

California State University, San Bernardino

CSUSB ScholarWorks

Theses Digitization Project

John M. Pfau Library

1998

The verdict in retrospect: An anlysis of the sociological and jurisprudential paradigms of jury decision-making

Christopher S. Riley

Follow this and additional works at: <https://scholarworks.lib.csusb.edu/etd-project>



Part of the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Riley, Christopher S., "The verdict in retrospect: An anlysis of the sociological and jurisprudential paradigms of jury decision-making" (1998). *Theses Digitization Project*. 1571.
<https://scholarworks.lib.csusb.edu/etd-project/1571>

This Thesis is brought to you for free and open access by the John M. Pfau Library at CSUSB ScholarWorks. It has been accepted for inclusion in Theses Digitization Project by an authorized administrator of CSUSB ScholarWorks. For more information, please contact scholarworks@csusb.edu.

**THE VERDICT IN RETROSPECT: AN ANALYSIS OF THE SOCIOLOGICAL
AND JURISPRUDENTIAL PARADIGMS OF JURY DECISION-MAKING**

**A Thesis
Presented to the
Faculty of
California State University,
San Bernardino**

**In Partial Fulfillment
of the Requirements for the Degree
Master of Arts
in
Criminal Justice**

**by
Christopher S. Riley
September 1998**

THE VERDICT IN RETROSPECT: AN ANALYSIS OF THE SOCIOLOGICAL
AND JURISPRUDENTIAL PARADIGMS OF JURY DECISION-MAKING


A Thesis
Presented to the
Faculty of
California State University,
San Bernardino


by
Christopher S. Riley
September 1998

Approved by:


Dr. Dale Sechrest, Chair, Criminal Justice

6-10-98
Date


Dr. Frank Williams


Dr. Larry Gaines

ABSTRACT

The current body of jury behavior literature produces two paradigms: the first explains variance in verdicts by sociological variables exhibited by the jury, defendant, and victim; the second explains variance by the strength of evidence, formal and informal legal rules, and reasoned differences in the interpretation of law. This thesis is a test of which paradigm best predicts the outcome of cases.

To that end, a mock trial has been created in which a defendant was charged with murder. Though the evidence favored his conviction, the sociological relationships favored acquittal. The mock trial was videotaped and shown to a jury of eleven members who deliberated and returned a hung verdict in favor of acquittal. Though the verdict was expected in light of the sociological paradigm, Opinion Tracking Surveys, deliberation monitoring, and Exit Surveys all showed that the verdict was based strictly on the relative strengths and weaknesses in the physical and circumstantial evidence. Thus, when pitted alongside evidentiary variables, the sociological variables failed to produce any movement in jury decision-making.

The conclusion of the thesis is that despite evidence showing correlations between sociological variables and patterns in decision-making, jurors accept and embrace their responsibility to make decisions given the weight of the evidence.

ACKNOWLEDGMENTS

Special thanks are due the members of the University of Redlands Mock Trial Team who provided exceptional witness testimony during the mock trial; friends and family members who gave their characters the “real life” essence that a convincing portrayal required; Annette Irving of the San Bernardino County District Attorney’s Office for her help as the prosecuting attorney; John R. MacRill of MacRill and Associates for his help as the defense attorney. Finally, very special thanks to the Honorable Judge Welch of Rancho Cucamonga for use of his courtroom.

TABLE OF CONTENTS

ABSTRACT.....	iii
ACKNOWLEDGMENTS.....	iv
TABLE OF CONTENTS.....	v
CHAPTER 1: BACKGROUND.....	1
CHAPTER 2: THE SOCIOLOGICAL PARADIGM.....	5
CHAPTER 3: THE JURISPRUDENTIAL PARADIGM.....	11
CHAPTER 4: RESEARCH PURPOSE AND DESIGN.....	17
CHAPTER 5: RESULTS.....	27
CHAPTER 6: DISCUSSION.....	35
CHAPTER 7: CONCLUSION.....	45
APPENDIX A: MOCK TRIAL CASE.....	47
APPENDIX B: JUROR SURVEY.....	70
APPENDIX C: OPINION TRACKING SURVEY.....	74
BIBLIOGRAPHY.....	75

CHAPTER 1: BACKGROUND

Centuries ago, if they were caught red-handed, were a notorious reprobate, or charged with a violent crime, accused individuals were subjected to “ordeals” to determine their guilt or innocence. As far back as 997 A.D. ordeals included such exercises as the “hot iron.” Accused individuals were forced to carry a hot iron over a certain distance (usually nine feet); if the burned hand healed within three days, God was believed to have expedited the process for the purpose of proving innocence and the prisoner was released. Alternatively, those individuals untouched by the hand of God were guilty. Another form of the ordeal was “going to the water” variant. Bound by rope, these accused were thrust into a body of water; if their bodies sank to a predetermined level, God had established innocence. However, those whose bodies floated were guilty and sentenced accordingly. Archaic by current standards of due process, dozens of these various tests of guilt were used in England until around the 13th Century when replaced with a jury composed of twelve appointees of the King. These jurors merely testified to their knowledge of the case and defendant and had no authority to determine guilt or innocence themselves. During the middle of the 13th Century, however, the role of the petit jury came to include ultimate decision-making power, but there was no recorded law requiring defendants to submit to a jury. Since ordeals had been outlawed and the jury system was still voluntary, often defendants refused to accept a jury and the courts, for lack of a better alternative, were forced to banish them. The Statute of Westminster in 1275 forever established the petit jury as the decision-making body in criminal trials when it decreed that any individual

refusing a jury trial would have “punishment strong and hard” imposed until a change of mind occurred.

The political independence of the jury did not immediately follow. Trials the King considered important were composed of jurors appraised of their “responsibilities,” or the knowledge they must return a verdict of guilty. When, in 1670, a jury refused to return a verdict of guilty against William Penn for unlawful assembly, fines and imprisonment followed.¹ In the American colonies, the independent jury system was established and considered an indispensable element of democracy. For example, in 1735 William Cosby was appointed by the King as Governor of New York. The new polemic wasted no time infuriating the colonists who responded with satire and opposition editorials. The publisher of one such journal, John Zenger, was tried for seditious libel but found not guilty by his peers. Many historians cite this instance as the moment in which juries came to represent a “check” against the power of government and were embedded in the definition of liberty. Indeed, following the Revolutionary War, concerns over the longevity of the jury system threatened to undo the political union created by the Constitution until the right to trials by jury in both criminal and civil matters were enumerated in the Bill of Rights.²

¹ For more information on the European history of jury trials, see Hans and Vidmar (1986, pp. 21-30), and Friedman (1993).

² In fact, opponents of the Constitution known as Anti-Federalists consistently listed the absence of a jury trial guarantee as a reason for not supporting its ratification. For further reference, see Ketchum, R., ed. (1986, pp. 173-266).

Between 1789 and 1895, the jury was the sole arbiter of the law. Not only did it decide the guilt or innocence of the accused but was given latitude to decide questions of law. Unsurprisingly, jury verdicts were arbitrary and, as commercial interests grew, efforts were initiated to standardize the interpretations of law within the courtroom. Thus, in 1895 the United States Supreme Court placed restraints on the jury and insisted that matters of law be decided by the presiding judge (*Sparf v. United States* 156 U.S. 52). Over the course of the next century, judges have instructed juries on legal matters such as negligence, proximate cause, self-defense, reasonable doubt, malice aforethought and so forth.

We have since placed considerable value in allowing common people to assume the responsibility of determining the guilt or innocence of fellow citizens accused of crime.³ Indeed, the United States joins the Canadian and English legal systems as the only remaining in the world still possessed of the jury system. Increasingly, however, popular sentiment in the United States questions the viability and wisdom of maintaining this historic institution. Some detractors argue that recent high profile criminal cases prove that juries are too amenable to flamboyance in the courtroom and render verdicts in conflict with deeper notions of justice (Beyette, 1997). Others have long maintained that the jury is incapable of understanding complex legal issues and ascertaining truth from falsity

³ Americans have resisted efforts to allow judges to determine guilt for basically three reasons. First, there is the hope that juries will treat defendants with more humanity than judges who strictly follow the law. Secondly, judges are professional jurists who have "heard it all before." As such, they are jaded by their experiences from evaluating each successive case fairly. Finally, consistent with democracy, the jury is a mini-government composed of representatives from the people. See for reference Adler (1994).

particularly when scientific evidence is involved (Wishman, 1986, pp. 168-169). Indeed, a study conducted by the American Bar Association concluded that jurors were often bored, confused, and incapable of recalling essential pieces of evidence (Margolis, D.H., 1989). Finally, others are embarrassed by the administrative shortcomings in the jury system and argue that it is an expense society cannot comfortably incur (National Center for State Courts, 1976). A recent example emerged when a Los Angeles area judge, unable to impanel a sufficient number of jurors, invoked a rarely used statute entitling him to authorize deputies to summon venirepersons from anywhere in the community. The deputy returned quickly with jurors found drinking in a bar (Corwin, 1996). Concerns over the length of service, financial hardship of those impaneled, and the costs incurred by taxpayers continue to be raised (Abrahamson, A. 1997), and some jurisdictions are now even allowing private companies to adjudicate cases with professional jurors (Jacobs, M.A. 1997).

If the jury system is to be maintained in the United States, changes in its administrative procedures will certainly occur. However, the erosion of faith in the jury is only tangentially related to administrative matters. The paramount concern is the jury's ability to render verdicts warranted by case facts. There are a number of paradigms and related theories existing in academic literature explaining how juries decide verdicts. Some maintain that juries are conscientious in the effort to return a verdict that is just; others expose difficulties encountered in doing so. Two such paradigms have been selected for exploration in this paper: the sociological and jurisprudential.

CHAPTER 2: THE SOCIOLOGICAL PARADIGM

In his 1989 book, Sociological Justice, Donald Black suggests that the manner in which we analyze the legal process is dreadfully incomplete: indeed, we concern ourselves with the logical application of facts against governing statutes and predict whether a jury will render a guilty (or liable) verdict or acquit (exonerate). Instead, according to Black, we should concern ourselves to a greater degree with the relationships between offender and victim, victim and jury, and offender and jury since these social characteristics will predict the outcome (p. 100). The mere scrutiny of rules does not account for the differential treatment of persons belonging to diverse races and social classes. To that extent, a formal analysis treats law as a uniform entity when in fact it is variable. For example, he relies upon evidence which suggests that African-Americans convicted of murdering a white are 15 times more likely in Ohio to receive capital punishment than blacks who murdered other blacks; in Georgia, the likelihood increases to 30 times; in Florida, it is closer to 40; and in Texas, the disparity is 90 times greater (Bowers, W.J. & G.L. Pierce, 1980). Obviously, then the law is not applied uniformly. Is blatant racism the cause or is it a discrepancy indicative of social characteristics that trial procedures cannot erase?

Social Distance and Jury Verdicts

Largely perceived to be the social inferior of whites, blacks who have claimed a white victim commit the most serious sociological crime of all: a downward social class

crime (wherein the offender's social status is beneath that of the victim). As such, they are judged and sentenced more harshly than those whose sociological crime was against a member of his or her own social class or, better yet, a class beneath it. Black reasons, therefore, that the law is differentially applied according to the social class relationship between offender and victim. Additionally, there are other sociological variables to mention. Consider the capital punishment disparity between those offenders whose victims were relatives and friends as opposed to those whose victims were strangers. Black cites research which suggests that the former are considerably more likely to escape a death sentence than the latter (Gross, S.R. & R. Mauro, 1984) to forge his conclusion that the sociological distance in relationship explains disparate levels of punishment between cases carrying the same charge. The rule holds for civil cases as well: in intra-family disputes, juries award a greater percentage of the damages sought to cousins, aunts, and uncles who are more socially distant than to children, brothers, sisters, and parents (Stephan, C., 1975). Thus, the closer the sociological distance, the less the law is applied; conversely, the farther the distance, the more the law is applied.

Black also reasons that variation in the application of law is also a direct reflection of the sociological distance between the offender and third parties such as the jury. If the offender is of a lower social class, the jury will most likely exercise a differentially greater degree of authoritativeness and vote to convict. Alternatively, those accused individuals who enjoy a social class above that of the jury members are those most likely to be acquitted. To wit, research suggests that white jurors convict black defendants at a greater

rate than members of their own race (Bernard, 1979) and that the likelihood of a conviction increases proportionately with the socio-economic disparity between offender and jury (Broeder, D., 1959). A Stanford Law Review study (1969) found that there is a correlation between a defendant's blue-collar background and the death penalty. In civil personal injury suits, research has shown that renters are more likely to support the plaintiff than homeowners (Adler, S., 1994). For Black's argument to maintain its credibility, we would expect civil cases in which the plaintiff is socially inferior to the defendant to result favorably for the latter. Indeed, when plaintiffs sue defendants of similar social standing, they win 61 percent of the time; conversely, suits initiated against wealthy corporations result favorably for the plaintiff roughly half of the time.

The sociological variables heretofore discussed are so prevalent in jury decision-making, Black reasons, that attorneys will, in the foreseeable future, choose cases exhibiting favorable tendencies and district attorneys will only press those cases to trial in which there is a sociological advantage. For this reason, Black continues, defendants should be either concealed from the jury or trial proceedings should be conducted electronically. This understanding of law is used throughout this paper to explain the sociological interpretation of variation in jury verdicts. And there is a considerable amount of research supporting Black's fundamental thesis.

Other Sociological Correlates to Jury Verdicts

Age has been researched thoroughly and the results are unsurprising. Older jurors tend to favor the prosecution more than younger jurors (Guinther, 1988, p. 113) and support the death penalty at a greater percentage (Van Dyke, 1977). Younger jurors attending college are also typically disfavored by prosecutors for fear of a liberal bias (Wishman, 1986) and defendants who are differentially older or younger enjoy greater sympathy from jurors (Kalven & Zeisel, 1966). Race has also produced explanations of variant jury behavior. Van Dyke (1977) found an increase in the percentage of black jurors in Baltimore subsequently decreased the overall rate of conviction by 13%. Broeder (1959) found that black jurors were considerably less likely to accept the testimony of a police officer. Statistically significant differences between blacks and whites were found in the levels of trust imputed to court actors such as the prosecutor, judge, defense attorney, defendant, psychiatrist, psychologist, and witnesses called on behalf of the defendant (Riley, 1997).

The social desirability of the defendant and victim have been found to correlate strongly with patterns of jury decision-making. For example, Kalven and Zeisel (1966) found that defendants who were generally likable to the jury received more sympathy than those perceived to be unattractive both socially and morally. Efran (1974) found that the defendant's social attractiveness correlated negatively with convictions and severe

punishment and, finally, attractive plaintiffs are likely to win larger awards in personal injury suits (Stephan, 1974).

But the sociological research correlating most strongly and consistently with patterned decision-making is that measuring venirepersons' attitudinal biases. Though mostly conducted by psychologists and socio-psychologists, this element of research still qualifies for the sociological paradigm simply because its primary measurement variable is ideological bias, which is arguably an inextricable reflection of social environment. Eugene Borgida (1984), found, for example, that jury subjects who watched a simulated rape trial had distinct voting proclivities predicted by their scores on the Rape Myth Acceptance Scale. This survey posed statements to which subjects indicated their level agreement such as: "Many women have an unconscious wish to be raped"; and "When women go around braless or wearing short skirts, they are just asking for trouble." Unsurprisingly, those subjects who indicated a strong level of agreement demonstrated a reluctance to vote guilty in the simulated trial. Additionally, Kassin and Wrightsman (1983) crafted a Juror Bias Scale, which is a seventeen question survey postulating questions such as: "Too many innocent people are wrongfully imprisoned"; "The defendant is often a victim of his own bad reputation"; "Too many jurors hesitate to convict someone who is obviously guilty"; and "In most cases where the accused presents a strong defense, it is only because of a good lawyer." The first two questions identify those with a bias toward the defense, and the latter exposes those toward the prosecution. Testing studies of the JBS conducted in Indiana found a remarkable correlation between prosecution biased responses and

willingness to convict (81 percent) compared to a defense biased willingness of only 52 percent. Other studies measuring the effects of juror demographics and attitudes using multiple regression analysis also found that attitudes correlate most strongly with patterned decision-making, though the percent of variance accounted was low (Field, 1978; Penrod, 1980).

These sociological variables combine to accord considerable support for Black's thesis. Indeed, if defendants are treated differently according to their race, age and social status, if juries behave differently by race and age, and if evidence is evaluated through competing sociological prisms, we have an institution in which the blind application of law is subverted. Our understanding of the legal process, as Black argues, is dreadfully incomplete: we must evaluate sociological characteristics of the major courtroom players with greater vigor than we do notions of law and their applicability to facts. Other observers, however, argue that Black's thesis is parsimonious and unsupported by the greater body of jury literature. These advocates contend that sociological variables, no matter how compelling, do not override the strength of evidence and stricture of law in the jury room. To that extent, they promote a jurisprudential viewpoint of jury decision-making to which we will now turn.

CHAPTER 3: THE JURISPRUDENTIAL PARADIGM

In establishing his framework for the sociological revitalization of legal education, Black (1989) bifurcates two approaches: the sociological and the jurisprudential. The sociologists, as we have largely seen, focus on the social structure inherent in each criminal case. They believe that the application of law varies according to the presence or absence of particular social variables. By contrast, those ascribing to the jurisprudential model believe that the process is defined by rules and their application to facts arising from each case. The jury merely engages in logical exercises over whether the facts warrant action based upon the letter of the law. To that end, the application of law is uniform: in each case, irrespective of the sociological characteristics of the participants, convictions are returned when the facts establish that the defendant broke the law with which s/he is charged. When two people, charged with the same crime under substantially similar circumstances, receive different verdicts and punishments, there has been a difference in opinion over what the law required or the intervention of secondary rules (such as those provided by appellate courts).

The underlying assumption of the jurisprudential paradigm is that jurors are basically honest, conscientious people who stridently attempt to return a just verdict. In an analysis of trial factors and jury verdicts, for example, Myers (1979) concluded that the integrity of evidence explained decision-making to a greater degree than prejudice, sympathy, or other sociological characteristics. Indeed, Kalven and Zeisel (1966, p. 56) found that judges

agreed with jury verdicts in 75 percent of the 3,576 trials studied and Broeder (1959) noted that judges find jury verdicts wholly improper only 2 percent of the time. Based on these pieces of evidence, is it a logical conclusion that cases with similar facts and similar chargers will result the same?

Bad Rules In, Bad Verdicts Out: Instructions and Reasonable Doubt

Even the fervent jurisprudentialist, in candor, admits that there is variance in the disposition of substantially similar cases but explains it with factors imposed by law or the legal system. For example, in 1992 a Chicago jury's death sentence was thrown out when it was revealed that standard judges' instructions were misunderstood by 75 percent of the jurors in local courts (Adler, 1994). Other defendants, charged with the same crime under similar case facts, may receive different dispositions unless their governing appellate court overturns their conviction because of poor instructions. Indeed, judge's instructions are the bane of jurisprudentialist construction. Noting that judge's must protect the appellate record by using standard instructions composed of legal verbiage, some observers (Kataoka, M., 1995; Adler, 1994; Kassin & Wrightsman, 1988, pp. 147-153) argue that jurors are often precluded from intelligently discharging their duties because judge's instructions poorly educate them in what the law requires. Severance and Loftus (1982) found that 25 percent of all jury deliberations are interrupted while the jury requests clarification on the law. Judges in these cases, fearful of issuing a paraphrase which might result in an overturned verdict, simply reread the instructions and order the jury back to deliberation. When this happens, according to the jurisprudentialists, the complexity and

contravention of appellate rules preclude jurors from logically applying facts to the immediate charge and rendering their verdict accordingly. Variance in verdicts is unsurprising since we have not adequately equipped jurors with the legal knowledge they need to perform consistently. Furthermore, appellate courts discriminately overturn verdicts based on their interpretations of the law.

In addition, judge's instructions are rendered at the conclusion of the trial. Kassin and Wrightman liken this exercise to providing the rules at the end of any game. Research has shown that jurors comprehend more evidence, waste less time in deliberation, and more confident in their decisions when given instructions before the trial begins (Penrod, 1985). For instance, in Phoenix, Arizona, Judge B. Michael Dann has been given permission by a state appellate court system known for its progressiveness to administer instructions prior to opening statements (Adler, 1994, pp. 218-242). Jurors are clearly informed of the charge, the nature of the evidence that must be presented to prove the charge, and various issues of law that are particular to each case. These jurors reputedly pay more attention, remember more testimony, and are able to distinguish between evidence and argument such as the opening statement and closing argument. Thus, the greater their understanding of law and jury duty, the more accuracy and consistency we can expect from jurors.

If the jurisprudential outweighs sociological considerations, we expect procedural reforms to change the manner in which jury verdicts are rendered and expect the change to be greater than that caused by sociological manipulation. For example, a change in the

state definition of reasonable doubt would either increase or decrease the conviction rate depending on the direction in which the change occurs. Although there is no such evidence yet, some researchers (Kerr, et. al., 1976) concluded minor changes in the instructions of reasonable doubt affect the decisions juries reach. Moreover, Simon and Mahan (1971) polled 106 judges and 25 jurors and asked them to convert the standards of reasonable doubt and preponderance of the evidence into numeric terms. Judges responded by noting that the reasonable doubt threshold is exceeded when they are 89 percent certain of the defendant's guilt; the standard of preponderance of the evidence is satisfied when they are 61 percent certain of the defendant's liability. Conversely, jurors indicated threshold levels of 79 percent and 77 percent respectively (virtually no difference). This piece of evidence supplements the recent admission of a juror whose vote to acquit in a high profile case was based on a defense theory that was "within the realm of possibility" (Dershowitz, 1996, p.86). Jurisprudentialists argue that the variance in juror decision-making is attributable to these divergent understandings of law. When jurors believe that theories "within the realm of possibility" justify acquittals, or that reasonable doubt is virtually the same as preponderance of doubt, it is unnecessary to study sociological characteristics because the verdict is a foregone conclusion. Thus, if we want to reduce errors, we must better educate jurors.

Consider, for example, California's definition of reasonable doubt. It reads: "It is not a mere possible doubt because everything related to human affairs is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and

consideration of the evidence, leaves the jurors in that condition that they cannot say they feel an abiding conviction of the truth of the charge.” Jurors consistently complain that such language is almost unintelligible to the ordinary person and does not adequately differentiate between doubt and reasonable doubt (Kataoka, 1995). We cannot therefore blame social distance between jury and defendant, jury and victim, and so forth as the cause of unseemly verdicts; we must consider whether the rules and techniques governing jury decisions are understood and applied. Therein lies variance.

Legal Experience and Informal Rules

Not all variance is attributed to misunderstanding; indeed, it is possible for two conscientious people to systematically apply rules to facts and reach opposite conclusions because of differences in the weight imputed to certain facts or elements of the rules. Judges, who must rule on motions such as directed verdicts, conviction set-asides, change of venue and so forth, as well as numerous objections based on the rules of evidence, also base decisions on various opinions concerning the applicability of rules to particular facts. Over the course of a career, judges develop regimented opinions of law which form a jurisprudence, or a working understanding of law. Research has found that jurisprudence is unrelated to social characteristics (Steinberg, 1977) but strongly related to jury acquittals. Broeder (1959) found that acquittals occur 22 percent more often in the courtroom of a judge who previously served as a criminal defense attorney. Obviously then, these judges

have developed a jurisprudence which results in rulings basically favoring the defendant thereby causing variance in the dispositions of similarly situated cases.

While there are formal rules which predict the outcome of cases in the jurisprudential paradigm such as reasonable doubt, malice aforethought, and so forth, there are informal rules as well. For example, research has shown a working relationship between the officers of the court (judge, prosecutor, and defense counsel) forcing each individual to work toward a plea arrangement and thereby avoid a costly and time-consuming trial (Mileski, 1971 and Blumberg, A.S., 1967). Deluged with cases for which time does not permit trials, courtroom actors evaluate the facts of each case and decide whether the significance therein is sufficient to warrant trial in light of the implicit governing rules. Most often, even cursory glances reveal that the cases can be disposed through the bargaining process and are then handled accordingly. Thus, implicit and explicit court rules and evidence, not manifestations of social characteristics, contribute to the prediction of outcomes.

CHAPTER 4: RESEARCH PURPOSE AND DESIGN

Given the importance of the issue to attorneys, clients, judges, reformers, and other interested observers, this research paper examines the cause of variance in jury decision-making; that is, reasons why cases involving similar facts and charges conclude with different verdicts. We have already explored two such explanations: the sociological, which claims that variance is related to the social characteristics of the participants, and the jurisprudential, which claims that variance is attributable to strength of evidence and rules governing its application. Those ascribing to a jurisprudential perspective point to copious academic literature which finds no statistically significant correlation between the social characteristics of jurors, defendants, and victims and patterns in decision-making (Hastie, Penrod & Pennington, 1983; Mills & Bohanon, 1980; Stephan, C., 1975; Adler, 1973; Stanford Law Review 1969; Reed, 1965; Rose & Prell, 1955, for examples). But we have already analyzed the considerable research concluding that such relationships exist. The question then becomes: given the literature and amount thereof supporting these two contrasting paradigms of jury behavior, which correlates most closely with patterns in decision-making? In short, this thesis is a test of the Blackian theory that the sociological factors involved in law are so determinative of case conclusions that it will behoove attorneys in the future to base decisions around them. To the best of my knowledge, there is no research conducted heretofore which has systematically attempted to determine whether sociological or jurisprudential variables correlate most strongly with verdicts and explain the greatest percentage of variance.

For research purposes, the Sociological Paradigm has been selected to provide the null hypothesis. To that end, we will expect the outcome of our study to produce a correlation between the sociological variables and the verdict they predict. More will be discussed on the precise parameters involved in the null hypothesis in the next section.

Method Design: Mock Trial

The question concerning why similar cases are decided differently has been tested through a mock trial. A hypothetical case involving a professor of business administration at a small private school in the Inland Empire charged with murder was created. The professor, sociologically superior to his victim and the jury, as Black would describe, is a wealthy, assiduous, well respected, Christian man. Colleagues and students alike adore him. The victim is a degenerate, promiscuous woman who is known for her patronage at local bars. She has recently, in the fact pattern, been fired for embezzlement. Thus, the sociological relationship, according to those in this school, favors acquittal.

To counterbalance the sociological relationship, the physical evidence was skewed somewhat in favor of the prosecution. Indeed, there was considerable circumstantial evidence linking the defendant to the crime. Caution must be taken, however, before assuming that perceptions of the strength and quantity of evidence are the same among the participants in the mock trial. Since there was no way of ensuring that reasonable minds agreed that the fact pattern established guilt beyond a reasonable doubt without providing the prosecution with an unfair evidentiary advantage, the deputy district attorney who tried

the mock case was simply asked whether the fact pattern was strong enough so that, if it were real, she would insist that the case be taken to trial. She indicated that she would.

Jury Demographics

The trial was then conducted in two sessions at the Rancho Cucamonga Courthouse in Rancho Cucamonga, California and videotaped. We were accorded special access to a courtroom after hours in light of the research value of this project. In all, nine witnesses testified and, when coupled with attorneys' opening statements and closing arguments, the trial lasted approximately one hour and forty minutes. Descriptions of witness testimony will be made when the results of the jury deliberations are discussed. A copy of the mock trial case is attached to this thesis.

The mock trial videotape was then taken to a group of ten jurors assembled in a classroom at the California State University San Bernardino. One additional juror viewed the tape separately and completed the questionnaires discussed later. She, however, is not counted among the those who rendered a verdict since she was not able to participate in the deliberation. Jurors were told only that they were involved in a project examining the manner in which juries arrive at verdicts. No mention was made of the argument concerning the predictive ability of the sociological variables. Nonetheless, the group consisted of nine women and two men. Among them were seven whites, two African-Americans, one Hispanic, and one Asian-American. Three of the jurors were in their

twenties, three in their forties, two in their fifties, and two in their sixties. Missing representation on this panel were jurors in their thirties. Additionally, seven jurors had either completed an associates degree or had completed the equivalent in college units. One juror had last completed high school and was in her second year of college. The remaining juror had earned her master's degree. The socio-economic representation of this panel was strongly reflective of the population: three jurors earned less than fifteen thousand a year, six jurors earned between sixteen and thirty thousand a year, one earned between thirty and thirty-five thousand a year, and the remaining juror earned between fifty-six and sixty thousand a year.

Of considerable importance on this panel was the attitudinal differences discussed earlier composed. The most effective method for ascertaining this information without unnecessarily elongating the survey with dozens of questions is to simply ask respondents to identify which most closely reflects their political philosophy: conservative, liberal, independent, or moderate? Six jurors indicated conservative, one juror marked liberal, three marked moderate, and the remaining juror indicated political independence. Socio-psychologists have consistently maintained that attitudes form a predisposition which strongly correlates with patterns in jury verdicts. If these pieces of research hold, we would expect the conservative bend on the jury panel to produce a guilty verdict since they have shown in past studies that conservatives correlate strongly with law and order attitudes and proclivities to convict. Finally, four jurors responded that they had served on a criminal jury before.

Null Hypothesis

As noted earlier, the Sociological Paradigm has been selected to provide the null hypothesis in this study. Specifically, the Blackian assertion that legal practitioners must someday decide whether to handle cases based upon the sociological variables involved is based on his reasoned belief that such variables predict the outcome of cases. In light of the clarity in this position, it provides a strong point of departure for crafting the null hypothesis.

Since the method used is a mock trial in which the sociological variables previously found in research literature to correlate with patterns in jury decision-making are posed to jurors along with physical and circumstantial evidence, we will expect the sociological variables such as race, age, socio-economic status, social reputation, attractiveness, and desirability to correlate more strongly with the eventual verdict than do variables such as physical and circumstantial evidence. Thus the null hypothesis is as follows: the sociological variables and relationships involved in this mock trial will predict the outcome of the case. How this will be done is explained in the next section.

Possible Outcomes and Research Instruments

In a criminal case, there are, of course, only three possible outcomes: guilty, not guilty, and hung jury. The mock trial case has been specifically designed so that the sociological variables, if most controlling, will produce a not guilty verdict. In this case, the defendant,

John Rodgers, is upwardly mobile and respectable. He is sociologically superior, as Black would say, to both the jury and the victim. This relationship, according to the sociologists, favors acquittal. However, the physical evidence has been manipulated to increase the likelihood that if the jurisprudential variables are more controlling, a guilty verdict will result. As discussed earlier, however, there is no way to ensure that the strength and quantity of the evidence is uniformly considered to establish guilt beyond a reasonable doubt. Thus, even if the jury returns a not guilty verdict, we cannot immediately assume that the sociological variables prevailed since the jurors may have simply reasoned that the evidence, believed by most participants in the mock trial to be strong and compelling, failed to establish guilt as the law requires.

Essential to the design of this thesis, then, is an evaluation of the juror's personal opinion development and the subsequent group deliberations. Knowing when, for example, during the course of trial a particular juror was persuaded allows us to determine whether the juror based this decision upon jurisprudential or sociological variables since each witness provided either and rarely both. Moreover, knowing which factors were most discussed during the deliberation provides the limited opportunity to peer into the jury room and ascertain how strongly the sordid pieces of the trial were debated.

To this end, jurors were provided an Opinion Tracking Survey at the beginning of the trial. In a break from real-life jury instructions, these jurors were asked to indicate their opinion after each witness testified and each argument was made. This was done by

providing each juror a sheet upon which the name of each witness appeared in addition to opening and closing arguments. After each of these events transpired, jurors were asked to record whether they believed the defendant to be guilty or not guilty. Since the witnesses were coached to provide either sociological or jurisprudential evidence, changes in the juror's opinion could be matched with either and we would know which is more determinative of variance in the outcome of verdicts⁴. In addition, the deliberation was monitored from outside. When deciding precisely how to accomplish this, choices such as installing a videotape or cassette recorder were considered. However, given the concern that the presence of recording instruments inhibits robust debate, the choice was made simply to listen to the deliberation from outside the door and write down important points jurors made. Finally, to check the first two instruments (e.g. the opinion tracking survey and deliberation monitoring), an exit survey was disseminated after deliberation conclusions. In this survey, jurors were asked to give their opinions on attitudinal statements, a hypothetical scenario, and each witness that testified in the mock trial case. These data are designed to buttress any conclusion drawn about the determinative capacity of the sociological and jurisprudential variables. Each instrument will be discussed at length in the coming sections.

⁴ Of course each witness provided some testimony of evidentiary value. However, half of the witnesses mainly discussed either the defendant's or victim's social standing and relationships.

Weaknesses with the Mock Trial Design

There are, of course, limitations to this design. Methodologically, the verdicts may be challenged on the ground that they are rendered in a fictitious circumstance and may not be the actual verdict a jury would return when the real fate of a defendant lies is in question. Moreover, since the trial was videotaped, there are conceivably concerns that jurors suffered difficulties keeping close attention. Other may express concerns that the jury is not representative of its vicinage; e.g. it does not represent the demographics in its geographical area. And finally, some may wonder whether the participants involved were able to recreate the level of skill and believability that is involved in a real trial. These criticisms were considered before the project was undertaken and reasonable steps to eradicate their effects were taken.

First, the charge in this case is first-degree murder. By virtue of the nature of this charge, one can reasonably expect the case to be taken seriously. Indeed, at one point during the deliberations, one juror noted "I can't see putting a guy away for life, or on death row, when there are these many questions." Clearly, the nature of the charge and the potential punishment involved awoken these jurors to the need to approach decision-making with sincerity. Also, the deliberations were conducted at the university which implies to participants that a serious research project is being undertaken. If venues such as a restaurant, private home, or other facility had been utilized, one could reasonably foresee problems with the case being taken seriously.

Secondly, deliberations proved that the jurors had comprehensively digested the evidence and paid very careful attention to the proceedings. Not only had they prepared themselves to discuss the material to which they were introduced, but their questions and concerns far surpassed expectations. They methodically reconstructed each explanation of what happened the night of the murder and identified strengths and weaknesses. Clearly, their ability to undertake such discussion was engendered only through careful evaluation of the evidence. Thus, there is no concern that the verdict was rendered without all the important variables being digested.

Third, as discussed earlier, the representativeness of the jury to its vicinage is strong. Concerning socio-economic status, education, and race, we see on this jury the same demographics we would reasonably expect to see in a real jury. Concerning age and sex, there was an underrepresentation of men and people in their thirties. This, however, does not separate this jury from reality; indeed, juries often are composed of more women than men, or vice versa, and not every age bracket is represented on them. Therefore, we can reasonably conclude that this jury exhibited the demographic properties which are necessary to make it a representative body of the area from whence it was drawn.

Finally, the participants in this trial were carefully selected to portray a convincing character and demonstrate the level of skill one would expect to see in a real courtroom. The attorneys involved were licensed attorneys in the State of California. The prosecutor is a deputy district attorney in the County of San Bernardino and has prosecuted

innumerable criminal cases, often in trial. The defense attorney is a specialist in defense work with the firm of MacRill and Associates based in Upland, California. He, too, has sufficient criminal law experience to override any concerns about his abilities.⁵ The witnesses were chosen according to the special needs each character presented. Friends and family were asked to portray those witnesses who bore a “real person” persona. Each were carefully helped and prepared. Those witnesses who provided complicated testimony were drawn from the nationally awarded University of Redlands Mock Trial Team. Jurors later expressed surprise at the skill and believability of each witness and attorney.

Therefore, while some weaknesses to the mock trial method exist, they were carefully identified and addressed. There should be no overriding concern that the results of this project are jeopardized by them.

⁵ The attorney representing the State of California was Annette Irvng. The attorney representing John Rodgers was John R. MacRill III.

CHAPTER 5: RESULTS

After viewing the videotaped trial, jurors were instructed briefly on the law in California governing first-degree murder. Instructions were taken from the California Book of Judges' Instructions and were agreed upon by the attorneys. Following these instructions, jurors were then asked to deliberate as they wished, while recording poignant arguments other jurors advanced. In total, the jury was "out" for nearly two hours; the trial itself, incidentally, was only one hour and forty minutes. When discussions finally failed to produce any change in opinions, the jury discontinued its work with seven members favoring acquittal and three favoring conviction. In modern parlance, the jury was "hung."

The implication of a hung jury on the central questions this thesis addresses does, of course, raise concerns. Should attorneys, judges, prosecutors, and police base decisions on the fate of the accused in light of their sociological characteristics and relationships? Do these sociological variables countervail and override the strength of evidence? Unfortunately, we will not know conclusively based on the verdict alone. However, fears that a hung jury would result were what produced the idea of the Opinion Tracking Survey, monitoring deliberations, and the Exit Survey. These instruments provide us with sufficient information to address these questions.

Opinion Tracking Surveys

According to the Opinion Tracking Surveys, jurors approach their jobs with the hesitation we desire them to have. Indeed, the surveys reveal that only one juror was persuaded of the defendant's guilt during opening statement. Ironically, it was the defense's opening that bore this conclusion. However, no one indicated a belief in guilt after the testimony of the first two witnesses, who, according to design, state only that they saw the defendant in the company of the victim the night of the murder and then provide damning sociological evidence against the victim and positive sociological evidence of the defendant. If the sociological variables were more determinative of these positions than the jurisprudential, when the witnesses who provide more jurisprudential than sociological evidence testify, we would expect no difference in the Opinion Tracking Surveys to result. However, differences begin to appear with the next three witnesses.

A police officer who interviewed the suspect-defendant, searched his home, and visited the crime scene caused three jurors to switch their opinion from not guilty to guilty. Despite some inadequacies in his investigation and the fact that he was not able to positively link the suspect-defendant to the crime, the strength of the circumstantial evidence he produced caused the strongest opinion switch of any of the witnesses who preceded him. Next came the criminalist who linked the suspect-defendant's DNA to the person of the victim but also provided the greatest evidentiary reasonable doubt by noting that someone else could have been involved in the murder since semen in the vagina of the

victim did not match the DNA of the suspect-defendant. Accordingly, one juror switched opinion in favor of not guilty. The final prosecution witness, who testified that she saw the defendant washing bloody clothes in a creek the day after the murder, was arguably the state's strongest. Expectedly, two jurors whose opinions were not guilty before she testified switched.

Interestingly, the defense began its case with a witness who provided very little information of evidentiary value but copious sociological information. This witness caused no change in the Opinion Tracking Surveys. In fact, beside the witness's name, one juror wrote "fluff." Next came the defendant who was forced to answer to lies he had told the police officer. Despite wearing a nice suit, making a kept and presentable appearance, using words commonly associated with the educated, describing his accomplishments, and providing substantial sociological evidence about himself, at the end of his testimony, for the first time in the trial, Opinion Tracking Surveys revealed that more jurors favored conviction than acquittal.

The defense's final witness was the brother of the defendant who testified that the defendant was lucid and calm during a phone discussion which occurred shortly after the crime allegedly took place. He also establishes a doubt about the window of opportunity the defendant had to commit the murder. Accordingly, two jurors switched their opinions at the conclusion of his testimony.

Surveys reveal that following the prosecution's closing argument the panel was split five to five. Following the defense's closing argument, four favored conviction, five favored acquittal. Thus, the arguments, both opening and closing, had little impact on decision-making. Moreover, those witnesses who provided sociological testimony made little bearing on this panel. In contrast to Black and other sociological researchers, however, the witnesses who occasioned the greatest variance in the Opinion Tracking Surveys were those who provided the most physical and circumstantial evidence, both for and against the defendant.

Monitoring the Deliberations

As previously noted, it was decided earlier to monitor the deliberations merely by listening outside the view of the jury. Without a videotape or cassette recorder in their physical presence, it was hoped that more candid, robust debate would follow. Whether this decision caused it, of course, is unknown, but there was prodigious debate, to be sure. Those who favored conviction argued strenuously that the lies told by the defendant betrayed his guilt; that there were too many unbelievable coincidences involved if he were not the real killer; and, finally, that the strength of the evidence favored conviction.

Those who favored acquittal demonstrated remarkable recall of the evidence as well, but noted that questions came to mind as to its conclusivity. For example, they wished to know why police did not establish the location of the murder. Was it at the defendant's home? If so, why was there no evidence of a bloody scene? If were elsewhere, why was

that not mentioned. These jurors also wanted to know the location of the murder weapon. How could they be convinced that a knife purchased by the defendant was used to murder the victim when it could not be found? Also, witnesses saw the defendant washing bloody clothes in the creek after the murder. Where were the clothes? Why were they not entered into evidence? And about the missing link to the semen, how could they not be convinced that someone else was not involved? Moreover, they established that all the state's physical evidence is meaningless if the defendant is to be believed. Surely, the state could produce something that was irrefutable if a man is to lose his liberty, if not life, over these charges.

Ultimately, one juror who had initially favored conviction switched his vote. There were too many holes in the state's case, he argued, and conviction just could not be justified. While one juror mentioned that the reputation of the victim was questionable and that she in some circles may be considered a "floozy", other jurors concerned themselves only with the physical evidence.⁶ Apparently, sociological relationships were inconsequential to this panel. Indeed, the juror who made mention of this later reduced her arguments to interpretations of the evidence.

⁶ The word "floozy" is presumably in reference to the victim's reputation of sexual promiscuity.

Exit Surveys

The exit surveys were designed to protect the deliberations from being misinterpreted during the analysis and also to provide further elucidation to the viewpoints and expectations of jurors in general. Besides being asked to provide their basic demographic information, jurors were asked to indicate their level of agreement with two attitudinal statements, the importance they accorded to each witness, an explanation of their interpretation of reasonable doubt, and their opinion of guilt in a vignette. Together, these items bring us closer to the jurors' minds in their effort to reach decisions. Though they are not dispositive in light of the small sample size, they are at least informative and provide backing for the conclusions drawn in this paper.

When asked whether they think some people deserve to be crime victims when they behave in a way they should not be (arguably as the victim in the mock trial case was), jurors responded with very little agreement. On a scale of one to ten (one representing no agreement with the statement, ten representing complete agreement), these jurors combined for an average score of 1.55. The sociology of this case then is expectedly unpersuasive since, no matter the social reputation of the victim, this panel does not overlook crimes against them. Indeed, the highest score on this item was five.

Jurors were also asked whether they believe the role of the juror is to evaluate the evidence given its strengths and weaknesses and to forego consideration of the wealth,

social status, and character of the defendant and victim. This item engendered strong agreement with an average score of 8.2 (again on a one to ten scale). This is, of course, unsurprising given the results of the Opinion Tracking Surveys and deliberations. Those witnesses who provided mostly sociological testimony were, in the words of one juror, “fluff.” Only those who provided physical and circumstantial evidence caused variance in the tracking. Moreover, during deliberations, little was mentioned about any of the sociological issues in the case, with only exception being that which was already noted.

When asked which of the nine witnesses were most important in their decision-making process, the police officer was selected four times, the defendant was selected three times, the criminalist twice, a convenience store manager twice, and the witness to the defendant’s clothes washing once. Interestingly, those jurors who favored conviction selected the defendant and the convenience store manager most often despite both of these witnesses providing a considerable amount of positive sociological evidence. The failure of the defendant, however, to explain his lies and missing knife, and the ability of the manager to put the two together one mile from the crime scene the night of the murder overrode the positive sociological evidence.

Those jurors who indicated that the police officer and criminalist were most important to their decision-making were those who overwhelmingly favored acquittal. Although paradoxical, this phenomenon is easily explained. When asked to indicate why these witnesses were of such importance in their decision-making process, jurors wrote in

responses such as “lack of conclusive evidence” and “could not match the DNA of the semen.” Clearly, these jurors had doubts about the integrity of the evidence presented by the state’s two government employees and made their decision accordingly. Had any of the sociological evidence been persuasive, we would have seen responses such as “murderer doesn’t fit his character” or “the victim’s reputation causes too many doubts” or something of the sort. Nothing, however, either the Opinion Tracking Surveys or the Exit Surveys suggest that these relationships were important.

CHAPTER 6: DISCUSSION

The Sociological Paradigm Explained

Before turning to the implications borne of the results of this mock trial, it is first necessary to explain why the sociological paradigm does not sufficiently explain variance in jury verdicts. Indeed, the sociological paradigm has produced countless pieces of literature connecting sociological relationships with variance in jury verdicts and a reasonable effort must be made to demonstrate why the results of their research is no longer persuasive. Otherwise, the results of this study may be attributed to nothing else than an aberration.

First, much of the research relied upon by authors in this paradigm is from a time period in American history when racism and sexism were overtly accepted by the establishment. Indeed, Black relies upon research demonstrating racial arbitrariness which utilized data from well over thirty years ago (Bowers & Pierce, 1980) and research demonstrating arbitrariness in case dispositions published over forty years ago (Newman, D., 1956). With data sets stretching time as these do, it is completely unsurprising that the conclusions of these researchers portray an America more susceptible to sociological arbitrariness. However, given the apocalyptic changes in American society following the civil rights movement, their conclusions must not be considered an accurate reflection of America on the verge of the twenty-first century until replicated.

Secondly, some articles of the sociological paradigm utilize methods grossly inconsistent with measuring jury verdicts. For example, some researchers such as Field (1978) administer surveys to jurors and attempt to cross-tabulate outcomes of vignettes and attitudinal questions with variables such as age, race, socio-economic status, etc. The pitfall, of course, to research such as this is that it overlooks the critical point of jury behavior: deliberation. When responding to criticisms that the government established by the Constitution of 1789 was too strong and would inevitably result in tyranny, James Madison argued that deliberative nature of governmental decision-making embodied in the document was sufficient to prevent such abuses. The idea, he contended, was to expand the nation to include different ideas and perspectives that, when pitted against each other, would impede a tyrannical majority from subduing the rights of others.

The principles reflected in Madison's theory form the fundamental purpose of the jury. Itself a republican institution composed of representatives drawn from the community, the jury is supposed to bring different perspectives and experiences to the table when deciding the fate of the accused. This way, of course, those who have an agenda are forced to persuade and negotiate with others before a decision can be reached. Therefore, the biases and predispositions of any one person are not determinative of the outcome of cases.

Research which relies strictly upon survey responses denies the essential deliberating element of jury work. They assume that the response one person gives on a survey will be

the response by which he or she stands during jury deliberations should that person be impaneled. This, however, is a fatal methodological flaw. Jurors persuade one another, counterbalance one another, and prevent each other from basing decisions upon variables repugnant to the concept of justice and due process. If any one person were allowed to render verdicts alone, the surveys would be informative. But when added to the responses of twelve other people, they tell us nothing more than how the juror might initially lean, which, of course, can be dramatically different from how she or he eventually decides.

Finally, those who, such as Black, contend that the interpersonal sociological relationships described throughout this paper predict outcomes of cases, overlook, at least as far as the jury is involved, the fact that rules of evidence forbid the admission of much of that material. For example, in our own mock trial, there were two critical pieces of testimony from the sociological perspective which would not ordinarily be admissible. The first was the testimony establishing that the victim had been fired for embezzlement the day before the murder. The other was that she had been seen on numerous occasions leaving a bar with men and had dated a bartender at the establishment from which she left with the defendant. All of these items were offered merely to establish the sociological distance existing between the victim and the defendant. But none of them according to the attorneys involved would be admissible under ordinary rules of evidence. Thus, there is some question as to whether jurors will ever know the interpersonal sociological relationships in such a way as to subconsciously base verdicts upon them.

Conclusions of this Research

The null hypothesis we posited earlier stated that the sociological variables would be more determinative of the case verdict than the evidentiary ones. Since the sociological variables were skewed to favor acquittal, such a verdict was expected in light of the upward relationship between victim and defendant. That is, since the victim was of a sociologically inferior position to the defendant, according to the null hypothesis we should expect to see considerable influence of these variables on the jury's decision-making processes. For example, we would expect to see the jury concentrate on whether the victim was of such disrepute that anything she said or did was unbelievable. Similarly, we would expect the defendant's social posture to engender positive feelings from the jury and for more credence to be accorded his testimony. We would expect those witnesses whose socio-economic status was superior to that of the jury to be more influential to the jury than those witnesses who in that same or lower status than jury members. In short, we would expect to find any of a myriad of possible patterns in jury discussion, opinion tracking, and exit surveys which would suggest the predictive influence of the sociological variables. While the verdict leaned toward fulfilling this expectation, analysis of the surveys and deliberation failed to do so. In fact, we found no influence of any of the possible relationships discussed above. The null hypothesis then has been rejected. Indeed, based upon the opinion tracking, deliberation monitoring, and exit survey results, it appears that the sociological variables had little, if any, influence at all. Moreover, they appeared to have no predictive power at all.

Caution must be taken when analyzing the results of the trial. Indeed, as we had hypothesized, the jury leaned toward acquittal. This may be interpreted by some to mean that the sociological variables triumphed after all, even if they were not discussed during deliberation and did not appear on any the surveys. This, however, has been deeply considered and rejected as an explanation of the jury's verdict. Indeed, if it were true that the verdict was surreptitiously based on the sociological rather than the evidentiary variables, several properties would have existed in the deliberation. First, we would expect to see uniformity in the outcome. Those qualities which predict, as Black argues sociology does, do so without regard to basic human differences; e.g., they are equally predictive whether hypothetical jury A hears and decides the case or whether hypothetical jury B does. Indeed, Black argues that variance in sociological properties explains variance in the outcomes of cases. Thus, given the sociological weakness of the state's case, we would expect a unanimous vote for acquittal. In fact, we found three jurors who held out in favor of conviction and two others who noted in the exit survey that they felt the case was strong enough for conviction but had reservations in light of the questions emerging from deliberation. Thus, sociology failed to predict this outcome on that ground alone.

Sociology failed to predict the outcome of the case in another key respect: only once during the deliberation did the reputation of either the victim or the defendant come into discussion. As noted earlier, one juror remarked that the victim's reputation gave her pause and even went so far as to call her a "floozy." The other jurors, however, did not allow these comments to reverberate and continued discussing the evidence as though the remark

had not been made. Surely, if the sociological predicts verdicts, jurors would have been more receptive to this line of argument. But given the opportunity to explore it, they passed it up for further discussion of the evidentiary variables. On this ground as well, the sociological failed to predict, or even influence the outcome.

Finally, if the sociological variables occasioned the verdict despite their not being discussed and not forming a unanimous verdict, they at least would have been acknowledged as a legitimate source of decision-making when jurors completed the exit surveys. Indeed, if it is expected of jurors, as Black implies, to magnify the sociological relationships between case actors, this understanding must be shared. Otherwise, how do we know jurors engage in it? And if it is a shared understanding, jurors surely would acknowledge as much on the attitudinal exit survey item. However, when given the chance to indicate on a scale of one to ten their agreement with a statement in which it is argued that the role of a juror is legal formalism, they overwhelmingly agreed. Thus, if we were to believe that sociology surreptitiously caused this verdict, we would first have to believe that discussion of the physical and circumstantial evidence was a facade, that the jury refused to acknowledge the role of evaluating sociological variables while actively doing so, that the sociological outcome is obvious to all and no discussion of it is necessary for it to result, and that a property need not cause unanimity in order to be considered predictive. For these reasons, though the actual verdict leaned toward the sociological perspective, we still reject the null hypothesis.

There are some who may argue that sociology conditions the viewpoints which are expressed when evidence is evaluated. Thus while someone is actively engaged in discussing evidence, they are actually just discussing differences in their sociological environs since their differences regarding the evidence will merely be a reflection of their sociological differences. For example, a white man and an African-American woman may be discussing evidence and differences result. The sociological paradigm would suggest that what we are witnessing is a clash of sociology rather than calculated differences over the meaning of an item. Thus, they would argue, even though sociology is not discussed per se, its influence on a jury's verdict is profound.

Profound it may be, but predictive it is not. Those who ascribe to the above viewpoint are always at pains to identify the sociological variable which best predicts the outcome of a decision-making venture. For example, is it race? Is it age? Is it political affiliation? Is it sex? Which of these factors or combination thereof best predicts how any one juror will respond during the course of deliberation? Recall that in our own mock jury there were six self-expressed conservatives on the panel. Conservatives are typically associated with law and order, pro-prosecution, pro-police proclivities. However, the outcome of our case was completely different. Indeed, four conservatives voted for conviction. To further illustrate the example, is the answer age? Recall earlier in the research literature review section of this paper, it was noted that some research had shown that older jurors tend to be more conviction prone than younger ones. In our case, however, two of three holdouts for conviction were the two youngest members of the panel. The other two members in their

twenties both indicated differentially stronger belief in the defendant's guilt than their older colleagues. Thus, age does not, as has been previously posited, explain variance in decision-making.

If cursory review can dismiss these two prized possessions in the sociological paradigm as predictive in this case, then reconciliation with evidentiary explanations is due. Indeed, sociology may condition thought, but in what way and to what extent? Moreover, which demographic best predicts the outcome? The explanatory power of the sociological paradigm ends there and, therefore, it cannot be considered a predictive instrument. Thus, it appears that there is no reason for law schools to modify their curricula to include instruction on sociological justice as Professor Black asserts. Furthermore, there is even less need for law schools, as he also contends, to teach students that evidence in the tradition sense is not as important as the sociological implications of it. In short, as unromantic, unsophisticated, and non-provocative as the results are, the best predictor of the outcome of a case is the strength of the physical and circumstantial evidence. Jurors will evaluate these items with considerably greater scrutiny than any of the sociological relationships Black calls predictive.

But if the best way to know the outcome of a case is to know the strength of the evidence, what does this portend for the growing industry of jury consultants? These individuals base multi-million dollar decisions on whether to select jurors based on many of the same correlates as have been exposed in research belonging to the sociological

paradigm. However, as other researchers and many attorneys are coming to find, jury consultation is an industry filled with promises but which delivers little product. In his 1994 book, We, the Jury, Jeffrey Abrahamson exposts the early major trials from which jury consultation emerged as a formidable science, including the Harrisburg Seven trial, the Mitchell/Stans trial, the Joan Little trial, the John DeLorean trial, the Lee Edward Harris trial, and the McMartin trial. In each of these trials, jury consultation either did not produce the desired effect or the trial was decided upon factors unbeknownst to the jury consultants. Therefore, he argues, given the history of scientific jury selection, the results are dubious at best. Other researchers, such as Hans and Vidmar (1982) note that jury consultants produce little more than experienced trial attorneys working without the sophisticated schema. Thus, this study confirms what is already being discussed; e.g., there is no way to take the sociological demographics of individual jurors and induce the eventual outcome with anything resembling accuracy. Again, the best way to predict the outcome of a case is to evaluate the strengths and weaknesses of the actual evidence.

What We Now Know About Jurors

This study failed to produce a correlation between sociological variables and patterns in decision-making, but it did uncover some interesting insights to jurors which may be of use to legal practitioners in the future. First, obviously the strength of the evidence is the paramount determinative variable. This, however, has already been discussed widely throughout this paper and needs no further elucidation.

Secondly, given the results of the opinion tracking survey in which showed several jurors indicated “not guilty” consistently throughout the trial, and several other jurors switched to guilty very late in the trial, it is clear that jurors respect the presumption of evidence. In fact, four jurors never indicated a belief in guilt while two others did only twice. Prosecutors may use this information to attempt a stronger presentation earlier in the trial, since it appears that the longer a juror goes before believing the state, the less likely that he or she ever will. Defense attorneys may use this information to consistently remind jurors of their oath to remain fair and presume innocence until it is proven otherwise, since it appears that jurors are naturally receptive to this line of persuasion. Finally, it appears that criticisms of sloppy police work are likely to be well received, even by jurors who initially identify themselves as pro-prosecution. When jurors doubt the veracity and competence of police officers, or when police officers fail to provide them the evidence for which they are searching, they are likely to altogether dismiss the testimony, as they did in this case.

CHAPTER 7: CONCLUSION

The ability to predict jury verdicts is considerably more difficult than social scientists admit. Though it is of interest to legal practitioners, courtroom observers, jury consultants, and litigants alike, juries still are not reducible to accurate forecast. Admittedly, there is a growing amount of literature which suggests that certain sociological demographics correlate with patterns of decision-making. These data, however, are informative at best and do not allow prediction. There are some legal observers, however, such as Donald Black who assert that the sociological properties of cases better portend their outcome than the actual evidence. But when this line of argument was used as a null hypothesis and tested through a mock trial alongside copious items of evidentiary value, the jury responded to the evidence and overlooked the sociological relationships. Thus, though the verdict leaned in the direction we expected given the null hypothesis, further examination concluded that the null should indeed be rejected.

Participants in the mock trial were given opinion tracking surveys to complete as the trial unfolded and exit surveys to complete at its conclusion. When sociological evidence was revealed, the opinion tracking surveys show jurors do not change their minds. In fact, the strongest shifts in opinion followed the introduction of scientific testimony. Furthermore, the exit surveys reveal that jurors believe their job strictly involves the evaluation of evidence, despite the social background of the participants involved. Even the African-American jurors, long believed by social scientists to be jealous guardians of

the right to avenge police abuses through not guilty verdicts, indicated complete agreement with this statement.

Though researchers have found correlations between social characteristics and certain outcomes, they do not outweigh the strength of evidence. The null hypothesis stating a supremacy of sociological variables over evidentiary ones has been rejected.

APPENDIX A: MOCK TRIAL CASE (PEOPLE V. JOHN RODGERS)

In San Bernardino, California, on the night of August 23, 1997 around 8:30pm Amanda Key was at her best friend's house complaining that had recently been fired for embezzlement. The friend, Jeanette Michealson, and Key consumed two drinks of hard liquor during the course of their conversation before Key stated that she was leaving and would stop at a nearby bar called the Saddle Man to see some friends, have a few more drinks, and then return home. Robert Smith, bartender at the Saddle Man, said that Key arrived at the bar around 9:00pm and ordered a white Russian, which is a mixed drink containing Kahlua and milk. Key then took a seat at the bar and spoke to cocktail servers she had befriended over the course of four years as a patron.

According to Smith, Key was approached by a man he had never before seen. The man, later identified as John Rodgers, took a seat next to Key because it was the only available one. Since the bar was busy, Smith did not engage either Key or the man in conversation, though he does recall the man ordering a shot of tequila. He noticed the man and Key had left on or around 9:30pm. Smith also noted that it was not unusual to see Key leave the bar with a man she met in the course of the evening. One hour later, Rodgers and Key were seen at Lucky's convenience store in Ridgecrest, California. Ridgecrest is a mountain community roughly twenty-five minutes from San Bernardino. Store cameras recorded Rodgers and Key entering the store, approaching the counter, and purchasing a bottle of Jose Cuervo tequila. They then left and Key was never again seen alive. Rodgers

was seen the next day by fisherman at a nearby creek washing apparently blood stained clothes in the water. When Rodgers saw the men he abruptly gathered the clothing and left.

On September 4, 1997 a geology class from San Grigornio High School in San Bernardino was hiking in the nearby San Bernardino Mountains. During the hike, two students became separated from their group and, while attempting to relocate the others, encountered a decomposed human body later identified as Key. When they rejoined the rest of their class, Eric Fielder, the teacher in charge, was informed of the body and its location, whereupon he notified authorities.

When they learned of the murder on September 5, the fisherman, Ken Bowland and Jeff Burns, contacted authorities and implicated Rodgers. When San Bernardino County Sheriff deputies questioned Rodgers he said that he had never met Key and knew nothing of her murder. One day later deputies obtained a search warrant to his mountain estate. Upon investigation, they found an empty bottle of tequila bearing the fingerprints of Key, numerous articles of pornographic material, a knife collection, and an article of underwear later found to belong to Key. Rodgers bore a scratch across his neck.

Autopsy reports concluded that Key was stabbed repeatedly and died of excessive blood loss. Skin beneath her fingernails was found to have a DNA link to Rodgers. Key was also found to have been raped but no DNA analysis linked Rodgers to this crime.

Rodgers has been charged with rape and first degree murder.

John Rodgers graduated cum laude in 1984 from University of La Verne and received his Master's of Business Administration from Claremont Graduate School in 1990. Between 1988 and 1994 Rodgers was the Chief Financial Officer for Citizens Thrift Bank based in Ontario, California. His innovative community banking style led to national attention and he was awarded a full-time faculty position at California Baptist College in Riverside, California. He consults for such financial institutions as First-Plus Bank and Dean Whitter. His first book, Making Your Way Through the Nonsense: Effective Money Marketing in the New Millennium, is set for publication in May of 1998.

Amanda Key graduated from Eisenhower High School in Fontana, California in 1982. She took employment with JC Penny's retail store in San Bernardino in 1984. Three years later she enrolled at San Bernardino Valley College and has since completed thirty two academic units. She left JC Penny's in 1992 and was employed as a teller at Wells Fargo Bank in Redlands, California until she was fired for embezzlement on August 20, 1997.

Stipulations

Both parties have stipulated to the following facts:

1. The knife set belonging to Mr. Rodgers is manufactured by HunterCorp USA. The set includes twelve knives and the manual for this set describes the "Power Blade" as the knife to use when subduing an animal weighing over one-hundred fifty pounds.
2. On August 23, 1997, the CBS show "60 Minutes" concerned poor food handling in restaurants.
3. John Rodgers's phone records show a call to Yucaipa at 11:30pm and a call to Malibu at 11:55pm. The Yucaipa call was to Steven Rodgers and the Malibu call was to Kenneth Ginsburg.

Statement of John Rodgers

My name is John Rodgers. I am 39 years old and a resident of Ridgecrest, California. In 1984, I graduated from the University of La Verne with a Bachelor's of Science in Business. I then went to work for Citizen's Thrift Bank in Ontario, California as an Administrative Officer and became the Chief Financial Officer in 1991. During that time I completed a Master's of Business Administration at the Claremont Graduate School. I left Citizen's Thrift in 1994 to take a teaching position at the graduate school of California Baptist College in Riverside and have been there since. I have written two books on successful community banking policies and my latest book, set for publication in the Spring of 1998, is a self-help manual on successful money management practices.

On the night of August 23, 1997 I went to the Saddle Man, a country and western bar in San Bernardino, to meet some students of mine who wanted to have drinks and discuss current policy initiatives of the Federal Reserve we reviewed in class. I am always willing to meet my students outside of class because I deeply believe that education occurs better in small circles where there is a free exchange of ideas. When I arrived, I noticed that my students were not there yet, so I decided to wait at the bar for them. I ordered two drinks and had no conversation with anyone while there. By 9:00pm I grew tired of waiting and decided to return home. I went directly home from the Saddle Man.

Since Ridgecrest is roughly twenty-five minutes from San Bernardino, I arrived at home around 9:30pm. I then watched 60 Minutes television show which featured special on poor handling of food in restaurants, washed my dishes, called my brother who lives in Yucaipa, talked to my publisher, worked on my money management manuscript, and went to bed. At no time in my evening did I make contact with Amanda Key. The following morning, as I do every Saturday, I went down to the creek by my house and sat for fifteen minutes, reflecting on my week past and the week ahead. I then returned home and continued the revising my manuscript.

Having lived in Ridgecrest for the past four years, I have become something of a sportsman. I enjoy the outdoors and outdoor activities such as fishing. As any good fisherman will tell you, a variety of knives is needed to scale fish of different sizes and weights. Last year, I bought a knife set for this purpose. I have used these knives only for scaling fish and find the allegations that I used one to kill another human being laughable. Also, I admit that I enjoy drinking. I have a liquor cabinet which includes selections from a variety of spirits, including tequila. The bottle of tequila I have in my house was purchased two weeks before the night of August 23rd. I did not purchase it in the company of Amanda Key nor did I purchase it at Lucky's convenience store in Ridgecrest. In fact, I have rarely patronize Lucky's at all.

It is true that I have a number of materials others consider "pornographic" in my home. My question is: so what? As a single man, I do sometimes get lonely and resort to

viewing these movies as a way of keeping myself entertained. But that's nobody's business but my own.

Let me say this again: I have never met Amanda Key; I did not meet her at the Saddle Man; I did not accompany her to Lucky's convenience store; and I did not kill her.

Statement of Rebecca Smith

My name is Rebecca Smith and I am a resident of Colton, California. In 1990 I graduated from Colton High School and attended the American Institute of Bartending for two years to learn how to bartend. When I graduated with my certificate, I was hired by TGI Friday's in San Bernardino but I was fired six months later for forgetting customers' orders. Then I went to the Saddle Man in San Bernardino and I have done a good job while there.

I clearly remember the night of August 23rd. It was pretty busy in the bar since the band called "Aces 'n Eights" started playing there. They're a really popular band here in the Inland Empire and draw a big crowd wherever they go. Anyway, that night "Aces 'n Eights" were playing and the bar was hopping. I saw Amanda Key come in around 9:00pm. I know Amanda well. She's been a good customer over the last three years. Everybody in the bar knows her mainly because she always comes in but also because she had an affair with the bartender who was here before me. She sat down at the bar like she always does and ordered a White Russian. I had a hard time hearing what she was saying to me but she did tell me that she had been fired from her job. I don't know why. Since I had a lot of other customers I couldn't spend much time with her.

I noticed that a man took a seat next to Amanda and it appeared as though she knew him. When she saw him she gave him a hug and kiss on the cheek. I clearly

remember what the man looked like and can identify him if I saw him again. He and Amanda were talking and laughing and he ordered a shot of tequila and another white Russian for Amanda. At first, Amanda politely said that she didn't want another drink because she had already been drinking too much, but he insisted and she gave in. That was the last time I talked to Amanda because she and this guy left together after they finished their drinks. I didn't think anything of it at the time since Amanda left with guys many times before.

Statement of Michael Richolo

My name is Michael Richolo. I am a resident of Grand Terrace, California and am the Chief Crime Laboratory Technician for the San Bernardino County Sheriffs Department. I received my Bachelor's of Science Degree from University of California Irvine in 1977 and my PhD in Criminalistics from the John Jay College of Criminal Justice in New York in 1984. I moved back to Southern California that year when I was hired by the San Bernardino County Sheriffs Department. I have published several articles on proper crime scene investigation and am an adjunct faculty member at California State University San Bernardino. Moreover, I have testified in the course of my tenure approximately two-hundred times in criminal trials, always as a witness for the prosecution.

In the evening of September 4, 1997, I was notified that a body was found in the San Bernardino Mountains and foul play was strongly suspected. The corpse, later identified as Amanda Key, was brought to the Coroner's Office in downtown San Bernardino where we began the investigation. It is policy in San Bernardino for the Chief Criminalist to work alongside the coroner when the autopsy is conducted. Therefore, when Key's body was analyzed, I was present. The findings of the autopsy were that she died of blood loss resulting from multiple stab wounds and that she had been sexually assaulted.

We also found specimens of human skin beneath her fingernails and a sample of male semen in her vagina. I immediately took these two samples to the crime lab which is

directly across the street and analyzed them for a DNA blueprint. The DNA compositions of the samples bore no scientific resemblance. This indicates that Key had very recent sexual intercourse with someone other than the man believed to have killed her; this, however, does not preclude the possibility that Key was sexually assaulted by her killer since sometimes even criminals protect themselves by using contraceptives. Nonetheless, the results were then sent to the California Department of Justice and the Federal Bureau of Investigation to see whether any match could be found in existing DNA profiles.

Two days later, police notified my office that a suspect had been found. He was identified as John Rodgers of Ridgecrest. Based upon some physical evidence they found his home, Rodgers was arrested and brought to the Central County jail in San Bernardino for holding until charges could be filed. While he was there, my team of criminalists obtained from Rodgers a skin culture and a blood sample. We then analyzed them using the same DNA procedures and found that there was a match between the DNA composition of the skin sample found beneath the nails of Key and the sample taken from the person of Rodgers. Given our earlier tests, of course, there was no match found between the DNA sample obtained from Rodgers and the DNA composition of the semen sample.

Sheriff's deputies provided me with a picture taken of Rodgers upon his arrest. The picture clearly shows a scratch across the left side of his neck. Amanda Key was found to be right-handed and in cases involving a victim fighting for his/her life, it is usual that a

right-handed person will attempt a strike to the left side of the assailants body, often producing a mere scratch on the skin. The scratch Rodgers bore is consistent with this type of injury causation.

Deputies also found a knife collection at Mr. Rodgers's house. I have obtained a copy of the missing member of this set, the "Power Blade". I analyzed the dimensions of this knife's blade and measured them against the dimensions of the lacerations on Ms. Key. I found that the "Power Blade" has precisely the same width as the lacerations.

Statement of Bernard L. Rush

My name is Bernard Leonard Rush and I am a fifteen year resident of Riverside, California. I am a the Department Chairman and Professor of Business Administration at California Baptist College in Riverside. I received my Bachelor's of Science degree in Economics from University of Southern California in 1966, Master's of Science in Business Administration from Stanford University in 1969, and my Ph.D. in Business Administration from University of California Berkeley in 1972. I was a faculty member at three universities before coming to CalBaptist in 1985, where I have remained. My scholarship includes over twenty articles published in business journals and I am a contributing editor to the California Journal of Banking and International Commerce.

As Department Chairman, I am responsible for all the faculty members the Department of Business Administration and I have been instructed by authorities to provide information on the professional conduct of Professor John Rodgers on or around the last week of August and first week of September 1997. Since California Baptist graduate program is designed to provide education to working professionals, our classes are in session year around. During the summer of 1997, Professor Rodgers offered a class in community banking, which is his professional and teaching expertise. To the best of my knowledge, Professor Rodgers attended every class session until Monday August 25th. That morning, my secretary received a call from him in which he stated that an illness had befallen him and he could not attend his class session scheduled for that evening. Since

community banking is among my research fields, I happily filled in for him. Two days later, the same thing happened, only this time he called me personally. He said in the conversation that he was suffering a terrible flu and did not feel up to conducting his classes. I thought it a little odd that there was not a sound of congestion in his voice nor did he indicate whether he was going to seek antibiotics from his doctor. Nonetheless, I agreed to teach his courses for him for the remainder of the week. He, of course, never returned because he has been arrested for allegedly killing and sexually assaulting a woman.

I have known Professor Rodgers for three years. It gives me horrible pain to think that allegations of this sort could be assessed against a fine man of God who is a tremendous intellect and never relinquishes the opportunity to give to the community through volunteer service facilitated by the university and the church. His students deeply miss him as does the university.

Statement of Janet M. Burns

My name is Jeffrey M. Burns and I am a lifetime resident of Ridgecrest, California. In 1980 I graduated from Rim of the World High School and worked in the local timber industry for six years until I was able to save enough money to open my own fish and tackle shop here in Ridgecrest, which I own and operate.

I have known John Rodgers since he moved to Ridgecrest. Ridgecrest is a small community where everyone knows each other. I never did business with John until August 21, 1997 when he came to my shop and purchased a set of hunting knives made by HunterCorp USA. He really wanted a set which included a knife capable of subduing a large animal. I was a little surprised by this since I did not know him to be a hunter. Usually, the guys that buy this set are those who shoot wild animals and need a knife to subdue and skin them. There are only a few guys around town that are serious hunters and none ever spoke of John joining them. I assured John that the "Power Blade" knife in the set would do the job. But I also told him that if he really wanted to subdue a wild animal he better purchase a rifle first. It can be really dangerous for novice hunters to try this with a knife. Then he said to me, "no, I don't want to leave any fingerprints." He then started laughing and so did I. I thought he was just joking.

On August 24, 1997 I was fishing in a Ridgecrest creek known for its fishing holes.

I was with my friend Ken Bowland. Ken and I always sit on the edge of the creek and throw our lines into the water while we wait for a bite. We often see the locals come around a drop a line in the water and we all have a good time together. On this day, we saw John. It's not unusual at all for John to come down and talk to me and Ken. Sometimes he even brings a six-pack of beer and shares it with us. John once told me that he is a professor somewhere. I can't hardly believe it since he is such a down-to-earth type of guy. Anyway, when we saw John we expected him to come over and say "hi" to us. But instead he wouldn't look at us. It appeared like he was trying to wash clothes in the creek. I've never seen him do that before. The clothes did appear to be bloody from the distance we saw them (which was about fifty feet). When he looked up and saw us, he grabbed the clothes and rushed back to his house. Ken and I were amazed because John is usually so friendly.

When we heard that there had been a body found near Ridgecrest, Ken and I began to suspect John. It's not that we have anything out for him. It's just that he is always so friendly and I can't believe that nothing was really troubling him that day. Also, the clothes we saw him washing gave it away. I feel bad for ratting on a guy who's usually so nice but I thought it was important to bring these facts to the attention of the authorities.

Statement of Jo-Ellen Kline

My name is Jo-Ellen Kline and I am a twenty-three year resident of Ridgecrest, California. I am the night manager of Lucky's convenient store in Ridgecrest. I have worked at Lucky's for the last twelve years. I graduated from Pacific High School in San Bernardino in 1961.

On the night of August 23, 1997 I was working my normal shift—4:00pm to 12:00am. I relieved the girl who works the cash register around 10:20pm and that's when I saw John Rodgers and a woman I had never seen before come into the store. I've known John over the last several years since he first came to Ridgecrest. He's always very polite and a he's also a good customer. Since that night, deputies showed me a picture of a woman named Amanda Key and she's the one I saw with John that night.

John and this woman—Ms. Key—were really giddy when they came to the store. They were laughing and joking and appeared to be having a good time together. It doesn't surprise me because John is a real charmer. Anyway, the two of them knew exactly what they wanted. They walked right up to the counter and asked for a bottle of Jose Quervo Gold tequila. I got it off the shelf and put it on the counter. While John was fiddling through the bills in his wallet, this Ms. Key picked the bottle up .

Statement of Rodney James

My name is Rodney James and I am a five year veteran deputy in the San Bernardino County Sheriffs Office. I received a Bachelor's Degree from California State University San Bernardino in 1990 before working as a public safety officer at Riverside Community College. Then the sheriffs department hired me and, after I have three commendations for outstanding field work, assigned me to the homicide division. This is the twelfth time I've testified in a criminal trial.

In the afternoon of September 4, 1997 I received a dispatch from the county headquarters about a dead body found in the San Bernardino Mountains nearest to Deer Creek Road. My junior partner—Stephanie Walker—and I went to Deer Creek Road, exited our vehicle, and met with a man named Eric Fielder who was reportedly on a hiking trip with high school students. Mr. Fielder led Deputy Walker and myself through the woods to the location of the body. The body was placed approximately one quarter of a mile through the woods off Deer Creek Road. The corpse was wearing a T-shirt and jeans but no underwear. I found a California Drivers License in a wallet located in the side pocket of her jeans. The body was that of Amanda Key. We immediately summoned the Coroner's Office who arrived within an hour.

Once the body was properly entrusted to the Coroner's Office, Deputy Walker and I searched around the location of the body for evidence. We found nothing. We then

returned to our office in San Bernardino and began making phone calls. After consulting with Ms. Key's relatives, we learned that she was last in the company of Jeanette Michaelson. Ms. Michaelson directed us to the Saddle Man bar where we learned that she was spotted leaving with a man. We had no further indication of the identity of this man.

The next day our office received a phone call from Jeffrey Burns and Ken Bowland of Ridgecrest. They stated that they had witnessed suspicious activity in a neighbor of theirs which might be related to the Key murder. Deputy Walker and I drove up to Ridgecrest and spoke to them. During our conversation, they stated that they saw John Rodgers washing apparently bloody clothes in the creek close to his house. The creek is one mile south of the site in which Key was found.

We then went to Mr. Rodgers' house and asked him for permission to question him about the murder of Amanda Key. He took a moment to consider and then agreed. We asked him whether he knew Amanda Key. He stated that he did not. We asked him whether he had accompanied Amanda Key to the Saddle Man Bar in San Bernardino. He replied that he did not. We asked him whether he had been washing clothes in the creek next to his home on August 24. He stated that he may have been at the creek in the morning time since he routinely takes morning walks down there. But he did not wash any clothes or have any articles of clothing in his possession other than those he was wearing. During the course of this questioning Mr. Rodgers demonstrated many body signals which suggest deceit. He was sweating profusely, speaking in clipped sentences, and avoiding eye

contact with either me or Deputy Walker. Deputy Walker and I thanked him for his time, left his house, and drove down to the local sheriff's office where we placed a call to obtain a search warrant. Fifteen minutes later we were granted permission to search Mr. Rodgers's house for knives, articles of clothing related to the death of Ms. Key, and any other evidence establishing a sexual assault.

Upon investigation of his house, Deputy Walker and I found the following items: an empty bottle of tequila, a knife collection, an article of women's underwear, and numerous articles of pornographic material. The knife collection is a 12 knife set of hunting knives produced by HunterCorp USA. These knives come in a large wooden box and each has its own space within the box. Deputy Walker and I found only eleven knives belonging to the twelve knife set. The missing knife is called the "Power Blade" and is described in the HunterCorp USA manual as the knife hunters should use when subduing an animal of a weight greater than one-hundred fifty pounds.

I also found an empty bottle of tequila beneath Mr. Rodgers's bed. Deputy Walker and I later took the bottle back to the Crime Lab and analyzed the fingerprints on it. We found, as expected, the fingerprints belonging to Mr. Rodgers and we also found fingerprints later matched to those of Amanda Key. Finally, the article of woman's underwear we found bore the initials "AK". Later, when we investigated Amanda Key's apartment, we found that each article of her underwear bore the initials "AK".

We also found a videotape in his machine with recordings of numerous "60 Minutes" shows, including the show aired on August 23, 1997 concerning poor food handling in restaurants.

Statement of Steven Rodgers

My name is Steven Rodgers and I am a three year resident of Yucaipa, California. In 1988 I received my Bachelor's of Arts in History at Pomona College and in 1994 I received my Doctorate of Philosophy in History at University of California Riverside. I am now a professor of American History at Crafton Hills Community College. I am also the brother of John Rodgers.

On the night of August 23, 1997 around 11:30pm I received a phone call from John. The time of night in which he call me is not at all unusual; since we are both night-owls, we communicate late in the evening. Not only does it save money but we seem to have more time to chat around that time. Nevertheless, I received the call and John and spoke for about twenty minutes.

During the course of our conversation John told me that the group of students he was to meet failed to show at the rendezvous and he decided to return home and work on his book. I was confused at first since he told me earlier in the week (on Monday) that he had a Friday night date with some woman he met in San Bernardino. I just figured that I misunderstood him. We then spoke at length about the final draft of his new book. He was complaining that the word processing unit was inadequate to achieve the special graphics he felt the manuscript deserves. I suggested several word processing applications which are designed to achieve the graphics John wanted. He then wrote down the names and

manufacturers' of the software and we began discussing other issues. He informed me that he supposed to meet his students that evening at a bar but when they failed to show he simply returned home and worked on his manuscript. At no time during the course of that conversation did John imply, suggest, or convey any excitement, unrest, or anxiety. The conversation was as normal as we have ever had. His voice was calm and his statements were sensible and intelligent.

APPENDIX B: JUROR SURVEY

Thank you for your participation in this thesis project examining the criminal jury in the American system of justice. Your contribution has been considerable and is deeply appreciated.

Please take these remaining few moments and complete this survey to the best of your ability. All answers are anonymous and no attempt will be made to match responses to participants.

(1) Your race:

- White
- African-American
- Hispanic
- Asian-American
- Native American
- Other

(2) Age:

- | | | |
|--------------------------------|--------------------------------|------------------------------|
| <input type="checkbox"/> 18-22 | <input type="checkbox"/> 42-47 | <input type="checkbox"/> 67+ |
| <input type="checkbox"/> 23-27 | <input type="checkbox"/> 48-51 | |
| <input type="checkbox"/> 28-31 | <input type="checkbox"/> 52-57 | |
| <input type="checkbox"/> 32-37 | <input type="checkbox"/> 58-61 | |
| <input type="checkbox"/> 38-41 | <input type="checkbox"/> 62-67 | |

(3) Highest level of education completed:

- 10th grade
- 11th grade
- 12th grade
- Associates Degree or its equivalent in college units
- Bachelor Degree
- Master's Degree
- Philosophy Doctorate or its equivalent
- Law Degree
- Medical Degree

- (4) Annual income:
- | | | |
|---|--|------------------------------------|
| <input type="checkbox"/> \$15,000 or less | <input type="checkbox"/> \$41,000-45,000 | <input type="checkbox"/> \$70,000+ |
| <input type="checkbox"/> \$16,000-20,000 | <input type="checkbox"/> \$46,000-50,000 | |
| <input type="checkbox"/> \$21,000-25,000 | <input type="checkbox"/> \$51,000-55,000 | |
| <input type="checkbox"/> \$26,000-30,000 | <input type="checkbox"/> \$56,000-60,000 | |
| <input type="checkbox"/> \$31,000-35,000 | <input type="checkbox"/> \$61,000-65,000 | |
| <input type="checkbox"/> \$36,000-40,000 | <input type="checkbox"/> \$66,000-70,000 | |

- (5) Marital status:
- Single Married Divorced

- (6) Which of the following would best describe your political philosophy?
- conservative
 liberal
 moderate
 independent

- (7) Have you ever served on a criminal jury before?
- yes no

- (8) In the present mock trial case, are you in complete agreement with the verdict of the jury?
- yes no

- (9) Please rate your level of agreement with the following statement: "Some people deserve to be crime victims when they behave in a way they should not be" (1=no agreement; 10=strong agreement).
- 1 2 3 4 5 6 7 8 9 10

- (10) Please rate your level of agreement with the following statement: "The role of a juror is to weigh the evidence only and to forget about the wealth, social status, and character of the defendant and victim" (1=no agreement; 10=strong agreement).
- 1 2 3 4 5 6 7 8 9 10

- (11) Which of the following witnesses was most important in your decision-making process?
- defendant
 - brother of the defendant
 - friend of the defendant (publisher)
 - bartender
 - convenience store manager
 - county criminalist
 - police officer
 - friend of the defendant (professor)
 - fish and tackle shop owner

- (12) What was the most important item the witness you indicated in question offered?

- (13) Which of the following statements best represents your own thoughts about the alleged guilt of the defendant and the proper verdict in this mock trial case? (please mark only one).

- the defendant is absolutely guilty without any reasonable question whatsoever and I vote to convict;
- although some questions may exist, I am 95% certain of the defendant's guilt and would vote to convict;
- while there are weaknesses in the state's case, the evidence is still strong enough for conviction;
- the trial evidence isn't that strong but it is still more likely than not that the defendant is guilty and I would convict;
- the trial evidence is strong but there are too many doubts. I favor acquittal;
- the evidence presented by the prosecutor is so weak that conviction is unjust.

- (14) The following is a hypothetical scenario. Please read it and then indicate whether as a juror you would vote for conviction or acquittal had you been selected to serve during this trial.

A police officer with a favorable department reputation stopped a car for having violated the speeding limit. The area in which the stop was made is notorious for high crime rates and also has a significant immigrant population. During the stop, the driver emerged from the car. Though instructed to remain still, the driver approached the officer. The officer then wrestled the driver to the ground and hit him five times with his baton. The driver sustained permanent injuries to his head and a broken arm. The driver does not speak English. The

officer told his superiors that the driver was obviously drunk and approached him with the intent to do harm. There was no presence of any controlled substance found in the driver's bloodstream. The driver also had no weapon. Witnesses told investigators that the driver shouted insults to the officer in Spanish. The officer has been charged with assault.

(14a.) Please indicate how likely you believe the defendant to be guilty of these crimes by selecting a percentage on a scale of 1 to 100 (1=total certainty of innocence; 100=total certainty of guilt).

Please mark the first seven digits of your social security number. These data will be used solely to match this survey with the Opinion Tracking Survey you completed at the beginning of this proceeding.

APPENDIX C: OPINION TRACKING SURVEY

Please record your opinion of the defendant's guilt after each argument is made and each witness has testified. Do not be afraid to make such a determination based on the limited amount of evidence you know at the time. Also, do not be afraid to change your opinion as the trial develops but please do not change an answer you have previously made.

Opening Statements:

Prosecution _____ guilty _____ not guilty _____ unsure

Defense _____ guilty _____ not guilty _____ unsure

Witnesses:

Bartender (Rebecca Smith) _____ guilty _____ not guilty

Convenience Store Manager (Jo-Ellen Kline) _____ guilty _____ not guilty

Deputy Sheriff (Rodney James) _____ guilty _____ not guilty

Criminalist (Michael Richolo) _____ guilty _____ not guilty

Fish and Tackle Store Owner (Janet Burns) _____ guilty _____ not guilty

Professor (Bernard Rush) _____ guilty _____ not guilty

Defendant (John Rodgers) _____ guilty _____ not guilty

Defendant's brother (Stephen Rodgers) _____ guilty _____ not guilty

Book publisher (Kenneth Ginsburg) _____ guilty _____ not guilty

Closing Arguments:

Prosecution _____ guilty _____ not guilty

Defense _____ guilty _____ not guilty

BIBLIOGRAPHY

- Abadinsky, H. (1990). *Law and justice*, 2nd edition. Chicago: Nelson-Hall Press.
- Abrahamson, A. (1997). Pilot program puts jury duty a phone call away. *Los Angeles Times*, Sec. B. Page 1, August 4, 1997.
- Abrahamson, J. (1994). *We, the jury*. New York: Basic Books.
- Adler, F. (1973). Socioeconomic factors influencing jury verdicts. *New York University Review of Law and Social Change*, 3: 1-10.
- Adler, S. (1994). *The jury*. New York: Doubleday.
- Bernard, J.L. (1979). Interaction between the race of the defendant and that of jurors in determining verdicts. *Law and Psychology Review*, 5: 103-111.
- Beyette, B. (1997). Can a lawyer's personality sway the jury? *Los Angeles Times*, Sec. E, Page 1, December 17, 1997.
- Black, D. (1989). *Sociological justice*. New York: Oxford University Press.
- Blumberg, A.S. (1967). The practice of law as a confidence game: Organizational co-optation of a profession. *Law and Society Review*, 1: 15-39.
- Borgida, E. and N. Brekke. (1984). Psychological research on rape trials. In A. Burgess (Ed.), *Research handbook on rape and sexual assault*. New York: Garland Publishing.
- Bowers, W.J. and G.L. Pierce. (1980). Arbitrariness and discrimination under post-Furman capital statutes. *Crime and Delinquency*, 26: 563-635.
- Broeder, D. (1954). Functions of the jury: Facts or fictions. *University of Chicago Law Review*, 21, 386, 391-92.
- Broeder, D. (1959). The University of Chicago jury project. *Nebraska Law Review*, 38, pp. 744, 755.
- Corwin, M. (1996). Deputies don't pass bar in jury foray. *Los Angeles Times*, sec. B, p. 1.

- Dershowitz, A. (1996). *Reasonable doubts*. New York: Simon and Schuster.
- Efran, M.G. (1974). The effect of physical appearance on the judgment of guilt, interpersonal attraction, and severity of punishment in a simulated jury task. *Journal of Research and Personality*, 8:45-54.
- Field, H.S. (1978). Juror background characteristics and attitudes toward rape: Correlates of jurors' decisions in rape trials. *Law and Human Behavior*, 2: 73-93.
- Frank, J. (1964). Jury system on trial. *Senior Scholastic*, March 20, 1964, p. 8.
- Freedman, J.L. (1990). The effect of capital punishment on jurors' willingness to convict. *Journal of Applied Social Psychology*, 20, pp. 465-477.
- Friedman, L.M. (1993). *Crime and punishment in American history*. New York: Basic Books.
- Gross, S.R. and R. Mauro. (1984). Patterns of death: An analysis of racial disparities in capital sentencing and homicide victimization. *Stanford Law Review*, 37: 27-153.
- Gunther, J. (1988). *The jury in America*. New York: Facts on File Publications.
- Hans, V.P. and N. Vidmar. (1982). Jury selection. In N.L. Kerr and R. Bray (Eds.), *The psychology of the courtroom* (pp. 39-82). New York: Academic Press, Inc.
- Hans, V.P. and N. Vidmar. (1986). *Judging the jury*. New York: Plenum Publishing.
- Hastie, R., Penrod, S.D. and N. Pennington. (1983) *Inside the jury*. Cambridge, M.A.: Harvard University Press.
- Hastie, R., editor. (1993). *Inside the juror: The psychology of juror decision making*. New York: Cambridge University Press.
- Jacobs, M.A. (1997). More look for justice in private jury trials. *Press-Enterprise*, Sec. A, Page 1, July 13, 1997.
- Kalven, H. and H. Zeisel. (1966). *The American jury*. Boston: Little Brown and Company.

- Kaplan, M. (1982). Cognitive processes in the individual juror. In N.L. Kerr and R. Bray (Eds.), *The psychology of the courtroom* (pp. 197-220). New York: Academic Press, Inc.
- Kassin, S.M. and L.W. Wrightsman. (1983). The construction and validation of a juror bias scale. *Journal of Research in Personality*, Vol. 17: 423-442.
- Kassin, S.M. and L.W. Wrightsman. (1988). *The American jury on trial: Psychological perspectives*. New York: Hemisphere Publishing.
- Kassin, S.M. and Barndollar, K.A. (1992). The psychology of eyewitness testimony: A comparison of experts and prospective jurors. *Journal of Applied Psychology*, 22, pp. 1241-1249.
- Kataoka, M. (1995). Plainly put: Juries stumble over legalese. *Press-Enterprise*, sec. A, page 1, 22, December 1, 1995.
- Kerr, N.L., Atkin, R.S., Stasser, G., Meek, D., Holt, R.W., and J.H. Davis. (1976). Guilt beyond a reasonable doubt: Effects of concept definition and assigned decision rule on the judgment of mock jurors. *Journal of Personality and Social Psychology*, 34: 282-294.
- Ketchum, R., ed. (1986). *The Anti-Federalist papers and the Constitutional Convention debates*. New York: Mentor Books.
- Krueger, R.A. (1994). *Focus groups: A practical guide for applied research*. Thousand Oaks: Sage Publications.
- Levine, J.P. (1992). *Juries and politics*. Pacific Grove, CA: Brooks/Cole Publishing Company.
- Margolis, D.H. (1989). *Jury comprehension in complex cases*. Washington D.C.: American Bar Association.
- McEvoy, P. (1996). What jurors really want. *Trial*, April, 1996, pp. 40-41.
- Mileski, M. (1971). Courtroom encounters: An observation of a lower criminal court. *Law and Society Review*, 5: 473-538.
- Mills, C.J. and W.E. Bohannon. (1980). Juror characteristics: To what extent are they related to jury verdicts? *Judicature*, 64: 23-31.

- National Center for State Courts. (1976). *Facets of the jury system*. Denver, CO: National Center for State Courts.
- Newman, D. (1956). Pleading guilty for consideration: A study in bargain justice. *Journal of Criminal Law, Criminology, and Police Science*, 46: 780-790.
- Penrod, S. (1980). Evaluating social scientific methods of jury selection. Paper presented at the meeting of the Midwestern Psychological Association, St. Louis, May, 1980.
- Penrod, S. (1985). Evaluating techniques to improve juror performance. Paper presented at the American Judicature Society Conference on the American Jury and the Law. Wingspread, Wisconsin.
- Ranii, D. (1981) Written pretrial instructions needed by jury. *The National Law Journal*, June 15, 1981, p. 8.
- Ranii, D. (1982). Judges push increased jury role. *The National Law Journal*, August 16, 1982, p. 1.
- Riley, C. (1997). Race and perceptions of the criminal trial and jury service: An empirical analysis. Unpublished.
- Reed, J.P. (1965). Jury deliberations , voting, and verdict trends. *Southwestern Social Science Quarterly*, 65: 247-259.
- Rose, A.M. and A.E. Prell. (1955). Does punishment fit the crime? A study in social valuation. *American Journal of Sociology*, 61: 247-259.
- Saks, M.J. (1977). *Jury verdicts: The role of group size and social decision rule*. Lexington, MA: Lexington Books.
- Severance, L.J. and E.F. Loftus. (1982). Improving the ability of jurors to comprehend and apply criminal jury instructions. *Law and Society Review*, Vol. 17: 153-197.
- Simon, R. and L. Mahan. (1971). Quantifying burdens of proof: A from bench, the jury, and the classroom. *Law and Society Review*, Vol. 5: pp. 319-330.
- Simon, R.J., editor. (1975). *The jury system in America*. Beverly Hills: Sage Publications.
- Sparf v. United States (1895) 156 U.S. 52

- Stanford Law Review. (1969). A Study of the California penalty jury and first degree cases. *Stanford Law Review*, 21: 1296-1497.
- Steinberg, R. (1977). Sympathetic voting dimensions on the New York Court of Appeals. *Albany Law Review*, 41.
- Stephan, C. (1974). The influence of physical attractiveness of a plaintiff on the decisions of simulated jurors. Unpublished.
- Stephan, C. (1975). Selective characteristics of jurors and litigants: Their influences on juries' verdicts. In R. Simon (ed.), *The jury system in America*. Beverly Hills: Sage Publications
- Talarico, S.M., editor. (1985). *Courts and criminal justice*. Beverly Hills: Sage Publications.
- Van Dyke, J. (1977). *Jury selection procedures: Our uncertain commitment to representative panels*. Cambridge, MA.: Ballantine Publishing Company.
- Williams, F.P. and M. McShane. (1990). Inclinations of prospective jurors in capital cases. *Sociology and Social Research*, 74, pp. 85-94.
- Williams, F.P. and M. McShane. (1987). Eligibility for jury service in capital trials: A question of potential exclusion and bias. *Texas Bar Journal*, April, 1987, pp. 365-370.
- Wishman, S. (1986). *Anatomy of a jury*. New York: Penguin Books.
- Wrightsmann, L.S., Kassin, S.M., and C.E. Wills. (1987). *In the jury box: Controversies in the courtroom*. Beverly Hills: Sage Publications.