The Role of Race in Jury Selection and the Effect of State Jury Selection Laws

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Abstract

The purpose of this research is to examine how race has played a role in the selection of the jury and further discover its relevance today in addition to explanations for the findings. This is also done through the analysis of state selection laws and how they affect the jury pool, thereby affecting the outcome of jury selection. The study uses implicit bias as a basis on which to build possible reasons why race is or is not an influencing factor in jury selection. Previous studies have shown various opinions and findings on the issue, but this research comes to the conclusion that race does affect the demographics of the jury due primarily to implicit bias and selection methods, and race is still a concern in its influence in the use of the peremptory challenge. In order to combat this problem and create a fairer justice system, it is most important to start at the structural level in movements such as changing state jury selection laws and introducing proper training for lawyers on avoiding implicit bias.

Introduction

In the criminal justice system, every offender has the right to have a fair jury trial. In order to gain information about potential jurors, the *voir dire* process is used, during which prosecutors and defense lawyers question those who were drawn from the jury pool (Sommers & Norton, 2008). Using this process, opposing sides may ask for information from each of the potential jurors. After rationalizing and analyzing responses, prosecutors and defense lawyers are able to use what is called a peremptory challenge (Morrison, DeVaul-Fetters, & Gawronski, 2016). King's University College explains that this special feature of the court system calls for a juror to be dismissed from serving without justification (as ctd. in Morrison et al., 2016). The purpose of the challenges is to allow for a minimization of potential juror biases, which would help produce a fair jury trial (Morrison et al., 2016). With this process in mind, it is difficult to determine if selection is really fair as the challenge has the possibility of being used improperly on the basis of race. If selection is unfair, then sentences will also suffer. These factors combined, Cole explains that there is room for error in which the court may actually be counterproductive in achieving a fair jury trial (as ctd. in Gabbidon, Kowal, Jordan, Roberts, & Vincenzi, 2008).

In an ideal criminal justice system, the jury is reflective of the community (Gabbidon, Kowal, Jordan, Roberts, & Vincenzi, 2008). However, it is difficult to ensure that this is actually the case. Furthermore, history has shown that it is not unheard of for black defendants to have all-white jurors. For example, in the Scottsboro trial of the early 1930s, two black males were tried and convicted by an all-white jury for allegedly raping two white females. In this case, the defendants were fortunate enough to have their conviction overturned due to the unfair jury selection that occurred; however, all white jurors still exist in present day, convicting black

defendants on weak evidence (Walker, Spohn, & Delone, 2012). In terms of the jury selection process itself, before it reaches the courts, state laws differ in their procedures for selecting jury pools. Because of the different processes from state-to-state, issues with the prevalence of non-diverse juries may be rooted in the flaws of this system.

Race-based discrimination in jury selection is defined as unconstitutional based on the Equal Protection Clause of the Fourteen Amendment (Albritton, 2003). Shortly after this amendment was enacted, the Supreme Court additionally recognized that *de jure*, or by law, exclusion of jurors on the basis of race is a violation of the Equal Protection Clause. *De facto* discrimination, which occurs outside of statutes, was more difficult for the Supreme Court to address. This kind of discrimination has been able to occur through jury selection processes; although appearing race-neutral, statutes have excluded minorities from the jury pool through discriminatory manners of who is eligible to be selected. In order to prove *de facto* discrimination is not in effect, it was ruled that the state must provide the burden of proof (Albritton, 2003). Although this seems to be in favor of those claiming race-based discrimination, the complaint is extremely difficult to support with solid evidence in the first place, making the state's job relatively easy.

Historically, many cases have addressed purposeful exclusion of races among juries. Beginning in 1880 with the *Strauder v. West Virginia* case, it was ruled that it is a violation of the Equal Protection Clause to eliminate prospective jurors because they are the same race as the defendant, which in this case, was black (Albritton, 2003; Walker et al., 2012). In 1965 in the *Swain v. Alabama* case, all black jurors were excluded through the use of peremptory challenges. Swain, a black male, was convicted but appealed his case, however, the Supreme Court and Alabama court ruled that Swain had to provide the burden of proof to win, a task that is no easy

feat, making it even more difficult to win these types of cases (Gabbidon et al., 2008; Walker et al., 2012). *Batson v. Kentucky* in 1986 advanced progress among discriminatory issues in the court by making race-based jury exclusions unconstitutional through the Fourteenth Amendment. Furthermore, the case created a system of three steps to evaluate peremptory challenges and determine if they were used because of a potential juror's race. With the 2005 *Johnson v. California* case, cases concerning race-based peremptory challenges became less arduous to win, as the burden of proof would now fall to the responsibility of the state (Gabbidon et al., 2008). However, Page states that many do not feel that these cases have prevented the peremptory challenge from being used in a discriminatory manner (as ctd. in Gabbidon et al., 2008).

Many theories exist to explain racial discrimination in court. This research will focus on the implicit bias theory, however, it is important to recognize other theories that attempt to explain racial matters. One such explanation is conflict theory, which emphasizes disparities in power within societal structure. Another is racial threat theory, which examines group interaction. Also, uncertainty avoidance theory studies court relations by evaluating how feelings of ambiguity affect risk assessment (Kutateladze, Andiloro, & Johnson, 2014). Implicit bias theory is most applicable to the present study of peremptory challenges and race. This type of bias occurs when race unintentionally influences a person's outlook or actions (Morrison et al., 2016). Implicit bias is unconscious and is largely a result of structural components that are embedded in society (Kang et al., 2012).

Presently, the prevalence and frequency of racial discrimination among jury selection is debated and difficult to determine. Hademeister found that prosecutors and defense lawyers both use peremptory challenges to dismiss potential jurors that would likely oppose their side, often resulting in its use with racially motivated intentions (as ctd. in McGuffee, Garland, &

Eigenberg, 2007). On the other hand, all respondents but one in research by McGuffee et al. (2007) did not believe they were dismissed based on race in jury selection. Results like these from varying studies make it troublesome to come to a clear conclusion about racial discrimination among jury selection. However, there has been progress in discovering the existence of this issue, as can be seen from results of the aforementioned court cases.

Another issue that makes it difficult to examine the currency of race-based peremptory challenges is the phenomenon of color-blindness. Gallagher (2003) asserts that color-blindness emphasizes a belief that everyone has equal opportunities regardless of race. This phenomenon hides white privilege, as many believe they are progressive in terms of racial tolerance when in reality they are not. Color-blindness in the courtroom then may affect the diversity, or lack thereof, among juries, and is a form of implicit bias. It furthermore ignores the structural shortcomings that affect discrimination (Gallagher, 2003).

There has been progress between jury exclusions from the past to the present, but finding more effective routes to ensure there is no discrimination is a work in progress. A few techniques include providing juror benefits and jurymandering, which essentially involves practices such as summoning potential jurors from certain areas after examining the areas' racial compositions (Walker et al., 2012). These practices take on structural issues, but they are still not enough to completely eliminate the peremptory challenge from being used against certain races. Not only can some practices be controversial, but they are not widespread, as states have different methods for jury selection (Walker et al., 2012).

Walker et al. (2012) provide an important point of discussion concerning the state jury selection laws. Guaranteeing race neutrality among the jury pool, even with the current laws to aid in achieving diversity, is not possible. Structurally, because states use a variety of different

methods to select the jury pool, the chances of being chosen are not equal for all races. For example, if the pool is drawn from a list of registered voters, minorities in certain areas may be less likely to vote, therefore decreasing the chances of a diverse jury (Walker et al., 2012). Therefore, even in instances when prosecutors or defense lawyers are well-meaning, the jury may be racially skewed. In the selection of the jury itself from the pool however it is possible to overturn convictions if race is proven to be a factor in jury selection, although again, this is a difficult process (Walker et al., 2012).

The goals of the present study are to examine the peremptory challenge and state jury selection laws. Using current research, the effectiveness of current constitutional features and case law will be examined in addition to the flaws of the system in order to prove that discrimination is still difficult to avoid. Research will examine, compare, and draw results from state jury selection laws, which include using lists of registered voters or those who own taxable property (Walker et al., 2012). The purpose is to determine the extent to which these processes affect the demographics of the jury pool and determine if this works against the ideal of a “fair” jury trial. It is hypothesized that implicit bias is quite prevalent among the processes for jury selection and that state jury laws skew racial diversity within jury pools.

Literature Review

Currently, there is much debate concerning the manner in which the peremptory challenge is used. In a study by Rose (1999), it was found that dismissing potential jurors using the peremptory challenge was the most frequently used method to reject a juror from service as opposed to challenges for cause, which occurred only in 19% of 181 exclusions. Furthermore, in 11 challenges for cause, 10 of the potential jurors were dismissed by methods of a peremptory challenge after losing the motions (Rose, 1999). As for race in this process, in another study, it

was found that Latinos composed the second most commonly excused people from the potential jury while blacks composed almost two-thirds of those dismissed (Gabbidon et al., 2008). The study also found that prosecuting attorneys were more likely to remove a minority from juror service, occurring 89.8% of the time as opposed to 5.5% for defense lawyers.

Overall, there is differing evidence of whether the peremptory challenge has been used to purposefully limit minorities from service or whether this is not an issue. Kang et al. (2012) found evidence that on the jury's end "jurors of one race tend to show bias against defendants who belong to another race" (p. 1142). Researchers argue that this could seriously affect the outcome of cases in a negative manner (Kang et al., 2012). This is an important finding to keep in mind when analyzing possible reasons that jurors may or may not be excluded. In cases as described above, this reason for exclusion based on race is not necessarily based in discrimination, but rather in eliminating bias. On the opposing side, Morrison et al. (2016) says that they have not found solid evidence that prosecutors/defense lawyers use the peremptory challenge for or against keeping jurors with implicit bias. Although they cannot definitively conclude that the challenge is used in a racially motivated manner, Morrison et al. (2016) found that juror selection reflected the legal interests of professionals. Rose (1999) found similar results in that in a comparison of African American versus white jury dismissal, exclusion differences were not significant.

Implicit bias theory is an extremely rational manner in which to describe why race is likely a factor in jury selection decisions. Implicit bias in prosecutorial instances, as defined by Kutateladze et al. (2014), occurs when certain factors of a defendant influence the decisions of court actors. This description is applicable to jury selection, using race as the factor. Because of negative connotations surrounding portrayal of non-white races in the environment and structure

of society, people are exposed to “race-coded” messages that they unconsciously develop into their thought-processing, resulting in negative outcomes for minorities (Steffensmeier, Ulmer, & Kramer, 1998). In the criminal justice system, implicit bias can play a dangerous role because of the biases that affect decision making (Kutateladze et al., 2014).

In analyzing the practice of using implicit bias in the courtroom, Morrison et al. (2016) found that those skilled in law are good at determining if potential jurors have implicit biases and therefore choose to dismiss or keep them based on this conclusion. Researchers in this study also found that defense lawyers more often excluded jurors with high perceived implicit bias towards race when the defendant was black and the plaintiff was white, with the prosecution doing the opposite in dismissing those with low implicit bias. Both parties were likely to include jurors opposite of their aforementioned preferences (Morrison et al., 2016). Morrison and colleagues (2016) also concluded that there was not a significant relationship between “peremptory challenges and jurors’ levels of explicit race bias” (p. 1136), when explicit bias is defined as verbally expressed bias. This result means that attorneys did not use a challenge because a juror had explicit bias; however, it does not exclude using a challenge because the prosecutor/defense lawyer had implicit bias.

Although implicit bias clearly exists, Gallagher (2003) explains the problem in a widely-held belief that race is not an issue in today’s society as it once was. Gallagher’s (2003) study showed that most whites believe that opportunities are equal for every color. By simply analyzing census data, it is clear that color-blindness does not exist as a progressive concept, as inequalities continue to persist with whites on top and others, particularly blacks and Latinos, experiencing much less advantage. The majority is under the false impression, especially due to the media, that purposeful racist attitudes/actions no longer exist (Gallagher, 2003). A clear

example of this occurred in McGuffee et al.'s (2007) study in which most jurors, which included both whites and people of color, felt that the system for jury selection was fair and had faith in the process. However, the aforementioned studies in this research show racial discrepancies still exist or are at least in question.

Although it can be seen that studies have either left the race-based peremptory challenge in ambiguity or address it by taking a side, regardless, it has been hard to prove with sufficient evidence. Sommers and Norton (2008) found results that when challenged on reasoning for a peremptory challenge, attorneys rarely admit if race was the reason. Just because attorneys do not admit this however does not mean that race was not the reason. In contrast, it could also be that the peremptory challenge was legitimately good-natured and race neutral (Sommers & Norton, 2008). Melilli (1996) found that of 632 peremptory challenges called into question in 55 of the cases an attorney admitted to having used the peremptory challenge in a race-targeted manner. Despite admissions occurring, they still only appeared in a small amount of the total questionings.

Statistically, very few of the cases that do get appealed because of a claim of racial injustices among jury selection are won. Seventy-nine percent of those who appeal lost their case, and when litigants won, often the "defense or prosecution stuck a racial or ethnic minority jury member for something they didn't similarly strike a White jury member" (Gabbidon et al., 2008, p. 64). While Gabbidon et al. (2008) does point out that appealing cases on beliefs of the unjust use of race-based peremptory challenges is less of a rarity than in the past, still only 20% of these cases are won. Gabbidon et al. (2008) does address both sides of the data however, stating that it could have resulted from attorneys neglecting to admit the use of a race-based peremptory challenge or giving vague responses to justify the action, or it could be that the

challenge was in actuality not race-based. Even if no admission results, Kang et al. (2012) emphasize that bias is a factor which does affect appeals as well as other decisions in the courtroom.

In order to aid in the chances of a diverse jury, it is important to consider structural factors. Walker et al. (2012) discuss the issue of diverse juries, relating problems of racial bias to roots in the current established state laws for jury pool selection. Walker et al. (2012) makes a good point in stating that there is no doubt that discrimination in jury pool selection is an issue. Walker et al. (2012) notes that if it was not an issue then white juries would not have been seen so prominently, and the Supreme Court would not have addressed discrimination so many times. The authors discuss an important case that illustrated discriminatory structure. As indicated in the *Strauder v. West Virgina* ruling, as previously mentioned, West Virginia had a law that only white males were eligible to serve. The court did rule in favor of Strauder, stating that blacks in general as well as black defendants were hurt by this type of statute. Because of the ruling, however, in *Strauder v. West Virgina*, states began to look for ways around the case law in order to maintain the tradition of the all-white jury. For example, jurisdictions in Delaware began to select the jury pool from taxpayer lists. Using this system, black were rarely selected for duty. This was supported by the state as well as the Chief Justice of the Delaware Supreme Court within the justification that blacks were unqualified or did not have the proper morals and intellect as compared to whites. Although this was eventually taken to court and deemed unconstitutional, it supports the fact that state law and procedures sometimes aided in discrimination (Walker et al., 2012). The all-white jury starts with the persistence of structural inequalities and injustices.

Regarding previously implemented structure, with *Batson v. Kentucky* being arguably the most recently significant case, Sommers and Norton (2008) argue that *Batson* cannot "identify and prevent race-based peremptories" (p. 534). Walker et al. (2012) also support this point in saying that cases since the ruling have displayed no particular advancement in the subject. For example, court decisions supported the idea that when a few African Americans are selected on juries, those juries are automatically deemed as free of racial discrimination. Furthermore, when the defendant is the same race as a potential juror, using only one or two peremptories to eliminate these types of potential jurors has been allowed and has not been ruled as a discriminatory practice (Walker et al., 2012). Sommers and Norton (2008) contend that the peremptory is simply ripe with opportunities for discrimination to prevail by the very nature of the allocation. Not only does this highlight the structural issues that lead to discrimination among jury selection, but in effect, black defendants automatically have less faith in the system for receiving a representative jury and fair jury trial (Sommers & Norton, 2008).

Many examples exist that support the argument that non-diverse juries stem from more than just implicit bias among lawyers. Often, statutes appear to be non-discriminatory on the face but are able to be exploited. Albritton (2003) discusses the Texas key man statute. In Texas law, a controversial jury procedure is that judges selected commissioners who can choose the jury pool, but they must be considerate and aware of race. The goal of this code was to create a representative jury, but it is has instead been used in the opposite way than intended. It allows lawyers to focus on race, but to focus on excluding certain races as opposed to including them (Albritton, 2003). Discriminatory jury selection methods were addresses in the case *Smith v. Texas*, but the court initially found that the Texas law was fair because it is capable of being

enforced without discrimination. However, they recognized that this goes both ways. Upon further examination, within a seven year period:

> …only five (actually only three because one grand juror served three times) of the 384 grand jurors were black, only 18 of the 512 persons summoned were black and only five of the 32 grand juries had a black member. (Albritton, 2003, p. 187)

In the ruling, the court did recognize that this was much more than just a chance happening and concluded a violation of the Fourteenth Amendment. Although Smith won appeal, nothing was done to change the law (Albritton, 2003). This is clearly a major structural issue that allows discrimination to continue.

After people were taking advantage of the committee system and apprehension rose, state law passed that eliminated the committee process, which has seemingly has a significant impact on the 159th district (Legal Monitor Worldwide, 2015). Reactions to this law have been the opposite of what would be expected after the above finding. Judge Paul White of the district stated that the jury will be "'chosen from driver licenses and voter registration.' He went on to call it random, saying it had no diversity of race, age, sex, or experience" (Legal Monitor Worldwide, 2015, n.p.). Judge White believes that the committee allows for a trustworthy way to select a qualified jury. He stated that in the first selection to occur once the new law was enacted, blacks were underrepresented with whites being the majority, and no Hispanics were even considered to be a grand juror (Legal Monitor Worldwide, 2015). In the 45th district, the presiding judge reported similar findings. He argued that the system cannot provide a jury representative of the community. However, attorney testimonies have taken a different perspective in disagreeing with a lack of diversity among the new law (Legal Monitor

Worldwide, 2015). The differing attitudes can only be thoroughly examined for correctness in time and analysis.

Walker et al. (2012) examines the opposite end of the country with Massachusetts. Figure 1 (see the Appendix) shows a portion of the requirements that a person must fulfill in order to be qualified to serve on a jury in that state. Using this figure, the authors explain that jury pool diversity is affected in that many minorities and poor are less likely than their white, middle-class counterparts to respond to calls for jury duty. However, because minorities and poor are also less likely to do/have things that are used for jury summons, such as being registered to vote, this already lessens the amount of diversity available for the final jury selection (Walker et al., 2012). Using the brief list of reasons a juror may be disqualified for service in Figure 1., it is clear that there are quite a few ways that minorities can find to avoid participating in jury service.

Benokraitis and Griffin-Keane (1982) describe the structural issues that exist as a form of “nonattitudinal” discrimination (p. 430). They cite issues similar to Walker et al. (2012) for reasons why some people may not be able to serve on the jury, such as lack of geographical mobility or not being registered to vote. Benokraitis and Griffin-Keane (1982) expand on these points using the registered voters example, stating that minorities may be less likely to be registered to vote because they are discouraged to vote by society or may feel as if they have little power to enact change. Therefore, the jury’s diversity is swayed from the start (Benokraitis & Griffin-Keane, 1982). Seemingly simple issues have a great overall effect in grand jury selection. The authors furthermore bring up an interesting point in conclusion, explaining that vague statutes may be another contributor to non-diverse juries since lawyers are left to interpret the laws on their own, which could include prejudicial attitudes. This is major cause for concern

considering their research showed that "*all* white and some black legal personnel express some prejudicial attitudes toward blacks" (Benokraitis & Griffin-Keane, 1982, p. 444).

With the existence of so much back and forth, countering beliefs, and varieties of evidence about the topic of diversity among the jury, it is important to come up with solutions that put the issue to rest, so to speak, once and for all and feature solutions that can be better enforced than case law. Walker et al. (2012) provide many different methods that are currently being implemented in some districts. In one county in Minnesota, for example, Higgins states, "They doubled the pay for serving, provided funding to pay for jurors' daycare expenses, and included a round-trip bus pass with each jury summons" (as cited in Walker, 2012, p. 250). This provides an incentive for minorities and poor to show up to duty. Jurymandering has also been a policy enacted in some areas. As the name implies, the process involves selecting where to have summons sent; in this method, more summons can be given out in minority concentrated areas in the hopes of increasing jury diversity (Walker et al., 2012). In Massachusetts, lists of residents, rather than the typical driver's license or registered voter lists, have been used, although this has been argued to be erroneous in locations with large black populations (Walker et al., 2012).

In Wayne County, Michigan, representatives are looking into ways to increase jury pool diversity by having a broader spectrum of names to choose from in using different selection methods, therefore having a more ideal jury in terms of reflecting the community. (The Detroit News, 2015). The present system uses driver's licenses and state ID cards, but this is a problem in some urban areas where these forms of identification are much rarer. This no doubt limits the options for those subject to serve on a jury. In this example, adding registered voters as well as state income tax filers to those available for service would be beneficial to increasing diversity since many people in the area are without their own registered transportation (The Detroit News,

2015). With this example, it is clear that what should be done to increase jury diversity depends on the area. What may advance fairness and diversity in one area could be the opposite in another.

Overview

This research is focused on examining the diversity among juries, as it is a topic that is has been continuously relevant and important to guarantee the ideal fair and representative trial by jury. Literature has long debated and shown differing results. Some findings prove a continuation of prejudice, whether purposeful or not, as a cause for the lack of diversity on juries. Some find that there is little or no evidence to support prejudice and/or jurors do not feel discriminated against. Others still cite structural issues to explain a long history of a lack of diversity. This paper argues that jury diversity must still be an issue, otherwise there would not be such an array of results. Regardless, it is best to end any chances of jury discrimination in order to guarantee the American ideals of equality and fairness are enforced throughout the courts.

There are many discrepancies surrounding the justness of the courts system, and focusing on these issues would hopefully help kick-start reformation of others as well. Specifically, offering methods in which to increase jury diversity and decrease the amount of prejudice and implicit bias affecting jury selection would be significant factors in confronting and improving the long withstanding issue of race inequalities in America. The literature review has provided routes that may be taken in achieving this goal, but to implement such large and widespread change would almost certainly include much trial and error as well as time— not to that say that it could not be done. Many laws have been passed before in order to create change and improvements in jury selection, but few have resulted in long-term success. The research review

sought to examine the existing literature for innovative ideas that would currently work best in obtaining the goal of fair jury selection. The results and history discussed in the literature are by no means uninteresting, but with so many complications to the debate of whether or not jury selection does its best to be representative, this confusion must be narrowed and focused to ensure and provide rights, faith, and lawfulness.

Discussion and Recommendations

Findings in this study confirm that previous evidence varies in concluding whether or not the peremptory challenge is used in a racially-motivated manner. Results show differing areas of support, including in terms of implicit bias theory. For example, Morrison et al. (2016) did not find significant evidence that implicit bias is cause for a peremptory exclusion, but Gabbidon et al. (2008) found that most dismissed were black. However, still, it is very clear that racial and ethnic minorities are underrepresented among the jury. Although case law has tried to combat this, success has been very limited. There were hopes of improving the system after *Batson v. Kentucky*, but multiple scholars have shown that very little has changed, essentially saying that the case ruling has been ineffective in actually making a difference (Sommers & Norton, 2008; Walker et al., 2012).

History has proven time and time again that there are issues with the peremptory challenge limiting the representativeness of the jury. For example, in the infamous Scottsboro trial mentioned earlier, an all-white jury convicted two black boys of rape; upon appeal, it was found that blacks were being purposefully removed from the jury, and the convictions were overturned (Walker et al., 2012). Regardless of whether or not scholars believe in peremptories being used discriminatorily, people involved in the system see it as happening; otherwise, cases would not appeal on this basis. Therefore, it remains an issue. It is important to question the

process of appellate courts and how they can effectively evaluate these claims. Clearly, there must be an issue with this process since so few appeals are won (Gabbidon et al., 2008).

In the long run, it is not solely an issue of peremptories being abused. The structure has much to do with who is even available and admissible for jury service. Jury selection methods are a major root cause for lack of diversity in juries. In many circumstances, the pool is limited because of where the names are selected from. For example, those who are not registered to vote may have no chance of being considered for service if the jury is selected solely through the use of lists of registered voters in an area. As a result of the current procedures, even in instances when lawyers are attempting to be as fair as possible, eliminate their implicit bias, and select a representative, honest jury, they may be essentially set up by the system to fail through no fault of their own. This folly must be brought to the attention of the public and the criminal justice system so it may end and jury trials can take a step towards being fairer.

Improvements are clearly needed, and jury selection, in particular, is an area that requires a lot more attention. There are methods for change floating about as discussed in the prior literature review section, but few districts seem to take an interest and actually implement them. There is no current law, system, or policy that is effectively enforcing elimination or lessening of one of the most important factors in jury selection: implicit bias resulting in prejudice and structural inequalities inherent in the U.S. courts system.

The best way to help ensure that jury selection is fair is to start at the structural level. This must be done beginning with the state selection methods. Districts in each state should evaluate which methods would work best for them in order to be able to draw a representative pool. States may do this by examining their population; census information and statistics would work well for this. Using the census, districts would be able to view the demographics of their

district in order to first find out what would encompass a representative jury. Following that, they would need to examine which selection method(s) would be likely be the most accurate in selecting a pool to match the demographics. For example, as cited earlier, in the 159th district in Texas, the judge felt that drawing the jury pool from drivers' licenses and voter registration did not allow for a representative jury as opposed to the previously installed committee process (Legal Monitor Worldwide, 2015). However, if the people on these lists are examined in relation to the community demographics in other areas, they may be very closely representative and this could be chosen as an effectively fair jury selection method. On the other hand, in areas where there is a large black population as well as a significant amount of previously convicted black felons, it would be unwise to select potential jurors from voter registration lists since convicted felons cannot vote.

Once districts research and analyze, they may implement the laws that work best for them based on the above needs. In order to garner more legal support for these actions, I recommend existing organizations such as the National Lawyers Association (NLA) and the National Association for the Advancement of Colored People (NAACP) join together in the interests of creating a justice system with better enforced ideals of equality as well as racial advancements. These groups can lobby to local districts to begin and progress up to the state and national level after acquiring more support for the cause along their journey. Once governments and courts are made more aware of the issue of jury selection through these methods, it will be an easier process to change and implement new selection laws with the support system and actions of legislative bodies in line with these goals.

Another structural component to be changed involves the way in which lawyers are trained. It would be a very interesting and important adjustment to begin implementation of

training within law schools to include a focus on being aware of, recognizing, and avoiding implicit bias in the courtroom. This would not only help improve jury selection, but it might also help in terms of general courtroom proceedings. Because of the environment lawyers have grown up in, their values/beliefs, and simply the way society is structured, may make it difficult — if not impossible— to completely avoid implicit bias, as some people will be inherently resistant, particularly racists. Nevertheless, this is likely a small population of lawyers, and proposed training or classes would at least help create ways in which to improve the effect of and lessen the presence of implicit bias in the courts system. This could be done by creating a course in the subject matter in law schools that all future lawyers must be required to take. I would begin this process by first contacting the deans of major influential universities that are open and willing to grow, which is likely since they will want to stay ahead of their counterparts. I would present my research to these individuals, explaining its importance, the benefits, and why this will make their school as well as their students better. Furthermore, using organizations once again such as NLA and NAACP, we could lobby government affiliations in addition to presenting information to universities/law schools in order to enact these changes. Another method to start could be offering to give presentations or seminars at universities and law schools to get students interested and passionate about the topic as well.

In order to even further adjust the structure for the best chance of selecting a fair, representative jury, I suggest making it easier for cases appealed on the basis of an unrepresentative non-diverse jury resulting from unfair jury selection to be won or be examined properly. The major component that must be changed in order to do this is to more closely monitoring the peremptory challenge. If cases are appealed because of the belief that peremptory challenges were used to influence race, we need better methods in which to tell if

this is indeed why a peremptory challenge was used. To begin this improvement, close records and monitoring should be enacted during the jury selection including careful observation by the judge. Similar to the above mentioned lawyer training course, judges should be required to take part in training programs in order to get a thorough idea and better analyze if lawyers show signs of being biased or prejudiced during jury selection. If the previously mentioned classes are indeed enacted in law schools, judges will have likely already taken the course and be knowledgeable about implicit bias. However, there should be another program to be embedded in the training of judges that is tailored more towards a judge's specific role and duties. They would then not only be able to be used as sort of a refresher course per se during judgeship training programs, but also add more information that is tailored to judges and the types of decision-making and reasoning they must be prepared to handle. These programs may be implemented in the same way as described above for courses in law school, except instead of contacting universities, contacting organizations that provide judge training such as the National Judicial College and lobbying with groups like the American Judges Association (AJA).

Once judges are trained in the matter of implicit bias, they will be better able to control what happens in their courtrooms. To even further analyze these types of cases, there are various steps that should be taken in order to best come to a conclusion for the case. First, part of the appeal process should be to compare the community makeup versus the jury demographics to see if the jury was unrepresentative; this can be conducted by, once again, using census data. Second, there must be an analysis of who was called to jury duty in the first place and why certain jurors were eliminated to see if the jury was chosen in the fairest way possible. This is why it is important to keep thorough records during the jury selection process so that if an appeal situation arises, records may be pulled for justification of elimination and discovering if a

peremptory challenge could have been used in a racially-motivated manner. In order to actually ensure these methods are being used, I propose garnering support from local legislatures and those who have dealt with these types of cases, as well as university officials who support the new policies to aid in lobbying to governments about the changes that must be enacted for an overall better criminal justice system. This way, the steps I have suggested to be used for these types of appeals can become requirements of how the cases must be handled, helping the process become less subjective and more objective.

Conclusion

After researching existing literature and analyzing conclusions, this research concludes that race is an influencing factor in jury selection whether intentional or not. Furthermore, the results of the final jury composition are derived from implicit bias as well as jury selection methods. This issue has a long history and has been referenced in various court proceedings, particularly those concerning the peremptory challenge. Case law has addressed the subject and attempted to help solve the problem, but districts have not been proactive in abiding by the established rules or having much concern. Although cases in which racial discrimination has been proven to influence jury selection have been reversed, they are very difficult to win. To minimize these cases in the first place, the issue needs to be resolved at its most fundamental level.

There are many ways in which racial discrepancies in jury selection can be addressed, but it seems that a major problem now is that it is simply not an area that many court officials are preoccupied with. Although society seems to be progressing in its views towards nonwhite races (seeing them in a more positive light than in the past), it is naïve to believe that racial biases and discrimination do not exist. Implicit bias is simply embedded in the structure of society.

Implicit bias affects the population subconsciously. Although not always outwardly having an effect, implicit bias does influence jury selection, which is extremely important, as the jury makes decisions about someone's future— often the rest of their lives. This is why it is so important that the nation's future lawyers are trained in avoiding and recognizing this implicit bias.

My research has provided me with a lot of insight into the subject. Reasons like the above mentioned are why I am adamant that the most important way in which to eliminate race playing a role in jury selection is to start with the structure. Simply saying that lawyers should stop letting race be a factor in jury selection is not enough. Regardless, it cannot be said that all lawyers let race influence their decisions about the jury. Changing state selection laws will have the greatest impact overall. By starting here, the jury will be representative from the beginning, which will eliminate the burden on lawyers to try to select a fair jury when the pool is unfair. This furthermore aids in cases that are appealed when the jury is believed to be selected based on race. If the state ensures that the pool is representative, then this factor will no longer be a cause for question in these appeals.

As society begins to be more accepting and a larger proponent of equal rights, it is important to grow with society in the courts and persistently address fairness in jury proceedings. The United States was founded on the belief of equality, which is something citizens take much pride in, but we can hardly say that this is truthfully a country of total equality. It is necessary to educate the country on why they must care about jury proceedings and the influence of race. Equality in the courtroom should be one of the most important issues, as the American courtroom is supposed to be the country's prime example of a just and fair system. If the place where the epitome of justness should exist does not even have equality, how can anyone expect it

to exist anywhere else? This is another reason why eliminating race as an influence in jury proceedings must be addressed with the highest concern.

As a future lawyer, this issue is of particular importance to me. I am going into this career to enforce and guarantee justness, not to further promote avoiding the topic. The entire purpose of the justice system is to punish those who need to be sanctioned, but to do it fairly. Everyone deserves the same opportunities, and that includes the same opportunity to have a case determined by a representative jury. In the future, I do foresee less implicit bias among lawyers as society grows to be generally less judgmental, but this does not change the root causes of the problem in the structure. Selection laws must be changed through the methods I have described earlier, and this can only occur if the topic is given more attention. The purpose of this project was not to criticize the system, but rather to prove that improvements are needed and possible to enact. I remain hopeful that the courtroom will progress, but the longer the wait, the more likely that wrongful convictions will take place. I urge those involved in the courtroom proceedings as well as believers of rights and equality to get educated, educate others, and act.

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Appendix

Juror Service

Juror service in the participating counties shall be a duty which every person wh qualifies under this chapter shall perform when selected. All persons selected for service on grand and trial juries shall be selected at random from the population the judicial district in which they reside. All persons shall have equal opportunity to be considered for juror service. All persons shall serve as jurors when selected and summoned for that purpose except as hereinafter provided. No person shall exempted or excluded from serving as a grand or trial juror because of race, colo religion, sex, national origin, economic status, or occupation. Physically handicapp persons shall serve except where the court finds such service is not feasible. This c shall strictly enforce the provisions of this section.

Disqualification from Juror Service

As of the date of receipt of the juror summons, any citizen of the United States, is a resident of the judicial district or who lives within the judicial district more t fifty per cent of the time, whether or not he is registered to vote in any state o federal election, shall be qualified to serve as a grand or trial juror in such judic district unless one of the following grounds for disqualification applies:

1. Such person is under the age of eighteen years.
2. Such person is seventy years of age or older and indicates on the juror conf mation form an election not to perform juror service.
3. Such person is not able to speak and understand the English language.
4. Such person is incapable by reason of a physical or mental disability of rend satisfactory juror service.
5. Such person is solely responsible for the daily care of a permanently disable person living in the same household and the performance of juror service w cause a substantial risk of injury to the health of the disabled person.
6. Such person is outside the judicial district and does not intend to return to judicial district at any time during the following year.
7. Such person has been convicted of a felony within the past seven years or is defendant in pending felony cases or is in the custody of a correctional institu
8. Such person has served as a grand or trial juror in any state or federal cour within the previous three calendar years or the person is currently schedule perform such service.

SOURCE: 234A M.G.L.A. § et seq.

Figure 1. Massachusetts jury selection laws excerpts. Reprinted from *The Color of Justice: Race, Ethnicity, and Crime in America* (p. 249), by Walker, S., Cassia S., & Miriam D., 2012, Belmont, CA: Wadsworth, Cengage Learning. Copyright 2012 by Wadsworth, Cengage Learning.