Bibles in the Jury Room: Psychological Theories Question
Judicial Assumptions

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I. INTRODUCTION

When jurors go into a jury room to determine a verdict or sentence, they are expected to use only the facts and the law presented to them. Occasionally, however, jurors refer to other sources, such as the Bible, to assist them in making this decision; for example, jurors might use Biblical passages such as “an eye for an eye” or “judge not, that ye be not judged” in order to help them make sentencing decisions during death penalty cases. These phrases allow the juror to feel less responsible for the outcome (e.g., death penalty). Judges must decide whether the jurors’ reliance on this extra-legal material—biblical phrases—violates the defendant’s rights. Some scholars and courts have determined that the use of the Bible during deliberations is harmless. In contrast, some scholars and courts have determined that sentences that are influenced by the Bible potentially violate the defendant’s rights under the First, Sixth, and/or Eighth Amendments. Still others have determined that the Bible is an impermissible outside source and should not be consulted at all during deliberations.

The first purpose of this Article is to summarize the appellate cases in which courts have considered whether the jury’s use of the Bible is

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2. Exodus 21:24 (God’s Word).
3. Matthew 7:1 (King James).
4. See infra Part II.
5. See infra Part II.
6. See infra Part II.
7. See infra Part II.
permissible. The relevant legal issues are discussed. The second purpose of this Article is to provide an in-depth, case-by-case analysis of this caselaw. A typology of the major reasons offered by judges is constructed and illustrates how judges come to their conclusions. In making decisions, judges sometimes make one or more psychological assumptions about what effects (if any) the Bible has on jurors’ decisions. As there is little relevant empirical research specifically on the topic, there is a need to study how the Bible affects jurors’ deliberations and verdicts. Such scholarship will be useful to the Supreme Court of the United States and other trial and appellate courts if they hear such a case concerning jurors’ use of the Bible. To date, the Supreme Court has declined to rule on the permissibility of jurors’ use of the Bible in deliberations in a general ruling (i.e., the Court has not stated whether the Bible should be permitted in overall cases); however, such a ruling would help eliminate the conflicting rulings among jurisdictions.

In Part II, this Article examines the possible legal and constitutional issues surrounding jurors’ use of the Bible. This Article also discusses the federal rule shielding jurors from being questioned about their deliberations, and what problems arise when this rule is applicable and thus makes it difficult to appeal cases concerning jurors’ use of religion. This Part also addresses how judges have decided whether the Bible should be considered extraneous information that is improperly considered by jurors. Then, in Part III, this Article examines psychological theories that discuss how decisions are made (e.g., a juror can be influenced by the authority figure such as a judge). After briefly examining various psychological theories of decision making, these theories are applied to the case facts in some cases in which jurors use the Bible in their decision making. Starting in Parts IV and V, this Article explains the study that was conducted to develop the typology of judicial reasonings (i.e., reasons why jurors’ use of the Bible was erroneous or not). In Part VI, this Article explains the results

8. See infra Part VI.A. The term “use of the Bible” will be used to refer to a variety of situations such as jurors quoting the Bible (whether or not the book itself is physically present), asking for a Bible to be brought into the jury room, etc. This broad term encompasses all uses that judges cite within the case law on the topic.
9. See infra Part VI.
10. See infra Part IV.
11. See Oliver v. Quarterman, 541 F.3d 329, 336 (5th Cir. 2008).
13. See infra Part II.
14. See infra Part II.A.
15. See infra Part II.A.
16. See infra Part III.A.
of the study. Finally, Part VII assesses the typology of reasonings developed in the previous sections. These reasonings serve as the basis for determining whether or not the assumptions made by judges might be erroneous in light of psychological theory discussed in Part III.\textsuperscript{17} This Article concludes with suggestions on how to address the issue of jurors using the Bible during deliberations.\textsuperscript{18}

II. LEGAL ISSUES SURROUNDING JURORS’ USE OF THE BIBLE

If a juror uses a Bible during deliberations, the constitutional rights granted to the defendant are potentially violated.\textsuperscript{19} Such rights include the Sixth Amendment rights to an impartial jury and the right to confront opposing witnesses.\textsuperscript{20} Additionally, attorneys have argued in some cases that jurors’ consultation of the Bible can violate the defendant’s right to freedom from cruel and unusual punishment granted by the Eighth Amendment\textsuperscript{21} and has the potential to violate the Establishment Clause of the First Amendment, which requires a separation of church and state.\textsuperscript{22}

If a defendant believes the jury consulted the Bible, he or she might use this arguably improper behavior as grounds to appeal his/her verdict or sentence, especially a death sentence.\textsuperscript{23} However, the defense first has to prove that one or more jurors used a Bible, quoted from the Bible, or that a Bible was present during the course of the jury’s deliberations.\textsuperscript{24} This requires the defense attorney to speak with jurors.\textsuperscript{25} Speaking to the jurors is typically prohibited because Federal Rule of Evidence 606(b)\textsuperscript{26} prohibits post-verdict interviews that are intended to investigate the jurors’ subjective thought processes during deliberations.\textsuperscript{27} The exception to this rule is that the defense can ask jurors about the use of “extraneous materials” not introduced to the jury at trial.\textsuperscript{28} Thus, the judge’s determination of whether the Bible constitutes extraneous material affects whether the defense can speak to the jurors about their use of the Bible. The following subsections

\begin{itemize}
\item \textsuperscript{17} See infra Part VII.
\item \textsuperscript{18} See infra Part VIII.
\item \textsuperscript{19} Sporn, supra note 12, at 814.
\item \textsuperscript{20} See infra Part II.B.
\item \textsuperscript{21} See infra Part II.C.
\item \textsuperscript{22} See infra Part II.D.
\item \textsuperscript{23} See, e.g., Oliver, 541 F.3d at 331.
\item \textsuperscript{24} See id. at 339-40.
\item \textsuperscript{25} See id. at 341.
\item \textsuperscript{26} See infra Part II.A.
\item \textsuperscript{27} Nicholas G. Shibely, Casenote, Divine Intervention? The Threat of Religious Discussion in the Context of Capital Sentencing Deliberations: Fields v. Brown, 503 F.3d 755 (9th Cir. 2007) (En Banc), 76 U. CIN. L. REV. 1404-05 (2008), See also Fed. R. Evid. 606(b).
\item \textsuperscript{28} Fed. R. Evid. 606(b)(2)(A).
\end{itemize}
discuss each of the potential rights violations (i.e., First, Sixth, and Eighth Amendments) and Rule 606(b) in order to provide a thorough review of the legal issues surrounding jurors’ use of the Bible.

A. Extraneous Material/Information and Federal Rule of Evidence 606(b)

During the appellate phase, the defendant (through his or her attorney) can argue that the jurors were involved in misconduct by consulting “extraneous”—or outside—material or information (i.e., the Bible) that was not properly introduced into evidence during the trial. Information about the defendant or the case that is deemed as factual and influences the jury is generally known as “extraneous prejudicial information” if it is not properly introduced at trial.

Courts have explained the threat of extraneous material and information in several cases, such as Remmer v. United States (“Remmer I”), Turner v. Louisiana, and Lucero v. Texas. For example, in Remmer I, one of the jurors was approached by someone not involved with the case who tried to pay the juror in exchange for a vote in favor of the defendant. According to the Supreme Court of the United States, any form of communication, contact, or tampering with a juror is “presumptively prejudicial”; whether the communication with the juror is deemed direct or indirect is irrelevant. This case was not about the jury’s use of the Bible; however, it was one of the foundational cases for establishing whether something is extraneous material that might have improperly influenced the jury.

In Turner, deputies who had testified during the trial also served as guards for the jurors during the jury’s sequestration. These deputies discussed the case amongst themselves and the jurors. According to the Supreme Court of the United States, this “continuous and intimate association” between the deputies and jurors violated the defendant’s

32. 379 U.S. 466 (1965).
34. Remmer v. United States (Remmer I), 350 U.S. at 378.
35. Id. at 379 (citing Remmer v. United States (Remmer II), 347 U.S. 227, 229 (1954)). See also Gregory M. Ashley, Theology in the Jury Room: Religious Discussion As ‘Extraneous Material’ in the Course of Capital Punishment Deliberations, 55 VAND. L. REV. 127, 144 (2002).
36. See Remmer I, 350 U.S. at 382.
37. 379 U.S. at 468.
38. Id. at 468.
39. Id. at 473-74.
Sixth Amendment right to a fair trial. The Court specified that the Due Process Clause guarantees that, in any jury trial, the verdict will be determined by analyzing the “‘evidence developed’ against a defendant,” but the actions of these deputies “subvert these basic guarantees of trial by jury.” The communication between the jurors and the officer, therefore, constituted extraneous material.

During the trial stage in *Parker v. Gladden*, before the jury concluded its deliberations, the bailiff informed the jury of his opinion that the defendant was guilty, and if the jury were to vote in any other manner, the mistake would be corrected by the Supreme Court. This communication, like that of the communication with the deputies in the *Turner* case, was determined by the Supreme Court of the United States to violate the defendant’s Sixth and Fourteenth Amendment rights. Following the ruling of the Court in *Turner*, the Court found that this “unauthorized communication” was intended to “reach the jury by ‘outside influence’” and thus was deemed to be extraneous material.

Courts have long debated whether the Bible is extraneous material and thus can be used as grounds for the defendant’s appeal. If the judge determines that the Bible is not “extraneous,” the defendant will not likely be given permission to ask the jurors about the incident due to Federal Rule of Evidence 606(b).

Rule 606(b) provides:

(b) During an Inquiry Into the Validity of a Verdict or Indictment.
   (1) Prohibited Testimony or Other Evidence. During an inquiry into the validity of a verdict or indictment, a juror may not

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40. See Gideon v. Wainwright, 372 U.S. 335, 342 (1963) (“[A] provision of the Bill of Rights which is ‘fundamental and essential to a fair trial’ is made obligatory upon the States by the Fourteenth Amendment.”). This right is applied to the states under the due process clause found in the Fourteenth Amendment.
42. *Id.* at 473.
43. *See id.* at 472.
45. *Id.* at 364-65.
46. *Id.* at 364.
47. *Id.* at 364-65.
48. See, e.g., *Harlan*, 109 P.3d at 629; Lucero v. Texas, 246 S.W.3d at 95.
51. *See Fed R. Evid. 606(b)(2).*
testify about any statement made or incident that occurred during the jury’s deliberations; the effect of anything on that juror’s or another juror’s vote; or any juror’s mental processes concerning the verdict or indictment. The court may not receive a juror’s affidavit or evidence of a juror’s statement on these matters.

(2) Exceptions. A juror may testify about whether:
   (A) extraneous prejudicial information was improperly brought to the jury’s attention;
   (B) an outside influence was improperly brought to bear on any juror; or
   (C) a mistake was made in entering the verdict on the verdict form. 52

Thus, a court must first determine whether the Bible is extraneous material. 53 Generally, any material or discussion that is obtained outside of the trial (i.e., that does not pertain to evidence or instructions) would be deemed to be extraneous. 54 Because Bible verses are not generally part of evidence or court instructions, the verses might constitute extraneous evidence and might provide grounds for the defendant to appeal. 55 If the ultimate ruling is that the verses are not extraneous, then the defendant is not allowed to talk with jurors about the verses, and likely no appeal can be based on this alleged wrongdoing. 56 On the one hand, it seems obvious that the Bible would constitute extraneous material. 57 On the other hand, the Judeo-Christian Bible is so widespread, and its contents are so widely known (and often memorized), that it is arguably different from other sorts of materials or communications that jurors might access. 58 It is largely for this reason that courts are divided on whether the Bible is, in fact, extraneous material.

Some courts have found that the Bible is extraneous. 59 In People v. Harlan, 60 the defendant claimed that the jurors were exposed to extraneous prejudicial information during deliberations. 61 The Colorado Supreme

52. Fed. R. Evid. 606(b).
53. Sanderford, supra note 30, at 182-83.
54. Sporn, supra note 12, at 848.
55. Id. at 829.
56. See id. at 829-30.
57. See id. at 829.
58. See id. at 821-22 (quoting Fields v. Brown, 503 F.3d 755, 780 (9th Cir. 2007)).
59. See, e.g., Harlan, 109 P.3d at 629.
60. 109 P.3d 616 (Colo. 2005).
61. Id. at 619.
Court determined that the Bible constituted extraneous material and qualified as an exception to Federal Rule 606(b), allowing the defense attorneys to interview jurors about this matter while preparing for appeal. After the defense interviewed jurors about their use of the Bible, the court ultimately determined that the use of the Bible during deliberations might have prejudiced the jury. The court found that the death sentence imposed on the defendant, Harlan, was unconstitutional due to the prejudicial extraneous material and sentenced him to life in prison without the possibility of parole.

Other courts have found that the Bible is not extraneous, as in the case of Lucero v. Texas, a case in which the foreperson read Bible passages to jurors. The particular passages read by the jury foreman contained verses that called for individuals to abide by the laws of man. The defendant argued that, because the Bible was not admitted into evidence, it should be considered extraneous in nature; the Court of Criminal Appeals of Texas disagreed and determined that it was not extraneous. The court reasoned that the record provided no grounds to determine that the passages read had any effect on the jurors’ decisions. Courts have debated and disagreed as to whether a Bible should be considered extraneous. However, the determination of the nature of this material is only one of the legal issues surrounding the problem of Bibles in the jury room. As discussed in the following sections, a defendant’s constitutional rights are implicated as well.

**B. Violation of Sixth Amendment Rights**

Criminal defendants have certain rights granted to them under the Sixth Amendment of the United States Constitution, primarily the right to an impartial jury and the right to confront witnesses that present testimony and

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62. *Id.* at 629.
63. *Id.* at 633.
64. *Id.* at 631.
66. *Id.* at 89.
67. *Id.* at 90-91, 95.
68. *Id.* at 95 (“The record presented to this Court indicates that this brief reading of Biblical scripture, which was essentially an admonishment to follow man’s law (and, therefore, duplicated what was already in the court’s charge), occurred near the beginning of jury deliberations. The affidavits clearly indicate that the scripture had no effect on the jury’s verdict rendered some hours later. We, therefore, cannot conclude that the trial court abused its discretion in declining to hold a hearing on appellant’s new trial motions.”).
69. See, e.g., Harlan, 109 P.3d at 629; Lucero, 246 S.W.3d at 95; see also Sporn, supra note 12, at 814.
other evidence against them.\textsuperscript{70} An impartial jury, according to the Supreme Court of the United States, is one that is “capable and willing to decide the case solely on the evidence before it.”\textsuperscript{71} Judges might excuse a potential juror if that particular juror feels that his or her beliefs or convictions would prevent or impair him or her from following the law that is to be used during the case.\textsuperscript{72} According to the Court, jurors may be excluded for cause if the juror’s views would “prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.”\textsuperscript{73}

If a juror relies on his or her beliefs rather than only relying on evidence during deliberation, the juror might not have performed his or her duties “in accordance with his [or her] instructions and his [or her] oath.”\textsuperscript{74} This would constitute juror misconduct that would violate the defendant’s right to an impartial jury.\textsuperscript{75} When a defendant challenges a verdict based on juror misconduct, conventionally, the challenge is made under the defendant’s Sixth Amendment right to an impartial jury or similar state provisions that guarantee the defendant a fair trial.\textsuperscript{76}

The primary purpose of the Sixth Amendment is to protect accused defendants from oppression by the government during criminal trials.\textsuperscript{77} Courts have indicated that the individual life experiences and common sense of each juror will inevitably influence decisions during deliberations.\textsuperscript{78} However, courts have held that the Sixth Amendment requires jurors to set aside their biases and make decisions based only on the laws, evidence, and facts presented during the trial.\textsuperscript{79} While this requirement is a strength of the jury system, a juror’s reliance on his or her personal beliefs and experiences also presents a risk that the verdict will not be based primarily on the laws or facts of the case.\textsuperscript{80}

\textsuperscript{70} U.S. CONST. amend VI; see also Shively, supra note 27, at 1403 & n.20.
\textsuperscript{71} Phillips, 435 U.S. at 217.
\textsuperscript{72} Gary J. Simson & Stephen P. Garvey, Knockin’ on Heaven’s Door: Rethinking the Role of Religion in Death Penalty Cases, 86 CORNELL L. REV., 1090, 1093 (2001).
\textsuperscript{73} Wainwright v. Witt, 469 U.S. 412, 424 (1985).
\textsuperscript{74} Id. at 423-24.
\textsuperscript{75} See id. at 423.
\textsuperscript{77} Singer v. United States, 380 U.S. 24, 31 (1965).
\textsuperscript{79} See id. at 372-73.
\textsuperscript{80} Sanderford, supra note 30, at 173.
Some courts have found that jurors’ use of the Bible violates the Sixth Amendment right to an impartial jury. For instance, in *Jones v. Kemp* the United States Court of Appeals for the Fifth Circuit found that the use of the Bible could carry such weight with a juror that “the effect may be highly prejudicial to the defendant, and the confidence in the reliability of the jury’s decision which must guide imposition of the death penalty may be undermined.” The court in *Jones* found that if a jury reaches a verdict that is based at least in part on the basis of Biblical verses (ones that are not admitted into evidence), the jury will have violated the defendant’s Sixth Amendment rights. The court found sufficient evidence of this violation and reversed Jones’ death sentence.

In *Fields v. Brown*, Judge Gould of the United States Court of Appeals for the Ninth Circuit noted several factors utilized by the circuit in order to determine whether the defendant’s Sixth Amendment rights had been violated when the jury consulted extraneous material (i.e., the Bible):

1. whether the [extraneous] material was actually received, and if so, how;
2. the length of time it was available to the jury;
3. the extent to which the jury discussed and considered it [i.e., how a juror might have interpreted a particular Bible verse during deliberations];
4. whether the extrinsic material was introduced before a verdict was reached, and if so, at what point in the deliberations it was introduced; and
5. any other matters which may bear on the issue [of whether the extraneous material affected the verdict in any manner] . . . .

In *Fields*, even though the Bible was ruled extraneous, the use of the Bible in this case did not violate the Sixth Amendment. The court noted that “[o]ne touchstone of a fair trial is an impartial trier of fact—a jury capable and willing to decide the case solely on the evidence before it” and the Sixth Amendment is supposed to guarantee the right to a fair and impartial trial.

83. Id. at 1560.
84. See id.
85. Id.
86. 503 F.3d 755 (9th Cir. 2007).
87. Id. at 800, 887 (Gould, J., concurring in part and dissenting in part) (quoting Bayramoglu v. Estelle, 806 F.2d 880, 887 (9th Cir. 1986)).
88. See id. at 781-82.
jury. The foreman read passages from the Bible and took notes on specific verses in order to determine the morality of a death sentence. Those notes were deemed as not having a “substantial and injurious effect,” and thus did not violate the defendant’s Sixth Amendment rights as applied to the five factors noted in Fields and established in Bayramoglu v. Estelle, particularly when examining the extent to which the jury discussed and considered the material. Thus, the notes did not provide adequate grounds for a successful appeal.

In Oliver v. Quarterman, jurors read passages from the Bible during deliberations and compared the verses to the case facts. Relying on precedents from the Supreme Court and using Fields as a guide, the United States Court of Appeals for the Fifth Circuit found that the Bible was “an external influence on the jury’s deliberations.” However, the Fifth Circuit also found that members of the community were religious and thus the jury would likely be familiar with the passages even before the trial. As such, the Bible verses were deemed not influential to the jurors. In the case of Oliver, the Court decided that the defendant’s Sixth Amendment rights were not violated.

In sum, if a jury bases a verdict on material that was not introduced in evidence, such as the Bible, the jury might not be impartial, as the Sixth Amendment requires. A defendant’s Sixth Amendment rights are violated if a jury’s verdict is based primarily on the religious extraneous material, as shown in the reasoning of the decision in cases such as Jones v. Kemp. However, in cases such as Fields, courts have found that the Bible can still be used as a moral guide without violating the defendant’s Sixth Amendment rights. As is discussed in the next section, a defendant’s Eighth Amendment rights are potentially violated as well, if reliance on the Bible during the deliberations results in an arbitrary verdict.

89. Id. at 766 (quoting McDonough Power Equip., Inc. v. Greenwood, 464 U.S. 548, 554 (1984)).
90. Id. at 777-78.
91. 806 F.2d at 887.
92. Fields, 503 F.3d at 776, 781-82, 800.
93. Id. at 781-82.
94. 541 F.3d 329 (5th Cir. 2008), cert. denied, 129 S.Ct. 1560 (2009).
95. Id. at 340.
96. See id. at 336-40.
97. See id. at 343-44.
98. Id.
99. See Oliver, 541 F.3d at 344.
100. Kemp, 706 F. Supp. at 1560; see also U.S. CONST. amend VI.
102. Fields, 503 F.3d at 781-82.
C. Violation of Eighth Amendment Rights

The Eighth Amendment of the Constitution protects defendants from excessive bail or fines being imposed and also from cruel and unusual punishment.\textsuperscript{103} The Eighth Amendment is also interpreted as a guarantee that the defendant will receive individualized consideration of all the facts (i.e., any special circumstances surrounding the case).\textsuperscript{104} In \textit{Jones v. Kemp}, not only did the defendant claim that his Sixth Amendment rights had been violated, as discussed in the previous section, but he also claimed that his Eighth Amendment rights were violated.\textsuperscript{105} Jones claimed that because the jury’s verdict was based on the Bible, even partially, the verdict should be seen as both “arbitrary and capricious.”\textsuperscript{106} As such, the verdict violated his right to be protected from cruel and unusual punishment.\textsuperscript{107} The United States Court of Appeals for the Ninth Circuit agreed with his argument, stating that the Bible has the potential to influence jurors’ decisions: “[a] search for the command of extrajudicial ‘law’ from any source other than the trial judge, no matter how well intentioned, is not permitted.”\textsuperscript{108}

However, not all courts agree on this matter. In \textit{Burch v. Corcoran},\textsuperscript{109} the defendant was convicted of murder and burglary.\textsuperscript{110} After losing his appeal to the Maryland Supreme Court, Burch appealed for a writ of habeus corpus in federal court on the grounds that his Sixth and Eighth Amendment rights had been violated due to the jury’s foreperson reading Biblical quotes during sentencing deliberations.\textsuperscript{111} The United States Court of Appeals for the Fourth Circuit denied this claim, stating that the jurors “did not rely upon the Bible as a source of law as distinct from the . . . law as instructed by the judge.”\textsuperscript{112} The Fourth Circuit found that even though the Bible reading could be deemed as improper conduct by the jury in some cases, there was no reasonable possibility that the Bible affected the jury verdict in this case.\textsuperscript{113} The verdict was based solely on fact; thus, the reading did not constitute improper conduct by the jury.\textsuperscript{114}

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\item \textsuperscript{103} U.S. CONST. amend VIII.
\item \textsuperscript{104} Baron, \textit{supra} note 78, at 393.
\item \textsuperscript{105} \textit{Kemp}, 706 F. Supp. at 1558.
\item \textsuperscript{106} \textit{Id.} at 1559.
\item \textsuperscript{107} \textit{See id.} at 1559-60.
\item \textsuperscript{108} \textit{Id.} at 1559.
\item \textsuperscript{109} 273 F.3d 577 (4th Cir. 2001).
\item \textsuperscript{110} \textit{Id.} at 580.
\item \textsuperscript{111} \textit{Id.} at 590.
\item \textsuperscript{112} \textit{Id.} at 590-91.
\item \textsuperscript{113} \textit{Id.} at 591.
\item \textsuperscript{114} \textit{Burch}, 273 F.3d at 590-91.
\end{itemize}
While a verdict based, even partially, on the Bible is arbitrary and capricious under the rights granted by the Eighth Amendment (in some jurisdictions), the defendant might also claim that jurors’ use of the Bible violates the Establishment Clause found within the First Amendment. \footnote{See Egland, supra note 76, at 356-58.} Violations of the First Amendment due to use of the Bible are discussed in the next section.

\section*{D. Violation of First Amendment Rights}

As explained in the sections above, some courts have determined that a jury consulting a Bible during its deliberations violates the constitutional rights granted to a defendant through the Sixth \footnote{See infra Part II.B.} and Eighth \footnote{See infra Part II.C.} Amendments; however, these same actions have potential to violate the Establishment Clause of the First Amendment. \footnote{See Egland, supra note 76, at 356-58; see also Kathleen Rupp, Note, Capital Hypocrisy: Does Compelling Jurors to Impose the Death Penalty Without Spiritual Guidance Violate Jurors' First Amendment Rights?, 48 AM. CRIM. L. REV. 217, 235-39 (2011).}

The separation of religion and the state has been interpreted from the Establishment Clause of the First Amendment as a right that all citizens share to protect against the government’s establishing a state religion. \footnote{Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971).} The Supreme Court of the United States has declared that this separation was intended to allow citizens to have personal religious freedoms without being forced to believe or follow any particular religion. \footnote{Sch. Dist. of Abington Twp, Pa. v. Schempp, 374 U.S. 203, 216 (1963).} Further, Justice Rutledge declared that “[this separation] was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion.” \footnote{Everson v. Bd. Of Educ. of Ewing Twp., 330 U.S. 1, 31-32 (1947) (Rutledge, J., dissenting).}

Judges who are presented with these legal questions have stated that judges, attorneys, and jurors cannot endorse any particular religion because all actors in the system are representatives of the state. \footnote{See generally Cory Spiller, People v. Harlan: The Colorado Supreme Court Takes a Step Toward Eliminating Religious Influence on Juries, 83 DENV. U. L. REV. 613, 621 (2005).} If a juror consulted the Bible (or any other religious text), the consultation would violate the First Amendment’s prohibition of the State endorsing any religion. \footnote{See id. at 633.}
According to many interpretations of the Establishment Clause, it is unconstitutional for jurors to “automatically” base a verdict on religious ideas or religious texts.\textsuperscript{124} This automatic response means that the jurors followed their instincts and bias rather than following the law, instructions, and evidence provided by the judge during the trial.\textsuperscript{125} The defense can argue that jurors should not be permitted to consult any religious text, religious ideas, or spiritual leaders because jurors are paid by tax dollars,\textsuperscript{126} and the trial is conducted by the government, which operates under the Constitution.\textsuperscript{127} Thus, jurors’ use of the Bible would constitute a connection between church and state because religious views would be intertwined with the public realm.

Courts have been “virtually silent on the serious Establishment Clause concerns” that are raised when jurors have utilized religion.\textsuperscript{128} In \textit{People v. Danks},\textsuperscript{129} the majority opinion stated that a juror who highlighted biblical passages and then spoke with her pastor about these passages did violate the rules of conduct for jurors, but her violation was deemed not prejudicial.\textsuperscript{130} However, the dissenting justices found that the jurors were “influenced by the combined effect of” the events that preceded the discussion of these passages (i.e., getting approval from her pastor).\textsuperscript{131} The dissenting justices noted that there was a substantial likelihood that the jury was impermissibly influenced after multiple jurors were directed to certain passages in the Bible and received assurances from their pastors that the death penalty was the appropriate punishment for defendant, which suggests that a connection between church and state had been formed.\textsuperscript{132}

There are cases in which courts have found that there was no violation of the Establishment Clause. For example, in \textit{People of the State of Colorado v. Vigil},\textsuperscript{133} the Supreme Court of Colorado, through an affidavit by one of the jurors, found that the Bible was used during deliberations.\textsuperscript{134} The court decided that because there was no evidence that the reading caused any prejudice (i.e., the religious texts did not sway other jurors), the

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\item \textsuperscript{124} \textit{Kemp}, 706 F. Supp. at 1559-60.
\item \textsuperscript{125} \textit{See} Simson & Garvey, \textit{supra} note 72, at 1127.
\item \textsuperscript{126} \textit{See} MINN. STAT. ANN. § 593.48 (West 2010); OHIO REV. CODE ANN. § 2313.22 (West 2012).
\item \textsuperscript{127} \textit{See} Simson & Garvey, \textit{supra} note 72, at 1127.
\item \textsuperscript{128} \textit{Id.} at 1125.
\item \textsuperscript{129} 82 P.3d 1249 (Cal. 2004).
\item \textsuperscript{130} \textit{Id.} at 1272, 1274-77.
\item \textsuperscript{131} \textit{Id.} at 1284; \textit{see also} Shively, \textit{supra} note 27, at 1410.
\item \textsuperscript{132} \textit{See generally} Danks, 82 P.3d at 1281-94.
\item \textsuperscript{133} 718 P.2d 496 (Colo. 1986). Note that this case was not included in the study sample because it did not fit the sample frame (specifically, it was not a death penalty case).
\item \textsuperscript{134} \textit{Id.} at 501.
\end{itemize}
reading of the biblical passages did not violate the defendant’s rights; thus, there was no violation of the Establishment Clause.\textsuperscript{135} Note, however, that this case did not address the Establishment Clause issue directly (i.e., whether jurors are actors of the State and their actions represent the State’s endorsement of religion).\textsuperscript{136}

As Parts II.A-D demonstrated, defense attorneys have used many constitutional arguments to claim the defendant should receive a new trial because the jury used a Bible during deliberations. While there is no existing quantitative or qualitative analysis of judicial rulings in cases in which jurors have used the Bible, there is such an analysis of judicial rulings in cases in which attorneys have used the Bible in their arguments to jurors.\textsuperscript{137} Some of these judicial reasonings are similar, while others are different. The current analysis uses the past analysis as a foundation and point of comparison; accordingly, the next section provides a brief summary.

\textbf{E. Attorneys’ Use of the Bible}

It is not only jurors who refer to the Bible during a trial; both prosecution and defense attorneys sometimes refer to biblical passages or the Bible as a whole to persuade the jury,\textsuperscript{138} and judges have been known to invoke the Bible as well.\textsuperscript{139} Attorneys typically use biblical quotes to make comparisons between the defendant and a biblical character, or tell the jury that God has given them the authority to sentence a defendant to death.\textsuperscript{140} Both attorneys and jurors refer to the Bible when they are trying to decide whether the Bible allows (or commands) them to give the defendant a death sentence.\textsuperscript{141} Such religious appeals might influence jurors to vote either in favor of or against the defendant, whether the messenger presenting the appeal is an attorney or another juror.

Chavez and Miller did an analysis of judicial rulings in cases in which attorneys used the Bible to persuade jurors.\textsuperscript{142} From that analysis, Chavez

\textsuperscript{135} See id. at 501-02
\textsuperscript{136} See generally Vigil, 718 P.2d 496.
\textsuperscript{138} Id. at 1039.
\textsuperscript{139} See Brian Bornstein & Monica Miller, God In the Courtroom: Religion’s Role at Trial 85-87 (2009).
\textsuperscript{140} Alexander v. State, 282 S.W.3d 143, 145 (Tex.App.–Texarkana 2009); see also Bornstein & Miller, supra note 139, at 143-53; Chavez & Miller, supra note 137, at 1041.
\textsuperscript{141} Danks, 82 P.3d at 1268; Alexander, 282 S.W.3d at 145; Chavez & Miller, supra note 137, at 1041-42.
\textsuperscript{142} Chavez & Miller, supra note 137, at 1041-47.
and Miller argue that attorney appeals can affect jurors in two ways.\textsuperscript{143} First, biblical appeals might influence the verdicts because of the emotional arguments presented.\textsuperscript{144} Second, if a biblical passage is presented as a moral lesson that can be used to examine the case facts, the passage has the potential to lessen jurors’ sense of responsibility (e.g., because the Bible says people should receive an ‘eye for an eye,’ the Bible—not jurors—is responsible).\textsuperscript{145}

“[A] court typically first determines whether the [biblical] reference is proper”—that is, “whether the attorney committed an error in using the reference.”\textsuperscript{146} Even if the reference is found to be improper, a court can still find that the reference is permissible; for example, if the trial judge had instructed the jury to ignore the improper reference.\textsuperscript{147} Chavez and Miller indicated that courts are divided as to whether references are allowed; in their study, courts in four states consistently ruled that religious references are both “proper and permissible,” whereas in four other jurisdictions, the courts consistently found that this conduct is improper but still permissible (e.g., the attorney’s behavior was misconduct, but this behavior could not have affected jurors, so the sentencing verdict was allowed to stand).\textsuperscript{148} In five states, the courts differed in their rulings on the matter, with appeals being successful in some cases but not others within the same jurisdiction.\textsuperscript{149}

Some courts have found that an attorney’s religious references are permissible. For example, in \textit{Gaede v. State of North Dakota},\textsuperscript{150} the prosecuting attorney read biblical passages to the jury during his closing arguments that implied the jury had the power to determine the fate of the defendant.\textsuperscript{151} While the defendant claimed this action should be deemed as misconduct, the court readily denied the claim, stating that the prosecutor’s argument did not make an “impermissible appeal to religious authority.”\textsuperscript{152} The court determined that the Bible should be considered, not as a source of

\begin{itemize}
  \item \textsuperscript{143} \textit{Id.} at 1048-53.
  \item \textsuperscript{144} \textit{Id.} at 1050.
  \item \textsuperscript{145} \textit{Id.} at 1045, 1055.
  \item \textsuperscript{146} \textit{Id.} at 1053.
  \item \textsuperscript{147} Chavez & Miller, supra note 137, at 1053. Although there were cases where the Bible was ruled as “improper and impermissible,” the focus on this section is on those cases where the Bible was ruled as permissible during the appeal trial. See infra Appendix, Table 1.
  \item \textsuperscript{148} Chavez & Miller, supra note 137, at 1039-40, 1046, 1077 n.190.
  \item \textsuperscript{149} \textit{Id.} at 1060.
  \item \textsuperscript{150} \textit{Id.} at 1065.
  \item \textsuperscript{151} 801 N.W.2d 707 (N.D. 2011).
  \item \textsuperscript{152} \textit{Id.} at 709.
  \item \textsuperscript{153} \textit{Id.} at 711.
\end{itemize}
religious authority, but as a form of literature. The California Supreme Court had previously stated, “attorneys may use ‘illustrations drawn from common experience, history, or literature.’”

Chavez and Miller’s analysis indicated several categories of judicial “reasonings” such as:

1) [Religious references] do not influence jurors’ decision-making when the lawyer who gave the religious reference also instructs the jurors to follow state law; 2) the jury is not affected by religious references in situations where the judge gives the jury a curative instruction to disregard the reference; 3) some references are too weak to have an influence on the jury when evidence against the defendant is strong; and 4) religious references have no effect on the jury when both the prosecutor and defense attorney give a religious reference because the effects of the references balance out.

Although Chavez and Miller’s analysis concerns attorneys and the current analysis concerns jurors, there are many similarities. For instance, the constitutional rights at issue are often the same, the judges’ reasonings might be similar, and the psychological analysis might be similar. The current comprehensive analysis of cases in which jurors used the Bible will provide evidence of similarities and differences in the reasonings and rulings of these two types of cases, focusing especially on the psychological assumptions that judges make in their rulings of such cases. In doing so, it is first necessary to understand the relevant psychological theories. In Part III, theories will be presented that will later be used to analyze the different assumptions made by the courts in the cases presented.

III. PSYCHOLOGICAL ANALYSIS

This Part will outline a brief psychological analysis of the assumptions most commonly made by judges concerning the jury’s use of the Bible during deliberations. Most judges will never hear a death penalty case, where biblical references are most common; and those judges who do will

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154. See id. at 710-11 (citing People v. Harrison, 106 P.3d 895, 921 (Cal. 2005)).
155. Id. at 710 (emphasis added) (quoting Harrison, 106 P.3d at 921).
156. Chavez & Miller, supra note 137, at 1048.
157. Compare id. at 1041-48, with supra Section II.
158. Compare Chavez & Miller, supra note 137, at 1041-53, with supra Part II, and infra Part III.
159. See infra Part VII.
typically not hear a case concerning juries using the Bible. However, it is possible that those judges who preside over death penalty cases, as well as appellate judges have developed certain assumptions about how juries will make their decisions and what actions a typical juror will follow to make their decision. Also, judges sometimes rely on the precedent set by judges in other jurisdictions, so the assumptions made by those other judges can influence judges in another jurisdiction. These assumptions, however, can be erroneous, and they might have serious consequences. For example, an initial review of some cases reveals that a judge might make assumptions such as: 1) the presence of a physical Bible will not influence jurors; 2) the jury is not affected by biblical passages even if they are read aloud; 3) jurors claim not to be influenced by the Bible, therefore they are not influenced. A more comprehensive review of cases, discussed in the results section, will reveal that there are additional assumptions; however, these assumptions are a good starting point for a psychological analysis of judicial assumptions. Psychological theories can explain why assumptions about the influence (or lack thereof) that the Bible has on a juror might be erroneous. If so, the Bible might influence a juror’s decision, thus violating a defendant’s constitutional rights, such as the right to an impartial jury. Obedience theory, Cognitive-Experiential Self-Theory, and theories and research concerning the influence of physical objects can provide evidence that some assumptions made by judges might be erroneous.

161. Chavez & Miller, supra note 137, at 1048-49.
163. Chavez & Miller, supra note 137, at 1048-49.
164. “Physical Bible” refers to the Bible being physically in the room with the juror. Whether it was quoted or used in any manner, simply being in the room is sufficient for this assumption.
168. See infra Part VLC.
170. Sanderford, supra note 30, at 186-87.
A. Obedience Theory

One of the assumptions made by judges when considering jurors’ use of the Bible is that the Bible does not have any substantial effect on the jurors’ decision. For instance, the United States District Court for the Western District of Kentucky determined that the defendant had not proffered any evidence to suggest that in absence of the juror misconduct the verdict would have been different. Even Juror Hawkins did not aver that her verdict would have been different but for the Bible verses she considered. She only stated that the verses played a part in her decision.

In essence, the juror admitted that she had been influenced by the Bible; however, because she said that her verdict would have been the same even if she had not consulted the Bible, the court refused to overturn the defendant’s death sentence. The question remains as to whether the juror only told the judge that it did not influence her (perhaps out of fear of getting in trouble with the judge for her misconduct), whether the Bible actually did not influence her, or whether she only believed that the Bible did not influence her (but in reality it actually did). This first possibility can be addressed using a body of research called obedience theory.

In the latter half of the twentieth century, psychologist Stanley Milgram conducted a study that demonstrated the extent to which, and the circumstances under which, people obey authorities. This study investigated how much pain a person will inflict on another person at the request of an authority figure. During the study, the participant would ask questions of another participant, who was actually a confederate who was pretending to be another participant. Every time the confederate got an answer wrong, the experimenter would tell the participant to push a button, which presumably gave the confederate an electric shock. Milgram wanted to see how far participants “would willingly follow the

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171. See Woodall, 2009 WL 464939, at *51.
172. Id. at *51
173. See id. at *51(citing Woodall, 2005 WL 2674989, at *1-2).
174. See infra Part III.C.
176. See id. at 12-13.
177. See id. at 17.
179. See id. 371-72.
orders of an ‘experimenter,’ who was wearing a lab coat, to inflict on another person potentially lethal electric shocks.” After each shock, the participant was asked to increase the voltage incrementally until it reached maximum capacity. The study showed that over sixty percent of all participants would follow the orders of the experimenter to the end of the experiment (i.e., to the maximum shock). This study and similar studies demonstrated that people will follow orders from authorities, even if they believe they are hurting someone.

Obedience theory can be applied to the facts in cases such as Woodall v. Simpson, in which Woodall was convicted of rape and murder. The jurors were instructed by the judge reading the jury instructions to “be able to consider a minimum sentence ‘if warranted by the evidence.’” Qualifying language required by the court merely made it “abundantly clear to the jurors that they must consider their verdict in light of the instructions given to them by [the] court and the evidence presented.” Two relevant authorities in these cases are the judge and the Bible. Just as Milgram’s participants obeyed the experimenter who was an authority, so too might jurors obey the judge who is an authority. Judges instruct jurors to use only the case facts and instructions to make a decision; thus, a juror may not want to admit disobeying the judge who is an authority. The study showed that a majority of participants displayed an “unquestioning obedience to authority,” which could indicate that the juror who was questioned simply stated that she was not influenced by the Bible because she did not want to upset the judge or admit any wrongdoing. She had admitted to using biblical passages; however, she later added that the Bible did not influence her verdict, one could surmise, to mitigate the effect of her wrongdoing. If a judge is deemed to be an authority figure, jurors might give the explanation that they were not influenced by the Bible simply to appease the judge.

181. See id. at 498.
182. See id. at 496.
183. See Benjamin & Simpson, supra note 175, at 14-15.
185. Id. at *2.
187. Id.
188. Sanderford, supra note 30, at 183-85.
189. Benjamin & Simpson, supra note 175, at 12.
190. See Woodall, 2009 WL 464939, at *51.
191. See Benjamin & Simpson, supra note 175, at 14-15.
While jurors might see the judge as an authority (and thus alter their behavior or fabricate a story to please the judge), jurors also might see the Bible as an authority. If the Bible is seen as such, then according to obedience theory, those individuals likely would follow biblical teachings with “unquestioning obedience.” If the Bible has authority, the Bible will then influence that juror’s decision in such a way that the juror favors a verdict based on the Bible, not the facts of the case.

In sum, many jurors (especially those who believe God and the Bible are authorities, as a large majority of Americans do) likely are influenced by the Bible. However, they are also likely influenced by the judge’s authority; thus they might tell the judge they obeyed his instructions and only considered the case facts. As such, judges’ assumptions about the Bible’s influence, and jurors’ assurance that they were not influenced, might be erroneous. Such assumptions could have damaging effects on the defendant’s constitutional rights. But more than authority can influence a juror’s verdict, emotions can as well.

B. Cognitive-Experiential Self-Theory

In some cases, judges have assumed that the jury had not been affected by the reading of biblical passages. While decisions should disregard emotions that the decision-maker holds, “the courts make what may be untenable presumptions when they require fact finders to ignore their affective states and evaluate evidence . . . .” Concerning religious references, some people might be affected emotionally even if they are not aware that they are being influenced. Emotional responses in this sense can be explained as anything that influences or that stirs “bias[es], life

192. Chavez & Miller, supra note 137, at 1052
193. Benjamin & Simpson, supra note 175, at 12.
195. See infra Part III for discussion of how presence of an object such as the Bible can influence behavior, even if the person is unaware it is present.
196. See Benjamin & Simpson, supra note 175, at 14-15.
197. See infra Part II.
influences, and personal experiences” that can then, in turn, alter decision making.200

There are several theories of how emotion and decision making interact, but one theory that applies particularly well to jurors’ decision making is the Cognitive-Experiential Self-Theory (“CEST”).201 According to this theory, jurors (and people in general) process information in one of two ways: using an experiential/emotional system and using a rational/logical system.202 When people process information through an emotional system, they rely on personal experiences and emotions associated with the information presented (i.e., religious people will agree with religious arguments because that is what they truly believe).203 Decisions that are made using this system of thinking have been influenced by prior emotional experiences.204 These experiences lead to shortcuts in the cognitive process and may lead to hasty decisions and errors.205

When a person thinks experientially, that person operates with a system directly in contrast with that of a rational system.206 When people make decisions using this experiential system, they draw upon personal experience and heuristics.207 “Heuristics are considered ‘rules of thumb’ socially learned by individuals.”208 These heuristics are used to make quick decisions when there is not enough information or time to make the decision.209 For instance, a shopper might have a heuristic to help her find the mustard in an unfamiliar grocery store. In most cases, the heuristic that “mustard is usually in the salad dressing aisle” will help her find the mustard more easily than going down every single aisle. But of course, not all stores put the mustard in the salad dressing aisle, so this heuristic might lead the shopper astray. When thinking experientially, a person does not consider all the information or evidence—she just uses her emotions and gut instincts, which may lead to use of biased heuristics.210 For instance, an

201. See Gunnell & Ceci, supra note 200, at 854-55.
202. Teglasi & Epstein, supra note 200, at 534.
204. See id.
205. Id. at 166.
206. See id.
207. See id.
208. Chavez & Miller, supra note 137, at 1050 n.101.
209. Id.
210. See id.
employer who is thinking experientially might use a heuristic based on the stereotype that “Blacks are lazy” and quickly make a decision not to hire a Black applicant. This can lead to poor decision making if the Black applicant is more qualified than a competing White applicant. In essence, the employer has ignored the evidence and relied on the heuristic because she was processing experientially. While these heuristics are inherently useful for the decision-maker to make quick decisions, they can also lead to errors in judgment and, therefore, to bad decision making. If one is to rely predominantly on heuristics then it can be surmised that the individual lacks the proper cognitive focus to make a rational and logical decision. Death penalty cases are typically emotional cases. Because of the emotional nature of the case, jurors will likely think experientially and not rationally; thus, jurors might then rely on heuristics such as “an eye for an eye.”

“In contrast to the experiential system, the rational system is an inferential system that operates according to a person’s understanding of the rules of reasoning and of evidence, which are mainly culturally transmitted.” When a person is processing information rationally, that person follows a system that is driven by analytical thinking and processing of logical reasoning. Often, this system of processing information leads to more accurate decision making. For instance, when using this system of information processing, the person’s actions can be described as “conscious, analytical, effortful, relatively slow, affect-free, and highly demanding of cognitive resources” in an attempt to make the most logical and correct decision. People using the rational system rely heavily on the information presented and not their emotions.

Research has demonstrated over the years that jury verdicts are in fact influenced by extralegal heuristics; for example, a study conducted by Joel Lieberman focuses primarily on the heuristics he calls a “defendant attractiveness cue.” In this study, jurors were questioned as to how their decisions were made to see if experiential processing would lead to bias in

211. See id.
212. See id. at 1050-51.
213. See Chavez and Miller, supra note 137, at 1050-51.
214. See id.
215. See id. at 1044-45.
216. See id. at 1044-45, 1050-51.
217. Epstein, supra note 203, at 161.
218. See id.
219. Teglas & Epstein, supra note 202, at 544.
220. Epstein, supra note 203, at 161.
221. See id.
222. Lieberman, supra note 169, at 2526.
their decision.223 Before these jurors awarded monetary damages, they were encouraged to think either rationally or experientially and then they were shown a photograph of the defendant who would be categorized as having either high or low attractiveness.224 Results showed that experiential-thinking participants awarded less money to the plaintiff when the defendant was attractive than when the defendant was not attractive; rational-thinking participants did not make this differentiation.225 These results can be used to infer that experiential thinking can result in biased decisions.226

Ideally, jurors should be processing rationally and logically. It is important to note that some degree of stress in many legal situations is actually appropriate.227 In some situations, emotions are good for decisions—for example, death penalty jurors have to consider whether there are “aggravating circumstances” which indicate that the crime is one deserving of a death penalty.228 One aggravating circumstance is whether the crime is “heinous,” which necessarily entails making an emotional judgment.229 In essence, then, jurors are asked to rely on their emotions to decide whether the crime is emotional or heinous enough to give the death penalty.230 Further, it would certainly be undesirable for judges and juries to make cavalier decisions without feeling a certain weight of responsibility.231 Even so, it is generally better for jurors to rely on rational rather than emotional processing because emotions can lead to over-reliance on heuristics and biased decisions, as suggested by CEST.232

For example, in the case of Keen v. State,233 verses from the Bible were read aloud during the deliberations; however, the judge ruled that these verses were not inherently prejudicial.234 Yet, under CEST, while these verses might not seem prejudicial on their face, they might in fact influence

223. See id. at 2532-33.
224. See id. at 2545.
225. See id. at 2548.
226. See id. at 2545.
228. See id.
230. Id.
232. Epstein, supra note 203, at 166.
234. Id. at *14-15. *94.
a juror.\textsuperscript{235} CEST suggests that reading verses from the Bible related to the death penalty (or simply making a death penalty decision) is likely to trigger an emotional response.\textsuperscript{236} This emotion can lead to experiential thinking, even in people who generally think rationally.\textsuperscript{237} The verses read in Keen could trigger an emotional response within individual jurors, causing them to use an experiential system and follow the Bible’s heuristics, such as “an eye for an eye.”\textsuperscript{238}

Several courts have assumed that the Bible’s use was harmless error because evidence against the defendant was so strong that the defendant would have been convicted regardless.\textsuperscript{239} This appears to be just a guess, however, because it is impossible to know what “would have happened” absent the biblical reference. It is fully possible that the biblical reference led to emotions that affected the jurors’ interpretation of the evidence and decisions. CEST hypothesizes that individuals sometimes process information through a system that is driven by emotion.\textsuperscript{240} Thus, it is possible that the emotional nature of many of these cases, especially death penalty cases, would have led jurors to process information emotionally.\textsuperscript{241} Their emotions could lead them to rely on mental “shortcuts,” such as the “eye for an eye” directive found in the Bible, rather than making the verdict based only on non-emotional logic and reason.\textsuperscript{242} The Bible could influence how jurors process other evidence, rather than using a rational weighing of aggravators and mitigators that the law requires.\textsuperscript{243} For example, jurors affected by emotions, thus processing experientially, might be unsure whether there are sufficient aggravating circumstances to warrant the death penalty, but upon being reminded that the Bible says “an eye for an eye, and a tooth for a tooth,” could rely on that authority as justification for their decision.\textsuperscript{244} If this response takes place, then the mental shortcut provided by the Bible could lead to arbitrary and capricious decisions, thereby violating the Eighth Amendment’s Cruel and Unusual Punishment clause.\textsuperscript{245}

In sum, emotional responses can influence jurors. Simply because the judge rules that the action (such as quoting the Bible during deliberations)

\begin{thebibliography}{99}
\bibitem{235} See Epstein, \textit{supra} note 203, at 175.
\bibitem{236} See id.
\bibitem{237} See id.
\bibitem{238} See Keen, 2006 Tenn. Crim. App. LEXIS 442, at *14-15; Chavez & Miller, \textit{supra} note 137, at 1050-51.
\bibitem{239} Keen, 2006 Tenn. Crim. App. LEXIS 442, at *91-92.
\bibitem{240} Epstein, \textit{supra} note 203, at 159.
\bibitem{241} Chavez & Miller, \textit{supra} note 82, at 1041-42.
\bibitem{242} See Epstein, \textit{supra} note 203, at 166; see also Chavez & Miller, \textit{supra} note 137, at 1051.
\bibitem{243} Epstein, \textit{supra} note 203, at 176.
\bibitem{244} Chavez & Miller, \textit{supra} note 82, at 1043.
\bibitem{245} See U.S. \textsc{const.} amend. VIII; Epstein, \textit{supra} note 203, at 166.
\end{thebibliography}
had no influence does not mean that the jurors were not affected.\textsuperscript{246} The Bible may trigger an emotional response in jurors, causing them to follow heuristics and make decisions based on the Bible rather than the evidence.\textsuperscript{247} Death penalty cases—and the gruesome evidence that they often contain—might also trigger emotions and the experiential thinking that comes with emotion.\textsuperscript{248} Just as words or phrases can have an influence over jurors, the presence of an object can influence jurors, as is explained in the next section.

C. Influence of Objects and Extralegal Factors/Information

Some judges trust that when jurors say they were not influenced by the Bible, they must not have been influenced; it is assumed that the juror would know what influences his or her decisions.\textsuperscript{249} Also, judges assume in some decisions that since the Bible was merely present but was not used, it had no influence.\textsuperscript{250} However, studies have shown that people are poor judges of what does or does not influence their decisions.\textsuperscript{251} Related to this same reasoning, judges tend to assume that jurors will follow the law and ignore any extraneous information (e.g., biblical verses) to which they might be exposed.\textsuperscript{252} Although the evidence presented at trial should affect jurors’ verdicts more than any other single factor, several decades of jury research have made it abundantly clear that non-evidentiary, extralegal factors influence jurors’ decision making as well.\textsuperscript{253} Extralegal factors include, but are not limited to, the identity, age, and race of the victim.\textsuperscript{254} Extralegal factors are most likely to exert an effect in close cases with complex evidence; these extralegal factors sometimes have enough influence over jurors to sway a juror’s decision.\textsuperscript{255} If such extralegal factors have influence, then one could surmise that other factors (e.g., presence of a Bible or biblical quotes) can influence a juror’s decision as well.

\textsuperscript{246} See Keen, 2006 Tenn. Crim. App. LEXIS 442, at *91-92.
\textsuperscript{247} See Chavez & Miller, supra note 137, at 1051; Epstein, supra note 203, at 166.
\textsuperscript{248} See Chavez & Miller, supra note 137, at 1044-45, 1050-51.
\textsuperscript{249} See Woodall, 2009 WL 464939, at *51.
\textsuperscript{250} See Chavez & Miller, supra note 137, at 1039.
\textsuperscript{252} See Chavez & Miller, supra note 82, at 1040.
\textsuperscript{254} See VIDMAR & HANS, supra note 253, at 244.
\textsuperscript{255} See Harlan, 109 P.3d at 623.
Moreover, jurors are unable to disregard information that they know to be legally irrelevant, despite their best intentions. Results of a study performed by Nancy Steblay and colleagues revealed that inadmissible evidence affects verdicts; the results showed that the verdicts were based heavily on the content of the inadmissible evidence. For example, if a juror is exposed to information about the case through pretrial publicity (“PTP”), the juror may be dismissed from jury duty because it is believed that he or she will not be able to put this information aside and make a non-biased decision. Research confirms this, as “jurors who were exposed to negative PTP perceived the defendant as being less credible than did non-exposed jurors[, which] suggests that negative PTP may have operated, at least in part, by causing jurors to form a negative impression of the defendant.” Just as jurors cannot ignore PTP, they might not be able to ignore biblical references. Thus, courts might be overly sanguine in assuming that jurors can simply ignore biblical references during deliberation.

Judges have also reasoned in some cases that since the Bible was merely present in the jury room but was not used (i.e., not quoted or referred to explicitly), it could not influence jurors. Experiments show, however, how objects in one’s immediate environment can influence behavior. Participants in one study demonstrated a higher sense of equality after being exposed to the American flag, compared to participants not exposed to the flag. This result was similar for people both low and high in “[n]ationalism, which is associated with both loyalty for one’s country and the belief that one’s country is superior to others . . . .” Thus, seeing the flag activates certain responses in people and causes them to behave differently than if they had not seen the flag.

256. See id. at 622.
258. Christine Ruva et al., Effects of Pre-Trial Publicity and Jury Deliberation on Juror Bias and Source Memory Errors, 21 APPLIED COGNITIVE PSYCH. 45, 61 (2006).
259. Christine Ruva, Cathy McEvoy & Judith Bryant, Effects of Pre-Trial Publicity and Jury Deliberation on Juror Bias and Source Memory Errors, 21 APPLIED COGNITIVE PSYCH. 45, 61 (2007).
262. Id.
263. Id.
264. Id. at 407.
265. Id.
Researchers in this same study also observed interactions between individuals to determine if the presence of the flag could influence an individual’s behavior toward a group of people. supra note 261, at 405, 407. Specifically, the study investigated if the American flag can cause people to have less hostile attitudes toward Muslims. supra note 261, at 407. One group saw the flag and then gave their attitudes toward Muslims. supra note 261, at 404. Another group did not see the flag before indicating their attitudes toward Muslims. supra note 261, at 407. The flag group was less hostile toward Muslims than the control (no flag) condition. supra note 261, at 407. Researchers surmised that the presence of the flag activated egalitarian concepts, which affected behavior.

Another study showed that the presence of an American flag can cause people to vote more conservatively. supra note 261, at 406. In this study, participants were asked their opinions on the candidates in the upcoming 2008 election. supra note 261, at 406. In the next session, the same participants were asked to participate in a survey; one group’s survey had an American flag in a corner of the computer screen, while the other had no flag. supra note 261, at 406. In the final sessions, participants indicated how they had voted in the election and their current perceptions of the candidates. supra note 261, at 406. Results showed that those individuals in the flag group voted for a more conservative candidate than they had originally indicated. supra note 261, at 406. Those in the non-flag group did not change their perceptions from the previous session. supra note 261, at 406. To ensure that these results were not because Republicans held control of the executive branch (i.e., a Republican President) at the time of the experiment, a second study followed more than a year after President Obama was elected. supra note 261, at 406. This second study showed that participants who had changed their perceptions during the election did in fact vote for the conservative candidate rather than Obama, thus showing that it was the flag that influenced these decisions.

See id. at 1013, 1016.

See id. at 1015.

See id. at 1013.
The flag is one prominent object that has more than just a physical meaning; it clearly has a symbolic meaning as well. This symbolic meaning leads citizens to feel a sense of patriotism and nationalism. Other objects, such as the Bible, can carry similar symbolic meanings. While the above studies indicate that the mere presence of an American flag can influence individuals’ behavior and attitudes, it is possible, then, that the mere presence of a Bible could also influence individuals’ behavior and attitudes, especially (but not only) for highly religious individuals. In the studies about the American flag, both those individuals with a low sense of nationalism and those with a high sense of nationalism were similarly affected by the presence of the flag.

Some courts have held that even the presence of a physical Bible is impermissible during a trial. In Alexander v. State, the judge ordered the defendant to remove his personal copy of the Bible from the defense counsel’s table during the course of the trial and place it somewhere less visible. The defendant claimed that this order violated his First Amendment right to exercise his religion freely; however, the court argued that this order was made in order to “conduct [an] orderly, impartial trial” and to avoid a “mute statement to the jury” by the defense team. Thus, in this case, the court suspected in advance that the presence of the Bible would influence jurors’ decision making.

Yet, in other cases such as People v. Mincey, the court ruled that the juror who brought a Bible was not in violation of the rules of the court. In fact, the court held that the presence of the Bible did not influence the decisions of the other jurors. However, according to the research cited above, the presence of the Bible might have an implicit effect on at least one juror; therefore, this assumption is possibly erroneous.

In summary, appellate courts have relied on a variety of reasons in holding that jurors’ use of the Bible during deliberation is not grounds to reverse a conviction. The various judicial reasonings contain many assumptions about how jurors make decisions, but psychological research
calls many of these assumptions into question. What seems trivial or harmless from a legal perspective might, on closer inspection, be far from trivial from a psychological perspective. The current study shows that judges often rely on these erroneous psychological assumptions.

IV. STUDY OVERVIEW

This study examined thirty-eight cases in which jurors referred to the Bible during sentencing deliberations. As described in detail below, the study followed the methodology of Chavez and Miller.\footnote{See generally Chavez & Miller, supra note 137.} The cases chosen for this study fit a specific sampling frame. A code book was created with categories of judicial reasonings. The codebook was used to analyze each case in the sample. Results revealed the most frequent reasons judges give for giving the defendant a new trial, for refusing to give the defendant a new trial, and also which Amendments were the bases for the appeals.\footnote{See infra Appendix, Tables 1-4.} A typology was created of the common reasonings.\footnote{See infra Appendix, Tables 1-4.} The typology was divided into nine categories of reasonings; each category was given an operational definition.\footnote{See infra Appendix, Table 3 (for the different variable/category codes and operational definitions).} An analysis was then conducted on those major reasonings to determine whether the decisions relied on erroneous psychological assumptions.\footnote{See supra Part III.}

This study was designed to answer four main research questions: 1) In which states have the courts found jurors’ use of religion to be “improper and impermissible,” “improper but permissible” or “proper and permissible”? 2) Which states consistently allow jurors’ use of religion, which consistently forbid jurors’ use of religion, and which states have mixed court opinions? 3) Which Amendments have judges determined to be violated by jurors’ use of religion? 4) What are the most common reasonings made by judges?

V. METHOD

The first step in the study was to select specific sampling frame (e.g., criteria for the cases to be included in the sample). Because the Bible is rarely used by jurors in non-death penalty cases, this study focused on cases involving the use of the Bible by juries during the sentencing (i.e., penalty phase) and guilt phases of trials in which the defendant was facing the death penalty. This study followed the methodology presented in Chavez and
Miller’s study on the use of religious references by attorneys.\textsuperscript{298} Cases were included if the Bible was in the room (even if it was not opened), if a juror quoted biblical verses (from a physical Bible, from memory, etc.), or if a juror used the Bible as justification for a death sentence.\textsuperscript{299} We identified possible cases that fit this sampling frame by conducting LexisNexis and Westlaw searches using search terms such as “Bible and jury deliberations,” “biblical argument and jury deliberations,” “juror and Bible and misconduct,” “juror reading of the Bible” and so on. If the case had been appealed more than once, only the highest court case was included, as these appellate decisions were the “final decisions” in the case. Additional cases were found in relevant law review articles and by reading the cases found in the initial search.

Next, a codebook was created to record relevant information about each case in the sample. As researchers read the cases, they created categories of the reasons judges gave (i.e., “judicial reasonings”) for whether or not the defendant received a favorable decision (e.g., new trial). Each category was given a definition.\textsuperscript{300} In the codebook, all the reasonings were coded as “yes” or “no,” meaning that the case either did or did not contain a particular judicial reasoning.\textsuperscript{301} In some cases, the court gave more than one reasoning, so some cases were coded as “yes” in multiple categories of reasonings. In addition, researchers coded the case name, basic case facts, citation, state where the case originated, year of the ruling, outcome of the appeal, and whether the use of the Bible was “permissible” or not, and whether the use of the Bible was “proper” or not.

VI. RESULTS

A. Research Question #1

Research Question 1 asks: In which states have the courts found the use of religion by the jury to be “improper and impermissible,” “improper but permissible,” or “proper and permissible?” For the use of religion to be

\textsuperscript{298} See Chavez & Miller, supra note 137, at 1054-56.
\textsuperscript{299} See generally infra Appendix, Table 5.
\textsuperscript{300} See infra Appendix, Tables 3-4.
\textsuperscript{301} Intercoider reliability ensured that there was no bias in the coding. Researchers coded several of the cases together to ensure that their understanding of the reasonings and definitions were the same. Then, each researcher independently coded fifteen cases; researchers resolved disagreement through discussion. Researchers then independently coded fifteen more cases. Holsti’s coefficient was conducted for each variable by comparing the two researchers’ coding for each variable. Overall, the coefficients were 0.934 and .97 (see infra Appendix, Tables 3-4 for results of Holsti’s coefficient for each variable), which indicates an overall high agreement in coding and suggests a low likelihood of bias in coding (see infra Part VII).
considered “improper and impermissible,” the judge had to rule that the religion or Bible should not have been introduced during deliberations, and because it was, the jury’s decision could not stand. 302 For the use of religion to be considered “improper but permissible,” the judge had to rule that the religion or Bible should not have been introduced, but it will still be allowed for some reason. 303 Finally, for the use of religion to be considered “proper and permissible,” the judge had to rule that there was no error committed when the jury used the religion and thus the jury’s decision will stand. 304

Each sub-section below shows the exact number of cases that fell into each of these categories. Table 1 provides a state-by-state summary. Of the thirty-eight cases, five found the use of the Bible “improper and impermissible”; thirteen found it “improper but permissible”; and twenty cases found it “proper and permissible.”

B. Research Question #2

Research Question 2 asks: Which states consistently allow jurors’ use of religion, which consistently forbid jurors’ use of religion, and which states have mixed court opinions (i.e., allowing it in some cases but not others)? As can be seen in Table 1, the states in which all courts have consistently permitted jurors’ use of the Bible include Indiana, Louisiana, Maryland, North Carolina, and Virginia. 305 States in which courts have consistently forbidden jurors’ use of the Bible include Colorado, Georgia, Kansas, and Texas. 306

In Alabama, California, Kentucky, Ohio, Oklahoma, and Tennessee, courts have offered mixed opinions—that is, one case found the use of the Bible was proper, but another case in the same state found the use of the Bible was not proper. 307 Likely, courts are communicating that the use of the Bible is okay in some situations but not in others. 308 For instance, it might be proper if the Bible was just present but not opened, but not proper if a juror actually quoted the Bible. 309 Different case facts can lead to different rulings. Because there is no consensus in these states, we deemed these states as having mixed decisions.

302. See, e.g., Kemp, 706 F. Supp. at 1558-60.
303. See, e.g., Oliver, 541 F.3d at 336-44.
304. See, e.g., Burch, 273 F.3d at 590-91.
305. See infra Appendix, Table 1.
306. See infra Appendix, Table 1.
307. See infra Appendix, Table 1.
308. See, e.g., Oliver, 541 F.3d at 336-44. But see, e.g., Kemp, 706 F. Supp. at 1559-60.
C. Research Question #3

Research Question 3 asks: Which amendments have judges determined to be violated by the use of religion? Table 2 provides a case-by-case summary related to this research question.

Of the thirty-eight cases, defendants in twenty-five cases claimed Sixth Amendment violations. However, only one of the defendants won those claims. When the court found that the Bible did not influence the jury and the jury remained impartial, the claim was denied.

In twenty-three of the thirty-eight cases, the defendant brought forth claims of Eighth Amendment violations on appeal. Only one of these cases won on that claim. Of the thirty-eight cases, there were five cases that brought forth issues of First Amendment claims on appeal. However, none of these cases won their appeal on this ground.

D. Research Question #4

What are the most common reasonings made by judges in these cases? Two categories were created in order to classify the thirty-eight cases. The first category included cases in which the defendant “lost” on appeal; for example, the defendant did not receive a new trial or have his or her sentence overturned. The second category included cases in which the defendant “won” on appeal; for instance, the defendant was given a new trial or his or her sentence was overturned. The subsections below list the reasonings for both cases in which the defendant lost and cases in which the defendant won. Table 3 lists the typology of nine reasonings used in cases in which the defendant lost; Table 4 lists the typology of three reasonings used in cases in which the defendant won. Table 5 lists all thirty-eight cases and the reasonings used in each case.

1. Cases in which the Defendant Lost on Appeal

The verdict and/or sentence was affirmed in thirty-four out of the thirty-eight cases analyzed (i.e., the defendant “lost” his appeal). The typology

310. See infra Appendix, Table 2.
312. See infra Appendix, Table 2.
313. See infra Appendix, Table 2.
314. See infra Appendix, Table 2.
315. See infra Appendix, Tables 3-4.
316. See infra Appendix, Tables 3-4.
317. See infra Appendix, Table 4.
318. See infra Parts VLD.1-2.
319. See infra Appendix, Table 1.
of reasonings included nine categories of judicial reasonings that various courts gave for not giving a defendant a new trial or reversing his or her sentence. The most common reasoning, mentioned in nine cases, was that the jury was not biased or prejudiced against the defendant because the reading of the Bible was harmless error. In Keen v. State, the Texas Appellate Court found that after “[v]iewing the extraneous information objectively, we cannot conclude that the Biblical verses read nor the prayer spoken out loud [sic] were inherently and substantially prejudicial.” The court explained this ruling by saying that jurors are not expected to leave their life experiences and knowledge behind before entering deliberations, and because of this, the defendant was not prejudiced.

The second most common category, mentioned eight times, was that the court assumed that jurors followed only the law and did not follow any direction from the Bible. For example, in Lenz v. Washington, the United States Court of Appeals for the Fourth Circuit stated, “it would have been reasonable for the [state] court to conclude that the Bible had no bearing on any fact relevant to sentencing,” because “no Biblical passage . . . had any evidentiary relevance to the jury’s determination of the existence of . . . aggravating and mitigating circumstances.” Here the Court of Appeals clearly assumes that, although the Bible was present and read from during deliberations, jurors were not influenced by the Bible and only followed the law and the facts presented to them at trial.

Another category of reasonings was also used eight times. This reasoning was that the jurors claimed that they were not influenced by the Bible, so they must not have been influenced. This is different from the “harmless error” reasoning because this category focuses primarily on the juror and what the juror claims influenced his or her decision. For instance, the United States District Court for the Western District of Kentucky determined that “[e]ven Juror Hawkins[, who consulted the Bible during deliberations,] did not aver that her verdict would have been different but for the Bible verses she considered.” In essence, the juror said that her

320. See infra Appendix, Table 3 (for operational definitions for each category).
321. See infra Appendix, Table 3.
323. Id.
324. See infra Appendix, Table 3.
325. 444 F.3d 295 (4th Cir. 2006).
326. Id. at 312 (alteration in original) (quoting Robinson v. Polk, 438 F.3d 350, 363 (4th Cir. 2006)).
327. Id. at 311-12.
328. See infra Appendix, Table 3.
329. See infra Appendix, Table 3.
verdict would have been the same even if she had not consulted the Bible; thus, the court refused to overturn the defendant’s death sentence.331

The category containing cases in which the court determined that the Bible did not qualify as an outside source or improper jury communication was used seven times.332 For instance, the United States Court of Appeals for the Fourth Circuit stated that:

the Bible is not analogous to a private communication, contact, or tampering with a juror . . . . Unlike these occurrences, which impose pressure upon a juror apart from the juror himself, the reading of Bible passages invites the listener to examine his or her own conscience from within. In this way, the Bible is not an “external” influence. In addition, reading the Bible is analogous to the situation where a juror quotes the Bible from memory, which assuredly would not be considered an improper influence.333

Other reasonings that were used less often are presented in Table 3; these include reasonings such as “Legal Technicality,” “Totality of Circumstances,” and “No evidence Bible was present.” Most cases presented offer multiple reasonings and assumptions; because of this, the total number of reasonings is greater than the thirty-eight cases in this study.

2. Cases in which the Defendant Won on Appeal

Out of the thirty-eight cases analyzed, the defendant received some sort of positive outcome in only five of the cases.334 The typology revealed that there were three categories of judicial reasonings used in these cases.335 Table 4 provides operational definitions for each category.

The first category of reasoning is that the Bible constituted extraneous or authoritative material and the jury should not have been allowed to use it during deliberations.336 This reasoning was used in three cases.337 For example, in Jones v. Kemp, the Court ruled that the Bible is an authoritative religious document and an extraneous source that should not be allowed in the jury room.338

331. See id.
332. See infra Appendix, Table 3.
333. Robinson, 438 F.3d at 363-64.
334. See infra Appendix, Table 4.
335. See infra Appendix, Table 4.
336. See infra Appendix, Table 4.
337. See infra Appendix, Table 4.
The second most-used reasoning category was that the jury’s use of the Bible was one element out of many that contributed to the “totality of the circumstances” of the case, which justified giving the defendant a new trial. Essentially, the reading of the Bible, along with other errors, was grounds for a new trial; however, the court did not specify whether the Bible reading alone would have been enough for a new trial. In Grooms v. Kentucky, the court listed the jury’s use of the Bible as part of the reason that the defendant received a new sentencing trial. The court in this case stated that the Bible reading did not need to be addressed, considering the other circumstances; however, the court did warn that jurors are not allowed to refer to the Bible during deliberations. This category of reasoning was used in two of the five cases.

The final category of judicial reasoning was that the use of the Bible constituted improper juror conduct. In the case of State v. Harrington, the court found that the jury foreperson’s reading of biblical passages during deliberations constituted juror misconduct; thus, Harrington was given a new sentencing trial. This category of reasoning was used in one case.

VII. DISCUSSION

This analysis of the legal cases in which the Bible was used (or at least present) in the jury room during deliberations reveals that the defendant was awarded a new trial or had his or her sentence reversed in very few of the cases analyzed (only five of thirty-eight). Further, it revealed a typology of nine different categories of judicial reasoning that judges used in cases in which the defendant lost, and three categories used in cases in which the defendant won.

Some of these reasonings were similar to the reasonings of judges who heard cases in which attorneys used biblical appeals at trial. For instance,
Chavez and Miller had a category labeled “not too extreme/grossly improper”; this category meant that the “judge states [that the] reference is permissible because it is not too extreme or grossly improper.”352 This reasoning is similar to the “Harmless Error/ Not prejudicial/ No bias against the defendant even though Bible was read” category in the current study.353 In both types of cases (attorney use of religion and juror use of religion), the judges assumed that the jurors were not influenced because the biblical information was not extreme enough to bias their decision.354 Both studies also found that judges have reasoned that the legal technicality (e.g., the defendant did not object at the time or did not file an appeal in a timely manner) would lead to a loss for the defendant.355 Finally, both studies revealed categories in which the judge essentially determined that, given all the case facts and evidence, the Bible readings would have had no impact on the jury’s verdict.356 This “totality of circumstances” category was defined as “[i]n considering all the facts of the case it made no difference if the jury referred to the Bible or not.”357 In the Chavez and Miller study, the category was called “weight of evidence was so strong toward death” and was defined as “judge states reference is permissible because the weight of the evidence was so strong against the defendant that the jury would have determined the same sentence without the reference . . . .”358 In these instances, judges in both types of cases gave similar reasons for denying a defendant a new trial.359

As in the Chavez and Miller analysis, some of these reasonings reflect judicial assumptions about how jurors make decisions.360 “Many of these assumptions can be erroneous” and might “have serious consequences for jurors and the legal outcome of a trial.”361 Some of these have been discussed in depth in Part III.362 Below is a summary of the assumptions that have psychological bases.

First, some courts assume that the Bible’s mere presence (i.e., “Bible not opened, only present, did not influence jury” category)—without being

352. See id. at 1069.
353. See supra Part VI.D.1; infra Appendix, Table 3.
354. See Chavez & Miller, supra note 137, at 1056-63; supra Part VI.D.1.
355. See Chavez & Miller, supra note 137, at 1069 (for the category “Permissible because defendant did not object at trial”); infra Appendix, Table 3.
356. See Chavez & Miller, supra note 137, at 1069 (for the category “Permissible because defendant did not object at trial”); infra Appendix, Table 3.
357. See infra Appendix, Table 3.
358. See Chavez & Miller, supra note 137, at 1069.
359. See id.; infra Appendix, Table 3.
360. See Chavez & Miller, supra note 137, at 1039-40; infra Appendix, Table 3.
361. See Chavez & Miller, supra note 137, at 1048.
362. See supra Part III.
opened and explicitly referred to—could have no impact on the jurors’ ability to look at the facts objectively and give an unbiased verdict. Thus, because the Bible was not actually used, it could not have influenced the verdict. However, the research discussed in Part III indicates that the presence of objects often does influence an individual’s behavior. Such research suggests that it is possible that jurors were influenced by the Bible, even if it was not opened. Thus, the assumption that an unopened Bible does not influence jurors might be erroneous.

Second, several courts have assumed that the Bible’s use was harmless error because evidence against the defendant was so strong that the defendant would have been convicted regardless (i.e., Harmless Error/Not prejudicial/No bias against the defendant category). It is nearly impossible to know if this is true. A jury with a unanimous decision rule (as in most capital trials) needs only one juror with a reasonable doubt to produce a verdict of life in prison, rather than a death sentence. It is possible that reading the Bible took that doubt away from one of the twelve jurors—thus leading to a death sentence. While it is difficult to know if this happened, it is certainly possible. This same assumption was analyzed by Chavez and Miller. According to the CEST theory, presented in Part III, an emotional trigger (either the Bible, or the death penalty case in general) might influence the verdict because emotions lead to reliance on heuristics found in biblical verses (e.g., the “eye for an eye” principle could be a heuristic) rather than logic. Scriptural passages could also raise jurors’ confidence in the appropriateness of a verdict toward which they were already leaning. For example, jurors might be unsure whether there are sufficient aggravating circumstances to warrant the death penalty, but, upon being reminded that “the Bible says an eye for an eye, and a tooth for a tooth,” jurors could rely on that authority as justification for their decision. Thus, the assumption that jurors were not influenced might be erroneous.

Third, some courts trust that when jurors say they were not influenced by the Bible, they must not have been influenced (i.e., the category “Jurors

364. See, e.g., id.
365. See supra Part III.C.
366. See supra Part III.C.
367. See supra Part VI.D.1.
368. See Chavez & Miller, supra note 137, at 1064-65.
369. See supra Part III.B.
370. See supra Part III.B.
371. See supra Part III.B
claimed were not influenced”). However, studies have shown that people are poor judges of what does or does not influence their decisions. Thus, they may think that the Bible did not influence them, but it actually did. Another possibility is that they may not admit being influenced by the Bible. Because the judge’s questioning as part of a 606(b) hearing informs them that they were not supposed to use the Bible, jurors might be reluctant to admit to the authority figure that they did so. Research supports this notion, indicating that individuals underreport behavior that transgresses the norm, such as criminal offending (both minor and major), lying, and symptoms of mental illness. Further, obedience theory, discussed in Part III, suggests that if the judge is deemed to be an authority figure, jurors will obey the judge, even if it means telling the judge that something did not influence them when actually it did. Thus, the assumption that jurors were not influenced because they say they were not influenced is possibly erroneous.

Fourth, related to this same reasoning, courts tend to assume that jurors will follow the law and ignore extraneous information (i.e., the category “Assume jurors only follow law”). Although the evidence presented at trial affects jurors’ verdicts more than any other single factor, several decades of jury research have made it abundantly clear that non-evidentiary, extralegal factors influence jurors’ decision making as well. Extralegal factors, as discussed in Section III, are most likely to exert an effect in close cases with complex evidence, which are just the sorts of cases likely to wind up on appeal. Moreover, jurors are unable to disregard information that they know to be legally irrelevant, despite their best intentions. Thus, courts assume that jurors can simply ignore biblical references during deliberation; this assumption might be erroneous.

In summary, the reasonings that judges use in cases in which jurors have used or been exposed to a Bible are similar to those of Chavez and Miller who addressed cases in which attorneys used religious appeals; similar to Chavez and Miller, most of the time, the defendant’s appeal on

372. See supra Part III.C.
373. See, e.g., Nisbett & Wilson, supra note 251, at 231.
374. See supra Part III.A.
375. See supra Part III.A.
377. See supra Part III.A.
378. See supra Part III.B.
379. See GREENE & BORNSTEIN, supra note 253, at 47-49, 82-92.
380. See supra Part III.B.
381. See GREENE & BORNSTEIN, supra note 253, at 161-62 (2003); see also Nancy Steblay et al., supra note 257, at 469, 489.
grounds of religious influences during deliberation is not successful. In denying the defendant’s appeal, judges make a number of psychological assumptions which seem counter to psychological theory.

VIII. CONCLUSION

There are various constitutional claims that can be brought up on appeal related to the jury’s use of a physical Bible or biblical verses; this use of religion has potential to influence the individual juror, as well as the jury as a whole, and therefore might violate the defendant’s rights. Judges hold certain assumptions about juror decision making, yet these assumptions are possibly erroneous.

Appellate courts have relied on a variety of reasons in determining whether jurors’ use of the Bible during deliberation is grounds to reverse a conviction. The reasoning behind these judicial rulings contains many assumptions about how jurors make decisions, but psychological research calls many of these assumptions into question. What seems trivial or harmless from a legal perspective might, on closer inspection, be far from trivial from a psychological perspective. If the judge’s assumptions are erroneous, then the defendant’s rights are violated. If judges are following these assumptions in future cases, the problem will continue. In order to stop the problem, psychological theories must be understood so that these assumptions are not made. This study was a first step in understanding the relevant psychological theory.

Through psychological analysis of judicial rulings and jury decision making, it is clear that there is a possibility that these judicial assumptions are erroneous. The next step that could be taken is to educate judges. This education can be provided either at the judicial level of training, from centers like the National Judicial College or the National Center for State Courts, or perhaps at an earlier stage of training; perhaps law schools could educate law students about psychological decision making and other general principles about psychology that will help them with a broad range of cases throughout their careers. This education would be most beneficial if presented to law students so they learn to understand the theories and how they relate to cases that the students work on throughout their careers. This education would allow judges to understand what psychological theory suggests influences decisions. This education would also allow judges to reexamine current cases they are hearing and determine whether or not defendants’ rights have been violated. Note, though, that psychological

382. See Chavez & Miller, supra note 137, at 1060-61; supra Parts V.LD.1-2.
383. See supra Part III.
theory related to jury decision making is not specific to jurors’ use of the Bible—understanding jury decisions is helpful in a plethora of cases.

In sum, a number of reasonings in cases involving jurors’ use of the Bible are likely erroneous, based on psychological theory. As a result, defendants’ rights likely have been violated. It is the duty of the justice system as a whole to defend the constitutional rights of every citizen, and if these rights are being violated by the assumptions being made in these decisions, then the system has failed. Cases must be thoroughly examined as to whether these rights are in fact being violated, for if they are, it is the duty of those in the system to remedy this situation. Educating judges about psychological theory is a logical first step.

APPENDIX

Table 1. Permissibility of Bible in States Involved in the Study by Number of Cases

<table>
<thead>
<tr>
<th>State</th>
<th>Improper &amp; Impermissible</th>
<th>Improper &amp; Permissible</th>
<th>Proper &amp; Permissible</th>
<th>Number of Cases</th>
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<td><strong>20</strong></td>
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Note: the numbers in this table indicate how many cases in that state had a particular ruling, for instance one of the two cases in Alabama found the use of the Bible by jurors to be “improper yet still permissible”.
Table 2. Amendment Claims

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2013] BIBLES IN THE JURY ROOM 619
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<td>2006 WL 1679595</td>
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<td>541 F.3d 329</td>
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<td>Lenz v. Washington</td>
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<td>(VA)</td>
<td>444 F.3d 295</td>
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**KEY:** Y=Claim was successful; X= Claim was not successful/not considered in the ruling; No code (blank space) = no claim made
Table 3. Operational Definitions of Categories found in Cases in which the Defendant Lost on Appeal

<table>
<thead>
<tr>
<th>Category Name/Code Name</th>
<th>Operational Definition</th>
<th>Number of Cases</th>
<th>Holsti’s coefficient (intercoder reliability/agreement)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harmless Error/ Not prejudicial/ No bias against the defendant even though Bible was read</td>
<td>The Bible was referred to but it did not cause enough harm or was not prejudicial enough to the jury’s decision to warrant a new trial. The Court found that there was no bias against the defendant even though the jury referred to the Bible.</td>
<td>9</td>
<td>0.90</td>
</tr>
<tr>
<td>Assume jurors only follow the law</td>
<td>Even though the Bible was present and/or read from the Court feels that the jurors only follow the law, e.g., because they were given instructions to do so.</td>
<td>8</td>
<td>1.00</td>
</tr>
<tr>
<td>Jurors claimed that they were not influenced</td>
<td>Although the Bible was present or referred to during sentencing deliberations it did not influence their decisions.</td>
<td>8</td>
<td>0.87</td>
</tr>
<tr>
<td>The Bible did not qualify as an outside source/ improper jury communication</td>
<td>Even though the Bible was referred to during sentencing deliberations it did not qualify as an outside source and jurors referring to it was not improper jury communication.</td>
<td>7</td>
<td>1.00</td>
</tr>
<tr>
<td>Jurors should not have to leave general knowledge/experience behind</td>
<td>The court ruled that jurors should not be expected to leave their experience/knowledge of God/Bible behind or the Bible is part of that general knowledge/ experience that they carry with</td>
<td>6</td>
<td>0.87</td>
</tr>
<tr>
<td>No Supreme Court precedent or any other precedent to say that Bible is an outside source</td>
<td>The Court could not find any precedent to say that the Bible is an outside source.</td>
<td>4</td>
<td>1.00</td>
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<tr>
<td>Legal Technicality</td>
<td>The defendant did not file appeal in time, claim was not made on original appeal, etc.</td>
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<tr>
<td>No evidence Bible was present</td>
<td>The Court found no evidence that the Bible was present during sentencing deliberations</td>
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<tr>
<td>Totality of Circumstances</td>
<td>In considering all the facts of the case it made no difference if the jury referred to the Bible or not</td>
<td>2</td>
<td>0.92</td>
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</table>

Total Holsti’s = 0.934
Table 4. Operational Definitions of Categories in Cases in Which Defendant Won on Appeal (e.g., new trial or new sentence)

<table>
<thead>
<tr>
<th>Category Name/Code Name</th>
<th>Operational Definition</th>
<th>Number of Cases</th>
<th>Holsti’s coefficient (inter-coder reliability/ agreement)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authoritative/ Extraneous Material</td>
<td>The Court found that the Bible did constitute extraneous material or authoritative material and the jury should not have been allowed to use it during deliberations.</td>
<td>3</td>
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<tr>
<td>Totality of Circumstances</td>
<td>The Court found that referring to the Bible was not acceptable and that considered it as a reason why the defendant received something.</td>
<td>2</td>
<td>0.92</td>
</tr>
<tr>
<td>Improper/Juror Misconduct</td>
<td>The Court found that the jury referring the Bible constituted improper communication or jury misconduct</td>
<td>1</td>
<td>1.00</td>
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</table>

Total Holsti’s = 0.97
Table 5. Reasonings Used in Cases Analyzed in Study

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Key: 1. Does not qualify as an outside influence/improper jury communication; 2. Harmless Error/Not prejudicial/No bias against the defendant; 3. Legal Technicality; 4. Jurors claimed were not influenced; 5. Jurors shouldn’t leave general knowledge/experience behind; 6. Totality of Circumstances; 7. Assume jurors only follow law; 8. No Sup. Ct precedent, or any other said external influence; 9. No evidence Bible was present.

Note: No code (blank space) = ruling did not rely on this category of reasoning.