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TO BE "IMPARTIAL" MUST A JUROR REJECT HIS OWN LIFE EXPERIENCES?

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I. INTRODUCTION

Area 51 and a completely impartial jury have a lot in common. Both are often discussed and bring about similar questions. Has anyone actually seen it? Does it really exist? Is it even possible? Although Area 51 is an interesting topic, society today should be more concerned with a defendant's right to a speedy and public trial by an impartial jury.

"It is a basic premise of our jury system that the court states the law to the jury and that the jury applies that law to the facts as the jury finds them."[1] Although the jury is the fact finder, the facts must be found only from the admissible evidence.[2] However,

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1. *See* Delli v. United States, 352 U.S. 232, 242 (1957) (determining that the jury system would make little sense if the court was unable to proceed on the basis that the jury will abide by the court's instructions). This faith in the jury's ability to follow the court's instructions, "has produced one of the most valuable and practical mechanisms in human experience for dispensing substantial justice." *Id.*

2. *How Courts Work – Courts and Legal Procedure*, AM. BAR ASS'N (Sept. 9, 2019),

will a juror's own life experiences allow that juror to examine the facts without bias? Jurors make decisions in the same way as every other person does, only it is done in a setting that is unlike that of "everyday individual decision-making."[3] Being a part of a trial can be difficult, and it can leave jurors open to cognitive shortcuts or unconscious biases that may influence the decisions they make.[4] This does not mean that jurors are "not intelligent enough to make decisions in complex cases, that their decisions are arbitrary and baseless, or that passion drives every verdict."[5] This is to say it is not possible for a court to erase the minds of each juror prior to trial or to instruct a juror to disregard their own life experiences.[6] But there are steps that can be taken, by the court, to provide the best chance for an impartial jury.

This Comment will discuss the general rule that jurors must set aside their opinions and life experiences, but also the modern trend that jurors are expected to use their own life experiences when evaluating the evidence.[7] Part II will explore how courts have interpreted the Sixth Amendment's right to an impartial jury.[8] Part III will discuss the view by courts when the jurors' life experience is similar to the facts of the case.[9] Finally, this Comment will propose that a juror should not reject his own life experiences, and that a uniform analysis and statute should be

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www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/jury_role/ [perma.cc/JL7Z-QCCR] (stating the "judge instructs the jury on the legal principles or rules that must be followed in weighing the facts").

3. Sonia Chopra, *The Psychology of Jurors' Decision-Making*, PLAINTIFF MAG. (Jan. 2018), www.plaintiffmagazine.com/item/the-psychology-of-jurors-decision-making [perma.cc/MJY8-E2CU].

4. *Id*.

5. *Id*.

6. Commonwealth v. Williams, 481 Mass. 443, 448, 116 N.E.3d 609, 615 (2019).

7. *Id*.

8. U.S. CONST. amend. VI.

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Id.

9. Kendrick v. Pippin, 252 P.3d 1052, 1063 (Colo. 2011). "[J]urors may use their background, including professional and educational experiences, to inform their deliberations so long as they do not introduce legal content or specific factual information learned from outside the record." *Id*. The court held that the jury was not exposed to extraneous prejudicial information because the juror simply used her "professional experience and her knowledge of mathematics" with the evidence presented at trial. *Id*.

implemented by all courts when evaluating a prospective juror's life experiences.

II. BACKGROUND

The Sixth Amendment to the United States Constitution entitles a criminal defendant to a trial by an impartial jury.[10] Each juror must be "impartial as to the persons involved and unprejudiced and uncommitted as to the defendant['s] guilt or past misconduct."[11] A jury is selected at random and is a representation of the community.[12] A jury provides the people a voice in the administration of justice.[13] Although, a single juror's bias or prejudice can violate the guarantee provided by the Sixth Amendment.[14]

There is a judicial process that courts follow when selecting a jury. First, the potential jurors are asked questions by the judge and attorneys from both sides to determine if they are competent to be on the jury for the case.[15] Then, the trial judge begins by asking the prospective jurors to determine if they can legally serve on the jury.[16] The purpose of this is to make sure that the jurors will not suffer any undue hardship if they are selected to serve on the jury.[17] Next, the lawyers ask the potential jurors questions

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10. *Williams*, 481 Mass. at 447; John Shea, *Defense of the Jury System*, 4 NOTRE DAME L.J. 543, 544 (1929).

> The right of trial by jury is a fundamental and integral part of a democracy as the right of suffrage or the freedom of worship, press and speech. It is engrafted as a part of our jurisprudence as the result of conflict and sacrifice. It is one of the terms of Magna Carta. There are two articles relating to it in the Bill of Rights of the Federal Constitution.

Id.

11. *Williams*, 481 Mass. at 447 (quoting Commonwealth v. Ricard, 355 Mass, 509, 512, 246 N.E.2d 433 (1969)).

12. United States v. Hernandez-Estrada, 749 F.3d 1154, 1158 (9th Cir. 2014).

13. Robert C. Walters, *Jury of Our Peers: An Unfulfilled Constitutional Promise*, 58 SMU L. REV. 319, 320 (2005) (stating "[n]early 70% of Americans believe that the right to have disputes decided by a jury of ordinary, randomly selected citizens is the most important element in the legitimacy of the court system in the United States").

14. *See* Dyer v. Calderon, 151 F.3d 970, 973 n.2 (9th Cir. 1998) (finding that "[t]he presence of a biased juror cannot be harmless; the error requires a new trial without a showing of actual prejudice").

15. *Williams*, 481 Mass. at 447.

16. Sherilyn Streicker, *Jury Selection in Criminal Cases*, NOLO, www.nolo.com/legal-encyclopedia/jury-selection-criminal-cases.html [perma.cc/57SC-Y76P] (last visited Apr. 30, 2020).

17. *Id.* (providing examples of undue hardship that may excuse a prospective juror from jury service such as having an upcoming surgery scheduled or serving as a sole caretaker of an elderly family member).

that might show favoritism towards one side or the other.[18] These questions will focus on a potential jurors' biases, backgrounds, experiences, or prior knowledge they have about the case.[19] Lawyers for each side can then make challenges for cause and peremptory challenges to remove potential jurors.[20] Challenges "for cause" are generally unlimited and are used when a juror is found to be not qualified, able, or fit to be on a jury in a particular case.[21] Lawyers are allowed a limited number of peremptory challenges, which allow them to dismiss a potential juror for no reason.[22]

Judges will dismiss potential jurors who cannot put aside their personal opinions and be impartial when applying the law to the facts.[23] A potential juror may be excused for cause when there is actual bias, for example, the juror admits he or she would not be able to be impartial.[24] Each side will then argue their challenges for cause in front of the judge in a process known as "striking the jury."[25] If the judge agrees with the challenge, the potential juror will be removed from the panel.[26] The lawyers for each side will then alternate dismissing jurors using their peremptory challenges.[27] These challenges are limited by the court and cannot be used to discriminate based on race or sex.[28] After both parties have agreed on the selection of a jury, the jurors are sworn in by the court clerk.[29]

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18. *Id.*; *see also* State v. Bruce, 745 S.W.2d 696, 699 (Mo. Ct. App. 1987) (Manford, D., dissenting) (expressing the view that "[f]avoritism for or against one side or the other, be in prosecutorial or defense, has no place in our legal system").

19. Streicker, *supra* note 16.

20. United States v. Annigoni, 96 F.3d 1132, 1138 (9th Cir. 1996).

21. *Id.*

22. *Id.* at 1137 (illustrating that although some jurors may be qualified, the lawyer may excludes a juror for fear that they will favor the other party).

23. *Williams*, 481 Mass. at 447.

24. Streicker, *supra* note 16 (illustrating that when a juror's life experiences or character traits would make it seem unlikely that they would be impartial, they can be removed for implied bias).

25. *Id.*

26. *Id.*

27. *Id.*

28. *How Courts Work – Steps in a Trial*, AM. BAR ASS'N (Sept. 9, 2019) www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/juryselect/ [perma.cc/8EN4-9NFD]. Peremptory challenges, in effect, "allow a lawyer to dismiss a juror because of a belief that the juror will not serve the best interest of the client. Peremptory challenges are limited to a certain number determined by the kind of lawsuit being tried. They can't be used to discriminate on the basis of race or sex." *Id.*

29. *Id.* (stating those that are not chosen to serve on the jury are then excused).

A. The Beginning of the American Legal System: United States v. Burr

To understand the value of a trial by jury, it is necessary to examine the methods to identify bias that have been used since the trial by a jury process was created.[30]In 1807, during the treason trial of Aaron Burr, Chief Justice John Marshall recognized the importance of identifying bias and prejudice in prospective jurors through examination.[31] In *United States v. Burr*, Aaron Burr was charged with the capital crime of treason.[32] Burr had been Vice President during the Thomas Jefferson administration before killing his rival Alexander Hamilton in a duel.[33] Burr was acquitted of treason by the jury due to lack of evidence.[34] Presiding over the trial was Chief Justice John Marshall.[35] According to Chief Justice Marshall, the value of a trial by jury is in its fairness and impartiality.[36] Marshall stated that the "common law required and the Constitution secured the right to an impartial jury, composed of persons would fairly hear the evidence and decide according to the evidence."[37] Those who appreciate the judicial system do so because of the expectation that it will be "uninfluenced by an undue bias of the mind."[38] This cannot be expected when a juror has formed an opinion, that the person being tried is either guilty or innocent, before the facts and testimony of the case have been presented.[39] A potential juror should not enter the courtroom with preconceived opinions that will close their minds off from the impressions that the testimony

30. Patton v. Yount, 467 U.S. 1025, 1038 (1984).

31 United States v. Burr, 25 F. Cas. 49, 50 (1807).

32. Charles F. Hobson, The Aaron Burr Treason Trial, Fed. Jud. Ctr., 1 (2006), www.fjc.gov/sites/default/files/trials/burrtrial.pdf [perma.cc/].

33. *Id.* (stating that this event "effectively ended Burr's career in national politics").

34. *Id.* at 7 (stating the verdict, "instead of a simple 'not guilty,' declared Burr 'not guilty by the evidence presented'").

35. *Id.* at 1.

36. *Burr*, 25 F. Cas. at 50.

37. Hobson, *supra* note 32, at 15 (reasoning that "those who had already formed an opinion of the accused's guilt were disqualified, as were those who had formed an opinion not on the whole case but on a point so essential that it would have an unfair influence upon the verdict").

38. *Id.* (citing Justice Marshall).

> I have always conceived, and still conceive, an impartial jury as required by the common law, and as secured by the constitution, must be composed of men who will fairly hear the testimony which may be offered to them, and bring in their verdict according to that testimony, and according to the law arising on it.
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> *Id*.

39. *Id.*

and law of the case could potentially have on them.[40] The law suspects that a biased juror will be prevented from fairly hearing and deciding the case on the facts and testimony that is being offered.[41] Chief Justice Marshall's opinion "points to the way to the relevant considerations in analyzing the proper relationship between knowledge and impartiality."[42]

Personal prejudices provide for a just for cause challenge because the individual is presumed to have bias which will prevent an impartial decision in the case.[43] The individual is not expected to weigh the evidence as fairly as someone who has not already made a judgment in the case.[44] "It is for this reason that a juror who has once rendered a verdict in a case, or who has been sworn on a jury which has been divided, cannot again be sworn in the same case."[45] Even if a prospective juror is not suspected of personal prejudices, that individual may be deemed unfit to serve as a juror in the case if he or she "formed and delivered an opinion."[46] The Supreme Court recognized that, although desirable, it is not required and perhaps impossible to obtain a jury that is without any preconceived opinion about the guilt or innocence of the accused.[47]

B. An Impartial Jury

The definition of impartiality "is not a static concept, but can be defined only in relation to specific facts and circumstances."[48] A fair trial is generally interpreted as being conducted before unprejudiced jurors who are instructed by the judge as to the law

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40. *Id.*

41. *Id.*

42. James J. Gobert, *Criminal Law: In Search of the Impartial Jury*, 79 J. CRIM. L. & CRIMINOLOGY 269, 312 (1988). The considerations are as:

> (1) knowledge on the part of the jurors is more or less inevitable; 2) the more intelligent and well informed the potential juror, the more likely he or she is to know something about the case; 3) persons generally knowledgeable about public affairs will in most instances be more discerning jurors than those who are generally ignorant about public affairs; 4) a juror's impartiality is compromised only to the extent that the juror's knowledge impedes a decision on the merits; and 5) whether a juror's impartiality has in fact been compromised by knowledge must be determined on an individual basis.
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> *Id.*

43. *Burr*, 25 F. Cas. at 50 (reasoning that "[h]e may declare that notwithstanding these prejudices he is determined to listen to the evidence, and be governed by it; but the law will not trust him").

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* at 51.

48. Farese v. United States, 428 F.2d 178, 179 (5th Cir. 1970).

and facts.[49] The laws of evidence are used to control a juror's knowledge of the case and prevent bias and prejudice.[50] These rules are designed to prevent the jurors from considering facts and objects that may prejudice or confuse.[51] It is necessary that all the evidence "come from the witness stand in a public courtroom where there is full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel."[52] This evidence is subject to cross-examination and rebuttal.[53] "[P]rejudice must sometimes be inferred from the juror's relationships, conduct or life experiences, without a finding of actual bias."[54]

Although the Supreme Court has interpreted that the Sixth Amendment requires that a jury in a criminal trial be "chosen from a jury pool that represents a fair cross-section of the community," it has never been interpreted that the jury "represent each and every element of the community from which it is selected."[55] Instead, the Supreme Court has interpreted the Sixth Amendment right to jury trial to serve:

> The purpose of the jury is to guard against the exercise of arbitrary power -- to make available the common sense judgment of the community as a hedge against the over zealous or mistaken prosecutor and in preference to the professional or perhaps overconditioned or biased response of the judge. This prophylactic vehicle is not provided if the jury pool is made up of only special segments of the populace or if large, distinctive groups are excluded from the pool. Community participation in the administration of the criminal law, moreover, is not only consistent with our democratic heritage, but is also critical to public confidence in the fairness of the criminal justice system.[56]

The Supreme Court has found that there is no constitutional violation without showing a "pattern of systematic exclusion of a particular class" from the jury.[57] However, Supreme Court

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49. *Id.* at 179-80.
50. *Id.* at 180.
51. *Id.*
52. *Id.* (citing *Turner v. Louisiana*, 379 U.S. 466, 472-73 (1965)).
53. *Id.*
54. *Dyer*, 151 F.3d at 984.
55. Teague v. Lane, 820 F.2d 832, 838 (7th Cir. 1987).
56. *Id.* (citing Taylor v. Louisiana, 419 U.S. 522, 531 (1975)).
57. *Id.*; *see* Apodaca v. Oregon, 406 U.S. 404, 412 (1972) (illustrating petitioners' argument that "unanimity is a necessary precondition for effective application of the cross-section requirement").

> There are two flaws in this argument [that the fair cross-section requirement requires a unanimous verdict]. One is petitioners' assumption that every distinct voice in the community has a right to be represented on every jury and a right to prevent conviction of a defendant in any case. All that the Constitution forbids, however, is systematic exclusion of identifiable segments of the community from jury panels and from the juries ultimately drawn from those panels; a

decisions "distinguish between the requirement that jury pools reflect a fair cross-section of the community and the requirement that a jury be impartial."[58] It is assumed that a "trial by jury" will include a jury that is a broad representation of the community as well as "impartial in a specific case."[59]

If a court has any doubts regarding the existence of actual bias, they must be resolved against allowing the juror to serve.[60] A juror's bias can be revealed by an express admission of the fact or through circumstantial evidence.[61] The Ninth Circuit agreed with the Third Circuit's observation that it is a fundamental fact that men are more likely to favor the side with which they "identify themselves either economically, socially, or emotionally."[62] "[T]he jury is a 'fundamentally human' institution; the unavoidable fact that jurors bring diverse backgrounds, philosophies, and personalities into the jury room is both the strength and the weakness of the institution."[63] This could compromise a juror's ability to make determinations that are based solely on the evidence and instructions introduced in court.[64]

When a juror's impartiality is questioned, the relevant issue is "did a juror swear that he could set aside any opinion he might hold and decide the case on the evidence, and should the juror's protestation of impartiality have been believed."[65] On an appeal, special deference is given to a trial court's determination of a

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> defendant may not, for example, challenge the makeup of a jury merely because no members of his race are on the jury, but must prove that his race has been systematically excluded.

Id. at 413.

58. *Teague*, 820 F.2d at 839.

59. *Id.*

60. Burton v. Johnson, 948 F.2d 1150, 1158 (10th Cir. 1991); *see* United States v. Nell, 526 F.2d 1223, 1230 (5th Cir. 1976) (explaining the rule).

> We have no psychic calibers with which to measure the purity of the prospective juror; rather, our mundane experience must guide us to the impartial jury promised by the Sixth Amendment. Doubts about the existence of actual bias should be resolved against permitting the juror to serve, unless the prospective panelist's protestation of a purge of preconception is positive, not pallid.

Id.

61. United States v. Allsup, 566 F.2d 68, 71 (9th Cir. 1977) (reasoning that, "more frequently, jurors are reluctant to admit actual bias").

62. *Id.* (citing Kiernan v. Van Schaik, 347 F.2d 775, 781 (3d Cir. 1965)).

63. In re Hamilton, 20 Cal. 4th 273, 296 (1999) (citing People v. Marshall, 50 Cal. 3d 907, 950 (1990)).

64. *Marshall*, 50 Cal. at 950. The court found that this is a weakness that must be tolerated because "[it] is an impossible standard to require . . . [the jury] to be a laboratory, completely sterilized and freed from any external factors." *Id.* (citing Rideau v. Louisiana 373 U.S. 723, 733 (1963)).

65. Dennis v. Mitchell, 354 F.3d 511, 520 (6th Cir. 2003) (citing Patton v. Yount, 467 U.S. 1025, 1036 (1984)).

juror's credibility because the trial judge was the one who saw and heard the juror.[66]

Federal Courts use the *McDonough* test when it is alleged that a juror deliberately concealed or withheld information.[67] In *McDonough Power Equipment v. Greenwood*, the Supreme Court held that a new trial will be granted if the defendant "demonstrate[s] that a juror failed to answer honestly a material question on *voir dire*, and then further show[s] that a correct response would have provided a valid basis for a challenge for cause."[68] *McDonough* involved a products liability case, where a juror, during *voir dire*, was asked whether anyone in his immediate family had ever sustained a severe injury.[69] The juror failed to reveal that his son had broken his leg after a tire exploded.[70] The Supreme Court found that the juror "apparently believed that his son's broken leg sustained as a result of an exploding tire was not such an injury."[71] The Court noted that jurors may not fully understand the meaning of terms that are often used by lawyers and judges.[72]

C. The Voir Dire *Process*

The jury is selected by the lawyers and judges in a process known as "*voir dire*," which is Latin for "to speak the truth."[73] This method has been relied on since the trial by jury process was

66. *Id.* (noting a trial court's finding "that a juror was impartial is entitled to a presumption of correctness, rebuttable only upon a showing of clear and convincing evidence").

67. *Id.*

> [I]n order to obtain a new trial based on a juror's non-disclosure during voir dire, the defendant must first demonstrate that a juror failed to answer honestly a material question of voir dire, and then further show that a correct response would have provided a valid basis for a challenge for cause.

Id. at 521.

68. McDonough Power Equipment v. Greenwood, 464 U.S. 548, 556 (1984) (explaining that "[t]he motives for concealing information may vary, but only those reasons that affect a juror's impartiality can truly be said to affect the fairness of a trial").

69. *Id.* at 550.

70. *Id.*

71. *Id.* at 555.

72. *Id.*

73. Fields v. Brown, 503 F.3d 755, 772 (9th Cir. 2007) (discussing how *voir dire* has been relied on as the primary safeguard for identifying juror bias). The purpose of the *voir dire* process "is to elicit information from the venire that may shed light on bias, prejudice, interest in the outcome, competence, and the like so that counsel and the parties may exercise their judgment about whom to seat and whom to challenge." *Id.*

created.[74] *Voir dire* is an important method used for "safeguarding the right to an impartial jury."[75] This is not always an easy task because a person may be reluctant to admit her hidden bias.[76] The Supreme Court explained that "[b]ias or prejudice is such an elusive condition of the mind that it is most difficult, if not impossible, to always recognize its existence."[77] A dishonest prospective juror can frustrate the *voir dire* process.[78] A juror who is accepted after being willfully evasive and providing knowingly untrue answers, "is a juror in name only."[79]

There are several relevant facts that can be used to determine whether a prospective juror has "both the capacity and the will to decide the case solely on the evidence."[80] This may include "the juror's ability to separate her emotions from her duties . . . the similarity between the juror's experiences and important facts presented at trial...the scope and severity of the juror's dishonesty . . . and the juror's motive for lying."[81] The cumulative effect of the factors should be considered by the court because any of the facts, taken alone, may not be enough for finding a valid basis for a challenge for cause.[82]

D. The General Rule for Determining Juror Impartiality

The general rule for a judge determining juror impartiality, is to look at whether the juror can disregard their own opinions.[83] However, state and federal courts have not distinguished between a potential juror's opinions about a specific case and opinions

74. *Patton*, 467 U.S. at 1038.

75. Sampson v. United States, 724 F.3d 150, 163 (1st Cir. 2013); *see* Correia v. Fitzgerald, 354 F.3d 47, 52 (1st Cir. 2003) (stating that a probing *voir dire* examination is "[t]he best way to ensure that jurors do not harbor biases for or against the parties").

76. *Sampson*, 724 F.3d at 164.

77. Crawford v. United States, 212 U.S. 183, 196 (1909) (stating that it "might exist in the mind of one (on account of his relations with one of the parties) who was quite positive that he had no bias, and said that he was perfectly able to decide the question wholly uninfluenced by anything but the evidence").

78. *Sampson,* 724 F.3d at 164. (reasoning that the *voir dire* process is "fluid rather than mechanical").

79. *Id.* (citing Clark v. United States, 289 U.S. 1, 11 (1933).

80. *Id.* at 166.

81. *Id.* (internal citations omitted).

82. *Id.*

83. *Williams*, 481 Mass. at 448; *see McDonough*, 464 U.S. at 554 (holding that: "One 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") (internal quotations omitted); and *Patton*, 467 U.S. at 1037 n.12 (holding that "[t]he constitutional standard that a juror is impartial only if he can lay aside his opinion and render a verdict based on the evidence presented in court is a question of federal law").

based on life experiences or world view.[84]

In *Commonwealth v. Williams*, the defendant argued on appeal that the trial judge committed error for dismissing a prospective juror for cause because of her work experience and belief that the criminal justice system is unfair to African-American men.[85] During the *voir dire* of the prospective juror, the trial judge attempted to determine if she could be impartial in the trial of an African-American man despite her opinion of the criminal justice system.[86] The Supreme Court of Massachusetts found that the *voir dire* was incomplete because the judge "did not inquire further to determine whether, given the prospective juror's beliefs based on her life experiences, she nevertheless could fairly evaluate the evidence and follow the law."[87] There, the court reasoned that a judge should not focus "on a prospective juror's ability to put aside his or her beliefs formed as a result of life experiences, but rather on whether that juror, given his or her life experiences and resulting beliefs, is able to listen to the evidence and apply the law as provided by the judge."[88]

When a prospective juror expresses an opinion, interest, bias, or prejudice related to the case, the judge must be satisfied that the juror will be able to set aside those opinions, properly weigh the evidence, and follow the instructions regarding the law.[89] To reject a potential juror, the juror's state of mind must be such "that he cannot render an impartial judgment and that seating him will result in substantial prejudice to the rights of the defendant."[90] On the other hand, if a prospective juror expressed an opinion based on her worldview or life experiences, it is sufficient if the juror "can lay aside his impression or opinion and render a verdict based on the evidence presented at court."[91] The judge should not ask the prospective juror to set aside her life experience or belief system because it would be "difficult if not impossible to do."[92] The Supreme Court of Massachusetts held that

84. *Williams*, 481 Mass. at 448.

85. *Id.* at 446 (recognizing that "holding particular beliefs about how African-American men are treated in the criminal justice system should not be automatically disqualifying").

86. *Id.* (deciding that "the prospective juror was not able to be impartial because she expressed uncertainty about being able to 'put aside' her beliefs and experiences and because she acknowledged that she would look at the case 'differently' due to her experiences").

87. *Id.*

88. *Id.*

89. Swindler v. State, 267 Ark. 418, 425 (1979).

90. *Id.*

91. *Id.*

92. *Williams*, 481 Mass. at 449. "No human being is wholly free of the interests and preferences which are the product of his cultural, family, and community experience. Nowhere is the dynamic commingling of the ideas and biases of such individuals more essential than inside the jury room." *Soares*, 377 Mass. at 486.

a judge "should not expect a prospective juror to set aside an opinion born of the prospective juror's life experiences or belief system."[93] It would be impossible and undesirable to keep a jury from bringing their own thoughts, feelings, opinions, beliefs, and life experiences into the court room and jury deliberation room.[94]

E. The Modern Trend

The Third Circuit has unequivocally held "that jurors can and should draw upon prior life experiences and use them in the course of deliberations."[95] In *United States v. Holck*, the defendants conceded that a juror could rely on ordinary personal experience during deliberations but argued that case law only supports relying on "normal observations of one's surroundings that a person accumulates in the course of normal life."[96] They argued that the juror's statements were extraneous evidence because the juror obtained the information from specialized knowledge that was specifically related to the disputed issues.[97] "A juror's specific knowledge about a particular subject matter is not dispositive of whether the information imparted is beyond the ken of common experience."[98] A juror's specialized experience, even when related

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93. *Williams*, 481 Mass. at 449.

94. *Id.* at 451; *see* Commonwealth v. Mutina, 366 Mass. 810, 817-18, 323 N.E.2d 294, 298-99 (1975) (recognizing that "such factors can affect the intellectual judgment of a juror without any consciousness of bias or prejudice and, for this very reason, has supported the jury system").

> Jurors do not come to their temporary judicial service as sterile intellectual mechanisms purged of all those subconscious factors which have formed their characters and temperaments such as racial or ethnic background, sex, economic status, intellectual capacity, family status, religious persuasion, political leanings, educational attainment, moral convictions, employment experience, military service or their individual appreciations of the social problems of the moment.

Id.; *see also id.* at 820 (stating that: "Juries are generally instructed by judges in their charges and urged by counsel in their argument that they must not leave their common sense outside the jury room").

95. United States v. Holck, 398 F. Supp. 2d 338, 365 (E.D. Pa. 2005) (reasoning that such conduct "does not amount to bringing in extraneous information"); *see* Dickerson v. Di Guglielmo, No. 04-0752, U.S. Dist. LEXIS 12342, at *17 (E.D. Pa. June 29, 2004) (holding "no extrinsic evidence was brought into jury deliberations" when, in drug case, two jurors discussed their personal life experiences with crack cocaine).

96. *Holck*, 398 F. Supp. at 365. (stating that drawing upon prior life experiences during deliberations "does not amount to bringing in extraneous information").

97. *Id.* (urging that it is not the type of "ordinary personal experience permitted under the law").

98. United States v. Tin Yat Chin, 275 F. Supp. 2d 382, 384 (E.D.N.Y. 2003) "Particular information need not be known by all or even most members of the community to constitute knowledge within the fund of ordinary experience." *Id.* at 384-85 (quoting Cocconi v. Pierre Hotel, 146 F.Supp.2d 427,

to an issue in the case, will not be considered extraneous "so long as it draws on personal experience."[99]

While the Ninth Circuit agrees that jurors must rely on their past personal experiences at trial, those experiences are considered extraneous evidence when they are related to the litigation.[100] "It is not improper for a juror, regardless of his or her educational or employment background, to express an opinion on a technical subject, so long as the opinion is based on the evidence at trial."[101] The Supreme Court of California has described it as misconduct when a juror expresses an opinion that is "explicitly based on specialized information obtained from outside sources."[102]

III. ANALYSIS

The myth of the impartial juror has been acknowledged more in the writings of trial attorneys than by judges in their opinions.[103] "Trial manuals have long stressed the importance of jury selection, on the premise that the same case, consisting of the same evidence, conducted pursuant to the same trial strategy but tried before different juries can result in different verdicts."[104] The jury selection is one of the most critical phases of a trial, and an attorney who can choose prospective jurors "whose life experiences, values, and personality" relate to that of his or her client has "won a significant battle in the overall war."[105]

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432 (S.D.N.Y. 2001).

99. *Holck*, 398 F. Supp. 2d at 366.

100. Hard v. Burlington Northern R.R., 812 F.2d 482, 486 (9th Cir. 1987). "Jurors must rely on their past personal experiences when hearing a trial and deliberating on a verdict. Where, however, those experiences are related to the litigation, as they are here, they constitute extraneous evidence which may be used to impeach the jury's verdict." *Id.*

101. People v. Steele, 27 Cal. 4th 1230, 1265 (2002) (citing In re Malone, 12 Cal. 4th 935, 963, 911 P.2d 468, 486 (1996)).

> Jurors' views of the evidence, moreover, are necessarily informed by their life experiences, including their education and professional work. A juror, however, should not discuss an opinion explicitly based on specialized information obtained from outside sources. Such injection of external information in the form of a juror's own claim to expertise or specialized knowledge of a matter at issue is misconduct.

Id.

102. *Id.*

103. *See* James J. Gobert, *Criminal Law: In Search of the Impartial Jury*, 79 J. CRIM. L. & CRIMINOLOGY 269, 322 (1988) (stating that: "The psychological baggage that human beings bring to the jury room renders illusory any talk of a truly impartial juror").

104. *Id.*

105. *Id.* at 322-23 (stating that the underlying premise is that "all jurors have had their personalities and opinions shaped by their life experiences, and that there are no impartial jurors").

The United States Supreme Court has not directly addressed impartiality, as it is often absorbed in a more "general discussion of the attributes of a constitutionally acceptable jury."[106] The Court has said that impartiality is a "state of mind" and not a "technical conception."[107] The Constitution provides no particular tests for determining impartiality, and procedure is not "chained to any ancient and artificial formula."[108] The *Burr* Court recognized that it would be impossible to find a jury that was without any preconceived opinions.[109] Chief Justice Marshall asserted that:

> [L]ight impressions which may fairly be supposed to yield to the testimony that may be offered, which may leave the mind open to a fair consideration of that testimony, constitute no sufficient objection to a juror; but that those strong and deep impressions which will close the mind against the testimony that may be offered in opposition to them, which will combat that testimony, and resist its force, do constitute a sufficient objection to him.[110]

The *Burr* Court does not say that a juror must reject his or her life experiences, but only that they must not form an opinion on the guilt of a defendant before fairly weighing the testimony.[111]

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106. *Id.* at 283 (reasoning that the Court fails to identify the specific components of impartiality, and the Court's decisions "raise provocative questions, provide insight in the Court's thinking, and merit examination").

107. United States v. Wood, 299 U.S. 123, 145 (1936).

108. *Id.* at 146; *see also* Stokes v. People, 53 N.Y. 164, 173 (1873). The *Stokes* court stated that:

> "[w]hile the Constitution secures the right of trial by an impartial jury, the mode of procuring and impanelling such jury is regulated by law . . . it is within the power of the legislature to make . . . such changes . . . , taking care to preserve the right of trial by an impartial jury."

See also Brown v. State, 62 N.J.L. 666, 678 (1899) (explaining the constitutional standard further):

> The provision in our constitution (paragraph 8), that the accused should have a right to a speedy and public trial by an impartial jury, secured to the accused a right to a trial by an impartial jury by an express constitutional provision. The means by which an impartial jury should be obtained are not defined. In neither of the constitutional provisions on this subject is there any requirement with respect to challenges, or to the qualifications of jurors, or the mode in which the jury shall be selected. These subjects were left in the discretion of the legislature, with no restriction or limitation, except that the accused should have the right to be tried by an impartial jury.
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> *Id.*

109. *Burr*, 25 F. Cas. at 50-51. *See* Christopher A. Cosper, *Rehabilitation of the Juror Rehabilitation Doctrine*, 37 GA. L. REV. 1471, 1486 (2003) (stating that "perhaps the most difficult aspect of the *voir dire* process is determining when a juror is rendered partial and thereby unfit to serve").

110. *Burr*, 25 F. Cas. at 51.

111. *Id.* (reasoning that the latter would disqualify an individual from

This section will discuss the minority approach demonstrated by the trial judge in *Sisto*, which is that a juror must leave his or her life experiences in the jury box. Next, it will discuss the reasoning by the *Williams* court, which is that it would be impossible to ask a juror to reject his or her life experiences. Finally, it will discuss how cases like *Pippin* and *Malone* have allowed jurors to use their specialized education and knowledge to assist during deliberations.

A. Depositing a Juror's Experience into the Judge's Disposal Box

In *Taylor v. Sisto*, the trial judge emphasized the view that a juror must reject his or her own life experiences to be impartial.[112] The trial judge instructed all of the prospective jurors that "they must as jurors, take all the decisions that you have made, all the opinions you have about how people act, how people behave, what kind of people behave in what way, what makes them do that, and you leave them in that box."[113] The only explanation that the trial judge provided to the jurors was that they use their experience to know "what nightfall was and where the sun rose or set."[114] However, knowing what nightfall is and where the sun rises are common facts, not life experiences.[115] The California Court of Appeals held that "the instruction, although a bit odd, did not create a jury of automatic robots with sterilized minds" and was defensible "in context."[116] As such, a court must determine whether the jury applied the challenged instruction in a way that prevented them from considering the relevant evidence.[117] The *Sisto* court suggested that the instruction may have been harmless because it would have been impossible for someone to "completely discard life experiences."[118]

In contrast, juries are presumed to abide by the court's instructions even if "to follow it completely may have been

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serving as a juror in the case).

112. Taylor v. Sisto, 606 F.3d 622, 626 (9th Cir. 2010).

113. *Id.* (stating that they must "take all of the experiences that you have had that have contributed to how you think about everything that you think about and lay those experiences aside").

114. *Id.*

115. *Id.* (holding that "[n]othing in the trial judge's explanation permitted a juror to draw on the personal experiences that make up human life").

116. *Id.* (failing to specify the context to which it referred).

117. Boyde v. California, 494 U.S. 370, 380 (1990) (stating that "[a]lthough a defendant need not establish that the jury was more likely than not to have been impermissibly inhibited by the instruction, a capital sentencing proceeding does not violate the Eighth Amendment if there is only a possibility of such an inhibition").

118. *Sisto*, 606 F.3d at 626.

impossible."[119] The *Sisto* court concluded that the trial judge's instruction "unreasonably applied a series of Supreme Court holdings concerning the nature of a trial by jury under the Sixth Amendment."[120] The *Sisto* court reasoned that according to the Supreme Court, an impartial jury is one that "applies common sense informed by the full range of human experience."[121]

The dissenting opinion in *Sisto* disagrees with the majority's finding that the Supreme Court cases formulate a rule regarding how jurors should use their life experiences.[122] "While these cases do contain scattered dicta, broad aphorisms, and general observations regarding the kinds of harm that flow from discrimination in jury selection, such remarks do not amount to clearly established Federal law on the Sixth Amendment issue presented here."[123] The *Sisto* majority acknowledges that the decisions they cited show that courts have occasionally acted as though an individual's life experiences can be eliminated from a jury, and "the Supreme Court has accordingly had to vindicate the essential requirement of diversity of humans."[124]

B. Williams Aims to Prevent Judges from Asking Jurors to do the Impossible

The *Williams* holding departs from the general rule that a prospective juror should set aside his or her own life experiences when looking at a case.[125] The *Williams* court begins its analysis by recognizing that "every prospective juror comes with his or her own thoughts, feeling, opinions, beliefs."[126] However, these life experiences may or may not affect how a prospective juror looks at a case.[127] The Supreme Court of Massachusetts recognizes that jurors do not come into court with a tabula rasa or "blank slate."[128] This is based on the theory that individuals are born without any built-in thoughts, opinions or emotions and all of the knowledge

119. *Id.*

120. *Id.*

121. *Id.* at 628 (holding that "the 'box' instruction affirmed by the California Court of Appeals instructed the jury to abandon that experience").

122. *Id.* at 630 (stating that nor "does any case enunciate the so-called 'first principle' that courts may not eliminate 'the experience of diverse human beings' from a jury").

123. *Id.* (internal quotations and citations omitted); *see* Peters v. Kiff, 407 U.S. 493, 498 (1972) (providing an example of the kinds of harm that result from discrimination during jury selection).

124. *Sisto*, 606 F.3d. at 629.

125. *Williams*, 481 Mass. at 453.

126. *Id.* at 450.

127. *Id.* at 450-51.

128. *Id.* at 460.

comes from our life experiences.[129]

> Jurors do not come to their temporary judicial service as sterile intellectual mechanisms purged of all those subconscious factors which have formed their characters and temperaments such as racial or ethnic background, sex, economic status, intellectual capacity, family status, religious persuasion, political leanings, educational attainment, moral convictions, employment experience, military service or their individual appreciations of the social problems of the moment.[130]

The *Williams* court realized that it would be impossible for a jury not to bring their life experiences into the courtroom.[131] Judges generally instruct juries in their charges to bring their common sense with them into the jury room.[132] However, state and federal courts have removed prospective jurors due to opinions based on life experiences.[133] The *Williams* court found that a prospective juror "may not be excused for cause merely because he or she believes that [certain individuals] receive disparate treatment in the criminal justice system."[134] A prospective juror should not be required to ignore his or her life experiences in order to serve on a jury.[135] The court distinguishes this argument from the idea that it is proper to remove a prospective juror "who has expressed or formed an opinion regarding the case, or has an interest, bias, or prejudice related to the unique situation presented by the case."[136] According to the court, a juror should not decide the case on preconceived opinions prior to hearing all of the

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129.*Garcia v. Secretary of HHS*, U.S. Claims LEXIS 390 *8 (Fed. Cl. 2010) (stating that the minds of members of the bench are not a naïve tabula rasa like "infants, tossed back and forth by the waves, and blown here and there by every wind of teaching and by the cunning and craftiness of men in their deceitful scheming").

130. Commonwealth v. Mutina, 366 Mass. 810, 817-18 (1975); *see* Commonwealth v. Ricard, 355 Mass. 509, 512 (1969) (asserting that "[e]very individual has impressions and beliefs, likes and dislikes").

131. *Williams*, 481 Mass. at 451; *see* J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127, 149 (1994) (O'Connor, J., concurring) (reasoning that "[i]ndividuals are not expected to ignore as jurors what they know as men -- or women").

132. *Williams*, 481 Mass. at 451 (reasoning that this is also urged by counsel in their argument that juries "must not leave their common sense outside the jury room").

133. *Id.* at 450. (stating that the prospective juror was removed because of an opinion she had that was based on prior experiences). The judge told the prospective juror "that she would have to be able to put that out of [her] mind and look at only the evidence." *Id.*

134. *Id.* at 451. (reasoning that a trial judge "must take care to determine whether such an opinion would affect a prospective juror's ability to be impartial" and not imply that a prospective juror must forget their life experiences).

135. *Id.* at 452.

136. *Soares*, 377 Mass. at 482 (stating that absolute proportionality cannot be guaranteed).

evidence.[137] However, the *Williams* court acknowledges that it is appropriate for a juror to bring his or her life experience into the jury room.[138] "Asking prospective jurors to 'put aside' or 'disregard; what they think, feel, or believe comes perilously close to improperly requiring them to 'leave behind all that their human experience has taught them.'"[139]

The *Williams* court was concerned that an otherwise qualified prospective juror may be removed because a judge "mistakenly equates an inability to disregard one's life experiences and resulting beliefs with an inability to be impartial."[140] In contrast, state and federal judges have assumed, that when a prospective juror expresses uncertainty about his or her ability to put aside their beliefs, that juror is unable to be impartial.[141] While those concerns are valid, the *Williams* court holds that a prospective juror should be excused for cause "only if, given his or her experiences and resulting beliefs, the judge concludes that the prospective juror is unable to fairly evaluate the evidence presented and properly apply the law."[142]

C. Is There a Fine Line Between Using One's Background in Analyzing the Evidence and Injecting an Opinion Based on Specialized Information?

There has been a split among the courts that have considered the particular issue of "whether jurors may use their professional and educational expertise to inform their deliberations."[143] The *Williams* court rejected the idea that, to be impartial, a prospective juror is required to reject his or her life experiences in order to serve on a jury.[144] The *Williams* decision, however, does not discuss whether it is proper for a juror to express an opinion

137. *Williams*, 481 Mass. at 452 n.7.

138. *Id.* at 452.

139. *Id.* (quoting Beck v. Alabama, 447 U.S. 625, 642 (1980)); *see* Beck v. Alabama, 447 U.S. 625, 642 (1980) (stating that "[j]urors are not expected to come into the jury box and leave behind all that their human experience has taught them").

140. *Williams*, 481 Mass. at 452.

141. *Id.*

142. *Id.*; *see* Commonwealth v. Entwistle, 463 Mass. 205, 221-22 (2012) (stating that a "defendant is not entitled to a jury that knows nothing about the crime, so long as jurors are able fairly to weigh the evidence in the case, set aside any information they learned outside the court room, follow the judge's instructions, and render an impartial verdict").

143. *Pippin*, 252 P.3d at 1063 (stating that a "minority of courts prohibit jurors from applying their specialized knowledge to deliberations and view a juror's professional or educational expertise as extraneous prejudicial information").

144. *Williams*, 481 Mass. at 451.

based on his or her background.[145] In *People v. Steele*, the defendant argued that several jurors, with military and medical experience, "committed misconduct by offering their expertise to the other jurors."[146] The defendant's argument was based on the rule announced in *In re Malone*, which stated:

> It is not improper for a juror, regardless of his or her educational or employment background, to express an opinion on a technical subject, so long as the opinion is based on the evidence at trial. Jurors' views of the evidence, moreover, are necessarily informed by their life experiences, including their education and professional work. A juror, however, should not discuss an opinion explicitly based on specialized information obtained from outside sources. Such injection of external information in the form of a juror's own claim to expertise or specialized knowledge of a matter at issue is misconduct.[147]

During the trial of *Steele*, the jury was exposed to extensive evidence regarding the defendant's military training and Vietnam experience.[148] The *Steele* court found that the views of the jurors were permissible interpretations of the evidence.[149] The Steele court reasoned that "[a]ll the jurors, including those with relevant personal backgrounds, were entitled to consider this evidence and express opinions regarding it."[150]

Voir dire and instructions to the jury from the trial judge serve as the "safeguards of juror impartiality," but they are not a guarantee.[151] The *Steele* court began its analysis by recognizing the fine line that exists between a juror appropriately using his or her life experiences in analyzing the evidence versus injecting an opinion into the jury room that is "explicitly based on specialized information obtained from outside sources."[152] The Supreme Court of California has held the latter to be misconduct.[153] The *Steele* court reasoned that a juror is permitted to use their life experiences in evaluating and interpreting the evidence, but he or she may not use personal expertise that is "different from or contrary to the law as the trial court stated it or to the

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145. *See Steele*, 27 Cal. 4th at 1265 (discussing whether or not it is proper for a juror to express an opinion based on his or her technical, educational, or employment background).

146. *Id.*

147. *Id.* (quoting In re Malone, 12 Cal. 4th 935, 963 (1996)).

148. *Id.*

149. *Id.* at 1266.

150. *Id.*; *see* Rideau v. Louisiana, 373 U.S. 723, 733 (1963) (reasoning that "it is an impossible standard to require that tribunal to be a laboratory, completely sterilized and freed from any external factors").

151. Smith v. Phillips, 455 U.S. 209, 217 (1982) (reasoning that it is "virtually impossible to shield jurors from every contact or influence that might theoretically affect their vote").

152. *Steele*, 27 Cal. 4th at 1265.

153. *Id.*

evidence."[154] A juror is not an automaton, or control mechanism, that can be programmed to follow instructions.[155] He or she is a human being that, through life experiences, has developed certain virtues and weaknesses.[156] Thus, it would be an impossibly high standard "to permit these jurors to express an opinion on this evidence without relying on, or mentioning, their personal experience and background."[157]

The holding in *In re Malone* emphasizes the view of the *Steele* court that it is not improper for a juror, regardless of his or her background, to express an opinion on a technical subject, so long as it is based on the evidence.[158] In *Malone*, the petitioner presented evidence of a polygraph examination which showed that he was telling the truth that he did not kill the victim, but also that he lied when he denied being at the location where she was killed.[159] At trial, the polygraph examiner testified that his personal experience and published studies have shown accuracy of ninety percent or more, but on cross-examination, he testified that other studies produced accuracy around sixty percent.[160] During deliberations a juror, who had studied psychology, expressed negative opinions on the reliability of polygraph evidence that was presented during trial.[161] She told the other jurors that her beliefs were "based on her reading rather than on her own experimental research."[162] The Supreme Court of California held that the juror's

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154. *Id.* at 1266. "[D]uring the give and take of deliberations, it is virtually impossible to divorce completely one's background from one's analysis of the evidence. We cannot demand that jurors, especially lay jurors not versed in the subtle distinctions that attorneys draw, never refer to their background during deliberations." *Id.*

155. *Id.*; *see In re Carpenter*, 9 Cal. 4th 634, 654 (1995) (stating "[i]f the system is to function at all, we must tolerate a certain amount of imperfection short of actual bias").

156. *Steele*, 27 Cal. 4th at 1266.

157. *Id.* at 1267 (holding that the trial court properly determined the declarations to be "merely expressions of opinions, informed by the juror's life experiences, regarding evidence subject to varying interpretations").

158. *In re Malone*, 12 Cal. 4th at 963.

159. *Id.* at 942.

160. Id. at 964.

161. *Id.* at 942.

162. *Id.* at 948. The juror had told her fellow jurors:

> [T]hat she was not an expert on polygraphs, but had read and discussed professional articles on the subject in the course of her studies in psychology; that while polygraph examiners claim an accuracy rate of 80 to 90 percent, Irwin was skeptical of that claim because independent researchers had found accuracy rates of only 50 to 60 percent; and that a key question petitioner answered truthfully, according to the examiner--whether he had killed, as Irwin remembered it being phrased, 'the woman in Baker'--was not probative on his guilt because the woman was not killed in Baker, but some distance away near Daggett.
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> *Id.*

assertions did not warrant reversal because they were "substantially the same as evidence and argument presented at trial."[163] They were not assertions about "what the law is or what the law should be;" an improper determination by a juror.[164]

In *Kendrick v. Pippin*, the Supreme Court of Colorado recognized that their precedent did not address "whether jurors may use their professional and educational experiences to assist their deliberation."[165] In *Pippin*, the plaintiff argued that the jury was exposed to extraneous prejudicial information when a juror shared her calculations regarding the automobile accident with other jurors.[166] The juror in question made her own calculations estimating the defendant's speed, distance, and reaction time and shared those calculations with the other jurors.[167]

The *Pippin* court held that a juror's statements "based on such experiences do not constitute extraneous prejudicial information."[168] The juror "simply applied her professional experience and her knowledge of mathematics" without introducing legal content or factual information from outside sources.[169]

Although most courts have departed from the idea of requiring jurors to reject their life experiences to be impartial, there are still some judges that believe a juror's life experiences should be left in the jury box.[170] In *Sisto*, the trial judge wanted the jurors to completely disregard their life experiences.[171] Similarly in *Williams*, the trial court dismissed a prospective juror under the belief that her life experiences would cause her to look at the case differently from other jurors.[172] Courts like *Steele* and *Pippin* have held that jurors should be able to apply their life experiences and knowledge.[173] How can trial courts continue to ask

163. *Id.* at 965.

164. In re Stankewitz, 40 Cal. 3d 391, 399 (1985) (stating it is a "fundamental and historic precept of our judicial system that jurors are restricted solely to the determination of *factual* questions and are bound by the law as given them by the court"); *see* Smoketree-Lake Murray v. Mills Concrete Construction Co., 234 Cal. App. 3d 1724, 1749 (1991) (holding that a juror's demonstration "constituted misconduct because it brought new evidence into the deliberations").

165. *Pippin*, 252 P.3d at 1063.

166. *Id.* (stating that "the trial court should have ordered an evidentiary hearing on the allegations of juror misconduct").

167. *Id.*

168. *Id.*

169. *Id.* (reasoning "[j]urors may use their background, including professional and educational experiences, to inform their deliberations so long as they do not introduce legal content or specific factual information learned from outside the record").

170. *Sisto*, 606 F.3d at 626.

171. *Id.*

172. *Williams*, 481 Mass. at 448.

173. *Pippin*, 252 P.3d at 1063; Steele, 27 Cal. at 1265.

jurors to do the impossible? In sum, the United States Supreme Court has not directly addressed the issue, and nor does the Constitution lay out certain rules or tests regarding juror impartiality.[174]

IV. PROPOSAL

This section proposes solutions to protect prospective jurors from being dismissed based on their life experiences. First, it will discuss how *Williams* demonstrates that, to be impartial, a juror need not reject his or her life experiences.[175] Next, how courts should be mandated to analyze this question using *Williams*, *Pippin* and *Malone*. Then, this section will address a solution of implementing a federal statute in the United States Code (U.S.C.), where a juror shall disqualify himself when impartiality might be reasonably questioned along with the penalties for non-compliance.

A. Where There is a Will[iams] There is a Way

The holding in *Williams* supports the idea that, to be impartial, a juror must not reject his or her own life experiences.[176] The reasoning by the Supreme Court of Massachusetts was not mandated by statute or derived from a test that was developed by the United States Supreme Court.[177] The *Williams* court observed what it means to be a human being, full of life experiences that are the "product of his cultural, family, and community experience."[178] Many prospective jurors will have already formed opinions regarding the particular case they are instructed to observe. A person develops these opinions and biases over time through their life experiences. Without these life experiences, a person would be unable to fairly evaluate the evidence and properly apply the law. The jury box would be filled with newborns who are unable to process what they are being presented, or robots who are all programed exactly the same way. This would not be an adequate representation of the community. A juror would have no education, work experience, or relationships to reference during deliberations. The holding in *Williams* makes it clear that a prospective juror should never be asked to reject his or her life experiences.[179] A judge may inquire about a juror's background

174. *Wood*, 299 U.S. at 145.
175. *Williams*, 481 Mass. at 446.
176. *Id.*
177. *Id.* at 453.
178. *Id.* at 449.
179. *Id.* at 451. (stating "[i]t would neither be possible nor desirable to select a jury whose members did not bring their life experiences to the court room and to the jury deliberation room").

during *voir dire*, but his or her life experiences should not be the reason for dismissal.

The holdings in *Malone* and *Pippin* go even further by allowing jurors to use not only their life experiences but to apply their professional experience and knowledge during deliberations.[180] This is what makes each and every person different. It is only natural for someone to rely on their education and work experience when interpreting facts. This allows each member of the jury to acquire new evidence in different ways. If all of the jurors had similar past experiences, they would hold similar expectations about the world. This may increase group cohesion, "but it can also have a negative effect on group decisions."[181] For example, "members of the same political party are likely to interpret incoming data in the same way regardless of whether they discuss their interpretation with each other."[182]

To be a "body truly representative of the community," jurors must come from different backgrounds and share different personal characteristics.[183] Neither a judge, a prosecutor, nor a defense attorney should be allowed to create a jury that is the "organ of any special group or class."[184] Although it may benefit one of the parties, it does not "comport with the concept of the jury as a cross-section of the community."[185] We cannot allow courts to depart from the traditional requirements of a jury trial because of the desire of one party to assemble a similar group. Although the goal is to remove bias from the courtroom, this strategy may consequently result in bias when all members of the jury are from the same organization or have received the same training.[186] Courts should be mandated to analyze these questions using the

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180. *Pippin*, 252 P.3d at 1063; *In re Malone*, 12 Cal. at 963.

181. Dan Bang & Chris Frith, *Making Better Decisions in Groups*, NCBI (Aug. 16, 2017), www.ncbi.nlm.nih.gov/pmc/articles/PMC5579088/ [perma.cc/2B2A-XSUC].

182. *Id.*

183. Glasser v. U.S., 315 U.S. 60, 86 (1942) (stating that "[t]endencies, no matter how slight, toward the selection of jurors by any method other than a process which will insure a trial by a representative group are undermining processes weakening the institution of jury trial, and should be sturdily resisted").

184. *Id.*

185. *Id.*

186. *Id.*

> No matter how high-principled and imbued with a desire to inculcate public virtue such organizations may be, the dangers inherent in such a method of selection are the more real when the members of those organizations, from training or otherwise, acquire a bias in favor of the prosecution. The jury selected from the membership of such an organization is then not only the organ of a special class, but, in addition, it is also openly partisan.
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> *Id.*

reasoning set forth in *Williams*, *Pippin,* and *Malone*. This will require the United States Supreme Court to take a case involving these issues in order to create precedent that other courts will have to follow.

The case law discussed above demonstrates that some judges are still requiring jurors to do the impossible.[187] Instructing a prospective juror to reject his or life experiences and base their decision solely on the facts and evidence presented in court is asking too much.[188] Ironically, judges are not asked to leave their life experiences in the robing room prior to making rulings in court.[189] "All judges come to the bench with a background of experiences, associations, and viewpoints."[190] According to Justice Rehnquist, "[p]roof that a Justice's mind at the time he joined the Court was a complete tabula rasa in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias."[191] Similarly, a juror's life experiences should not be observed as evidence of bias, but instead as his or her qualifications to serve on a jury.

B. A Federal Statute for Jurors that models 28 U.S.C. § 455. Disqualification of Justice, Judge, or Magistrate Judge

The United States Code Section 455 is a recusal statute that is meant to protect litigants from biased and prejudiced judges.[192] While this section provides rules for judges, there is no statute that is meant to protect litigants from biased and prejudiced jurors.[193] Judges, like jurors, bring unique life

187. *Pippin*, 252 P.3d at 1063.

188. *Sisto*, 606 F.3d at 626.

189. Sandra Day O'Connor, *Justice Sandra Day O'Connor on Why Judges Wear Black Robes*, SMITHSONIAN (Nov. 2013), www.smithsonianmag.com/history/justice-sandra-day-oconnor-on-why-judges-wear-black-robes-4370574/ [perma.cc/4VFT-EPHZ] (stating that the robing room is "the court's versions of a locker room").

190. Easley v. Univ. of Mich. Bd. of Regents, 853 F.2d 1351, 1356 (6th Cir. 1988).

191. Laird v. Tatum, 409 U.S. 824, 835 (1972).

> Since most Justices come to this bench no earlier than their middle years, it would be unusual if they had not by that time formulated at least some tentative notions that would influence them in their interpretation of the sweeping clauses of the Constitution and their interaction with one another. It would be not merely unusual, but extraordinary, if they had not at least given opinions as to constitutional issues in their previous legal careers.

Id.

192. 28 U.S.C. § 455 (2019).

193. *Wood*, 299 U.S. at 145.

experiences with them into court. Judges are not asked to reject their life experiences, but instead are asked to set aside any bias resulting from those experiences.[194] The Seventh Circuit has observed:

> [I]n the real world, "possible temptations" to be biased abound. Judges are human; like all humans, their outlooks are shaped by their lives' experience. It would be unrealistic to suppose that judges do not bring to the bench those experiences and the attendant biases they may create. A person could find something in the background of most judges which in many cases would lead that person to conclude that the judge has a "possible temptation" to be biased. But not all temptations are created equal. We expect--even demand—that judges rise above these potential biasing influences, and in most cases we presume judges do.[195]

The Seventh Circuit's reasoning in *Del Vecchio v. Illinois Department of Corrections*, although regarding a judge, can be compared to the Supreme Court of Massachusetts analysis in *Williams*.[196] Both courts acknowledge that a person's outlook, whether they are a judge or a juror, is shaped by their life experiences.[197]

"[T]he judicial system hopes for a judge possessing experience and knowledge of the workings of the world and the cogs of his community rather than a judge with a vacuumed mind."[198] Despite the similarity in analysis, judges and jurors are subject to different rules when dealing with impartiality.

To ensure deliberate, unbiased fact-finding, Congress can eliminate this dual standard between judges and jurors by amending 28 U.S.C. § 455 to include disqualification of juror. This section of the statute would read as follows:

> (a) Any juror shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the juror or such lawyer has been a material witness concerning it; (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy; (4) He knows that he,

194. Del Vecchio v. Ill. Dep't of Corr., 31 F.3d 1363, 1372 (7th Cir. 1994).

195. *Id.*

196. *Id.*; *Williams*, 481 Mass. at 448.

197. *Del Vecchio*, 31 F.3d at 1372; *Willaims*, 481 Mass. At 448.

198. In re Estate of Hayes, 185 Wash. App. 567, 598 (2015) (stating "after all, judges do not leave their common experience and common sense outside the courtroom door").

> individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding; (5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (i) Is a party to the proceeding, or an officer, director, or trustee of a party; (ii) Is acting as a lawyer in the proceeding; (iii) Is known by the juror to have an interest that could be substantially affected by the outcome of the proceeding; (iv) Is to the juror's knowledge likely to be a material witness in the proceeding. (c) A juror should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.[199]

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199. § 455 (a)-(f). This statute would be modified to apply to jurors in the same way that it applies to justices, judges, and magistrate judges. Similarly, a juror would be expected to recuse himself when his impartiality might reasonably be questioned and whenever any of five criteria exist.

> (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it; (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy; (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding; (5)He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (i) Is a party to the proceeding, or an officer, director, or trustee of a party; (ii) Is acting as a lawyer in the proceeding; (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; (iv) Is to the judge's knowledge likely to be a material witness in the proceeding. (c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household. (d)For the purposes of this section the following words or phrases shall have the meaning indicated: (1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation; (2) the degree of relationship is calculated according to the civil law system; (3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian; (4)"financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

To ensure impartiality, jurors and judges, each having unique life experiences as members of the community, would then be subject to the same guidelines. With the amended statute, a juror would be required to disqualify him or herself under the same circumstances as a judge. A juror would also be allowed to bring his or her life experiences into the courtroom. As with a judge, society would presume that a juror would set aside any potential biases derived from those past experiences.

Our legal system places great importance upon a trial by jury. This is derived from the "special confidence we repose in a body of one's peers to determine guilt or innocence," and it deserves to be protected.[200]

> If a juror's partiality would have constituted grounds for a challenge for cause during jury selection or for discharge during trial, but the juror's concealment of such a state of mind is not discovered until after trial and verdict, the juror's actual bias constitutes misconduct that warrants a new trial.[201]

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund; (ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization; (iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest; (iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities. (e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification. (f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

200. Johnson v. Louisiana, 406 U.S. 356, 373 (1972) (reasoning that "[i]t is this safeguarding function, preferring the commonsense judgment of a jury as a bulwark against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge, that lies at the core of our dedication to the principles of jury determination of guilt or innocence").

201. People v. Nesler, 16 Cal. 4th 561, 581 (1997).

To guard against juror misconduct, certain penalties should be in place for those who violate the disqualification of juror statute. Any juror who fails to disqualify himself because his impartiality might reasonably be questioned may be charged with Obstruction of Justice.[202] If convicted, the juror shall be fined or imprisoned not more than six months, or both.[203]

V. CONCLUSION

The judicial system relies on the impartiality of judges and jurors. For this to occur, a judge or juror need not have his or her mind erased prior to trial. The Supreme Court of Massachusetts in *Williams* adopted the position that it was not necessary for a prospective juror to reject his or her life experiences to be impartial.[204] Cases like *Sisto*, show the need for a uniform statute regarding juror impartiality.[205] *Sisto* demonstrates the minority approach that prospective jurors, prior to looking at the case, must forget every opinion, decision, and observation they ever made.[206] Both judges and jurors are given great responsibility, trusted to be impartial and unbiased, but yet their qualifications to serve are determined by different standards. As human beings, individuals, and people of the community, are they really that different to allow the use of life experiences for one but yet tell the other that they must reject them? The result of *Williams* demonstrates that the question should be answered in the negative.

> [A]ctual bias supporting an attack on the verdict is similar to actual bias warranting a juror's disqualification….Actual bias in this context is defined as the existence of a state of mind on the part of the juror in reference to the case, or to any of the parties, which will prevent the juror from acting with entire impartiality, and without prejudice to the substantial rights of any party.
>
> *Id.* (internal citations omitted).

202. 18 U.S.C. § 1504 (2021).
203. *Id.*
204. *Williams*, 481 Mass. at 451.
205. *Sisto*, 606 F.3d at 626.
206. *Id.*