

How Attorneys Can Use Religion to be More Effective at Trial

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In every trial, lawyers have to make important decisions about which jurors to choose, and what evidence to submit. Sometimes these decisions are based on experience, gut instinct, folklore or advice handed down through trial advocacy manuals. Sometimes these decisions can be difficult and controversial. This is the case when lawyers consider whether to eliminate a juror based on his/her religious characteristics or whether to submit evidence of a religious nature (e.g., the defendant has converted to Christianity since being arrested). Some decisions can significantly help a lawyer's case, while others can be detrimental. In this article, we discuss how religion can help lawyers be more effective in two critical areas: during jury selection and when introducing evidence and testimony at trial. Within each area, we discuss (1) how religion has been used in court, (2) in which situations lawyers are allowed or not allowed to use religion, and (3) how lawyers can use research on religion and the courts to be more effective.

Use of Religion in Jury Selection

Lawyers are often given the opportunity to remove jurors who may be unsympathetic to their client. In most jurisdictions, lawyers can use a potential juror's religious affiliation or characteristics to select a favorable jury. When lawyers know the right questions to ask they are able to unveil religious biases that predict how a juror may vote.



How Has Religion Been Used In Jury Selection?

During the jury selection process, some attorneys have excluded potential jurors based on their religious affiliation and characteristics, often when the trial will involve religion. For example, jurors' religious affiliations were an important consideration for the defense in the trial of Mary Winkler, the Tennessee woman convicted of voluntary manslaughter in the death of her husband, who was a minister in the Church of Christ (Associated Press, 2007). In the trial of Zacarias Moussaoui (who was accused of playing a role in the September 11 terrorist attacks) federal prosecutors surveyed potential jurors about their religious affiliation (e.g., Jewish, Muslim) and characteristics (e.g., strength of beliefs, frequency of attendance at worship services, and knowledge about Islamic beliefs) (Markon, 2005; McNulty, 2005). A lawyer in California is said to have removed Jewish jurors based on his belief that they would be less likely to give the death penalty (Associated Press, 2005).

Most exclusions are made by prosecutors who assume that highly religious people will be more lenient toward offenders. For instance, the prosecutor in *State v. Fuller* (2004) dismissed a potential juror because he had been a missionary. In other cases, potential jurors have been excluded because they expressed strong Christian beliefs (*U.S. v. DeJesus*, 2003) or identified themselves as Catholic (*State v. Purcell*, 2001), Muslim (*State v. Hodge*, 2001), Jehovah's Witness (*People v. Martin*, 1998), or Pentecostal (*Casarez v. State*, 1995).

Are Lawyers Allowed to Use Religion During Jury Selection?

Using religion as a reason to exclude potential jurors is controversial. Circuit courts have allowed (e.g., *Fisher v. Texas*, 1999; *U.S. v. Williams*, 1996), prohibited (e.g., *U.S. v. Greer*, 1991; *U.S. v. Somerstein*, 1997), and declined to rule (e.g., *U.S. v. Berger*, 2000) on religious-based peremptory challenges. State courts reflect a similar divide with

some allowing (e.g., *State v. Davis*, 1993) and others prohibiting (e.g., *State v. Fuller*, 2004 (NJ); *Thorson v. State*, 1998 (MI); *People v. Wheeler*, 1978 (CA)) the use of religion in jury selection. The U.S. Supreme Court has denied certiorari on this issue (*Davis v. Minnesota*, 1994). These rulings illustrate the controversy of using religion during jury selection; thus, lawyers must be careful to consult the case law in their jurisdiction before using religion as a basis to exclude potential jurors.

Should Lawyers Use Religion to Select Juries?

Research on religious affiliation and characteristics can help lawyers be more effective when selecting a jury. Characteristics including literal interpretism, devotionism, and fundamentalism can help lawyers select the most favorable jury.

Affiliation. A juror's religious affiliation may affect her decision making. Religious affiliation refers to the religion with which a juror is associated (e.g., Muslim). This is a title only and is a separate issue from a juror's religious characteristics (e.g., the devotion of a Muslim juror to Islam) which will be discussed later. Lawyers often believe that the more similar a jury is to the defendant, the more lenient they will be (Wishman, 1986). Research reviews confirm these assumptions (Wrightsmann, 1987), namely that juries are less punitive toward defendants with whom they can relate. Kerr, Hymes, Anderson, and Weathers (1995) found that both Jewish and Christian mock jurors were less punitive toward defendants who shared their religious affiliation than to defendants who did not. Further, Jewish mock jurors, more so than Christians, were more likely to offer leniency across many different issues. Gonzalez-Perez (2001) found that there was little relationship among Catholic, Baptist, and other Protestant potential jurors on death penalty attitudes. Miller and Hayward (2008) found that Protestants mock jurors were more likely than Catholics to support the death penalty.

Lawyers can use this research during jury selection by asking jurors their religious affiliation. If the potential juror belongs to the same religion as the defendant, the juror may be less punitive. If the potential juror is Jewish, she may be more lenient to the defendant across many issues. In death penalty cases, prosecutors should remove Catholics and defense attorneys should remove Protestant potential jurors.

Literal Interpretism. Literal interpretism is the belief that "the Bible is the actual word of God and is to be taken literally, word for word" (Young, 1992, p. 82). Studies have consistently shown that literalists are more likely to give a death penalty verdict (Leiber & Woodrick, 1997; Miller & Hayward, 2008; Young, 1992) and are generally more punitive (Miller, 2006). Literalists also are less supportive of rehabilitation for prisoners and more supportive of punishment (Applegate, Cullen, Fisher, & Vander Ven, 2000).

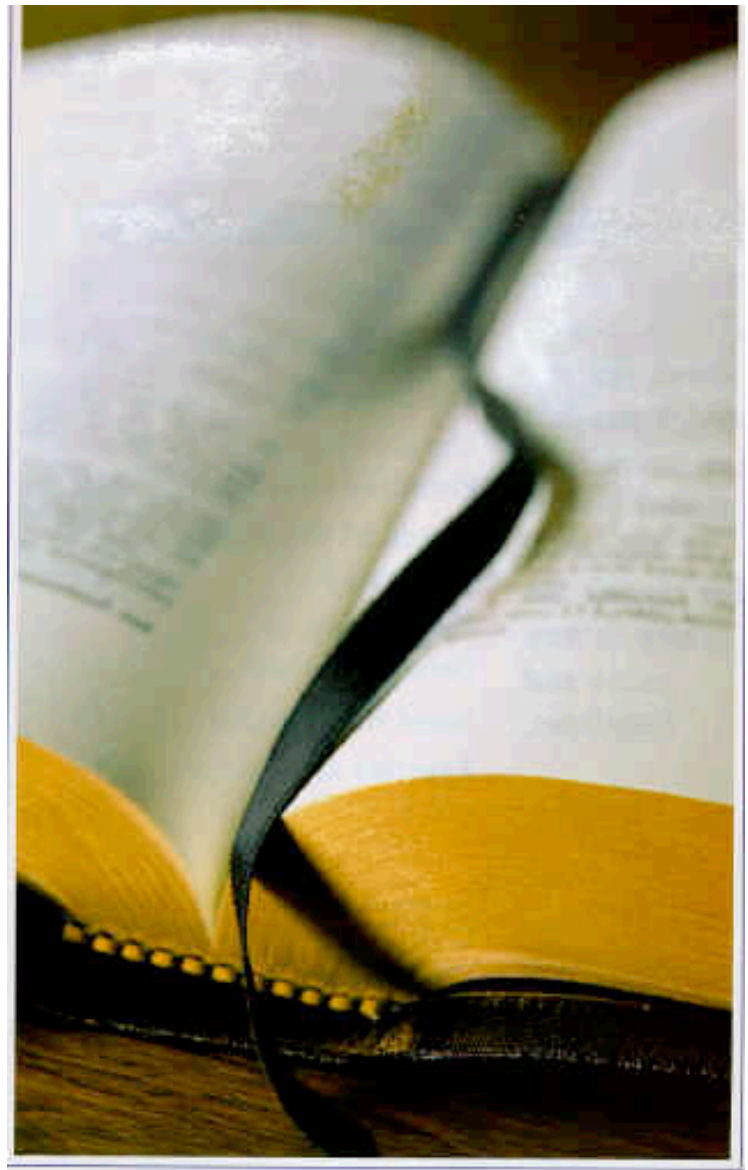
Because each of these studies has found that literal interpretism is related to increased punitiveness, a lawyer can simply ask, "Do you believe the Bible is the literal word of God?" If the juror answers affirmatively, he will most likely benefit the prosecution and not the defense.

Devotionalism. Devotionalism is how devoted individuals are to their religion. Generally, it is measured by how frequently a person practices religious acts. However, there is some discrepancy on how devotionalism should be measured. It is not surprising that because there is variation in how devotionalism is measured, research does not consistently conclude what devotionalism does and does not predict. Evans and Adams (2003) found that when religion is salient in the daily life of individuals, those who believe in a punitive God support harsher punishments. Bjarnason and Welch (2004) found that the more often a Catholic (the Catholic Church opposes the death penalty) juror attended church, the less punitive he was in death penalty trials. Young (1992) found that the less an individual attends religious services, prays, and reads the Bible, the more supportive he was of the death penalty. Other research has found that

religious devotion did not predict actual sentencing decisions (Miller, 2006; Miller & Hayward, 2008). Overall, whether there is a relationship between devotionism and a trial outcome depends on how the trait is measured (Miller, Singer, & Jehle, in press).

Selecting jurors based on devotionism may not be particularly useful, even though some studies did find relationships between certain measures of devotionism and verdicts. If lawyers desire to use this religious characteristic in jury selection, they should ask jurors questions based on the specific measures used in these studies.

Fundamentalism. Fundamentalism is the strength of an individual's orthodox religious beliefs (Miller & Hayward, 2008). Most studies found that fundamentalists are more punitive (see Miller et al., in press). Miller & Hayward (2008) found that Christian fundamentalism was positively correlated with death penalty verdicts. Grasmick and McGill (1994) also found that Christian fundamentalist attitudes (e.g., tendency to attribute blame to individuals rather than situations) predict a more punitive orientation. This is consistent with other research on Christian fundamentalism (Ellison & Sherkat, 1993; Grasmick, Cochran, Bursik, & Kimpel, 1993). Yet other researchers found no relationship (Leiber & Woodrick, 1997; Miller, 2006). This discrepancy in the research may be due to differences in how fundamentalism and types of punishment were measured.



Lawyers can ask jurors, on a scale from 1 (strongly disagree) to 7 (strongly agree), to what degree they subscribe to specific fundamentalist beliefs (e.g., life after death) or to what degree they believe a crime is committed because of a personal attribute of the offender rather than the situation. Jurors that have higher ratings (6 and 7) may be more punitive and better for the prosecution.

Use of Religious Evidence and Testimony

Lawyers are charged with the responsibility of knowing when evidence and testimony should be introduced, and when it should not. Certainly, in many jurisdictions, lawyers are allowed to use religion in trial, and religion can be used effectively as evidence and in witness testimony. Selecting the appropriate religious evidence and testimony is critical to an effective strategy in certain situations. In other situations, lawyers should not use religious evidence and testimony at all.

How Has Religion Been Used as Evidence and Testimony?

Several defendants have recently claimed that they committed their crimes because they experienced hallucinations involving instructions from God. In June 2008, a case ended in a mistrial when jurors could not agree

whether Naveed Haq was guilty or insane when he killed one woman, seriously wounded five others, and kidnapped a teenage girl at gunpoint inside the Jewish Federation of Greater Seattle (Johnson & Ho, 2008). Haq claimed God sent him on that mission to influence the wars in Iraq and Lebanon. Haq’s attorneys introduced evidence that Haq had converted from Islam to Christianity eight months prior to the shooting (Gutierrez, 2006), and should be considered insane rather than convicted of a hate crime fueled by his Pakistani origin and Islam background (Cochran & Thompson, 2008). Other defendants have also drawn attention to their religious conversion, hoping it would distance themselves from their crimes. Terry Nichols, the Oklahoma City bombing accomplice, converted to Christianity while imprisoned. His jury deadlocked because some jurors felt that his conversion indicated that he did not deserve to die (CNN.com, 2004). Nichols was spared the death penalty.



Finally, some lawyers have offered opinions about how God feels about the crime, in attempts to sway the jury. In the trial of Andrea Yates, who drowned her five children in her bathtub (CNN.com, 2006), 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.” Prosecutors have quoted the Bible directly, using such phrases as “[w]hoso sheddeth man’s blood, by man shall his blood be shed” (*Carruthers v. State*, 2000) to argue that murderers should receive the death penalty. Defense attorneys have responded, for instance by referring to the following quotes from Jesus: “You have heard that it [has been] said ‘[an] eye for an eye and [a] tooth for [a] tooth...But I say to you . . . [i]f someone strikes you on the right cheek, turn . . . the other also.’” (*Bennett v. Angelone*, 1996).

Are Lawyers Allowed to Use Religious Evidence and Testimony?

During the trial, the prosecution and defense offer evidence and testimony in an effort to persuade the jury. Lawyers can introduce religion by offering character evidence, evidence of insanity, and biblical appeals.

Character Evidence. The Supreme Court has ruled that sharing testimony regarding the defendant’s religiosity is allowable because it helps the jury understand the defendant’s character (*Commonwealth v. Daniels*, 1994; *Locket v. Ohio*, 1978). At trial, prison chaplains and inmates have testified regarding a defendant’s religious conversion, founding of prison ministries, and writing of religious books (see Miller & Bornstein, 2006).



Evidence of Insanity. Lawyers have introduced evidence and testimony to persuade jurors that religious delusions lessened the defendant’s personal responsibility and his sentence should therefore be less punitive (see Miller & Bornstein, 2006; Miller et al., in press). In some instances, defendants acknowledge that what they did was wrong, yet they remain resolute that God commanded them to act. In this type of case

defense counsel has argued for the court to recognize the defendant as an exception to the standard for legal insanity with a *deific decree*. This decree allows the defendant to be considered insane even if she knew the offense was illegal because “due to mental disease or defect” she believed God ordained her actions (*People v. Serravo*, 1992).

Biblical Appeals. Courts do not agree whether biblical appeals should be permitted. Court rulings range (see Miller & Bornstein, 2006) from prohibiting all religious appeals (e.g., *Sandoval v. Calderon*, 2000), allowing all religious appeals (e.g., *Bussard v. Lockhard*, 1994), and providing guidelines, such as permitting biblical appeals as long as lawyers do not prejudice the jury (*Cunningham v. Zant*, 1991) or if the defendant has first offered religious evidence or testimony (*Boyd v. French*, 1998).

When biblical appeals are prohibited, courts often cite a violation of the Eighth Amendment (e.g., *State v. Alston*, 1995) or a violation by following a law that contradicts state law (e.g., *Commonwealth v. Daniels*, 1994).

Should Lawyers Use Religion as Evidence or Testimony?

When lawyers debate whether they should use religious evidence or testimony, it is important to consider evidence of character and insanity as well as biblical appeals. In this next section we will summarize the research on these topics and tell lawyers how they can use social science research to be more effective in court.

Character Evidence. Defendants have the right to share character evidence that could justify their actions (*Lockett v. Ohio*, 1978). A defendant who converts to Christianity may be shown mercy, while a defendant who is a lifelong Christian may not. Miller and Bornstein (2006) found that mock jurors were the least punitive toward a defendant who had converted to Christianity in prison as compared to a defendant who did not convert or a defendant whose lawyer quoted biblical appeals for mercy. However, Miller and Bornstein (2006) found that jurors were not more lenient to a defendant who gave evidence that he had been a lifelong Christian. Johnson (1985) found these lifelong Christian defendants were perceived to be more responsible by jurors and received harsher sentences than non-Christians.

Defense lawyers should introduce testimony of conversion experiences that occur after the crime was committed. However, they should be very cautious of giving evidence that the defendant has been religious throughout his life because such evidence will lead the jurors to be harsher, or at the very least will have no impact. However, detailing the lifelong religious nature of a defendant may be an effective strategy for the prosecution.

Evidence of Insanity. Whether a defendant is judged to be insane may depend on the type of hallucination he experiences; specifically, it might depend on the entity that orders him to commit the crime. Participants' rated the likelihood that a criminal was insane based on whether God, the president, or a dog commanded him to perform the crime (Miller & Jehle, 2008). A criminal who commits a killing spree or robs a bank was more likely to be judged sane when he followed orders from either God or the president (as compared to a dog). Additionally, an individual who vandalized a church was more likely to be sane when he followed orders from God as compared to either the president or a dog. Thus, hallucinations containing orders from God are less likely to indicate insanity, especially when the order involves a crime to the church.

Defense attorneys should be cautious with linking insanity to "instructions from God" because religious hallucinations make the defendant seem more sane, especially when the crime is related to religion (e.g., vandalizing a church). Evidence of insanity may be most effective at securing an insanity verdict when it involves accepting instruction from a figure other than God.

Biblical Appeal. A biblical appeal is any biblical quote or account used by a lawyer to sway the jury. Research has shown that such appeals offered by either the defense or the prosecution do not affect jurors' decisions (Miller, 2006). More concerning is the finding that defense appeals can even backfire; mock jurors were more punitive toward a defendant when his attorney quoted biblical scripture prescribing mercy (Miller & Bornstein, 2006). The jurors may have felt that the appeal was a misuse of religion.

Biblical appeals may be more likely to sway jurors who believe the Bible to be the literal word of God; however, they are ineffective in general. Defense attorneys should not quote the Bible to recommend mercy for their

client because jurors are resultantly more punitive. Prosecutor appeals to scripture also are ineffective, so it is generally recommended that all attorneys avoid them.

Conclusion

Consulting social science research empowers lawyers by providing them with knowledge of how and when to use religion in the courtroom. For best results, lawyers should ask questions and use trial strategies as close to those used in the research cited above. Trial consultants should continue conducting research specific to the case at hand to provide individualized advice. As researchers continue to learn how religion influences juror decision making, lawyers are wise to pay attention to their results. As a result, lawyers will be more effective when they understand how and when religion affects trial outcomes.

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Use of Religion in Jury Selection

Research Findings	How to Implement
<p>Affiliation: Religion with which juror is associated</p> <ul style="list-style-type: none"> • Jurors that belong to same religion as defendant may be less punitive • Jewish jurors are more lenient toward defendants across many issues • In death penalty cases, Catholics are more lenient and Protestants are more punitive 	<p>Ask, “What religion are you affiliated with?”</p> <p><i>Prosecution:</i> Remove Jews; remove Catholics in death penalty cases</p> <p><i>Defense:</i> Remove Protestants in death penalty cases; select jurors of same religion as defendant</p>
<p>Literal Interpretism: A belief that scripture(s) is/are literal</p> <ul style="list-style-type: none"> • Literalist jurors are consistently more punitive • Literalist jurors consistently give death penalty verdicts 	<p>Ask, “Do you believe the Bible to be the literal word of God?”</p> <p><i>Prosecution:</i> Select literalist jurors</p> <p><i>Defense:</i> Remove literalist jurors</p>
<p>Devotionalism: The frequency of a religious act</p> <ul style="list-style-type: none"> • May not be useful because of inconsistency on how devotionalism is measured 	<p>Generally not recommended</p>
<p>Fundamentalism: Strength of an individual’s orthodox religious beliefs</p> <ul style="list-style-type: none"> • Fundamentalists are generally more punitive • Christian fundamentalists are positively associated with death penalty verdicts 	<p>Ask, “To what degree do you believe in life after death?”</p> <p>1 2 3 . . . 7</p> <p>Strongly Disagree Slightly Strongly</p> <p>Disagree Disagree Agree</p> <p><i>Defense:</i> Remove jurors with 6 and 7 rankings.</p>

Use of Religious Evidence and Testimony

Research Findings	How to Implement
<p>Character Evidence:</p> <ul style="list-style-type: none"> • Jurors are more lenient toward defendants that convert to Christianity after the crime was committed • Jurors are more punitive toward lifelong Christians 	<p><i>Prosecution:</i> Detail lifelong religious nature of defendant</p> <p><i>Defense:</i> Detail client’s conversion if it occurred after the crime</p>
<p>Evidence of Insanity:</p> <ul style="list-style-type: none"> • Jurors are less likely to judge defendant insane if instructions allegedly came from God • Jurors are more likely to judge defendant insane if order came from someone other than God. 	<p><i>Defense:</i> Be cautious of linking insanity to instructions from God; it is better to detail how defendant followed instructions from someone or something else</p>
<p>Biblical Appeals: Use of biblical quote or account</p> <ul style="list-style-type: none"> • Biblical appeals have not been shown to affect jury decisions • Jurors are more punitive when defense uses biblical appeal to mercy 	<p><i>Prosecution:</i> Avoid biblical appeals</p> <p><i>Defense:</i> Avoid biblical appeals, especially when asking mercy for client</p>

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We asked several experienced ASTC-member trial consultants to respond with their thoughts on the relevance of Lindsey et al., for trial work. On the following pages, Andy Sheldon, Gayle Herde and Phil Monte offer their thoughts, experiences, and perspectives on the issue of religion in the jury box.

Andrew Sheldon comments on:

How Attorneys Can Use Religion to be More Effective at Trial

[by Lindsey, Miller, Hayward, Jehle, Singer and Summers]

Andrew Sheldon, JD, PhD [Andy@SheldonSinrich.com] began trial consulting in 1984 after careers as a lawyer and as a psychotherapist. He is interested in the junctions between religion, mental health and law (as in the Andrea Yates case) and in the role that religious training plays in juror decision-making.

There are some good jury selection pointers made by the six authors of this literature review and a few that may cause a trial lawyer some concern. The good pointers, first.

The basic premise that religious beliefs can be important to a juror's decision making is bedrock true in my experience. Any litigator who is not paying attention to the history of religion in a juror's life is missing out on some key information about that juror. Whether religion is part of the issues that are being decided in the case (e.g., a criminal case defended on the grounds that female circumcision is part of a defendant's tribal religious practice yet is considered spousal abuse in the United States) or not, religious training affects the values many people rely on in both considering testimony and in making decisions.

Lindsey, et al., take us into difficult territory, however, when they advise that "In death penalty cases, prosecutors should remove Catholics and defense attorneys should remove Protestant potential jurors." In my experience, that is an over simplification. Religious affiliation *per se* is a demographic and we all know that you can shoot yourself in both feet by making deselections based on demographics.

However, taking the Bible literally is, as the authors point out, a very good signpost for deselection in both death penalty cases and when gauging punitiveness, generally. We have found this deselection criterion useful because it reflects a belief that goes deeper than simply being a Baptist or an Episcopalian.

The authors' third criterion, "devotionalism", has always been heavily weighted in our selection decisions. This is because when it is considered in conjunction with "literalism" and/or with their final criterion, "fundamentalism," one can really begin to accumulate valuable information about a potential juror. "Devotionalism" is a productive area because it is measured by frequency, i.e., how many times per week a person attends church, reads her religious texts, etc. In fact, we like to clarify the picture further by adding "role" (i.e., is the juror a deacon, Sunday School teacher, or church elder?) when evaluating this criterion so that we can know is likely to be a leader.

The final issue, "Fundamentalism" is one most of us are very familiar with and find helpful in evaluating the depth and strength of a person's orthodox religious beliefs. We need not expand here on their description.

In the final section of their article, the authors move beyond jury selection issues into the "use of religion in trial," a primer on and review of various U.S. Supreme Court rulings in which religion has played a central role. While the review is helpful, and the blend of actual cases and anecdotes is interesting, their advice to lawyers does not reflect a strong experience base. Purporting to "tell lawyers how they can use social science research to be more effective in

court,” the authors fall victim to a strategy that dilutes the application of their social science research results and ultimately, the utility of their advice.

Gayle Herde comments on:

How Attorneys Can Use Religion to be More Effective at Trial

[by Lindsey, Miller, Hayward, Jehle, Singer and Summers]

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I was very interested in the article by Lindsey, et al. and appreciate them bringing to light a thorny subject. The information is intriguing, as the religious observance of the jury pool and, especially, of defendants does not receive much attention. I'd like to take this opportunity to expand somewhat on the well-laid foundation by this article by addressing a few points found in the first half of the article, *Use of Religion in Jury Selection*.

How Has Religion Been Used?

My first point refers to the statement that “prosecutors [] assume that highly religious people will be more lenient toward offenders.” In my opinion, this is a serious mistake. Many religions and Protestant denominations are highly authoritarian in structure and belief (more about this in a later TJE article). When defined as “the belief in one inerrant set of religious teachings,” religious fundamentalism is strongly related to authoritarianism (Altemeyer, 1996; Altemeyer & Hunsberger, 1992; Kirkpatrick, 1993; Laythe, Finkel & Kirkpatrick, 2001).^{Mark} Staunch adherents to these belief systems have a deep-seated respect for those in authority; as a result, those jurors are more likely to demonstrate that respect by siding with the prosecution as the representative of the state, as well as of law and order.

Affiliation.

I recently happened across a website that listed the number of Christian denominations by country.^{Mark} I asked my husband how many he thought there were in the United States alone and he responded, “There have to be a lot; maybe 200, 300?” The answer is **635!** This is only Christian, mind you, not Hindu, Islam, Buddhist or divisions within other faiths. The country closest to the US is India with 263, followed by Britain with 253. Not even close.

My point is this: the article tends to gloss over the distinctions within Protestantism,^{Mark} probably due to space constraints, to which I am entirely sympathetic. I would like to clarify some of the major denominational differences and why attorneys must be aware of them.

By way of historical reminder, in early times, around the second and third centuries, there was the Roman Catholic Church, which had substantial sway across Europe. There was a split, around the fourth century, out of which came the Eastern Orthodox tradition (for your Greek-American jurors), leading eventually to the Russian Orthodox tradition (important to your Russian-American jurors). Following that came the Reformation in the 16th century, a “protest” against certain Roman Catholic practices. But it is a mistake to lump all Protestant denominations together. According to one website, Protestantism is “less a denomination than a general branch of Christianity encompassing numerous denominations and a wide theological spectrum *ranging from conservative to liberal.*”^{Mark} (Emphasis added.) While some Protestant denominations retained many of the doctrines and practices of their Roman Catholic parentage (e.g., Anglicans and Episcopalians), many others thrust off all association with Catholic liturgy and symbolism (e.g.,

Baptists, Presbyterians, and Methodists). It should be noted that at least one item that non-Roman-Catholic denominations share in common is a rejection of the authority of the Roman Catholic pope.

Literal Interpretism.

While exploring the question of literalism is one way of identifying conservative or fundamental Christians, there are other issues that are as important and may be more distinctive. For example, in a comparison of major Christian denominations, a chart of questions of “official beliefs” included that of the Divine inspiration *and inerrancy* of Scripture.^{Mark} There were some major differences, even among the same denomination: Scriptures are God’s inspired revelation (Roman Catholic); Scriptures are inspired by God but only in the original languages (Orthodox), Scriptures are inspired and inerrant (Lutheran Missouri Synod, Wesleyan), inspired but not inerrant (Evangelical Lutheran), and so on. It is plain, then, there are many facets of belief in this issue to which literalism is linked.

There is a doctrinal issue that may be more telling than literalism, i.e., that of the means of salvation. One of the basic tenets of Christianity is the primacy of the meaning of Jesus’ death. However, when asked about whether other religious observers outside Christianity are heaven-bound without Jesus, a different attitude emerges. There will be two major divisions: those who believe that Jesus is the only way to heaven and those who believe there are other ways. Although all Christian denominations listed in the belief chart mentioned above state or imply that Jesus’ work was salvific, Roman Catholics, Orthodox Catholics, Evangelical Lutherans and American Baptists believe that adherents to other faiths “have a chance.” On the other hand, Southern Baptists and Missouri Synod Lutherans state unequivocally that Jesus is the only way. The Presbyterians and Methodists do not mention other faiths in their doctrinal statements, while the Anglicans “waffle” a little by addressing only the subject of “cooperating” with other kinds of believers. While in these politically correct times it is difficult for many people to state a belief that sounds narrow-minded and/or exclusionary, those who are willing to do so will be highly entrenched in their belief system.

Devotionalism.

Religiosity is not just a matter of attendance at services. As the authors rightly pointed out, attorneys need to know how invested the potential juror is in their belief system. Attendance, reading Scriptures, and praying is a start, but there are other indicators. For example, does the juror invest his/her time by participating in committee work, relief work in or out of town, or in teaching classes? Is the potential juror monetarily invested? I’m not referring to the obligatory guilt-assuaging dollar bill in the collection plate every week, but someone who financially supports their congregation’s efforts to build a new building, send members to foreign countries to work with orphanages, or support their local church with a “tithe” (one-tenth or more) of their income.^{Mark}

Attorneys need to be aware of the major, influential belief systems in their venue, whether it is a large collection of Muslims in Michigan, Amish in Pennsylvania, Jews in New York, or Southern Baptists in Georgia. This is where local counsel can be indispensable to the out-of-town trial team. Alternatively, one member of the team can be assigned the task of researching the religious composition of the venue and understanding the doctrinal beliefs, as well as the ethical positions, of the region. It is also helpful to know whether there is a denominational headquarters or major seminary in the venue.



One factor that is no longer very helpful for analysis of belief systems is the actual name of the venire-person’s church. In an effort to appear more inclusive and to attract the curious seeker, many have dropped denominational titles

(e.g., Main Street Baptist Church) and, instead, use either the name of the street it's on, or use "Community" prominently in the title (e.g., Main Street Community Church).

All this doesn't begin to scratch the surface. I haven't mentioned yet the Charismatic movement that developed out of Protestantism, comprised chiefly of Assemblies of God and Pentacostals, for whom feelings and emotionalism play a large part in their worship. This tendency could possibly also be found in their decision-making processes. And then there are the so-called "cults," Mormonism, Jehovah's Witnesses, Scientology, rejected by "mainstream Christians." Could their possible feelings of religious marginalization affect their orientation? Additionally, there are the New Age and Neopagan religions, including Wicca, atheism (which, contrary to what one might think, actually requires a great deal of personal faith), agnosticism and a host of others.

The "rub" in all of this, however, is how to *get at* the information during voir dire without raising objections. As the authors state, there is everything from wide latitude to no latitude regarding religious issues unrelated to the case matter, depending on the jurisdiction. In venues where juror questionnaires are allowed, one good method of understanding is to inquire about group membership and to ask, not just whether the person has a leadership position within the congregation, but in what activities the person engages. The additional advantage to a questionnaire is that often you can get the name of the congregation. Many (dare I say, most?) churches have their own websites, many with doctrinal information available to the public.

Religion is not a construct that can be ignored, despite our social ideas that religion is to be kept private and makes for "inappropriate dinner conversation." According to Barna, 47% of Americans in 2005 attended a church service in the past seven days, excluding special events such as weddings and funerals, up from 43% in 2004.^{Mark} Even more telling, nearly three out of five (58%) say they are "deeply spiritual" (2005).^{Mark} This is an important part of their value systems and will most definitely influence their decision-making. I believe the conversation should start here in *The JuryExpert*. I would very much like to see contributions from readers of experiences that worked (and when they didn't work) to sensitively and non-judgmentally garner information in voir dire.

It is the purpose of this response to demonstrate that religiosity is a very complex grid of influential criteria in the lives of potential jurors. There exists a whole constellation of unique, varied and powerful religiously-based belief systems within virtually all Americans. Broad brushstrokes would be nice, but in this realm are not realistic.

Notes

^{Mark} Wink, P., Dillon, M., & Prettyman, A (2007). "Religiousness, spiritual seeking, and authoritarianism: Findings from a longitudinal study," *Journal for the scientific study of religion*, 46(3), 321-335.

² <http://www.worldchristiandatabase.org/wcd/about/denominationlist.asp>

³ I have no intention to overlook or ignore other belief systems. However, Protestantism is within my personal sphere of reference and will be my focus here. It is as much a mistake for an attorney to be ignorant of the major differences within Islam, e.g., Sunnis, Sufis, Shi'as, Ahmadiyya, and Nation of Islam, or within Judaism, e.g., Conservative, Orthodox, Hasidic, and Reform, as it would be to ignore differences within Christianity.

⁴ <http://www.religionfacts.com/christianity/denominations/protestantism.htm>

⁵ http://www.religionfacts.com/christianity/charts/denominations_beliefs.htm

⁶ As a note, the juror's *children's* attendance probably is not quite as informative, especially if the parent doesn't attend with the child, as this could be the result of a type of felt social need rather than genuine devotion.

⁷ <http://www.barna.org/FlexPage.aspx?Page=Topic&TopicID=10>

⁸ Ibid.

Phil Monte comments on:

How Attorneys Can Use Religion to be More Effective at Trial

[by Lindsey, Miller, Hayward, Jehle, Singer and Summers]

Phil Monte, Ph.D., J.D. (montepf@floridastate.com) is a practicing lawyer in Tallahassee, Florida and a former state criminal prosecutor. He has studied courtroom behavioral dynamics since 1988, and wrote a doctoral dissertation on the social psychology of religious conservatism.

The authors perform a useful service in sensitizing trial lawyers to the role that religion plays in conditioning how jurors understand a case. Of necessity, they simplify some of the academic research findings in the field, and practitioners should avoid stereotyping jurors based on religious belief and practice (“religiosity”). While it would be tempting to adopt a “one size fits all” generalization that would allow for easy classification of a potential juror as desirable or undesirable based on characteristics such as religious affiliation or frequency of worship, to do so runs the risk of courting disaster in the jury box.

Any trial lawyer would benefit from reviewing the research summarized by the authors and following up with their own study regarding the social psychology of religion. The article’s bibliography can serve as a very useful starting point in this respect. A more general text on the sociology or psychology of religion would also serve as a good place to begin. The effort involved might best be put to work not in trying to locate some elusive rule of thumb that simply facilitates rote religious stereotyping, but rather in developing a series of voir dire questions designed to elicit individualized information about each member of the jury.

It is worth noting that there remains a dearth of research regarding the role that religion plays in the lives of African Americans. While the situation has improved over the past two decades since I first began studying religion from an academic perspective, much remains to be discovered. An attorney interested in how religiosity influences jury dynamics should keep in mind two important caveats when considering the psychology of potential African American jurors. First, traditionally black denominations often carry the same or similar names as mainline denominations, even though the practices and beliefs of each differ significantly. Second, the belief systems vary widely on a number of different dimensions. African Methodists¹, for example, tend to be much more politically liberal than their counterparts in the white mainstream United Methodist Church. As a consequence, the attorney must be especially careful to have black venirepersons elaborate upon their initial responses when asked about their religious affiliation since a simple answer such as “Methodist” often does not tell the entire story. (While the same of course holds true when examining jurors of any race about their denominational membership, the opportunities for making a serious mistake seem to be more serious when examining African Americans – perhaps due to our relative ignorance regarding black religiosity.)



Where religion is likely to be a significant issue in a case in one form or another, the use of a supplemental juror questionnaire (“SJQ”) and sequestered voir dire is essential if one is to fully explore how potential jurors’ religious behavior and beliefs are likely to influence how they understand the case. Much of how we experience religion (or do not experience religion) is a very personal and private matter. As an extreme case, I recall being involved in a sequestered voir dire where a Catholic priest was on trial on criminal charges in an archdiocese wherein the Catholic Church had been accused of covering up child abuse allegations against the clergy. This occurred sometime after the various Church abuse scandals had started to become public. A venireman under examination confided in a closed courtroom that he had undergone abuse as a child, and he clearly held strong feelings against the Catholic Church.

There is little doubt in my mind that he would not have disclosed this information in an open courtroom. On a more routine basis, decisions to leave a denomination, doubts about the theology that one has learned since childhood, and other such phenomena are much more likely to be disclosed in private on a questionnaire or in a closed, “safe” environment.

On a related note, I would emphasize how important it is that attorneys demonstrate a sincere respect for the religious beliefs -- or lack thereof -- expressed by any potential or actual jurors on a panel. Such respect is not something that is easily faked -- we’ve all seen and probably experienced intolerance in the form of religious or anti-religious bigotry. Trust me, jurors will immediately discern whether your investigation of this significant part of their lives is conducted with the intent to cynically manipulate, or rather with the intent to truly understand.

Finally, I take issue somewhat with what may be a too-strong admonition to avoid arguments that reference biblical or theological themes. It is dangerous to create hard and fast rules in this regard. Arguments based on generalized religious themes and imagery can resonate in the jury box. I would recommend that any practicing lawyer review sociologist Robert N. Bellah’s work regarding the concept of “civil religion.”² Briefly, Bellah describes an overarching set of religious principles to which the three major religious traditions in this country -- Protestant, Catholic, and Jewish -- adhere. These can often be successfully raised during closing argument. And while most of my legal practice and research has occurred in the South, where the population tends to be more conservative in belief and practice than in the rest of the country, I have often seen relatively strong religious appeals -- including references to Scripture -- successfully argued by a prevailing party in a case.³ Though religious practice continues to grow more diverse in this nation, such concepts as “love thy neighbor,” “thou shalt not steal,” and similar rules of conduct ring just as true among persons from nontraditional religious backgrounds (e.g., Muslims, Hindus, atheists, etc.). However, the careful practitioner should bear in mind that narrowly sectarian appeals can alienate jurors and are nearly always best avoided.

Notes

¹ Two prominent churches in this faith tradition include the African Methodist Episcopal Church (“AME”) and African Methodist Episcopal Zion Church.

² See, e.g., *Varieties of Civil Religion* (1980).

³ The authors correctly point out that certain types of appeals based on religion may be illegal or at least frowned upon in some jurisdictions. One such example I can recall involved a District Attorney in Fulton Co., Georgia, who argued that a defendant was “the Lapdog of Satan” during a death penalty case. The lawyer was severely chastised by the appellate court that reviewed the case.

Following review of the consultant responses, the first two authors responded to comments made by each of the ASTC-member consultants.

Response to Sheldon, Herde and Monte by Samuel C. Lindsey and Monica K. Miller

We’d like to thank *The Jury Expert* for this opportunity to discuss a topic that we find not only academically significant, but pragmatically meaningful. Like many others, we are convinced that at the crossroads of religion and law lay important discussions on how individuals use their religion to make life decisions. We think religion plays a crucial role among many of the everyday decisions, and many of the more significant decisions in our lives.

We appreciate the responses by Drs. Herde, Monte, and Sheldon. They offer valuable insight and real world expertise that is important for lawyers to consider when using religion in the courtroom. The following are our responses to their commentaries.

Gayle Herde Commentary: Dr. Herde commented on the statement “prosecutors [] assume that highly religious people will be more lenient toward offenders” and proceeded with a discussion of how this might be inaccurate because of research on authoritarian characteristics of religious people. We agree with Dr. Herde that the prosecution may not be applying tried-and-tested theory to their jury selection choices, and may in fact be removing jurors that could potentially be very sympathetic to their case. Whatever the reason, however, prosecutors have removed highly religious jurors as discussed in the cases we cited.

Herde offers an excellent observation on affiliation. The denominations of Protestantism are much more numerous than we included. However, among the hundreds of Protestant denominations, the research on punitiveness is lacking. We can therefore only make general statements from what exists. As noted by Herde, this is a limitation to our research summary on affiliation. We think it important in the future to research the intricacies of these and other individual affiliations which will clearly be more informative than stereotypical assumptions arising from grouping all Protestants together. Overall, Herde delves into great detail on several aspects of the article which we think helps make it more complete.

Phil Monte Commentary: We are grateful for the additions offered by Dr. Monte. He rightly appreciates the purpose of the article as a starting point and invites lawyers and trial consultants not to oversimplify, but take the information provided and build on it as they conduct individualized research to the case at hand. It is important to emphasize how Monte acknowledges the interaction between African-Americans and religion. This interaction has been overlooked in the literature. Similarly overlooked is the interaction between devotionalism and affiliation. By themselves, devotionalism and affiliation have inherent limitations; however, the interaction between the two (e.g., understanding differences between someone who is highly Jewish and someone who is highly Catholic) may be much more useful. In sum, studies looking at the interaction of race and religion, as well as devotionalism and affiliation, have been overlooked and future research in this area will be valuable to helping us better understand the predictive power of religious affiliation and characteristics toward verdicts.

Dr. Sheldon Commentary: We believe that trial consultants who tailor trial strategy with jurors’ religious beliefs in mind will be more successful than those who do not. Sheldon confirms our position by offering his experience applying religion in the courtroom. He offers a helpful perspective on religious affiliation and fundamentalism that adds to a broader discussion on this topic. We agree that religious affiliation is a difficult method by which to remove potential jurors because in the lives of jurors, religion is more than just a title. Religion is layered with many beliefs, attitudes, and personal experiences that meld together into the decision a juror makes. Sheldon advises that removing jurors from death penalty cases on the basis of religious affiliation may be overly simplistic. This may well be true. Our advice to lawyers in the affiliation section is not our strongest advice. The one research study we cited which investigated the punitiveness of Catholics versus Protestants is most likely not strong enough to support our conclusion that the prosecution should remove Catholics and the defense should remove Protestants. The Miller and Hayward (2008) study only showed that Protestants were *more likely* than Catholics to support the death penalty. This conclusion only supports the comparison of two religious affiliations and does not necessarily predict the punitiveness of each affiliation individually. With Sheldon’s help, we recognize our advice to lawyers would be stronger if we would have restricted our advice to the following: In death penalty cases, Protestants will provide more favorable verdicts than Catholics for the prosecution.

Sheldon's summary concludes with, "The authors fall victim to a strategy that dilutes the application of their social science research results and ultimately, the utility of their advice." Sheldon brings up an important point that we would like to clarify. The topic of religion and law is a relatively new field of study. At present there is simply not enough research on this topic, and our advice in each section is often based on one or two studies. The research is not strong enough to match lawyers' present need for guidance on implementing strategy based on religion in the courtroom. The advice we offer is based on cutting-edge research, most being conducted within the last ten years. So wherein the research lacks in volume, our advice is still useful because it is at the forefront of showing predictive patterns lawyers can use before this information is widely known. We hope lawyers and trial consultants will recognize that religion affects the way jurors make decisions, and as more research is conducted, it will be an even stronger foundation for courtroom strategy.

Conclusion: We appreciate the opportunity provided by *The Jury Expert* to have a dialogue with Drs. Herde, Monte, and Sheldon, who have had first-hand experience applying religion in the courtroom. We believe that, ultimately, the most useful information is that which brings together research with expertise of those in the field. Surely their commentaries reflect a small sampling of the comments and concerns likely similar to those of the readers. We hope our response helps clarify our positions and the purposes of the article. We also hope our readers will appreciate the controversial dynamics and limitations of using religion in the courtroom. Employing social science research on religion and law can provide a starting point which will help them develop their own methods to improve their effectiveness at trial.

The Jury Expert wants to thank Mr. Lindsey and his co-authors for not only sharing their work but for responding to consultant reactions on its practical utility. The willingness to discuss (and even courteously disagree over) religiosity in this venue is appreciated.

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Thanks for looking at the July 2008 issue of TJE. This month we are pleased to bring you not only diverse but international perspectives. This issue of The Jury Expert has authors from England, Canada, and all across the United States.

This time we're all about witness preparation, the eye witness research literature, a new 'secret weapon' for ensuring your witnesses remember facts as accurately as possible, religion in the jury box, case themes, a new form of forensic animation, and understanding RSS without any real work on your part. Plus our July 2008 "favorite thing" is hidden away inside.

We appreciate the feedback you've given us and are eager for more! Tell us what you think or what you'd like to see in The Jury Expert by simply sending an email to the [Editor](#).

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Rita R. Handrich, PhD
Editor, The Jury Expert



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