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THE UNIVERSITY OF OKLAHOMA

GRADUATE COLLEGE

TESTING A JURY SELECTION SCALE

AND THEORY IN COURT

A DISSERTATION

SUBMITTED TO THE GRADUATE FACULTY

in partial fulfillment of the requirements for the

degree of

DOCTOR OF PHILOSOPHY

By

Dee Ann S. Horstman

Norman, Oklahoma

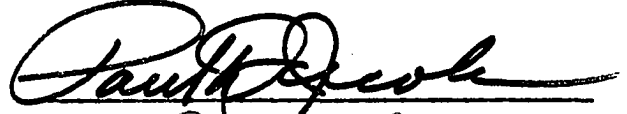
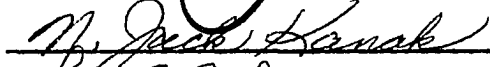
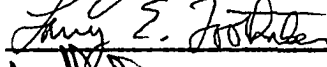
1976

TESTING A JURY SELECTION SCALE
AND THEORY IN COURT

A DISSERTATION

APPROVED FOR THE DEPARTMENT OF PSYCHOLOGY

APPROVED BY


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Testing a Jury Selection Scale and Theory in Court

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Abstract

Research was conducted in actual court cases as part of a long range schema to determine the validity of a jury selection theory and a scale based on authoritarianism. Results provided additional support for previous mock court trial findings that authoritarian jurors will not render a just verdict on the basis of the trial evidence, but will have a predisposition towards certain decisions. Authoritarian jurors, as identified by the jury selection scale, voted in favor of the first presentation they heard, the prosecution, unless they felt similarity to the defendant wherein they voted for acquittal. Identification and dismissal of authoritarian jurors to secure a more impartial jury was emphasized in this rare instance of applied research within legal confines.

Testing a Jury Selection Scale and Theory in Court

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University of Oklahoma

"If there is one greatly unknown area in the whole business of trying cases, it is jury selection, and anybody who professes to have the answers to that, including people like myself who attempt to lecture on it, are really swinging in the dark," proclaimed F. Lee Bailey (Kuhn, 1975, p. 1) recently.

Despite this and similar advice, attorneys have continually sought to predict the voting tendencies of potential jurors during the voir dire or jury selection process. Trying to obtain an equitable trial for their clients, lawyers have utilized formulas devised by famous attorneys, prior experience, intuition, facial expressions, physiognomy, body language, background checks and expensive demographic rating systems (Belli, 1954; Gordon, 1968; Kairys, 1972; McCarty, 1960; National Jury Project & National Lawyers Guild, 1975; Robinson, 1937).

No customary procedure for voir dire exists either, but those questions the lawyer considers relevant may usually be asked during the voir dire, albeit attempts to relieve court case load congestion are encroaching on rights in this area (Ginger, 1975; National Institute of Law

Enforcement and Criminal Justice, 1974). The voir dire procedure may be conducted by only the judge, with supplemental questions supplied by the lawyers also asked from the bench; or the judge may permit additional questioning by counsel following those by the judge as to the general qualifications of the jury panel. Federal and state rules prohibit the judge from arbitrarily excluding counsel from voir dire or limiting the examination of potential jurors unreasonably.

The voir dire may result in a potential juror's dismissal on the basis of a cause or peremptory challenge. A cause challenge is granted whenever an individual fails to meet the statutory qualifications for jury duty or when bias is demonstrated to the trial judge's satisfaction; there are no numerical limitations to the exclusions resulting from challenges for cause. The peremptory challenge allows counsel to dismiss a certain number of individuals, as statutes specify, without demonstration of bias. Although rarely done, the entire jury panel may also be challenged; this may occur in jury composition challenges, or lack of representativeness in the jury panel (Bloomstein, 1972; Busch, 1959).

Legal jury selection procedures have directly or indirectly sought to assess attributes or attitudes similar to authoritarian traits, primarily prejudice. The authoritarian personality's distinguishing characteristics of rigidity, dogmatism, prejudice, intolerance, cynicism, anti-intraception, superstition and extrapunitive attitude toward those violating society's conventional values, have received scrutiny from researchers (Adorno, Frenkel-Brunswick, Levinson & Sanford, 1950; Christie & Cook, 1967; Christie & Jahoda, 1954; Kirscht & Dillehay, 1967). While these traits have all been found to be stable (Byrne, 1966), the most

enduring trait of the authoritarian personality is regarded to be rigidity or resistance to change. A review of several hundred studies found the authoritarian to be typified by a closed-minded cognitive functioning (Kirscht & Dillehay, 1967).

Relatively few psychologists have been involved in investigating the variables associated with jury trials. Fewer still have attempted to examine authoritarian behavior in jury trials. The most recent studies on authoritarian jurors have focused on the authoritarian's extrapunitive toward those accused of violating society's laws; the results affirm the expectancy that authoritarians are conviction prone and mandate harsher punishment (Boehm, 1968; Epstein, 1965; Jurow, 1971; Rokeach & Vidmar, 1973). In an important mock court experiment conducted by Mitchell and Byrne (1973), similarity between juror and defendant was a significant influence on authoritarians' verdicts, but not those of equalitarians (non-authoritarians). Direct research on authoritarianism, or any other research in actual court cases, is scant, limited by legal and ethical restrictions on experimental manipulations. Investigation is further complicated by the small number of possible subjects, making statistical analysis difficult at best. Simulated jury situations and mock court trials have been employed in lieu of actual jury trials, but clearly the closer the laboratory setting approximated an actual trial the more certain one could be of the research results (Gordon, 1968; Helfgott, 1974; Kirby & Lamberth, 1973).

The social scientists who have recently worked in legal settings have been similarly precluded from effective experimentation, however, their observations have been informative (Ginger, 1975; Gould & Gould,

1974; Schulman, Shaver, Colman, Emrich & Christie, 1973). The difficulty in assessing the impartiality and open-mindedness of potential jurors during the voir dire is always emphasized. Social scientists have elected to apply their skills via two methods, the clinical and demographic techniques. Neither technique has been able to develop an accurate rating methodology which can also be practically utilized in normal trial situations.

What was needed was a long-range experimental plan to ascertain whether authoritarianism is a significant variable in jury trials and specifically whether authoritarian jurors could be identified during the voir dire phase of the trial. Appendix A provides further information in support of the jury selection theory. The initial phase of this plan necessitated construction of a practical scale suitable for assessment of authoritarianism during voir dire, followed by a controlled mock court trial investigating the variables of interest. Significant results in the preceding research would call for a series of mock court cases with further factors allowed to vary to approximate legal and practical realities inherent in jury trials. Field testing in actual court trials with investigation of the significant variables revealed by the previous research would then provide a more definitive solution to the problem of bias in jury trials and how to identify those jurors who exhibit this bias in their verdicts. This research schema was followed.

Previous research conducted as part of the experimental schema (Kirby, 1972) found that authoritarianism, as measured by the specially developed oral scale administered as an integral part of the voir dire procedures, was a relevant variable in a staged mock court trial. In the

mock trial authoritarian individuals, as defined by the oral F scale or jury selection scale, were significantly more likely to make a decision early in the case and not change that decision upon presentation of later, more convincing evidence. Non-authoritarians apparently based their decisions upon the case evidence (Kirby, 1972).

Further tests of the theory and accompanying scale would clearly be worthwhile. Practice court cases routinely conducted by senior law students as the penultimate requirement prior to graduation afforded an ideal situation for further experimentation. Although not actual cases, every effort was made to ensure each case's realism. The theory and scale were tested in four practice court trials of civil suits. The various attorneys utilized the scale questions in differing ways during their voir dire. The quality of the evidence and case presentation also varied markedly; however authoritarian jurors were again found to be influenced most by variables irrelevant to the trial evidence. Authoritarian jurors in these four cases always voted for the plaintiff, except when they perceived themselves similar to the defendant; whereupon they always voted in the defense's favor. Equalitarians, as determined by the jury selection scale, were not significantly affected by either the order of evidence presentation or the similarity variable in this series of mock court cases (Kirby & Lamberth, 1973).

Despite the close approximation to actual court trials, the previous mock court cases left unanswered the question as to how jurors respond in actual court cases. Also requiring research was how authoritarians would react as jurors in criminal trials, particularly those involving sexual crimes such as rape. This factor was kept constant during the previous research and only civil suits were tried.

This experiment would investigate the effects of still further variation on the jury selection scale, the measure for assessing authoritarianism. Minor variations have frequently made major differences in the significance of experimental results, and few theories have survived the transition from the laboratory's controlled confines to the applied setting. Thus the robustness of the jury selection scale would be a major determinant in the successful attainment of the goal to identify and deselect closed-minded jurors.

This research was thus designed to provide experimental data upon authoritarian behavior in actual trials of criminal cases and to further advance the theoretical concepts discovered during this long-range study of the authoritarian juror's voting behavior. It was hypothesized that the authoritarian juror, as detected by the jury selection scale, will in an actual court case vote "guilty", unless he perceives himself as similar to the defendant in which instance he will vote "not guilty". It was also believed that authoritarian tendencies will be exhibited to a greater degree in cases in which rape was alleged.

Method

Subjects

Subjects were 24 adults, 12 per trial, who had qualified for jury duty in the state of Oklahoma. The jurors were selected by legal counsel in each trial via customary questioning during the voir dire and without utilization of the jury selection scale. The judge for the trials was a highly esteemed juvenile court judge with numerous honors to his credit. The legal counsel were of the same age group, evenly matched in judicial skills according to the judge, and had been assigned

to the cases from the Public Defender's Office in each instance.

Materials

The experiment was conducted within a courtroom of the Oklahoma County Courthouse. Two actual juvenile court cases provided the necessary conditions for testing the hypotheses. A tape recorder was used to supplement the court transcripts. A legal advisor attended to assess the utility of the jury selection scale and theory in other actual court cases, evaluate psychological aid in scoring juror responses to the scale, and explain legal procedures if necessary.

The State's allegation in the first juvenile court case was that the defendant beat his stepmother to death with a brick during an argument; however, the Defense contended the retarded Indian youth acted in self-defense against her attack with an automobile jack. In the second court case, the 13 year-old defendant was accused of second degree rape, willful and unlawful sexual intercourse by force. The Defense contended that the 76 year-old complainant had not been raped; indeed she had been the instigator of the act. Appendix B contains additional information relating to the charges and evidence in the two cases.

Procedure

Standard courtroom procedures were followed, except that after the usual voir dire of potential jurors by the judge and attorneys, the judge cleared the courtroom of spectators in order to ask some questions that "were more psychological and personal in nature about a juror's feelings regarding aspects of the case". The jurors were individually questioned by the judge, who in both court cases asked the jury selection

scale questions in a random order. The judge modified the questions slightly to accommodate his inquiry style, but he left the basic question or phrase intact. This tested the jury selection scale's utility in varying voir dire procedures. If a juror failed to indicate how strongly he felt about his answer, the judge asked an additional question to elicit the depth of the respondent's feeling, for example, "How strongly do you believe (not believe) that?"; or "Do you agree (disagree) with that slightly or strongly?". Supplemental questions being developed in order to improve the effectiveness of the jury selection scale were interspersed during the latter phase of inquiry. Responses to the jury selection scale questions were unobtrusively scored by the experimenter and a lawyer who acted as legal advisor during the experiment. A five point continuum was used to score the juror responses; these scores were summed and the total used as the measure of the juror's authoritarianism. Those jurors with jury selection scale scores over 25 points were considered authoritarian. The range, mean and standard deviation of jury selection scale scores for authoritarian jurors was 36 - 25, 29.38, and 2.99, the comparable range, mean and standard deviation scores for equalitarian jurors was 24 - 19, 21.90, and 1.68. See Appendix C for further information on the jury selection scale administration and evaluation.

Thereafter the court cases were conducted without variation from their customary manner. After the verdicts were returned in the court cases and the cases concluded except for sentencing (treatment), the judge excused the jurors from their official duties, but requested that they remain afterwards for a few questions. The judge then briefly explained that the experimenters were there to learn more about the nature of jury trials and had a few additional questions to ask them. The jurors were each asked

simply whether they had felt similar to the defendant and if they had any comments about the verdict or conduct of the case. After their responses were noted and questions answered, the individuals were further debriefed and thanked for their assistance before they were dismissed. The judge and legal counsel were asked their opinions as to the utility of the jury selection scale, the representativeness of the trial, the turning points in the trial, the appropriateness of the verdict, and the impartiality of the jurors.

Results

The data was divided into a 2 x 2 table for analysis; the variables were the juror's vote as to the defendant's guilt or innocence and the juror's reported feeling of similarity to the defendant. Table 1 presents the results for authoritarian and for equalitarian jurors.

Insert Table 1 about here

Other experimental designs and statistical tests were inappropriate due to the legal and ethical restrictions on applied research in actual jury trials. Thus obtaining pre- and post-deliberation votes of the jurors would not be possible, nor would random assignment of jurors to experimental and control groups, nor would the majority of other experimental manipulations. The data analysis was further complicated by the small numbers of jurors in a trial; thus Fisher's exact test was felt to be the most appropriate statistical test. Using Fisher's exact test, a significant relationship was found for authoritarians, but not for equalitarians; $p = .025$ and $p = .121$ respectively.

Discussion

The results of the jury trials provide good evidence for the

hypothesis that in actual court cases authoritarian jurors, as identified by the jury selection scale, will tend to find the defendant innocent only if they perceive themselves as similar to the defendant. The non-authoritarian or equalitarian jurors do not seem to be strongly predisposed towards guilty verdicts nor significantly affected by the similarity variable. This replicates the earlier findings in mock court cases (Kirby & Lamberth, 1973). Jurors identified as authoritarian in those four cases always voted guilty, unless they perceived the defendant as similar to themselves, in which instance they always voted innocent; there was no such relationship for equalitarian jurors; $\chi^2_1 = 19.$, $p \leq .001$ and $\chi^2_1 = .57$, not significant, respectively. Despite the small sample size, confidence in the results appears justified due to the consistency of the obtained results under varied conditions.

This confidence is further strengthened by reviewing the opinions expressed during post trial interviews with the authoritarian jurors who had voted contrary to the hypotheses. The sole authoritarian juror identifying strongly with the retarded defendant in the first trial did so on the basis of a common cultural heritage. The juror, believing the boy to be Indian like herself, defended him during the jury deliberations. The juror in the post trial interview said, "I am Indian like the boy and know how they fail to speak up for themselves. I identify strongly with the boy . . . and I said so in there [the jury deliberation room]." Actually the boy was primarily of black ancestry, but the juror believed the boy to be similar to herself. Contrary to prediction of authoritarian voting behavior, this juror also returned with a delinquent verdict, but on the

least serious charge possible. The post trial interview with the jurors revealed that this juror felt the disadvantaged youth might benefit from a guilty or delinquent verdict which would be likely to result in institutional treatment and remove him from a poor environment.

An authoritarian juror who voted for acquittal in the rape case replied in the negative when asked during post trial questioning if she felt similar to the defendant, but she was emphatic in her negative response when asked about perceived similarity to the complainant. A chance remark by the experienced bailiff provided a possible explanation for the seemingly discrepant finding. The bailiff's comment that "Germans still don't seem to care for Jews" served as a reminder that the original authoritarian scales, the J and A-S scales, were developed to measure anti-Semitism (Adorno et al., 1950). (It was also an effective reminder of the necessity for keeping a broad picture in scientific research.) It may be surmised that the juror's feelings of similarity to the defendant increased as a result of her bias towards the complainant.

The sex of jurors did not appear to be significantly related to court case, verdict, or authoritarianism. Four of the seven authoritarian jurors voting guilty in the manslaughter case were females; three of the six authoritarian jurors who perceived themselves to be dissimilar to the male defendant were male, three female. Three of the six authoritarian jurors voting not guilty in the rape case were female; two of the five authoritarian jurors who perceived themselves similar to the male defendant were female and three were male. In both the manslaughter and rape cases the only authoritarian jurors voting contrary to prediction were female, one in each case.

A more impartial jury trial could be obtained if the judge or attorneys utilized the jury selection scale to their advantage and attempt to "stack" a jury panel in their favor, but the means of ascertaining the juror's perception of his similarity to the defendant prior to the trial is not yet reliable. Currently, it would be safest to deselect those jurors identified as authoritarian, but more importantly, justice would be better served as a more impartial trial could be held.

The validity and utility of the jury selection scale in actual court cases is a major consideration. The scale's validity has been illustrated by this and prior research, and it has been found to be robust to variation under different trial conditions. The question as to the scale's utility has been only partially tested in actual court cases. Comments from the judge, the trial attorneys and the legal advisor, however, provide some idiographic data bearing on the scale's utility.

The judge who conducted the actual jury trials was enthusiastic about the research results. He felt a lawyer could substantiate a challenge for cause on the basis of the jury selection scale results rather than have to request dismissal with a peremptory challenge. The allowability as a challenge for cause is indicative of the high degree of faith the judge placed in the scale. Challenge for cause is on a par with the highest order of reasons for dismissing a juror and can be used for an unlimited number of dismissals during a trial.

The judge said that he thought a trial judge would be in the best position to conduct the questioning of the potential jurors. The lawyers interviewed regarding the applicability of the jury selection scale indicated the reverse, that the trial lawyer could use the scale to the best

advantage. The need for further research was recognized by all, but the trial judge saw the need for juror impartiality as the overriding concern. The length of additional voir dire time required to administer the scale, approximately ten minutes per juror, was not considered excessive. While some of the questions were rephrased slightly, they were not considered unduly psychological. Indeed, they were viewed as "appropriate and most relevant. . . . a critical factor in juvenile court cases". The jury selection scale questions were seen as amenable to inclusion without modification into the lawyers' voir dire techniques, but they felt additional questions on the specific issue at trial would be beneficial. The lawyer acting as legal advisor for the research concurred in believing additional questions would be an asset. He felt the scale questions could best be utilized "imbedded in a smoke-screen of plausible, but irrelevant voir dire".

The trial lawyers, who at first disparaged the notion of so simplistic a means to improve juror selection techniques, lost their skepticism after the court cases. The lawyers remarked favorably and with some surprise upon the successful predictions of juror voting behavior achieved via the short juror selection scale and underlying theory of authoritarian juror behavior. Minimal training time and ease of scoring for scale use were also noted with approval by attorneys and the judge.

Future experimentation should be designed to incorporate new questions and those specifically relevant to the trial issues into the scale matrix. This was tried in the last court case only to the extent that a few other questions were asked along with the jury selection scale questions. While the obtained data can be only indicative at this point,

it appears likely that these questions may provide supportive information and background for the jury selection theory and scale. Juror response to the information they had participated in research was genuine surprise and interest. They generally indicated interest and pleasure at being able to assist in the research. The subjects' responses bode well for future research possibilities in laying a more solid foundation and exploring its in situ utility.

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Table 1

Authoritarian and Equalitarian Jurors' Decisions
in Manslaughter and Rape Court Cases

Authoritarian Jurors' Decisions			
	Verdicts		
	Guilty	Not Guilty	
Perceived Similarity	1	5	
Perceived Dissimilarity	6	1	$\underline{p} = .025$
Equalitarian Jurors' Decisions			
	Verdicts		
	Guilty	Not Guilty	
Perceived Similarity	0	3	
Perceived Dissimilarity	5	3	$\underline{p} = .021$

APPENDIX A

THEORETICAL JURY SELECTION IN PRACTICE

Theoretical Jury Selection in Practice

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Abstract

Selection of jurors is a daily undertaking of attorneys and judges. Social scientists have infrequently assisted in the effort to select impartial, open-minded jurors. Philosophical stances and pragmatic preclusions have combined to restrict scientific research and theory formulation. Authoritarianism as related to jury selection is analyzed and a theory constructed in this paper. Experimentation in simulated and actual court cases to test the jury selection theory and accompanying scale provided supportive evidence. Consideration of the theoretical application and implications indicates it is possible via utilization of the jury selection theory and scale to obtain more impartial jury panels in the future.

Theoretical Jury Selection in Practice

Dee Ann S. Horstman

University of Oklahoma

This paper reviews jury selection concepts and practices in America. An analysis of legal precepts and psychological research bearing on the issues reveals a common basis for juror selection; it is observed that the majority of the voir dire or jury selection techniques seek open-minded individuals to serve as jurors. The major obstacle to be surmounted has been the development of a valid and pragmatic way of identifying, within the customary legal confines, those individuals who will be open-minded during the trial.

The heavily researched theory of authoritarianism is shown to have critical implications for selection of jurors. The constraints of actual courtroom use had, however, kept these constructs from being combined into a meaningful framework, capable of being tested. Previous research findings on authoritarianism, similarity, and the social interactions at work during the voir dire and juror voting phases led to a theory that a more impartial jury will result by the identification and dismissal of authoritarians from the jury panel. An analysis of research conducted in simulated and actual courtroom supports the belief that authoritarians,

as identified by a specially developed scale, will not render a just verdict on the basis of the trial evidence, but will be influenced by irrelevant variables. The crucial elements of a theory for jury selection are investigated in the latter phases of the paper: its applicability or utility, implications, theoretical parameters, and predictive ability. Consequences of the jury selection theory are considered in the paper's conclusion.

Jury Selection: Concepts

The essence of the judicial system is impartiality. This is presumed to be guaranteed by a jury trial of one's peers. Whether a trial by jury is "fair" is a question affected by many variables. It has long been recognized that a juror could be influenced by personal interests, bias, prejudice, or for other reasons could not serve as an impartial trier of the truth. Procedures for jury selection have thus been practiced since early jurisprudential history.

Voir Dire

The modern voir dire in the United States had its origins in medieval English common law, where two "triers" questioned jurors to ascertain their impartiality. This practice is still the basis for jury selection, although it has met with some modification.

In 1760 in the Colony of Massachusetts there was a Jury Selection Law which required "that the venire be chosen by a town meeting, thereby allowing the accused to thoroughly examine the character and biases of prospective jurors". American colonists complained that in

criminal trials against political opponents of Great Britain, the policy of the crown was "to secure jurors favorable to the Crown (Tories) and to deny defendants an effective opportunity to ferret out biased jurors" (Gutman, 1972, p. 294). The right to question jurors in criminal cases as to their impartiality was restored to the colonists after the American Revolution. The Judiciary Act of 1789 plus the Sixth and Ninth Amendments to the Constitution were worded so as to ensure that individuals retained the right to voir dire as well as other rights despite the Constitution's failure to specifically enumerate them (Ginger, 1975).

American judges and lawyers have continued to view the voir dire as a means for securing a fair trial. Chief Justice Marshall's discussion of personal bias in the famous treason case of United States v. Burr (1807) illustrates that closed-minded, rigid individuals were recognized as a detriment to justice:

Why do personal prejudices constitute a just cause of challenge? Solely because the individual who is under their influence is presumed to have a bias on his mind which will prevent an impartial decision of the case according to the testimony. He may declare that notwithstanding these prejudices he is determined to listen to the evidence, and be governed by it; but the law will not trust him. . . . He will listen with more favor to that testimony which confirms, than to that which would change his opinion. (p. 50)

Another famous Justice also noted that individuals are likely to be biased by factors irrelevant to the case. "This is not a matter of polite presumptions; we must look facts in the face. Any judge who has sat with juries knows that in spite of forms they are extremely likely to be impregnated by the environing atmosphere," declared Justice Holmes in his dissent in Frank v. Mangum (1915, p. 349).

Voir dire procedures currently vary considerably according to state statutes. While not a uniform practice, frequently a court official will ascertain whether individuals are qualified for jury duty or excluded by state or Federal statute. Some of the grounds for exclusion, such as a prior felony conviction, youth, short residence in locale, lack of citizenship, or lack of ordinary intelligence, are being challenged in certain jurisdictions. The trial judge rarely conducts detailed questioning of the jurors; however he has the duty to try to select a fair and impartial jury. Counsel participation may not be unreasonably limited nor arbitrarily excluded in cases (Ginger, 1975). The court's questions normally involve possible challenges for cause as it is legally defined, while the lawyers for each side seek to determine possible prejudices of potential jurors in the specific case at issue.

Although there is no standardized procedure for voir dire examinations, certain practices are generally followed. The judge may conduct the voir dire himself, having required counsel's questions to be submitted in writing prior to the voir dire. The judge-conducted voir dire is more common in Federal courts or where the court's caseload is heavy. A judge may question the jury panel as a group, rather than each juror individually. A judge may permit counsel to question the potential jury members on specific matters after the judge has been satisfied as to the prospective juror's general qualifications. Frequently the judge will permit counsel to conduct the entire questioning of the prospective jurors themselves (Bloomstein, 1972). Some findings indicate that a voir dire conducted by the parties is advantageous to the defense, but this is not certain (National Jury Project & National Lawyers Guild, 1975).

Determinations as to the counsel's involvement are based on various statutes, court rules and prior decisions; in Federal courts the question of voir dire conduct is left to the court's discretion by Rule 24(a) of the Federal Rules of Criminal Procedure.

The primary purpose of the voir dire is to select jurors who will act as impartial triers of fact. Individuals may be dismissed from the jury by either a cause or peremptory challenge. A potential juror may be successfully challenged for cause if actual or implied bias is demonstrated to the judge or if an individual does not have the statutory qualifications to be a juror in any case. Counsel are also allowed to dismiss a certain number of jurors "without a reason stated, without inquiry and without being subject to the court's control" (Swain v. Alabama, 1965, p. 220). Peremptory challenges may be utilized when a lawyer senses hostility or bias in a juror for no demonstrable reason (Dolan, 1967). The number of peremptory challenges allowed by each side is usually set by statute or court rule, but the trial judge usually has discretion to increase those numbers. The defense frequently is allowed more challenges than the prosecution by court rule or statute (National Jury Project & National Lawyers Guild, 1975). Challenges to the entire jury panel may be presented; these challenges vary considerably as to procedure and are infrequent (Busch, 1959; Jox, 1969). Jury composition challenges or lack of representativeness are the usual causes for jury panel challenges (Kairys, 1972).

The voir dire may frequently serve a purpose other than that of selecting impartial jurors. The jury selection procedure may also be employed by an attorney to awaken jurors to their own biases, or to make

them more introspective. It is used to establish a good relationship between juror and lawyer and conversely to show opposing counsel in a poor light. The voir dire has also assisted attorneys to discover "friendly jurors", instruct jurors as to important case facts or expose them to damaging facts in an opportune manner, and even prepare for summation (Youtt, 1971). However the judge and counsel are primarily trying via the voir dire to obtain jurors who will hear and decide a case on the facts and presented evidence rather than by bias or prejudice.

Psychological Research

Forensic psychology, a new field itself, has relatively few individuals engaged in jury selection. General interest and involvement in matters relating to jury trials is not quite so novel a phenomenon.

Psychological pioneers in the field were primarily concerned with the problem of witness testimony. Hugo Munsterberg's publication of On the Witness Stand in 1908 established him as the "father of forensic psychology". Alfred Binet, who obtained a law degree in 1878, was a proponent for developing a science of testimony, noting its advantages and immediate need. Max Wertheimer studied law at the University of Prague prior to his involvement with Gestalt psychology. Another pioneer, William Stern, frequently wrote articles on the relationship between psychology and the law (Gordon, 1968).

Few textbooks on forensic psychology appeared in America during the first half of the twentieth century. Moreover, neither Munsterberg (1908), Arnold (1913), Glueck (1916), Brown (1926), nor Burt (1931) concentrated on jury selection. It may be even more indicative of the dearth of material to note that only a few applied psychology texts devoted attention to either forensic psychology or jury selection. Munsterberg's

applied psychology textbook naturally included substantive material on forensic psychology, but only Hollingsworth and Poffenberger (1921), Grey (1941) and Husband (1949) dealt with forensic psychology in any depth. Even today few textbooks mention forensic psychology.

Munsterberg, who conducted the first experiments in forensic psychology, investigated in 1914 the possibility of sex differences in jury verdicts. After asking subjects to give pre- and post-deliberation verdicts, Munsterberg concluded that women were less able to benefit from group problem solving. This conclusion may have reflected some of his own prejudices as well as poor matching of subjects since male subjects were advanced Harvard graduate students and female subjects were undergraduates at a nearby college. Another early jury simulation experiment found that females were superior to males in testimony evaluation (Marston, 1924). Burt (1931) also addressed the problem of sex differences in juror decisions and found that females profited more than males from group discussions.

The relative activity of male and female mock jurors was studied in a more recent experiment of Strodbeck and Mann (1956). Males were found to initiate both more and longer periods of verbal activity, while females were shown to be more likely to merely react to male-initiated contributions. Additional research in this area is continuing, but disparate results persist. This could be due to the changing role of women and the necessity to employ simulated jury deliberation settings.

Other socio-cultural variables have been thought to effect juror's voting behavior. In an experimental study by Strodbeck, James, and Hawkins (1957) only laborers chose a jury of skilled workers when subjects

were asked to indicate their jury composition preferences should a relative become either a defendant or litigant in a court case. The subjects in other occupational categories preferred a jury more similar to themselves consisting of proprietors. High status jurors were observed to participate more fully in group discussions. Cues to status can be provided by appearance, dress, speech habits, allusions to previous experience, and even home addresses as demonstrated in a study by Gordon and Jacobs (1969). The student subjects were able to discount these prejudicial social factors in arriving at a verdict, just as judges and attorneys have found some jurors may reach impartial decisions despite the perception of wealth.

Nationality and race of jurors has also been observed to correlate with voting behavior. Italians, Slavs and blacks will usually favor the defendant in actual trials; while German and British jurors ally themselves with the State in actual court cases (Belli, 1954; Gordon, 1968).

While James (1959) found that the educational achievement of jurors had no major impact upon the consonance or dissonance of jury decision-making, a juror's educational attainment has been observed by many others to distinctly influence voting behavior. A comprehensive study of actual jurors, Biases and Prejudices Among Jurors (Education Systems and Publications, 1970) found that higher educational achievement is significantly correlated with a juror's impartiality. Defendants with less than an elementary school education were also less favored by jurors than those with college degrees.

In its exhaustive consideration of juror attributes, the same study (Education Systems and Publications, 1970) found that the ideal

juror is male, married, 40-49 in age, a college graduate, professional, Protestant, white, a \$10,000 to \$15,000 wage-earner, native-born American, Midwesterner, and either Republican or Democrat. Conversely the characteristics of the least ideal juror are: female, single, over 60 in age, elementary school education, unemployed, either a Jehovah's Witness or Adventist, either Oriental, Indian, Hungarian, or Filipino, under \$3,000 income, Southerner and Socialist. The American least likely to be favored by a jury is either very young or very old, possessing only an elementary school education, and is either a Seventh Day Adventist or Jehovah's Witness. This disliked client earns less than \$3,000 a year and is probably frequently unemployed; if he has a job, he's likely to work for the government or a union. If this client is also a Socialist and a Southerner, one will have an extremely difficult time finding an unbiased jury to try the defendant. On the other hand if the client is a white, native-born, married man in his forties, who is a professional with a college degree, earning between \$7,500 and \$15,000 a year, one will have a much easier time selecting a jury. Should this client also be either Protestant or Jewish, a Democrat, and from either the Northeast, Midwest or West, the chances are that almost any jury will find in his favor.

Not until the 'seventies were there any significant advances in jury selection. Only a few years earlier, in March 1968, the International Academy of Forensic Psychology had been founded to respond "to a compelling need for an international organization to provide stewardship for an interdisciplinary venture into the relationship of law and behavioral science" (Gordon, 1969, p. 3). Although commendable, this journal still focuses on testimony effects, intellectual issues and other questions more readily researched than jury selection.

More recently, a group of social scientists concerned about civil rights and dedicated to constructive social change in 1972 formed the Center for Responsive Psychology, which is the prime participant in the National Jury Project. The National Jury Project is also sponsored by the Center for Constitutional Rights, Civil Liberties Legal Defense Fund, National Conference of Black Lawyers, National Emergency Civil Liberties Committee and the National Lawyers Guild. Information relating to the National Jury Project is disseminated mainly through the Center for Responsive Psychology's journal, "Social Action and the Law", published bi-monthly, with subscriptions at \$5.00 per year, \$2.00 for students, free to those in jail. The organization is dedicated to preserving the jury system and reducing prejudice in jury trials, particularly via change of venue motions, compositional challenges to jury panels, jury selection and voir dire questioning.

The group's concern with civil rights is evident in the studies reported. This directional influence even permeates the investigations relating to eyewitness testimony; for example, Center Director Robert Buckhout's investigations utilized a picture of a hostile black-white interaction and a line-up of Hispanics to reveal the unreliability of eyewitness testimony (Buckhout, 1974). Compositional challenges, prejudicial pre-trial publicity, jury deliberations, capital punishment and the "death qualified" jury, and jury size have been looked at in a similar vein.

While more attention has been directed to the jury, relatively little scientific investigation has been directed towards jury selection. Findings can be extrapolated from other jury research which are applicable to jury selection. One can infer the importance of personality

variables and selecting jurors more cautiously from research designed to determine whether the verdicts of six-member juries would be more or less advantageous to the defendant than 12-member juries. Contrary to the U.S. Supreme Court's 1970 ruling in Williams v. Florida that the use of six-member juries was both constitutional and functionally equivalent to 12-member juries, most recent research indicates that the reduction of jury size will result in more convictions, particularly if the cases are prosecution oriented (Buckhout & Weg, 1975; Valenti & Downing, 1976). Buckhout and Weg (1975) also found that verdicts by the majority decision rule resulted in significantly more convictions than those in which an unanimous decision was necessary. An assertive confederate subject arguing for conviction was found to have significantly more influence with smaller juries in another simulated jury study, reported by Helfgott (1975).

Research on the attractiveness of defendants has pointed up the popular tendency to favor those whom one finds more attractive. This meant that more attractive defendants generally received lighter sentences in simulated jury experiments, but occasional contrary results occurred. Efran (1974) found that physically attractive female defendants received more favorable sentences from male jurors; but female jurors did not give significantly more favorable verdicts to the physically attractive men in the study. It is unfortunate that there was no same-sex rating, as the results could have indicated either females were more impartial than men or that physical attractiveness is not as important for men as women. Other explanations are also conceivable. It is interesting that both groups strongly believed physical attractiveness should be an irrelevant factor in their decisions. Jurors were generally more

lenient towards attractive defendants but this was particularly true if the crime, like burglary, was not related to looks. Better looking individuals were judged more harshly if the alleged crime itself favored those with good looks, like swindling (Sigall & Ostrove, 1975). Izett and Leginski's (1974) study of simulated jury deliberations found that deliberations produced more lenient sentences for physically unattractive defendants. It is possible that the jurors' attitudes were influenced by real or perceived differences in similarity.

Similarity has been demonstrated to be the primary factor influencing behavior in many non-jury trial situations (Byrne, 1971); this also appears to be true in jury situations. In previous experiments mock court jurors had harsher decisions for defendants with dissimilar attitudes and more lenient ones for defendants with similar attitudes; this was particularly true of authoritarian jurors (Griffit & Jackson, 1973; Kirby & Lamberth, 1973; Mitchell & Byrne, 1973). These experimental results will be considered in more detail in the section on authoritarianism. As will continue to be evidenced throughout this paper, authoritarianism, or something very akin to what is considered to be authoritarianism, is theorized to be the primary variable influencing a juror's behavior and verdict. This has been recognized by those psychologists attempting to study the relationship between juror decision and personality, and thus the few experiments on this aspect have usually centered on the authoritarian personality or attitudes (Alexander & Licker, 1975; Boehm, 1968; Kirby, 1972; Kirby & Lamberth, 1973; Mitchell & Byrne, 1973).

One of the problems hampering further research into the importance of a juror's personality in decisions has been the necessity to develop an assessment instrument which could be utilized during the voir dire

(Kirby, 1972; Golden, 1973). Another obstacle to this line of personality research has been restrictions to experimentation imposed by the legal setting. These closely linked problems must be recognized and overcome in any jury selection theory. This has not been systematically or scientifically addressed by previous research studies.

The ultimate test of a theory is its utility (Mischel, 1968), and utility is particularly critical in jury selection research. Although considerable leniency and time may be allowed attorneys for voir dire, a jury selection instrument must meet certain standards in order to be practical. The scale should be short and simple. The scale will have to be orally administered, and the scoring process must accommodate the oral responses. It must also be flexible and adaptable to administration under the various voir dire procedures. The expense should not be prohibitive in order to assure an impartial trial to more people.

A jury selection scale must have these characteristics in addition to reliability and validity. Asked by Judge Friedman during the Newton trial to propose an improved method of jury selection, sociologist Dr. Robert Blauner responded that one needed to devise new tests or criteria for selecting the least racist, most equalitarian whites. The appropriate tests for juror selection as yet do not exist was Blauner's regretful remark (Ginger, 1975). Blauner's and other scientists' recognition of the difficulty in constructing an appropriate assessment instrument doesn't explain the relative paucity of research conducted by psychologists and social scientists in an area where cognitive processes, personality and social dynamics are so relevant. Why has psychology failed to thoroughly investigate this area? One answer lies in the divergent philosophical stances of the social sciences and the law.

The theoretical differences which lead to tremendously important practical differences are particularly well-summarized by Gordon and Jacobs (1969) as follows:

Psychology and the law often stand juxtaposed. The law is basically rational and deductive; psychology is basically experimental and inductive. The law assumes a voluntaristic source of man's actions and couches its concepts in such absolute terms as guilty or innocent, defendant or plaintiff, sane or insane. Psychology assumes a deterministic basis for man's actions and shrouds its concepts in relativistic and probabilistic terms. The law, for the most part, seeks answers in legal theory and precedent; psychology seeks to solve its problems by future research. Yet both psychology and the law are concerned with human behavior: One to study it and aid in its actualization, the other to codify rules for the protection of men to guide the behavior of men in relationship to one another. (p. 276)

Conflicting philosophical obstacles to research have been further escalated by inflexible legal and psychological representatives since Munsterberg's time. Advocate Charles Moore vehemently charged Munsterberg with practicing "yellow psychology", and declared that experimental psychologists would be unwelcome in his courtroom. Munsterberg's reply is purported to have done little to improve relations.

Psychological research relating to jury trials received a more devastating blow in October 1955, when a congressional subcommittee of the Senate Judiciary Committee under the Internal Security Act convened a hearing to investigate a study of the judicial processes conducted by a prominent group of University of Chicago jurists and social scientists under a \$400,000 Ford Foundation grant. To analyze the social and psychological factors contributing to the jury deliberations the researchers considered it necessary to "bug" the jury room to record the jurors' interchange. Most of the congressional inquiry focused on the possibility of communist subversion; for instance project director Dean Edward Levi

of the Chicago Law School was questioned in regard to his signature on a letter critical of the House Un-American Activities Committee. Also noted by the subcommittee was Levi's acquaintance with a University of Chicago student, who was purported to be a communist. Levi's contribution to the American Civil Liberties Union was also considered incriminating (Eastland, 1955). The Senate later resolved to make recording jury deliberations unlawful.

The subcommittee further observed that an associate project director, Professor Harry Kalven, had several years before the study written a personal letter to President Truman asking for a review of the Rosenberg atomic spy case. Professor Kalven's letter was subsequently published by the Daily Worker, a Communist newspaper (Gordon, 1968). Other subcommittee testimony concerned the tenth judicial conference at Estes Park, Colorado, at which the recorded jury deliberations were presented by another project member, Fred Strodbeck. The Estes Park Conference, described as an august gathering which included former Supreme Court Justice Tom Clark, was still viewed with some distrust. This suspicion of research on juries as being somehow "un-American" is still extant.

A leading authority on jury selection, Melvin Belli, revealed in his 1954 jury selection guide his own skeptical attitude as to the potential utility of psychology in the voir dire.

To fit these personal traits and idiosyncrasies into a precise formula would be the task of the super "salesman", the psychologist, but more appropriately and practically such other "experts" as: the clerk at the corner store who has learned, i.e., to whom to give, where to deny credit. (p. 831)

Legal distrust and judicial unwillingness to have research conducted within a legal context, as well as the obvious experimental

constraints, have precluded substantive psychological investigation. The vast majority of the previously cited scientific research was performed in experimental settings, not courtrooms, with students rather than jurors for subjects. Inferences from this type of research must be cautious and supplemented by others' anecdotal findings and experiences in an eclectic approach.

Sociologist Blauner's account of his experiences in a major trial thus provides valuable insight into the social interplay occurring during the voir dire with resultant implications for jury selection. Professor Blauner was an expert witness for the defense on the subject of race relations in California v. Newton, the trial of the Black Panther leader for the murder of a white police officer. Dr. Blauner also studied the voir dire process, hoping to help it achieve its theoretical purpose of guaranteeing an objective, impartial, unbiased jury. Blauner maintains that "despite its theoretical function, the voir dire is in reality a contest between the two adversaries toward the goal of selecting the jury that is most favorable to his side" (Ginger, 1975, p. 448). The contest in the Newton trial took two weeks and the questioning of 99 prospective jurors before a regular jury of 12 was chosen. Fifty-three additional panelists were questioned in the determination of alternate jurors.

Prejudice and a rigid anti-death-penalty stance were the two main criteria for a challenge for cause in the Newton case. Blauner tried to determine white racism during the voir dire and suggested ways the jury selection techniques could be improved. His primary recommendation to the lawyer was to ask open-ended questions. This approach would elicit more information from the potential jurors; however this does not fit in

with traditional legal practices. ("Just answer 'yes' or 'no', please" is a common judicial request illustrating the succinctness desired by many judges.) Blauner felt that the racial attitudes and subtle prejudices frequently ~~were~~ not uncovered during the voir dire even by attorney Charles Garry's innovative and imaginative questioning. Blauner theorized that this was partially due to the public nature of the voir dire and the need to avoid embarrassing a prospective juror in front of a large audience. He noted that Garry's questioning frequently was irrelevant and that Garry seemed to rely on his intuitive ability to recognize a prospective juror's hostility on the basis of subtle cues.

Newton's defense was seeking prospective jurors "who were basically honest, who appeared to have a capacity to learn and grow in the course of the trial" (p. 465). Blauner expressed disappointment because the dynamics of the peremptory challenge system resulted in a jury that was not representative of a heterogeneous population; rather a middle ground was achieved as each side utilized their challenges. Blauner, however, was apparently most concerned that "the type of person that is held up as ideal for a democratic polity - the concerned, knowledgeable and politically active citizen - had the worst chance of all to become a juror!"

The accounts of other social scientists who have provided aid to attorneys in jury selection also cite the need to more scientifically assess individuals in order to obtain impartial jurors (Bryan, 1971; Sage, 1973; Schulman, 1973; Gould & Gould, 1974). It should be noted that despite the common recognition of the need for scientific experimentation and investigation, this has not been accomplished. Psychologists,

sociologists and psychiatrists have usually sought only to apply their knowledge to the jury selection process. The methodology used is frequently the "shotgun approach"; wherein the psychologist employed tries to make his or her assessment of the prospective jurors using a variety of techniques hoping that one will hit the mark. Inferences are made on the basis of previous experience, knowledge, and judgment from the potential juror's personal and work history, responses to questions, past and present associations, verbal and body language, expressed attitudes, and other cues. This method was used in the Angela Davis and Pentagon Papers trials, together with analysis of voter registration records, third-party information networks, and lengthy voir dire. This has been termed the clinical selection model by forensic sociologist Dr. Jay Schulman, as differentiated from his demographic model which he utilized in several famous trials (Schulman, 1973). The demographic model relies primarily on construction of profiles of "good" and "bad" jurors based on a survey of current attitudes on case-related issues in the area where the trial will be held. Behavioral ratings are also made during the trial by many people on the defense team; the joint decision-making involves the legal counsel, social scientists, defendant(s), relatives of defendant(s), and other individuals with special insight into the case. In the Wounded Knee case an aged Indian chief who assisted in the decision-making purportedly had the best judgement concerning potential jurors.

The clinical and demographic selection methods both rely heavily on jury observation, expert judgment, and construction of model juror profiles. The basic difference is in the procedures whereby the model juror profiles are constructed. The clinical method relies primarily on the

expert's judgment which is based on the expert's and others' prior observations and studies of individuals, now applied to the jury selection setting to determine who will be a good juror. The demographic selection method obtains a current sampling of community opinion by conducting a community survey; the responses to the survey questions are then used in conjunction with information about the interviewees to develop a profile of those who will be favorable or unfavorable to each side. This profile is then matched by the behavioral ratings to the potential jurors. The demographic method, while more systematic than the clinical method, requires considerably more time, money and staff. It has been most effectively used in political trials, where a large number of unpaid volunteers have been available (National Jury Project & National Lawyers Guild, 1975). Other practical and legal limitations may restrict the effectiveness of the demographic selection model. Both methods do try to select the jurors most favorable to their cause or those with open-minds; more importantly the models are generally based either directly or indirectly on authoritarianism (Gould & Gould, 1974; Schulman, 1973). The importance of this will be elaborated upon in the development of a jury selection scale and theory.

Legal Precepts. Lawyer's theories and methods of jury selection tend to covary, usually in accordance with prevailing practices and their own success in jury selection. Prior to the Juries Act in England advocates had to even consider a juror's willingness to go hungry to duly consider a decision; as the bailiff in charge of the jury was sworn to keep them without meat, drink, or fire until a verdict was reached. This practice has been attributed to Hervey de Stanton, the Chief Justice of the

King's Bench, England, who started it in 1310. Little wonder that prior to 1870 the voir dire's importance and utility was not fully recognized.

Practices have changed, but legal theory and methodology still seem outdated. The majority of lawyers continue to select jurors on an unscientific basis. Advice from more successful attorneys, intuition, "common-sense", "cerebration", anthropological or physiological factors, body language, handwriting and even astrology are cited as jury selection techniques by attorneys.

Lawyers frequently rely on jury selection formulas devised by prominent trial attorneys, such as Melvin Belli's guide (1954). Belli's guide to jury selection is extensive, but also highly experiential as seen from these excerpts:

A juror should not be asked if he is "prejudiced" against or for anything. Rather he may be questioned if he has "had an experience" with this type of thing, or does he have any particular "feelings on the matter". . . . Generally, an older plaintiff will receive less at the hands of a younger juror than an older juror for the older juror better will understand the discouragements of age and particularly one disabled during his later years. . . . The married juror, too, has more patience and tolerance in the jury room and perhaps, therefore, greater weight. . . . (pp. 800; 814; 817)

A rule of thumb: this type of juror, the expert or professional person or spouse of one should be excluded by both plaintiff and defendant, criminal and civil. . . . He will definitely be on one side or the other and you will not know which side, no matter how carefully you examine him on voir dire (p. 818)

The physically infirm juror is generally opinionated. . . . Thus the rule of thumb with this type of juror depends on the other qualification of appearance, physiognomy and personality. . . . (p. 819)

Generally a male juror is more sound than a woman juror. However, women jurors generally "catch on faster" than male jurors and intuitively sense a "break" in a case before a male juror . . . (p. 820)

But, to make the "game" of selecting the juror even more intriguing, I recall . . . The rule of thumb: artists, writers, musicians, those on the stage or public figures, are generally good plaintiff jurors in the civil case, good defendant's jurors in the criminal case. . . (p. 824)

Despite the comprehensive, detailed nature of Belli's guide, the methodology used to select jurors remains unsystematic. A thorough reading of the text however indicates underlying scientific premises, contrary to the lack of recognition and Belli's references to a lawyer's need for "equal gifts of intuition, the art of jury selection and other learned 'tools of the trade' . . ." (p. 844).

The more subjective techniques of intuition and "common sense" are employed by many trial attorneys and, despite the lack of objectivity, cannot be lightly dismissed. Although unsystematic and occasionally irrational, a common thread is also apparent in their remarks. Legal counsel prefer jurors who are open-minded or otherwise sympathetic to their clients.

"My feelings, call it hunches if you like, about jurors are usually pretty accurate. . . it's primarily a trial and error method," one defense attorney quipped when questioned about his jury selection techniques. "It is common experience that jurors with small incomes are partial to criminal defendants," Train wrote in 1924 (p. 19) in an article entitled "Human Nature on the Witness Stand". A defense attorney with 25 years experience, Robert Heeney, refuses to put engineers on any jury hearing a criminal case. "They're hard-nosed," he said when asked why. "These people only know 2 and 2 is 4 and sometimes I need it to be $4\frac{1}{2}$ or 5 and they won't budge." On the other hand, Heeney feels that women with bleached blond hair are good jurors in rape cases where the defense is

that the accused was led on by the female. "She understands the men's motives. And although she might not commit adultery, she's thought about it. She's probably been in a situation because of her attractiveness. This woman would understand why he misunderstood" (Kuhn, 1975, p. 1).

Another respected criminal defense attorney, James E. Sharp, said he would prefer a juror who is a social worker. Although admittedly a stereotype, he's found it to be supported in trials that a person who deals with people's problems is a good choice as they get sympathetic and bend over backward to give someone a second chance. Nurses, doctors and other medical personnel are usually perceived by attorneys as calloused and enured to suffering.

Prosecutors tend to select more conservative jurors, who are less apt to change. Bill Collins, chief of the U. S. Attorney's Office, criminal division in U. S. district court, stated that prosecutors "basically look for stability in jurors. People who are a little bit older are usually less radical in their views, but it depends on the individual case" (Kuhn, 1975, p. 7).

"Some people say, 'Well, we want all this kind of person, all that kind of person. We want Italians to sit in a rape case because they're passionate.' All those old thumb rules, to me, seem like so much hogwash," defense attorney F. Lee Bailey has remarked (Kuhn, 1975, p. 1). A few months later Bailey in a television appearance on the Mike Douglas Show said that his client Patty Hearst's chance of acquittal "depends one whale of a lot on what happens with the jury" (February 5, 1976). He felt Ms. Hearst had as good a chance in the Bay area as anywhere; the problem was that when you pick a jury for a rich client there were no peers. The

Hearst defense team is reported to have hoped for "older jurors who are parents, and capable of being touched by the sight of the Hearsts sitting loyally behind their daughter in court" (Mathews, 1976a, p. 26). This strategy proved unsuccessful; the jury foreman, a retired Air Force colonel, and the other eleven jurors brought in a guilty verdict. "I have no idea what caused the jury to go the way it did," Bailey stated with dismay (Mathews, 1976b, p. 23).

Preference for certain types based on reasoning and experience are thus expressed by many lawyers. There is relatively little printed on the subject, however, and most "trade-secrets" are carefully guarded. A few attorneys are apparently attempting to improve information exchange and intellectualize jury selection. One such attorney is a Connecticut trial attorney, Theodore Koskoff.

"The first step in jury selection is cerebration," Theodore Koskoff noted in a speech on jury selection before the American Trial Lawyers Association (Ginger, 1975, p. 479). His analysis of jury selection, "a study of applied psychology", illustrates an appreciation for a systematic approach; it also indicates how a few experienced trial attorneys are trying to reduce the guesswork in jury selection. "The complexion of the jury you want varies with the type of case you have. By careful analysis, one can make an essentially unscientific process a little more scientific," Koskoff stated, reported Ginger (1975, p. 480).

"The jury selection process is mostly an exclusionary process. The lawyer never knows who the good jurors are. What he is trying to do is get rid of the bad ones. Some types are bad for all types of cases. Some are bad for some cases and good for others" (Ginger, 1975, p. 280).

Here are some of the examples that Koskoff gave:

Never take a juror who strikes you as being very strong. He will crack the whip. He will be a one-man jury. If he is on your side, he will be great, but he is just as bad against you, and you never know, so you can't afford to take him. How do you find out who these people are? Sometimes you find out by their past; chances are a retired army colonel or master sergeant would be a one-man jury. A foreman in a factory . . . In other words, people whose training and background tended to be rigid or authoritarian make poor jurors. (Ginger, 1975, pp. 481, 482).

Some attorneys rely on observation of a prospective juror's mannerisms and movements for clues in jury selection. For example, a juror with a limp would not be a plaintiff's juror in a physical injury case, reason some attorneys, as the juror has learned to live with his pain and disability and could always rationalize how his disability is worse than the plaintiff's. Nonverbal forms of communication, or body language, is espoused as a juror selection method by Dr. William Bryan, who holds doctor's degrees in medicine and jurisprudence. Body movements, facial expressions, even tiny gestures and nervous habits are thought to be important clues to an individual's personal traits. Dr. Bryan, who is chief of staff at the American Institute of Hypnoses Medical Clinics in Los Angeles, believes anxiety and insecurity are among the easiest to spot. Bryan's treatise, The Chosen Ones - The Psychology of Jury Selection, (1971), gives the following example of body language.

When a prospective juror is asked if she can decide the case fairly, she will always invariably answer in the affirmative. If, of course, she feels subconsciously that she would not be a fair juror to your side of the case, she may give you a subconscious "no" by swiveling her hips back and forth in the witness chair at the same time that she is saying "yes" and nodding her head in the affirmative. Such prospective jurors should usually be excused. (p. 163)

Elridge Sampliner, an Ohio attorney, also claims success with a

physiognomic or anthropological approach to jury selection (Belli, 1954). He divides jurors into classes; relying further on their appearance, talk and walk. Some typical observations follow:

Salesman with the round face who beams. He is material to work with . . . his lips curve upwards . . . his eyes watch yours . . . select him . . . he will influence the others. . . . (p. 829)

Her [the "spinster"] lips droop. The contour of her head is elongated. She winces pain while talking. She looks down. She isn't sure of anything. A frustrated life is written on her face. Throw her off the jury. . . . (p. 829)

The affluent businessman . . . keep him on . . . his optimistic face is high in the air. . . . The professional man's wife . . . never for the plaintiff . . . the success story may be written on her face . . . the lines will turn up . . . her lips slant upwards . . . a good bet if the defense counsel doesn't exercise his prerogative. (pp. 829; 830)

Mr. Sampliner's voir dire by categorization of an individual's appearance and occupation is intuitively-based, but again an underlying thread of reason might account for his apparent success in jury selection.

Prospective jurors' handwriting was analyzed in the Angela Davis case for clues to their impartiality. This technique is rarely employed in the United States. Although handwriting analysis is employed successfully in Germany, its application is not recommended for jury selection because it seems to incur ill-will among the potential jurors. In Jury Woman (1974) Mary Timothy, the foreperson in the Angela Davis case, remarked as to the offensiveness of some investigation or inquiry techniques. She singled out handwriting analysis as particularly offensive.

One district attorney, who preferred not to be quoted, insisted that astrological signs proved to be as reliable a selection technique as any others. "It wouldn't be good for my image, but a person's sign will often decide whether I challenge or not," he said. "For example,

Geminis are apt to be changeable . . . I'd want them on only if I've got a good case . . . can't count on influencing them emotionally - not and have it last." The district attorney also declared that "many more attorneys than you'd think" select jurors successfully via astrology.

Jury composition challenges have been successfully litigated by David Kairys by means of a mathematical or statistical method of analysis of jury selection systems (Kairys, 1972; National Jury Project & National Lawyers Guild, 1975). If the process by which jurors are selected does not result in cross-sectional representation or discriminates against any "cognizable class", it is unconstitutional and invalid. A prima facie case of discrimination can be established if there is a substantial disparity between the representation of the class in the jury pool and in the population. Definite standards have not been established for the point at which a disparity becomes substantial. Kairys' methodology involves computation of the probability of the disparity resulting if the process were unbiased, plus excellent advice on ways to obtain the requisite data and the most effective explanation of the resultant statistics in court. Kairys' technique is useful primarily in trials of minority or radical defendants, or in other instances where biographical and demographic variables would be particularly pertinent.

Lawyers' recent focus on the problems of black defendants in criminal cases has evolved special techniques in juror selection. Speakers at a conference of the College of Criminal Trial Lawyers, Inc., held in Atlanta from February 13-16, 1976, discussed methods of challenging grand jury lists, investigating a jury pool, questioning jurors, discrediting white eyewitnesses and phrasing appellate briefs when defending

black clients. The prominent attorneys addressing the conference included Leo Branton, Archibald Cox, Percy Foreman, Charles Garry, James Montgomery, and William Murphy, among others.

"I knew I'd won the Angela Davis case when the jury was selected . . . A lot of things went into the Angela Davis trial, but that was the most important," defense attorney Leo Branton reportedly told the convened lawyers (Joyce, 1976, p. 1). One of the questions Branton asked prospective jurors was the defendant's race. "If the jurors answered 'colored' we knew he hadn't moved into this century. If he said 'Negro', we knew he'd moved into the century, but he wasn't ready for it. If he said 'black', he knew what was happening," Branton said (Joyce, 1976, p. 3). Branton explained that in questioning the jury pool they were mainly looking for fair, open-minded jurors. There were 11 whites and one Hispanic juror in the Angela Davis trial, but Branton did achieve an acquittal for his client. If attorneys had a jury list, money and a large staff of volunteers, demographic jury selection techniques such as Schulman's were suggested. Percy Foreman, Houston defense attorney, disclaimed he used any special techniques in representing black defendants, but he did relate his unorthodox method of obtaining more information as to prospective jurors. He suggested becoming acquainted with the personnel staff in the city's major firms and thereby gaining access to their files.

Defense attorney Montgomery shared with the other attorneys the questions he had found to be most revealing, particularly in the 20 states where the judge usually conducts the voir dire. Jurors should be asked whether they had ever had any experience with the NAACP, the KKK, the ACLU, or the Nazi Party. The phrase "ever had any experience with" was preferable to a direct inquiry about a juror's prejudice, as few prospective

jurors would admit to being biased. Although not mentioned at the seminar, this phrase had previously been recommended by Belli (1954) for the same reasons.

The need for indirect questions to ascertain a potential juror's conservatism or bias was emphasized by Garry, who had defended Black Panther Huey Newton in 1971. Questions he has suggested to determine a person's ability to be fair were indirect measures of racist or dogmatic attitudes such as "Have you ever moved out of a neighborhood because blacks were moving in?; Do you have any friends or relatives who are police officers?; What newspapers do you read?". The use of indirect questions to discover prejudice was supported by the other lawyers.

Even the best of jury selection methods used by skilled practitioners will go awry; often for unrecognized reasons. This is confirmed by famous attorneys like Melvin Belli, who stresses that all the formula signs may point to the challenging of a juror, yet a person in a jury trial situation may "even lean over backwards to be fair" (1954, p. 827). Nearly every guide on jury selection will emphasize the exceptions to the rules (Stevenson, 1971). In Psychology and the Law (1960) McCarty says, "There is not much that can be done in picking the jury. Experienced lawyers make the examination short and agreeable, strike a few names, and hope for an intelligent jury" (p. 400).

While many attorneys feel that selecting a jury is the most important part of the case, a few feel that so little is known about the process it is essentially valueless. "Cases are won on perspiration and preparation and not so much on how a jury is selected", Maryland attorney Andrew Sonner has commented (Kuhn, 1975, p. 1), but, as observed, the majority of lawyers will disagree with him. The numerous court cases which

have arisen in protest to even minor restrictions in voir dire rights, plus the extensive time taken to voir dire in many cases, further attest to its importance. Whether they have been successful in their jury selection techniques or not, lawyers all agree that present jury selection methods could be improved.

Authoritarianism

A recurrent theme in the jury selection methods of both attorneys and social scientists is the need to select impartial, open-minded jurors, individuals who are able to listen to both sides of a case before reaching a decision. Whether or not it has been recognized, jury selection is usually based on the prospective juror's authoritarianism.

General research findings concerning authoritarianism will be reviewed; research on authoritarianism and jury selection will then be considered in more detail.

Re: General Research. Kirscht and Dillehay's (1967) comprehensive review of the research and theory supporting authoritarianism begins "for sheer quantity of research and wealth of findings, few areas within the behavioral sciences can rival the study of authoritarianism" (p. xi). Research has discovered methodological inadequacies, modifying conditions, measurement problems and lack of conceptual clarity; yet the authoritarian personality remains a viable construct.

The "typical" authoritarian is considered to be closed-minded, rigid, dogmatic, resistant to change, intolerant, prejudiced, with an extrapunitive attitude toward those who have violated the conventional values of society (Adorno, Frenkel-Brunswick, Levinson & Sanford, 1950; Christie & Jahoda, 1954). These and other personality characteristics

such as conventionalism, anti-intraception, superstition, stereotyping, cynicism, insecurity and intolerance of ambiguity were first described in 1950 in The Authoritarian Personality, when Adorno et al. reported a series of related studies using questionnaires, interviews and projective techniques in their massive volume. The initial study was based on anti-Semitism, but shortly focused upon ethnocentrism and potential facism (Bettelheim & Janowitz, 1950; Kirscht & Dillehay, 1967).

Investigators have not been able to ascertain the cause of authoritarianism, although apparently the combination of a severely restricted societal environment with exposure to an authoritarian type of social system will lead to the development of authoritarianism. Authoritarians are made, not born. Like many psychological processes, the necessary conditions for the development of authoritarianism vary with the individual. Nor does there appear to be an effective method of "curing" authoritarian individuals. It should be possible to obtain a desired behavior in certain instances by appropriate manipulation of conditions modifying the authoritarian's behavioral tendencies, but this has not been achieved with any degree of certainty. There are too many conditional variables to control them effectively; both field and lab studies have shown that authoritarians are not likely to change (Triandis, 1971, pp. 120-124). Authoritarianism is hence viewed as a relatively fixed characteristic of personality, with stable and enduring traits (Byrne, 1966).

The original Adorno et al. study will not survive critique on many methodological grounds. As Hyman and Sheatsley (1954) have pointed out, the samples were not representative; the statistical analyses had serious faults; other explanations were not adequately explored; and the

cumulative weaknesses operated "in favor of the author's assumptions" (p. 121). The Berkeley group's studies, however, were not intended to be a systematic research study (Sanford, 1956), but had only a central thesis that hostile, prejudiced attitudes are expressions of an individual's inner needs or impulses which form the foundations of the authoritarian personality. Resolution of intra-psychic conflict could evolve into suspicion, distrust of others, prejudice, ethnocentrism and facism. While the investigators offered only ad hoc reasons for many of their observations, they had sought to identify a central psychological construct and had developed a scale to try to measure the concept. Improved measurement and experimental techniques should clarify the "nomological network" necessary to support the construct (Cronbach & Meehl, 1955).

Response bias in the determination of the original F scale scores is a matter of considerable concern for some researchers. The scale's original wording was such that agreement with the measures reflected authoritarianism; thus it is unclear whether the tendency to agree or authoritarianism was being measured with the original scale. Subsequent research has not settled this problem. Investigators have found it mechanically difficult to isolate acquiescence, or the tendency to agree, particularly as research attempting to resolve the issue discovered that the acquiescence variable interacted with authoritarianism. It is possible that acquiescence may be a facet of authoritarianism; perhaps similar to the authoritarian-submission cluster proposed by the Berkeley group. Rorer's thorough discussion of response bias (1965) challenges the significance of prior studies concerning acquiescence and stresses the low degree of intercorrelation among the measures of acquiescence. The researchers who have

arduously counterbalanced F scales, may have not only done so unnecessarily, but may have actually weakened their assessment instruments. The issue is not problematic for the jury selection theory as it utilizes a specially designed, prevalidated oral scale (Kirby, 1972). It is noteworthy that the validation process yielded three-fourths of the questions scored in a positive direction.

The proliferation of instruments used to measure the authoritarian personality syndrome or its different dimensions may have been frequently occasioned by efforts to avoid the possibility of response bias. Other efforts at improvement have attempted to establish alternative explanations to authoritarianism, either by reformulation or disproving it. Neither approach has proved successful (Christie & Cook, 1958; Kirscht & Dillehay, 1967). Observable weaknesses have generally proved easier to note than correct.

The most well known attempt to correct an inadequacy was Rokeach's development of the theory of dogmatism to assess closed-minded cognitive thinking in individuals of the political left and right, rather than only the right as did the F scale (Rokeach, 1960). Rokeach's promising theory, which he delineates in The Open and Closed Mind (1960), has serious empirical weaknesses. The same concern regarding response bias exists, as the Dogmatism scale items are all worded in a similar direction. Heavy reliance on student samples to develop the base are not strong when the theory's scope encompasses authoritarianism, rigidity, prejudice, problem-solving, perception, value and attitudinal changes. Another empirical difficulty is that correlations between the D scale and F scale range from .54 to .88; this is too high to maintain the claims of distinction between the two (Kirscht & Dillehay, 1967). In a previous study by Preston

Horstman (1972) analyses of the data indicated a curvilinear function in the dogmatism scores; this supported Becker's (1967) research which found similar evidence. Finally, there is the notation by the F scale constructors (Adorno et al., 1950) that although there is a distinct sub-type among extreme low-scorers in whom liberal ideology becomes so pronounced that the individuals evidence signs of rigidity, it is mainly the conservative high scorers who display rigidity.

The failure of the initial F scale to account for education also sparked research. Findings are somewhat inconclusive, but apparently when education is controlled the relationship between social class and authoritarianism declines sharply (Lipsitz, 1965). This diminished Lipset's evidence (1960) that greater "genuine" authoritarianism exists among lower status individuals. Cross-cultural testing of the F scale and testing within subcultural groups has generally attested to the validity of the scale. Typically individuals from cultural backgrounds reflecting an overtly authoritarian life style and limited social perspectives, such as Germany, yield higher F scale and dogmatism scores (Cohn & Carsch, 1954). It has also been found to be true of those in prison and military organizations (Kirscht & Dillehay, 1967).

Various conditions have been found to modify authoritarianism, but the behavior of the authoritarian in most situations reflects active distrust of others, submission to personally relevant authority, and hostility toward "safe" scapegoats. The jury setting allows these authoritarian tendencies to be expressed, even punitiveness towards others is encouraged. Organizational authorities could easily influence those organizational members identified as highly rigid, found a study of organizational stress and role conflict by Kahn, Wolfe, Quinn, Snock, and

Rosenthal (1964). The rigid workers were highly dedicated to the responsibilities assigned by organizational authorities. The rigid individuals conformed more to rules and were very dependable; however, they were not easily influenced by everyone. Particularly when exposed to conflict, the more rigid person rejects his equals or subordinates as role senders. Authoritarians in jury situations would be expected to tend to resist others' influence and be holdouts; while the more liberal, moderate, flexible jurors would be more willing to compromise. Judges should also be easily able to influence the rigid, authoritarian juror's decision.

Another important cognitive dimension was added by Steiner and Johnson (1963). The experimenters had noted that most of the original F scale items assessed beliefs about people; their study was intended to determine whether authoritarians have a tendency to categorize people as good or bad. Authoritarians did differ from nonauthoritarians or equalitarians in the characteristics they attributed to others. Authoritarians were reluctant to believe that "good people" could possess both good and bad traits. This also has important consequences if authoritarians are jurors.

The concept of authoritarianism has withstood enthusiastic investigation and criticism. Literally hundreds of papers have been written on the subject. Naturally, a number of questions still exist, as do various alternative explanations to specific relationships, but no other theory accounts for as many findings. As Kirscht and Dillehay (1967) observed, "Conceptually, the authoritarian personality now has a firm position in psychological theory" (p. 2). It also has tremendous import for behavior in jury settings, and hence for jury selection.

Re: Jury Selection. Indications of authoritarianism are discernable in many aspects and at many times during an individual's life, from childhood drawings to scholarly writings (Levy, 1975). Authoritarian traits are particularly prone to expression in a jury situation. It is thus imperative to correctly identify and deselect the authoritarian juror if justice is to prevail. This has been accomplished with varying degrees of success.

An important factor in authoritarian behavior in juries relates to the authoritarian's most characteristic trait, the closed-minded cognitive functioning style. The highly authoritarian individual lacks the ability to deal with new cognitive material, but seeks rapid closure, particularly when faced with novel situations. The authoritarian's belief system is also highly dependent on external authority and prior learning. This closed-minded cognitive style is moderated through another set of beliefs and behavior patterns which are subject to social reality, but the cognitive style is predominant and relatively permanent, Kirscht and Dillehay determined (1967). They also noted that the identification of the closed-minded individual will necessitate a scale which is rather different from the F scale and that subsequent validation will require tests in several settings, especially those involving issues of central concern to an authoritarian.

An authoritarian juror's cognitive style would preclude due consideration of all the evidence presented at the trial. The authoritarian juror would be expected to make an early decision in a case and resist changing that opinion even if the later evidence would otherwise be convincing. The authoritarian juror's premature closure and rigidity would

thus be distinctly unfavorable for the defense. Research on authoritarians has neglected the importance of this aspect, but has focused on other attributes of the authoritarian juror, particularly the authoritarian's punitiveness.

The authoritarian's punitiveness and hostility toward those who have violated society's laws have been found to have dire consequences for defendants with authoritarians as their judges. The American Jury by Kalven and Zeisel (1971), primarily a study of verdict agreement between judge and jury, also found that juries are not fundamentally "defendant-prone." However, the juries were more lenient than the judges 16% (net) of the time. Apparently in operation one is not "innocent until proven guilty." While it is interesting to speculate as to the percentage of authoritarian jurors in the Chicago study, other studies provide more evidence on authoritarian punitiveness. Those likely to be selected jurors were found in one study (Buckhout, Ayres, Donovan, Eberle, Lawrence, Leontieff, Waters & Williams, 1973) to be those more likely to be conservative, older, white, middle-class individuals (authoritarian); a later study conducted by staff of the Center of Responsive Psychology (Buckhout, Weg, Cohen & Becker, 1973) found prior jurors of similar background highly favored convicting a defendant, based only on several newspaper articles.

More directly, Virginia Boehm, utilizing a Legal Attitudes Questionnaire (LAQ) developed in 1966 for her doctoral dissertation, found that authoritarian student jurors were more prone to conviction than the anti-authoritarian in a simulated study (1968). Two three-page summaries of the case evidence were prepared for the study, with one version slanted toward guilt, the other toward innocence. More students convicting on the

"innocent case" were authoritarians than those who voted for acquittal. Authoritarian subjects tended to make tough errors or vote for conviction in the "innocent case"; while anti-authoritarian subjects tended to err on the lenient side, either acquitting or voting for manslaughter in the guilty case. Boehm's study, plus others indirectly relating capital punishment to conservative political attitudes, induced Jurow (1971) to determine whether there was a relationship between attitude toward capital punishment and juror voting. His other main hypothesis was that those individuals favoring capital punishment were more authoritarian than persons opposed to the death penalty.

Jurow's research was particularly concerned with the capital punishment issue in light of Witherspoon v. Illinois (1968), a Supreme Court case wherein the petitioner challenged his conviction on the basis of unfair jury selection procedures in capital cases. The petitioner's main argument was that a death qualified jury was more prone to convict than a jury more representative of the community as prospective jurors admitting to scruples against capital punishment were excluded. The Supreme Court, who declared the social science and other research evidence too tentative and fragmentary to establish conviction proneness and impartiality in the jury selection procedures, held that elimination of jurors with conscientious scruples against capital punishment biased the penalty determination process. The Court declared that a state could exclude jurors who

make it unmistakably clear (1) that they would automatically vote against the imposition of capital punishment without regard to any evidence that might be developed at the trial of the case before them, or (2) that their attitudes toward the death penalty would prevent them from making an impartial decision as to the defendant's guilt. (pp. 522-523)

Although Jurow believes that Witherspoon reduced potential jury bias as fewer "anti-capital punishment" jurors would be excluded, he sought to determine whether the post-Witherspoon jury was still guilt-biased. The results of the research with the two simulated cases indicated that both those most opposed to capital punishment and those most in favor of capital punishment were relatively constant and inflexible in their voting to convict. Jurow found further evidence relating a favorable attitude toward capital punishment and a tendency to convict. The research results strongly evidenced the difference in attitudes between those favoring and those opposing capital punishment, "with groups favoring capital punishment also tending to be politically conservative, generally authoritarian, and specifically authoritarian in their legal attitudes."

Jurow concluded in this significant study that attitude toward capital punishment was only part of a broader belief system involving the individual's attitudes and social value orientation. He theorized that the

attitude toward capital punishment, which is one measure of a social value orientation closely related to the law, may be related to verdicts via a mediation process involving a belief in authoritarian or conservative legal positions. (p. 598)

Those in favor of the death penalty are considered by other social scientists to be strongly inclined to be generally more punitive, more prejudiced, less forgiving and more authoritarian than other individuals (Buckhout et al., 1973). Rokeach and Vidmar (1973) also attested to the hostility and retribution of dogmatic individuals in their report on jury bias in a Black Panther murder trial.

Authoritarians have been found to be generally more hostile towards both high and low status individuals than non-authoritarians, but

particularly punitive towards lower status individuals (Epstein, 1965). The authoritarian's punitiveness is apparently most extreme when he or she feels justified by the nature of the individual or when the punishment is sanctioned by a higher authority figure. The prestigious sanctioning figure might be the judge, but this is difficult to determine as the law itself could be viewed as the sanctioning figure by the authoritarian juror. Highly authoritarian individuals were reported by Vidmar and Crinklaw (cited in Buckhout et al., 1973) as more motivated to give longer sentences before parole to defendants of "bad" character. Authoritarians apparently are more likely to believe they have a "calling" to serve, that it is their duty to serve and to protect society from its transgressors; hence their identification and dismissal from jury duty becomes more important. Their belief systems and righteousness have been found to be resistant to persuasion, particularly by intellectual or rational evidences (Adorno et al., 1950).

A simulated jury study by Mitchell and Byrne (1973) found a significant interaction between authoritarianism and attitude similarity on certainty of the defendant's guilt and the recommended severity of punishment. The study is frequently cited for its further findings that similarity of attitudes was a significant influence upon the judicial decisions of authoritarians, but not those of egalitarians. Similarity was assessed in the simulated jury situation by having the undergraduate subjects respond to an accused defendant whose attitudes were prepared to be either similar to or different from their own on five issues not relevant to the case. In keeping with Mitchell and Byrne's study, similarity of attitudes was found to be an important variable in a simulated jury study by Griffit

and Jackson (1973). Subjects tended to rate a defendant with attitudes dissimilar to their own as more guilty and sentenced him to more years in prison than they did a defendant with similar attitudes.

Reflecting on the previously noted legal jury selection practices, it is evident that many lawyers have intuitively selected jurors by practices in keeping with Mitchell and Byrne's research results. Successful attorneys have attempted to select either impartial jurors or jurors who would be similar and presumably thus favorable to their clients whenever possible. There are several problems encountered by attorneys utilizing this selection strategy, in addition to the superiority of statistical over clinical prediction (Meehl, 1954/1966). Few attorneys are familiar with social science research relating to authoritarianism. An even more serious shortcoming has been the failure to possess an adequate assessment instrument.

Attempts to develop an adequate method of assessing authoritarianism have been frustrated in most instances by the need to use simulated jury situations, employing either written trial transcripts or occasionally the more real videotaped trial sequences. Even when former jurors participate in the research study, rather than the more typical student subjects, the generalization of research results has been questioned (Helfgott, 1975; Jurow, 1971). It has been contended that real involvement and hence generalization of findings cannot occur when the research conditions are so different from actuality.

Boehm's Legal Attitudes Questionnaire (L.A.Q.), mentioned earlier, is probably the most popular measure of authoritarianism used in jury simulation research. Although it is a promising tool, its forced-choice format makes it an inappropriate jury selection measure in the vast majority

of actual trials. The L.A.Q. is comprised of ten triads of statements, each triad consisting of an authoritarian item, an anti-authoritarian item, and an equalitarian item (Boehm, 1968). The subject is asked to select the statement most and least agreed with in each triad. The authoritarian items are short statements expressing a right wing or punitive philosophy, or those indiscriminately endorsing authority. Anti-authoritarian items are those expressing left wing views or indiscriminately rejecting acts of authority. Equalitarian items are those statements endorsing liberal, but nonextreme positions, or are stated in a form indicating the questions could have two answers. A score for the three attitude categories is calculated to determine an individual's classification. While predominantly a measure of attitudes on legal and political issues, Jurow (1971) seems to believe the L.A.Q. provides an indication of an individual's conservatism. Alexander and Licker (1975) are studying the L.A.Q.'s worth as a measure of rigidity and punitiveness. They found that simulated jurors scoring higher on the authoritarian scale of the L.A.Q. rendered more severe verdicts, while those scoring higher on the equalitarian scale returned more lenient verdicts.

Another technique has been used in actual trials to ascertain authoritarian or conservative attitudes as part of the approach to jury selection; it is the previously mentioned demographic method. A single assessment technique doesn't exist, but rather a general approach to jury selection which has evolved over several trials. Various social scientists have participated in the trials and selection of jurors, but the portions of the approach which have focused on authoritarianism are primarily credited

to Jay Schulman and Richard Christie. Schulman, a sociologist, has been most involved with the development of the survey, or demographic techniques, while psychologist Christie has concentrated on the assessment of authoritarian or conservative attitudes. Prior to his work in the legal realm, Christie had studied and written on the authoritarian personality (Christie & Cook, 1958; Christie & Jahoda, 1954).

A report of the Harrisburg Conspiracy Trial, which was the lead article in the May 1973, Psychology Today, provided an explicit account of the scientists' efforts in jury selection in a case (Schulman, Shaver, Colman, Emrich, & Christie, 1973). Although they never formally stated that they were considering the potential jurors on the basis of authoritarianism, many of the attitudes the social scientists were considering are closely related to those associated with authoritarianism. The "ideal juror" for the defendants' side was young, black, strongly opposed to the Vietnam war, possessed "elements of a counterculture style of life", or had a son or male relative of or near the draft age. Conservatism, which is closely linked to authoritarian attitudes, was determined to be the predominant negative quality for the defense. Two factors were thought to be the basis for these elements, opposition to authority and a maternalistic social style.

A rating scheme was followed whereby the jurors most favorable to the defense were rated one, and undesirable defense jurors, ratings of four and five. The 16 lawyers, social scientists, and defendants then arrived at a group decision as to the desirability of the individual as a juror. A problem cited by the group in juror selection "was the question of how far we should rely on impressions from the questioning of the panel.

Often we compromised. The main use of surveys is to sort out 'types of people', not to pick out individuals, which was the issue at hand. The great danger and temptation was to use the survey results to select jurors mechanically. To paraphrase a defense lawyer, we had to avoid following 'Saint Social Science' dogmatically" (p. 44).

Ten jurors voted for acquittal and two for conviction on the conspiracy charges; the jury was deadlocked. Ironically the exhaustive group deliberations during jury selection consumed hours discussing third-choice jurors, but it was two of the second choice jurors who had hung the jury. Journalist Paul Cowan, who interviewed seven of the jurors after the trial, provided substantial information to the social scientists and insight into the jury deliberations and character of the jurors. Cowan was told that one of the jurors who held out for conviction was a religious fanatic, prejudiced, hostile toward those who disagreed with him, punitive; by all accounts, extremely authoritarian. Illustrative of this juror's remarks was that the jury needed "to find the defendants guilty to satisfy God's will and to save the children and grandchildren of America. . . . the defendants had to be guilty if the Government had brought them to trial. . . the Government doesn't make mistakes" (p. 80). The other juror was apparently less authoritarian and reputedly would not have held out alone for conviction.

Despite the questionable success of this venture, Schulman et al. felt they had obtained considerable information and a good basis for their foray into future trials. The survey procedure and rating system were refined during the Gainesville Eight, Wounded Knee, and Attica trials, but remain much the same as previously described.

The demographic survey method has received more attention than the rating procedures for actual jury selection. The reasons for this may be surmised to be the scientist's preference for working with more readily quantifiable data, plus the reluctance of most attorneys to have social scientists enter into the actual jury selection process, instead preferring to have them in an advisory capacity. In addition to the acquisition of data to compose a model juror profile, surveys are conducted to obtain information for use in challenging the composition of a jury panel and transferring the place of trial.

Schulman and Christie's technique has limitations which make it unsuitable for the majority of trial situations. Some of these are practical, while others are more basic. Practically the survey technique admittedly "requires a considerable investment of time, energy and money", Schulman and Christie report (National Jury Project & National Lawyers Guild, 1975, p. 34). The time needed for a survey varies from a few weeks to a few months. Costs may be significantly reduced should there be a sufficient number of volunteers, but will generally be very high. Community networks have been useful in political trials where local people have been interested in aiding the defense, but are unlikely to be feasible in other cases due to the work and commitment demanded. Other problems restricting the various survey techniques' use are the legal limitations to juror investigation, sampling and administration difficulties, staff concerns, etc. Additionally, it is likely that in small or homogeneous communities an indicative correlation may not be obtained.

More basic questions relate to the validity and reliability of the survey method. Typically the survey instrument is constructed anew for each trial, while the staff or personnel also vary considerably. The

standardization problem and lack of control is obvious. Although the methods have formulas and are quantifiable, the methods' variability and inexactness are of concern. Survey originators have cautioned others to remember that not all people with similar demographic characteristics have similar attitudes (Kairys, 1972; National Jury Project & National Lawyers Guild, 1975). Schulman and Christie's warning that the method selects groups, not individuals, should be remembered particularly as it is not always possible to obtain detailed demographic data on every potential juror during the voir dire. Without a truly systematic development of a method to identify which individuals to include or exclude from the jury, additional techniques and research are needed.

Schulman and Christie, as well as Boehm, have tended to view conservatism, particularly on political and legal issues, as the predominant characteristic of the authoritarian juror, but there is another, closely related variable which seems to be more important. Kirscht and Dillehay (1967) after their studies and intensive analysis of the existing literature on the subject have stated that the authoritarian's most characteristic feature is a closed-minded cognitive functioning. This characteristic closed-minded style of thinking is the antithesis of the impartial juror ideal. Roger and Renee Gould (1974) determined that an open-mindedness/bias ratio was the key variable to measure in jury selection for the Pentagon Papers trial. However, the limited voir dire in this trial severely restricted the attempt to appropriately assess this factor's relevance.

Thus the few scientists who have been both interested in jury selection and cognizant of the importance of the authoritarian variable have as yet failed to develop a jury selection theory which has been

systematically and scientifically investigated, which remains valid in an actual courtroom, and which meets the practical and legal requirements for a jury selection method.

A Theory of Jury Selection

Attorneys, judges, and more recently social scientists, have sought to identify those individuals capable of impartially listening to evidence from both sides of a case before arriving at a decision. Scientific experimentation to resolve the questions in the area has been negligible; ideally, however, a psychologist should be able to develop an effective juror selection method via a long range experimental design.

It was previously hypothesized (Kirby, 1972) that a more impartial jury will result by the identification and deselection of authoritarians during the voir dire; this theory remains essentially unchanged. Research conducted to test this theory has found that authoritarians, as identified by a specially developed scale, will not render a just verdict on the basis of the trial evidence, but will be influenced by irrelevant variables (Kirby, 1972; Kirby & Lamberth, 1973). This research has been conducted in both simulated jury situations and actual courtrooms. Although the earlier staged trials were faithful to actual courtroom conditions, investigation into the actual courtroom setting provided a more definitive test of the theory.

The first jury selection study (Kirby, 1972) was initiated after conversing with several attorneys who desired a more effective way to select fair jurors. The attorneys did not expect to be assured of a jury predisposed in their favor, but professed a desire for jurors who would listen to both sides of the case before reaching a verdict. Studies on

authoritarianism indicated it should be a significant variable (Adorno et al., 1950).

A problem was the assessment of authoritarianism by an instrument which would also be suitable for use during the voir dire. The existing scales and questionnaires were inappropriate, so a new instrument was constructed to meet traditional legal and practical requirements of the voir dire (Kirby, 1972). To obtain a short scale which would effectively measure authoritarian responses, but be amenable to the varying voir dire procedures, necessitated several experimental steps. Initially a modified version of the original F test was administered to a group of security force trainees in a nationwide training program. The men and women had a heterogeneous economic, educational, geographical and social background. Their ages ranged from 20 to 57. The following day an attorney instructing the class requested these adult trainees to note their responses to an oral version of a counter-balanced authoritarian scale developed by Mitchell and Byrne (1973). Following data analysis, those statements with low or negative correlations between the oral and written authoritarian measures were eliminated from consideration. Correlations between the remaining written and oral questions were then determined after the scales' administration to two college classes. The resultant correlation was .82 between the totals of the oral and written measures of authoritarianism. The oral scale was refined and narrowed to an eight question base, after analysis of requested legal opinion, which indicated that three questions would be frequently disallowed, were too psychological in nature, or otherwise unsuitable for use during the voir dire. Provision was also made to permit inquiry as to intensity of feeling regarding the subject. See Appendix C

for administration and evaluation of the resultant jury selection scale. Later supplemental questions were developed to assist the attorney to include the authoritarian assessment measure in the voir dire, but the base eight questions remained essentially the same during the latter experiments.

A mock court trial experiment was conducted in the first test of the jury selection theory. It was hypothesized and found that authoritarian jurors would make decisions early in the case, failing to change that decision even upon later hearing the defense's more convincing evidence. Non-authoritarians, or equalitarians, were predicted to be unaffected by the order of case presentation. This preliminary test of the derived jury selection scale and theory was conducted in the University of Oklahoma's mock court facilities as closely as possible to actual trial procedures.

Two deviations were introduced in order to test the hypotheses. Necessarily the case was not real, but similar to a civil case utilized in a previous experiment of Gordon's (1968). Juries had usually found in the defendant's favor in the case. Authoritarian jurors in this instance awarding damages would be determining their decisions on a basis other than the evidence. The jury selection scale questions were interspersed during the voir dire, while the experimenter unobtrusively scored each juror's responses. Three juries were formed; one in the jurybox, one jury behind the plaintiff, and the other behind the defense. The potential identification on the basis of proximity did not occur; indeed the audience juries did not become emotionally involved in the trial. Those jurors in the jurybox deliberated for over 45 minutes, while those in the audience juries spent less than five minutes each in discussion. Later interviews

with the subjects also found that those individuals in the jurybox remembered considerably more about the case than those in the audience juries; this although the three juries were treated alike. This has important implications for future simulated jury research and supports others who have expressed concern about unrealistic laboratory experiments (Helfgott, 1975; Jurow, 1971).

While those in the audience juries decided not to award damages to the plaintiff, all the jurors except one who had been identified as authoritarian in the jurybox awarded damages to the plaintiff. The damage awards for the authoritarian jurors ranged from \$500 to \$6500; however, none of those identified as equalitarian jurors felt damages should be awarded. This difference is even more notable as the "authoritarian" juror not awarding damages had a similar score to an equalitarian juror; as the initial categorization of authoritarianism was made on the basis of median scores. When the "holdout" jurors were asked their reasons for finding in the plaintiff's favor, the answers pointed up the authoritarian's characteristic closed-mindedness. "I had my mind pretty well made up at the first and the defense never did anything to change my mind," was one authoritarian juror's illustrative comment. Other authoritarian jurors were also unable to provide substantive reasons for favoring the plaintiff despite the defense's otherwise conclusive evidence. Analysis of other possible relationships, such as age, identified no other significant factors. The foreman in the jurybox jury was authoritarian, but those in the audience juries were not so identified.

The results of this staged court case clearly indicated that further validation efforts would be worthwhile. It was decided that

further tests of the jury selection theory and the robustness of the jury selection scale were needed. Fortuitously an ideal situation for such an experiment was feasible. Cases were routinely presented by senior law students in a practice court class; this was their penultimate requirement before graduation and every effort was made to ensure each case's realism and excellence. For example, each situation leading to the trial had to have actually occurred, whether unplanned or enacted.

This experiment (Kirby & Lamberth, 1973) consisted of four practice court trials, all civil suits requesting damage awards for different reasons. The attorneys were not informed of the purpose of the experiment, nor given specific instructions as to utilization of the jury selection scale. The law school professor merely requested they include the questions during their voir dire of the jurors. Half of the questions were asked by the various defense attorneys and half by those for the plaintiff. During the cases the experimenter again unobtrusively noted the jurors' responses to the jury selection scale statements. The attorneys could dismiss jurors by cause and peremptory challenges; later interviews with the lawyers revealed only one attorney dismissed a juror for conservative, or authoritarian, responses to the jury selection scale.

The judges, attorneys, scale administration, cases and likewise the preponderance of evidence, all varied. After the jury deliberations and verdicts, the judges requested the jurors complete a questionnaire about their trial experiences. The questionnaire requested the following information: the juror's decision before and after deliberations, reasons for the decision, the juror's perception of similarity to the defendant, the juror's age, sex and grade-point, the juror's belief as to the trial's

fairness and any comments on the trial. The participants' sex, age and grade-point were apparently unrelated to level of authoritarianism and case decision. The trials were felt to be fair.

A significant relationship ($\chi^2_1 = 19.00, p < .001$) was found for authoritarianism and similarity; authoritarians, as denoted by the jury selection scale, always voted guilty, except when they perceived similarity to the defendant wherein they always voted innocent. Non-authoritarians, or equalitarians, were predictably unaffected by the order of the evidence presentation. It did seem possible to identify authoritarian jurors during the voir dire; moreover, authoritarians unconsciously based their judicial decisions on factors irrelevant to the case at trial.

The jury selection theory and scale had withstood considerable variation; indeed the experimenter's hope had been to merely narrow down its possible utility for further research. Additional investigation into the validity of the jury selection theory was obviously indicated. The scale's worth had not been assessed in criminal cases, nor juvenile court cases, only in varying types of civil cases. Theoretically the authoritarian individual, who is particularly punitive towards transgressors of society's laws and holds high moral standards for youth, should be even more distinguishable in juvenile trials.

An esteemed Federal judge consented to a test of the jury selection theory and accompanying scale in two juvenile court cases. The prosecuting and defense attorneys involved in the cases were informed that some research would be conducted during the course of the trials in an effort to secure more impartial jury trials, but that this research would not damage or influence either side's case. After the attorneys' normal voir

dire, the judge individually questioned each juror, slightly modifying the jury selection scale statements to accommodate his style of inquiry.

The first court case was the trial of a youth accused of beating his stepmother to death; the second trial was of a 13 year-old boy charged with raping a 76 year-old woman. Appendix B describes the cases in more detail. After the cases were concluded except for sentencing (treatment), the judge excused the jurors from their official duties, but asked them to remain for a few brief questions. The jurors were each asked after the cases whether they had felt similar to the defendant and their opinions regarding the trial. The judge and counsel in each of the cases were later requested to comment on the jury selection scale's utility, the trial's representativeness, the trial's turning points, the verdict's appropriateness, as well as the impartiality of the jurors. In each instance the trial was viewed as representative. The judge and trial attorneys were enthusiastic as to the potential of the selection scale; so much so that the experimenter later had difficulty dissuading other attorneys that additional analysis and research were desirable prior to their utilization of the selection scale.

The actual court cases supported the jury selection theory that authoritarian jurors, as identified by the derived jury selection scale, will find in favor of the State. Authoritarians will find in favor of the defendant only if they feel similarity to the defendant.

The research evidence from controlled, simulated jury experiments and actual court applications supports the jury selection theory. A theory for jury selection necessitates consideration be accorded to the following theoretical elements: application, implications, theoretical parameters, and predictions.

Application

The paramount criterion of a jury selection theory is its utility or applicability. Unless the theory can be translated to successfully operate in an applied setting, it has little practical value. Thus the jury selection scale utilized in conjunction with the theory acquires sufficient stature that it is appropriate to refer to them together. The failure to develop an appropriate assessment instrument, systematically validated in both the laboratory and applied settings, has been a major problem for others concerned with jury selection. The difficulties other researchers have encountered in developing juror assessment methods have been previously noted, as well as the subsequent shortcomings in selection instruments. The jury selection scale used in conjunction with the theory must meet the requirements for application in the court room.

Any jury selection method must be pragmatic. It has to be robust to variability, capable of use in different court rooms, with various voir dire procedures, judges, attorneys and defendants. Ideally the type of case should also not affect the scale's administration, scoring, reliability, or validity. Thus far the developed jury selection scale has met all the tests, although continuing research is always indicated. Future research should be conducted to test the jury selection scale and theory in further actual court cases under varying conditions.

In addition to the more important characteristic of robustness, the jury selection scale must also possess other qualities. As will be detailed, it must be inoffensive to potential jurors, short, relatively inexpensive, and easy to administer and score. The need for a high degree of reliability and validity is critical when dealing in the legal realm

where an individual's future could be drastically altered by a jury's verdict.

One of the jury selection scale's attributes is that it can be included in a lawyer's or judge's voir dire to obtain an indirect measure of authoritarianism. The need for indirect questioning is important to obtain a more accurate report of the potential juror's attitudes. Sociologist Blauner noted the need to ascertain an indirect assessment of a juror's prejudice; as Michael Saks (1976) succinctly put it, "jurors sometimes lie" (p. 49). Dr. William Pierce, who testified in United States v. McNeil (1973) on the need to allow the defendant's counsel to participate in voir dire, responded to the judge's request to explain social desirability; "It simply means that people tend to answer in a socially acceptable manner whether or not they are aware that they're doing this or not . . . especially in public where their answers are heard by people that they don't know" (Ginger, 1975, p. 300).

A jury selection procedure should be like the jury selection scale, indirectly phrased, but relevant, with sufficient "face validity", or meaning, for individuals to attend to the questions. The scale must also be couched in terms which are understandable to most individuals. Indirect questions should also be inoffensive but this is readily satisfied as voir dire questioning is rarely viewed by jurors as offensive, unlike the investigation and handwriting techniques disparaged in Jury Woman (Timothy, 1975).

Another important characteristic for a jury selection method is that it be sufficiently short to include in the majority of jury trials. The current situation of congested court dockets, and the subsequent efforts

to shorten the voir dire process, place additional emphasis on the desirability of a brief selection scale. The eight question base of the jury selection scale does meet the standard for brevity. It also appears amenable for use should the judge insist upon questioning the jurors as a group. While the jury selection scale would have been expected to suffer some loss in identification ability should there be a group voir dire conducted, in the early jury simulation studies this did not occur (Kirby, 1972). Individual questioning of jurors remains preferable to provide potential jurors privacy in responding to the jury selection scale and any other questions about their life and feelings. Most courts have allowed individuals this right to privacy when counsel requests it (Ginger, 1975). The relative brevity of the scale, even if jurors are individually questioned, is particularly apparent when one considers the time involved in some trials. It is not exceptional for the selection of the jury and alternates to take more time than the actual trial; for example, the jury selection in a trial relating to the Attica prison riot took seven and a half weeks to the actual trial's five weeks.

A jury assessment method should be relatively inexpensive, so that it would be practical and feasible to employ in "normal" trials as well as sensational trials or those of the very wealthy. The expense and accompanying time demands of the demographic method severely restrict its use. The jury selection scale's utility is enhanced by its ease of administration and scoring. It is suitable for use by social scientists, experienced or new lawyers, or by the trial judge, without the extensive advance preparation necessitated by other techniques. Its flexibility would permit application in conjunction with other jury selection methods, particularly those seeking to identify authoritarians.

The reliability and validity of the jury selection scale and theory are, of course, crucial for the scale to have any value. Continued research, particularly in further actual court cases, is planned to affirm the scale's reliability and validity.

Implications

The principal implication of the jury selection scale and theory is that by appropriate application of the principles it will be possible to obtain fairer, more impartial trials. This is inherent in the jury selection theory itself. Other implications of this, or any theory, should also be considered.

The variability in the jury selection expertise of attorneys could be reduced by utilization of the scale and theory. Attorneys would be on a more even basis if a more scientific rather than intuitive method of juror selection was used. As intuition frequently is the result of experience, the more established, prominent attorneys are often more proficient in the jury selection art. Equalizing attorneys' effectiveness in the jury selection phase would make justice more evenly available to the poor and the wealthy.

It is also possible that justice would be more often obtained by a decrease in the number of "hung" juries. Excluding authoritarians would be expected to reduce the number of "hung" juries, as it has been found that authoritarians tend to be particularly resistant to change. This rigidity is apparently increased when an authoritarian juror sees himself as society's sole source to ensure that justice is done and righteousness prevails. This may be another important avenue for investigation.

The theory is also able to integrate others' findings and helps

to explain why the importance of authoritarianism was overlooked in some instances. Earlier portions of the paper have emphasized that lawyers and social scientists have sought open-minded jurors, the theory's non-authoritarians or equalitarians, indeed the only problem apparently was the means of assessment. The theory also explains why prejudiced individuals could in a legal context become fair-minded and disregard their biases. Biased, prejudiced individuals are not necessarily always authoritarian; and while one may serve as an impartial juror despite biases, authoritarianism is not as easy to discard.

Those attorneys who became adept at assessing authoritarianism without a formal questionnaire or scale were occasionally surprised at a juror's vote. On these occasions it is probable that an individual's closed-mindedness was correctly determined, but not the juror's perception of similarity to the defendant. Research conducted on the jury selection theory (Kirby & Lamberth, 1973) found that authoritarian jurors, unlike equalitarians, were so strongly influenced by the juror's own perception of similarity to the defendant that an authoritarian juror who perceived the defendant as similar would find in the defendant's favor regardless of the evidence.

Authoritarianism as the chief variable may not have been readily recognized by the few social scientists interested in jury selection due to the moderating similarity factor; however, other causes, as previously detailed, are more likely to have been the reason. The difficulty in conducting research within the actual legal setting forced most scientists to work in simulated jury situations with students for subjects. Authoritarian individuals would not be as strongly affected by the usual simulation

study where transcripts of trials are read; additionally the young students used in the majority of experiments would not be as likely to have fully developed authoritarian traits.

Evidence, not jurors' attitudes, is thought by Michael Saks (1976) to be the most important variable. Case evidence probably does have significant impact on equalitarian jurors' decisions, but not on the decisions of authoritarian jurors. It is noteworthy that most of the studies cited by Saks utilized simulated juries with students for subjects. More importantly Saks' logic is frequently flawed; for example, he cites the results of Kalven and Zeisel's The American Jury survey, that indicate in 78 percent of the cases the judge and jury agreed on the verdict, to illustrate his point that evidence is the prevailing factor in trials. What Saks overlooks is that in nearly 25 percent, or one-quarter of the cases, the judge and jury disagreed. The discrepancy is substantial. It should also be evident that judge/jury agreement does not preclude the existence of attitudinal factors or the possibility of an authoritarian jury or judge. As 64 percent of the time the judge and jury agreed on the defendant's guilt, this certainly does not argue against the existence of authoritarianism. Saks' other "examples" proffered as support for his thesis suffer from similarly serious logistical flaws.

Consideration of the implications of a theory is not complete without contemplating the ethical and moral implications. Assuredly the purpose of the jury selection scale and theory is to make jury trials more just and equitable by identifying and deselecting those individuals who are unable to give an impartial hearing to both sides and decide the case on its merits, rather than irrelevant factors. It must be considered,

however, whether exclusion of any group of individuals from juries may be justified. Obviously individuals are excluded from juries at the current time; only now a more valid and reliable determination of biased jurors is possible. Systematic exclusion of authoritarians from jury service is believed to be justifiable as only those individuals who can't listen equitably to both sides of the case will be dismissed. Indeed, a simulated jury experiment (Berg & Vidmar, 1974) found highly authoritarian persons recalled evidence about a defendant's character while equalitarians remembered more situational evidence. Furthermore, as Justice Field noted in Hayes v. Missouri, "the right to challenge is the right to reject, not to select a juror" (1886, p. 71). Application of the jury selection theory conforms to this legal standard.

Theoretical Parameters

The specification of a theory's parameters is an integral part of its operational definition. The jury selection theory is essentially self-delimiting by its very nature and statement. Other parameters pertain also.

Although authoritarianism and the jury selection theory are not restricted to this country, the accompanying jury selection scale and procedure are limited to the American system of jurisprudence. If after thorough study of another legal system, the voir dire and other legal processes are sufficiently similar to the American judicial system's, the jury selection scale and theory could be applied on a test basis. Transportability or generalizability to other jurisprudential systems should be considered only after intensive study and comparison of the legal processes.

The jury selection theory states, in part, that a more impartial jury will result from the dismissal of authoritarians. In order to actually achieve a more impartial jury it will thus be necessary for either

peremptory challenges or challenges for cause to be permitted. The dismissal by peremptory challenge would usually accomplish the desired purpose of obtaining a fairer jury, but challenges for cause on the basis of demonstrated authoritarianism would be preferable. Judges' informal opinions have found the jury selection theory and scale to meet the standards for causal challenges. This is a hopeful sign for the theory's eventual application. While not part of the theoretical statement, it assumes that challenges will be allowed.

It is an important condition for utilization of the theory's accompanying jury selection scale that all of the questions are asked. This is necessary to assess the level of authoritarianism. Fortunately, as has been noted, this will usually be possible due to the scale's brevity. The scale may also be empirically expanded for certain cases.

The major theoretical parameter is the inherent assumption that one is seeking justice rather than to advance a particular side. Inherent in the jury selection theory is that authoritarian jurors' voting behavior is predictable. If one knows two factors, the level of an individual's authoritarianism and the individual's perception of similarity to the defendant, past research evidence indicates it is theoretically possible to perfectly predict the voting behavior of authoritarians. Little attention has been paid to the similarity variable in this paper, for two reasons. First, ethical questions should deter a scientist from attending to research which could adversely affect individual rights. This does not mean that research on the similarity factor is unethical; rather why it has not been included in this theoretical framework. On the pragmatic side, the jury system precludes any juror previously knowing or interacting with the defendant. Predicted assessment of a potential juror's perception of similarity to the

defendant is hence left to the trial attorney's judgement, as there are currently no unobtrusive a priori methods of assessing similarity which might be reliably and validly used in a jury trial.

The principal concern is a reliable and valid identification and consequent exclusion from the jury of those individuals who are unable to equally hear and judge both sides of the trial evidence. Further research efforts will be directed towards this objective.

Predictions

Testable predictions should be explicitly and implicitly contained within a theory. A theory must thus be capable of guiding future research; it should not be a narrow hypothesis capable of being disproven by one experiment, nor incapable of test and rejection. Explicitly stated is the jury selection theory's prediction of a more impartial trial if authoritarian jurors are identified and deselected. An accompanying part of the theory is that a valid and reliable means of identification of authoritarians is possible. It is also believed that such an assessment measure has been developed (Kirby, 1972), and that this jury selection scale may be appropriately and effectively applied during the voir dire. Implicit is the prediction that this jury selection scale will continue to be robust even given the variability in courtroom procedures and administration.

Although authoritarianism is still detectable under group voir dire conditions, authoritarianism, like other personality and attitudinal variables, is expected to be more evident if the potential jurors are individually questioned. Individuals are presumed to respond more honestly and accurately the less others' influence is present. Highly authoritarian individuals would be expected to be less susceptible to others' influence, but more likely to attempt to please the judge by responding in a desirable fashion.

Authoritarian traits are more likely to be aroused in trials involving sexual crimes, political or religious issues. Reports of jurors in trials on this issue support this prediction, but further research is desirable. Correlations of closed-mindedness or authoritarianism with punitiveness and type of trial is an area also worthy of inquiry. Other possible correlates of authoritarianism, for instance, intelligence and social class, should also be investigated.

Further research on the effects of perceived similarity to the defendant is also indicated by the experimental studies conducted in the theoretical testing. As noted, Mitchell and Byrne (1973), using a simulated jury situation, found that similarity between juror and defendant significantly influenced authoritarian jurors' decisions, but not those of equalitarians. The four mock or practice court sessions conducted during the early testing of the jury selection theory and accompanying scale found similar results; more importantly, a small number of authoritarian jurors did perceive themselves as similar to the defendants in the actual trials. This was particularly of interest despite the predictably small number of those jurors so identifying as the defendants were juveniles and charged with criminal offenses, one of beating his stepmother to death and the other of rape.

If lawyers possessed a reliable means of determining an authoritarian juror's perception of similarity to the defendant prior to the trial's commencement, the attorney presumably could select authoritarian jurors so as to weight the trial's outcome in favor of or against the defendant. Theoretically, given a sufficient number of authoritarian jurors an attorney could predetermine a trial's outcome. Thus research on

similarity's effect as a moderator variable in authoritarian jurors' decisions should proceed cautiously, with the realization of potential ethical problems. Mock court sessions are recommended for research into this specific relationship for the previously cited ethical reasons.

Happily, suspicion of those engaged in legal research is subsiding. This is best evidenced by Edward Levi, who was formerly brought before the House Un-American Activities Committee as the project director of the aforementioned Chicago Jury Project (Eastland, 1955), and who is currently Attorney General of the United States. Investigators should continue to be aware of the experimental constraints and special restrictions in forensic psychology research, but experimental investigation to answer many of the questions now seems feasible if the researchers are cautious and somewhat flexible. The research results will have a significant impact on psychology, sociology, and the law.

Conclusion

Recently Saks (1976) declared that "social scientists can't rig juries" (p. 48). Saks' statement is correct, but it is possible to make juries more fair by scientific research and application of the results. Research evidence and attorneys' anecdotal experiences support the theory that identification and exclusion of authoritarian individuals from juries will result in a more impartial, and hence more just, trial. Experimental results indicate that a valid and reliable means has been devised to identify, during the voir dire, those individuals who are unable to listen impartially to both sides of the case before reaching a decision, but instead let extraneous factors enter into consideration. "Equal justice under law" may become more of a reality in the future.

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APPENDIX B

ACCOUNT OF ACTUAL COURT CASES

Account of Actual Court Cases

The following is a more detailed description of the actual court cases from which experimental data was obtained.

Trial 1

The State alleged that during an altercation with his stepmother, the juvenile defendant beat the deceased, causing severe injuries which were the proximate cause of her death three hours later. The most damaging of the injuries were inflicted with a brick. The defense contended that during the argument with his stepmother, the defendant, acting in self defense against a sudden and unwarranted attack by the deceased with an automobile jack, inflicted the injuries which hospitalized the decedent. The defense further contended that these injuries could not be established with certainty as the cause of death since the deceased had chronic, severe lung and heart conditions, and since medical examinations indicated prior injuries. The self-defense contention was supported by a fracture of the boy's right hand and by the fact that his stepmother was approximately 45 pounds heavier than the defendant.

The medical examiner's testimony, the weight of the automobile jack, and the defendant's low intelligence appeared to legal counsel to be the major trial factors in the finding of delinquency for murder or the lesser includeds.

Apparently a defense demonstration evidencing that the tire jack was easily manageable by both a small female witness and the petite female defense counsel failed to disprove one juror's notion that a "small woman could not have handled the tire jack against the boy." Much of the

potential evidence, both in favor of and against the defendant, was inadmissible; for example, there were indications of sexual intercourse and bite marks on the decedent's stomach.

Trial 2

In the second trial, the State alleged that the defendant committed second degree rape by willfully and unlawfully having sexual intercourse with the complainant or petitioner. It was further alleged that the youth went to the petitioner's home with rape as his intent and accomplished the act of sexual intercourse after having overcome by force the petitioner's resistance. The contention of the defense was that the 76 year-old complainant had asked the 13 year-old defendant into her home one evening while drinking and had initiated the act of sexual intercourse herself. The defense's contention was bolstered by evidence that the youth and his grandfather, the defendant's guardian, had known the complainant for a year and had frequently stopped at the alleged victim's home while on errands to chat with her. Legal counsel opinion was divided as to the effect the complainant's extensive crying had on the jury; however, all agreed that the youthful defendant's resemblance to the freckled youths in many Norman Rockwell paintings was a plus for him.

APPENDIX C

JURY SELECTION SCALE
ADMINISTRATION AND EVALUATION

Jury Selection Scale

The Jury Selection Scale was designed and developed to identify those individuals who can be expected to have a predisposition towards certain verdicts in court cases, regardless of the evidence presented in the cases. The Jury Selection Scale (JSS) was developed so that these individuals may be identified during the voir dire, or jury selection phase of a trial, via a short series of questions asked of each potential juror. It has been determined by prior research and experimentation that utilization of the scale in the prescribed manner in conjunction with the proper scoring schema will significantly increase an attorney's or judge's probability of selecting impartial jurors.

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Jury Selection Scale

Administration and Evaluation

The Jury Selection Scale questions are asked of the potential jurors during the voir dire by either the judge or any of the attorneys present, dependent upon the specific court procedures in the case, to determine the impartiality of the potential jurors. The Jury Selection Scale is so constructed as to accommodate the varying court procedures. Prior investigation and research supports the Jury Selection Scale's value when potential jurors are questioned as a group, but the most satisfactory administration occurs when each individual is questioned separately, and dismissed until the panel is convened.

The Jury Selection Scale questions, which tend to be more psychological in nature than many "regular" voir dire questions, may be prefaced by one of several explanations or none at all. Some preludes previously found to be usable in this context are: "Some of the questions will be philosophical in nature. I am trying to obtain your ideas (or feelings) on different subjects such as religion, politics, and so on"; "I will be asking you some general questions just to get to know you better"; "It's hard to become acquainted by my just asking your name and address, so I'd like to see how you feel concerning some theoretical statements"; "In order to represent my client as well as possible, I'd like to see how you feel regarding certain issues"; or other similar prefaces depending on the suitability to the lawyer (or judge) and case in question at court.

It should also be noted that the Jury Selection Scale may be utilized at one specific time during the voir dire without interruption or the Selection Scale questions may be interspersed in among similar inquiries

of the potential juror. The Jury Selection Scale has been shown to be most effective when it is interspersed with similar non-Scale questions. This is particularly true when jurors are questioned as a group; although this situation does not render the Selection Scale useless, as lawyers frequently address the same questions to all potential jurors. Additional supplemental questions have been and are being developed in order to obtain information in meaningful areas and to possibly improve the utility of the Jury Selection Scale, as well as to provide a "background" for the Jury Selection Scale.

The questioning of the potential juror should reveal to the individual noting the responses whether the particular subject feels strongly or not about his answer or has a particular opinion. The questions usually call for either a "yes" or "no" response with an additional question designed to elicit the depth of the respondent's feeling; however, the questions may be combined to elicit both concurrence and strength of feeling. As previously noted, the Jury Selection Scale questions may be modified slightly to accommodate the questioner's style of inquiry.

The individual scoring the responses, whether attorney, judge, psychologist, or other, after noting the respondent's answers, should assign points to them per question as follows: Agree Strongly - 5, Disagree Strongly - 1, No Opinion - 3, Agree Only Slightly - 4, Disagree Only Slightly - 2; except for Questions 5 & 8, where Agree Strongly - 1, Disagree Strongly - 5, No Opinion - 3, Agree Only Slightly - 2, and Disagree Only Slightly - 4.

The assigned scores for each response are summed and the total score is utilized as the indicator of a potential juror's impartiality.

A judge or an attorney should question the impartiality of an individual with a Jury Selection Scale score of 25 - 27, and strongly consider dismissing those individuals with Jury Selection Scale score of 27 or above, as similarly-scoring individuals have been shown by past research to have pre-determined decisions or verdicts in court trials.

1. Do you believe that what today's kids need most is strict discipline, determination and the will to work and fight for his family and country? _____
Do you agree (disagree) with this strongly or slightly? _____
2. Would you say that obedience and respect for authority are the most important virtues children should learn? _____
To what extent? _____
3. It's been said that if people would talk less and work more, everybody would be much better off. Do you agree with that?
_____ Strongly? _____
4. Regarding religion, do you feel that with all the modern scientific advances the need for a religious belief is more important than ever before? _____ Do you feel this strongly? _____
- *5. Do you feel that prisoners, regardless of what they did, should always receive humane treatment in prison? _____
6. Do you believe a person who has bad manners, breeding or habits can expect to get along with decent people? _____
7. To what extent would you agree or disagree with the statement that an insult to one's honor must always be defended? _____
- *8. Do you agree or disagree (strongly or slightly) that some of the most brutal acts in man's history have been committed in the name of religion and morality? _____

These supplementary questions are not included as a part of the Primary Scale, but are included only as indicative of the most favorable background for the Jury Selection Scale inquiries, and may be included as part of the Primary Scale in the future when additional research is completed. Suggested supplementary question stems are listed below:

A person cannot deny destiny.

Capital punishment should have been abolished.

Only U. S. Savings Bonds are a good investment nowadays.

Church members are more trustworthy than non-church members.

It is a person's duty to serve his country in the armed forces, regardless of his personal beliefs.

A truly honest and fair businessman will not prosper.

In America everyone has an equal opportunity to success.

You can't change human nature.

People are moral only because they are afraid of being caught.

If a man's religion suits him, it is the best religion for him.

A person who commits suicide is the best judge of his own worth.

If minorities want to be equal, they should compete equally for jobs like they had been doing.

No normal person would think of hurting someone in his family.

Young people sometimes are rebellious, but they usually are O.K. and will change before long.

Astrology affects us a good deal more than most people admit.

Books and movies should be censored by the town council or school librarians to keep them out of kids' hands.