

Bias in Jury Selection: Justifying Prohibited Peremptory Challenges

MICHAEL I. NORTON^{1*}, SAMUEL R. SOMMERS² and SARA BRAUNER²

¹Harvard Business School, Boston, Massachusetts, USA

²Tufts University, Department of Psychology, Medford, Massachusetts, USA

ABSTRACT

The United States Supreme Court has restricted attorneys from considering the gender and race of potential jurors in their use of peremptory challenges—the practice by which jurors may be removed from a jury without explanation or evidence of potential bias. We propose that forbidding peremptories based on social category information not only fails to decrease biased jury selection, but also encourages attorneys to search—successfully—for neutral justifications for their biased decisions. In Study 1, participants who acted as prosecutors in a jury selection paradigm eliminated female jurors more often than male jurors, but then justified these biased choices by citing gender-neutral information. Troublingly, Study 2 showed that explicit instructions against the use of gender failed to eliminate selection bias, and in fact resulted in even more elaborate justifications. Copyright © 2007 John Wiley & Sons, Ltd.

KEY WORDS jurors; biases; prosecutors; gender bias

INTRODUCTION

The 6th Amendment to the Constitution of the United States guarantees defendants the right to a trial by a fair and impartial jury. There are two stages designed to ensure this process, each with inherent difficulties. First, the pool from which juries are drawn must be representative of the community (e.g., *Lockhart v. McCree*, 1986); the jury selection process (*voir dire*)—in which attorneys for both the prosecution and defense can excuse individual jurors—is then intended to identify and remove jurors who cannot be impartial in a given case (see *Holland v. Illinois*, 1990; *Taylor v. Louisiana*, 1975). Creating jury pools that are representative of their communities is a task typically left to policymakers, an objective that remains elusively difficult to achieve (see Cohn & Sherwood, 1999). The challenging task of ensuring the impartiality of individual jurors, on the other hand, is left up to those who interview prospective jurors during jury selection: judges and attorneys. Because attorneys are expected to win cases, however, their motivation to select unbiased jurors is

* Correspondence to: Michael I. Norton, Harvard Business School, Boston, MA 02163, USA. E-mail: mnorton@hbs.edu

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