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The selection of juries: Lawyers' perspectives

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THE SELECTION OF JURIES: LAWYERS PERSPECTIVES

By
Rudolf Kreis

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ABSTRACT

THE SELECTION OF JURIES:
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Juries have been a long standing institution within the Canadian criminal justice system. However, there is to be found very little research in the area. This exploratory study seeks to examine the selection of juries from the lawyer's perspective, both Crown and defence, and the factors that the lawyers find as being significant to them. The research is conducted from a symbolic interactionist perspective of the study of the definition of the situation, of selecting a Jury for a criminal trial. The research methodology combines a multi-faceted approach which combines observations, interviews and questionnaires to arrive at its' findings. It was found that lawyers typically utilize six major categories of determinants when selecting a Jury.

A. Occupation
B. Age
C. Gender
D. Race
E. Residence
F. Appearance

DEDICATION

An meine Eltern
Friedrich und Rita Kreis

Ihr lehrtet mir das Wert
vom Studium, aber auch viel
mehr als ich vom Studium lernte.

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CHAPTER I

INTRODUCTION

The symbolic interactionist perspective is used by this research in order to identify, and examine, the significant determinants of the definition of the situation employed by defence and crown attorneys in defining the situation of selecting a criminal trial Jury. The research will be focused on the selection of juries for criminal trials, which require twelve jurors, as opposed to juries in civil trials, which only require six jurors.

The introductory chapter will present both a historical and legal perspective of juries and Jury selection, which serves to better initiate the reader into the criminal justice system.

Research on juries is very well documented, especially in the United States, where it has flourished since 1953. This was the year that the University of Chicago launched a major program in law and the behaviourial sciences, and decided that the Jury system in the United States should be one of its areas of focus. This inquiry resulted in almost one hundred articles and two monographs about many aspects of Jury behaviour including Jury competence, representativeness, motivation, the Social-psychological dynamics of Jury deliberations, and perceptions of the Jury's performance by trial court judges (Simon, 1980). Canadian research on juries,

on the other hand, is very sparse and the area of investigation undertaken herein has not been a focal point of the research.

It could be presumable that Canadian scholars might employ the research generated in the United States. However, unknown to many who are familiar with the law, Canadian and American, the two criminal justice systems differ greatly, especially in consideration of Jury selection procedures.

Juries are viewed as an integral part of the Criminal Justice System in Canada, as they are in many other countries, although relatively few cases actually come to trial by judge and Jury.

Kalven and Zeisel (1966) estimated that in 1955 there were approximately 55,000 Jury trials within the United States.

The only figures which are available for Canada are obtained from the Law Reform Commission of Canada, for the year 1972. The figures given by the Commission are inaccurate, since the number of actual cases which went to trial is unknown. Only the number of charges laid, and the number of Jury trials in regard to the charges laid, are revealed. In the research site of Windsor, Ontario, the District Court Co-ordinator estimated that there are approximately 75 Jury trials in Windsor each year.

The Law Reform Commission, in its 1983 report <u>The Jury,</u> found many inaccuracies and deficiencies. Despite this, The

Law Reform Commission of Canada recommended unanimously that the Jury system be retained in the Canadian Criminal Justice System, with only minor changes.

HISTORY OF TRIAL BY JURY

Prior to the establishment of juries in the Western world, there were two methods by which an accused person could be tried; both of which asserted that the final decision of guilt or innocence was ordained by God.

The first of these methods was trial by battle, whereby the accused would engage in physical combat with the person or persons they were accused of offending. The battle was usually conducted with edged weapons or pistols as the most common firearm. Also, trial by battle was also not as impartial as it may have appeared. The accused, or the accuser, was permitted to hire a champion to do battle in their place if they were either too aged, or too infirm to do battle themselves. In most instances, the wealthier of the two parties would be the victor as they had the necessary resources to procure a worthy champion (Morgan, 1971). A parallel may be drawn here with today's practice of obtaining a lawyer to represent one's interests in court.

The second method used to try the accused, was trial by ordeal. Governed by this method, the accused was compelled to undergo one of a variety of ordeals or "tests". The distinguishing characteristic of this method was the assumption that the accused was presumed guilty until they could prove themselves innocent; unlike today, where the accused is presumed innocent until proven guilty. Many of

these ordeals were so contrived that, regardless of the outcome the accused would die, either through the ordeal itself, or at the hands of their adjudicators (Morgan, 1971).

It is commonly believed that the Grand Jury and Petit Jury originated ir England during the reigns of Henry I and Henry II (Morgan, 1971). Grand Juries were comprised of twelve to sixteen elders of the community. At that time, the position was available to men only. The function of the Grand Jury was to report felonious activities of community members to the King, or his representatives, as they travelled through the country. A secondary function of the Grand Jury was the inspection of jails, lock-ups and mental institutions; a function which it still performs today. The Petit Jury is believed to have evolved almost simultaneously with the Grand Jury. The Petit Jury, which will hereafter be referred to as the Jury, was initially offered as an alternative to trial by battle and trial by ordeal. The decision of guilt or innocence was removed from the hands of God and entrusted to twelve of one's peers. The early Jury arrived at a verdict based on their knowledge of the facts. Today's juries are instructed by the presiding judge to arrive at a verdict based only on the evidence presented in the courtroom. For this very reason some trials require that the Jury be sequestered, so as not to bias their judgement.

MODERN JURY SELECTION PROCEDURES

In today's society trial by battle and trial by ordeal have been abandoned. Now, the Canadian Criminal Code makes provisions that most serious offenses in Canada must be tried by Judge and Jury (Section 471). Offenses of a less serious nature permit the accused the choice of electing trial by judge alone or trial by judge and Jury (Section 536).

In preparation for Jury selections, the County Sheriff empanels the prospective jurors. The County Sheriff submits a list to the Census Office in Toronto of approximately how many Jury trials are expected within Essex County for that year. The Census Office generates a random list, by computer, and sends the list to the Essex County Sheriff. This list contains the names, addresses and occupations of approximately 15,000 people who live within Essex County. The sheriff must now determine if these people are indeed eligible for Jury duty. This is accomplished by contacting the persons and requiring them to complete a questionnaire that was designed by the Attorney Generals' Office.

The Jurors' Act of each province, sets out the basic requirements for eligibility for Jury duty. In Ontario, one must be a resident of the province, a Canadian citizen, and between the ages of eighteen and sixty-eight. There are certain people who are not eligible, these include: members of the Privy Counsel of Ontario, the Senate and the House of

Commons; judges, lawyers, students-at-law and law enforcement officers and their spouses; practising doctors, veterinarians, coroners; priests, and, ministers who are licensed to perform marriages; as well as those who are infirm or blind, and those who have served a jail sentence within the last three years.

Once the Sheriff has compiled the list of eligible jurors, the prospective jurors are sub-divided into smaller lists of about 150. Each of these lists becomes a Jury panel. From a Jury panel list, between 3 to 6 juries will be chosen for a variety of trials. Although this part of the procedure may vary between counties, it is a common practice at the Essex County Court House. The respective lawyers, for the Crown and for the defence may obtain the Jury list a minimum of three days prior to the selection date. On the day of the selection, the names of all persons on the Jury panel are placed into a drum, from which the court clerk will then draw 20, and call them to the front of the court. Once this group is in place, the clerk will again call their names and say; "Accused look at juror, juror look at accused, challenge or content?" Both the Crown and defence lawyers now have the opportunity to accept, or reject, this person for Jury duty. The defence lawyer has the first opportunity to exercise his\her choice. The point of paramount importance is that the only information that has been supplied to the lawyers regarding the prospective jurors is their name, occupation and residential address. If, after the first twenty people have

been viewed, and there has still not been a Jury selected, this process will be repeated until a Jury is assembled or the Jury panel is exhausted. If the panel is exhausted, the judge may direct the Sheriff to add personnel to the panel by having him go into the street and bring back the first ten people he sees.

The two types of challenges which are available to the lawyers are the "challenge for cause" and the "peremptory challenge".

Challenge for Cause.

638. (1) A prosecutor or an accused is entitled to any number of challenges on the ground that

a) The name of the juror does not appear on the panel, but no misnomer or misdescription is a ground of challenge where it appears to the court that the description given on the panel sufficiently designates the person referred to;

b) a juror is not indifferent between the Queen and the accused,

c) a juror has been convicted of an offence for which he was sentenced to death or to a term of imprisonment exceeding twelve months,

d) a juror is alien,

e) a juror is physically unable to perform properly the duties of a juror, or

f) a juror does not speak the official language of Canada that is the language of the accused or the official language of Canada in which the accused can best give testimony or both official languages of Canada, where the accused is required by reason of and order under section 530 to be tried before a judge and Jury who speak the official language of Canada that is the language of the accused or the official language of Canada in which the accused can best give testimony or who speak both official languages of Canada, as the case may be (C.C. Sect. 638).

Both the Crown Attorney and the defence may use this type of challenge an unlimited number of times. When an lawyer uses a challenge for cause, the presiding judge will usually allow the lawyer, who made the challenge, to ask the prospective juror a question in relation to that challenge (Sadownik, 1980). In Canadian Jury selections, this is the only time a lawyer may question a prospective juror, unlike the Jury system in the United States which uses the "voir dire" as a question period for lawyers to determine possible juror biases [1]. Canadian lawyers have only what they receive on the Jury list and their perception to aid them in choosing their jurors.

The peremptory challenge, which is of primary importance in this research, is the second type of challenge. A prospective juror may be peremptorily dismissed for any reason. The reason for their dismissal, by either lawyer, must

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[1]. The "voir dire" is a French term which in translation means "to tell the truth". The primary function of which in the Canadian courts is in the preliminary hearing, to determine the admissibility of evidence. In the United States it is used to question prospective jurors as to their possible biases.

not be made public and may be made for any reason. In the case of murder, or high treason, the defence may use up to twenty peremptory challenges. For offenses which carry a sentence of up to five years, the defence may use up to twelve peremptory challenges, and for offenses punishable by less than five years imprisonment, the defence may use a maximum of four peremptory challenges (Section 633).

In all cases, the Crown has four peremptory challenges at its disposal (Section 634.1). The Crown does, however, have the option to exercise up to forty-eight stand asides which are used, in effect, as peremptory challenges. The stand aside allows the Crown to stand a prospective juror aside so that they may view more of the Jury panel before accepting or rejecting that person. The Crown Attorney does have the right to recall any juror stood aside at any time during the selections (Section 634.2).

CHAPTER II

REVIEW OF THE LITERATURE

Jury research, in the United States, has flourished since the early 1950's. Much of this was a direct result of the Chicago Jury Project of 1953. The Chicago Jury Project was organized through the University of Chicago, and was headed by law professor Harry Kalven, and sociologist Hans Zeisel. The largest and most comprehensive work on juries ever compiled was by Harry Kalven and Hans Zeisel entitled; The American Jury (1968). As previously noted, most of the research on juries is from the United States. Therefore, because of the differences between American and Canadian legal systems there is very little research that can be related to the course of investigation undertaken herein. There are, however, many interesting studies which have been carried out with regard to juries, and Jury selection, that are most valuable as cursory knowledge.

The selection process has been addressed by Hans (1982) who compared Jury selection practices between the United States and Britain (which has a similar system to that in Canada). Hans found that there are significant differences in the way the Jury systems are administered and perceived. Her research only serves to further illustrate the point of the great differences between systems.

Much of the research that has been generated has dealt with the group dynamics of Jury behaviour in deliberations[2]. Strodbeck, et al. (1976) utilized mock juries and examined factors of social status, seating position, and sex-delineated roles. He found that persons who ranked high on the socio-economic scale were more likely to take charge of the Jury and have a more direct effect on the verdict. Similar findings were also obtained by Sommer (1969). Buckhout et al. (1977), obtained permission from a California Superior Court Judge to introduce a second Jury, into the courtroom, in order to compare the thought processes used by jurors in deciding a case. Although, actual Jury deliberations were recorded in the United States, prior to 1938 they have since been prohibited. Now researchers rely primarily upon mock Jury deliberations. In Canada, the deliberation process has always been held in private. However, until the 1950's, jurors could be questioned by anyone as to the reasoning used to arrive at their verdict. Still, other researchers have undertaken an examination of Jury composition and representativeness. For instance, Nelligan (1988) examined the gender composition of 86 juries in rape cases, in the United States, and concluded that the number of males and females in the juries were unrelated to

[2] Deliberation is the process where the Jury considers the evidence which has been presented through the course of the trial in order to arrive at a verdict.

the acquittal, or conviction, of the defendant. Numerous other studies by Beiser (1973), Gewin (1968), Kairys (1972) and Mills (1969) have concluded that the average Jury is not a Jury of one's peers, but tends to be one of individuals who are middle-class, relatively well-educated, middle-aged white men.

Fenaughty (1976) studied juror experience, in the judicial district of York, and concluded that those who served as jurors on higher level courts were apt to view their role, within the Criminal Justice System, as more significant than did those who served at the lower level courts. She also concluded that there was no racial, socio-economic, or sex group under-representation in the courts of the district of York, for the Jury trials which were studied.

Racial factors among juries have long been a popular topic of research. Several studies have demonstrated the stereotypical behaviour in which lawyers engage. Turner et al. (1986) analyzed the use of peremptory challenges of prospective jurors, in 121 cases, in an effort to examine the use of systematic bias against black prospective jurors. The results indicated that the prosecution was more likely to challenge black prospective jurors, while the defence was more apt to accept them, regardless of the race of the accused. This suggests that both the prosecution and the defense perceive a black juror as being pro-acquittal. Sunnafrank and Fontes, (1983) investigated racial stereotypes of criminal

types. They established that blacks were attributed with crimes of the person, in contrast to whites, who were mostly associated with white-collar and property crimes. The study, however, did not support the hypothesis that general racial prejudice influences judicial decisions. Similarly, the area probed by Gordon et al. (1988) was the effect of the defendant's race and the type of crime, on simulated juror discussions. The findings revealed that white embezzlers were handed longer prison terms than black embezzlers, and that black burglars received longer prison terms than white burglars. In addition, Bernard and Dwyer (1984) concluded that jurors will be influenced by persuasion techniques in the adversary process, and that Jury behaviour is relatively unaffected by the race, social class or sex of the accused.

Since the 1970's systematic or scientific Jury selection has been a popular topic of research. The major proponent of this method of Jury selection is sociologist Jay Schulman, of the National Jury Project. Systematic or scientific Jury selection involves surveying and interviewing a sample of the population, from which an actual Jury pool is derived, for a particular trial; the purpose of which is to be able to better ascertain possible juror biases, and to create a composite of the ideal juror for a particular trial (Ellison and Buckhout, 1983).

Scientific Jury selection has come under criticism by

many scholars from all disciplines, as it presents a number of methodological, ethical and legal dilemmas for which there does not appear to be a simple solution. The major premise of scientific Jury selection is that social scientists, through their researching skills, will enable a lawyer to choose a Jury which is more unbiased (or biased) than could an unaided lawyer. Verification of these assertions is, however, far from conclusive (Berk and Hennessey, 1977; Berman and Sales, 1977 and Ellison and Buckhout, 1983).

Lees-Haley (1984) concluded that the techniques of scientific Jury selection must be sufficiently superior in terms of validity and reliability to a standard selection in order to justify the expense. Frederick (1984) also examined the validity factor and asserted that some of the techniques were more valid than others; however it was not conclusive.

The importance of the level of attractiveness of the defendant has been addressed by Angira, (1987) who found a relationship between the defendant's level of attractiveness and gender with reference to a mock juries judgement. Darby and Jeffers (1988) found a much more disturbing correlation. More attractive defendants were convicted less, punished less severely, and rated as less responsible for the charges. They were also seen as happy, likeable and trustworthy. In addition, attractive mock jurors were more likely to convict than acquit unattractive defendants, while less attractive mock jurors did not differentiate on attractiveness. Despite

these other findings, Baumeister and Darby (1982) found that a juror's bias towards an attractive defendant was significantly reduced by increasing the factual matter in the case.

Lawyers themselves have also come under study in the context of Jury research. Pfeifer (1988) investigated dominant female prosecutors' non-verbal communication towards male defendants and the effect that this had on the Jury. Male jurors were found to rate the defendant as being significantly less guilty under these circumstances. Similarly, Hodgson and Pryor (1984) studied lawyers' gender on juror perceptions of the lawyers' credibility and effectiveness. It was found that female mock jurors rated a female lawyer as less intelligent, friendly, pleasant, capable, expert and experienced than a male lawyer. In addition, Sigal et al. (1985) found that an assertive and aggressive style by defense lawyers resulted in a significantly greater number of not-guilty verdicts than the passive style, for both male and female lawyers.

Malton et al. (1986) examined the factors which influence Jury decision making. They found that legal factors, such as evidence, were more important than extralegal factors, such as the defendant's gender in determining a verdict. In addition, Visher (1989) also found that jurors were

considerably less responsive to the characteristics of victims and defendants, although some of these factors significantly affected their decisions.

Levan (1984) studied non-verbal communication within the courtroom and found that facial expression, gestures and voice tone, as well as the sex of a witness, defendant, judge, or lawyer, may have an effect on the Jury. Levan concedes that although nonverbal communication may not be the primary determinant of the outcome of the case, lawyers should be aware of its possible effects.

Goldstein et al. (1984) investigated the use of stereo-types for criminal and non-criminal face "types". It was found that a typology for criminal face "types" did emerge from the research.

Well known social-psychologist Alice Padawer-Singer has, in recent years, dealt with the concept of the ideal juror. Her focus, however, has been on the characteristics which make an ideal juror, as opposed to the processes which lawyers utilize in trying to decide who is to be picked for the Jury. In her 1981 study, Padawer-Singer employed the use of video cameras and trained lawyers, as well as Jury selection experts, in an effort to find the ideal juror. Demby (1970) surveyed 500 people throughout the United States, including criminal lawyers, in an effort to determine biases and create the ideal juror. The completed research, however, presents little methodological discussion.

Kalven and Zeisel (1966) observed that the differences between how the judge alone would decide the verdict, and how the Jury decided the verdict, were in agreement 84.5% of the time. These findings were based on questionnaires that were sent to judges based on 3,576 cases which had been tried in the United States. Rita Simon, who was also involved with the pioneering Chicago Jury Project, is also well published in the area of Jury research. She is the researcher of literature on many aspects of juries, including how the Jury interprets the defence of insanity in criminal trials, and the role of the Jury system in society (Simon, 1969;1980).

Diamond and Zeisel (1974) conducted trials using a Jury which was randomly chosen from a Jury pool, another Jury which was challenged by the lawyers, and a third Jury which was neither chosen nor rejected. The findings of this study revealed that juries, which were challenged peremptorily by the defence and Crown attorneys, were more likely to disagree with the judge as to the verdict. Although this is an American study, it nevertheless demonstrates the importance of challenging prospective jurors, how it shapes the Jury, and the possible effects it may have on the outcome of the trial. As is with many legal structures, the Jury came under attack in the middle and late 1970's as being an out dated and obsolete institution. In 1980, however, the Law Reform Commission of Canada presented Working Paper 27: The Jury in Criminal Trials, which examined the origin of the Canadian

Jury, its merits, and its deficiencies. This working paper was the prelude to a report entitled, The Jury, (1983). This report advocated many changes to the Jury system within Canada. However, the Commission came to the unanimous decision that the Jury system is of great importance and should be retained with only minor modifications.

This literature review has gone far and wide outside of the scope of this research. However, many of the areas of study referred to were areas of concern to the persons interviewed, whilst conducting this research.

CHAPTER III

THEORETICAL ORIENTATION

> The imaginations which people have of one another are the solid fact of society, and...to observe and interpret these must be the chief aim of sociology (Cooley, 1902:45).

A theoretical framework, or orientation, is an indispensable tool which allows the researcher to interpret and analyze the findings of his/her research. The theory selected for the analysis of the findings should be one which is most efficacious in its description of the findings. Thus, for this research, the social-psychological perspective of symbolic interactionism has been selected as the analytical framework. Within this perspective is the underlying principle that the individual and society are mutually dependant on one another and cannot be analyzed as separate entities. This is in contrast to the psychological perspective, which examines individuals and rejects the importance of the society, and the macro-sociological perspective, which is solely solicitous with the importance of society and not the individual. The social-psychological perspective of symbolic interactionism seeks to integrate psychology and sociology into a viable alternative.

The modern roots of symbolic interactionism are most

closely associated with the social behaviourist approach of George Herbert Mead. This perspective was further explicated by the University of Chicago's Herbert Blumer, who was a student of Mead's. Blumer's genre of symbolic interactionism became known as the Chicago School. According to Meltzer et al. (1978;57-8), Blumer advocated a methodology which uses "sensitizing concepts", as opposed to definitive and traditional concepts. Furthermore, Blumer argues that the traditional concepts are used as prescriptive devices for what the researcher should be seeing. Furthermore, Blumer argues the need for insightfulness; "feeling one's way inside the experience of the actor" (Blumer, 1969). Blumer contends that the student of human conduct must get inside the actor's head and "take the role" of those under study, in order to see the world as the actor sees it. Since Blumer maintains that the actor's behaviour takes place on the basis of his/her own particular meanings, the intuitive approach of the student of human behaviour demands that the student form a "sympathetic introspection" of the actors world, and attempt to define the actors' own categories and meanings, thereby leading the researcher to a more intimate understanding of the actor (Meltzer et al., 1978).

Finally, Blumer also believed that "...the naturalistic inquiry is superior to other methods, because it directly

examines the empirical world and its natural ongoing actively, rather than abstracted and quantified data" (Blumer, 1969).

> The only way to get... The assurance that premises, problems, data, relations, concepts, and interpretations are empirically valid .. is to go directly to the empirical social world to see through meticulous examination of it whether one's premises or root images of it, one's questions and problems posed for it, the data one chooses out of it, the concepts through which one sees and analyzes it and the interpretations one applies to it are actually borne out (Blumer, 1969;12).

Manford H. Kuhn, from the University of Iowa, developed a different variety of symbolic interactionism, which is known today as the Iowa School (Meltzer, 1975). The Iowa School takes its basis from a deterministic philosophy. Kuhn advocated a more systematic, operationalized and quantifiable form of empirical research. His ambition was to primarily seek universal predictors of social conduct.

Kuhn believed that humans are passive participants in their society. Individuals are determined almost totally by societal definitions. Human behaviour is therefore prescriptive, predictable, determined and constrained (Stryker 1981). This research will be oriented towards a social behaviouristic model, and will therefore utilize the following theoretical premises espoused by Blumer (1969;2) and the Chicago School:

1. Human beings act towards things on the basis of the meanings that the things have for them.

   Thus, "things" have no intrinsic meaning and are attributed meaning by individual definitions.

2. These meanings are a product of social interaction in human society.

   Interaction is a primary force in the development of meanings. It must be noted that interaction is a phenomenon which is a two-sided process. However, due to the nature of the legal constraints placed on this research, it could only be examined as a one-sided process.

3. These meanings are modified and handled through an interpretive process that is used by each individual in dealing with the things he/she encounters.

   The third premise emphasizes the dynamic, ever changing nature of meanings or definitions by recognizing the individual's abilities to actively interpret and reinterpret their social worlds.

CONCEPTUAL DEVICES

Each theory has, unto itself, concepts which provide the researcher with the basic foundations of that theory.

A concept is conceived of as, "A term or symbol that represents the similarities in otherwise diverse phenomena" (Labovitz and Hagedorn, 1981;18).

Thus, we can employ concepts to explain relationships and a number of concepts used in combination may be used to arrive at a particular theory. There are several key concepts that are recognized within the symbolic interactionist perspective, they include: symbol, role, role-taking, self, generalized other reference group and the definition of the situation.

The concepts which are directly relevant within the scope of this research are: 1. Symbols 2. The definition of the situation and 3. Typifications; which are viewed as an integral part of the definition of the situation. The concept of the definition of the situation will be discussed in greater detail on page 27.

SYMBOLS AND SIGNIFICANT SYMBOLS

According to Lauer and Handel (1983), "Symbols are the basis for human interaction and are the means by which individuals indicate to each other what their responses to objects will be and what the meanings of objects are." Significant symbols are those symbols which have shared meanings among others within a social system (Lauer and Handel, 1983). The social system of interest in this study is the community of lawyers. Also of interest in this research, is whether or not some of the symbols found can be viewed as significant symbols.

According to Mead (1934), a gesture is the first component of an act. Thus, reaching for a pack of cigarettes can be seen not only as a gesture, but also as a significant symbol. This is because the gesture calls out in the non-smoker both the meaning of the entire act and signals the beginning of his/ her adjustments to it. This might include leaving the room, opening a window or other strategies. As Mead (1934) states, "...gestures, thus internalized are significant symbols because they have the same meaning for all individuals in a given society or social group."

Within the framework of this research, a gesture such as a prospective juror's eye contact with the defendant or lack thereof, a clenched fist, crossed arms, stooped or erect walk,

etc. may be a signal to the lawyer that the prospective juror may be either antagonistic, or protagonistic, towards the defendant.

TYPIFICATIONS

Typifications are very closely related to the concept of the definition of the situation, because, in many cases people will define the situation at hand through the use of typifications (Charon, 1985).

> Typifications can be defined as recipes for actions that exist in the culture as a whole. As people are socialized, they learn these recipes, these typical actions for typical situations, and use them in situations they have learned appropriate for them (Ritzer,1980;207).

Thus, lawyers' actions towards prospective jurors, either in challenging or accepting them for the Jury, will be based on the meanings that these prospective jurors have for the lawyers. These meanings, which are socially derived, will be found in the lawyers definitions of the situation, and will manifest themselves in the forms of typifications. The typifications, that the lawyers attribute to the various prospective juror variables, will be modified and adapted to fit each individual case.

In interaction we define others based on their actions and words. Typifying aids in the categorization of these definitions into a more cohesive unit. Individuals will also attempt to define the situation for others by their appearance and through the interactional setting. This aspect of defining the situation for others was noted in several

interviews; however it was most directly stated by Interview # 14.

> *"...men know how to get out of Jury duty, if they really don't want to be there, they won't shave, they'll dress like bums... women, on the other hand, won't do anything as drastic as that."*

DEFINITION OF THE SITUATION

> If men define situations as real, they are real in their consequences (Thomas, 1928;317).

This statement, made by W.I. Thomas in 1928, has been of major conceptual importance to many sociologists and psychologists since that time. But what is the definition of the situation?

The definition of the situation has been described by Ball (1972) as "the sum total of all recognized information from the point of view of the actor , which is relevant to his locating himself to others so that he can engage in self determined lines of action and interaction".

According to Stryker (1985;322), "the definition of the situation focuses on the salient aspects in an interactive setting permitting preliminary organizations of actions appropriate to that setting."

Thomas also stated that this process was one of the

> "...most important powers" that humans gained over evolution. "The world acts on external factors, but humans make decisions...behaviour on these decisions involves the prior process of examination and deliberation known as the definition of the situation (Thomas, 1937;42).

Thomas stressed, repeatedly, that introducing subjective definitions of the situation, is required in any explanation, because the "same" objective situation does not lead to identical behaviour.

> The total situation will always contain more and less subjective factors, and the behaviour reaction can be studied only in connection with the whole context, ie. The situation as it exists in verifiable, objective terms, and as it has seemed to exist in terms of the interested persons. (Thomas and Thomas, 1928;31).

To understand how people define the situation, is thus to understand the meaning that a particular situation has for an individual, and thereby understanding why an actor behaves as he/she does in that situation. Much behaviour that is otherwise perplexing can be understood when we comprehend a particular actor's definition of the situation. Furthermore, to know how individuals define the situation is to understand why they behave differently in the same situation.

> To define a situation is to represent it to the self symbolically so that a response can be made.... humans live in a symbolic environment; he or she responds to situations indirectly through symbolic mediation. Thus, the individuals' response in any particular situation is a function of how he or she defines that situation, rather than how the situation is objectively presented to him or her. Objective factors are important but not sufficient in explaining behaviour (Lauer and Handel, 1983;127).

This final quote should serve as the definitive view of the definition of the situation, as it is pertains to this research:

> The definition of the situation, then, is the most important part of all interaction (Lauer and Handel, 1983;129).

The work of Stebbins (1975) will serve as the model, in the use and application of the concept of the definition of the situation in this research.

Stebbins (1975) presents the definition of the situation as a theory in itself. However, for this research it will be treated as a concept within symbolic interactionist theory. Stebbins presents his theory of the definition of the situation within the framework of a rough chronology, from the time an actor enters a setting, until he/she defines it and begins to act with reference to their interpretation. Since the idea of "situation" is fundamental to this concept, it will also be defined and described.

The observations which one makes when he/she is in a situation are mental constructs with elements that come from the outside world. These observations are then partly ordered through the person's selective perception, which Stebbins (1975) describes as

> A sensitization to those elements of the environment that are of immediate interest to the individual or that he habitually recognizes.....In order to define the term situation one must begin with selective perception for the vast array of potentially relevant situational elements is greatly reduced by the actor through this process (Stebbins, 1975;6).

Individuals will also place a great emphasis on the importance of the physiological, psychological, and physical circumstances in which they find themselves. Thus, it is

reasonable that these circumstances are included as part of the individual's mental construct of the situation, and are distinguished between objective and subjective situations. The objective situation is the immediate social and physical surroundings as well as the current physiological and psychological state of the actor.

Stebbins (1975) also asserts that the final selection, or construction of the definition of the situation is affected by numerous factors which fall into two categories, personality-cultural and situational.

Preconceptions are an organized set of predispositions that the actor brings to the situation. Predispositions are enduring and remain dormant until activated by situational stimuli. Once activated, these products of past experience equip individuals with specific, usually habitual, views of the world and guide their behaviour in the immediate present.

This set of preconceived factors is the outcome of the actors' socialization, which include predispositions stemming from past definitions of situations, long range goals, values and attitudes and social and personal identities. In addition to predispositional factors, there is the matter of the availability of adequate linguistic symbols for the person to describe the setting to him/herself.

Reflection is a process which is involved both in

structuring and defining the situation, and requires the use of symbols of some kind. If all factors are equal, a low level of linguistic ability should result in less complex definitions of the situation. In this research, the linguistic ability is not of great importance, as there are only special circumstances where verbal communication transpires, between the prospective jurors and the lawyers.

There is no single situation which uses all predispositions of individuals. Rather, elements of the subjective situation will activate in an individual only relevant tendencies toward a particular situation. Situational elements, such as the sequences of events, numbers of people and objects, and spatial relationships are also accorded significance. The degree of order among the situational elements affects the definition of the situation (Stebbins, 1975).

The definition of the situation is, more or less, a conscious synthesis and personal interpretation of the interrelation of the activated predispositions and the elements of the subjective situation. Stebbins (1975) identified three types of definitions of "the definition of the situation." These are cultural, habitual personal and unique personal.

The major difference between cultural and habitual is consensual and non-consensual sharing of meanings. Cultural definitions are collective representations. They are the

standard meaning of events established in the community, culture, or sub-culture. This is learned through primary and/or secondary socialization. It is also one which is shared to the extent that members are aware that others use the definition in the same way, and they are aware of each other. The sharing of definitions can also be non-consensual because, in the same situation, people may think the same but not realize that they are (Stebbins, 1975).

Habitual definitions are regular meanings used by categories of actors in particular kinds of periodic situations. These are different from unique definitions, which are a person's interpretation of events which are rarely encountered in the community. This is an event for which there is no cultural or habitual meaning.

Cultural definitions are categorical and impersonal. They are given additional specification by the actor using them with reference to actual settings. Once a cultural definition is deemed to be relevant for the events at hand, it is tailored so as to serve the user better. These classifications of definitions should be viewed as ideal types, as they are multi-dimensional and cannot be placed on a single continuum.

This sequential model indicates the location of the definition of the situation in relation to initiation of goal directed action.

1. Typical actors in a given identity enter a typical setting with particular orientations in mind.

   The lawyers enter the courtroom for the purpose of Jury selection with a rough idea of who they would like or not like to have on the Jury.

2. Certain aspects of these surroundings, some of which relate to the orientations, activate or awaken some of the predispositions the actors characteristically carry with them.

3. The aspects of the surroundings, the orientations, and the activated predispositions, when considered together, initiate further selection of cultural or habitual definitions or further construction of a unique one.

   The lawyer considers all of the prospective juror's variables and constructs a definition.

4. This definition guides subsequent goal-directed action in the situation, at least until reinterpretation occurs (Stebbins, 1975;16).

It is at this point that Stebbins embarks on a discussion of the operationalization of the definition of the situation. However, with reference to the present study this aspect of the definition of the situation will not be addressed until the methodology section.

PHASES OF THE DEFINITION OF THE SITUATION

The recognized aspects of the surroundings of the orientation and the activated predispositions, when considered together, initiate further selection of either a cultural, habitual, or unique definition.

Choosing one, or the other, takes place in two artificially demarcated phases in rapid succession.

In Phase One, the actor identifies the ongoing events as an instance of some category of situation. The actors then have a choice: the set of events will fall into "X" category, or the set of events is not of "X" but of another (Stebbins, 1975).

Recurrent situations will never be free from associate meanings for individuals. Recurrent situations never occur as neutral and uninterpreted findings. By the very process of identifying the category of setting that the individual has encountered, he/she will have selected a portion of their habitual or cultural definitions.

Phase Two of the development of the definition of the situation, involves choosing a standard personal evaluation, or a plan of action and justification. Choice is guided by the action orientation of actors. This, however, can only be done once the actor has some answers from the first phase, regardless of how tentative they may be (Stebbins, 1975).

A definition of the situation is constructed only after a certain amount of conscious reflection. The actor will delay goal-oriented behaviour long enough to allow possible identification of the setting in which they are placed. If the actor finds him/herself in an ordinary situation, he/she must decide which standard personal evaluation, plan of action, and justification to select before acting. Hence, whatever the mode of definition of the situation considered, some reflection characterizes selection or construction.

REFLECTION

Reflection occurs between the time the actor enters the objective situation and the time that they define a subjective version (Stebbins, 1975). Typically, the actor engages in either trial and error behaviour, or little action at all. Blumer, (1969;5) describes reflection as a

> ....process of communicating with himself, interpretation becomes a matter of handling meanings. The actor selects, checks, suspends regroups, and transforms the meanings in the light of the situation in which he is placed and the direction of his action.

During the reflexive period, goals are suspended until the situation has been given meaning in terms of the actors current action orientations. Routine things require very little reflection; for instance, washing one's hands or combing one's hair. Another class of reflection is one which is sufficiently complex, albeit routine, to cause the actor to pause long enough to study the components of the setting in order to put them into a familiar category. It is suspected that the reflective period in Jury selections will be found somewhere closer to a routine variety of reflective period.

Finally, there are classes of definitions that have been constructed to cope with unusual situations. This is not expected to be the case in this study, as the situation of

Jury selection will always be very much the same. These final definitions are complex and require large amounts of time for reflection. This would be the case in the interpretation of crises such as motor vehicle accidents, fires, etc.

Regardless of the amount of reflection called for, no definition will be entirely new. It will always develop, in part, from previous experience, however remote the events of the immediate present may seem:

> The degree of complexity of a given definition of the situation, is a function of both the complexity of the setting being defined and the amount of time available to the actor for reflection before he must act. Hence the amount of reflection that occurs is a function of the complexity of the setting and the amount of time available to the actor for thought before he must act (Stebbins, 1975:22).

It is widely recognized that, under certain conditions humans from diverse areas will adhere to seemingly outdated and inaccurate definitions, even in the face of contradictory information and experience. This is expected to manifest itself in some of the typifications employed by some of the lawyers in this research.

It is evident that definitions of situations change while the situation is in progress, thus situations are dynamic phenomena, not static. Situations are structured by the immediate action orientations of the actor; as new situational elements enter or leave, new predispositions may be activated.

Thus, definitions of situation may be retrospective within the situation, as well as between them. However, we should never view a changing definition of the situation as an alteration in the subjective situation unless, of course, the principal action orientation changes.

REFERENCE GROUPS

A reference group is a group which provides the actor with a frame of reference or social comparison. It is within the context of this frame of reference that the individual defines situations. The reference group, however, provides the individual with an initial basis for defining the situation. People differ in their definitions because of their diverse reference groups (Stebbins, 1975).

GOALS

In addition to expectations, a person comes into a situation with goals. From the individual's perspective, interaction is the procedure for pursuing their personal goals in the social context (Lauer and Handel, 1983). In this research, the goal of the interactive setting is to select a Jury that the individual lawyers will perceive as amicable.

CONCLUSION

It should be recognized that interactions do not occur in a social vacuum. Their content is constrained, by a variety of factors, that are more or less known to the individuals involved. Goffman (1959) points out that the type of social occasion, or affair, in which an interaction occurs, may oblige the participants to accept a particular definition of a situations.

> People at a funeral look solemn and don't cheer or discuss business matters and so forth. Where the nature of the occasion is known in advance, such constraints can be incorporated into the definition of the situation before the situation is entered (Goffman, 1959).

This is, to some degree, paralleled in the courtroom because of the obligation of participants to accept that the courtroom is a place of justice, where one must conduct oneself in a manner which is befitting to judicial standards. This is the case for the lawyers as well as the prospective jurors. There are certain rules of conduct which are expected to be followed. Any deviation from these rules may result in sanctions imposed by the judge.

The definition of the situation, however, is a concept which is both complex and dynamic. Although behaviour within the courtroom is strictly regulated, there are, nevertheless,

ongoing reinterpretations of the situation present. This will become evident throughout the present study.

CHAPTER IV

METHODOLOGY

When considering a methodological approach, it should be remembered that the theoretical perspective, and the methodology, are closely interrelated. However, the researcher should still select the most appropriate methodology, or methodologies, for investigating the problem at hand.

> Sociologists must carefully analyze each of their methods in terms of the kinds of questions they can best answer. To proclaim participant observation as the method of sociology is equivalent to stating that the experiment is the method of psychology. Obviously every discipline can and must employ more than one as it moves from vague hypothesis to observations and empirical tests (Denzin, 1978;9).

This research employs the methodological approaches that were derived from the realization that the lawyer's perspectives and actions with regard to Jury selection cannot be fully explained by either a solely qualitative methodology or a quantitative approach. Some of the factors and views expressed by the lawyers, such as one's "gut reaction" to peremptory challenge, a prospective juror because he/she looked like a "sleaze bag" or an "undesirable", cannot be well managed and interpreted in a statistical manner, as can the ascribed variables of age or gender. Similarly, occupation is a factor which can better lend itself to a statistical

analysis. Therefore, the methodology employed herein, is one which lends itself to the exploration of various areas of the study, in order to extract the most information.

Denzin (1978) advocates the use of triangulation, or multiple methods because it increases the likelihood of attaining a more complete picture of the area of study:

> ...both the concepts and the research method act as empirical sensitizers of scientific observation. Concepts and methods open new realms of observation, but consequences follow: if each method leads to different features of empirical reality, then no single method can ever completely capture all the relevant features of that reality; consequently, sociologists must learn to employ multiple methods in the analysis of the same empirical events. This is termed triangulation (Denzin, 1978;12).

The present research supports Denzin's argument for triangulation and utilizes a multi-faceted approach which combines observations, interviews, and questionnaires. The present research has thus been sub-divided into these three methodological divisions.

PHASE ONE OBSERVATIONS

Observation was used as the initial research method. This proved to be a most valuable method because it was the most uncomplicated to coordinate, and it also allowed the researcher to gain a more "intimate familiarity with the research matter" (Denzin, 1978;12). This familiarity allowed the latter phases of the research to be conducted with a greater degree of comprehensiveness. As previously mentioned, Blumer (1969) advocates the use of observation when he states that "Naturalistic inquiry is superior to other methods, because it directly examines the empirical world and its natural ongoing activity rather than abstracted and quantified data" (Blumer, 1969).

In-court observations were conducted at the Essex County Court House in Windsor, Ontario, from February 1989 to June 1989. A total of 23 Jury selections from 8 court sessions were observed and recorded. The most recurring types of cases were assault and sexual assault. In addition, weapons charges, as well as charges for fraud, break and enter and arson were also observed. During this observational stage, five different Crown Attorneys and thirteen defence lawyers were observed choosing juries.

Prior to February of 1989, other observations were also conducted. However, these merely served as an initiation to the courts and allowed the researcher to design appropriate

observational methods and techniques. The observations conducted from February 1989 onward, were based on a prospective juror observational characteristic sheet designed and utilized by Demby (1970). It was however, modified and adapted for Canadian research (Appendix A). The revised observation forms were pre-tested on several occasions, both in the courtroom and other public places, to assess the ease that observers would have in using them, as well as to test its accuracy in accounting for a large number of variables. Since the observations were focused primarily on the different visual aspects of the prospective jurors, this could have been accomplished more efficaciously through the use of photographic or video-graphic equipment. However, the Criminal Code makes provisions that no recording or photographic devices are permitted in the courtroom. The prospective juror's characteristics recorded in court were grouped into the following areas:

1. gender
2. race
3. height
4. weight
5. colour and style of clothing
6. hair length; colour, and style
7. presence or absence of jewellery
8. general appearance
9. eye contact with the attorney or defendant

In addition to the principal researcher, there were six other observers present in the courtroom. The additional

observers, third-year criminology students from the University of Windsor were trained by the researcher in courtroom observation skills and given sufficient background in court procedures, in order to complete the research.

The analysis of the in-court observations proved to be somewhat problematic. Initially, some of the categories developed for observation were too narrow in scope to be of use to the research. For this reason the information that was gathered on the prospective jurors clothing, jewellery, accessories, hair colour and other personal factors has been omitted from the quantitative analysis, as it proved to be of little significance.

The remaining observations were analyzed utilizing the Statistical Program for the Social Sciences. The observations were recorded and coded using the code sheet found in Appendix B. The category of "Race" used in this research is not defined as that which is generally used and accepted by anthropologists. This factor was assigned on the basis of the researchers' observation of the skin colour and the physical features of that person, since this would also be the method used by the lawyers. In addition, it would have been impossible to administer scientific tests to ascertain the generally accepted categorization of race.

The occupational categories were derived utilizing the occupational code developed by Pineo and Porter (1971). Age, as well as the prospective juror's place of residence was

obtained from the panel list. The analysis of the courtroom observations also includes whether or not the prospective juror was peremptorily challenged, stood aside or chosen as a juror.

SAMPLE

The method of recruitment of the lawyers was one which made use of "networking". The networking was based, initially, on referrals by University of Windsor faculty who were acquainted with local criminal lawyers. These lawyers further recommended colleagues whom they thought might be interested in the research. In all but one case, the interviewees were most receptive and were more than willing to give their utmost cooperation. In two cases the interviewees declined to have the interview tape recorded.

A statistically derived, random sample of criminal lawyers would not have been feasible for a number of reasons. Although a list is available which provides the names of all of the members of the bar in Windsor, it does not stratify the members as to the nature of their practice. Therefore the list would not be of any use, since the present research is restricted, exclusively, to lawyers dealing in criminal matters.

Many of the lawyers which were interviewed have been in practice for a number of years, and are considered to be masters of the profession by their peers, see Appendix D.

PHASE II INTERVIEWS

The second phase of the research utilized intensive interviews with 17 Windsor area judges, Crown Attorneys and defence lawyers. This included some who had been observed selecting juries in the initial stage of the research, as well as lawyers who were not initially observed. An intensive interview is one which, according to Lofland (1984) is,

> A guided conversation whose goal is to elicit from the interviewee, rich and detailed materials which can be used in qualitative analysis...the intensive interview seeks to discover the informants experience of a particular topic or situation (Lofland, 1984;76).

The primary aim of the interviews was to discover the significant determinants of the situation use by lawyers and the typifications employed in defining it, as they pertained to Jury selection.

The interviews were loosely structured and allowed the interviewee to set the pace and, in most instances, the general flow of the conversation. The interview, however, attempted to lead the lawyer chronologically through the selection process and the development of their determinants of the situation.

The interviews varied in duration from 30 to 90 minutes, with an average time of approximately 40 minutes. The interviews were conducted in a location where the participants

would feel most comfortable and least inconvenienced. In all cases, this was in their own offices. Participants were provided with the background of the research, the possible outcome of the research, and the impact it could have for them as participants. In addition, all subjects were guaranteed complete anonymity. At the close of the interview, the participant was thanked for his/her co-operation and was asked if he/she could recommend anyone else who would participate in the study. They were also told that he/she would receive a copy of the completed research. Although most of the interviews were tape recorded, some could not be fully transcribed due to the inferior quality of the recording device which was used.

PHASE THREE QUESTIONNAIRE

The final phase of the research utilized a questionnaire, which was administered to most of the participants interviewed, at the conclusion of the interview.

The method of questionnaire was selected for this research for several reasons, some of which are proposed by Babbie (1989;258). 1. The questionnaire asks the same question of all subjects and thus the data collected is standardized. 2. The responses of the subjects are not biased through the interpretation of the researcher. 3. There is a considerable flexibility in the analysis of data because many questions can be asked on one particular topic.

The questionnaire, used for this research, was designed based on Jury research conducted by Simon (1980) in the United States. Her research found that there were specific typifications which permeated American lawyer's definitions of Jury selections. The purpose of the questionnaire, in the present research, is to serve as a cross-reference with the interviews and the observations. The questionnaires were analyzed using only descriptive statistics. An inferential type of analysis would not have been valid or reliable of a mere fifteen questionnaires.

ANALYSIS OF DATA - INTERVIEWS

The analysis of the interviews has been sub-divided into the six groupings which were found to be the major forces in determining the lawyers' definitions of the situation of Jury selection. Each of these sections includes the analysis and discussion of the interviews, observations, and questionnaires.

The major categories which emerged from the research are listed below, and, may be considered as being of the habitual/cultural definition type and are listed in the order of the importance they were accorded during the interviews. The categories have been discussed in the order in which they appear.

A. Occupation.
B. Age
C. Race
D. Gender
E. Residence
F. Dress and deportment

It must be noted that, subsequent to this research, the prospective juror's addresses have been removed from the panel list.

In order to study the definition of the situation "...one should strive to make general statements about classes of definitions used by identifiable groups of men *(sic)* in particular but recurrent situations" (Stebbins, 1967;9). In

this research, the identifiable groups are the lawyers who have chosen juries for criminal trial. Thus, choosing a Jury is a particular, but recurrent, situation.

> In order to operationalize the definition of the situation it is done most efficaciously through a combination of direct observation and questionnaire interviewing. The observation enables the researcher to obtain a crude idea of the definition that the subject has chosen for the situation at hand. The interviewing will then supplement the observation and permit the researcher to establish a more detailed and valid picture of the meaning of the subject (Stebbins,1967;6).

The interviews were conducted following an operationalized concept of the definition of the situation. The following list provides empirically demonstrated statements which play an important role in the definition of the situation.

Stebbins (1975) notes that all of these perceptions by a given set of identity holders can, theoretically, be said to be a part of their definitions of a particular kind of situation. However, not all of them will necessarily be obtained in any given investigation, for the actors may not be able to get such information for their own use in the interaction.

1. Identification by the identity incumbent's of relative others present.

2. The incumbent's perception of the evaluation that those others have made of the situation.

3. The incumbent's perception of the goals or intentions of the others while in the setting

4. The incumbent's perception of the plans of action of the relevant others

5. The incumbent's perception of the justifications or vocabularies of motives associated with the others' plans of action.

6. The incumbent's evaluation of the situation

7. The incumbent's plans of action

8. The incumbent's justification of the plans.

9. The identity incumbent's perception of the identification of them by the relevant others.

10. The incumbent's perception of the evaluation of the situation imputed to them by others.

11. The incumbent's perception of the intentions imputed to them while in the situation.

12. The incumbent's perception of the plans of action imputed to them.

13. The incumbent's perception of the justifications of the plans imputed to them.

(Stebbins, 1975;18-19).

CHAPTER V

FINDINGS

The Findings chapter will discuss the areas and topics which emerged during the examination of the interviews. The topics and their sub-groupings to be discussed are:

PRE-SELECTION STRATEGIES

OCCUPATION

- teachers
- financial persons
- farmers
- housewives
- retired persons
- logical persons (defined later in the chapter)

AGE

- younger persons
- older persons

RACE

GENDER

RESIDENCE

DRESS AND DEPORTMENT

- eye contact
- bearing
- dress

PRE-SELECTION STRATEGIES

In this study, the definition of the situation, and its determinants, have been followed chronologically from the point where the lawyer obtains a copy of the Jury panel list from the sheriff's office, up until the Jury for a specific trial is chosen. Although the determinants remain fairly consistent, their importance to the individual lawyer may change or be altered as the situation progresses.

The formation of the initial definition of the situation begins many days prior to the selection of the Jury. The initial stage is obtaining a panel list from the county Sheriff. Many lawyers employ a similar kind of strategy for the initial screening of prospective jurors. They rely on a form of networking; both internal with staff, and external with colleagues. The panel list is then reviewed by the lawyer, the staff, the client and perhaps other lawyers, unless the client has the financial resources to engage in Jury panel research. The Crown's office also has at its disposal CPIC (Canadian Police Intelligence Computer). The CPIC allows the Crown Attorney to ascertain if anyone on the panel list has been convicted of an indictable offence.

At this point, the situation is still seen as a somewhat distant event, because the actual selection may not take place for up to ten days. Nevertheless, the lawyer will have partly identified the significant determinants of the

situation through various typifications, and acted on them. It was found that of the significant determinants of the situation, all with the exception of one, were contained on the panel list.

For instance, Interview # 11 indicated that typifications are indeed utilized, and that they are still valid and necessary to a certain degree. In particular the subject was making reference to how a specific person would behave.

> *The problems with this (discussion) is the risk of stereotyping...but you've got to go with trends. You know, you are going to say. "Well, it's eighty percent probable that this will happen." Well, if I don't have any other information, I've got to go with the eighty percent rather than the twenty percent...*

Upon examining the interviews, it was found that there were indeed patterns established, with regard to the pre-selection strategies employed by the lawyers, in a variety of areas. The pre-selection strategy allowed the lawyers to examine the significant determinants of the situation and categorize them in a case specific context.

Interview # 5 provides the foremost example of the "typical" pre-selection strategy.

...when a lawyer knows that the matter is going to be called for trial, the first thing that he does is obtain a copy of the jurors list. Now those lists are normally inaccurate. In other words, they are taken from the elections list where people may, or may not, be living so that you get a different impression. They may not be living in the city, they may be living in the county, they may not be living in Southlawn gardens, which is a very prestigious area, they could be living in an apartment downtown, so, you have to be very, very careful of that information. I generally circulate the list amongst my office staff, and I say to my staff "Do you know anybody here, and if so what do you know about that person and I don't care whether its good, bad or indifferent." I just want to know and I'll make the decision, and I, of course, look at it first because, if you've been out for 20-25 years, there are a lot of people you've come across..now in looking at the list you make a decision as to the type of person that you want.

The dominant pre-selection strategy was found to be the individual lawyer's review of the list, with the aid of the lawyer's staff and the defendant. It is the least expensive and the least time consuming.

...well, in those rare cases where I have a client who has a lot of money, I send out three or four investigators and I check them out (members of the panel). In those cases where my client does not have enough money, or at least if they have money and would prefer to spend it on other things than checking out the Jury...I send the Jury list around with a memo that any person who knows any of these jurors should see me and speak to me about the jurors. Usually I find that out of a Jury panel list of one hundred and twenty or a hundred and twenty-five names, that almost everybody on the Jury panel someone in here knows or can tell me something about them. So, it's a cheap, easy way to find out about the jurors. (Interview # 2)

In this instance, the law firm involved, was one which could be considered to be quite large and well equipped, by Windsor standards. A larger firm could thus have an advantage over a smaller one, given the preceding example.

Interview # 1 adhered to this kind of pre-selection strategy. They did on the other hand, acknowledge that the strategy may vary from one lawyer to another.

...responsible council goes and gets a copy of the panel list. Even if you don't have any money to investigate the panel list, you at least get it the day before and you go through a formal process of reading the list and seeing who you know on it and seeing what areas of the city they are from, and that sort of thing, and looking at the professions. And, I think, different lawyers have a different formal process that they go through, and they have certain rules that are either superstitious or well-founded. But, they follow, they have certain patterns that they follow.

Interview # 1 further stated that investigating the Jury panel list is most restrictive due to the cost and is quite rare as a strategy.

If your client has a lot of money, and it really does depend on if your client has a lot of money, you may, for instance, want to do some sort of investigation of the list. Now, I have to tell you that your client would have to have an awful lot of money. It's very expensive, and I have never had the money to investigate a Jury list. But, I have friends who have, you know, in a major trial. For instance, I'm sure that in the _____ murder trial they investigated the Jury list and in some of these big drug conspiracies they may very well...

Interview # 1 also makes reference to the sharing of information amongst lawyers through networking. The following quote also serves to illustrate the extent to which the determinants and their definitions are shared by lawyers.

...and when you are dealing with other lawyers, of course they knew what you are looking for. They say, you don't want this guy, he's an asshole and he hates women. You don't want this guy, he's an asshole and he is not going to like your client...

Interview #16 makes particular reference to the fact that everything about a person is a factor in deciding whether or not this person should be selected for a Jury.

I ask them (employees) about their (the panellist's) religion, I ask them about their likes or dislikes, what their hobbies are, whether they are married, whether they have children, whether any body in their family has had trouble with the law, whether any of them are aware or have been convicted of criminal offenses, whether they've had any run in with the authorities, whether they are thought to be liberal or right-winged on the other end...almost always I can find out something about just about everybody on there.

In contrast, interview # 6 employed a very simplistic approach to his/her pre-selection strategy, yet there is no evidence to support that their approach is inferior or any less effective than the aforementioned strategy.

So, it is my practice to obtain a copy of the Jury list and to go through the names prior to date of Jury selection. I'm not looking to doing any particular investigation other than reading it myself.

Interview # 7 provides a concrete example why they feel that it is good practice to have the client aid in the reviewing of the panel list.

I give it to my client, and say, is there anybody you know on it? You know, is there a close relation, a close neighbour or somebody? If it's somebody where you say, "Well, I knew this guy fifteen years ago when he was my teacher and he was a very liberal minded person, or he was a teacher in my school, but he was a very liberal minded person." Well, then, I would want that person on.

The foregoing quotes sought to demonstrate some of the pre-selection strategies or procedures used by some of the lawyers in forming their initial determinants of the situation of Jury selection. The first factor to be examined, which was found to be a most diverse and decisive factor, is the prospective juror's occupation.

OCCUPATION

Those interviewed made a great deal of reference to the importance of occupations. Some occupational groups, however, were sited as being more important or influential in terms of assessing a particular prospective juror. In particular, teachers, farmers, bankers/accountants, and housewives, were referred to in the interviews quite often as contributing to the lawyer's definition of the situation. Out of the seventeen interviews conducted, occupation was referred to by all subjects to some degree, but, to many it was a most decisive factor.

For example, the following quote by Interview # 4 demonstrates how very strongly they feel about the role which occupation plays in determining their situational definition.

...for instance, if it said "retired" on the panel list, then I would make inquiries to the sheriff's office, and ask them to determine retired from what. Was he a retired police officer, or a customs officer, somebody you may not want as a best answer, so, I used to go through the occupations. Occupation is obviously a big factor, you know. The occupation has comprised most of their lives. It forms their opinions. It develops a characteristic or personality or they're in that job because of their personalities. So, it is very important to know what they do. Actually, it is pretty fundamental.

By comparison, Interview # 10 argued that, from the perspective of the defendant, occupation would not be a significant factor unless the accused is of a particular occupational group:

Rarely do accused people have occupations, unless it is white collar crime, or very violent crimes. I mean, murders and that kind of thing are different because those aren't sort of the ordinary course of events. But, yea I do. If it's a white collar crime, particularly some kind of fraud, I would want to avoid anybody who had a similar profession on the Jury because I don't want them to have any inside information. I want these people to decide this case on whatever the Crown can prove. And, if the Crown can't get their act together, I don't want a juror back there saying, "Well, I know how it works in the business, even though they didn't leave any evidence, I can tell you". I don't want that. I want them not to know anything about it. Just to decide it on the basis of the evidence. That's really about it. I try to avoid the same profession as my client or job as my client.

TEACHERS

The sub-category of occupation which received the most attention was that of teachers. Of the 17 interviews conducted, it emerged as a significant group in 14 interviews. This sub-category, however, for the most part excluded university professors, as they were seen by many lawyers as being "too intellectual and analytical" to be a "good" juror.

For instance, Interview # 1 found that teachers may attempt to take charge of the situation, as well as being too analytical, and therefore was not predisposed to having them on the Jury.

> *I do have problems, sometimes, with teachers because if there is only one on the Jury I believe that they would tend to become the chair person or the foreman of the Jury and I find, as clients, they are a pain in the ass. That's a preconceived notion that I have... I would be terrified that somebody (teacher) would overanalyze it and analyze it right back around to guilty and those kinds of things. I'm really concerned about that.*

This view of teachers as being somewhat authoritarian, or controlling was also recognized by Interview # 2, but it was not a shared meaning. This subject found, through their experience, that the view that teachers are authoritarian did not hold true.

There are some too, who will say "Well there are certain classes of people, there are certain types of occupations which tend to be more liberal". Lots of people tend to think, for instance, that teachers tend to be more right-winged than others because they are always pounding in the principles to children, that you have to live by the state of the law and you can't be outside the law and things like that. So, they tend to be less yielding or less bending from a defense counsel's point of view. But I don't really buy that. I haven't found that, in fact; I haven't found that in practice. So, while I could hear that and I say I can understand where they came up with that philosophy, my own experience has been that it is not the case. I have dabbled with teachers on my juries and I don't think that they are any more right-wing or difficult or more stringent than other people.

By the same view, Interview # 15 favoured having teachers on a Jury, but for the very reason that other lawyers found as grounds to reject teachers.

I guess I just have a feeling that they're interested in perhaps sort of esoteric theories. And, I just figure that they may be a little more willing to listen to something that's a little novel in terms of an argument than someone who is more black and white in terms of the way he/she thinks.

Similarly, Interview # 9 prefers teachers on their juries for one of the other main reasons that some lawyers state for not wanting them.

...you want a particular kind of a person that at least who is going to be open-minded and, contrary to what a lot of defense lawyers want, I like jurors that have a great deal of confidence. I like jurors that are strong. I like school teachers.

Teachers were also found to be referred to on several occasions in the case specific sense of

sexual assault. Interview # 4 stated that they prefer teachers on the Jury for sexual assault cases involving a child accusing an adult.

> *...but, certainly, in a sexual assault case, I try to stay away from some women. But, I ... you know, with the Jury panel being what it is, you can't. So, then, I try to choose ... for instance, in this one I'm doing next week ... it's a child with an allegation to an adult. I'll try to choose some teachers because teachers have been unjustly alleged to have sexually assaulted students in the past. So, if I had to pick a woman, well, I want a woman teacher because they are very sensitive in that way.*

In addition, Interview # 10 shares the meaning which teachers have for them, in the case-specific sense of sexual assault, with interview # 4 with regard to having teachers on the Jury because they have an understanding of children.

> *There are certain professions that I like. I like to have school teachers on a Jury. On cases where children are witnesses, I like it, whatever kind of case it is. Whether it's a sexual assault case, or anything. Numerically, this is where children are witnesses. I just figure that teachers are well aware of the mischief that children can get into. So, they are not going to be unrealistic about the faux pas that children can make.*

Thus, the occupational sub-group of teachers emerged as being the most decisive occupational category, and was favoured by most of the lawyers. The second most often sited sub-category of occupation, which will be discussed next, is financial persons.

FINANCIAL PERSONS

Persons involved in banking, accounting and business, were also an occupational sub-category to which references were made in 13 interviews. Interview # 1 provides a prime example of not wanting an accountant on the Jury, because accountants are perceived by the lawyer to be experts.

> *I knew that they would have to take the stand, and I wasn't particularly concerned about it, other than I didn't want accountants, because it was a long trial and it was coming close to tax time, and I knew it would be pressure for them, you know. I didn't want accountants because I knew there was a substantial amount of evidence, financial evidence, and I didn't want somebody there who specialized in that area.*

In addition, Interview # 4 shared this same view of an opposition to include financial people in fraud trials.

> *...and you look at the occupations to see how that's going to fit in someone who, as I have indicated, in an office that's completely computerized might be very knowledgeable of some sophisticated frauds or business frauds and\or someone who's a bookkeeper or an accountant, or someone who's involved in financial institutions, will have a greater knowledge of the operations, in and businesses about how frauds can occur and so, you may not want them for that particular reason. they are*

Individuals involved in banking, accounting or business were also perceived by several lawyers to be "ultra-conservative", and were apt to view any kind of criminality in a very negative sense;

especially monetary crimes or narcotics offenses. Interview # 8, although, related this anecdote of how his stereotypical reality was shattered by a financial officer who did not fit his "model". The narrative refers to a case where a woman who was on welfare was "set up" by a law enforcement agency.

...so, I said, "I don't want a "banker" on my Jury for a welfare mother" and I said, "The stereotype I have of a "banker" is that he would feel she was on welfare, but she had money to buy drugs". He would just throw the book at her. Fine, okay. A month after the trial, I walked into the bar and I'm not even sure if I recognized him, but, sitting at the end of the bar, was this very "banker". He had now retired and he was shit-faced. But, I recognized him. I knew this was the guy that I had rejected. He was so drunk that he didn't even realize who I was. So, we started talking...But, this guy is sitting there ... she's right here (the accused woman), and I'm at the bar and this "banker" is sitting right there at the end of the bar, and he's listening. He's just shit-faced and he says, "Well, I got news for you, you fucking asshole ... what he did to her, took advantage of her...with his big fucking Continental...I don't give a shit how wealthy he was, I never would have convicted her".

In general, financial persons were not well received from a defence lawyers perspective. They were not made reference to in the Crown's context and are therefore only viewed as relevant to the defence lawyers definition.

FARMERS

Farmers were a third occupational group which was found to be a significant sub-category of occupation, with 11 interviews making reference to them. In general, farmers were perceived as being more law abiding and less likely to be tolerate of deviance.

Interview # 5 revealed that they believed that farmers are generally viewed as "unsophisticated and unknowledgeable".

> *...if you've got a sophisticated crime involving a lot of fine details, quite frankly some lawyers would like a group of farmers on there, thinking that farmers are unsophisticated and not knowledgeable and would not understand it. I really don't take that position. Quite frankly, I take the position that the fact that they're farmers doesn't make them not knowledgeable or sophisticated, and that they should be treated as sophisticated, and indeed, the only difference in farm people is the fact that they tend to look upon law and order in a more stringent view. Because they're not used to crime in the county, and on their farm, so that if somebody does steal some pumpkins out of their patch they get very upset about that because it is a real intrusion. Whereas somebody stealing a baseball out of somebody's backyard in downtown Windsor, isn't going to give a damn.*

Although the research was mainly concerned with juries in criminal trials, several interviews made reference to farmers within the context of civil trials. Since the views presented, in terms of civil trials, also dealt with the perception of farmers, they have thus been included.

For example, Interview # 7 offers the best example as to why in civil cases farmers are not well received by the plaintiffs lawyer.

...if you're dealing with a case where you are concerned with damages, for some reason, the plaintiff's lawyers do not necessarily like farmers. That's not true for all of them, but a good number seem to think that farmers don't think in the same dollar-numbers perhaps as city people. If they are looking for a reward of $100,000, the farmer might think, even though he's got a great capital asset in the farm, that is an awful lot of money to give out for damages. They're probably looking more for some corporate type who doesn't think a great deal about $100,000, who would think that the pain and suffering, if the case merits that kind of an award, he would say, "Well, $100,000 isn't a lot of money. I'll give him $100,000".

As a group, farmers were not well received by defence because they were perceived to be more law abiding. The view of farmers being law abiding citizens also emerged from the Crown's perspective, and therefore farmers were preferred on their juries.

HOUSEWIVES

Housewives comprised the fourth occupational group which was a significant determinant in the research. Of the 17 interviews, 9 made reference to housewives as being an important attribute. Although not an actual occupational classification "housewife" has been categorized as such, because there were a relatively large number of women who indicated that they were housewives on the panel list, and because they were made reference to, as such, by several lawyers.

Interview # 5 maintained that, housewives are similar to farmers, in that they may also fall into the category of being unsophisticated and perhaps easily influenced, as opposed to a financial person in a fraud trial.

> *...you may want a housewife who stays at home and who simply looks after the children and takes care of the family. Because she isn't sophisticated enough and you may be able and if your defence is based on the fact that your client, uh, this was simply bad bookkeeping on your client than that type of defence may be acceptable to a unsophisticated person who stays at home and doesn't have that thing and say "Well shit people make mistakes".*

In contrast, Interview # 7 stated that "housewives" are not unsophisticated, moreover, that they have a feel for law cases because of the influence of television.

Some lawyers like home makers in various types of cases. They feel that they are always watching soap operas or television and that they have a feeling of law cases. I don't know whether they show the old "Perry Mason" reruns in the morning or, whatever.

Housewives were quite well received by the majority of lawyers, both Crown and defence.

RETIRED PERSONS

Retired persons were described as being a problematic group, because on the panel list it may not be stated what occupation that the prospective juror is retired from. To many lawyers, this posed a kind of threat, because the lawyers felt that the person's former occupation would still influence the way the prospective juror would behave. In addition, there is usually an overlap with the age factor.

> Interview # 9 however, made no reference to the prospective juror's former occupation as being important, and stated that those who are elderly, or retired, generally may not be "in touch" with present social states.

> *I never want retired people. Most lawyers don't. I don't know... It's just ... they ... it has something to do with their age. They are not always familiar with what is going on in 1990. They are conscious of maybe 1972, or something. The laws change and people change too.*

> By comparison, Interview # 10, who served as a Crown Attorney for several years, states their preference for elderly or retired people on the Jury.

...I remember as a Crown, I was usually quite happy to get retired people, because I always was of the opinion that, if they are retired, maybe they'll feel that this is an interesting exercise and they'll pay attention and they won't be concerned that their businesses are going under while they're sitting in court. And, generally, what I would, especially as a Crown, what I was looking for was people that were going to be careful about listening to the evidence.

Retired persons were viewed, by most lawyers, as being elderly, which was found to be a more over-riding factor in their definitions.

LOGICAL PERSONS

The category of logical persons is not an actual sub-category of occupational groups. However, it includes several occupational groups which lawyers view as being logical, and from a defense lawyers perspective they are in some instances perceived as undesirable to be placed on a Jury.

Within the context of civil litigation, Interview # 7 found that those who are (as they termed) "mathematically inclined" are unacceptable to be placed on a Jury.

...you sometimes don't want people who are mathematically inclined (economists, accountants, etc.). By that, I mean, you don't want an individual that sits down and itemizes everything, and then comes up with a number and says, well, that's worth $15,000. What you are looking for are people in occupations that would, ball park-figure, perhaps, for lack of a better term, make a guesstimate[3] of what would be a fair.

Similarly, Interview # 3 shares the position with the aforementioned interview in terms of mathematical people.

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[3] The term "guesstimate" was used by this interview as a term which combines elements of the words guess and estimate.

I wouldn't like Engineers, typically, because they deal in mathematical things. They are very logical thinkers. If you're given A, B, and C, therefore D and E must follow.

In general, it was found that those who offered examples from a defence lawyer's perspective focused on a much wider range of occupations than did those who spoke from the Crown's perspective. Occupational groups, which are traditionally associated with higher education, comprised the bulk of the occupational groups which were not preferred by the defence lawyers.

AGE

Age emerged to be the second most important determinant of the definition of the situation. Although all those interviewed made some reference to age, the discussion did not become as in depth as it did on occupation. The individually perceived age factors were dichotomous; from a preference for young people to one for older individuals. In the interview, the participants were also asked if they attempt to choose persons their own age, the age of the client, or the age of the witnesses when choosing the Jury.

YOUNGER PERSONS

Interview # 14 supports the view that younger persons are preferred on the Jury because they tend to be more liberal.

> *I say, if you have no other basis to go on, generally speaking I'd prefer younger jurors because I think they are more tolerant... they're more understanding.*

In concurrence with Interview # 14, Interview # 2 also stated a preference for younger individuals as opposed to older ones, because they perceive younger people to be more liberal. However, they did acknowledge that this perception could be changed as the situation progressed.

I don't have too many basic or general perceptions. There are some real obvious ones, you know. For instance, I usually prefer a younger juror over an older juror because they tend to be more liberal. But, if I saw a very pleasant looking, apparently receptive older person, then clearly I would be more likely to take that person than someone who I did not perceive the same way, despite an age difference, and despite the one who is less attractive or less looking like they are receptive being the younger of the two. So, you can have general philosophies, but very much I go on specifics. I deal with the look of that particular individual.

In the case specific context of sexual assault, Interview # 10 stated that they shared the preference for younger people.

If it's a sexual assault case and the accused is a male and the victim is a child, generally speaking, I try to avoid older people...except that, with children who are Crown witnesses, I want people on the Jury who are experienced with children, who are young enough to have children, who can accept that ... obviously, any sexual assault on a child is a horrible thing. ...I don't want a juror who simply looks at a young child and feels that's a cute young child. I guess I have a sense that someone of a grandparent's age may be less likely to be critical in terms of assessing a child's evidence. They may more likely say, "Oh, it's a child. That's a little child, and that little child wouldn't lie", or whatever.

OLDER PERSONS

With respect to older persons on the Jury, Interview #8 offered the most succinct response on a Crown Attorney's preference for older jurors.

> *I avoid very young people because I wonder whether they have the assurance and the ability to make a tough decision.*

Interview # 6 provides an example which incorporates a preference for older and retired persons because of their life experiences.

> *...the older retiree, or retired person ... they've seen it all and they've been around and they've probably been through some experiences in their lives and they've learned to forgive and forget. Some of them can be very compassionate. They've seen it all...*

Interview # 5 also preferred older jurors, but also demonstrates that this definition could change depending on the circumstances of the offence.

> *In most cases you don't want young people on the Jury unless you have reason to believe that they might have been involved in for example if they're 20 years old they may have been in taverns and seen fights take place and thought nothing of it. If its a traffic offence they may have been involved in traffic offenses as well...So age is an important factor.*

Similarly, Interview # 4 stated that, they too, have a preference for older persons. However, this was qualified, in a case-specific context, through the following example.

If you are acting for a kid who is charged with robbery which is stealing a purse out of an old lady's hand, you don't want a silver haired old lady walking up on the Jury panel. There is no way she is going to be sympathetic. She is going to say there's been some time in my life when I've been pushed around, got bumped around, was on a bus and got abused by some teenagers...

The following interview provides an example which presents a balancing approach.

I like to not have too many young people on, one or two, and I'm talking about really young, university level. Generally, the older the juror, the less likely he is to convict, I would think. ...you want somebody who is wise enough to know that everything the police say is not true. On the other hand, you've got to balance that... if I've got a case where the guy has beaten up and robbed a seventy year old woman, I might not put a lot of old people on the Jury.
(Interview # 4)

With regard to age, it was found that most lawyers preferred older persons on the Jury, unless the case was of a nature where the accused person was a younger person who was alleged to have committed an offence against an older person. Younger jurors were also preferred in cases where it was an offence to which a younger person could relate to.

APPROXIMATION OF AGE

Interview # 2, in response to being asked if, when they are picking a Jury they may tend to choose jurors who are close to their own age, replied in the following manner.

> *Sometimes. But, sometimes my key witness is the client's mother and she might be thirty years older than the client and if I think I want them to identify with her, I'm not so worried about my client's age or my age. I might be worried about that age bracket because I want them to sympathize or be moved with this lady's very compassionate story. So, I don't think it always just relates to the accused or the counsel.*

Interview # 4 was also posed the same question as Interview # 2 and, responded in a most surprisingly.

> *I get along very well with my grandmother. So, I don't mind having an older person on the Jury. I don't mind having a younger person on the Jury. I get along well with my kids. Age isn't as important, I don't think, in most trials, as we think. It's really what kind of mind-set that you think that person will have, based on what they do for a living and whatever else you can get, from where they live and that type of thing. I don't think age is important because I think people's ideas are pretty well set, at a reasonably early point in life. People don't change to the extent that you think they do, or they think we will or you will. We are really a function or a product of our environment, and I don't think there's many changes after you reach adulthood. Age is not a big factor for me.*

Most lawyers responded to the question posed, in a manner similar to that which was presented by Interview # 2, indicating that the approximation of age was a factor which is the most situation specific, and based on a variety of factors.

RACE

Although race was a factor which seemed to be of great interest and discussion, it was not perceived to be a great factor in the Windsor area, because of the relative homogeneity of the majority of the population. This may, however, change over time. This factor, nevertheless, provides for an interesting topic of discussion. In most cases, the lawyers would want a visible minority on the Jury, if the juror were the same race as the defendant.

Racial factors were not mentioned if the accused were a white person, since the percentage of the population of other racial groups is minimal, as compared to whites. Race was also seen as a tactic which could be used to "embarrass" the Crown. It is suggested that the racial factor would be of greater concern in a metropolitan centre which has a more diverse population base.

> Interview # 1 expressed a desire to include a black person on the Jury if the accused were black, and given the opportunity.
>
> *...yea, if I had a black client, I would want a black person on the Jury...I don't think I've ever had a Jury with a black person. But, I think I did have to choose a Jury one time, and there was a fellow, a prospective panellist who was black, and I stood him aside, or challenged him. But, it was because I had specific knowledge about him that I thought would indicate some prejudice for this type of crime. I didn't want him around. And I think, in that case, one of the investigating officers was black too.*

Interview # 2 corroborated this ideal, but used Orientals as an example, in terms of an assault case where an Oriental had assaulted someone after being provoked with a racial slur.

If I'm representing a person who is Oriental, I would like to have people on the Jury who are oriental. I think they'd be more understanding. They might, particularly, be more understanding of the cultural background of the accused, so that they would understand when he felt slighted by some comment that they, themselves, would be slighted by. They could see that as being provocation. Whereas somebody from North America who would not be slighted by that comment to the same extent, may not view that as provocation. Something like that. I certainly take it into consideration.

Similarly, Interview # 10 stated that they believe prejudice is a fact of society, and if the accused is non-white, a non-white juror could only be beneficial to the accused.

Well, yea. I think if my client, (and I always hesitate to say this, but I think it exists)...If my client is black, I am concerned with a Windsor Jury because they are going to be predominately white... I think that there is prejudice out there. I believe that it exists. I think there is bigotry out there, and I've seen it in action. So, it worries me a little bit if my client is black, or of some other ethnic background, that I think he may find himself the subject of prejudice. I'll probably try to get people that are well educated and younger, hoping that they are less likely to have the stereotypes and prejudice than someone perhaps older and less educated. And, I say that knowing that there are many people that are older and less educated who are bigots.

Four of the interviews stated that race is a factor that may be used as a tactic against the Crown. The following comment by Interview # 3 typifies this opinion:

You want a nice racial mix if you can get it, and you can often embarrass the prosecution. If I have a black client, I know the prosecution is going to want to stand any black aside, but if he does I am going to screw him. That's a tactic.

Within the same context, Interview # 6 expresses a defense lawyer's view that the racial factor is significant in a tactical situation.

It might be...I think, from the Crown's perspective...obviously there's a lot fewer black people than there is white people. On a Jury panel, you've got one or two hundred people and not more than three or four black people are on it. I think, as a Crown, if you've got a black accused, and a black juror who is called up among the twenty, I think you almost have to, regardless of whether you otherwise wouldn't, put the black person on the Jury. I think you almost have to as a Crown, be content to put on a black juror. I don't think you could ever not accept a black person, especially in a crowded courtroom of two or three hundred people and only two black people, one is the accused and one a potential juror. I think you are running a risk as a Crown if you are perceived as somehow unfair by not agreeing to that juror.

In the introductory section of the research, the challenge for cause was described in some detail. The challenge for cause is an option which is seldom used in the Courts. However, Interview # 4 spoke of a challenge of the array being exercised on the basis of an under-representation of blacks on the panel, and the effect it had on the remainder of the selection process. The challenge was to determine if the proper procedures for empanelling a Jury, according to the Juror's Act of Ontario, had been followed by the Essex County Sheriff.

> *...we were defending two black guys...who were charged with raping a white female, and when the Jury showed up, there were absolutely no blacks on the Jury panel. And, so we challenged the array under the provisions of the Code...the challenge for array was unsuccessful because all of the proper procedures were followed. But, it sensitized everybody to the issue before the trial ever started. We also called a witness, a black historian in the Windsor area...to testify about the evolution of the blacks in this area and the percentage of the total population. Which at the time was about eight per cent and, out of two hundred jurors we didn't even have sixteen, we had zero. So, it sensitized the whole trial process to that particular problem. ...we went through the whole two hundred people, and only had ten jurors. So, when the sheriff was sent out (to get more prospective jurors), he brought back ten people. Out of the ten he brought back, eight were black. So... what we did in the beginning obviously had some impact on what we ended up with because the next two people who were seated were black.*

In the aforementioned context, it becomes evident that race was one of the most significant determinants of that particular Jury selection.

A Crown Attorney also comments on the nature of a black panel member, when there is a black person on trial, and the volatile nature of the situation from their perspective.

> *...when you have a black accused...and there is seldom a black person on the panel. And if there is, what should happen, and I know I've felt a lot of pressure... that black person comes forward...Maybe it's only in my mind. I feel a lot of pressure that is am I going to challenge or stand aside that black person. There's a whole sea of white people out there. Is the accused going to be tried by his peers? It's interesting because it is also putting that juror under a lot of pressure. There is only going to be one black person on that Jury. I have sort of gone all the away around on that. I feel it's sort of not fair to that juror, to stick him on a Jury and to force him to be centred out and I have no difficulty standing aside a challenge. I had one case where I put a black person on the Jury and my view was that the case was overwhelming. In fact, the Jury was directed to convict ... and the Jury was hung. They couldn't come back with a verdict.*

In conclusion, race is a significant determinant of the definition of the situation which will vary in its degree of significance based primarily on whether a person of a visible minority is the accused. It would also be a more significant factor where the population base is more diverse.

GENDER

Gender was the fourth factor which formed a significant determinant of the definition of the situation. Most lawyers advocated a "mix" of both males and females. Once again, however, gender was also used as a tactic between the Crown and defence in some situations. It is worth noting that women have only been permitted to be on juries since the nineteen fifties in Canada, and the majority of lawyers are still male. Of those interviewed, gender was made reference to by all. It is interesting to note that, of the references which were made about gender, all dealt with the inclusion or exclusion of the female gender and not of the male gender. Gender was a factor which was referred to be the most case specific in terms of sexual assault. However, the views on this aspect were also the most diverse.

In general terms, however, Interview # 4 stated a desire to have women on the Jury, although they still prefer the Jury to be male dominated by a ratio of two to one with one exception.

> *.. I try to stay around four to five women on a Jury, unless you've got a case where, for instance, you are acting for a woman who is charged with, say, aggravated assault on her husband because he was beating the shit out of her. Well, in that kind of case, yea, I want lots of women on there because, you know, statistics show a lot of women are physically, or sexually abused, in the course of their lives. But, generally speaking, I don't want a lot of women on the Jury.*

Interview # 14 also stated a preference for women on the Jury, but in the context of sexual assault cases. This view is contrary to the once popular belief that a woman would judge a woman harder than a man would.

Sexual cases, for example, it might surprise you that I like to put a lot of women on in sexual cases. Women are much harder. They won't judge a woman victim harder than a man. I'm not so sure that was always ... I have a feeling that was always the case. That's my perception, and it may be wrong. I wouldn't put all women, but enough women that they are going to overwhelm.

Once again, the idea that whether a Jury should be dominated by males or females depending on the nature of the case is explicated by another lawyer. Interview # 6, however, does take the opposing point of Interview # 5, with regard to women on sexual assault cases.

...generally speaking, you say maybe you want more men on the Jury and, in other cases, maybe more women. Sometimes ... I know on, say, sexual assault cases, one perspective is that a woman may be more understanding to the victim, and men more understanding to the accused. Then you get women who probably see the victim in sort of a compromised position to start with. They may be critical of her for putting herself in that position and that they wouldn't have done that.

A difference in the perceived objectivity of males and females was found in Interview # 5 who was adamant in his rejection to women on the Jury in cases involving offenses against children.

> *whether it involves a child. How do you get ... you wouldn't want twelve mothers on there where there's been a death of a child. Men are a little bit more objective about these things, women are emotional about them. And, right or wrong, in a situation like that you are not going to get a lot of mothers to be objective about the death of someone else's child.*

Also related to the gender factor is the gender of the lawyer, and the effect this may have on the way the lawyer, particularly a female lawyer, will approach the situation. Within this context, one of the female interviewees (who will not be identified by number to reassure her anonymity and confidentiality) spoke of her perception towards placing women on juries.

> *For instance, I believe that I may, as a female advocate, be off-putting to some women. So, I always challenge, almost always challenge, women who call themselves housewives in their descriptions on the list. So, if I see a woman who calls herself a housewife...it always concerns me that she may have very traditional values in terms of what a woman should be doing.*

In contrast, another female lawyer did not share the aforementioned perception, believing that her own gender was of little consequence.

No, I think that I can honestly say that the fact that I am a woman does not affect what I do in terms of picking juries, at all. Maybe it should, I don't know. But, it never occurs to me that the Jury's perception of me will matter. I just figure that I'm not that important to the process. Do you know what I mean? I am more concerned about their perception of my client and the evidence from the Crown witnesses. So, it doesn't cross my mind at all as to whether or not ... for instance, I may get ... it may be that certain people that are older, from working class backgrounds, may not be as enlightened in terms of women in professional careers. But, I don't think that it matters...

RESIDENCE

Residence was a multi-dimensional factor which held a variety of meanings to those interviewed. Some felt it was a factor if the residence of the prospective juror was in any way related to the scene of the crime, or if the prospective juror lives in an area which is more commonly exposed to crime. The second meaning was the perceived difference between city and country dwellers (this aspect overlaps with the occupational group of farmers).

The first assertion is supported by Interview # 2, from a defense lawyer's perspective, with specific reference to a murder in a small community. A situation which would, under most circumstances, cause a lawyer to apply for a change of venue (location) for the trial.

> *...for instance, if they live in a small community like Leamington. I've got a guy charged with murder in Leamington, and I might want to avoid them because I think they might have information that would be harmful to the accused and which I cannot dispossess in a short trial, to get rid of from their minds, wipe the prejudice out, and things like that.*

The first assertion is further expounded by Interview # 10, who also comments on the aspect of the prospective juror's residence, in relation to a high incidence of criminality in that area.

The only time it matters to me is if where they live is related, at all, to the crime. If it's a break and enter that happens in a certain area of the city, where there is a lot of break and entries, and this person lives in that general community, I would prefer them not to be there because they may have a knee-jerk reaction. "Well, we've got to stop these break and enters in our neighbourhood". But, that' the only time. It's if their address has something to do with the offense. Other than that, it doesn't have much affect.

The following two quotations serve to illustrate the conception of the differences between county and city people, and was shared by a number of the lawyers.

...and then their location, where they come from. We get a combination of county people and city people, and I often times feel that the county people are more law abiding or whatever. But, it's such a mixture.
(Interview # 8)

This perspective is further demonstrated in the context of violent crimes by Interview # 5.

If you have a crime involving violence then, as I've indicated a few seconds ago, you tend to want city dwellers as versus county dwellers, because they are more used to it, they are hardened to it, and so they may not be so upset when they see the actual physical violence (the pictures for example), or the problems that these people are complaining about. They can say, "Well we've seen that on a saturday night it isn't all that bad and, uh, we've seen worse and I've been in worse and I didn't complain".

As is the case with many of the preconceptions that lawyers, or persons in general possess, they are very fragile and not conclusive. This assertion is supported on the basis of residence by Interview #5

...you look at the person and you say, he lives in the "Projects". For instance, in a case of police misconduct, a lot of people who live in the "Projects" mistrust the police. So, you say, "Yea I might want this guy on because I'm going after the police in this particular case". And, they are not going to automatically believe the police, because they feel the police are always lying to them anyway. And then you find out, after you get the person on the Jury, that he's the Director of the local Police Athletic Region Council and, you know, that type of thing. There's absolutely no way that you can know that.

Throughout the interviews, it was noticed that most lawyers did not assign much importance to residential factors. However, two lawyers remarked that it is more important than the lawyers consciously realize. Interview # 11 submitted the following to substantiate his/her position.

I did a Jury trial in --------- three or four years ago, and I was at a total loss. I didn't know any of the ... I didn't know the ethnic background of the town. I knew there were a reasonable concentration of Dutch people, for instance. I knew that, in some ways, it would be similar to Windsor because there was a lot of factories. But, in other ways, it was less sophisticated because of its rural nature, farming and things like that. But, the main disadvantage because the only thing I could look at, in Windsor, was I could look at the person's address and see where that person lives. But, in --------- I had no idea, because I didn't know what Elm Street meant. If there's an Elm Street in Windsor, I know what it means. It's down by the University. Lower class, working class neighbourhood, solid houses, you know, there's a lot of students around there. You know, but the Elm Street in --------- I had no idea of. So, I felt almost naked there.

Residence is, therefore, viewed as a significant determinant of the situation, which is not consciously recognized, yet it may be a greater force in determining the situation than can be objectively assessed.

DRESS AND DEPORTMENT

> *...appearance is a very, very, significant factor because, for the first time, you're seeing this juror who is going to determine your client's fate. (Interview # 5)*

The category of dress and deportment was the only perceived determinant of the situation which was not found on the Jury panel list. Chronologically, it is the last, and may be the most decisive factor, which determines if the prospective juror is chosen for the Jury. Dress and deportment was also found to be the factor with the most variability of meaning. Many lawyers will have already chosen (in their minds) whom they would like to have on the Jury, prior to the selection date. This factor is the final determinant of Jury selection and has been sub-divided into three sub-categories: eye contact, level of dress and bearing.

EYE CONTACT

Of the dress and deportment category, eye contact was found to be the sub-category which was the most significant to both Crown and defence lawyers.

The following quote, from a defence lawyer's perspective, was given by Interview # 5.

> *I look at eye contact all along. I want to see whether their eyes are down-cast and turned away. It gives me the impression that they don't want to be there, they are not interested ... There are a lot of people, surprisingly enough, who do not want to judge their fellow man. They don't want to do it. They will do it because they are called upon to do it. They will do it with the least amount of enthusiasm, and they'll generally follow the pack.*

Interview # 8 offers this subsequent version from the perspective of the Crown.

> *They are standing there, nervous, which I think is a good thing. They don't know what to expect, but are respectful. They are not chewing gum, or not hands in their pockets and they look at you, they look at the accused. They look like a solid person. Generally, that's it.*

Interview # 12 also speaks from the Crown's perspective, and also places just as much emphasis on eye contact with the accused.

If I, as a Crown, if I look at that potential juror, and he could not look that accused in the eye, I would not want him because I figured that, if they can't look him in the eye, they are not going to find him guilty. It's going to be too tough for them. I wanted someone that could, at least, look this guy in the eye and say, okay, I'm here. I'm going to do what's right. It really matters to me as a Crown, because I feel that if they couldn't look him in the eye, this is a person that may not have what it takes to have to come out and say, "Guilty".

In contrast, Interview # 13 adopts the perspective of a defence lawyer, and offers the opposite line of reasoning.

I suppose the alternative is, if they can't look him in the eye, the defense council may say, wow, that might be a good person. Maybe they are kind of wishy-washy and wishy-washy likely means not guilty because, if you can't be sure, even if you think you are going to say "Not guilty", because that's the instruction that they get.

Eye contact is a factor which is found in all aspects of human life, and it is one of the most fundamental acts which can instill trust, or distrust, in others. This was found to be especially true in the confines of the courtroom.

GENERAL LEVEL OF DRESS

The prospective juror's level of dress was also a deciding factor in determining whether or not the prospective jurors were selected for the Jury. This factor appeared to embody a shared meaning for both the Crown and defence. Since the prospective juror's annual income is not revealed to the lawyers, the two factors which are mainly utilized as a measure of socio-economic status are the persons' occupation and the way they are dressed.

Interview # 5, illustrates this point from the perspective of the defence

> *...But, everything is relevant, the way that they dress, the type of clothes they are wearing, the way they wear their clothes. If you've got a trial that involves a particular degree of violence, you don't want the well dressed, well spoken suburbanite who is going to come in and say violence is a part of our lives, therefore let's get these scum bags and put them where they belong...*

Interview # 7 noticed that people who appear "street wise" are more often than not chosen by the defense.

> *Appearances, believe it or not, have a great deal to do with the selection of the Jury... notice when jurors are called. If you find a young man called up and he looks like he is street wise and he has the dress and the demeanour of a person that has been through the hard knocks, invariably you will see the defense counsel saying, content, particularly on an assault case.*

The Crown's perspective however, is presented by Interview # 8, who stated that to them the prospective juror should appear as if they were dressing up for court.

But, it's really the appearance that gives me ... that's a person I can trust, and they don't have to have a suit and tie on. But, if they come in appearing to maybe have dressed up for the occasion. They'd have a suit and tie where they'd normally wear one thing and they'd come in with a good shirt on and a sweater...

Interview # 8 makes reference to clothing as being indicative of respect.

I am looking for is the person that to me appears to have the ability to sit and listen; intelligence, or whatever you want to call that, and, more importantly, a person who exhibits, either through their dress or their manners or their appearance. A respect for the system. They will come to court and they'll listen, and honour their oath.

By comparison, Interview # 7 comments on the variability of the prospective juror's clothing, and the different meanings it could have for different lawyers.

...some lawyers challenge for no other reason than the colour of the tie the individual is wearing that particular day. He doesn't like it. Either it is too loud or too demurring. You size up the individual. You just get a feeling, You wouldn't want that person on the Jury.

Interview # 10 however contends that even the interpretation of the prospective juror's clothing is situation specific through the following example:

Well, I think a Crown would tell you that, as a prosecutor, you want people that look well dressed, neat and tidy because, generally, accused people aren't...So, I think, the Crown might say, we want people that look like very sort of solid members of the community and that kind of thing. But, I don't think it makes a huge difference. Particularly, I think, in Windsor, as I say, I think there is a lot of people in Windsor, depending on the economy at the time, who come for Jury selection, who are not in situations where they even own a suit and tie. They are off work, or have been for a while, or are working at jobs where they are not required to wear suits and ties. It's not sort of a business community. It's much more a labour community. And, I think that it's sort of unrealistic to expect you're are going to find a Jury full of people who are dressed in suits and ties. Like I can tell you, for instance, in London, if you walk into a Jury, you look at the Jury, and chances are the majority of them will be dressed in suits, men and women. Come to Windsor and it's not the case. And, I think it's just the make up of the community. It's really doesn't make a big difference to me in terms of picking a Jury, particularly now as a defense lawyer. I just don't really think it makes any kind of a difference.

BEARING

Bearing is a sub-category which overlaps greatly with the prospective juror's personal dress. Interview # 5 however provides the best summation of the factors which are a part of the persons bearing.

> *I want to see how they walk, how they talk, how they carry themselves, whether there's a sense of confidence in their stride, whether they're waiving to their friends thinking that it's all a lark and oh good I've been called, whether this is simply another boring interlude for them, or whether they're looking forward to it with zest and fervour.*

An individual's clothing and bearing are factors which are not only important in this research, but will also shape another persons impressions of the individual in other facets of everyday life.

In this chapter the researcher has presented the major categories of significant determinants of the definition of the situation, which emerged during the analysis of the interviews conducted with the lawyers. The following chapter of quantitative analysis will attempt to exemplify some of the assertions made in this chapter, through the examination of the data compiled by the researcher.

CHAPTER VI

QUANTITATIVE ANALYSIS

It must firstly be stated that although this chapter has been named quantitative analysis this in no way implies that the findings may be inferred or generalized for the universe, this is due mainly to the small sample size. The quantitative analysis of the research was conducted using the statistical analysis, software program SPSS-X on an IBM main frame computer. The computer generated tables of the lawyer's dispositions of the prospective jurors cross-tabulated by the prospective juror's age, residence, gender, race, and occupation on separate tables. Tables were also generated utilizing a specific case type as a control variable. The first being assault, the second sexual assault and the third category was created as a residual category. This third category was created because there were not sufficient cases of any one particular case-type remaining to comprise another category. The residual category contains the remainder of the other cases which were selected

It was found that for the 23 juries which were chosen for criminal matters 705 persons were viewed. On average 30.65 persons were viewed for each individual trial.

OCCUPATION

Occupation was coded and scaled using the occupational scaling guide utilized by Porter and Pineo (1968). This scale was employed since there were too many occupations listed, making a statistical analysis impractical, had the occupational categories not been collapsed. In their interviews the lawyers indicated that the prospective juror's occupation as initially the most significant factor which contributed to that person being selected or not. The statistical analysis of occupation revealed that the largest occupational groups found were: Unskilled Manual 18.6%, Semi-skilled Sales 14.9%, Skilled Clerical 13.2%, Skilled Trades 9.5% and Housewives 8.7% These groups comprised 65% of the sample population and also accounted for 62% of the members of juries. There are, however, noticeable differences in the use of challenges and stand asides between these groups.

In the largest group of Unskilled Manual the crown exercised 58 stand asides which eliminated 44% of the group, whereas the defence only used 22 challenges eliminating 16% of the group. The remaining 35% of the group was accepted.

By far the most chosen from group on a percentage basis was the semi-professional category, which also included teachers. 48% of those viewed were accepted as members of juries. 40% were challenged by the defence and 12% were stood aside or challenged by the Crown.

27 retired persons were viewed and were equally accepted or challenged or stood aside in each category.

With regard to the categories of farmers, unemployed persons very little was found because of an inadequate sample size. Even when combined, these categories did not even comprise 1% of the sample.

Employed professionals, High-level management, middle management, foremen and supervisors comprised 14.1% of the sample and were found to be evenly represented on juries comprising 15.2% of the Jury members.

Overall, Semi-skilled trades were also evenly accepted, challenged or stood aside.

Skilled Clerical were the second most popular group to be chosen with 42% of those in the sample being chosen, while 32% were challenged by the defence and the remaining 26% were challenged or stood aside by the Crown.

The third most popular group were those that indicated that they were housewives with 38% of them being accepted 37% were challenged by defence and the crown eliminated the remaining 25%.

SEXUAL ASSAULT

The sexual assault sub-division consisted of a total of 138 persons, from which 60 persons were chosen for five sexual assault trials.

With reference to occupation, there was little variance found between these cross tabulations and those from the original cross tabulations. Semi-professionals were once again the preferred occupational group, with 52% of them being accepted. The unskilled manual category however did not form as large a percentage as it did in the original cross tabulations. Instead, the two largest groups were found to be the skilled clerical and semi-skilled sales groups.

ASSAULT

The assault case sub-division consisted of a total of 345 persons from which 120 persons were chosen for 10 juries.

The occupational categories in this cross tabulation showed that there was a much larger percentage of unskilled manual workers than in the sexual assault sub-division (71/354 or 20.6%). However, the semi-professional category only comprised 7.5%. As was the case in the original table, the Crown exercised the greatest number and percentage of stand asides and challenges against the unskilled manual category.

The Crowns eliminated 49% of the persons in the category, while the defence only 12%

OTHERS

The residual category, which included all other types of offenses consisted of 220 persons , from which 96 persons were chosen for 9 juries. This set of cross tabulations did not vary from the original cross tabulations in any significant manner and will therefore not be discussed further for any of the categories.

GENDER

The examination of the gender variable revealed that overall the sample was comprised of 394 males (56.3%) and 306 females (43.4%). In terms of representation on juries, however, the division is virtually non-existent males and females comprised 50.18% and 49.09% of the juries respectively. In terms of the number of prospective jurors challenged by the defence it was almost the same, males 49% and females 51%. It is interesting to note however that a sizeable difference exists in the number of stand asides and challenges exercised by the crown to the different genders. The Crowns exercised challenges or stand asides against 154 males (68%) as opposed to 69 against 31% of the females.

SEXUAL ASSAULT

With specific reference to gender in sexual assault cases, it was found that the overall ratio of males and females in the sample varied minimally from the original table, and the Crown still stood aside or challenged a much greater percentage of males than did the defence , however, the juries chosen were 46% male and 54% female.

ASSAULT

In the cross tabulation of the assault cases with reference to gender it was found that the ratio of males to females in the sample was quite large when compared with the original table (57% male 43% female). However, the actual Jury composition of males and females was almost identical.

RACE

As was expected and expressed in many of the interviews, the racial factor is of minimal importance in the Windsor area. The data revealed that race is truly insignificant, because the total number of visible minorities observed in total only comprised 1.9% of the sample.

RESIDENCE

The residential factor which was accorded little significance in the interviews also does not appear to be an important factor in the quantitative analysis 67% or 472 persons of the sample indicated that their residence was in Windsor. The actual juries contained 66% Windsor residents A further 26 % of those in the residential category resided in small towns or in the neighbourhood, only the remaining 8% resided in what could be considered rural. When this variable was controlled for sexual assault, assault and the other cases it did not vary from the original table, and has therefore been deemed as insignificant.

AGE

The cross tabulation of the age variable revealed that 53.4% of those in the sample were between the ages of 30-49. The age group which had the largest percentage of its members chosen was the 40-45 year old group, with 48% being accepted. The oldest group which included all those persons over the age of 60 was the group which had the smallest percentage of its members chosen for a Jury. A pattern did emerge with respect to the percentage of challenges or stand asides used by the Crown. As the age category increased the number of stand asides and challenges issued by the Crown decreased. With

regard to the defence there was no discernable pattern on this aspect.

SEXUAL ASSAULT

In the cross tabulation of sexual assault cases with reference to age, the majority of the sample fell between the ages of 30-49 (57.4% or 77/138). The remainder of the sample was evenly distributed amongst the other age categories, thus rendering any further investigation of little consequence.

ASSAULT

The cross tabulation of assault cases with reference to age revealed the same patterns as were observed for the original cross tabulations and therefore require no further explanation.

TABLE I

PROSPECTIVE JURORS CHALLENGED OR STOOD ASIDE FOR ASSAULT CASES

OCCUPATIONAL CATEGORY	CROWN	DEFENSE	ACCEPTED	TOTAL
SELF EMPLOYED PROFESSIONAL	/	/	1	1
EMPLOYED PROFESSIONAL	1	2	3	6
HIGH LEVEL MANAGEMENT	/	1	/	1
TECHNICIANS	1	1	6	8
MIDDLE MANAGEMENT	5	6	4	61
SEMI-PROFESSIONALS	3	12	11	62
FOREMEN	5	4	2	11
SUPERVISORS	2	1	1	4
SKILLED CLERICAL	10	17	13	14
FARM OWNERS	/	/	/	/
SKILLED TRADES	12	7	15	84
SEMI-SKILLED SALES	18	17	13	41
UNSKILLED CLERICAL	4	3	9	61
UNSKILLED MANUAL	35	9	23	17
FARM LABOURERS	1	/	/	1
HOUSEWIFE	10	12	10	33
RETIRED	5	2	4	11
UNEMPLOYED	/	1	/	1
TOTALS	122	97	119	345

GENDER				TOTALS
MALE	88	45	60	197
FEMALE	34	52	58	147
AGE				
18-24	18	9	14	34
25-29	18	5	13	63
30-34	17	7	8	43
35-39	12	13	19	44
40-44	10	13	19	34
45-49	5	12	7	42
50-54	6	8	11	52
55-59	7	8	8	32
60 +	7	7	6	12
TOTALS	122	97	119	345

TABLE II

PROSPECTIVE JURORS CHALLENGED, STOOD ASIDE OR ACCEPTED FOR SEXUAL ASSAULT CASES

OCCUPATIONAL CATEGORY	CROWN	DEFENSE	ACCEPTED	TOTAL
SELF EMPLOYED PROFESSIONAL	/	/	/	/
EMPLOYED PROFESSIONAL	/	1	2	3
HIGH LEVEL MANAGEMENT	/	/	/	/
TECHNICIANS	3	/	/	3
MIDDLE MANAGEMENT	3	1	4	8
SEMI-PROFESSIONALS	2	8	11	12
FOREMEN	1	1	1	3
SUPERVISORS	/	1	/	1
SKILLED CLERICAL	4	9	10	32
FARM OWNERS	/	/	/	/
SKILLED TRADES	6	3	7	61
SEMI-SKILLED SALES	8	8	6	22
UNSKILLED CLERICAL	2	2	/	4
UNSKILLED MANUAL	5	5	7	71
FARM LABOURERS	/	/	/	/
HOUSEWIFE	2	1	5	8
RETIRED	2	1	3	6
UNEMPLOYED	1	1	/	2
TOTALS	36	42	60	138

GENDER				TOTALS
MALE	25	15	28	68
FEMALE	11	27	32	70
TOTALS	36	42	60	138

AGE				
18-24	4	5	8	17
25-29	3	3	6	12
30-34	5	4	11	20
35-39	3	5	8	16
40-44	5	10	5	20
45-49	4	6	11	21
50-54	2	1	3	6
55-59	4	3	2	9
60 +	5	3	5	13
TOTALS	36	42	60	138

TABLE III

PROSPECTIVE JURORS CHALLENGED, STOOD ASIDE OR ACCEPTED FOR RESIDUAL CATEGORY CASES

OCCUPATIONAL CATEGORY	CROWN	DEFENSE	ACCEPTED	TOTAL
SELF EMPLOYED PROFESSIONAL	1	/	/	1
EMPLOYED PROFESSIONAL	/	1	3	4
HIGH LEVEL MANAGEMENT	/	/	/	/
TECHNICIANS	2	3	2	7
MIDDLE MANAGEMENT	4	3	9	61
SEMI-PROFESSIONALS	2	2	5	9
FOREMEN	2	2	2	6
SUPERVISORS	3	/	/	3
SKILLED CLERICAL	8	5	17	03
FARM OWNERS	/	/	/	/
SKILLED TRADES	4	7	6	71
SEMI-SKILLED SALES	12	7	15	43
UNSKILLED CLERICAL	2	/	4	6
UNSKILLED MANUAL	18	8	17	34
FARM LABOURERS	/	1	/	1
HOUSEWIFE	2	9	8	91
RETIRED	2	6	2	01
UNEMPLOYED	/	/	/	/
TOTALS	66	55	96	217

GENDER				TOTALS
MALE	41	36	50	129
FEMALE	24	19	45	89
TOTALS	66	45	96	217
AGE				
18-24	10	3	11	44
25-29	10	1	9	20
30-34	11	6	16	34
35-39	9	12	10	31
40-44	7	6	24	37
45-49	7	4	6	19
50-54	4	5	8	17
55-59	4	5	5	14
60 +	2	11	5	16
TOTALS	66	45	96	217

QUESTIONNAIRES

The questionnaire utilized in conducting the research will now be presented in a form which illustrates the responses given by the subjects. The response categories provided on the questionnaire were: strongly agree, agree, no opinion, disagree and strongly disagree.

1. A YOUNG JUROR IS MORE LIKELY TO RETURN A VERDICT FAVOURABLE TO THE CROWN THAN TO THE DEFENDANT

   AGREE 3 NO OPINION 1 DISAGREE 10

2. A JUROR WHOSE AGE CLOSELY APPROXIMATES THE AGE OF THE DEFENDANT, IS MORE LIKELY TO GIVE A FAVOURABLE VERDICT FOR THE DEFENDANT.

   AGREE 2 NO OPINION 3 DISAGREE 9

3. A JUROR WHOSE AGE CLOSELY APPROXIMATES THE AGE OF THE DEFENCE ATTORNEY, IS MORE LIKELY TO GIVE A FAVOURABLE VERDICT FOR THE DEFENDANT.

   AGREE 1 NO OPINION 2 DISAGREE 10

   STRONGLY DISAGREE 1

4. A MALE JUROR IS MORE LIKELY TO RETURN A VERDICT FAVOURABLE TO THE DEFENDANT, IF THE DEFENDANT IS AN ATTRACTIVE FEMALE.

   AGREE 8 NO OPINION 3 DISAGREE 4

5. A FEMALE JUROR IS MORE LIKELY TO RETURN A VERDICT FAVOURABLE TO THE DEFENDANT IF HE IS AN ATTRACTIVE MALE.

   AGREE 5 NO OPINION 3 DISAGREE 6

6. A WOMAN JUROR IS MORE LIKELY TO BE INTOLERANT TO THE COMPLAINTS OF HER OWN SEX AND THUS RETURN A VERDICT UNFAVOURABLE TO HER OWN SEX.

STRONGLY AGREE 1 AGREE 5 NO OPINION 3
DISAGREE 5

7. A JUROR BELONGING TO THE SAME OCCUPATION OR PROFESSION AS THE DEFENDANT WILL BE MORE LIKELY TO GIVE A FAVOURABLE VERDICT FOR THE DEFENDANT.

AGREE 3 NO OPINION 3 DISAGREE 9

8. A JUROR BELONGING TO AN OCCUPATION OR PROFESSION TRADITIONALLY ANTAGONISTIC TO THE OCCUPATION OR PROFESSION OF THE DEFENDANT IS MORE LIKELY TO RETURN AN UNFAVOURABLE VERDICT FOR THE DEFENDANT.

AGREE 7 NO OPINION 1 DISAGREE 7

9. A JUROR WHO HAS OR HAD EXTENSIVE DEALINGS WITH THE PUBLIC IN MATTERS OF LAW ENFORCEMENT AND INVESTIGATION IS MORE LIKELY TO GIVE A DECISION FAVOURABLE TO THE DEFENDANT.

AGREE 2 NO OPINION 2 DISAGREE 8
STRONGLY DISAGREE 2

10. A JUROR WHOSE OCCUPATION IS THAT OF A BELLBOY OR TAXI DRIVER IS MORE LIKELY TO BE DEFENDANT-PRONE IN A CRIMINAL CASE. THEY SEE SO MUCH OF THE FRAILTIES OF HUMAN NATURE THAT THEY ARE NOT EASILY SHOCKED.

AGREE 4 NO OPINION 4 DISAGREE 6

11. A JUROR WITH A SMALL INCOME IS MORE LIKELY TO BE SYMPATHETIC WITH A POOR DEFENDANT.

AGREE 10 NO OPINION 2 DISAGREE 2

12. A JURY COMPRISED OF BOTH MEN AND WOMEN WILL HAVE A MORE DIFFICULT TIME AGREEING ON A VERDICT, AND IS THUS MORE LIKELY TO RETURN A VERDICT FAVOURABLE FOR THE DEFENDANT.

AGREE 2 NO OPINION 2 DISAGREE 10

The remaining questions have been omitted as the question of the prospective juror's ethnicity did not emerge form the interviews, nor were there any significant observations which could be made form the questionnaire.

DISCUSSION AND CONCLUSIONS

The symbolic interactionist perspective is used by this research in order to identify, and examine, the significant determinants of the situation employed by defense and Crown Attorneys in defining the situation of selecting a criminal trial jury. This chapter seeks to integrate into this body of research the determinants which emerged from the interviews with criminal lawyers and Crown Attorneys as well as other quantitative research.

Although most of the lawyers interviewed provided very case-specific examples, it would be short-sighted to dismiss this research as merely an exercise in constructing typologies of jurors for specific cases. Instead, it is the very nature of the case specific examples that highlight the researcher's goal of defining the significant determinants that the lawyers employ to define the situation of criminal jury selection.

The definition of the situation is one of the most important concepts in sociological literature and has been asserted by several sociologists, including Thomas and Thomas (1929), Lauer and Handel (1983). By applying this key concept to the jury selection process, the researcher was able to identify the significant determinants of the definition of the situation as employed by Crown and defence attorneys. As an aid to defining the lawyer's significant determinants, it was necessary to outline the pre-selection strategies utilized by

them. This pre-selection stage is not a category of determinant. Instead it allows the reader to become familiar with the lawyer's thought processes and strategies of jury selection. It is this familiarity that allows the reader, along the researcher, to understand why some determinants are more significant than others when used by the lawyers to define the situation of selecting a criminal trial jury.

The research revealed that , in order to define the definition of the situation of choosing a jury for a criminal trial, a lawyer will utilize a number of typifications and predispositions of the prospective jurors characteristics, just as other people engage in the use of typifications to assist them to define a particular situation. These characteristics are great in number and fall under several categories of significant determinants. The significant determinants were found to be occupation, age, race, gender, residence, and dress and deportment. Some of these categories contain several sub-categories. Table IV presents a representation of the one-sided interactional process which transpires when a lawyer chooses a jury for a criminal trial. It must be noted that interaction is never one-sided, and is presented here as such for illustrative purposes only.

Note: The interaction in the numbered areas occur simultaneously and not in the order it is presented.

TABLE IV

INTERACTIONAL CHART OF JURY SELECTION

LAWYER ENTERS THE SITUATION OF
JURY SELECTION
WITH
ELEMENTS OF
SELF, MIND, SYMBOLS, PERSPECTIVE, SIGNIFICANT OTHERS,
REFERENCE GROUPS, ROLE-TAKING ABILITY AND MEMORY OF THE PAST

LAWYER DEFINES SITUATION OF JURY SELECTION AS
ONE IN WHICH THEY MUST SELECT PERSONS TO
COMPRISE A JURY WHICH WOULD BE MOST
FAVOURABLE FOR THEIR CLIENT OR THE CROWN

1. LAWYER TAKES ROLL OF OTHER LAWYER EITHER CROWN
OR DEFENCE, IN AN EFFORT TO PREDICT
WHAT KINDS OF PEOPLE THEY WOULD LIKE TO
HAVE ON THE JURY

2. LAWYER EXAMINES PROSPECTIVE JURORS AGE, OCCUPATION
GENDER, RESIDENCE, APPEARANCE AND OTHER
FACTORS IN ORDER TO DEFINE THAT PROSPECTIVE
JUROR TO THEMSELVES

3. LAWYER APPLIES PAST EXPERIENCES THAT
THEY HAVE HAD IN SELECTING JURIES

LAWYER DETERMINES LINE OF ACTION TOWARDS THE
PROSPECTIVE JUROR EITHER IN THE FORM
OF A CHALLENGE FOR CAUSE A PEREMPTORY
CHALLENGE, A STAND ASIDE, OR BY
ACCEPTING THEM FOR THE JURY

LAWYER MAY REVISE THEIR PERCEPTION
OF THE DEFINITION OF THE SITUATION
AND IT'S DETERMINANTS,
BASED ON THE OUTCOME OF THE TRIAL

Adapted from Charron (1985).

OCCUPATION

The interviews revealed that the prospective juror's occupation was one of the most significant determinants of the situation. Although all occupational groups are considered determinants, there were six that were cited most often and have pronounced impact on whether a lawyer will chose a prospective juror for the jury. The sub-categories that emerged, and which aided the lawyers in more narrowly defining and categorizing this determinant, are teachers, financial persons, farmers, housewives, retired persons and the sub-category termed as logical persons.

Upon examination of the quantitative data compiled for this research, it was found that the occupational category with the greatest percentage of its members chosen for juries, regardless of case type, was the semi-professional category. This notably included a large contingent of teachers. Farmers were also a group which elicited a variety of responses from the lawyers. Unfortunately, the statistical data contained very few farmers. Housewives, also formed a distinct group for many of the lawyers. There were variances in the ways in which the lawyers perceived housewives. However, the statistical data demonstrated that over 36% of the persons who were categorized as housewives were chosen for juries, while 36% were challenged by the defence, and the remaining 22% were

challenged or stood aside by the Crown. In this instance, the statistical data supports the assertions made by the lawyers during the interviews. The final sub-category of occupation was that of retired persons. Retired persons are actually a part of the occupational category as well as the age category, since many retired persons are also elderly and are thus perceived as such by the lawyers. Most lawyers expressed a disdain for elderly or retired persons on the Jury, particulary those speaking from a defence perspective. The statistical data on this aspect is, although, inconclusive once again due to the small number of retired persons in the sample.

The questionnaires revealed that the lawyers believed that a prospective juror with the same occupation as that of the accused would not give a favourable verdict to the accused. In particular, this would be the circumstance in a fraud case involving bankers or accountants. The questionnaire also revealed that someone who has, or has had extensive positive dealings with law enforcement (such as ex-police, security guards, etc.) was perceived as not liable to render a verdict favourable to the accused. In addition the questionnaire also established that lawyers perceived that someone who has a small income will be more sympathetic with a poor defendant.

AGE

The second category found to be of great significance was the age factor. In the interviews, many defence lawyers made strong references to their aversion towards the very old (over 60 years) and the very young (under 25 years). The statistical data revealed that the majority of prospective jurors were to be found between the ages of 30 and 49, and that most of those chosen for juries were from this group. In contrast, those who were perceived as very young or very old were proportionately the most under-represented. It was also found that the Crown stated a preference for older persons. This was substantiated by a trend, which demonstrated that as the age of the prospective juror increased, the smaller the percentage of that group that the Crown would stand aside or challenge.

With regard to the questionnaire, it substantiated a dislike on the part of lawyers to include young persons on a Jury. In addition, it was felt that choosing jurors who approximated the age of either the accused, or the defence lawyer, did not increase the likelihood of a favourable verdict for the accused.

RACE

Race is a category which was found to be an important determinant to the lawyers, only when a visible minority is the accused. Unfortunately, the data generated on race by the current study is inconsequential.

GENDER

The gender factor was once again a most case specific variable, although most lawyers were proponents of a Jury which combined equal numbers of males and females. In the case specific context of sexual assault, however, there were lawyers who argued for and against the inclusion of women on the Jury. The statistical analysis established that, in actuality, the juries were evenly divided among men and women. In sexual assault juries however, there were slightly more females than males (54% and 46% respectively).

The questionnaire, supplied data which re-affirmed the perspective that the lawyers prefer a "mix" of genders on the Jury. Most lawyers disagreed with the opinion that a Jury comprised of both men and women will have a more difficult time reaching a verdict, and will thus return a verdict favourable to the accused.

RESIDENCE

Overall, residence was a factor that to most lawyers was insignificant, with some very case-specific exceptions. It was noted, however, that this factor may actually be more significant than consciously realized, since most lawyers who have lived in the area for a number of years will have distinct meanings which are assigned to the prospective juror's residential address. The quantitative analysis of the data obtained from the panel list found that, overall, a prospective juror's residential address is an insignificant factor, since people from all areas were chosen proportionately to their numbers. The questionnaire supplied information which indicated that the lawyers believed that male jurors would have a tendency to return a favourable verdict for the accused, if the accused were an attractive female. The inverse of this, however, was not found to be true. The data reveals that the position that women are more intolerant of the complaints of their own sex, and will thus return an un-favourable verdict to her own sex, was found to be supported and refuted by equal numbers of lawyers.

DRESS AND DEPORTMENT

The final determinant was found to be the prospective juror's dress and deportment, with special reference being made to eye contact, level of dress, and the prospective juror's bearing. Quantitative data was not available for this section of the research.

CONCLUSIONS

As with many researchers, it is in retrospect that he becomes aware of the possible shortfalls in his method, as well as its sources of remedy. It is also at this point of closure that the researcher realizes that his work has taken his interests in areas beyond his original thesis.

One of the methods used to explicate and examine the determinants of the definition of the situation was quantitative research. As inferred by its title, quantitative research should involve a rather substantial body of information. Although a sample of 705 subjects does seem to be quite substantial, once the data is cross-tabulated, in order to be trial specific, the categorization of information caused the sample body to be too small for meaningful evaluation. In order that a more concrete evaluation may become possible, and that more instances are provided for defining significant determinants it is advocated that a larger, more case-specific sample size be instituted. A possible pitfall with a case-specific approach would be the great amount of time required to complete the study, since Jury selections are not arranged by case type. In spite of this, an overall larger sample size would afford the researcher a better opportunity to examine more fully such characteristics as race, occupation, residency and perhaps the prospective juror's ethnicity.

Another drawback with quantitative research when the numbers are too small for statistical inference is that it makes the determinants themselves appear insignificant. It would be erroneous to assume that the research itself has been rendered useless as a result. The thesis deals with the personal nature of reflection, making the lawyer interview stage the lynch-pin of this research because of the spontaneity of their responses. This process is the closest practical means possible to actually simulating the jury selection procedure, as opposed to trying to rationalize it quantitatively after the fact. The only other means to be more accurate would be to either interview the lawyers immediately following the Jury selection or to carry on a running dialogue with the lawyer as the selection is taking place. Obviously the first would be a logistical nightmare, as well as a great imposition on the lawyers, and the second is outside of the bounds of acceptable behaviour in the court room, and therefore impossible. It is the spontaneous nature of the interview that prevents the lawyer from over-rationalizing for his/her audience and consequently allows him/her to answer instinctively, not reflectively.

Because the disposition of this research is exploratory, the quantitative research is intended to enhance, not supersede the qualitative aspect. If there is to be a symbiotic relationship derived from this, it would be that the quantitative depends on the qualitative.

In the course of this research a number of tributary lines of thought have developed. Having identified and examined what the significant determinants are, an interesting angle would be to study the full scope of any individual determinant and all of its implications, versus the exploratory nature of the present study. Along this line of thought, an interview phase with equal numbers of Crown and defence attorneys or equal numbers of male and female lawyers, either Crown, or defence, or both, would be quite illuminating. At the outset of the present study some of these ideas were to have been explored, however, this would have been a difficult manoeuvre to carry out considering the constraints of time, accessibility, and willingness of participants.

This research has fulfilled its thesis by successfully using the symbolic interactionist perspective in order to identify and examine the significant determinants of the definition of the situation employed by defence lawyers and Crown attorneys, in defining the situation of selecting a criminal trial jury. Although not prophetic, this research has shed some light into an area of the Criminal Justice System that is not generally well understood. It is this selection of a criminal trial Jury that forms a "cornerstone of justice".

APPENDIX A

Appendix A is presented in two variations which were developed as the research progressed. The first version is the original prospective juror observation sheet (Demby, 1970), which includes minor modifications.

The second version is the subsequent form which was designed and used to record the in court selection process. It was based on the original work by Demby, 1970. However, it incorporated pre-selected abbreviations for the juror characteristics for ease of application.

APPENDIX A

VERSION I

COURTROOM OBSERVATIONS

DATE:_____ TIME:_____

COURTROOM NUMBER:_____

CROWN ATTORNEY:_____

DEFENSE ATTORNEY:_____

DEFENDANT:_____

AGE:_____
WEIGHT:_____
SEX:_____
HAIR:_____
RACE:_____
HEIGHT:_____

NATURE OF TRIAL:_____

NUMBER ON JURY PANEL:_____

CIRCUMSTANCES OF TRIAL:

SEX
Man
Woman
AGE
18-29
30-39
40-49
50-59
60+
OCCUPATION
professional
businessman
banker/broker
executive
union official
city,state,federal worker
office worker,clerical
salesman
factory worker/labourer
factory foreman/technician
farmer
housewife
unemployed
retired

RACE

Oriental (Chinese)

American Indian

Asian indian/Malayan/Filipino

Negro

White

FAMILY NATIONALITY

British

French

Irish

German

Spanish

Italian

Japanese

Puerto Rican

Polish

Greek

Russian

Czech/Bohemian

Romanian/Hungarian

Scandinavian

Lebanese

Arabic Other

MARITAL STATUS if known

single

married

APPEARANCE

---

height

weight

hair colour

scars/amputations

Adapted from (Demby, 1970)

In addition to the criteria used by Demby (1970) the additional criteria of specific articles of clothing, will be introduced in an effort to more narrowly define the prospective jurors.

CLOTHING

---

suit	shirt
skirt	pants
dress	blouse
t-shirt	shoes
sweater	shorts
hat	

APPENDIX A

VERSION II

COURTROOM OBSERVATIONS

DATE:_____

JUDGE_____

CROWN_____

DEFENCE_____

DEFENDANT_____

SEX M / F RACE W / B / O / N / E / OL

HEIGHT WEIGHT

HAIR B / BR / BL / A / D / R / BB / S+P / BA /BD

SH / S / L / C / ST / W / K / D / A / P / SR / G / SP / BR

FACIAL M/ /B / G / S / L

SCAR/AMP/TATTOO 1 / 2 / 3 / 4 / 5

APPEARANCE C / A / N PHYSICAL N / AP / I S / C / A / N /E

SHOES R / DR / P / F / C / DE / S / W / H / RU / DB /

SUIT 2 / 3 PANTS COLOUR AND MATERIAL

SKIRT M / L DRESS F / S

JACKET PE / T / S / W / V / B / F / P / C

SWEATER SHIRT T / M / B / S

TIE COLOUR HAT B / F / BE / P

ACCESSORIES P / H / C / B / S / G / W / N / SO / PA / E

JEWELLERY W / C / P / R / BR

CODES

MATERIALS J = JEAN CD = CORDUROY P = POLYESTER (ETC)
L = LEATHER SK = SILK S = SUEDE
T = TWEED C = COTTON

COLOURS R = RED O = ORANGE Y = YELLOW G = GREEN
B = BLUE G = GREY N = NAVY PK = PINK
PI = PINSTRIPE W = WHITE P =PURPLE
BR = BROWN T = TAN PL = PLAID

F = FLUORESCENT

D OR L AS A PREFIX DENOTES LIGHT AND DARK RESPECTIVELY

SHOES R = RUNNING SHOES DR = DRESS SHOES P = PUMPS
F = FLATS C = COWBOY BOOTS D = DECK
S = SANDALS W = WORK BOOTS H = HIKING
RU = RUBBERS DB = DRESS BOOTS
O = OXFORDS DE = DESERT BOOTS
A = ANKLE BOOTS

SUIT COLOUR MATERIALS AND 2 = TWO PIECE 3 = THREE PIECE

PANTS COLOUR AND MATERIAL

SKIRT COLOUR AND M = MINI
L = LONG

DRESS COLOUR AND F = FLOOR LENGTH
S = SHORT

JACKET COLOUR, MATERIAL PE = PEE COAT T = TRENCH COAT
S = SKI JACKET W = WIND BREAKER
V = VARSITY P = PARKA
B = BOMBER C = CAR COAT
F = FUR

SWEATER COLOUR AND PATTERNS

SHIRT COLOUR AND T = T-SHIRT
M = MUSCLE SHIRT
B = BLOUSE
S = SWEAT SHIRT

TIE COLOUR MATERIAL AND PATTERN

ACCESSORIES COLOUR AND

P = PURSE	H = HANDBAG	C = CLUTCH PURSE
B = BELT	S = SCARF	G = GLASSES
W = WATCH	N = NYLONS	SO - SOCKS
PA = PAINTED NAILS		E = EARRINGS

JEWELLERY

W = WEDDING BAND
C = CHAIN
P = PENDANT
R = RINGS
BR = BRACELET

SEX M = MALE F = FEMALE

RACE W = WHITE B = BLACK O = ORIENTAL/ASIAN
N = NATIVE PEOPLES E = EAST INDIAN

HEIGHT

HEIGHT AND WEIGHT WILL BE ESTIMATED AND CODED LATER

WEIGHT

HAIR B = BLACK BR = BROWN BL = BLONDE
A = AUBURN D = DIRTY BLONDE R = RED
BB = BLEACH BLONDE S + P = SALT + PEPPER

BA = BALD BD = BALDING

SH = SHOULDER LENGTH S = SHORT L = LONG

C = CURLY ST = STRAIGHT W = WAVY
K = KINKY D = DYED A = AFRO
P = PERM SR = STREAKED G = GREASED BACK

SP = SPIKED BR = BRUSH CUT

FACIAL HAIR AND COLOUR IF DIFFERENT THEN HAIR COLOUR
M = MOUSTACHE
B = BEARD
G = GOATEE
S = SIDEBURNS
L = LABMCHOPS

SCAR/AMP/TATTOO 1 = SCAR
2 = AMPUTATION GIVE LOCATIONS ON BODY
3 = TATTOO AND WRITING SEEN
4 = LIMPING
5 = CAST

APPEARANCE C = CLEAN CUT A = ATTRACTIVE N = NEAT

PHYSICAL N = NERVOUS AP = APATHETIC I = INTERESTED

S = SLOUCHED

N = NO EYE CONTACT WITH DEF

C = LEGS CROSSED E = EYE CONTACT

A = ARMS CROSSED

APPENDIX B

CODEBOOK

COLUMN	DESCRIPTION
1-3	ID NUMBER
4-5	CASE NUMBER
6	CASE TYPE 1 = ASSAULT 2 = SEXUAL ASSAULT 3 = WEAPONS OFFENSES 4 = FRAUD 5 = BREAK AND ENTER 6 = ARSON
7	PANEL NUMBER
8-9	RESIDENCE WINDSOR = 1 A'BURG = 2 ESSEX = 3 MAIDSTONE = 4 KINGSVILLE = 5 LEAMINGTON = 6 EMERYVILLE = 7 STONEY POINT = 8 TECUMSEH = 9 ST CLAIR BEACH = 10 LASALLE = 11 HARROW = 12 MCGREGOR = 13
10-11	OCCUPATION CODE HOUSEWIFE = 17 RETIRED = 18 UNEMPLOYED= 19
12-13	AGE

14 SEX

1 = MALE
2 = FEMALE

15 DISPOSITION

1 = OK
2 = DC
3 = SA
4 = CC

16 RACE

1 = WHITE
2 = BLACK
3 = ORIENTAL
4 = NATIVE PEOPLES
5 = EAST INDIAN

APPENDIX C

1. A YOUNG JUROR IS MORE LIKELY TO RETURN A VERDICT FAVOURABLE TO THE CROWN THAN TO THE DEFENDANT

STRONGLY AGREE ___

AGREE ___

NO OPINION ___

DISAGREE ___

STRONGLY DISAGREE ___

2. A JUROR WHOSE AGE CLOSELY APPROXIMATES THE AGE OF THE DEFENDANT, IS MORE LIKELY TO GIVE A FAVOURABLE VERDICT FOR THE DEFENDANT.

STRONGLY AGREE ___

AGREE ___

NO OPINION ___

DISAGREE ___

STRONGLY DISAGREE ___

3. A JUROR WHOSE AGE CLOSELY APPROXIMATES THE AGE OF THE DEFENCE ATTORNEY, IS MORE LIKELY TO GIVE A FAVOURABLE VERDICT FOR THE DEFENDANT.

STRONGLY AGREE ___

AGREE ___

NO OPINION ___

DISAGREE ___

STRONGLY DISAGREE ___

4. A MALE JUROR IS MORE LIKELY TO RETURN A VERDICT FAVOURABLE TO THE DEFENDANT, IF THE DEFENDANT IS AN ATTRACTIVE FEMALE.

STRONGLY AGREE ___

AGREE ___

NO OPINION ___

DISAGREE ___

STRONGLY DISAGREE ___

5. A FEMALE JUROR IS MORE LIKELY TO RETURN A VERDICT FAVOURABLE TO THE DEFENDANT IF HE IS AN ATTRACTIVE MALE.

STRONGLY AGREE ___

AGREE ___

NO OPINION ___

DISAGREE ___

STRONGLY DISAGREE ___

6. A WOMAN JUROR IS MORE LIKELY TO BE INTOLERANT TO THE COMPLAINTS OF HER OWN SEX AND THUS RETURN A VERDICT UNFAVOURABLE TO HER OWN SEX.

STRONGLY AGREE ___

AGREE ___

NO OPINION ___

DISAGREE ___

STRONGLY DISAGREE ___

7. A JUROR BELONGING TO THE SAME OCCUPATION OR PROFESSION AS THE DEFENDANT WILL BE MORE LIKELY TO GIVE A FAVOURABLE VERDICT FOR THE DEFENDANT.

STRONGLY AGREE ___

AGREE ___

NO OPINION ___

DISAGREE ___

STRONGLY DISAGREE ___

8. A JUROR BELONGING TO AN OCCUPATION OR PROFESSION TRADITIONALLY ANTAGONISTIC TO THE OCCUPATION OR PROFESSION OF THE DEFENDANT IS MORE LIKELY TO RETURN AN UNFAVOURABLE VERDICT FOR THE DEFENDANT.

STRONGLY AGREE ___

AGREE ___

NO OPINION ___

DISAGREE ___

STRONGLY DISAGREE ___

9. A JUROR WHO HAS OR HAD EXTENSIVE DEALINGS WITH THE PUBLIC IN MATTERS OF LAW ENFORCEMENT AND INVESTIGATION IS MORE LIKELY TO GIVE A DECISION FAVOURABLE TO THE DEFENDANT.

STRONGLY AGREE ___

AGREE ___

NO OPINION ___

DISAGREE ___

STRONGLY DISAGREE ___

10. A JUROR WHOSE OCCUPATION IS THAT OF A BELLBOY OR TAXI DRIVER IS MORE LIKELY TO BE DEFENDANT-PRONE IN A CRIMINAL CASE. THEY SEE SO MUCH OF THE FRAILTIES OF HUMAN NATURE THAT THEY ARE NOT EASILY SHOCKED.

STRONGLY AGREE ___

AGREE ___

NO OPINION ___

DISAGREE ___

STRONGLY DISAGREE ___

11. A JUROR WITH A SMALL INCOME IS MORE LIKELY TO BE SYMPATHETIC WITH A POOR DEFENDANT.

STRONGLY AGREE ___

AGREE ___

NO OPINION ___

DISAGREE ___

STRONGLY DISAGREE ___

12. A JURY COMPRISED OF BOTH MEN AND WOMEN WILL HAVE A MORE DIFFICULT TIME AGREEING ON A VERDICT, AND IS THUS MORE LIKELY TO RETURN A VERDICT FAVOURABLE FOR THE DEFENDANT.

STRONGLY AGREE ___

AGREE ___

NO OPINION ___

DISAGREE ___

STRONGLY DISAGREE ___

13. PLEASE RESPOND SEPARATELY FOR EACH GROUP.

A JUROR OF:

A. NORDIC (SWEDISH) (NORWEGIAN) (FINNISH)

B. ENGLISH

C. GERMAN

D. SCOTTISH

DESCENT IS MORE LIKELY TO RESPOND TO AN APPEAL BASED ON LAW AND ORDER AND THUS, TO RETURN A VERDICT FAVOURABLE TO THE CROWN

A.

STRONGLY AGREE	___
AGREE	___
NO OPINION	___
DISAGREE	___
STRONGLY DISAGREE	___

B.

STRONGLY AGREE	___
AGREE	___
NO OPINION	___
DISAGREE	___
STRONGLY DISAGREE	___

C.

STRONGLY AGREE	___
AGREE	___
NO OPINION	___
DISAGREE	___
STRONGLY DISAGREE	___

D.

STRONGLY AGREE	___
AGREE	___
NO OPINION	___
DISAGREE	___
STRONGLY DISAGREE	___

14. PLEASE RESPOND SEPARATELY FOR EACH GROUP.

A JUROR OF:

A.	IRISH	B.	JEWISH	C.	FRENCH
D.	ITALIAN	E.	SPANISH	F.	SLAVIC

DESCENT IS MORE LIKELY TO RESPOND TO AN EMOTIONAL APPEAL AND THUS, TO RETURN A VERDICT FAVOURABLE TO THE DEFENCE

A.

STRONGLY AGREE	___
AGREE	___
NO OPINION	___
DISAGREE	___
STRONGLY DISAGREE	___

B.

STRONGLY AGREE	___
AGREE	___
NO OPINION	___
DISAGREE	___
STRONGLY DISAGREE	___

C.

STRONGLY AGREE	___
AGREE	___
NO OPINION	___
DISAGREE	___
STRONGLY DISAGREE	___

D.

STRONGLY AGREE	___
AGREE	___
NO OPINION	___
DISAGREE	___
STRONGLY DISAGREE	___

E.

STRONGLY AGREE	___
AGREE	___
NO OPINION	___
DISAGREE	___
STRONGLY DISAGREE	___

F.

STRONGLY AGREE	___
AGREE	___
NO OPINION	___
DISAGREE	___
STRONGLY DISAGREE	___

APPENDIX D

CLASSIFICATION OF LAWYERS INTERVIEWED

LAWYER NUMBER	CROWN/DEFENSE	YEARS EXP.	TAPED
1.	D	12	Y
2.	B	13	Y
3.	D	22	Y
4.	D	20	Y
5.	D	23	Y
6.	C	15	Y
7.	D	20	Y
8.	D	16	Y
9.	B	18	Y
10.	B	9	Y
11.	D	17	Y
12.	D	30	Y
13.	D	15	Y
14.	D	21	N
15.	D	17	Y
16.	B	33	Y
17.	D	19	N

Some lawyers have acted as both defence and crown through their careers and have been indicated as "B" in the crown or defense column.

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