

IDENTIFYING JUROR BIAS: USING THE PRETRIAL
JUROR ATTITUDE QUESTIONNAIRE
FOR MORE EFFECTIVE
VOIR DIRE

by

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ABSTRACT

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A vast amount of empirical study exists regarding both the juror decision-making process and testing the validity of various methods for finding juror bias. Juror decision making is based on a multitude of factors including, but not limited to, ability to retain information, strength of evidence, preconceived ideas about lawyers, the justice system and law enforcement. Further, the concern regarding judicial economy during voir dire gives rise to ineffective attorney questioning as well as pressure placed on jurors to fulfill their duty to serve.

This study seeks to rely on a version of the Pretrial Juror Attitude Questionnaire or

PJAQ as developed by other researchers, modified by the author, as a valid predictor of bias to create profiles of acceptable jurors in criminal cases. Further, the review explores the prospect of the bias scale as a tool for attorneys to use in voir dire to assist with making decisions about the utilization of peremptory strikes. The higher the pro-prosecution bias the more likely the juror will vote to convict, therefore the higher the pro-defense bias the more likely the juror will acquit. It is also hypothesized that juror partiality will be more evident in cases where the jurors have little information about the parties involved and the evidence is weak.

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CHAPTER 1

INTRODUCTION

Oklahoma United States District Court Judge Frank Seay conveyed his concern and fear for the future of our criminal justice system when he vacated the conviction of Ron Williamson, who at the time was set to be executed within the next five days . (Scheck 2006)

While considering my decision in this case I told a friend, a layman, I believed that facts and law dictated that I must grant a new trial to a defendant who had been convicted and sentenced to death. My friend asked, “is he a murderer?” I replied simply, “We won’t know until he receives a fair trial.” God help us, if ever in this great country we turn our heads while people who have not had fair trials are executed. That almost happened in this case.” (*Williamson v. Reynolds*, 904 F. Supp. 1529, 1576 (W.D. Okla. 1995)).

Unfortunately, this case is not as unusual as one might wish to believe. According to the Innocence Project (2007), DNA evidence has exonerated 208 people in 31 states since 1989. The defendants in these cases were convicted, lost their appeals, exhausted their post-conviction remedies, and then DNA testing exonerated them. (Scheck 2006) On that basis, those wrongfully convicted spent a total of 2,538 years wrongfully imprisoned. (Innocence Project 2007) It should be noted that although DNA has rescued many, there is likely more innocents imprisoned. Criminalists say that in 80% to 90% of cases, there is no biological evidence in order to do dispositive testing. (Scheck 2006). Essentially, not all cases have the DNA ‘safety net’ and leave innocents no remedy once the post-conviction process is exhausted. Therefore, in an effort to consider the contribution of juror bias to wrongful conviction, this study seeks to rely on a revised version of the Pretrial Juror Attitude

Questionnaire or PJAQ as developed by Dr. Bryan Myers and Dr. Len Lecci (2005), modified by the author, as a valid predictor of bias to create profiles of acceptable jurors in criminal cases. Further, the review explores the prospect of the bias scale as a tool for attorneys to use in voir dire to assist with making decisions about the utilization of peremptory strikes. The higher the pro-prosecution bias the more likely the juror will vote to convict, therefore the higher the pro-defense bias the more likely the juror will acquit. It is also hypothesized that juror partiality will be more evident in cases where the jurors have little information about the parties involved and the evidence is weak.

The Texas Court of Criminal Appeals is contributing to the changes occurring to offer relief to those who have been wrongfully convicted. The statutes surrounding DNA testing have been interpreted as to give trial courts the ability to deny testing of DNA in cases where identity is not at issue. Recently, the Texas Court of Criminal Appeals handed down an opinion holding that a defendant can make identity an issue by showing that exculpatory DNA tests would prove his innocence, even when the victim knew the attacker prior to the incident and identified him. (*Blacklock v. State*, Nos. PD-16939 and 1640-06, 2007 Tex. Crim. App.) This reasoning applies whether the defendant pled guilty, conceding to identity or if conviction occurred from trial.

Contributing factors to wrongful conviction are improper eyewitness identification (the leading cause of wrongful conviction), junk science, and false confessions. (Innocence Project 2007) Because Dallas County has the highest rate of exoneration in the country, efforts to combat wrongful conviction have been stepped up. (Yan 2007) Newly elected District Attorney, Craig Watkins, instituted a department called Conviction Integrity to

review old DNA cases in conjunction with Innocence Project. (Yan) The hope is that this collaboration will uncover other cases of wrongful conviction and lead to the release of more innocents. The Dallas County Police Department has joined the District Attorney's office by participating in a federally funded study seeking the best possible way to confirm eyewitness identification. (Eiserer 2007) This is especially important considering that three-quarters of wrongful convictions nation wide depended on eyewitness testimony. (Eiserer)

For every criminal defendant who is exonerated and found innocent of the charges for which he/she was convicted, the State is responsible for damages for each year he or she spent wrongfully imprisoned. (TEX. CIV. PRAC. & REM. CODE ANN. § 103, Vernon 2005) (stating exoneree has right to up to \$500,000) Society, therefore, pays the price of juror bias due to this direct economic effect. More importantly, as will be discussed in Chapter 2 innocent people that are wrongfully convicted likely generates a mistrust of the justice system that negates the United States Constitution. Additionally, the responsibility for choosing the jury is placed on the attorney and failure to identify partial jurors is malpractice.

As more criminal defendants are exonerated, the necessity for identifying partiality becomes ever more vital. For example, Dallas County, Texas has twelve exonerations based on DNA evidence excluding the convicted individual as the perpetrator. (McGongile 2007) Thus, Dallas County appears to be an ideal setting for the administration of this study.

It is arguable that reformation of the criminal justice system is necessary to accept that individuals are wrongfully convicted and that something must be done to ensure a fair trial. Therefore, if a defendant has been wrongfully identified or has falsely confessed, the next

strongest available hope for justice is the Constitutional guarantee of an impartial jury. It is then up to the prosecution and defense attorneys to identify the jurors who are not impartial. It is likely that in the cases that went to a jury trial, many jurors had a bias that was not properly identified. Attorneys' failure to identify bias creates a system that becomes irreparably flawed. Thus, concerns regarding impartial juries require examination. (Schniederjans & Hollcroft 2005)

One of the tenets of American jurisprudence is the right to a trial by jury. A jury that decides the fate of the defendant has a duty to be impartial. Research (as noted in the subsequent literature review) suggests that juror bias is rampant amongst empanelled jurors and the methods attorneys utilize during voir dire are not effective in identifying said bias. Public debate about the trust we place in the jury system raises questions about the nature and legitimacy of verdicts in light of jury composition. (Diamond & Rose 2005) Much discussion exists in the legal community about whether lay people should make decisions regarding technical cases.

A vast amount of empirical study exists regarding both the juror decision making process and testing the validity of various methods for finding juror bias. Juror decision making is based on a multitude of factors including, but not limited to, ability to retain information, strength of evidence, preconceived ideas about lawyers, the justice system and law enforcement. Further, the concern regarding judicial economy during voir dire gives rise to ineffective attorney questioning as well as pressure placed on jurors to fulfill their duty to serve.

Specifically, the author will discuss in Chapter 2 a review of the literature including:

a) jury selection practices including challenges for cause and the use of peremptory strikes, b) juror bias and juror decision-making, c) common measures of pretrial bias, and d) studies administered to measure the validity of jury selection tools. The review will include discussion of tools utilized by attorneys, the policy implications of incorporating a juror bias scale into voir dire, and the academic analysis of current effectiveness of said tools.

Chapter 3 contains the methodology employed for this study. Using quantitative analysis, the study measures juror bias based on knowledge and perception as compared to each individual's demographics in order to create a profile. Variables introduced to the jurors are analyzed as to the impact of demographics and the criminal case itself in rendering verdicts.

In Chapter 4 the outcome of the questionnaire and the data derived from the experiment are listed. The demographics as compared to scaled bias will be reviewed as well as any statistical significance that arise.

Chapter 5 includes the conclusions and findings resulting from the data. Analysis of the hypothesis and potential policy implications are generated. Limitations and recommendations for future research are also included.

CHAPTER 2

LITERATURE REVIEW

The purpose of this chapter is to review the literature related to jury selection practices including challenges for cause and the use of peremptory strikes, juror bias and juror decision-making, common measures of pretrial bias, and studies administered to measure the validity of jury selection tools. Also included is a discussion of tools utilized by attorneys, the policy implications of incorporating a juror bias scale into voir dire, and the academic analysis of current effectiveness of said tools.

In 1983, a jury convicted James Giles in Dallas County, Texas for participating in the gang rape of a pregnant woman. (Bustillo 2007) A tipster, Marvin Moore, notified police that a man named James Giles was involved in the rape. Corroborating Giles involvement, the victim identified him as the perpetrator in a police lineup even though he was much older and physically larger than her initial description. (Bustillo) The identification was the only evidence in the State's case linking Giles to the rape. A jury found him guilty although Giles's wife and mother established his alibi, including restaurant receipts, from the exact time the rape occurred. While Giles was in prison he encountered Moore who immediately realized that the police had gotten the wrong James Giles. Upon reviewing the case, the Innocence Project discovered that another James Giles who matched the initial description.

the victim gave police, lived across the street from the victim. Police apparently focused on the older Giles because he was on probation for attempted murder. Giles was exonerated on April 9, 2007 with the apologies of District Attorney Craig Watkins. (Bustillo) Arguably, this instance is not as rare as society would likely prefer. As previously stated, there are several factors that are potential causes, alone or aggregated, that lead to wrongful convictions. Such factors include improper eyewitness identification, junk science, and false confessions. (Innocence Project 2007) Another factor that has received a vast amount of attention by empirical researchers is juror bias. Bias deserves much attention because the preconceived ideals that a juror maintains will likely have a direct impact on the verdict. The goal of attorneys in the voir dire process, which is not necessarily successful, is to be able to identify bias to challenge a juror for cause or utilize a peremptory strike. To aide attorneys this study seeks to utilize a valid predictor of juror bias that can replace initial voir dire questioning and offer attorneys a tool identifying jurors who should be challenged for cause or to strike by peremptory challenge. To gain better understanding of the jury process, this review will discuss jury selection practices, juror bias and juror decision-making, common measures of pretrial bias, and studies administered to measure the validity of jury selection tools.

2.1 Jury Selection Practices

Jury selection involves: 1) creation of a list from the population who are eligible to serve and are registered to vote; 2) upon arrival to the designated area per the jury summons, grouping individuals into panels; and 3) sending panels to the courts to be questioned by the judge or the attorneys for possible selection. The venire, the individuals on the panel, is

voir-dired, or questioned. This interrogation is for placing impartial jurors on the jury panel for the trial. These procedures are also for weeding out the individuals who are aberrant or incompetent. (Hastie, 1991)

"Voir dire has long been recognized as an effective method of rooting out such bias, especially when conducted in a careful and thoroughgoing manner." See *United States v. Duncan*, 444 U.S. 871 (1979). *Smith v. Phillips*, however, describes situations in which state procedures are inadequate to uncover bias. (455 U.S. 209, 1982) In her concurring opinion, Justice O'Connor expresses concern that partiality must be addressed during voir dire because there are limited legal remedies for juror influence.

Determining whether a juror is biased or has prejudged a case is difficult, partly because the juror may have an interest in concealing his own bias and partly because the juror may be unaware of it. The problem may be compounded when a charge of bias arises from juror misconduct, and not simply from attempts of third parties to influence a juror.

Although the purpose of voir dire is to question venire panels in order to uncover bias, attorneys are not necessarily skilled at uncovering the necessary information negatively influencing who is being represented in court. (Hastie, 1991) Open for empirical examination are the abilities of attorneys to uncover juror thoughts, attitudes, and attempts to reduce bias by special instructions or procedure, and use of voir dire to indoctrinate jurors to favor a particular side. (Hastie) Hastie further states that the adversarial framework of trial has a balance that should reduce jury prejudice if attorneys are skilled in discerning potential bias. Attorneys are in need of a tool that is efficient, effective, and valid.

Two tools that are available to excuse a member of the venire and avoid that particular juror's preconceived bias is the use of challenge for cause and peremptory

challenges. (See TEX. CODE CRIM. PROC. ANN. art. § 34.14 and 35.16) Challenges for cause are adversarial in nature. The attorney will argue to the court that a juror should be dismissed for specific reasons because he/she cannot likely render an impartial verdict. An attorney can exercise challenges for cause to an unlimited degree. Should a juror appear partial but the partiality does not rise to the level necessary under cause, the peremptory strike is available. The peremptory is limited by a set amount based on the type of case determined by jurisdiction.

The peremptory challenge has encountered much legal analysis and Supreme Court interpretation. Although this review does not intend to debate the issues surrounding the peremptory challenge, it is worth noting that as an attorney tool there are certain limitations. Under *Batson v. Kentucky*, the United States Supreme Court ruled that a peremptory challenge cannot be used to remove jurors solely because of their race. (476 U.S. 79, 1986) The holding in *Batson* was expanded to include gender under *J.E.B. v. Alabama*. (511 U.S. 12, 1994) This allows opposing attorneys to question the other sides jury selection tactics in order to justify the removal of a juror. The remedy for jurors who have been improperly challenged is to put all improperly struck venire members on the jury or order a new jury panel.

The process of voir dire has arguably become an art for many organizations who hire attorneys just for voir dire purposes and who do not participate in other aspects of trial. Importance of jury selection has been the impetus for the utilization of experts to give the attorney a better chance of picking the “best” jury. The ability to pick the “best” jury has become an important topic in American jurisprudence. Often jury consultants are employed

to use knowledge and intuition to analyze a jury pool. (Schniederjans & Hollcroft 2005) The ethics of utilizing jury consultants has been called into question as well as the lack of regulation of jury consultants. Nevertheless, jury consulting is a tool for attorneys to become stronger advocates for the client. The methods by which consultants profile jurors, known as scientific jury selection, has also been called into question by academics and scholars who do not see how this form of selection could be valid and/or reliable. Scientific jury selection, however, has over a thirty-five year history.

The development of scientific jury selection began in 1971. (Lecci , Morris, & Snowden 2004) A group of seven Vietnam War protesters accused of conspiring to destroy selective service records and kidnap former-Secretary of State, Henry Kissinger, were placed on trial in Harrisburg, Pennsylvania. This location was chosen for the trial because it was known to be politically conservative, which would likely guarantee several guilty verdicts. Their prosecution became known as the Harrisburg Seven Trial. Because of the known jury pool, a group of sociologists from Columbia University who sympathized with the Harrisburg Seven, offered to help the defense team pick a jury that would be impartial. (Shestowsky & Strier 1999) To accomplish this, they administered surveys of Harrisburg residents, conducted interviews, and utilized a computer program to create what they considered to be the profiles of the best and worst demographics for the defense. (Cleary, 2005) The profile of the most favorable juror to the defense was female, a liberal democrat, with a strong belief in the presumption of innocence, no religious affiliations, and politically tolerant. (Varinsky 1992) Their efforts were successful; the prosecution spent about two million dollars on the case to have it end with a hung jury. (Shestowsky 1999). This highly

publicized case was the first to publicly call attention to the need for effective methods to discover preconceived juror bias.

Other political cases that followed utilizing similar strategies include the 1970 trials involving the Attica prison riots, the prosecution of John Lennon's assassin, the lawsuit against the manufacturers of Agent Orange brought by Vietnam veterans, the Watergate prosecution, the trial of a Columbian drug lord. (Fredrick, 1984); the MCI 1980 anti-trust suit against AT&T (which ended in an award for MCI of \$600 million); the defense of Rodney King (Shestowsky, 1999); Oprah's successful defense against defamation which launched Dr. Phil's career (Tooher, 2005); the prosecution of Scott Peterson (Hutson, 2007); the McDonald's hot coffee case; and the \$253 million dollar award against Vioxx (Shestowsky, 1999). The parties that employed jury selection experts received a favorable verdict, showing that instruments and/or methods are available to ascertain who is partial.

One of the most famous cases that brought notoriety to scientific methods and jury consulting was the prosecution of O.J. Simpson in Los Angeles. Jo-Ellen Dimitrius, lead trial consultant with a Ph.D. in government and criminology, used phone surveys administered to the community of Los Angeles County in order to establish attitudes and decide on the best juror profiles. (Davis & Davis, 1995). Specifically, the questions targeted people's perception of Simpson and overall feelings about evidence. (Davis, et al. 1995) After the profiles were created, juror questionnaires were written for voir dire. (Davis, 1995) The prosecution also employed a jury consultant but fired him two days into trial and ignored all his advice resulting in an acquittal.

Jury consultants typically use methods that include inventorying a potential jurors'

demographic information as well as attitudes for the purpose of perception analysis. This is often done using mock juries, focus groups, and questioning members of the community, thereby becoming a safeguard for an attorney and his client. According to one Boston based attorney, “no self-respecting trial lawyer will go through the process of jury selection in an important case without assistance of a highly paid trial consultant.” (Gordon 1995) A New York attorney surmises that “it’s gotten to the point where if the case is large enough, it’s almost malpractice not to use a trial consultant.” (Adler 1989). Further, because there are Constitutional protections in place, the American Bar Association has recognized that trial consultants may be necessary in order for an attorney to provide fair representation. (Shestowsky et.al, 1999) A consultant can reinforce competent representation for a criminal defendant in a death penalty case by weeding out the “lethal prejudice” that may exist in the jury pool. (American Bar Association, 1989)

It should be noted, however, that the expense of hiring a consultant is likely prohibitive in criminal cases. Protections in place by the U.S. Constitution do not include the right to the help of a jury consultant. Thus, the ability of an attorney to identify bias is a vital skill to criminal trial work. It is necessary then to discuss the literature surrounding juror bias and the juror decision-making process.

2.2 Juror Bias and Juror Decision-Making

The prejudice and bias individuals maintain have a direct impact on the outcome of trial and whether or not it was constitutionally fair. The courts must be aware of community attitudes about particular defendants such as in the case of the Oklahoma City bomber Timothy McVeigh. On the motion for change of venue, Judge Matsch consulted a dictionary

about the definition of prejudice. (Lane 1996) He recognized that prejudice is difficult to prove and could deny McVeigh of a fair trial. Erring on the side of caution, he ruled to have the case transferred to Colorado avoiding a jury pool that was incapable of being fair. In McVeigh's case, the bias of the community he was charged of hurting was not likely to hold him to an objective standard. Every jury pool is reviewed as harboring hidden bias ripe for discovery. In order to evaluate aids to attorneys to uncover said bias in cases where bias will not be as obvious, it is important to understand what bias is and how it often affects verdicts.

Juror bias has been defined in the literature as integrated extralegal elements that influence jurors' consideration of trial evidence in arriving at a verdict. (Kaplan, 1982) Kaplan and Miller (1978) asserted that particular facts of the trial such as defendant's characteristics, pretrial publicity, and evidence bring out rooted bias. Also, the juror's philosophical ideals, such as views of the justice system, show general bias. A juror may experience bias because he/she identifies with the defendant or the victim resulting in having a perceived interest in the trial outcome. (Vidmar, 2002) This includes a desire to be a consistent member of a perceived group and wanting to be loyal to that group. It then becomes incumbent upon the practitioners to provide the means necessary to ensure that the citizenry in fulfilling a duty are truly impartial.

Kaplan (1978) notes that there are two constructs in which bias falls, specific or general attitudes. Specific attitudes reflect varying attitudes according to the specific case or defendant. (Kaplan & Miller, 1978) General attitudes reflect stable ideals regarding criminal justice system in general. (Kaplan et.al., 1978) The bulk of research conducted has been in specific attitude assessments. Examples of such studies include the impact of evidence

admissibility on juror perception (Pickel, 1995; Sue, Smith, & Caldwell, 1973); victim respectability (Jones & Aronson, 1973); pretrial publicity (Carroll, Kerr, Alfini, Weaver, MacCoun, & Feldman, 1986; Green & Wade, 1987; Kramer, Kerr, & Carroll, 1990); race of defendant (Johnson, Whitestone, Jackson, & Gatto, 1995); and attitudes toward the death penalty.

As compared to the research on specific attitudes, there have been few studies regarding general bias. Because of this, academics and legal experts appear to be concerned with the bias and preconceived notions potential jurors have on guilt or innocence. Yet, there are few empirical studies done to evaluate bias/attitude scales themselves. Of those, none have attempted to measure bias on the issue of guilt/innocence in criminal cases. (Myers et.al., 1998) It is arguable that the scales designed for assessing bias are better at determining attitudes towards punishment, not actual guilt, or liability. Whether it is specific or general, if an individual's bias cannot be identified, then the belief that "almost every case has been won or lost when the jury was sworn"¹ offers little comfort to the state prosecutor attempting to overcome reasonable doubt or the innocent defendant.

A major problem is that uncovering the bias, whether specific or general, is directly inhibited by the conditions under which voir dire occurs. Jurors are placed into a new situation with strangers, asked to follow rules not in front of them to read, and asked whether it is possible to be impartial with little or no facts. (Peck, 2004; Patterson & Neuffer 1998) It is difficult to presume that jurors would be willing to honestly identify their

¹ Quote by legendary attorney Clarence Darrow regarding the importance of jury selection based on who you choose.

prejudices revealing hidden bias in open court. (Hans & Jehle, 2003; Rose, 2003, Vidmar, 2002; Hans & Vidamar, 1986; Nisbett & Wilson, 1977) In fact, research has verified that jurors will not identify bias or be honest during questioning. One such study was conducted in the context of post-service interviews upon dismissal from jury service. (Rose 2003) Rose observed that jurors admitted having a difficult time determining bias. Many confessed to not being able to keep an open mind even though they answered in the affirmative when asked during voir dire if they could remain impartial. Further, it is unfair to put the burden and reliance on the juror to determine whether or not he/she can be impartial. (Hans & Vidmar 1986).

Voir dire by its nature is in a public forum leaving jurors open to the effects of social constructs. This is likely due to attorneys utilizing the laboratory system of voir dire or the interrogative approach. (Schniederjans et. al) The laboratory system requires an attorney to ask a myriad of questions, primarily demographic in nature, to analyze which jurors should be struck. (Schniederjans) The interrogative approach includes a multitude of questions based on social affiliations, attitudes on various topics, and religious beliefs. (Schniederjans) The purpose to bombard jurors with as many questions as possible, often tailored to the case in question to establish favoritism toward one party. (Schniederjans) Because jurors value their privacy, (Rose 2005) an attorney's attempt to discover deep setting bias based on life experiences by either system will cause a juror to be less than forthcoming. (Diamond & Rose 2005) Although courts allow for discussion behind closed doors, thereby, limiting the open court intimidation upon jurors, it is still likely that the juror will fail to reveal pertinent information. For example, according to a study by Seltzer (1991), 25% of jurors selected for

criminal cases did not volunteer information during the voir dire process that either they or a relative had experienced criminal victimization, which likely is correlated to preconceived attitudes.

The open court voir dire concept places certain pressures that will inhibit a juror from revealing information. Many courts, whether voir dire is administered by the presiding judge or attorneys, interrogate the potential panel as a group. Reliance is then placed upon the juror speaking up and volunteering answers to questions. According to Mize (1999), one judge was so frustrated at the silence and refusal to answer questions, that he instituted a private interrogation of each juror who remained silent. Of those who were silent, 20% responded to the individual voir dire revealing conflicts or severe difficulties. To further substantiate this concern, it has been shown that there are higher sustained challenges for cause when a judge allowed for private individual voir dire. (study based on capital case voir dire practices, Nietzel & Dillehay 1982)

Other such pressure is the demand to serve society by being a juror. Observation studies have shown that judges spend a great deal of time explaining how much the court needs their willingness to serve. (Rose 2005) This is often followed by what is known as juror rehabilitation. If a juror states that he or she feels that he or she cannot follow the law, follow up questions are administered in order to reduce this bias thus rehabilitating them. (Diamond, Ellis, & Schmidt 1997) This technique is often used to avoid a challenge of cause from an opposing side, forcing the opposition to use a peremptory challenge.

Another issue facing jurors is psychological reactance, according to Liberman and Arndt. (2000) This means that when people feel that their intellectual freedom is threatened

then not only do individuals pay more attention to it, but will find it more attractive, thus more memorable. This theory was developed by Brehm (1966) and can potentially explain why any admonishments by a judge regarding evidence or actions by counsel could actually become more attractive to jurors. (Lieberman & Arndt 2000) To further substantiate this, it has been shown that jurors do not “ignore” inadmissible evidence (Pickel 1995), therefore a backfire occurs. Therefore, an instruction during voir dire as to what can or cannot be considered at trial could have the opposite intended result.

Based on the aforementioned studies, it is reasonable to believe that the infrastructure of voir dire and its current administration is a direct hindrance to the ability to uncover juror bias. To approach the problem of uncovering juror bias it is therefore important to consider how jurors make decisions about cases in order to render a verdict.

Decision-making is the juror job description. Jurors are called to evaluate and compare credibility of conflicting accounts of past events, mental states, and to decide whether someone was injured or injured enough to be awarded compensation, or to convict a defendant. (Diamond & Rose 2005) This requires the active evaluation and plausible interpretation of the evidence as presented to them. (Diamond 2005) It is logical to accept that jurors weigh the information as internalized based on their own individual past experiences, which is a bias. Past research offers several theories as to how jurors evaluate the case as presented and render a verdict.

Pennington and Hastie (1981) reviewed four decision-making models to research how jurors make decision and specifically how evidence is evaluated. The first is the information integration models (Kaplan, 1975; Kaplan & Kemmerick, 1974; Ostrom, Werner, & Saks,

1978) which utilize an average calculation integrating information on a single dimension of culpability, across an initial opinion and information items pertaining to guilt. (Pennington & Hastie 1986) The evidence items are evaluated independently for guilt and at the conclusion of a trial the items are weighted then averaged to determine what the probability of a finding of guilt would be.

Second, Bayesian models (Marshall & Wise 1975) assert that the decision making process is product of a prior opinion and a diagnosis of each evidence item. This substantiates those who theorize that juror bias is essentially a filter for decision making.

Third, the Poisson process stochastic models (Kerr, 1978a, 1978b; Thomas & Hogue, 1976) describe the decision making process as the accumulation of evidence that, upon the happening of a critical event a weight is then fixed. Jurors then compare decision criteria to that fixed weight in order to make a decision.

Fourth, Sequential weighting models (Weld & Danzig, 1940; Weld & Roff, 1938) assert that decision making is a series of opinion revisions. Each revision is the weighted average of the previous judgment.

Upon reviewing these models, Pennington and Hastie (1986) developed what has become a widely accepted primary form of juror decision making. (Diamond & Rose 2005) They conducted a study based on the theory that jurors utilize a story model when evaluating evidence. Jurors assign meaning to evidence in an effort to create a “story” and figure out what happened. Thus, if there are gaps in the information presented, the juror will fill in those gaps in order to finish the story. (Hans & Jehle, 2003) These inferences made are likely based on individual personal experience. As related to the perception of new

evidence, Lord, et al. (1979) found that people will accept evidence at face value if it comports with that person's theory of the events at trial. When the evidence does not conform, however, the individual will then likely scrutinize the evidence more rigorously. Arguably, the scrutiny of non-conforming evidence is the sign of impartiality.

Finkelman (2005) suggests that jurors cling to psychological anchors to understand and determine what occurred in a case. These anchors are evaluated in the context of how the juror views the world. (Vinson, 1986) This provides reference points for which a juror can make decisions. Selective attention and selective perception are how jurors process information, meaning that a 'tune out' affect occurs. (Finkelman 2005). A contributor to selective attention and perception is information overload (Finkelman, Zeitlin, Filippi, & Friend, 1997) as well as a need to maintain consistent attitudes and behavior, also known as cognitive dissonance theory. (Festinger, 1957)

One particular instance in which the phenomena of selective attention and perception occurs is when an expert testifies. Apparently, jurors spend a great deal of time considering and discussing the content of expert testimony during deliberations. (Vidmar & Diamond 2001) Due to the fact that jurors are obviously aware that experts are hired by the parties involved, skepticism is initially placed upon expert testimony. (Shuman 1996) In light of jury instructions that require jurors to weigh expert testimony based on education and experience, it is likely that the content of the testimony is also used to determine the credibility of the expert. (Vidmar et al 2001). Content, however, is subject to the 'tune out' affect based on the psychological anchors that are in place.

Understanding bias and how jurors make decisions is vital to creating instruments to

measure verdict predictability. In light of preconceived bias, the external, extralegal factors that could overcome said bias require brief discussion.

2.3 Extralegal Factors

There have been many theories as to what external factors affect juror decision making. Attorneys have overwhelmingly relied upon demographics. Attorneys have typically utilized stereotypes surrounding demographic data in order to determine the impartiality of a juror. Research has shown that demographics are not valid factors to be considered when making such determinations. (Hans & Vidmar, 1982; Kressel & Kressel, 2002) It appears that mock trial verdicts were unrelated to sex, age, religion, occupation, or income. Some research has substantiated a relationship between demographics and verdicts, but no uniform set of predictors exist that have universal application. (Hepburn, 1980) In addition, the impact of demographics, including race, is dramatically overestimated. (Diamond & Rose, 2005) According to a study by Garvey et. al (2004) analyzing the verdicts of 3000 jurors in four major metropolitan areas, race had some predictive value, but only for some offenses for some defendants in some jurisdictions. African American jurors in the District of Columbia who were empanelled for a drug case were more likely to favor acquittal than white jurors in those cases. It should be noted, however, that race had no detectable influence.

Other extralegal factors that affect jury decision making are reliance on opening arguments (Pyszczynski, Greenberg, Mack, & Wrightsman, 1981; Pyszczynski & Wrightsman, 1981); disregard for judicial admonitions but actually paying greater attention to inadmissible evidence (Lieberman & Arndt, 2000; Patterson & Neuffer, 1998; Pickel,

1995; Sue, Smith, & Caldwell, 1973; Wegener et al., 2000; Wolf & Montgomery, 1977); pretrial publicity (Carroll, Kerr, Alfini, Weaver, MacCoun, & Feldman, 1986; Green & Wade, 1987; Kramer, Kerr, & Carroll, 1990); race of defendant (Johnson, Whitestone, Jackson, & Gatto, 1995); and defendant attractiveness (Dane & Wrightsmans, 1982; Gerbasi et al. 1977; Kaplan, 1982; Kressel & Kressel, 2002).

Evidence, however, appears to be the most likely determinative external factor in predicting juror verdicts (Kressel 2002) aside from preconceived bias. Jurors tend to be receptive to expert testimony and making personal credibility determinations about the expert's experience, education, demeanor, and communication skills. (Cooper, Bennett, & Sukel, 1996; Horowitz, 2001) As hypothesized for the purposes of this study, the extralegal, external factors will likely overcome some juror bias. However, because a tool to aide attorneys for initial determination of impartiality is necessary for the preservation of justice, a review of the studies surrounding jury selection tools follows.

2.4 Studies Administered to Measure the Validity of Jury Selection Tools

Researchers have recommended the use of questionnaires to assess juror bias. (Hans & Jehle, 2003) A questionnaire offers information about jurors to the attorneys prior to voir dire. (Schniederjans et. al) This is an early onset identifier. The developers of such identifiers as questionnaires and other scientific jury selection methods are typically psychologists. Many have doctoral degrees in areas of sociology, criminology, communications, marketing, and law. (Shestowsky et.al., 1999) A survey was administered to trial consultants who were members of the American Society of Trial Consultants, and of the respondents over half possess a Ph.D., in some cases a few having both a Ph.D. and a

J.D. (Shestowsky et.al.) Using the expertise of their various disciplines, they apply the educational knowledge base to a variety of different methods. The use of psychological theories for the purposes of analyzing verbal and non-verbal cues along with extensive juror questionnaires is the most common. (Shestowsky et. al.)

The courts, however, appear to be split on whether juror questionnaires as developed by consultants are the most fair and effective means of guaranteeing a fair and impartial jury. It is therefore valuable to review studies of various methods which employ scientific jury selection and questionnaires.

Two systematic empirical studies have tested the efficacy of scientific jury selection. The first conducted by Penrod, included statistical analysis, which utilized to following scientific jury selection handbooks and fit the statistical models into data from a large scale-mock jury study. (Bonara & Krauss, 1979) Jurors reviewed a reenacted murder trial. This included audio taped summaries of murder, rape, and robbery cases. (Fulero & Penrod, 1990) The researchers' findings concluded that statistical models as used by jury consultants combined with other strategies would likely provide a five to ten percent advantage over random jury selection in criminal cases. (Fulero et. al., 1990)

The second study trained law students to apply conventional intuition-based strategies, reliance on demographic stereotypes, or a scientific jury selection method. (Horowitz, 1980) The students observed the voir dire of mock jurors and then predicted the probable verdict of each mock juror in drug, court-martial, murder, and drunk driving cases. (Horowitz) The students using scientific jury selection tended to be more accurate in choosing the verdicts of the potential jurors, but only in the drug and court-martial cases.

According to Hastie (1990) these two studies reveal, “at present, the conservative conclusion is that the party employing survey-based ‘scientific’ selection methods yields slightly better results than the side using conventional, intuition-based voir dire strategy or random selection. These effects, however, typically fall in the range of five to ten percent better than chance, and it remains unclear exactly which types of cases will yield the greatest advantage to the ‘scientific’ selection methods.” (Hastie, 1990) Further, the variance accounted for in juror verdict preferences ranges from five to fifteen percent in the different case types and background characteristics. (Fulero et.al., 1990) Fulero and Penrod point out that this figure is not a low variance, but as compared to the application without scientific jury selection, an attorney could randomly pick jurors with the ability to correctly classify whether the individual is for or against his client upwards to 69% of the time. If an attorney has those kinds of odds, for scientific jury selection to be shown as effective it requires a very high level of successful predictability. (Fulero et.al.). However, uncovering bias to build a fair jury versus a “stacked” one should be the primary goal when approaching the implementation of various techniques.

Based on the aforementioned studies, one can assume that scientific jury selection and its use by jury consultants is an effective predictor of juror decisions. Studies, however, suggest otherwise. Of the existing studies, there is a substantiated link between demographic and personality variables, but this link is modest at best. Scientific jury selection links between demographics, personality, and attitudes to case prediction is low and unreliable. (Greene & Wade 2002). The bulk of the research has utilized college students (without regard for the fact that most jurisdictions give an exemption for college students to avoid

service on a jury) (Bornstein 1999); phone interviews at random from voter registration list; or mock trial scenarios which are essentially focus groups. (Shestowsky et.al., 1999) Other criticisms are that studies have failed to use materials from actual trials and do not include juror deliberation. (Hastie, 1991)

It should be noted that even though research is somewhat pessimistic about the efficacy of scientific jury selection, the true measure is likely the market. Trial consultants are thriving in the marketplace. The industry is estimated to be a \$400 million dollar industry with consultants charging \$50 to \$375 and hour. (Shestowsky et. al., 1999) It is not likely that attorneys would spend such a great deal of money on tools that do not work. There is too much at stake in criminal trials to use a tool that is not effective. Therefore, discussion of popular bias scales follows in order to consider the implementation of such a tool in criminal voir dire.

2.5 Legal Attitudes Questionnaire and Juror Bias Scale

Two scales developed to predict juror attitudes that have been widely used, are the Legal Attitudes Questionnaire (LAQ) (Boehm, 1968); and the Juror Bias Scale. (Kassin & Wrightsman 1983) The LAQ was developed first in time. LAQ specifically measures legal authoritarianism. Specifically, Boehm felt that personality traits related to authoritarianism might have a relationship to individual attitudes about punitiveness. Scholars hypothesized that if you can measure an individual's attitudes regarding authority you can predict their verdict. Legal-authoritarians are likely to have a higher predictability of verdicts. (Kravitz, Cutler, and Brock, 1993) Authoritarian items included "right-winged philosophy, endorsed indiscriminately the acts of constituted authority, or were essentially punitive in nature."

(Boehm) Anti-authoritarians were instead left winged, rejected authority, and societal structure. (Boehm) The more authoritarian the potential juror, the more likely to convict in a criminal case, the more anti-authoritarian the more likely to acquit, and those in the middle (equalitarian) were considered likely to acquit as slightly negative to authoritarians. (Kravitz et. al., 1993)

The instrument is composed of 30 statements in a forced choice format divided among the aforementioned anti-authoritarianism, equalitarianism, and authoritarianism. According to Peck (2004), antiauthoritarianism construct reflects the implied belief that social deviance is the result of societal problems, a rejection of the authority, or generally liberal political beliefs. The authoritarianism then reflects in contrast generally to conservative beliefs, more punitive than rehabilitation oriented attitudes, and support for authority. The equalitarianism represents more neutral beliefs that are not extreme or independent.

Several studies of LAQ have been conducted to assess the validity and reliability of the questionnaire. Three studies utilized the LAQ as originally developed by Boehm and, more recently, studies have used variations of the LAQ as the Revised Legal Attitudes Questionnaire (RLAQ).

The first study of the LAQ was in its inception. It was administered to 151 undergraduate students who filled out the questionnaire and then were presented with a murder case. (Boehm, 1968) The LAQ scores determined type of authoritarianism of each student. When presented with a murder case where the evidence indicated innocence, those who convicted had extremely high authoritarianism scores. When the same students were given a murder case where the evidence suggested guilt, those who acquitted tended to be

21 and over, and had high anti-authoritarian scores. Students under 21 years old did not show a reliable difference.

In 1971, 211 employed adults completed the LAQ, listened to audio taped simulations of two murder cases, and then rendered a verdict. (Juror, 1971) The findings in this study resulted in one case having a high number of equalitarian scores of those who convicted. The other case had similar results as the previous study by Boehm.

Moran and Comfort (1982) revised the LAQ to eliminate the forced choice format. Levels of agreement were substituted for subjects to respond to. Each item was coded to compare legal authoritarian versus anti-authoritarian to form one score. This version was completed by 319 individuals who served as jurors in felony trials. The conclusions showed that high LAQ scores in the female jurors was a strong predictor of conviction. In 1989, a study of 345 felony jurors was conducted in which three items from the questionnaire were removed. (Moran & Cutler, 1989) There was a significant correlation between LAQ and pre-deliberation verdict.

The LAQ was revised again and included the Juror Bias Scale (discussed below). (Cutler, Moran, & Narby, 1992) Sixty-one undergraduates completed the questionnaire, watched a videotaped simulation of a murder trial in which the defendant pled not guilty by reason of insanity. Questions regarding the interpretation of evidence were included in the questionnaire. Students then rendered individual verdicts. High scorers tended to be more likely to convict than low scorers. The construct validity of LAQ came into question, and reportedly, could be more reliable upon further revision. (Kravitz et. al., 1993).

In 1993, the LAQ was further modified to utilize a Likert response scale. This

encompassed two studies. The first used 294 undergraduate students who completed the questionnaire as revised. (Kravitz, et. al., 1993) One of the revisions was to include additional scales to assess the construct validity of the LAQ. The results were in support of strong construct validity of this scale. The second part of the study was a sample of 102 jury eligible adults. The questionnaire was shortened to accommodate the non-student population. The results were similar to the first study. Overall, researchers concluded that the revised version is significantly more reliable and that more research is required to establish the validity of the LAQ as a jury verdict predictor.

The other well-known and accepted scale is the Juror Bias Scale. The first systematic measure for juror bias is the Juror Bias Scale was designed by Kassin and Wrightsman in 1983. Myers and Lecci (1998) assert that JBS functions to assess attitudes specific to actual juror making decisions versus punishment. In other words, Juror Bias Scale goes to the heart of juror thought process. They specifically chose the Juror Bias Scale because it uses two theoretically grounded accepted constructs explaining how jurors make decisions of guilt, thus likely more reliable. Further, it is the first self-report instrument to directly measure theoretical constructs. (Myers & Lecci 2002) The bias is shown by assessing the likelihood that the defendant committed the crime, also known as the probability of commission, and by establishing the burden of proof of probability of commission that must be met in order to convict, otherwise known as reasonable doubt. (Myers et. al., 1998) Juror Bias Scale assesses juror bias along the aforementioned dimensions.

Juror Bias Scale originally consisted of twenty-two items. Seventeen of those items assess bias along the dimensions of probability of commission and reasonable doubt. Each

item is rated by a 5 point Likert-scale with strongly disagree being 1, and strongly agree being 5. High scores indicate a bias toward the prosecution. Past findings found JBS to be inconsistent. The initial validation study showed that JBS significantly predicted verdicts, but the second study showed that scores were limited to certain cases and excluded prediction in rape trials. (Kassin & Wrightsman 1983) The finding in the rape cases was so statistically significantly different that prosecution biased subjects were less likely to vote guilty. Similar results were reported by Weir and Wrightsman (1990) using Juror Bias Scale in a rape trial simulation.

Myers and Lecci suggest that because the theoretical model for JBS is based solely on probability of commission and reasonable doubt that it will never receive empirical support. In order to explore whether or not JBS is a valid source of pre-trial bias, a study was done using approximately 602 undergraduate students from a large Midwestern university in 1993. (Myers et al 1998) The 22 item JBS was administered with 9 probability of commission (PC) items, 8 reasonable doubt (RD) items, and 5 filler questions. For the purposes of the study, the PC and RD items were placed in a scale together but tested separately. The subjects completed the questionnaire, watched a video depicting a murder trial, and then played the role of juror to deliberate after the video. Jurors were asked to render individual verdicts prior to deliberations. The participants were split into two groups. 301 (half) were randomly selected from the larger pool consisting of psychology students and administered the JBS first. Subsequently, the remaining 301 students were administered the JBS in order to cross-validate the first study.

The study's findings suggested that the construct of the model is a modest predictor

at best. Myers and Lecci suggest that it is likely that there is not a separation between cynicisms of the criminal justice system versus confidence in the criminal justice system, which invalidates the overall ability to predict. This, however, goes to the items utilized in measuring probability of commission. Suggestions to enhance predictability are to use Likert scales over a range of various trials in order to better make assessments for juror bias. Also, it would likely benefit the model to modify the language to be case specific, such as changing the wording to reflect murder versus sexual assault attitudes.

In a study of the validity of Juror Bias Scale in Spain, researchers found that the scale is a valid predictor when evidence is ambiguous. (Fuente, Fuente, & Garcia 2003) Specifically, researchers wanted to give credibility to a bias measure because Spain requires jurors to justify their verdicts. Using 153 undergraduate students from the University of Almeria who ranged from ages 18 to 39, the Juror Bias Scale was administered, followed by video recorded murder trials. Fuente et al (2003) found that scale was an effective predictor of verdicts in the case that used ambiguous evidence but not in the case where evidence was clear. Most subjects then voted guilty no matter their bias. This supports the hypothesis that the extralegal factor of evidence is the mediating factor (Fuente) that no matter what bias are identified; the evidence will have a tremendous effect on juror verdict. Therefore, a scale is likely beneficial for the specific use as a tool during initial voir dire.

2.6 Pretrial Juror Attitudes Questionnaire

One of the major arguments against the use of questionnaires (scale) for voir dire has been the notion that the instrument itself would create a bias or plant ideas into the head of the juror. In the first study of its kind, Morris and Lecci (2005) conducted a study utilizing a

newly developed instrument that measured pretrial bias much like the RLAQ and JBS scales to experiment whether or not the instrument itself affected the verdict.

After reviewing the literature on semantic priming, Morris et al (2005) purported that it was likely that pretrial juror assessment could function as primes for the bias it was to assess. Priming is considered a form of unconscious memory processing whereby exposure to the stimulus will affect the later interpretation of similar or related information. (Tulving et al cited by Morris 2005) Therefore, a work or statement implicating bias could be correlated to the mental translation of evidence or weight toward a verdict.

The 147 undergraduate students who participated were administered a 29 item questionnaire called the Pretrial Juror Attitude Questionnaire. The constructs of the questionnaire were conviction proneness, system confidence, cynicism toward the defense, social justice, racial bias, and perceptions of the innate criminality of the defendant. The scale itself was shown to be more effective in predicting juror verdicts than the RLAQ and JBS.

Likert style scale was utilized per item from 1 (strongly agree) to 5 (strongly disagree). The responses were recorded on a computer scantron answer sheet and all values were recoded so that the higher scores on all items denoted bias towards the prosecution.

Participants sat at a computer where demographic information was recorded, the PJAQ was completed before watching a computerized trial. A control group was formed to test the bias by watching the trial and then filling out the PJAQ.

Two-tailed T-tests were employed to identify the differences between participants who completed the questionnaire prior to watching the trial against those who subsequently

completed it. Verdicts were examined by defining “guilty” as a rating of 1 to 5 and “not guilty” as -1 to -5. The T-test showed that there was no significant difference based on the condition ($t = .26$, ns).

Morris and Lecci (2005) found, based on above, that there is no priming bias from a standardized assessment of pretrial juror attitudes or a negative impact of such. This substantiates the idea that juror questionnaires do not affect attitudes or that verdicts are tools that can be utilized at the voir dire stage of trial. The limitations of the study included the use of undergraduate students, artificial presentation of evidence, and no jury instructions. Morris et. al states that in light of the limitations:

An alternative to the current method of jury selection is the consistent use of and impartial jury. The use of such questionnaires could minimize the problems associated with the often lengthy and inaccurate juror evaluation process that is the hallmark of the modern day voir dire. Moreover, by anonymously completing the questionnaire, one can minimize problems associated with social desirability. We here also suggest that even if small priming effects do result from the evaluation of bias in prospective jurors, then it is advantageous for that process to be standardized for all jurors, thereby creating a known, quantifiable, and common bias. Thus, a reasonable alternative would be to expand the role of social science research in the jury selection process by administering standardized, validated juror bias measures to the entire jury panel in advance of the formal voir dire. Each prospective juror’s scores on these measures could then be available to the individuals conducting voir dire so as to facilitate juror selection. This approach could also significantly expedite the voir dire by obviating the need for direct questioning. Importantly, the present findings suggest that such an approach would be minimally intrusive, as the evaluation of pretrial biases does not itself affect how the juror engages in the trial process.

As noted above, the PJAQ has been developed for use as new assessment of juror bias. Lecci and Myers (in press) conducted an empirical study in order to validate the PJAQ as predictor of juror bias. The act-frequency approach (Buss & Craik, 1983) was used to

generate the new items for the scale. The study occurred in three phases. In phase one, forty-two participants were recruited from college classes and asked to create a list of three items they felt would indicate “a bias that was likely to affect verdicts.” (Lecci) All redundant, irrelevant, and inverse items were removed resulting in 95 unique items. Phase 2 included a sample 110 participants who were also recruited from Classes and did ranking used a one to indicate “poor” predictor to five “very good” predictor. From the 95, 30 items were found to have high scores with a high mean rating and small standard deviation. The final 30 were evaluated for further consideration. The items were then generated into the appropriate construct that emerged. Initially 617 participants were recruited to be a part of the validity study. Only 601, however, responded to all the items and those were the answers utilized for analysis. The participants were randomly split into two groups. One group was used to cross validate the other. Participants were administered the PJAQ, which utilized a five point Likert-scale with 1 denoting strongly disagree to 5 strongly agree. Also, participants were administered the 9 probability of commission items and the 8 reasonable doubt items from the Juror Bias Scale. (Kassin & Wrightsman 1983) The scales were coded so that higher scores made a showing of conviction bias. The scales were significantly inter-correlated. Phase 3 tested establish internal validity of the study. The PJAQ was compared to the Juror Bias Scale and the Revised Legal Attitudes Questionnaire. Participants had to fill out all three questionnaires. After the assessment of pretrial bias was complete, the participant read two of the three available trial summaries and subsequently rendered a verdict. Lecci and Myers found that the PJAQ was able to out predict the JBS and RLAQ. They note that the study assesses direct effects of bias without considering the indirect effects on bias such as

evidence. There were limitations to the study, however, related to three of the subscales: racial bias, social justice, and innate criminality. This is due to race of the defendant not being made known to the participants, no discussion of the defendant's socioeconomic status, and lack of stereotypical crimes. Further, Lecci and Myers feel that it is likely that the longer scales have a statistical advantage than the aforementioned three subscales for which the study is limited.

The literature shows that there is need for more research for several reasons. First, there is a great deal of criticism about the focus on external validity of simulations (Moran et. al., 1982); second, the use of college students rather than actual jurors (Tanford & Tanford, 1988); third, the lack of group deliberation instead of individual written decision (Shestowsky, 1999); fourth, few juror samples have not been read a jury charge which requires application of the law. Often a case will have a defendant that is guilty of something, but if the jury is charged to apply law, the law given may not allow a guilty verdict.

As noted by a study conducted by Bornstein (1999), jury simulation researchers have had concerns about the use of undergraduate students as the subjects of mock juror simulations. Likewise, making generalizations based on simulations that are likely not realistic may be suspect. Accordingly, Bornstein points out that validity concerns exist not only with the use of students but also the research setting (laboratory versus courtroom), the trial medium (written summaries versus realistic simulations), presence or absence of trial elements such as deliberation, use of dependent variables such as dichotomous verdicts versus probability of guilt judgments, and the lack of consequences of the task (hypothetical

situation instead of real-life one). To address the issue of student populations being used as subjects for study, several experiments have been done to compare students to non-students. (Finkel & Duff, 1991; Finkel & Handel, 1989; Finkel, Hughes, Smith & Hurabiell; 1994; Finkel, Hurabiell, & Hughes, 1993a, b; Finkel, Meister, & Lightfoot, 1991; Fulero & Finkel, 1991). Student participants were asked to recruit non-student participants who were over the age of 21 years. Each set then completed reading various hypothetical trials and rendering an individual verdict. Overall, results of the studies have not found a significant difference between students and non-students. Students and non-students also appeared to react similarly to eyewitnesses regardless of the witnesses age (Goodman, Golding, Helegeson, Haith, & Michelli, 1987) or with regard to jury instructions (Elwork, Sales, & Alfini, 1977)

Bornstein (1999) reports that in only 5 of 26 studies, which compare students to non-students, was there a main effect on the participant verdicts. Simon & Mahan (1971) found that students would be more likely to acquit in a murder trial, when the battered wife syndrome was a defense (Schuller & Hastings, 1996), or in a robbery trial (Berman & Cutler, 1996). Finkel et al. (1999) found that non-student jurors were more likely to accept self-defense, but this was limited to 1 in every 3 cases. In simulated civil cases involving illegal searches, students were more likely to award higher compensation and no punitive damages. (Casper et al. 1989)

The aforementioned studies tend to support the use of juror questionnaires as predictors and facilitators of voir dire in order to uncover juror bias. No studies have been done, however, to test the effects of juror questionnaires on disclosure or on the exercise of

challenges. (Diamond & Rose 2005) Although this study does not propose to directly test disclosure or the exercise of challenges it does intend to poll jurors as to whether it is more likely that disclosure would be optimal via questionnaire. This study uses the Pretrial Juror Attitude Questionnaire, revised by the author, to uncover juror bias and compare pre-verdict bias to a verdict the juror individually renders. The methodology is explained in depth in Chapter 3.

CHAPTER 3

METHODOLOGY

Data for this study was obtained and analyzed in order to ascertain juror bias and whether it is related to rendered verdicts. A cross-sectional study was administered in the Dallas County central jury room at Frank Crowley Criminal Courthouse. The measuring instrument consisted of the Pretrial Juror Attitude Questionnaire, revised by the author, as well as a short survey following three different case summaries which was approved by the Institutional Review Board (IRB) at the University of Texas at Arlington.

In September, 2007, the Application for Expedited Review of a research protocol (Form 1) was submitted to the Institutional Review Board (IRB) along with informed consent, Pretrial Juror Attitude Questionnaire, case summaries, and case follow up survey. IRB approved the research protocol in the Fall of 2007 and research began shortly thereafter.

The sampling frame is the list of registered voters in a designated county. The elements of the sampling frame (the individuals) are then summoned at random by the designated county to appear on a specified date. The researcher has no control over which individuals were summoned and abided by the summons for jury service on the date of study. Once all those individuals who do show up, check in with jury services, and those with disqualification or exemptions are excused, then a new list is created of all those who are present. From that list, potential jurors were asked to volunteer and participate in this study in order to achieve random sample.

Criminal District Court Presiding Judge, John Creuzot, by and through his authority approved the use of jury services for the study. Researcher asked for volunteers in the Central Jury Room in Frank Crowley Courthouse, Dallas County, Texas. Those who volunteered were distributed the instrument and asked to complete at his/her seat under no timed conditions. This was done over a three-day period for a total of 99 completed questionnaires.

The study included four sections for jurors to fill out. The first section contained the informed consent requisite. In order to keep the survey anonymous the informed consent was detached from the packet upon return. The second section was a list of ten demographic questions to be analyzed against the bias scale section. The Pretrial Juror Attitude Questionnaire developed by Dr. Brian Myers and Dr. Len Lecci, revised by researcher, was the third section. Specifically, the instrument contains 30 items comprised of six subscales. The constructs include: a) conviction proneness; b) system confidence; c) cynicism toward the defense; e) social justice (defined by Morris et al as the belief that law is not applied equally and in the same way to all individuals); f) racial bias; and g) perceptions regarding the innate criminality of defendants. The constructs are the independent variables where by the verdict (dependent variable) is determined. The final questions were intended to measure juror belief that filling out the questionnaire versus being publicly asked questions resulted in a more honest responses as well as whether or not all bias could be uncovered. The fourth section is case vignettes describing circumstances for a juror to render a verdict and answer questions as to why that verdict was rendered.

This quantitative study utilizes a cross-sectional experimental design. The

participants were exposed one time to the stimulus. Once all participants completed the study, data was scanned into the computer maintaining Remarkable software at the University of Texas at Arlington-Criminology and Criminal Justice Department. This software read the barcode placed on each page of the instrument and coded the data. Once the data was coded it was exported to SPSS (Statistical Package for Social Sciences) for analysis. Percentages and frequencies were statistically evaluated. Two-tailed t-tests are used to compare each variable to one another in order ascertain correlation between variables. These comparisons are considered notable if a confidence interval of 0.05 or lower results.

CHAPTER 4

FINDINGS

The purpose of this chapter is to reveal the product of the Pretrial Juror Attitude Questionnaire and discuss the resulting findings. In order to better illustrate the outcome of the surveys, several tables have been generated. Table 1 comprises of the demographic characteristics of the sample. Table 2 consists of the knowledge based questions and answers as controlled by the demographic variable of race/ethnicity. Table 3 comprises of perception-based questions and answers as controlled by the variable race/ethnicity. Table 4 lists the outcome verdicts and subsequent answers as influenced by various information.

Table1 - Demographic Characteristics

<u>Variable</u>	<u>Characteristic</u>	<u>Percentage of Sample</u>
Gender	Female	50
	Male	48
Completed Education	High School	29
	Associate Degree	19
	Bachelor	31
	Master	11
	Ph.D., J.D., M.D	5
Current or Past Work	Full Time	84
	Part Time	2
	Retired	6
	Unemployed	5
Occupation	Professional	73
	Clerical	14
	Skills/Trade	7

Table 1 – continued

Age	18-25	5
	26-30	4
	31-40	13
	41-50	33
	51-65	34
	66+	9
Race/Ethnicity	African-American	14
	Caucasian	75
	Hispanic	5
	Native American	2
	Other	3
Length of Residency in Texas	3 to 5 years	4
	6 to 10 years	4
	11 to 20 years	10
	over 20 years	80
Participation in Religious Activities	Attend weekly	49
	Attend monthly	8
	Attend on certain occasions	19
	Do not attend services but consider self to be spiritual	16
	Do not attend services and do not consider self spiritual	6
Political Affiliation	Democrat	31
	Independent	25
	Republican	42
Household Status	Single	16
	Married	63
	Domestic Partner	4
	Divorced	9
	Widowed	5
Socioeconomic Status	Under \$20,000	2
	\$20,000-\$75,999	39
	\$76,000-\$120,000	28
	over \$120,000	29

Overall the sample was composed of 99 potential jurors. Demographic characteristics of the sample are shown in Table 1. The percentages were rounded if .5 or higher and rounded if less than .5. As indicated, the gender breakdown is composed of 50% female with 48% being male. Three respondents failed to answer the gender question. In terms of education completion, about half of respondents had an associates degree or less (high school 29%; associate degree 19%) with the other half being

undergraduate degreed or higher (Bachelor 31%; Master 11%; Ph.D., J.D., M.D. 5%). The majority of respondents work full time, 83%, while 2% work part-time, 6% are retired, and 5% are unemployed. Of those working, 72% consider themselves professionals, 14 % as clerical, and 7% part of a skills/trade industry. Over half of respondents ages break down to under the age of 50 (18-25 5%; 26-30 4%; 31-40 13%; and 41-50 33%) while the other half comprised of 34% at 51-65 with 9% at 66 and over.

In terms of racial and ethnic demographic characteristics, the majority of respondents were Caucasian at 74%, while the minority consisted of 14% African-American, 5% Hispanic, 2% Native American, and 3% claiming other. As to length of residency in Texas, 80% claim to have resided in Texas more than 20 years, 10 % 11 to 20 years, 4% at 6 to 10 years, and 4% less than 6 years. 49% of jurors responded to attending religious services weekly, 19% attend on certain occasions, 16% do not attend religious services but consider themselves to be spiritual, 8% attend monthly, and 6% do not attend religious services and do not consider themselves spiritual.

As to political affiliation and household as well as socioeconomic status, 42% consider themselves Republican, while 31% are Democrat, and 25% Independent. The majority of respondents were married at 63%, with 16% single, 9% divorced, 5% widowed, and 4% have a domestic partnership. Total household income has 39% at \$20,000-75,999, 29% over \$120,000, 28% at \$76, 000-120,000, and 2% less than \$20,000.

In Table 2 the outcome of potential jurors knowledge based answers according to race/ethnicity is listed. The jurors who identified themselves as Caucasian are referred to

as the majority, and the remaining aggregate of African-American, Hispanic, Native American, and other were combined as the minority.

Table 2 - Pretrial Juror Attitudes Questionnaire Knowledge-Based Questions

Knowledge-Based Questions	Majority	Minority	p-value
If a suspect runs from police, then he/she probably committed the crime.	2.32	2.79	.033*
In most cases where the accused presents a strong defense, it is only because of a good lawyer.	3.14	2.29	.005**
Out of every 100 people brought to trial, at least 75 are guilty of the crime with which they are charged.	2.84	3.50	.003**
Generally, the police make an arrest only when they are sure about whom committed the crime.	3.00	3.58	.045*
Many accident claims filed against insurance companies are phony.	2.70	3.21	.028*
Defense lawyers are too willing to defend individuals they know are guilty	3.34	3.08	.349
Police officers routinely lie to protect other officers.	3.53	2.67	.001**
Once a criminal, always a criminal.	3.89	4.17	.209
Lawyers will do whatever it takes, even lie, to win a case.	3.30	3.04	.326
A prior record of conviction is the best indicator of a person's guilt in the present case.	4.11	4.17	.778
If a defendant is a member of a gang, he/she is definitely guilty of the crime.	3.96	3.70	.227
When it is the suspect's word against the police officer's, I believe the Police Officer.	2.57	3.61	.000**
Men are more likely to be found guilty of crimes than women.	3.03	2.87	.577
If a witness refuses to take a lie detector test, it is because he/she is hiding something.	3.04	3.25	.494
Defendants who change their story are almost always guilty.	3.09	2.79	.254

Table 2 - continued

I would be more honest about my feelings and experiences when serving jury duty if I was not questioned in front of the whole group but able to answer through a questionnaire.	3.18	3.08	.802
You could never uncover what is really in my mind or my heart.	3.53	3.54	.966

* significant at the .05 level

** significant at the .01 level

As indicated in Table 2, the following knowledge-based questions did not yield statistically significant results: “Defense lawyers are too willing to defend individuals they know are guilty”; “Once a criminal, always a criminal”; “Lawyers will do whatever it takes, even lie, to win a case”; “A prior record of conviction is the best indicator of a person’s guilt in the present case”; “If a defendant is a member of a gang, he/she is definitely guilty of the crime”; “Men are more likely to be found guilty of crimes than women”; “If a witness refuses to take a lie detector test, it is because he/she is hiding something”; “Defendants who change their story are almost always guilty”; “I would be more honest about my feelings and experiences when serving jury duty if I was not questioned in front of the whole group but able to answer through a questionnaire”; and “You could never uncover what is really in my mind or my heart”.

Several knowledge-based questions resulted in statistically significant findings. For instance, “If a suspect runs from police, then he/she probably committed the crime” is significant at the .05 level. In addition, the questions regarding “In most cases where the accused presents a strong defense, it is only because of a good lawyer” and “Out of every 100 people brought to trial, at least 75 are guilty of the crime with which they are charged” are both significant at the .01 level. Finally, “Generally, the police make an

arrest only when they are sure about whom committed the crime” and “Many accident claims filed against insurance companies are phony” are significant at the .05 level.

Table 3 lists the outcome of perception based answers to the juror questionnaire. The majority of perception questions were not statistically significant. This includes the following questions: “A defendant should be found guilty if 11 out of 12 jurors vote guilty”; “Too often jurors hesitate to convict someone who is guilty out of pure sympathy”; “For serious crimes like murder, a defendant should be found guilty so long as there is a 90% chance that he committed the crime”; “Defense lawyers do not really care about guilt or innocence because they are just in the business to make money”; “The defendant is often a victim of his own bad reputation”; “Extenuating circumstances should not be considered; if a person commits a crime, then that person should be punished”; “If the defendant committed a victimless crime, like gambling or possession of marijuana, he should never be convicted”; “People with means (i.e.money and power) do not receive harsh sentences when convicted”; “The large number of African-Americans currently in prison is an example of the criminality of that subgroup”; and “Famous people are often considered to be “above the law.”

Table 3 - Pretrial Juror Attitudes Questionnaire Perception-Based Questions

Perception-Based Questions	Majority	Minority	p-value
A defendant should be found guilty if 11 out of 12 jurors vote guilty.	3.27	3.29	.946

Table 3 - continued

Too often jurors hesitate to convict someone who is guilty out of pure sympathy.	3.08	3.25	.477
For serious crimes like murder, a defendant should be found guilty so long as there is a 90% chance that he committed the crime.	4.05	3.50	.120
Defense lawyers do not really care about guilt or innocence because they are just in the business to make money.	3.16	2.92	.272
The defendant is often a victim of his own bad reputation.	3.03	3.04	.966
Extenuating circumstances should not be considered; if a person commits a crime, then that person should be punished.	2.89	2.73	.518
If the defendant committed a victimless crime, like gambling or possession of marijuana, he should never be convicted.	3.96	3.42	.084
Criminals should be caught and convicted by “any means necessary.”	3.54	2.87	.049*
People with means (i.e. money and power) do not receive harsh sentences when convicted.	2.65	2.13	.066
Minorities use the “race issue” as a justification or excuse when they are guilty.	2.70	3.57	.003*
The large number of African-Americans currently in prison is an example of the criminality of that subgroup.	3.38	3.68	.363
An African-American man on trial with a predominantly white jury will always be found guilty	4.08	2.92	.000**
Minority suspects are likely to be found guilty, more often than not.	3.47	2.63	.006**
Famous people are often considered to be “above the law.”	2.40	2.21	.460

* significant at the .05 level

** significant at the .01 level

Significant at the .05 level is “Criminals should be caught and convicted by “any means necessary.” Statistically significant, however, at the .01 level are “Minorities use the “race issue” as a justification or excuse when they are guilty”; “An African-American man on trial with a predominantly white jury will always be found guilty” and “Minority suspects are likely to be found guilty, more often than not.”

Table 4 represents the three cases jurors rendered verdicts for and the answers to the follow-up questions regarding reasoning behind the decision.

Table 4 - Case Summary Questions

Case Summary 1	Majority Percentage Yes	Minority Percentage Yes
Daniel Smith is guilty of murder as charged.	6	8
Do you feel you needed more information about the defendant and the victims to come to a verdict?	87	83
Assumptions about the following: Race, based on the crime-defendant, Daniel Smith	4	8
victim, Mary Lou Smith and/or Scott Maddox	6	8
Age, based on the crime-defendant, Daniel Smith	3	0
victim, Mary Lou Smith and/or Scott Maddox	4	0
Socioeconomic status: defendant, Daniel Smith	6	13
victim, Mary Lou Smith and/or Scott Maddox	5	8
Education: defendant, Daniel Smith	1	0
victim, Mary Lou Smith and/or Scott Maddox	2	0
Religious participation: defendant, Daniel Smith	1	0
victim, Mary Lou Smith and/or Scott Maddox	0	0
Political Affiliation: defendant, Daniel Smith	1	0
victim, Mary Lou Smith and/or Scott Maddox	1	0
Case Summary 2	Majority Percentage Yes	Minority Percentage Yes
Daniel Smith is guilty of murder as charged.	6	17

Table 4 - continued

Did any of the following affect your image of the case, therefore the guilt or innocence of Daniel Smith?	3	8
Race:		
of defendant, Daniel Smith	4	8
victim, Mary Lou Smith	6	13
victim, Scott Maddox	7	17
Race of the individuals involved did not affect the verdict	22	8
Age:		
of defendant, Daniel Smith	4	0
victim, Mary Lou Smith	5	4
victim, Scott Maddox	4	8
Age of the individuals involved did not affect the verdict	21	4
Socioeconomic status:		
of defendant, Daniel Smith	8	13
victim, Mary Lou Smith	8	17
victim, Scott Maddox	5	8
Money and power of the individuals involved did not effect the verdict	25	8
Have you made assumptions about:		
Education:		
defendant, Daniel Smith	14	13
victim, Mary Lou Smith and/or Scott Maddox	10	13
Religious participation:		
defendant, Daniel Smith	3	4
victim, Mary Lou Smith and/or Scott Maddox	1	4
Political Affiliation:		
defendant, Daniel Smith	2	4
victim, Mary Lou Smith and/or Scott Maddox	2	4
Case Summary 3	Majority Percentage	Minority Percentage
	Yes	Yes
Daniel Smith is guilty of murder as charged.	17	29
If the knife had been found, would that change your verdict?	60	58
Does the fact that Mary Lou asked Daniel for a divorce effect how you voted?	15	21

Table 4 - continued

Did the fact that Daniel had no blood on his clothing when he was arrested effect how you voted?	60	38
Was the presence of Daniel's fingerprints on both bodies important to your decision on how to vote?	35	54

Percentage of “yes” answers to the three case summary questions are listed in Table 4. A t-test could not be utilized for the analysis of this portion of the questionnaire data. The case summaries are one case broken into three sections. Each summary revealed information not previously disclosed and asked for a verdict based on that limited information. The guilty verdict percentages rose the more information the jurors were given.

The resulting implications of the studies findings will be discussed in Chapter 5. Specifically, the potential effect on policy is addressed by the author and analysis of what would best constitute future research.

CHAPTER 5

DISCUSSION

The findings of the study reveal a difference between the preconceived bias of majority and minority respondents. As a valid predictor of bias, PJAQ can likely create profiles of acceptable jurors in criminal cases. Juror partiality is arguably more evident in cases where the jurors have little information about the parties involved and the evidence is weak. One purpose of this study was to explore the possibility of utilizing a juror bias scale in order to directly affect voir dire techniques. By using knowledge and perception questions, the goal was to ascertain preconceived bias of respondents and then to compare the bias to the verdicts rendered. Potential jurors in Dallas County appeared to have pre-conceived bias that would likely affect their decision-making process.

As previously discussed in the literature review, there have been many tools created to attempt to measure juror bias but the Pretrial Juror Attitude Questionnaire appears to outperform other scales. (Lecci in press) The review also emphasized the necessity of tools that will aide attorneys in jury selection. Better voir dire techniques for the purposes of seeking the impartial juror will only benefit society and thwart issues that lead to wrongful conviction.

The survey administered to the potential jurors resulted in statistically significant differences between majority and minority respondents. Specifically, the knowledge-based .

questions reveal several differences at the .001 level. Questions regarding knowledge about attorneys, law enforcement, and police practices appear to show distrust by minorities. This mistrust is a baseline of likely pre-conceived bias that will work as a filter in the decision-making process. The majority jurors appeared to find police officers credible, responsible, and were more likely to trust lawyers. Further, when rendering verdicts and answering questions about what affected their verdict, minorities felt that the wealth and race affected their verdict, whereas the majority did not. This was particularly evident when rendering verdicts after reading the case summaries. Minorities convicted at a higher percentage upon discovering that the defendant was wealthy.

This study reveals that potential bias appears to exist amongst various demographic groups, specifically by race and ethnicity. By revealing that bias exists, in light of wrongful conviction, this study offers a first step in evidence toward efforts to better the criminal justice system by reforming voir dire practices, thus contributing to the literature surrounding jury selection practices.

Ultimately, the potential policy implications are likely to have major impact on how voir dire is administered. One such possibility is to assign each answer to the scaled question a numerical value. Based on the Likert scale as used in this study, have each juror tally the total score. The total score could then be used to ascertain whether or not the juror is likely pro-conviction, pro-acquittal, or neutral. This allows attorneys to review the scores prior to voir dire, pull undesirable juror answers, and conduct individual voir dire for the purpose of either challenging for cause or setting aside that juror for a peremptory challenge. Such a tool avoids embarrassing the potential jurors with questions, creates conditions for

honest responses by avoiding the group interrogation, and allows for efficient, quick voir dire that will only benefit judicial economy. It is also worth considering the removal of demographic data from juror information and rely on the bias scale as to prevent *Batson* challenges and the stereotyping potential jurors.

As Texas law regarding voir dire allows a great deal of judicial discretion in its structure and implementation, legislative interference can possibly be warranted to create statutory guidelines to better ensure juror impartiality. Legislative involvement could likely end the debate surrounding peremptory strikes by implementing effective voir dire techniques. Further, as juror bias is of concern to the administration of criminal justice, recognizing that perceptions arguably do not equate truth or reality, a solution could be to educate the jury pool about the system, as well as practitioners, in order to neutralize the partiality that exists.

Further research that would benefit the literature would be by implementing the bias scale into a real criminal trial circumstance, observe whether attorneys are able to strike jurors for cause, and upon conclusion of a trial observe jurors in deliberation to see if they were in fact impartial. Another such recommendation is to discover pretrial bias via the bias scale without revealing to the attorneys the results, thus leaving them to their own voir dire techniques, and interview the selected jurors post-deliberation to uncover the overall impact the individual's bias on the verdict

APPENDIX A

INFORMED CONSENT

INFORMED CONSENT

PRINCIPAL INVESTIGATOR:

Sara Jane Mobley

TITLE OF PROJECT:

Identifying Juror Bias: Using the Pretrial Juror Attitude Questionnaire for More Effective Voir Dire

INTRODUCTION:

You are being asked to participate in a research study. Your participation is voluntary. Please ask questions if there is anything you do not understand.

PURPOSE:

To validate a measure of juror bias to avoid trial by partial jury.

DURATION:

Approximately 1 to 2 hours will be needed to completed the questionnaire.

PROCEDURES:

You are asked to complete a juror bias scale and return it to the investigator. Upon completion of the scale, you are asked to read a case summary, render a verdict, and answer questions. There are three case summaries total.

POSSIBLE BENEFITS:

Your participation will fulfill your jury duty responsibility.

COMPENSATION:

Your participation will not affect your juror compensation or parking validation.

WITHDRAWAL FROM THE STUDY:

You may discontinue participation at any time without penalty or loss of benefits, to which you are otherwise entitled.

NUMBER OF PARTICIPANTS:

We expect 100 participants to enroll in this study.

CONFIDENTIALITY:

If in the unlikely event it becomes necessary for the Institutional Review Board to review your research records, then The University of Texas at Arlington will protect the confidentiality of those records to the extent permitted by law. Your research records will not be released without your consent unless required by law or a court order. The

data resulting from your participation may be made available to other researchers in the future for research purposes not detailed within this consent form. In these cases, the data will contain no identifying information that could associate you with it, or with your participation in any study.

If the results of this research are published or presented at scientific meetings, your identity will not be disclosed.

CONTACT FOR QUESTIONS:

Questions about this research or your rights as a research subject may be directed to Sara Jane Mobley at (214) 653-3647. You may contact Karshena Valsin at (817) 272-1235 in the event of a research-related injury to the subject.

CONSENT:

Signatures:

As a representative of this study, I have explained the purpose, the procedures, the benefits, and the risks that are involved in this research study:

Sara Jane Mobley

Signature and printed name of principal investigator or person obtaining consent **Date**

By signing below, you confirm that you have read or had this document read to you. You have been informed about this study's purpose, procedures, possible benefits and risks, and you have received a copy of this form. You have been given the opportunity to ask questions before you sign, and you have been told that you can ask other questions at any time

You voluntarily agree to participate in this study. By signing this form, you are not waiving any of your legal rights. Refusal to participate will involve no penalty or loss of benefits to which you are otherwise entitled, and the you may discontinue participation at any time without penalty or loss of benefits, to which you are otherwise entitled.

SIGNATURE OF VOLUNTEER

DATE

APPENDIX B

PRETRIAL JUROR ATTITUDES QUESTIONNAIRE

JUROR QUESTIONNAIRE
YOUR BACKGROUND INFORMATION

Juror Number

- | | | | |
|---|---|---|---|
| ① | ① | ① | ① |
| ① | ① | ① | ① |
| ② | ② | ② | ② |
| ③ | ③ | ③ | ③ |
| ④ | ④ | ④ | ④ |
| ⑤ | ⑤ | ⑤ | ⑤ |
| ⑥ | ⑥ | ⑥ | ⑥ |
| ⑦ | ⑦ | ⑦ | ⑦ |
| ⑧ | ⑧ | ⑧ | ⑧ |
| ⑨ | ⑨ | ⑨ | ⑨ |

1. Gender

Female

Male

2. Completed Education:

Did not finish high school

High School

Associate Degree

Bachelor Degree

Master Degree

P.h.D, J.D., M.D.

3. Current or Past Work:

Employed Full Time

Employed Part Time

Retired

Unemployed

4. Occupation:

Professional

Clerical

Skills/Trade

5. Age:

- 18-25
- 26-30
- 31-40
- 41-50
- 51-65
- 66+

6. Race/Ethnicity:

- African American
- Asian American
- Caucasian
- Hispanic
- Native American
- Other

7. Length of Residency in Texas:

- 2 years or less
- 3 to 5 years
- 6 to 10 years
- 11 to 20 years
- over 20 years

58

8. Participation in Religious Activities:

- I attend services weekly
- I attend services monthly
- I attend services only on certain occasions
- I do not attend services but consider myself spiritual
- I do not attend services and do not consider myself spiritual

9. Political Affiliation:

- I consider myself to be Democrat.
- I consider myself to be Independent.
- I consider myself to be Republican

10. Household: Your status

11. Socioeconomic status: (total household income)

Single

Married

Domestic partner

Separated

Divorced

Widowed

Under \$20,000

\$20,000-\$75,999

\$76,000-\$120,000

Over \$120,000

Directions: Please rate your agreement with the following items according to the 5-point scale below. Please try to make a clear choice for each item. Pick only one option for each item. Please read each item carefully and be as honest as possible. On a scale from 1 to 5, **1 being “Agree Strongly”** and **5 being “Disagree Strongly”**, choose the answer that best suits you.

- | | 1 | 2 | 3 | 4 | 5 |
|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| a. If a suspect runs from police, then he/she probably committed the crime. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| b. A defendant should be found guilty if 11 out of 12 jurors vote guilty. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| c. Too often jurors hesitate to convict someone who is guilty out of pure sympathy. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| d. In most cases where the accused presents a strong defense, it is only because of a good lawyer. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| e. Out of every 100 people brought to trial, at least 75 are guilty of the crime with which they are charged. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| f. For serious crimes like murder, a defendant should be found guilty so long as there is a 90% chance that he committed the crime. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| g. Defense lawyers do not really care about guilt or innocence because they are just in the business to make money. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

- | | 1 | 2 | 3 | 4 | 5 |
|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| h. Generally, the police make an arrest only when they are sure about whom committed the crime. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| i. Many accident claims filed against insurance companies are phony. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| j. The defendant is often a victim of his own bad reputation. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| k. Extenuating circumstances should not be considered; if a person commits a crime, then that person should be punished. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| l. If the defendant committed a victimless crime, like gambling or possession of marijuana, he should never be convicted. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| m. Defense lawyers are too willing to defend individuals they know are guilty. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| n. Police officers routinely lie to protect other officers. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| o. Once a criminal, always a criminal. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

1	2	3	4	5
---	---	---	---	---

- p. Lawyers will do whatever it takes, even lie, to win a case.
- q. Criminals should be caught and convicted by “any means necessary.”
- r. A prior record of conviction is the best indicator of a person’s guilt in the present case.
- s. People with means (i.e.money and power) do not receive harsh sentences when convicted.
- t. If a defendant is a member of a gang, he/she is definitely guilty of the crime.
- u. Minorities use the “race issue” as a justification or excuse when they are guilty.
- v. When it is the suspect’s word against the police officer’s, I believe the Police officer.
- w. Men are more likely to be found guilty of crimes than women.
- x. The large number of African-Americans currently in prison is an example of the criminality of that subgroup.
- y. An African-American man on trial with a predominantly white jury will always be found guilty.
- z. Minority suspects are likely to be found guilty, more often than not.
- aa. If a witness refuses to take a lie detector test, it is because he/she is hiding something.
- bb. Defendants who change their story are almost always guilty.

- cc. Famous people are often considered to be “above the law.”
- dd. I would be more honest about my feelings and experiences when serving jury duty if I was not questioned in front of the whole group but able to answer through a questionnaire.
- ee. You could never uncover what is really in my mind or my heart.

APPENDIX C

CASE SUMMARY 1

State of Texas v. Smith

Case Summary 1

Instructions: Please read the opening and closing statements of the Prosecution and Defense. Based on this information, render a verdict. Following your verdict you will be asked a series of questions. Please answer as honestly as possible.

Summary of Opening Statement by the Prosecution:

The Prosecution explains that opening statements are not evidence. However, the evidence will be quite clear. The evidence you will hear today will show that Mr. Smith murdered his wife, Mary Lou Smith, and Mr. Scott Maddox in cold blood. We are confident that after listening to the evidence presented here, you will render the proper verdict. Thank you.”

Summary of Opening Statement by the Defense:

“You jurors must decide what really happened based on the things you will hear and see today. Mr. Smith was at the wrong place at the wrong time and did not kill his wife as the State alleges. The only thing he was guilty of was being jealous, which is not a crime. He loved his wife very much. After you have seen all the evidence, I am sure you will agree. Thank you.”

Defense closing argument:

“It was emotion that made Daniel Smith rush to the body of his wife when he found her but that does not mean he is guilty of murder. We heard from his friend that he was in control of his emotions later that night, having accepted that his wife was not having affair but rather out of love with him. His actions are not those of a guilty man. He couldn’t think straight. He has just seen the woman he loves covered in blood next to a stranger. He then did the right thing and called the police, knowing they were going to suspect him. The State has not proven that my client has committed this crime. There is no murder weapon, no eyewitness, nothing tying my client to the crime itself. The evidence is shaky and circumstantial. Ladies and gentlemen, there is clear reasonable doubt in this case which means a not guilty vote. Thank you.”

Prosecution closing argument:

“Daniel Smith was a man consumed by jealousy. Daniel Smith was calm that night not because he had adjusted, but rather because he had decided to take some sort of drastic action. The evidence is substantial. Jealousy is a logical motive for the murders. There was no forced entry into the home. The time gaps tend to coincide with the murder.. Daniel Smith killed his wife and Scott Maddox beyond a reasonable doubt. Vote guilty. Thank you.”

APPENDIX D

CASE SUMMARY 1 QUESTIONS

Directions: Read Case Summary 1 and answer the following questions.

- | | Yes | No |
|--|-----------------------|-----------------------|
| 1. Daniel Smith is guilty of murder as charged. | <input type="radio"/> | <input type="radio"/> |
| 2. Do you feel you needed more information about the defendant and the victims to come to a verdict? | <input type="radio"/> | <input type="radio"/> |
| 3. Did you make any assumptions about the following: | | |
| a. Race, based on the crime- | | |
| i. defendant, Daniel Smith | <input type="radio"/> | <input type="radio"/> |
| ii. victim, Mary Lou Smith and/or Scott Maddox | <input type="radio"/> | <input type="radio"/> |
| b. Age, based on the crime- | | |
| i. defendant, Daniel Smith | <input type="radio"/> | <input type="radio"/> |
| ii. victim, Mary Lou Smith and/or Scott Maddox | <input type="radio"/> | <input type="radio"/> |
| c. Socioeconomic status: | | |
| i. defendant, Daniel Smith | <input type="radio"/> | <input type="radio"/> |
| ii. victim, Mary Lou Smith and/or Scott Maddox | <input type="radio"/> | <input type="radio"/> |
| d. Education: | | |
| i. defendant, Daniel Smith | <input type="radio"/> | <input type="radio"/> |
| ii. victim, Mary Lou Smith and/or Scott Maddox | <input type="radio"/> | <input type="radio"/> |
| e. Religious participation: | | |
| i. defendant, Daniel Smith | <input type="radio"/> | <input type="radio"/> |
| ii. victim, Mary Lou Smith and/or Scott Maddox | <input type="radio"/> | <input type="radio"/> |
| f. Political Affiliation: | | |
| i. defendant, Daniel Smith | <input type="radio"/> | <input type="radio"/> |
| ii. victim, Mary Lou Smith and/or Scott Maddox | <input type="radio"/> | <input type="radio"/> |

APPENDIX E

CASE SUMMARY 2

Case Summary 2

Instructions: Please read the following summaries of testimony. Based on this information, render a verdict. Following your verdict you will be asked a series of questions. Please answer as honestly as possible.

State's witness-Donald Heffling, police officer:

Officer Donald Heffling was on patrol in his police cruiser the night of the incident. At 8:45 PM, he received a call from the station informing him that two people had been murdered. Dispatch gave him an address in Highland Park, Dallas and arrived at the residence at 8:50PM. An African-American male, age 48 named Daniel Smith, met him at the curb. Smith informed him that he had reported the incident. While Smith remained outside, Officer Heffling entered the house and examined the bodies. According to Officer Heffling, he observed a Hispanic male, approximately in his mid to late thirties, identified as Scott Maddox on the floor of the kitchen having suffered a severe stab wound in the chest. He also observed a Caucasian women lying next to Maddox and appeared to have been strangled. Heffling stated that the defendant identified the woman as his wife, age 45.

Cross-examination by Defense:

Officer Heffling testified that the murder weapon was never found. He further stated that Mr. Smith's behavior "was not consistent with that of typical criminal," and he seemed "extremely upset by the death of his wife and was very emotional about the whole thing." When he was brought to the police station he appeared to be under extreme stress and was crying.

APPENDIX F

CASE SUMMARY 2 QUESTIONS

Directions: Read Case Summary 2 and answer the following questions.

- | | Yes | No |
|--|-----------------------|-----------------------|
| 1. Daniel Smith is guilty of murder as charged. | <input type="radio"/> | <input type="radio"/> |
| 2. Did any of the following affect your image of the case, therefore the guilt or innocence of Daniel Smith? | <input type="radio"/> | <input type="radio"/> |
| A. Race: | | |
| i. of defendant, Daniel Smith | <input type="radio"/> | <input type="radio"/> |
| ii. victim, Mary Lou Smith | <input type="radio"/> | <input type="radio"/> |
| iii. victim, Scott Maddox | <input type="radio"/> | <input type="radio"/> |
| iv. Race of the individuals involved did not affect the verdict | <input type="radio"/> | <input type="radio"/> |
| B. Age: | | |
| i. of defendant, Daniel Smith | <input type="radio"/> | <input type="radio"/> |
| ii. victim, Mary Lou Smith | <input type="radio"/> | <input type="radio"/> |
| iii. victim, Scott Maddox | <input type="radio"/> | <input type="radio"/> |
| iv. Age of the individuals involved did not affect the verdict | <input type="radio"/> | <input type="radio"/> |
| C. Socioeconomic status: | | |
| i. of defendant, Daniel Smith | <input type="radio"/> | <input type="radio"/> |
| ii. victim, Mary Lou Smith | <input type="radio"/> | <input type="radio"/> |
| iii. victim, Scott Maddox | <input type="radio"/> | <input type="radio"/> |
| iv. Money and power of the individuals involved did not affect the verdict. | <input type="radio"/> | <input type="radio"/> |
| 3. Have you made assumptions about: | | |
| a. Education: | | |
| i. defendant, Daniel Smith | <input type="radio"/> | <input type="radio"/> |
| ii. victim, Mary Lou Smith and/or Scott Maddox | <input type="radio"/> | <input type="radio"/> |
| b. Religious participation: | | |
| i. defendant, Daniel Smith | <input type="radio"/> | <input type="radio"/> |
| ii. victim, Mary Lou Smith and/or Scott Maddox | <input type="radio"/> | <input type="radio"/> |
| c. Political Affiliation: | | |
| i. defendant, Daniel Smith | <input type="radio"/> | <input type="radio"/> |
| ii. victim, Mary Lou Smith and/or Scott Maddox | <input type="radio"/> | <input type="radio"/> |

APPENDIX G

CASE SUMMARY 3

Case Summary 3

Instructions: Please read the following summaries of testimony. Based on this information, render a verdict. Following your verdict you will be asked a series of questions. Please answer as honestly as possible.

Prosecution witness-Dr. John Belmonte, a medical examiner:

Dr. John Belmonte is a forensic pathologist with degrees from Johns Hopkins University and the University of Texas Medical School who examined the deceased. Belmonte testified that Maddox had a “one inch laceration to the left midline of the sternum and the nipple line.” An internal examination revealed that the “left chest cavity was full of fluid caused by a two inch laceration of the right ventricle of the heart.”

Mary Lou Smith showed “severe bruising on the front of the throat and collapsed windpipe.” She was strangled, and an internal examination revealed that she died of a shortage of oxygen to the brain.

Belmonte testified that he thinks a hunting knife is what killed Maddox and based on the laceration was done by someone left handed.

Defendant’s fingerprints were on both bodies.

Cross-examination by Defense:

Belmonte testified that the knife was likely very common. No blood appeared to be on the Defendant when he was taken into custody.

Defense witness- Arnold Feinstein, neighbor of the Smith’s:

Feinstein has lived next to the Smith’s for many years. He met Mr. Smith at a bar on the west side of town on the night of the murders. Smith told Feinstein that he was having marital problems. Feinstein understood that Mary Lou Smith asked for a divorce. Mr. Smith hired a private investigator to follow her resulting in no evidence of infidelity. Smith was going home to pick up some unpaid bills and stuff from his desk that night.

Cross-examination by the prosecution:

Feinstein testified that Smith left the bar around 7:30 PM and that the drive to his home was probably around 15 minutes without traffic. He thought Smith owned a hunting knife Feinstein further stated he thought Smith threw darts with his left hand.

APPENDIX H

CASE SUMMARY 3 QUESTIONS

Directions: Read Case Summary 3 and answer the following questions.

Yes No

1. Daniel Smith is guilty of murder as charged.
2. If the knife had been found, would that change your verdict?
3. Does the fact that Mary Lou asked Daniel for a divorce effect how you voted?
4. Did the fact that Daniel had no blood on his clothing when he was arrested effect

how you voted?
5. Was the presence of Daniel's fingerprints on both bodies important to your decision

on how to vote?

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BIOGRAPHICAL INFORMATION

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