1964

The Effects of Selection Processes on Trial Outcome: an Evaluation of Trial by One's Peers.

John Plume Reed

Louisiana State University and Agricultural & Mechanical College

Follow this and additional works at: https://digitalcommons.lsu.edu/gradschool_disstheses

Recommended Citation


https://digitalcommons.lsu.edu/gradschool_disstheses/958

This Dissertation is brought to you for free and open access by the Graduate School at LSU Digital Commons. It has been accepted for inclusion in LSU Historical Dissertations and Theses by an authorized administrator of LSU Digital Commons. For more information, please contact gradetd@lsu.edu.
REED, John Plume, 1921—
THE EFFECTS OF SELECTION PROCESSES ON
TRIAL OUTCOME: AN EVALUATION OF TRIAL BY
ONE'S PEERS.

Louisiana State University, Ph.D., 1964
Sociology, general

University Microfilms, Inc., Ann Arbor, Michigan
THE EFFECTS OF SELECTION PROCESSES ON TRIAL OUTCOME:
AN EVALUATION OF TRIAL BY ONE'S PEERS

A DISSERTATION

Submitted to the Graduate Faculty of the
Louisiana State University and
Agricultural and Mechanical College
in partial fulfillment of the
requirements for the degree of
Doctor of Philosophy

in

The Department of Sociology

by
John Plume Reed
M.A., University of Illinois, 1950
May, 1964
The writer wishes to express his thanks and gratitude to all who advised, commented, instructed, and informed and guided him in the conception and execution of his study "The Effect of Selection Processes on Trial Outcome." Without their help it would have been an impossible task; with it, the results have been garnered for this presentation.
Few empirical studies have been made of jury trial. Of the empirical studies, most employ the experimental jury device and center on some select aspect of jury trial. What is lacking is a study of several facets of the jury system, particularly as they relate to one another and to trial outcome.

To meet the deficiency this study concentrates on the following: (1) the construction and drawing respectively of the general and regular venires; (2) the legal requirements, folklore, and methods of jury selection; (3) the composition of the general venire, venires, and civil and petit juries compared with the population resident within the judicial district; (4) the "peer" concept and voting patterns; (5) attitudes of judges, lawyers, and jurors on jury trial; and (6), "folk" hypotheses. To foster unity and continuity, a frame of reference was employed throughout the study. The frame consisted of the concepts real and ideal which provided a contrast mainly between the formal and informal culture structure of jury trial.

It was hypothesized that real and ideal would deviate in each of the subject areas. Case, statutory law, and the supportive writings of the members of the legal profession supplied the formal-normative assumptions to be tested. These were: (1) the cross sectional principle of case law; (2) jurors as separate, co-equal, and rational men; and (3), the evidence as determinative of trial outcome.

Sources of data included library materials, court records, and questionnaires and interviews obtained from judges, lawyers, jurors and
the clerk primarily within East Baton Rouge Parish. Interviews and questionnaires followed a time-sequence pattern based on the components and events of an average jury trial. All jurors of the 1959-61 12-man jury universe were sent a mailed questionnaire with follow up by letter, telephone, or personal call. Of the contacted population (432), approximately 56 percent responded to strategies designed to collect data.

Findings indicate considerable disparity between the real and ideal of jury trial. The clerk often controlled pool drawing and construction instead of the jury commissioners. Although qualified individuals could be selected from the voting roll and community, selections were confined to the former. Formal structuring of the pool was limited to statutes specifying qualifications for jury service and granting exemptions. Judges and lawyers were also involved in selection processes. Lawyers selected jurors to their side of the case and through the peremptory challenge affected minority-group participation. Judges unintendedly structured venires through judicial excuse. Pool, venires, and juries consisted of 52 to 58.3 percent craftsmen, foremen, and operatives. No women or minority-group members saw service on juries.

Jurors are not co-equal, separate, and rational men. The jury as a group is a factor in voting and verdict outcome. Jurors are co-equal as citizens but citizenship is related to qualifications for jury service and not to the juror's performance. Voting and participation in deliberations are related to the juror's class background. Non-evidentiary matters influence verdict outcome.

"Folk" hypotheses are indicative of values subserved by jury trial.
Democracy and efficiency are the values most often stressed by the hypotheses; however, justice is the only true measure if the focus is the trial and the individual. In view of the findings, but mindful of values, popular support, and constitutional problems, it is recommended that litigants and the accused have an election of trial by judge, jury, or experts within the framework of existing law. Panels of experts would be attached to higher courts or struck within the appropriate jurisdiction. The determination of who is expert would be based on the adversarial nature of the trial and the subject matter of the case.
# TABLE OF CONTENTS

ACKNOWLEDGMENT ............................................... ii

LIST OF TABLES ............................................... v

Chapter

I. INTRODUCTION ............................................... 1

   Frame of Reference, Area of Coverage,
   and Hypotheses ................................... 2

   Literature in General ........................... 4

   Study Design ..................................... 12

   Data Gathering ................................... 20

   Data Processing ................................... 22

II. DRAWING AND CONSTRUCTING THE GENERAL AND
    REGULAR VENIERES ..................................... 28

   The General Venire ................................. 28

   The Regular Venire ................................ 31

III. SELECTION OF JURORS ................................. 35

   The Calluo ........................................... 36

   Lawyers' Examination ............................. 38

   Rulings .............................................. 43

   The Ideal and Real in Jury Selection ............... 44

IV. COMPARISONS AMONG VENIERES, JURIES, AND THE
    DISTRICT POPULATION ....................................... 50

   From District Population to Juries Reaching
   a Verdict ............................................ 50

   Cross-sectional Products .......................... 53

V. BACKGROUND AND MEANING OF JUDGMENT BY ONE'S PEERS .. 59

   Historical and Legal Meaning of the Concept
   and Principle ........................................ 59

   Use of Peer Concept in Other Fields ............... 61

   Definition of the Principle "Judgment by
   One's Peers" ......................................... 62

iii
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>VI. JURY DELIBERATIONS, VOTING, AND VERDICT TRENDS</td>
<td>64</td>
</tr>
<tr>
<td>Jury Deliberations</td>
<td>64</td>
</tr>
<tr>
<td>Voting</td>
<td>68</td>
</tr>
<tr>
<td>Voting and the Jury Group</td>
<td>74</td>
</tr>
<tr>
<td>Verdict Trends</td>
<td>78</td>
</tr>
<tr>
<td>The Ideal and Real in Jury Deliberation, Voting, and Verdict Trends</td>
<td>80</td>
</tr>
<tr>
<td>VII. ATTITUDES OF JURORS, JUDGES, AND LAWYERS ON JURY TRIAL</td>
<td>84</td>
</tr>
<tr>
<td>Ideal and Real and the Attitudes of Judges, Lawyers, and Jurors</td>
<td>90</td>
</tr>
<tr>
<td>VIII. THE JURY ARGUMENT, CONCLUSION, AND RECOMMENDATIONS</td>
<td>91</td>
</tr>
<tr>
<td>Arguments for and against Jury Trial</td>
<td>91</td>
</tr>
<tr>
<td>The Jury Argument and a Review of Some of the Findings of this Study</td>
<td>97</td>
</tr>
<tr>
<td>A Look at Alternatives and Innovations in Trial by Jury</td>
<td>101</td>
</tr>
<tr>
<td>A Recommendation and Conclusion of the Study</td>
<td>105</td>
</tr>
<tr>
<td>SELECTED BIBLIOGRAPHY</td>
<td>114</td>
</tr>
<tr>
<td>APPENDIX A: THE CLERK</td>
<td>122</td>
</tr>
<tr>
<td>APPENDIX B: STATEMENTS FOR AND AGAINST JURY TRIAL GIVEN TO JUDGES, LAWYERS, AND JURORS</td>
<td>130</td>
</tr>
<tr>
<td>APPENDIX C: THE JUDGE</td>
<td>135</td>
</tr>
<tr>
<td>APPENDIX D: THE JUROR</td>
<td>144</td>
</tr>
<tr>
<td>APPENDIX E: THE LAWYER</td>
<td>166</td>
</tr>
<tr>
<td>VITA</td>
<td>191</td>
</tr>
</tbody>
</table>
### LIST OF TABLES

<table>
<thead>
<tr>
<th>Table</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Jury Sample Data from Jury Pool to Impanelment, 1959-61</td>
<td>15</td>
</tr>
<tr>
<td>2.</td>
<td>Jury Sample Data Based on Hung Juries and Juries Reaching a Verdict, 1959-61</td>
<td>16</td>
</tr>
<tr>
<td>4.</td>
<td>Occupational Composition of Four Randomly Selected Venires, the Resulting Juries, and Classified Employed Males by Percent for East Baton Rouge Parish, 1959-61</td>
<td>54</td>
</tr>
<tr>
<td>5.</td>
<td>Occupational Composition of Four Randomly Selected Venires, the Resulting Juries, and Classified Employed Males by Percent for East Baton Rouge Parish, 1959-61</td>
<td>56</td>
</tr>
<tr>
<td>7.</td>
<td>Jury Service and Voting of Responding Petit Jurors, 1959-61</td>
<td>70</td>
</tr>
<tr>
<td>8.</td>
<td>Education and Voting of Responding Petit Jurors, 1959-61</td>
<td>71</td>
</tr>
<tr>
<td>10.</td>
<td>Industrial Classification and Voting of Responding Civil Jurors, 1959-61</td>
<td>72</td>
</tr>
<tr>
<td>11.</td>
<td>Size of Employer and Voting of Responding Civil Jurors, 1959-61</td>
<td>73</td>
</tr>
<tr>
<td>12.</td>
<td>Job Level and Voting of Responding Civil Jurors, 1959-61</td>
<td>73</td>
</tr>
<tr>
<td>13.</td>
<td>Years of Residency and Voting of Responding Civil Jurors, 1959-61</td>
<td>73</td>
</tr>
<tr>
<td>Table</td>
<td>Probative Items into the Roles of the Members of the Jury</td>
<td>77</td>
</tr>
<tr>
<td>------</td>
<td>--------------------------------------------------------</td>
<td>----</td>
</tr>
<tr>
<td>14.</td>
<td>Concurrence and Deviation of Charge and Verdict, 1956-61</td>
<td>79</td>
</tr>
<tr>
<td>15.</td>
<td>Juror Attitudes on the Approach of the Trial</td>
<td>85</td>
</tr>
<tr>
<td>16.</td>
<td>Juror Attitudes on the Selection of Jurors</td>
<td>86</td>
</tr>
</tbody>
</table>
Chapter One

INTRODUCTION

All studies (or research) have their justification. A study of jury trial is no exception, even though its historical significance seems obvious. Together with *habeas corpus*, jury trial has been regarded by many as one of the major cornerstones of our democratic system.

If any one specific feature of our common law procedural system were to be chosen as distinctively outstanding, it would be the institution of our jury. . . . Thomas Jefferson declared: "I consider trial by jury as the only anchor yet imagined by man, by which a government can be held to the principles of its constitution." Transplanted from English soil to our hemisphere, it has been characterized as perhaps the most cherished institution of the greatest exemplar of free and intelligent government that the world has ever seen.¹

Historical importance, however, is but one of several reasons for studying the jury. Of more interest sociologically is the controversy over the jury. For more than 200 years a forensic battle has been waged between the supporters and critics of the jury system. Occasionally, this battle of words has culminated in changes in the jury (struck juries, split and special verdicts) but, for the most part, it has produced little and appears to be nowhere near resolution. The sociological aspects of the controversy center around approaches to the study of the jury. Most of the studies and research treat of the jury as composed of separate and distinct individuals or else use contrived
rather than actual juries to study facets of the jury system. As both a social and sociological problem, the sociologist can apply his concepts and research methods in the hope of increasing insights and theoretically and practically contributing to its solution.

Frame of Reference, Area of Coverage, and Hypotheses

Towards a resolution of this controversy, "The Effect of Selection Processes on Trial Outcome" is directed. As a study of jury trial, however, it differs from its predecessors in area of coverage, general frame of reference, hypotheses, and specific techniques used in the collection and analysis of the data.

For a frame of reference, the researcher employed the concepts real and ideal to contrast two important phases of jury trial. While the concepts have varied meaning both sociologically and otherwise, their use in this research is operationally defined. The ideal refers to how the jury is supposed to form, organize and function according to case and statutory law and the supportive writings of the members of the legal profession. The real, on the other hand, refers to the informal and unwritten ways in which the jury forms, organizes and functions as an actual and observable entity. The real, hence, is that portion of the actual and observable entity which ideally is unrecognized or unincorporated into formal law norms or the supportive writings of the members of the legal profession. In the trial of a case, a specific jury would include both the real and ideal as the concepts are defined here but for heuristic purposes they have been separated.

Of the many facets of jury trial that could be researched within the "ideal-real" framework, this study concentrates on the following:
(1) the construction and drawing respectively of the general and regular venires; (2) the legal requirements, folklore, and methods of jury selection; (3) the socio-economic composition of the general venire, venires, and civil and petit juries compared with the population resident within the judicial district (parish); (4) the legal and sociological meaning of the "peer" concept, with emphasis on how the defendant fares when judged by his peers (voting patterns); and (5), the attitudes of judges, lawyers, and jurors on jury trial.

It is hypothesized that there will be considerable disparity between the ideal and real of jury trial in each of the subject areas. In terms of a more specific hypothesis, the "goodness of fit" or concurrence between the ideal and real will be affected by: (1) the favorability or unfavorability of the attitudes of judges, lawyers, and jurors on jury trial; (2) the extent to which minorities are represented on the general venire, venires, and civil and petit juries; (3) the existence of the human resources necessary to carry out the mandate of the law on construction of the general venire and the drawing of individual venires; (4) the methods used and latitude allowed in the selection of juries; and (5), the extent to which the legal fiction of a status-free juror (a rational man) exists for purposes of jury deliberation and individual voting. The above hypothesis and sub-hypotheses apply to the individual subject area as well as to the jury in law and the jury in practice.

All the indices of "goodness of fit" or concurrence are of special significance to jury trial. They are related either to the "cross sectional principle" of case law or to other facets of the
Literature in General

Frames of reference, areas of coverage, and hypotheses are shaped to a considerable extent by the literature on jury trial. Much of the literature either represents the personal experiences of judges and lawyers or else consists of an historical and/or legal treatment of the evolution, structure, and function of the jury. Some of the literature is also popular but however it is classified its dimensions are practically unlimited. A feasible classification of the articles, books, and journalistic endeavors on the jury would be as follows: (1) historical; (2) bio- and auto-biographical; (3) technical; (4) scientific; and (5), popular. Each of the types of literature to be found on jury trial, in turn, break down into either a defense or an attack on the institution. In historical, technical, and scientific literature this is perhaps less explicit but if the writings or findings counter generally accepted beliefs, they can be held to be critical of the jury. An attack and defense of the jury suggest a frame of reference; the literature points to the scope of the problem and the aspects of the jury that are open to controversy; and the hypotheses follow accordingly.

The Scientific Literature. If one equates science with experimentation and empirical research, then the scientific literature on jury trial has a relatively late beginning. According to Winnick, the first serious research on the jury was conducted in 1924 by lawyer-psychologist William M. Marston. Using simulated juries, Marston concluded that one trained individual is a better fact finder than either a female or a male jury and that female were better than male jurors. The conclusion
was based on observation that the female used more care in considering testimony than male jurors. Other findings by Marston, resulting from the use of simulated juries, included the following: (1) the individual juror's previous training and experience were related to his skill in fact finding; (2) written evidence was superior to oral evidence; (3) the self-confidence of a witness might be more effective on a jury than the logic of other testimony; and (4), direct examination was a more effective means of presenting testimony than cross-examination.

Following Marston, studies were made of what happens in the jury room, the value of discussion among the members of the jury, the effects of having the last word in a trial, how the jury's verdict is reached, whether the jury tries the lawyer or the litigant, and the University of Chicago jury research, which has been under way since 1953.7

The first empirical study of what happens in the jury room was undertaken by two law professors in 1935.8 The study was a post-trial interview of jurors on various phases of the case on which they had rendered a verdict. Their conclusions were that the average juror does not understand the rules of law in a lawsuit and does not apply them to the proper issues.

Thus the techniques were forged for all subsequent research on the jury. Marston contributed the simulated jury device and the professors, the post-trial interview of jurors. The one exception, involving the use of actual juries during trial and in deliberation, ended abortively in a congressional investigation.9

By far the most elaborate empirical research on the jury (simulated and post-trial), has been under way since 1953 at the Law
School of the University of Chicago. There a team of lawyers and behavioral scientists have been engaged in a ten year study of the jury system. Of the many facets of the jury system which could be examined the Chicago researchers concentrated on the following:

1. The functions assigned and imputed to the jury;
2. The principles, if any, on which jury trial is or is not made available to litigants to elect or to waive a jury; identifiable classes of cases in which jury trial appears to involve special inconvenience;
3. The legal rules, the administrative practices, and the litigants' choices, which determine the composition of particular juries;
4. The decisional process—the determinants of the jurors' individual judgments; the nature and effect of group deliberation;
5. Workable criteria for appraising particular verdicts;
6. The rules and usages which promote, or interfere with informed and rational jury determinations or the efficient use of the jury in adjudication;
7. The significance of the jury as a form of democratic participation—community attitudes regarding the jury;
8. The social and individual costs of the jury system in various classes of litigation;
9. A reexamination of the functions of the jury in the light of data regarding its operations.\(^{10}\)

The material, gathered primarily through the use of simulated juries and post-trial interviews,\(^{11}\) is in the process of being summarized in a number of books. From time to time, however, articles have appeared which both preview the final product and add to the growing body of empirical research on the jury. One study by Strodtbeck and Man (1956)\(^{12}\) compared the relative activity of men and women in the jury room. Their examination of 12 different groups of jurors indicated that men jurors initiated relatively long periods of activity directed towards the verdict. Women tended to go along with the contributions of others. This sparsity of original contributions by women was thought to be a reflection of their subordinate role in our culture.

A second study with simulated juries examined the manner in which
the status of the jurors affected their work in the jury room (Strodtbeck, James, and Hawkins, 1957)\textsuperscript{13} In more than half of the cases studied, the foreman was nominated by one member and quickly approved by the others. Foremen were often persons with high status. In general, persons with high status participated more than jurors with lower status, derived more satisfaction from their service, exerted more influence on other jurors, and were also perceived as being more competent by their fellow jurymen.

A third study in 1959 took another look at the effect of status of jurors.\textsuperscript{14} A recorded criminal trial was presented by James to panels consisting of 204 jurors. Male jurors and jurors with high educational status participated more actively in group discussions. In her examination of deliberations, it was found that jurors spent about 50 percent of their time exchanging experiences and opinions, 25 percent of the time on procedure, 15 percent reviewing facts, and 8 percent on the court's instructions. Of this group of jurors, the more educated interpreted the court's instructions more accurately, and were more effective in facilitating group discussion than the poorly educated jurors. The education of the jurors did not seem to unduly affect whether they concurred in the majority decision, were pressured in going along with the majority, or were likely to be dissidents. Jurors, in general, showed concern for doing their job, and there was no indication that "strong men" had any great influence on the other jurors. In evaluating the participation of each other, jurors paid little attention to educational background, although jurors with little education spoke significantly less accurately and more disruptively than
In 1959, James also attempted to evaluate jurors' assessment of criminal resonsibility in a trial. A recorded criminal trial was played to twenty juries. Half the juries were instructed in the McNaghten Rule and half in the Durham Rule. The rules are relative to criminal trials where the defense of insanity has been raised. Most states apply the McNaghten Rule, which goes to the accused's ability to distinguish between right and wrong at the time of the commission of the crime. The Durham Rule involves the question of whether the crime was the product of mental illness but the Rule is thought to be somewhat harder to apply by a jury. In this study by James both sets of instructions were given serious consideration by the two groups of juries with no significant variations resulting in their verdicts.

Two additional studies by Kalven round out the Chicago research that has been published to date. In 1957, a post-trial interview of jurors revealed that in 71 percent of the cases there was no unanimity on the first ballot. In 36 percent of the cases the split was at least 8 to 4. In 90 percent of the cases where the majority voted not guilty on the first ballot, the verdict was not guilty. The jury hung only when the initial balloting showed a substantial minority. It was thought that the jury's "hanging" either reflected the closeness of the case or the feeling of the minority that they could pick up additional supporters.

Kalven's other study involved the use of simulated juries to determine the extent to which juries would make awards for damages. The juries were presented a case which in the real situation had been
settled for $42,000. The average award made by 10 mock juries was $41,000 with a range which ran from $17,500 to $60,000. According to Kalven, the experiment suggests that a particular jury may make an award which may appear to be relatively high or low, but that in the long run such awards tend to approximate an average.

Additional surveys and reports on the progress of the Chicago research have been published. No attempt, however, has been made to review or summarize all that has been written on the project or its prospective findings. Only the major articles have been treated in order to set them off from this study, "The Effect of Selection Processes on Trial Outcome."

Historical and Technical Literature. An interesting contrast is offered by the historical and technical literature on jury trial. Of earlier vintage than scientific literature, it is primarily the product of political scientists, historians, and members of the legal profession. Found in scholarly journals and hard-cover books, this literature treats of the entire jury system both at home and abroad. But unlike scientific literature, the historical and technical literature is primarily descriptive and interpretative in character. Some of the more serious efforts in this category include F. X. Busch's Law and Tactics in Jury Trial, W. Forsyth's History of Trial by Jury, and M. Lesser's The Historical Development of the Jury System. The work of Busch is primarily concerned with the distribution of formal law norms in time and space (by state) whereas those of Forsyth and Lesser center on documentary and secondary sources to treat of the origins, development, structure and functions of the jury.
The journal literature is more numerous and more dispersed. Most of the literature is in the form of law or bar journal articles. Occasionally articles have also appeared in *State Government, The American Historical Review, the American Political Science Review, The Annals*, and regional historical and political publications. In the government document, *Recording of Jury Deliberations*, most of the bar and law journal literature are summarized. The summary treats of the literature as being in the form of a debate between the supporters and opponents of the jury system.

First, the debate has been extremely bitter. The attackers of the jury have been especially violent.

Second, the debate assumes that the alternative to jury trial is judge trial and much of the debate is concerned with the respective merits of the judge versus jury trial. It might justifiably be said that the debate has put judges on trial as much as the jurors.

Third, the debate has been going on for a long time (at least since 1780) and the arguments which were advanced pro and con haven't changed much in the interim. Nor, contrary to my first impression, does there seem to be any particular period in which the debate grows hotter or colder. It has always been a hot debate.

Fourth, most of the literature deals with reforms which might be adopted rather than calling for outright abolition of the jury or for its retention without any reform.

Fifth, the literature is immense. There must have been more than 300 articles written on the subject in the past 100 years. All of the historical and technical literature focuses on the legal ideal of jury trial...but resorts to scholarship, observations, and experience to appraise the ideal in view of reality.

**Popular and Bio- and Auto-biographical Literature.** The popular and auto-biographical literature is of little concern to the study, "The Effects of Selection Processes on Trial Outcome." Its treatment is consequently summary with only a modicum of pretense made as to its validity. In medium form, the popular and bio- and auto-biographical
are to be found in paperbacks, movie, television, and radio scripts, 
the Broadway play, newspaper and magazine articles, and in hard-cover 
books of recent and none-too-recent origin. Taken as a whole, they 
could be said to project a double image of the trial and trial 
functionaries (lawyers, witnesses, jurors, and the judge), particularly 
in the 20th century. Thus, at his worst (uninstitutionalized be-
haviors), the lawyer is pictured as a "shyster"; at his best, as "a 
law maker" and "law giver." Jurors are either "good men and true" or 
"weak-minded and gullible enough to believe anything if it were dished 
up in an appetizing form." The witness is a "coached liar" or a 
"dutiful citizen testifying on the basis of his knowledge to what is 
in issue." Lawyers, jurors, and witnesses interact before the judge 
who is "politically fair-weathered," sometimes even regarded as a 
"social isolate," or the "epitome of the profession." The occasion is 
the trial. . . which has been called everything from a "game," "passion 
play," and the "amateurs' group therapy session" to a "device created 
by society for rationally and, usually, publically solving certain 
types of conflicts." All are included in its sweep; and all are pro-
jected, at one time or another, like Janus, as having two faces or two 
sides which are open to view.

As a product of the mass media, the double image (deviant and 
overly idealized) probably has differential consequences for the 
American public. If the media are audience-selective, some segments 
of the population may be overexposed to the deviant rather than the 
idealized image of the trial and its functionaries. Quentin Reynolds 
(courtroom, 1950), for example, writes that the "average person's idea
of a criminal trial is exclusively a synthetic Hollywood product...

and (the average man) has come to regard the criminal court as a perfectly suitable stage for the exhibition of perjury, trickery, and dishonesty. Others may have internalized more of the idealized image but whichever image is internalized both doubtlessly clash with reality and the legal ideal. For images that are audience-directed take their cues from commercial standards and mass taste and not from the tenents of scientific research. The consequences for the media publics are that they are largely unaware of the expectations of the legal ideal and either pre-judge the trial situation or confront it in terms of their prior media socialization.

Study Design

Based upon the scientific, historical, and technical literature, the present study employs the post-trial questionnaire and interview primarily within a single jurisdiction, East Baton Rouge Parish, Louisiana. Its parameters, however are wider than the journal-published research of the University of Chicago Law School. Also included in this study are interviews with judges, lawyers, and clerks of court in the parish and surrounding judicial districts, observations of jury trials, library research, and court records from Baton Rouge, Louisiana. Altogether, the subject areas, hypotheses, sample, and techniques used in the research constitute the design for this study of the jury system.

Preliminary Survey. To be in a position to apply the design, however, it was first necessary to determine what records were available. Towards this end, contact was initiated with the clerk of court whose office serves as a depository for the legal processes, documents, and
records within the 19th Judicial District. By virtue of district policy and the state's liberal public documents law, the clerk gave permission to examine most of the holdings pertinent to the juror phase of the research. The docket, *proces verbals*, summonses, pleadings, transcripts of the trial, juror warrants, and the minute books were open to inspection and copying when the need arose to compile juror lists, ascertain verdict outcomes, and the disposition of cases. Of the holdings, the *proces verbals* and minute books were the most promising because they gave entry to the jury pool and to juries which had served in decided cases.

In addition, contact was established with the Office of the District Attorney and with state prison officials. Both were sources of information on defendants in criminal trials. The D.A.'s office contained warrants for the arrest of persons charged with a crime, police reports, and pre-trial notes which had a bearing on jury selection and the voting patterns of the jurors. Particularly important were the social background characteristics of the accused and their possible association with verdict outcomes. At the prison, the classification records of inmates had similar value. In the first place, the records helped to differentiate the social background characteristics (particularly occupational status) of not guilty and guilty defendants who had been sentenced to prison. Secondly, differences in characteristics were broadly shown to be associated with how the juror and the jury voted.

Contact was also made with lawyers and judges to determine their availability and to discuss the problems of field research into
the jury system. Some judges and lawyers were approached for access to their files because they had handled particular cases that would figure in the study. Others were sought out for advice, recommendations, or as editors of interview materials.

As part of the preliminary survey, several weeks were spent in the 19th Judicial District Court examining the trial records and trial resumes in the minute books. The examination was undertaken to determine the volume and types of jury trials in the district. Both the volume and types of trials had consequences for the conduct of the research in East Baton Rouge Parish as well as for the sample design.

Sample Design. On the basis of the survey, it was decided to limit the sample to all 12-man jury trials occurring within the two year period, 1959-61. Some thought had been given to randomly sampling jury trials over a longer period, but the idea was ultimately abandoned. To randomly sample cases would require coverage of additional terms of court and add to the problems of locating the jurors and the juror's recall of trial events long after they had taken place. During the two year period selected, there were 60 jury trials initiated (28 criminal and 32 civil). Of this total, 21 criminal and 16 civil trials culminated in a verdict.

Once the trials had been located, the jury pool, venires, and juries were compiled. The pool and venires for the period were obtained from the process verbals; the juries, primarily from the minute books. In all, 3,600 names were found to constitute the pool and 444 the number of jurors who reached a verdict, from 1959 through 1961. From pool to verdict, however, venires are drawn, jurors impanelled, cases
settled before a verdict is reached, and only in the remaining trials is a verdict realized. The juror questionnaire population is consequently limited primarily to jurors reaching a verdict but the pool from which the jurors originate and the venires on which jurors are drawn figure in other ways in the research. In non-tabular form this material is presented below.

Table 1. Juror Sample Data from Jury Pool to Impanellment, 1959-61

<table>
<thead>
<tr>
<th>Sample Data*</th>
<th>Number</th>
<th>Percent Involved in the Study*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jury Pool, 1959-61</td>
<td>3600</td>
<td>100</td>
</tr>
<tr>
<td>Venires, 1959-61</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Civil</td>
<td>32</td>
<td>6.25</td>
</tr>
<tr>
<td>2. Criminal**</td>
<td>36</td>
<td>5.55</td>
</tr>
<tr>
<td>Veniremen, 1959-61</td>
<td>2690</td>
<td></td>
</tr>
<tr>
<td>1. Civil</td>
<td>1190</td>
<td>5.00</td>
</tr>
<tr>
<td>2. Criminal</td>
<td>1500</td>
<td>6.66</td>
</tr>
<tr>
<td>Impanelled Jurors, 1959-61</td>
<td>720</td>
<td></td>
</tr>
<tr>
<td>1. Civil (32 Juries)</td>
<td>384</td>
<td>53.8***</td>
</tr>
<tr>
<td>2. Criminal (28 Juries)</td>
<td>336</td>
<td>82</td>
</tr>
</tbody>
</table>

**Sample Data" and "Percent Involved in the Study" mean that the data presented here figure in the study qualitatively or quantitatively as the percentages indicate.

**The criminal venire figure (36) represents the number of petit juror lists for the two year period, 1959-61.

***Includes pretest population of 48 jurors.
Table 2. Juror Sample Data Based on Hung Juries and Juries Reaching a Verdict, 1959-61

<table>
<thead>
<tr>
<th>Sample Data</th>
<th>Number</th>
<th>Percent in Questionnaire Population</th>
<th>Percent Responding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Juries Reaching a Verdict, 1959-61</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Civil</td>
<td>16</td>
<td>75</td>
<td>52.8</td>
</tr>
<tr>
<td>2. Criminal</td>
<td>21</td>
<td>100</td>
<td>53.1</td>
</tr>
<tr>
<td>Hung Juries, 1959-61</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Civil</td>
<td>1</td>
<td>100</td>
<td>67.0</td>
</tr>
<tr>
<td>2. Criminal</td>
<td>2</td>
<td>100</td>
<td>79.2</td>
</tr>
</tbody>
</table>

Hung Jurors and Jurors Reaching a Verdict, 1959-61

<table>
<thead>
<tr>
<th>Sample Data</th>
<th>Number</th>
<th>Percent in Questionnaire Population</th>
<th>Percent Responding</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Civil</td>
<td>204</td>
<td>76</td>
<td>53.8*</td>
</tr>
<tr>
<td>2. Criminal</td>
<td>276</td>
<td>100</td>
<td>57.0*</td>
</tr>
</tbody>
</table>

*Percentages do not include spoilage (2%) or deaths and migrations (4%) from the district.

To fully circumscribe the juror questionnaire population, however, two additional steps had to be taken. To juries reaching a verdict hung juries had to be added and a pretest population subtracted. With hung juries included, there were forty 12-man jury trials. From the forty, 4 jury trials were randomly selected for a pretest. The remaining 36 juries, or 432 jurors, constitute the juror population to which a mailed questionnaire was sent. Fifty-six percent, or 242 jurors, of the questionnaire population responded and were used in the study.
Judges, clerks of court, and lawyers were also part of the field research into the jury system. Since this was primarily a study of a single jurisdiction, efforts were concentrated upon the 19th Judicial District to obtain the clerk and judges necessary for the study. Judges and clerks from outside the district, however, were interviewed as both tactical and desirable for understanding district practices and to guarantee coverage of the subject matter. Lawyers in the selection practices and attitude sections of the study came primarily from Baton Rouge; but all attempts to randomize selection proved futile in view of the lack of cooperation experienced once the research got under way. In all, 8 clerks, 12 judges, and 42 lawyers were approached. Of these about 50 percent responded to a variety of strategies designed to collect information.

Thus the sample used consisted primarily of jurors, judges, lawyers, and the Clerk of the 19th Judicial District Court. To reiterate its parameters, 1 clerk, 4 judges, 42 lawyers, and 432 jurors were involved. The clerk, 2 judges, 21 lawyers, and 242 jurors were interviewed or responded to a questionnaire. From outside the district, interviews were obtained from 4 clerks and 3 judges but this material was limited to the venire, rulings, and attitude sections of the study.

**Questionnaire and Interview Techniques.** Data were gathered, from this population, primarily through questionnaire and interview techniques. Questionnaires were sent to the jurors, with follow up by letter, telephone, and personal call. Clerks of court, judges, and lawyers were interviewed or else left with instructions on filling out the schedules
and having them ready for the interviewer at a later date.

The juror questionnaire was pretested then sent to the juror population. Pretesting was designed to ascertain juror attitudes on the research, aid in questionnaire construction, and data gathering techniques. Both the pretest and final questionnaire included sections on social background characteristics of jurors and questions covering pre-trial and trial events from receipt of summons through the verdict. The final questionnaire also contained a set of statements which was designed to obtain the juror's attitudes on jury trial. The statements were based principally on arguments for and against the jury system, and were taken from the technical literature on jury trial. In order to encourage juror response, questionnaires were numbered and anonymity guaranteed in a covering letter.

Interview schedules for lawyers and judges were reviewed by members of the legal profession then used in the interviews. Of the two, the lawyer interview was the more complex. Besides calling for background information, the lawyer interview consisted of statements and questions covering the pre-trial investigation of jurors, the voir dire examination, use of challenges, opening argument, trial tactics, closing argument, jury selection, and a set of statements for and against jury trial comparable to those submitted to jurors. The section of the interview schedule dealing with lawyer selection of jurors included two civil and two criminal cases from the 19th Judicial District whose venires were placed on index cards by the researcher in order of their callup. On the front of the card was a listing of the social background characteristics of the veniremen; on the reverse, their answers
to questions put to them by the lawyers during the voir dire (lawyer examination of veniremen for prospective jury service). Each group of 30 or 40 veniremen, as the case might be, comprised a "deck of cards" (veniremen listed on index cards) from which the lawyers in the interview population were to "draw" their juries. Decks of cards accompanied the interview material and were apportioned among the lawyers in the sample according to their specialization in criminal or civil law.

Among civil lawyers, those representing the plaintiff normally in trial practice were the first to make their selections. The selection of a jury from a "deck of cards" went as follows: If counsel for plaintiff didn't like the first venireman, or if a statutory ground existed, counsel could eliminate him by challenge. This process continued until peremptories had been exhausted and/or a group of 12 had been found acceptable. From the plaintiff lawyer, the choices and "deck of cards" went to a lawyer specializing in the defense. The latter would then pass on the choices of the former either by accepting them or challenging (usually peremptorily) those he found to be unsatisfactory. If a jury still had not been impanelled, the deck and choices (made in terms of a number on each card) were then carried back and forth until 12 veniremen had been found who were mutually acceptable (within the limits of allowable challenges).

Among criminal lawyers, the district attorney was the first to make his selections. He was then followed by defense counsel who either accepted or challenged his choices. If challenges resulted, the mechanics of selection were similar to that outlined above except that (1) more challenges were allowed and (2), the grounds for challenging for cause
(on the reverse side of the card) were modified to meet the requirements of the criminal code.

Thus, both civilly and criminally legal procedure was observed as much as possible within the framework of this type of simulated selection of juries, using decided cases and the original venires.

Judge and clerk of court interviews were more limited undertakings. The judge interview concentrated on exemptions from jury service, judicial excuse, evaluations of lawyers in their use of challenges and knowledge of the law, the influence of the judge on the verdict, and statements for and against jury trial. The clerk interview emphasized selection processes. Included in this interview were statements and questions on the drawing and construction of general and regular venires, the filling and maintenance of the tales jury box, the content of the jury pool, sex and minority group representation in the pool, and the role of clerk and jury commissioners in the selection of veniremen for inclusion in the pool. Both judge and clerk interviews excluded inquiry into social background characteristics of the interviewee in order to preserve the anonymity of a smaller group of respondents.

Data Gathering

Once the schedules and questionnaires had been completed contact was initiated with the population selected for the research. The juror questionnaire was mailed from December through January of 1961-62. Interviewing began in February and continued into the summer of 1962. Jurors who failed to respond were first sent a follow up letter. Later telephone and personal calls were used. Each call was adapted to the
interests of the juror and designed to overcome his opposition to filling out and mailing his questionnaire. During the period of the telephone calls, questionnaire returns increased 200 percent over those of the previous month and continued high for some time thereafter. Occasionally personal calls were also necessary to obtain the juror questionnaires. In a number of instances, petit jurors wanted to see the sender (of the questionnaire) to indicate their support for the research or to verify the sender's credentials. Two in particular feared reprisals from a convicted man's friends.

With some degree of success assured for the juror questionnaire, judge, clerk, and lawyer interviews were then pushed more vigorously. First the judges and clerk of court of the 19th Judicial District were approached; later, those in bordering districts. Judge interviews were scheduled whenever convenient to the interviewee and usually after a copy of the interview schedule had been examined. On more than one occasion, judges requested that the material be left with them to be filled out at their leisure. When this occurred, the schedules were picked up at a later date. Clerks of court were initially approached for access to their holdings (court records); and after examination of the minute books, docket, and proces verbals, for an interview. The clerk interview was the shortest and easiest to administer and oftentimes proved the most successful.

Lawyer interviews were undertaken primarily in May and June of 1962. Preceeding the interview, appointments were set up by phone. During the phone conversations, the purpose and content of the interview were explained to the lawyer, the identity of the interviewer was
established, and a day and time was requested when the interview could be held. If granted, interviews were conducted in the lawyer's office and ran from two to four hours in length. Because of the length of the interview, it was often necessary to either split the interview into two parts or else leave the entire interview schedule with the lawyer. When schedules were split or left at the lawyers' offices, they were usually harder to retrieve. Repeated attempts to personally interview the lawyers or obtain the schedules met with failure.

In May a complication developed. Some member of the local bar association began to actively oppose the study. Specifically, the Criminal Committee of the Baton Rouge Bar Association reacted adversely to the juror questionnaire and recommended that "a strong position should be taken by the Bar Association as a whole as to the impropriety of such activity... and the undesirable results which could be obtained by virtue of such inquiries." Coming at the outset of the lawyer interview, the committee report undoubtedly had some effect on lawyer participation. Many lawyers, who had initially agreed to participate, either delayed granting the interview or return of the schedules.

Data Processing

The data gathered through questionnaires were statistically treated at the Louisiana State University IBM Center. Frequencies, percentages, cross-tabulations, and chi-squares were run by the Center and used in the study. Clerk of court, judge, and lawyer interviews were sparingly used in view of the limited number of respondents. The interview of the Clerk of Court of the 19th Judicial District was interpretatively employed to distinguish between statutory requirements
of venire construction and local practice. Parts of the judge inter-
views supplemented observation, library research, and lawyer interviews
on methods of juror selection. Results of the lawyer interviews were
restricted principally to sections on juror selection and attitudes on
jury trial. All of the work with the Center was restricted to the
juror questionnaire.
Footnotes to Chapter One


5 Certainly no one would argue that unfavorable attitudes, exclusion or restriction of minority representation, constrictive selection practices, occupation-linked voting, and group organization and function are ideally the characteristics and nature of jury trial. It would be far more correct to say that the converse is true in view of the ideal. Thus jurors are viewed as separate and distinct individuals, as rational men; their voting is determined by the evidence in the case; and lawyers, judges, clerks, and commissioners follow the letter of the law in performing their institutionally prescribed roles. As to jury trial, in the absence of "intentional and systematic exclusion of racial and ethnic groups" from jury service, ideally one would assume that juries (particularly the jury pool) are "representative" and that the litigant or the offender has a trial by his peers. In other words, the criteria include what could be considered the major props of the jury system.


R. M. Hunter, op. cit., II (1936), 1-19.

Subcommittee of the Committee on the Judiciary, op. cit.

Ibid., p. 160.


Subcommittee of the Committee on the Judiciary, op. cit.

Ibid., Pp. 63-64.


23"The layman’s impression of a trial frequently comes from stage, motion picture, and television sources, which while invariably exciting, are a pale simulation of a real trial." L. Nizer, op. cit., p. 9.

24Louisiana also has 5-man jury trials. The 12-man trials were selected in order to permit comparisons between this and other studies of the jury.

25Several disadvantages were connected with the small number of juries reaching a verdict. One in particular was the inability to treat of voting patterns more finitely; for example, by type of suit, crime, victim, lawyers, etc.

26Two attempts were made to randomize the selection of lawyers. One was based on random sampling; the other, on stratified random sampling techniques. Both attempts were unsuccessful. For an explanation, see the "Data Gathering" section of this chapter.

27The question of representativeness of the sample may be raised by some. The question, however, is a sociological and not a legal one. Within the "ideal-real" framework, deviations from the ideal are the significant considerations. If deviations can be shown to exist, the law, in effect, fails to operate as it is supposed to operate. The more extensive the deviations, the more questionable is the jury system and the law and legal assumptions that underlie it. The more questionable the system, the more subject it will be to attack, the poorer its image, and the greater its likelihood of eventual modification.

28From the sociological point of view the question of representativeness of the sample is an important one. If the sample is not representative, one is limited in his treatment of the data and in his generalizations about the applicable universe. The question of representativeness here, however, is limited to the lawyers figuring in the study. Apart from the lawyers, this study treats of the jury trial universe from 1959-61. Since the study was limited primarily to a single jurisdiction, only 1 clerk had to be obtained, 4 judges, and
480 jurors to complete coverage of the entire universe. The clerk was interviewed and all the members of 12-man juries were sent a questionnaire in either the pre-test (4 juries) or the actual research (36 juries). Pre-test and actual research showed no significant variations in juror responses. In the actual research 242 jurors responded. All 12-man juries in the actual research were represented in the 242 questionnaires that were obtained. All juries were represented by 3 or more respondents. Of the four judges, half were interviewed.

The interview materials obtained from judges and clerks from outside the 19th Judicial District were used for purposes of contrast or to support somewhat broader generalizations about the jury.
Chapter Two

DRAWING AND CONSTRUCTING THE GENERAL AND REGULAR VENIRES

Contrasts between real and ideal offer a ready-made framework for treating of certain classes of problems. The law as formal rules and regulations (or what ought to be) is taken as the legal ideal and what agents and agencies of the law informally and extra-legally do as the real. The contrast would seem to be particularly important not only in testing the efficacy of the law but also in determining whether the law operates as its advocates claim. The area of application for this framework is limited to jury selection processes and their effect on trial outcome.

A logical place to begin an evaluation of trial by one's peers, or jury trial, is with the general venire. The general venire constitutes the jury pool from which venires are randomly drawn and juries ultimately impanelled. The duty of constructing and supplementing the general venire devolves upon the jury commissioners. Normally, the commissioners gather in the office of the clerk of court and then proceed to the office of the registrar of voters to select the names of individuals for inclusion in the jury pool.

The General Venire

The several district judges... select and appoint five discreet and competent citizens, able to read and write the English language who, with the clerk of the district court... as a member thereof ex-officio... constitute
a jury commission for such parish and hold their office
during the pleasure of the district judge.

Upon the written order of the district judge to draw
a jury panel, the commissioners meet at the office of the
clerk of the district court and in the presence of at least
two witnesses select the names of three hundred persons
qualified to serve as jurors. . . . From this list of three
hundred names, known as the general venire, the commission
selects twenty persons who will serve from four to eight
months as grand jurors.
The names of the remaining two hundred and eighty
persons, which are written on slips of paper, are placed
in a 'General Venire Box'. . . .

Not less than twice in each year, or once in every six
months computing the time from the date of the first
drawing by the jury commission. . . . the commissioners shall
meet at the clerk's office, and after being furnished by
the clerk of court with a list of those who have served
as jurors. . . . in the presence of witnesses. . . . examine the
original venire list and strike therefrom the names of
those who have served, died, become exempt or disqualified
. . . . and shall supplement the original list. . . . with enough
competent persons to keep the number at 300. 2

In constructing the general venire, the jury commissioners are
without a guide. Nothing in the code or elsewhere spells out how
veniremen are to be selected. The commissioners, individually and
collectively, are left to their own inventions. This means that almost
any method could be used to select the names of registered voters for
prospective jury service. In some districts the absence of "know-how"
on the part of the commissioners finds the clerk of court stepping
into the vacuum and extra-legally directing their selections. The
clerk-directed commissioner is told to "bring in so many names from
this or that ward and precinct" or "with some indicated occupation."

In other districts, the commissioner who is reappointed from term to
term often foists his method of making selections on the remainder of
the commissioners.

The lack of a directive in constructing the general venire, in
effect, personalizes selection. Instead of being determined by the
code or administrative rules, selection is determined by the office
holders. Selection, thus, will vary from district to district and
within the district with a turnover in the office of the clerk and/or
commissioners. Who is selected is similarly affected. Depending on
the clerk or commissioners philosophy of life, prospective jury
service may be restricted to particular economic classes or to indi-
viduals who stand in a particular relationship to the selectors.
Some commissioners (and clerks) select the unemployed, the part-time
worker, or their status inferiors. Others select outside their circle
of friends and acquaintances. More than a few have been noted for
selecting in-laws and relatives along with others for prospective jury
service. In dealing with minority group members, an arbitrary number
are put into the pool by the clerk and commissioners. . .but where the
number comes from or how minority group members are selected is as
perfunctorily decided as pool composition. In all these areas the
code and administrative rules and regulations are silent and men and
not law control.

In treating of methods of drawing and constructing the general
venire, another practice should be cited. From term to term of court,
veniremen may be reinserted in the pool. Reinsertion is a product
either of veniremen surplusage during the court term or reselection
of veniremen by the clerk and/or commissioners for inclusion in next
term's jury pool. Veniremen surplusage, hence, refers to unused pool
members who are carried over to the new court term. Reselection carries
the implications of a voir dire examination or jury service by the
venireman during a specific term of court and replacement in the pool for prospective service when the venireman again qualifies under the code (one year later). In Baton Rouge veniremen were found who had served as many as 11 times on actual juries.

What must result from these practices in terms of the jury pool is open to question. When one considers how the pool has been constructed, its parameters are uncertain. Ideally, however, the pool is supposed to represent a "cross section" of the community. In case law both federal and state courts advance this requirement although neither spells out with any degree of exactitude what a "cross section" means.

Case law, in turn, conflicts with the operation of Louisiana's civil and criminal code. As in most states, the code exempts or disqualifies large segments of the population from jury service... and, therefore, limits the pool and its "cross-sectional" requirements to the remainder. A "cross section" by operation of the code is devoid of a number of age, residency, and occupational categories that constitute the district (or parish) population.

The Regular Venire

From the jury pool (or general venire), regular venires are drawn and constructed from time to time. Very simply stated, the series of events begins with the order of the judge and ends with the delivery of copies of the venire to the lawyers in the case or publication of the venire (list of petit jurors for jury week) in a public newspaper. In the interim, (1) the clerk, as custodian of the pool, makes his facilities available; (2) the commissioners or other
designated parties, in the presence of witnesses, randomly draw the names of a specified number of veniremen from the pool; and (3), the order of drawing is recorded by the clerk and constitutes the venire for trial of the case. Both civilly and criminally the order of events is much the same.

Upon the written order of the district judge, the commissioners draw by lot. from the 'General Venire Box'. the names of thirty persons to serve as petit jurors for the first week of the next ensuing session of the court, and if, in the judgment of the commission or district judge, a jury for a subsequent week of the session may be required, the commissioners draw in the same manner an additional thirty names.

In civil cases, the district judge may order the jury commissioners to draw the names of 50 persons to serve as jurors on civil cases for the first or second and additional weeks as may be necessary.

The thirty, fifty, or additional names are put in an envelope and sealed and endorsed. 'List of Jurors No. 1' and '2' for petit jurors. similarly for civil jurors. and placed in a 'Jury Box' which is sealed and delivered to the custody of the clerk of court for use at the next session of the court.

The clerk of court makes a proces verbal of the meeting, recording all the names in the order they are drawn and showing the week for which they are to serve. When the drawing and the proces verbal is complete, the clerk delivers a copy of it to the sheriff of the parish, who proceeds to summon all the persons on the list to attend upon the session of the court and serve for the week for which they are drawn. The clerk of court also publishes the list of grand and petit jurors in the official journal of the parish. or in any public newspaper. By this publication counsel obtains identification of the prospective jurors. In civil cases, opposing counsel are provided a copy of the venire for trial of the case by the clerk of court.

Drawing the venire is a fairly mechanical process. Publicity attends the process if several functionaries participate; however, the randomness of the venire is questionable. Names taken are eliminated rather than returned to the pool to equalize everyone's chance of being drawn. In providing the lawyers with a copy of the venire,
pre-trial investigation of veniremen is made possible but abuses
develop out of direct and indirect contact with veniremen prior to
the **voir dire**. The abuses may range from establishing rapport with
veniremen to pre-trial of the issues in the case. In view of these
practices, it might be desirable to curtail lawyer contact with
veniremen before the **voir dire**. If it is felt that some veniremen
are more qualified than others to hear the issues in the case, the
**voir dire** would be the appropriate time and place to ascertain
veniremen qualifications. For than the selection of jurors is under
the supervision of the judge and no more would go on than the judge
allows.
Footnotes to Chapter Two

1. The commissioners first meet in the office of the clerk of court. Here they are informed of venire problems. From the clerk's office, the commissioners then go to the office of the registrar of voters where the selection of names actually takes place. Each commissioner is usually responsible for selection of the names of registered voters from his ward or specified areas.


3. Pool parameters may also be affected by a resort to the "tales jury box." The box contains the names of 100 persons selected by the jury commissioners and/or the clerk. In many instances "tales jurors" reside in the vicinity of the courthouse; hence, may be hurriedly summoned when it appears the venire will be (or is) exhausted before a jury is impanelled. See La. R.S. 15: 183-184 (1950) and 13: 3048 (1950).

4. Pierre v. Louisiana, 306 U. S. 354 (1939); Norris v. Alabama, 294 U. S. 587 (1935); Hernandez v. Texas, 347 U.S. 475 (1954). See also the Louisiana Constitution, Article 1, Section 9; and Article 172 of the Louisiana Code of Criminal Procedure (1950). For a general treatment of the problem, consult: C. H. Pritchett, op. cit., Pp. 544-548. The concept "cross section" is used in its gross and negative sense by the courts. As such, it is taken to mean "the intentional and systematic exclusion of racial (and ethnic) groups from jury service."

5. La. R.S. 13: 3041-3042 (1950); Ibid., 15: 172-175.

6. Quoted material is a composite based on material taken from the following sources: R. Slovenko, op. cit., XVII (1957), 681-682; La. R.S. 13: 3041-3056 (1950); Ibid., 15: 175-188.
Chapter Three

SELECTION OF JURORS

Another type of selection process in jury trial concerns the jurors. In order of its occurrence, the selection of jurors always follows the drawing and construction of the general and regular venires. Whereas constructing the venires involuntarily segregates the veniremen from the community, jury selection, on the other hand, marks the beginning of group formation. The jury as a group, however, is unusual in the sense that the members are institutionally required to associate with each other long before they formally organize. The period of association may involve several days consumed in the selection of the jury as well as the trial itself. During this period, observations reveal that a pecking order is likely to develop upon which formal organization will be ultimately superimposed in jury deliberation. This chapter presents jury selection as an observable phenomenon within the normative legal framework in which it occurs.

The examination of veniremen for jury service is called the *voir dire*. In the state courts of Louisiana the examination is conducted primarily by counsel in the case. During the *voir dire*, counsel question veniremen and through the use of challenges attempt to control the composition of the jury. For purposes of treatment, the *voir dire* may be divided into several phases. The three scrutinized here are termed callup, lawyers' examination, and rulings.
The Callup

In the callup phase of the *voir dire* the sequence of events is rather well established. In response to their summons, veniremen arrive at the courthouse at a designated time. When directed by the bailiff they enter the courtroom and seat themselves in back of the guard rail separating court functionaries from the audience. When their names are called, veniremen then proceed from their seats to the jury box. As many as six may be called at any one time. In the jury box veniremen are examined by the lawyers for prospective jury service. The pertinent section of the code provides:

> When the list of the jurymen present shall have been formed in the manner above specified, or when the court shall have ordered, or the parties agreed, to call them in any other manner, the jurymen shall be called three at a time to be sworn; the parties then make their challenges to the court, if they have any cause therefor, either to the array or to the poll.¹

The practice in the 19th Judicial District is to call veniremen three or six at a time. The resulting massing of veniremen first in the courtroom and subsequently in the jury box initiates incipient group tendencies. By incipient group tendencies is meant socio-psychological relationships among veniremen and ultimately among jurors which have their source in shared experience. These shared experiences include summons to the courthouse, milling and interaction prior to convening the court, instructions from the judge, questions, examination, and challenge by the lawyers, the segregation of jurors from the remainder of the veniremen, the trial, interaction between court sessions, and eating and being quartered together when the trial runs for several days. As a consequence of the shared experience, a unity arises
among veniremen which persists during the voir dire and subsequently among jurors during the trial. This unity may be called the affective component of grouping which, when coupled with structure, comprise group organization.²

Born during the voir dire, the group as an affective entity has significance both for the lawyer and for the trial outcome. For the lawyer, it means that his relationships to veniremen are partly circumscribed by feelings of togetherness among veniremen as a consequence of their common experience. When examining a particular venireman the lawyer has to take the others into account; otherwise he may prejudice unexamined veniremen against his side of the case.³

For trial outcome, the existence of a group affectively during the voir dire and during the trial has important consequences.⁴ It suggests, among other things, that the affective entity is the basis for formally organizing the jury once it has entered the juryroom. In the juryroom a foreman will be elected and procedure instituted for reaching a verdict. Both are institutionally prescribed; but who emerges as foreman and jury group members and what roles the members play in jury deliberations stem, in large measure, from the socio-psychological juxtaposition of the jurors to one another prior to their entry into the juryroom.⁵

The existence of a group affectively before jury deliberations would also seem to indicate that jurors do not undergo the trial experience as individuals. In all the instances of milling, interacting, eating and being quartered together, the individual has to make his adjustments to the presence and actions of the other jurors in the
trial situation. To put it in other words, is to claim that, while
veniremen may come to the courthouse as individuals, they are rela­
tively early in the trial integrated into their roles as jury group
members through dominance-submission, imitation, sympathy, identifi­
cation, and other sociopsychological processes.6

Hence, it is that the callup is signaled out as an important
factor in jury-group formation. The callup, in effect, formalizes
the segregation of jurors from the community and from the venire.
From here until jury deliberations, the group will affectively form
and function. In jury deliberations it will formally organize to
reach a verdict.

Lawyers' Examination

Another phase of the voir dire is the lawyers' examination of
veniremen for jury service. The examination has its roots in receipt
by the lawyers of a list of veniremen constituting the venire for
trial of the case. Upon receipt of the venire, the lawyers may in­
vestigate each venireman or await their turn at verbally questioning
veniremen during the voir dire.

The examination phase of the voir dire is an admixture of law,
folklore, and "science." Of the three, folklore is the more diffuse;
however, all three of the normative elements in selection operate in
varying degree from the pre-trial investigation through the voir dire.

In comparison with more advanced techniques of selection,
folklore could be called pre-scientific. As pre-science, it represents
a mixture of the insights of practitioners, past and present, and early
psychological and sociological beliefs. The focal points of these
insights and beliefs are: (1) the physical characteristics, appearance, and group relations of the individual; and (2), inferences of a socio-psychological nature about his personality traits. In combination, the "visible signs" and their referents are accepted as a priori indicators of how the venireman-selected juror will vote.7

Some of the folklore of selection in East Baton Rouge Parish includes the following: (1) "give me any 12 men good and true"; (2) "all veniremen make good jurors"; (3) "the type of tie a venireman wears indicates something of his personality"; (4) "some nationalities are more open-minded than others"; (5) "middle-aged, married men make the best jurors"; (6) "you can do more with a venireman without previous jury service than one who has served before"; (7) "if you select a woman, you never know how she is going to go"; and (8), "take the man who seems friendly to your line of questions."

By way of contrast the "scientific approach" to selection is investigatory, gives rise to hypotheses about voting behavior, and seeks validation (of hypotheses) through poll of the jury or through post-trial research. The pre-trial phase of the approach is given to: (1) personal or hired inquiry into the background characteristics of veniremen; (2) maintenance of a juror file; (3) use of experimental juries (although not in Baton Rouge); (4) evaluation of findings; and (5), preparation and development of questions and techniques for selection, maneuver and countermaneuver during the voir dire.8 Post-trial validation of hypotheses lags, however, because of legal restrictions on lawyer contacts with jurors after the trial.

As a rule of thumb, the "principle of maximum similarity and
"minimum difference" is a guide to which veniremen to accept or reject for jury service. The principle has its application in matching up the characteristics of one's client with those of veniremen in view of the issues in the case. The more of a match one succeeds in getting between client, venireman, and case, the greater the probabilities of a favorable verdict outcome. Minimum differences, however, may have to be accepted because of opposing counsel's cross selections. Sometimes the match may be partly made against counsel in the case. A district attorney may select a venireman because he voted for him during the last election. The assumption is that if the venireman voted for the district attorney, he would favor his side of the case. Occasionally veniremen with similar social origins or who interact socially with counsel will be preferred.

Selection of veniremen takes place within a normative legal framework that provides the lawyers with challenges. Challenges may be to the array, peremptory, or for cause. Challenges to the array are related to venire composition and to methods of drawing and constructing the venires whereas the challenge for cause centers on the venireman and his qualifications for jury service. Both are statutory in the sense that counsel must cite the grounds for his challenge, which are set forth in the criminal and civil code. General grounds (or causes) for challenging civil and petit jurors are much the same. Using Article 172 of the Louisiana Criminal Code for purposes of illustration, the following requirements for jury service are enumerated:

"To be a citizen of this state, not less than twenty-one years of age, a bona fide resident of the parish in and for
which the court is held for one year next preceding such service, able to read and write the English language, not under interdiction or charged with any offense, or convicted at any time of any felony, provided that there shall be no distinction made on account of race, color or previous condition of servitude; provided further, that the district judge shall have discretion to decide upon the competency of jurors in particular cases where from physical infirmity or relationship, or other causes, the person may be, in the opinion of the judge, incompetent to sit upon the trial of any particular case. In addition to the foregoing qualifications, jurors shall be persons of well known good character and standing in the community."

Article 351 and 352 of the Criminal Code provide for special grounds for challenging for cause. Article 351 allows the state or defendant to challenge prospective jurors because of (1) fixed opinion, (2) relationship of the juror to persons involved, and (3) service on the grand jury or former petit jury in connection with the case. Article 352 is available only to the state which may challenge where there is (1) bias against the enforcement of the statute charged to have been violated, or where the juror is of the fixed opinion that the statute is unconstitutional; (2) conscientious scruples against the infliction of capital punishment; or (3), unwillingness to convict upon circumstantial evidence.

For civil jurors, partiality is also a ground for challenging as well as (1) mental competence and intelligence to try and determine civil cases and (2) relationship or alliance to either party within the sixth degree, according to the computation of the civil law.

The peremptory challenge, on the other hand, while numerically limited by statute, goes more to fitting the venireman to the case. Since no statutory grounds need be cited for the peremptory challenge, it is likely to have a basis in facts uncovered by the pre-trial
investigation or during the lawyers' examination. All challenges and
the examination of veniremen by counsel are adversarial, usually occur
in sequence, and are presided over by the judge.\textsuperscript{15}

Of the three types of challenges provided counsel, the peremptory
challenge is the mainstay of jury selection. Through peremptories each
lawyer in the case strives to load the jury with persons he regards as
favorable to his side of the case.\textsuperscript{16} Since he is not in control of
the order of callup, counsel has not only to winnow out those he be­
lieves are unfavorable but in "scientific jury selection," within an
adversarial context, be prepared to accept veniremen who would be the
"lesser of two evils" wrought by opposing counsel's cross selections.
Cross selection implies that opposing counsel select to their side of
the case but a level of toleration exists in the defense as to what
selections of the lead-off examiner will be acceptable. The level of
tolerance will vary from lawyer to lawyer depending on: (1) the
amount of pre-trial investigation counsel has done; (2) counsel's
ability to perceive connections between general background and per­
sonality characteristics and possible verdict outcome; and (3), the
number of peremptory challenges statutorily allowed in the case.

In civil cases, counsel for plaintiff leads off with examining
veniremen as they are called up by the bailiff or judge. In criminal
cases the district attorney has a similar role. In either type of
case counsel must accept or reject (through challenge) the venireman
before passing him on to the other side. The defense, criminally or
civilly, then picks up with the questioning and either concurs in the
selection made by the other side or challenges.
The process of selection thus unfolds. Challenges to the array usually occur at the outset of examination. During examination, peremptories and challenges for cause may be raised by either side as their turn comes up in the examination process. As peremptories are used up, the challenge for cause tends to be made more often as the lawyers strive for a favorable jury. Even uninstitutionalized behaviors may punctuate the process as counsel depart from their legally prescribed roles to harass each other or curry favor with veniremen.

Apart from observation of actual trials, data from the judge and lawyer interviews are in point. According to several of the judges, some lawyers spend more time selecting jurors than they do in trial of the case. Under the adversarial system of cross selection of jurors, no lawyer succeeded in getting all of his pre-trial or voir dire choices on the jury. Both the judge and lawyer interviews indicated that the lawyers in the case were evenly matched only 10 to 20 percent of the time; hence, primings of the jury were more likely to favor one side over the other.

Rulings

Rulings by the court during the lawyers' examination are primarily in response to challenges for cause raised by fellow counsel. The basis for a challenge for cause is Louisiana's civil and criminal code. The code sets forth disabling or disqualifying characteristics which bar veniremen from jury service. Agents and agencies of the law involved in culling out veniremen are: (1) the jury commissioners and clerk in constructing and supplementing the venires; (2) the judge through the granting of judicial excuse; and (3), the lawyers during their examination of veniremen.
Some judges feel that the lawyers' examination rather than the judge's chambers (and judicial excuse) is the appropriate time and place to ascertain qualifications. Upon a challenge for cause, however, ascertainment of qualifications is determined in a practical rather than a "scientific manner" in instances of bias or prejudice, intelligence, reading and understanding the English language and in other instances which have a bearing on the caliber of veniremen who may hear and decide the issues of fact in the case. No written tests are administered prior to the voir dire nor are experts used to aid the court in making its rulings.

Rulings are assumed to be uniform from judge to judge but actually the grounds for challenge may be either narrowly or broadly interpreted. Among a small number of judges in Baton Rouge and surrounding parishes, response to the question, "are you a broad or narrow constructionist in interpreting statutory grounds" as a basis for judicial excuse or a challenge for cause during the lawyers' examination, indicated differential handling of the problem. Some judges may qualify veniremen others would not; still others would excuse or disqualify veniremen their fellow judges would require to serve if not eliminated by peremptory challenge. What this means is that the judge is also a factor in selection processes through his broad discretionary powers to grant excuses in chambers or through his rulings on challenges raised during the lawyers' examination.20

The Ideal and Real in Jury Selection

The ideal of jury trial in this area could best be conceived as beset by unequal rates of change. In the absence of any great amount
of regulation, and probably under the impetus of competition, lawyers are using more refined techniques of selecting jurors. The trial, and particularly the jury, remain relatively unstudied as a means of treating of certain classes of conflict within American society. Such changes as have been instituted in the jury (special and split verdicts and struck juries) have come from within the legal system and consequently are more in line with the symmetry of the law than with the latest findings of the behavioral sciences. 21

Conflicts between selection methods and the legal ideal are both specific and general in character. Specific conflicts are manifest in the use of questions and challenges by lawyers as a means of selecting veniremen for jury service. Occurring during the voir dire, the lawyer's questions (and hypotheticals) may be an attempt to pre-try the issues or otherwise establish rapport with veniremen preliminary to their acceptance for jury duty. As a consequence, something more than the "weight of the evidence" (ideally) operates in the outcome of the case. The use of challenges by lawyers may also represent a departure from the legal ideal: (1) when employed to gain a tactical advantage over the other side (passing veniremen without indicating acceptance or rejection) or influence the selection of jurors; and (2), when their tactics purposely or otherwise eliminate minority group members from service on the jury. Elimination of minority group members is common practice in Baton Rouge in both civil and criminal cases and centers in the use of peremptory challenges. By common agreement among the lawyers, one side or the other will challenge minority group members and, hence, eliminate them from actual service on the jury.
General conflicts are somewhat more tenuous but pertinent within a framework that purports to assess the efficacy of jury trial. In this sense, the whole notion of challenge, while presupposing some veniremen are more qualified than others to decide issues of fact in the case, departs from one of the avowed functions of the jury—to allow participation by the public in the administration of justice. Challenges are more likely to serve the lawyers' interest in the case rather than the public interest of getting more qualified veniremen on the jury. Since there is nothing resembling a "cross section" on the venires, the lawyers' interest is, in effect, substituted for the legal ideal of community participation.
Footnotes to Chapter Three

1L.S.A. Article 1761 (1960).

2M. S. Olmstead, The Small Group (New York: Random House, 1959), Pp. 95-98. The point of view that the jury is a group is explicit in the article "Social Status in Jury Deliberations." To quote:

"For groups to define and achieve their goals, they must control the use of their primary group resource, their common time together. Only one, or, at most, a few persons can talk at any given instant and be understood. Who talks and how much he talks is, within limits, determined by the reactions of the remainder of the group to the speaker. Acts that are perceived as relevant to the solution of the group's problems are generally favorably received and the responsible speaker is encouraged to continue. Over the long run participation tends to become differentiated with a small fraction of the group's members accounting for most of the participation."

F. Strodtbeck, R. James, and C. Hawkins, op. cit., XXII (1957), 713. See also p. 719 of the same article.


4In The Small Group, p. 96, Olmstead in summarizing the perspective of sociometry, and particularly that of J. L. Moreno, indicates that affective bonds and the propensity to form them are taken as the crucial human and social fact.

5See F. Strodtbeck, R. James, and C. Hawkins, op. cit., 715.
6. This still leaves open the question of how well the juror is integrated into his role or what influences or identities with trial functionaries other than the jury group or other jurors qualifies the juror's integration into the group.


9. For data sources see the lawyer questionnaire in the "Appendix." The principle also applies to the prosecution in criminal cases. The D. A. displaces the "victim" and, in effect takes the "victim's" side of the case. The district attorney is also the State and the "community's" representative in the case. These are the parties, so to speak, he has to keep in mind when examining veniremen.


12. Ibid., 351-352.


17. This statement is based on the judge interviews and observations of the voir dire.


20. R. Slovenko, "The Jury System in Louisiana Criminal Law," XVII (1957), 692-694. From one-third to one-quarter of a venire are excused by the judge according to the clerk and judge interviews in East Baton Rouge and surrounding parishes.

21. It is interesting to note, however, that the lawyer's conceptualization of the trial generally fails to take into account the fact that the jury is a group with its formative stage in the voir
dire and its organizational stage in jury deliberations. This means that there are more than jurors in the case. There is a mediating component standing between the juror and the verdict just as it stands between all components of the trial (the evidence, the influence of the lawyers, etc.) and trial outcome. With this conceptualization in mind, the lawyer should adapt his pre-trial and voir dire accordingly. Queries should be directed toward the following: (1) previous leadership experience; (2) flexible, inflexible, extraverted, and introverted personality; (3) interactional patterns among veniremen in the community and (observed) in the courthouse before and between court sessions; (4) status of venireman in the community and the extent to which venireman's status is known (and deferred to) by others comprising the venire; and (5), knowledge of how to proceed to a verdict or special knowledge concerning the subject matter involved in the case.
Chapter Four

COMPARISONS AMONG VENIRES, JURIES, AND THE DISTRICT POPULATION

Selection processes involve populations of decreasing magnitudes. Using the "cross-sectional" requirement of case law as the ideal, the populations produced by selection processes can be treated as the real. When disparities in population composition occur, they can be termed "deviations" of the real. Deviations of the real from the ideal imply a quantitative difference that is demonstrable in comparisons of the venires, juries, voting roll, and district populations. The venires (criminal and civil) used in the comparisons have been randomly drawn from the venire universe for the period, 1959-61.

From District Population to Juries Reaching a Verdict

The district population is the potential universe from which veniremen could be selected for prospective jury service. Movement in and out of the district, however, puts the population in considerable flux and raises a number of questions that may have no immediate solution. Two questions in particular are: (1) who should participate in the administration of justice; and (2), what written records exist from which the general venire could be constructed.

The law of Louisiana allows either use of the voting roll or selection of qualified individuals from the community. In the 19th
Judicial District the voting roll is used exclusively. This means that 31 percent of the total, or 60 percent of the adult population constitutes the actual universe of the jury pool.

Whether the voting roll adequately answers the question of who should participate in the administration of justice is doubtful. Voting requirements, particularly residency, do not carry the same connotation of integration into the life of the community as property. Moreover, as the exclusively used basis for inclusion in the jury pool, the voting roll brings "politics" into the judiciary at the "people's" level. As alternatives, (1) selection from the voting roll and from the community would provide a more representative cross section or (2) selection from the tax rolls, a more stable basis for jury service.

It is, however, in the idea of "progressive shrinkage of a cross section" that the ideal and real of jury trial approach their apogee. Between the universe of the voting roll and the verdict, a series of variables operate to constrict the number and affect the kinds of jurors who reach a verdict. These variables include: (1) statutory exemptions; (2) the volume of jury cases; (3) judicial excuse; (4) lawyer selection practices; (5) the tactical use of jury trial to secure out-of-court settlements; (6) rulings on, and the use of challenges; and (7), uncalled veniremen. In East Baton Rouge Parish, according to Table 3, operation of the variables netted 263 jurors from a pool of 1720 veniremen for the court term, September, 1960 to July, 1961. In terms of "shrinkage," .3 percent of the voting roll population of 74,361 saw actual service on a jury reaching a
Table 3. Progressive Shrinkage of a Cross-section in East Baton Rouge Parish, 1960-61

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Percent of Preceding Total (Use Column 1)</th>
<th>Percent of Population</th>
<th>Percent of Registered voters</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1960</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td>230,058</td>
<td></td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>White</td>
<td>156,917</td>
<td></td>
<td>69</td>
<td>69</td>
</tr>
<tr>
<td>Non-white</td>
<td>73,141</td>
<td></td>
<td>31</td>
<td>31</td>
</tr>
<tr>
<td>Male</td>
<td>59,580 (21 and over)</td>
<td></td>
<td>26</td>
<td>28</td>
</tr>
<tr>
<td>Female</td>
<td>65,313</td>
<td></td>
<td>28</td>
<td>28</td>
</tr>
<tr>
<td><strong>1961 (July)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Registered Voters</td>
<td>74,361</td>
<td></td>
<td>32</td>
<td>32</td>
</tr>
<tr>
<td>White</td>
<td>64,149</td>
<td></td>
<td>86</td>
<td>86</td>
</tr>
<tr>
<td>Non-white</td>
<td>10,212</td>
<td></td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Male</td>
<td>37,580</td>
<td></td>
<td>50.5</td>
<td>50.5</td>
</tr>
<tr>
<td>Female</td>
<td>36,781</td>
<td></td>
<td>49.5</td>
<td>49.5</td>
</tr>
<tr>
<td><strong>1960-1961</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Venire</td>
<td>1,720</td>
<td></td>
<td>2.31</td>
<td>2.31</td>
</tr>
<tr>
<td>White</td>
<td>1,462</td>
<td></td>
<td>86</td>
<td>86</td>
</tr>
<tr>
<td>Non-white</td>
<td>240</td>
<td></td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Male</td>
<td>1,720</td>
<td></td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Female</td>
<td>36,781</td>
<td></td>
<td>49.5</td>
<td>49.5</td>
</tr>
<tr>
<td><strong>1960-1961</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Venires Drawn</td>
<td>1,390 (venire-men)</td>
<td></td>
<td>1.79</td>
<td>1.79</td>
</tr>
<tr>
<td>18 Civil</td>
<td>710</td>
<td></td>
<td>53</td>
<td>53</td>
</tr>
<tr>
<td>14 Petit</td>
<td>620</td>
<td></td>
<td>47</td>
<td>47</td>
</tr>
<tr>
<td><strong>1960-1961</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judicial Excuse</td>
<td>383*</td>
<td></td>
<td>29</td>
<td>29</td>
</tr>
<tr>
<td><strong>1960-1961</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Available for Voir Dire</td>
<td>1,006**</td>
<td></td>
<td>1.35</td>
<td>1.35</td>
</tr>
<tr>
<td><strong>1960-1961</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juries Impanelled</td>
<td>393 (jurors)</td>
<td></td>
<td>.53</td>
<td>---</td>
</tr>
<tr>
<td>18 Civil</td>
<td>216</td>
<td></td>
<td>55</td>
<td>55</td>
</tr>
<tr>
<td>20 Petit</td>
<td>177***</td>
<td></td>
<td>45</td>
<td>45</td>
</tr>
<tr>
<td><strong>1960-1961</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juries Reaching a Verdict****</td>
<td>263 (jurors)</td>
<td></td>
<td>.35</td>
<td>---</td>
</tr>
<tr>
<td>10 Civil</td>
<td>120</td>
<td></td>
<td>45</td>
<td>45</td>
</tr>
<tr>
<td>16 Petit</td>
<td>143</td>
<td></td>
<td>55</td>
<td>55</td>
</tr>
</tbody>
</table>

*Estimated from clerk interview and from figures on excuse from other districts.
**Includes 59 "tales jurors."
***Includes both 5- and 12-man juries.
****Civil cases were often settled before a verdict was reached. In criminal cases, mistrials and change of pleas account for the discrepancies between "Impanelled Juries" and "Juries Reaching a Verdict."
verdict.

To state that this is "community participation" is quite a fiction. The fiction is perhaps compounded when one realizes that about 15 percent of the pool carries over from year to year (veniremen reappearing in the pool). "Shrinkage" rather suggests the converse: the vast majority of the citizenry will neither be called or serve on a jury during their lifetime. These conclusions are based on the preceding table (Table 3).

Cross-sectional Products

In comparisons of the characteristics of the pool, venires, juries, voting roll, and other populations lie the ultimate test of the "cross-sectional principle." As in the case of "shrinkage," ideal and real are far from coterminous. While there were 10,212 non-whites on the voting roll not a single one saw service on a jury during the two years covered by the study. With modifications, the same was true of female voters. Of a total of 36,781, none appeared in the jury pool or served on a jury under Louisiana's "voluntary service law."5

If an occupational overlay is applied to the venires and the classified employed male population for East Baton Rouge Parish, additional discrepancies are evident. Using four randomly selected venires (criminal and civil) from the venire universe for 1959-61, laborers were found to constitute 9.8 percent of classified employed males but only 2.5 percent of veniremen (see Table 4). Also underrepresented on the venires were professional and technical people, farmers and farm managers, and service workers. While professionals
Table 4. Occupational Composition of Four Randomly Selected Venires, The Resulting Juries, and Classified Employed Males by Percent for East Baton Rouge Parish, 1959-61

<table>
<thead>
<tr>
<th>Occupational Categories</th>
<th>Venires</th>
<th>Juries</th>
<th>Classified Employed Males*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional &amp; Technical</td>
<td>10.0</td>
<td>8.3</td>
<td>15.6</td>
</tr>
<tr>
<td>Farmers &amp; Farm Managers</td>
<td>0.0</td>
<td>0.0</td>
<td>.4</td>
</tr>
<tr>
<td>Mgrs., Officials, &amp; Proprietors</td>
<td>16.2</td>
<td>16.7</td>
<td>13.6</td>
</tr>
<tr>
<td>Clerical</td>
<td>5.0</td>
<td>2.1</td>
<td>6.8</td>
</tr>
<tr>
<td>Sales</td>
<td>9.1</td>
<td>6.2</td>
<td>7.0</td>
</tr>
<tr>
<td>Craftsmen &amp; Foremen</td>
<td>27.5</td>
<td>33.3</td>
<td>21.4</td>
</tr>
<tr>
<td>Operatives</td>
<td>26.3</td>
<td>25.0</td>
<td>17.6</td>
</tr>
<tr>
<td>Service Workers</td>
<td>4.4</td>
<td>6.3</td>
<td>7.8</td>
</tr>
<tr>
<td>Laborers</td>
<td>2.5</td>
<td>2.1</td>
<td>9.8</td>
</tr>
<tr>
<td>Totals</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>

*Employed males in East Baton Rouge Parish total 51,185 according to the 1960 Census of the United States. Of these, 1,965 have no reported occupation. Consequently in figuring the percentages in column three, 49,220 was taken as the more appropriate base.
and technicals were 10.0 percent of the venire population, they comprised 15.6 percent of the classified employed males in the parish. Other differences in the occupational composition of venires and classified employed males are evident in the preceding table (Table 4). The table (Table 4) gives a percentage breakdown on the occupational composition of the venires, the resulting juries, and the classified employed male population of the parish according to the 1960 Census of the United States. Since the venires are randomly selected they are also indicative of the occupational composition of the jury pool.

The occupational composition of juries compared with the classified male population in the parish produce similar findings. Four juries randomly selected from the 12-man jury universe for the period under study reveal that jury composition primarily consists of craftsmen, foremen, and operatives. As in the case of the venires, professionals, technicals, service workers, and laborers are underrepresented. When professionals and technicals are to be found on the venires and the juries, they are largely engineers, accountants, and chemists from the Baton Rouge industrial complex. The conclusion seems inescapable that criminal and civil justice, to a large measure, is the determination of the employees of large-scale industrial enterprise. (See Table 5.)

The "off-centeredness" of the ideal and real evident in these comparisons poses a very fundamental question: To what extent is justice determined by pool, venire, and jury composition? In other words, if the venires and juries were more heavily drawn from the top of the occupational hierarchy, would verdict outcomes be the same? The use of
Table 5. Occupational Composition of Four Randomly Selected Juries and Classified Employed Males by Percent for East Baton Rouge Parish, 1959-61

<table>
<thead>
<tr>
<th>Occupational Categories</th>
<th>Juries</th>
<th>Classified Employed Males*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional &amp; Technical</td>
<td>10.4</td>
<td>15.6</td>
</tr>
<tr>
<td>Farmers &amp; Farm Mgrs.</td>
<td>0.0</td>
<td>0.4</td>
</tr>
<tr>
<td>Mgrs., Officials &amp; Proprietors</td>
<td>16.7</td>
<td>13.6</td>
</tr>
<tr>
<td>Clerical</td>
<td>6.2</td>
<td>6.8</td>
</tr>
<tr>
<td>Sales</td>
<td>8.3</td>
<td>7.0</td>
</tr>
<tr>
<td>Craftsmen &amp; Foremen</td>
<td>31.3</td>
<td>21.4</td>
</tr>
<tr>
<td>Operatives</td>
<td>20.8</td>
<td>17.6</td>
</tr>
<tr>
<td>Service Workers</td>
<td>4.2</td>
<td>7.8</td>
</tr>
<tr>
<td>Laborers</td>
<td>2.1</td>
<td>9.8</td>
</tr>
<tr>
<td>Totals</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>

*Percentages in column three have been computed with 49,220 classified employed males as a base.

"blue ribbon" juries in New York points to the contrary. These juries have been called "convicting juries" and have been attacked as depriving the offender of a "fair trial." If, on the other hand, the venires and juries were more representative of the community, one could argue that their verdicts would be more expressive of community norms and values and, hence more authoritative in character. As it stands, there
is a strong suspicion that "justice" is related to venire and jury composition and may even reflect differences in life philosophies among classes.
Footnotes to Chapter Four


2By virtue of under-registration of minority group members, the exclusive use of the voting roll serves to limit the entry of minority group members into jury service.

3This variable is limited to civil cases. After filing, the "threat of asking for a jury trial" is often worth up to the amount of the jury bond. After posting of bond, the price of an out-of-court settlement may run somewhat higher.

4The figure was derived by running the names of veniremen in the 1959-60 jury pool through the pool for 1960-61.

5La. R.S. 13: 3055-3056 (1950); Ibid., 15: 172. See also Article VII, Section 41 of the present Constitution of the State of Louisiana.

6See H. V. Booth, op. cit., 670.

7On the basis of the judge interviews, judicial excuse would seem to be particularly important in the occupational composition of juries. Actually judicial excuse is related to the economic and business structure of the community. Large companies promote citizenship by not docking the pay of their employees called for jury service. The "independent" and small company employee are made to feel the burden of jury service by loss of pay; however, judicial excuse may operate here to ease the burden, which unintendedly influences jury composition. For venires composed largely of professionals, managers, officials, and proprietors, see: L. Barrett, "Pin-Stripe Juries," Nation, CXII (August, 1960), 89-91.

Chapter Five

BACKGROUND AND MEANING OF JUDGMENT BY ONE'S PEERS

The concept "peers" as well as the principle "judgment by one's peers" have had varied meaning. In the historical sense, however, both are incongruous as applied to jury trial. "Peers" imply status equals but juries and litigants are usually unequal. Inside and outside the legal field, age and sex peers are suggestive of similar anomalies. The principle "judgment by one's peers" can be taken to mean a judgment of an individual by members of a given social stratum. In terms of the framework used in this study, variations in the meaning of the concept and principle evidence ambiguities in the legal ideal and conflicts with the real.

Historical and Legal Meaning of the Concept and Principle

Variations in the meaning of the ideal are implicit in a treatment of the "peer" concept. Originally, "judgment by one's peers" was a right of the nobility against the crown. It was based on one's legal and social status as determined by birth. The right was only gradually acquired by the commoner as the legal order developed out of a changing social and cultural context. At first, the commoner's right was undifferentiated from the right of the crown to be informed of violations of the king's law in the community. Later, it appeared more as an immunity against the summary justice of the higher estate.
Only when the courts were separated from domination by the higher estate, and particularly by the crown, did the commoner acquire a right to judgment by his peers. The right, however, must have been short-lived in view of subsequent events.

With the rise of commerce and industry, new strata emerged within the feudal system. As a consequence of the political activities of individuals and groups comprising the strata, the old rank order of estates eventually gave way to a system of classes. Within the class system power and economic position were added to birth as determinants of status. When social classes fashioned the modern state as the protector of their rights and interests, status became social rather than legal in character. Law in the modern state tended to regard all men as equal and distinctions of rank were no longer recognized.

In a sense, after centuries of change, the lower estate encompassed the society.

Judgment by one's peers, however, lost its raison d'etre. If the state is the representative of the people, the need for an immunity against the state is tautological. It is the same as saying the people have to be protected against themselves. With the emergence of social classes, the right to judgment by one's peers is without its original referent. The lower estate, which provided the commoner with peers against the nobility, developed into a class system whose strata are highly diversified, politically, economically, and socially.

To equate "peers" with a "cross-section" of the community may be democratically relevant but historically is inaccurate. Among whites in the South, jury trial may be a closer approximation to judgment by
one's peers than in other sections of the country but only because of a more compressed class system.

Use of the Peer Concept in Other Fields

In the literature on discussion and decision groups, one can also find references to peer and peer groups. The literature is the product primarily of educational psychologists and sociologists who have worked or experimented with "age peers." In jury-like fashion age peers in student government, and particularly in delinquency prevention practice, have sat in judgment on violators of institutional norms and, in an unusually large number of cases, have not only found violators guilty but also have meted out harsher punishment than non-peers. Both the device and the judgments have come to be regarded: (1) as efficacious in dealing with youthful offenders; (2) as indicative of the quality of our youth; and (3), as proof that a judgment by one's peers is appropriatively authoritative and apt to be severe.

In the folklore of jury trial, sex peers occupy a similar place in vice trials. Female jurors supposedly have little sympathy for female defendants.

Of all the referents of status, however, age and sex would seem to be the least important here in individual and group decision making. The example of the student offender will illustrate the hypothesis. Within the colleges and universities the rank order of students grows out of scholastic and other institutionally approved activities. As an adjunct of the enforcement of school norms, student government is selective as to rank, academic area, and personality type among the students. The agencies of enforcement as well as the agents are
functionaries primarily of the institutional order and not of the peer group culture. Hence, standing between the student offender and his "judge and jury of age peers" are many gradations of rank, selective adherence to educational values, and diverse emotional attitudes. In short, distinctions in rank and associated life philosophies are the true referents of the judgment—not age or sex. The same is true of the juvenile and female offenders. They are judged—not by their peers—but by their status superiors.

Definition of the Principle "Judgment by One's Peers"

In the modern sense, "peers" are equated with citizens and a "judgment by one's peers" is said to be a judgment by one's fellow citizens. In the historical sense "judgment by one's peers" may be taken to mean a judgment of an individual by members of his social stratum. If the historical background and meaning of the principle are used, then, in an industrial democracy, social classes comprise the strata and provide the units for an analysis of verdicts and voting patterns.

The concept "social class" as used in succeeding chapters is based upon such objective criteria as occupation, education, and income.
Footnotes to Chapter Five


5In the chapter on jury deliberations, voting, and verdict trends (Chapter Six), difficulties were experienced in attempting to relate voting to income. These difficulties stemmed from the fact that from 52 to 58 percent of veniremen were craftsmen, foremen, and operatives according to Chapter Four. These occupations are primarily associated with the Baton Rouge industrial complex of aluminum, oil, and chemicals. Incomes, hence, would tend to run higher for this group of occupations than for others which would normally rank higher if other criteria were employed.
Chapter Six

JURY DELIBERATIONS, VOTING, AND VERDICT TRENDS

Ideally, the verdict of the jury emanates from its deliberations. Deliberations follow the trial and the judge's instructions as to what the jury must take into consideration in reaching its verdict. The instructions are in the form of an explanation of what the law is regarding the particular facts in the case being tried. After hearing the instructions the jury files out of the courtroom and into the jury-room. In the juryroom the jury formally organizes and begins its deliberations. According to law, deliberations are secret and continue until a verdict is reached or the judge recesses or dismisses the jury for failing to reach a verdict. To arrive at a verdict jurors must then vote. Voting is incorporated into the verdict and becomes the product of group action.

In this chapter ideal and real are interwoven in a treatment of jury deliberations, voting, and verdict trends.

Jury Deliberations

Upon retiring to the juryroom the first act of the jurors will be to select a foreman, unless one has already been chosen or appointed. The foreman should preside, keep order and give every juror a fair opportunity to express his views. Deliberations are held in an effort to find a verdict for one or the other of the parties. Jurors should go to their deliberations with an open mind, give respectful consideration to the opinions advanced by fellow jurors, freely discuss the ideas held by them, and not be afraid to change their minds when logic and reason so dictate. While jurors should try,
if possible, to agree on a verdict, they are under no duty to surrender an opinion conscientiously held.

To reach a verdict jurors must weigh and consider the evidence presented at the trial. They must not decide the case by reason of prejudice or sympathy. The judge's instructions should be followed and the law as it is defined by him should be accepted; the juror should not be governed by what he thinks the law should be. A juror's oath requires him to bring in a true verdict.

The jury, by a request made through the bailiff or clerk, may ask the judge for further instructions, or clarification of the instructions that were given. If there is important disagreement as to what was said during the trial, a request may be made to the judge to have the stenographer read that part of the record to the jury.

In addition to not permitting bias or sympathy to affect the verdict, a jury must not allow chance to enter. The verdict must be the result of reason and deliberation on the part of all jurors.

The jury's deliberations are secret. When a verdict is reached, the foreman informs the bailiff. The jury then returns to court, and returns its verdict; there may or may not be a polling of the individual members of the jury to make sure that each member of the jury agrees with the verdict submitted by the foreman.1

In reality, it probably could be said, jury deliberations are never wholly rational and seldom confined to the evidence. In East Baton Rouge Parish, Louisiana, 242 civil and petit juror respondents to a questionnaire covering jury deliberations and select aspects of jury trial aptly bore this out. Among petit jurors the amount of deliberation in the jury room ranged from "a great deal" to "none." Fifty percent of petit jury respondents (158) checked "some," "very little," or "none"; the other 50 percent thought a "great deal" of deliberation had taken place. Figuring in deliberations were items which included trial functionaries (lawyers, judge, parties, witnesses, etc.), the evidence in the case, and non-trial matters. Non-trial matters consisted of "weather," "people on the jury or in the community," "reputation of the parties in the case," "the family of the
accused," "reputation of the lawyers," and "race and racial differences."
Individually these items were checked by 15 to 40 percent of the
responding petit jurors with indications that 10 to 90 percent of the
jury's deliberating time was spent in discussing them. For all respond­
ing petit jurors (159) the median amount of time devoted to discussion
of the facts or evidence in the case was 70 percent; however, on a
fill-in item of "what was discussed most in the jury room," 57 percent
of 106 petit juror responses specified non-factual or non-evidentiary
matters. On the question, "did any of the following have an effect on
you or the other jurors in reaching your verdict," 34 respondents claimed
their vote was affected by: (1) "reports of the trial in the press, on
T.V., or over the radio"; (2) "discussions with your wife or family";
(3) "behavior of fellow jurors during, or in between, court sessions";
(4) "persons other than the above interested in the outcome of the case";
(5) "threatening or sarcastic remarks"; (6) "a troubled conscience";
(7) "a decision of how you would vote before all the evidence was in";
and (8), "a philosophy of life inconsistent with impartiality in a jury
trial." Respondents, however, thought that other jurors were more often
affected by one of the above than themselves. There were 59 reported
instances of other jurors being influenced by matters that have little
to do with rationality or the institutionally prescribed role of the
juror.

Among civil jurors, deliberations were more normative. Only 35
percent of 84 respondents said the amount of deliberation ranged from
"some" to "none." Also fewer civil jurors indicated that non-trial
matters and trial functionaries occupied the jury's deliberating time.
On the amount of time given to discussion of the facts or evidence, the median for responding civil jurors was 30 percent; but on the fill-in item the percentage for civil and petit jurors specifying non-factual or non-evidentiary matters was the same (57 percent). Instances of voting irregularity based on the eight statements cited above ran to 23 and 26 for the individual and other jurors in the jury room.2

The somewhat higher performance of civil jurors may be associated with lawyer selection practices. Probably as a consequence of the "direct action statute"3 (suing the insurance company directly when defendant is covered) higher status persons were accepted by the defense. If the Edwards' census ranking of occupations is applied, more individuals among responding civil jurors were drawn from the top four categories than petit jurors (45 to 41 percent). Differences between the status of the accused in criminal cases and the parties in civil suits also would be reflected in jury composition. Litigants in civil cases usually have higher status than criminal offenders. As a consequence, counsel would tend to select somewhat higher on the occupational scale than their counterparts in a criminal trial.

These differences in the performance of the jurors, however, could well be based on something more fundamental. The parties in civil suits, including the insurance company under the "direct action statute,"4 are all part of the established order. The accused, if he is not already peripheral to that order occupationally or residentially, is marginal to the order until the outcome of his trial. How marginal he is, as measured by the seriousness of his offense, or his peripherality to the community, may account in part for the differences in the texture of deliberations among civil and petit jurors.
Voting

As defined, the concept "peer" (or the principle, "judgment by one's peers") would have limited applicability to jury trial. Most juries are socio-economically mixed rather than drawn wholly from a given stratum. In criminal cases, the status of the accused is usually low. Therefore, in treating of the question "how does one fare when judged by his peers," one has to deal with the socio-economic characteristics of the individual jurors and the parties in the case. Socio-economic characteristics may be grouped to produce strata roughly comparable to the community's class system. Thus social classes and "associated life philosophies" become appropriate units for analyzing the juror's voting behavior. Since other types of groupings also are related to voting, they are cited from time to time.5

To treat of voting on an individual basis, however, raises a number of problems. For one thing, how free is the juror's vote? If the verdict is the product of the group, the vote (or the balloting) of the individual juror has been subjected to modifying influences. If an unanimous verdict is required by the state's statutes, each vote will have to be like all the others within the framework of the case. The methodological problem might be partly solved by distinguishing between first round voting and the final vote comprising the jury's verdict. As a possible solution, the comparison of first round and final voting would disclose the effect of the group on the individual voter, at least in jury deliberations.

In East Baton Rouge Parish the problem of the "free voter" went
unresolved. Voting unanimites, however, were handled as the situation allowed. Under the state's code, a split verdict of 9 to 3 is permissive in civil cases and in criminal cases involving non-capital felonies. Since the study covered all 12-man jury trials from September 1959 through July of 1961, the jury questionnaire population had to be further freed from the "bias" of the unanimous verdict in capital cases and the general slant towards unanimity of a three-quarter majority in other types of cases. This was accomplished by including three hung juries from the period, which increased the range of voting possibilities in the questionnaire population.

Within the framework described above, voting by the jurors in East Baton Rouge Parish evidenced considerable uniformity. Among responding petit jurors (158), associations between birthplace, previous jury service, socio-economic class and a vote of guilty or not guilty were significant at levels ranging from .001 to .02 percent. Individually, previous jury service and a birthplace in the Anglo-Saxon northern part of Louisiana produced proportionally a greater number of guilty votes than "fresh jurors" (no previous jury service) and a birthplace in the French southern part of the state. Both the voting and the pertinent chi square scores appear in the tables presented below. The chi square tests of association between birthplace, jury service, socio-economic status and voting treat of the 1959-61, 12-man jury universe and the responding petit jurors as if they were randomly drawn from an appropriate universe.

The class-based nature of the juror's vote appeared in associations between occupation, education, and vote outcome. Within the
limits set by statutory exemptions, judicial excuse, and lawyer selection practices, the higher the status of the individual juror the more likely he was to vote guilty; the lower the status of the individual juror, the more likely he was to vote not guilty. Petit jurors also differentially treated persons accused of a crime. Persons with high occupational status were much more frequently held not guilty than their low socio-economic counterparts. During

---

Table 6. Birthplace and Voting of Responding Petit Jurors, 1959-61 (Frequencies)

<table>
<thead>
<tr>
<th>Birthplace</th>
<th>Guilty</th>
<th>Not Guilty</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Louisiana</td>
<td>39</td>
<td>44</td>
</tr>
<tr>
<td>North Louisiana &amp; Southern U. S.</td>
<td>34</td>
<td>12</td>
</tr>
<tr>
<td>Non-South</td>
<td>6</td>
<td>5</td>
</tr>
</tbody>
</table>

\[ \chi^2_{d.f.2} = 8.791 \ p < .02 \]

Table 7. Jury Service and Voting of Responding Petit Jurors, 1959-61 (Frequencies)

<table>
<thead>
<tr>
<th>Jury Service</th>
<th>Guilty</th>
<th>Not Guilty</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Previous Jury Service</td>
<td>51</td>
<td>54</td>
</tr>
<tr>
<td>Previous Jury Service</td>
<td>29</td>
<td>9</td>
</tr>
</tbody>
</table>

\[ \chi^2_{d.f.1} = 8.625 \ p < .01 \]
Table 3. Education and Voting of Responding Petit Jurors, 1959-61 (Frequencies)

<table>
<thead>
<tr>
<th>Education</th>
<th>Guilty</th>
<th>Not Guilty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elementary*</td>
<td>8</td>
<td>18</td>
</tr>
<tr>
<td>Secondary*</td>
<td>42</td>
<td>50</td>
</tr>
<tr>
<td>College*</td>
<td>20</td>
<td>7</td>
</tr>
</tbody>
</table>

*Respondents were classified as "elementary," "secondary," or "college" if they had one year or more schooling covered by the applicable category.

$$X^2_{d.f.2} = 9.846 \ p < .01$$

Table 9. Occupational Level and Voting of Responding Petit Jurors, 1959-61 (Frequencies)

<table>
<thead>
<tr>
<th>Occupational Level</th>
<th>Guilty</th>
<th>Not Guilty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upper*</td>
<td>34</td>
<td>10</td>
</tr>
<tr>
<td>Middle*</td>
<td>16</td>
<td>8</td>
</tr>
<tr>
<td>Lower*</td>
<td>25</td>
<td>39</td>
</tr>
</tbody>
</table>

**"Upper," "middle," and "lower" are the equivalent of a 3-way breakdown of the Edwards' occupational scale according to the Census of the United States.**

$$X^2_{d.f.2} = 16.369 \ p < .001$$
the two year period covered by the study four offenders with high status were brought to trial but none were convicted.

No associations of significance were found between vote and age, marital status, religious preference, and church attendance. The absence of a significant relationship between the last two variables and voting suggests that the rural-urban aspects of birthplace were more important in voting than religion.\(^\text{11}\)

Among responding civil jurors (\(84\)), results were somewhat negative. Size of the civil jury population reaching a verdict and the number of responding civil jurors, however, were factors influencing the results.

At the 10 to 20 percent level of significance, ties were found between vote and job level, size of firm, industry, and years of residency in East Baton Rouge Parish. The first three variables carry the implication of class voting because (1) a sizeable number of operatives, craftsmen, and foremen were jury members and (2), the defendant in nearly every case was an insurance company under the state's "direct action statute."

Table 10. Industrial Classification and Voting of Responding Civil Jurors, 1959-61 (Frequencies)

<table>
<thead>
<tr>
<th>Industrial Classification</th>
<th>Voting</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Plaintiff</td>
</tr>
<tr>
<td>Manufacturing*</td>
<td>26</td>
</tr>
<tr>
<td>All Other Industries</td>
<td>7</td>
</tr>
</tbody>
</table>

*Consists primarily of the oil, chemical, and aluminum industries of East Baton Rouge Parish.

\(X^2d.f.1 = 2.927 \ p < .10\)
Table 11. Size of Employer and Voting of Responding Civil Jurors, 1959-61 (Frequencies)

<table>
<thead>
<tr>
<th>Size of Employer</th>
<th>Voting</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Plaintiff</td>
<td>30</td>
<td>23</td>
</tr>
<tr>
<td>Large*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Small*</td>
<td></td>
<td>5</td>
<td>10</td>
</tr>
</tbody>
</table>

**"Size of employer" is based on the number of employees in the working force. For purposes of this dichotomy (large and small), "100" employees was used as the dividing line between "large" and "small."

\[ X^{2}\text{d.f.}_1 = 2.496 \ p < .20 \]

Table 12. Job Level and Voting of Responding Civil Jurors, 1959-61 (Frequencies)

<table>
<thead>
<tr>
<th>Job Level*</th>
<th>Voting</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Plaintiff</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Proprietary &amp; Managerial</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Technical, Clerical, Sales, &amp; Foremen</td>
<td>17</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>Workers</td>
<td>12</td>
<td>5</td>
<td></td>
</tr>
</tbody>
</table>

*The term "job level" is used to distinguish this table from the "occupational level" table used for petit jurors and to bring out some of the "line" and "staff" distinctions among responding civil jurors.

\[ X^{2}\text{d.f.}_2 = 4.536 \ p < .20 \]

Table 13. Years of Residency and Voting of Responding Civil Jurors, 1959-61 (Frequencies)

<table>
<thead>
<tr>
<th>Years of Residency</th>
<th>Voting</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Plaintiff</td>
<td>14</td>
<td>16</td>
</tr>
<tr>
<td>1 - 20</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21 - 40</td>
<td>21</td>
<td>9</td>
<td></td>
</tr>
</tbody>
</table>

\[ X^{2}\text{d.f.}_1 = 3.994 \ p < .10 \]
At the 10 to 20 percent levels or better, no associations of significance were found between voting and age, birthplace, marital status, religious preference, education, and a 3-way breakdown of the Edwards' occupational scale. While educational and occupational levels have some relationship to vote outcome, the presence and operation of other variables cloud the picture. Among civil jurors other variables that could be operative in vote outcome include: (1) greater similarities in status among plaintiffs, defendants, and their jury of peers; (2) the caliber of defense counsel, particularly when an insurance company is also a party to the suit; and (3), the conflicting roles of the juror... as a policy holder in one or more insurance companies but, as a juror, one who must decide on a claim when claims and verdicts for damages generally increase the cost of insurance to all.

Voting and the Jury Group

The problem of voting and verdicts is to a considerable extent a matter of conceptualization. Several types of conceptualization are evident in the literature but one, in particular, needs to be emphasized. Probably the two most used types of conceptualization view the jury as composed of (1) separate and distinct individuals and (2), rational men. The third type suggests treating the jury as a group but fails to provide analytical tools or take into account the influence the group exerts on the individual juror. While the first and second types of conceptualization are more research oriented, the third is probably closer to reality and in the future should receive greater attention in jury research.

In turn, how one conceptualizes the jury determines the treatment
and material in the problem areas. If one conceives of the jury as made up of separate and distinct individuals, voting and verdict outcomes are linked to background characteristics of the jurors. If, on the other hand, one treats of jurors as rational men, then the evidence in the case determines how each juror will vote and what the verdict will be. To treat the jury as a group, however, presupposes that the evidence, the influence of the lawyers, the rulings and instructions of the judge, and the other variables in the trial are not operative in a straight-line course to the juror and how the juror votes. To view the jury as a group presupposes that all the components of the trial, including the jurors, comprise the material of group organization and ultimately of group action.

Empirically, the effect the jury has on the individual juror can only be approximated. To arrive at an approximation one would have to know the following: (1) the individual's background characteristics (such as social class); (2) the probabilities of the background characteristics resulting in a certain vote; (3) the weights to assign various characteristics in voting; and (4), how the juror actually voted. Disparities between background characteristics and the vote may be attributed to the influence of the jury on the voting of the juror. When organization and deliberation are at a minimum, the background characteristics of the juror would be the more important factor in how he votes.

How the jury votes is a product of how it is structured. As in the case of any social group, norms and roles arise out of the interaction of the members and make possible some form of group action. The
jury's action is directed towards a verdict which is prescribed by the institutional framework (the law) in which the jury functions. To reach its goal (the verdict), the jury must employ procedure and organize formally. Since only the basic outlines of organization and procedure are institutionally provided, they are subject to individual and group interpretation and to considerable improvisation.

The jury as a group, however, is unusual because the members are required institutionally to associate with each other long before they formally organize. From the voir dire to jury deliberations, jurors interact and adjust to each other and to their roles as jury-group members. For the group the period is largely formative; for the individual, the period is mainly one of integration into the jury group. Unless the integrative process is arrested by the juror identifying with the judge or lawyers, an affective alignment is likely to develop among jurors upon which formal organization will be superimposed in jury deliberations.

In neither the institutional role of foreman or jury-group member is power or authority inherent to reach a verdict. Table 14 suggests that the role of foreman is legitimately dominant as moderator but only potentially powerful in the direction of formulating the jury's verdict. The power attributes of jury roles either emerge from affective alignments formed during the trial (including the voir dire) or carry over from the status-roles of the members in the community. Role content (partly normative, partly non-normative) is provided mainly by the components of the trial (the evidence, instructions of the judge, behaviors of the lawyers, witnesses, litigants, and the judge, etc.) but
Table 14. Probative Items into the Roles of the Members of the Jury (Frequencies)

<table>
<thead>
<tr>
<th>Questionnaire Items</th>
<th>Civil Jurors</th>
<th>Petit Jurors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did anyone on the jury seem to have more influence on the rest of the jurors than anyone else?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Yes</td>
<td>50</td>
<td>49</td>
</tr>
<tr>
<td>2. No</td>
<td>23</td>
<td>77</td>
</tr>
<tr>
<td>Not Answering</td>
<td>11</td>
<td>31</td>
</tr>
</tbody>
</table>

| Was this individual... the foreman or someone else?                                   |              |              |
| 1. Foreman                                                                           | 24           | 45           |
| 2. Some other member                                                                  | 25           | 36           |
| Not Answering                                                                        | 35           | 77           |

| Whom do you believe contributed most to helping your group reach its decision?         |              |              |
| 1. Foreman                                                                           | 25           | 43           |
| 2. Some other member                                                                  | 30           | 41           |
| Not Answering                                                                        | 29           | 74           |

| Would you briefly indicate why you think this man contributed the most... to your group reaching a decision (open-ended)?* |              |              |
| Classification of Responses*                                                          |              |              |
| 1. Knowledge                                                                         | 12           | 20           |
| 2. Status                                                                            | 5            | 9            |
| 3. Personality Factors                                                               | 19           | 27           |
| Not Answering                                                                        | 48           | 102          |

*The last item and the classification of responses would seem to have limited value. The item is somewhat confusing, which probably affected responses; the classification, on the other hand, fails to set forth mutually exclusive categories.
frequently may have a locus outside of the trial.

In a structural sense, the jury votes in accord with the content of its roles and the particular role configuration that emerges out of jury deliberations. A possible key to the jury's role configuration lies in a comparison of the characteristics of switch and non-switch jurors. Switch jurors indicate their change of verdict preferences in trials by jumping from one side of the case to the other. In multiple balloting during jury deliberations, switching is evidenced by the voting record of each juror. The term, however, as it is used here, is broader than a voting record would indicate. Switching also includes any change in the verdict preference of a juror that may be attributable to the other jurors. In a one ballot situation the influence of the other jurors upon the individual juror may be effective from relatively early in the trial up to the time the balloting takes place. Among responding jurors, there were 75 reported instances where 1 to 6 jurors switched sides in the balloting alone.

By ascertaining the characteristics of switch and non-switch jurors, the superordinate and subordinate aspects of jury-group roles might be brought into focus and some additional insights realized on why and how the jury reaches a particular verdict.15

Verdict Trends

Judgment by one's peers has been running counter to holding the accused strictly accountable for his offense. Among jurors whose socio-economic status was low there were more not guilty votes for both low and high status violators of the criminal code than guilty votes. High status jurors were fewer in number and rarely, if ever, majorities on
the juries in East Baton Rouge Parish. By verdict, 11 juries in 1960-61 found the defendant not guilty, guilty of a lesser offense than charged, hung, recommended mercy, or voted for the lesser of two punishments they could impose. In only five cases did juries side completely with the State. For the five year period, 1957-61, there were 49 jury trials where the verdict concurred with the charge and 80 where verdict and charge deviated.

On a national level the long term trend in verdict outcomes would seem to be quite similar. In the article, "Twelve Good Men or One"16 the authors have attempted to quantitatively substantiate the view that "jury justice" favors the accused. While the data are somewhat old and sparse, they lend support to an abundant literature which has made the same claim for many decades.17

Table 15. Concurrence and Deviation of Charge and Verdict, 1956-61* (Frequencies)

<table>
<thead>
<tr>
<th>Court Term</th>
<th>Concurrence</th>
<th>Deviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1956-57</td>
<td>8</td>
<td>15</td>
</tr>
<tr>
<td>1957-58</td>
<td>13</td>
<td>15</td>
</tr>
<tr>
<td>1958-59</td>
<td>12</td>
<td>22</td>
</tr>
<tr>
<td>1959-60</td>
<td>11</td>
<td>17</td>
</tr>
<tr>
<td>1960-61</td>
<td>5</td>
<td>11</td>
</tr>
</tbody>
</table>

*Table 15 treats of charges which resulted in a verdict. Change of pleas, nolle prosequi charges, and mistrials, hence, are not included. Both 5- and 12-man juries are included.
For all jurisdictions, the interpretation of this trend is structural and cultural in character. Culturally growing humanitarianism and cross-selection techniques of trial lawyers would be important facets to research in understanding verdict outcomes. Structurally, the consequences of lawyer selection practices coupled with statutory exemptions and judicial excuses have compressed the pool, venires, and juries in the direction of the accused. Compression results in fewer rank distinctions between the offender and his peers and increasingly similarity in life experience and philosophy. While compression of the pool, venires, and juries may produce more of a "judgment by one's peers" as the principle is defined in this study, it has seemingly made for fewer convictions or concurrences between verdicts and charges.

The Ideal and Real in Jury Deliberations, Voting, and Verdict Trends

Logically and otherwise, the "goodness of fit" between ideal and real in this area leaves much to be desired. The legal ideal posits both a rational man and an individual actor. The observed situation and research point to the converse. Extraneous matters vie with the evidence for the juror's attention and the jury's deliberating time. Experimental and actual jury research indicate that only a fraction of the time spent in the jury room is given to a discussion of the facts or evidence in the case.18 Most of the time is likely to be spent talking about trial personalities or matters wholly foreign to the trial.

Voting also shows divergencies from the legal ideal. Legal norms treat of jurors primarily as individuals who rationally entertain the evidence, the arguments of their fellow jurors, and then vote for one
or the other side of the case. As this chapter suggests, not only is there a class aspect to voting but the jury as a group may exert an influence on the individual juror. It remains to be seen whether the verdict is determined by a majority from the same class level, dominant personalities, or a combination of the two. . . who sociopsychologically carry the others with them.

Finally, verdict trends provide a rather broad test of the ideal. Growing divergence between charges and verdicts suggests a lag between legal norms and class and community expectations. If the law is or becomes the vehicle of class power it is not likely to be effective in controlling behavior or settling conflicts. Whether the operation of the law in a lag context can also produce "justice" or result in a "just disposition" of particular cases is itself another matter.
Footnotes to Chapter Six


2For the content of the deliberations of experimental juries, see: R. James, "Status and Competence of Jurors," XLIV (1959), 563-570.

3L.S.A. Article 4652 (1960) and annotations.

4Ibid. It should also be indicated that almost all civil suits in East Baton Rouge Parish from 1959-1961 involved an insurance company.

5It would have been desirable to treat of the juror's social group memberships and participation as they relate to how he votes; but the number of responding jurors and a limited inquiry into this area through the questionnaire made this type of treatment impractical.


7Ibid., 15: 337.

8Statutory exemptions, judicial excuse, and lawyer selection practices compress the class structure of juries so that it is something less than found in the community.

9Would the same apply to the grand jury? If the socio-economic status of grand jurors approximated that of petit jurors, would there be fewer indictments? Robinson's study of grand jurors in California shows that they have relatively high occupational status. See W. S. Robinson, "Bias, Probability, and Trial by Jury," American Sociological Review, XV (1950), 73-78.

10Whether high status jurors vote for or against the accused with similar status is not discernable at this time.

11Migrants from the northern half of Louisiana were predominantly from protestant rural areas. If the religious preferences or church attendance of rural migrants are significantly associated with voting, associations would not be evident in treating of religion and vote because rural migrants would be "lost" in the larger number of urban respondents in the questionnaire population. Treatment of voting by birthplace and religious preference would have been more desirable if cell requirements for a chi square treatment of the data could be met.

12Most of the research cited in the "Introduction" treats of jurors primarily as separate and distinct individuals. The "rational man" approach is derived from the writings of members of the legal profession and from case and statutory law.
For general approaches in the sociology of law (and, for that matter, to jury research), see: W. E. Evan, Law and Sociology (Glencoe: The Free Press, 1962), pp. 1-11.


Actually the statement would apply to both general and special verdicts. In the case of special verdicts the affective alignment may not hold for all questions submitted to the jury.


R. James, op. cit., 563-570.
Chapter Seven

ATTITUDES OF JURORS, JUDGES, AND LAWYERS
ON JURY TRIAL

On the attitudes of judges, lawyers, jurors and the public ultimately rests the fate of jury trial. Attitudes towards the jury may be supportive or non-supportive. Non-supportive attitudes may be positive or negative but generally stem from states of apathy, ignorance, opposition, and from value conflict.

Attitudes towards the jury in this study are not to be taken as representative of Louisiana or of the rest of the country. Jury trial is not a fundamental part of Louisiana's legal tradition and is still a rarity in civil cases in some parts of the state. The factors of (1) non-traditionality and (2) rareness probably affect both the caliber of trials and the quality of "jury justice," since expertise in any area is a function of training and experience.

According to Table 16, attitudes varied among jurors with respect to the approach of the trial experience and to the trial itself. Twenty-one percent of the responding civil jurors (16) and 34 percent of the petit jurors (47) thought a jury trial would be an "unpleasant experience." Reactions to the "idea of being a juror" may be influenced either by what one thinks he will experience or by non-trial matters. Fifty-one percent of civil (42) and 60 percent of petit juror respondents (93) were "neutral" or "disliked" the idea of being a juror. Since
Table 16. Juror Attitudes on the Approach of the Trial (Percentages)

<table>
<thead>
<tr>
<th>Questionnaire Items</th>
<th>Civil Jurors</th>
<th>Petit Jurors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did you think jury service would</td>
<td></td>
<td></td>
</tr>
<tr>
<td>be a pleasant or unpleasant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>experience?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pleasant</td>
<td>79 (61)*</td>
<td>66 (91)*</td>
</tr>
<tr>
<td>Unpleasant</td>
<td>21 (16)</td>
<td>34 (47)</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

| What were your feelings about the                      |              |              |
| idea of being a juror?                                 |              |              |
| Liked the idea                                         | 49 (41)      | 40 (60)      |
| Neutral                                                | 40 (33)      | 55 (85)      |
| Disliked the idea                                       | 11 (9)       | 5 (8)        |
| Total                                                  | 100          | 100          |

*Frequencies are in parenthesis.

these were people who actually served on a jury, judicial excuse could not be used as an indices of additudinal intensity. Some indication of attitudes towards jury trial is also evident in the behavior of Louisiana's female voters. During the two year period covered by the study, no female voters petitioned for inclusion in the jury pool. Either "volunteering" is a lost art or the law-makers intended to preserve the burden of jury service for male voters.

In Table 17, petit and civil jurors are shown to differ in their attitudes on specific aspects of the trial. Percentagewise, more civil (90 percent) than petit jurors (80 percent) thought lawyers "tried to get certain kinds of people on the jury." "The kinds of people" lawyers selected were "average" according to 71 percent of the civil
Table 17. Juror Attitudes on the Selection of Jurors (Percentages)

<table>
<thead>
<tr>
<th>Questionnaire Items</th>
<th>Civil Jurors</th>
<th>Petit Jurors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do you think lawyers try to get certain kinds of people on the jury...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>90 (73)*</td>
<td>80 (121)*</td>
</tr>
<tr>
<td>No</td>
<td>10 (8)</td>
<td>20 (30)</td>
</tr>
<tr>
<td>Totals</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

What kinds of people do lawyers select for jury service?

<table>
<thead>
<tr>
<th></th>
<th>Civil Jurors</th>
<th>Petit Jurors</th>
</tr>
</thead>
<tbody>
<tr>
<td>The most qualified</td>
<td>24 (19)</td>
<td>25 (36)</td>
</tr>
<tr>
<td>The average-man type</td>
<td>71 (56)</td>
<td>69 (102)</td>
</tr>
<tr>
<td>The least qualified</td>
<td>5 (4)</td>
<td>6 (9)</td>
</tr>
<tr>
<td>Totals</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

How do you think the selection of jurors should be conducted?

<table>
<thead>
<tr>
<th></th>
<th>Civil Jurors</th>
<th>Petit Jurors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyers should be required to take the first 12 who qualify</td>
<td>11 (9)</td>
<td>5 (7)</td>
</tr>
<tr>
<td>Judge should select them</td>
<td>11 (9)</td>
<td>4 (6)</td>
</tr>
<tr>
<td>There should be some other way of doing it</td>
<td>8 (7)</td>
<td>11 (16)</td>
</tr>
<tr>
<td>The present way should be continued</td>
<td>70 (58)</td>
<td>80 (121)</td>
</tr>
<tr>
<td>Totals</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

Frequencies are in parenthesis.

Jurors (56) and 69 percent of the petit jurors (102). Civil jurors, however, were proportionately more for change "in how jurors are selected." Thirty percent of the civil juror respondents (25) compared with 20 percent of the petit jurors (29) were for methods other than "the way it is presently done."
A larger percentage of civil jurors (30% as versus 24% percent) thought the facts were "difficult" or "somewhat difficult" to understand but jurors in general indicated that lawyers were contributing factors in their confusion. Thirty-seven percent of responding jurors (78) thought the "lawyer's examination of witnesses" and "histronics" (looks, glances, innuendoes, etc.) made their assigned function of assessing the facts harder to perform. Other questionnaire items that went to the juror's attitudes towards the trial included several on documentary evidence, instructions of the judge, the final argument, and the language of the law. In every instance some response was elicited indicating a feeling on the part of many of the jurors that an explanation or additional knowledge would have helped them more efficiently perform their roles as jurors. More than 70 percent of responding jurors (165) were for having "the judge explain or comment on the evidence" or for "taping and cutting a record of the trial" which they could bring into the jury room and replay during deliberations.

From the standpoint of the juror, the trial experience and various aspects of the trial itself are outside of his daily round of life. His image of the trial and its functionaries is probably attributable to the mass media, the grapevine, and educational background. His attitudes are a function of the image and/or the priority of other values over citizenship. Values associated with occupation, the State, and health are evident in statutory exemptions and judicial excuse but others are not translatable into institutionally recognized grounds for non-service. Since there is no attempt to fit the trial to the juror's level of comprehension by encouraging questions from the jury
box, pre-trial attitudes will not only influence the juror's intake but carry over into deliberations and affect its texture.

In dealing with judges, lawyers, and jurors, scaling techniques were employed to distinguish their attitudes on jury trial. Scaling was based on a series of statements for and against jury trial which accompanied interview and questionnaire material. Respondents indicated their attitudes by checking scale categories ranging from "strongly agree" to "strongly disagree" for each of thirteen statements. Using a five point scale produced differences in attitudinal intensity with respect to each of the statements and compositely for the three groups involved. The statements appear in the "Appendix" as part of the questionnaire and interview materials and are labeled "N" and "P" depending upon whether they were supportive or non-supportive of the jury system. The categories, scale, and scoring are illustrated below.

```
strongly agree, agree, neutral, disagree, strongly disagree

5 4 3 2 1
```

On statements supportive of jury trial, the composite scores of judges and lawyers were higher than those for civil and petit jurors. The scores of judges and lawyers were 3.45 and 3.82 respectively; those for civil and petit jurors, 2.62 and 2.97. The jurors' scores place them on the scale between "neutral" and "disagree" indicating either non-familiarity with the functions or values of jury trial or attitudes that were slightly non-supportive in character. The higher scores of judges and lawyers, while supportive, were nonetheless qualifiable by the following considerations: (1) a felt need to retain the system in
criminal cases; and (2), a bias in the sample in favor of the plaintiff lawyer. In either instance, jury trial receives its strongest support.

Statements against jury trial resulted in high scores for civil jurors, with judges, lawyers, and petit jurors following in that order. The actual scores were 3.37 for civil jurors, 3.11 and 3.10 for judges and lawyers, and 2.93 for petit jurors. On the scale, civil jurors, judges, and lawyers would be positioned between "neutral" and "agree"; petit jurors, between "neutral" and "disagree." The non-supportive character of the scores of judges and lawyers implies awareness of the shortcomings of the jury system but less intensely held attitudes than on supportive statements. Overall, the scores give some indication of the internal validity of the two types of statements as a measure of attitudes of jury trial.

Generally the scale scores indicate jury trial still has considerable support among judges, lawyers, and jurors. Of the three groups, the civil jurors were the most responsive to change. More than 70 percent of responding civil jurors "agreed" or "strongly agreed" with such statements as: (1) "It is mainly the lawyers and not the public who want to retain the jury system"; (2) "The jury system has outlived its historical function of guaranteeing the individual a trial by his peers"; and (3), "The jury's function should be to advise the judge on, but not to determine, the facts in the case." Petit jurors, judges, and lawyers generally went the other way in response to these statements. Fifty-three percent of the petit jurors, 78 percent of the judges, and 63 percent of the lawyers either "disagreed" or "strongly disagreed." In contrast with petit jurors, civil jurors
often had higher educational and occupational status, suggesting, perhaps, that the traditional aspects of our culture operate differentially in a social class context. On lower levels, the tradition of jury trial is stronger than at higher levels—except where specialized training or the oath of office goes to upholding the legal order.

As viewed by the civil jurors, the solution of the jury problem was: (1) to require service of more professional and managerial people (40 percent); (2) to use fact-finding experts (49 percent); and (3), to make the jury advisory to the judge (80 percent). All three solutions are contrary to the "cross-sectional principle" and go to improving the quality of the jury or the trial.

Ideal and Real and the Attitudes of Judges, Lawyers, and Jurors

In presenting the material and research in this chapter the emphasis was placed upon the real. Since formal legal norms rarely treat of the personalities of jurors, it is both informative and adventitious that attitudes contrary to the jury be brought into focus. The tables and much of the write up, hence, is purposively selective rather than an item by item presentation of all the data produced by the juror questionnaire. The material shows, if anything, that jurors have diverse attitudes about jury trial and that formal legal norms and juror expectations are often inharmonious. Among lawyers and judges, responses to the thirteen statements were undoubtedly tempered by the oath of office and the economic utility of the jury to the successful practitioner.
Chapter Eight

THE JURY ARGUMENT, CONCLUSIONS, AND RECOMMENDATIONS

Arguments for and against jury trial are a recurrent phenomena. Judges, lawyers, and even member of the public seasonably express their opinions but rarely follow them up with anything concrete. A more positive approach would involve classification and analysis of the arguments, testing by scientific methods or, if you will, initiation of a movement to bring about changes in, or merely to preserve, the status of the jury.

The undertaking here is a limited one. Arguments for and against jury trial are subject to a single classificatory scheme whose aim is to bring out values subserved by the jury. Arguments for jury trial seem to stress primarily "democracy"; arguments against jury trial, "efficiency." After reviewing the arguments and ascertaining the values reinforced by trial by jury, a possible resolution of the jury argument is offered in the concluding section of this chapter.

Arguments For and Against Jury Trial

Inevitably, retention, modification, or abolition of the jury system raises the question of values. Values are a proper subject for sociological analysis if they can be imputed to others. Appropriately, the values associated with jury trial can be imputed to members of the legal profession, legislators, and writers of legal and political
history and science. Lawyers, judges, and teachers of law, particularly, have provided a prolific literature concerning the jury. The specific aspects of the literature that deal with values are the arguments for and against jury trial that have been formulated during the last 200 years. Treatment of the literature can be found in works by Story, Forsyth, Lesser, Johnsen, and in the "Recording of Jury Deliberations." Because these works are chronologically spaced from 1833 to 1955, they have been selected to provide the bulk of the arguments that follow.

Some insight into the nature of the arguments may be gained from classification. By applying the categories society or community, group and individual one is able to determine the level and system to which the arguments are addressed. If they are classified and counted, most of the arguments treat of functions performed by the jury for the society or community rather than for sub-groups or the individual. Functions are taken as indicators of value emphases which may be served by the jury.

On the society or community level, "democracy" receives the most attention. Included in arguments for jury trial are such democratic principles as: (1) self-government (people arbitrate their own disputes) and checks and balances (the jury is a check and balance against arbitrary use of power by other government agents or agencies); (2) representative government (the jury is the representative of the people; the jury, as a cross section, is representative of the community); (3) democratic choice (juries are what the public wants and it is essential in a democratic society that they should get what they want); (4) the idea of the "average" or people's democracy (the jury keeps the
administration of law in accord with the wishes of the community; the jury represents the average sense of justice in the community); and (5) the people's right to disobedience (the jury has power to refuse to put laws into effect; the jury can amend bad laws, etc.). Other arguments stress "progress" (the jury in the long run makes for progress; the jury system has upheld liberty and progress; existence of trial by jury gives us the confidence necessary to experiment with new and different adjudicative devices); "respect and confidence in the law" (the jury makes people part of the judicial system; the jury makes people responsible for the purity of the system; and because jurors reflect the common feelings and prejudices of men...they are trusted by laymen more than the judge); "compromise" (verdicts are compromises and compromise is the essence of civilization); "fair play" (trial by jury is trial by equals drawn indiscriminately from the mass...who feel no malice or favor); "education" (the jury is a school of free admission which puts jurors in contact with learned judges and lawyers); and "justice" (juries are desirable because they avoid the necessity of creating precedents which may create injustice in the future; the jury is a valuable balance wheel in the scale of social justice).

On the subgroup and individual levels, democratic values have their counterpart in "liberty" and "personal freedom." Arguments here treat of the jury as the "bulwark of individual liberties"; state that "there cannot be too many safeguards thrown around the citizen" and, in effect, hold out the jury as the agency or vehicle for their guarantee; for example, "the few (the judge) may be the more readily deceived than the many (the jury)"...and "the jury is a better fact finder than the judge."
Support for the jury comes also from the functions it performs for others. Judges, courts, the legal profession, litigants, the accused, citizens, and the individual juror are thought of as benefiting in some way or another from the operation of the jury (juries are desirable in that they attract people to take up the law as a profession; juries save the judge from the responsibility of deciding simply on their own opinion upon the guilt or innocence of the prisoner; the jury induces a desirable attachment of the people to their laws). Benefits, however, are more often negative and indirect (juries protect the courts and judges from suspicion of bias or corruption) than in line with the institutional roles or functions of the benefiting part or agency or with the historical functions of the jury. Some benefits are so incongruous with the values of the community or society that they best be left unmentioned by the supporters of the jury (the jury offers an excellent form of popular entertainment. . . presumably is good in that it gives people relaxation . . .). For the citizen and the juror, the jury is said to: (1) enable the citizen to participate in the operation of government; (2) limit individual selfishness; (3) make one concern himself with the affairs of others; (4) educate the juror; (5) safeguard the citizen's liberty; and (6), otherwise make the juror a better citizen.

Just dealing with affirmative arguments leaves one with the impression of conflict. If the jury educates the juror, how can the jury be a better fact finder than the judge? How can the uneducated many be less likely to be deceived than the educated few? If jury service is "entertainment" how can it stand for "fair play" or build "respect and confidence in the law?" What kind of education does jury service give the juror if one of the functions of the jury is to "protect
the courts and judges from the suspicion of bias and corruption? If the community depends on the jury to make the "jurors concern themselves with the affairs of others" (and "limit individual selfishness"). . .
but the "jury reflects the common feelings and prejudices of men". . .
what kind of performance does the community receive from its institution and what kind of justice is accorded the litigant or the accused?

Some who argue in support of the jury system admit of its shortcomings. Among the members of this group, are those who believe the evils of the jury system can be corrected through reform, such as "giving the judge power to comment, improving the caliber of jurors and especially getting rid of the professional juror, abolishing the unanimity rule, reducing the number of jurors, changing the law of challenges and the law of the voir dire, making litigants pay the costs of the jury system, instructing the jurors in their duties prior to their service, lengthening and shortening the period of jury service, giving the jurors the right to take notes, and permitting a defendant in criminal cases to waive jury trial." As the "Recording of Jury Deliberations" indicates, however, many of these proposed reforms either abolish the jury pro tanto or run counter to arguments that are supportive of the jury system.

Negative arguments counter the affirmative but add little to identifying society or community, sub-group, or individual values reinforced by jury trial. Probably "efficiency" (or its lack) is the most used criterion (or value) for appraising the jury, its functions, and influence (jury trial is costly, delays justice, and is responsible for contempt of the law; the jury system is grossly inefficient as a
trier of fact). But "efficiency" and "democracy" are not synonymous. The former is the cold and calculating yardstick of a mature business civilization; the latter, a series of political institutions maximizing freedoms which have survived from the past and have been readapted to the present. As one of these survivals, the jury may be made (or may become) more "efficient" but the more "efficient" it becomes the less "democratic" it will likely be.

Few of the negative arguments treat specifically of the accused (juries as often convict people who shouldn't be convicted as they acquit people who should be convicted; the jury is ruled by prejudice and emotion which frequently results in much injustice). Rather is the concern with sub-groups, the community or the society. In one way or another, continuation of the jury system is viewed as detrimental to all involved. The accused (even the litigants in civil cases) would seem to be the "forgotten man" of the arguments although in some quarters he would be viewed as having the most at stake.

If the focus, however, is the accused (or the litigants), then "justice" is the proper measure of trial by jury. For could not one argue that "democracy" is the condition that prevails before and surrounds the trial; "efficiency" is the dispatch with which the jury performs its functions for others (the community, etc.); and "personal liberty" and "freedom," nothing more than the state of the citizen generally undisturbed by legal process or if disturbed, restored to its original dimensions? Once the citizen is at bar only the "just disposition" of his case remains.
The Jury Argument and a Review of Some of the Findings of This Study

Like jury selection practices, none of the arguments for or against jury trial have been subject to empirical test. If one were to argue that the accused has his measure of "justice" when "judged by his peers," this still leaves the question of who are a man's peers? According to case law, "peer judgment" can be taken to mean a judgment by a cross section of the community.\(^7\) While not mathematically ascertainable,\(^8\) a cross section is democratically relevant at the level of the jury pool (if not the actual jury) in determining whether the accused has been deprived of due process and equal protection of the laws as provided by the Fourteenth Amendment to the Constitution of the United States (or more specifically has had a "fair trial"). But do the dabblings of the jury commissioners in the voting rolls (or the tax rolls in other jurisdictions) produce anything near a cross section?\(^9\) And how can there be a cross section in any sense of the word if statutory exemptions lop off portions of the top and middle of the community's occupational hierarchy\(^10\)? The arguments assume there is a cross section even though the court's application of the concept has been in the gross and negative sense of exclusion rather than the positive sense of composition of the venires and juries.

Normally it is the commissioners who are charged with the drawing and construction of venires. But the commissioners are without legal guides to enable them to perform their statutory duties. This means that almost any method could be used to select the names of registered voters for prospective jury service. In some districts the absence of "know-how" on the part of the commissioners finds the clerk of court stepping into the vacuum and extra-legally directing their selections. The clerk-directed commissioner is told to "bring in so many names from this or that ward or precinct" or "with some designated
occupation." In other districts the commissioner who is reappointed from term to term often foists his method of making selections on the remainder of the commissioners.

The lack of a directive in constructing the general venire personalizes selection. Instead of being determined by the statutes or administrative rules, selection is determined by the office holders. Depending on the clerk or commissioners' philosophy of life, prospective jury service may be restricted to particular economic classes or to individuals who stand in a particular relationship to the selectors. Selection, thus, will vary from district to district and within the district with a turnover in the office of the clerk and/or commissioners.

What must result from these practices in terms of the jury pool is open to question. When one considers how the pool has been constructed, its parameters are uncertain. Compounding the uncertainty in many districts is the reinsertion problem. Veniremen who are not used during a specific term of court are carried over to the following term. Those who have had a voir dire exam or who have served on actual juries may be re-selected by the clerk and/or commissioners for inclusion in the pool for the succeeding term. For one reason or another, in East Baton Rouge Parish, approximately 15 percent of the pool carries over from term to term.

The cross sectional requirement of case law, in turn, conflicts with the operation of state statutes. In most states, statutes exempt or disqualify large segments of the population from jury service... and, therefore, limit the pool and its "cross sectional requirement" to the remainder. A cross section by operation of the statutes is
devoid of a number of age, residency, and occupational categories that constitute the district (or parish) population.

Judicial excuse and lawyer selection practices only further pervert the product (the pool and venires) so that an unrepresentative fraction of the community comes to decide questions of the highest importance to community welfare. In four judicial districts in Louisiana, it was found that the judges excuse from one-quarter to one third of the venire in chambers. Excuses run the gamut from highly intangible to occupational and physical considerations but vary from judge to judge over the same and different grounds that were indicated as the basis for an exercise of their discretionary powers.

What remains of a venire (criminal and civil) is brought forward to the lawyers' examination (the voir dire). Considering the lawyer-client nexus with its emphasis on winning the case, it would rarely follow that the jury is a cross section of the community, demographically or otherwise. Lawyers select jurors to their side of the case. Juries, however, seldom represent a balance between contending parties because differences in ability, experience, and training among the lawyers result in juries primed in favor of a particular side. Moreover, selections aimed at winning the case in effect elevate the lawyers' interest in verdict outcome above the democratic ideal of community participation in the administration of justice.

Pool, venires, and juries in East Baton Rouge Parish from 1959-61 showed an occupational composition that ranged from 52.1 to 58.3 percent craftsmen, foremen, and operatives. These occupations comprised 39 percent of classified employed males in the district (or parish)
population. No women or non-whites served on a jury during this period, although they were 49.5 and 14 percent respectively of registered voters in the parish in July of 1961.

If one is still argumentative about "peers" and "cross sections" as the essence of "justice" for the accused in a trial by jury, a look at voting patterns and verdict trends should indicate that the jury is something less than an impartial forum. This study purports to show that the juror votes his class position. In criminal cases the higher the status of the juror the more likely he is to vote guilty; the lower the status, the more likely he is to vote not guilty. New York's "blue ribbon" juries of managers, officials, and proprietors are said to be "convicting juries." Among civil jurors in East Baton Rouge Parish, the relationship between status and vote is less evident but the number of responding civil jurors and other variables may account for the differences.\(^\text{12}\)

Nationally, however, the long-term trend in verdict outcomes supposedly favors the accused. A structural explanation based on the Baton Rouge data stresses "status similarities." Statutory exemptions, judicial excuse, and lawyer selection practices have compressed the jury pool, venires, and juries in the direction of the accused. Compression results in fewer rank distinctions between the offender and his peers and increasing similarity in life experience and philosophy. The results are more "not guilty" verdicts or deviations of verdicts from charges and possibly a minimization of the role of the evidence in verdict outcomes.

Where does this leave the "jury argument"? The "democracy" of
the affirmative is far from the "average sense of justice in the com-
munity"; from a "cross section"; from "representation," "fair play," and "compromise." It is seemingly class-oriented and subject to the vagaries of selection processes. And "justice"—et tu—is colored by status and needs a champion to free her.

A Look at Alternatives and Innovations in Trial by Jury

Alternatives to trial by jury are by no means easy to formulate. Constitutional guarantees of jury trial on both federal and state levels\(^\text{13}\) presupposes that a resort to the amending process is necessary to bring about major changes in the jury. Whether sufficient legislative or public support could be mustered during the pertinent stages of the amending process is a debatable proposition. Both abstract sentiment and economic utility reinforce each other to account for continuation of trial by jury.\(^\text{14}\)

Some distinction, however, can be made between federal and state constitutions. Guarantees of jury trial in the federal constitution apply only to the federal government. In the absence of a federal requirement jury trial on the state level is more subject to modification. While all state constitutions provide for some form of jury trial, struck juries, split and special verdicts, and curtailment of the right to a trial by jury have been introduced in response to localized problems and pressures. Still, to argue for outright abolition of the jury, even on a state level, is largely an academic undertaking at this time. If some of the alternatives are examined, perhaps a recommendation can be devised to meet the situation.

Among members of the legal profession, trial by judge is viewed
as the alternative to jury trial. Outside the profession, trial by judge has its supporters but many prefer the use of panels of experts. Outsiders claim that experts would introduce expertise and experience into the proceedings and meet the criticisms of the opponents of jury trial. Very few of the proposed alternatives treat of who the experts are or how the experts should be selected. An interesting exception is a proposal by Harry Elmer Barnes. This historian and sociologist suggests that permanent commissions of experts trained in psychology, criminology, criminal law and sociology examine the evidence—minus courtroom oratory—and then rationally decide on the guilt or innocence of the defendant.

Whether there are enough of these kinds of experts to satisfy state and local needs is itself problematical. Of far greater import is the consequence of the use of experts to the whole judicial process. Perhaps this could best be focused by propounding a series of questions. Assuming that the adversarial system is to be retained—in whole or in part—to bring out the truth, what of the use of witnesses? As Munsterberg has shown, perceptual habits vary even though witnesses have been sworn to tell the truth. Will the commissions of experts want to "quiz" the witnesses? As experts, they will probably want to use their prerogative, if they sit as a jury, to question litigants, lawyers, witnesses, and the judge as well. Will this delay the trial? An even more pertinent question involves the kind of truth the experts will find. If the adversarial system is modified, will they be concerned with "scientific" or "legal truth"? If it is scientific truth, will there be extra-trial investigations using sampling and interview
techniques and will the experts circulate in the community between the trial and the verdict unprotected from its influences? Will they always reach a verdict? Every trial has its ending but not every issue connected with a trial is presently scientifically solvable. What of the rules of evidence? Will the experts want to consider "incompetent," "irrelevant," "immaterial" and "heresay" matter either during the trial or during their deliberative period? If they do, then the scope of judicial inquiry and legal theories of causality will have to be modified in view of the assumptions, approaches, theories, and research of the social sciences.

There is hardly any limit to the number of questions that could be raised about the use of experts. One thing, however, is certain. If the adversarial system is retained a new type of trial lawyer will emerge. For with the shift in trial emphasis from "personalities" to the facts or evidence, as is implied by the use of experts, a Fallon, Darrow, Rogers and Belli might not even be able to make a living.

Procedurally and substantively too some change is expected. Although the experts operate essentially within the framework of Anglo-American law, both the "cross sectional principle" and the "peer" concept are rendered surplus. Experts have relatively high socio-economic status. What their "life philosophies" are is speculative but being expert would lead one to suspect that they would be more rationally and empirically oriented than the non-expert. If the latter assumption is true, then "justice" in law and "justice" in fact will have a new alignment.

Other values will also be affected. Employment of commissions
of experts will undoubtedly have consequences for "compromise," "fair play," "education," "progress," and "democracy." For one thing, there will be no citizens to educate through jury service. The commissions of experts, according to Barnes, are permanent bodies. If impermanent, the formal education of the experts may, nonetheless, exceed that of the lawyers and judges. For another thing, if there is to be "compromise," it is more likely to be within a context of "expertize" rather than one of inexperience or emotionality. "Fair play" and "progress" too will take on new meaning. One suspects, for example, that the "progress" of the experts will involve increased organizational efficiency, more uniform procedures, and improvement in the jury's fact-finding functions. Whether the experts will be more or less "humanitarian" than the citizen jury is unknown. If humanitarianism is accepted as one of the dimensions of "progress," then the institutional measures of the verdict have to be examined. These measures are "preponderance of the evidence" in civil cases and "beyond a reasonable doubt" in criminal cases. It is highly possible that both measures will have different meaning for the expert as versus the citizen jury. But will it involve a greater or lesser burden of proof to the parties who normally sustain it in a case? In any event it would seem that "humanitarianism," "justice," and "fair play" are in issue.

Of the remaining values subserved by jury trial, "democracy," "justice," and "efficiency" are the concern of the concluding portion of this study. To some extent, one could maintain that "democracy" is central to, and coordinating of, most of the values associated with
jury trial. Certainly "fair play," "compromise," "education" of the public, "personal freedom," and "progress" have been linked with the rise of democratic institutions. But apart from this historical convergence, democratic institutions structurally conceived are the vehicles for the guarantee and realization of the values of our society. Of these vehicles, the jury is still regarded by many as one of the most fundamental. If the jury is radically changed, the values can be expected to undergo a metamorphosis of some proportions. The net change in the values in the legal, politico-legal, or total social system depends ultimately upon the contributions of their respective sub-systems. With courts, administrative agencies, and the executive branch of the federal government presently maximizing the realization of civil rights for all citizens the values are in no great danger of being subverted. On other occasions, and in other areas, however, the contributions on local, state, and federal levels have not been, or may not be, as great. It is, therefore, in the long run that the jury has utility for the individual, sub-groups, and the society in preserving traditional values.

A Recommendation and Conclusion of the Study

The foregoing discussion points to a conclusion. It has been argued and demonstrated that the jury has considerable support; that it is constitutionally guaranteed and may have long-term utility in preserving democratic values. Major changes in the institution, hence, are not likely to occur. But "justice" and the concern for "efficiency" are themselves important values in the legal system and in our society.
"Efficiency" has to do with how the jury performs its functions for others (the individual, sub-groups, and society). If it lacks "efficiency," the jury becomes economically and socially costly. By virtue of its malfunction democratic values may be endangered and public and private funds spent in support of questionable actions.

"Justice," that product of the judicial process, may itself be jeopardized. For a system which does not justly dispose of litigable conflicts will either be avoided, opposed, or ignored even in its most official actions.

In jury trial "justice" is that quality of the verdict that signifies that the individual at bar, with all the guarantees substantively and procedurally of the legal and politico-legal system, has been heard and judged on the evidence by his peers. If the guarantees are denigrated, or non-evidentary matter figures in the verdict, or if the individual's access to qualified citizens is obstructed by acts of omission or commission by agents of the court or outsiders, his cause, in all probability, has not been justly disposed. "Justice," however, is more than mere compliance with due process. For a verdict to be "just" it must be essentially supportive of the values of some social system. Ideally and initially, these are the values of the legal system but ultimately they must be the values of our society. If the jurors comply with their role expectations, they deliberate as rational beings and reach a verdict based on the evidence in the case. "Rationality" and "role compliance" by the jurors coupled with "due process" presuppose "justice" for the litigant or the accused.\textsuperscript{13} In reality, jurors are characterized by all shades
of rationality and only secondarily can they be regarded as fact finders. Primarily, jurors are persons socialized in the same and different aspects of the culture, with varying personalities, whose daily round of life has been interrupted by legal process and who are expected to assume roles whose counterparts are generally absent in their life experience. As the research on deliberations and voting indicate, jurors are susceptible to non-evidentiary stimuli and end up voting either their class values or sociopsychologically dominant influences (the jury, specific jurors, the lawyers, etc.).

This means that in jury trial the values of the legal system are only partly realized. Whether societal values are similarly sidetracked would seem to turn on what values the juror or juries vote. If they are the values of a social class or an ethnic, racial, or religious minority or majority, then "justice" and "democracy" have not been served. "Justice" implies more than a class orientation to the trial. It implies a verdict either in harmony with values common and fundamental to the society or with the highest ideals the society has to offer. "Wither 'justice' in most jury trials?"

To finally approach the problem of a recommendation, the foregoing discussion must be kept in view. For any recommendation, if it is to be soundly based, must take into account the values associated with jury trial and the likelihood that no major changes in the jury can be immediately realized. In brief, these values are "democracy," "justice," and the operational "efficiency" of the jury in performing its functions for others. With these limitations in mind, this study espouses the Barnes' proposal for petit as well as civil juries but
with the following modifications:

(1). Trial by experts should be made an alternative to trial by judge or trial by jury. The election of this alternative should be with the parties in the case. In criminal trials the election should be with the accused.

(2). Who is expert should be determined by the adversarial nature of a trial and by the issues in the case. 20

(3). Unless the commissions of experts are attached to higher courts and made available to inferior courts on request, the experts should be furnished by the district in which the court with jurisdiction to hear and try the case is sitting.

(4). The cost of trial by experts should be borne by the parties in the case except where a showing of need would shift the burden to the State. The cost should fall on the party or parties who first make the election but ultimately should be placed on the loser of the case.

By making trial by experts a third alternative available to the parties, constitutional amendment is probably unnecessary. Election maximizes "democracy" and should also ensure "justice" where trial by experts is held. If the experts are more rational than the non-expert, legal values have been reinforced. In cross-racial or heinous types of crime, or in any action where public opinion or the self-interests of the courts or agents of the law might be involved, or where the verdict is likely to follow class lines, trial by experts holds more potential for "justice" than either trial by judge or trial by jury. What values the verdicts of the experts support should be higher or
more common and fundamental than those of the non-expert. "Efficiency"
gains lie in fixing responsibility for the cost of trial by experts,
in the organization and operating procedures instituted by the experts,
and hopefully in "confidence and respect" in the law they must promote.

Thus concludes this search and adventure in the border lands of
law and sociology. If its by-products are insights and further
research into the jury, it has served its purpose and more than
rewards its efforts.

For those who would carry forward some of the basic ideas of
this study, the components of the trial and their effect on the indi­
vidual juror would seem to have considerable research potential. These
components are the judge, the lawyers, the witnesses, the parties, the
evidence, the jurors and the jury group. If one recalls the argument,
the jury as a group was given priority over the other components of
the trial as to their influence on the individual jurors. Once the
group has formed, at least affectively, it mediates the other components
and their effects on the juror; that is to say, the effects of the
other components, which go to creating a body of rules, behaviors, and
institutionally-recognized facts, do not travel in a straight-line
course from initiators to the jurors. The components are filtered by
the group or by specific jurors (sociopsychologically dominant) who will
ultimately carry the other jurors with them.

In any particular trial, of course, the group even affectively
may be early or late in forming; it may include all or only part of the
individuals comprising the jury (in cases of tampering or identification
of the juror with the judge or the lawyers); or in a very short trial,
if the group has formed affectively or affectively and organizationally (in jury deliberations), its influence may nonetheless be relatively unimportant in the outcome of the trial.

As research suggestions on the components of the trial, the following are offered: (1) work out dimensions—such as type and length of trial—in terms of which the effects of the components of the trial on the individual juror may be measured; (2) through interview or questionnaire jurors themselves could be queried as to the influence of the components of the trial on their voting and verdict outcomes; (3) use "ersatz jurors" (possibly students) with a breakdown into control and experimental groups varying the number and kinds of components of the trial to which the groups are exposed from "piped in trial" through the full complement of judges, lawyers, witnesses, parties, and opportunities for the jury group to develop through split sessions, dining together, and sleep-ins; (4) as post-trial research, have the judges, lawyers, jurors, and courtroom public rank the components of the trial in terms of their presumed effects; and (5) as a sort of "contrived experiment," run in 12 people (perhaps selected with specific criteria in mind) on any on-going jury trial—which is usually open to the public—have them simulate jurors during the trial and interview and test them daily as to the components of the trial and their influences on each of the members of the "floating jury."
Footnotes to Chapter Eight


From the Federalist, this quotation aptly presents the view: "The friends and adversaries of the plan of the convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury: Or if there is any difference between them it consists in this; the former regard it as a valuable safeguard to liberty, the latter represent it as the very palladium of free government." See No. 83.


3Recording of Jury Deliberations, p. 71.

Some of these arguments are: (1) the jury system makes the law more uncertain and less predictable; (2) jury trials are slower than judge trials; (3) the jury lowers the standards of the legal profession; (4) the jury is a wasteful use of human resources; and (5), delays caused by jury trial result in the prevention of much just litigation.

As examples, consider the following: (1) the jury system degrades the law and has destroyed public confidence in the administration of justice; (2) the jury has stultified the overall sophistication of judicial inquiry; and (3), existence of juries in criminal cases increases the crime rate and reduces respect for the law.

"Justice," of course, has many referents. Some may view "justice" as a verdict in line with the symmetry of the law; others, as the balancing of the interests (and/or values) associated with the person, the community, and the society. A more positivistic approach would be to view "justice" as what the jury in fact does whether by other referents one can or cannot agree with the verdict.


As it is presently construed, the "cross-sectional principle" goes primarily to the racial representativeness of juries. Representativeness here is used in the gross and negative sense to mean the
"absence of intentional and systematic exclusion" of racial groups from jury service. If there is the semblance of inclusion, juries are thought to be representative of the community. The principle has recently been applied to ethnic groups (Hernandez v. Texas, 347 U.S. 475) but has not been accepted as applying to socio-economic class.


10Nationally, some 52 different occupations are exempt. These include physicians and surgeons, lawyers, professors and school teachers, ministers, some engineers, dentists, state officers and their clerks and employees, officers commissioned under the authority of the United States, and the members, officers and clerks of the legislature.

11In East Baton Rouge Parish the jury pool was seriously lacking in sex and minority group representation considering the parish population structure. Juries were largely composed of foremen, craftsmen, and operatives.

12There is a relationship between education, occupation, income and vote outcome among civil jurors. Jurors with low socio-economic status show some preference for the plaintiff whereas those with high status tend to prefer the defendant. Using the chi square technique, however, levels of significance were much higher than what are generally taken by sociologists to be an acceptable working margin in controlling for chance associations.


14Jury trial has economic utility for the lawyer as a publicity-making device and builder of his reputation. Depending on the "juriness" of the case, jury trial also stands for more likely recovery and large damage awards.


18There are, of course, other politico-legal values associated with the verdict. The deliberative phase of jury trial out of which the verdict emerges is procedurally "democratic." The verdict "as a
compromise" is both legal and politico-legal in character; for example, "the law favors compromise" is a well known maxim of Anglo-American law. "Compromise" is also characteristic of the political process in the legislature and within political parties.

But the voting can be conceived as being class oriented. Jurors either vote their class values or circuitously the values of those in affectively superordinate roles. That the voting and the verdict are supportive of values other than those of the legal system is feasible by virtue of the "gap" between the evidence and the verdict. In a criminal case the State has the burden of proving that the accused is guilty beyond a reasonable doubt. If a juror or the jury sustains such a doubt the presupposition is that a vote or the verdict will be not guilty. The requirement, in effect, makes the most infinitesimal part of the evidence the legally acceptable basis for the verdict. Through a "gap" so side almost anything could be supported.

The criteria for determining who is expert should be further clarified. These criteria are the adversarial nature of jury trial and the subject matter involved in the case. The adversarial nature of trial would qualify behavioral scientists as experts but the criterion of subject matter has broader implications. The latter would encompass as expert those whose training or experience are in the subject area of the case. In forgery cases, the panel would include handwriting experts; in embezzlement, accountants. In manslaughter by auto, or in auto negligence suits in civil courts, traffic control specialists, safety engineers and others, would be numbered among the expert. Where injury or death of the victim or plaintiff is in issue, it would be appropriate to include doctors of medicine on the panel. To put it another way would be to point out that the counterparts of the expert witness would be members of the "expert" jury.
SELECTED BIBLIOGRAPHY
SELECTED BIBLIOGRAPHY

Encyclopaedias and General Works


Books


**Government Publications**


Learned Journals


Magazines and Periodicals


__________, "Let's Reform Our Jury System... Or Abolish It," Coronet, XLI (April, 1957), 72-76.


APPENDIX A

THE CLERK
PLEASE NOTE: Some reproduced pages in Appendix A are cropped at top and bottom margins. Filmed as received.

UNIVERSITY MICROFILMS, INC.
CLERK INTERVIEW

1. Do you confine your selection of veniremen to the voting roll?

2. In constructing the general venire, how is the selection of qualified individuals carried out?

3. Do the jury commissioners select veniremen from the voting roll?

4. What is your role in constructing or supplementing the general venire?

5. How often do you or the commissioners go outside the voting roll to select qualified individuals from the community?

6. Since the commissioners are often new at their job, what kind of help or assistance do you give them in constructing or supplementing the general venire?

7. What kinds of people are the commissioners likely to select from the voting roll?
   - Relatives
   - Acquaintances
   - Friends
   - People in need of work
   - Other (Specify)

8. How do you or the commissioners go about determining how many veniremen to take from each ward or precinct?

9. Do you keep a book or ledger on veniremen who have been listed or put on the general venire in past years? In constructing or supplementing the general venire is this book or ledger sometimes used by you or the commissioners?

10. How are tales jurors selected?

11. Are they selected from wards and precincts near the courthouse?

12. Do you keep a book or ledger on tales jurors from which you fill or refill the tales juror box?
13. Do you have a complete turnover in jury commissioners with each new term of court?

14. What is the longest term in office by a jury commissioner in this parish?

15. What are the occupations of the present jury commissioners?

16. From what class level would you say most of the jury commissioners come?

17. Could you estimate the percentage of voters who qualify for jury service in this parish? What percentage of the voters have been selected for inclusion in the general venire?

18. How often does reselection of veniremen occur?

19. What percentage of the voters, would you say, have served on actual juries?

20. Out of a venire of 30 (40 or 50 as the case may be) how many veniremen call you for information about their jury summons? How many call you about getting excused?

21. Out of a venire or petit juror list of 30 (or 40 or 50 as the case may be) how many veniremen are excused by the court?

22. Out of a venire or petit jury list of 30 (or 40 or 50 veniremen as the case may be), how many are "no service" returns by the sheriff?

23. Are there any non-whites in your general venire? How are they selected?

24. Do women petition in your parish for service on the jury? When was the last time a woman petitioned for service? Have any women served on a jury in this parish within your memory?

25. Do you carry over unused veniremen from term to term of court?
A COPY OF A PORTION OF THE GENERAL VENIRE

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

Clerk's Office

BE IT KNOWN, That pursuant to an order of the Honorable Judges of the 19th Judicial District of Louisiana, in and for the Parish of East Baton Rouge, dated July 27th, 1959, We, the undersigned Jury Commissioners of said Parish, did assemble at the Clerk's Office in said Parish, on this 9th day of September, 1959, and in conformity with the law, pursuant to said order, proceed to revise and supplement the General Venire List of said Parish, making it when so revised, a list of THREE HUNDRED (300) names of persons qualified to serve as jurors in said Parish, as follows:

<table>
<thead>
<tr>
<th>NO.</th>
<th>NAME</th>
<th>W.D.</th>
<th>P.R.</th>
<th>NO.</th>
<th>NAME</th>
<th>W.D.</th>
<th>P.R.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>HUTTON, KENNETH L.</td>
<td>1-1</td>
<td></td>
<td>13.</td>
<td>JAMES, CLIFTON</td>
<td>1-2</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Foot Conv. St.</td>
<td></td>
<td></td>
<td></td>
<td>925 Nicholson</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>GRACE, CLIFFORD L.</td>
<td>1-1</td>
<td></td>
<td>14.</td>
<td>ODOM, WM. JOS.</td>
<td>1-2</td>
<td></td>
</tr>
<tr>
<td></td>
<td>105 Somerules</td>
<td></td>
<td></td>
<td></td>
<td>846 St. Louis</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>TERRELL, HARVEY C.</td>
<td>1-1</td>
<td></td>
<td>15.</td>
<td>PARENT, HERMAN</td>
<td>1-2</td>
<td></td>
</tr>
<tr>
<td></td>
<td>442 Spain St.</td>
<td></td>
<td></td>
<td></td>
<td>634 St. Phillips</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>JOHNSON, MURRAY L.</td>
<td>1-1</td>
<td></td>
<td>16.</td>
<td>MATTHEWS, JOH. D.</td>
<td>1-3</td>
<td></td>
</tr>
<tr>
<td></td>
<td>129 North Blvd.</td>
<td></td>
<td></td>
<td></td>
<td>1052 Europe St.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>JACKSON, JOHN H.</td>
<td>1-1</td>
<td></td>
<td>17.</td>
<td>RICARD, WILBERT</td>
<td>1-3</td>
<td></td>
</tr>
<tr>
<td></td>
<td>605 Government</td>
<td></td>
<td></td>
<td></td>
<td>981 Julia St.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>KIMBLE, ELDRIDGE</td>
<td>1-1</td>
<td></td>
<td>18.</td>
<td>PETRO, FRED J.</td>
<td>1-4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>305 St. Charles St.</td>
<td></td>
<td></td>
<td></td>
<td>658 So. 13th St.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>KENDRICK, BUELL R.</td>
<td>1-1</td>
<td></td>
<td>19.</td>
<td>PONDER, MERLIN</td>
<td>1-4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>234 St. Louis</td>
<td></td>
<td></td>
<td></td>
<td>708 S. 18th St.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>STACKHOUSE, WILTON</td>
<td>1-2</td>
<td></td>
<td>20.</td>
<td>ABY, CHAS. W.</td>
<td>1-5</td>
<td></td>
</tr>
<tr>
<td></td>
<td>415 Europe St.</td>
<td></td>
<td></td>
<td></td>
<td>723 Spain</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>WASHBURN, LAMBERT</td>
<td>1-2</td>
<td></td>
<td>21.</td>
<td>BATES, JOHN A.</td>
<td>1-5</td>
<td></td>
</tr>
<tr>
<td></td>
<td>635 France St.</td>
<td></td>
<td></td>
<td></td>
<td>753 Gov't St.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>HATHORN, J. W. JR.</td>
<td>1-2</td>
<td></td>
<td>22.</td>
<td>BROWN, HAL JR.</td>
<td>1-6</td>
<td></td>
</tr>
<tr>
<td></td>
<td>515 Europe St.</td>
<td></td>
<td></td>
<td></td>
<td>124 N 14th St.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>HANKS, IRWIN W. JR.</td>
<td>1-2</td>
<td></td>
<td>23.</td>
<td>EGGART, AL DAVID</td>
<td>1-6</td>
<td></td>
</tr>
<tr>
<td></td>
<td>628 France St.</td>
<td></td>
<td></td>
<td></td>
<td>2020 Spain St.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>HAMILTON, AUBREY L.</td>
<td>1-2</td>
<td></td>
<td>24.</td>
<td>RUSSELL, HORACE</td>
<td>1-7</td>
<td></td>
</tr>
<tr>
<td></td>
<td>535 France St.</td>
<td></td>
<td></td>
<td></td>
<td>2186 Olive</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
LIST OF PETIT CRIMINAL JURY TO APPEAR FOR SERVICE ON MONDAY, MARCH 20, 1961 and FOR THE ENTIRE CRIMINAL JURY WEEK.

List of Petit Jurors appearing for service for the week beginning March 20, 1961.

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Days</th>
<th>Miles</th>
<th>Mileage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Carl Allen</td>
<td>3</td>
<td>7</td>
<td>$24.70</td>
</tr>
<tr>
<td></td>
<td>Walker, La.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Bankston, Benton W.</td>
<td>3</td>
<td>18</td>
<td>25.80</td>
</tr>
<tr>
<td></td>
<td>Rt. 1, Ind.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Chester Balfantz</td>
<td>3</td>
<td>40</td>
<td>28.00</td>
</tr>
<tr>
<td></td>
<td>Maurepas, La.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Clyde Blount</td>
<td>3</td>
<td>5</td>
<td>24.50</td>
</tr>
<tr>
<td></td>
<td>Livingston, La.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Conley Brown</td>
<td>3</td>
<td>15</td>
<td>25.50</td>
</tr>
<tr>
<td></td>
<td>Denham Springs, La.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Earl Berthelot</td>
<td>3</td>
<td>25</td>
<td>26.50</td>
</tr>
<tr>
<td></td>
<td>Rt. 3, D.S.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Berthelot, Quave</td>
<td>3</td>
<td>35</td>
<td>27.50</td>
</tr>
<tr>
<td></td>
<td>Maurepas, La.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Robert J. Bendily</td>
<td>1</td>
<td>15</td>
<td>9.50</td>
</tr>
<tr>
<td></td>
<td>Walker, La.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Clyde Cockerham</td>
<td>3</td>
<td>25</td>
<td>26.50</td>
</tr>
<tr>
<td></td>
<td>Watson, La.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Elmore E. Cunningham</td>
<td>3</td>
<td>15</td>
<td>25.50</td>
</tr>
<tr>
<td></td>
<td>Denham Springs, La.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Lester Devall</td>
<td>3</td>
<td>17</td>
<td>25.70</td>
</tr>
<tr>
<td></td>
<td>Springfield, La.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>C. C. Fayard</td>
<td>3</td>
<td>17</td>
<td>25.70</td>
</tr>
<tr>
<td></td>
<td>Spgflld, La.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.</td>
<td>Pearly Fletcher</td>
<td>3</td>
<td>6</td>
<td>24.60</td>
</tr>
<tr>
<td></td>
<td>Walker, La.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14.</td>
<td>Elliott Foster</td>
<td>3</td>
<td>25</td>
<td>26.50</td>
</tr>
<tr>
<td></td>
<td>Spgflld, La.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15.</td>
<td>Sidney Graham</td>
<td>1</td>
<td>18</td>
<td>9.80</td>
</tr>
<tr>
<td></td>
<td>Rt. Walker, La.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16.</td>
<td>Hollis Gill</td>
<td>3</td>
<td>18</td>
<td>25.50</td>
</tr>
<tr>
<td></td>
<td>Rt. 1, Ind.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17.</td>
<td>Roger Guitreau</td>
<td>3</td>
<td>20</td>
<td>26.00</td>
</tr>
<tr>
<td></td>
<td>Fort Vincent, La.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18.</td>
<td>Albert M Halker</td>
<td>3</td>
<td>16</td>
<td>25.60</td>
</tr>
<tr>
<td></td>
<td>F. S., La.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>19.</td>
<td>Hilton Hill</td>
<td>3</td>
<td>15</td>
<td>25.50</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20.</td>
<td>Seigel Hunstock</td>
<td>3</td>
<td>20</td>
<td>26.00</td>
</tr>
<tr>
<td></td>
<td>D. S., La.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21.</td>
<td>Arnold Natherne</td>
<td>3</td>
<td>30</td>
<td>27.00</td>
</tr>
<tr>
<td></td>
<td>Rt. 2, Liv. (214)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22.</td>
<td>T. S. McKinney</td>
<td>3</td>
<td>16</td>
<td>25.60</td>
</tr>
<tr>
<td></td>
<td>Rt. 1, Box S-14, Hammond</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23.</td>
<td>John McKinney</td>
<td>3</td>
<td>20</td>
<td>26.00</td>
</tr>
<tr>
<td></td>
<td>Rt. 1, Hammond</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24.</td>
<td>Schofield H. Lobell</td>
<td>3</td>
<td>17</td>
<td>25.70</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25.</td>
<td>Percy Loupe</td>
<td>1</td>
<td>17</td>
<td>9.70</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>26.</td>
<td>Eugene P. Picou</td>
<td>3</td>
<td>42</td>
<td>28.20</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>27.</td>
<td>Joseph Penalber</td>
<td>3</td>
<td>35</td>
<td>27.50</td>
</tr>
<tr>
<td></td>
<td>Maurepas, La.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28.</td>
<td>J. W. Ratcliff</td>
<td>3</td>
<td></td>
<td>24.00</td>
</tr>
<tr>
<td>No.</td>
<td>Name</td>
<td>Address</td>
<td>Age</td>
<td>Income</td>
</tr>
<tr>
<td>-----</td>
<td>-----------------------</td>
<td>--------------------------------</td>
<td>-----</td>
<td>--------</td>
</tr>
<tr>
<td>7.</td>
<td>Berthelot, Quave</td>
<td>Maurepas, La.</td>
<td>3</td>
<td>35</td>
</tr>
<tr>
<td>8.</td>
<td>Robert J. Bendily</td>
<td>Walker, La.</td>
<td>1</td>
<td>15</td>
</tr>
<tr>
<td>9.</td>
<td>Clyde Cockerham</td>
<td>Watson, La.</td>
<td>3</td>
<td>25</td>
</tr>
<tr>
<td>10.</td>
<td>Simore E. Cunningham</td>
<td>Denham Springs, La.</td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td>11.</td>
<td>Lester Devall</td>
<td>Springfield, La.</td>
<td>3</td>
<td>17</td>
</tr>
<tr>
<td>12.</td>
<td>C. C. Fayard</td>
<td>Spgld, La.</td>
<td>3</td>
<td>17</td>
</tr>
<tr>
<td>13.</td>
<td>Gearly Fletcher</td>
<td>Walker, La.</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>14.</td>
<td>Elliott Foster</td>
<td>Spgld, La.</td>
<td>3</td>
<td>25</td>
</tr>
<tr>
<td>15.</td>
<td>Sidney Graham</td>
<td>Rt. Walker, La.</td>
<td>1</td>
<td>18</td>
</tr>
<tr>
<td>16.</td>
<td>Hollis Gill</td>
<td>Rt. 1, Ind.</td>
<td>3</td>
<td>19</td>
</tr>
<tr>
<td>17.</td>
<td>Roger Guitreau</td>
<td>Ft. Vincent, La.</td>
<td>3</td>
<td>20</td>
</tr>
<tr>
<td>18.</td>
<td>Albert M Walker</td>
<td>F. S., La.</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td>19.</td>
<td>Hilton Hill</td>
<td></td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td>20.</td>
<td>Seigel Hunstock</td>
<td>U. S. La.</td>
<td>3</td>
<td>20</td>
</tr>
<tr>
<td>21.</td>
<td>Arnold Hatherne</td>
<td>Rt. 2, Liv. (214)</td>
<td>3</td>
<td>30</td>
</tr>
<tr>
<td>22.</td>
<td>T. S. McKigney</td>
<td>Rt. 1, Box S-14, Hammond</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td>23.</td>
<td>John McKigney</td>
<td></td>
<td>3</td>
<td>20</td>
</tr>
<tr>
<td>24.</td>
<td>Schofield H. Lobell</td>
<td></td>
<td>3</td>
<td>17</td>
</tr>
<tr>
<td>25.</td>
<td>Percy Loupe</td>
<td></td>
<td>1</td>
<td>17</td>
</tr>
<tr>
<td>26.</td>
<td>Eugene P. Picou</td>
<td></td>
<td>3</td>
<td>42</td>
</tr>
<tr>
<td>27.</td>
<td>Joseph Penalber</td>
<td>Maurepas, La.</td>
<td>3</td>
<td>35</td>
</tr>
<tr>
<td>28.</td>
<td>J. W. Ratcliff</td>
<td>Liv.</td>
<td>3</td>
<td>25</td>
</tr>
<tr>
<td>29.</td>
<td>Maple Ross</td>
<td></td>
<td>3</td>
<td>25</td>
</tr>
<tr>
<td>30.</td>
<td>Walter Scott</td>
<td>La.</td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td>31.</td>
<td>Albert Schexnaider</td>
<td>Rt. 3, D. S.</td>
<td>3</td>
<td>30</td>
</tr>
<tr>
<td>32.</td>
<td>W. M. Schliegelmeyer</td>
<td>Rt. 1 box S-12 Spgld</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td>33.</td>
<td>Kerney Sibley</td>
<td></td>
<td>3</td>
<td>12</td>
</tr>
<tr>
<td>34.</td>
<td>Roe E. Sibley</td>
<td></td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td>35.</td>
<td>Dennis L. Watts</td>
<td>Liv.</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Name</td>
<td>Page</td>
<td>Date</td>
<td>Charge</td>
<td></td>
</tr>
<tr>
<td>--------------</td>
<td>------</td>
<td>------</td>
<td>--------</td>
<td></td>
</tr>
<tr>
<td>E. W. Wall</td>
<td>3</td>
<td>20</td>
<td>26.00</td>
<td></td>
</tr>
</tbody>
</table>

Deputy Clerk of Court
APPENDIX B

STATEMENTS FOR AND AGAINST JURY TRIAL GIVEN
TO JUDGES, LAWYERS, AND JURORS
Statements used in Chapter VI in a treatment of "The Attitudes of Judges, Lawyers, and Jurors on Jury Trial." Statements marked "N" were treated as being against the jury system; those marked "P" as being in favor of the system.

Below is a series of statements. For each statement, place a check mark in one of the columns labelled "Strongly Agree," "Agree," "Neutral," "Disagree," or "Strongly Disagree" to indicate the nature of your attitudes about the matter dealt with. There should be only one check mark for each of the statements that follow.

<table>
<thead>
<tr>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Neutral</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The jury has outlived its historical function</td>
<td>N</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Juries determine the facts in the case according to their moral standards rather than those on which the law is based.</td>
<td>N</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. It is mainly the lawyers and not the public who want to retain the jury system.</td>
<td>N</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. In the long run justice is better assured by having the community represented on juries, even though some people serve who are not good jurors.</td>
<td>P</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. A group of fact-finding experts could determine the facts in a case better than the average 12 jurors.</td>
<td>N</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Strongly Agree</td>
<td>Agree</td>
<td>Neutral</td>
<td>Disagree</td>
</tr>
<tr>
<td>---</td>
<td>----------------</td>
<td>-------</td>
<td>---------</td>
<td>----------</td>
</tr>
<tr>
<td>6.</td>
<td>Lawyers want to retain the jury system because they can influence jurors more readily than they can influence the judge.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>The jury system makes it possible for the community to take part in the administration of justice.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>The jury's function should be to advise the judge on, but not to determine, the facts in the case.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>If not all women, then working women should have the same rights as men to serve on juries.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>If they had their way, most people would just as soon not serve on juries.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Jurors should generally have the same occupation as the accused or the parties in the case.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>All classes, races, and nationalities ought to be given proportional representation on the general venire.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.</td>
<td>If more professional people served, juries would be less emotional and more rational in their operation.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Strongly Agree</td>
<td>Agree</td>
<td>Neutral</td>
<td>Disagree</td>
</tr>
<tr>
<td>---</td>
<td>----------------</td>
<td>-------</td>
<td>---------</td>
<td>----------</td>
</tr>
<tr>
<td>14.</td>
<td>All classes, races, and nationalities ought to be given proportional representation on both the general venire and on civil and petit juries.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15.</td>
<td>The community would be better off if more professional people (doctors, teachers) served on juries.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16.</td>
<td>Women should have the same rights as men to serve on juries.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17.</td>
<td>How a juror votes is determined by how the lawyer treats him.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18.</td>
<td>The moral standards of the grand jurors are higher than those of civil and petit jurors.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>19.</td>
<td>The jury should elect its own foreman.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20.</td>
<td>If a doctor were acquitted of a murder charge by a jury, his medical association ought not to deny him the right to practice medicine.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21.</td>
<td>The law is rational; the jury is human. To make the jury rational through the use of experts or professionals would amount to applying a higher standard of judgment to the facts in the case than most men exercise or, for that matter, understand.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
22. **Grand jurors are better qualified to make fair and just decisions than petit jurors.**
APPENDIX C

THE JUDGE
JUDGE INTERVIEW

I. EXCUSE

A. What excuses or reasons do veniremen use the most in trying to avoid jury service? (Give in order of their occurrence or frequency.)

(1)_______________________________________________________________
(2)_______________________________________________________________
(3)_______________________________________________________________
(4)_______________________________________________________________

1. What are the statutory grounds veniremen cite the most in seeking to be excused from jury service?

_________________________________________________________________
_________________________________________________________________

(a) Which of the statutory grounds do you use the most in excusing veniremen from jury service?

_________________________________________________________________
_________________________________________________________________

(b) Which do you use the least?

_________________________________________________________________

2. Out of a venire (or petit jury list) of 30 (or 40 or 50 as the case may be), on the average, how many veniremen seek to be excused?

_________________________________________________________________

(a) How many on the average do you excuse?_______

(b) Individuals with what occupational classification seek to be excused the most?
3. Of the following, what reasons would be acceptable to you or to other judges you know as grounds for a judicial excuse? (Check as many as necessary.)

YOU    OTHER JUDGES

(a) Parents of the venireman is critically ill

(b) Venireman has to be out of town on an important business trip

(c) Venireman is ill but not bedridden

(d) Financial hardship to venireman

(e) Wife died the day before the voir dire

(f) Must take part in a religious revival during jury week

(g) Venireman's professional society is holding its national convention in town during jury week

(h) Employer can't spare venireman from job

(i) Venireman afraid to serve on jury

4. Would you say the number of veniremen seeking to be excused varies with any of the following (Check as many as necessary):

(a) Counsel in the case _____________________________

(b) Which judge will try the case ____________________

(c) The type of crime involved _______________________

(d) The parties involved _____________________________

(e) The publicity given the case ______________________

5. Have you ever experienced a situation where no judicial excuses were sought by veniremen?  ___Yes  ___No
6. Have you ever experienced a situation where no judicial excuses were granted? __Yes__ __No__

B. Among the qualifications for jury service is one that the juror must be of "well known good character and standing in the community."

(1) Is this qualification verified in any positive way? By poll, survey, or interrogation of venireman by court or counsel? __Yes__ __No__

(2) Would you say that the average juror's character and standing in the community are well known, particularly in a city like Baton Rouge? __Yes__ __No__

(3) Is the existence of a "bad reputation" apt to be known to the judge before the voir dire? __Yes__ __No__

(4) In the event of conflicting stories about a venireman's reputation (as a measure of his character) is he likely to be excused? __Yes__ __No__

C. Another qualification reads the juror "must be mentally competent and possessing the intelligence to permit him as a juror, to try and determine civil cases."

(1) Is the venireman's intelligence tested in any way before the voir dire? __Yes__ __No__

(2) Would you say that the main test comes during the voir dire? __Yes__ __No__

(3) Is the voir dire more likely to serve the lawyers' interest or the ends of justice in testing this requirement for jury service? Lawyers' Interest ____________ Ends of Justice ____________

(4) In what types of cases would you say the lawyers probe the deepest into the question of the juror's intelligence?

__________________________________________________________

__________________________________________________________

(5) Would you say that the "testing" of the juror's intelligence on or during the voir dire is adequate as measured by your agreement with the jury's verdict (in terms of the number of times you have agreed or disagreed with the jury's verdict)? __Yes__ __No__
(6) As measured by the number of times the jury calls for the record (or parts thereof) or explanations of the law from you? ___Yes  No___

D. C.P. 506 and La. R.S. 15: 172 provide that the district judge shall have the discretion to decide upon the competency of jurors...including physical infirmity.

(1) Of the following physical infirmities or conditions, which have you ruled incompetencies during your years on the bench?

<table>
<thead>
<tr>
<th>Infirmities</th>
<th>Percentage of incompetencies they constitute</th>
</tr>
</thead>
<tbody>
<tr>
<td>old age</td>
<td></td>
</tr>
<tr>
<td>heart condition</td>
<td></td>
</tr>
<tr>
<td>impaired hearing</td>
<td></td>
</tr>
<tr>
<td>failing eyesight</td>
<td></td>
</tr>
<tr>
<td>communicable disease</td>
<td></td>
</tr>
<tr>
<td>paralysis</td>
<td></td>
</tr>
<tr>
<td>speechlessness</td>
<td></td>
</tr>
<tr>
<td>Other (specify)</td>
<td></td>
</tr>
</tbody>
</table>

(2) Out of a venire of 30 (or 40 or 50 as the case may be), on the average, how many veniremen do you rule to be incompetent under the above provisions?

(3) Apart from the venireman's word or oath are any practical tests administered to determine the existence of the infirmity? ___Yes  No___

(4) Which would you say is the more likely to thwart the ends of justice, emotional instability or one of the infirmities listed above?

   Emotional instability____________

   One of the infirmities above________
E. How often do you rule a venireman incompetent because of his inability "to understand the English language, when read or spoken?"

II. Using the exemption sections of the civil and criminal code, would you rank the occupational groups from 1 to 14 according to (1) the likeliness of the members to claim their exemptions if called for jury service and (2) the number of exemptions you grant for each of the occupational groupings.

<table>
<thead>
<tr>
<th>Members of the legislature</th>
<th>Most likely to claim exemptions</th>
<th>Most frequently granted exemptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional officers of the state</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clerks and employees of the Executive Department of the State</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Members of the police jury</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ministers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Physicians and surgeons</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dentists</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Professors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>School teachers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>School bus drivers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Firemen</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial travelers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Telegraph and telephone operators</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chief engineers of water works, ice plants, and sugar factories</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
III. Peremptory Challenges and Challenges for Cause

A. Out of a venire (or petit jury list) of 30 (or more as the
case may be), on the average, how many veniremen are
challenged for cause?

____________________________

(1) Which of the statutory grounds is most frequently used
by the lawyers in challenging for cause?

____________________________

(2) Why do you think this is so?

____________________________

(3) Would you say that other than partiality, most chal­
lenes for cause are necessitated by oversights by the
clerk and commissioners in constructing the general
venire or the failure of veniremen to seek excuses?

Yes   No

B. Does the number of challenges for cause increase or decrease
once peremptory challenges have been exhausted?
Increase   Decrease

C. In ruling on challenges for cause do you apply a less
stringent standard, the same standard, or a more stringent
standard than you do in granting judicial excuse?

Less stringent standard
The same standard
More stringent standard

D. Is the challenge for cause based on partiality resorted to
more frequently when peremptory challenges have been ex­
hausted?

Yes   No

E. In the jury cases you have tried how often were all per­
emptory challenges used?

In every case
In most cases
In some cases
Rarely exhausted

F. In what percentage of jury cases you have tried, would you
say that the experience, abilities and skill of opposing
counsel were evenly matched in the following:
1. In preparing for the voir dire

2. In the use of challenges

3. In establishing rapport with the jurors before trial of the case

4. In their knowledge of the law

5. In being able to emotionally influence jurors during the trial

6. In giving an effective closing argument

G. Do you think the judge exerts an influence on jury selection?  Yes  No

H. In your opinion would the strict or broad constructionist of judicial excuses and challenges for cause produce the better or more qualified jury?

Strict constructionist
Broad constructionist

I. Would you briefly indicate how you go about determining (or deciding) who will be the foreman of the jury (civil cases before 1961)?

J. In which of the following ways would you say the judge influences the verdict?

(1) By his treatment of counsel  Yes  No

(2) By his rulings on the evidence  Yes  No
(3) Through his appearance, or comportment
Yes__ No__

(4) By his instruction to the jury
Yes__ No__

(5) By his handling of requests for clarification of points of law by the jury while in deliberations
Yes__ No__

(6) By his comments on the evidence
Yes__ No__

(7) By the length of time he holds the jury in the hope they will reach a verdict
Yes__ No__

IV. Would you briefly indicate what you think "trial by one's peers" means?

_________________________________________________________________

_________________________________________________________________
I. GENERAL INFORMATION

A. Age: (Check one)
   21___30; 31___40; 41___50; 51___60; 61___70

B. Sex: (Check one)
   Male___ Female___

C. Marital Status: (Check one)
   Married___ Single___ Divorced___ Remarried___

D. Religious Preference: (Check one or specify)
   Protestant___ Catholic___ Jew___ Other___
   (1) Church Attendance: (Check one)
       Weekly___ Frequently___ Seldom___ Never___
   (2) Church Officerships, Chairmanships, Etc.: (Specify)

E. Birthplace and Residence: (Specify)
   (1) City________________________Parish or county______
       State__________________________________________
   (2) Number of years in East Baton Rouge________________

F. Race: (Check one)
   White___ Colored___

G. Education: (Check one or specify)
   (1) Did you graduate from elementary school? Yes___ No___
(2) If not, last year completed __________________________

(3) Did you graduate from high school?
   Yes___ No___

(4) If not, last year completed __________________________
   (a) If you completed high school, what was your class standing when graduated? (Check one)
       In upper quarter of class________________________
       In upper half of class________________________
       In lower half of class________________________
       In lower quarter of class________________________
   (b) Approximate grade average in high school________

(5) College attended: (Specify)
   Where located_____________________________________
   (a) Did you graduate? Yes___ No___
   (b) If not, last year completed_______________________
   (c) Major________________________Minor________________________
   (d) College social and professional organization memberships or officerships: (Specify)
       __________________________________________________
       __________________________________________________

II. Occupation and income level:
(1) Field or Industry in which you work________________________
       (Government, agriculture, business, etc.)
(2) Type of job________________________
       (Engineer, salesman, clerk, etc.)
(3) Job level________________________
       (Chief clerk, supervisor, etc.)
(4) Income Level: (Check one)

0-------$2,499___  $10,000--$12,499___
$2,500--$4,999___  $12,500--$14,999___
$5,000--$7,499___  $15,000--$17,499___
$7,500--$9,999___  $17,500--$19,999___
$20,000 and over___

I. Have you ever served on any of the following: (Specify where necessary)

(1) Grand Jury: Yes___ No____. If yes, number of times you have served________________________
Indicate the years during which you served________________________

(2) Civil Jury: (Check one) Yes___ No____. If yes, indicate the number of times you have served________________________
Indicate the years you served________________________

(3) Petit Jury: (Check one) Yes___ No____. If yes, indicate the number of times you served________________________
Indicate the years you served________________________

II. JURY SERVICE

A. When you received your jury summons, what did you do? (Check one)

Tried to get out of serving________
Tried to find out more about it________

(1) Did you talk to any of the following about your jury summons? (Check as many as necessary)

(a) Friends or relatives________
(b) A lawyer__________________
(c) Clerk of court__________________
(d) The judge__________________
(e) Your employer or business associates__________________

(2) Did you feel that you had a reason to be excused from jury duty? (Check one)

Yes___ No____

(3) Did you ask to be excused? (Check one)

Yes___ No____
(4) What was your reason if you asked to be excused? (Specify)

(5) Whom did you contact about being excused? (Check as many as necessary)

(a) A lawyer ______
(b) The judge ______
(c) Clerk of court ______
(d) Someone else ______

(6) When did you contact your employer about being excused? (Check one)

(a) The next day ____________________________________________
(b) The same week notice was received __________________________
(c) Later (Specify) _________________________________________

(7) If you were employed at the time you received notice, what was your employer's reaction? (Check one)

(a) Favorable ______
(b) Unfavorable ______
(c) No reaction ______

(8) How did you feel about your qualifications for jury service? (Check one or specify)

(a) I felt I would make a good juror _____________________________
(b) I felt I would be as good as the average juror ______________
(c) I felt I would make a poor juror ____________________________

(9) How did you feel about the idea of being a juror? (Check one)

(a) I liked the idea ___________________________________________
(b) I neither liked or disliked it ________________________________
(c) I disliked the idea _________________________________________

(10) Did you think jury service would be a pleasant or unpleasant experience? (Check one)

Pleasant ______ Unpleasant ______

B. How do you think the selection of jurors should be conducted? (Check one)

(1) Lawyers should be required to take the first 12 jurors on the venire who qualify under statute

(2) Judge should select them _________________________________

(3) There should be some other way of doing it __________________

(4) They should continue to do it the way it is presently done ____________________
C. In your opinion what kinds of people do lawyers select for jury service? (Check one)

(1) The most qualified
(2) The average-man type
(3) The least qualified

D. Do you think the lawyers try to get certain types of people on juries and keep certain other types of people off the jury? (Check one)

Yes  No

INSTRUCTIONS:
Below is a list of characteristics. For each category listed, check in the "Favor" or "Disfavor" column what characteristics you think lawyers favor or disfavor in jurors. When you have completed this, would you then check the characteristics you think jurors should have in the columns, "Types you Favor or Disfavor." You may favor or disfavor the same characteristics you think lawyers do or favor or disfavor different characteristics.

<table>
<thead>
<tr>
<th>SEX:</th>
<th>LAWYERS</th>
<th>TYPES YOU</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Favor</td>
<td>Disfavor</td>
</tr>
<tr>
<td>Male</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>AGE:</th>
<th>LAWYERS</th>
<th>TYPES YOU</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Favor</td>
<td>Disfavor</td>
</tr>
<tr>
<td>Young Adults</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Middle Aged</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Old People</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| MARITAL STATUS | LAWYERS | TYPES YOU |
|               | Favor    | Disfavor  | Favor | Disfavor |
|               |          |           |       |          |
| Married |           |           |       |          |
| Single |          |           |       |          |
| Divorced |         |           |       |          |

<table>
<thead>
<tr>
<th>RELIGION</th>
<th>LAWYERS</th>
<th>TYPES YOU</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Favor</td>
<td>Disfavor</td>
</tr>
<tr>
<td>Protestant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Catholic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jew</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| CHURCH ATTENDANCE | LAWYERS | TYPES YOU |
|                  | Favor    | Disfavor  | Favor | Disfavor |
|                  |          |           |       |          |
| Church Goers |           |           |       |          |
| Non-church Goers |         |           |       |          |
III. THE TRIAL

A. During the trial, what or who made the deepest impression on you? (Check one or specify)

(1) The judge__________________________
(2) Lawyer for plaintiff_________________ 
(3) Lawyer for the defendant______________
(4) The district attorney_________________
(5) Fellow jurors_______________________ 
(6) Other (specify)______________________

B. Would you briefly indicate why this thing or person had such an affect on you? (Specify)

______________________________________________________________________________
______________________________________________________________________________

C. If you served on more than one jury, did the same thing, officer of the court, or party have the same affect on you? (Specify)

Yes____ No____
D. In the case or cases in which you sat as a juror, how would you rate the facts that were presented (or how would you rate the evidence)? (Check one or specify)

(1) As difficult to understand
(2) As somewhat difficult to understand
(3) As easy to understand
(4) Other (Specify)

E. Were there times during the trial when you would have liked some additional explanation about what was going on? (Check one)

Yes  No

(1) How often during the trial did this occur? (Specify)

(2) What would you have liked explained? (Check as many as necessary)

(a) The judge's rulings
(b) Testimony of the witnesses
(c) The lawyer's examination of the witnesses
(d) Documentary evidence
(e) Other (Specify)

F. Would you favor "taping" or "cutting" a record of the trial which the jurors could take into the jury room and replay before or during jury deliberations? (Check one)

Yes  No

G. Assuming the trial lasted several days, how would you rate your memory of the first day's proceedings? (Check one)

Excellent  Good  Poor  No memory

H. Would you favor limiting jury trials to the more simple cases and letting the judge handle the more complicated one? (Check one)

Yes  No

I. Would you say that lawyers unnecessarily confuse jurors? (Check one)

Yes  No
(1) If you think lawyers unnecessarily confuse jurors, is it because of any of the following: (Check as many as necessary or specify)

(a) The language lawyers use
(b) The way lawyers conduct their examination of witnesses
(c) Arguing too much among themselves
(d) Trying to influence jurors by glances, mannerisms, innuendoes, and tone of voice
(e) Getting too technical

(2) Expert lawyers make it easier for the juror to understand the facts in the case. (Check one)

Yes___ No___

J. The judge, as a neutral party to the trial, should be allowed to explain, and comment on, the evidence in the case for the benefit of the jurors. (Check one)

Yes___ No___

(1) If the judge could do this, jurors would be able to perform their functions better. (Check one)

Yes___ No___

(2) Do you agree or disagree with this statement? (Check one)

"In criminal cases, jury trial relieves the conscience of the judge by enabling him to put off on the jury the unpleasant task of dealing in human life."

Yes___ No___

K. When the evidence is in, the lawyers summarize their case. This is called the summation. Do you think the summation is: (Check one or specify)

(1) An aid to the juror in remembering the facts in the case
(2) An obstacle to the juror's remembering the facts in the case
(3) Other (Specify)

L. How many days did you serve on the jury? (Specify)
(1) If you served more than one day, where did you spend the night or nights in between court sessions? (Check one or specify, particularly if you served on more than one jury)

(a) At home
(b) In a hotel or motel
(c) In the courthouse
(d) Other (Specify)

(2) Did any of the following have an effect on you or the other jurors in your voting or the verdict you reached? (Check as many as necessary or specify)

<table>
<thead>
<tr>
<th>YOU</th>
<th>OTHER JURORS</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Reports of the trial in the press, on T.V., or over the radio</td>
<td></td>
</tr>
<tr>
<td>(b) Discussions with your wife or family</td>
<td></td>
</tr>
<tr>
<td>(c) Behavior of fellow jurors during, or in between, court sessions</td>
<td></td>
</tr>
<tr>
<td>(d) Persons, other than the above, interested in the outcome of the case</td>
<td></td>
</tr>
<tr>
<td>(e) Threatening or sarcastic remarks by fellow jurors in the jury room</td>
<td></td>
</tr>
<tr>
<td>(f) A troubled conscience</td>
<td></td>
</tr>
<tr>
<td>(g) A decision of how you would vote before all the evidence was in</td>
<td></td>
</tr>
<tr>
<td>(h) A philosophy of life inconsistent with impartiality in a jury trial</td>
<td></td>
</tr>
<tr>
<td>(i) Other (Specify)</td>
<td></td>
</tr>
</tbody>
</table>
IV. JURY DELIBERATIONS:

A. How much discussion of the case occurred in the jury room the last or only time you were a juror? (Check one)

A great deal ___ Some ___ Very little ___ None ___

B. Was there any talk about the following items in the jury room (See instruction)?

INSTRUCTION FOR FILLING OUT IV B.

In the columns "Percent of Time Items Talked About," check as many items as were discussed during your deliberations as a percent of the total time spent in deliberations. For example, on the "guilty looks of the accused," petit jurors who served on juries discussing this item in their deliberations would estimate the percent of total time spent in deliberations given to this item. If it were 10%, he would place a check mark opposite "the guilty looks of the accused" in the column labelled 10%. For each of the remaining items proceed the same way, if the item were discussed in jury deliberations. Answer for the last or only jury on which you served.

<table>
<thead>
<tr>
<th>PERCENT OF TIME ITEMS TALKED ABOUT</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 20 30 40 50 60 70 80 90 100</td>
</tr>
</tbody>
</table>

(1) The "guilty looks of the accused"

(2) The uneasiness, the looks, poise, or any other aspect of the appearance of the witnesses

(3) The story the witness told

(4) The way the lawyers conducted their case

(5) The reputation of the lawyers

(6) The weather

(7) People on the jury or in the community
PERCENT OF TIME ITEMS TALKED ABOUT

10 20 30 40 50 60 70 80 90 100

(9) How the verdict would affect the family of the accused

(9) The reputations of the parties

(10) Race or racial differences

C. Of the items listed above, or any other item you are free to specify, what was talked about the most in the jury room? (Indicate below)

D. What percent of the jury's deliberating time was given to discussion of the following: (Please approximate the time as a fraction of 100%, which we will call the jury's total deliberating time)

<table>
<thead>
<tr>
<th></th>
<th>For Jurors Who Served on a Civil Jury</th>
<th>For Jurors Who Served on a Petit Jury</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Facts in the case</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Other matters</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

(1) If you served on more than one jury, proceed as you did in D for Jury II, space for which is provided below:

<table>
<thead>
<tr>
<th>JURY II</th>
<th>For Jurors Who Served on a Civil Jury</th>
<th>For Jurors Who Served on a Petit Jury</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Facts in the case</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Other matters</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

(2) If you served on more than two juries, proceed as you did above for Jury III, in the space provided below:
156

<table>
<thead>
<tr>
<th>JURY III</th>
<th>For Jurors Who Served on a Civil Jury</th>
<th>For Jurors Who Served on a Petit Jury</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Facts in the case</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other matters</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

E. Did anyone on the jury seem to have more influence on the rest of the jurors than anyone else? (Begin with the last or only jury on which you served and work back in time. Jury I is the last or only jury on which you served)

<table>
<thead>
<tr>
<th>Jury I:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes__ No___</td>
<td>Civil Jury___</td>
<td>Petit Jury___</td>
</tr>
<tr>
<td>Jury II:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes__ No___</td>
<td>Civil Jury___</td>
<td>Petit Jury___</td>
</tr>
<tr>
<td>Jury III:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes__ No___</td>
<td>Civil Jury___</td>
<td>Petit Jury___</td>
</tr>
</tbody>
</table>

INSTRUCTION:

In "E" above, for each jury on which you have served, beginning with the last (or only) jury as Jury I, you should have checked either "Yes" or "No" and indicated whether it was a civil or criminal jury.

(1) Was this individual the foreman or someone else? (Continue to use Jury I, II, and III as you used them above. If Jury I was a civil jury above and you checked "Yes," then Jury I below should be answered as if it were the same civil jury.)

<table>
<thead>
<tr>
<th>Jury I:</th>
<th>Foreman___</th>
<th>Some other member___</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jury II:</td>
<td>Foreman___</td>
<td>Some other member___</td>
</tr>
<tr>
<td>Jury III:</td>
<td>Foreman___</td>
<td>Some other member___</td>
</tr>
</tbody>
</table>

(2) Would you please indicate this man's occupational level? (Continue to use Jury I, II, III as you used them above.)

<table>
<thead>
<tr>
<th>JURY I</th>
<th>JURY II</th>
<th>JURY III</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proprietor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Managerial and Professional</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clerical and Sales</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Skilled</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Semi-skilled and Unskilled Labor</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
F. Whom do you believe contributed most to helping your group reach its decision (verdict)? (Use Jury I, II, III as you used them above, beginning with Jury I as the last (or only) jury on which you served and then proceeding to the others.)

Jury I: Foreman ___ Some other member __

Jury II: Foreman ___ Some other member __

Jury III: Foreman ___ Some other member __

1. Would you indicate this man's occupational classification? (Continue to use Jury I, II, III as you used them above, beginning with Jury I as the last (or only) jury on which you served and working back in time from there.)

<table>
<thead>
<tr>
<th></th>
<th>JURY I</th>
<th>JURY II</th>
<th>JURY III</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proprietor</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Managerial and Professional</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clerical and Sales</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Skilled</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Semi-skilled and Unskilled Labor</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. Would you briefly indicate why you think this man contributed so much to helping your group reach its verdict? (Specify for each jury on which you served, using Jury I, II, and III as you used them above.)

INSTRUCTION:

3, 1, 2, 3, and 4 are to be answered by those who served on civil juries. Continue to use Jury I, II, and III as you used them above. Jury I should be treated as the last (or only) civil jury on which you served; Jury II, as the second-to-last civil jury on which you served, and so on.
C. If you served on a civil jury, for whom did you finally vote? (Check one for each civil jury on which you served.)

Jury I: Plaintiff____ Defendant____
Jury II: Plaintiff____ Defendant____
Jury III: Plaintiff____ Defendant____

(1) If the jury or juries on which you served voted more than once, did you switch your vote from one party to the other during the voting? (Check one for each civil jury on which you served.)

Jury I: Switched from plaintiff to defendant________
Switched from defendant to plaintiff________
Jury II: Switched from plaintiff to defendant________
Switched from defendant to plaintiff________
Jury III: Switched from plaintiff to defendant________
Switched from defendant to plaintiff________

(2) If you switched from one party to the other during the voting, would you please indicate why you did this for each of the civil juries on which you served? (Continue to use Jury I as the last (or only) civil jury on which you served.)

Jury I________________________________________
Jury II________________________________________
Jury III________________________________________

(3) How many other people switched their vote from one party to the other during the voting? (Continue to use Jury I as the last (or only) civil jury on which you served.)

Jury I________________________________________
Jury II________________________________________
Jury III________________________________________

(4) Why do you think these other people switched their vote from one party to the other during the voting? (Continue to use Jury I as the last (or only) civil jury on which you served.)
INSTRUCTION:

J 1, 2, 3, and 4 are to be answered by those who served on petit (or criminal) juries. Continue to use Jury I, II, and III as you used them above. Jury I should be treated as the last (or only) petit jury on which you served; Jury II, as the second-to-last petit jury on which you served, and so on.

J. If you served on a petit (criminal) jury, how did you finally vote? (Check one for each petit jury on which you served.)

Jury I: Guilty ___ Not Guilty ___
Jury II: Guilty ___ Not Guilty ___
Jury III: Guilty ___ Not Guilty ___

(1) If the jury or juries on which you served voted more than once, did you switch your vote from guilty to not guilty or vice versa during the voting? (Check one for each petit jury on which you served. Continue to use Jury I as the last (or only) petit jury on which you served.)

Jury I: Switched from Guilty to Not Guilty
Switched from Not Guilty to Guilty

Jury II: Switched from Guilty to Not Guilty
Switched from Not Guilty to Guilty

Jury III: Switched from Guilty to Not Guilty
Switched from Not Guilty to Guilty

(2) If you switched your vote from guilty to not guilty or vice versa during the voting, would you please indicate why you did this for each of the petit juries on which you served? (Continue to use Jury I as the last (or only) petit jury on which you served.)

Jury I: ________________________________
Jury II: ________________________________
Jury III: ________________________________
(3) How many other people switched their vote from guilty to not guilty or vice versa during the voting? (Continue to use Jury I as the last (or only) petit jury on which you served.)

Jury I

Jury II

Jury III

(4) Why do you think these other people switched their vote from guilty to not guilty or vice versa during the voting? (Continue to use Jury I as the last (or only) petit jury on which you served.)

Jury I

Jury II

Jury III

K. Did most of the jurors have much to say or offer before they voted or during the voting? (Check "yes" or "no" under civil or petit jury depending on the last (or only) jury on which you served. If you served on both civil and petit juries check "yes" or "no" under both but indicate which type of jury was the last on which you served.)

For Civil Jurors

Yes__ No__

For Petit Jurors

Yes__ No__

(1) For each of the juries on which you served, how many times did you vote before a verdict was reached? (Place a check under civil or petit jury depending on the type you served on. If you have served on both types or more than once on the same type of jury, follow the procedure above. Jury I should be the last or only jury on which you served, and so on.)

CIVIL JURY PETIT JURY

Jury I

(Number of times jury voted)

Jury II

Jury III
(2) How long did it take you (the jury) to reach a verdict? (Place your estimate of the number of hours or fractions thereof under the type of jury you served on. If you have served on both types or more than once on the same type of jury, follow the procedure above. Jury I should be the last or only jury on which you served, and so on.)

<table>
<thead>
<tr>
<th>CIVIL JURY</th>
<th>PETIT JURY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jury I</td>
<td></td>
</tr>
<tr>
<td>Jury II</td>
<td></td>
</tr>
<tr>
<td>Jury III</td>
<td></td>
</tr>
</tbody>
</table>
CONTINUING JURY SERVICE

<table>
<thead>
<tr>
<th>By year served in chronological order</th>
<th>JURY I</th>
<th>JURY II</th>
<th>JURY III</th>
<th>JURY IV</th>
<th>JURY V</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Year Served</td>
<td>Year Served</td>
<td>Year Served</td>
<td>Year Served</td>
<td>Year Served</td>
</tr>
<tr>
<td></td>
<td>Civil</td>
<td>Crim</td>
<td>Civil</td>
<td>Crim</td>
<td>Civil</td>
</tr>
</tbody>
</table>

1. Whom do you believe contributed most to helping your group (jury) reach its decision (verdict)? (Check either Foreman or Some other member for each kind of jury on which you served.)
   - Foreman
   - Some other member

2. For each jury on which you served, would you please indicate this man's occupational classification. (See question above, then check one classification for each jury on which you served.)
   - Proprietor
   - Managerial and Professional
   - White Collar and Sales
   - Skilled
   - Semi-skilled and Unskilled
### Continuing Jury Service

<table>
<thead>
<tr>
<th>By year served in chronological order</th>
<th>JURY I</th>
<th>JURY II</th>
<th>JURY III</th>
<th>JURY IV</th>
<th>JURY V</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year Served</td>
<td>Civil</td>
<td>Civil</td>
<td>Civil</td>
<td>Civil</td>
<td>Civil</td>
</tr>
<tr>
<td>Year Served</td>
<td>Crim</td>
<td>Crim</td>
<td>Crim</td>
<td>Crim</td>
<td>Crim</td>
</tr>
</tbody>
</table>

### 3. How did you finally vote? (Check one for each civil or criminal jury on which you served.)

- **For Plaintiff**
- **For Defendant**
- **Guilty**
- **Not Guilty**

### 4. If your group balloted more than once, did you switch your vote from one party (or verdict) to another during the balloting? (Check appropriate cell for each jury on which you served.)

- **Switched from Pltf. to Deft.**
- **Switched from Deft. to Pltf.**
- **Switched from Guilty to Not Guilty**
- **Switched from Not Guilty to Guilty**
CONTINUING JURY SERVICE

<table>
<thead>
<tr>
<th>By year served in chronological order</th>
<th>JURY I</th>
<th>JURY II</th>
<th>JURY III</th>
<th>JURY IV</th>
<th>JURY V</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Civil</td>
<td>Crim</td>
<td>Civil</td>
<td>Crim</td>
<td>Civil</td>
</tr>
</tbody>
</table>

5. How many people switched their vote during the balloting? (Specify the number of people who switched in the appropriate cell for each jury on which you served.)

- Switched from Pltf. to Deft.
- Switched from Deft. to Pltf.
- Switched from Guilty to Not Guilty
- Switched from Not Guilty to Guilty

6. Why did you switch your vote during the balloting from one party (or verdict) to another? (Use space below to specify reason, then check appropriate cell for each jury on which you served.)

Brief Reason Here
## Continuing Jury Service

<table>
<thead>
<tr>
<th>By year served in chronological order</th>
<th>JURY I</th>
<th>JURY II</th>
<th>JURY III</th>
<th>JURY IV</th>
<th>JURY V</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year Served</td>
<td>Year Served</td>
<td>Year Served</td>
<td>Year Served</td>
<td>Year Served</td>
<td>Year Served</td>
</tr>
<tr>
<td>Civil Crim</td>
<td>Civil Crim</td>
<td>Civil Crim</td>
<td>Civil Crim</td>
<td>Civil Crim</td>
<td>Civil Crim</td>
</tr>
</tbody>
</table>

7. For each of the juries on which you served, how many times did you ballot before a verdict was reached? (Specify number in appropriate cell for each jury on which you served.)

<table>
<thead>
<tr>
<th>Number of times jury balloted</th>
</tr>
</thead>
</table>

9. How long did it take you (the jury) to reach a verdict? (Specify the approximate number of hours and fractions it took you to reach a verdict for each jury on which you served.)

<table>
<thead>
<tr>
<th>Number of hours to reach verdict</th>
</tr>
</thead>
</table>
APPENDIX E

THE LAWYER
I. ORGANIZATIONAL FACTORS

A. Type of Practice: (Check one and complete where necessary)

1. Private practice

2. Law firm Size

3. Corporation Counsel

4. Labor attorney For what union

5. Government attorney For how many years
   (a) Federal What Dept. or Agency
   (b) State What Dept. or Agency
   (c) Local What Dept. or Agency

B. In what Court or Courts do you practice?

1. State Judicial District
   (a) Average # of suits filed during court year
   (b) Average # of suits contested during court year
   (c) # of suits contested during 1960-61 term

2. Federal District Court
   (a) Average # of suits filed during court year
   (b) Average # of suits contested during court year
   (c) # of suits contested during 1960-61 term
   (d) Most common type of suit
   (e) Number and type of jury trials you have figured in

C. Location of Practice:

1. City

2. Town

3. Combination of city or town and other areas

D. Retainers:

1. Number

2. Principal type

167
II. ROLE FACTORS

A. Client Specialization: (Type of client handled primarily)

1. Male ______ Female ______ About equally divided ______
2. Age of most clients ______ Marital status of most clients ______
3. White ______ Colored ______ Clients about equally divided ______
4. Socioeconomic status of clients: (Treat as a percentage of 100, which represents percentage wise all your clients)
   (a) Proprietary and corporate ____________________________
   (b) Managerial and professional ____________________________
   (c) Sales and white collar ____________________________
   (d) Skilled and semi-skilled ____________________________
   (e) Unskilled labor ____________________________
   (f) Farm labor ____________________________
   (g) Retired ____________________________

B. Case Specialization:

1. Civil ______ Criminal ______ Cases about equally divided ______
   Percentage breakdown on civil and criminal cases handled ______
2. Types of civil cases handled primarily ____________________________
3. Civil case area in which you have had most of your jury trials ____________________________
4. Types of criminal cases handled primarily:
   (a) Felony ______ Misdemeanor ______ About equally divided ______
   (b) Criminal case area in which you have had most of your jury trials ____________________________
   (c) Defense or prosecution in how many murder trials ____________________________

C. Functional Specialty as Lawyer: (Specify as a percent of 100 which constitutes your total activities)

1. Trial ____________________________
2. Counselor ____________________________
3. Agent or representative ____________________________
4. Legal research ____________________________
5. Teaching ____________________________
6. Combination (Specify) ____________________________

D. Professional Organization Memberships:

1. Member of Local Bar Association ______ State Bar ______
   American Bar Association ______ Chairmanships or Officerships ______
2. Member of Law School Alumni Association
3. Alumnus Membership in legal fraternity Yes__ No__
   Officerships__________________________
4. Other Professional Organizations to which you belong:
   __________________________________________
   __________________________________________
   __________________________________________

E. Community Organization Memberships:

PTA ___ Symphony Orchestra ___ United Fund ___
Community Council ___ March of Dimes ___ Heart Fund ___
Red Cross ___ YMCA ___ YWCA ___ Other (Specify) ___

For the organizations listed above, please indicate offices
held, committee chairmanships, and other positions
__________________________________________
__________________________________________
__________________________________________

F. Social Organization Memberships:

1. Lions ___ Shriners ___ Rotary ___ Veterans
   Organization ___ Kiwanis ___ Country Club ___
   Knights of Columbus ___ Dance Club ___
   Masons ___ Others (Specify) ___

2. For organizations listed above, please indicate offices
   held, committee chairmanships and other positions
   __________________________________________
   __________________________________________
   __________________________________________

G. Political Organization Memberships:

1. City Council ___ Citizens Council ___ School
   Board ___ State Sovereignty Comm. ___ Legislative
   Office ___ Civil Liberties Union ___ OPEN ___
   CORE ___ Others (Specify) ___

III. PERSONAL FACTORS AFFECTING SELECTION

A. Sex: Male ___ Female ___
B. Undergraduate Major ___ Minor ___
C. Law School Graduate ___ Law Office Background ___
C. Graduate of what law school ___
1. Law Journal experience ________________________________
2. Moot Court experience  Yes  No
   If yes, number of years ________________________________
3. Order of the Coif ________________________________
4. Overall grade average in law school ________________________________
5. Number of law school lectures heard on Jury Trial ________________________________
6. Number of law school lectures heard on Jury Selection ________________________________

E. Ethics

1. Have you ever had a Bar Association or Court reprimand?  Yes  No.  Of what nature? ________________________________

2. Have you ever had a case rescheduled because of pre-trial investigation of jurors?  Yes  No.  Number ______

F. Socioeconomic Status of Self and Parents:

1. Father's Occupation ________________________________
   Approximate yearly income ________________________________

2. Your Income Level ________________________________
   0—5,999  6,000—11,999  12,000—17,999  18,000—23,999  24,000—29,999  30,000—35,999  36,000—41,999  42,000—47,999  48,000 and over

3. Please approximate yearly income if over $48,000 ________________________________

IV. PRE-TRIAL

A. When you are the attorney in a civil or criminal case and the jury list (or venire) has been furnished, how much pre-trial investigating of veniremen do you do?
   Great deal____  Some____  None____

B. What is the nature of your investigation?

1. Use the city directory  Yes  No
2. Use voting roll information  Yes  No
3. Use a personal file on individual jurors or jury performance  Yes  No
4. Conduct a private investigation  Yes  No
5. Use other information or investigatory techniques (Specify) ________________________________
C. Do you have a standardized method or technique for selecting jurors? Yes ___ No ___. If yes, would you briefly describe it? ___________________________

1. Is this method or technique something you developed yourself? Yes ___ No ___. If not, from whom was it acquired? Law School _____ Associates _____ Father _____

2. How much weight would you say you give to the following in your selection of jurors? (Specify percent of 100 each constitutes)
   (a) Pre-trial investigation ______________________________
   (b) Appearance of juror (Dress, poise, etc.) __________________
   (c) Questioning of, and answers by veniremen during the voir dire ____________________________________________
   (d) Tactics of opposing counsel __________________________

3. For each category check the kinds of people you "Avoid," "Prefer," or are "Indifferent" about in your selection of jurors. (Try to determine if interviewee has any general guide or basis for selecting veniremen?

<table>
<thead>
<tr>
<th>CHARACTERISTICS</th>
<th>AVOID</th>
<th>PREFER</th>
<th>INDIFFERENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sex:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Age:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Young Adults</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Middle Aged</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Old</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marital Status:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Married</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Single</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Divorced</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Religion:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Church Goers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-church Goers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Occupation:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proprietors</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales and White Collar</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Skilled and Semi-skilled Labor</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Farm Labor</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retired</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
CHARACTERISTICS (Cont.)

AVOID  PREFER  INDIFFERENT

Educational Level:
- Elementary School
- High School
- College
- Professional School
- Graduate School

Residence:
- Rural People
- Urban People

Race:
- White
- Colored

Jury Service:
- Previous Service
- Prior Claims or Suits in Immediate Family of Juror
- Prior Claims or Suits of Juror
- No Previous Service

Labor Organization:
- Union
- Non-union

4. Are there other types of people you "prefer" or "avoid" in your selection of jurors? (Please indicate)

5. In certain types of cases you can recall, what types of jurors would you prefer and what types would you avoid? (Briefly describe the case and indicate the type of juror)

V. THE TRIAL

A. During your career, how many jury trials have you participated in? (Specify)

(1) In how many was the verdict of the jury in your favor? (Or in approximately what percentage of these cases was the verdict in your favor)

(2) In what percentage of these cases (jury trials) did you succeed in getting the kind of jury you wanted?
(3) In what percentage of the cases in which you had the kind of jury you wanted was the jury's verdict in your favor?_______________________________

B. At the voir dire, essentially what do you try to accomplish? (Specify)____________________________________

C. Have you, your associates, or other lawyers ever tried to do any of the following during the voir dire: (Check as many as necessary or specify)

YOU ASSOCIATES OTHERS

(1) Tried to get friendly with the jurors
(2) Tried to make the jurors believe that they were especially selected for this case
(3) Tried to pre-try issues of fact by "feeling out" the veniremen during the voir dire
(4) Tried to create in the veniremen or jurors' mind a bias against the opposing party, his counsel, or his side of the case
(5) Other (Specify)____________________________________

D. Do you have any specific tactic or strategy that you use in exercising your right to challenge jurors? Yes___ No___

(1) If yes, would you briefly describe it?____________________________________

(2) After your examination, have you ever passed jurors on to opposing counsel without indicating whether they were acceptable or unacceptable to you? Yes___ No___

(3) Ordinarily, when do you use your peremptory challenges?

(a) After examining the juror____________________________________
(b) After both you and opposing counsel have examined the juror____________________________________
(c) After 12, or after 5 jurors in the case of a bobtailed jury, have been examined____________________________________
(d) Other (Specify)____________________________________
(4) Are there certain types of people you, or other lawyers you know, challenge peremptorily? (Check as many as necessary or specify)

YOU OTHERS

(a) Women
(b) Colored People
(c) Chinese or Japanese
(d) Certain Nationalities
(e) People over 60
(f) People who have had some legal training
(g) Other (Specify)

(5) Have you ever challenged a juror peremptorily because of a "hunch" you had about him? Yes No

(6) How often has this happened? (Specify)

(7) On what do you base your peremptory challenges? (Specify)

(8) In what percentage of the cases (jury trials) in which you have participated were all peremptory challenges used? (Specify percent)

(9) In what percentage of the cases in which you participated were no peremptory challenges used? (Specify percent)

(10) Do you think the number of peremptory challenges should be increased, decreased, or kept as it is?

Increased Decreased Kept as is

11. How do you use the challenge for cause? (Briefly indicate)

(1) Have you, or other lawyers you know, used the challenge for cause for any of the following purposes? (Check as many as necessary)

YOU OTHERS

(a) To mislead opposing counsel
(b) To determine whether the judge is a broad or narrow constructionist
(c) To influence veniremen who have not been examined yet
(d) To obtain a more favorable jury
(2) How often have you felt you had grounds but didn't challenge for cause?

Frequently ___ Seldom ___ Never ___

F. In how many of the jury trials you have participated in, has there been a challenge to the array?

(1) How many of these (challenges to the array) were successful

(2) Briefly indicate why you think the challenge was made

G. In how many of the jury trials in which you have participated have tales jurors been called or used?

(1) Are tales jurors examined more thoroughly, less thoroughly, or about the same as regular jurors?

More thoroughly ___ Less thoroughly ___ About the same ___

(2) Have you been more successful, less successful, or have you done about the same with tales jurors (on which there are one or more tales jurors) as with regular juries?

More successful ___ Less successful ___ About the same ___

H. Of what importance is your opening argument to your case?

Of considerable importance ___ Some importance ___ Little importance ___ No importance ___

(1) Would you briefly indicate the function of your opening argument?

(2) Have you, or any of the lawyers you know, used the opening argument for any of the following:

YOU OTHERS

(a) As an opportunity to become better acquainted with the jurors
(b) To determine which jurors you will direct your case towards
(c) To gauge the legal ability or alertness of opposing counsel
(d) To determine the caliber, impartiality, or frame of mind of the judge
(e) Other (Specify) ______________________
I. Would you briefly indicate what you think are the more important phases or aspects of jury trial, particularly from the standpoint of being able to get a favorable verdict from the jury?

(1) How would you rate the following with respect to their influence on the verdict? (Give as a percent of 100)

(a) Evidence in the case
(b) Bias of the judge
(c) Caliber of opposing counsel
(d) Being able to establish rapport with the jurors
(e) A courtroom public who favors your side of the case
(f) A favorable regard for your side of the case by the press, radio, or T.V.
(g) The nature and quality of the closing argument
(h) The persuasiveness of the witnesses

(2) In your opinion would the number of times the judge overrules your objections and sustains the objections of opposing counsel have an effect on the verdict?

Yes__ No__

(3) Would you say that it has an effect on the jurors?

Yes__ No__

(4) Is your behavior before a judge (non-jury trial) the same as your behavior before a jury?

Yes__ No__

(a) If not, would you briefly describe the differences?

(b) Of the following, what differences in your verbal and non-verbal behavior exists before the judge (non-jury trial) and before the jury? (Check as many as necessary or specify)
J. Would you briefly indicate the purpose of your closing argument?

______________________________

K. Of the following which do you think is the most important with respect to the verdict? (Check one)

(1) The kind of jury you get
(2) The type of case you can build for your client
(3) The opening argument
(4) The closing argument

L. Would you say that the summation (the closing argument) is less legal in its content (types of words used) than any other part of the trial?

Yes   No

(1) Did you ever think you won a verdict solely or primarily on the basis of your closing argument?

Yes   No

(2) If yes, how often was this true?

______________________________

(3) How often have you given what you or your associates or opposing counsel thought was a particularly good closing argument and lost the case?

______________________________

M. What is the average length (in minutes) of your closing argument?

______________________________

(1) Do any of the following affect the length or content of your closing argument? (Check as many as necessary or specify)
(a) The issues in the case
(b) The amount of damages sought
(c) The type of client you represent
(d) Whether a civil or criminal case is involved
(e) The publicity given the case in the press, over the radio, and on T.V.
(f) The kind of jury you have
(g) Other (Specify)__________________________

(2) In order of their importance, which two items listed above affect your closing argument the most?

N. Is your closing argument intended for the entire jury or do you concentrate on certain members of the jury?

Yes ___ No ___

O. Is there any particular tactic or strategy you employ in giving your closing argument? Yes ___ No ___

(1) If yes, would you briefly indicate what it is? (Specify)

(2) Have you, your associates, or other lawyers you know used any of the following in the closing argument? (Check as many as necessary or specify)

YOU ASSOCIATES OTHERS

(a) Tears
(b) Epithets
(c) Religious sayings
(d) Half-truths or distortions of the truth
(e) Overbearing appearance
(f) Confidential tones
(g) Special dress
(h) Particular mannerisms
(i) Specify__________________________
Instruction Sheet For Cases Three (3) and Four (4)

Cases 3 and 4 include a factual situation and a venire. The venire has been reproduced on cards which are arranged in the approximate order that veniremen were called up for the voir dire. General practitioners and plaintiff lawyers lead off with their selections of a jury on the civil side; district attorneys on the criminal side.

To achieve as much realism as possible challenges must be used to move through the deck. Four peremptories are allowed civilly and whatever challenges for cause the attorney may find. This puts the civil cases in the context in which they were tried, 1959-61. Thus, if the first venireman is not desirable in view of the factual situation, he has to be challenged. One cannot go to the end or middle of the deck for selections. He has to deal with each venireman as he comes up in the deck of cards.

Selections made and challenges are to be recorded by number in answer to the series of questions following each case. The number of each venireman appears in the upper left hand corner of the front and reverse of each card.

When plaintiff attorney's selections are in, they become a part of the interview material for defense counsel. Complete anonymity, however, is assured. No defense counsel will know whose selections he is dealing with, and vice versa, until a jury of 12 has been impaneled.

Prosecutors and defense counsel will follow the same procedure.

Many thanks for your cooperation. If you care to comment, your remarks would be appreciated on the Lawyer Interview form.
CIVIL CASES

Two Sets: One for plaintiff lawyers and one for defendant lawyers. Cases remain the same; however, word changes occur in the questions depending on whether a plaintiff or defendant lawyer was being interviewed.

CASE # 1

The "T" Company sold sand, which was dumped into large bins from cars running on an elevated track, and then delivered through 13 inch openings in the bins into wagons on the street level. Children often climbed on the top of the bins by a ladder that was fastened on the side, and played in the sand, sliding down the sloping sides of the bins through the openings. A ten-year old boy slid down and was smothered in sand that flowed down after him.

A. If the issues here came to trial before a jury, as counsel for the "T" Company what kinds of people would be acceptable to you as jurors? (Use social background characteristics or personality traits to indicate the kinds of jurors you would prefer)

________________________________________________________________________

(1) What kinds of people would you try to avoid through peremptory challenges? (Follow instruction in A above)

________________________________________________________________________

(2) What types of partiality, if any, would you challenge for cause?

________________________________________________________________________

B. If deceased were 21 instead of 10 years old and you represented the "T" Company, what kinds of people would be acceptable to you as jurors? (Follow instruction in A above)

________________________________________________________________________
C. In the original fact situation, assuming there were more witnesses than you needed, are there any particular types you would prefer? (Use social background characteristics or personality traits to indicate the type of witnesses you would prefer)

CASE #2

A lithograph likeness of a young woman bearing the words, "Flour of the Family" was without her consent printed and used by a flour milling company to advertise its goods. Suit was brought by the young lady against the flour milling company to enjoin it from further using the lithographs and for damages. The petition charged that in consequence of the circulating of such lithographs the plaintiff's good name had been attacked, and she had been greatly humiliated and made sick and had been obligated in consequence thereof to call a physician and had incurred large debts of medicines and physician's bills, in endeavoring to be cured of her illness.

A. If you represented the company in this case, what types of people would be acceptable to you as jurors? (Use social background characteristics or personality traits to indicate the kinds of jurors you would prefer)

(1) What kinds of people would you try to avoid through peremptory challenges? (Follow instruction in A above)

(2) What types of partiality, if any, would you challenge for cause?
B. If the plaintiff were a man instead of a woman, what types of people would be acceptable to you as counsel for the flour company? (Follow instructions in A above)

(1) What kinds of people would you try to avoid through peremptory challenges? (Follow instructions in A above)

(2) What types of partiality, if any, would you challenge for cause?

C. Apart from the legal issues involved in this case, what economic, social, or psychological factors would you stress or allude to in your closing argument?

CASE # 3

An employee of the Coca Cola Bottling Company was pushing a dolly loaded with 8 or 9 cases of coca cola. The dolly tiped over and some of the cases struck plaintiff who was sitting on a chair in a next-door parking lot waiting for some friends. Suit was brought by the plaintiff against the Coca Cola Bottling Company for damages. His petition alleges that as a result of the accident he suffered severe painful and permanent injuries consisting of contusions, abrasions, bruises, torn ligaments and muscles, trauma, and the shock which have disabled him from his work as a pipe fitter both now and hereafter.

A. If you had this venire (to be furnished) and knew these facts about the venireman (to be furnished), which would be the first 12 veniremen acceptable to you as jurors, assuming you were counsel for the Coca Cola Bottling Company? (See attached instructions as to how to proceed)

(1) Would you briefly indicate why these 12 veniremen would be acceptable to you as jurors? (See instruction sheet)

(2) Until you had a jury of 12, what veniremen would you challenge peremptorily? (See instruction sheet)
(3) Would you briefly indicate why such challenges would be made?

(4) Until you had a jury of 12, would you challenge any for cause? (See instruction sheet)

(5) If you challenge any veniremen for cause would you briefly indicate why?

B. If plaintiff were a doctor instead of a pipe fitter, would the same 12 veniremen in A be acceptable to you as jurors?

Yes  No

(1) If not, until you have a jury of 12, what veniremen would be acceptable to you as jurors? (See instruction sheet)

(2) Would you briefly indicate why you challenged any of the original 12 veniremen you accepted as jurors in I A above?

C. Suppose in the original fact situation the employee of the Coca Cola Bottling Company intentionally tipped the dolly so that the cases fell on the pipe fitter sitting in the next-door parking lot, would the same 12 veniremen be acceptable to you as jurors? (See instruction sheet)

(1) If not, which would be the first 12 veniremen acceptable to you as jurors? (See instruction sheet for procedure)

(2) Would you briefly indicate why the new veniremen would be more acceptable to you than the original as jurors?
(3) Would you briefly indicate why you challenged any of the original 12 veniremen you accepted as jurors?

____________________________

CASE # 4

Plaintiff, a pipe fitter, brought his car to a stop behind a line of traffic. While waiting for the light to change from red to green as a signal to move forward, he was struck with great force from the rear by a 1952 model sedan, operated by the defendant. As a consequence of the accident, plaintiff experienced pain and suffering and serious and excruciating bodily injury. In a suit against the defendant, plaintiff seeks $40,000.00 in damages and pleaded a direct cause of action against defendant's insurer, the "M" Company.

A. If you had this venire (to be furnished) and knew these facts about the veniremen (to be furnished), which would be the first 12 veniremen acceptable to you as jurors, assuming you were counsel for the "M" Company. (See instruction sheet for procedure)

____________________________

(1) Would you briefly indicate why these 12 veniremen would be acceptable to you as jurors?

____________________________

(2) Until you had a jury of 12, what veniremen would you challenge peremptorily? (See instruction sheet for procedure)

____________________________

(3) Would you briefly indicate why such challenges would be made?

____________________________

(4) Until you had a jury of 12, would you challenge any for cause? (See instruction sheet)

____________________________

(5) If such challenges would be made, would you briefly indicate why?
B. Let us suppose the pipe fitter was the father of 10 children and had died as a result of the injuries sustained. As counsel for the "M" Company, would the same 12 veniremen in A above be acceptable to you as jurors?

Yes____ No____

(1) If not, until you have a jury of 12, what veniremen would be acceptable to you as jurors? (See instruction sheet)

________________________________________________________________________

(2) Would you briefly indicate why you challenged any of the original 12 veniremen you accepted as jurors?

________________________________________________________________________
CRIMINAL CASES

Two Sets: One for prosecutors and one for defense counsel. Cases remain the same, however, word changes occur in the questions depending on whether a prosecutor or defense counsel was being interviewed.

CASE # 1

During the early morning of February 14th, an explosion followed by fire occurred in a building on Main Street, and two boys, sons of the tenant of the building, were burned to death. Ownership of the property was in the name of the wife of the accused, and a portion of the building was used for the storage of furniture by Livewell Furniture Company, a corporation of which the accused was the majority stockholder. The accused, a man of 50 years, was indicted upon a charge of murder for having caused the death of the two boys by willfully burning the building for the purpose of collecting insurance on it and the furniture stored therein.

A. If the case here came to trial before a jury and you were handling the prosecution, what kinds of people would be acceptable to you as jurors? (Use social background characteristics—such as age, marital status, etc.—or personality traits to indicate the kinds of jurors you would prefer)

(Use reverse side of sheet if necessary)

(1) What kinds of people would you try to avoid through peremptory challenges? (Follow instruction in A above)

(Use reverse side of sheet if necessary)

(2) What types of relationship would you challenge for cause?

(3) What types of relationship would you challenge peremptorily?

B. Suppose the accused were a woman instead of a man and the owner of the building and furniture, what kinds of people would be acceptable to you as jurors? (Follow instruction in "A" above)
(1) What kinds of people would you try to avoid through peremptory challenges? (Follow instruction in "A" above)

(2) What kinds of relationships would you challenge peremptorily, assuming they were not covered by the challenge for cause?

CASE # 2

Mrs. Aimless, a widow of 75, made a deal with James Jones to advance large sums of money to him for the purpose of acquiring some maps which Jones and his companion represented were in existence in a foreign country and which would reveal the location on her property of much buried gold.

The treasure hunt was started by Mrs. Aimless advancing Jones $5,000 for the purpose of enabling him to go to Spain and purchase the first map. A month later Jones returned with a map and by its pretended use directed a group of diggers to a designated spot on the Aimless property where a lot of metal bars resembling gold were dug up. Jones had made the map out of his imagination and the "gold bars" out of bronze. It was agreed that the bars would be kept in the home of Mrs. Aimless until the day arrived when gold was no longer federally controlled and could be converted into spending money. Then they could divide the treasure equally.

Thereafter, Jones reported that he had located other maps; more money was advanced to procure them; more bars dug up and placed in the widow's closet. Over a period of four years, the widow advanced $175,000 under such circumstances.

Eventually the time arrived when Jones said the gold was salable in Neighboring City. With Mrs. Aimless' consent it was taken from the closet and loaded onto a truck, which Jones drove away. While proceeding towards Neighboring City—according to Jones' report—he was hijacked of the entire load.

A. If the issues here came to trial before a jury and you were handling the prosecution, what kinds of people would be accepted to you as jurors? (Follow instructions in "Case I" above)
(1) What kinds of people would you try to avoid through peremptory challenges? (Follow instructions in "Case I" above)

(2) What types of relationships would you challenge for cause?

(3) What types of relationships would you challenge peremptorily, assuming they were not covered by the challenge for cause?

B. If Mrs. Aimless were only 30 years old, instead of 75 as in the original fact situation, would this make a difference in the kinds of people that would be acceptable to you as jurors? (Follow instructions in Case I above)

(1) What types of people would you try to avoid through peremptory challenges?

(2) In what way, if any, would the age differences in the first and second fact situation affect your closing argument?

(Use reverse side if necessary)

CASE # 3

On February 19, John Lacey, a veterinarian, presented a prescription to I. M. Vial of Corner Drugs, which called for two (2) bottles of 30 cc. each of Demoral. The prescription was made out to
Lacey and bore the notation, "For Vet Use Only."

Since an unusually large amount was involved, Vial called O. O. Knight of Owl Drugs Inc. who advised Vial that he had filled a similar prescription for Lacey on February 14.

Vial then talked to Lacey about the prescription. The latter informed Vial that he had allowed his license to expire...and that he used as much as one full bottle of Demoral on a single cow.

After Lacey left, Vial called police who then proceeded to the animal clinic where Lacey was employed. Lacey admitted the prescriptions were filled but could produce no records to show how the Demoral was used.

On questioning by police, Lacey's wife said she was taking Demoral on prescription from Dr. Service and when Service could not be found her husband obtained more for her. Mrs. Lacey was pregnant at the time. (Assume that Lacey is arrested, later indicted, and asks for a trial by jury)

A. If you had this venire (to be furnished) and knew these facts about the veniremen (to be furnished), which would be the first 12 veniremen acceptable to you as jurors, assuming you were the prosecution in this case? (A venire is furnished with this case, and comes in the form of a deck of cards. Each card represents a venireman whose background characteristics are listed on the front of the card and whose answers to questions put to him by counsel during the voir dire on the reverse side of the card. The deck is arranged in the order the veniremen were called up for their voir dire. Use your challenges to move through the deck and to select 12 jurors. Indicate your choice of jurors within the limits allowed by statute by listing the numbers appearing in the upper left hand corner of each card in the space provided below; for example, 1, 7, and so on.)

(1) Would you briefly indicate why the 12 veniremen you select would be acceptable to you as jurors?

(2) Until you had a jury of 12, what veniremen would you challenge peremptorily? (Follow instructions in Case I above and limit your peremptory challenges to what is allowable under the Code.)
(3) Until you had a jury of 17, what veniremen would you challenge for cause? (Follow instructions in Case I above)

(4) Would you briefly indicate why such challenges would be made? (Follow instructions in Case I above)

R. Suppose Lacey was a carpenter instead of a veterinarian, worked for Esso, had stolen the prescription pad and forged the name of a doctor, would the same 17 veniremen be acceptable to you as jurors?

(1) If not, until you had a jury of 17, what veniremen would be acceptable to you as jurors? (Follow instructions in Case I above)

(2) Until you had a jury of 17, which veniremen would you challenge peremptorily? (Follow instructions above)

(3) Would you briefly indicate why the new choices would be more acceptable than the old ones as jurors?

C. Apart from the legal issues involved in the original fact situation, what economic, social, moral, or psychological factors would you stress or allude to in your closing argument?
VITA

John Plume Reed was born July 4, 1921, in New Orleans, Louisiana. He took his B.A. in Sociology and History at Tulane University in 1947. From 1947 through August of 1953 he attended the University of Illinois where he completed his Masters in Sociology and an LL.B. in Law. Upon graduation from the University of Illinois Law School, he embarked upon a teaching career for the next seven years in Nevada, South Carolina, and Louisiana. In 1960 he returned to Louisiana State University to work full-time towards the Ph.D. in Sociology. After completion of course work and Generals, he took another teaching post in 1962 in Arizona and presently is a member of the staff of the Sociology and Anthropology Department at the University of North Carolina.
EXAMINATION AND THESIS REPORT

Candidate: John Plume Reed

Major Field: Sociology

Title of Thesis: The Effects of Selection Processes on Trial Outcome: An Evaluation of Trial by One's Peers

Approved:

[Signatures]

Major Professor and Chairman

Dean of the Graduate School

EXAMINING COMMITTEE:

[Signatures]

Date of Examination:

April 10, 1964