

Literature Review

Name of Student

Institutional Affiliation

5-2 Literature Review

The literature review delves into significant scholarly contributions that explore the multifaceted aspects of the jury selection process, mainly through the lens of constitutional law and various allied fields such as psychology, technology, and public policy. The review critically examines how innovations in technology and insights from psychological research are reshaping traditional jury selection practices while also considering how policy reforms are addressing or failing to address existing inadequacies. The overarching goal is to assess the effectiveness of these interventions in ensuring compliance with the Sixth Amendment, which mandates a fair and impartial trial for all defendants. The investigation is crucial for understanding whether current practices in jury selection adequately safeguard the rights afforded by the Constitution and how they might be improved to serve the principles of justice and equality better.

Virtual Reality and Restorative Justice

Bloch delves into the role of virtual reality (VR) in enhancing the restorative justice process¹. It argues that VR, by facilitating immersive perspective-taking, can significantly influence jurors' understanding and empathy toward parties involved in a case. The potential for VR to serve as a tool for bias mitigation in jury deliberations is profound. By embodying avatars, jurors can gain a deeper appreciation of the diverse experiences and hardships that influence human behavior, potentially leading to more empathetic and less biased verdicts. The approach aligns with the Sixth Amendment's emphasis on fair trials by potentially reducing unconscious biases that might affect jury decisions. The integration of cognitive science into the legal framework through VR could revolutionize jury trials by making them more equitable and just.

Implicit Bias and Its Implications for Jury Selection and Antidiscrimination Policy

¹ K. E. Bloch, *Virtual Reality: Prospective Catalyst for Restorative Justice*, 58 Am. Crim. L. Rev. 285, 287 (2021).

Gawronski, Ledgerwood, and Eastwick critique the reliability of Implicit Association Tests while highlighting mechanisms that lead to implicit bias in real-world scenarios, such as jury selection². The authors propose that biased interpretation and weighting of information about social groups significantly affect jurors' decisions. The insight is crucial for developing more targeted and effective bias mitigation strategies in jury selection. By focusing on the actual behaviors influenced by implicit biases rather than merely changing test scores, legal systems can better address discriminatory practices. The implications for jury selection are significant, offering a pathway to refining selection processes to ensure they are not only fair in theory but also in practice.

Online Court Proceedings

Gras explores the evolution of online court proceedings and their impact on access to justice³. The move towards digital platforms could enhance the fairness and efficiency of trials by providing greater accessibility and reducing costs. However, this shift also raises questions about the ability of virtual settings to maintain the integrity of trial processes, including jury selection. Gras suggests that while online courts are not a cure-all, they offer a valuable supplement to traditional courts, potentially increasing public trust and participation in the judicial process. It is particularly relevant under the Sixth Amendment, as the adoption of virtual trials must ensure that they uphold the standard of impartiality and fairness required in jury trials.

The Controversy Surrounding Peremptory Challenges

Jolly addresses the contentious issue of peremptory challenges in jury selection⁴. His analysis argues against their abolition, suggesting that while peremptory challenges have been used discriminatorily, they are constitutionally protected under the Sixth Amendment.

² B. Gawronski, A. Ledgerwood & P. W. Eastwick, *Implicit Bias and Antidiscrimination Policy*, 7 *Policy Insights from the Behavioral and Brain Scis.* 99, 101 (2020).

³ I. O. Gras, *Online Courts: Bridging the Gap Between Access and Justice*, 10 *UCLJLJ* 24, 26 (2021).

⁴ R. L. Jolly, *The Constitutional Right to Peremptory Challenges in Jury Selection*, 77 *Vanderbilt L. Rev.* (forthcoming 2024), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4743424.

Jolly emphasizes the need to balance the historical right to peremptory challenges with the necessity to eliminate racial and other biases from jury selection. His perspective provides a crucial counterpoint to calls for abolition, suggesting that regulation rather than elimination might better serve the goals of justice.

Systemic Reforms and Racial Discrimination in Jury Trials

Lovell reviews recent jury trial rulings related to racial justice, underscoring the persistent need for systemic reforms to combat racial discrimination in jury selection⁵. Lovell argues that despite legal advancements, significant work remains to ensure that jury trials are free from racial bias, in line with the Sixth Amendment. His analysis points to a comprehensive approach that encompasses not just legal mandates but also broader societal changes to mitigate racial bias in jury selection truly. Lovell's discussion is precious in highlighting ongoing challenges and proposing multifaceted solutions, which include educational initiatives for legal professionals and public awareness campaigns about jury rights and responsibilities.

Synthesis and Analysis

The literature reviewed offers a comprehensive exploration of the jury selection process, encompassing technological advancements, psychological insights, and systemic reforms. Each piece contributes uniquely to our understanding of how these various factors intersect with constitutional mandates to ensure the fairness and impartiality of juries. For instance, Bloch's exploration of virtual reality introduces innovative methods for enhancing empathy and reducing bias among jurors, which aligns with constitutional requirements for fairness in the judicial process. Similarly, Gawronski, Ledgerwood, and Eastwick provide critical insights into the subconscious processes influencing jury decisions through their discussion on implicit bias. They highlight the necessity for practical interventions that

⁵ R. E. Lovell, "A Fair and Impartial Trial Free from Racial Discrimination Will Require an across-the-Board Approach": Systemic Reforms Still Needed in Light of the "Other" Racial Justice Jury Trial Rulings in *State v. Veal* & *State v. Williams*, 71 Drake L. Rev. Discourse 101, 103 (2021).

extend beyond mere theoretical assessments, suggesting a deeper integration of psychological research into jury selection practices.

In addition, Gras's analysis of online court proceedings delves into the logistical and ethical implications of digitizing court processes. He discusses how such advancements could potentially enhance the accessibility and efficiency of the justice system, though they also require careful consideration to maintain the integrity of jury trials. Jolly's argument against the abolition of peremptory challenges presents a constitutional perspective on preserving traditional jury selection practices while advocating for their reform to eradicate bias effectively.

Lastly, Lovell's call for systemic reforms underscores the need to address racial discrimination through both legal changes and broader societal transformations. He emphasizes that ensuring equitable and just jury selection processes involves addressing deep-seated societal biases, not just implementing legal adjustments. Collectively, these articles suggest a multifaceted approach to reforming jury selection that includes embracing new technologies, applying psychological insights, and advocating for comprehensive legal and social reforms. Its synthesis underscores the complexity of aligning jury selection processes with the evolving landscape of societal values and technological capabilities, highlighting the ongoing challenge of maintaining fairness and integrity within the judicial system.

Conclusion

The integration of insights from these scholarly articles into the broader context of the Sixth Amendment reveals a complex landscape where technology, psychology, and policy intersect with legal norms to shape the jury selection process. As legal professionals and policymakers continue to navigate these intersections, the primary goal remains clear: to ensure that every individual's constitutional right to a fair and impartial trial is upheld. The

articles collectively advocate for innovative yet cautious approaches to reforming jury selection processes to enhance fairness, reduce bias, and maintain public trust in the judicial system. The literature review not only highlights the current state of research but also points towards necessary future investigations to continue improving the jury selection process in line with evolving societal and technological landscapes.

References

K. E. Bloch, Virtual Reality: Prospective Catalyst for Restorative Justice, 58 Am. Crim. L. Rev. 285 (2021).

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