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JURY CONSULTANTS AND THE CRIMINAL JUSTICE SYSTEM: ATTITUDES AND PERCEPTIONS OF CRIMINAL DEFENSE ATTORNEYS IN THE STATE OF PENNSYLVANIA

A Dissertation

Submitted to the Graduate School

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for the Degree Doctor of Philosophy

in Criminology

Eric S. See

Indiana University of Pennsylvania

December 2001

Indiana University of Pennsylvania
The Graduate School and Research
Department of Criminology

We hereby approve the dissertation of

Eric Stephen See

Candidate for the degree of Doctor of Philosophy

25 July 01

Dr. Robert J. Mutchnick
Professor of Criminology, Advisor

25 July 2001

Dr. W. Timothy Austin
Professor of Criminology

July 25, 2001

Dr. R. Paul McCauley
Professor of Criminology

25 July 2001

Dr. William F. Barker
Professor of Educational and School Psychology

August 22, 2001

Ms. Michele S. Schwietz
Interim Associate Dean for Research
The Graduate School and Research

Title: Jury Consultants and the Criminal Justice System: Attitudes and Perceptions of Criminal Defense Attorneys in the State of Pennsylvania

Author: Eric See

Dissertation Chairman: Dr. Mutchnick

Dissertation Committee Members: Dr. McCauley
Dr. Austin
Dr. Barker

This study examined the perceptions and attitudes of Members of the Pennsylvania Association of Criminal Defense Lawyers concerning the use of jury consultants in criminal trials. Black's theory of law was tested as a theoretical basis for understanding jury consultants, and five research questions were asked.

All members of this organization were mailed a 35 question survey. In this survey, they were asked to indicate their level of agreement to 20 questions. They were then asked a series of questions that were used to determine basic demographic information and a series of questions designed to measure their perceptions on the use of jury consultants in criminal trials.

The results of this survey demonstrated overall support for Black's theory of law. Jury consultants are a measure of law used primarily by white defendants, and primarily by the upper class. Attorneys who responded to this study believed that defendants were at a disadvantage when consultants were used by the state, yet denied to the defense. They believed that consultants could be beneficial in high profile cases, and did not pose ethical problems for the criminal justice system. In addition, attorneys believed that consultants

should possess an advanced degree. Attorneys were divided on the overall question of jury consultants effectiveness, and the need to license consultants.

This dissertation is dedicated to my wife Sarah and my son Cameron. Only with the help and devotion of my family was it possible for me to compiete this project. In addition, I also want to thank my parents for their help and support over this long process. A special thanks to Dr. Robert Mutchnick for his guidance and for all he has taught me over the years. Finally, I want to thank Dr. Tammy King, Christopher Bellas, and Heather Alderman-Keskin for all of their assistance on this project.

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CHAPTER 1

INTRODUCTION

Americans enjoy many rights and freedoms not available to people in other parts of the world. Guaranteed by the U.S. Constitution, citizens enjoy rights including: free speech, religious freedom, protection from unreasonable search and seizure, and the right to counsel. Of the many rights available there is one that many groups and individuals feel is in serious jeopardy. The right in question, found in the Sixth Amendment, guarantees all citizens in criminal prosecutions the right to a speedy and public trial, by a fair and *impartial* jury.

This dissertation examines the concept of an impartial jury and the role of a relatively new actor and professional, in the criminal justice system, the *scientific jury consultant*. Jury consultants are individuals hired by counsel to aid in selecting members of a jury. They can be used by the prosecution or the defense, and in criminal or civil cases. No matter which side elects to use a jury consultant, a fundamental question arises: does the use of a jury consultant alter the selection of jurors to such an extent that the result is in fact a biased and prejudiced jury, unfairly favoring one side of a particular case? This study seeks to conduct a scientific survey of practicing defense attorneys in the state of Pennsylvania in order to answer this question.

For many in this country, the term jury consultant entered a state of national consciousness during the 1994 trial of O.J. Simpson. Indicating the importance of the effect of this trial, Lehman states:

> From this time forward, the history of trial by jury shall be divided into two distinct eras which shall be known as the BOJ period, and the AOJ period. The acronyms stand for, respectively, the time before Orenthal J. Simpson and the time he crashed into our collective consciousness during the eventful summer of 1994. While all of us were aware that in the background of our national life there existed the concept of trial by jury, few paid much attention to it unless they were directly involved (p. 9, 1997).

While the Simpson case may have brought public attention to the role of scientific jury consultants, social scientists have offered their input in selecting juries since the 1950's. Attorneys representing doctors Carl Coppolino and Sam Sheppard hired consultants to aid them in challenging prospective jurors (Hans and Vadimar, 1986). Through the 1960's, psychologists aided counsel in how to frame questions for prospective jurors, and how to analyze the answers given. For example, the 1968 Black Panther trial of Huey Newton included the use of a social scientist to aid in developing voir-dire questions, and analyzing the answers given by perspective jurors (Hans and Vadimar, 1986).

While early examples of social scientist involvement exist, the true beginning of the jury consultant industry is said to be 1972, with the trial of the Harrisburg Eight (Hans, and Vidmar, 1986; Jordan, 1980, Kassin and Wrightman, 1986). This case involved eight antiwar protestors who were accused of plotting to kidnap Henry Kissinger, destroy selective service records, and blow-up tunnels under Washington. A group of social scientists, led by Jay Schulman, conducted phone and in-person interviews of Harrisburg residents, in an attempt to develop a profile of potential jurors sympathetic to the defense.

Through this research, an ideal juror profile was constructed; the result of the trial

was a hung jury. After success in this case and others, Schulman and his colleagues founded the National Jury Project in 1975. This organization supplies professional jury consultants, and has led the way for dozens of firms to enter the new jury consultant market.

Trial attorneys and social scientists are both interested in predicting human behavior. It has only been approximately 25 years since social scientists have attempted to study, understand and influence trial procedures. Before this time, trial attorneys most often relied on experience, instinct, and stereotypes in selecting the jury members who would decide their client's fate. The introduction of the scientific jury consultant has changed this practice forever.

In working with trial attorneys, social scientists have brought scientific methods into the courtroom. Social scientists have developed techniques that they claim will aid attorneys in the better selection of jury members. This practice continues to be highly controversial. Members of the general public, legal field, and scientific community are divided on how effective jury consultants are in their methods, and how valid are their claims of success.

Statement of the Problem

While a wealth of information is available on the methods consultants bring to the court room, a lack of literature exists on the attorneys who may or may not hire consultants to conduct this kind of work. Literature on the ethical implications that surrounds jury consultants, from the perspectives of trial attorneys, is sparse as well. The specific topic of this research focuses on the perceptions and attitudes of attorneys

concerning the use of jury consultants trained in the social sciences. The following questions will be addressed in this research based on attorney's perceptions:

1. How effective are jury consultants in influencing the ultimate disposition of a particular case?

2. How are ethical and moral issues presented by the use of jury consultants reconciled?

3. How do the profiles of defense attorneys who hire a jury consultant differ from the profiles of those who do not hire a consultant?

4. What types of qualifications do defense attorneys look for in a jury consultant?

5. If the use of jury consultants continues, will the indigent defendants have a legitimate claim of a right to have a jury consultant appointed for them?

This research is timely and justifiable for several reasons. First, it is fair to say at this point that the scientific evidence on the effectiveness of jury consultants is divided. While authors such as Lehman (1997) oppose the use of consultants, Branson and Branson (1992) recommend consultants as part of a well balanced preparation. As to whether consultants can affect the final outcome of the case, Hans and Vidmar believe that: "it is doubtful we will ever have a definitive answer to this key question" (p.91, 1986). While this question may indeed be difficult to answer, perhaps we have overlooked the perceptions of success or failure of a key group of actors in the process, the attorneys who hire the consultants.

Second, the majority of research conducted, to date, has focused on juror profiles. While extensive juror profiles have been developed, a profile of attorneys who hire consultants to develop juror profiles has been largely ignored. It is quite possible that the

characteristics of individual attorneys who employ consultants are just as important in the ultimate outcome of a trial as the characteristics of the jurors.

A recent survey conducted by Strier and Shestowsky examined the views of jury consultants. The surveys were sent to the entire membership of an organization called the American Society of Trial Consultants (1999). The researchers learned that in general, consultants did not want to be licensed, and did not want to be under control of the bar association. In addition to this information, the researchers learned that there were large discrepancies in the qualifications and education levels of those offering their services as consultants.

Given this, a survey of those who actually hire the jury consultants is necessary. It is important to learn what an attorney looks for in a consultant, and how attorneys feel about the issues of regulation and licensing. In the case of the indigent defendant, the attorney will serve as the gate keeper to the jury consultant. Functioning as a gate keeper, it is imperative to know what the attorneys' attitudes and beliefs are on the effectiveness of a consultant.

Third, the Supreme Court has issued several rulings concerning the legal and ethical use of voir-dire. Attorneys are prohibited from striking a juror based upon sex, race, or religious background. How do attorneys respond when a juror profile does not match Supreme Court guidelines for appropriate use of voir-dire and peremptory challenges? How do attorneys respond to claims that the use of consultants violates the Sixth Amendment guarantee of a right to a fair trial by an impartial jury?

While the Supreme Court has yet to rule on a case in which the right to a jury

consultant has been the central issue, it has been dealt with, and handled differently in different state courts. To date, most states have not found a defendant to have a right to a jury consultant. However, this is not always the case. In the 1993 case of two black men accused of beating Reginald Denny, the defendants requested, and were appointed a jury consultant who was paid by the state of California. As a result, court funding for jury consulting remains at the discretion of the judge, and is handled on a case by case basis (Strier, 1999). As will be demonstrated through a review of the case law to follow, this case by case basis mirrors the path followed by the right to an attorney in this country.

Fourth, what qualifications do defense attorneys deem necessary and proper for jury consultants to possess? Currently, consultants may be sociologists, criminologists, psychologists, market researchers, or fellow attorneys. Do defense attorneys hiring consultants prefer one discipline over another, and does that preference have any effect on trial outcome?

At the present time, there are over 700 people who call themselves jury consultants, and over 400 firms offering this type of service (Strier and Shestowsjy, 1999). A profile of the consultant can be constructed, but no empirical research to date has matched the existing profile of the consultant, to the profile of the defense attorneys who make the decision to hire such an individual or firm. This research intends to address this issue.

Theoretical Perspective

The theoretical perspective for this study is found in Donald Black's Behavior of Law (1976). In this work, Black explains how the law operates in society through the

following variables: stratification, morphology, organization, culture, social control, and anarchy. These variables lead to a number of propositions which Black utilizes to explain how the law operates. Through these variables Black explains how the law operates, and also how it varies in form and function across time and space. "The purpose of these propositions is to predict and explain this variation, and so contribute to a scientific theory of law" (Black, ix, 1976). An explanation of the relevant portions of Black's work which help explain the true meaning of a fair trial will be provided, and some of his basic proposition will be discussed.

A definition of the law is necessary to establish the foundation of this research. Law can be viewed and defined in a number of ways. For example, it can be seen as a written or un-written code, as a rigid application of procedures, or a set of rules by which a society operates. According to Black (1976) however, the definition is much simpler. Black defines law as governmental social control (2).

> It is the social control of citizens by the government. It is important to note that there are many types of social control, of which law is only one example.

While law is governmental social control, it can be further explained. Law is a quantitative variable (Black 1976, 3). It can be measured. It can vary across time and space, and it can appear stronger in one setting as opposed to another.

An example of the quantitative nature of law follows. An officer issuing a ticket for speeding is an application of the law. It is more law than issuing a warning, and less law than placing the speeder under arrest. In addition to the quantity of law, there are also

different styles of law. The law can be: penal, compensatory, therapeutic, or conciliatory. The style of law used varies depending on the time and place it is invoked, and the social position of the individual to whom it is applied. For example, a wealthy defendant convicted of domestic violence receives therapy (therapeutic law) while a poor defendant convicted of domestic violence receives a jail sentence (penal law)

Once understood in this manner, the application, style, and manner in which the law is used by the government can be measured and understood. As noted in the beginning of this section, the operation of law is influenced by a number of variables. These variables will now be discussed.

Stratification

Stratification is defined as the vertical aspect of social life (Black 1976). It is any uneven distribution of the material conditions of existence, such as food and shelter, and the means by which these items are produced, such as land, raw materials, tool, domestic animals....(1976, 11) More important to this research, one aspect of stratification includes the magnitude or difference in wealth. The amount of money an individual does or does not have can affect the way they are treated by the law. Once stratification is viewed as the vertical aspect of social life, an individual can be placed on a continuum in a position of rank thus forming a hierarchy. Factors that influence ones placing on this continuum include variables such as: wealth, race, gender, social class, income, and profession.

Once individuals have been placed on the continuum, the behavior of law can be predicted, understood, and explained. In general, the law will function in a set pattern

based upon the position an individual occupies on the continuum. The highest positions on the hierarchy would be occupied by wealthy white males, followed by wealthy white females. The lowest end of the hierarchy would be filled by economically deprived minority females, and children. The law will then operate in a manner such as to protect those at the upper end of the hierarchy while at the same time operating to punish those at the lower end of the hierarchy.

This becomes important when the concepts of upward and downward deviance, and upward and downward law are introduced. There is an inverse relationship between deviance and law. Downward crime invokes an upward response from the law. This simply means that a crime committed by one from the upper levels of the stratification scale against one from the lower level of the stratification scale carry much less significance than the reverse. This is because the law has a vertical direction. Downward law is always more powerful than upward law. For example, the murder of a poor man by a rich man is less serious than the reverse. The murder of a child by a parent is less serious than the reverse.

This proposition formulated by Black is applicable to the focus of the current research: jury consultants. Stratification affects the ability of an individual to obtain a jury consultant. Stratification is based in part on wealth. Without the ability to pay for jury consultants, the downward force of law has even more power. The role of the consultant in advising and selecting jury members seeks to counteract the force of downward law when used by the person of lesser social means. If however, the only form of consulting employed is by the state, then the force of downward law becomes all the more powerful.

Morphology

Morphology is the horizontal aspect of social life. It refers to the distribution of people to each other. Included are things such as division of labor, and levels of intimacy (Black 1976, 37). Included in the concept of morphology is the concept of differentiation. "Differentiation is a specialization of function across parts of the whole" (1976, 38).

The relationship between law and differentiation is curvilinear. There is less law where people are equal, and more when they are un-equal. Family members are less likely to use the law, as are people of equal financial status. For example, if a family member is caught stealing from another family member, the incident is more likely to be handled within the family unit as opposed to within the criminal justice system. The law is used more and more as people become separated, until it reaches a point where they are so separated, there is no connection at all (such as living in different countries).

Culture

Every society across time and space has had some form of culture. "Culture is the symbolic aspect of social life, including expression of what is true, good, and beautiful" (Black 1976, 61). Examples of culture include art, poetry, clothing, food, values, and literacy. Literacy is an aspect of culture that demonstrates a portion of education.

Literacy has been used as a factor in criminal justice in the past. From the neck verse which determined whether or not a defendant would be hanged (Siegel and Senna, 1996), to a tool to deny voting rights to African Americans in the south, culture in general and literacy specifically has factored into our concept and application of justice.

Law varies directly with culture. This simply means that a crime committed by an

offender who is less culturally connected than his victim is more serious than the reverse. An assault committed by a homeless person against a businessman is more serious than an assault committed by a businessman against a homeless person. As can be seen, an individual who is not culturally integrated in society, such as the inability to read or poorly educated is at a distinct disadvantage. Without these tools, it becomes difficult to advance on the stratification scale. When these cultural deficiencies are combined with minority status of any kind, it becomes even more difficult in the face of downward law to defend ones self against the forces of the state.

Education is vital not only to cultural integration but to placement on the stratification scale as well. Without an education, a prospective defendant will not understand the forces and resources the state brings to bear on a criminal trial. Similarly, without the education necessary to achieve some measure of financial independence, the cost of a jury consultant will be beyond the means of the indigent defendant.

Organization

Organization is the corporate aspect of social life. It refers to the capacity for collective action. In this case, the law varies directly with organization. As organization in society increases, so does the law. Just as vertical distance was discussed with stratification, organizational distance can be discussed.

In a direction toward less organization, law varies directly with organizational distance. In a direction toward more organization, law varies inversely with organizational distance. What this simply means is that the law functions to protect the interest of those more organized in society. In the case of a criminal trial, it is "the State of Ohio vs. Jon

Smith", or "The United States of America vs. Jon Smith". The government is the organization, and the law will function to protect the organization as opposed to the individual. When organizational distance is combined with vertical distance on the stratification scale, it becomes possible to predict the outcome of a given case. To understand this point, examples will be given from both a civil and a criminal perspective.

An example to highlight the power of the organization involves the Ford Motor Company Pinto case of the 1970's. The flawed design of the Pinto lead to death and injury to the public that could have been easily avoided. However, given the size and organizational power of Ford Motor Company, even the plaintiff with considerable financial resources was no match against the resources and legal representation available to Ford.

The matter was treated civilly as opposed to criminally. In addition, the style of law used was compensatory as opposed to penal. Even though death and serious injury was the direct result of Ford's actions, the thought that executives from a company could face jail time for corporate decisions affecting bottom line profits was not given serious consideration.

A more recent example that demonstrates not only the power of the organization against the individual, but the manner in which law varies across time and space involves the tobacco companies. Until the landmark deal struck between several states and the tobacco companies in the last several months, cash pay outs by the tobacco companies were virtually unheard of. In addition, the tobacco companies rarely lost a jury verdict, and never publicly admitted the addictive or dangerous nature of their products. Recent

shifts in the style and application of law however, brought all of these once seemingly impossible actions to fruition.

One must be reminded that one of the primary elements of organization is the ability for collective action. This ability for collective actions is clearly demonstrated by the resources the state brings to the table in prosecuting criminal cases. The ability of the state to employ multiple prosecutors in a single case is only one of the vast organizational resources at the state's disposal. In addition, the state has the ability to employ jury consultants in any such case where these services are desired. The lack of organizational influence held by the indigent defendant places the individual at a disadvantage when facing the state in criminal proceeding.

Social Control

According to Black (1976), social control is:

> the normative aspect of social life. It defines and responds to deviant behavior, specifying what ought to be: what is right or wrong, what is a violation, obligation, abnormality, or disruption. .....Social control is found wherever people hold each other to standards. (105)

The application of social control to this project can be seen in two primary ways. The first concerns the issue of standards. The use of jury consultants is a controversial practice. Debates concerning the ethics of consultants have yet to be established. Because the decision to hire a consultant must either originate with, or be processed by the attorney handling the case, the perceptions of these attorneys is invaluable in understanding the problem at hand. Perceptions of factual, or actual guilt, on behalf of

the attorney using the consultant may be important in understanding when a consultant is employed.

A component of social control is respectability. Law varies directly with respectability. This means that it is more serious to victimize a corporate executive than a bum. If however the corporate executive is charged with a serious crime, the respectability of such a person is put to the test. In addition to the perceptions of the attorney, the perceptions of the general public must be considered as well. It is important to know how the attorney handling the case deals with such issues as the media and the general public.

In the JBR case, the family was widely critized for employing consultants and spokes people to deal with the media. The same has been said about the use of a jury consultant by O.J. Simpson, and the Menendez Brothers. It is important to know if these are merely well know exceptions to the rule, or a pattern. The perception of the general public about the factual or actual guilt of a defendant using a consultant may be a factor in whether or not a consultant is employed. In this study, a critical factor is exactly how the attorney feels about public perceptions, and how the attorneys actions may be influenced.

Anarchy

As stated by Black: anarchy is social life without law, that is, without governmental social control. It is a quantitative variable, the inverse of law" (1976, 123). Although it may seem counter intuitive at first, just as law can be measured, so can the absence of law. Just as there is a lack of court decisions directly targeted to the questions and issues surrounding the use of jury consultants, there is a lack of legislation on the issue

as well.

While laws and regulations regarding the issues surrounding jury consultants are sparse, a few possible directions exist. The status quo may continue, meaning that the field continues without legislation or regulation. It is possible that the American Bar Association may enter the picture, in an attempt to regulate or licence jury consultants in some manner. State and or federal legislation may also enter the picture.

With attorneys at the center of jury consultant use, their perceptions on the issues of regulation, control, and licensing may be critical in understanding the problem at hand. It may be discovered that attorneys prefer the field of jury consultants in an unregulated state, allowing them maximum discretion in the selection of consultants. It is also possible that attorneys may see the licencing and regulation of consultants a necessary step in insuring quality and consistency among consultants, and limiting the liability of the attorneys who make the decision to hire them.

Additional Work by Black

Black has followed up and continued his theory in many published articles and books since the *Behavior Of Law*. In "Social Control as a Dependent Variable", Black discusses how some societies, and some members of society use law.

> To be more specific: It is now abundantly clear, for example, that people of lower status, such as the poor and disreputable, rarely use the law against a social superior. In fact, some of those at the very bottom of society, such as slaves and children, are generally not permitted to use law at all, whereas some of the highest, such as feudal lords and monarchs, are practically immune to it (1984, 3).

In this work, Black explains the operation of law, and the role that social control plays. He discusses the role social control can play in a society, and the impact it can have

on members of different social classes. This provides the reader not only with an expanded concept of social control, but concrete examples of how it operates in a society. If traditional law is not an option for a member, another course of action may be taken. If this course of action is violent however, it may very well be defined as criminal by those in authority.

As has been noted, the effectiveness question concerning the use of jury consultants has yet to be answered in a definitive fashion. There are those that claim that the use of consultants constitutes nothing more than a waste of time and money. An important work by Black however, demonstrates why the use of consultants cannot be so easily dismissed. In *Sociological Justice*, Black discusses legal sociology. Under this concept, the social structure of a case is examined to determine how a case may eventually be resolved. Several areas of this work can be applied to the concept of jury consultants.

In this work, as with the *Behavior of Law*, Black explains that law is a quantitative variable. He then explains how various aspects of a case may impact the final disposition. Some of these aspects are as follows: adversary effects, lawyer effects, and third-party effects. All of these effects have a bearing on the case, and all of them directly effect the defendant and his or her chances in a court room setting.

Adversary effects concern whom is in litigation with whom. It deals directly with social status, and the concepts of upward and downward law that were discussed before. It factors in issues such a gender, wealth, and race. It also considers levels of intimacy and integration. All of this ties directly to the concepts discussed in this project, and all of these concepts relate to the notion that the state is a powerful force. In the event that the

state has access to the services of a jury consultant, and that access is denied to the defense, the adversary effect simply increases.

Lawyer effects are also of concern. Just as defendants can be ranked according to status, so to can attorneys. The higher status the attorney, the more the benefit gained by the defendant (13). The impact a lawyer has on a case, and the relationship he or she shares with other actors in the system all impact the defendant. There is however, and even more important lawyer effect to be concerned with.

As will be discussed in greater detail later in this study, criminal defendants did not always have the right to an attorney in this country. As Black points outs, an attorney is of different value to different defendants. While anyone who has an attorney will increase their chance of success in a particular case, the benefit is proportionally greater for those who are more severely disadvantaged. What this simply means is that an attorney representing a poor, uneducated client has a higher proportional gain than a wealthy, educated defendant. This points to an important parallel.

As has been discussed, the use of a consultant by the state, just like an arrest, represents more law. It represents the use of downward law by the state against the individual. A wealthy defendant may have the means to fight back and hire a consultant to aid in the preparation of a case, but the poor defendant has no such opportunity. This demonstrates how the combination of adversary effects and lawyer effects can operate in such a manner as to severely limit the options of the defense. Of course, all of this is played out in front of a jury. The jury is part of the third party effects.

Third party effects concern juries and how they operate. Juries can be more or less

authoritative (15). The degree of this authority stems in part from the relative rank of the juror members to the defendant. In other words, how well does the jury relate to the defendant? The concept of a jury of ones peers does not look at such comparisons. A jury consultant does. If one accepts the notion that law is a quantitative variable, then the relative status of the members of the jury cannot be over looked. It is unlikely that the state is looking to seat members on the jury that are sympathetic to the defendant.

It is in this manner that all three of these elements come together. Adversary, lawyer, and third party affects can all influence the outcome of a case. The role of the consultant is to identify these effects, influence and manipulate them for a particular side of the case.

Previous Tests of Black's Theory

The current study uses Black's theory to understand the use of jury consultants in the criminal justice system. Black's theory has been tested many times before however, and a review of some of these tests is necessary.

Gottfredson and Hindelang examined Black's theory to see if it explained the operation of law better than an alternative explanation. In their study, the alternative explanation was the degree of harm caused to the victim (1979). They examined crimes that were reported between 1974 and 1976, and were part of the National Crime Survey. Each of Black's variables were operationalized, and tested against the simple concept of degree of harm. In their research, Black's theory of law was not supported.

The authors concluded that a theory which did not include the degree of harm

caused to the victim could not be complete. It was determined that the degree of harm caused was often times more important than the rank of the offender, or the size of the respective communities from which victims and offenders came.

While they did not find support for Black's theory, the authors made the following comment.

> *The Behavior of Law* is an important contribution to the sociology of law both because of the empirical questions that is raises, and because it is generally set forth in such a manner that it is testable. Black predicts that law, which can be quantified in a variety of ways, is associated with several critical dimensions; Black predicts the direction of these associations, and the conditions under which these associations hold. Through the use of a great variety of concrete examples Black facilitates the research task by translating central concepts into indicators (15).

Black's theory has also been used to examine how rape offenders were sentenced. In this study, Black's theory of law was competing with a feminist perspective which held the belief that rape offenders were sentenced more leniently than other offenders (Atkins, 1995). This study found partial support for Black, and for the feminist perspective. While support for Black was found, it was also discovered that offenders who commit the crime of rape were not sentenced as severely as might have been predicted. Punishment was found to vary not only by the crime, but also at what point in the system punishment was handed out.

Black's theory states that law is a quantifiable variable, and one that can be measured. Simply put, the theory of law sates that two people charged with the same crime may be treated differently based on the position they hold in society. Men may be treated differently than women, and the educated differently than the uneducated. These concepts of gender and education are explained by Black through stratification and culture respectively.

In an additional study of Black's theory, the behavior of law was used to examine and understand sanctions and penalties taken against chemically dependent nurses. In this study, it was found that penalties did in fact vary depending on the rank and positions of the nurses, the degrees they held, full verses part time status, gender, and marital status (Doss, 1995). This study shows supports for Black's theory, and highlights key concepts such as stratification and culture.

Hypothesis

H_1. Jury consultant usage is reflective of Black's theory of the behavior of law in that it can be explained using his six elements: stratification, morphology, organization, culture, social control, and anarchy.

Through the six elements discussed here, Black explains how the law operates in society. When looking at these variables, it is clear that the indigent defendant is at a considerable disadvantage when confronted with the forces of the state. When the state utilizes the services of a jury consultant, and that opportunity is denied to the defendant, the forces of downward law are all the more powerful. The argument in favor of

supplying jury consultants to indigent defendants parallels the right to an attorney. To illustrate this point, an examination of the relevant case law concerning the right to an attorney, and a jury of one's peers is proper.

History of Relevant Court Cases

Right to an attorney

When the issue of jury consultants is raised to those in the field of law and criminology, it is often met with displeasure and distaste. "In general, scientific jury selection evokes cynicism toward the notion of jury independence" (DiPerna, 1984). It can be viewed by many as an attempt by the rich to buy justice. There is almost universal agreement however, that only the defendant with financial means could ever hope to obtain the services of a jury consultant. This point is made all the more clear, and reinforced by firms advertising their services on the internet. The stated goal of one such firm is "to give you a distinct advantage" (http://www.jriinc.com/).

Important questions regarding the use of jury consultants must be raised so that the field of criminology realizes the importance of this issue. Opposition to supplying poor defendants with the services of a jury consultant comes in many forms. The two major objections will be presented. The first objection normally comes on the basis of financial considerations. Many claim that it would simply be too expensive to supply jury consultants, along with attorneys, to any defendant that requested their services.

The second main objection is based on the principal that a defendant does not have the right to a jury consultant under the Constitution of the United States. In order to

demonstrate the flaws inherent in both of these arguments, an examination of the Sixth Amendment to the Constitution is in order.

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Based on these objections to jury consultants, an examination of this Amendment requires attention to two very important elements. First, all defendants have the right to a trial by an impartial jury. A strong argument can be made, that in any criminal case, in which the state employs the use of a jury consultant, and that opportunity is denied to the defendant, that the concept of an impartial jury has been violated. When this option is excluded on the basis of poverty, it is all the more troubling. Supreme Court Justice Hugho Black said: "there can be no equal justice where the kind of trial a man gets depends on the amount of money he has" (1956).

Based upon the notion of an impartial jury, any arguments of financial burden to the states in supplying a consultant to the defendant, though fiscally compelling, seem to lack Constitutional backing. In addition, even if Constitutional concerns can be removed, allowing consultants only one side of the case, based upon ability to pay, is fundamentally unfair (Strier and Shestowsky,1999), and supports Black's notion of downward law. This directly parallels the argument raised in opposition to supplying indigent defendants with an attorney in non-capital cases.

In a similar manner, any argument proposing that defendants simply do not have a right to a consultant must pass similar Constitutional standards. In order to demonstrate this point, an examination of relevant cases concerning the use of attorneys in criminal cases will be useful.

The emergence of jury consultants into the practice of law has followed a path similar in both theoretical implications, and practical applications as faced by the system in adjusting to the widening interpretations of the Six Amendment to the Constitution. As seen over the last 60 years of Supreme Court decisions, the meaning of the Sixth Amendment has been clarified through a number of relevant decisions. These decisions will be reviewed here.

It was not until the 1938 Supreme Court case of Johnson v. Zerbst that the Court ruled that a defendant in a federal criminal case had the right to an attorney when charged with non-capital crimes. Until this time, the federal government often denied an attorney to an indigent defendant in cases that did not involve rape or capital crime.

In this case, the Supreme Court ruled that even the 'intelligent and educated layman has small and sometimes no skill in the science of law" (Johnson v. Zerbst). In referring to the Sixth Amendment right to counsel, the court states "the Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides are lost, justice will still not be done" (Johnson v. Zerbst).

In essence, the court has stated that when the protections of the Sixth Amendment are violated, justice cannot be the end result. Given this is true, then the provision of the Sixth Amendment concerning impartial juries must also be protected, or justice will be

denied. It is important to note that in the above quote, the Supreme Court refers to the science of law. That the law was recognized as a science is critical, for it is science that is being used to select a jury of one's peers. When a jury consultant use scientific methods to select a jury pre-determined to favor conviction, the concept of impartiality has been lost, and the jury of one's peers has lost the original meaning and purpose it was designed to serve.

It was not until the 1963 Supreme Court Case of Gideon v. Wainwright that the court applied this same standard to the states. Up until this case, the state of Florida supplied attorneys to indigent defendants only in capital cases. While the issues of supplying attorneys to indigent defendants had been addressed in the 1942 Supreme Court case of Betts v. Brady, the Court ruled in that case the decision should be handled on a case by case basis. As implemented by the state of Florida, attorneys were only provided in capital cases.

In order for Gideon to be successful, Betts would have to be overturned. Speaking to this issue, the court stated:

> Treating due process as "a concept less rigid and more fluid than those envisaged in other specific and particular provisions of the Bill of Rights," the Court held that refusal to appoint counsel under the particular facts and circumstances in the Betts case was not so "offensive to the common and fundamental ideas of fairness" as to amount to a denial of due process. Since the facts and circumstances of the two cases are so nearly indistinguishable, we think the Betts v. Brady holding if left standing would require us to reject Gideon's claim that the Constitution guarantees him the assistance of counsel. Upon full reconsideration we conclude that Betts v. Brady should be overruled (Gideon v. Wainwright)

As demonstrated, it was not until this decision in 1963, that a clear message was sent to the states that indigent defendants must be supplied with an attorney when facing not only a capital crime, but a felony as well. That the rich could always have the benefit of counsel, while the poor were denied, demonstrates Black's idea of stratification and downward law. The court went even further in the case of Argensinger vs. Hamlin, by granting a lawyer in any case in which an individual faces jail time (1972) 407 U.S. 25. In the verdict the Court referenced the Gideon ruling.

> "[I]n our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, [407 U.S. 25, 32] quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with a crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him." 372 U.S., at 344.3
>
> Under the rule we announce today, every judge will know when the trial of a misdemeanor starts that no imprisonment

> may be imposed, even though local law permits it, unless the accused is represented by counsel. He will have a measure of the seriousness and gravity of the offense and therefore know when to name a lawyer to represent the accused before the trial starts.
>
> The run of misdemeanors will not be affected by today's ruling. But in those that end up in the actual deprivation of a person's liberty, the accused will receive the benefit of "the guiding hand of counsel" so necessary when one's liberty is in jeopardy.

These quotes from the Gideon case clearly demonstrate that the right to counsel guaranteed by the Sixth Amendment must be protected when the liberty of the accused is at stake. The right to an impartial jury can be examined through Supreme Court cases as well.

Right to an Impartial jury

One of the first cases to address who actually serves on a jury was the 1879 Supreme Court case of *Strauder v. West Virgina*. In this case the Court determined that it was a violation of equal protection to exclude blacks from serving on a jury in a federal trial. In that case, the Court stated: "the very idea of a jury is a body of men composed of the peers or equals of the person whose rights it is selected or summoned to determine that of his neighbor" (1879).

Even though this case was decided in 1879, the issue of blacks serving on juries was far from over. The 1965 Supreme Court case of *Swain v. Alabama* examined the issue of using a peremptory challenge to remove a potential juror on the base of race alone. In this case, the court determined that it was not a violation of the equal

protection clause to exclude blacks from jury service in this manner. So long as blacks were not systematically excluded from jury service as demonstrated in the *Strauder* decision, the use of preemptory challenges was permitted.

As was noted previously, it was not until the 1963 Supreme Court Case of *Gideon v. Wainwright* that the right to counsel in non-capital cases was applied to defendants in state court proceedings. In a similar manner, it was not until the 1968 Supreme Court case of *Duncan v. Louisiana* granted defendants the right to a jury trial in state courts. In this case, the court determined that the 14th amendment applied the right to jury trial to defendants in state court. In this case, the Supreme Court stated: "we believe the right to a trial in criminal cases is fundamental to the American scheme of justice..." (1968).

After these cases in 1968, the following rules were in effect. Defendants had a right to a jury trial in both state and federal courts, and they had the right to an attorney. Blacks could not be systematically excluded from jury service on the basis of race, however they could be excluded based solely on race through the use of preemptory challenges. At this point, a defendant could not appeal a case based upon who was or was not excluded from a potential jury panel.

The next major case in jury selection was the 1986 Supreme Court case of *Batson v. Kentucky*. Once again, the issue at hand was the exclusion of blacks from jury service based solely upon their race. In this case, the Supreme Court had to re-examine the holdings in a number of case, including *Strauder v. West Virginia, and Swain v. Alabama*. In *Batson*, the Court concluded that a race was unrelated in any way to service on a jury. Swain v. Alabama was reversed, and *Strauder v. West Virginia* was reaffirmed.

For the first time, the Batson case made it illegal to exclude a black person from a potential jury on the basis of race, even through the use of peremptory challenges. The Court determined that such an exclusion injured not only the defendant, but the potential juror and the public's confidence in the justice system.

Batson was strengthened in the 1991 Supreme Court case of *Powers v. Ohio*. In this case a white defendant had appealed based on the fact that a black juror had been excluded from a jury panel. After being rejected by the lower courts, the Supreme Court reversed the lower courts and found that the defendant did indeed have a right to appeal such an action. The Court sated that: "racial discrimination in the jury system casts doubt on the integrity of the judicial process" (1991).

The preceding cases demonstrate how the Supreme Court has dealt with the right to an attorney, the right to a jury trial, and exclusion of jurors based upon race. What has been neglected however, is the role the jury consultant plays in all of these areas. While these cases seek to enforce the rights guaranteed in the Sixth Amendment, the role of the jury consultant is to circumvent these rights.

Dating back to the 1879 decision in *Strauder*, the Court emphasised the jury as a body of peers judging their neighbor. When the state employs a jury consultant, his or her job is to ensure that peers and neighbors are avoided and replaced with those predetermined to convict. When this occurs, the right to counsel is affected, as well as the right to a jury of ones peers. This demonstrates the downward flow of law Black discusses, and seeks to deny the indigent defendant rights guaranteed through the Sixth Amendment. The right to an impartial jury must receive no less protection as afforded to

the right to counsel. Because the right to counsel and the right to an impartial jury both equally affect the administration of justice, they must both be considered.

CHAPTER 2

LITERATURE REVIEW

> Never take a wealthy man on a jury. He will convict unless the defendant is accused of violating the anti-trust law, selling worthless stocks or bonds or something of that kind. An Irishman is emotional, kindly and sympathetic...Keep Unitarians, Universalists, Congregationalists, Jews and other agnostics (Darrow, 1936)

Jury consultants as professionals are relatively new to the criminal justice system; the practice of seeking ideal candidates for juries, those favoring one side of a particular case over the other, is not. The high profile cases of the 60's and 70's spawned research in two major areas related to juries. The first area relates to the psychology of jury decision making (Hastie, 1993), and the second area relates to the effectiveness of consultants in selecting jurors based upon scientific criteria.

The psychology of jury decision making models represents an attempt to understand why different jurors who listen to the same evidence arrive at different verdicts (Hastie, 1993). A brief understanding of these models, and their principles are necessary, in order to contrast them with the assumptions found in research completed by trial lawyers. Psychological decision making models, such as algebraic, stochastic, and cascaded inference, use a scientific process to understand the process jurors use in coming to a decision based upon the evidence presented (see Hastie, 1993).

The algebraic model uses a weighted average equation in which any piece of evidence can be given a mathematical number representing its importance to a particular

jurors ultimate decision. The importance of any piece of information is subject to how relevant and credible the jury members decides it to be, and the importance can be reviewed and modified based upon additional evidence heard. When all the evidence has been reviewed, the juror is able to come to a final decision in the case (Hastie, 1993).

The algebraic model, along with all other psychological modes of jury decision making assume that a juror is able to hear all of the evidence before arriving at a decision. What happens however, if that assumption is incorrect? The second wave of research to develop out of the high profile case centers on the use of consultants to predict juror verdicts in advance of the trial.

Research conducted by trial lawyers suggest that juror decisions are not made after a careful review of the evidence, but may indeed be made very early in the trial process. Research conducted by Jones indicates that up to 80 percent of jurors have reached their final decision by the end of the voir-dire process (Johnson, 1983). Additional studies suggest that up to 40 percent of perspective jurors make decisions with-in four minutes of court room involvement in the case, and that up to 50% believe that the defendant is guilty from the start of the trial (Johnson, 1983).

If these statistics are to be taken at face value, then the contribution of a jury consultant and his/her scientific methods may very well influence the end result of a particular case. An understanding of the role of jury consultants, and the primary techniques they use is necessary.

The process of selecting jurors is referred to as voir-dire. With one notable exception, (shadow juries type B), all of the techniques employed by a jury consultant are

used to affect the voir-dire process. To understand the role of jury consultants, an understanding of the practice and principles of voir-dire is essential

The Process Of Voir-Dire

Voir-dire refers to the questioning of potential jurors to determine if they should be selected to serve on a jury. The term itself comes from a French word, meaning "true talk" (Wenke, 1989). A potential juror can be kept off a panel for two primary reasons. A juror can be kept off of a jury if cause is shown (Trial, 1994). A juror who is related to an actor in the case, or who shows a clear bias or prejudice, has good cause to be prevented from serving, and may be removed for cause by either side. Individuals may also be kept off a case if they can demonstrate to the court that serving on the jury would impose an undue hardship on their personal lives.

An additional manner in which a prospective juror may be kept from serving, and a vital component of the voir-dire process, involves the use of peremptory challenges. The use of peremptory challenges pre-dates the U.S. Constitution.

Peremptory strikes are deeply embedded in English Common law, having been created by a reform-minded Edward I at the end of the 13th century to give the wretched accused a modicum of power over juries that were otherwise controlled by the crown (Trial, 1994)

This tradition allows counsel from either side of the case to dismiss a juror for any reason, without showing cause. In American courts, these challenges are generally limited in number, with both sides in the case being granted an equal number of these challenges to use as they deem proper. While the tradition pre-dates the Constitution, Supreme

Court decisions have limited its use. These limitations will be discussed in depth along with juror profiles at a later point.

There are conflicting views on the true purpose of the voir-dire process. Some attorneys in the field believe that the concept of true jury selection is a false one. This group believes that peremptory challenges are so limited by the court, that an attorney can only realistically hope to eliminate the most biased jurors not already removed for cause (Kelner,1983). Other attorneys take a more aggressive and optimistic approach. Stressing the importance of voir-dire, Ring (1983) admonishes fellow attorneys for often over-looking this critical part of a trial, and offers suggestions on how to best select potential jury members (Trial, 1983). Branson and Branson go one step further, and state that in voir-dire, "your goal is to seat a jury that will provide your client the most favorable result at the end of the trial" (1992).

It is at this point that the serious dilemma facing the question of impartial juries becomes clear. Is the goal and responsibility of the attorney in question to seat a fair and impartial jury, or is the goal to seat a biased jury, in favor of his/her client's case? Increasingly, the answer seems to point towards seating a jury that is in fact partial to a particular side of the case, and to use as much science as necessary to achieve that goal. This becomes the job of the jury consultant.

Why is seating the proper jury so critical to success? The answer may very well come from Johnson, when he states:

> Every good trial lawyer believes that he or she can persuade and convince an impartial juror. Jurors however, are not impartial. It is unrealistic to believe that an individual will not be affected by the prejudices and attitudes of a lifetime (Trial, 1983).

Science In The Court Room

Jury consultants assist counsel in the voir-dire process through three primary methods. They are as follows: the construction of questionnaires , the use of shadow juries, and the development of ideal juror profiles. Each of these methods are important endeavors, which can impact the formation of a jury for a particular case. When implemented properly, each method can affect the voir-dire process, and aid in the acceptance or rejection of specific juror members. Furthermore, these techniques are often combined and used in concert with one another. A discussion of each technique will follow.

Questionnaires

Questionnaires usually take two primary forms. They may be administered in a community wide level, or administered to the specific jury pool in question. The former method allows the consultant to develop a specific profile of jurors he would like to sit on the case, as well as a profile of those he would like to keep off. The latter method allows a consultant to analyze specific responses from actual members of the jury pool. This allows the consultant to search for potential biases, and use them to his advantage.

There are additional advantages to using a questionnaire on a specific jury pool. According to Fargo (Trial, 93), the use of questionnaires can aid the voir-dire process in several ways. First, they can allow a juror to answer personal and embarrassing questions in private as opposed to open court. This can lead to more detailed and more accurate information. Second, they can save valuable court time by answering basic questions in a standardized manner. Third, they give an attorney a detailed understanding of potential

jurors. This allows counsel to quickly eliminate jurors for cause, and provides a road map for more detailed questions to be asked during voir-dire in open court.

Shadow Juries/Mock Trials

Mock trials have become a valuable tool in preparing for trial. Kassin (1990) states that ..."performing mock jury trials in order to empirically evaluate and improve the presentation of one's case could be the single most effective method of pre-trial preparation". The terms mock trial and shadow juries are often used to refer to the same type of event, however some differences need to be clarified. Two basic types of mock trials and shadow juries are used. The first type is implemented before the jury in the actual case is seated, and the second occurs after the real jury has been seated.

Pre-Jury Mock Trials

The first scenario, conducted before a jury is seated, is commonly referred to as a mock trial. During a mock trial, counsel presents its case to a hired jury which is to as closely resemble the actual jury as possible. A mock trial conducted before a jury is seated can take one of four basic forms: pre-trial exploratory surrogate juries, summary jury trials, pre-trial simulated groups, and the quasi-experimental method (Abbott, 1990).

The simplest form of a mock trial is the pre-trial exploratory surrogate jury model. Under this system, the hired jury members simply listen to the opening statements of counsel, and offer suggestions for improvement. In-depth case material, witnesses, strategy, and potential exhibits are not discussed. This is simply a focus group type project, and jurors are exposed only to the opening statements from one side of the case.

Summary jury trials are similar to the model presented above, but contain a little

more depth. This model was created by a district judge, in an attempt to reduce civil court back log. In this model, an actual jury is selected, and this jury hears opening statements, and rebuttals form both sides in a given case. After hearing these statements and rebuttals, the jury renders a non-binding decision. The theory behind summary jury trials is that they will increase out of court settlements, and allow counsel to determine the strength of their case early on, thus freeing valuable court time.

While the first two types of mock trials can be useful, their simplicity limits the results which can be expected from them. The third type of pre-jury mock trial is referred to as the pre-trial simulated group. In this type of mock trial, the jury is exposed to virtually all aspects of the case pending. The voir-dire process is followed, and both sides of the case, from opening statements to closing statements are included. For particularly long trials, the mock jury may see an abbreviated version of the case, but they are exposed to all aspects of the case none the less. After the trial is completed, the jury deliberates, and a verdict is rendered.

What separates this model from the previous two, is the additional information that is available. In order to avoid the problem of over generalization, three jury panels, of at least six members each are usually selected. They may all view the trial at once, or on different days. The use of multiple panels helps the researcher spot patterns among the jury members, and helps to avoid problems that occur when only one small group of people are exposed to the material.

Along with using multiple panels, multiple data collecting techniques are employed as well. Mock juror members in this scenario go through four data collecting phases.

Step one occurs immediately after the trial is completed. Each juror simply writes down their individual verdict (and monetary award if applicable), and submits this to the researcher. Next, the jurors deliberate collectively, and a group verdict is rendered. These deliberations are video or audio recorded, and often observed through a one way mirror.

After the deliberations, each juror member fills out a detailed questionnaire, explaining why they voted as they did, and what arguments they found persuasive. The questionnaires often supply the most useful information to the researcher (Kassin, 1990). Finally, all the juror members are brought back together, and a de-briefing process occurs. During this phase, the jurors discuss the case with the consultant and the attorneys, and they are given an opportunity to express their views on the presentation of the evidence. Often times, evidence that was presented in a manner which confused the juror members, or left an impression not desired by counsel can be modified based upon these debriefing sessions.

The final method of pre-jury mock trials is the quasi-experimental method. This method follows the same pattern demonstrated in the pre-trial simulated group, with one notable exception. The use of three panels allows different panels to be exposed to different stimuli. Perhaps counsel is trying to decide whether or not to present a specific piece of evidence or witnesses. The consultant may expose the panels to the exact same case, only panel A is exposed to the evidence or witnesses in question, while panel B is not. If the rest of the trial exposure is the same, then the results of panels A and B, along with their questionnaires and post verdict de-briefings can be analyzed in deciding whether to present the evidence or witnesses at the actual trial.

Are these various types of pre-jury mock trials effective? Commenting on mock trials and mock juries, Ladner states: "For years, this was considered voodoo litigation. But not only does it work, it also gives trial attorneys a sense of confidence in their preparation" (Schwartz, 93). While the cost of hiring a jury consultant to conduct a mock trial may be high, Jones (1986) compared it to marketing an expensive product, and claims that the result may be well worth the additional investment of time and money (Trial). Strategies are learned from the project, and important observations concerning what type of juror is desired may be learned through the use of mock trials. This can lead to the development of ideal juror profiles, and can greatly aid counsel in the voir-dire process.

Post-Jury Mock Trial/Shadow Juries

Post jury mock trials are relatively new in the criminal justice system, and are more appropriately refereed to as shadow juries. The first known time a shadow jury was used involved a 1976 case, in which IBM was being sued by California Computer Products (Vinson, 1983). After a jury has been seated for a specific case, a shadow jury is selected. The goal is to seat a shadow jury that closely resembles the actual jury. Shadow jury members attend court every day, and hear all the evidence actual jury members hear, and leave the court room each time actual juror members leave.

Each day, and often several times a day, the trial consultant interviews the shadow jury members. Impressions of the case, likes and dis-likes, and areas of concern are recorded, and presented to the attorneys presenting the case. Where applicable and practical, trial strategy may be modified to address areas of weakness pointed out by

shadow jury members.

Ideal Juror Profiles

Perhaps the most important function of the jury consultant, and indeed the most controversial is that of developing juror profiles. Many theories exist as to what type of juror is needed for a specific type of case; these theories range from the scientific to the bizarre. Kassin and Wrightman report of lawyers in New York City that selected jurors based on their favorite baseball teams (1988). This occurred during the 1950's, when New York had three teams, the Yankees, Dodgers, and Giants. Prosecutors struck all Dodger fans, while defense attorneys struck all Yankee fans; fans of the Giants were perceived as the only reasonable people in town.

Other methods of profiling tend to blend science, common sense, and pure fiction. In the fiction category, jury consultants in the 70's claimed to be able to select jurors based on pupil dilation. They claimed that pupil expansion indicated acceptance, while constriction indicated negative feelings (see Kassin and Wrightman, 1998).
Johnson believes that jurors who are most likely to convict believe that: the world is to permissive, alcoholism is a moral problem, and that misfortune is the result of laziness (Trial, 83). He believes that teachers, managers, and engineers have to avoid mistakes as part of their daily professional lives. As a result, people in these professions are less forgiving of mistakes, and more likely to convict.

On the defense side of the coin, Johnson claims that jurors most likely to acquit a defendant are: more likely to be married to a liberal, and be more educated than their spouse, more likely to read as opposed to watching television, more likely to have had

trouble with the law, more likely to have more children, more likely to have been later born in their own families, and more likely to not like the victim (Trial, 83). Johnson is not alone in his typecasting of potential jury members.

The most common factors in developing juror profiles are: age, race, gender, education, and level of authoritarianism (Hans and Vidmar, 1986; Abbott, 1987). These characteristics are then used to make generalizations to the specific jury pool in question. In the 1978 case in which the state of Georgia was pitted against Larry Flint and Hustler magazine, jury consultants for Mr. Flint used community surveys to develop their juror profiles. These surveys cautioned the defense from selecting women who were married to traveling salesmen. It turns out that a high percentage of infidelity was found in these marriages, and the wives involved placed some of the blame for this problem on adult magazines (Kassin and Wrightman, 1988).

In discussing sex discrimination cases, Conlin provides several factors she looks for in potential jury members who will side with the plaintiff. She cautions lawyers to avoid picks, simply based on gender. If a woman subscribes to traditional sex roles, the client's case may be harmed. Conlin also questions potential jury members as to what types of television shows they like, and what kind of magazines they read. Those who like the show "Murphy Brown" are good picks, while those who are "readers of Playboy, for obvious reasons, are to be avoided like the plague" (Trial, 93).

The concept and science of juror profiles has advanced since the days of pupil dilatation, as has the strategy of picking ideal jurors. One of the most aggressive attempts to predict individual juror behaviors, the analytic juror rater, was published by Abbott in

1987. Abbot recognized that large scale surveys for individual trials were very expensive and time consuming. As a result, Abbott used national survey data to develop a quick and easy instrument for use by attorneys in developing juror profiles. By using large, national data bases, attorneys are given an instrument that is flexible, and able to quantify a jurors given characteristics into an easy to use scale. These profiles and scales are intended to predict how individual jurors may react to particular case material.

By using Abbott's scales, prospective jurors can be rated and placed in one of the following categories: authoritarianism, economic orthodoxy, cosmopolitan lifestyle, and racial tolerance. These profiles will be examine in a simplified manner. Those who score high on the authoritarianism scale are seen as coercive, and favoring retribution over rehabilitation. Economic orthodoxy refers to the strength of ones belief in the American economic system. A person who scores high on the cosmopolitan lifestyle scale is more likely to be tolerant of non-traditional lifestyles. Finally, the racial tolerance scale is only used for white jurors. It measures how willing an individual is to accept blacks as equals in society. By using these classification scales, attorneys can determine if a particular individual will likely be harmful or helpful to their specific case.

Why are juror profiles believed to be so important in any given case? Additional research findings shed light on this question. Literature from the study of group dynamics reveals that individuals who hold a position of privilege in society carry this role with them in small group settings; this includes juries (Hans and Vidmar, 1988). Therefore, a single individual who holds a position of prestige in society, and does not share counsel's theory of a particular case, may be able to influence the entire jury panel.

It was noted earlier that individual jurors may reach their ultimate decision of a given case very early in the trial process. Research conducted by Kalvein and Zessil (in Abbott, 1990) supports this point by demonstrating that ultimate jury verdicts very closely match the initial vote taken by jury members before actual deliberations begin. Commenting on this, Abbott states: "This process underscores the importance of a favorably predisposed jury, and having the jurors reach their conclusions before deliberations begin (1987:3).

It is important to note, that these techniques need not be used in isolation. Questionnaires may be used to recruit mock juries. Mock juries may then be used to develop juror profiles. The common theme running through all of these techniques revolves around the use of science as a method of affecting the outcome of a case. Jury consultants may be used at any stage of this process, to improve the odds of this desired outcome. Any and all of these techniques complete a circle back to the voir-dire process. All of them are an attempt to use science in a way that will aid in the selection of actual juror members. It is critical to keep in mind the research noting how fast individual jurors arrive at a decision. The consultant's job is to use any scientific methods available to gather information to aid the attorney in the voir-dir process.

Now that the primary methods of jury consulting have been discussed, it is necessary to examine who engages in these practices and why. Just a few short years ago, jury consulting was a seldom used tactic, even for the wealthy. Although the wealthy are now the primary beneficiaries of consulting, the science began as an attempt to help those at odds with the forces of the state.

As demonstrated by Black, the power and force of law changes. The field of jury consulting has witnessed such a change. As was noted in the introduction, jury consulting got its start in the 1972 case of the Harrisburg Eight. This case used social science to help pick a jury that was sympathetic to the cause of eight anti-war protestors. The original purpose and function of the jury consultant was to even the playing field so that the defendants were not at such a disadvantage to the forces of the state. However, less than thirty years later, the tables have turned. "..Today's typical clients are the wealthy and privileged: corporations and well-heeled, prominent individuals, some celebrities, engaged in civil litigation" (Hunt, 1993). Times and attitudes have changed however; the poor, the indigent, and the socially unpopular, have been left behind.

The O.J. Simpson case has been mentioned previously in this project. It was mentioned due to the fact that it introduced the term "jury consultant" to the American legal landscape. The lasting effect of this case has been tremendous, especially in controversial cases. "So common is consulting in large jury trials that one Boston trial lawyer opined, 'no self-respecting trial lawyer will go through the process of jury selection in an important case without the assistance of highly paid trial consultants'" (Walker, 1995)

Not only has the use of consultants become mainstream, but the absence of consultants has become an issue as well. "Its gotten to the point where if the case is large enough, its almost malpractice not to use [trial consultants]" (Adler, 1989). It is note worthy that both of the preceding quotes deal with consultants in the controversial and important case. Neither quote however, deals with the case involving the indigent

defendant. The system is still at a point, where the wealthy who can afford the services of the consultant benefit, while leaving the poor behind.

Why is the issue of the indigent defendant so closely tied to the cost factor? A survey conducted by Strier and Shestowsky found that the average hourly fee for a trial consultant was $178.04 (1999). The cost however, can be much greater. It may be impossible for a consultant in a major case to provide any of their services for under $50,000 to $100,000 (Lambert, 1994). The cost for a full range of services provided by the professional consultant in 1982 dollars could reach approximately $500,000 (Hunt). The choice of employing the services of a consultant is often not based upon need, but upon economics.

What is the effect of the economic divide created in the system? Speaking to this issue, Strier states:

> This widens the already-substantial advantage of the wealthy who can afford the best legal representation, investigators, and expert witnesses. Whether or not unconstitutional, if consulting is effective, its availability to , and use by, one side only seems clearly unfair. In a sense then, what is unfair about trial consulting is a metaphor for what is unfair about the adversarial system. Mismatches of litigant sources result in mismatches of affordable professional services. Some of those additional services that the wealthier litigants can purchase undoubtedly rebound to their benefit. All other variables being equal, the side with the more skilled attorney, more persuasive expert witnesses, more thorough investigators, and more insightful trial consultant will probably fare better than the opposition in a substantial number of cases. Similarly, the litigant who can afford the best trial consultants, performing an array of services from pretrial community surveys and mock trials, to extensive voir dire and peremptory challenge analyses, to courtroom observation and trial strategy, and supplemented

> with state-of-the-art graphic presentations will probably hold a significant edge against the litigant who can afford little, if any, of these services (1999).

It must be re-emphasized that when these services are afforded to the state and denied to the defendant based upon economic considerations, the force of downward law is fully in effect. When the goal of the process leaves behind the notion of an impartial jury for a partial jury, Sixth Amendment concerns are justified. While the body of knowledge concerning jury consultants has grown in the last few years, the body of knowledge concerning those attorneys who chose to hire such individuals has not. This project intends to address that issue.

The Current State of Consultants

The profile of attorneys who hires jury consultants becomes important as we learn more about the consultants themselves. Until recently, little was know about either group of professionals. A survey conducted by Strier and Shestowsky determined that consultants varied on a number of variables. While the mean age of consultants in this survey was 45.3 years old, they ranged from 18 to 74 years old. Psychology was the most common educational background for consultants, as well as the most common advanced degree at 57 percent.

Following psychology, a degree in communication was most common followed by a law degree. While consultants may be psychologists or lawyers, they may also be actors looking to sell communication and acting skills (1999). The survey data suggests that a large percentage of consultants have chosen this line of a work as a second career, and

have little or no formal training in law or psychology.

Research examining the profile of consultants is in its infancy. While the picture is more complete than in the past, additional studies are necessary. The profiles of attorneys who hire consultants however, remains largely a mystery. This project will develop such a profile. After that profile has been constructed, it will become possible to begin matching the profile of attorneys who hire consultants with the profile of the consultants themselves.

Are the methods of the trial consultant effective? In other words, can the consultant employed by the state increase the chance of conviction, or increase the chance of acquittal for the defendant? At this point, the evidence is inconclusive. The first issue to be examined here must be the lack of scientifically grounded research examining the affect of jury consultants. Most studies have been methodically weak, and limited in scope. Separating the affects of the consultant from the affects of other important variables, such as the strength of the evidence, has proved difficult. Also difficult is determining how many of the jurors profiled and selected by the consultant are eventually selected by the attorney to serve on the case.

Reviewing past cases however, consultants have been able to develop profiles based on gender and age, which have demonstrated the manner in which a potential juror is likely to vote. Additionally, some studies using background and demographic information have proved moderately successful, explaining 5 to 15 percent of the variation in juror preference. While this may seem insignificant, Fulero and Penrod, demonstrate how critical this may actually be.

With a jury pool one-half favorable and one half unfavorable, an attorney on a completely random basis would correctly classify one half of the jurors. If, however, a survey reliably found a five percent variance in verdicts attributable to attitudinal and personality measures, successful use of the data would raise the attorney's performance to sixty-one percent correct classification of the jurors. With a fifteen percent variance, performance would increase to sixty-nine percent. (1991)

This demonstrates how critical profiles can be. It only takes one juror for the defense to result in a mis-trial. At the same time, the state must have an unanimous verdict to convict. If the consultant can explain even a small amount of the variance in juror decision making, then that science can be utilized in favor of the side of the case which has the information.

CHAPTER 3

METHODS

This study involved two types of research. The first was hypothesis testing, which included an examination of Black's theory on the behavior of law. The second was an exploratory study designed to explain the magnitude, regulation, and perceptions of defense attorneys concerning the use of jury consultants.

H_1. Jury consultant usage is reflective of Black's theory of the behavior of law in that it can be explained using his six elements: stratification, morphology, organization, culture, social control, and anarchy.

Explanation of Elements

Stratification

According to Black: (1976)

> stratification is the vertical aspect of social life. It is any uneven distribution of the material conditions of existence, such as food and shelter, and the means by which these are produced. (p.11)

In order to operationalize this concept and evaluate its presence, survey participants were asked to agree or disagree with the following statements:

1. Jury consultants are cost prohibitive to poor defendants.

2. The methods used by jury consultants are effective in helping attorneys achieve their goals in a case.

3. The use of jury consultants by the state helps insure the conviction of the defendant.

4. White male defendants are more likely to employ jury consultants than are females or members of other racial groups.

5. White defendants are more likely to be able to afford private counsel.

These questions are reflective of Stratification because they address such issues as power, money, race, and gender. All of these issues are used by Black in explaining the concept of stratification. (See Chapter 2 for additional information).

Morphology

According to Black: (1976)

> Morphology is the horizontal aspect of social life, the distribution of people in relation to one another, including their division of labor, networks of interaction, intimacy, and integration (p.37).

In order to operationalize this concept and evaluate its presence, survey participants were asked to agree or disagree with the following statements:

1. Attorneys can preform the tasks of jury consultants effectively without the need to hire a consultant.

2. Criminal trials in urban settings are more likely to use jury consultants than criminal trials in rural settings.

These questions are reflective of morphology because they address such issues as division of labor through urbanization, and levels of interaction and integration.

Culture

According to Black: (1976)

> Culture is the symbolic aspect of social life, including expressions of what is true, good, and beautiful...Examples are science, technology, religion, magic, and folklore. It also includes conceptions of what ought to be, what is right and wrong, proper and improper...Values, ideology, morality, and law have a symbolic aspect of this kind (p.61)

In order to operationalize this concept and evaluate its presence, survey participants were asked to agree or disagree, or answer the following questions and statements:

1. The use of jury consultants is an ethical practice.
2. The use of jury consultants will become more popular in the future.
3. I believe that I will use a jury consultant in the future.
4. Ideally, what qualifications should an individual have before he or she is able to serve as a paid jury consultant?
5. What changes do you see in the future regarding jury consultants?

These questions are reflective of culture, because they address such issues as education, ethics, personal moral beliefs, and public opinion.

Organization

According to Black, organization is: "the corporate aspect of social life, the capacity for collective action"(1976, p 85). In order to operationalize this concept and evaluate for its presence, survey participants were asked to agree, disagree, or answer with the following questions and statements:

1. Are you in a private practice or a firm?

2. The use of jury consultants by the state violates the defendants right to a fair trial.

3. The state has virtually unlimited resources in prosecuting defendants.

4. Recent Supreme Court decisions have narrowed the rights of criminal defendants.

These questions and statements are reflective of organization for they address issues such as state power, organization, and control. They also address levels of bureaucracy in the legal system, as well as in the stare and federal government.

Social Control

According to Black, (1976) social control is:

> The normative aspect of social life. It defines and responds to deviant behavior, specifying what ought to be: what is right or wrong, what is a violation, obligation, abnormality, or disruption (p.105)

In order to operationalize this concept and evaluate its presence, survey participants were asked to agree, disagree, or answer each of the following statements or questions:

1. Defendants who use jury consultants are more likely to be factually guilty than those who do not.

2. The general public believes that defendants who use jury consultants are more likely to be factually guilty than those who do not.

3. The state is more likely to use a jury consultant to convict a defendant charged with a violent crime as opposed to a white collar crime.

4. What type of offense(s) do you think a jury consultant would be needed by the defense to assure a fair trial?

These questions are reflective of social control, for they address issues of deviance,

the perception of right and wrong, obligation on both sides of the case, as well specific types of deviance that might invoke the use of a consultant.

Anarchy

According to Black, anarchy is "social life without law, without governmental social control" (1976, p.123).

In order to operationalize this concept and evaluate its presence, survey participants were asked to agree, disagree, or answer the following statements:

1. Jury consultants should be under the authority of the American Bar Association.
2. Jury consultants should be licensed in some manner.
3. Jury consultants are necessary to assure the defendant a fair trial.
4. The use of jury consultants hinders true justice.
5. What if any licensing requirements should jury consultants have to achieve or obtain in order to charge for their services.

These questions are reflective of anarchy because they address the level of law, regulation, and authority presently constraining the field of jury consultants.

Sample Group

Six hundred and twenty (n = 620) defense attorneys throughout the state of Pennsylvania were selected to participate in this study. This sample comprised the entire membership of the Pennsylvania Association of Criminal Defense Lawyers. This list was supplied by the Executive Director of this organization. The Association of Criminal Defense Lawyers is a professional organization of defense attorneys from across the state of Pennsylvania who elected to join this group . Among other professional functions, this

organization serves as a referral service to those in need of a criminal defense attorney.

This organization was selected primarily because the researcher was interested in the views of defense attorneys. A random sample of attorneys in the state of Pennsylvania would not have been practical for a number of reasons. Although the Pennsylvania Bar Association does print an annual list of all attorneys in the state, it does not differentiate attorneys based on what type of law they practice. Therefore, the researcher would have had no way of insuring an adequate number of defense attorneys would be included in the sample. In addition, many law firms have the names of individuals listed as partners and practitioners who have passed away. As a result, it simply would not have been possible to generate a random sample of defense attorneys in the state of Pennsylvania.

Because the Pennsylvania Association of Criminal Defense Lawyers takes an active role in the rights of the accused, it was expected that the membership of this organization would be particularly interested in the emerging field of jury consultants. Although the state must insure a fair trial, it is the defense attorney who acts as a check and balance to insure this occurs.

Pre-Test

The instrument used in this study was pre-tested with a group of twenty professionals. This group included criminal defense attorneys, judges, and professors with a Ph.D. Of the professors, the group included those with a Ph.D. in criminology, sociology, psychology, and education.

The pre-test was done for several reasons. The researcher wanted to make sure

that the instrument was clear, and that the instructions easy to understand. In addition, because this was a mail survey, it was important that the instrument be able to solicit the maximum information in the minimum amount of time. The average person taking the pre-test was able to finish in approximately seven to ten minutes.

The most important aspect of the pre-test however was the establishment of criterion validity. The researcher wanted to make sure that the instrument was in fact measuring the elements of Black's theory. The way to establish criterion validity is to administer the test to a group of experts familiar with the subject matter. That is why a diverse group Ph.D.'s, judges, and defense attorneys were selected.

During the course of the pre-test, one major problem was found. Question number seven, from section one of the survey initially read "The use of jury consultants by the state violates the defendants right to a fair trial". All of the academics who took this pre-test understood what the researcher was asking in this question. The question was designed as a measure of Black's concept of organization. It was designed to measure attitudes and perceptions concerning the ability of the state to mobilize and organize resources in a criminal case. As noted above, all of the academics who took this pre-test understood that, and responded in the range of twenty one to forty on the scale, which represents moderate to total agreement. All of the attorneys and judges however, were rating the question a zero, representing total disagreement.

A review of the data provided no explanation for this range in responses, so the researcher asked the judges and attorneys why they responded to that particular question in such a manner; the response was universal. The attorneys read the question precisely

as it was written, and answered it accordingly. The question asked if the use of consultants by the state violated the defendants right to a fair trial. No court in this county has ever ruled that such a use is a violation of the defendants rights, and no legislature has ever passed a law stating that this practice is or should be illegal. In the absence of any legal authority stating that such a practice is a violation of the law, it was a simple question for the attorneys, and the answer was simply no.

After gaining this insight, the question was modified to its current form. The question was then stated in the following way: "Do you personally believe that The use of jury consultants by the state violates the defendants right to a fair trial". Once the question was stated in this manner, attorneys were clear that the researcher was after their perceptions of the use of consultants, and not the current state of the law.

Through the use of the pre-test, issues like this were discovered and questions were modified accordingly. Through this process, the attorneys, judges, and academics were able to respond to the researcher, and improve the quality of the survey instrument before it was mailed to the sample population, and it was through this process that criterion validity was established.

Procedure - Data Collection

Surveys were mailed to all attorneys on May 11, 2000. Each defense attorney received a self-administered questionnaire and a letter encouraging them to participate in the study by mail. The defense attorneys were requested to complete and return the questionnaire in a stamped, self - addressed envelop. After the initial mailing, a post card was sent as a thank you and a reminder to complete and return the questionnaire. This

post card was sent on June 23, 2000. A second survey was sent by mail on June 30, 2000 to all attorneys who had not returned the initial survey instrument.

The questionnaire contained items which included short, open-ended demographic questions and 20 statements that required the respondents to place a slash mark through a line indicating their level of agreement with a given statement. The demographic questions included gender, age, number of years as a defense attorney, if they served as a prosecuting attorney, and if so how long. The open-ended questions were used so that qualitative data could be collected. The statements were used to collect information concerning general attitudes about the use of jury consultants. Every questionnaire contained clear instructions and introductory comments where appropriate (See Appendix O).

Measurement and Analysis

The key questions and statements in the survey tied the current research to Black's six elements. The data were also used to evaluate defense attorney's attitudes towards jury consulting, and the role these individuals play in ensuring a fair trial. Descriptive statistics and correlation coefficients were used to analyze the data received from the attorneys. Descriptive statistics were conducted to obtain the frequency of responses and give insight into the distribution of scores obtained. The descriptive statistics gave the researcher percentages, means, standard deviations and correlation coefficients which were used to explore relationships between two or more variables.

Summary

In this chapter, the methods used in collecting and analyzing the data were presented. A survey instrument was sent to 620 attorneys in the state of Pennsylvania in an attempt to analyze Black's theory of law as it applies to jury consultants, and in an attempt to answer five basic research questions. In the following chapter, the data collected will be presented and the results of the data analysis will be discussed.

CHAPTER 4

RESULTS

In this chapter, the data that were collected from the defense attorneys surveyed will be presented. The original sample consisted of 620 attorneys who were members of the Pennsylvania Association of Criminal Defense Lawyers. Of the 620 surveys sent to attorneys, 40 were returned as un-deliverable. Of the surveys returned to the researcher, 10 were dis-carded because the attorney no longer lived in the state of Pennsylvania, or no longer practiced law. An additional 19 surveys were returned with no response, and 18 were disregarded because they were answered inappropriately and could not be coded. Of the final population of 533 attorneys, 151 completed and returned the survey instrument (28.3%).

The attorneys who responded were an average age of 47 years and five months old ($n = 147$, $\bar{x} = 47.62$). Their average years of practice was 19 years and two months ($n = 148$, $\bar{x} = 19.29$). Males were over-represented in the sample. There were 129 males (85.4%), 19 females (12.6%) and three attorneys did not report their gender (2.0%). Caucasians were also over-represented. They made up 90.1 percent of the sample ($n = 136$). There were nine African-Americans (6 .0%), one Native American (0.7%) and five people did not report his/her race (See Table 1)

Table 1

Attorneys' Race

Race	Frequency	Percent
Caucasian	136	90.1
African-American	9	6.0
Native American	1	0.7
Not Reported	5	3.31
Total	151	

Respondents were also asked about their political affiliation. Democrats accounted for 44.4 percent of the sample (n = 67). Republicans made up 37.1 percent (n = 56), Independents made up 4.0 percent (n = 6), and 14.5 percent of the respondents did not report their political affiliation (n = 22) (See Table 2).

Table 2

Attorneys' Political Affiliation

Political Affiliation	Frequency	Percent
Democrat	67	44.4
Republican	56	37.1
Independent	6	4.0
Not Reported	22	14.5

Forty-two of the 67 counties in Pennsylvania were represented in the sample group (63.6%). Over 22 percent of the respondents practiced law in Philadelphia County; this was the modal county. The next highest represented county was Allegheny (7.6%). The attorneys also indicated the geographical classification of where they practiced law. Seventy-three of the attorneys reported that they practiced law in an urban setting (n = 73, 48.3%), 64 in a rural setting (n = 64, 42.4%), two in a suburban setting (n = 2, 1.3%), six practiced in all settings, and six did not respond to this question (See Table 3).

Table 3

Where Attorneys Practice Law

Geographical Area	Frequency	Percent
Urban	73	48.3
Rural	64	42.4
Suburban	2	1.3
All Settings	6	4.0
Not Reported	6	4.0

The final demographic question that was asked of the respondents was what type of practice they were involved in. Seventy of the attorneys reported that they were in private practice (n = 70, 46.4 %). Thirty-two reported that they worked for a firm (n = 32, 21.2%), thirty five attorneys worked both privately and for a firm (n = 35, 23.2%), eight attorneys reported they were public defenders (n = 8, 5.3%), and six did not answer the question (See Table 4). Of the 151 attorneys, 106 (70.2%) indicated that they had defended clients on a court appointed basis.

Table 4

Attorney's Type of Practice

Type of practice	Frequency	Percent
Private Practice	70	46.4
Firm	32	21.2
Both Private and Firm	35	23.2
Public Defender	8	5.3
Not Reported	6	4.0

Part I - Hypothesis Testing

In order to test Black's theory of law, several questions under each element were asked. To review, attorneys were provided 20 statements. Under each statement was a line with zero on one end and ten on the other (See Appendix C). Zero indicated total disagreement with the statement, five indicated a neutral attitude, and ten indicated total agreement with the statement per their directions.

When the results were entered into SPSS/PC+ version 8.0, it was more efficient to use a 40 unit scale. Zero, or total disagreement remained 0. Five, or neutral, is now represented by 20. Total Agreement is now represented by 40.

The results which are presented below and then summarized in Table 11, support

Black's Theory of Law as it pertains to the use and evolution of jury consultants based upon the responses for the 151 attorneys surveyed. When determining levels of support or non-support for a statement, the following was utilized. If a respondent marked the line between 0 - 9, it was determined that the respondent strongly disagreed with the statement. A score of 10 - 19 indicated disagreement, 20 was classified as neutral, 21 - 30 classified as agreement, and 31 - 40 was classified as strongly agreed with the statement.

After examining each individual question or statement, all of the items asked under a specific element were analyzed. Because there was not the same response rate on each individual question, an estimation of μ was not proper. To better understand the data, the average percent of agreement across all questions in the specific category was calculated.

Stratification

When examining Black's first element, stratification, five items were used to evaluate if this element was supported by the attorneys' responses. Table 5 lists the five items, the mean responses, the standard deviations, and the percent of attorneys who agreed with the statement.

Table 5

Stratification Indicators

Statement	Level of Agreement: Percent Who Agree	Mean	Standard Deviation
Jury consultants are cost prohibitive to poor defendants.	87.8	34.97	9.17
The methods used by jury consultants are effective in helping attorneys achieve their goals in a case.	58.0	23.73	9.91
The use of jury consultants by the state helps insure the conviction of the defendant.	50.3	22.27	10.36
White male defendants are more likely to employ jury consultants than are females or members of other racial groups.	62.6	24.44	12.58
White defendants are more likely to be able to afford private counsel.	82.7	30.61	10.28

When attorneys were asked to respond concerning the five items that were pre-determined to indicate stratification, their responses in general were supportive of this element. They agreed that jury consultants are cost prohibited to the poor, jury consultant are effective in helping attorneys achieve their goals in a case, jury consultants by the state

helps insure the conviction of the defendant, white male defendants are more likely to employ jury consultants than are females or members of other racial groups, and white defendants are more likely to be able to afford private counsel. When examining an attorneys years of practice and whether or not white male defendants are more likely to employ jury consultants than are females or members of other racial groups, the longer an attorney had practiced law, the more likely they were to agree that white male defendants would be more likely to employ jury consultants than females or members of other racial groups would be ($r = .223, p \leq .01$) (See Appendix R).

To determine overall if stratification was supported by the five items, the percentage of agreement across all five statements was then calculated. The percentage of agreement across all items for stratification is 68.28 percent. Therefore, stratification was supported.

To test the reliability of the stratification scale, Cronbach Alpha was conducted. In this case, alpha was .61 Appendix C lists the alpha for the stratification scale. Reliability of the survey instrument was a problem. Possible reasons for the poor reliability of this survey instruments will be discussed later in this chapter.

Morphology

When examining Black's second element, morphology, two items were used to evaluate if this element was supported by the attorneys' responses. Table 6 lists the two items, the mean responses, the standard deviations, and the percentages of attorneys who agreed with the items.

Table 6

Morphology Indicators

Statement	Level of Agreement: Percent Who Agree	Mean	Standard Deviation
Attorneys can perform the tasks of jury consultants effectively without the need to hire a consultant.	47.9	21.00	11.77
Criminal trials in urban settings are more likely to use jury consultants than criminal trials in rural settings.	65.7	25.03	12.81

When asked to respond to the two items that were pre-determined to indicate morphology, their responses showed slight support for this element. When asked if attorneys can perform the tasks of jury consultants effectively without the need to hire a consultant 47.9 percent of the attorneys agreed that they could perform the tasks of jury consultants effectively. An agreement of slightly under fifty percent on this item clearly demonstrates that attorneys in the study are divided about the need to hire a consultant. There is no clear consensus at this point as to the need to bring in an outside expert. This item examines the issues of division of labor and specialization of function, and demonstrates that the issue is not yet decided.

A majority of attorneys agreed with the concept that criminal trials in urban settings are more likely to use jury consultants than criminal trials in rural settings. The

question of rural versus urban environment is a complex one indeed, and will be discussed in greater detail in the conclusion and limitation chapter. The response to this statement however, supports the element of morphology in that it indicates that the likelihood of using this additional legal tool increases as society becomes more complex, and people become more separated by function. When examining the items designed to indicate morphology, the concept was supported, with a value of 56.8 percent across the items.

To test the reliability of the morphology scale, Cronbach Alpha was conducted. For the morphology scale, the alpha was .0068. (See Appendix D).

Culture

When examining Black's third element, culture, five items were used to evaluate if this element was supported by the attorneys' responses. Table 7 lists the three statements, the mean responses, the standard deviations, and the percentages of attorneys who agreed with the statements.

Table 7

Culture Indicators

Statement	Level of Agreement: Percent Who Agree	Mean	Standard Deviation
The use of jury consultants is an ethical practice.	76.6	31.11	10.08
The use of jury consultants will become more popular in the future.	59.3	25.30	10.61
I believe that I will use a jury consultant in the future.	52.1	22.57	13.10

Attorneys were asked to respond to five items that were pre-determined to indicate culture. Three of these items were quantitative in nature, and two were qualitative. All five items demonstrated support for culture in explaining the use of jury consultants. As demonstrated by table 7, the use of jury consultants was deemed to be an ethical practice. In addition, over half of the sample believed that not only would their use become more popular in the future, but that they would personally use a jury consultant.

When examining the qualitative data, two questions were asked concerning the education necessary to become a consultant, and future changes they would have on the system. Concerning education, three patterns were discovered. The attorneys who responded to this survey believed that consultants needed a law degree, an advanced degree in the social sciences, or a combination of the two. When examining future

changes, respondents felt that they would become more popular and more accepted in the criminal justice system. This demonstrates support for Black's ideas of education and integration. Culturally, jury consultants are appropriate (good moral) and will continue to be used in the future.

To determine overall if culture was supported by the three quantitative statements, the level of agreement was calculated across the three statements. The percent of agreement was 62.6 percent. This establishes general agreement across the items, and supports the concept of culture.

To test the reliability of the culture scale, Cronbach Alpha was conducted. The alpha for this scale was .57. (See Appendix E).

Organization

When examining Black's fourth element, organization, four items were used to evaluate if this element was supported by the attorneys' responses. Table 8 lists the three 40 point items, the mean responses, the standard deviations, and the percentages of attorneys who agreed with the statements.

Table 8

Organization Indicators

Statement	Level of Agreement: Percent Who Agree	Mean	Standard Deviation
Do you personally believe that the use of jury consultants by the state violates the defendants right to a fair trial.	51.4	16.43	14.72
The state has virtually unlimited resources in prosecuting defendants.	85.6	32.36	10.34
Recent Supreme Court decisions have narrowed the rights of criminal defendants	88.3	32.54	8.62

The fourth item to deal with the issue of organization concerned what type of practice the attorney was engaged in. Of the 145 attorneys who responded, 70 of them (48.3 %) indicated they are in private practice, 32 (22.1%) are in a firm, 35 (24.1%) indicated they are in both private practice and work for a firm. Eight attorneys (5.5%) reported they are public defenders.

Of the attorneys who responded to this survey, a slight majority agreed that the state violates the rights of the defendant when they use a jury consultant. While this was a slight majority, there was overwhelming agreement among the attorneys that the state has virtually unlimited resources in pursuing a case. As was noted in the stratification items,

defendants in general do not have nearly the financial resources at their disposal as the state does during a criminal trial.

Attorneys who responded to this survey also showed overwhelming agreement with the notion that the Supreme Court has narrowed the rights of criminal defendants. As a division of both state and federal government, the courts function as an arm of the state. When looking at these items as a whole, it is clear that the attorneys in this study view the state as a powerful force who on the one hand can devote virtually unlimited resources to a criminal case, while narrowing the legal rights of defendants with the other hand. These results indicated that the state is very powerful and if it were to use jury consultants, then there is a real threat to the rights of the defendants and to the fundamental fairness of the process.

To determine overall if organization was supported by the three quantitative statements, the level of agreement was calculated across the three statements. The percent of agreement was 75.1 percent. This establishes general agreement across the items, and supports the concept of organization.

To test the reliability of the organization scale, Cronbach Alpha was conducted. The alpha for the organization scale was .44. (See Appendix F).

Social Control

When examining Black's fifth element, social control, three statements and one question were used to evaluate if this element was supported by the attorneys' responses. Table 9 list the three 40 point items, the mean responses, the standard deviations, and the

percentages of attorneys who agreed with the statements.

Table 9

Social Control Indicators

	Level of Agreement		
Statement	Percent Who Agree	Mean	Standard Deviation
Defendants who use jury consultants are more likely to be factually guilty than those who do not.	19.6	10.39	11.84
The general public believes that defendants who use jury consultants are more likely to be factually guilty than those who do not.	55.9	21.51	11.61
The state is more likely to use a jury consultant to convict a defendant charged with a violent crime as opposed to a white collar crime.	49.6	21.62	12.15

Attorneys in this study did not agree that a defendant who uses a jury consultant as part of a defense strategy are more likely to be factually guilty of the offense than a defendant who does not use a consultant. At the same time however, there is slight agreement among attorneys that the general public does not share that view, and in fact that general public may view the hiring of a consultant as evidence of the defendant's guilt (See Table 9).

Attorneys were also divided on which types of criminal offenses made the use of a consultant more likely by either the state or the defendant. Only 49.6 percent of attorneys

who responded felt that the state was more likely to use a consultant to prosecute a defendant charged with a violent crime as opposed to a white collar crime. When looking at the question from a defense perspective, while the use of a jury consultant was indicated as necessary for s defendant charged with a violent offence, support for this conclusion was not overwhelming nor clear cut. Offenses for which a defendant may need a jury consultant to assure a fair trial included: violent crimes, sex crimes, crimes with a high financial stake, and crimes of any nature which have generated a great deal of publicity.

To determine overall if social control was supported by the three quantitative statements, the level of agreement was calculated across the three statements. The percent of agreement was 41.7 percent. These items as a whole do not generate support for Black's notion of social control. An examination of the data reveals that this overall lack of support is most likely the result of a failure on the part of the researcher to properly operationalize the variable.

To test the reliability of the social control scale, Cronbach Alpha was conducted. The alpha for this scale was .57. (See Appendix G).

Anarchy

When examining Black's sixth element, anarchy, four items were used to evaluate if this element was supported by the attorneys' responses. Table 10 list the four 40 point items, the mean responses, the standard deviations, and the percentages of attorneys who agreed with the statements.

Table 10

Anarchy Indicators

Statement	Level of Agreement: Percent Who Agree	Mean	Standard Deviation
Jury consultants should be under the authority of the American Bar Association.	38.0	13.50	13.74
Jury consultants should be licensed in some manner.	53.1	21.80	14.44
Jury consultants are necessary to assure the defendant a fair trial.	26.7	13.63	12.88
The use of jury consultants hinders true justice.	27.4	12.07	12.48

Anarchy is the absence of law. The field of jury consulting is currently unregulated and has few rules. Less than half of the attorneys who responded to this survey indicated that jury consultants should be under the authority of the American Bar Association. When asked about licensing in general, slightly more than half of the sample agreed that there should be some type of licensing procedure at all. While the attorneys in this sample did not believe that a jury consultant was needed in order for the defendant to receive a fair trial, they also did not believe that the use of consultants hinders the search for true justice.

Taken together, these items demonstrated a lack of agreement not only on the necessary licensing procedure for consultants, but who should control that procedure as well. Perhaps this stems from the basic disagreement concerning the overall effectiveness and need for consultants in the system. While this general disagreement exists, one significant relationship was still found. The longer an attorney has practiced law, the less likely they were to agree that jury consultants should be licensed ($r = -.219, p \leq .01$) (See Appendix S).

To determine overall if anarchy was supported by the four quantitative statements, the level of agreement was calculated across the four statements. The percent of agreement was 36.3 percent. Anarchy is different from the other elements of Black's theory, for it refers to the absence of an element, not the presence of one. An analysis of the data demonstrates that a lack or laws, rules, regulations, or simple agreement exists in the field of jury consulting. As a result, the data support Blacks's element of anarchy.

To test the reliability of the anarchy scale, Cronbach Alpha was conducted. The alpha for this scale was .73. (See Appendix H).

Based on the data just presented, Black's theory of law was supported. While one area of the theory, specifically social control was not supported, the theory as a whole is useful in understanding jury consulting. Failure to operationalize social control properly most likely explains the lack of support found for that element of the theory. Each element of the theory was evaluated, and the results of the findings are presented in table 11 in summary form.

Table 11

Summary of Hypothesis Testing

Element of Black's Theory	Supported / Not Supported	Summary
Stratification	Supported	Indicated White Males can Afford Jury Consultants / Other Can Not
Morphology	Supported	More Likely to Use in Urban Settings
Culture	Supported	Jury Consultants are Seen as Ethical, Acceptable and Require Educational Training
Organization	Strongly Supported	State has Unlimited Resources and the Ability to Restrict Defendant's Rights
Social Control	Not Supported	The Public Believes that if a Person Uses a Jury Consultant then they are Guilty
Anarchy	Supported	There is No Agreement on Standards or Licensing Procedures or Qualifications

Reliability of the survey instrument

The reliability of the survey instrument was problematic. After collecting the data, reliability problems were discovered that were difficult to anticipate in the design stage of the research project. Reliability on the six scales ranged from a low of .0068 for morphology, to a high of .7325 for anarchy. The only overall assessment that can be made is that the survey instrument was not reliable.

This could have occurred for a number of reasons. Perhaps the most likely cause for this problem can be traced to a difference in the way attorneys and Ph.D.'s read the survey instrument. It is possible that problems similar to those that affected question number seven of the survey affected other questions as well (See the discussion in the pre-test section). If the attorneys read the questions differently than the researcher intended, reliability problems are sure to result.

Another possible problem concerns the way in which the survey questions were answered. In scaling the questions on a zero to forty scale, as opposed to a Likert scale, it is possible that the researcher was trying to take to precise of a measurement. Respondents who both strongly agreed with a question may have ranked the question as a forty, and a thirty-six respectively. If this occurred, then reliability of the instrument would be compromised.

It is still possible however, to have validity. It is possible that the criterion validity established by the pre-test was accurate, and reliability was lacking do to other issues. While reliability cannot be established for this project, it can be improved in future projects. A more extensive pre-test, and better operationalization of the variables may indeed correct the reliability issues in future studies.

Part II - Attorneys' Perception

In addition to evaluating Black's theory of law, an additional purpose of this research was to better understand jury consultants, and to understand them from the perspective of the criminal defense attorney. To accomplish this, five basic research

questions were asked at the beginning of this study. The survey instrument utilized in this study examined the perceptions and attitudes of criminal defense attorneys in the state of Pennsylvania in an attempt to answer these questions. These five questions are presented below, along with the relevant findings.

1. How effective are jury consultants in influencing the ultimate disposition of a particular case?

While there was only slight agreement to the proposition that jury consultants were effective in helping attorneys achieve their goals in a particular case, a closer look at the data reveals some important clues. An overwhelming number of defense attorneys believed that the state had virtually unlimited resources in prosecuting a case. In addition to that finding, defense attorneys believed that in a situation where the state had acquired a jury consultant, the defense should be entitled to one as well.

Qualitative analysis indicated that the types of cases in which defense attorneys felt jury consultants were needed varied (See Appendix N). Although there was variation, three broad groups were apparent. These groups included cases involving: wide spread media attention, violent or sexual offenses, and white collar offenses. While there was variation concerning the types of cases in which a jury consultant was needed, there was very little disagreement over the type of defendant which could actually hope to obtain a jury consultant. There was strong support for the notion that only defendants who were white and of strong financial means could even consider the use of a jury consultant.

2. How are ethical and moral issues presented by the use of jury consultants reconciled?

Questions involving the moral and ethical use of jury consultants all seemed to focus more specifically on fundamental fairness. Qualitative analysis demonstrated that attorneys were divided not only on the overall effectiveness of jury consultants, but their impact on the system as a whole (See Appendix K and L). The concept of fairness however enjoys broader support. As noted above, there was strong support for the notion that the state has unlimited means in pursuing a case; this included the hiring of a consultant. Since the defense generally lacks such means, ethical and moral issues concerning the unfair advantage gained by the state in employing a jury consultant where raised. This was especially true when the option was denied to the defendant.

An additional issue that supported this conclusion concerns disclosure by the state when a consultant has been employed. Currently, there is no rule or law requiring that the state disclose to the court, defense team, or jury that such services have been retained. This was viewed by a number of the defense attorneys surveyed as a potential ethical and moral problem, and an area of concern. If in fact either side has obtained such services, disclosure to at least the opposing side seems appropriate.

3. How do the profiles of attorneys who hire a jury consultant differ from the profiles of those who do not hire a consultant?

Building a profile of an attorney who is most likely to hire a jury consultant is an elusive task. Perhaps the most telling bit of data from this study was the nearly universal belief that jury consultants are simply too expensive for the vast majority of defendants to even consider them as an option. The majority of attorneys who responded to this survey

had never used a consultant, and many did not even know of a fellow attorney who had used a consultant in the past. Due to the fact that less than seven percent of the respondents to this survey were minority, and less than thirteen percent were female, many statistical tests simply were not available to this data set. Additional studies need to be conducted to examine this issue. While it was a goal of this study to develop such a profile, it simply was not possible with the data obtained.

4. What types of qualifications do attorneys look for in a jury consultant?

The data indicated that three sets of qualifications are looked for in a jury consultant (See Appendix I). The first set concerned those attorneys who believed that a law degree is necessary in order to be a consultant. This is not surprising since nearly half of the attorneys surveyed indicated that they can preform the tasks of a jury consultant just as effectively as the consultant.

Along with support for a law degree, many attorneys felt that a degree in social science, primarily psychology, was needed. The final group suggested that a degree in both law and social science was in order. Cutting across all three groups was the belief that actual trial experience, or at the least, trial observation was necessary.

Interestingly enough, while there was division as to the question of what qualifies one to be a jury consultant, the data showed no pressing need to either license or regulate those who claim to be jury consultants (See Appendix J). As noted in the literature review, there is a wide variation in the credentials and experiences of those who market themselves as consultants. As a result, it was anticipated that there would be wide spread

support for licensing and control of this field. This belief however, was not supported in the data.

5. **If the use of jury consultants continues, will the indigent defendants have a legitimate claim of a right to have a jury consultant appointed for them?**

This question again revolves around the issue of fundamental fairness. While only about half of the respondents indicated that the use of a consultant violates a defendants right to a fair trial (51.4%), and only about half believed that the use of a consultant by the state helps to insure the conviction of the defendant (50.3%), slightly more support was found when defense attorneys were asked if consultants were necessary to assure the defendant a fair trial (58.5%). The data seemed to indicate that attorneys are fairly evenly split on the issues of effectiveness and necessity.

What is not split however, is the belief that the United States Supreme Court, through recent decisions, has narrowed the rights of criminal defendants. If as many defense attorneys indicated, that jury consultants simply even the playing field for criminal defendants, what we see emerging is an additional tool that can be utilized only by those defendants with the financial means to acquire a consultant on their own. This line of thought is not unlike the history presented on the right to an attorney in this country. This right was relatively slow in developing, and only through the course of several years and many Supreme Court decisions did it come to be applied to all defendants who faced the possibility of jail time, in felony and misdemeanor cases. While criminal defendants may want a jury consultant, and may in fact benefit from the use of one, it has not reached the level of necessity nor Constitutional right at this point. This could change however, if the

use of consultants becomes more wide spread by the state, or if consultants are viewed as becoming more proficient in influencing the actions and behaviors of juries.

The qualitative data in this study was examined in an attempt to discover and understand patterns or trends in defense attorney's perceptions concerning the use of consultants. These questions were also used as a way of letting the attorneys express their thoughts and views in an open ended manner that was not possible by simply agreeing or disagreeing with a given statement. While the qualitative data gathered in this study was useful in understanding attorney's perceptions on the use of jury consultants, several cautionary notes are needed. First, the response rate to the qualitative questions was very low. The number of respondents ranged from a high of 53 on question15, to a low of 17 on question number 12. With such a low number of responses, the data must be viewed simply as a representation of those who chose to respond.

Second, as was noted, very few women or minorities responded to this survey. As a result, the information provided here does not provide insight into the views of females or minorities. Additional studies must be completed to explore that issue.

Finally, it is not possible to assume that the responses discussed here represent the views of all members of this organization, or to the larger population of defenses attorneys in the state of Pennsylvania or the nation. This dissertation has completed the first step in a long process of researching the impact of jury consultants, and how they are viewed by defense attorneys.

Insignificant Results

Based on Black's theory of law, certain relationships were expected to occur that did not develop once the data was analyzed. In this section, some of those insignificant relationships will be discussed, and an attempt will be made to understand why the relations were in fact insignificant.

At the beginning of the study, the researcher firmly believed that the political party affiliation of a defense attorney would be correlated with several items in the survey, including: the amount of state resources devoted to a case, issues of ethics, perceptions of Supreme Court cases, and issues of licensing. In fact, once the data was examined, these variables were not correlated, and no relationship was found.

It may be that the training and job responsibilities of a defense attorney simply outweigh self identified political party affiliation. Or more simply it may be that defending the client may render political party affiliation irrelevant. If that is in fact the case, then it would be normal to find no correlation among these items.

It was expected that jury consultants were more likely to be used in urban as opposed to rural settings. In the state of Pennsylvania however, this was not the case. One possible explanation for this may be that the attorneys had difficulty in self classifying what type of environment they practiced in. When the data was analyzed, it was noted that it was not uncommon to find attorneys from the same county classifying the county as both rural and urban.

Black's theory also led to the belief that there would be differences between defense attorneys who were in private practice and those who were members of a law

firm. It was believed that members of a firm would be more likely to use a consultant in the future. This believe was based on the premise that firms would be better able to shoulder the financial burden and complexities of a case necessitating the use of a consultant as opposed to a defense attorney in private practice. This relationship however, did not exist once the data was analyzed.

The explanation for this may be very simplistic. The majority of defense attorney's who responded to this survey have never used a jury consultant. This fact, combined with the enormous expense involved seems to have prevented most attorneys from using jury consultants, regardless of firm or private practice status.

It was also expected that attorneys who accept clients on a court appointed basis would be more likely to find ethical problems with the practice of jury consultants. As court appointed clients would more likely be indigent, jury consultants for these clients may simply be an impossibility. This expected relationship was not supported in the data however. The explanation for this may be similar to the explanation provided above. Since so few defense attorneys have actually worked with jury consultants, it is simply not possible to determine this relationship at this time.

Finally, it must be noted again that this survey had a very small number of female and minority defense attorneys responding to the survey. As a result, questions concerning female and minority defense attorneys, and comparisons between them and white male defense attorneys, could not be made. In the future, efforts need to be made to survey organizations consisting of female and minority defense attorneys.

CHAPTER 5

DISCUSSION

This study expands the scientific knowledge base concerning the use of jury consultants in the criminal justice system. Previous efforts primarily examined the consultants themselves, or the construction of ideal juror profiles. As a result, there was little emphasis placed on the attorneys involved. Attorneys are the ones who make the decision to work with jury consultants. These attorneys may very well make the final decision to bring a consultant into a case, and have to make the final decision as to how much of the consultants advice they follow.

The scientific community is split as to the effectiveness of jury consultants. Due to the nature of the consulting, it may never be possible to answer the effectiveness question. Even if a defendant hires a jury consultant, a victory in the court room cannot be definitely attributed to the use of a consultant. Conversely, failure, or a conviction, cannot be attributed solely to the consultant. Even though questions such as this are extremely difficult to answer, attempts to do so in a scientific manner must still be made.

Previous research efforts have examined jury consultants, and their views on issues such as licensing (Strier and Shestowsky, 1999). This study demonstrated that practicing consultants do not favor any kind of licensing procedure. In addition, the qualifications and educational backgrounds of consultants were found to vary greatly. As the gatekeepers to the legal system, it is imperative to understand the views of attorneys on these critical issues. Their views will influence their decisions concerning the selection and employment of consultants.

Finally, the issues of fundamental fairness cannot be avoided. As demonstrated through Black's concept of stratification, the use of jury consultants constitutes more law being applied to a case. As an additional legal tool, the presence of a jury consultant in a case can be presumed to have an impact on the final disposition of that case. Because that affect is difficult to measure does not provide justification for not attempting to do so.

Concerning the issue of the effectiveness of jury consultants, like other research projects preceding this current study, the question is unresolved. The majority of defense attorneys believed that consultants were effective in helping attorneys win a case. They also believed that the use of a jury consultant by the state helps to insure the conviction of the defendant. It must be noted that while there is agreement with these issues, in some cases the agreement is very slight, further emphasizing the idea that the issue remains unresolved. What is evident however, is that the majority of attorneys believed that jury consultants will become more popular in the future. Over half of the sample indicated a belief that they will personally use a jury consultant in the future.

While the issue of effectiveness has been by no means resolved by this current research project, it is clear that jury consultants are not a fad as was thought by many legal experts. It is clear that while jury consultants are not within the financial reach of all defendants, they will not disappear any time soon for those that can afford their services. The fact that defense attorneys believed jury consultants are effective, or at least can be effective, for the time being is sufficient to sustain their existence.

The need for jury consultant licensing, control, and education produced mixed results from the attorneys. Concerning the issues of licensing, the majority of attorneys

surveyed feel that jury consultants should be licensed in some manner. It must be pointed out however, that only slightly more than one third of the attorneys who responded to this survey feel that the American Bar Association is the proper organization to conduct and maintain control over such a procedure. When the results from this study are compared to the earlier work of Strier and Shestowsky (1999), some basic disagreements are noted. While the majority of practicing consultants do not want to be subjected to a licensing procedure, the majority of attorneys feel that they should be. What is not clear however, is exactly how this should take place, and what body should have control over the process.

As previously noted, the educational qualifications of jury consultants is diverse. Practicing jury consultants vary from individuals with a law degree, a Ph.D., or an out of work actor. The attorneys who responded to this survey indicated no clear cut educational preferences, although an examination of the data did show support for basic educational criteria. The attorneys who responded to this survey suggested that jury consultants needed to obtain a law degree, an advanced degree in the social sciences, or a combination of the two. While these three qualifications generated the most support, regardless of the qualifications of a consultant, most attorneys who responded to this question felt that extensive trial observation was also necessary for the consultant to adequately perform the task of selecting a jury.

At first glance, this level of division in the attitudes of attorneys may seem surprising. It must be noted however that nearly 50 percent of the attorneys surveyed felt that they could preform the duties of a consultant just as effectively as the consultant. This being the case, for a consultant to be effective, he or she is going to have to bring

some special skill to the case that the defense attorney does not believe they possess. This explains the desire for the advanced degree in social science, since most attorneys lack this specialized knowledge, and further explains why of all the advanced degrees available, psychology was the preferred degree.

Perhaps the most important element of this study concerns fundamental fairness. A case can be made that if jury consultants affect the outcome of the case, and one side is afforded them while the other side has been denied, then the notion of fundamental fairness has been violated. In this regard, the evolution of jury consultants is not unlike the evolution of the right to an attorney.

As noted previously, it was not until the 1938 case of Johnson v. Zerbst 304 U.S. 458, that the Supreme Court ruled that a defendant had the right to an attorney in a non-capital case. Additionally, it was not until the 1972 case of Arrgensinger v. Hamlin 407 U.S. 25, that the Supreme Court ruled that a defendant had the right to an attorney in any case in which jail time was a possible sentence. It is interesting to note that the Supreme Court decided the Arrensinger case in 1972, the same year that the concept of the scientific jury consultant was truly born in this country.

While the majority of attorneys who responded to this survey indicated that jury consultants were too expensive in general, there was overwhelming agreement that white males were the most likely to employ a consultant, and the most likely to be able to afford a consultant. Nearly 90 percent of the attorneys who responded believed that jury consultants are cost prohibitive to poor defendants. This is significant because these same attorneys showed overwhelming agreement with the statement that the state has virtually

unlimited resources in prosecuting defendants.

When taken together, it appears as if jury consultants are a legal tool which are only available to wealthy, predominantly white male defendants. In this sense, there is no real difference between the state of jury consultants today, and the right of a defendant to counsel prior to the 1972 Argensinger decision. As it stands today, consultants are available for a price, as were attorneys prior to Supreme Court decisions which mandated that any defendant facing jail time who was unable to afford an attorney be provided one by the state. In fact, a strong argument could be made that the situation is more dire than the one faced in pre 1972- America.

The vast majority of attorneys surveyed believed that recent Supreme Court decisions have narrowed the rights of criminal defendants. While the 1960s and 1970s proved to be a time of expanding rights for the criminal defendant, the late 1990s have seen a closing of many of the legal doors that were opened over thirty years ago to level the playing field. Appeals have been limited, and severe time limitations have been imposed on the introduction of new evidence following a criminal conviction. What has happened in the past 29 years however, is that a technique originated to help the poor and the socially outcast criminal defendant, has become a sophisticated scientific tool available only to the state, and the most wealthy of defendants. The class of defendant for which this technique was originally designed have been left behind, and they are now oppressed by this very same technique.

Weaknesses and Limitations

Overall, Black's theory of law provides a good theoretical base from which to understand and explain jury consulting. Some weaknesses in this current research project must be noted. One weaknesses is the reliability of the questions for each element. Reliability is suspect, due in large part to errors in operationalization on the part of the researcher. Future attempts to examine this theory need to focus on better operaltionalization, with particular attention to morphology, social control, and anarchy.

Morphology for example, is a difficult concept to measure. This study attempted to measure morphology by asking respondents to identify their county of practice as rural or urban. When these self reported responses were compared to U.S. Census data for all counties in the state of Pennsylvania, many discrepancies were noted. Residents of the same county responded differently as to whether their county was rural or urban. In addition, it was not uncommon for those from small counties to classify themselves as urban, while those from much larger counties classified themselves as rural.

An additional limitation of this study was the target sample and the response rate. Only defense attorneys who practiced in the state of Pennsylvania and were members of the Pennsylvania Association of Criminal Defense Lawyers were selected. This of course leaves out defense attorneys who were not members of this organization, prosecuting attorneys, and all attorneys outside the state of Pennsylvania. This study was designed to answer some basic research questions, and begin building a knowledge base concerning attorneys and jury consultants. In that regard it has been successful. It is not possible however, to generalize these results to all attorneys, defense attorneys, or attorneys in the

state of Pennsylvania.

Critical to the success of any mail survey is the response rate. As noted previously, the response rate for this study was 28.3 percent. While this is generally lower than expected for mail surveys, it must be noted that mail surveys of attorneys in general is a difficult task. Recent attempts at surveying attorneys have produced response rates as low as 14.5 percent (Gauzr, 1999). A 1996 effort by the Salt Lake Tribune to survey more then 4,000 attorneys on the state of Utah resulted in a 33 percent response rate. While surveys can be found with a higher response rate, there are many examples in the literature of low response rates when attempting to survey attorneys. This issue must be given additional thought in future research attempts, and strategies created to increase attorney participation in mail surveys.

Finally, it must be noted that those who responded to this study were overwhelming white and male. All members of this organization were included in the survey, but based upon those who responded, certain statistical tests and analysis that were planned could not be completed. The final results contained only nine African-Americans, and only one Native-American. Only 19 females responded. Based on the overwhelming representation of white males in the survey, it was not possible to determine if the views of females or minorities differed in opinion to white males to any degree of certainty or reliability.

Future Areas of Study

Future areas of study are virtually unlimited concerning the use of jury consultants in criminal trials. While this study has added to the scientific body of knowledge, there is

still much to be learned. Topping the list for future areas of study is the effectiveness issue. While this study provided insight as to the effectiveness of jury consultants from the perspective of a group of Pennsylvania defense attorneys, more work needs to be done. Additional areas of study include additional surveys of defense attorneys, judges, jury members, prosecutors, and actual jury consultants.

Ethical issues still need to be explored and discussed as well. As demonstrated by this project, there are many ethical issues still to evaluate. The use of jury consultants by the defense, or by the state, to even the playing field or as an attempt to "fix" a trial all carry separate ethical considerations. It will take additional research efforts to understand and explain these issues.

Future studies also need to explore this topic from the viewpoint of women and minorities to see if they differ from each other and from white males . It cannot be assumed that their viewpoints would be similar or different from the ones presented here. Research projects need to be designed with specific target populations in mind. As demonstrated by the attorneys who responded to this study, the belief exists that the use of jury consultants in not an ethical problem, nor is it necessary to achieve justice. It is not known however, if these same beliefs in ethics and justice would be found in a study that was more balanced along racial and gender lines.

Policy Implications

Since their introduction into the criminal justice system in 1972, the use and popularity of jury consultants has continued to grow. If it can be established that they are indeed effective in helping the state to prove a case, or to the defense in securing an

acquittal, then serious policy implications arise. Jury consultants are not provided to defendants in criminal cases. As a result, jury consultants can charge what the market will bear for their services.

What has been created then, is a system in which only those who can afford to pay will receive the best possible defense. If what has been suggested is true, that jury consultants pick juries not to level the playing field, but to secure a victory, then the right to a fair trial is threatened. Although a criminal defendant is provided with an attorney, it may be necessary at some point to provide them with consultant services. The data from this study demonstrated a divide as to who is most likely to be able to afford such services.

If and when we reach a point in this country where defendants are provided with the services of a jury consultant, there will have to be guidelines and rules concerning those who practice this technique. Codes will need to be developed, along with a minimum threshold of educational, technical, and legal skills.

The Constitution of the United States of America guarantees all criminal defendants the right to a fair trial. Whether or not jury consultants become an integral part of the trial process remains to be seen. While there are still unresolved questions concerning the efficiency of jury consultants, their popularity seems to be on the increase. While there is still knowledge concerning jury consultants that the scientific and legal community does not know, what we do know is that social science has been brought into the courtroom, in an attempt to alter the outcome of a criminal trial. Only time will tell if this altered outcome has a positive or negative effect on the defendant, the criminal justice system, and the scientific community.

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Powers v. Ohio, (1991) 499 U.S. 400

Johnson v. Zerbst, (1938) 304 U.S. 458

Swain v Alabama, (1965) 380 U.S. 202

Strauder v. West Virgina, (1879) 100 U.S. 303

Taylor V. Louisiana, (1975) 419 U.S. 522

APPENDIX A

DEFINITION OF TERMS

Challenges	An attempt by counsel to prevent a potential juror from becoming an actual jury member. There are two basic types of challenges: *challenges for cause*, and *peremptory challenges*. Challenges for cause occur when counsel believes that a potential juror is biased toward a particular side of the case, and is unable to serve in an impartial manner. There is no limit to the number of challenges for cause that can be raised, however, the judge in a particular case rules on all challenges for cause. Unlike challenges for cause, peremptory challenges can be used to exclude a potential juror for virtually any reason. Peremptory challenges are limited in number (depending upon the type of case) and can be used by counsel at their discretion.
Poison Pill	Refers to the practice used by a jury consultant of picking a jury based upon opposing personalities. The idea is to seat a jury that simply cannot get along, and is prone to arguing and fighting. Most often used when an attorney feels that his client is obviously guilty, and cannot win based on the merits of the case. The purpose of the poison pill is to create a hung jury.

Surrogate Juries

Type A

This refers to the hiring or recruiting of individuals to listen to the arguments and evidence of counsel, and serve as an simulated jury. These individuals are typically paid for their service, and may or may not be randomly selected. These individual hear the evidence, deliberate, and render a decision. After this process, they are typically interviewed by the consultant, and their views on the case are recorded and analyzed. The information gained from this process is used in the construction of: juror profiles, voir-dire questionnaires, and may be used in the modification of counsel's strategy in presenting a case to the actual jury at trial time. Also refereed to as a *Mock Trial*.

Surrogate Juries

Type B

This type of "jury" is generally selected after a real jury has been seated for a specific case. Members of the surrogate jury are to as closely match the characteristics of the actual jury as possible. These surrogate jury members attend court every day, and listen to all of the evidence presented in court. Each day, and possible several times a day, they are questioned by the consultant and the attorney presenting the

actual case. Their opinions and concerns, questions and doubts, are believed to represent the same feeling as those of the actual jury members. Counsel can then modify strategy and presentations in court based on information learned form the surrogate jury. Also refereed to as *Shadow jury*.

Trial Consultant — An individual(s) trained in the social sciences who aides atrial attorney(s) in selecting a jury panel, and interpreting likely juror reaction through out the course of a trial. A trial consultant may be used in a civil or criminal case. Also referred to as a *Scientific Jury Consultant*.

voir-dire — From the French word, meaning "true talk". Voir-dire refers to the process of questioning prospective jurors to discover any potential biases that should prevent them from serving on a particular case.

APPENDIX B

CLASSIFICATION AND CODING SCHEME OF SURVEY RESPONSES

CLASSIFICATION AND CODING SCHEME OF SELECTED SURVEY RESPONSES

Question	Code Number
1. Gender	
Male	1
Female	2
2. Race	
African-American	1
Caucasian	2
Asian-American	3
Native American	4
Pacific Islander	5
Hispanic or Latino	6
Other	7
3. Membership of a:	
Firm	1
Private Practice	2
Both	3
Public Defender	4
4. Acceptance of court appointed clients	

Yes	1
No	2
5. County of practice	
Adams County	1
Allegheny County	2
Armstrong County	3
Beaver County	4
Bedford County	5
Berks County	6
Blair County	7
Bradford County	8
Bucks County	9
Butler County	10
Cambria County	11
Cameron County	12
Carbon County	13
Centre County	14
Chester County	15
Clarion County	16
Clearfield County	17
Clinton County	18
Columbia County	19

Crawford County	20
Cumberland County	21
Dauphin County	22
Delaware County	23
Elk County	24
Erie County	25
Fayette County	26
Forest County	27
Franklin County	28
Fulton County	29
Greene County	30
Huntingdon County	31
Indiana County	32
Jefferson County	33
Juniata County	34
Lackawanna County	35
Lancaster County	36
Lawrence County	37
Lebanon County	38
Lehigh County	39
Luzerne County	40
Lycoming County	41

McKean County	42
Mercer County	43
Mifflin County	44
Monroe County	45
Montgomery County	46
Montour County	47
Northampton County	48
Northcumberland County	49
Perry County	50
Philadelphia County	51
Pike County	52
Potter County	53
Schuylkill County	54
Snyder County	55
Somerset County	56
Sullivan County	57
Susquehanna County	58
Tioga County	59
Union County	60
Venango County	61
Warren County	62
Washington County	63

Wayne County	64
Westmoreland County	65
Wyoming County	66
York County	67
6. Location of practice	
Rural	1
Urban	2
Both	3
Suburban	4
7. Political Party Affiliation	
Republican	1
Democrat	2
Independent	3
Other	4

APPENDIX C

CRONBACH ALPHA FOR STRATIFICATION SCALE

Reliability

R E L I A B I L I T Y A N A L Y S I S - S C A L E (A L P H A)

Reliability Coefficients

N of Cases = 135.0 N of Items = 5

Alpha = .6115

APPENDIX D

CRONBACH ALPHA FOR MORPHOLOGY SCALE

Reliability

R E L I A B I L I T Y A N A L Y S I S - S C A L E (A L P H A)

Reliability Coefficients

N of Cases = 138.0 N of Items = 2

Alpha = .0068

APPENDIX E

CRONBACH ALPHA FOR CULTURE SCALE

Reliability

R E L I A B I L I T Y A N A L Y S I S - S C A L E (A L P H A)

Reliability Coefficients

N of Cases = 141.0 N of Items = 3

Alpha = .5754

APPENDIX F

CRONBACH ALPHA FOR ORGANIZATION SCALE

Reliability

R E L I A B I L I T Y A N A L Y S I S - S C A L E (A L P H A)

Reliability Coefficients

N of Cases = 141.0 N of Items = 3

Alpha = .4451

APPENDIX G

CRONBACH ALPHA FOR SOCIAL CONTROL SCALE

Reliability

R E L I A B I L I T Y A N A L Y S I S - S C A L E (A L P H A)

Reliability Coefficients

N of Cases = 138.0 N of Items = 3

Alpha = .5733

APPENDIX H

CRONBACH ALPHA FOR ANARCHY SCALE

Reliability

R E L I A B I L I T Y A N A L Y S I S - S C A L E (A L P H A)

Reliability Coefficients

N of Cases = 142.0 N of Items = 4

Alpha = .7325

APPENDIX I

RESPONSES TO QUESTION TEN, SECTION TWO. "IDEALLY, WHAT QUALIFICATIONS SHOULD AN INDIVIDUAL HAVE BEFORE HE/SHE IS ABLE TO SERVE AS A PAID CONSULTANT?"

Recommended Qualifications	Frequency
Law Degree	29
Ph.D. in Psychology	20
Advanced Degree	19
Law Degree and Advance Degree	12
Trial Observation	11

* this chart is based on an N of 45.

** Attorneys were permitted to, and some chose to, give more than one possible qualification or set of qualifications.

APPENDIX J

RESPONSES TO QUESTION ELEVEN, SECTION TWO. "WHAT IF ANY LICENSING REQUIREMENTS SHOULD JURY CONSULTANTS HAVE TO ACHIEVE IN ORDER TO CHARGE FOR THEIR SERVICES?"

Licensing Requirement	Frequency
State Certification	33
ABA Certification	3
Examinations or Testing Procedure	7
Standards developed by Attorneys	5

* this chart is based on an N of 45.

** Attorneys were permitted to, and some chose to provide more than one requirement.

APPENDIX K

RESPONSES TO QUESTION TWELVE, SECTION TWO. "HOW HAVE JURY CONSULTANTS HELPED THE CRIMINAL JUSTICE SYSTEM?"

How Consultants have helped the System	Frequency
Level the playing field	14
Look for potential biases	4

* This chart is based on an N of 17.

** Attorneys were permitted, and some chose to list more than one response.

APPENDIX L

RESPONSES TO QUESTION THIRTEEN, SECTION TWO. "HOW HAVE JURY CONSULTANTS HURT THE CRIMINAL JUSTICE SYSTEM?"

How Consultants have Hurt the System	Frequency
Creates perception of buying justice	23
Creates false belief in trial prediction	4
Creates negative image of the system	3
Takes resources away from other elements of the defense	2

* This chart was based on an N of 26.

** Attorneys were permitted, and some chose to, provide more than one response.

APPENDIX M

RESPONSES TO QUESTION FOURTEEN, SECTION TWO. "WHAT CHANGES DO YOU SEE IN THE FUTURE REGARDING JURY CONSULTANTS?"

Future Changes	Frequency
No change	17
More frequent of consultants	9
Less frequent use of consultants	4

* This chart was based on an N of 29.

** Attorneys were permitted to, and some chose to provide more than one response.

APPENDIX N

RESPONSES TO QUESTION 15, SECTION 2. "WHAT TYPE OF OFFENSE(S) DO YOU THINK A JURY CONSULTANT WOULD BE NEEDED BY THE DEFENSE TO ASSURE A FAIR TRIAL".

Type of Offense	Frequency
Homicide	40
White Collar	36
Sex Crimes	35
High Profile	15
Drug Crimes	10
Racially Sensitive	9
Violent	9
Assault	7
Battered Spouse	1

* This chart is based on an N of 53.

**Attorneys were permitted to, and some choose, to list more than one offense. A total of 162 offenses were listed by the respondents.

APPENDIX O

SURVEY INSTRUMENT

JURY CONSULTANTS

Listed below are 20 statements. For each statement, Zero (0) indicates total disagreement Five (5) indicates a neutral attitude and Ten (10) indicates total agreement with the statement. Please indicate your level or strength of agreement with each statement by making a slash through the line below each statement.

1. **Jury consultants are cost prohibitive to poor defendants.**

0 5 10

2. **The methods used by jury consultants are effective in helping attorneys achieve their goals in a case.**

0 5 10

3. **The use of jury consultants by the state helps insure the conviction of the defendant.**

0 5 10

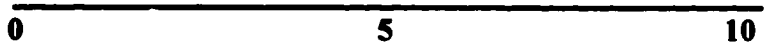
4. **White male defendants are more likely to employ jury consultants than are females or members of other racial groups.**

0 5 10

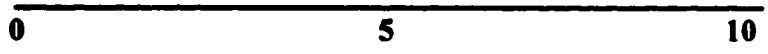
5. **White defendants are more likely to be able to afford private counsel.**

0 5 10

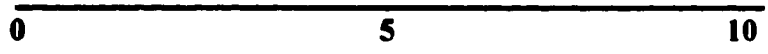
6. **Attorneys can perform the tasks of jury consultants effectively without the need to hire a consultant.**



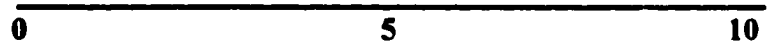
7. **Do you personally believe that the use of jury consultants by the state violates the defendants right to a fair trial.**



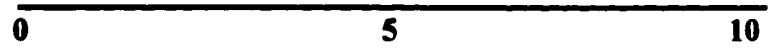
8. **The state has virtually unlimited resources in prosecuting defendants.**



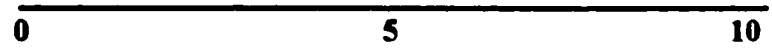
9. **Recent Supreme Court decisions have narrowed the rights of criminal defendants.**



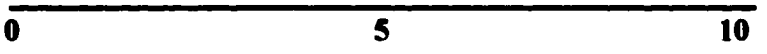
10. **The use of jury consultants is an ethical practice.**



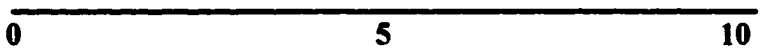
11. **The use of jury consultants will become more popular in the future.**



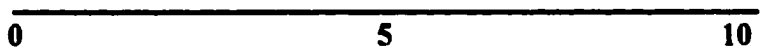
12. **I believe that I will use a jury consultant in the future.**



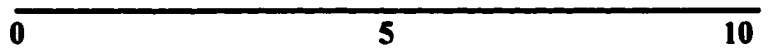
13. **Defendants who use jury consultants are more likely to be factually guilty than those who do not.**



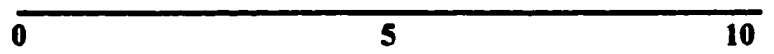
14. **The general public believes that defendants who use jury consultants are more likely to be factually guilty than those who do not.**



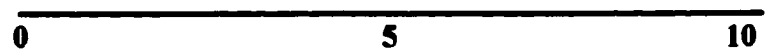
15. **The state is more likely to use a jury consultant to convict a defendant charged with a violent crime as opposed to a white collar crime.**



16. **Jury consultants should be under the authority of the American Bar Association.**



17. **Jury consultants should be licensed in some manner.**



18. **Jury consultants are necessary to assure the defendant a fair trial.**

0 5 10

19. **The use of jury consultants hinders true justice.**

0 5 10

20. **Criminal trails in urban settings are more likely to use jury consultants than criminal trials in rural settings.**

0 5 10

JURY CONSULTANTS

Please answer the following questions as accurately and completely as you can. If you need additional room, please write the corresponding question number on the back of the page, and finish your answer.

1. **What is your date of birth?** _____

2. **How many years have you been practicing law?** _____

3. **What is your gender?** __ **Male** __ **Female**

4. **What is your race?** __ **African-American** __ **Caucasian**
__ **Asian-American**
__ **Native American**
__ **Pacific Islander** __ **Hispanic or Latino**

5. **Are you a member of a** __ **Firm,** __ **Private Practice,** __ **Both?**

6. **Do you defend clients on a court appointed bases?** __ **Yes** __ **No**

7. **In which county is your principle practice located?** _____

8. **In the county in which your principle practice is located, is the county predominately ___ Rural or __ Urban?**

9. **What is your political party affiliation?**_____

10. **Ideally, what qualifications should an individual have before he/she is able to serve as a paid jury consultant?**

11. **What if any licencing requirements should jury consultants have to achieve in order to charge for their services?**

12. **How have jury consultants helped the criminal justice system?**

13. **How have jury consultants hurt the criminal justice system?**

14. **What changes do you see in the future regarding jury consultants?**

15. What type of offense(s) do you think a jury consultant would be needed by the defense to assure a fair trial?

_____

_____

_____

Thank you for completing this survey. Your input is very important to the success of this project, and let me remind you again that your organization will be receiving a copy of the survey results. Please place *all three sheets* in the YSU envelope. The envelope is addressed, and postage will be paid by the University. If there is any information you would like to share about the use of jury consulting that was not included in this survey instrument, please feel free to provide that information below:

_____

_____

_____

_____

_____

_____

_____

_____

_____

APPENDIX P

REMINDER CARD

CRIMINAL JUSTICE DEPARTMENT

June 23, 2000

Dear PACDL Member:

On May 11, 2000, I sent you a copy of a survey entitled "Jury Consultants". I would like to thank those of you who have already responded. I am sending an additional copy of the survey in the hopes that those of you who were unable to respond may have the opportunity to do so now.

It is my sincere hope that you will take a moment and complete the enclosed survey. The survey is two and one-half pages long and takes only a few minutes to complete. Once you have completed the survey, place all three sheets back in the postage paid return envelope.

If you have any questions, please feel free to contact me at:

Eric S. See, M.S., A.B.D.
Criminal Justice Department
One University Plaza
Youngstown, Ohio 44555-3279
(330) 742-3279

Thank you again for your assistance. I look forward to receiving your reply.

Sincerely,

Eric See, M.S., A.B.D.

APPENDIX Q

INTRODUCTION LETTER

Dear PACDL Member:

My name is Eric See, and I am a professor in the Criminal Justice at Youngstown State University, Youngstown, Ohio. I am a conducting a research project of attorney's perceptions of jury consultants, and their effects on the criminal justice system.

Sponsors of the Study

This research is being conducted in conjunction with Indiana University Of Pennsylvania, Youngstown State University, and with the cooperation and understanding of the PACDL.

Informed Consent

Your responses and views are very important to this research. All members of the PACDL are being surveyed, and the PACDL will receive a full copy of the results of this study. All individual answers will be kept confidential, and data will be reported and discussed in the aggregate. No individual members will be compromised by their responses, and you are not being asked to put your name anywhere on the survey.

Your participation is completely voluntary. If you choose not to participate, simply discard this survey. By sending your completed survey back to the researcher, you are giving your consent to take part in this research.

It is my sincere hope that you will take a few minutes, and complete the enclosed survey. The Survey is two pages, front and back. Once you have completed the survey, place both sheets back in the postage paid return envelope.

If you have any questions, please feel free to contact me at on the phone, or at the following address.

Eric See
One University Plaza
Youngstown Ohio
44555-3279
(330) 742-3279

APPENDIX R

PEARSONS r CORRELATION COEFFICIENT

Descriptive Statistics

	Mean	Std. Deviation	N
white male more likely to employ	24.391	12.616	138
years practicing law	19.43	8.29	138

Correlations

		white male more likely to employ	years practicing law
Pearson Correlation	white male more likely to employ	1.000	.223
	years practicing law	.223	1.000
Sig. (1-tailed)	white male more likely to employ	.	.004
	years practicing law	.004	.
N	white male more likely to employ	138	138
	years practicing law	138	138

Variables Entered/Removed[b]

Model	Variables Entered	Variables Removed	Method
1	years practicing law[a]	.	Enter

a. All requested variables entered.

b. Dependent Variable: white male more likely to employ

Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.223[a]	.050	.043	12.344

a. Predictors: (Constant), years practicing law

ANOVA[b]

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	1081.556	1	1081.556	7.098	.009[a]
	Residual	20723.814	136	152.381		
	Total	21805.370	137			

a. Predictors: (Constant), years practicing law

b. Dependent Variable: white male more likely to employ

Coefficients[a]

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	17.802	2.687		6.624	.000
	years practicing law	.339	.127	.223	2.664	.009

a. Dependent Variable: white male more likely to employ

APPENDIX S

PEARSONS r CORRELATION COEFFICIENT

Descriptive Statistics

	Mean	Std. Deviation	N
jury consultants should be licensed	21.954	14.376	142
years practicing law	19.32	8.31	142

Correlations

		jury consultants should be licensed	years practicing law
Pearson Correlation	jury consultants should be licensed	1.000	-.219
	years practicing law	-.219	1.000
Sig. (1-tailed)	jury consultants should be licensed	.	.004
	years practicing law	.004	.
N	jury consultants should be licensed	142	142
	years practicing law	142	142

Variables Entered/Removed[b]

Model	Variables Entered	Variables Removed	Method
1	years practicing law[a]	.	Enter

a. All requested variables entered.

b. Dependent Variable: jury consultants should be licensed

Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.219[a]	.048	.041	14.077

a. Predictors: (Constant), years practicing law

ANOVA[b]

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	1398.843	1	1398.843	7.059	.009[a]
	Residual	27741.109	140	198.151		
	Total	29139.952	141			

a. Predictors: (Constant), years practicing law

b. Dependent Variable: jury consultants should be licensed

Coefficients[a]

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	29.279	2.999		9.762	.000
	years practicing law	-.379	.143	-.219	-2.657	.009

a. Dependent Variable: jury consultants should be licensed