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McCrae Jones

Ouachita Baptist University

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SENIOR THESIS APPROVAL

This Honors thesis entitled

“Psychological Techniques in Jury Consulting”

written by

McCrae Jones

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the requirements for completion of
the □ Carl Goodson Honors Program
meets the criteria for acceptance
and has been approved by the undersigned readers.

Guyla Davis, thesis director

Chris Long, second reader

Kayla Dwelle, third reader

Dr. Barbara Pemberton, Honors Program director

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McCrae Jones

Ouachita Baptist University

Psychology's Role in Jury Selection

Introduction

Renowned attorney Clarence Darrow once said, “Almost every case has been won or lost when the jury is sworn” (Darrow, 1936). With jury imposed financial payouts possibly as high as they have ever been, increased pressure has been placed upon attorneys to insure a favorable outcome for their client. The employment of and importance of jury consultants has risen with this increased pressure. Jury consultants are employed to help create juries that will be sympathetic to their client’s argument. Often, they are used to find jurors that would have strong proclivities against their argument. As the practice has gained more attention in recent years the techniques used by consultants have been romanticized by the general public. Consultants recommend potential jurors not by intuition as many people imagine, but through careful scientific measures and acute observations of potential jury members.

Humble Beginnings

The use of jury consultants has exploded in recent years. A job that was only created in 1972, today now has an iPad application, iJury, which assists attorneys in selecting potential jurors (Hoffmeister, 2010). The first use of trial consultants occurred in 1972 in a case centered on peace-activist and pastor, Philip Berrigan (Kressler & Kressler, 2004). The trial took place in the quiet town of Harrisburg, Pennsylvania, where at the time Berrigan was a Catholic priest. He and six others, who claimed they were part of the Catholic Resistance to the Vietnam War, stood trial for planning a conspiracy to destroy draft boards, conscription records, and kidnap then Secretary of State, Henry Kissinger. A group of social scientists led by Jay Schulman, Richard Christie, and Philip Shaver signed on to help the defense for what they felt was a morally compelling cause (Kressler & Kressler, 2004). The scientists believed it would be nearly impossible for the men to receive a fair trial from an impartial jury in the conservative

Pennsylvania town. The task as they viewed it was to make the jury more neutral by selecting members who held ideas that would be favorable to the defendants.

To begin research on the case the scientists performed standard survey tests on the general population of Harrisburg. From this information they were able to create a profile of the background both a good and bad jury member would possess. They found that those most likely to favor acquittal were: female, Democrats, white collar, and lack strong religious beliefs. Jurors who would most likely convict Berrigan and his companions were: college educated, Republican, and subscribers of *Readers Digest* (Varinsky, 1992). From this profile the defense's counsel was able to strike several high risk jurors and the ultimate outcome was a hung jury on all major counts. This was an unforeseen outcome for the trial and a promising start for the role of jury consultants.

The next big step for the increased prominence of consultants came just a few years after the Harrisburg experiment. In 1974 Clarence Alligood, a night jailer, was found dead in a locked cell in the jail in Beaufort County, North Carolina. Joan Little, the prisoner assigned to the cell, had escaped but soon turned herself in. She claimed that Alligood had raped her and she had acted in self-defense (McConahay, Mullin, & Frederick, 1977). In this case the jury selection team was led by John McConahay, a psychology professor at Duke University. Once they arrived in Beaufort County the team polled local residents and found a startling prejudice against blacks in the county. They found that two-thirds of residents in the county believed that black women were less moral and were more likely to commit a crime than white women (Kressler & Kressler, 63). With these results in hand the defense attorney was able to receive a request for change of venue approved to Wake County, which was viewed as being a much more favorable location for the defense. The research team then built a jury profile similar to the one used in the

Harrisburg case. They concluded that a favorable juror would be: a Democrat, younger than 40, and college educated. Armed with the change of venue and the juror profile, the defense team was able to secure an acquittal.

These highly publicized criminal cases helped launch trial consulting into a sustainable industry. During the 1970's, the business continued to emerge as scholars were used for consultants in cases such as the Angela Davis trial, the Attica Prison rebellion case, and the Vietnam Veterans Against the War trial (Saks, 1976). The most highly publicized case of the era to employ consultants was the defense of former Attorney General John Mitchell.

One might assume that these new consultants had to start from nothing in building a body of research and information. However, this was not the case. Existing academic research and application greatly assisted these early consultants in their beginning trials. As Kressel and Kressel explain in their book, *Stack and Sway*,

[T]he market research and advertising industries had achieved well-documented success with focus groups, quantitative surveys, statistical analyses, consumer profiling, and a variety of their techniques. Trial consultants drew eagerly on such principles; perhaps this is why some practitioners refer to their methods as "basic" or "far from rocket science."—(Kressler & Kressler, 2004, p. 64)

Whatever people thought of the process, by the 1980's the job opportunities for jury consultants were booming.

Evolution of the Consultant Role

Early consultants were generally single or small groups of academic professors who, for mostly moral causes, took the initiative at little pay to help defendants in court cases. Once the effectiveness of consultants had been shown through the trials of the '70s this role began to transform. Soon non-academics were drawn into the field and began practicing for significantly higher wages (Kressel & Kressel, 2004). Early consultants were primarily viewed as social

scientists that could help attorneys identify and target potentially favorable jurors. During the 1980's, the field grew further as trial consulting firms came into existence. These powerhouse firms offered more resources and manpower than individual consultants could provide. Firms and individual consultants also began to specialize in particular fields of practice. For example, Trial Behavior Consulting Inc. served as a consulting company for more than 150 asbestos related cases during the '80s (Kressel & Kressel, 2004). A great increase in personal civil suits during the late 21st century greatly increased the need and desire for consultants. Specialized firms are currently the standard for jury consulting.

Today the role of trial consultants has grown considerably. Current consultants are hired not only to help with jury selection, but also with: change of venue motions, witness preparation, survey work, practice trials, and focus groups (Huss, 2009). One of the largest emerging roles for jury consultants is their use of psychological principles to help attorneys build a rapport with juries. Jason Bloom and Karin Powdermaker are two jury consultants who focus extensively on this field. They contend that in order for a potential jury member to be fully open and honest while answering an attorney's questions during *voir dire*, which helps the attorney or consultant better judge the potential jurors proclivities towards the case, they must feel comfortable with the attorney (Bloom & Powdermaker, 2006). They demonstrate to clients the best ways to build a good rapport with the jury through use of eye contact, body language, tone, and their personal appearance. Trial consultants began in the 1970's as small groups of academics using social science techniques for individual cases. Today large, high priced-firms control the increasingly specialized market and the role of jury consultant has diversified into other areas of case preparation and presentation.

Common Misconceptions of Jury Selection

Many attorneys and political experts feel that jury consultants today in selecting jurors during voir dire are performing the same tasks that lawyers receive training to do and have performed since the beginning of the jury based trial system. People generally believe that lawyers have a strong ability to predict potential jurors' tendencies. However, studies have shown there is little difference in lawyers' and the general public's techniques for selecting jurors. In this study performed by Olczak, Kaplan, and Penrod (1991), which compared college undergraduates and lawyer's techniques for jury selection, both groups tended to employ the same methods for selecting jurors (Olczak, Kaplan & Penrod, 1991). This study suggests that most lawyers tend to use the same stereotypes and processes as does the general population and may not be significantly more effective at understanding jurors' proclivities than the common person.

There are many examples of trial attorneys believing their experience and decisions are more accurate than consultants. Perhaps the best illustration is the O.J. Simpson murder trial. The O.J. Simpson murder case was possibly the biggest trial of the 1990's and arguably of the past several decades. The results of the racially charged Los Angeles murder trial are well known. What has been more concealed from the general public is the role of jury consultants and how one side's misuse of them may have changed the outcome of the case. Both sides openly employed the use of jury consultants in the case. Don Vinson, of the firm DecisionQuest, was employed by Marcia Clark the case's lead prosecutor. Upon being retained, Vinson began to do extensive survey work of the potential jury pool in downtown L.A. where the trial was to be held. He soon noticed that black men were three times more likely than black women to believe that Simpson was guilty of the crimes. He believed this was because many black women

felt protective of Simpson and were more accepting of domestic violence (Kressel & Kressel, 2004). Clark vehemently disagreed with Vinson and his findings however, and fired him shortly after the trial began (Cotterill, 2003). In October, 1995 after eight months of trial, the jury returned with a verdict of not guilty in less than four hours. This final jury consisted of eight black women. While what was said in the jury room may never be known, one thing is for certain, race was a strong statistical predictor before, throughout, and after the trial, of public perceptions concerning the murders. The Gallup Organization reported that most people had made up their minds about the murders soon after the events had taken place and did not change these beliefs throughout the trial (Saad & Newport, 1995). Of these people 66 percent of white people believed Simpson to be guilty compared to 24 percent of blacks (Saad & McAneny, 1995). Perhaps the trial outcome would have been different had Clark retained Vinson and relied on his research and suggestions to place more white and black men and fewer black women on the panel.

Although there are certainly attorneys who are highly effective at understanding and selecting jurors, the majority simply rely on simple stereotypes and intuition in their selection process (Dodge, 2010). It is also often true that using scientific jury selection will not always produce the desired result. No consultant would claim to be able to pick a winning jury every time, and there is little doubt that scientific jury selection has been overhyped and greatly romanticized. However, research has shown that scientific techniques can provide greater predictability in juror beliefs and tendencies than the employment of simple stereotypes or guesswork (Seltzer, 2006). Scientific jury selection can help guide attorneys away from these practices to a more systematic approach to selection.

Consultant's Goal

Many attorneys make a key error in the selection process before *voir dire* even begins. Attorneys often feel that their first priority is to select potential jurors they believe to be most in favor of their argument in the case. However, jury consultant and Ph.D. Angela Dodge feels the most important goal during *voir dire* is the finding and striking of jurors who are biased against a case (Dodge, 2010). It is naïve to believe that jurors can be blank slates who will view all aspects of the trial fairly and impartially. In truth most jurors have made up their minds about many of the issues in the case before the trial even begins. This is not to say that they have determined the outcome of the trial already but they have used past experiences, values, and attitudes to shape their views on the subjects in the case. Those jurors whose preconceived beliefs are biased against a case must be found and struck to avert them from effecting a trial. In doing so the attorney at least insures his client a fairer and more open minded jury. As Manny Sanchez a prominent Chicago attorney said, "I don't believe a case can be won in *voir dire*. But it can be lost" (Dodge, 2010, p. 3). That loss may occur if attorneys and consultants are too preoccupied attempting to seat favorable jurors rather than striking biased ones.

Generalizations

A key mistake that scientific jury selection attempts to combat is the use of implicit personality theory when evaluating jurors. This theory constitutes the general practice of associating personality characteristics with certain groups of people. The theory is especially prevalent concerning racial stereotypes. Once a person is known to belong to a certain ethnic group he/she is usually characterized by assumptions made about that group (Grant & Holmes, 1981). For example, it is generally assumed that black males are more tolerant and indifferent to

violence than white males. Attorneys will typically rely on approaches such as these generalized assumptions when more systematic methods are unknown to them. This method of jury selection is often ineffective because stereotypes are often wrong and it is too risky to build a juror profile around something as unreliable as this. In recent years, the accuracy of judgments made using implicit personality theory has been called into question (Borkenau & Ostendorf, 1987). The use of these generalizations does not take into account individual differences among similar people or for exceptions to the stereotype. Dodge, in her book *Winning at Jury Selection*, points out,

Religion, nationality, age bracket, body mass index, occupation, household income, or any other demographic characteristics are all unreliable, sometimes inaccurate, and often inappropriate indicators of how a juror is likely to see a specific case...[I]t is the *interaction* of many factors, including demographics in some cases, that improves predictability of how a potential juror is likely to view a specific case.—(Dodge, 2010, p. 7)

As demonstrated in the O.J. Simpson murder case, generalizations can be almost completely off base. The assumption made by lead prosecutor Marcia Clark that black women would be sympathetic to her case because of their fear of domestic violence served as a crucial error, as almost the complete opposite occurred, with the jury composed of mostly black women returning a not guilty verdict. While generalizations can be somewhat accurate when looking at large groups of people, they have no place in the scientific jury selection process because they are ineffective in accounting for individual differences and exceptions.

Intuition

Hunches or gut feelings are often used by veteran attorneys during jury selection. They believe through years of experience they can sense which jurors will lean in favor or against their client during deliberation. Many people hold their intuition in high regard. However, according to psychological research this assumption could not be more incorrect.

Psychologists have performed a wealth of studies examining the effectiveness of intuition. Paul Meehl investigated the intuition of supposed experts in their fields and came to a clear cut decision:

There is no controversy in social science which shows [so many] studies coming out so uniformly in the same direction as this one... When you are pushing 90 investigations, predicting everything from the outcome of football games to the diagnosis of liver disease and when you can hardly come up with a half dozen studies showing even a weak tendency in favor of the clinician, it is time to draw a practical conclusion.-(Meehl, 1986, p. 372)

Meehl's and others research has examined the differences between using systematic judgment processes such as statistics against using one's intuition. These studies have shown that systematic approaches are far superior to using hunches to make decisions. One study of the accuracy of expert clinical psychologists found that they are no more accurate than is the lay person at making correct judgments concerning a mental inmate's potential for violence (Faust & Ziskin, 1988). Another study looked at 967 patients in a mental hospital who were originally placed in maximum security sections after clinical experts had determined that they had a high likelihood for violent outbursts or attacks, but were later forced back into normal care following a court order. Four years later half of these individuals were still in mental hospitals' care, where

it should be easy to monitor violent outbursts, and of these only 26 subjects were known to have committed violent acts (Faust & Ziskin, 1988).

The research examining the inaccuracy of supposed experts intuition compared to systematic approaches is so overwhelming that some psychologists now consider it unethical to run practices solely based on expert intuition. Such overwhelming research clearly indicates that attorneys should be hesitant to rely on their instincts when selecting jury members. Research has clearly shown that supposed experts in dozens of fields have difficulties relying primarily on sheer intuition when assessing problems and making decisions. It is much more reliable to employ a systematic approach when deciding which jurors would be good for a case.

In-Group Bias Belief

The in-group bias effect is the favoritism of anyone towards members of their in-group (Marquies, Yzerbyt, & Leyens, 1988). Concerning jury selection, this bias is used by attorneys in assuming that jurors who are similar to the party on trial will be sympathetic and understanding towards them (Dodge, 2010). Many times this bias appears accurate and similarity to a party leads to attitudes favoring them. However, the black sheep hypothesis is an idea used by psychologists to describe the fact that when concerning in-group members there are more extreme positive and negative evaluations when judging them. While the in-group bias and black sheep effect seem counter to each other, it has been determined that both are used to protect one's positive views about one's group and their place in the group (Marquies, Yzerbyt, & Leyens, 1988).

The black sheep theory can easily lead to biased views from jurors towards a person. For example, if a client is a doctor accused of malpractice an attorney might assume that, seating other doctors would be good for their client because they would understand the pressures a

doctor faces and how frivolous malpractice suits can be. The attorney may think because the doctor has been in a similar situation as his client, he will be sympathetic towards him.

However, the black sheep theory states the doctor who is a potential juror might also be very critical of the client because he will understand the failings of the doctor on trial and may be very condemning of his practices. He may hold extremely negative views of the accused because he feels he is giving other doctors and their in-group a bad reputation through his poor conduct.

While there is little doubt that jurors similar to a litigant will sometimes favor that party, attorneys must be careful of allowing people of certain in-groups, such as doctors in a malpractice case or insurance agents in a claims case, to be seated on the jury. Who is more likely than an in-group member who has been in a similar situation to be skeptical of the excuses and justifications that a potential defendant might use?

Techniques of Scientific Consultants

The implementation of juror consultants who are able to accurately pick a jury sympathetic to a side's argument can have a great impact on a case. The possible impact of consultant's work in criminal cases has previously been seen in the O.J. Simpson murder trial when the defense used consultants to determine which groups would be more sympathetic towards Simpson. There are innumerable other examples of the effects retaining jury consultants can have for attorneys on either side of a case. Take for example the story told by consultant Amy Singer of one of her civil cases involving a mother whose child had been injured using a dangerous product. The product had met all industry standards for safety and worked perfectly. However, years earlier the company who manufactured the product had researched making the product more child-proof and found a version that was effective. The company never followed up on this research however, and kept the less safe version on the market. It initially seemed

unlikely that Singer wrote, “[J]urors would find the product unreasonably dangerous or defective or the manufacturer negligent for not warning users of possible dangers” (Singer, 2011, p.).

Singer went out into the community and did research and found 92% of potential jurors believed that the company should be liable for damages because the mother had taken steps to hide the product and make it as safe for her child as possible, but the manufacturer had not, by failing to implement the safer version of the product (Kressel & Kressel, 2004). Armed with this information the company soon came to an out-of-court agreement with the mother, and a case that looked like it had slim prospects, turned out a significant payout for the plaintiff.

Techniques such as those used by Ms. Singer are used in almost every trial. Consultants attempt to emphasize the scientific aspect of jury selection and deemphasize intuition and other subjective elements that have proved to be ineffective. The major areas they concern themselves with when studying potential jurors include: demographics, personality traits, case related experiences, and attitudes formed from life experiences.

Demographics

Jury selection specialists are generally very cautious when trying to predict juror behaviors based on demographics. Many decisions based on demographics are simple generalizations or gut instincts about people groups, both of which were shown earlier to be ineffective. Research has shown little relationship between juror demographics and their conviction tendencies (Giewart, 2007). Eisenberg and Wells (2002), both professors at Cornell University, reviewed over 30,000 state and federal jury trials and found no evidence of a correlation between jury demographics and conviction rates or decisions in civil cases. Selection specialists therefore generally rule out the sole use of demographics when selecting jurors, but believe there are certain demographic traits that when examined in conjunction with other

information about the juror, can provide solid information. One type of demographic that consultants do look at is the juror's education level (Bennett, 2010).

Consultants use the perceived strength of their case to help determine what level of intelligence they desire in jurors. Higher educated jurors will be more sought after if the trial lawyer and selection specialist feel they have a case with strong evidence. They desire highly educated jurors because they will generally be able to interpret the evidence more effectively. Likewise a team with a weak case usually attempts to seat less educated jurors in hopes that they will not be able to grasp or will disregard the potency of the evidence against their side in the case (Bennett, 2010).

Personality Traits

Personality traits are often hard to measure accurately in the short period allotted to *voir dire*. Because of this, research has shown that lawyers often do not attempt to take them into consideration during the selection process (Clark, Boccaccini, Caillouit, & Chaplin, 2007). However, if correct assessments can be made during this time they can prove to be especially insightful into potential jurors' attitudes. Many selection specialists attempt to measure these traits during *voir dire* and in conjunction with other information about a juror, try and establish their particular beliefs about a case. Some consultants believe they can target specific traits to gain an accurate picture of beliefs. For example, Harry Plotkin a Los Angeles based jury consultant, emphasizes six personality traits that he believes can help in deciding how a juror will view an issue in a case. He identifies sympathetic, analytic, practical, conventional, persuasive, and creative as personality types that should be measured to establish attitudes (Plotkin, 2011). Many jury specialists will argue that these traits are too specific to be measured during the brief time allotted for *voir dire*. However, most will agree that authoritarianism,

views on personal responsibility, and leadership can provide some insight into how jurors will behave throughout the trial and in deliberation.

Authoritarianism is the rigid adherence to traditional values and the tendency to look towards powerful authority figures for guidance (Dodge, 2010). Authoritarians typically have a strong belief in the judicial system and take their role as juror seriously. Authoritarians are typically more certain of guilt and are likely to punish those who they believe do not agree with their beliefs. They may see, “[T]he presumption of innocence and burden of proof as unwanted obstacles to the efficiency of the criminal justice process” (Myers, 2008,). Because authoritarians can typically be a side’s most ardent advocate or worst enemy during the trial, consultants try to identify juror candidates with authoritarian tendencies early in *voir dire* and attempt to establish if their beliefs lead them to favor their case. If they do, they desire to have these people seated for the jury; and if they do not, they push for them to be struck from the panel.

The issue of personal responsibility has played an increased role in recent years with the explosion of civil suits against corporations and businesses. Consultants want to determine how people feel concerning which party should generally take more responsibility in a case. It has been proven that jurors hold individuals and corporations to different standards when relegating responsibility (Hans, 1989). Jurors’ views on responsibility usually come from their own life practices and beliefs. Those who are usually “hands on” in all aspects of their life tend to look negatively on individuals and believe they should take more control for their action. Meanwhile those who generally believe life is a function of fate tend to put their faith in companies and believe they are responsible for their own products (Dodge, 2010). During civil cases

consultants will try to identify the responsibility people take in their life and evaluate if this will transfer over to their beliefs about responsibility in a case of an individual versus a corporation.

Leadership is another trait consultants look for when evaluating potential jurors. Leaders can have a strong influence during debates and may shape the opinions of undecided jurors during deliberations. They can have a huge impact on a case. Post-trial interviews and other forms of research have determined that in most instances during deliberation three or four jurors will do 90% of the talking (Bradshaw, 2009). Leaders are typically easy to identify based on their social standing and occupation. Leaders can be identified based on both their social standing and how they answer questions during *voir dire*. Leaders will usually have higher ranking social jobs even if those jobs do not necessarily entail leadership. Leaders are also generally older in age. Sixty-five percent of jury foreman are between the age of 45 and 65 (Nordstrom, 2011). As Maureen McLaughlin, a trial consultant explains, "Leadership qualities may be linked to social status. A bank president probably sees herself as more of a leader, although a construction foreman actually may exercise more hands-on leadership" (McLaughlin, 2007). The way someone answers questions during *voir dire* can also be indicative of their leadership abilities. People who are confident and talk clearly when questioned are obviously more likely to be leaders behind closed doors, during deliberation, than someone who responds to questions meekly.

Consultants pay special attention to those they have targeted as potential leaders during *voir dire*, as they can have a great influence on other jurors throughout the trial. Because of their ability to change and influence others opinions a jury leader who does not agree with a case should be a major concern. Because of this consultants generally avoid seating them unless they are quite certain that they will align with their side. In general when faced with the choice of

whether to select a vocal wildcard or a relatively dispassionate juror, consultants will select the latter, even if their views are slanted against their case (Nordstrom, 2011).

It is vital that a consultant learns jurors' personal beliefs. How are consultants able to better measure a potential juror's beliefs if personality traits are only of minimal help? The examining of past life experiences and attitudes formed because of them can be the best indicators of a juror's proclivities (Dodge, 2010).

Prior Experiences and Attitudes

One of the most reliable predictors of how jurors will view a case is their prior experience with issues concerning the case. Jury consultant Cynthia Cohen says,

The strongest influence on jurors is their particular experience with and exposure to issues pertaining to the trial. During their lives, jurors have experienced many things that filter how they will view the trial process. The closer their experiences match the central case issue of a case, the stronger their convictions about the issue. Searching for the behavior or experiences that reveal the core belief of each juror is critical. This epicenter, so to speak, will influence convictions in the deliberation room-(Cohen, 2001, p. 352).

Past experiences can play a large role in a civil case but can affect criminal cases as well. For example, a juror who has had a previous experience where they feel they were treated unfairly by a police officer, could be biased in a case concerning police testimony because this past experience may influence their decisions about the current case (Spaeth, 2010).

Potential jurors will often be hesitant to reveal their past experiences because they feel they can be objective despite these experiences. They fear appearing too subjective when expressing their views in front of people so may mask them in order to appear as neutral as possible. Jurors may also try to answer questions the way they feel attorneys want them to

answer questions. This is known to psychologists as response bias, and can greatly hamper selections during *voir dire* (Lehrer, 2012). An increasing role of consultants' job is the attempt to coach attorneys so that they may better elicit truthful responses from potential jurors during *voir dire*. By doing this they can more accurately assess how jurors will view a case.

Gathering Information in *Voir Dire*

Voir dire is a valuable time that many attorneys do not take full advantage of. *Voir dire* time has seen a drastic reduction, especially in modern day court rooms where judges are pressed to move cases along. Many attorneys make several key mistakes during this limited time. Consultants try to: steer attorneys away from arguing a case during this time, teach them to ask the right kinds of questions during *voir dire*, develop a high risk profile, and gather sufficient information for creating profiles.

Many attorneys will mistakenly try to establish the basis of their case during *voir dire*. They believe that by explaining their case early in the trial it will stick in jurors' minds more often. This idea, known to psychologists as the primacy effect, is not an effective use of time (Tan & Ward, 2000). Most jurors come into cases with attitudes shaped by years of experience. It would be impossible for even the most persuasive attorney to change these opinions in the short time allotted to *voir dire* (Kearney, 2001). Almost every study of juries' efficiency also show that in the end it is the evidence presented in the trial that led to a juries' decisions (Lafree, Reskin, & Vischer, 1985). This strategy is not only ineffective at establishing favorable juror attitudes early in the trial but also takes up much of the time allotted to select a jury. As Craig Smith, a senior litigation consultant in Seattle says, "Many attorneys see and use *voir dire* as an opportunity to start trying the case. They have little concern for specific high-risk juror characteristics, using valuable time to hopefully "educate" jurors or to "set up" their case, then,

in the short time remaining, relying primarily on stereotypes to make their strikes. This common practice rarely, if ever, provides any demonstrable advantage” (Smith, Brooks, & New, 2006, p. 4).

Before *voir dire* even begins consultants have already conducted a large portion of their work. This involves the creation of a high-risk jury profile or HRJP. As discussed earlier, the main goal of consultants during *voir dire* is to target and eliminate jurors who are biased against a case. The best way to do this is through the creation of the HRJP which outlines characteristics of jurors who are most likely to hold negative views of a case (Dodge, 2010). Jury consultant Richelle Lyon outlines the most effective way to create a HRJP, by using three simple steps. Step one, create a list of the riskiest attitudes against a case. First establish about 10-20 key subjects or topics of the case that could entail strong attitudes. Then gather information about how people in the same demographics as the jury pool view these topics. The second step is to then narrow down these attitudes to the few that would be most detrimental to a case (Appendix A). In the last step consultants create both warm-up questions and precise individual questions that can elicit these attitudes from the jurors and then have attorneys use strikes appropriately to make the jury as much in their favor as possible (Lyon, 2012). Consultants also encourage attorneys to petition the court to allow for the implementation of a written questionnaire that can greatly reduce time gathering basic information about members of the jury pool (Appendix B & C).

Consultants employ specific types of questions that can best elicit information from jurors that can then be matched up against their HRJP's. People will often be apprehensive about answering personal questions in front of strangers. A long held psychological fact is that reduced privacy, i.e. an open courtroom full of strangers, leads to reduced self-disclosure, fear of embarrassment or of appearing biased in front of others (Holahan & Slaikeu, 1977). Many

consultants instruct attorneys to employ warm up questions to break the ice and help jurors become less apprehensive. Some of these methods include hand raising, yes or no, and biographical information questions (Dodge, 2010). Following these questions attorneys need to focus on questions that both provide information about the case to the jurors and elicit information from them. There is a distinction between making a case during this time and asking indoctrinating questions that present facts of the case in order to judge jurors' reactions and answers to them. These questions should be open ended, a format that encourages voluntary participation by the jurors, which can lead to better identification of leaders. Precise questions about topics of the case have proven to be more effective, "[R]esearch indicates that fairly precise questions about a person's behavioral intentions are better predictors of what the person will actually do than more general questions about liking or effect" (Hans, 1986, p. 193). By comparing answers to these questions with a HRJP an attorney can better evaluate which jurors to strike and which to retain. Consultants advise attorneys to keep track of information gathered through these questions by implementing either a tracking sheet or sticky note system (Appendix D). These systems allow attorneys to easily record and return to information gathered during questioning.

To effectively build a HRJP a consultant must first gather information from the population in general. Information should be gathered from the same demographic population as the jury pool is built upon. It does little good to know the general view on gun laws of a Dallas citizen from a poor neighborhood when a trial takes place in an affluent San Diego residential area. Consultants employ multiple methods to obtain information. The base forms of population sampling and surveying still rely on techniques used by the first consultants in the Harrisonburg case. Consultants use a myriad of techniques to gather information from street surveys to

telephone and mail based questionnaires. Research has shown that the most effective way to conduct accurate surveys is on the internet (Kaplowitz, Hadlock, & Levine, 2004). Because of this, many consultants now employ the web to gather their information. Mock trials can also provide valuable insight to how jurors will view not only the topics of the case but also the evidence and the presentation of the attorneys (Kressel & Kressel, 2009). Focus groups can also obtain the same information but can sample more people quickly. Consultants can also use past research and court cases to review information that may reveal key insights into the public's perception of their case. Consultants use one of these methods, or more often a combination of them to gather information for a trial.

Conclusion

The United States State Department estimates that there are approximately 154,000 trials in the U.S. per year that involve a jury (state of the states, 2007). Jury selection is a relatively infant part of the court system. Consultants were first used in 1972 and have since grown into a legitimate tool employed by attorneys. The role of consultants has been greatly romanticized in America in recent years. Contrary to commonly held beliefs consultants do not rely on guess work or obscure facets of people's appearance to make decisions. Instead they rely on scientific techniques such as surveying, background research, and other social science research to come to their conclusions. In only 40 years the role of consultants has grown from its birth into a serious component of the justice system. As their role increases consultants will continue to rely on scientifically based research and techniques to make judgments concerning which potential jurors will favor a case.

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Appendices

Appendix A

High Risk Juror Profile

(Example from the defense perspective of a hospital negligence case)

- Attitudes and Opinions
 - Holds a very low opinion of the medical field, hospitals, nursing homes, or other medical facilities.
 - Believes hospitals overcharge and take advantage of people in order to make more money.
 - Believe hospital workers care very little about individual patients' welfare.
 - Believes rewards for medical malpractice cases must be severe in order to "make an example" for other facilities.
 - Believes that in general workers at hospitals are jaded from their experiences.
- Past Experiences (Can apply to themselves, family, or friends)
 - Had a negative experience at a hospital or other type of healthcare facility.
 - Believes they did not receive proper care at a hospital before.
 - Believes hospitals have run unnecessary tests on them before to gain money.
 - Has lost a family member/friend at a hospital due to possible negligence.

High Risk Juror Profile

(Example from the plaintiff side of a hospital negligence case)

- Attitudes and Opinions
 - Holds a high opinion of the medical field, hospitals, nursing homes, etc.
 - Believes hospitals do their best to limit the cost to patients and provide the best care for them
 - Believes there are too many lawsuits today.
 - Believes people file lawsuits solely for monetary gain.
 - Believes there should be a limit for the amount of damages awarded in malpractice suits.
 - Holds medical workers in high regard and views them as selfless public servants.
 - Believes that hospital staffs are under tremendous pressures from their job.
 - Believes, “when it is someone times to go, there is nothing that can be done”.
- Past Experiences (Can apply to themselves, family, or friends)
 - Had a lifesaving medical experience and feels grateful to the medical workers who treated them
 - Knows a loved one who works in the medical field.
 - Has had negative experiences at hospitals before but does not blame the doctors or nurses.
 - Has previously worked in a medical environment and had a positive experience.
 - Training or experience in insurance claims

Appendix B

Request to Court to Administer a Juror Questionnaire

The implementation of a succinct and focused written questionnaire for selecting potential jurors greatly expedites the jury selection process. Questionnaires allow for individuals to respond to the same questions in the same setting, allowing for more accurate comparisons and evaluations of prospective jurors. A written survey such as this also minimizes the chance that jurors respond to questions with prejudicial remarks that might affect other potential jurors on the panel. A questionnaire also allows for potential jurors to provide a large amount of information in a brief amount of time, and since all members can take the survey at the same time it greatly reduces the time necessary for the answering of individual questions. For the above mentioned reasons the defense requests that the Court administer a brief written questionnaire to the prospective jurors before the oral section of the voir dire process.

A copy of the questionnaire is follows. It seeks to gather a basic level of back ground information for each potential juror. The questionnaire should be taken under oath, and should take fifteen minutes to complete. We propose that the questionnaire be administered on the first day of voir dire and following this, more specific oral questions can be delivered based on the information provided.

Appendix C

Sample Juror Questionnaire

Introduction:

The following questions are meant to provide more information and background to help the court more expediently select potential jurors. The entire set of questions on this survey could be asked in open court and are completely private.

Reminder: You are under oath, and are required to answer the questions truthfully, accurately and completely as possible.

Questionnaire:

Juror Number: _____ Full Name: _____

Age: _____ Gender: _____ Marital Status _____

- What is your current occupational status?:

Employed full-time
 Employed part-time
 Student
 Disabled
 Unemployed
 Self-Employed
 Laid-Off
 Retired

- Please list your last two jobs, employer, and dates you held that job:

Employer	Job	Date (from-to)

- What is the highest level of education that you have received?:

___ Less than High School

___ High School

___ Junior College/some college

___ Bachelor's Degree

___ Graduate Degree

- This trial is expected to last for _____. Is there a reason why you would be unable to complete your service requirement? _____

- Have you ever served on trial jury before being called here today? If so please explain: _____

- The parties involved in this case are _____. Do you know either/any of them? _____
- The attorneys in this case are _____. Do you know either/any of them? Have you ever employed their services or had them bring action against you? _____
- These are the potential witnesses in the case _____. Do you know any of these potential witnesses?
- Do you know any of the other jurors in the jury pool today? _____

- I have already briefly described the case. Do you have any reasons why you would be unable to act unbiased in making a decision?

- Have you or anyone especially close to you had any training, education or experiences in the following fields?
 ___ Human resources, management, or labor relations
 ___ Civil rights, affirmative action, or discrimination
 ___ Law or courtroom procedures
 ___ Ageism, Sexism, or any other form of discrimination
- Have you, any member of your family, or personal friend filed a law suit of any kind?
 ○ If so please describe the suit briefly

- Do you hold any bias against a plaintiff who has brought a lawsuit against an entity?

- If the law and court proceedings warranted it would you be able to make a decision in the case regardless for your possible sympathies for either party? _____
- Would your decision in this case be influenced by any factors other than the arguments and evidence presented in the court? _____
- Can you accept a law even if you do not agree with it and fairly apply it to the trial? _____

Example questions for a trial involving workplace harassment

- Please read each statement below and mark if you agree, disagree, or have neutral feelings about the statements.

<i>Agree</i>	<i>Disagree</i>	<i>Neutral</i>	
			Work place harassment claims are usually well based
			Employee harassment claims are usually unjust
			Companies do a good job of eliminating work harassment
			Female harassment is a serious problem in today's world
			There are generally too many lawsuits today
			Damages awarded in harassment suites are too high
			No one is really injured because of work place harassment
			There should be a limit to damages awarded for harassment
			Many cases of harassment are just flirting
			Harassment laws are biasedly favor women
			Women are just as guilty as harassment as men are
			Men can be victims of female harassment

Potential Problems

- Have you, family member, or friend, ever been employed or been a customer of the company that the suit is brought against today? _____
- Have you ever heard of previous lawsuits brought against the company in this case or previous lawsuits that the plaintiff has brought to court? _____
- Do you have any strong religious feelings that may influence your ability to hear this case unbiasedly? _____
- Is there anything else that has not been covered in the above questions that you feel the court should know about your past that could influence your hearing and decision making concerning this case? _____

I declare under penalty of perjury that the above statements have been answered as honestly as possible

Signature

Date

Appendix D

Examples of Juror Information Tracking Systems

- Sticky note system

Juror #- 23, John Smith

Male, 48 y.o., jr. high teacher,
Hispanic, 3 kids.

Owens own business, sister is nurse,
familiar with contracts & insurance,
conservative dresser, very vocal,
possible leader?

Juror #- 9, Linda Brown

Female, 32 y.o., receptionist,
Caucasian, single mother.

High school education, had bad
experience with doctor once, timid,
little knowledge of insurance system,
possible strike.

- Tracking sheets

Juror #	Name	Info	Status
32	Naomi Urdike	F, 25, stay at home mom, conservative, college educated-business, extensive insurance knowledge, father was doctor	High priority retain
18	Steve Tavarez	M, 59, retired military officer, little knowledge of health care system, very black and white oriented, believes offenders should be punished severely	High priority strike
3	Tamara Collins	F, 42, ER nurse, very sympathetic towards medical field workers, feels negligent workers tarnish job and need to be punished, husband is a police officer	Low priority strike