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The Vanishing Jury: An Examination of How District Attorneys Perceive Justice

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Scholars have identified four primary types of justice: distributive, procedural, interpersonal, and informational. These four types of justice correspond, respectively, to the perceived fairness of one's outcomes, to the perceived fairness of the procedures used to determine one's outcomes, to the degree to which people are treated with politeness, dignity, and respect by decision makers, and to whether individuals receive complete, truthful, and timely explanations of procedures and decisions. A significant amount of research has examined how perceptions of justice affect individuals' attitudes and behavior (Denver, 2011). For example, research has examined how district attorneys shape victims' and offenders' perceptions of justice (Patterson-Badali, Care, & Broeking, 2007). Less is known, however, about district attorneys' own perceptions of justice. Understanding how district attorneys view justice gives us insight into their decisions they make. These decisions include how to dispose of cases, what charges to bring against defendants, what sentence to recommend, and even how victims should be treated throughout the court process. With respect to how cases are handled in the criminal justice system, jury trials are often considered the epitome of justice. Proponents of jury

trials argue that limiting or abolishing jury trials would undermine the public's faith in the criminal justice system (Roberts & Hough, 2011). Nevertheless, the court system has confirmed the existence of "the vanishing trial," a term used to describe the steadily declining role of trials (civil and criminal) in the American legal system (Frampton, 2012). The current study examines the court and county factors that affect district attorney's perceptions of four types of justice: distributive, procedural, interpersonal, and informational. This research was based on data from a telephone and email survey conducted by the Social Science Research Center at Mississippi State University and county data from the United States Census Bureau and the Uniform Crime Reports (UCR).

DEDICATION

I would like to dedicate this research to the two people I love the most in this world: my parents. Thank you for your unwavering love and support throughout my college years. Hail State!

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CHAPTER I

INTRODUCTION

Although the meaning of justice, or fairness, has been the subject of debate for centuries, scholars have identified four primary types of justice: distributive, procedural, interpersonal, and informational. Research on distributive justice, or the perceived fairness of one's outcomes, dominated the literature until the 1970s. Outcomes, however, are not always individuals' primary concern (Tyler, 2000); people also care about how decisions are made and how they are treated. Procedural justice refers to the perceived fairness of the procedures that lead to decision outcomes (Colquitt, 2001). Interpersonal justice reflects the degree to which people are treated with politeness, dignity, and respect by those involved in the decision making process. Finally, informational justice reflects the degree to which individuals receive complete, truthful, and timely explanations for those procedures and decisions (Bies and Moag, 1986).

A significant amount of research has examined how perceptions of justice affect individuals' attitudes and behavior (Denver, 2011). Although research concerning justice stemmed from organizational studies that examined individuals' perceptions of the fairness of decision-making and resource allocation in the workplace (Colquitt & Rodell, 2011), justice also has implications for criminal justice practitioners and for the criminal justice system as a whole.

District attorneys' perceptions of justice are particularly important given the amount of power they hold within the criminal justice system. As representatives of the State, district attorneys are responsible for bringing charges against a suspect in a court of law. They have a tremendous amount of discretion over charging decisions, disposition types (i.e., trials versus pleas), punishment decisions, and the inclusion of victims within the court process. Along with their discretion and power, their specialized education and training may differ from the public and other courtroom actors and therefore result in different perceptions of justice. Although studies have examined how courtroom actors affect perceptions of justice for defendants, victims, and the public, few have examined the factors that affect perceptions of justice for district attorneys.

Research has found that district attorneys play an important role in shaping offenders' and victims' perceptions' of justice (Patterson-Badali, Care, & Broeking, 2007). For example, offenders' and victims' perceptions of distributive justice may be influenced by the district attorney's charging and punishment decisions, and their perceptions of procedural justice may be influenced by the type of disposition. Their perceptions of informational justice may be influenced by the amount and type of information they are given about the process of disposing of cases. Lastly, their perceptions of interpersonal justice may be influenced by how district attorneys treat offenders and victims throughout the process.

Although research has demonstrated strong support for juries and for a plethora of policies and reforms designed to improve various aspect of the jury process, district attorneys increasingly rely on plea bargaining to dispose of cases. Since district attorneys

have considerable discretion in deciding how to dispose of cases, their perceptions are important in understanding how decisions are made with regard to courtroom procedures.

Jury trials are an essential part of the criminal justice system and play a pivotal role in dispensing justice. The right to a trial by jury is one of the fundamental rights guaranteed by the United States Constitution. It has been an essential part of our democracy since the Bill of Rights became law on December 15, 1791 (Roberts & Hugh, 2008). The Constitution guarantees the right to a jury trial in order to limit government oppression (Mottley, Abrami, and Brown, 2002). Specifically, the Founding Fathers envisioned the jury as an institution that fulfilled three related roles: "operating as a check against judicial and governmental overreaching, allowing for meaningful citizen participation in the democratic process, and acting as an essential figure in the administration of justice" (McClanahan, 2012, p. 735).

Juries provide citizens the opportunity to directly participate in the system (McClanahan, 2012) by fulfilling the role of fact finder (Sudman, 1999). This participation is recognized as a critical part of a democratic government as it is thought to enhance the legitimacy of the legal system (Appleman, 2010). Juror participation is also thought to provide an educational benefit whereby citizens are aware of their rights and responsibilities (McClanahan, 2012). Alexis de Tocqueville referred to the jury as "a gratuitous public school" that "invests each citizen with a kind of magistracy; it makes them all feel the duties which they are bound to discharge towards society; and the part which they take in the Government" (McClanahan, 2012, p. 736).

Jury trials not only educate the public about the law, legal processes, and their duties as citizens, but simultaneously reinforces their faith in the American justice system

(Kassin, 1988). Proponents of trials argue that juries play a critical role in the American justice system by protecting the rights of criminal defendants while also promoting public trust and confidence in the courts (Mize, Hannaford-Agor, & Waters, 2007). Although many individuals complain about the inconvenience of jury service, post-trial surveys indicate the jury service results in more public support for the courts, legal system, and judges (Appleman, 2010; Gastil, Lingle, & Deess, 2010). Seemingly then, juries should connote justice within the criminal justice system. Proponents of jury trials argue that limiting or abolishing jury trials would undermine the public's faith in the criminal justice system (Roberts & Hough, 2011). Nevertheless, in 2003, the American Bar Association supported the claim of the "the vanishing trial," a term used to describe the steadily declining role of trials (both civil and criminal) in the American legal system (Frampton, 2012). The trend of vanishing trials has largely been attributed to the increase in plea-bargaining (Frampton, 2012). Approximately 95% of all criminal indictments are disposed of through plea bargaining (Appleman, 2010).

Plea bargaining has a variety of benefits for both criminal justice officials and defendants. For criminal justice officials, plea bargaining is beneficial because the jury selection process can be timely and costly (Lily, 2001). Plea bargaining, then, helps in eliminating the costs of going to trial while decreasing the time and resources spent on case preparation and trial (Barkow, 2003). Moreover, plea bargaining eliminates the potential risk of acquittal at trial (Breen, 2011).

For defendants, plea bargaining reduces the risk of a potential trial penalty. A trial penalty refers to the phenomenon of more severe sentences for those who assert their sixth amendment right to a trial (Breen, 2001). Nationwide sentencing data has revealed

that guilty plea sentences are the least punitive (King, Soule, & Steen, 2005). Specifically, empirical studies have found that defendants convicted at trial are more likely to be incarcerated and receive longer sentences than those who plead guilty (Bradley-Engen & Shields, 2012).

Proponents of jury trials, however, maintain that there are many problems with plea bargaining. For example, since prosecutors often offer defendants a reduction in charges in exchange for a guilty plea, the reduction in charge may be viewed as an injustice or that the punishment does not fit the crime. Although the literature focuses on the advantages and disadvantages of plea bargaining, the literature does not adequately address how the decrease in jury trials affects perceptions of justice.

This dissertation therefore attempts to address the shortcomings of the literature by investigating the court and contextual factors that affect district attorneys' perceptions of four types of justice: distributive, procedural, informational, and interpersonal. This study attempted to address these gaps by analyzing data obtained from a telephone and email survey conducted by the Social Science Research Center at Mississippi State University combined with contextual data from the United States Census Bureau and the Uniform Crime Reports (UCR). The next chapter reviews the literature on each of the four types of justice: distributive, procedural, interpersonal, and informational.

CHAPTER II

PERCEPTIONS OF JUSTICE

The original meaning of the term justice dating back to the Old Testament and Homer's *Illiad* revolved around punishment, retribution and revenge. Later, Plato discussed the term justice as revolving around social harmony. The question *"What is Justice?"* was asked by Socrates in Plato's *Republic* and has been a leading question in philosophy ever since. Socrates noted that justice was "giving and getting one's due" and that justice is "doing one's own" (Solomon & Murphy, 2000). Socrates argued that it was good to be just, for its own sake. However, there was not a mention of how to translate that into decision-making or policies. Since then, there have been numerous variations of what justice means. The concept of justice as developed by Aristotle revolved around fair exchange and equality with respect to what people deserve or earn. Throughout history, there have been many questions about justice. Apart from definitional issues, other pertinent questions include the following: a) "Does fairness mean equal treatment? Getting one's due?" b) "Does justice depend on the context or is it a universal principle?"(Solomon & Murphy, 2000).

In modern times, the term justice has tended to focus on distribution and exchange. A significant amount of research has examined how perceptions of justice affect individuals' attitudes and behavior (Denver, 2011). Much of this research comes

from organizational studies examining individuals' perceptions of the fairness of decision-making and resource allocation in the workplace (Colquitt & Rodell, 2011). In management and organizational research, the terms "justice" and "fairness" are often used interchangeably. I will now describe the following four types of justice: distributive, procedural, interpersonal, and informational.

Distributive Justice

Research on organizational justice initially focused on distributive justice (Colquitt, 2001). Distributive justice refers to the perceived fairness of one's outcomes, both individual rewards and punishments and the distribution of outcomes between groups (Van den Bos, Vermont, & Wilke, 1997). This judgment of fairness is referred to as distributive justice because of the assessment of how resources are distributed or allocated to individuals. Scholars were interested not only in how resources were distributed, but also in the consequences of the distributions.

Homans introduced the concept of distributive justice and subsequent work by Adams (1965) was instrumental to its development. Homans's (1958) work on fairness and social exchange maintained that people develop exchange histories that create normative expectations for future exchanges. Normative expectations are based on comparisons of a reference group or individual. In other words, people evaluate their organizational outputs based upon their own inputs and then compare them to what others in similar situations have received (Lambert, Hogan, & Barton-Bellessa, 2011). Injustice results when normative expectations are violated due to inputs and outputs being out of balance. Homans suggested that one dispute that may arise is what is considered a

contribution. He nonetheless maintained that the aspect of comparison was always involved.

There are three allocation norms (equity, equality, and need) used as criteria for evaluating fair and just distributions of rewards and resources. These allocation norms are three independent justice norms or principles. Equity refers to distributing rewards in accordance with one's contributions, while equality refers to all recipients receiving equal rewards. Need refers to the concept of giving more to recipients with greater need (Adams, 1965). How the norms are applied depends on the certain conditions of the situation (Greenberg & Cohen, 1982). For example, the equity norm tends to be important in economic situations (Leventhal, 1976), the norm of equality ensures group harmony and positive social relations, and the need norm arises in situations of personal welfare between those in close relationships (Deutsch, 1975).

Equity theory is the dominant theory of distributive justice. Adam's (1965) work on social exchange relationships is central to explaining how equity is perceived in relation to inputs and outputs. Equity theory stresses the notion that rewards should be proportional to contributions for fairness to be perceived. The outputs one receives for their contributions (e.g., pay, rewards intrinsic to the job, benefits, job status) make up the other side of the exchange.

Individuals expect just returns for the inputs (i.e., contributions, investments) (Homans, 1961) they bring to an exchange. Based on Adam's (1965) social exchange theory framework on evaluating fairness, one could determine if an outcome was fair by calculating the ratio of one's contributions or inputs to one's outcome before comparing the ratio with that of a comparison other. Adams (1963) noted that inequity was a

pervasive concern in the realms of industry, labor, and government and was not simply a matter of "a fair day's pay for a fair day's work" or being underpaid. Fairness within the employee-employer relationship, then, is not restricted to just economics (Adams, 1963).

It has been argued that adjudication is the subset of the criminal justice system that the public most expects to allocate justice (Cole, 1992). With respect to courts, early research on court satisfaction linked citizen satisfaction to outcomes. For example, defendant evaluations of the courtroom experience were thought to be related to the sentences they received. Consequently, defendant's whose cases were dismissed or acquitted were thought to be more approving of judges and the judicial system, whereas defendants who were convicted were perceived to be less approving (Tyler, 1984).

Procedural Justice

Although research on distributive justice predominated until the 1970s, studies have found that outcomes are not always the primary concern of individuals (Tyler, 2000). Instead, later research focused on procedural justice or the justice of the processes that lead to decision outcomes (Colquitt, 2001). Procedural justice theories focus on whether procedures are perceived as fair. There are three main theories in the literature about why procedural justice is pertinent to individuals. One theory posited by Thibaut and Walker (1975) maintain that procedural justice is important to individuals because only a fair process ensures a fair outcome. A second theory, based on Tyler and Lind's group value model, contends that people care about processes because treating an individual in a fair manner conveys positive information about the participant's status in society. This conferment of a positive status will then in turn affect the individual's self-esteem (Tyler & Lind, 2001). Lastly, Van den Bos, Vermont, & Wilke (1997), asserted

that individuals have difficulty in assessing outcomes and therefore evaluate the process to form judgments about the outcome.

Thibaut and Walkers (1975) research on procedural justice stemmed from their observations of courtroom settings. Thibaut and Walker (1975) posited that perceptions of procedural justice affect satisfaction regardless of the level of the outcomes obtained. For example, both the outcome of a court trial and the manner in which it was conducted may affect judgments of fairness. Specifically, they found that individuals who felt that court procedures were fair were more willing to accept and defer to court decisions.

Thibaut and Walker's (1975) criteria for procedural justice included process control (i.e., the ability to voice one's views and arguments during a procedure) and decision control (i.e., the ability to influence the outcome itself). Process control was later referred to as "voice" by Folger (1977). Folger's (1977) voice effect and Thibaut and Walker's (1978) process control reflect the enhancement of procedural fairness in cases where individuals who are concerned with the outcome are afforded the opportunity to express themselves (Lind & Earley, 1992). Lind and Tyler (1988) contend that the voice effect reflects the symbolic indication that the individual in question has something of value to contribute to the process. Being afforded the opportunity for participation in resolving one's problems or conflicts makes people feel more fairly treated (Tyler, 2000).

As pointed out by Tyler and colleagues (Tyler, 1987; Tyler, Rasinski, & Spodick, 1985), having a voice in the process has been shown to increase perceptions of procedural justice regardless of whether people actually believe their input will affect the outcomes. Research has consistently demonstrated that people express more support for outcomes, for authorities, and for institutions when they feel as though they were heard

(Rose, 2005). Denver's (2011) study on juries, for example, found that having a voice in the process, feeling included in the jury, having a friendly and welcoming environment, and having clear procedures during deliberations all reflect examples of the criteria for fairness. Casper, Tyler, and Fisher's (1988) study found that defendants indicated that the process of plea bargaining afforded them a greater opportunity to participate compared to a trial.

While Thibaut and Walker (1975) focused on process and decision control, Leventhal (1980) asserted there were additional factors that affected procedural justice. Leventhal's criterion for procedural justice were consistency, bias suppression, accuracy of information, correctability, representation, and ethicality were upheld. In cases where consistency (i.e., ensuring everyone is subjected to the same procedures), bias suppression (i.e., neutrality of the decision maker), accuracy of information (i.e., procedures are based on accurate information), correctability (i.e., appeal procedures are available for correcting bad outcomes), representation (i.e., all subgroups in the population affected by the decision are heard from), and ethicality (i.e., standards of ethics and morality are upheld in the process) were upheld, procedures were deemed just.

Later, Tyler and Lind (1992) developed the relational model of procedural justice whereby they departed from Thibaut and Walker's (1975) model by not including process control or decision control. In contrast to Leventhal's (1980) instrumental concerns, Tyler and Lind (1992) suggested that people care about processes because treating people fairly conveys positive information about one's status in society. Their model identified three determinants of procedural justice: trust, standing, and neutrality. Trustworthiness involves people's concerns about the underlying motivation behind the decision making

and whether the decision makers are honest and benevolent (Tyler, 2000). The intentions of the authorities to act fairly and behave in an ethical manner reflect perceptions of trust (Hickman & Simpson, 2003). Furthermore, trustworthiness reflects the notion that decision makers should consider the situational needs and concerns of the individuals in question while striving to do what is best for them in a fair manner (Hollander-Blumoff, 2011).

The second element, standing, refers to being treated with dignity and respect along with authorities showing regard for the rights of the individual. Standing reflects the interpersonal treatment given during social interactions that were thought to provide information about group status. The third element, neutrality, refers to people's desire for an unbiased dispute resolution forum and to the impartiality and objectivity of those involved in the process. Neutrality reflects the honesty and impartiality of the decision makers and the belief that their personal values and biases should not enter the decision making process. Instead, the process should be based solely on prescribed facts and rules (Hollander-Blumoff, 2011). Procedures are believed to be fairer in cases where authorities follow impartial rules and make factual objective decisions (Tyler, 2000).

The importance of procedural justice is well documented within the literature. Tyler (2009) contends that perceptions of procedural justice affect recidivism. Individuals that view the law as legitimate are more likely to obey it and follow the directions of those in authority. Individuals are more likely to view those who used fair procedures as legitimate. Tyler and Huo (2002) contend that legitimacy rests on the fact that individuals should defer to the judgments of legal authorities because they are entitled to be obeyed.

Moreover, the effects of procedural justice have been documented across a variety of settings including legal, political, organizational (1989). Each setting may require specific modifications to enhance or secure procedural justice. For example, Berman and Gold (2012) noted that even minor modifications within the courtroom experience could significantly alter levels of procedural justice for defendants. The Center for Court Innovation, The National Judicial College, and the Bureau of Justice Assistance has provided recommendations for improving procedural justice within the court system. Their recommendations include humanizing the experience for defendants, using "plain English" instead of legal jargon for better understanding, engaging defendants in dialogue, and focusing strictly on the case at hand (Berman & Gold, 2012, p. 21). Furthermore, it is important to recognize the fact that all courtroom actors can enhance the courtroom experience for defendants. Although Hollander-Blumoff (2011) posits that procedural justice affects both plaintiffs and defendants, the attorney's role in the process has been relatively understudied in the literature.

Interpersonal and Informational Justice

Although research originally focused on the perceived fairness of procedures and outcomes, Bies and Moag (1986) advanced the justice literature by focusing on the relationship between interpersonal treatment and fairness, or what they called interactional justice. This resulted from the awareness that perceptions of procedural justice are influenced by factors other than just the formal procedures enacted during the decision making process. Bies and Moag (1986) distinguished this idea from procedural justice by claiming that individuals may feel as though they were unfairly treated even when they believe the decision making processes were fair. Interactional justice can be

defined as the interpersonal treatment people receive during the enactment of procedures. Interactional justice is ensured when decision makers treat people with respect and sensitivity. It is also fostered when decision makers thoroughly explain the rationale behind their decisions.

Greenberg (1993) argued that interactional justice should be broken down into two constructs – interpersonal and informational – because they were different concepts with independent effects. Interpersonal justice reflects the degree to which people are treated with politeness, dignity, and respect by those who execute procedures or determine outcomes. Interpersonal treatment is important because of the fact that individuals may feel as though they were unfairly treated even when the decision-making processes were viewed as fair

In examining interpersonal justice, Tyler (2001) found that people who were treated politely with respect and without harassment or stigmatization were more supportive of the law and legal authorities. Tyler (2006) also found that treating people with respect worked to regulate behavior as it enhanced the view that legal authorizes were legitimate and entitled to be obeyed. Consistent with this idea, Berman and Gold (2012) found that the strongest predictor of recidivism was defendants' attitude toward the judge and whether they perceived the judge to have treated them fairly and respectfully. These findings were consistent regardless of one's race, gender, and prior record. These findings even remained consistent for defendants who had extensive prior records and for those who received unfavorable sentences. However, interpersonal treatment is only one element of interactional justice.

The second construct, informational justice, refers to whether an individual receives complete, truthful, and timely explanations for procedures and decisions. Research has found that individuals who have received negative outcomes were more likely to accept the procedures preceding the outcome as fair when explanations for the decision were offered (Bies & Shapiro, 1987; Greenberg, 1990). Similarly, Greenberg (1988) found that workers perceived their performance reviews as more fair when written explanations accompanied the reviews.

Later research by Wemmers (2003) found that even passive participation (i.e., being consulted and informed of the developments of their case) with the criminal justice system is related to justice. Wemmers (2006) noted that victims want to be included in the criminal justice system in an active or passive role. Moreover, Colquitt and Rodell (2001) found that informational justice was a predictor of trust and predicted employees willingness to be vulnerable. In this study, employees were more trusting of supervisors who explained and justified decision making in an honest and truthful manner. Bies, Shapiro, and Cummings (1988), however, emphasized that only explanations perceived to be reasonable and sincerely communicated enhanced notions of procedural justice.

In sum, although there is a plethora of research on distributive and procedural justice, few studies have focused on interpersonal and informational justice. It is important to distinguish between these four types of justice, however, because research has supported the four factor model of justice. For example, Colquitt's (2001) two-part study of a university setting and manufacturing company found that distributive, procedural, interpersonal, and informational justice were best conceptualized as four separate dimensions. Specifically, Colquitt (2001) noted that interactional justice should

indeed be broken down in to interpersonal and information justice as they had different effects. Additionally, in a meta-analytic review of 183 studies in organizational justice, Colquitt, Conlon, Wesson, and Porter (2001) found support that procedural, interpersonal, and informational justice were distinct concepts. In this study, I focus on justice from the perspective of the district attorney. Therefore, the next section will describe the role of the district attorney in the criminal justice system.

Role of the District Attorney

Depending on the jurisdiction, the district attorney can be referred to as a prosecuting attorney, state's attorney, county attorney, or the commonwealth attorney. Some rural jurisdictions may be comprised of a prosecuting attorney and one part-time assistant, while larger urban jurisdictions may have up to five hundred assistant prosecutors and assistants. According to the 2005 National Survey of State Court Prosecutors, half of all prosecutors' offices served a population of 36,500 or less.

Ensuring that justice prevails is the primary responsibility of the district attorney (Felkenes, 1975). Stemen and Frederick (2013) found that attorneys had different opinions of the definition of justice. Some district attorneys argued that justice meant ensuring consistency in outcomes, while others argued that justice meant ensuring consistency in decision making. The district attorney has two distinct roles: state's advocate and judicial officer (Felkenes, 1975). As a state's advocate, the district attorney's goal is to get a plea or guilty verdict. As a judicial officer, however, the district attorney's concern is with justice, which includes the legal procedures put in place to ensure that justice prevails (Felkenes, 1975).

Specifically, the district attorney is responsible for the legal representation of the state in bringing criminal charges against a defendant. The district attorney has the discretionary power to make decisions about whether to pursue criminal charges, which charges to make, and what sentences to recommend. They also have the power to recommend the bail amount, drop or reduce charges, and negotiate and approve guilty pleas (Kingsworth, MacIntosh, and Sutherland, 2002). District attorneys also play a significant role with respect to grand juries. Grand juries conduct proceedings to investigate criminal conduct in order to decide if criminal charges should be brought against the suspect. District attorneys therefore present grand juries with evidence in order to seek indictments. In addition to felony criminal matters, district attorneys may also have authority over misdemeanor, juvenile, and traffic offenses. The 2005 National Survey of State Court Prosecutors found that 60% of district attorneys were responsible for trying civil cases, 57% were responsible for prosecuting cases of child support enforcement, and 54% were responsible for felony appeals. It was also reported that State court prosecutors closed over 2.4 million felony cases and 7.5 misdemeanor cases.

Discretion in the criminal justice system has been explored with respect to a variety of institutions and groups (e.g., police, judges, attorneys). Donald Black (1989) pointed out that doctrines of law alone do not adequately predict and explain how cases are decided, as evidenced by the fact that identical cases are often handled differently (Black, 1989). Stemen and Frederick (2013) argued that district attorneys' discretion is the least constrained of all the criminal justice actors. As such, the district attorney's decision making process has been described as a “black box,” given that inner workings

of the district attorney often remain hidden and receive little scrutinization from the legal realm (Stemen & Frederick, 2013).

District attorneys exercise a high level of discretion and their decisions may be biased in terms of race, class, or gender. Because district attorneys are elected officials, their decisions may also stem from trying to please voters, garner the public's attention, please judges, or save time and resources (Maschke, 1995). Certain background characteristics and experiences are conducive to particular attitudes and values (Jones, 1978). Experience in and exposure to the criminal justice system, for example, may affect perceptions and belief (Jones, 1978; Felkenes, 1975). Accordingly, these attitudes and values influence decision-making and behavior (Jones, 1978). Conviction psychology exists when emphasis is placed on convictions (Felkenes, 1975). Since convictions are often measured as success, conviction psychology places emphasis on the high achievement of conviction rates instead of high justice rates, which Felkenes (1975) argued could diminish respect for the ideal purpose of the prosecutor's position. Nonetheless, Stemen and Federick (2013) found that district attorneys often differ in what is meant by the concept justice. They found that while some district attorneys argued that justice meant ensuring consistency in outcomes, others argued that justice meant ensuring consistency in decision making.

According to Felkenes (1975), the development of a conviction psychology is related to the length of district attorney's experience. The longer a district attorney is in office, the more likely he or she is to adapt to the conviction psychology (Felkenes, 1975). District attorneys expressing concern for conviction had about twice as much experience, on average, compared to those with a concern for justice (Felkenes, 1975).

However, in an effort to obtain career stability, young prosecutors may exhibit a conviction psychology to conform to the peer group or imitate superiors (Felkenes, 1975).

Wright and Levine (2014) argue that veteran prosecutors differ from their younger counterparts in three main ways: endorsing and practicing proportionality, focusing their resources on exceptional cases, and believing defense attorneys make valuable contributions. In order to build skills and establish a reputation, young district attorneys, may, for example, force many cases to go to trial. Similarly, Wright, Levine, and Miller (2014) found that more experienced district attorneys reserved trials and harsh consequences for only a small subset of defendants. Over time, confidence will grow and attorneys will start to put small crimes in a large context by understanding the importance of a defendant's background and mitigating factors. Moreover, experience can foster empathy leading to question whether punishment is always the best response. (Wright & Levine, 2014). The actions that stem from the worldview of young prosecutor are referred to as "young prosecutor's syndrome" (Wright & Levine, 2014).

District attorneys' opinions on defense attorneys also vary significantly by experience level. District attorneys with more experience tend to appreciate the value that defense attorneys add (Wright, Levine, & Miller, 2014), are more likely to view the defense attorney as important, and are more likely to emphasize the importance of maintaining a good relationship with them (Stemen & Frederick, 2013).

The relationships district attorneys have with other criminal justice actors also influence prosecutorial decision making. District attorneys rely on a variety of relationships within the criminal justice system in order to prosecute cases (Stemen &

Frederick, 2013). These relationships not only have the capacity to affect how they approach a case, but also to create expectations about how things will turn out. For example, being familiar with judges may lead prosecutors to establish ideas about what they would deem favorable or have an idea about what decisions they will make. While judges may impose sentences on offenders, district attorneys make recommendations for them to consider (Gomme & Hall, 1995). Relationships with the defense attorneys are also important. Maintaining a good relationship with defense attorneys is important to receiving a better flow of information and a more just case resolution (Stemen & Frederick, 2013). Another key relationship involves the police since they are responsible for providing suspects and enough sufficient evidence to secure a conviction. Because district attorneys rely heavily on information and support provided by other agencies and organizations, they must work closely with state and federal counterparts (Gomme & Hall, 1995). Victims and witnesses are also an important to securing evidence. Therefore, cooperation is a crucial and necessary element in moving forward with a case (Dawson and Dinovitzer, 2001).

District attorneys are subject to role overload which can produce considerable amounts of strain (Gomme & Hall, 1995). Not only do district attorneys have to maintain important relationships, but they also have to maintain public support (Felkenes, 1975). Therefore, the relationship with the community also plays an important role. Public opinion and the media can shape whether the district attorney is supported or criticized and therefore may affect his or her likelihood of reelection.

Another element of the district attorney's role that deserves attention is the size of his or her case load. The burdens of a large caseload may affect how defendants and

victims feel about the court process. Spending more time on cases is likely to be perceived as more fair by those involved in the court process. For example, district attorneys with smaller caseloads likely have more time to spend on each case. Therefore, they may have more time to interact with those involved in the case. For example, district attorneys with smaller caseloads may have more time to meet with victims, giving victims a sense of participation in the trial process. District attorneys may also have more time to notify victims of important information regarding the court process. Smaller caseloads may also lead to the belief that attorneys have more time to investigate the facts of a case. For example, this may enable district attorneys to have more time to meet with experts or witnesses.

Staffing levels may affect caseload size and other resources, which could potentially lead district attorneys to increase the likelihood of reducing or dismiss charges (Walker, 1988). District attorneys may have to prioritize cases when working with limited resources or drop cases with weak evidence. The latter may especially be true in situations where district attorneys are trying to maintain a high conviction rate.

Although research has examined citizens' evaluations of fairness with regard to police and the courts, courtroom actors are often overlooked with attention being paid to defendants or victims. Beliefs about the justice system may be influenced by clients' perceptions of their attorneys (Patterson-Badali, Care, & Broeking, 2007). For example, if clients feel unfairly treated by their attorney, they may cease to adhere to established rules and laws (Patterson-Badali, Care, & Broeking, 2007). This lack of adherence may result from individuals choosing informal methods of conflict resolution and their overall disrespect for the attorneys and law.

Defense function standard 4-3.1 of the American Bar Association's Standards for Criminal Justice: Prosecution and Defense Function (1993) states that defense counsel "should seek to establish a relationship of trust and confidence with the accused" (Boccaccini & Brodsky, 2002, p.83). Trustworthiness is deemed a crucial element of the attorney-client relationship. For one, it is important because full disclosure is recommended for effective representation. It is therefore beneficial to the client in helping to ensure they provide as much information as is necessary to the attorney in order to formulate and strengthen their defense strategy (Pierce & Brodsky, 2002). For example, past research has found that some juveniles are afraid to tell their attorneys certain kinds of information. This may hinder their ability to assist their attorney in their defense. It is also beneficial to the attorney in that a trusting relationship may enhance the cooperation and helpfulness of the client (Boccaccini & Brodsky, 2002), which improves the overall attorney-client relationship. Boccaccini and Brodsky (2002) found that clients' willingness to trust their attorney was related to their satisfaction with legal services.

Regarding youth perceptions of their attorneys, Pierce and Brodsky (2002) found that their ratings of participation, objectivity, trustworthiness, and being treated with dignity and respect were related to their overall satisfaction with their attorney. These evaluations were independent of distributive justice variables such as arrest history and duration of the sentence. Furthermore, Pierce and Brodsky (2002) found that juvenile mistrust in attorneys was associated with a poor understanding of legal matters, a lack of trial knowledge, and a lack of understanding what the attorney role encompasses, and courtroom knowledge compared to their adult counterparts. Sprott and Greene (2008)

also examined young offenders and found that their perception of how they were treated by court actors influenced their overall evaluation of the legitimacy of the justice system.

Courtroom actors, such as attorneys, play an important role in shaping their clients notions of justice within the courtroom. Trust in the attorney-client relationship and in how defendants are treated by their attorneys, for example, may significantly affect one's satisfaction with their overall representation and case outcome. Although the importance of the attorney-client relationship is evident, less is known about the factors that affect prosecutors' notions of justice.

If defendant perceptions are influenced by courtroom actors such as their attorney, courtroom actors such as the judge and jury may similarly affect district attorney perceptions. As previously mentioned, Pierce and Brodsky (2002) noted the importance of clients providing as much information as necessary to help their attorney formulate and strengthen their defense strategy. Similarly, for the district attorney, the important factor may be providing as much information as possible to the jury to increase the likelihood of conviction.

In sum, district attorneys play in an important role in the criminal justice system. They must hold offenders accountable, ensure case dispositions are appropriate, and administer justice in a timely and efficient manner. Their decisions affect not only the fates of the accused, but also impact victims and their families, influence public perceptions of the courts, and significantly impact legislation and policy (Gomme & Hall, 1995).

Contextual Effects

Although most research tends to focus on individuals' perceptions of justice, contextual factors may also affect justice. Criminal courts are often influenced by the broader social and economic environments (Eisenstein, Flemming, & Nardulli, 1999). County contextual factors may include economic and social characteristics. Economic factors may focus on characteristics such as the percentage of people living below the poverty level, while the social characteristics may include characteristics such as the percentage of people living in urban areas and the crime rate. Although these factors may affect justice, the effects of contextual factors on district attorneys' notions of justice are unclear.

The link between inequality and punishment can be linked to criminal offending or to the efforts of criminal justice authorities to control specific populations (Western, Kleykamp, & Rosenfeld, 2004). Increased disadvantage, for example, may cause certain social groups to be viewed as more dangerous. These groups, which may be based on race, ethnicity, or class, may then be deemed as threatening to the social order. In turn, criminal justice officials may impose more punitive punishment on these groups. For example, sentencing research has found minorities and those living in high unemployment areas have the highest probability of incarceration (Western, Kleykamp, & Rosenfeld, 2004).

In analyzing social structure, researchers have found that city dwellers know a smaller proportion of their neighbors than do persons in smaller communities (Freudenburg, 1986). In large cities, criminal justice officials are more likely to be unacquainted with the citizens they encounter. In smaller towns and rural areas,

however, criminal justice officials are more likely to know those involved in legal matters. The sense of community may be greater for individuals living in rural areas compared to those in larger communities (Eisenstein, Felmming, & Nardulli, P, 1999). Weisheit, Falcone, and Wells (2006) refer to this as density of acquaintanceship (i.e., the extent to which people in a community know one another). Therefore, urban and rural areas may affect certain aspects of justice such as interpersonal justice. Increasing the number of community inhabitants, for example, is bound to limit the possibility of each member of the community knowing the others personally (Wirth, 1938).

The city leads human relations to be impersonal (Park, 1925). Eisenstein, Felmming, and Nardulli (1999) contend that larger jurisdictions are more likely to have a diverse mix of social backgrounds and personalities. Social isolation and the disappearance of local community life have been found in relation to the urban environment as well (Bell & Boat, 1957). The city is often characterized by secondary contacts rather than primary contacts. Contacts of the city are often impersonal and superficial. Wirth (1938) noted that these contacts have outlooks that are blasé, reserved, and indifferent with respect to relationships. Tradition civilities (e.g., apologizing, offering assistance), for example, are more likely to be observed in smaller communities (Milgram, 1970). Eisenstein, Flemming, and Nardulli (1999) argued that in their analysis of communities and their courts, the stereotyped image of the "friendly way of life in small communities" and the "avoidance of conflict in favor of cooperation" remained true the majority of the time (p. 49). Community type, then, may affect perceptions of interpersonal justice or how people are treated within the courtroom process.

Lastly, contextual factors such as crime rate may also affect justice. There may be greater concern about crime and justice in areas with high crime rates. For example, high crime rates may trigger increased media coverage and intensify pressure on the courts (Helms & Jacobs, 2002). For example, crime was the number one topic on local television in the 1990s and remained in the top five in the early 2000s (Beale, 2006). Political pressure stemming from media attention may lead criminal justice officials to ensure that appropriate steps are taken to adequately address crime and punishment in their counties. Some of these steps may be seeking harsher punishments for offenders.

Summary

The terms “justice” and “fairness" are often used interchangeably in the literature. This study focuses specifically on four types of justice. Distributive justice refers to the perceived fairness of one’s outcomes, both individual rewards and punishments and the distribution of outcomes between groups, while procedural justice focuses on whether procedures are perceived as fair. Interpersonal justice reflects the degree to which people are treated with politeness, dignity, and respect by those who execute procedures or determine outcomes. Informational justice refers to whether an individual receives complete, truthful, and timely explanations for procedures and decisions. The effects of the various types of justice have been well documented in the literature across a variety of settings. As previously suggested, justice may be affected by both courtroom and contextual factors. It is therefore crucial to understand which factors affect justice, and more specifically, whether courtroom and contextual factors operate differently for the four different types of justice.

CHAPTER III

HISTORICAL OVERVIEW OF JURY TRIALS IN ENGLAND AND THE U.S.

The institution of the jury was created to play a pivotal role in the administration of justice. The link between jury trials and justice is of particular interest to this study. Therefore, this chapter will trace the history and development of the jury. The Frankish Inquest is the likely origin of the English jury. Dating back to the 9th century, Frankish Kings used the inquest to help them govern and expose corruption. The inquest was comprised of the best and most trustworthy men of the district (Thomas, 2008). When the Normans invaded England, William the Conqueror introduced the notion of the Frankish inquest whereby inquisitors were sent to investigate property claim disputes. This process was used only to investigate property crimes until Henry II adapted its use for criminal offenses in the 13th century. Along with the Frankish Inquest, the Magna Carta of 1215 was another important event leading up the development of the jury trial.

The concept of being judged by a jury of one's peers is often traced back to the Magna Carta of 1215 (Elrod, 2009; Sudman, 1999). The Magna Carta stated that "no free man shall be taken or imprisoned or disseised…exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers of by the law of the land" (Elrod, 2009). Although the Magna Carta did not guarantee the right to a trial, it is viewed as an important document that is credited for the development of England's constitutional government. In addition, the rights to due process and an impartial jury are

thought to have developed from it (Kasper, 2013). The ideas brought forth from the Norman Invasion were slow to take effect, but were seen under Henry II's reign of England. Before discussing the process under Henry II, though, we must first look at the processes the English used to determine one's guilt: compurgation or wager of law, ordeals, and trial by combat (Anand, 2005) before these ideas from the Norman Invasion evolved.

Early English Processes Used to Determine Guilt

There are three methods for determining guilt that the English used prior to the development of jury trials. The first process, compurgation or wager of law, involved the accused swearing a not guilty oath while providing a number of compurgators (i.e., oath helpers) to affirm his/her oath (Anand, 2005). Compurgation or wager of law was a method established by King Henry II for resolving land and inheritance disputes. In this case, twelve "free and lawful" men of the neighborhood were assembled to provide testimony under oath to the rightful property owner or heir (American Bar Association Public Education Division, 2005). This process, however, was used also used for criminal offenses. The belief was that the compurgators would not commit perjury for fear of punishment (both physical and spiritual punishment; Anand, 2005). If the accused swore an oath and found the required number of compurgators, he/she was absolved of all crimes (Anand, 2005). The accused was found guilty in cases where compurgators were absent or in cases where oaths were not consistent across compurgators (Ho, 2003). Compurgators were not required to have any personal knowledge of the facts in question; their purpose was strictly to swear to the credibility and purity of the oath (Ho, 2003).

Not all individuals accused of crimes were allowed to participate in the process of compurgation or wager of law. Foreigners and those suspected of previous or current criminality were forbidden to participate and instead went straight to trial by ordeal (Anand, 2005). Individuals also went straight to ordeal if they were not free men (Forsyth, 1875). Individuals were subjected to immediate punishment if they were caught in the act of committing a crime or they confessed to their crimes (Anand, 2005). Compurgation was common throughout the 10th and 11th centuries. However, by the 12th century it was rarely used (Anand, 2005) although cases involving this method date as late as 1440 (Thayer, 1891).

The second process the English used to determine guilt was the ordeal, which was common in the 11th and 12th centuries (Olson, 2000). Ordeals were tests given to the accused who were thought to be under divine influence. Ordeals were often used as a last resort for those who were disabled or too old for fighting and thus could not partake in the third process of trial by battle. The ordeals were also used in cases where compurgators could not be located or could not agree on the facts (Ho, 2003; American Bar Association Public Education Division, 2005).

The two most common types of ordeals were the cold water ordeal and the hot iron ordeal (Ho, 2003). In a cold water ordeal, the accused was immersed in a body of water that had been blessed by the clergy (Anand, 2005). If the priest overseeing the ordeal believed the accused was sinking, the individual was presumed innocent and an attempt to retrieve him/her was made. If the accused floated, however, he/she was presumed guilty. In a hot iron ordeal, the accused was given a piece of iron that had been held in a fire and blessed by the priest. The accused was required to hold the iron while

walking a predetermined number of paces (Anand, 2005). The accused's hand was then bound and inspected by the clergy days later. Healing was a sign of innocence, so in cases where there did not appear to be an infection, the clergy determined it was God's way of conveying the accused was innocent (Ho, 2003).

Eventually there were concerns about the clergy's involvement in determinations of guilt or innocence. As a result, the 4th Lateran Council convened by Pope Innocent III in the 13th century prohibited clergy from participating in ordeals, in part because of the belief that ordeals tempted God (Anand, 2005). After the prohibition, the Council gave instructions stating that ordeals had been abolished and how to proceed. According to Anand (2005), "the instructions provided that those accused of major crimes about which there was strong suspicion of guilt should be committed to prison for safekeeping; that those accused of medium crimes, for which the ordeal would have been appropriate, should be permitted to be exiled from the realm; and that those accused of minor crimes about which there was no strong suspicion should be placed under good-conduct pledges" (p. 412). Judges used their discretion to handle cases outside of these situations.

The third process the English used to determine guilt was the trial by battle. These trials were available only to able-bodied men, while women, the disabled, and the elderly often were put to an ordeal (Anand, 2005). The earliest reference to a trial by battle dates back to 1077 (American Bar Association Public Education Division, 2005). In a trial by battle, court officials would accompany the accused and the accuser into a field drawn for battle. Prior to battle, the accused swore an oath maintaining his innocence, while the accuser swore an oath that the accused was guilty of committing the crime in question (Anand, 2005). Both the accused and the accuser wore suits of armor,

but part of their legs and arms were exposed (Anand, 2005). Batons were used as weapons during the battle. The battle lasted until the accused or the accuser died, until one yielded by crying "craven," or until evening when the stars appeared (Leeson, 2011; Anand, 2005). The accused was declared innocent if he could survive until the stars appeared (Anand, 2005). Trials by battle were viewed as entertainment and not all trials resulted in death (Leeson, 2011).

Trials by battle, like ordeals, were believed to reflect God's judgment and therefore yielded inscrutable verdicts (Thayer, 1891; American Bar Association Public Education Division, 2005). By the 16th century, people began to have reservations about the verdicts being ordained by God. There were also concerns about the fact that the strength of the individuals involved in the battle influenced the verdict (Anand, 2005). The trial by battle remained the primary method for resolving land disputes until 1179 (Leeson, 2011). It was abolished completely in 1819 (Anand, 2005).

Jury Trials in England

When the Normans invaded England in 1066, they brought with them the idea of the Frankish inquest to investigate property crimes. This was a method of using the most trustworthy men of the district to expose crimes was used during Henry II's reign. This method gained approval by those opposing the idea that God ordained the final outcome of the ordeals. The Assize of Clarendon was enacted by Henry II in 1166 and is viewed as an important event in the shift from the use of compurgation, ordeals, and trial by battle to jury trials. Based on the Frankish inquest, the Assize of Clarendon called for an official inquiry from the oath of twelve men, known as a presentment jury, on individuals suspected of robbery, murder, or theft (Helmholz, 1983). After the Assize of Clarendon

was enacted, presentment juries were periodically assembled from each community. Presentment jurors swore an oath and reported any fellow neighbors they suspected had committed a crime. The assumption was that a jury comprised of one's neighbors would already possess information about crimes in the area or could easily find out if they did not.

Henry II expanded the usage of local participation for adjudicating disputes (Nemeth, 1981) and adapted the inquest for use in the criminal jurisdiction of the King's Court in addition to property disputes (Drew, 2004). Under Henry II, justices ordered sheriffs to arrest those who had been accused by the presentment jury (Green, 1976). The accused's guilt was originally determined by the ordeal (Langbein, 1987). Later, the accused would stand trial by a jury. As such, The Assize of Clarendon did not lead to immediate changes as the other methods previously described were still being used. However, this act is considered a forerunner to the jury and gained wider acceptance into the 13th century as trials replaced the previous methods for determining guilt. This shift from the previous methods for determining guilt to the use of individuals in the community represented the forerunner to the standard criminal jury (American Bar Association Public Education Division, 2005).

The first true criminal juries in England occurred in the 13th century (Anand, 2005). At that time, the courts relied on panels of free and lawful men, rather than clergy, for determining guilt or innocence. Early English juries were considered self-informing because jurors came to trial with knowledge of the facts, were responsible for investigating crimes, (Langbein, 1987) and gathering facts (Green, 1976). After jurors investigated crime allegations, they reported their findings at trial (Anand, 2005). This

strategy was beneficial because juries were comprised of men from the immediate area where the crime occurred or from the defendant's township (Olson, 2000). Friends and relatives of victims were permitted to sit on the jury during this period. However, the practice of allowing friends and relatives to sit on the jury began to decrease in the 14th century (Myrsiades, 2008). This was an important change to the structure of the jury. Although it was originally deemed beneficial for jurors to have firsthand knowledge of the case in question, courts began to allow objections to certain persons being seated on the jury. In addition, the self-informing aspect of juries began to disappear in the 15th century when reliance on witness testimony emerged (Anand, 2005). Although greater reliance on witnesses eroded the self-informing aspect of the jury (Anand, 2005), jurors continued to actively participate by questioning witnesses or summoning new ones (Myrsiades, 2008). By the 17th century, jurors were precluded from relying on evidence procured from outside the court. Instead, the investigative role of the jurors ceased and they relied solely on evidence presented in court.

Even when juries were considered self-informing and contained an investigative element, judges exerted tremendous influence over juries. Throughout the 17th century, Early English trials allowed for a writ of attaint, which allowed for the punishment of juries that reached an "untrue" verdict. A twenty four juror panel would examine the original verdict. If overturned, the original jurors could be imprisoned or forced to forfeit their land and property (American Bar Association Public Education Division, 2005).

The Bushell Case (1670) 124 E.R. 1006 was instrumental in establishing the right of English juries to deliver a verdict free from judicial coercion and ended writ of attaints. The defendants in this case were William Penn and William Mead, who were arrested

and prosecuted after congregating and discussing a religion other than the Church of England. Their actions were illegal because the British Parliament had passed the Conventicles Act in 1664, which banned members of nonconforming religious groups from assembling (McClanahan, 2012; American Bar Association Public Education Division, 2005). The jury found the two defendants not guilty. The court disagreed with the jury's verdict and responded that "[Y]ou shall not be dismissed till we have a verdict that the court will accept; and you shall be locked up, without meat, drink, fire, and tobacco. You shall not think thus to abuse the court; we will have a verdict, by the help of God, or you shall starve for it" (McClanahan, 2012, p. 731). Nevertheless, the jury again rendered a not guilty verdict. The court responded by holding the jurors in contempt of court. They were then fined for their not verdict guilty. Jurors who were unable to pay the fine were then imprisoned. Juror Edward Bushell petitioned for a writ of habeas corpus. Judge Vaughan, who presided over the petition, ruled that judges could not punish jurors for rendering a verdict contrary to the court's opinion (McClanahan, 2012). Vaughan noted that "the judge and jury might honestly differ in the result from the evidence, as well as two judges may, which often happens" (McClanahan, 2012, p. 731). This case was important to curbing judicial coercion while also giving juries the power to nullify unjust laws.

By the 18th century, all cases of serious crimes were tried by the jury (Langbein, 1987). English courts did not allow defendants to waive a jury trial. Prior to 1772, defendants were tortured if they did not consent to a jury trial. The courts considered it a guilty plea if the defendant still refused to consent after being tortured (McClanahan, 2012). It was common throughout the 18th century for one criminal jury to sit for

numerous cases. The jury originally decided all verdicts at one time and did not adjourn from the courtroom unless the deliberation was lengthy. It was not until the 1730s that juries began deciding verdicts after each individual case (Nemeth, 1981).

The English jury system provided a model for the early colonies in America and had undergone numerous changes before the jury developed in America. The framers of the U.S. Constitution knew from England's history that the right to a jury trial was essential and a better method compared to England's previous methods of guilt determination. It was deemed vital that one's peers should fulfill the role of fact finders to help resolve legal issues that were brought before the court (Sudman, 1999). The next section focuses on juries in early America.

Jury Trials in the U.S.

As previously discussed, two defining events for the evolution of the trial were the Norman Invasion of Britain in 1066 and the reign of Henry II (1154-1189). Although variations of the trial have existed throughout various parts of the world, America's conception of the jury trial most resembles the one of that practiced during Henry II's reign (Nemeth, 1981). The right to a jury trial is documented in several of America's most important documents: the Declaration of Independence, the United States Constitution, and the Bill of Rights (McClanahan, 2012). By the time our Constitution was written, the jury trial had existed in England for several centuries (Sudman, 1999). The Constitution guarantees the right to a jury trial and maintains that protections should be established to limit government oppression (Mottley, Abrami, and Brown, 2002) by maintaining checks and balances on political authorities (McCoun & Tyler, 1988). The rationale behind these protections stemmed from problems in England regarding

corruption and the inadequacies of compurgation, ordeals, and trial by battle. The Founders envisioned the jury as an institution that would allow citizens to directly participate in the system (McClanahan, 2012). It was also thought to provide an educational benefit whereby citizens would be aware of their rights and responsibilities (McClanahan, 2012). Alexis de Tocqueville referred to the jury as "a gratuitous public school" that "invests each citizen with a kind of magistracy; it makes them all feel the duties which they are bound to discharge towards society; and the part which they take in the Government" (McClanahan, 2012, p. 736).

As in England, the colonies adopted the practice of choosing jurors from the neighborhood in which the crime occurred. However, as McClanahan (2012) asserted, judges in colonial America normally had less control over trials compared to their contemporary counterparts. Jury instructions, for example, were not routinely provided by judges in all colonies and colonial jurors did not have to provide an explanation for their verdict (Gertner, 2010). The Founding Fathers of the United States envisioned the jury as an institution that fulfilled three related roles: "operating as a check against judicial and governmental overreaching, allowing for meaningful citizen participation in the democratic process, and acting as an essential figure in the administration of justice" (McClanahan, 2012, p. 735). As such, the role of the American jury extended beyond its fact finding capacity to include the power to occasionally defy their jury instructions by acquitting a defendant they believed was guilty (Barkow, 2003). The concept of jury nullification allowed the jury to ignore the law in cases where an unjust application of the law was recognized. This decision may stem from the jury's belief that a law was too

broad, too harsh (Barkow, 2003), or simply unjust (Lippke, 2012) or in cases where misconduct was suspected (Lippke, 2012).

"Depriving [the colonists] in many cases, of the benefits of Trial by Jury" and "transporting [colonists] beyond Seas to be tried for pretended offences" was an explicit complaint in the Declaration of Independence (McClanahan, 2012, p. 734). One specific issue revolved around the British Navigation Acts. These Acts were used to secure British control over the American colonies with respect to trade by requiring that goods moving to and from the colonies be carried on British ships (American Bar Association Public Education Division, 2005). Juries during this time often refused to convict individuals charged with violating these laws because of their disagreement with the Act as it was seen as harmful to their economy (American Bar Association Public Education Division, 2005).

With respect to sentencing, the colonial jury played a great role in determining punishment (McClanahan, 2012). Many criminal codes during the colonial period mandated death for a variety of offenses, including murder, treason, piracy, arson, rape, robbery, sodomy, and burglary (McClanahan, 2012). Juries during this time often acquitted defendants because they knew death was the mandatory punishment. Eventually, the codes were modified so that fewer crimes were death penalty-eligible. Murder was also classified into varying degrees. These changes allowed for more judicial discretion with regard to punishment (McClanahan, 2012) and helped to decrease incidents of nullification.

Jury nullification is an important concept in that it allows juries the ability to dismiss the law to ensure their idea of justice is carried out. Examples of jury

nullification that have been used throughout history include southern juries refusing to convict defendants accused of committing crimes against African Americans and Prohibition-era juries refusing to convict liquor law violators. More modern examples of jury nullification include Vietnam War era acquitting draft dodgers and acquittals of those accused in assisting suicide (King, 1999). Although juries are afforded this right, the courts do not always explicitly inform jurors of this power (Lippke, 2012). Moreover, this practice is highly controversial and potential jurors who admit to weighing their consciences over jury instructions can be excused during the voir dire (i.e., pretrial interview for potential jurors; Rubenstein, 2006).

Although jury nullification is controversial and may result in unpopular verdicts, the Double Jeopardy Clause of the United States Constitution prohibits defendants from being prosecuted again for the same offense after the jury has acquitted them (Barkow, 2003). The main purpose of this clause was to protect the innocent from the harms (i.e., shame, expense) associated with trial (Lippke, 2012). Moreover, defendants should not be subjected to harassment after they were found not guilty. It has also been argued that retrying a defendant would essentially take away the final decision making power the jury holds. In other words, their verdicts should not be questioned as they are vested with the final authority in determining the guilt or innocence of a defendant.

Critics of double jeopardy argue that the state should be afforded the opportunity to retry defendants in specific cases (Lippke, 2012). They maintain that not all individuals who are acquitted are actually innocent. Instead, acquittals may be the result of a particularly good defense, a successful crime cover-up, or missing or destroyed evidence (Lippke, 2012). Critics also assert that juries may make errors and that the

discovery of new evidence may shed new light on the guilt of the defendant. They maintain that this is especially true for major crimes such as murder and rape. Proponents of double jeopardy emphasize that wrongful acquittals thwart justice for victims and their families, put the public's safety at risk, and affect the public's confidence in the criminal justice system (Lippke, 2012). Since a brief overview of the history of the jury trial has been established, the next section will shift to the literature on the various aspects of the jury trial that have scrutinized and reformed over time.

The Juror Selection Process

The Federal Judicial Act of 1789 granted the determination of juror qualifications in the Federal courts to the States. Most states enacted juror qualifications that mirrored those of voting qualifications. In addition, many states added requirements such as intelligence and good character (Alschuler & Deiss, 1994). In the 19th century, states started to move away from the property, gender, and race restrictions (Gertner, 2010). In the 19th century, it was also common for states to have statutes dictating that if jurors failed to appear, court clerks or sheriffs could impanel unqualified bystanders.

Juries are expected to be representative of the communities from which they are drawn. Rose (2005) noted that although the concept of a trial by jury is a central tenant of our criminal justice system, the concept of what a trial by one's "peers" is could be interpreted in a number of ways. Moreover, the term peer is not reflected in the Constitution (Weddell, 2013). Instead, we find "impartial jury," which has been interpreted by the Supreme Court as a fair cross section of the community. Specifically, the Supreme Court defines an impartial juror as one who is, a priori, indifferent to the outcome of the case, and conscientiously applies the law and finds the facts solely on the

evidence before the court (Villiers, 2010). Nonetheless, it is essential that juries be comprised of individuals from a diverse array of backgrounds and experiences, as this aspect is deemed the greatest strength of the American jury system (Rose, 2008).

Ensuring a cross section of the community at trial allows for the views of the community to be brought in to the criminal justice system (Barkow, 2003). Race, gender, and class diversity is thought to balance out any individual biases or prejudices an individual juror may have. Achieving impartiality, then, is thought to be achieved through the interaction of the diverse beliefs and values of the jurors (Villiers, 2010). Furthermore, the assumption is that this composition boosts the public's confidence about fairness (Kassin, 1988) and respect for the government (Weddell, 2013).

The jury selection process is intended to expose any prejudice or bias that may inhibit potential jurors from being impartial fact finders (Smith, 2005). Potential jurors must be able to evaluate evidence and reach decisions with an unbiased and open-mind. Drawing the venire and conducting the voir dire are the two components of selecting impartial jurors for trial. The venire is the master list from which potential jurors will be selected to participate in the voir dire, or the pretrial interview for juror selection.

Venire

The first step in the juror selection process consists of compiling a master jury list (i.e., venire) from which potential jurors will be chosen. Once the venire or jury pool is determined, the clerk of courts or a jury commissioner determines the exact number of jurors needed for the particular case and then randomly selects individuals from the master jury list. These individuals are then summoned to the courthouse for the voir dire.

Historically, there has been no uniform way of compiling a venire, which usually consists of thirty to sixty people. The venire was originally run via a "key-man system" whereby prominent individuals recommended certain people in the community to take part. Another common method was to call on people who happened to be near the courthouse at the time of question. Early on, jurors were individuals in the community that had some firsthand knowledge of the events in question. Kurland (1993) noted that in these cases the jurors were as much fact gatherers as they were fact finders. This was reflected through the self-informing aspect of juries that was previously discussed.

In 1961, the U.S. Department of Justice reported that federal district courts used more than 92 different methods, none of which produced an adequately represented jury from the population (Kassin, 1988). Seven years later, Congress passed the Jury Selection and Service Act. This stipulated that the jury pool must consist of at least all eligible voters and that jurors be selected on a random basis. Specifically, this act stated that jurors should be "selected at random from a fair cross section of the community and that no citizen should be excluded on account of race, color, religion, sex, national origin, or economic status" (Kassin, 1988, p. 23). The justification for this act was the belief that a diversified panel of jurors is the best safeguard against prejudicial case outcomes (Cox, 2006).

U. S. courts have historically relied on voter registration rolls to compile the venire. The second most common method was to compile driver registration records. Unfortunately, these lists rarely met the goals of including every eligible citizen and representing all segments of the community (Mottley, Abrami & Brown, 2002).

Although not in widespread use, other sources such as pubic benefit records, property tax records, and annual local census data have been used.

Munsterman (1996) proposed that courts consider the following factors when deciding on what sources to use:

1. *Availability*. Available lists (e.g., Social Security lists, federal censuses, and federal income tax lists)
2. *Efficiency*. *Combining* lists can be costly, especially if the lists are updated at different times, in which case the combined lists should be recompiled each time one of the lists is revised. It is also very inefficient to generate a large, nonduplicative master list when only a very small number of names are required (e.g., 10,000 selected out of 1,000,000).
3. *Bias*. Some lists are *heavily* biased. For example, property tax and utility lists are biased toward property holders.
4. *Duplications*. Because *of* the difficulties associated with eliminating duplicate names, individuals on multiple lists have a greater probability of being selected than those named on only one list. Courts confronted with this problem accept some level of duplication rather than risk excluding a qualified citizen. The best method for removing duplicates is to use a unique identifier in each list, such as a Social Security number.

The jury yield refers to the number of individuals summoned who are deemed qualified and available for jury service. The jury yield is expressed as a percentage of the total number of summonses mailed (Mize, Hannaford-Agor, & Waters, 2007). The National Center for State Courts reports that out of the estimated 32 million people

summoned, approximately three million are excused for financial or medical reasons, while three million fail to appear to court (Denver, 2011). State courts mail an estimated 31.8 million jury summonses annually, which equates to approximately 15% of the adult population receiving a summons (Mize, Hannaford-Agor, & Waters, 2007). However, less than one percent of the adult population, approximately 1.5 million individuals, are actually impaneled for jury service annually (Mize, Hannaford-Agor, & Waters, 2007).

Many citizens ignore summonses or fail to appear in court. Denver (2011) posits that approximately ten percent of those summoned for jury duty do not respond, although some studies have cited higher rates. Some potential jurors may be disqualified due to citizenship status, state residency, a past felony conviction, or the inability to understand and speak English (Mize, Hannaford-Agor, & Waters, 2007). In addition, many people may not want to serve on juries because they find it time-consuming and costly. Complaints about the inconvenience of jury service are common, but research has found that jury participation seems to increase public support for the courts and the legal system by allowing community involvement. This involvement ensures community values enter into the criminal justice process as individuals decide on punishment while simultaneously giving participants a deeper understanding of the criminal justice system (Appleman, 2010)

Although states used to exempt whole classes of citizens from jury service based on their professional or civic obligation to their community, this practice has been reduced or eliminated in more recent times (Mize, Hannaford-Agor, & Waters, 2007). The National Center for State Courts (NCSC) identified ten categories of exemptions. The most common exemption, found in 47 states, was the exemption of "previous jury

service." This exemption was typically used to exempt individuals who had served on a jury within the last 12-24 months. Another leading category was age, which was typically used to exempt elderly individuals. Other categories were based on various occupational roles such as political officeholder, law enforcement, judicial officers, healthcare professionals, sole caregivers, licensed attorneys, and active military personnel (Mize, Hannaford-Agor, & Waters, 2007). Florida listed the most exemptions (nine out of ten), while Louisiana listed none (Mize, Hannaford-Agor, & Waters, 2007).

Follow-up notices may be sent to individuals who do not respond to their summonses. In some cases, sheriffs may be sent to locate the individuals to bring them to court (Denver, 2011). Courts have the discretion to allow jurors to postpone or defer their jury duty on the basis of personal or financial reasons (Denver, 2011). Judges will generally impanel one or more alternate jurors in case jurors unexpectedly are unable to fulfill their role throughout the trial (Denver, 2011).

Voir Dire

After the venire is compiled, the second step is the voir dire, which is the process by which potential jurors are questioned. Left to the discretion of the judge, the potential jurors may by questioned by the judge only, attorneys only, or a combination of the judge and attorneys. The voir dire, which is French for "to speak the truth," is the pretrial interview whereby the judge or attorneys seek to eliminate jurors suspected of bias. Its main purpose is to elicit information from potential jurors that would be viewed as grounds for removal. These interviews are an important part of securing a representative jury.

The methods used to question jurors during the voir dire may vary. For example, questions may be posed to the full jury panel and answered by show of hands or posed on an individual basis. In other cases, jurors may be provided with written questionnaires. The questions posed usually focus on the potential juror's background, life experiences, and attitudes toward certain facts of the case that may arise during trial (Neubauer, 2005). Some questions may include information such as whether the potential juror has ever been the victim of a similar crime or has a relationship with the defendant or victim. Attitudes toward the death penalty are also relevant if the outcome includes a possible death sentence (Rose, 2008). When judge and attorney-directed questioning are compared, research has found that jurors are less intimated by attorneys and therefore more likely to provide truthful answers. Judges, however, have maintained that attorneys are more likely to waste time and invade juror privacy (Mize, Hannaford-Agor, & Waters, 2007).

Critics argue that attorneys more often than not strive for a sympathetic jury rather than an impartial jury. The questioning of potential jurors may work in such a way to actually create bias rather than detect and remove it (Kassin, 1988). For example, individuals who appear perceptive, well educated, or independent minded may be more likely to be struck (Lilly, 2011). Furthermore, attorneys may look for attitudes or values that may work in their clients' favor. Many critics argue that the voir dire process provides only a limited amount of information to attorneys and therefore may lead attorneys to rely on negative stereotypes or gut feelings (Smith, 2005).

The purpose of juror selection is to develop a case strategy and a profile of individual jurors that may prove favorable or unfavorable to the prosecution or to the

defense team (Seltzer, 2007). The process is important because many attorneys believe it determines whether or not trials are won. To assist in selecting jurors favorable to their case, attorneys often hire jury consultants for the voir dire process. Jury consultants are responsible for determining whether individuals are predisposed to acquit or to convict (Sudman, 1999). This process of scientific jury selection does not attempt to predict a verdict, but rather to provide a profile of potential jurors. Although the use of jury consultants has grown tremendously over the years, verdicts cannot always be adequately predicted just by knowing the makeup of the jury (Seltzer, 2007). As a result, most research finds that the effects of scientific jury selection are modest at best (Cox, 2006).

All fifty states and the District of Columbia provide compensation for jurors (Mize, Hannaford-Agor, & Waters, 2007) once they are selected. The rationale behind juror compensation is that it helps with out-of-pockets expenses and serves to recognize the juror's service. Although federal and state jurors are compensated for their time, the compensation is low. The pay generally ranges from five to forty dollars per day, with a possible additional allowance for millage (Lilly, 2011). Mileage rates vary from .02 cents to .49 cents per mile and are permitted in over half of the states (Mize, Hannaford-Agor, & Waters, 2007). Eight states and the District of Columbia require that employers compensate their employees for a limited period of time while serving. For example, A Lengthy Trial Fund was implemented in Arizona that allows jurors to be compensated up to $300 a day for lost income (Mize, Hannaford-Agor, & Waters, 2007).

The juror selection process has undergone a variety of changes and has been thoroughly analyzed to ensure an impartial jury. However, there are two ways

(challenges for cause and peremptory challenges) to excuse specific individuals from jury service.

Challenges for Cause and Peremptory Challenges

Individuals may be excused from jury service in one of two ways: challenges for cause and peremptory challenges. It has been argued that these two types of challenges enable the prosecution, the defense, and the jurors to have faith in the system (Cox, 2006). Challenges for cause are used when jurors have demonstrated some type of conflict with the case. Common challenges for cause include financial hardships, the juror having a financial or special interest in the outcome, or a stated unwillingness to be impartial (Rose, 2005). In exercising a challenge for cause, the attorney must demonstrate a specific reason the potential juror may be biased or impartial during trial. In other words, the attorney must give a specific reason for why the potential juror would be unable to evaluate the facts of the case fairly and impartially. The judge is responsible for determining whether the reason for the challenge warrants dismissal from the jury selection process. Challenges for cause are a constitutionally protected requirement for jury selection; they are an essential element of an unbiased jury and are unlimited in number (Cox, 2006; Childs, 1999).

Peremptory challenges, on the other hand, allow attorneys to excuse a limited number of jurors without having to provide a reason for their dismissal. The original justification for peremptory challenges was that individuals on trial should not be subjected to the judgment of an individual who was biased or prejudiced against them, even if a specific reason could not be given as to why they believed the person was biased (Cox, 2006). In the U. S., peremptory challenges were first recognized by

Congress in 1790. By 1870, most states allowed peremptory challenges because attorneys considered them necessary in the jury selection process.

The number of peremptory challenges allotted to the prosecution and to the defense varies from state to state. In non-capital felony trials, the number of peremptory challenges ranges from a low of three per side in Hawaii and New Hampshire to a high of twenty per side in New Jersey (Mize, Hannaford-Agor, & Waters, 2007). In California, attorneys are allotted twenty challenges for capital felony cases and ten challenges for all other cases. Massachusetts, on the other hand, allows twelve challenges for felony cases and four challenges for all others (Smith, 2005).

Peremptory challenges are usually based on intuition or on first impressions believed to be relevant to the legal proceedings (e.g., occupation, religious affiliation). Attorneys often rely on instincts, past experiences, and even stereotypes to assist in their use of peremptory challenges (Kassin, 1988). Peremptory challenges are often used to eliminate potential jurors based on their demographic characteristics or other socio-psychological factors attorneys deem appropriate. These factors may include marital status, occupation, physical attractiveness, or the fact that potential jurors may seem distracted, angry, frustrated, hostile, or unhappy (Enriquez, 2007).

The use of peremptory challenges is not without criticism, however. Proponents argue that peremptory challenges are essential to the impartiality of the trial process because they allow for the removal of biased or hostile jurors. Furthermore, peremptory challenges may be useful in eliminating potential jurors who are worrisome to the prosecution or to the defense and who were not targeted or eligible for challenges for cause (Childs, 1999). It is important, however, that peremptory challenges not be used in

a manner that violates the Equal Protection Clause of the Fourteenth Amendment (Sudman, 1999). Although parties may generally use their peremptory challenges as they see fit, the U.S. Constitution has prohibited their use to eliminate all jurors of a particular race or gender from a particular jury. Peremptory challenges are not considered a constitutional right, but they are present in all state statutes (Childs, 1999). In other words, all states have recognized their importance in the jury selection process.

In contrast, critics argue that peremptory challenges may be racially motivated and thus compromise the representativeness of the jury in cases where attorneys strictly use them to exclude certain segments of the population. As such, it is argued that criminal defendants are denied equal protection from juries when individuals of their own race are excluded from the process. Another problem is the discrimination against individual jurors that are excluded because of their race. Therefore, the use of peremptory challenges can potentially negatively affect two distinct groups in the criminal justice system (Stoltz, 2007). As Justice Marshall noted, "The inherent potential of peremptory challenges to distort the jury process by permitting the exclusion of jurors on racial grounds should ideally lead the court to ban them entirely from the system" (Enriquez, 2007).

One of the first landmark cases surrounding the jury selection process and race occurred with *Strauder v. West Virginia*, 100 U.S. 202 (1965). The case challenged a West Virginia statute that allowed only "White male persons at least twenty-one years of age to serve as jurors". The United States Supreme Court held that the statue infringed upon African Americans' rights by precluding African Americans from the jury venire.

The Supreme Court overturned the murder conviction of an African American man who had been tried by an all-White jury.

Swain v. Alabama, 380 U.S. 2002 (1965) was a landmark case concerning the use of peremptory challenges in the jury selection process. Swain, an African American who was convicted of rape, claimed that his equal protection rights had been violated because the prosecutor struck all of the African Americans off his jury. The Equal Protection Clause of the 14th Amendment provides that "no state shall deny to any person within its jurisdiction the equal protection of the laws" (Devermen, 1995). This clause essentially guaranteed equal protection by the government for all individuals. The U. S. Supreme Court ruled that Swain's Equal Protection Rights had not been violated. Furthermore, the Court ruled that defendants who claim their protection rights have been violated must prove the attorney's discriminatory pattern over time (Enriquez, 2007).

Years later, in *Batson v. Kentucky*, 476 U.S. 79 (1986), Batson, an African American convicted of burglary by an all-White jury also claimed that his 14th Amendment rights had been violated. This time, however, the U. S. Supreme Court overruled its earlier decision in Swain and concluded that the use of discriminatory peremptory challenges is detrimental to the defendant and the community as a whole. The rationale behind the U. S. Supreme Court's decision in Batson was that it protected the rights of the defendant, the rights of the potential juror, and the overall integrity of the criminal justice system (Enriquez, 2007). In 1991, the Baston ruling was extended to include civil cases as well as criminal cases (Denton, 1997). In Powers v. Ohio, 449 U.S. 400 (1991), the court ruled that a defendant does not have to be of the same race as the

struck jurors to object to the use of peremptory challenges. The Supreme Court contended that this was a further extension of the rights afforded to the defendant.

In addition to race, the courts have also dealt with the issue of gender. Although the first woman to serve jury duty occurred in the Wyoming Territory in 1870, the norm was that women were most often excluded from jury service. The U. S. Supreme Court has intervened in the jury selection process to ensure the fair representation of the jury. In *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975), the U.S. Supreme Court ruled that excluding women from jury duty was unconstitutional. It also concluded that the systematic exclusion of women from jury panels violated a defendant's (male or female) fundamental right to a jury drawn from a representative cross-section of the community. Essentially, the court found that the "systematic and intentional exclusion of women, like the exclusion of a racial group or an economic or social class, deprives the jury system of the broad base it was designed by Congress to have in our democratic society" (Deverman, 1995, p.1036); this exclusion harmful to the individual on trial, as well as to the community as a whole. In *J.E.B. v. Alabama*, 511 U.S. 127 (1994) ruled that it was unconstitutional to use peremptory challenges to exclude perspective jurors on the basis of gender (Alschuler & Deiss, 1994).

Even though the courts have addressed these issues, there is a three-step process for determining if peremptory challenges are used in a discriminatory manner. First, the defendant must establish a prima facie case. A prima facie case is a case established by evidence that is sufficient enough to establish the fact in question unless otherwise rebutted. Once established, the attorney must provide a race neutral explanation for why they struck a particular juror. The prosecutor's explanation must meet each element of a

three-part test. The explanation must be a clear and reasonably specific explanation of a legitimate cause for concern. The explanation must also be related to the case and be race-neutral (Denton, 1997).

The last step includes the trial court's ruling on whether or not the peremptory challenge was deemed discriminatory. However, many contend that it is difficult to recognize discrimination and it can easily be masked or covered up by attorneys (Denton, 1997) and as one critic claimed, any attorney with a little imagination can come up with a race-neutral explanation for striking a juror (Uelmen, 1997). Essentially, the Supreme Court did not adequately clarify what constitutes a sufficient race-neutral explanation or address the issue of whether evidence must be provided to support their race-neutral explanations.

In conclusion, the jury selection process strives to select a representative jury from the community that it is drawn from. Representativeness is thought to be the best way to protect the defendant from exposure to any prejudices or biases jurors may have. The courts have addressed various issues that have arisen during the jury selection process that may inhibit representativeness of the jury. Jury size, jury unanimity, and juror understanding are three issues that may arise after juror selection. These issues have also been examined and addressed so they do not interfere with defendants receiving a fair trial.

Jury Size

Although juries were traditionally comprised of twelve people, in 1970 the United States Supreme Court upheld the use of a six-person jury for criminal trials in state courts. Most states require twelve members for felony trials, although Connecticut and

Florida allow six member trials while Arizona allows eight (Mottley, Abrami, & Brown, 2002). Over half the states use six-member juries for misdemeanor trials.

Reducing the jury size may provide benefits to the court with respect to money, time, and resources. For example, it may reduce time spent on conducting the voir dire, trial, and deliberations. A smaller jury size may also enhance the jury's ability to reach group consensus and augment the likelihood of positive group interactions (Waters, 2004). Nonetheless, critics emphasize that these benefits may be at the expense of justice being carried out as it decreases the jury's ability to render just verdicts. Research has found that a smaller jury size alters the dynamics present in the deliberation room. For example, research has found that six person juries perform worse at recalling evidence and considering the minority viewpoint. Smaller juries are also likely to represent the larger community's viewpoints. This disruption in community representation may lead to a decrease in public trust and confidence (Waters, 2004). Representation, then, ensures that the community conscience is reflected within the courtroom.

Another issue related to jury size deals with jury unanimity. Jury unanimity is required in all federal criminal trials under the Sixth Amendment (Mottley, Abrami, & Brown, 2002). Although the United States Supreme Court held that unanimous jury verdicts in state courts are not required, unanimous verdicts *are* required in states that allow six-member juries in their criminal cases (Mottley et al, 2002). With respect to deliberations, sequestering juries and requiring a unanimous verdict have both been associated with a decrease in deliberation time. With respect to deliberations, there is no minimum or maximum allotted time that has been specified. Judges may declare a mistrial if jurors decide they are unable to reach a unanimous decision. In these cases,

the state has the option to retry the defendant at a later date (Mottley, 2002). Jury size and jury unanimity were analyzed to ensure justice was not compromised by ensuring the community values and beliefs were reflected in deliberations and the resulting verdicts.

Juror Understanding

It has been argued that jurors are incapable of comprehending the factual and legal complexity that encompasses some trials (MaCoun and Tyler, 1988). The tasks assigned to juries are becoming increasingly complex (Lilly, 2011) as technological advances have been made with regard to evidence (Sudman, 1999). For example, forensic evidence is a commonly used tool in the apprehension and conviction of criminals. Some commonly used evidence includes fingerprint analysis, hair and fiber analyses, deoxyribonucleic acid (DNA) analysis, and matching shells, bullets, and calibers to specific weapons. These types of analysis have progressed tremendously with technological advances in lasers, complex computer software programs, and genetic engineering (Stolzenberg & Alessio, 1999).

As such, jurors may have trouble understanding the complex language and terminology associated with specific types of evidence such as DNA, ballistics, or medical evidence. Therefore, the possibility of misunderstanding scientific evidence is seen as a significant problem for juries. Critics have long questioned whether a jury of untrained and inexperienced people can make competent decisions in trials that have complex evidence such as DNA analysis and fingerprint analysis (Myers, Reinstein, & Griller, 1999).

The ability of juries to distinguish between experts with contradictory opinions has also been called into question (Myers et al, 1999). One issue surrounding the debate

regarding expert testimony stems from the fact that the experts may have negative effects on the jury. The jury may become confused or skeptical of complex evidence or conflicting evidence by different experts (Cutler, Dexter, & Penrod, 1989; Myers et al, 1999). Many juries believe that science is quick and always accurate, which is not always the case (Roane, 2005).

In addition, there are concerns about whether juries can understand and remember the court's instructions with regard to forensic evidence and/or the law (Vidmar, 1995). Jury instructions were first articulated by the U. S. Supreme Court in 1895 as a way to inform the jury of laws relevant to their duty (Kassin, 1988). Jury instructions may be given prior to trial, during trial, or at the close of the presentation of evidence. The timing, as well as the wording of instructions, is often left to the discretion of the individual judge (Mottley, Abrami, & Brown, 2002). In theory, "instructions should be simple, impartial, clear, and concise representations of the governing law of the jurisdiction concerning the legal issues raised by sufficient evidence in the cases of both the prosecution and defense" (Mottley et al, 2002, p. 4). Informing the jury of its responsibilities, the law, and court procedures helps to "constrain its decision making power, ensure procedural fairness and promote the uniform application of the laws across trials" (Kassin, 1988, p. 141).

Instructing the jury before closing arguments along with providing written copies of the instructions have been found to improve juror comprehension of the law (Mize, Hannaford-Agor, & Waters, 2007). Since jury instructions can be quite lengthy, providing written copies allows jurors to not have to rely on their memory alone. Jurors can consult the written copies for clarification or to reread portions that they may have

forgotten. Mize, Hannaford-Agor, & Waters (2007) reported that at least one copy of written instructions was provided for the jury in more than two thirds of state jury trials. For federal jury trials, they were provided in almost three fourths of trials. They also found that state judges were more likely to provide instructions prior to closing arguments compared to federal judges. Federal judges, however, were more likely to provide written instructions to jurors (Mize, Hannaford-Agor, & Waters, 2007). Juries that were instructed prior to closing arguments deliberated for shorter periods, giving credence to the notion that the act of providing instructions may enhance juror understanding.

Yet another jury related issue deals with the ability of jurors to take notes during trial. Although note taking may improve comprehension, not all jurisdictions permit it. This opposition is based on the idea that notes taking may be a distraction for jurors (Longhofer, 1999). For example, juror attention may be focused on the note taking rather than listening to the information being presented. Nonetheless, studies performed in Arizona and Wisconsin found that note taking did not distract jurors. Furthermore, these studies found that the notes taken by jurors contained accurate information and thus did not negatively influence the verdict (Longhofer, 1999).

Although it is left to the judge's discretion, Mize, Hannaford-Agor, and Waters (2007) found that more than two-thirds of trials in state and federal courts permit juror note taking. Some of these courts may even provide the materials for the note taking. The basis for the decision to allow jurors to take notes may be based on the complexity of the case. Other important factors affecting the decision to allow note taking may include whether or not there was a statute, court rule, or case law that had previously addressed

the issue. Arizona, Colorado, Indiana, and Wyoming mandate that judges allow juries to take notes, while South Carolina and Pennsylvania prohibit it (Mize, Hannaford-Agor, & Waters, 2007). Research has found that jurors who were permitted to take notes, given notebooks by the court, and those that were given at least one copy of written jury instructions all tended to deliberate for longer periods. This finding may give credence to the notion that these tools allow jurors to have a more thorough deliberation (Mize, Hannaford-Agor, & Waters, 2007).

In order to help jurors deal with complex scientific evidence some courts have promoted an active learning environment within the courtroom. This new classroom-like approach began in 1995 in Arizona. A classroom environment allows jurors to discuss evidence and take effective and useful notes during the trial. The goal of the new approach enabled jurors to improve their recall and comprehend complex data and concepts. The classroom environment also allowed the jury to keep track of the parties, witnesses, testimony, and evidence (Myers et al, 1999). By improving the decision-making environment in the courtroom, the court can improve jury comprehension, jury performance, and overall satisfaction with the trial experience (Myers et al, 1999). Further suggestions to improve jury comprehension include giving jury members a comprehensive notebook including jury instructions, layout of the courtroom with locations of attorneys and parties, a glossary of scientific terms, diagrams, and photographs of evidence (Myers et al, 1999).

Public Opinion about Juries

Juries have faced criticism from their very conception. Kassin (1988) contends that juries are often viewed as bleeding hearts or prejudicial. Researchers argue that

jurors may be swayed by prejudice, anger, or pity rather than fact-based evidence alone. Elrod (2009) notes that some have referred to the jury as "a dozen dimwits gathered at random" (p. 4). Although prone to errors, juries provide an easy target for those not agreeing with verdicts. Research has found that a lack of public support leads to a willingness to destroy the law and engage in anti-system behaviors (Tyler, 1984). As such, it is important to address any issues (such as the aforementioned reforms) that may increase public satisfaction. MacCoun and Tyler (1988) point out that jury trials have been abolished in Continental Europe and severely restricted in Great Britain. Critics to jury trials similarly argue for restrictions and/or abolishment in the United States.

Proponents of the jury trial, however, argue that the abolition of the jury trial would undermine the public's confidence in the criminal justice system (Roberts & Hough, 2011). In examining the importance of the right to a trial by jury, respondents to the British Social Attitudes Survey of 2005 were asked to rate the importance of six rights in a democratic society. Researchers found that the right to a trial by jury was rated as more important the right to protest against the government, the right not to be detained for longer than a week before being charged, the right to privacy, the right not to be exposed to offensive views in public, and the right to free speech in public (Roberts & Hough, 2011). MacCoun and Tyler (1988) found that there was strong public support for the jury system even with the awareness that erroneous verdicts are sometimes reached by juries.

Cole (1992) points out that although most Americans never visit the criminal courts, many have firsthand experience as defendants, witnesses, and jurors or learn about court processes and trial through the media. These individuals are greatly

influenced by their perceptions of the quality of justice within the system and these perceptions contribute to citizen education, legitimacy of the criminal justice system, and even willingness to abide by the law. The main way citizens are incorporated in to the legal process in the United States is via jury service (Appleman, 2010). In 1999, 1,826 Americans were asked to express their opinions concerning the courts in their community in order to gather evidence of how the public perceived state and local court performance, including issues of justice, timeliness, fairness, and equality (Bennack, 1999). Slightly over half of respondents indicated some personal involvement in the court system. A little less than half of those indicated the involvement was through jury service. Approximately 40% of respondents indicated they had multiple involvements with courts.

Past research has found that jury participation tends to increase the public's confidence in judges and the overall justice system (Gastil, Lingle, & Deess, 2010) while promoting democracy and enhancing the legitimacy of the legal system (Appleman, 2010). Furthermore, research has found that jury participation promotes democracy and citizenship more than any voluntary association. Those who participate have also been found more likely to vote (Appelman, 2010).

In 2004, the American Bar Association asked respondents if they agreed with the statement "If I were a participant in a trial I would want a jury to decide my case, rather than a judge." Three-quarters of the sample agreed. Similar findings emerged in Australia (Roberts & Hough, 2011). The American Bar Association also reported that 84% of respondents believed that serving on a jury is an important civic duty. In

addition, 75% of respondents indicated they do not believe it was a burden and would prefer a jury trial to a bench trial if they were a defendant (Denver, 2011).

Respondents to the 2002 Bar Council survey in England found that only one quarter of the sample expressed support for reducing trials in order to strictly save money. Roberts and Hough (2011) note that there has not been enough research to establish whether the "public's enthusiasm for a trial by jury reflects this abstract attraction rather than concrete evidence relating to the effectiveness of the jury" (p. 259).

Regardless of positive support for the institution of the jury, Elrod (2009) reports that despite the steady increase of cases filed in the criminal justice system between 1970 and 1999, statistics show a decline in the number of jury trials. The percentage of trials in criminal cases between 1962 and 1991 remained steady at approximately 13 to 15 percent. However, the percentage of trials in criminal cases has steadily decreased since 1991 (with the exception of a .06 increase in 2001) (Galanter, 2004).

In examining nineteen states, the total for criminal dispositions increased seven percent between 1993 and 2002. Jury trials decreased during this time period by 20%, while bench trials fell by 14% (Strickland, 2005). Long-term trends show that the number and rate of trials in state courts have declined for four case type categories (criminal, civil, felony, and general civil) for both jury and bench trials. Even so, Frampton (2012) points out that the literature has nonetheless largely ignored state-to-state differences with respect to trial rates. This is unfortunate since state courts may have the greatest effect on the public's perception of the justice system given the number of cases they handle. For example, in 2004, there were a reported total of 100 million

incoming cases (traffic, criminal, civil, domestic, and juvenile) in state courts (Moog, 2009).

The decline in the jury trial has been accompanied by a shift in non-trial dispositions (Strickland, 2005). Criminal non-trial dispositions can fall into the categories of guilty pleas, dismissals, and nolle prosequi. Although charges can be dismissed by a judge, the entry made by a prosecutor on the record of a case and announced in court that indicates the charges specified will not be prosecuted is termed a nolle prosequi. Guilty pleas account for the most common type of non-trial disposition (60%) followed by dismissal (21%). The remaining dispositions are classified as "other" and may include the following: nolle prosequi, deferred judgments, transfers, cases placed on inactive status, and post judgment activity (Strickland, 2005). Interestingly, guilty pleas accounted for 63% of total dispositions in 1993, but decreased to 61% in 2002. Strickland (2005) emphasizes that although criminal trials compromise a small part of the overall disposition activity, they nonetheless consume a significant amount of the court's resources.

Frampton (2012) argues that in jurisdictions where trials are seemingly rare, it is purportedly from "conscious efforts by state legislators and judiciaries to limit the defendant's right to be tried by a jury of their peers" (p. 186) by instead relying on plea bargaining. Therefore, we will now turn to plea bargaining, which is responsible for disposing of the majority of criminal indictments in the United States.

Plea Bargaining

In 2003, the American Bar Association confirmed the existence of the "vanishing trial," a term used to describe the steadily declining role of trials in the American legal

system. This confirmation was for both civil and criminal trials over the past few decades (Frampton, 2012). The trend of vanishing trials has largely been attributed to the increase in plea-bargaining (Frampton, 2012). The guilty plea is responsible for disposing of approximately 95% of all criminal indictments (Appleman, 2010). Barkow (2003) contends that the number of felony convictions resulting from plea bargaining has reached as high as 97% in some jurisdictions.

Even in 1791, a defendant could plead guilty. However, the courts discouraged it until the 19th century (Alschuler & Deiss, 1994). A strict application of the U.S. Constitution led some state supreme courts in the mid-19th century to rule that guilty pleas (even with the court's consent) were unconstitutional since only juries could determine guilt or innocence. Although this did not last, it would have prevented any plea bargaining in the future (Kurland, 1993) because of the belief that only juries could determine guilt. Today, jury waivers may be requested by the defendant, although some jurisdictions require attorney or court approval (DeCicco, 1983).

Even though the constitutionality of plea bargaining has been upheld by the United States Supreme Court, trial penalties and the potentiality of violating defendants' constitutional rights to a jury trial nonetheless remain a concern to researchers (Ulmer, Eisenstein, & Johnson, 2009). A variety of factors may influence the prosecutor's final decision of whether to plea bargain with a defendant. The prosecutor may debate societal costs, public opinion, the costs of going to trial, the allotment of time and resources, and the risk of acquittal (Barkow, 2003). Appleman (2010) points out that the process of plea bargaining includes a variety of elements, including negotiation of guilt, acceptance, sentence length, reduction of charges for offenders and third parties, cooperation and

testimony against others, or even agreements for leaving specific jurisdictions. In other words, plea deals are not just simple negotiations of guilt and sentence length and type. Instead, plea bargaining is often complex and involves multiple stages of bargaining. These stages may include negotiating the sentence type and length and any provisions that must take place (e.g., testimony against others) on behalf of the defendant. After an agreement is reached, it must be brought before the court to be finalized and approved. The court then advises the defendant of his rights before the defendant pleads guilty. The court has the power to accept or reject the plea agreement.

Many researchers argue that offenders often plead guilty because plea-bargaining affords them less severe sanctions as opposed to those who opt for a jury trial (Breen, 2011; Johnson, 2006). This is referred to as a trial penalty or as a guilty plea discount (Breen, 2011). Many empirical studies have found that defendants convicted through trial are more likely to be incarcerated and receive longer sentences compared to individuals who enter a guilty plea (King et al, 2005; Breen, 2011, Johnson, 2006). This is true even taking into consideration relevant factors related to the offense, such as criminal history or offender characteristics (Bradley-Engen & Shields, 2012). The trial penalty effect appears in cases involving a variety of offenders and crimes, including drug offenders, white collar offenders, violent offenders, and terrorist defendants (Bradley-Engen & Shields, 2012).

Critics have also questioned the voluntariness of the plea bargaining process. Prosecutors may threaten offenders who exercise their right to a trial with seemingly harsh punishments for leverage in accepting a plea. Moreover, prosecutors may charge offenders with offenses that do not fit the crime or that they have no intention on even

taking to trial as a way to persuade offenders to plea (Appleman, 2010). Appleman (2010) argues that guilty pleas have become largely unregulated with the primary intention of efficiency.

Although the plea bargaining process may fulfill an organizational or administrative need, it arguably goes against notions of fairness in that decisions are influenced by factors unrelated to offender and his or her case. For example, Ulmer and Bradley (2006) found that trial penalties among serious offenders in Pennsylvania tended to be larger in counties with larger caseloads. It would then seem that the plea bargaining process may ultimately work in the best interests of the court personnel rather than the offender. Although plea bargaining is largely to blame for the decreasing trials, other practices also affect this trend. For example, legislative changes in what offenses are considered jury eligible and economic burdens associated with trials (Frampton, 2012). Regardless of the number of jury trials that take place, however, the institution of the jury continues to earn widespread acceptance by the public and remains a cherished right to the majority of Americans (King, 1999).

Summary

In sum, the American jury trial was modeled after that of England's. The English originally used three processes (compurgation, ordeals, and trial by combat) to determine guilt before turning to the jury trial. The 13th century is credited for having the first true criminal juries in England. Since then, in England and America, numerous changes have occurred to the institution of the jury with the notion that each change improves the institution and thus its efficiency and fairness. Changes to the institution of the jury have been implemented from the juror selection process (e.g., venire, *voir dire*) to the final

deliberations (e.g., verdict unanimity). The hope is that improving some of the issues associated with the jury will encourage jurors to deliberate more carefully, lead to a speedier trial time, and encourage greater juror participation (King, 1999). The vanishing trial has largely been attributed to plea bargaining. Critics of plea bargaining argue that this practice often focuses on fulfilling an administrative need rather than ensuring justice prevails. Nonetheless, the jury continues to garner widespread support. Therefore, understanding whether district attorneys also support the institution may provide insight on the phenomenon of the vanishing trial and the increased reliance on plea bargaining.

CHAPTER IV

THE CURRENT STUDY

This dissertation will investigate district attorneys' perceptions of four types of justice: distributive justice, procedural justice, informational justice, and interpersonal justice. The focus on district attorneys is advantageous because, compared to other courtroom actors or the public, they likely have a unique perspective on perceptions of justice. This unique perspective may be due, in part, to their educational experiences and to their experiences in the court system. Although judges have similar educational experiences (Haynes, Ruback, & Cusick, 2010), the district attorney's role is unique because they are charged with representing the State in bringing charges against a suspect in a court of law. The district attorney's ability to decide whether and how to prosecute an offender highlights the importance of their role in the criminal justice system. These decisions affect a variety of actors, including defendants, victims, and other criminal justice officials such as judges and defense attorneys. While numerous studies have examined the factors that affect defendants', victims', and the public's perceptions of justice, few have examined district attorneys' perceptions of justice. The purpose of this dissertation is to examine the effects of court and county characteristics on district attorneys' perceptions of justice. The following discussion describes three sets of hypotheses that will be tested in this study: the first set of hypotheses focuses on the effects of demographic characteristics, the second set focuses on the effects of court

characteristics on justice and the third set focuses on the effects of county characteristics on justice.

Hypotheses

Demographic-Related Hypotheses

Distributive Justice H_1: Perceptions of distributive justice (i.e., the extent to which district attorneys trust juries to make the correct verdict) are expected to be greater for district attorneys who are White, male, and older.

Procedural Justice

H_2: Perceptions of procedural justice (i.e., the extent to which district attorneys believe defendants are more likely to get a fair trial if tried by a jury rather than by a judge) are expected to be greater for district attorneys who are White, male, and older.

Interpersonal Justice

H_3: Perceptions of interpersonal justice (i.e., the extent to which district attorneys believe victims are treated with dignity and respect) are expected to be greater for district attorneys who are White, male, and older.

Informational Justice

H_4: Perceptions of informational justice (i.e., the extent to which district attorneys believe jurors understand the facts of the case) are expected to be greater for district attorneys who are White, male, and older.

Research has consistently demonstrated that minorities are more likely to perceive bias and discrimination in the criminal justice system. It is therefore hypothesized that Whites and males may be more likely to view the system as just, or fair compared to their

minority counterparts. Experience in and exposure to the criminal justice system may also affect perceptions and beliefs (Jones, 1978; Felkenes, 1975). It is hypothesized that older district attorneys probably have more experience in the criminal justice system and are therefore more likely to perceive greater perceptions of justice.

Court-Related Hypotheses

Distributive Justice

H_5: District attorneys' perceptions of distributive justice (i.e., the extent to which they trust juries to make the correct verdict) are expected to be greater in counties in counties where offenders receive harsher punishments. Specifically, distributive justice should be greater in counties with a higher conviction rate and in counties with a higher proportion of jury trials resulting in the defendant's incarceration.

Throughout history, punishment has been equated with justice (Engel, 2005). In fact, punishment has been a dominant response to injustice (Okimoto & Wenzel 2009). The notion of just desserts, for example, is based on the idea that offenders deserve to be punished for their wrongdoing. Vidmar (2000) argued that punishment restores balance by reducing the offender's status and power while working to serve as a social consensus about norm violators. Nardulli, Eisenstein, and Flemming (1988) found that, compared to public defenders, prosecutors scored higher on the "belief in punishment" scale. It follows, then, that district attorneys may perceive harsher punishments as more fair. In counties where a high proportion of jury trials result in the defendant's conviction, the district attorney is likely to believe that the jury made the correct verdict by finding the defendant guilty.

Procedural Justice

H_6: District attorneys' perceptions of procedural justice (i.e., the extent to which they believe defendants are more likely to get a fair trial if tried by a jury rather than by a judge) are expected to be greater in counties that use multiple sources to compile the venire.

Using multiple sources to compile the venire likely improves the representativeness of the jury. Representativeness has been viewed as one of the key aspects to securing a just verdict as it is thought to protect defendants from prejudices or biases that individuals may have (Mottley, Abrami & Brown, 2002). It is therefore hypothesized that district attorneys will be more likely to view their jurisdiction as having fair procedures in counties that employ a variety of sources to compile the venire. The use of multiple sources makes it more likely to include all eligible citizens for jury selection, thereby increasing the diversity of juries (Mottley, Abrami & Brown, 2002). This diversity of a jury may be viewed as more advantageous compared to a bench trial

H_7: District attorneys' perceptions of procedural justice (i.e., the extent to which they believe defendants are more likely to get a fair trial if tried by a jury rather than by a judge) are expected to be greater in counties that allow both attorneys and judges to participate in the voir dire.

Procedural justice should be greater when both judges and attorneys are allowed to participate in the process of selecting jurors. Support for this hypothesis is based on the fact that participation has been viewed as an instrumental element of procedural justice (Tyler, 2000).

Interpersonal Justice

H_8: District attorneys' perceptions of interpersonal justice (i.e., the extent to which they believe victims are treated with dignity and respect) will be greater in counties where district attorneys have a smaller caseload.

District attorneys with smaller caseloads likely have more time to spend on each case. Spending more time on each case is likely to be perceived as more fair because the district attorney may have more time to meet with victims and notify them of important information regarding the court process. Ensuring victim participation within the court process may lead district attorneys to believe they are treating victims with dignity and respect. It is therefore hypothesized that interpersonal justice will be greater in counties where district attorneys have smaller caseloads.

H_9: District attorneys' perceptions of interpersonal justice (i.e., the extent to which they believe victims are treated with dignity and respect)are expected to be greater in counties where district attorneys have been in office longer.

The amount of time a district attorney has been in office may affect perceptions of interpersonal justice. District attorneys who have been in office longer have more years of exposure to the criminal justice system and more personal experience with victims. As such, district attorneys who have been in office longer may be more likely to understand the importance of including victims in the court process. Alternatively, the longer district attorneys have been in office the less they may perceive victims as being treated with dignity and respect.

Informational Justice

H_{10}: District attorneys' perceptions of informational justice (i.e., the extent to which they believe jurors understand the facts of the case) are expected to be greater in counties that allow jurors to take notes.

Note taking has been found to lead to improved comprehension by allowing jurors to keep track of witnesses, testimony, and evidence (Myers et al, 1999). However, not all jurisdictions permit note taking (Mize, Hannaford-Agor, & Waters , 2007) because it has been argued that note taking may distract jurors from listening to the actual testimony (Longhofer, 1999). However, studies performed in Arizona and Wisconsin found that note taking did not distract jurors. Furthermore, these studies found that the notes taken by jurors contained accurate information and thus did not negatively influence the verdict (Longhofer, 1999). District attorneys in counties that allow note taking should be more likely to think jurors are knowledgeable about the facts of the case. This is based on the idea that note taking may increase the amount of information retained by jurors.

H_{11}: District attorneys' perceptions of informational justice (i.e., the extent to which they believe jurors understand the facts of the case) are expected to be greater in counties that provide jurors with written jury instructions.

Jury instructions were first articulated by the U. S. Supreme Court in 1895 as a way to inform the jury of laws relevant to their duty (Kassin, 1988). Jury instructions may be given prior to trial, during trial, or at the close of the presentation of evidence at the discretion of the judge (Mottley, Abrami, & Brown, 2002). Providing written copies of the instructions have been found to improve juror comprehension of the law (Mize, Hannaford-Agor, & Waters, 2007) by allowing jurors to consult the instructions for

clarification as needed. As such, it is hypothesized that district attorneys will view this as a process that likely affects jurors' knowledge.

County-Level Hypotheses

Distributive Justice

H_{12}: District attorneys' perceptions of distributive justice (i.e., the extent to which they trust juries to make the correct verdict) are expected to be lower in counties with a greater percentage of people living below the poverty level, a higher percentage of people living in urban areas, higher crime rates, and a greater percentage of the population that is Black.

In counties with a greater percentage of people living below the poverty level, a higher percentage of people living in urban areas, higher crime rates, and a greater percentage of the population that is Black, crime may seem commonplace to jurors. Jurors may not be as likely to impose harsh punishments in these communities. District attorneys may therefore be less likely to trust the jury's verdict.

Procedural Justice

H_{13}: District attorneys' perceptions of procedural justice (i.e., the extent to which they believe defendants are more likely to get a fair trial if tried by a jury rather than by a judge)are expected to be lower in counties with a greater percentage of people living below the poverty level, a higher percentage of people living in urban areas, higher crime rates, and a greater percentage of the population that is Black.

As previously mentioned, in communities with a greater percentage of people living below the poverty level, a higher percentage of people living in urban areas, higher

crime rates, and a greater percentage of the population that is Black, district attorneys trust in juries to make the correct verdict may be lower. As such, district attorneys may be less likely to perceive that defendants are more likely to get a fair trial if tried by a jury rather than by a judge.

Interpersonal Justice

H_{14}: District attorneys' perceptions of interpersonal justice (i.e., the extent to which they believe victims are treated with dignity and respect) are expected to be greater in counties with a greater percentage of people living below the poverty level, a higher percentage of people living in urban areas, higher crime rates, and a greater percentage of the population that is Black.

Characteristics of the social and economic context, such as the percentage of the population living below the poverty level, the percentage of people living in urban areas, the percentage of the population that is black, and the crime rate may all influence the amount and availability of victim resources within the county. These areas may have more victim advocates, funding and programs available given that there is likely a greater need for them due to the larger areas with higher crime rates. In these kinds of communities, having more resources for victims may lead district attorneys to believe that victims are more likely to be treated with dignity and respect.

Informational Justice

H_{15}: District attorneys' perceptions of informational justice (i.e., the extent to which they believe jurors understand the facts of the case) are expected to be greater in counties with a greater percentage of people living below the poverty level, a higher

percentage of people living in urban areas, higher crime rates, and a greater percentage of the population that is Black.

Characteristics of the social and economic context, such as the percentage of the population living below the poverty level, the percentage of people living in urban areas, the percentage of the population that is black, and the crime rate may affect how much jurors know about crime and the criminal justice process. This knowledge may stem from direct and indirect information from personal experience, friends, family, or the media.

Method

This research is based on data from a telephone and email survey conducted by the Social Science Research Center at Mississippi State University and from contextual data from the United States Census Bureau and the Uniform Crime Reports (UCR). This project was approved by the Institutional Review Board (HRPP Study #13-184) at Mississippi State University.

Sampling Frame

The sample for this study was based on a list of all district attorneys in the United States. I compiled the sampling frame by identifying the district attorney for each of the 3,073 counties[1] in the United States.

The sampling frame was compiled in the summer and fall of 2013 by conducting Internet searches through Google. These searchers were attempted in order to identify

[1] In Louisiana, counties are referred to as parishes. In Alaska, counties are referred to as boroughs.

the name, office telephone number, and email address for every district attorney in each county of the United States. First, an attempt was made to locate a district attorney directory for each state. This began with an Internet search for the official website of each state. After locating each state's official website, an attempt was made to locate the government section on the official website. For state websites containing government sections, attempts were made to locate sections about courts. If court sections were identified, the website was scanned for a district attorney directory for each county in a particular state. This search method produced district attorney directories for 31 states. Seven of the 31 state directories specified that attorneys might be responsible for multiple counties. In these cases, the name of the district attorney and the telephone number for the district attorney's office was listed under each county the district attorney represented. Email addresses, however, were rarely listed. Many websites simply gave the option of filling out a form that would automatically submit your information to the courthouse or office.

The second method of obtaining names, telephone numbers, and email addresses included using the website *findlaw.com*. This website included a section called "Find a Lawyer," which allows users to search for attorneys by state, city, and county. I used these particular links to browse for individual county websites whereby the district attorney's contact information could be located. Not all counties provided a link for their district attorney. Furthermore, many counties had missing, invalid, or incorrect web links. Using the "Find a Lawyer" method, I was able to identify names and telephone numbers for district attorneys in most of the remaining counties, leaving approximately

three percent of counties missing. As with the first search method, email addresses were rarely available.

The third method for compiling district attorney contact information included employing a Google web search for each particular county that had yet been identified. After locating the official county website, the website would be scanned for a government or court section. In these sections, I would then locate the contact information for the county's district attorney.

These previous three methods resulted in the obtaining telephone numbers for all 3,073 counties in the United States. After deleting duplicates numbers that resulted from attorneys that were responsible for multiple counties[2], the total sample of telephone numbers was 2,292. The total number of emails addresses secured was 863.

Description of the Survey

The survey instrument included four sections (See Appendix C). The first section includes general questions about the district attorney and his/her office. For example, respondents are asked about their tenure as a district attorney, the number of assistant district attorneys in their office, their annual caseload, the percentage of their cases that go to trial or are plea bargained, and their conviction rate.

The second section focuses on respondents' opinions about how cases are handled within their jurisdiction. Specifically, these questions are designed to measure the perceived fairness of courtroom processes and decisions. For example, respondents were

[2] In cases where district attorneys represented more than one county, the first county listed alphabetically was the one saved in our sample.

asked about their level of agreement with the following statements: *A defendant is more likely to get a fair trial if tried by a jury rather than by a judge*; *I trust juries to make the right decision*; and *Justice would be better served if the court system used juries more often.* Respondents were asked about the extent to which they believe the courts in their county: *Are unbiased in their case decisions*; *Have judges who are fair*; *Conclude cases in a timely manner*; *Have fair outcomes*; *Have fair procedures*; *Treat offenders with dignity and respect*; *Treat victims with dignity and respect*; *Listen carefully to what defendants have to say*; *Listen carefully to what victims have to say*; *Take victims' needs into account*; and *Are sensitive to the concerns of the average citizen*.

The third section asks a series of questions about jury trials in the respondent's jurisdiction. Questions focused on the jury selection process, peremptory challenges, venire, jury instructions, juror compensation, jury representativeness, and juror understanding. Example questions include: *How often do you think jurors completely understand the facts of the case? How well do you think jurors understand the jury instructions?* and *What sources are used to compile your venire?*

The last section included demographic questions such as the respondents' age, race, ethnicity, marital status, political ideology, and length of residence in the county.

Data Collection

To reach as many district attorneys as possible, the data collection process included both telephone and email surveys. In the telephone version of the survey, participants were verbally asked if they were willing to participate in a survey lasting approximately 10 minutes. Oral consent was obtained prior to conducting the interview (See Appendix A). Participants were informed that their participation was voluntary and

that they may quit the interview at any time during the process. Participants who previously completed or refused the telephone survey did not receive an email invitation to complete the online survey.

The telephone survey relied on computer-assisted data collection (CATI), which employs an interactive computing system to assist interviewers in the data collection process. In this process, survey questions were presented on computer monitors for interviewers to read the questions directly off the survey. The interviewers then keyed in the responses using the computer keyboard. CATI systems have been beneficial in controlling interview behavior by enforcing the question wording, probing procedures, and routing through the questionnaire (Groves, 1990). Controlling interviewer behavior speeds up the interview process and ensures all interviews are identical in the way questions are asked. Data collected from the surveys was then entered into SPSS for analysis.

The data for this study was collected in the summer of 2014. The method for assigning numbers to counties ensured that researchers did not bias the sample by distributing the numbers randomly when pulling cases to distribute. To achieve this, we assigned each case in the sampling frame a random number and sorted the file by that number before making any attempts. After assigning numbers to each county, telephone numbers were distributed among interviewers. Numbers were distributed randomly (in batches of one hundred to several hundred, based on interviewers' assessment of current sample exhaustion) among interviewers. The telephone survey began on June 19, 2014 and concluded on July 29, 2014, resulting in 136 completed surveys. A total of 1,277 telephone numbers were called. Sixty-one people refused the telephone survey. To

prevent a biased response rate due to false refusals, the Social Science Research Center calculates cooperation rates instead of response rates when dealing with telephone survey dispositions. The cooperation rate is calculated as follows: Completes/ (Completes + Refusals). The cooperation rate for the telephone interviews was 63.6%.

For the email version of the survey, participants received an email with a consent script and a description of their rights as participants and a web link to the survey (See Appendix B). One reminder email was sent to respondents five business days after the initial contact. Respondents who completed the survey did not continue to receive reminder emails. All emails included an unsubscribe link which automatically removed participants from the mailing list. The sampling frame of email addresses consisted of 863 email addresses. The email version of the survey was sent to 775 district attorneys, excluding bounced emails (i.e., those that resulted from incorrect or out of service email addresses) and those who had previously completed or refused the telephone version of the survey. The email survey began on August 13, 2014, concluded on August 27, 2014, and resulted in 38 completed surveys (4.7% response rate). The total number of telephone and email surveys obtained was 174.

Variables

Dependent Variables

In order to test the aforementioned hypotheses, four dependent variables were examined: distributive justice, procedural justice, interpersonal justice, and informational justice. ***Distributive justice*** refers to whether outcomes are perceived as fair. In this study, distributive justice is measured by asking respondents about their level of agreement that they: *trust juries to make the correct verdict*. Survey responses were

coded as 1 = "strongly disagree," 2 = "disagree," 3 = "agree," and 4 = "strongly agree." A neutral category was created to combine survey responses of "Not Sure" and "No Comment." Distributive justice was then recoded as 1 = "strongly disagree," 2 = "disagree," 3 = "neutral," and 4 = "agree," and 5 = "strongly agree."

Procedural justice refers to whether processes and procedures are perceived as fair.

Procedural justice is measured by asking respondents about their level of agreement that: *A defendant is more likely to get a fair trial if tried by a jury rather than by a judge*. Survey responses were coded as 1 = "strongly disagree," 2 = "disagree," 3 = "agree," and 4 = "strongly agree." A neutral category was created to combine survey responses of "Not Sure" and "No Comment." Procedural justice was then recoded as 1 = "strongly disagree," 2 = "disagree," 3 = "neutral," and 4 = "agree," and 5 = "strongly agree."

Interpersonal justice refers to the treatment of those involved in the decision making process and reflects the degree to which people are treated with politeness, dignity, and respect. In this study, interpersonal justice is measured as the extent to which respondents agree that the courts in their county: *Treat victims with dignity and respect*. Survey responses were coded as 1 = "strongly disagree," 2 = "disagree," 3 = "agree," and 4 = "strongly agree." Interpersonal justice was then recoded as 0 = "strongly disagree" and "disagree," 1 = "agree," and 2= "strongly agree." The categories of "strongly disagree" and "disagree" were combined due to the lack of variation in the distribution[3].

[3] Only 8 (4.7%) respondents disagreed (n=6, 3.5%) or strongly disagreed (n=2, 1.2%) with the following statement: *The courts in my county treat victims with dignity and respect.*

Informational justice refers to whether an individual receives complete, truthful, and timely explanations for procedures and decisions. In this study, informational justice is measured as the extent to which respondents agree that: *jurors in their county understand the facts of the case.* Survey responses were coded as 1 = "strongly disagree," 2 = "disagree," 3 = "agree," and 4 = "strongly agree." Informational justice was then recoded as 0 = "strongly disagree" and "disagree," 1 = "agree," and 2 = "strongly agree." The categories of "strongly disagree" and "disagree" were combined due to the lack of variation in the distribution[4].

- Independent Variables

This study examined the effects of demographic, court and county characteristics on four types of justice: distributive justice, procedural justice, interpersonal justice, and informational justice.

Court characteristics. Court characteristics included information specific to the district attorney and his/her jurisdiction. These variables included the district attorney's annual caseload (i.e., the total number of cases per year), annual conviction rate (i.e., the proportion of cases that resulted in a conviction), jury incarceration rate (i.e., the proportion of jury trials that resulted in incarceration), bench trial rate (i.e., the proportion of bench trials that resulted in incarceration), and the plea bargain rate (i.e., proportion of plea bargains that resulted in incarceration). Courtroom specific information included the venire compilation (i.e., the sources used to compile the venire), voir dire participation (i.e., whether attorneys are allowed to participate in the voir dire process), jury

[4] Only 5 (3%) respondents disagreed (n=3, 1.8%) or strongly disagreed (n=2, 1.2%) with the following statement: *The jurors in my county understand the facts of the case.*

instructions (i.e., whether jurors are provided with written jury instructions), and note taking (i.e., whether jurors are allowed to take notes during trial). Information about the venire compilation was measured by summing the total number of sources the county employs. Voir dire participation was measured as a dichotomous variable coded "1" if both the district attorney and judge were allowed to participate in the voir dire and "0" otherwise (i.e., if only one or the other was allowed to participate). The jury instruction variable is also a dichotomous variable coded "1" if written jury instructions are provided and "0" if they are not. Note taking is a dichotomous variable coded "1" if note taking was allowed and "0" if note taking was not allowed.

County characteristics. The county variables focused on characteristics of the economic and social contexts. The economic factor included was the percentage of people living below the poverty level. Characteristics of the social context included the percentage of people living in urban areas, the percentage of the population that is Black, and the crime rate (crimes reported per 100,000 people). The first four variables were taken from the 2010 U.S. Census while the crime rate variable was taken from the 2010 Uniform Crime Report (UCR).

Control Variables

A series of demographic variables served as control variables. These variables included age, race, and sex. Age is measured in years and sex is a dichotomous variable coded "1" for males and "0" for females. Race is coded "1" for Whites and "0" for Non-Whites and marital status is coded "1" for married and "0" for not married. Sex is coded "1" for males and "2" for females. Political ideology is coded "1" for very conservative,

"2" for somewhat conservative, "3" for moderate, "4" for somewhat liberal, and "5" for very liberal.

CHAPTER V

ANALYSES AND RESULTS

The analyses for this study proceeded in two stages. First, I conducted descriptive analyses of the sample. These analyses described characteristics of the district attorneys and of the courts and communities in which they practiced. Second, I conducted a series of ordinary least squares (OLS) and ordered logit regression models. OLS was used to estimate the effects of the independent variables on two dependent variables: distributive and procedural justice. OLS was appropriate for these models because of the assumption that the dependent variables are a linear function of the independent variables. Ordered logit analyses were used to estimate the effects of the independent variables on two dependent variables: interpersonal and informational justice. Ordered logit analyses were appropriate for testing these hypotheses because the dependent variables were ordinal. This is common in survey research where opinions such as agreement are ranked on a Likert scale (e.g., strongly disagree, disagree, agree, strongly disagree).

Description of the Sample

Table 1 describes the sample of 174 district attorneys and the courts and communities in which they practiced. The results showed that most respondents were White males with an average age of 52 (M = 51.7). The district attorneys included in the sample served their counties an average of approximately 13 years (M = 12.8 years).

They employed an average of 12.5 assistant district attorneys and had an average yearly conviction rate of 91.7%. Most (83.1%) of their cases were settled through plea bargains. Regarding court characteristics, the majority (93.1%) provided written instructions to the jurors and allowed jurors to take notes (90.4%).

Regarding county characteristics, the mean percentage of people living below the poverty level was 9.8% (which was lower than the national average of 15.3% for the year 2010). Regarding the social context, the mean percentage of people living in urban areas was 38.6%, compared to 19.3% for the population as a whole. The mean percentage of the population that was Black in was 5.4%, compared to 13.2% in the total U.S. population. The crime rate was 1,747.83 crimes reported per 100,000. There were an estimated 403.6 violent crimes per 100,000 inhabitants in 2010. The 2010 property crime rate was 2,941.9 per 100,000

See Appendix D to compare this sample description of district attorneys to a national description of U.S. case types and characteristics of 2,330 counties that was conducted using the 2007 National Prosecutors Survey. The National Survey of Prosecutors was examined in order to provide a descriptive overview of prosecutors' offices in the United States, including information on their case types, staffing, and budget.

Table 1 Description of the Sample (n=174)

	Mean	SD	Range
Dependent Variables			
Distributive Justice (i.e., *I trust juries to make the correct verdict*)	3.85	1.03	1.00-5.00
Procedural Justice (i.e., *A defendant is more likely to get a fair trial if tried by a jury rather than by a judge*)	2.54	1.14	1.00-5.00
Informational Justice (i.e., *The jurors in my county understand the facts of the case*)	1.32	0.05	0.00-2.00
Interpersonal Justice (i.e., *The courts in my county treat offenders with dignity and respect*)	1.42	0.58	0.00-2.00
District Attorney Characteristics			
Male	0.83	1,038.00	0.00-1.00
White	0.95	0.21	0.00-1.00
Age (In Years)	51.72	10.38	29.00-44.00
Years as DA	12.83	10.18	0.05-47.50
Conviction Rate	91.79	8.85	40.00-10.00
Courtroom Characteristics			
Note-Taking Allowed	0.90	0.29	0.00-1.00
Written Instructions Provided	0.93	0.25	0.00-1.00
Judge and Prosecutor Participate in Voir Dire	0.68	0.46	0.00-1.00
Number of Venire Sources	1.77	0.87	0.00-5.00
County Characteristics			
Poverty	9.84	4.43	25.20
% Urban	38.64	31.17	96.80
% Black	5.04	11.31	67.10
Crime Rates	1,747.83	1,139.95	6,113.26

Regression Analyses

Distributive justice.

Hypothesis 1 predicted that district attorneys' perceptions of distributive justice (i.e., the extent to which they trust juries to make the correct verdict) would be greater for district attorneys who are White, male, and older. *Hypothesis 5* predicted that district attorneys' perceptions of distributive justice (i.e., the extent to which they trust juries to make the correct verdict) would be greater in counties where offenders receive harsher punishments. As such, distributive justice was expected to be greater in counties with a higher conviction rate and in counties with a higher proportion of jury trials resulting in the defendant's incarceration. *Hypothesis 8* predicted that district attorneys' perceptions of distributive justice would be greater in counties with a greater percentage of people living below the poverty level, a higher percentage of people living in urban areas, higher crime rates, a greater percentage of the population that is Black.

To test these hypotheses, three models were created. Model 1 included only demographic characteristics. Model 2 added two courtroom characteristics: the district attorney's annual conviction rate and the jury incarceration rate. Model 3 added four county characteristics: one indicator of the economic context (i.e., the percentage of people living below the poverty level) and three indicators of the social context (i.e., the percentage of the population living in an urban area, the crime rate, and the percentage of the population that is Black).

Table 2 describes the results of the regression analyses predicting distributive justice. Race was significant (b=2.703, p=.019), indicating that Whites reported higher levels of distributive justice. None of the court variables (i.e., conviction rate, jury

incarceration rate) or the county variables (i.e., percentage of the population living below the poverty level, percentage of people living in urban areas, crime rates, and percentage of the population that is Black) significantly predicted distributive justice.

Table 2 OLS Regression Models Predicting Distributive Justice (i.e., I trust juries to make the correct verdict)

	Model 1			Model 2			Model 3		
	beta	SE	p	beta	SE	p	beta	SE	p
Demographic Variables									
Age	0.00	0.00	0.88	0.00	0.01	0.40	0.00	0.01	0.44
White	-0.02	0.40	0.94	2.87	1.09	0.01**	2.70	1.12	0.01*
Male	-0.02	0.72	0.48	-0.08	0.35	0.80	-0.23	0.35	0.50
Court Variables									
Conviction Rate				0.00	0.01	0.55	0.00	0.01	0.59
Jury Incarceration Rate				0.00	0.00	0.98	-0.00	0.00	0.59
County Variables									
% Poverty							0.02	0.03	0.38
% Urban							0.00	0.00	0.08
Crime Rate							-0.00	0.00	0.23
% Black							0.01	0.01	0.35
R^2		0.00			0.07			0.12	
n		162			99			99	

*p < .05.
**p < .01.
***p < .001

Procedural justice.

Hypotheses 2 predicted that district attorneys' perceptions of procedural justice (i.e., the extent to which they believe defendants are more likely to get a fair trial if tried by a jury rather than by a judge) would be greater for district attorneys who are White, male, and older. *Hypotheses 6 and 7* predicted that district attorneys' perceptions of procedural justice (i.e., the extent to which they believe defendants are more likely to get a fair trial if tried by a jury rather than by a judge) would be greater in counties that use multiple sources to compile the venire and in counties that allow both attorneys to

participate in the voir dire. *Hypothesis 13* predicted that district attorneys' perceptions of procedural justice would be lower in counties: with a greater percentage of people living below the poverty level, a higher percentage of people living in urban areas, with higher crime rates, and a greater percentage of the population that is Black.

To test these hypotheses, three models were created. Model 1 included only demographics. Model 2 added courtroom characteristics: the number of venire sources used to compile the venire and voir dire participation. Model 3 added four county characteristics: the percentage of people living below the poverty level, the percentage of people living in urban areas, percent of the population that is Black, and the crime rate (reported crimes per 100,000 people).

Table 3 describes the results of regression analyses predicting procedural justice. Gender was a significant predictor with a coefficient of 0.058, p=.001 indicating that males reported higher levels of distributive justice. None of the court variables (i.e., the number of venire sources used to compile the venire, voir dire participation) or the county variables (i.e., percentage of the population living below the poverty level, percentage of people living in urban areas, crime rates, and percentage of the population that is Black) significantly predicted procedural justice.

Table 3 OLS Regression Models Predicting Procedural Justice (i.e., A defendant is more likely to get a fair trial if tried by a jury rather than by a judge)

	Model 1			Model 2			Model 3		
	b	SE	p	b	SE	p	b	SE	p
Demographic Variables									
Age	0.00	0.00	0.91	0.00	0.00	0.68	0.00	0.00	0.66
White	-0.04	0.52	0.92	-0.11	0.52	0.83	-0.06	0.56	0.90
Male	0.05	0.25	0.00***	0.08	0.26	0.73	0.02	0.26	0.92
Court Variables									
Venire Sources				0.01	0.06	0.60	0.08	0.12	0.50
Voir Dire Participation				-0.15	-0.15	0.46	-0.13	0.21	0.53
County Variables									
% Poverty							0.02	0.02	0.30
% Urban							0.00	0.00	0.78
Crime Rate							-0.00	0.00	0.30
% Black							0.00	0.01	0.43
R^2		0.00			0.03			0.03	
n		150			140			140	

*p < .05.
**p < .01.
***p < .001

Lastly, I employed ordered logit regression models to estimate the effect of the independent variables on (interpersonal justice and informational justice).

Interpersonal justice.

Hypotheses 3 predicted that district attorneys perceptions of interpersonal justice (i.e., the extent to which they believe victims are treated with dignity and respect) would be greater for those who are White, male, and older. *Hypotheses 8 and 9* predicted that district attorneys' perceptions of interpersonal justice (i.e., the extent to which they believe victims are treated with dignity and respect)would be greater in counties where district attorneys had a smaller caseload and less in counties where district attorneys had been in office longer. *Hypothesis 14* predicted that district attorneys' perceptions of

justice would be greater in counties: with a greater percentage of people living below the poverty level, a higher percentage of people living in urban areas, higher crime rates, and a greater percentage of the population that is Black.

To test these hypotheses, three models were created. Model 1 included only demographics. Model 2 added courtroom characteristics: caseload size and time in office. Model 3 added four county characteristics: the percentage of people living below the poverty level, the percentage of people living in urban areas, percent of the population that is Black, and the crime rate (reported crimes per 100,000 people). Table 4 describes the results of the regression analyses predicting interpersonal justice.

The *omodel* command was downloaded in order to test whether the proportional odds assumption was violated. The proportional odds assumption is that the relationship between all groups is the same. An *omodel* parallel assumption test yielded a chi square=.069 indicating that the proportional odds assumption was not violated. The results showed that gender, age, and years in office were significant. Males and younger DAs reported significantly higher levels of interpersonal justice that did their counterparts. Specifically, the odds ratio of 6.92 indicates that the odds of reporting interpersonal justice are over six times greater for males compared to females, holding all other variables constant. The odds ratio of 0.952 indicates that the odds for reporting interpersonal justice are lower for older DAs compared to their younger counterparts. District attorneys also reported greater interpersonal justice in counties where they had been in office longer. For every one-year increase in employment, the odds of reporting interpersonal justice are 1.06 times higher. The county-level variables of poverty level,

percentage of people living in urban areas, crime rates, and percentage of the population that is Black did not significantly predict interpersonal justice.

Table 4 Ordinal Logit Models Predicting Interpersonal Justice (i.e., The courts in my county treat offenders with dignity and respect)

	Model 1			Model 2			Model 3		
	Odds Ratio	SE	p	Odds Ratio	SE	p	Odds Ratio	SE	p
Demographic Variables									
Age	0.97	0.01	0.16	0.95	0.02	0.06	0.95	0.02	0.04*
White	0.14	0.16	0.08	0.31	0.38	0.34	0.50	0.63	0.58
Male	3.65	1.68	0.00**	7.19	4.35	0.00***	6.92	4.27	0.00**
Court Variables									
Caseload				0.99	0.00	0.14	0.99	0.00	0.12
Years as DA				1.05	0.02	0.01*	1.06	0.02	0.01*
County Variables									
% Poverty							1.07	0.05	0.18
% Urban							1.01	0.00	0.16
Crime Rate							0.99	0.00	0.10
% Black							1.032	0.02	0.27
cut 1	-5.04	1.42		-4.16	1.75		-3.49	1.91	
cut 2	-1.77	1.37		-0.94	1.72		-0.19	1.88	
Pseudo R^2		0.10			0.10			0.13	
N		116			116			116	

*p < .05
**p < .01
***p < .001

Informational justice.

Hypotheses 4 predicted that district attorneys' perceptions of informational justice (i.e., the extent to which they believe jurors understand the facts of the case) would be greater for those who are White, male, and older. *Hypotheses 10 and 11* predicted that district attorneys' perceptions of informational justice (i.e., the extent to which they believe jurors understand the facts of the case) would be greater in counties that allow

jurors to take notes and in counties where judges provide jurors with written instructions. *Hypotheses 15* predicted that district attorneys perceptions of informational justice would be greater in counties: with a greater percentage of people living below the poverty level, a higher percentage of people living in urban areas, with higher crime rates, and a greater percentage of the population that is Black.

Model 1 included only demographic characteristics and Model 2 included demographics, note-taking, and written instructions. Model 3 added four county characteristics: the percentage of people living below the poverty level, the percentage of the people living in urban areas, percent of the population that is Black, and the crime rate (crimes per 100,000 people). Table 5 describes the results of the regression analyses predicting informational justice.

The *omodel* command was downloaded in order to run a proportional odds assumption test because of the assumption that the relationship between all groups is the same. The *omodel* test conducted on the informational justice model yielded a chi square=.502 indicating that the proportional odds assumption was not violated. Model 1 indicates that age, race, and gender are not significant predictors of informational justice. In Model 2, the demographic variables of age, race, gender, and the court variables of note-taking, and providing written instructions were not significant predictors of informational justice. In Model 3, the demographic variables of age, race, gender, and the court variables of note-taking and providing written instructions did not significantly predict informational justice. The contextual variables of poverty level, percentage of people living in urban areas, crime rates, and percentage of the population that is Black also did not significantly predict informational justice.

Table 5 Ordinal Logit Models Predicting Informational Justice (i.e., The jurors in my county understand the facts of the case)

	Model 1			Model 2			Model 3		
	Odds Ratio	SE	p	Odds Ratio	SE	p	Odds Ratio	SE	p
Demographic Variables									
Age	0.99	0.01	0.68	0.98	0.01	0.49	0.98	0.01	0.46
White	0.66	0.50	0.59	1.02	0.86	0.97	0.79	0.71	0.79
Male	1.18	0.56	0.71	1.24	0.59	0.64	1.33	0.65	0.56
Court Variables									
Note-Taking				1.25	0.72	0.68	1.17	0.68	0.78
Written Instructions				1.81	1.25	0.39	1.66	1.22	0.47
County Variables									
% Poverty							0.94	0.04	0.26
% Urban							0.99	0.00	0.45
Crime Rate							1.00	0.00	0.77
% Black							1.01	0.19	0.60
cut 1	-4.03	1.22		-3.03	1.52		-3.99	1.74	
cut 2	0.34	1.13		0.99	1.47		0.05	1.69	
Pseudo R^2		0.00			0.00			0.01	
n		162			155			155	

*p < .05.

**p < .01.

***p < .001

Summary: Regression Analyses

The results of the hypothesis testing for the demographic-related hypotheses found that three of the demographic hypotheses were partially supported. Hypothesis 1 was partially supported in that race was a significant predictor of distributive justice. Hypotheses 2 and 3 were also partially supported in that gender was a significant predictor of procedural and interpersonal justice. Court related hypothesis 9 was supported in that district attorneys' perceptions of interpersonal justice were greater in counties where district attorneys had been in office longer. The court related hypotheses

concerning distributive justice, procedural justice, and informational justice were not supported. None of the contextual hypotheses were not significant predictors of justice. Table 6 provides an overview of the bivariate correlations among the demographic, court, and county characteristics. Table 7 provides an overview of the results of the hypothesis testing.

Table 6 Bivariate Correlations Among Demographic, Court, and County Characteristics

		1.	2.	3.	4.	5.	6.
	Distributive Justice						
1.	Distributive Justice	1					
2.	Age	0.022	1				
3.	White	-0.034	-0.0375	1			
4.	Male	0.032	0.223*	0.047	1		
5.	Conviction Rate	0.176*	0.090	-0.0683	0.039	1	
6.	Jury Incarceration Rate	-0.025	-0.0784	-0.0986	-0.03	0.041	1
	Procedural Justice						
7.	Procedural Justice	1					
8.	Age	0.018	1				
9.	White	0.011	-0.038	1			
10.	Male	0.033	0.223*	0.015	1		
11.	Venire Sources	0.045	0.087	0.045	0.117	1	
12.	Voir Dire	-0.025	-0.011	-0.149	0.059	0.150	1
	Interpersonal Justice						
13.	Interpersonal Justice	1					
14.	Age	-0.058	1				
15.	White	-0.155	-0.038	1			
16.	Male	0.198	0.223*	0.047	1		
17.	Caseload	-0.144	-0.041	0.067	0.005	1	
18.	Years as DA	0.110	0.554*	0.066	0.125	-0.080	1
	Informational Justice						
19.	Informational Justice	1					
20.	Age	-0.022	1				
21.	White	-0.072	-0.038	1			
22.	Male	0.037	0.223*	0.046	1		
23.	Provide Written Instructions	0.085	0.046	-0.061	0.00	1	
24.	Allow Note Taking	0.050	0.038	-0.070	-0.042	-0.004	1

Note. **Distributive justice**=I trust juries to make the correct verdict; **Procedural justice**=A defendant is more likely to get a fair trial if tried by a jury rather than by a judge; **Interpersonal justice**=The courts in my county treat offenders with dignity and respect; **Informational justice**=The jurors in my county understand the facts of the case.

Table 7 Results of Hypothesis Testing

Demographic Hypotheses	**Results**
H_1: Perceptions of **distributive justice** (i.e., the extent to which they trust juries to make the correct verdict) are expected to be greater for district attorneys who are White, male, and older.	Partially Supported
H_2: Perceptions of **procedural justice** (i.e., the extent to which they believe defendants are more likely to get a fair trial if tried by a jury rather than by a judge) are expected to be greater for district attorneys who are White, male, and older.	Partially Supported
H_3: Perceptions of **interpersonal justice** (i.e., the extent to which they believe victims are treated with dignity and respect) are expected to be greater for district attorneys who are White, male, and older.	Partially Supported
H_4: Perceptions of **informational justice** (i.e., the extent to which they believe jurors understand the facts of the case) are expected to be greater for district attorneys who are White, male, and younger.	Not Supported
Court-Related Hypotheses	
H_5: District attorneys' perceptions of **distributive justice** (i.e., the extent to which they trust juries to make the correct verdict) are expected to be greater in counties where offenders receive harsher punishments. Specifically, distributive justice should be greater in counties with a higher conviction rate and in counties with a higher proportion of jury trials resulting in the defendant's incarceration.	Not Supported
H_6: District attorneys' perceptions of **procedural justice** (i.e., the extent to which they believe defendants are more likely to get a fair trial if tried by a jury rather than by a judge) are expected to be greater in counties that use multiple sources to compile the venire	Not Supported
H_7 District attorneys' perceptions of **procedural justice** (i.e., the extent to which they believe defendants are more likely to get a fair trial if tried by a jury rather than by a judge) are expected to be greater in counties that allow both attorneys and judges to participate in the voir dire.	Not Supported
H_8**:** District attorneys' perceptions of **interpersonal justice** (i.e., the extent to which they believe victims are treated with dignity and respect) will be greater in counties where district attorneys have a smaller caseload.	Not Supported

Table 7 (Continued)

H_9: District attorneys' perceptions of **interpersonal justice** (i.e., the extent to which they believe victims are treated with dignity and respect) are expected to be greater in counties where district attorneys have been in office longer.	Supported
H_{10}: District attorneys' perceptions of **informational justice** (i.e., the extent to which they believe jurors understand the facts of the case) are expected to be greater in counties that that allow jurors to take notes.	Not Supported
H_{11}: District attorneys' perceptions of **informational justice** (i.e., the extent to which they believe jurors understand the facts of the case) are expected to be greater in counties that provide jurors with written jury instructions.	Not Supported
Contextual Hypotheses	
H_{12}: District attorneys' perceptions of **distributive justice** (i.e., the extent to which they trust juries to make the correct verdict) are expected to be lower in counties with a greater percentage of people living below the poverty level, a higher percentage of people living in urban areas, higher crime rates, a greater percentage of the population that is Black	Not Supported
H_{13}: District attorneys' perceptions of **procedural justice** (i.e., the extent to which they believe victims are treated with dignity and respect) are expected to be lower in counties with a greater percentage of people living below the poverty level, a higher percentage of people living in urban areas, higher crime rates, and a greater percentage of the population that is Black.	Not Supported
H_{14}: District attorneys' perceptions of **interpersonal justice** (i.e., the extent to which they believe victims are treated with dignity and respect) are expected to be greater in counties with a greater percentage of people living below the poverty level, a higher percentage of people living in urban areas, higher crime rates, a greater percentage of the population that is Black.	Not Supported
H_{15}: District attorneys' perceptions of **informational justice** (i.e., the extent to which they believe jurors understand the facts of the case) are expected to be greater in counties with a greater percentage of people living below the poverty level, a higher percentage of people living in urban areas, higher crime rates, and a greater percentage of the population that is Black.	Not Supported

CHAPTER VI

DISCUSSION AND CONCLUSION

The purpose of this study was to investigate the court and contextual factors that affect district attorneys' perceptions of four types of justice: distributive, procedural, informational, and interpersonal. To examine these issues, I used data from a telephone and email survey conducted by the Social Science Research Center at Mississippi State University and from contextual data obtained from the United States Census Bureau and the FBI's Uniform Crime Reports (UCR).

Distributive justice refers to the perceived fairness of one's outcomes. Procedural justice theories focus on whether procedures are perceived as fair. Interpersonal justice reflects the degree to which people are treated with politeness, dignity, and respect by those who execute procedures or determine outcomes. Informational justice refers to whether an individual receives complete, truthful, and timely explanations for procedures and decisions. Much of the previous research on justice has stemmed from organizational studies examining individuals' perceptions of the fairness of decision-making and resource allocation in the workplace (Colquitt & Rodell, 2011). This study, however, attempted to analyze justice within the courtroom context from the perspective of the district attorney. Research has found that the law alone does not adequately predict and explain how cases are decided. Instead, research has consistently demonstrated that identical cases are often handled differently (Black, 1989). Understanding how district

attorneys view justice, then, gives us insight into their decisions they make. These decisions may include how they choose to dispose of cases, what charges to bring against defendants, sentencing recommendations, and even how victims are treated and included within the court process.

Distributive justice was expected to be greater in counties with a higher conviction rate and in counties with a higher proportion of jury trials resulting in the defendant's incarceration. However, these variables were not significantly related to distributive justice. Although the majority of respondents indicated that they trusted juries to make the correct verdict, conviction rate and the incarceration rate for jury trials did not significantly affect district attorney's trust in juries to make the correct verdict. Although the majority of district attorneys trusted juries to make the correct verdict, most of the cases were nonetheless disposed of through plea bargaining. This seems to suggest that even though district attorneys perceive that juries can be trusted to make the correct verdict, other factors may ultimately have stronger influence on the decision of whether to go to trial.

Procedural justice was expected to be greater in counties that use multiple sources to compile the venire and in counties that allow attorneys to participate in the voir dire. Drawing the venire and conducting the voir dire are two important parts of securing a representative jury. In this study, the process of securing a verdict via a jury of one's peers was expected to be more fair than securing a verdict by a judge.

The majority of district attorneys disagreed, however, that a defendant is more likely to get a fair trial if tried by a jury rather than by a judge. In contrast to the public, a 2004 American Bar Association survey found that three-quarters of individuals reported

that if they were on trial they would want a jury to decide their case rather than a judge (Denver, 2011). As such, there may be differences in how criminal justice actors and the public view disposition types. This finding may have resulted from the fact that they were also supportive of judges in their counties. The majority of district attorneys in our sample, for example, reported their counties had fair judges. This could have been a reflection of a social desirability bias in which respondents answer questions in a socially acceptable manner. District attorneys may have been hesitant to portray their courts or judges in a bad light.

District attorneys' perceptions of interpersonal justice were expected to be greater in counties where district attorneys had smaller caseloads. Ensuring victim participation within the court process may lead district attorneys to believe the courts therefore treat victims with dignity and respect. Although it was hypothesized that district attorneys with smaller caseloads likely have more time to spend on each case, which is likely to be perceived as more fair because the district attorney may have more time to meet with victims and notify them of important information regarding the court process, this hypothesis was not supported.

Informational justice was expected to be greater in counties that allow jurors to take notes and in counties where judges provide jurors with written instructions. Note taking has been found to lead to improved comprehension by allowing jurors to keep track of witnesses, testimony, and evidence (Myers et al, 1999). In addition, providing written copies of the instructions have been found to improve juror comprehension of the law (Mize, Hannaford-Agor, & Waters, 2007) by allowing jurors to consult the instructions for clarification as needed. As such, it was hypothesized that district

attorneys will view these factors as affecting whether jurors understand the facts of a case. However, these hypotheses were not supported. Although the majority of district attorneys reported that they believed the jurors in their county understood the facts of the case, note-taking and providing written instructions to jurors were not significant predictors of informational justice.

The contextual variables were not significant predictors of justice. The fact that demographic and courtroom variables mattered more than the county variables, illustrates the importance of distinguishing between distal and proximal contexts. This study is consistent with previous research showing that proximal factors may have a stronger effect than distal factors on matters related to the criminal justice system. For example, in their analysis of sentencing outcomes, Haynes, Ruback, and Cusick (2008) found that although the distal context had no effect on sentencing, characteristics of the proximal context did. Proximal context refers to the characteristics of the individuals responsible for the handling of cases. Distal content, on the other hand, refers to the characteristics of the jurisdiction in which cases are processed. Relationships between members of a work group may be important because of their shared beliefs and attitudes (Eisenstein, Felmming, & Nardulli, 1999). After all, these individuals of the workgroup often share a common task environment and are all involved in the goal of disposing cases. For example, the relationships between those involved in sentencing (judge, prosecutor, and defense attorney) are important in that they may share beliefs concerning what constitutes appropriate sentencing.

There are three aspects to the community workgroup (Haynes, Ruback, & Cusick , 2008). The first aspect, similarity, refers to the degree to which workgroup members

share the same characteristics. This similarity may be in terms of race, gender, age, background, or political affiliation. The second aspect, proximity, refers to the location of workgroup members' officers in relation to one another. Lastly, stability refers to the number of years workgroup members worked together in the same jurisdiction. Stability is important because it reduces uncertainty about one's intentions and expected behavior. Similarity, proximity, and stability are all measures of the proximal content. This study's importance is highlighted by the finding that demographic characteristics may be more influential to perceptions of justice compared to either court or county characteristics.

Despite the non-significant findings, this study has important implications for the justice literature. A main contribution of this study was that it focused on justice from the perspective of the district attorney, a vital yet understudied actor in the criminal justice system. The district attorney holds a unique position in the criminal justice. The district attorney has the discretionary power to make decisions about making, dropping, or reducing criminal charges, making bail and sentencing recommendations, and negotiating and approving guilty pleas (Kingsworth, MacIntosh, and Sutherland, 2002). Stemen and Frederick (2013) argue that district attorneys' are the least constrained out of all of the criminal justice actors. As such, the district attorney's decision making process has been described as a "black box," given that inner workings of the district attorney remain hidden and are often exempt from scrutinization (Stemen & Frederick, 2013). They are not only afforded a considerable amount of discretion, they also have two distinct roles that may contradict one another: trying to secure a guilty plea or conviction and ensuring that justice prevails (Felkenes, 1975). District attorneys must also please the voters, develop and maintain working relationships with a variety of courtroom actors

(e.g.,defense attorneys, judges, law enforcement, and victims, and strive to save valuable time and resources (Maschke, 1995).

Wright and Levine (2014) argue that even though we understand what district attorneys do, less is known about why they do it. Moreover, I argue that we know even less about how they view the justice, or fairness, that flows from their decisions. According to Stemen and Frederick (2013), there are two main understudied areas with respect to district attorneys and case outcomes. 1) The effect of the district attorney characteristics (e.g., experience and demographics) and 2) Organizational constraints (e.g., caseload). This study addressed the aforementioned gaps by focusing on district attorneys rather than judges and defendants and by examining district attorney characteristics and organizational constraints.

Furthermore, in addition to focusing on the understudied district attorney, this study also contributed to the literature by focusing on jury trials and all of the reforms and recommendations that have been suggested in hopes of improving the jury's efficiency. Specifically, this study was unique in that it tapped into four distinct types of justice (distributive, procedural, interpersonal, and informational) and analyzed various components of the jury trial. Jury trials have evolved tremendously since its origins of compurgation, ordeals, and trials by battle. A variety of reforms have been aimed at improving the efficacy and fairness of jury trials. These reforms include attempting to improve the jury selection process by focusing on the venire and voir dire, examining issues related to jury size and juror unanimity to ensure fairness in deliberations, and attempting to increase juror understanding by analyzing the effects of note-taking, simplifying jury instructions, and providing written instructions and notebooks to jurors.

This study attempted to highlight that jury trials have undergone reforms because they are an important right to Americans and are viewed as the type of disposition that best ensures justice.

Surveying individual district attorneys requires a huge time commitment (Wright, Levine, & Miller, 2014). Another major contribution to this study was the creation of a survey and completion of the sampling frame that consisted of telephone numbers for every county in the United States. This affords researchers the capability to conduct future justice and jury related research from the perspective of the district attorney.

Limitations

The primary weakness of this study was the response rate. District attorneys were a hard to reach population in this study. The majority of district attorneys did not directly answer the telephone. Instead, secretaries and office assistants usually answered the calls made to the district attorney's office. Furthermore, it was common for secretaries and office assistants to report that the district attorneys were unavailable to take phone calls due to meetings, being out of the office, or attending court.

Another weakness of the study included the fact that district attorneys seemed hesitant to criticize their courts. Elected officials, such as district attorneys, may be hesitant to talk to researchers or the public about their job, court system, or personal beliefs. Furthermore, district attorneys who participated in the survey, particularly in the telephone version, may have been more likely to give socially desirable answers. Although participants were informed of the confidential nature of the study, interview bias may still have inhibited the study. Public opinion and the media, after all, can shape

whether the prosecutor is supported or criticized, which in turn may affect their likelihood of reelection.

We know that it is crucial for key players in the criminal justice system to establish working relationships in order to work effectively. As such, district attorneys may have been hesitant to criticize the criminal justice system or the criminal justice actors they work with. Within the court group, the district attorney seems to have a particularly hard job in that he often is responsible for serving competing interests.

In order to secure as much participation as possible, the survey was kept at a reasonable length. Although subjective, the recommended length was based on previous studies conducted by The Social Science Research Center. As a result, the survey did not encompass the original number of questions that were originally constructed.

Moreover, it would have been beneficial to have additional indicators of justice, more specific information on jury trial length, and differences among misdemeanor and felony trial characteristics. One specific limitation of the study derives from the subjective nature of the questionnaire items (e.g., the courts in my county conclude cases in a timely manner; the courts in my county have judges who are fair; the courts in my county treat offenders with dignity and respect). The responsive nature of these questions relied primarily on perceptions and not fact. In sum, although district attorneys disposed of the majority of cases through plea bargaining, they were nonetheless very supportive of their courts, judges, and juries. This support may have stemmed from the fact that they had high conviction rates. It may also reflect the propensity to report socially desirable answers.

Directions for Future Research

Future research can address some of the aforementioned limitations of the current study. Going forward, I would like to increase the sample size in order to run further analyses. Providing additional questions and measures of justice are two of the most important areas that need to be addressed in future research. Since distributive and procedural justice tend to dominate the justice literature, future studies should focus particularly on interpersonal and informational justice. Furthermore, given the importance of demographic characteristics in this study, future research should pay particular attention to the strength of the effects of demographic characteristics on perceptions of justice. Given the definitional issues associated with the concept of justice, I would like to focus on how individuals define justice and how, if at all, it varies among the courtroom workgroup. Additionally, future research should analyze perceptions of justice from the perspective of the defense attorney in order to have a greater understanding of how justice varies, if at all, between various courtroom actors. How justice varies may have important policy and reform implications. Accordingly, policies and reform initiations may be complicated in situations where justice varies among courtroom actors or between the public and criminal justice practitioners. Although this research may shed light on the different variables that affect justice, this study cannot speak to how these attitudes translate, if at all, into behavior. It is important to recognize that task forces and/or committees have been implemented in some jurisdictions to examine their jury system. Future research should examine these jurisdictions in order to understand what changes have been imposed and if/how justice was affected thereafter. The perceptions and behaviors of these district attorneys may

differ compared to those in jurisdictions that do not have task forces or committees. Furthermore, the reforms and recommendations aimed at improving jury trials may ultimately have the strongest effect on jurors and defendants. Future research can attempt to disentangle the factors of the jury trial that affect justice the most, and for which individuals.

This exploratory study attempted to gain insight into the perceptions of district attorneys. Practically, findings suggest that district attorneys are typically supportive of their courts, including the institution of the jury. Nonetheless, there are many unanswered questions about the future of the jury. District attorneys typically have high conviction rates and tend to rely on plea bargaining to dispose of cases. So despite their perceptions of fairness or support for jury trials, the question remains whether district attorneys ever see an advantage to using jury trials.

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APPENDIX A

MISSISSIPPI STATE UNIVERSITY OFFICE OF RESEARCH COMPLIANCE

TELEPHONE CONSENT SCRIPT

Informed Consent Script Read at the Beginning

"Hello. My name is _____, and I am calling from the Social Science Research Center at Mississippi State University. We are doing a research study of district attorneys. We are interested in your opinions and experiences related to jury trials. This is a scientific study and is not affiliated with any political group. Your phone number was selected because of your job. All of your answers will be kept confidential. Your participation is voluntary and your name will not be associated with the analysis. You may withdraw at any time during the survey and may refuse to answer questions you do not want to answer. This interview will only take about 15 minutes." If you have any questions or concerns please contact the researchers at 662-325-0811 or the MSU IRB at 662.325.3994."

Script Read at the End of the Survey

"That completes our survey. Do you have any questions?"

"If you have any specific questions about this research, please feel free to contact Jacqueline Chavez in the Department of Sociology at Mississippi State University at 662-325-2495. If you have any questions about our survey research laboratory, please contact Dr. John F. Edwards, Director of the Survey Research Laboratory at Mississippi State University. Dr. Edwards can be contacted by telephone at 662-325-9726. For questions involving your rights as a research participant, or to discuss problems, or express concerns or complaints, request information, or offer input, please feel free to contact MSU Regulatory Compliance office by phone at 662-325-3994, by email at irb@research.msstate.edu or on the web at http://orc.msstate.edu/humansubjects/particpant/"

APPENDIX B

MISSISSIPPI STATE UNIVERSITY OFFICE OF RESEARCH COMPLIANCE

EMAIL CONSENT SCRIPT

Script for the Email Version

Subject Line: MSU Academic Survey: What Do District Attorneys Think About Jury Trials?

Hello. My name is Jacqueline Chavez and I am contacting you on behalf of the Social Science

Research Center at Mississippi State University. We would appreciate the opportunity to ask your opinions about your experiences as a district attorney in your county. We are specifically interested in your opinions about jury trials. Your participation in this research is voluntary and your name will not be associated with your responses. All of your answers will be kept confidential and you may withdraw at any time during the survey or refuse to answer any questions that you do not want to answer. This is a scientific study and is not affiliated with any political group. Your email address was selected because of your job. This survey should take less than ten minutes of your time.

If you have any questions about this research, please feel free to contact Jacqueline Chavez in the Department of Sociology at Mississippi State University at (662) 325-2495. If you have any questions about the survey research laboratory, please contact Dr. John F. Edwards, Director of the Survey Research Laboratory at Mississippi State University, at (662) 325-9726. If you have any questions regarding your rights as a research participant, please feel free to contact Mississippi State University's Office of Regulatory Compliance at (662) 325-3994.

If you understand the information you just read and are willing to volunteer to participate in the study, please click this link to proceed to the survey:

${l://SurveyLink?d=Take the Survey}and refer to this corresponding county that is listed.

Password: **XXXX**

Thank you.

APPENDIX C

THE VANISHING JURY DISSERTATION SURVEY

I'd like to begin by asking you some questions about your work as a district attorney. Please refer to county *x* when responding.

1. In how many counties do you serve as district attorney? _____

2. For how many years have you been a district attorney in this county? _____

3. How many assistant district attorneys are employed by your office? _____

4. What is your personal annual caseload in this county? _____

5. What percentage of your cases are:

    1) Bench trials _____
    2) Jury trials _____
    3) Plea bargains _____

6. Within the last year, has the number of jury trials in your county:

    1) Increased
    2) Decreased
    3) Stayed the same
    4) Don't know

7. For each of the following types of cases, what percentage results in the defendant being incarcerated?

    1) Bench trials _____
    2) Jury trials _____
    3) Plea bargains_____

8. What percentage of your cases resulted in a conviction last year? _____

Next, I'd like to ask your opinion about how cases are handled.Please indicate whether you Strongly disagree, disagree, agree or strongly agree with the following statements:

9. The jurors in my county understand the facts of the case.

    1) Strongly Disagree

2) Disagree
3) Agree
4) Strongly Agree

10. A defendant is more likely to get a fair trial if tried by a jury rather than by a judge.

    1) Strongly Disagree
    2) Disagree
    3) Agree
    4) Strongly Agree

11. I trust juries to make the correct verdict.

    1) Strongly Disagree
    2) Disagree
    3) Agree
    4) Strongly Agree

12. The courts in my county:

    a. Have fair outcomes.

        1) Strongly Disagree
        2) Disagree
        3) Agree
        4) Strongly Agree

    b. Have fair procedures.

        1) Strongly Disagree
        2) Disagree
        3) Agree
        4) Strongly Agree

    c. Treat offenders with dignity and respect.
        1) Strongly Disagree
        2) Disagree

3) Agree
4) Strongly Agree

d. Treat victims with dignity and respect
1) Strongly Disagree
2) Disagree
3) Agree
4) Strongly Agree

e. Have judges who are fair
1) Strongly Disagree
2) Disagree
3) Agree
4) Strongly Agree

f. Conclude cases in a timely manner
1) Strongly Disagree
2) Disagree
3) Agree
4) Strongly Agree

13. How often you think the following groups receive fair sentences in your county?

African Americans
1) Never

2) Seldom

3) Sometimes

4) Always

5) Does not apply

Asian Americans
1) Never

2) Seldom

3) Sometimes

4) Always

5) Does not apply

Caucasians
1) Never

2) Seldom

3) Sometimes

4) Always

5) Does not apply

Hispanic Americans

1) Never

2) Seldom

3) Sometimes

4) All the time

5) Does not apply

Now I am going to ask you some questions about jury trials in your county.

14. How many peremptory challenges are given to the:

    1) Defense _____

    2) Prosecution _____

15. Who conducts the voir dire in your county?

    1) Attorneys only

    2) Judges only

    3) Both attorneys and judges

16. Which of the following sources is/are used to compile the venire in your county?

    a. Registered voter lists

        1) Yes
        2) No

    b. Driver license lists

        1) Yes

        2) No

    c. State tax rolls

        1) Yes

2) No

d. Unemployment lists

1) Yes
2) No

e. Public assistance lists

1)Yes
2) No

F. Other (specify): _____

17. Do judges provide written instructions to jurors?

1) Yes
2) No

18. Are the following actions allowed for jurors?

1) Note-taking

1) Yes

2) No

2) Submitting written questions to the judge

1) Yes

2) No

3) Verbally asking the judge questions

1) Yes

2) No

4) Discussing the evidence amongst themselves prior to deliberation

1) Yes

2) No

Using a scale from 1 to 5, with 1 being "Never" and 5 being "All the time," please indicate:

19. How often you think jurors completely understand the facts of the case?

1) Never

2)

3)

4)

5) All the time

20. How often you think jurors completely understand the jury instructions?

1) Never

2)

3)

4)

5) All the time

Using a scale from 1 to 4, with 1 being "Not very well" and 4 being "Very well," please indicate:

21. How well you think jurors understand the jury instructions?

1) Not very well

2) Somewhat well

3) Well

4) Very Well

22. **Please indicate how often you believe juries in your county are representative in terms of**:

1) Gender

    1) Never representative

    2) Occasionally representative

    3) Frequently representative

    4) Always representative

2) Race

    1) Never representative

    2) Occasionally representative

    3) Frequently representative

    4) Always representative

3) Age

1) Never representative
2) Occasionally representative
3) Frequently representative
4) Always representative

4) Education

1) Never representative
2) Occasionally representative
3) Frequently representative
4) Always representative

5) Income

1) Never representative
2) Occasionally representative
3) Frequently representative
4) Always representative

Finally, I'm going to ask you some general questions about yourself.

23. What is your age?

____ years old

24. What race or ethnic group do you most identify yourself with? Would you say:

1) White
2) Black or African American
3) Hispanic or Latino
4) American Indian or Alaska Native
5) Asian
6) Native Hawaiian or other Pacific Islander
7) Other
8) Don't know/Not sure

25. Are you currently:

1) Married
2) Cohabitating (living with partner)
3) Single (never married)

4) Separated
5) Divorced
6) Widowed

26. What is your religious preference?

1) Protestant
2) Catholic
3) Jewish
4) None
5) Other (Specify):

27. Considering your political views, would you say you are?

1) Very Conservative
2) Somewhat Conservative
3) Moderate
4) Somewhat liberal
5) Very liberal

28. Respondent's sex

1) Male
2) Female

Conclusion

If you have any questions about this research, please feel free to contact Jacqueline Chavez in the Department of Sociology at Mississippi State University at (662) 325-2495.

If you have any questions about the survey research laboratory, please contact Dr. John F. Edwards, Director of the Survey Research Laboratory at Mississippi State University, at (662) 325-9726.

If you have any questions regarding your rights as a research participant, please feel free to contact Mississippi State University's Office of Regulatory Compliance at (662) 325-3994.

APPENDIX D

THE 2007 NATIONAL PROSECUTORS SURVEY

The National Prosecutors Survey [Census] for 2007 is the second survey conducted by the Bureau of Justice Statistics, which surveyed 2,330 prosecutors' offices in the United States. The first survey was conducted in 2001 and included 2,341 offices. The 2007 survey had an overall response rate of 95.6% from 2,330 offices serving populations ranging in size from 500 to 9.9 million residents. These offices reported closing 2.9 million felony cases through convictions, acquittals, dismissals, or other dispositions. Table 7 provides a descriptive analysis of U.S. case types and characteristics from the second National Prosecutors Survey that was conducted in 2007. The average number of felony cases convicted was 935.01 while the average number of jury verdicts was 31.46. The survey also provided information on whether each district attorney's office had prosecuted any specific types of cases within the year 2007. I recoded case type as "0" if the office had not prosecuted that particular type of case that year and "1" for yes they office had prosecuted that particular type of case that year. The National Prosecutor's Survey the average length of service for district attorneys in 2007 was 9.21 compared to our 2014 average of 12.83. The average number of assistant district attorneys in 2007 was 10.37 compared to our average number of 12.51 in 2014. Although our survey did not obtain information regarding the number of victim advocates, the National Prosecutors Survey reported an average of 1.98 victim advocates in 2007.

Table 8 Description of the National Prosecutor's Survey, 2007 (N=2330)

	Mean	SD	Range
Case Characteristics			
Felony Cases Closed	1,248.62	3,511.20	0.00-64585.00
Felony Cases Convicted	935.01	2,593.16	0.00-58050.00
Felony Jury Verdicts	31.46	106.82	0.00-3000.00
Case Type			
Excess Police Force	0.09	0.28	0.00-1.00
Child Exploitation	0.57	0.49	0.00-1.00
Gang Violence	0.33	0.47	0.00-1.00
Human Trafficking	0.03	0.19	0.00-1.00
School Violence With Firearm	0.27	0.44	0.00-1.00
Terrorism	0.03	0.19	0.00-1.00
Meth Production	0.71	0.45	0.00-1.00
Elder Abuse	0.55	0.49	0.00-1.00
Cyberstalking	0.37	0.48	0.00-1.00
Credit Card Fraud	0.60	0.41	0.00-1.00
Insurance Fraud	0.20	0.40	0.00-1.00
Staffing			
Term in Office	9.21	7.97	0.00-42.00
Assistant Prosecutors	10.3	35.58	0.00-904.00
Victim Advocates	1.98	4.41	0.00-70.00
Budget			
Yearly Office Budget	$249,266.79	$101,897,17.19	$630.00-306,958,000.00