Bias and the Jury Resource List (updated May 2021)

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Readings & Resources:

(1) **A Federal Court Asks Jurors to Confront Their Hidden Biases (2017)**, available at https://www.themarshallproject.org/2017/06/21/a-federal-court-asks-jurors-to-confront-their-hidden-biases

Description: A discussion of an 11-min video on unconscious biases shown to all prospective jurors in federal courthouses in Seattle and Tacoma

(2) **Our Jury System is Racially Biased. But It Doesn't Have to Be That Way (2019)**, available at https://www.washingtonpost.com/opinions/2019/03/27/our-jury-system-is-racially-biased-it-doesnt-have-be-that-way/

Description: In light of the Supreme Court case involving race-based jury selection in the case of Curtis Flowers, this piece considers the limits of *Batson* and the future of jury selection.

(3) **Bias in the Courtroom (2019)**, available at https://now.tufts.edu/articles/bias-courtroom

Description: A prominent social scientist who studies race and juries talks about bias and they jury.

(4) **How Juror Bias Can Be Tackled to Ensure Fairer Trials (2018)**, available at https://theconversation.com/how-juror-bias-can-be-tackled-to-ensure-fairer-trials-100476

Description: Adds to the understanding of juror biases to consider how information integration over the course of a trial might affect decisonmaking in ways that haven't been appreciated before, particularly given the cognitive biases that can manifest during this process.

(5) **Identifying Juror Bias: Moving from Assessment and Prediction to a New Generation of Jury Selection Research (2016)**, available at https://www.researchgate.net/publication/301261569_Identifying_Juror_Bias_Moving_from_Assessment_and_Prediction_to_a_New_Generation_of_Jury_Selection_Research

Abstract: One of the behavioral assumptions made by the legal system that has attracted attention is the notion that jurors can make decisions which are free from bias. In an attempt to ensure that seated juries are comprised of jurors who are free from bias, venirepersons (i.e., potential jurors) are interviewed in a pretrial procedure called voir dire. During this procedure, venirepersons respond to questions that are designed to elicit responses that will allow judges and attorneys to evaluate whether they may have knowledge or biases that would interfere with the duty to evaluate the evidence fairly and make decisions that comport with the law. In this chapter, the psychological assumptions of legal actors about the identification of venireperson bias during voir dire, and the extent to which the process results in the removal of problematic jurors from jury service, are reviewed. The empirical literature from the first generation of jury selection research was devoted to identifying traits or developing attitudinal measures that predict juror verdicts. The chapter contains a review of several studies that represent a new generation of jury selection research that moves beyond mere prediction of venirepersons' verdict inclinations to an evaluation of the extent to which social cognitive and social influence processes interfere with judges' and attorneys' abilities to effectively exercise challenges to venirepersons' potential jury service.

(6) **A Proposal to Properly Address Implicit Bias in the Jury (2020)**, available at
https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1436&context=hwlj

Abstract: This article addresses what implicit bias entails and why increasing education and exposure about it is important. More specifically, it addresses why implicit bias education of jurors is critical in order for a fairer court system—particularly for the criminal justice system. It then analyzes the main efforts currently utilized by courts and attorneys across the United States to inform jury members of implicit bias. This article also analyzes some of the more peculiar methods certain courtrooms have been using.   With this all-in mind, I propose a methodology that courts should use that is based on the methodologies already in place and scientific research on what effective implicit bias training looks like. I hope that this note leads to more courts employing effective implicit bias trainings to lead to long-term reduction of systematic bias.

(7) **Eliminating Bias in the Criminal Courtroom (2018)**, available at
https://blog.scholasticahq.com/post/eliminating-bias-criminal-courtroom/

Description: A discussion of how biases show in the courtroom and the promise of technological solutions to decrease bias.

(8) **Unconscious Bias Video for Potential Jurors** [Posted by US District Court, Northern District of California], available at
https://www.cand.uscourts.gov/attorneys/unconscious-bias-video-for-potential-jurors/

Description: A 6-minute video entitled *Understanding the Effects of Unconscious Bias* shown to potential jurors before the jury selection process. Attorneys are invited to review the video before trial and to express any concerns to the assigned judge in advance of jury selection.

(9) **Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promise of Batson, and Proposed Solutions (2010)** [written by a federal judge], available at https://harvardlpr.com/wp-content/uploads/sites/20/2013/05/4.1_8_Bennett.pdf

Abstract: This Article begins with a brief examination of the existence and prevalence of implicit bias, including the history of implicit bias testing and other social science research into the phenomenon. Next, this Article turns to a more detailed examination of the two problematic aspects of jury selection mentioned above—judge-dominated voir dire and the Batson challenges— and the way in which those processes may exacerbate rather than alleviate the problems of implicit bias in jury selection and jury determinations. Finally, this Article considers what lawyers and judges can and should do about implicit bias in the legal system. I propose twin solutions to the problems of judge-dominated voir dire and the flawed Batson challenge process. The first solution is to increase lawyer participation in voir dire, thereby placing the primary onus to detect and address the implicit bias of jurors in the hands of the trial participants best equipped to do so. The second solution is the total elimination of peremptory challenges, a solution to the failed Batson process perhaps as brutally elegant and effective as Alexander the Great's solution to the Gordian Knot. True, there is some tension between increasing lawyer participation in voir dire while stripping lawyers of peremptory challenges. But it is my contention that the two proposed solutions work best in tandem. The implicit bias of jurors can be better addressed by increased lawyer participation in voir dire, while the implicit bias of lawyers can then be curbed by eliminating peremptory strikes and only allowing strikes for cause.

(10) **On Addressing the Problem of Implicit Bias in Juror Decision Making**, available at http://www.ncsc-jurystudies.org/__data/assets/pdf_file/0017/5615/cr49-4elek.pdf

Abstract: The first section of this article discusses the difference between explicit bias and implicit bias and why contemporary researchers have become more convinced that much of the disparity in legal outcomes for African-Americans compared to whites is likely due to implicit bias. We then describe different interventions that have been proposed to reduce the impact of implicit bias, and findings from empirical research about their effectiveness. One complication of these interventions is that some otherwise well-intentioned approaches can provoke a backlash effect in which the individuals exposed to the intervention are actually more likely to make judgments or behave in ways that manifest prejudice. In the context of administering these interventions with trial jurors, there are a number of pros and cons, many of which

involve purely logistical concerns. We conclude with an update about interventions that are currently being tried, including a pilot test of an implicit-bias jury instruction.

(11)   **Getting Beyond "Can You Be Fair?" Framing Your Cause Questions (2013)**, available at http://www.thejuryexpert.com/2013/08/getting-beyond-can-you-be-fair-framing-your-cause-questions/

Description: Explanation of how to ask more multilayered and less leading questions to determine if a juror has a bias that cannot be overcome and thus should be dismissed. Discusses how to avoid social desirability biases that often lead to promises of fairness that jurors are not likely to live up to.

(12)   **Illinois Courts Pattern Jury Instructions on Implicit Bias**, available at https://courts.illinois.gov/CircuitCourt/CivilJuryInstructions/1.08.pdf

(13)   **Psychology of Jurors in the Age of Coronavirus (2020),** available at https://www.uslegalsupport.com/blog/psychology-of-jurors-in-the-age-of-coronavirus/

(14)   **Chauvin Jury: A Range of Views on Race and Policing (2021),** available at https://www.nytimes.com/2021/03/30/us/chauvin-trial-jurors.html

(15)   **The Chauvin Trial's Jury Wasn't Like Other Juries (2021),** available at https://www.theatlantic.com/ideas/archive/2021/04/what-was-different-time/618735/