

IDENTIFICATION OF CIRCUMSTANCES UNDER WHICH RELIGION AFFECTS EACH STAGE OF THE TRIAL PROCESS

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Religion is a major facet of society and an integral component of many people's lives. Not surprisingly, religion affects jurors and judges throughout the trial process. This article reviews the use of religion in each stage of trial (e.g., jury selection, testimony, deliberations), discusses relevant social science research, and offers theoretical analyses to explain how religion impacts jury and judicial decision-making. These effects are important because the jury acts as the voice of society and the judicial system communicates societal norms. Thus, the use of religion by legal actors affects verdicts and sends messages about the religious beliefs and behaviors that are valued within society. For instance, a defendant who conforms to Christianity may be shown mercy, whereas a defendant who belongs to a deviant religion will not. The ultimate question to be answered by this article is whether (and under what specific conditions) religion affects each stage of the trial process. We ultimately conclude that religion is so ingrained in our society and way of life that it would be impossible to fully expunge it from the judicial system.

Religion is a major facet of society and an integral component of many people's lives. As such, it is not surprising that religion impacts the law in many ways. The purpose of this paper is to identify the circumstances under which religion can affect every stage of the trial. Each section of this article discusses one stage in the trial process, including voir dire (i.e., jury selection), the trial, closing

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arguments, deliberation, and judicial sentencing phases. Each section will discuss (1) legal rulings concerning the use of religion in that stage, (2) research that has been conducted concerning the use of religion in that stage, and (3) social science theories that explain the effects of religion at that stage. For each stage of the trial, the overall analysis will answer the ultimate question: Under what circumstances does religion affect this stage of trial?

The analysis reveals that religion affects every aspect of a trial to some degree. Although research is consistent in some areas, it is not consistent in other areas; however, this inconsistency reflects the complexity surrounding the study of the effects of religion. Specifically, some measures of religious beliefs (e.g., devotionism) impact legal decisions, whereas other measures do not. Further, religious variables can affect certain legal attitudes or decisions (e.g., attitudes) but not others (e.g., verdict in a certain case). Thus, this article will highlight the circumstances under which religion is known to have an effect or to not have an effect on each stage of the trial process. We ultimately conclude that religion is so ingrained in our society and way of life that it would be impossible to fully expunge it from the legal system.

RELIGION, SOCIETY, AND THE JUDICIAL SYSTEM

The effect of religion on the legal system is an important social and legal issue that has become quite controversial (Miller, 2006). Juries are intended to reflect the community, and their verdicts are intended to represent the voice of society. Society can use the jury system as a tool to communicate with the legal system about laws or prosecutions they find disagreeable. Jury nullification, a process in which a jury acquits an obviously guilty defendant, is one method of communicating disagreement with the prosecution or the law (Hans & Vidmar, 1986). Therefore, the composition of a jury, including the religious beliefs of jurors, can affect society's voice.

The infiltration of religious attitudes into the judicial system becomes potentially problematic when attorneys use religion as a basis for jury selection. This technique results in the potential over-

or under-representation of certain religions as the voice of society. Similarly, when jurors make decisions based on their religion, they send a message that their religious beliefs represent society's views; however, society is too diverse to ever be fully represented by a twelve-member jury. The framers of the Constitution supported the "separation of church and state," as stated in the First Amendment's Establishment Clause; yet there is evidence that religion affects the legal system in many ways (Miller, 2006). For instance, religion affects the way jurors, as representatives of society, treat defendants (Kerr, Hymes, Anderson, & Weathers, 1995). The influence of religion on legal outcomes has become a social and legal issue that is constantly debated in court rulings (see Bornstein & Miller, 2005; Miller & Bornstein, 2005). Thus, it is important to understand the specific circumstances under which religion affects each stage of the trial. This is the purpose of this article. To accomplish this, each of the following sections illustrates the role of religion in a different stage of trial. The first stage is voir dire (i.e., jury selection).

USE OF RELIGION IN VOIR DIRE

In order to illustrate the circumstances under which religion affects voir dire, this section will discuss the legal rulings, social science research, and theoretical explanations relating to this topic. Table 1 summarizes the legal status and research related to this (and every other) stage of trial, along with the conclusions to be drawn from this body of research.

During voir dire, attorneys attempt to exclude jurors that will be unsympathetic to their side. This selection is likely to be based on a variety of personal characteristics, including religiosity. For instance, a former prosecutor recently claimed that he conspired with a trial judge to remove Jewish people from the jury pool because he felt that Jews were less likely to give the death penalty. The California Supreme Court, however, recently noted that there was no evidence of conspiracy (Kravets, 2006).

Although attorneys are allowed great latitude in excluding jurors, they cannot legally exclude potential jurors based on race or

gender (*Batson v. Kentucky*, 1986; *J.E.B. v. Alabama*, 1994). The U.S. Supreme Court had the opportunity to decide whether it was permissible to exclude jurors based on their religiosity in *Davis v. Minnesota* (1994); however, the Court declined to make a ruling. Without a Supreme Court decision, states have issued a variety of legal rulings (see Bornstein & Miller, 2005; Miller, 2006).

Table 1.
Under what Circumstances does Religion Affect Each Stage of Trial?

Stage of Trial	Judicial Ruling	Research	Conclusion
Voir Dire	Rulings vary from always permissible to never permissible to exclude jurors based on their religious characteristics.	<p><i>Affiliation:</i> Jews are less punitive than Christians; Protestants are more punitive than Catholics.</p> <p><i>Fundamentalism:</i> most studies find that fundamentalists are more punitive.</p> <p><i>Evangelism:</i> evangelicals are less likely to support the death penalty but evangelism does not affect verdicts.</p> <p><i>Devotionalism:</i> varies by how trait is measured.</p> <p><i>Literal interpretism:</i> consistently associated with greater punitiveness.</p>	All measures of religion are associated with legal decisions; however this is often dependent on the way the trait is measured and the legal decision (e.g., verdict) or attitude (e.g., support for the death penalty) in question.

Table 1. (continued)
Under what Circumstances does Religion Affect Each Stage of Trial?

Trial	Generally acceptable to present evidence of defendant's character, including religious character.	Jurors will give a defendant who has had a religious conversion a less punitive sentence. Jurors will give a defendant who has always been a Christian either the same or a more punitive sentence.	One type of character evidence is effective, whereas another type is not.
Stage of Trial	Judicial Ruling	Research	Conclusion
Closing Arguments	Rulings vary from always permissible to never permissible to use religious arguments in closing arguments.	Studies consistently find that Biblical appeals delivered by either the prosecutor or the defense attorney are ineffective. A religious conversion appeal delivered by the defendant does help the defendant get a lighter sentence.	One type of appeal is effective, whereas other types of appeals are not. It may depend on who delivers the appeal.
Jury Deliberations	Some state courts have ruled that jurors cannot rely on the Bible in their decisions.	Self-reported reliance on the Bible did not relate to sentence, however nothing is known about how deliberation affects the decision-making process or sentence given.	No studies have specifically studied this issue; research is needed.
Judicial Rulings	One court has determined it to be acceptable for judges to rely on the Bible if there are other factors they also rely on.	Evangelical judges were more likely to vote to uphold the death penalty as compared to Protestants or Jews.	Only one study exists; more research is needed.

The Minnesota Supreme Court determined that attorneys could eliminate jurors based on religion (*Minnesota v. Davis*, 1993), whereas the Third Circuit (*U.S. v. DeJesus*, 2003) held that it is acceptable to eliminate a potential juror on the basis of how *often* he practices his religion, but not on the basis of a *particular religious affiliation*. Most recently, the Indiana Supreme Court determined that an individual cannot be excluded because of his specific religious affiliation; however, an individual could be properly excused because of a religious belief that negatively affects his abilities as a juror (e.g., a strong opposition to the death penalty), or because of his religious occupation (*Highler v. State*, 2006). The New Jersey Supreme Court adopted a stricter rule: No potential juror can be excluded for any reason related to religious practice or affiliation (*State v. Fuller*, 2004). This blanket exclusion is similar to that of other states (*Fields v. People*, 1987; *Joseph v. State*, 1994; *People v. Wheeler*, 1978). This wide variety of rulings demonstrates the controversy surrounding the use of religion during voir dire.

Many attorneys assume that jurors' religious traits will affect their decision-making. Thus, they use such information to help them select a jury during voir dire. The ultimate question is this: under what circumstances do jurors' religious traits affect their decisions? Research can help answer this question.

Social Science Research

Social science research can help determine whether jurors' religious traits can affect their decisions. Religious variables that potentially affect jurors' decisions include religious ideology, fundamentalism, evangelism, devotionism, and a belief in a literal interpretation of the Bible.

Religious ideology. An individual's understanding of her religion's teachings concerning punishment (e.g., the death penalty) may affect her decisions as a juror. For example, a juror who believes that her religion endorses the death penalty may be more likely to vote for the death penalty than a juror who believes that her religion opposes the penalty. The similarity between the defendant's and jurors' religious affiliation could also affect jurors' decisions. From his years of experience as a trial attorney, Belli (1963)

determined that Jewish jurors were more punitive toward Jewish defendants than non-Jewish defendants. Empirical evidence suggests otherwise, however. Kerr et al. (1995) found that both Jewish and Christian mock jurors were more lenient toward defendants who were members of their own religious group as compared to defendants of another religious group. Additionally, Jewish mock jurors were more lenient overall than Christians. Such findings indicate that many aspects of religion (e.g., jurors' beliefs and practices, defendant's beliefs) may affect juror decision-making. Although Gonzalez-Perez (2001) found that religious affiliation had no significant influence on death penalty attitudes, Miller and Hayward (in press) found that death penalty supporters were significantly more likely to be Protestants than of other religious groups.

Fundamentalism. A study by Young (1992) indicated that individuals who were members of fundamentalist churches were more punitive than members of other churches. The author suggested that this was because fundamentalists are more likely to hold others responsible for their actions. Similarly, other researchers (Grasmick, Cochran, Bursik, & Kimpel, 1993; Grasmick, Davenport, Chamlin, & Bursik, 1992; Miller & Hayward, in press) have determined that there is a positive relationship between Christian fundamentalism, support for the death penalty, and attitudes toward punishment. Other studies (Miller, 2006; Leiber & Woodrick, 1997), failed to replicate the relationship between fundamentalism and punitiveness.

These findings illustrate the complexity of studying the effects of religion in the legal system. These studies differed in many ways: they used different measures of fundamentalism; they used different measures of attitudes; they used different types of participants; and they asked about different types of punishment. Thus, it is not completely surprising that there is some variety in results. What is important, however, is that no study found that fundamentalism was negatively related to punishment. Instead, all found either a positive relationship or no relationship.

Evangelism. Young (1992) compared individuals on the basis of evangelism, defined by their "yes" or "no" answer to the question, "Have you ever tried to encourage someone to believe in Jesus

Christ or to accept Jesus Christ as his or her savior?" Evangelicals (i.e., those who answered "yes") were less likely to support the death penalty. This finding was replicated by Miller and Hayward (in press). Evangelicals were said to be motivated to bring others to find salvation in Jesus Christ. Accordingly, they may be opposed to the death penalty because it would represent a lost opportunity to lead the defendant to Jesus. Nevertheless, evangelism does not affect mock jurors' sentencing decisions (Miller, 2006; Miller & Hayward, in press). It is not fully surprising, however, to find different results using different dependent variables. Specifically, Miller and Hayward found that participants who scored high on an evangelism scale were less supportive of the death penalty than those who were less evangelical, but the groups did not differ when asked to give a sentencing verdict in a death penalty sentencing trial. Thus, evangelism affects support for the penalty *in general* but does not affect actual sentencing verdicts. Differences in tasks and judgments can account for seemingly different findings. Importantly, no study found a positive relationship between evangelism and punitiveness; all found either a negative or no relationship.

Devotionalism. Like evangelism, a juror's level of devotionalism could affect her decisions. Young (1992) found that devotionalism, defined as how often the participant attends religious services, prays, and reads the Bible, was related to opposition to the death penalty. In contrast, Gonzalez-Perez (2001) found that a high level of church attendance was strongly associated with support for the death penalty. Other studies have found that devotionalism did not predict actual sentencing decisions (Miller, 2006; Miller & Hayward, in press). Greer et al. (2005) found a somewhat complex pattern between devotionalism and feelings of vengeance; specifically, the authors found that those who consistently donated to their church (i.e., an extrinsic orientation) were more retaliatory, yet those who participated in many church activities and often attended church (e.g., an intrinsic orientation) were found to be less retaliatory. In sum, studies examining the impact of devotionalism on jurors' attitudes and decisions seem quite mixed. Different studies found varying results, likely because they used different measures of de-

votionalism and studied different legal attitudes. Thus, this complex relationship needs to be studied further.

Literal interpretism. Individuals who interpret the Bible literally may be more influenced by religious teachings. “Literal interpreters” are individuals who believe that “the Bible is the actual word of God and is to be taken literally, word for word” (Young, 1992, p. 82). Three studies have found a positive relationship between belief in a strict interpretation of the Bible and support for the death penalty (Leiber & Woodrick, 1997; Miller & Hayward, in press; Young, 1992). Literal interpreters are also more punitive (i.e., vote for the death penalty rather than life in prison) when acting as mock jurors as compared to non-literal interpreters (Miller, 2006; Miller & Hayward, in press). Finally, literal interpreters are less likely to believe that rehabilitation is an important goal of prisons and generally are less likely to support treatment of prisoners (Applegate, Cullen, Fisher, & Vander Ven, 2000). Thus, numerous studies have consistently shown that literal interpretism is related to a variety of legal decisions and attitudes; all studies show that literal interpreters are more punitive than their counterparts.

In sum, there are many aspects of a juror’s religiosity that could affect her decision-making; however, the relationships between religion and decision-making are complicated. Studies vary in many different ways and thus findings are not always consistent. As such, it is difficult to make generalizations regarding the impact that a juror’s religious beliefs may have on her decisions. Nevertheless, there is evidence that many types of religious traits affect various types of legal decisions and attitudes. To investigate this matter further, social psychological theory can help explain some ways in which jurors’ religious attitudes influence their decision making.

Theoretical Analysis

Although there has been limited empirical study of the ways in which a juror’s religion affects her decisions, social science theories suggest several explanations. The ultimate attribution error, the black sheep effect, the heuristic-systematic model, and attitudinal selectivity all predict ways in which a juror’s religiosity can affect her decisions.

Ultimate attribution error. Jurors who practice a religion different than the defendant may judge him more harshly because they view him as being a member of an outgroup (Pettigrew, 1979). Individuals are susceptible to this ultimate attribution error because they attribute failure and negative behaviors to internal factors (e.g., personality) for outgroup members but to external factors (e.g., situational forces) for ingroup members (Pettigrew). Such ethnocentric attributions are a form of ingroup bias; ingroup members are given the benefit of the doubt in situations, whereas outgroup members are not. Further, ingroup members are credited with more successes and positive actions and are less likely to be held accountable for negative actions as compared to outgroup members (Brewer & Brown, 1998). Thus, a Christian juror could be more likely to view a Christian defendant as less culpable than a defendant of another religion. This juror will give more weight to mitigating circumstances and ultimately be more lenient because the Christian defendant is seen as deserving the benefit of the doubt. This phenomenon is likely an explanation for the Kerr et al. (1995) study, which found that mock jurors were more lenient toward defendants who were members of their religious ingroup.

Black sheep effect. Although ingroup bias can suggest that individuals favor their group members, this is not always true. Individuals can sometimes be *more* punitive toward ingroup members who engage in especially egregious behavior. This phenomenon, called the black sheep effect (Marques, Yzerbyt, & Leyens, 1988), hypothesizes that the “black sheep” defendant reflects badly upon the image of the entire group, leading ingroup members to judge him harshly in an attempt to distance him from the group. Indeed, mock jurors were more likely to convict a defendant of their own race (as compared to a defendant of another race), but only when they perceived themselves to be in the racial minority of their jury (Kerr et al., 1995). The authors suggest that mock jurors want their minority racial group to look good. Thus, they judge a deviant group member harshly so that the majority jurors know the defendant is not a typical member of the minority group.

Heuristic-systematic model. A model of attitude formation and influence that may explain why religion affects jurors' behavior is the heuristic-systematic model. This model asserts that there are two paths to persuasion: systematic and heuristic (Chaiken, Lieberman, & Eagly, 1989). The systematic path is a highly cognitive path in which the person receiving a message processes it very carefully and rationally to assess its validity. Heuristic processing, on the other hand, is a method of processing that requires much less effort. A person may use very simple rules or heuristics to assess the message. For instance, a person may trust statements made by an expert or assume that the consensus on a given subject is correct (Eagly & Chaiken, 1993).

Even if individuals initially systematically analyze everything their religion teaches, eventually they may feel it is unnecessary to process everything in such a highly cognitive way. Religion then becomes a heuristic that guides their decision-making, leading individuals to process heuristically. For example, if their minister, whom they have long trusted to know what is best, tells them they need to make certain steps to be a good Christian, they do not question his word. He is the expert; therefore, he must be right. Research has shown that the mere credibility of the messenger is often used as a heuristic for those hearing the message. In this case, *who* is giving the message is sometimes much more important than *what* information the message contains (Hovland & Weiss, 1951).

Perhaps followers continue to think about their religious beliefs in this heuristic way when they become jurors. For example, literal interpreters believe that the Bible's message is the literal word of God and should be followed exactly. As jurors, literal interpreters may believe that the Bible's "eye for an eye" passages require them to sentence a murderer to death. This would explain previous findings (Leiber & Woodrick, 1997; Miller, 2006; Miller & Hayward, in press; Young, 1992) that literal interpreters are more punitive than their counterparts. This systematic-heuristic model seems particularly appropriate to explain how religion can serve as a heuristic that affects jurors' decisions.

Attitudinal selectivity. Religious attitudes can also shape how people process incoming information. People often focus on information that confirms their attitudes and beliefs and ignore contradictory information (Festinger, 1957, 1964). One example of this selectivity is social judgment theory, which assumes that a recipient of attitudinal messages will use her own attitudes about a subject as an anchor to judge the message (Hovland & Sherif, 1952). An attitudinal message can fall into three categories along a continuum: the latitude of acceptance, which contains beliefs that fall in line with the recipient's own attitudes; the latitude of rejection, which contains beliefs too extreme to be accepted; and the latitude of non-commitment, which contains beliefs that are neither acceptable nor unacceptable. When an attitudinal message falls within the acceptance zone, the recipient assimilates her attitude and is persuaded by the message. If, however, the attitude is too extreme, the recipient will contrast it with her own attitudinal base and reject it (Hovland & Sherif). This method of judging incoming attitudinal messages can bias the way the person processes information.

Likewise, information that a juror receives during trial is not processed objectively, but is shaped by existing attitudes. Messages too far removed from the juror's comfort zone may be processed in a biased way or rejected outright. Some views may be unacceptable to the teachings of a juror's church, such as the belief that euthanasia is acceptable. Some religious jurors believe that the taking of another human life in any circumstance is wrong. They may be unwilling to show mercy toward a defendant who has killed, even if the killing could be seen as merciful.

In sum, there are many facets of religion that can influence a juror's decision. Although there is still much to learn, the studies and theories presented here indicate that there is evidence that a juror's religion could influence her decisions as a juror. Thus, attorneys are likely to continue to exclude jurors based on their religion. It can be concluded that there are certain circumstances under which religion plays a part in voir dire. Similarly, there are circumstances under which religion affects the trial phase.

USE OF RELIGION IN THE TRIAL PHASE

Whereas the previous section identified the circumstances under which religion can affect the voir dire phase, this section identifies the circumstances under which religion can affect the trial phase. This section will be presented in an identical manner as to the last; it will discuss the legal issues, followed by a discussion of the research and theoretical explanations for how religion affects the trial phase.

Once the jury is selected, both the prosecutor and defense attorney present evidence and testimony that they hope will persuade the jurors. Religiosity can be introduced during the trial phase in several ways. First, a defendant can use his religiosity as a defense for his behaviors, or as a mitigating factor to promote a less severe sentence. Second, a defendant can claim that religious delusions led her to commit crimes. Finally, religious symbols, such as jewelry or headwear, can be used to demonstrate the defendant's religiosity and insinuate that the defendant is a religious person. In general, courts have allowed religious evidence concerning the defendant's character (*Commonwealth v. Daniels*, 1994). This comports with a Supreme Court decision finding that defendants must be allowed to introduce character evidence that could help their case (*Lockett v. Ohio*, 1978). Such strategies are examples of how religion is used during trial. This section will identify the circumstances under which religion affects the trial.

Defendant Religiosity as a Mitigating Factor

Defendants typically offer mitigating evidence to persuade the jurors or judge to come to a less punitive verdict or sentence. This evidence is often related to the character of the defendant, including his religious nature. A defendant can present evidence that he has converted to Christianity since incarceration, leading jurors to believe that he is still capable of good. This was the case in the trial of Terry Nichols, the co-conspirator in the Oklahoma City bombing. One juror commented that jurors "thought he could do some good in prison because he found religion" (CNN.com, 2004). As a result, the jury was unable to come to a unanimous decision about whether to give him the death penalty; the judge ultimately entered

a sentence of life imprisonment. Defendants may be hopeful that a religious conversion will help them at trial, but studies have shown that defendants using religion at trial have had only limited success, as will be explained below.

Religion as a Defense for Refusing a Child Medical Treatment or C-Section

Religion also appears in cases in which parents refuse treatment based on their religious beliefs. Generally speaking, the First Amendment Free Exercise of Religion Clause provides the right to act according to one's religious beliefs, although these rights are not absolute and can be regulated by the state (*Niemotko v. Maryland*, 1951; *Prince v. Massachusetts*, 1944). For example, in *State v. Norman* (1991), a father refused traditional medical treatment for his son's diabetes in favor of spiritual healing. The court held that the father's Free Exercise rights did not allow him to put his child's life in danger. On the other hand, some courts have found that parents have immunity from criminal prosecution if their refusal is based on religious beliefs (*State v. Lockhart*, 1983; *In Re Hudson*, 1942; *Bradley v. State*, 1920). In such cases, the state's compelling interest in the health and welfare of its children are weighed against the parents' religious rights.

Similarly, women have refused to undergo cesarean sections based on their religious beliefs. Typically, courts weigh the rights of the mother against those of the fetus or the state. The court in *In re Baby Boy Doe* (1994) held that the woman could refuse the c-section, even if it results in harm to the fetus. Other courts have disagreed, however. In the case of *Jefferson v. Griffin Spalding County Hospital* (1981), the court ordered a woman to have a c-section against her religious beliefs. The court held that the state had a compelling interest in the fetus and that the fetus's right to life outweighed the mother's wishes. In these cases, legal actors are faced with religious issues that could clearly be affected by the decision maker's attitudes toward religion.

Religious Delusions

Defendants sometimes claim they have had hallucinations or delusions with religious themes. For example, John Rennie experi-

enced a series of escalating delusions in which he believed that he was Christ (*Rennie v. Klein*, 1978). Similarly, Andrea Yates reportedly drowned her children at God's request (Russell, 2004).

The law allows defendants suffering from mental illness to argue that they are not responsible for their crimes due to diminished capacity and legal insanity. Typically, if a defendant is unable to understand what he did was wrong, he is not legally responsible. A unique legal challenge occurs when the mentally ill defendant knows what he did was wrong, but asserts that God commanded him to commit the act. In these instances, the "deific decree" can be used as an exception to the legal insanity rule. The deific decree is most often seen by the courts as "an exception to the societal standard of moral wrong and that, under such an exception, a defendant may be adjudicated insane *even if the defendant knew that the act was illegal* [italics added]... but, due to a mental disease or defect, believed that God had ordained the act" (*People v. Serravo*, 1992). Thus, under the deific decree, a defendant who knew her behavior was wrong could still plead insanity because she had acted under God's orders.

Religious Symbols in the Courtroom

Religious symbols and artifacts also play a role in the courtroom. For example, basketball star Jayson Williams wore a cross pin on his jacket during his trial (Ryan, 2004). Religious symbols are not limited to use by the defendant, however. In *United States v. Yahweh* (1992), 40 to 60 followers of a religious cult, all dressed in white turbans and long white robes, filled the courtroom during the trial of their leader. The judge became concerned that this large number of followers would intimidate the jury; he barred followers from the courtroom.

These examples demonstrate the presence of religion in evidence, testimony, or mere symbolism. Attorneys and defendants have used religiosity in these ways to try to influence jurors. Whether these methods are successful depends on a variety of psychological factors. The next section uses research to identify the circumstances under which religion affects the trial stage.

Social Science Research

One experiment found that evidence of a defendant's jail-house conversion is successful in making jurors less punitive in some cases (Miller & Bornstein, 2006). Much like the Terry Nichols jurors, the mock jurors in this experiment could have believed that the conversion demonstrated that the defendant had changed his evil ways and was now able to be a better member of society. The same study found, in another experimental condition, that evidence that the defendant has "always been a Christian" did not lead jurors to be lenient (Miller & Bornstein, 2006). Perhaps mock jurors thought that a lifelong Christian would have refrained from killing. Whereas Miller and Bornstein found that being a lifelong Christian had no effect on sentencing, Johnson (1985) found that mock jurors were actually more punitive toward a defendant who used religious evidence than a defendant who did not. Defendants who used religion as a defense were perceived as more responsible for their crimes, were more likely to be found guilty, and received longer sentences compared to defendants who did not offer religious evidence. Johnson suggested that jurors are emotional and angry when Christians do not live up to an expected level of moral responsibility. These few empirical studies are the only ones to investigate the effects of religious testimony and evidence admitted at trial. These studies indicate that a conversion to Christianity is beneficial, however having always been a Christian is either harmful or has no impact. Importantly, no studies have found the opposite effect. Some theories further suggest how testimony and evidence might affect jurors.

Theoretical Analysis

Through the use of religious testimony and evidence, defendants attempt to influence legal decisions. The implications of this influence are far reaching and can affect, for example, whether a jury finds the defendant guilty and whether a judge will grant parents immunity based upon their religious beliefs. Social psychological theory offers explanations for how religious testimony and evidence might affect legal decision making.

Cognitive dissonance. Jurors considering a defendant's jail-house conversion may experience a range of emotions. As stated

above, jurors could expect religious defendants to rise up to a higher level of moral responsibility (see Johnson, 1985). Because the defendant has instead broken the law, he has failed to be a “good” religious person and may be judged harshly and given a longer sentence. At the same time, these same jurors may also feel guilt at harshly judging a religious man. This phenomenon is best explained by dissonance theory (Festinger, 1957). Dissonance theory proposes that when a person has two opposing cognitions, he will experience negative arousal. To alleviate this negative state, a person will often simply change one of his cognitions (e.g., an attitude) to be in line with the other.

Jurors can feel dissonance because of the inherent differences between their legal duty and moral duty. Before deliberations, jurors are instructed of their *legal* duty to decide the fate of the defendant before them in a fair, just manner based only upon the case facts and law. However, jurors may feel a *moral* duty to consider other factors not directly related to the crime, such as the defendant’s religiosity. Jurors may find it immoral to give a harsh sentence (e.g., death penalty) to someone who has recently found God. Feelings of guilt in punishing a “changed man” may complicate their decision making. Thus, their attitudes toward their legal duty and their moral duty may be dissonant. Cognitive dissonance would suggest that jurors in this situation may change one of their attitudes— either about their legal duty or about their moral duty—in order to alleviate the discomfort caused by the contradiction. Often people will change the attitude which is less concrete or essential to their self identity. In this case, the attitudes that are stronger (e.g., the importance of being an upstanding citizen versus an upstanding Christian) will form the basis of their decisions.

Ingroup/outgroup effects. A religious conversion may affect jurors’ attitudes toward the defendant based on the defendant’s chosen religion. For example, if the defendant has converted to the same religion as the juror, the juror may then see him more positively, as he is now an ingroup member. The juror may be more lenient and give him the benefit of the doubt (Pettigrew, 1979) or be harsher if

she sees the defendant as a “black sheep,” as described at length in the voir dire section above.

Impression management. Defendants who wear cross-shaped jewelry or claim to have been lifelong Christians are trying to affect the jurors’ opinions of them through the process of impression management. Similarly, the defendant who has converted to Christianity hopes that the jury believes that he has changed his ways due to his newly found beliefs. This approach utilizes an apology strategy called forbearance; the defendant acknowledges the violation of social order and promises that the transgression will not occur again (Blum-Kulka & Olshtain, 1984; Scher & Darley, 1997). Giving an apology with a forbearance promise suggests to the jury that the defendant will not recidivate and therefore deserves a less severe sentence.

Cognitive-experiential self-theory. The effects of religion on decision making could also be explained by a dual processing theory called Cognitive-Experiential Self-Theory (CEST), which posits that individuals process information through two distinct systems (Epstein, 1990). The “rational” system is analytic, effortful, and logical, whereas the “experiential” system is automatic, effortless and based on affect. According to CEST, an individual who experiences an emotionally significant event is likely to respond experientially instead of rationally, making it difficult to make logical judgments. Religious testimony or evidence may lead jurors to experience heightened emotions, triggering the experiential system. Jurors then make decisions based upon their emotions rather than on a rational analysis of the case facts. This theoretical explanation supports Johnson’s assertion that jurors are angered when a defendant asks them for a lighter sentence because he is a lifelong Christian (Johnson, 1985).

Insanity schema. When defendants plead not guilty by reason of insanity (NGRI), jurors rely on their “insanity schemas” to determine whether the defendant should be found guilty or insane (Finkel & Handel, 1989). Jurors identify facts that are relevant in making an insanity determination, and these facts are categorized as either guilty or NGRI constructs. For instance, jurors consider

the defendant's levels of incapacity, impaired awareness and perceptions, distorted thinking, control over actions and impulses, culpability for actions, and evilness of the motive. Religious motives can also tie into these schema constructs. For example, a defendant who claims that God gave her instructions to kill her children may be categorized as having distorted thinking and lack of control; thus, jurors with insanity schemas that are compatible with a religious defense will support the NGRI verdict. In contrast, some jurors might have a schema that includes the notion that defendants who blame God for their actions are usually faking insanity; such jurors will support the guilty verdict.

Religious justifications. Parents who refuse medical treatment for their children or for themselves (e.g., a mother refusing c-section) are using an account called a justification. A person offering a justification acknowledges that her behavior caused harm, yet claims that the act was necessary because it avoided a bigger harm (Scott & Lyman, 1968; Schönbach, 1980). Women who refuse medical treatment for religious reasons believe, for example, that God will condemn them for receiving a blood transfusion. Avoiding this extreme, negative religious outcome justifies the refusal of medical treatment. Some courts have accepted this religious justification (*In re Baby Boy Doe*, 1994; *In Re Hudson*, 1942; *State v. Lockhart*, 1983), whereas other courts have held that religious beliefs do not justify endangering a child's life (*Jefferson v. Griffin Spalding County Hospital*, 1981; *State v. Norman*, 1991). Judges who reject this justification may order the medical procedure but still treat the parents more leniently than parents who simply neglect their children without justification (Hale, 1987).

In sum, there are a variety of ways in which religion can be used in the trial phase. Attorneys expect each method to affect the jury, though research is slim. Nonetheless, it is possible to identify a couple of circumstances under which religion has an impact. Specifically, a conversion to Christianity benefits the defendant (i.e., a lighter sentence), whereas having always been a Christian either has no effect or has a negative effect. Thus, the research and theory suggests that there are some situations in which religion does affect

the trial phase. Similarly, there are circumstances under which religion affects the closing argument phase.

USE OF RELIGIOUS APPEALS IN CLOSING ARGUMENTS

As with the previous two sections, this section will identify the circumstances under which religion affects a stage of trial. This section specifically will address the closing argument phase, addressing the legal status, research, and theory surrounding this issue.

Attorneys in some jurisdictions can use religious appeals in closing arguments (e.g., telling the jury, “The Bible dictates ‘an eye for an eye,’ so a defendant who killed must also be killed”), encouraging jurors to use religious instructions in their decision making. One high-profile example can be found in the first trial of Andrea Yates, the Texas mother who drowned her children in the bathtub. Prosecutor Kaylynn Williford told the jury, “[i]t was wrong in the eyes of God and it was wrong in the eyes of the law” (CNN.com, 2002).

Most jurisdictions allow attorneys to use religious appeals in their arguments to a jury (see *State v. Williams*, 1999); however, some courts have disapproved of religious appeals, typically because they violate the Eighth Amendment prohibition on cruel and unusual punishment (see Miller & Bornstein, 2005). Some courts have determined that religious appeals violate the requirement that states provide juries with “channeled discretion” in determining whether a defendant should or should not receive the death penalty (*Carruthers v. State*, 2000; *Sandoval v. Calderon*, 2000). Appeals may also encourage jurors to rely on Biblical authority instead of state law (e.g., *Sandoval v. Calderon*).

Appeals have also been said to improperly reduce the jurors’ sense of responsibility for making the sentencing decision (*Sandoval v. Calderon*, 2000), inflame juror’s passions and prejudices (*Cunningham v. Zant*, 1991) and lead jurors to base their decisions on emotion (e.g., *Commonwealth v. Chambers*, 1991). Perhaps most importantly, religious appeals may encourage jurors to make

decisions in legally impermissible ways. In death penalty cases in many jurisdictions, jurors are supposed to weigh both aggravators and mitigators when rendering their verdict. Aggravators are those factors related to the defendant and crime that are supportive of this harsh penalty (e.g., a murder which is characterized by extreme cruelty and depravity). Mitigators are those factors that are supportive of leniency (e.g., the defendant is a good candidate for rehabilitation). If the aggravating circumstances outweigh the mitigating circumstances, the jury is supposed to recommend death. Religious appeals could disrupt such logical decision making by encouraging jurors to rely on the Bible and their emotions. Limited social science research has investigated the circumstances under which religious appeals lead to these legally impermissible outcomes.

Social Science Research

Despite attracting some attention in legal forums (e.g., Miller & Bornstein, 2005; Simson & Garvey, 2001; Simons, 2004), religious appeals have received little empirical attention. The notable exceptions are the studies by Miller (2006) and Miller and Bornstein (2006), which both examined the influence of religious appeals on jurors' decision making in death penalty trials. Both studies concluded that prosecutorial arguments that cite Biblical commands (e.g., "an eye for an eye") regarding the death penalty did not affect verdicts. However, the use of Biblical appeals by the defense appears to have the opposite effect as intended (Miller & Bornstein, 2006). Mock jurors were most punitive in the condition in which the defense attorney makes a Biblical appeal as compared to a control condition and conditions in which the defendant was a lifelong Christian or a converted Christian (although not all comparisons were significant).

Miller and Bornstein (2006) also found that some types of appeals interfered with mock juror's abilities to weigh aggravators and mitigators properly. Thus, religious appeals have the capacity to lead jurors to make legally impermissible decisions.

In sum, the research, though limited, consistently finds that Biblical appeals given by either the prosecutor or the defense attorney are ineffective; however, a defendant who claims to have had a

religious conversion receives a lighter sentence. Thus, at least one type of appeal is effective. This difference in effectiveness could be due to the different type of appeal (Biblical quote or religious conversion), or due to the different messenger (i.e., attorney or defendant); research is needed to further investigate. Nevertheless, these studies indicate that religious appeals are affecting some juror decisions.

Theoretical Analysis

Although religious appeals in the attorneys' closing arguments have not been given much attention in the research literature, social psychological theory suggests several ways that appeals could affect jurors' decisions. Information processing, source credibility, and attribution all offer explanations for how appeals can influence jurors.

Information processing. Although attorneys who use religious appeals to persuade jurors believe they are effective, it is questionable whether these attempts are successful. This in part depends on the manner by which jurors process information. A religious appeal is an experiential (e.g., emotional) information source, rather than a cognitively based information source. Therefore, the Cognitive-Experiential Self-Theory (discussed above; Epstein, 1990) would assert that jurors who use such experiential cues to guide their decision making would rely on their emotions rather than logic and reason. Thus, jurors relying on religious appeals would be swayed more by emotion than by the proper weighing of aggravators and mitigators (Miller & Bornstein, 2005). The Heuristic-Systematic model, as explained above, would also predict a similar outcome; religious commands, such as "turn the other cheek" or "an eye for an eye" could act as heuristics, leading jurors to rely more on such religious appeals than on the aggravators and mitigators present in the case (Eagly and Chaiken, 1993).

Source credibility. Another important factor is the amount of credibility jurors assign attorneys; that is, whether jurors feel attorneys are trustworthy sources. People tend to judge information as more valid if it comes from someone seen as a credible source (French & Raven, 1959). Jurors recognize that attorneys are hired

to persuade them to agree with their version of events. Instead of being swayed by an emotional religious appeal, some jurors will likely recognize this tactic and become angered that attorneys are trying to manipulate them by using religion. Instead of following the attorney's advice (e.g., giving the defendant mercy because Jesus teaches us to be merciful), angered jurors could do just the opposite. This is perhaps the case in the Miller and Bornstein (2006) study in which mock jurors were not persuaded by attorney's appeals, but were persuaded by religious evidence presented by the defendant. In fact, that study found that a Biblical appeal made by the defense attorney actually backfired (i.e., led to more punitive juror sentencing verdicts), especially in cases with high mitigators.

Attribution theory. Attribution theory seeks to explain the process by which people judge the validity of what they are told. This theory asserts that a person hearing a message has to decide why this person has delivered the message. The receiver could attribute the message to some internal characteristic of the messenger (e.g., the receiver could believe that the messenger is a pathological liar that is not believable), or to situational constraints (e.g., the receiver could believe that the messenger's boss ordered him to lie under threat of losing his job). In the absence of any situational or personal characteristic that could provide an explanation, the receiver could attribute the message to some external reality (e.g., the receiver could find no dispositional or situational reasons for why the messenger may be lying, so the message must be true). Attribution of the message to the external reality increases its persuasiveness because the recipient of this message believes that the message is valid (Kelley, 1967, 1972).

Jurors are faced with the task of listening to a variety of people, including attorneys who give Biblical appeals. Jurors have to determine both the facts of the case and who is telling the truth. Part of this process involves making attributions about these speakers. For example, jurors expect to hear a defense attorney declare that the defendant is innocent; however, most jurors assume that attorneys make such assertions because they are paid to do so. Jurors do not necessarily believe the attorney's messages because of the attri-

butions they assign. Thus, when attorneys deliver Biblical appeals, jurors may discount the message because of these attributions.

In sum, attorneys sometimes use religious appeals in order to persuade jurors. The bulk of the research and theory suggests, however, that these appeals may not be successful under some circumstances. The appeals may, however, encourage jurors to rely on religion in their deliberations.

USE OF RELIGION IN DELIBERATION

Previous sections have identified the circumstances under which religion affects voir dire, trial, and closing argument phases of the trial. This section discusses the circumstances under which religion can affect the deliberations phase. As with previous sections, the legal status, research, and theory surrounding this issue are discussed.

Religion can affect the judicial system when jurors rely on the Bible during deliberations. The Oklahoma Appeals Court in *Glossip v. State* (2001) determined that no outside sources, such as Bibles, dictionaries, or other reference materials, should be allowed in the deliberation room or the deliberation discussions. This issue was more thoroughly addressed in *Colorado v. Harlan* (2005). Jurors brought a Bible into the jury room and read passages authorizing the death penalty (Pankratz, 2005), including the passage “an eye for an eye and tooth for a tooth” (Lindsay, 2003; Paulson, 2005). The Appeal’s Court overturned the defendant’s death sentence because the jurors inappropriately relied on Biblical passages. In 2005, the Colorado Supreme Court upheld the ruling (*People v. Harlan*, 2005), and the U.S. Supreme Court (*Colorado v. Harlan*, 2005) declined to hear the case.

The *Harlan* and *Glossip* decisions were similar to that of *Jones v. Kemp* (1989), in which the Georgia appellate court ruled that the Bible and other “extrajudicial code” are not allowed in deliberations because they may influence the jurors’ decisions. The court in *Jones*, however, added that the court’s decision “in no way means to suggest that jurors cannot rely on their personal faith and

deeply-held beliefs when facing the awesome decision of whether to impose the sentence of death” (p. 1560). Therefore, the question of whether jurors can consult outside sources is part of a broader issue of whether jurors can rely on any religious factors. The past cases (*Colorado v. Harlan*, 2005; *Glossip v. State*, 2001; *Jones v. Kemp*, 1989) have ruled that jurors cannot consult the Bible during deliberations. Complications arise when jurors recite Biblical passages from memory or simply base their decisions on religious principles. Jurors may not even realize that their attitudes toward the death penalty are based on their religious beliefs. Thus, it is hard to keep the Bible and other religious influences out of deliberations, despite the courts’ rulings.

Social Science Research and Theoretical analysis

No empirical research has been conducted which directly examines the effects of allowing jurors to consult a Bible during deliberation. Miller (2006) found that the degree to which jurors relied on the Bible when making their sentencing verdict was not related to the actual sentence. This indicates that self-reported reliance on the Bible does not affect individual decision making, but says nothing about group (i.e., jury) decision-making.

Social judgment theory. As jurors deliberate, their attitudes about the defendant, the crime, and the trial emerge. As a juror discusses his attitudes, other jurors compare these attitudes to their own. As explained above, social judgment theory (Hovland & Sherif, 1952) assumes that the recipient of these attitudinal messages will use her own attitudes about a subject as an anchor to judge the message being presented and can ultimately decide to accept or reject it. A juror with deeply religious attitudes (e.g., God demands “an eye for an eye”) would likely have difficulty agreeing with another juror who has radically different religious attitudes (e.g., that God commands mercy for wrongdoers). Each juror would likely reject the other’s viewpoint because the attitude would fall into the latitude of rejection. Neither person would be able to convince the other, which could result in a jury deadlock. In another scenario, a religious juror would be more likely to persuade a juror with similar or weak religious attitudes, avoiding deadlock.

This is likely the process that occurred in one of the trials of Terry Nichols; the jury deadlocked when considering the sentence Nichols should receive (CNN.com, 2004). Although some jurors supported a death sentence, others believed that Nichols' newly adopted religiosity was grounds for showing mercy. It is possible that jurors' individual religious attitudes influenced their sentence preferences.

Reactance theory. Although jurors may reject a belief because it is too radical, they may also reject it because they find it threatening. Reactance theory asserts that when people feel their freedom to believe or act is threatened, they react by reaffirming their initial attitude or supporting the position opposite the one being forced upon them (Brehm, 1966). This situation may occur in a jury. A juror who believes in a literal interpretation of the Bible (e.g., believes that the jury must give the death penalty because the Bible commands "an eye for an eye") could demand that other jurors see his point of view; this could threaten other jurors, especially those who believe in a less rigid interpretation of the Bible. Because the literal interpreter threatens other jurors' freedom to interpret the Bible as they choose, they may reject the literal interpreter's views altogether. This could lead to heated deliberations or deadlock.

In sum, jurors may rely on religion during deliberation by purposely seeking guidance from the Bible or by relying on attitudes that have been shaped by their religion. Similarly, judges can also rely on religion in their decision-making.

USE OF RELIGION IN JUDICIAL DECISION MAKING

This section discusses circumstances under which religion can affect judicial decision making—the final stage of the trial process that will be discussed here. Although many courts have forbidden the use of the Bible during deliberations (e.g., *Colorado v. Harlan*, 2005) and the use of religion in closing arguments (e.g., *Carruthers v. State*, 2000), some judges allow their own religious attitudes to play a role in their decision-making (Wiehl, 2000). For instance, a

Kentucky judge offers convicted defendants the option of going to worship services instead of serving jail time (Maimon, 2005).

In 2000, the Ohio Supreme Court upheld a judge's sentencing decision that had been based on a reference to the Bible (*State v. Arnett*, 2000). Although the judge explained her reliance on the Bible as an additional source that "finally answered [her] question" (p. 211) about what sentence to impose, the Court determined that the Bible was only one of many factors in the judge's decision, rather than the "basis of her sentencing decision" (p. 212).

Attorneys can also use religion as a tool to persuade judges. For example, after five white teenagers pled guilty to lynching a black teen, the defense attorney for one defendant asked the judge to show mercy, characterizing the defendant as a churchgoing boy (O'Neil, 2006). This religious appeal did not persuade the judge, who ultimately gave the defendants harsh sentences to send a message that hate crimes would not be tolerated.

Religion can also influence a judge's decisions concerning whether the use of religion in voir dire, testimony, closing arguments, and deliberations is proper. As discussed above, some courts have determined that attorneys cannot exclude jurors based on religion, whereas other courts have come to the opposite conclusion (Bornstein & Miller, 2005). Differences in judicial opinions could reflect, in part, differences in judges' religious beliefs and attitudes.

Social Science Research and Theoretical Analysis

Only one study has investigated the relationship between a judge's religion and decision-making; thus, there is limited information as to the circumstances under which religion can affect a judge's decisions. Songer and Tabrizi (2000) compared the voting behavior of Evangelical judges to those of other religious orientations. Evangelicals were significantly more likely to vote to uphold the death penalty than mainline Protestants or Jewish judges. This result is different from the study concerning evangelism and jury decisions. This is possibly due to the use of a different sample (judges rather than juries), a different measure of evangelism, or different decisions being made (sentencing verdicts rather than a vote wheth-

er to uphold a sentence), or different types of cases (death penalty or non-death penalty cases). This complexity highlights the need for further research to fully identify the situations in which religion affects the trial process.

Wiehl (2000) argues that a double standard exists between attorneys and judges. Specifically, attorneys in some jurisdictions are not allowed to make Biblical appeals to the jury because judges fear it will prejudice the jury and violate the defendant's rights. However, judges sometimes make religious references during their own sentencing determinations (*State v. Arnett*, 2000). The logic behind this double standard is that the Biblical appeals will improperly influence jurors' decisions, but will not affect judges. Judges are presumably stronger mentally, are better able to compartmentalize their decision making and are more successful at avoiding prejudicial decisions. It seems presumptuous, however, to assume that judges would be immune to unconscious cognitive processes such as the "white bear" effect of ironic process theory. This theory predicts that attempting to actively avoid thinking about something leads a person to unavoidably think about it (Wegner, Schneider, Carter, & White, 1987).

Judges are likely affected by religion in similar ways as jurors (as described above). For instance, a judge could feel that her decision-making freedom was threatened by an attorney who requests a less severe sentence for a Christian defendant. Reactance theory would predict that the judge would reject the suggestion, as in the lynching trial described above (O'Neil, 2006). Similarly, cognitive dissonance could also be a factor for judges who want to follow their religious teachings, but must also follow the law. Judges could also use their religion as a heuristic to guide their decisions, as was the case with the judge who used the Bible in her decision making (*State v. Arnett*, 2000). These examples illustrate a few of the many ways in which religion could affect judges. Whenever judges or other legal actors rely on religion, society receives a message about the behaviors and beliefs that are valued.

MESSAGE THE JUDICIAL SYSTEM SENDS TO SOCIETY

The effects of religion on the judicial system are important because the jury acts as the voice of society, and the judicial system communicates societal norms. Thus, the use of religion by legal actors affects verdicts and communicates messages about what behaviors and beliefs are accepted within society. For instance, a judge who orders a woman to have a c-section against her religious beliefs communicates that her religion is less important than the interests of her fetus. This also communicates to society that the beliefs of some religions are not highly valued.

Jurors also send messages to society when they allow religion to influence their decisions. As discussed above, Terry Nichols was spared the death penalty because some jurors believed his conversion to Christianity indicated he had transformed his life. Rarely, if ever, does the media report stories of jurors giving the benefit of the doubt to defendants who convert to other religions. Instead, the media is more likely to report stories of prosecutors asking for a defendant to receive harsher punishment because he was motivated by his non-traditional religious beliefs (for review, see Miller, Jehle, & Summers, 2007). This sends a message to society that conforming to majority religious beliefs will result in more lenient treatment, whereas devotion to deviant or minority religious beliefs will result in harsher punishment.

Attorneys' behaviors during trial also communicate messages about religion. Attorneys use religious appeals to persuade jurors; most often these appeals involve commands from a Christian God or Jesus. By focusing on Christian scripture at the exclusion of teachings of other religions, the attorney communicates that Christianity supports a certain legal outcome; the attorney might also send the message that Christianity is somehow favored by the judicial system. This example illustrates how minority religions often are ignored in the judicial system. This could be taken as a symbol that minority religions are not as valued in our society compared to more traditional religions.

Because juries are meant to represent the community, they should adequately represent society. It is difficult to let all religious voices be heard when attorneys actively exclude some religious potential jurors. Thus, some religions will not be represented in the final jury. As a result, jurors who are influenced by their religions may make decisions that do not adequately represent society. The practice of excluding jurors based on their religion can have a negative impact on society and the legal system in general. When potential jurors are excluded because of their religion, they may come to believe that their voice (and that of their religion as a whole) is not valued. Thus, the negative experience of being excluded may foster negative feelings toward the legal system as a whole. Whereas religious minorities' perceptions of the judicial system are not well studied, racial minorities' perceptions have been more thoroughly investigated (for review, see Adya, Miller, Singer, Thomas, & Padilla, 2006). This accumulation of research has shown that some racial minorities have both negative experiences with the legal system and negative perceptions of the government as a whole. The same might be true for religious minorities, though more research is needed. Despite these potential negative outcomes, some attorneys continue to exclude potential jurors based on their religion.

These few examples are but a few of the ways that the use of religion sends messages to society. The most common message is that conformity to the majority religion is acceptable, and any deviance is not. This preference for one religion over another could be seen as a violation of the separation of church and state, however the issue has received little attention (Egland, 2004; Simson & Garvey, 2001). Despite some of these negative outcomes, the courts have not uniformly taken steps to forbid the use of religion in the judicial system.

CONCLUSION

Religion has always been a major part of society and day-to-day life. Religion affects every aspect of life and provides guidance for many of the decisions that must be made. Thus, it is no surprise that attorneys have used religion to influence the outcome of trials

by selecting jurors based on their religion and by using religious testimony, evidence, and arguments as persuasive tools. Judges have also relied on religion in their decision making. As such, religion has affected every stage of trial.

The purpose of this article was to identify the specific circumstances under which religion affects every stage of the trial process. It identified consistent findings (e.g., multiple studies have found that literal interpreters are more punitive than non-literal interpreters), and some findings that were dependent on the measurements used. For instance, evangelicals are more likely to support the death penalty in general, but they are not more likely to give a death penalty verdict in any specific trial. Similarly, whether devotionism affects individual's legal decisions depends on what measure of devotionism is used. In sum, variables such as the specific dependent variable, independent variable, measurements, and type of trial are all specific circumstances that affect whether religion has an impact on the various trial stages.

Ultimately, much more research is needed to fully understand all the circumstances that determine whether religion plays a part in each stage of the trial process. Despite these gaps in research, this analysis revealed that religion can affect every stage of a criminal trial, beginning with jury selection and ending with a sentencing decision from a judge or jury. It seems an impossible task to completely eliminate religion from the judicial system. Even if courts forbid the use of religion during voir dire, trial, and deliberations, it will still affect the system. Religious leaders will still commit crimes, and jurors will still follow their religious beliefs (even if unintentionally). Such religious influences would be impossible to remove entirely from the judicial system. Nevertheless, it is important to carefully consider the messages that the judicial system sends to society.

The use of religion in the judicial system is certainly a controversial topic. Some authors contend that reliance on religious teachings threatens the separation of church and state and violates the First Amendment's Establishment Clause (England, 2004; Simson & Garvey, 2001). Simson and Garvey (2001) argue that religion

should be eliminated in all aspects of a trial because any reliance on religion is a violation of the clause. Because judges and prosecutors are state actors, any religious references could arguably be seen as a violation of the Establishment Clause. Likewise, defense attorneys, though not state actors, could be seen as such by jurors. Simson and Garvey further argue that jurors also are considered actors of the state for Establishment Clause purposes; thus they should not rely on religion in their verdicts. Although most courts do not take such a strict stand about the use of religion as do Simson and Garvey, a few have recognized potential negative effects. For instance, some courts have determined that the use of religious arguments by attorneys violate the defendant's due process (e.g., *Boyd v. French*, 1998; *State v. Haselden*, 2003) or Eighth Amendment (e.g., *Carruthers v. State*, 2000) rights.

To date, the effects and permissibility of religion in the courtroom have been controversial topics. Research can explain the effects of religion on the judicial system; however the courts are likely to remain sharply divided on issues of legal permissibility.

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