

LEARNING BY DOING JUSTICE:
JURY SERVICE AND POLITICAL ATTITUDES

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Abstract

Alexis de Tocqueville was convinced of the value of jury service as a form of political participation and the value of the jury as a political institution. He linked the use of the jury to the "practical intelligence and political good sense" of the American people. This study focuses on the question of whether Tocqueville's assertions regarding the educational effects of jury service accurately characterize the consequences of contemporary jury service.

The effect of the jury service experience upon participants' knowledge and political attitudes is assessed through A) a before-and-after-service series of surveys measuring knowledge and attitude change and B) a series of open-ended interviews gauging the nature and depth of juror reactions to service.

The majority of trial jurors report that they learned something from the experience, mostly "how the process works." The before and after service survey data show some small positive effects of jury trial service on attitudes toward the jury and judicial system, knowledge of due process principles and, among women first-time trial jurors, feelings of political efficacy. In addition, the indepth interviews suggest that jury trial service can increase attention to "system concerns."

This research aims to help bridge a gap that exists between jury research, political participation research and studies of the relationship between legal institutions and political attitudes.

CHAPTER ONE

INTRODUCTION

DOES JURY SERVICE MAKE PEOPLE BETTER CITIZENS?

Over a century ago, Alexis de Tocqueville praised the American institution of trial by jury, linking its use to the "practical intelligence and political good sense" of the American people.¹ He was convinced of the value of the jury as a political institution and the value of jury service as a form of political participation:

[The jury] teaches men to practice equity; every man learns to judge his neighbor as he would himself be judged... The jury teaches every man not to recoil before the responsibility of his own actions and impresses him with that manly confidence without which no political virtue can exist. It invests each citizen with a kind of magistracy; it makes them all feel the duties which they are bound to discharge toward society and the part which they take in its government. By obliging men to turn their attention to other affairs than their own, it rubs off that private selfishness which is the rust of society.²

Tocqueville emphasized the benefits of jury participation to participants and polity alike. He believed that the jury served as an antidote to the alienating effects of

¹ Alexis de Tocqueville, Democracy in America, Volume I (New York: Vintage Books, 1945) pp.295-296.

² Ibid., p.294.

democratic individualism.

Where there is democracy, Tocqueville observed, "as social equality spreads there are more and more people who, though neither rich nor powerful enough to have much hold over others, have gained or kept enough wealth and enough understanding to look after their own needs."³ Democracy breaks the social and economic bonds of aristocracy. "Such folk owe no man anything and hardly expect anything from anybody. They form the habit of thinking of themselves in isolation and imagine that their whole destiny is in their own hands."⁴ Withdrawing into private worlds of family and friends, a self-sufficient and self-absorbed citizenry leaves the polity to fend for itself. "Each man is forever thrown back on himself alone, and there is danger that he may be shut up in the solitude of his own heart."⁵

Tocqueville believed that the jury drew people out of the "solitude of [their] own heart[s]" into the light of the public sphere where they would learn legal principles through administering justice on behalf of the society.

In Tocqueville's view, jury service increased both a

³ Alexis de Tocqueville, Democracy in America, Volume II trans. George Lawrence, ed. J.P. Mayer (New York: Doubleday, Anchor Books, 196) p. 507.

⁴ Ibid., p.508.

⁵ Ibid., p.508.

citizen's KNOWLEDGE OF and ATTACHMENT TO democratic legal principles. It taught jurors their rights as they "become practically acquainted with the law":

It may be regarded as a gratuitous public school, ever open, in which the juror... enters into daily communication with the most learned and enlightened members of the upper classes, and becomes practically acquainted with the laws, which are brought within the reach of his capacity by the efforts of the bar, the advice of the judge, and even the passions of the parties.⁶

Jury service exposes jurors to the democratic legal culture and the principles upon which it is based. As participants, they work within the legal system, learning through applying, with the aide of court professionals, the tools of the legal trade. In Tocqueville's words,

The jury...serves to communicate the spirit of the judges to the minds of all the citizens; and this spirit, with the habits which attend it, is the soundest preparation for free institutions. It imbues all classes with a respect for the thing judged and the notion of right.⁷

John Stuart Mill shared Tocqueville's convictions concerning the educational effects of jury service. In Considerations on Representative Government, Mill made the following argument:

As between one form of popular government and another, the advantage...lies with that which most widely diffuses the exercise of public functions... on the one hand, by excluding fewest from the

⁶ Tocqueville, Vintage Books, pp. 295-296.

⁷ Ibid., p.296.

suffrage; on the other opening to all classes of private citizens . . . the widest participation in the details of judicial and administrative business . . . whereby not merely a few individuals in succession, but the whole public are made to a certain extent participants in the government, and sharers in the instructions and mental exercise derived from it.⁸

Tocqueville and Mill believed the jury was an institutional antidote to public ignorance and social isolation. How true is this today? Does jury service have significant educational effects? Does the experience change the political attitudes of those who serve? Can it counter tendencies of social and political isolation? Or does our contemporary jury system reinforce social division? Does it reflect more than counter the excesses of individualism and specialization? If the experience serves as a kind of 'public school,' can public policy be reformulated to enhance its educational effects? These are the questions that this study addresses.

Questions about the effects of jury service seem to be especially relevant today. Though Americans have shed many of the social and political prejudices of over a century ago, we are arguably more culturally isolated from one another and more distant from our public institutions than ever before. The small face-to-face communities which once

⁸ John Stuart Mill, On Liberty and Considerations on Representative Government, (Oxford: Basil Blackwell, 1946) p.117.

nurtured civic culture have given way to large, diverse and anonymous cities and atomized suburbs.

Some theorists claim that modern liberalism has undone democracy. One critic complains:

...what we do not assume, what we do not seem to have, is the space in which to act like citizens.

While we are given rights, we are not given the responsibility for acting on those rights. This, in many important ways, is the flaw in our liberalism. The citizen is granted rights but is given no place to exercise them; each person has potential power but no place to actualize it. The individual is given political tools, but no area in which he or she may act politically.⁹

The preoccupation with individualism and individual rights, according to some, has led to wholesale withdrawal from the public sphere. There is plenty of evidence to support their claims. Survey researchers find low levels of political interest and information in the electorate upon which democratic institutions depend.¹⁰ Fewer of us vote these days. More of us are cynical about and less attentive to politics and government. Some say that people are inattentive because they are contented; Others say the inattentive are alienated and still others suggest that the

⁹ David Schuman, A Preface to Politics, Second Edition, (Lexington: D.C. Heath and Company, 1977) See also Benjamin Barber's Strong Democracy: Participatory Politics for a New Age, (Berkeley: University of California Press, 1984) for a more recent and extensive discussion of this issue.

¹⁰ For a recent review of this evidence, see W. Russell Neuman, The Paradox of Mass Politics: Knowledge and Opinion in the American Electorate, (Cambridge: Harvard University Press, 1986).

inattentive are merely preoccupied with their private lives.

Though there may be great disagreement about the reasons for political inattentiveness, few would deny the fact of it. Inattentiveness means neglect of the public sphere, the mass public's neglect of democratic institutions.

Americans not only neglect the public sphere, but show mostly superficial support for individual due process rights. People say they believe in the Bill of Rights but many do not support the specific legal procedures used to sustain and preserve civil and due process rights.¹¹ For many people these days, the term "legal technicality" has only negative connotations.

The need for support of civic culture in the United States, for antidotes to the pernicious effects of social and economic individualism, appears greater than ever. At the same time, support for individual due process rights which serve as part of the foundation of American democracy needs to be strengthened.

While past and present champions of the jury make great claims for its positive effects, jury critics can make compelling counterclaims. Contrary to Tocqueville's expectations, studies of public attitudes toward the courts and the legal profession find that people who have first

¹¹ Herbert McClosky and Alida Brill, Dimensions of Tolerance: What Americans Believe About Civil Liberties, (New York: Russell Sage Foundation, 1983).

hand experience with the legal system tend to be less satisfied than those to whom the 'system' remains remote.¹²

Serving as trial jurors might make people feel more like outsiders than they felt before their first hand experience. The language of American law is archaic; legal procedures are specialized and often complicated. Instead of feeling more attached and supportive, jurors may feel more distant from the system after their jury service than before. The judicial system may seem less accessible and justice less attainable than they had expected. Public service may feel more like a burden, a distraction from more valued private pursuits, than like an enriching educational and civic experience.

Propositions, Positive and Negative:

There are, as the above discussion suggests, two opposing sides to expectations about the educational effects of jury service. Tocqueville's assertions, distilled into hypotheses, can be matched by plausible null hypotheses, as follows:

Hypothesis One:

Jury service is likely to increase a juror's knowledge of legal procedural rights, ie. due

¹² Austin Sarat, "Studying American Legal Culture: An Assessment of Survey Evidence," Law and Society Review, 11:3, (Winter, 1977) p.441. See his references to two studies in particular: Barton and Mendlovitz (1956) and Walker et al. (1972). Jury service is not identified as a category of experience with the legal system in these studies.

process principles.

Null Hypothesis:

Jury service will not increase a juror's knowledge of legal procedural rights, ie. due process principles.

Hypothesis Two:

Jury service is likely to increase a juror's respect for due process norms.

Null Hypothesis:

Jury service will not increase a juror's respect for due process norms.

Hypothesis Three:

Jury service is likely to increase a juror's knowledge of and respect for the judicial system, including specific actors such as judges, prosecutors and defense attorneys.

Null Hypothesis:

Jury service will not increase a juror's knowledge of and respect for the judicial system, including specific actors such as judges, prosecutors and defense attorneys.

Hypothesis Four:

Jury service is likely to increase a juror's social and political confidence.

Null Hypothesis:

Jury service will not increase a juror's social and political confidence.

Hypothesis Five:

Jury service is likely to increase a juror's support for democratic institutions.

Null Hypothesis:

Jury service will not increase a juror's support for democratic institutions.

Judging whether Tocqueville's assertions are true today does not require a comparison of the American jury of today with the institution of his time. The endeavor is

worthwhile even without the historical comparison. We do not know whether Tocqueville was right about the juries of the 1830's and could only speculate about most of the likely differences between the juries of his time and our own.¹³ Therefore, we leave the question of comparison for another study.

In this study, a multi-stage research program was used to explore and test the aforementioned hypotheses. The program consisted of (a) an initial exploratory phase, (b) a panel study employing a before-and-after service series of surveys and (c) a series of indepth, open-ended interviews.

The study took place in three San Francisco Bay Area courts: (a) Walnut Creek Municipal Court, (b) Alameda County Superior Court and (c) U.S. District Court in San Francisco.

All judicial departments in the Municipal Court participated in the study, while one judge from the Superior Court and three judges from the Federal Court cooperated.

Data was collected from trial and non-trial jurors called to serve on 26 criminal jury trials.¹⁴ Descriptive data was collected on all the trials in the study. No long

¹³ Langbein sums up the comparative dilemma: "Too little is known about the detail of the transformation of the 18th Century summary jury trial into the 20th Century adversary jury trial." See John H. Langbein, "Understanding the Short History of Plea Bargaining," Law and Society Review, Vol. 13 (Winter 1979) p.265.

¹⁴ One case settled before jury selection so actually 25 complete trials were part of the study.

trials or violent crimes were part of the study. Charges ranged from misdemeanor Driving Under the Influence of alcohol (DUI) to felony drug dealing to securities fraud.

865 prospective jurors were asked to fill out pre-service surveys in the courthouse or courtroom waiting area before jury selection began. Over 85 percent of prospective jurors answered the pre-service survey at the outset of service.¹⁵ They were told participation was voluntary, assured of the confidentiality of survey information received and invited to request the results of the research (See invitation statement, surveys and results request forms in Appendix B). Over 36 percent of respondents available from this same group answered the post-service survey.¹⁶

Four control groups were used in the study. First, pre-service respondents and among them, those in the prospective juror pool without prior jury trial service were considered a control group. Prospective jurors dismissed

¹⁵ See Appendix A, SURVEY RESPONSE RATES for detailed information concerning response levels.

¹⁶ The base for this figure is all the respondents for whom mailing addresses were available or those who were given the post-survey at the courthouse (N=637). In the Municipal Court, juror addresses were not released by the administrators. Instead, the researcher asked for respondents' addresses and used the address information from the results request forms as well. As a result, the group of respondents available to answer the post-service survey was somewhat smaller than the total panel sample. Trial jurors were given the post-service survey before they left court whenever possible.

from trial service during the study were considered a second control group. A third control group consisted of one panel (of prospective jurors) which was dismissed from jury service without any courtroom exposure. And finally, the last four trials in the study for which no pre-service survey was administered were used as a survey response effects control group (see TABLE 4.2, Chapter Four).

Before turning to an overview of the project's findings, let us briefly review the context of and conditions for the study.

Jury Service as Political Participation

The extensive use of the jury system in the United States provides analysts of political participation with an opportunity to explore an arena of participation they have been missing. At the same time, it affords students of the jury an opportunity to consider the larger role of the institution they study. It provides analysts of legal institutions with the opportunity to study how jury service affects knowledge of and support for (or criticism of) legal norms and processes. This study of the consequences of jury participation aims to help bridge the gap among jury research, political participation research, and studies of the relationship between legal institutions and political attitudes.

The ideas of jury service as a political activity and as a potentially educational activity have not been systematically discussed or researched in either the jury or the political participation literature. Although a number of juror exit surveys have been conducted, these tend to focus on administrative issues associated with jury service (waiting periods, treatment of jurors by court officials, problems with parking, etc.).¹⁷ While anecdotal accounts of the jury experience by former jurors sometimes include comments concerning the political character and educational effects of the experience, formal studies of juror reactions to jury service do not explore these aspects.

Analysts of the jury have focused more on the internal dynamics of juries and on the administrative aspects of the system. Until recently, researchers were not allowed to observe jury deliberations.¹⁸ Perhaps in part because of this, most scholarly research on the jury has concentrated on the dynamics of the process itself-- reconstructing jury

¹⁷ See Broeder, 1959; Flynn, 1960; Durand, Beardon, 1977; Easro, Kasunic, 1979; Pabst, Munsterman, Mount, 1976; Conway, 1980) Jurors are asked to report their reactions to the jury experience as simply either favorable or unfavorable. Data on juror reactions are usually used to inform debates like those over appropriate juror administration, compensation, and willingness to serve.

¹⁸ In PBS Frontline's "Inside the Jury" (April 9, 1986) a criminal jury's deliberations were videotaped. This is the first time, to my knowledge, that cameras were allowed to record jury deliberations.

decision-making¹⁹ or jury selection²⁰, to name two examples.

One rarely hears arguments or analyses focusing on jury service as a form of political participation.

At the same time, studies of political participation seem to ignore jury service altogether. Most reviews of the subject either fail to mention the jury or make only a brief reference to it. Analysts include voting, campaign participation, interest group participation and citizen initiated contacts in their surveys of who participates and how and why.²¹ They attempt to uncover systematic incentives and disincentives to participate.²² They even

¹⁹ See Reid Hastie, Steven D. Penrod and Nancy Pennington, Inside the Jury (Cambridge: Harvard University Press, 1983) especially pp. 175-226.

²⁰ See Michael Fried, Kalman J. Kaplan and Katherine W. Klein, "Juror Selection: An Analysis of Voir Dire," in Rita James Simon, (ed.), The Jury System in America: A Critical Overview (Beverly Hills: Sage Publications, 1975), pp. 47-66; Michael J. Saks, Jury Verdicts: The Role of Group Size and Social Decision Rule (Lexington, Massachusetts: Lexington Books, 1977); and "The Influence of Demographic and Social Characteristics on Juror Selection and Performance," Chapter Three in Rita J. Simon, The Jury: Its Role in American Society (Lexington, Massachusetts: Lexington Books, 1980) pp. 29-45.

²¹ See especially Wolfinger and Rosenstone, Who Votes? (New Haven: Yale University Press, 1980); Nie, Verba, Kim, Participation and Political Equality: A Seven Nation Comparison (Cambridge University Press, 1977); Norman Ornstein and Shirley Elder, Interest Groups, Lobbying and Policymaking (Congressional Quarterly, 1978); Samuel Barnes, et al., Political Action: Participation in Five Western Democracies (Beverly Hills: Sage Publications, 1979).

²² See, for example, Mancur Olson's The Logic of Collective Action (Harvard University Press, 1971); Peveril Squire, Raymond Wolfinger, and David Glass, "Residential

grapple with the difficult question of whether there are educational effects from these kinds of political participation, though no clear conclusions can be drawn from their efforts.²³ Still jury service has been conspicuously absent from the agenda of political participation studies.

How can we explain this oversight? At one level, jury service just does not look like other forms of political participation. Jury service is obligatory rather than voluntary and requires the participation of citizens with no personal stake in the issues to be decided. Incentives to participate and opportunities for personal gain are not issues central to understanding jury service. Furthermore, some seem to assume that juries are both infrequently used and likely to be unrepresentative and, therefore, less significant forms of participation than other types.²⁴ Juries do not neatly fit with theories of other forms of political participation.

Mobility and Voter Turnout," in The American Political Science Review, 81:1, March, 1987.

²³ See Robert Dahl, Who Governs? Democracy and Power in an American City (New Haven: Yale Univ. Press, 1961); Carole Pateman, Participation and Democratic Theory (Cambridge University Press, 1970) and Johannes Pedersen, "On the Educational Function of Political Participation: A Comparative Analysis of John Stuart Mill's Theory and Contemporary Survey Research Findings." Political Studies 30:4 (1982).

²⁴ See Jack Nagel Participation (Englewood Cliffs: Prentice-Hall, 1987) pp. 55 and 62.

It may also be that analysts of political participation feel justified in not viewing jury service as political. The reasoning might be the following: since jurors are instructed by the courts to make decisions of fact rather than law, their role is administrative rather than political. Juries are fact-finding bodies, determining whether the facts fit the law as it is explained to them. Hence, there is no room for politics in this model of decisionmaking.

However, in their extensive analysis of the institution, the authors of The American Jury challenge this view directly:

Although a substantial part of the jury's work is the finding of facts, this, as has long been suspected, is not its total function in the real world. . . the jury imports its values into the law not so much by open revolt in the teeth of the law and the facts, although in a minority of cases it does do this, as by what we termed the liberation hypothesis. The jury in the guise of resolving doubts about the issues of fact, gives reign to its sense of values. . . Its war with the law is thus both modest and subtle. {emphasis added}²⁵

A jury's discretion with regard to judgement of the facts allows it a kind of political agency.

Juries, in making their decisions, either choose among available alternative interpretations of the facts in a

²⁵ Harry Kalven, Jr., and Hans Zeisel, The American Jury, (Chicago: University of Chicago Press, 1966) pp. 494-495.

case or develop their own interpretations. They decide which facts are critical and which are merely incidental to the determination of guilt or innocence. Just as an administrator, implementing a law, uses his or her discretion in its practical application, thereby acting politically, so, too, does the jury use its discretion when implementing the law in a single decision. The role of the jury is thus, at the very least, subtly political.

In U.S. petit jury trials, the jury's role can be described as job sharing with the judge. The judge decides matters of law and instructs the jury in the law while the jury decides the facts and applies the law it is given to the facts. The dividing line between judicial functions can be crossed, however, as when a jury sets aside the law given to it when determining its verdict.

In some unknown proportion of cases, the jury exercises more broadly political action. Juries deliberate in secrecy and regardless of the judge's instructions as to the law, they can disregard "the law" and substitute their own standards of morality or public policy. The practice of jury "nullification" as legal scholars call it,²⁶ is most likely to operate, and is most important as a check on

²⁶ For more information concerning 'jury nullification', see Mortimer R. Kadish and Sanford H. Kadish, Discretion to Disobey: A Study of Lawful Departures from Legal Rules, (Palo Alto: Stanford University Press, 1973).

tyranny, when governments seek to prosecute violations of controversial laws. In some cases, where the civil law uses broad terminology, inviting the jury to decide what is "reasonable" or what should be "negligent", the jurors in effect make regulatory policy.

The independence of the American jury dates from the John Peter Zenger criminal libel case of 1734. This decision established the role of the jury as "conscience of the community."²⁷ Zenger, a newspaper publisher, was charged with criminal libel of the New York royal governor.

Zenger claimed freedom of the press as his defense. The judge directed the jury in the case "to decide only the admitted fact of whether the defendant published the articles in question; he, the judge, would decide if they were libelous. The jury defied the judge and returned a verdict of not guilty."²⁸

In considering jury service as a form of political participation it is natural to focus attention on the United States judicial system. The right to 'trial by jury' is central to the American system of justice. Very few other

²⁷ Seymour Wishman, Anatomy of a Jury, (New York: Times Books, 1986) p.206. It is also a dramatic historical example of 'jury nullification'- when a jury ignores the judge's instructions in the law and acquits the defendant because they believe either a) the law is unjust or b) the likely punishment would be unjust (ie. too severe).

²⁸ Ibid., p.206.

countries entitle their citizens to a jury trial. In the case of the U.S., however, where it has been estimated that ninety percent of the world's jury trials occur²⁹, the right to trial by jury is guaranteed by the Constitution.³⁰

An important fact about the American jury: The nature of jury selection procedures in the U.S. presents an interesting analytical opportunity that is not available in the study of other kinds of political activity. In the U.S., jury service is the only form of political participation which a citizen is, at least theoretically, obliged to perform. In jury participation, there is a good deal less self-selection bias than in the other (non-compulsory) forms of American political participation.

While reluctant jurors may select themselves out of service in a variety of ways, they cannot select themselves in! People do not volunteer for jury duty; they are summoned by the court. Citizens called in as prospective jurors generally represent a random sample of either the local (or regional) voter registration or driver's license

²⁹ The source for this estimate: The New Encyclopaedia Britannica (Chicago: Encyclopaedia Britannica, Inc., 1987) Vol. 22, 15th Edition, p.486. Hastie et al. estimate that more than 300,000 jury trials take place in the United States every year (See Inside the Jury, op.cit.).

³⁰ Trial by Jury is established in Article III of the Constitution: "The Trial of all Crimes...shall be by Jury;" The right to a trial "by an impartial jury" is guaranteed in the Sixth Amendment, and "preserved" in the Seventh for federal civil cases.

lists.³¹ Those who want to avoid service might decide not to register to vote in order to reduce their risk of being called but since other kinds of lists are also used, especially in large metropolitan areas, such a strategy is not likely to be very effective.

There are certainly opportunities even for those 'called' to escape the obligation to serve. They can ignore the summons or juror qualification questionnaires sent by the court and risk being fined. They can claim that jury service would result in great hardship, though they must explain the hardship to the court's satisfaction. Most judges and jury officials are more likely to postpone rather than excuse the obligation to serve, however. Finally, if all else fails, when summoned to court and questioned for service for particular trials, unwilling prospective jurors can insist that they cannot judge the cases fairly.

As one scholar has pointed out, the "democratic rules

³¹ In some courts, voter registration lists are used as the primary, if not sole source for jurors. Because nonwhites, the poor and the young register at lower rates than the rest of the population, they are likely to be underrepresented in the random samples called in by these courts. In 1984, U.S. District Courts were required by federal statute (Title 28 U.S.C.A. Sections 1863-67) to devise and operate a jury selection plan designed to "insure random selection of a fair cross section" of the community. Representativeness of the sample selected is required in only two categories, however: gender and race (white/non-white variation). See Chapters Four and Five for further discussion of the issues related to "who is called" of "who serves."

of the political game" normally prohibit the researcher from using the experimental method to analyze politics. It is not usually possible to divide the citizenry into separate groups, compelling some citizens to participate in politics while others abstain.³² Yet this characterization roughly describes the procedure used by courts each time they develop a pool of prospective jurors for one service period. Each time a given court draws its needed sample of prospective jurors, leaving others out, it sets the stage for a potential experiment in political participation.

Learning by Doing?

What are the key elements of this experiment? Observation of jury trials in the courts in the San Francisco Bay Area revealed three aspects which seem crucial to understanding the educative potential and participatory dimensions of jury service: 1) Instruction in the law by the judge and attorneys, 2) Individual juror judgement of the facts in the case and 3) Collective juror deliberation.

Instruction in the Law

In the cases observed in this study (all criminal

³² Johannes T. Pedersen, "On the Educational Function of Political Participation: A Comparative Analysis of John Stuart Mill's Theory and Contemporary Survey Research Findings," Political Studies, Vol. 30, No. 4, December, 1982, p.557.

cases), all prospective jurors received some instruction in the law from the judge and attorneys during jury selection (voir dire).³³ The judges informed the panels that a) the State bears the burden of proving the defendant's guilt beyond a reasonable doubt; b) the State must overcome the defendant's presumption of innocence; and c) the defendant has a right not to testify. The judges paraphrased some and read other portions of the official jury instructions concerning these principles. They were likely to read the official definition of reasonable doubt to the panel, as well.

When attorneys questioned the prospective jurors in the jury box, they took the opportunity to emphasize some of the legal principles which the judge outlined. Defense attorneys usually emphasized the concepts of the presumption of innocence and the right not to testify, while prosecuting attorneys explored the concept of reasonable doubt.

Trial jurors, once selected, were instructed in rules of law by the judge at least two more times (often three or more) before they were given the case to deliberate. The jury was usually instructed before attorney opening statements, again before closing arguments and finally, before being given the case for deliberation. In addition

³³ In addition, under California law (as of 1987), written copies of the judge's instructions are sent into the jury room during deliberations.

to the principles of reasonable doubt, burden of proof, presumption of innocence and (if relevant) the right not to testify, trial jurors are instructed in the rules of law regarding the legal definition of the crime charged, evidence, witnesses, criminal intent and other matters relevant to the particular case being tried.

Individual Juror Judgement

Among the instructions to the jury before it is given the case to deliberate, the judge reads the following, "Both the People and the defendant are entitled to the individual opinion of each juror."³⁴ (17.40) Jurors, as noted above, are judges of the facts. As some judges described it, the jurors "job share with the judge."³⁵ As the testimony and physical evidence are presented through the course of the criminal jury trial, trial jurors must individually attempt to assess the credibility of the witnesses, evidence and arguments presented to them. They are instructed by the judge not to form any opinions or discuss the case with each other until deliberations begin.

³⁴ Committee on Standard Jury Instructions, Criminal, of the Superior Court of Los Angeles County, California, California Jury Instructions, Criminal, Fifth Edition, (St. Paul: West Publishing Co., 1988) Instruction No. 17.40. Here after, CALJIC (No.).

³⁵ Two judges in this study use this phrase to describe the role of jurors.

Collective Juror Deliberation

In the trials observed in this study, jurors had to agree unanimously on a verdict. In addition to developing an individual judgement of the facts of the case, jurors were instructed by the judge to decide collectively in the following terms:

It is the duty of each of you to consider the evidence for the purpose of arriving at a verdict if you can do so. Each of you must decide the case for yourself, but should do so only after a discussion of the evidence and instructions with the other jurors.

You should not hesitate to change an opinion if you are convinced it is erroneous. However, you should not be influenced to decide any question in a particular way because a majority of the jurors, or any of them, favor such a decision.³⁶

Transforming individual judgement into collective judgement in the jury room is an exercise in face-to-face democratic deliberation. Jurors must attempt to reconcile differing perspectives and opinions related to the case in order to reach the unanimous decision required of them.³⁷ In the

³⁶ CALJIC, 17.40

³⁷ The criminal trial jury in the State of California (even for misdemeanor cases) is a 12-person institution bound by unanimous decision rule. Nearly half of other states permit use of smaller juries as means of lowering trial costs. The Supreme Court also has permitted the use of nonunanimous juries (3/4 majority rule). See Saul Kassin and Lawrence S. Wrightsman, The American Jury on Trial: Psychological Perspectives, (New York: Hemisphere Publishing Co., 1988) pp. 5, 195-199. See also, Peter Sperlich, "...and Then There Were Six: The Decline of the American Jury." Judicature, Vol. 63, p. 280, 1980.

jury room every person's vote counts equally.

Lessons Learned by Doing Justice

What did jurors learn, if anything, from their experience of 'doing justice' on behalf of their community?

Of the 285 trial jurors, alternates and non-trial jurors³⁸ responding to the post-service survey and interviews in this study, the overwhelming majority said they learned something. Most reported learning either procedural or positive lessons. Many reported learning how the criminal justice process "works." Not surprisingly, trial jurors were more likely than "non-trial jurors" to report learning positive lessons. Although all prospective jurors shared the same initial bureaucratic burdens and inconveniences, those selected as trial jurors seemed more able to get past concerns about the administrative inefficiencies and understand and work at the heart of the American criminal justice process.

The findings in three crucial areas paint a positive picture of the likely effects of jury service on support for democratic institutions. The data show (a) a significant increase in political efficacy among trial jurors (b) increased understanding of and support for due process

³⁸ Non-trial jurors are those potential jurors who were called to the courthouse but who did not actually sit on a trial.

principles and (c) increased understanding and respect for the jury and judicial systems. For those who serve as trial jurors, jury service is more than just a glimpse into the process. Jurors appear to develop knowledge and understanding that comes from working as part of the judicial system.

Former trial jurors report that they "see things differently." They appear to feel more politically efficacious after performing a community service in what is perceived to be a very complicated public institution. The data show that trial jurors held a greater appreciation for the practical and conceptual difficulties associated with the administration of justice as a result of their service.

What are the implications of these findings? Although this is an exploratory study, the findings clearly point to important potential educational effects of jury service and the critical role of the judge in the achievement of that potential. The jury trial experiences in this study reached much of their educational potential.

The findings also point to the distinctiveness of jury service from other forms of political participation. Service on a trial jury affords participants a real-life seminar in democratic legal governance. In spite of the limited representativeness of jury panels and juries, no other form of institutionalized participation throws such a

wide range of people together, involuntarily, in service of their community.

Outline of the Study

The aforementioned Tocqueville and Mill assertions regarding the knowledge and opinion effects of jury service help us to frame the question of the consequences of jury service. The study undertaken to explore answers to the question is outlined below.

The next chapter, Chapter Two, takes the reader through criminal jury service typical of those experienced by the respondents in this study. The narrative highlights the educational and participatory aspects of service.

In Chapter Three the range of relevant social science literature is used to frame the expected effects of jury service on jurors' political and institutional attitudes. The conclusions and insights from the literature along with exploratory observation of jury trials and jury service were combined to develop a rough model of 'expected effects'.

Chapter Four details the study's research design. The study began with exploratory observations of jury trials and preliminary interviews with court officials and former jurors. Next, the two main research phases of the study were undertaken: A) a quasi-experimental panel study employing surveys administered before and after jury service

and B) the in-depth post-trial interviews with former jurors. Finally, background and operational data were gathered on the courts and communities under study. Appendices A and B contain more detailed information regarding study design, including the survey questions used, the types of trials in the study and the trial data collection forms used.

Chapter Five reports the research findings of both the quantitative and qualitative data collected in this study. The chapter presents an overview of the findings, describes those who have served and then considers the findings related to each set of hypotheses.

In Chapter Six, the implications of the study's findings are discussed. The results of the surveys and indepth interviews are integrated with the relevant social science literatures. Potential questions and issues for further research in this area are outlined as well.

Chapter Seven concludes the study with a discussion of the jury as a participatory institution, relating the findings to the broader issues of participation and democratic theory.

CHAPTER TWO

JURY SERVICE OBSERVED

Millions of Americans serve on juries every year. Millions more are called for jury duty, present themselves as prospective jurors and are excused from trial service by jury officials or judges. Where are the opportunities to learn the lessons praised by Tocqueville? What do prospective jurors and trial jurors experience when they show up for jury service? This chapter briefly reviews characteristics of a typical jury service as it was experienced by the respondents in this study.¹

The three aspects of criminal jury trials which seem to be crucial to their educative potential are (1) instruction in the law by the judge and attorneys, (2) individual juror judgement of the facts and--usually indirectly--the law in the case and (3) collective juror deliberation. This chapter highlights these aspects in the narrative which follows.

The courthouse may be old and ornate or modern and minimalist but the physical layout and bureaucratic patterns are much the same. After a brief explanation of the

¹ This narrative is a composite of the various jury trials experienced by respondents in this study. Unless otherwise noted, the description relates the common aspects of jury service (including trial procedures) experienced in the three courts in the study.

administrative aspects (pay, parking, etc) of their service by court officials, prospective jurors are either shown a brief instructional video, told by an official the nature of their service or simply left waiting to be called to a court department for jury selection.

The wait can be as short as a few minutes or as long as all day. Prospective jurors sit in a relatively spare waiting area.² Not knowing why they wait frustrates some and tires most. The more sociable strike up conversations with their fellows. Some speculate about what they might see or hear in court. Others grumble about their loss of vacation, work time or income as result of jury service.

When a jury panel is called up for a particular case, the prospective jurors chosen are escorted to the relevant court department.³ They enter the courtroom quietly and fill the rows of gallery seats to the left and right of the

² The juror assembly rooms in the courts in this study were more or less like those in doctors' offices. Reading material was available in the Superior and U.S. District Court waiting rooms. A television was mounted on the wall in both the Municipal and U.S. District Court. The T.V. in the U.S. Court usually featured the news while the one in the Municipal Court played a nature video, ironically, on the subject of the "Great White Shark."

³ The panels sent to court departments numbered from about 30 to 60 people. The size of the panel sent depended on the nature of the case being tried. If the issue or parties were well known and/or controversial, the judge would request a larger panel of prospective jurors. For information on the panel size in each case, see the SURVEY RESPONSE RATE TABLE in Appendix A.

aisle while the bailiff, clerk, court reporter and attorneys in the area beyond the gallery railing look on. To one side of the judge's bench and the witness stand, prospective jurors see the jury box, usually two rows of nine seats each.

The stage for courtroom ritual and drama is set. The prospective jurors wait expectantly while the principal players take their places. The clerk calls the roll. All in the panel are present. The clerk asks everyone in the panel to rise and administers the oath: "Do you solemnly swear to give truthful answers to the questions put before you in this court to the best of your ability?" The response: "I do." The bailiff calls for order, announcing the judge⁴. The judge, who will preside over the proceedings, enters the courtroom through a side door. Dressed in black robe, he steps up to the elevated bench at the head of the courtroom. Behind the bench stand the national and state flags. The judge begins the proceedings by introducing himself and welcoming the prospective jurors and identifying for them the kind of case before the court.

"This is a criminal trial. In the first part, the 'voir dire', which means to speak the truth, we will select the jury... In the old English juries, they used to go out

⁴ In the courts in this study, the call to order was not also a call to rise.

and select as jurors those people who knew someone or something associated with the case. Jurors were like witnesses then. But today, we've come 180 degrees. We are looking for people with no connections, no associations with this case. Our system of law is based not on expert judgement but on the collective wisdom of the community... Be the kind of juror that you would want to judge you if you were on trial."⁵

The judge continues, "I job share [sic] with you, the jury. I am the judge of the law. You are the judges of the facts. I am going to instruct you in the law. You might think some of it is strange, curious or objectionable but your job is to use it [the law], not judge it. It's not your place to make political or social statements but to decide the facts in this case. We have complementary but totally different functions."⁶ As judges, you must refrain

⁵ Dialogue, particularly informal instructions by the judge has been reconstructed from notes taken during observation of all the trials in this study.

⁶ This judge (8 jury trials) stressed the division of labor between judge and jury more dramatically than the others. Trial jurors were not told of their power to judge the law as well as the facts but in the process of 'doing justice' as they understand it, jurors, under the guise of determining the relationship between the two, can and do sometimes reject the law. See the discussion of 'jury nullification' in Chapter One. One case in the exploratory portion of the study involved jury nullification. Trial jurors (in a municipal court case) reported that they wanted to send a message to the police regarding the overzealous enforcement of drug laws.

from partisanship. Do not champion one side or the other. You must be cold assessors of the evidence."⁷

The judge explains the procedures of voir dire. He explains that a 'challenge for cause' is an objection to the seating of a juror based on facts that raise a legitimate suspicion that the prospective juror could not be fair in this case.⁸ In addition, attorneys are allowed a certain number of 'peremptory challenges' with which they can excuse prospective jurors for any reason without explanation.⁹

The judge explains that attorneys do not think ill of those they excuse: "They keep in mind the kind of case and evidence at issue and attempt to screen prospective jurors accordingly. If you are excused, it is because one of the attorneys thought that you were just not right for this

⁷ Not every judge extends the same elaborate introduction as the one reported here. Two other judges also used the phrase "job-sharing." All but one municipal court judge (2 jury trials out of 25) emphasized the seriousness of the task and the value of the jury's service to the court and the community.

⁸ The judge does not explain the technical grounds for a challenge for cause. A prospective juror can be excused for cause if he or she a) is related to the defendant, a witness, or one of the attorneys b) has a special interest in the issues involved in the case c) has served as a juror in a related case or d) has a mind set that would bias judgement.

⁹ If the other attorney(s) suspect peremptory challenges are being used in a racially biased way they can object and force an explanation for individual peremptory challenges. *People vs. Wheeler* (1978), 2 Cal. 3d 258.

case. Please do not be offended."¹⁰ Prospective jurors will be questioned by both the judge and attorneys. They are told that anyone uncomfortable answering sensitive questions in open court can request to answer questions in the judge's chambers, in the presence of only the judge, attorneys and court stenographer.

Before beginning jury selection, the judge explains what the jury selection and trial schedule will be. This case will last four to five days.¹¹ He then asks the clerk to select the first group of prospective jurors for questioning. After spinning the jury wheel, the clerk removes 18 name slips, one by one, from the small wooden drum, calling and spelling each name and directing the named person to the appropriate numbered seat in the jurybox.

The judge asks those in the jury box whether service would be a hardship for any of them. One fellow is scheduled for an eye operation soon and so is excused. A

¹⁰ In some court departments, the judge informs the jurors that they have been excused without explaining whether the dismissal is for cause or which side has used a peremptory challenge.

¹¹ This length is the average of those in the study. Municipal Court cases averaged 2 days, Superior Court cases averaged 8 days and U.S. District Court cases averaged 5 days. This is one way in which jury service has changed. Thirty years ago, criminal and civil trials were much shorter. In Tocqueville's day, a jury might hear several cases in a day.

cabinetmaker and installer has a job deadline tomorrow and is also excused.

The judge explains the nature of the charges in this case.¹² He asks the clerk to read the charge. For example: "The defendant is accused in the information of having violated Sections 11350 and 11352 of the Health and Safety Code."¹³ He asks that anyone who has a problem judging a case involving drugs bring the issue to his attention when the round of questioning reaches him or her.

The judge provides the entire panel with some general instructions regarding principles of law. He paraphrases and then reads some of the formal instructions which he will later read in full to those chosen to serve: "...The State has the obligation of proving the defendant's guilt. It bears the burden of overcoming the presumption of innocence.

The case needs to be proved beyond a reasonable doubt. The State must overcome [the presumption of innocence] through evidence that proves guilt beyond a reasonable doubt." The formal instruction reads:

¹² See TABLE A.1 in APPENDIX A for descriptive information on each of the trials in this study.

¹³ These charges are from CALJIC 1200, 1202. They are read again at the start of the trial and before the jury is given the case. Most of the trials in this study (20 out of total N of 25) involved either felony charges of possession and sale of drugs--'controlled substances'(N=9) or misdemeanor charges of driving while under the influence of alcohol, known as DUI (N=11).

The burden is on the people to prove beyond a reasonable doubt that the defendant is the person who committed the crime with which he is charged.

If, after considering the circumstances of the identification and any other evidence in this case, you have a reasonable doubt whether defendant was the person who committed the crime, you must give the defendant the benefit of that doubt and find him not guilty.¹⁴

The judge then asks, rhetorically, "What is reasonable doubt?" and answers by reading from the formal criminal jury instructions:

Reasonable doubt is defined as follows: It is not mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.¹⁵

The judge continues instructing the panel: "The charges in this case are not proof or even evidence of guilt. The defendant's presence in the court is not proof of guilt. The Fifth Amendment guarantees the defendant the right not to testify. He doesn't have to present evidence or witnesses. The State has all the burden of proving guilt.

¹⁴ Committee on Standard Jury Instructions, Criminal, of the Superior Court of Los Angeles County, California, California Jury Instructions, Criminal, Fifth Edition, (St. Paul: West Publishing Co., 1988) Instruction No. 2.91. Hereafter, this source is cited as CALJIC.

¹⁵ CALJIC 0290.

Civil rights and due process rights shield the defendant against the power of the State."

The judge then introduces the attorneys. The prosecuting attorney introduces her assistant (if present) and the defense attorney introduces the defendant. The judge names the places and the people involved in this case: the scene(s) of the alleged crime, the police officers involved, and the key witnesses to be heard.¹⁶ He asks prospective jurors to make a mental note of any name, place or organization that they recognize and to mention it when the round of questioning reaches them. If newspaper articles were written about the case, the judge asks prospective jurors to make a note if they remember reading anything about the case.

The voir dire begins. Each prospective juror is asked to tell the court his or her name, residence, marital status, education, occupation, employer, spouse's occupation and employer, number of children and their occupation(s) (if the children are old enough to work). Prospective jurors are also asked if they have ever served on a jury before. If so, they are asked whether the case was criminal or civil and whether a decision was reached in the case(s) on which they served.

¹⁶ This list would include alleged victim(s) and organizations if any were involved in the case.

Prospective jurors are also asked whether they or their friends or family have ever been victims of crime¹⁷ or accused of one. Anyone who answers in the affirmative is questioned further about the specifics of the incident(s). If a victim, they are asked, "If you don't mind telling the court, what was the nature of the crime? (Some may prefer to speak to the judge more privately) Was the case resolved to your satisfaction? Was the perpetrator charged? Were you a witness in the case against him? Was he convicted? Do you think the police and or district attorney(s) handled the case properly? effectively? Do you have any ill feelings as a result of the experience?" If the prospective juror, a friend, or relation had ever been accused of a crime, these questions would likely be asked: "Do you think the accused was treated fairly? Do you feel the matter was dealt with in a satisfactory way? Do you have any ill feelings toward the police or the judicial system as a result of the matter?" Prospective jurors who express any dissatisfaction with their crime-related experiences are asked by the judge whether they can put their feelings aside in this case.

Prospective jurors are asked whether they or any friends or relations have medical, legal or criminal justice training or work in these fields. Because of fears that

¹⁷ On average, about half the prospective jurors questioned know or are related to someone who has been a victim of crime or have themselves been victims of crime.

professionals in these areas are likely to hold 'professional biases' and might be likely to influence deliberations unfairly due to their expertise, attorneys of one side or the other are likely to challenge for cause or use peremptory challenges to excuse prospective jurors in these professions and even to excuse people closely related or associated with other people with these kinds of training.

Finally, prospective jurors are asked whether they can think of any reason why they cannot fairly judge this case.

One person tells the judge that she cannot judge a case involving drugs because she has seen what drug addiction has done to a family friend. The judge asks whether she could put that situation aside when judging this case: "I think everyone here shares your concern over the problems of drug addiction. We are here to determine whether the law has been broken. Would you be able to judge this case solely on the evidence presented in court and keep that role separate from your concern about the drug issue? Can you be fair to this defendant?"

Once the judge has questioned all the prospective jurors in the box, he turns the questioning over to the attorneys. The attorneys follow up some of the judge's questions. They ask particular prospective jurors about their work and crime-and drug-related experiences. The

attorneys also take the opportunity to establish rapport with the prospective jurors and to emphasize principles of law critical to their respective sides of the case. Attorneys often use the voir dire as an opportunity to informally argue their case to the jury (some more subtly than others).

The prosecuting attorney reintroduces herself to the prospective jurors in the box. Then she begins by putting some questions to the group as a whole, "Do any of you have a problem understanding the distinction between proving beyond a reasonable doubt and beyond all possible doubt?" No response. A few of the prospective jurors look at her quizzically, not sure whether she expects anyone to respond.

She takes the funny looks as a cue, emphasizing the differences between imaginary doubt, born of speculation, which can accompany any decision and substantial doubts which concretely challenge the logic of a choice. The prosecutor then asks specific follow up questions of individual prospective jurors.

When the defense attorney takes his turn, he begins by reintroducing himself and his client. He addresses the group: "I'm worried that people think that because the defendant is here, he must be guilty or that because the judge is here, he must have reviewed this case. Does anybody feel this way?" He pauses. No answer. Again,

quizzical expressions on the faces of the prospective jurors. "Do you understand that the fact that he's in custody [pointing to the defendant] is because he can't afford bail? It's not a factor in determining whether he's guilty or not."

The defense attorney continues his apparently rhetorical questioning. He asks some questions of the whole group; Others, he puts to individuals: "Do you have any preconceptions about how a falsely accused person would testify?" Or if the defendant is not likely to testify,¹⁸ the defense attorney will likely ask: "Do you have a problem with the idea that a defendant has a **right not to testify?** [Do you have a problem] With the idea that, as we sit here, the defendant must be **presumed innocent?**"

When each round of attorney questioning is complete, peremptory challenges are announced.¹⁹ One by one, each attorney thanks and excuses one among the prospective jurors

¹⁸ Even the defense attorney may not be sure whether or not his client will testify. In these situations, the defense attorney will emphasize the right not to testify during voir dire.

¹⁹ In the U.S. District Court, the system of peremptory challenges used in the trials observed followed the "Modified Arizona System." The attorneys approach the bench, inform the judge of the prospective jurors they want to dismiss and the judge thanks and excuses them all in one group. The remaining prospective jurors are joined by a new group in the jury box. As one judge explained it, "We let attorneys put an 'X' by your name so in addition to not knowing the reason you are excused, you won't know which side excused you."

in the first twelve jury seats in the box.²⁰ "The Defense thanks and excuses Juror Number 2, Mr. Case." The judge instructs Number 2: "Thank you for your time, Mr. Case. You may return to the Jury Commissioner's Office for further instruction." Next, the Prosecution's turn: "The People thank and excuse Juror Number 7, Mrs. Barrows." The judge instructs Number 7: "Thank you, Mrs. Barrows. You may go." Those excused often leave with puzzled expressions on their faces. Some seem hurt. Others appear relieved.

Once more than six seats in the twelve seat box are vacated, the prospective jurors who were sitting in the other six seats fill in the first twelve. New prospective jurors are called to fill in the empty seats in the box.²¹

Another, usually shorter, round of questioning the replacements begins. By now, the replacements know what they will be asked. Attorneys take the opportunity to lecture about a legal principle or two. They ask some specific questions of some of the replacements.

²⁰ On average, sixty percent of the prospective jurors questioned in the first round of voir dire were excused. In the cases (Municipal and Superior Courts) in which 18 people were questioned, this means around 10 people dismissed. In the U.S. Court, where 32 people were initially questioned about 20 were dismissed.

²¹ In the U.S. Court departments in this study, 32 prospective jurors are initially questioned. The excuses are given en masse, as noted above, and one additional group is questioned, if needed.

Another round of peremptory challenges follows the questions. Empty seats are filled, another round of questions and peremptories follows. Finally, each attorney reports: "The People are satisfied with this jury, Your Honor... The Defense is satisfied, Your Honor..." The alternates are chosen from those remaining. Finally, the jury has been selected.

Jury selection in the trials in this study took from an average of three hours in the Municipal Court cases to an average of eight in the Superior Court cases. In spite of the greater severity of the charges and the longer trial length of the cases in the U.S. Court, the length of jury selection did not tend to be longer than the Municipal Court average. This appears to be because the greater judicial control and use of the 'Modified Arizona System' (described in footnote 18) streamlines the process.²²

What is the lesson that this extraordinary selection process teaches jurors? Those retained may feel special. But how do those excused by peremptory challenge feel? Peremptory challenges appear to endorse arbitrariness. If stray remarks and facial expressions are any indication,

²² The time it takes to select a California jury has expanded in the last 20-30 years. The trend appears to be reversing, however. A recent (1990) state initiative required judges to more control over voir dire. As early as December 1990, the result has been somewhat shorter voir dire (4 hours instead of 8) in the Superior Court department which has been part of this study.

many of those excused leave either (a) confused by the mysteriousness of the process (b) convinced of legal arbitrariness (c) convinced that only ignorant, apathetic people are selected for trial juries.

The rest of the prospective jurors are thanked and dismissed. The newly selected jury is told the expected trial schedule for the rest of the day, introduced to the Bailiff, then directed to jury room to get comfortable. The judge confers with the attorneys about trial out of the jury's presence.

If the jury selection is completed late in the day, as was often the case in Superior Court cases in this study, the jury is brought back to court and informed of the next day's trial schedule.²³ The judge then admonishes the jurors not to discuss any aspect of the case with anyone, including their fellow jurors. They are to form no opinions regarding the case until they begin their deliberations.²⁴

²³ Juries were not sequestered at any point in any of the trials in this study. As a rule, they are not sequestered in these kinds of cases in these courts in this state. The practice of sequestering juries varies from state to state.

²⁴ Some judges are more respectful of juror intelligence and their time than others. The U.S. District Court judges in this study did not belabor their 'admonitions' as much as those in the other two courts. In addition, the jury selection and management of trial time appeared more efficient in the U.S. Court. The greater efficiency may be due in part to the more experienced attorneys in the cases tried in this court.

The trial schedule can be a great source of frustration for many jurors. The trial 'day' often started at 10am (or was expected to). Jurors would be expected to be on time, but then would wait for hours while judges attended to other business. Jurors aren't usually told what the 'other business' is and often no apologies are made to them for their wasted time. Mid-session 10 minute breaks usually last longer than 20 minutes. Lunch breaks are often long (sometimes 2 hours), as well. The judge sometimes explains that he or she has other matters to attend to during lunch.

When the Court reconvenes for the start of the trial, the judge instructs the jurors on how to approach the testimony they are about to hear. On the meaning of evidence, both direct and circumstantial, he reads the formal instructions:²⁵

Evidence consists of testimony of witnesses, writings, material objects, or anything presented to the senses and offered to prove the existence or non-existence of a fact. Evidence is either direct or circumstantial.

Direct evidence is evidence that directly proves a fact, without the necessity of an inference. It is evidence which by itself, if found to be true, establishes that fact.

Circumstantial evidence is evidence that, if found to be true, proves a fact from which an

²⁵ In the short, one day DUI trials in the Municipal Court, juries were not as likely to hear the law on evidence before testimony was heard. In the longer cases, however, judges usually instructed on the matter either before attorney opening statements or just after them.

inference of the existence of another fact may be drawn.

An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence.

It is not necessary that facts be proved by direct evidence. They may be proved also by circumstantial evidence or by a combination of direct evidence and circumstantial evidence. Both direct evidence and circumstantial evidence are acceptable as a means of proof. Neither is entitled to any greater weight than the other.²⁶

The judge further explains that statements by himself and arguments, statements and questions by the attorneys are not evidence:

Statements made by the attorneys during the trial are not evidence, although if the attorneys have stipulated or agreed to a fact, you must regard that fact as conclusively proved as to the party or parties making the stipulation.

If an objection was sustained to a question, do not guess what the answer might have been. Do not speculate as to the reason for the objection.

Do not assume to be true any insinuation suggested by a question asked a witness. A question is not evidence and may be considered only as it enables you to understand the answer.

Do not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken by the court; treat it as though you had never heard of it.²⁷

²⁶ CALJIC 0200

²⁷ CALJIC. 0102.

You must decide all questions of fact in this case from the evidence received in this trial and not from any other source.

You must not make any independent investigation of the facts or the law or consider or discuss facts as to which there is no evidence.

This means, for example, that you must not on your own visit the scene, conduct experiments, or consult reference works or persons for additional information.

You must not discuss this case with any other person except a fellow juror, and you must not discuss the case with a fellow juror until the case is submitted to you for your decision and only when all jurors are present in the jury room.²⁸

Finally, the judge tells the jurors that they may take notes but instructs them not to neglect their observation of the proceedings. Later, jurors in such cases are again formally instructed on the use of notes during deliberations.²⁹

The judge then tells the prosecuting attorney to proceed with her opening statement. "Ladies and Gentlemen of the Jury," she begins, "Ronald Smith is charged with the possession and sale of heroin..." In my opening remarks, I am going to give you an outline of what the People will

²⁸ CALJIC 0103.

²⁹ In California, the judge decides whether the jury will be allowed to take notes. In most departments (17 trials out of 25; all judges except three in Municipal Court), trial jurors were allowed to take notes. In one department, they were also given notepads. Three judges (11 trials out of 25; one in Superior Court and two in U.S. Court) allowed jurors to submit written questions to the court.

prove in this case. During the course of this trial, though not always in sequential order, the parts of the puzzle of what happened on the night of April 5th will be pieced together..." The Assistant District Attorney goes on to tell a story of how the prosecution believes the crime(s) took place. At the end of her narrative, the prosecutor adds a moral judgement regarding the crime committed.³⁰ She closes her statement with the request that the jurors listen carefully to the evidence, use their common sense and "bring back a verdict of guilty."

The Defense Attorney³¹ opens by calling the District Attorney's "certainty" into question. He suggests that some important facts inconsistent with the prosecution's story will come to light. He reminds the jurors that "the State bears all the burden of proving guilt. He reminds them that they must be sure "to a moral certainty" that the defendant is guilty of the charges alleged. Otherwise, "you must return a verdict of 'not guilty'. Finally, he asks that the jury listen very carefully to all the evidence presented, not just that of the State.

³⁰ If the case involved a sensational or brutal element, the prosecuting attorney would probably extend such commentary. Most of the cases in this study were drug or alcohol related with no direct victim. See Chapter Six for the implications of this fact.

³¹ The jurors are not usually told whether the Defense Attorney is paid by the defendant or is with the Public Defender's Office or hired by it.

As the Defense Attorney takes his seat, the judge tells the prosecutor to call her first witness. The arresting officer takes the stand. He takes the oath to tell the truth, spells his name and sits in the witness chair. Question by question, the prosecutor elicits from the officer what he thought, did and said around and at the time of the alleged crimes and arrest. Maps, photographs, drug samples and money are entered as "People's" evidence.

The detailed question and answer session goes on for over two hours. The Defense Attorney objects now and again to the phrasing of a question, "Objection, leading the witness, Your Honor," he complains, when the prosecutor asks a question that seems to imply a particular answer. The judge disagrees with his perception, "Overruled." A little later, another objection; this one is sustained.³²

When the prosecutor is finished, the Defense Attorney cross-examines the witness. His questions are detailed. How far were you from the suspect? Where were the street lights? Do you wear corrective lenses? How did the suspect hold his hand? What other gestures did he make? His questions are interrupted by an objection or two from the prosecutor, "Objection, irrelevant," comes the complaint.

³² None of the judges in the trials observed showed any obvious bias for or against either attorney. In one case in which the attorneys were sniping at one another, the judge showed frustration with both but gave no indication of being irritated with one side or the other.

The judge looks to the Defense Attorney expecting an explanation. After hearing his reasoning, the judge rules, "Sustained." The Defense Attorney responds, "Exception, Your Honor." The reply, "So noted, please proceed."

When the Defense Attorney ends his questioning, the judge invites the prosecutor to "redirect." If the prosecutor fears that some damage may have been done to the witness' credibility, she asks a few reconstructive questions. The defense is then invited to question further.

After one more question, the Defense Attorney states, "Nothing further."

One by one, the witnesses for both sides are brought forth and questioned in the same manner: direct examination, cross-examination, redirect and finally, additional defense questions. Laboratory technicians and forensics experts are brought forward by the prosecution as expert witnesses. When such witnesses are accepted by the court as "expert", the judge reads the pattern instruction regarding "expert testimony".³³ The defense is likely to call witnesses to testify to the defendant's character or to corroborate his or her explanation of events.

Once all the prosecution witnesses have testified, the Assistant District Attorney rests her case. The Defense

³³ See the sample jury instructions in Appendix B for the exact wording of instructions on "expert witness" testimony.

Attorney calls his witnesses. (In about half of these cases, the defendant is among them). When the direct, cross-examination, redirect and additional question phases are complete, the evidence phase is complete.

In trials in which jurors are allowed to ask questions, the judge asks for written questions before each witness is about to be excused.³⁴ If jurors have questions, they write them on a slip of paper and pass them to the Bailiff who hands them to the judge. The judge looks over the questions. If he considers them relevant, he shows them to the attorneys. The judge will then ask the attorneys if they have any more questions for the witness. If the attorneys decline, the judge may question the witness. Jurors submitted an average of 2 questions per trial.

Before the closing arguments, the judge reminds the jury that the evidence phase is over and that the closing statements are not evidence. He tells the jury that after the closing arguments, they will be read the charges, instructed in the law and finally given the case to deliberate. The prosecutor closes with a detailed story of "what happened," outlining the evidence she believes she has offered as proof of the defendant's guilt. She explains the

³⁴ As noted earlier, juries in 10 trials in this study were invited to ask questions. Judge #5 of the Superior Court and Judge #6 of the U.S. District Court both used the policy described above. See the JURY TRIAL DATA SUMMARY in Appendix A for more information about the trials.

defendant's motives, intent and opportunity to perform the acts charged by the "People." The Defense Attorney closes by challenging the accuracy and comprehensiveness of the prosecution's story. He offers detailed criticisms of the testimony of the "State's witnesses." He challenges the reliability of some, suggesting physical and environmental limitations. He challenges the motivation of others. Finally, he suggests that the issues he has raised leave more than enough room for reasonable doubt. "The State has not proved it's case."

Finally, the prosecution is given the opportunity to rebut the defense closing.³⁵ The prosecution challenges the criticisms offered by defense counsel, one by one, if it seems appropriate. Satisfied that she has closed all the significant holes made by the defense, she asks the jury to "use your common sense and bring back a verdict of 'guilty'."

The judge then rereads the charges and reads the jury their final legal instructions.³⁶ Those most relevant to the issues raised in this study are excerpted below:³⁷

³⁵ In California courts, the prosecution closes first, the defense next, and then the prosecutor is allowed to rebut the defense closing arguments.

³⁶ The judge selects the instructions which he or she believes are relevant to the case. Attorneys can review the instructions and request that the judge include others which they consider relevant.

³⁷ The instructions, here, are excerpts from the versions used in the California Superior and Municipal Courts (Source: CALJIC). The full text of the instructions

(The First Instruction)

Ladies and Gentlemen of the Jury:

You have heard all the evidence, and now it is my duty to instruct you on the law that applies to this case.

The law requires that I read the instructions to you. You will have these instructions in written form in the jury room to refer to during deliberations.³⁸

You must base your decision on the facts and the law.

You have two duties to perform. First, you must determine the facts from the evidence received in the trial and not from any other source. A "fact" is something proved directly or circumstantially by the evidence or by stipulation. A stipulation is an agreement between attorneys regarding the facts. Second, you must apply the law that I state to you, to the facts, as you determine them, and in this way arrive at your verdict.

You must accept and follow the law as I state it to you, whether or not you agree with the law.

If anything concerning the law said by the attorneys in their arguments or at any other time during the trial conflicts with my instructions on the law, you must follow my instructions.

You must not be influenced by pity for a defendant or by prejudice against him or her. You must not be biased against the defendant because he or she has been arrested for this offense, charged with a crime, or brought to trial. None of these circumstances is evidence of guilt and

used in one typical case are provided in Appendix B. Some of the instructions read earlier in the trial are repeated (for example, the definitions of 'reasonable doubt' and 'direct and circumstantial evidence').

³⁸ Since 1987, California law requires that written copies of the jury instructions be made available to jurors during deliberations.

you must not infer or assume from any or all of them that he or she is more likely to be guilty than innocent. You must not be influenced by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling. Both the People and Mr. Smith have a right to expect that you will conscientiously consider and weigh the evidence, apply the law, and reach a just verdict regardless of the consequences.³⁹

* * * * *

(Consider the Instructions as a Whole)

If any rule, direction or idea is or has been repeated or stated in different ways in these instructions, no emphasis is intended and you must not draw any inference because of its repetition. Do not single out any particular sentence or any individual point or instruction and ignore the others. Consider the instructions as a whole and each in light of all the others.

The order in which instructions are given has no significance as to their relative importance.⁴⁰

* * * * *

(What Is and Is Not Evidence)

Statements made by the attorneys during the trial are not evidence, although if the attorneys have stipulated or agreed to a fact, you must regard that fact as conclusively proved as to the party or parties making the stipulation.

If an objection was sustained to a question, do not guess what the answer might have been. Do not speculate as to the reason for the objection.

Do not assume to be true any insinuation suggested by a question asked a witness. A question is not evidence and may be considered only as it enables you to understand the answer.

³⁹ CALJIC 0100.

⁴⁰ CALJIC 0101.

Do not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken by the court; treat it as though you had never heard of it.⁴¹

* * * * *

(Use Only Evidence Received in Court)

You must decide all questions of fact in this case from the evidence received in this trial and not from any other source.

You must not make any independent investigation of the facts or the law or consider or discuss facts as to which there is no evidence. This means, for example, that you must not on your own visit the scene, conduct experiments, or consult reference works or persons for additional information.

You must not discuss this case with any other person except a fellow juror, and you must not discuss the case with a fellow juror until the case is submitted to you for your decision and only when all jurors are present in the jury room.⁴²

* * * * *

If I neglect to correct the pronouns used in these instructions forgive me and understand that each pronoun applies equally to all persons.⁴³

* * * * *

(Rules of Evidence)

Evidence consists of testimony of witnesses, writings, material objects, or anything presented to the senses and offered to prove the existence or non-existence of a fact.

Evidence is either direct or circumstantial.

⁴¹ CALJIC 0102.

⁴² CALJIC 0103.

⁴³ CALJIC 0110.

Direct evidence is evidence that directly proves a fact, without which the necessity of an inference. It is evidence which by itself, if found to be true, establishes that fact.

Circumstantial evidence is evidence that, if found to be true, proves a fact from which an inference of the existence of another fact may be drawn.

An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence.

It is not necessary that facts be proved by direct evidence. They may be proved also by circumstantial evidence or by a combination of direct evidence and circumstantial evidence. Both direct evidence and circumstantial evidence are acceptable as a means of proof. Neither is entitled to any greater weight than the other.⁴⁴

However, a finding of guilt as to any crime may not be based on circumstantial evidence unless the proved circumstances are not only (1) consistent with the theory that the defendant is guilty of the crime, but (2) cannot be reconciled with any other rational conclusion.

Further, each fact which is essential to complete a set of circumstances necessary to establish the defendant's guilt must be proved beyond a reasonable doubt, each fact or circumstance upon which such inference necessarily rests must be proved beyond a reasonable doubt.

Also, if the circumstantial evidence is susceptible of two reasonable interpretation, one of which points to the defendant's guilt and the other to his innocence, you must adopt that interpretation which points to the defendant's innocence, and reject that interpretation which points to his guilt.

If, on the other hand, one interpretation of such evidence appears to you to be reasonable and the other interpretation to be unreasonable, you

⁴⁴ CALJIC 0200.

must accept the reasonable interpretation and reject the unreasonable.⁴⁵

Neither side is required to call as witnesses all persons who may have been present at any of the events disclosed by the evidence or who may appear to have some knowledge of these events, or to produce all objects or documents mentioned or suggested by the evidence.⁴⁶

* * * * *

(Right not to Testify)

A defendant in a criminal trial has a constitutional right not to be compelled to testify. You must not draw any inference from the fact that a defendant does not testify. Further, you must neither discuss this matter nor permit it to enter into your deliberations in any way.⁴⁷

In deciding whether or not to testify, the defendant may choose to rely on the state of the evidence and upon the failure, if any, of the People to prove beyond a reasonable doubt every essential element of the charge against him. No lack of testimony on defendant's part will supply a failure of proof by the People so as to support a finding against him on any such essential element.⁴⁸

* * * * *

(Presumption of Innocence)

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in the case of a reasonable doubt whether guilt is satisfactorily shown, he or she is entitled to a verdict of not guilty. This presumption places upon the People the burden of proving guilty beyond a reasonable doubt.

⁴⁵ CALJIC 0201.

⁴⁶ CALJIC 0211.

⁴⁷ CALJIC 0260.

⁴⁸ CALJIC 0261.

* * * * *

(Reasonable Doubt)

Reasonable doubt is defined as follows: It is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.⁴⁹

The burden is on the people to prove beyond a reasonable doubt that the defendant is the person who committed the crime with which he is charged.

If, after considering the circumstances of the identification and any other evidence in this case, you have a reasonable doubt whether defendant was the person who committed the crime, you must give the defendant the benefit of that doubt and find him not guilty.⁵⁰

* * * * *

(Re: availability of written instructions)

The instructions which I am now giving to you will be made available in written form if you so request for your deliberations. They must not be defaced in any way.⁵¹

* * * * *

(Using notes taken during trial)

Remember that notes are only an aid to the memory and should not take precedence over independent recollection. A juror who does not take notes should rely on his or her independent

⁴⁹ CALJIC 0290.

⁵⁰ CALJIC 0291.

⁵¹ CALJIC 01745.

recollection of the evidence and not be influenced by the fact that other jurors have taken notes. Notes are for the note-taker's own personal use in refreshing his or her recollection of the evidence.

Should any discrepancy exist between a juror's recollection of the evidence and his or her notes, or the notes of any other juror, and that discrepancy cannot be resolved, he or she may request that the reporter read back the relevant proceedings and the trial transcript must prevail over the notes.⁵²

* * * * *

(Elements of the Crimes Charged)

Defendant is accused in the information of having violated Section 11352 of the Health and Safety Code, a crime.

Every person who sells, furnished, administers, or gives away a controlled substance, namely, Heroin, is guilty of the crime of violation of Section 11352 of the Health and Safety Code, a crime.

In order to prove such crime, each of the following elements must be proved:

1. A person sold, furnished, administered, or gave away a controlled substance, and
2. Such person had knowledge of its presence and nature as a controlled substance.⁵³

Every person who possesses a controlled substance, namely, Heroin, is guilty of the crime of illegal possession of a controlled substance, in violation of Health and Safety Code, Section 11350.

In order to prove such crime, each of the following elements must be proved:

⁵² CALJIC 1748.

⁵³ CALJIC 1202.

1. A person exercised control or had the right to exercise control over a certain controlled substance,
2. Such person had knowledge of its presence,
3. Such person had knowledge of its nature as a controlled substance, and
4. The substance was in an amount sufficient to be used as a controlled substance.

There are two kinds of possession: actual possession and constructive possession.

Actual possession requires that a person knowingly exercise direct physical control over a thing.

Constructive possession does not require actual possession but does require that a person knowingly exercise control or the right to control a thing, either directly or through another person or persons.

One person may have possession alone, or two or more persons together may share actual or constructive possession.⁵⁴

* * * * *

(Entitlement to the Opinion of Every Juror)

The People of the State of California and (defendant's name) are entitled to the individual opinion of each juror.

Each of you must consider the evidence for the purpose of reaching a verdict if you can do so. Each of you must decide the case for yourself, but should do so only after discussing the evidence and instructions with the other jurors.

Do not hesitate to change an opinion if you are convinced it is wrong. However, do not decide any question in any particular way because a

⁵⁴ CALJIC 1200.

majority of the jurors or any of them, favor such a decision.

Do not decide any issue in this case by chance, such as the drawing of lots or by any other chance determination.

* * * * *

(The Last Instructions)

You shall now retire and select one of your number to act as foreperson. He or she will preside over your deliberations. In order to reach a verdict, all twelve jurors must agree to the decision. As soon as all of you have agreed upon a verdict, so that each may state truthfully that the verdict expresses his or her individual vote, you should return with it to this courtroom. You must also return any unused verdict form.⁵⁵

You will be permitted to separate at noon and evening recesses. During your absence the jury room will be locked. You are to return following recesses at the time you are instructed to return of which I will have the bailiff inform you. During such periods of recess, you must not discuss with anyone any subject connected with this trial, and you must not deliberate further upon the case until all 12 of you are together and reassembled in the jury room. At such time you shall notify the bailiff that the jury is re-assembled, and then continue your deliberations.⁵⁶

The reading of the final instructions takes about forty-five minutes. Jurors are told that they can communicate their requests to review the trial record and their questions to the judge by handing written notes to the Bailiff.

The jury retires to the jury room to deliberate. The jury room is usually a small, spare room large enough only

⁵⁵ CALJIC 1750.

⁵⁶ CALJIC 1752.

for a conference table, twelve chairs and a few feet of walk space around them. Post-trial interviews indicate that jurors take the judge's instructions seriously and attempt to follow them closely. The wording of particular passages is often reviewed very carefully. Interviewees report that usually each juror is expected to relate his or her concerns and doubts to the rest of the group before any vote is taken.⁵⁷ As individual concerns are raised, the others in the group try to understand and resolve them. Evidence is reviewed.

Interviewees report that all are expected to participate in deliberation. The instruction that informs the jurors that "both the State and (defendant) are entitled to the individual opinion of every juror" is taken seriously. Some hold back from the discussion. After a while, they are pressed by the others to state their views.

After 5 hours of deliberation, a verdict is finally agreed upon.⁵⁸ The jury "buzzes" the bailiff and thirty minutes to one hour later, the judge, attorneys and

⁵⁷ In most of the jury deliberations in this study, the jurors did not begin by taking a vote, but instead, each voiced their concerns and opinions in a kind of roundtable discussion. Some reported that they had interpreted instruction 17.41 to be an admonishment not to take an initial vote.

⁵⁸ In this study, Municipal Court cases averaged 2.5 hour deliberations. Superior Court jury deliberations averaged about 6.5 hours and U.S. District Court jury deliberations averaged about 6 hours.

defendant are assembled in the courtroom.⁵⁹ The jury enters and delivers its verdict of 'guilty'⁶⁰. The Defense Attorney asks that the jury be polled. The judge then asks each, individually, "Is this your verdict?" The answers of every one, "Yes." The judge thanks the jury, praising their responsible performance of an important civic duty. He sends them back up to the jury room for a few minutes while he arranges a sentencing date for the defendant.

When the jury is brought back down to the courtroom, the defendant is gone. The judge announces that they are "off the record" and offers to answer jurors' questions regarding the trial and the jury's role in it. The attorneys are invited to remain to take and ask questions of the jury.⁶¹ After a minute of uncomfortable silence, the

⁵⁹ The jury must wait to deliver its verdict to the full court. If the judge is conducting other business at the time, the proceedings must be disrupted and the parties to the case must be called (or, in the case of some defendants, brought) to the court. This can take anywhere from a few minutes to an hour depending on the distances involved.

⁶⁰ In 17 of the 25 jury trials in this study, the jury returned a verdict of 'guilty'. In 2 cases, the jury declared the defendant 'not guilty' and in 4 cases, the jury hung (could not agree unanimously). In the 2 remaining cases, the jury returned mixed verdicts: 'guilty' on one or some counts, 'not guilty' on the other. See JURY TRIAL DATA SUMMARY in Appendix A.

⁶¹ In most of the cases in this study, the trial jurors are invited to talk with the attorneys regarding the case. In 10 of the 25 trials (including the four post-control groups), the in-court "debriefing" described here was held. In 10 of the others, the judge invited trial jurors to discuss the case with the attorneys out in the court

questions start to flow to the judge and the attorneys.

"What will happen to the defendant? Does he have priors?" they ask the judge. "How do you decide which jurors to keep and which to excuse?" they ask the attorneys. "Do you have to defend people you believe are guilty?" they ask the defense attorney. The attorneys and judge answer forthrightly, sometimes providing eloquent defenses of their beliefs and the criminal justice system.

When the questioning subsides, the judge invites jurors to speak with the attorneys outside the courtroom, thanks them once again for their valuable service and adjourns the session.

What are the key elements of this 'experiment' in participation? How educational is it likely to be? In many ways, the experience seems like a large lecture course with a group decision assignment at the end. The lectures are often tedious but the chance to use the information presented provides students an opportunity to appreciate its meaning. In other words, the deliberation or "doing" phase of the jury trial, in conjunction with the instruction in

hallway. The 'debriefings,' apparently not common in these courts may be rare in other courts as well.

the law is likely to be the most influential aspect of the experience.

Jurors are listeners and observers during the evidence phase. They watch the ritual and procedure unfold before them, with more or less guidance from the judge and attorneys as to what is going on. They cannot freely question or criticize the attorneys or witnesses during the proceedings. When permitted they may take notes and submit questions but they are clearly not active, creative participants while the evidence is presented. The experience for most trial jurors in this study may actually be somewhat better than average since many were allowed to take notes and/or ask questions and these practices are not widely employed.⁶²

How favorably does the experience during the evidence phase compare with the jury service of Tocqueville's day? We can only speculate since there is little systematic knowledge about the juries of the nineteenth century.⁶³ If jury trials of the eighteenth century are any indication, the process was much less bureaucratic and

⁶² See Kassin and Wrightsman, The American Jury on Trial, op.cit., pp. 119-137.

⁶³ "To little is known about the detail of the transformation of eighteenth-century summary jury trial into twentieth-century adversary jury trial..." John H. Langbein, "Understanding the Short History of Plea Bargaining," Law and Societ Review, Vol. 13 (Winter 1979) p. 265.

professionalized⁶⁴ although juries appear not to have been any more participative.⁶⁵ Proceedings were shorter and simpler but there were also fewer safeguards against wrongful conviction. Judges apparently exercised a great deal of control over the proceedings in a process that "lacked the time-consuming stiffness of a modern adversary trial".⁶⁶ They exercised a broad power of comment on the evidence and occasionally questioned witnesses and the accused directly.⁶⁷ But the scope of jury action during the presentation of testimony is not clear.

The evidence phase of today's jury trial seems on its own, educative in only the most minimal way. It may be somewhat like watching a dry but important television show.

As described above, all prospective jurors received some instruction in the law from the judge and attorneys during jury selection (voir dire). Trial jurors, once selected, were instructed in rules of law by the judge at least two more times (often three or more) before they were given the

⁶⁴ Ibid., pp. 262-265.

⁶⁵ As late as the early eighteenth century, "the trial judge had an alternative system of jury control that was both swifter and surer than the subsequent resort to rules of admissibility and exclusion." Ibid., p. 264.

⁶⁶ Ibid., p. 264.

⁶⁷ John Langbein, "The Criminal Trial Before the Lawyers," University of Chicago Law Review, Vol. 45, pp. 284, 285-287.

case to deliberate. The jury was usually instructed before attorney opening statements, again before closing arguments and finally, before being given the case for deliberation.

Individual juror judgement and collective deliberation put the legal principles into practice. Although juries sit passively by while the evidence and arguments are presented, they are given the power to decide.

In the criminal jury trials observed in this study, jurors had to agree unanimously on a verdict. In addition to developing an individual judgement of the facts of the case, jurors must decide collectively. They must attempt to reconcile differing perspectives and opinions related to the case in order to reach the unanimous decision required of them.⁶⁸ In the jury room every person's vote counts and counts equally. Transforming individual judgement into collective judgement in the jury room is a brief exercise in face-to-face democratic deliberation.

The composite trial jury experience described in this chapter is in many ways as bureaucratic, professionalized

⁶⁸ The criminal trial jury in the State of California (even for misdemeanor cases) is a 12-person institution bound by unanimous decision rule. Nearly half of other states permit use of smaller juries as means of lowering trial costs. The Supreme Court also has permitted the use of nonunanimous juries (3/4 majority rule). See Saul Kassin and Lawrence S. Wrightsman, The American Jury on Trial: Psychological Perspectives, (New York: Hemisphere Publishing Co., 1988) pp. 5, 195-199. See also, Peter Sperlich, "...and Then There Were Six: The Decline of the American Jury." Judicature, Vol. 63, p. 280, 1980.

and ritualistic as many other familiar organizational experiences. For this reason, most trial jurors may adapt relatively easily to their compartmentalized role in the process. However, they may also learn less from their experience than Tocqueville expected would be learned from the more integrated and less bureaucratized jury trials of his day. In some ways, today's juries represent the most difficult test of Tocqueville's hypotheses.

CHAPTER THREE

EXPECTED EFFECTS OF JURY SERVICE

The Tocqueville and Mill assertions regarding the knowledge and opinion effects of jury service help frame the question of the consequences of jury service. Chapter Two provided a brief overview of the nature of jury trial service. This Chapter integrates the insights from the range of relevant social science research literature into an analytical framework of the expected effects of jury service on juror's political attitudes. After a brief overview of the framework, the discussion turns to the insights which informed the expectations.

The Analytical Framework: An Overview

The framework was developed using the literature in four subject areas: 1) Political participation and political socialization research; 2) Social psychology research on attitudes, attitude change, and legal socialization; 3) Jury research and 4) Studies of public attitudes toward the legal system. Conclusions and insights from these literatures are combined with the exploratory research results to develop a rough model of the expected effects of jury service on political and institutional attitudes. This model or

framework of interaction among the situation, subjects, communicators and communication then guided the development of the study's research design.

The learning potential outlined in the study's hypotheses is expected to vary according to the situation, communication, communicator and the subject's 'type'.

The discussion will now turn to a review of the questions and insights which informed this framework of expectations.

What are attitudes?

Social psychologists define an attitude toward a given object, idea or person as an enduring system with a cognitive (knowledge) component, a feeling or emotional component and an action tendency (readiness to respond in a particular way).¹ In this study, the focus is whether and how changes in one of the components of attitudes lead to changes in the other components. I am focusing primarily on the changes in attitudes precipitated by changes in their cognitive dimension. Tocqueville's assertions of the educational effects of jury service are based upon the expectation that changes in knowledge of the administration

¹ William McGuire, "The Nature of Attitudes and Attitude Change" in The Handbook of Social Psychology, edited by Gardner Lindzey and Eliot Aronson, (Reading, MA: Addison-Wesley, 1968-69), p. 172.

of justice and the legal culture will lead to changes (strengthening) of the affective dimension (attachment to principles and support for the system). Thus, in order to determine whether Tocqueville's assertions are valid, the study should track and measure changes in both knowledge and support.

What factors are associated with attitude change?

The attitude change literature alerts us to a wide range of factors which can promote or inhibit attitude change. It also provides us the concepts through which to organize our understanding of the likely attitude change dynamics associated with jury service. By borrowing and slightly revising the analytical categories in the attitude change process² (Situation, Subjects, Communicator, and Communication), it becomes possible to organize both the conclusions from the attitude change literature (TABLE 3.1) and the likely elements associated with attitude change in the jury service experience (TABLE 3.2).

The analytical categories of Situation, Target, Source and Message are used by social psychologists to organize their exploration and understanding of persuasion. The

² See Carl Hovland and Irving Janis, eds., Personality and Persuasibility, (New Haven: Yale University Press, 1959).

categories, and much of the research in this field, assume a conscious effort on the part of communicators to persuade subjects to accept certain attitudes. Since jury service involves action (ie. decision-making) by participants as much as efforts at persuasion, the categories have been broadened to accomodate the more complicated dynamics. Jurors are labeled 'Subjects'. The content of jury service, the 'Situation' is labeled 'Communication' and the other participants in jury service are labeled 'Communicators'. TABLE 3.1 arranges the elements of the jury service experience in the appropriate categories.

TABLE 3.1
ASPECTS OF JURY SERVICE POTENTIALLY
ASSOCIATED WITH ATTITUDE CHANGE

<u>Communicators:</u>	<u>Communication:</u>	<u>Situation:</u>
Jury Officials	Orientation	Lots of Waiting
Judge	Voir Dire	Church-like
Lawyers	Judge Instructions	Atmosphere
Other Jurors (Subjects)	Testimony	
	Lawyer Opening/Closing Statements	
	Deliberations	
	Post-Trial Debriefing	

Jury trials in the United States are not designed to change general political and legal attitudes of prospective

trial jurors. They are decision-making forums. Although jurors are clearly viewed as targets of persuasion by the attorneys in the trial,³ they are also participants. As decision-makers, they are capable of affecting one another's attitudes as well as the attitudes of the other principal participants.

Attorneys attempt a narrowly focused persuasion through their opening and closing statements, questions to witnesses, motions and commentary. They try to convince trial jurors to agree with their interpretation of the evidence presented during the trial.

Jurors are aware of attorney efforts to persuade them, however. As a result, they are less likely to be easily persuaded by them. Nevertheless, attorneys can employ a variety of strategies to persuade jurors. They may attempt to arouse juror fears and/or related motivations. They may attempt to distract them and/or to be likeable. Shrewd attorneys will attempt to select jurors who appear to be more open to their persuasive methods. The effectiveness of these efforts depends in part on the characteristics of the individual juror (Subject) and the attorney (Communicator)

³ To some extent, the judge may view them as targets as well, if he or she attempts to enhance juror support for the jury and judicial systems.

and the constraints of the case and trial (Communication and Situation).

The judge is likely to be highly respected by jurors, perceived to be objective and viewed as a kind of teacher.

For these reasons, he or she is likely to be potentially very influential (See TABLE 3.2). Jurors are not likely to expect that the judge will attempt to persuade them to hold a particular point of view. They are likely to expect the

TABLE 3.2
FACTORS AFFECTING ATTITUDE CHANGE

Factors:	<u>Which Promote Change:</u>⁴	<u>Which Inhibit Change:</u>
<u>Associated with:</u>		
Communicator (or Source)	High prestige communicator Liking the communicator	Low Prestige communicator Disliking communicator
target	Communicator appears objective Communicator appears similar to subject/ different	Communicator appears biased Communicator appears
Communication (or message)	If high prestige communicator, high levels of discrepancy ⁵ likely to produce max. attitude change In most cases, 2-sided communication more likely to produce change than 1-sided	If low prestige, rejection easy with low->high discrepancy If poorly informed unintelligent & already sympa- thetic audience, 1-sided more effective (less confusing)
	Stating a conclusion, if complex arguments with which audience unfamiliar or low intelligence audience Presenting novel information or telling listeners it is novel Fear arousal	

⁴ In the direction of the communication/communicator position.

⁵ Discrepancy refers to the difference between the communicator's message and the subject's initial position (prior attitude).

TABLE 3.2: FACTORS AFFECTING ATTITUDE CHANGE (continued)⁶

Factors:	<u>Which Promote Change:</u>	<u>Which Inhibit Change:</u>
<u>Associated with:</u>		
Subject (or target)	Subject has low	Subject has high
commitment to in- itial position	commitment to initial position (con) ⁷	commitment to initial position (con) ⁷
	Subject has low self esteem & message is <u>not</u> complex	Subject given sup- porting arguments for initial position (con)
Situation	Subject is forewarned	Subject is fore-
but has	of effort to persuade	warned
	<u>and</u> has low involvement with issue and position which contradicts	high personal involvement with issue involved
communication	communication	in
	Arousing strong motivations increases the effect of a communication that is directly relevant to the motivation	
	Associating a persuasive message with some	

⁶ Table developed using: Freedman, Carlsmith and Sears, Social Psychology (1974), Hovland and Janis, Personality and Persuasibility (1959), and McGuire, "The Nature of Attitudes and Attitude Change," in Lindsey and Aronson, The Handbook of Social Psychology (1969).

⁷ (con) refers to position (or attitude) contrary to that of the communicator.

reinforcing stimulus.

judge to be objective and to respect him or her as an authority. The judge is unlikely to overtly attempt to change jurors' attitudes. Instead, he or she defines jurors' responsibilities and assists them (through formal and informal instructions) in the performance of their duties.

Insofar as the judge plays the role of teacher during jury selection and the trial, he or she will influence juror attitudes in the same indirect ways that students are influenced by their teachers. The more effectively the judge guides and instructs the jurors, the more likely jurors will be receptive to learning the knowledge and ideas presented to them during service.

Other jurors are likely to influence respondent reactions through their effects on the character of jury deliberations. If deliberations are perceived to be respectful and collegial by the participants, trial jurors would be expected to react more positively to the experience and to the system to the extent that they generalize beyond their experience.

Other characteristics of the situation and communication suggest that trial jurors are likely to be a persuasible group. Trial jurors are selected to serve for the most part on the basis of their low commitment to attitudes and opinions related to the issues raised in the case. Prospective jurors who reveal a stake, personal or

professional⁸, in the issues or the outcome of a case are disqualified. Those who reveal strong opinions in one direction or another are likely to be excused by one attorney or the other through peremptory challenges. Other things being equal, trial jurors should be open to influence, especially from the judge.

What are the relevant attitudes of those who serve?

Political Opinion and Participation

Analysts of political participation have gathered extensive data on the political attitudes and activity levels of the public. Their insights into forms of political participation other than jury service can be used to inform expectations of what the effects of jury service might be.

Two areas of study seem to provide the greatest help: a) political knowledge, opinion and participation and b) political tolerance. The research in each area will be reviewed in turn. In addition, I will quickly review the relationship of political participation to political efficacy.

We know from studies of political knowledge, opinion and participation levels that the public can be caricatured

⁸ A professional stake is defined as professional knowledge or training in a related field.

or roughly divided into three participatory 'types':⁹ Activists, Spectators and Apoliticals. The characteristics of each type are presented in TABLE 3.3.

Activists are those who are highly attentive to and knowledgeable about politics. They vote and participate extensively in politics in other ways as well. They are likely to work on behalf of candidates, issues and political parties during elections. They are likely to belong to civic groups and political organizations. They also tend to be of higher socioeconomic status than the rest of the public.

Spectators are marginally or moderately attentive to and marginally to moderately knowledgeable about politics. They accept the duty to vote and do so with some regularity but they are not likely to participate beyond voting. They are unlikely to work on behalf of candidates, issues or political parties during elections and only moderately likely to belong to civic and political organizations. They are likely to be mildly cynical about the behavior of politicians. Spectators tend to be of moderate socioeconomic status.

⁹ See W. Russell Neuman, The Paradox of Mass Politics: Knowledge and Opinion in the American Electorate, (1986) for the best statement of this "theory of the three publics." Neuman draws conclusions similar to those made earlier by Milbrath and Goel in Political Participation, (1977).

Finally, Apoliticals are those who are "self-consistent and unabashedly apolitical" in Neuman's words. They do not

TABLE 3.3
SUMMARY OF POLITICAL KNOWLEDGE, OPINION, AND
PARTICIPATION BY THE AMERICAN ELECTORATE¹⁰

Category:	Characteristics:
ACTIVISTS	Between 1-5% of population
(Neuman estimates 5%, Milbrath-1%)	Uniquely high levels of political involvement
	Very high levels of political sophistication (salience/knowledge/conceptualization--Neuman)
	Self-consistent and self-reinforcing attitudes and behavior
	High levels of support for due process rights among many
of these	(esp.
journalists, public servants)	
SPECTATORS	Between 60% (Milbrath) and 75% (Neuman) of population
	Mod to Marginally attentive to politics
	Mildly cynical about behavior of politicians
	Vote with fair regularity but not likely to participate
beyond voting	
	Accept "duty" to vote (civic duty)
	Proxy voting common in this group
	Moderate to low levels of political sophistication (salience/knowledge/conceptualization--Neuman)
	General (mostly superficial) support for due process
(moderate/low levels political tolerance)	
APOLITICALS	Between 20% (Neuman) and 33% (Milbrath) of population
	"Self-consistent and unabashedly apolitical" (Neuman)
	Don't share norms which stress importance of keeping politically informed

¹⁰ Table based on information gathered from Neuman (1986), Milbrath and Goel (1977) and McClosky and Brill (1983).

Don't share norms which stress importance
of voting
Candid about not having political opinions
Low levels of political sophistication
(salience/knowledge/conceptualization)
Weak support for due process (low
political tolerance)

pay attention to politics; they do not participate and they do not care. Apoliticals do not share the norms which stress the importance of keeping politically informed. Neither do they share the norms which stress the importance of voting. They neither vote nor participate in politics in other ways. They do not work on behalf of candidates, issues and political parties during elections and they are not likely to belong to civic groups and political organizations. Apoliticals tend to be of lower socioeconomic status.

The participatory types described above are 'ideal types' or caricatures. They alert us to the characteristics which generally distinguish those who participate in politics from those who do not. Although there are no clear dividing lines between the categories, they make rough sense of almost 40 years of survey data and can be used to guide inquiry into the effects of jury service which might relate to other forms of political participation.¹¹

The variety of participatory types and the varying degrees of internal attitude and behavioral consistency

¹¹ The use of political participation research categories to help guide jury participation research does not mean that jury service is expected to be more like other kinds of political participation than it is different. However, in order effectively to relate the findings from jury participation research to research on other kinds of political participation, it is necessary to consider potential similarities and connections.

within each category of the public alert us to the need to (a) measure attitudes before and after jury service and (b) measure attitudes over time as well as behavior in order to determine when we are measuring merely temporary attitudes.

Political Efficacy

Confusion over the relationship between political participation and feelings of political efficacy alerts us to a unique research opportunity available in the study of the effects of jury service. Contemporary analysts of political participation offer some expectations of the effects of political participation on feelings of political efficacy and vice versa but there are no clear conclusions about the relationships. The various conclusions are identified in TABLE 3.4, Part A. Because of the voluntary nature of most forms of political participation, it is impossible effectively to separate feelings of political efficacy as cause from feelings of political efficacy as effect. Those who participate are expected to feel more politically efficacious as a result. But those who feel politically efficacious are more likely to participate in politics in the first place.

Jury service provides a unique opportunity to contribute to knowledge in this area in that prospective petit jurors are a) obliged to serve (at least theoretically) b) randomly selected for service and c)

cannot volunteer themselves for service. Since jury service also involves the conflict of ideas and individual and collective decisionmaking, a study of its effects may shed light on the role of these factors in other kinds of participation.¹²

¹² See W. Lance Bennett, The Political Mind and the Political Environment, (Lexington, MA: D.C. Heath, 1975).

TABLE 3.4
STUDIES OF THE EFFECTS OF POLITICAL PARTICIPATION

Subject:	Author:	Conclusions:
A) Political Participation	Dahl (1961)	Mutual reinforcement of political efficacy and political participation
	Converse (1964)	Sense of efficacy is a powerful independent cause of pol. activism
	Finkel (1985)	Reciprocal effects of participation and political efficacy
	Bennett (1975)	Participation involving conflict of ideas and individual initiative and input enhances conceptual-
	Leighley (1991)	"Participation in national problem-solving and campaign activities enhances political conceptualization."
B) Public Attitudes Toward the Legal System	Sarat (Summary) (1977)	"Those who know law and legal system from first hand experience tend to be less satisfied than those to whom it remains remote." (p. 441) [summarizing Walker et al. (1972), Barton & Mendlovitz (1956)] ¹³
C) Effects of Jury Service	Tapp & Levine (1977)	Higher levels of legal reasoning as a result of "Wounded Knee" jury trial experience

¹³ Note: no identification of jury service as a category of experience though respondents may assume it is included.

Pabst,
Munsterman
Mount

Most who serve indicate jury
service was a positive
experience. (No depth to these
evaluations)

Support for Due Process Principles

The most significant educational effects of jury service are likely to be related to knowledge of and support for due process principles. Studies of tolerance reveal differences in the public's understanding of and support for these norms.¹⁴ Tolerance levels follow the same general patterns as political knowledge and participation (See TABLE 3.3).¹⁵ Activists (McClosky's "political elite") are generally more likely than the rest of the public to report high levels of support for due process principles. Spectators and Apoliticals (McClosky's "mass public") are likely to show mostly superficial support for due process principles.

The public shows strongest support for due process principles which are familiar and highly visible like the

¹⁴ See McClosky and Brill, Dimensions of Tolerance (1983), pp. 232-233. Their analysis divides the public into two categories: 'political elites' (corresponding to Activists) and 'the mass public' (corresponding to Spectators and Apoliticals).

¹⁵ Exceptions to the very general relationship between tolerance levels and political participation tendencies certainly exist. See the McClosky and Brill discussion of differences between conservative and liberal elites (Chapter 7). Those elites with weak support for civil libertarian and due process norms would be expected to maintain their previously held views even in the face of information and persuasion which contradicts them.

right to an attorney and the right to a fair trial.¹⁶ Sixty percent of the mass public "prefer to let a guilty person go free than to convict an innocent person."¹⁷ There is less support for more "technical" due process rights such as those involving the conduct of trials and the use of evidence, however. Only 40 percent think that "forcing people to testify against themselves is never justified."¹⁸ Perhaps this limited support is due, at least in part, to the fact that many people are unfamiliar with the reasons for the more specific rules. Criminal jury trial service may be one way in which people become more aware of the reasons for and the logic behind some due process principles.

There is reason to believe that jury service might enhance a person's sense of law consciousness and justice. A study of the 1974 "Wounded Knee" trial jurors by Tapp and Levine found that jurors' legal reasoning shifted toward a more advanced law-creating, principled perspective after their service (See TABLE 3.5).¹⁹ Through close observation

¹⁶ Ibid., p.147.

¹⁷ Ibid., p. 147.

¹⁸ Ibid., p. 158.

¹⁹ June L. Tapp and Felice Levine (eds.) Law, Justice and the Individual in Society: Psychological and Legal Issues, (New York: Holt, Rinehart and Winston, 1977).

of the voir dire for the case, the researchers were able to classify the pre-service legal reasoning levels of the empanelled jurors and some who were questioned but excused.

TABLE 3.5²⁰

TAPP'S LEVELS OF LEGAL REASONING

PRECONVENTIONAL LEVEL: (Law-deferring)

Individuals exhibit a mode of legal reasoning based on fear of punishment or deference to power. The focus is on external consequences and authority. The generality of law is absent in reasoning about legal actions and attitudes.

CONVENTIONAL LEVEL: (Law-maintaining)

People are concerned with fulfilling role expectations. Commitment to the community is tied to performing as a good-girl (woman) or good-boy (man). Individual rights are lost to group norms. Social norms must be maintained for orderly living.

POST CONVENTIONAL LEVEL: (Law-creating)

Individuals have a legislative perspective. These principled-thinking individuals see the need for social systems yet differentiate between the values of a given social order and universal ethics. They can distinguish principles of justice from concrete laws and societal conventions.

²⁰ Taken from June Louin Tapp et al., "Socialization: Three Ages, Three Rule Systems," in D. Perlman and P. Crosby (eds.) Social Psychology, (New York: Holt, Rinehart and Winston, 1981) p. 47.

Although some trial jurors (42%) were classified at the "post conventional" level before the trial began, after the trial, all the trial jurors were so classified. In part as a result of their jury trial research, Tapp and Levine developed a set of four socializing strategies which they believe stimulate movement to higher levels of legal reasoning. TABLE 3.6 presents a summary of the strategies.²¹

TABLE 3.6
Socializing Strategies for Enhancing Legal Reasoning

- 1. Legal knowledge.** This strategy involves transmitting information. Effective socialization includes "schooling" about rights, rules, and remedies. Such education allows individuals to become creators as well as consumers of law.
 - 2. Mismatch and Conflict.** Mismatch in value orientation or value conflicts stimulates the construction of more complex forms of thought.
 - 3. Participation.** Through participation, an individual can gain an appreciation of someone else's framework. Participation also emphasizes reciprocity and cooperation.
 - 4. Legal continuity.** Rule-creating and fair-play opportunities occur in many daily contexts: home, school, church, union. Recognition of the continuity among various rule or justice systems should help persons define the interdependent nature of legal activity.
-

²¹ Ibid., p. 67-69.

Service as a trial juror, even a case much less dramatic than the "Wounded Knee" trial, exposes a person to legal rights, rules and remedies. Perhaps more importantly, trial service requires that a juror use his or her understanding of rights, rules and remedies to make an individual decision and then negotiate a group decision with the other jurors.

The expectation that jury service might increase juror knowledge of and attachment to due process principles is also consistent with the expectation of 'informal social learning' put forward by Herbert McClosky and Alida Brill in their study of political tolerance:

People learn (or embrace) the norms of tolerance, privacy, due process, and other civil liberties much as they learn any other set of social norms, and the conditions which promote such learning are in many respects the same: access to information about public matters, frequency and intensity of exposure to the norms, and the perceived benefits or costs of upholding the norms.²²

McClosky and Brill suggest that the process of social learning involves three stages: (a) exposure; (b) comprehension; and (c) acceptance (or internalization).²³

²² See McClosky and Brill, p. 232.

²³ Ibid., p. 28.

Jury trial service provides participants with information concerning due process principles through instruction in the law. It exposes jurors to the norms and gives them a concrete sense of their benefits and costs through the practical application of the principles in the case on which they serve. This would lead to the hypothesis that trial jurors end up more accomplished in their legal reasoning than those in the jury pool who did not serve on a trial.

Attitudes Toward the Legal System

The jury literature and studies of public attitudes toward the legal system provide us primarily three kinds of useful insights. First, information in the jury literature about the jury selection process and about jury decisionmaking help us to develop expectations about who is likely to serve and what it means to serve. We know, for example, that many state courts use a combination of voter registration and drivers' license lists to identify their pool of prospective jurors. Courts vary in the degree to which they rely on voter registration lists. In courts that rely primarily on voter registration lists, we would expect that few "Apoliticals" would appear in the jury pool since they are unlikely to be registered to vote.

Second, studies of juror reactions to jury service (TABLE 3.4 Section C) report that most jurors react

favorably to service and the majority of those who serve on trials indicate a willingness to serve again.²⁴ However, the very general character of the evaluations and the administrative focus of the studies limit their usefulness to this study. We need to probe beyond these evaluations.

Third, anecdotal evidence and studies of public attitudes toward the legal system are equivocal on the issue of the effects of jury service on juror attitudes (See TABLE 3.4, Section B). Their bottom line, that "those who have first-hand experience with the legal system are more dissatisfied with it"²⁵ runs counter to the conclusions of studies of the effects of jury service. While their findings might be interpreted as saying that jury service leads to greater dissatisfaction with the legal system, the questions used do not distinguish between the effects of various kinds of first hand legal system experience. In studies of reaction to first hand experience, jury service is not identified as a category of 'experience' though respondents may be assuming that it is included.²⁶

²⁴ See William R. Pabst, Jr., G. Thomas Munsterman and Chester H. Mount, "The Myth of the Unwilling Juror," and "The Value of Jury Duty," both in Judicature, November, 1976 and June-July, 1977, respectively.

²⁵ See Austin Sarat, "Studying American Legal Culture: An Assessment of Survey Evidence," Law and Society Review, 11:3 (Winter, 1977).

²⁶ See Barton and Mendlovitz (1956), and Walker, et al., (1972) among others. In these studies, categories of

Anecdotal accounts of jury service by trial jurors and systematic juror attitude surveys²⁷ suggest that those who serve as trial jurors are likely to react favorably to both their service and the system. The vast majority of

legal system experience such as witness, defendant, and plaintiff are distinguished from one another in specific questions but service on a jury is not.

²⁷ These studies include: Durand, et al., "Individual Perceptions of Jury Service," The Alabama Lawyer, (July, 1977); Pabst, et al., "Myth of Juror Unwillingness," Judicature, (November, 1976); Richert, "Jurors' Attitudes Toward Jury Service," Justice System Journal (Spring 1977) and Simon, "The Juror in New York City: Attitudes and Experiences," American Bar Association Journal (February, 1985).

TABLE 3.7
TALLY OF ANECDOTAL ACCOUNTS OF JURY SERVICE²⁸

Author/Year:	Occupation:	Reaction to A)Service:	B)System:²⁹
Abrahamson '86	judge	+	+
Amandes '63	lawyer	+	+
+			
Anonymous '73		no evaluation	
Bartlett '25	(initially reluctant)	+	+
Beach '47	editor, author	+	+
Beckelhymer '76	minister	+	+
Birenbaum '70	sociologist	no evaluation	
Bridges '80	(initially reluctant)	+	+
Brown '65	banker	+	+
Cameron '81	judge	+	+
Carey '73	(layman)	+	+
Chesterton '68	writer	+	+
Coleman '20	(layman)	+	+
Deemer '72	free-lance writer (self-described liberal/radical)	+	+
Ederheimer '54	(layman)	-	-
Edman '49	(layman)	+	+
Fitzpatrick '83	lawyer/court administrator	+	+
Friedman '80	(layman)	+	+
Garrotto '64	judge	+	+
Greene '86	jury researcher	+	+
Hartley '40	(layman)	+	+
Healy '76	administrator	-	-
Kaplan '79	lawyer	+	+
Kerig '79	law professor	n/a	+
King '76	(layman)	+	+
Klass '41	(layman)	no evaluation	
Kraft '82	law-trained professor	-	-
Lee '75	scientist	+	+
Macy '10	journalist	+	+
McNulty '81	news writer	+	+
Nichols '57	TV news commentator	+	+
Scargle '38	(layman)	-	-
Spicer '61	(layman)	+	+
Steele '23	(layman)	-	+

²⁸ These are published accounts of jury service, usually article length.

²⁹ Judgement of whether reaction is positive or negative is made based on the overall direction of evaluative comments in the account.

Timothy '75

housewife

+

+

anecdotal accounts of the jury experience which are in any way evaluative are also favorable (See TABLE 3.7). Out of 33 accounts which evaluate the jury or judicial system in some way, 29 (87.9 percent) evaluate either one favorably. Although this "sample" is hardly representative³⁰, the strongly positive direction of the "results" is, at least, suggestive. Most of the former trial jurors in this group report a generally positive reaction to both jury service and the judicial system as a result of their experience.

In addition, Pabst, Munsterman and Mount's post-service survey of attitudes found that jurors who serve on trials and who report little or no economic hardship associated with their service were very likely to find the experience satisfactory. They were also likely to report a willingness to serve again.³¹ Unfortunately for the purposes of this study, when the survey researchers break down the jury experience for analysis, they focus on reactions to the administrative aspects of jury service. Even Durand et al., who measured juror attitudes before and after service, measured juror reactions to aspects such as financial

³⁰ All of the writers were motivated enough to report and evaluate their experiences. Many were providing advice to attorneys at the same time so a pre-existing pro-legal system bias may have been present.

³¹ See Pabst, et al., "The Myth of Juror Unwillingness."

compensation, parking facilities, physical surroundings, and management of time and safety but not to legal concepts or principles.

Finally, research on procedural justice reveals that people evaluate the fairness of legal decisionmaking procedures in the processes (legal and otherwise) in which they are participants.³² An analytical model developed by Tyler and others suggests that evaluations of decisionmaking fairness have an indirect influence on behavioral reactions to institutional decisions. When people judge procedures to be fair, they evaluate the institutional legitimacy of authorities more highly.³³ In these studies, participants have a personal stake in the outcome which can influence their evaluations.

If those with a personal stake in process outcomes evaluate and are affected by the fairness of the procedures with which they deal, it seems even more likely that trial jurors would so evaluate and be later influenced by their

³² See E. Allan Lind, Susan Kurtz, Linda Musante, Laurens Walker, and John Thibaut, "Procedure and Outcome Effects on Reactions to Adjudicated Resolutions of Conflicts of Interest," Journal of Personality and Social Psychology 39 (1980), p. 643.

³³ Tom Tyler et al., "Maintaining Allegiance toward Political Authorities: The Role of Prior Attitudes and the Use of Fair Procedures," American Journal of Political Science, Vol. 33, (1989), p. 629.

procedural evaluations. Trial jurors may be likely to develop a personal stake in the trial process itself.

The Analytical Framework

When information on attitudes, political participation and the jury and legal systems are combined, it is possible to construct a rough framework of expected effects. There are three clusters of expected differential effects of jury service related subjects' prior political attitudes. In addition, there are two overall expected effects. Each of three 'ideal types' of prospective jurors, Activists, Spectators and Apoliticals would be expected to react somewhat differently within the general expectations. The categories of "situation", "communication" "communicators" and "subjects" are used to organize the summary of expected effects.

The Situation and Communication

Service as a trial juror exposes a person to legal rights, rules and remedies (as described in Chapter Two) and the kind of active and productive participation that should lead to increased due process and legal system knowledge and support. Trial jurors attempt to understand and use principles relevant to the case on which they serve. Other things being equal, trial jurors should (a) learn about the

principles they attempt to use and (b) as a result of learning while doing justice, they should gain greater appreciation of the judicial system and the difficulties associated with administering justice. Other things being equal, trial jurors should learn more than those who do not serve on juries.

Communicators

The literature and exploratory research suggest that two kinds of 'communicators,' the judge and other trial jurors, are likely to influence reactions to service. The judge is likely to be influential due to his or her position and role in the proceedings. Other jurors are likely to influence respondent reactions through their effects on the character of jury deliberations.

The judge is likely to be highly respected by jurors, perceived to be objective and viewed as a kind of guide or teacher and, therefore, is likely to be the most influential among the 'communicators'. Since the judge is unlikely to overtly attempt to change jurors' specific attitudes, he or she is more likely to indirectly influence juror receptivity to information and new ideas. Since the judge is

likely to

be highly respected by jurors, perceived to be objective and viewed as a kind of guide or teacher, other things being

equal, he or she is likely to be the most influential among the 'communicators'.

Trial jurors are likely to influence one another's reactions to jury service and the system, as well. To the extent that jury deliberations are respectful and collegial, trial jurors would be expected to react more favorably to their experience and the judicial system.

The Subjects

There are three clusters of expected differential effects of jury service related to subjects' prior political attitudes. Each of three 'ideal types' of prospective jurors, Activists, Spectators and Apoliticals would be expected to react somewhat differently.

Activists

Earlier in this section, Activists were described as very knowledgeable of and attentive to politics. (See TABLE 3.3) They vote and participate extensively in politics in other ways and are likely to work on behalf of candidates, issues and political parties during elections. Activists are also likely to be supportive of due process and civil libertarian norms. Because of their high involvement and attention to public affairs, however, they might also be more likely to be excused from serving on a jury because

they know someone involved or simply know too much. If Activists do serve on a jury, their specific knowledge is likely to increase and their general support (which was probably already high) ought to remain strengthen and grow deeper. Activists are likely to have a high commitment to their intial position regarding the legal system (whether negative or positive) so they ought to be less influenced by specific experiences which are inconsistent with their predispositions and more influenced by experiences consistent with their predispositiions.

The variations associated with being Activist can be summarized as follows:

A) They are likely overrepresented in jury panels but more likely than other groups to be excused from serving on a jury because of personal or professional knowledge of participants or issues involved in the case;

B) When serving, they would be unlikely to change the direction of their opinions about the legal system and due process principles³⁴;

C) When serving, they would be more likely to deepen rather than broaden their prior knowledge³⁵;

Apoliticals

³⁴ Activists ought to be less influenced by specific experiences or information inconsistent with their prior attitudes, which are more likely to be informed and well-formed.

³⁵ The level of Activists' prior due process knowledge is likely to be very high.

Apoliticals would be expected to follow patterns of experience similar to those of the Activists but for opposite reasons. Apoliticals, like the Activists have attitudes consistent with their behavior. They do not participate and they do not care. Because they are not likely to register to vote, they are also less likely than others to be called for jury service on many courts. Because their socioeconomic status is likely to be low, they may be more likely to ask for and more easily obtain excuses from jury service for hardship. Because Apoliticals 'do not care' they are not likely to retain much of the knowledge they gain during the trial. When Apoliticals do serve on juries, they would be expected to react to service consistent with their predispositions. If they enter the experience alienated from the system, they will probably interpret the experience consistent with this view. If an Apolitical enters the jury experience with no predispositions, and experiences an 'educational' trial (a teaching judge, non-divisive deliberations and approval of outcome), she or he ought to react favorably to the experience but will probably not relate the attitude change beyond the specific experience. Unfortunately, Apoliticals who have served on a jury are probably also less likely to be willing to report their reactions to the experience.

The variations associated with being Apolitical can be summarized as follows:

A) They are less likely to be called for service since they are less likely to be registered to vote³⁶;

B) They are more likely to ask for and perhaps more easily obtain excuses from jury service for economic hardship;

C) Because they 'do not care', they are not very likely to retain much of the information they use during the trial;

D) If they enter the experience with strongly negative views of the judicial system, they will probably interpret the experience consistent with this view;

E) If they enter the jury experience with no predispositions, and experience an 'educational' trial,³⁷ they will likely react favorably to the experience but probably not relate the specific experience to the institution or politics.

Spectators

Finally, Spectators, presumably the most numerous of the three groups, are likely to be the most influenced by the actual jury experience. Spectators have attitudes that are somewhat inconsistent with their behavior. On the one hand, they have at least a minimal sense of civic duty. On

³⁶ Voter registration lists are at least a partial source of prospective jurors for most courts.

³⁷ 'Educational' trial is defined by the presence of a somewhat or very didactic judge, non-divisive deliberations and approval of decision result.

the other hand, they are marginally attentive to and mildly cynical about politics.

If the Spectator serves on a 'educational' jury trial, we would expect a positive impact on knowledge level and on attitudes toward the experience and perhaps some impact on attitudes toward the legal system.

The variations associated with Spectators can be summarized as follows:

- A) They are likely to be overrepresented in prospective juror panels;
- B) They are likely to gain more knowledge of the judicial system and due process principles;
- C) They are likely to change their attitudes as a result of their trial experience.

The research results are likely to provide the most information regarding the Spectator group. A caution is in order, however: although the framework outlines the above three discrete groups, these are to be viewed as 'ideal types.'

Service as a trial juror exposes a person to legal rights, rules and remedies (as described in Chapter Two) and the kind of participation that should lead to some increase in due process and legal system knowledge and support. Other things being equal, trial jurors should learn something from their service.

CHAPTER FOUR

THE RESEARCH DESIGN: TESTING THE EXPECTATIONS

Introduction

In this chapter, the general research plan of the study is presented. First, a brief overview opens the chapter. Second, the stages of the research program used to test the study's propositions are outlined. Third, the issue of sample representativeness is considered. Finally, the strategies used to minimize problems associated with non-response, non-attitudes and temporary attitudes are discussed.

General Plan of the Study

A multi-stage research program was developed to study the effects of jury service on the political attitudes of those who serve. The effect of the independent variable (jury service experience) and intervening variables upon the dependent variables (juror knowledge of and attitudes toward their experience, legal principles, actors in the system, etc.) were measured through both before-and-after service surveys and indepth interviews.

The research program consisted of (a) an initial exploratory phase, (b) a panel study and (c) a series of indepth, open-ended interviews. Research expectations were developed and refined through a review of relevant research literature, exploratory observation and interviews. The systematic, quasi-experimental panel study was used to measure institutional knowledge, attitudes and knowledge and attitude change. Finally, the indepth interviews were used to probe more fully into individual juror reactions to their experiences and understanding of the system. Each of the research phases is described below.¹

The Exploratory Phase

Research expectations were refined through a research review, preliminary jury trial observation and interviews conducted with judges, jury administrators and former trial jurors in the San Francisco Bay Area. The primary purpose of the interviews and observation were three: First, an attempt was made to refine the relevant intervening variables to be measured in the study and to develop measures for them. This effort included gathering background information, the identification of both the nature and degree of internal and intercourt variation as

¹ For more detailed information, see Appendix B.

well as the sources of the variation (judges, cases, jury selection procedures, etc.). Second, the list of dependent variables was both narrowed and refined. This effort included finding out who serves on juries compared to the general population. It also involved refining the educational effect hypothesis along with the clarification of additional plausible assertions regarding the effects of jury service. Third, the questions for in-depth interviews and the panel study were developed. Potential questions for the panel study questionnaires were pre-tested among colleagues and through a small pilot survey in a local municipal court.² In-depth interview questions were tested through informal interviews with former jurors.

Variation in the jury experience (the independent variable) may be influenced by a variety of court and case-related factors, many of which were discussed in Chapters Two and Three. Aspects of the experience, like the kind of crime charged, might have an effect on what and how much a trial juror learns from jury service. However, all potential variation could not be studied in this project which is, itself, exploratory. The project focus, therefore, was narrowed in a number of ways. First, only

² The pilot study was conducted in a court other than the Municipal Court involved in the main portion of the study.

criminal jury service was studied. Second, since court cooperation was secured judge by judge, full court participation³ was obtained for the smallest size court (municipal) while only some departments in the other two courts participated in the study. Altogether, jurors and trials were tracked through eight court departments in three courts. Third, long-term trials involving violent crimes and the death penalty were excluded since the study time frame and resources could not accommodate them.⁴

The courts chosen for the study vary according to the types of cases handled as well as the population served. They are: a) Walnut Creek Municipal (Suburban); b) Alameda County Superior Court (Urban/Suburban); c) U.S. District Court of San Francisco (Urban/Suburban/Rural). The trials included in this study ranged from misdemeanor cases involving charges like 'Driving while under the influence of alcohol'(DUI) to felony cases involving charges like Drug Smuggling.⁵

³ The Municipal Court with four departments.

⁴ Since cases involving the death penalty can average over four months from jury selection through deliberations, the costs of including these cases in an exploratory study such as this would be prohibitive.

⁵ See Appendix B, Table 3 for summary information of the 25 trials in the study.

The sample of survey respondents from these courts was expected to be only 'roughly representative' of the public lists from which the courts draw their pools of prospective jurors. The sample could be only roughly representative of even these lists because some people randomly called from these lists were excused from service as a result of disqualifications, exemptions and hardship excuses (see TABLE 1, below). Most of these people were excused without being required to appear in court.⁶ Since the surveys must be administered at the courthouse, those excused before appearing at court would not be available to participate. This issue is discussed in greater detail in the section on sample representativeness, below.

Phase 2: The Panel Study and Trial Observation

In this second phase of the research, a panel study of a sample of 865 prospective jurors was undertaken. The primary goal was 200-300 pre-service and post-service respondents, at least half of whom would have served as trial jurors. Prospective jurors were asked to fill out a

⁶ It was not possible (in this study) to obtain the names and addresses of those disqualified, exempted or excused from service. If this information was available, pre-service surveys could have been sent to this group to compare its demographic and attitudinal profile with the rest of the sample.

survey while they were waiting to be called to a department for service. They were told that the purpose of the research was to better understand jury service, that it was sponsored by the University and completely independent of the Court and that all responses would be kept completely confidential.⁷ Respondents were handed a written copy of

⁷ For the complete text of this invitation to participate, see APPENDIX B.

TABLE 4.1
Disqualifications, Exemptions, & Excuses from Service

Disqualifications: Not a citizen of the U.S.
Unable to read and understand English
Under 18 years of age
Not a resident of Court's jurisdiction
Physical or mental disability
Presently serving as Grand Juror
Convicted of felony and civil rights
not yet restored
Felony charges currently pending

Exemptions: Member of governmental police or
regular fire department
Full-time elected public official or
public official appointed by one⁸
Member in active service of U.S. Armed
Forces

Grounds for Excuse: Over 70 years old
(optional) Served as Grand or Petit Juror within
last 2 years⁹
Care for dependent between 8 a.m. and 5
p.m. daily¹⁰
Travel distance of more than 60 miles¹¹
Extreme hardship or inconvenience

⁸ 'Public official' refers to those serving at any level of government. In this study, only the Federal Court applies this exemption so widely. In the Municipal and Superior Courts in the study, the only appointed officials formally exempted are judges.

⁹ The Federal Court within two years of previous service while the Municipal and Superior Courts excuse within one year.

¹⁰ The Federal Court version of this excuse is more specific: Those who must care for children under age 12 or an infirmed person can be excused.

¹¹ This excuse relevant for Federal Court only because of the large size of its jurisdiction.

(usually financial)

the invitation, the questionnaire and a "Survey Results Request Form" (see APPENDIX B).

An average of two weeks after their jury service ended, respondents were mailed the post-service survey. Trial jurors were handed post-service surveys before they left court, if possible. Respondents were invited to participate in the post service survey (a) whether they had served as trial jurors or not (b) whether they remembered much about their service or not and (c) whether they had participated in the study at the outset of their service or not. Respondents were again invited to request the results of the survey (see APPENDIX B for the post-service survey and invitation letter).

Approximately two to three weeks after the expected receipt of the post-survey, respondents were sent a thank you/reminder note. The note thanked those that had completed the survey and asked those who had not yet done so to consider completing it. A telephone number was provided so that those who had misplaced the survey could request a new copy or question the researcher (see APPENDIX B for the full text of the Thank You/Reminder Note).

Trial Observation

The trials in which the respondents were "participants" were observed (22 cases, 21 trials [one settled]) and the trial activity recorded (written) in coded form to insure standardized collection of information regarding as many components of the independent variables as possible. Data collected from the trials (4-13 per court) included the content of the case being decided, the amount and type of guidance provided by the judge to the jury on legal principles, procedures and questions (See the Jury Trial Data Summary, APPENDIX A, TABLE A.1). Trial data was also collected on four additional jury trials (#23-#26) which were experienced by an additional group of respondents considered a response effects control.

Control Groups

Four control groups were used in the study. They are presented in TABLE 4.2, below. First, the pre-service respondents, and among them, those in the prospective juror pool without prior jury trial service were considered a control group. Prospective jurors dismissed from trial service ("non-trial jurors") during the study were considered a second control group. This group is referred to as "non-trial jurors" throughout the rest of the study.

TABLE 4.2
CONTROL GROUPS

A. PRE-SERVICE SURVEY RESPONDENTS:

Definition: Those who filled out the pre-service survey (N=738 out of sample N=865).

Divided into those who had previously served on trial(s) (PREVJ's) and those who had not (NPREVJ's).

Uses: Partial control for panel survey effects. Some ability to gauge selection effects. Some ability to separate out other court experience in the analysis (v46, v47).

Limitations: Not enough information to isolate other potential effects on relevant attitudes.

B. NON-TRIAL JURORS:

Definition: Those prospective jurors not selected to serve as trial jurors or alternates (N=585).* Most of these (N=554) at least observed part of jury selection.

Uses: Partial control for survey effects through comparison of pre/post attitude changes. Compare demographics and attitudes to those of trial jurors to help determine selection effects.

Limitations: Although no trial experience, some exposure to judge instruction, attorneys and discussion of issues during voir dire. No information (except as noted above and in category "C" below) on the variation of exposure to courtroom activity.

C. NON-TRIAL JURORS WITH NO COURTROOM EXPOSURE:

Definition: Prospective jurors in Panel Number Seven of study who spent their 1.5 hours of service waiting in the jury assembly room before being dismissed by a judge

because the case for which they had been called was settled (N=31). These
TABLE 4.2 (Continued...)

respondents were administered the pre-service survey before the waiting began and mailed the post-service survey two weeks later (Pre/Post N=10).

Uses: A partial control for panel study effects. Since some respondents filled out both pre/post surveys, responses could be compared with pre/post responses of non-trial jurors, trial jurors and alternates to better isolate causes of attitude change.

Limitations: Very small number of respondents. Although no courtroom experience, might expect some information or attitude effects (negative) from waiting around.

D. POST-ONLY PANELS:

Definition: Those invited to participate in study only after trial service (N=154).
Surveys mailed approximately two weeks after service (Response N=64).

Uses: A partial control for survey effects on response rates. Revealed no significant effects. These respondents were about as likely to fill out post-surveys as those invited at outset of service.

Limitations: No pre-service information so not a useful control for any other effect.

KEY: Survey Effects= attitude change as result of prompting by prior survey.

Selection Effects= whether some more likely selected for trial service than others.

* This group includes some of the respondents from the Post-Only Panels (#23-#26) discussed below. Demographic data was collected from them through the post-service survey. As a result, they could be included in the demographic comparisons of trial jurors and non-trial jurors. However, since no pre-service knowledge and attitude information was available from them, they were not included in these kinds of comparisons.

Third, the one panel of non-trial jurors with no courtroom exposure were considered a partial survey effects control group.¹² And finally, the last four trials in the study for which no pre-service survey was administered were set up as another partial control, this one for survey effects on response rates. As the TABLE 4.1 summarizes, each of the control groups is of limited use. The findings related to each of them, except for Group D, are discussed in Chapter Five, Research Results.

The post-service response rate of Group D was not significantly different from the rate of response of the main panel. The response rate to the post-survey for the main panel was 32.1 percent while that for Group D was 32.5 percent.¹³

¹² The reader may wonder why alternates were not separated from trial jurors in the analysis. They would have been of limited utility for discerning, for example, deliberation effects: the pre-service response group is very small (N=25) and only five completed both pre- and post-service surveys.

¹³ The response rate is calculated from number of potential respondents (a) for whom mailing addresses were available. In the main panel, addresses were unavailable for some respondents. In one court (municipal) and one other court department (U.S. District #2) panelist addresses were not released by the court. Instead, prospective jurors were asked to volunteer their addresses. An average of 51 percent provided them (usually through the request for research results). Jurors for whom no address was available were usually handed the post-survey before leaving the court so they are also included in the base for the response rate calculation.

Dependent Variables

Based on the hypotheses regarding the educational effects of jury participation (see Chapter One, pp.7-8) the dependent variables are:

1. Change or lack of change in jurors' knowledge of legal procedural rights, ie. due process principles.
2. Change or lack of change in jurors' support for due process norms.
3. Change or lack of change in jurors' knowledge of and respect for the judicial system, including specific actors such as judges, prosecutors and defense attorneys.
4. Change in jurors' social and political confidence.
5. Change (or lack thereof) in jurors' support for democratic institutions.

In addition, variations of the above effects, related to variations among the subjects (e.g. Activists, Spectators, Apoliticals) and their experiences (see Chapter Three) were expected.

The Questions

In order to test the above hypotheses and variations, questions concerning general political attitudes and

attitudes toward and knowledge of due process norms were borrowed from (in some cases revising those used in the National Election Studies, the National Opinion Research Center's General Social Survey, and McClosky and Brill's Dimensions of Tolerance Study, among others. In addition, new questions were developed drawing from those suggested by judges and court administrators during the exploratory phase of the research.

However, the range and number of survey questions (especially due process-related) had to be limited because of (a) limited response time (average of 20-30 minutes available) (b) concern not to burden prospective jurors with a long survey and (b) judge and attorney concerns about the potential disruptive influence of controversial questions. Pre- and post-trial juror surveys had never been conducted by outsiders before. Today, parties to lawsuits increasingly use jury surveys as tools for jury selection; but even in such cases, permission usually must be obtained from the judge presiding over the case.

Judges considered some questions too controversial or too suggestive of opinions and disallowed them. Judges have to be concerned about the perceived impropriety of asking jurors opinion questions about due process principles. A scenario imagined by one judge illustrates the judicial perspective well:

When the defense attorney asks prospective jurors, "Do you have any preconceived notions about the defendant or this case?" one of the jurors in the box pipes up and says, "Well, it's not really specific, but we just filled out a survey in which we were asked our opinion about 'the right to remain silent' and other legal principles. I can't remember my answer choices but I agreed with some pretty extreme things."¹⁴

This imagined reaction would be a nightmare for both judge and researcher. It would be a nightmare for the researcher because the study becomes the topic of its subject. It would be a problem for the judge because the question of inappropriate influence on prospective jurors' mindsets could be raised by either of the attorneys who could later raise the charge of 'jury tampering'. Fortunately, the survey administration had no such effects. It did not disrupt the trial process nor did it appear to be a burden to prospective jurors.

Information in at least five categories was gathered from each respondent at the outset of service.¹⁵ First, demographic information such as age (V51), sex (V53), race (V59), education (V58), occupation (V54), and income (V61) was collected. Respondents were also asked whether they

¹⁴ Exploratory interview (EI) No. 9.

¹⁵ See the Codebook in Appendix A, Variables (V1) through (V61) for complete list of pre-service survey questions. The symbol 'V' plus a number in parentheses refers to the survey question's variable number as listed in the Codebook.

had ever served on a jury or juries before (V1) and whether they had any other kind of court experience, for example, as a witness, plaintiff, etc. (V46, V47). Second, information on the nature and degree of respondents' interest in, knowledge of, attitudes toward and involvement in politics was collected (V5, V7, V9-V22, V26, V32, V38, V48-V50).

HERE ARE SOME ACTIVITIES IN WHICH SOME PEOPLE PARTICIPATE AND OTHERS DO NOT. FOR EACH ACTIVITY LISTED, PLEASE CHECK THE ANSWER THAT BEST DESCRIBES YOUR OWN PARTICIPATION.¹⁶

	No, never	Yes, once/ twice	Yes, often	Don't remem- ber
HAVE YOU EVER:				
Voted in national elections?.....	_____	_____	_____	_____
Voted in local elections?.....	_____	_____	_____	_____
Helped in a political campaign by wearing a button, contributing time or money, etc?.....	_____	_____	_____	_____
Joined a political organization of any kind?.....	_____	_____	_____	_____
Discussed candidates or political issues with friends or neighbors?.....	_____	_____	_____	_____
Visited, called or written to a public official to get help on a personal problem?.....	_____	_____	_____	_____
Followed political news through the press or television?.....	_____	_____	_____	_____
Tried to solve some community problem by writing letters, attending meetings, joining with others, etc?.....	_____	_____	_____	_____

¹⁶ This question series was borrowed from McClosky and Brill, Dimensions of Tolerance, op.cit., Appendix A, p. 442.

Taken part in a demonstration, _____
protest march, or sit-in?....._____

Questions like "Do you belong to any political clubs or organizations?" and "Do you feel that elections make the government pay attention to what the people think?" were asked. The following question series was also included: Third, information on respondents' level of political confidence (also known as political efficacy) was gathered before and after service (v23/v114). Agree/Disagree statements were used to measure these feelings. The following statement was used: "Sometimes politics and government seem so complicated that people like me can't really understand what is going on."

Fourth, respondents' knowledge of and support for legal procedural principles (v30/v119, v31/v102, v33/v99, v34, v35/v104, v36/v101, v41/v117, v43/v118 in APPENDIX A, CODEBOOK) were measured both before and after service to the extent allowed by the courts. The following questions, adapted from McClosky and Brill, are examples:¹⁷

1. Forcing people to testify against themselves in criminal cases in court:
 - a) is sometimes allowed when they are accused of a very brutal crime,
 - b) is not allowed under our system of justice,
 - c) neither (explain)

¹⁷ Herbert McClosky and Alida Brill, Dimensions of Tolerance, Appendix A.

d) undecided

(measures knowledge of principle).

2. Giving everyone accused of a crime a qualified lawyer even if the government has to pay for it:

A) is wasteful and goes beyond the requirements of justice.

b) is absolutely necessary to protect individual rights.

c) neither

d) undecided

(measures support for principle).

Finally, respondents' attitudes toward lawyers, judges, courts and the judicial process were measured, drawing, interalia, on questionnaire items used in the series of studies reviewed in Austin Sarat's article, "Studying American Legal Culture: An Assessment of Survey Evidence."¹⁸

Respondents' attitudes toward the jury system and the courts were measured both before and after service using multiple choice questions (v3/v91, v28/v94, v29/v90, v37/v89). Questions like, "From what you know at this point, how well do you think the U.S. Jury system works?" (v3/v91), "From what you know at this point, how fair do you think the courts are?" (v28/v94) and "How likely do you think it is that a person could be wrongfully convicted by a

¹⁸ Austin Sarat, "Studying American Legal Culture: An Assessment of Survey Evidence," Law and Society Review, 11:3, Winter, 1977.

jury?" (v37/v89) were used. Reactions to the judge, attorneys and general experience were gauged after service through both open-ended and multiple choice questions (v81, v82, v83, v92, v93).

In addition, a measure of judge 'didactic' style was developed using information gathered during observation of jury trials during the exploratory phase. The categories, potentially related to educational effect, were developed by watching portions of 20 jury trials and interviewing 20 former jurors during the exploratory phase of the study. The categories range from minimally didactic to very didactic. 'Very didactic' was defined as all of the following (a) formal instruction of the jury in the law before and during the trial as well as after; (b) informally explaining (in layman's terms) principles and court procedures (i.e. due process principles); (c) allowing jurors to take notes and (d) allowing jurors to submit questions. 'Somewhat didactic' was defined as (a) and either (b), (c) or (d). 'Minimally didactic' was defined as (a) or (b) only (v67, see CODEBOOK in APPENDIX A).

Phase 3: In-depth Interviews and Trial Observation

A moderate number (45) of open-ended interviews were conducted with former jurors to explore their reactions to their jury service and the judicial system. Most of these

interviews took place by telephone. Some were face-to-face.

All were conducted between three and sixteen months after the respondent's jury service had ended. At least one juror from every jury trial in the study was interviewed (N=31). In addition, two alternates and thirteen non-trial jurors were interviewed.

Some of the questions used in the panel study questionnaires were followed up in the in-depth interviews.

For example, respondents were asked for their reactions to their service, the judge, the attorneys and the other jurors. They were asked whether they learned anything from the experience. They were also asked for their interpretations of the principles of reasonable doubt, presumption of innocence, and the right not to testify, among others.

In addition, respondents were asked for their reactions to and evaluations of jury deliberations (if applicable). They were asked about their legal and political experiences before and since jury service, as well. Finally, they were asked whether the experience had changed their behavior in any way (See APPENDIX B, Indepth Interview Form).

Sample Representativeness

There are two kinds of sample representativeness at issue in this study. First, there is the immediate question

of whether the pre-service respondent group (N=738) and panel study respondent group (N=218) are representative of the total study sample (N=865). Second, there is the question of how well the study sample represents the population from which it is drawn. Each of these questions will be considered in turn.

The pre-service response group, to the best of my knowledge, is representative. The response rate of 85.3 percent is very strong. In addition, a comparison of the demographic profile of the pre-service respondent group to demographic information obtained (during jury selection) for some of the non-respondents (67 out of N=115)) showed no significant differences.

The panel study respondent group appears to be at least roughly representative of the study sample. Those who answered both the pre- and post-service surveys were not found to be significantly different from those who did not.¹⁹ The panel study respondent group (those who answered both before and after service) is, of course, a much smaller subset of the total study sample (25.2 percent). However, for the somewhat smaller group of respondents for whom mailing addresses were available, the rate of response was somewhat higher (32.1 percent).

¹⁹ No differences greater than 5 percentage points were found.

As mentioned in the discussion of the Exploratory Phase, the sample of survey respondents was expected to be only 'roughly representative' of the public lists from which the courts draw their pools of prospective jurors. The sample could be only roughly representative of even these lists because some people randomly called from these lists were excused from service as a result of disqualifications, exemptions and hardship excuses. Most of these people were excused without being required to appear in court. Since the surveys were administered at the courthouse, those excused before appearing at court were not available to participate.

TABLE 4.1 details the disqualifications, exemptions and hardship excuse policies of the courts in this study. As a result of these rules, some subgroups in the population, most notably, blue collar²⁰ workers, are likely to be under-represented in jury panels in these courts.

Because blue collar workers are (a) less likely to be reimbursed by their employers for wages lost due to service and (b) less likely to be able to adjust their work schedules around the court schedule, they are more likely to ask for and receive hardship excuses from service. Mothers of small children are likely to be underrepresented as are

²⁰ Other daytime hourly-wage service workers and those who work for very small businesses.

recently-arrived foreign-language immigrants who are less likely to be citizens and to understand English well.

Those called by the court can request deferment of their service due to a planned vacation, short illness, medical appointments, etc. but they must contact the court directly to arrange for postponement to a more convenient time. Jury officials are allowed some discretion when arranging postponements and excuses but do not excuse easily.

How was the degree of sample representativeness determined? The demographic profile of respondents to the pre-service survey was compared to the demographic characteristics of the populations from which the jury pools were drawn in order to determine the extent to which the study sample differs from the population from which it was drawn. Demographic and occupational data from the U.S. Census and the California Department of Finance were used to compare the sample and general populations.²¹ The results of the comparison are discussed in Chapter Five.

Non-Response, Non-Attitudes, and Temporary Attitudes

²¹ The comparisons are limited because the categories of retirees and housewives are not included in the data of either the Census or the Department of Finance.

Problems associated with non-response, non-attitudes and temporary attitudes were minimized through use of a series of research techniques. To strengthen response rates, former jurors were sent reminder notes and second copies of the post-service survey if they did not send back the survey within a reasonable time (2 weeks). 'Don't Know' and 'Undecided' answer choices and a statement from the researcher made it easier for respondents to report 'no opinion' on attitude questions. Finally, indepth interviews were conducted at least 3 months after service to gauge the extent to which the post-service survey measured temporary attitudes.

Non-Response

The inconvenience of jury service (especially in longer trials) and the tendency toward apathy on the part of some prospective jurors (particularly Apoliticals) made non-response to the post-service surveys and interview requests a likely problem. The pilot study response rates were a signal of this potential problem. Although response rates to court-administered pre-service surveys in the pilot study were high (>80 percent), the mail-in post-service responses were much lower (<30 percent). To compensate for this problem, 'Thank-you/Reminder' notes²² including the

²² See Appendix A for text of the 'Thank you/Reminder' Note.

invitation to request second copies of the post-service survey were sent to former trial and non-trial jurors a few weeks after they had been sent the post-service survey. When possible, trial jurors were given the post-service survey in court immediately at the close of their jury service (14 out of 21 trials).

Non-Attitudes

To help counter the tendency of some respondents to answer attitude questions when they hold no opinion or interest in the subject²³, 'Don't Know' and 'Undecided' answer options were included on all relevant questions. In addition, respondents were reminded verbally by the researcher (when invited to participate) that they were under no obligation to answer every survey question when they agreed to fill out the survey.

Temporary Attitudes

Immediately following the close of trial, some judges conduct a kind of de-briefing session with the jurors and attorneys. Much of the exchange can be very positive. If

²³ For discussion of the 'Non-attitude' problem see Philip Converse, "Attitudes and Non-Attitudes: Continuation of a Dialogue," in The Quantitative Analysis of Social Problems, Edited by Edward R. Tufte, (Reading, Mass.: Addison-Wesley, 1970).

jurors are questioned immediately following this exchange, their responses may be colored by the moment, reflecting more 'temporary' attitudes. On the other hand, delaying the administration of post-service surveys might jeopardize the response rate and compromise response accuracy due to memory loss.

Rather than risk the negative consequences of delaying the post-survey administration, the indepth-interviews were delayed until at least three months after service. Indepth interviews were conducted from three to sixteen months after service to determine the endurance of juror reactions and attitude changes. Most interviews (33) were conducted within ten months of service while the rest (12) took place between eleven and sixteen months after service had ended (see APPENDIX A, TABLE A).

CHAPTER FIVE
RESEARCH RESULTS

Who are these judges from among us? Did they learn anything from their experience? Did jury service increase their knowledge of and support for the judicial system and for due process principles, as Tocqueville and others would have expected? Or are former jurors more cynical about the American way of justice? This chapter reports the findings of the surveys and interviews in answer to the questions posed and expectations developed at the outset of the study.

It begins with an overview of the findings, follows with a general description of the people who served and then considers the findings related to each set of hypotheses.

Overview of Results¹

The overwhelming majority of respondents to the post-service survey, 88.9 percent, said that they learned something (v88, n=300)². Not all reported learning

¹ In this chapter, 'r=' refers to the correlation of one variable to another. The statistical significance of findings was tested using Chi-square. Unless otherwise indicated, all results tested significant at the .05 level or better. See the Statistical Note in Appendix A for further explanation.

² The symbol 'v' and number in parentheses, i.e. (v88) refer to the variable number of the survey question as

something that could be construed as 'positive' about their service or the system, however.³ 17.1 percent said they learned something negative about their service or the judicial system and another 3.7 percent indicated that they learned lessons both negative and positive. Many, 44.9 percent, reported learning something neutral or factual⁴ while 23.1 percent reported learning something positive.

Trial jurors and alternates were somewhat more likely to report learning a positive lesson than non-trial jurors.⁵

Non-trial jurors were more likely to report learning nothing or learning something negative (See TABLE 5.1).

These results are consistent with other studies of reactions to jury service (See Chapter Three). Another interesting

listed in the Panel Survey Codebook featured in the Appendix. The "N" refers to number of respondents answering the question.

³ The post-service question (v88), "What, if anything, have you learned?" (See Codebook in Appendix for introductory wording) was open-ended. Responses were coded according to whether they reflected a negative, positive, combination or neutral reaction to jury service, the courts or the judicial system.

⁴ Most commonly, "how the process works."

⁵ Non-trial jurors are those prospective jurors who are called to court but do not serve as trial jurors. All but one panel of prospective jurors participated in (at least observing) jury selection for a trial. The panel for Case/Trial Number Seven did not participate in jury selection. They were dismissed after about 1.5 hours of waiting in the jury assembly room. They were told the case had settled. The Number Seven panel was used as a survey-effects control group (discussed in Chapter Four).

finding: among non-trial jurors, women were more likely than men to report learning neutral or positive lessons.

TABLE 5.1
WHAT JURORS SAY THEY LEARNED⁶

<u>RESPONSE:</u>	<u>ALL NJ'S</u> (N=89)	<u>ALL JA'S</u> (N=126)	<u>FIRST TIME JA'S</u> (N=79)	<u>VETERAN JA'S</u> (N=47)
(all figures below in percent)				
SOMETHING POSITIVE	9.0 (N=8)	33.3 (N=42)	32.9 (N=26)	34.0 (N=16)
SOMETHING NEUTRAL	49.4 (N=44)	41.3 (N=52)	41.8 (N=33)	40.4 (N=19)
SOMETHING POSITIVE & SOMETHING NEGATIVE	2.2 (N=2)	4.8 (N=6)	5.1 (N=4)	4.3 (N=2)
SOMETHING NEGATIVE	23.6 (N=21)	12.7 (N=16)	13.9 (N=11)	10.6 (N=5)
NOTHING	15.7 (N=14)	7.9 (N=10)	6.3 (N=5)	10.6 (N=5)

KEY: **JA'S** = Trial jurors and alternates
NJ'S = Non-trial jurors
1ST TIME JA'S = Trial jurors & alternates with no previous jury trial service.
VETERAN JA'S = Trial jurors & alternates w/ previous trial svc.

⁶ This question was asked of post-service respondents (v88, N=215).

Some of the 'legal reasoning' change predicted in Chapter Four was found in the data, though it was revealed in the indepth interviews rather than in the survey questions. Trial jurors tended to develop a greater depth of understanding of the due process principles which they "used"⁷ during their jury service.

Support for "unused" technical legal principles related to illegal evidence did not increase as a result of service.

The absence of change was apparently due to the fact that these principles were not openly discussed or at issue in the trials in the study. Neither the attorneys nor the judge mentioned them or gave instructions to the jury regarding them.

The survey and indepth interview data also support the proposition that jury service somewhat increases juror knowledge of and respect for the judicial system as a whole.

As noted above, the majority of trial and non-trial jurors and alternates reported learning something new from their experience, for many (44.9 percent) it was something factual, often "how the system works." First-time trial

⁷ Trial jurors were instructed by the judge in certain principles of law. They were then told to apply those principles to the facts as they saw them. Trial jurors could be said to have "used" those principles during their service. See Chapter Two for description of the range of principles used.

jurors were more likely than veteran trial jurors to more positively evaluate the jury system after their service (32.4 vs. 6.8 percentage point increases, respectively). Respect for the judge was significantly related to this change but attitudes toward the attorneys were not.

Former trial jurors interviewed after service do not report that they are more likely to participate in politics in new ways as a result of their service but they do report they "see things differently." Some appear to feel both somewhat more politically efficacious and somewhat more community-oriented in their thinking after performing a community service in what was perceived to be part of an important public institution.

Who Served?

865 prospective jurors were invited to participate in this study.⁸ Over 85 percent complied in some way, filling out one or both of the two surveys. As was noted in Chapter Four, additional demographic information was obtained for some of the non-respondents through the observation of jury selection. As a result of the survey responses and the additional measures, at least some demographic information was obtained for over 94 percent of those invited to

⁸ See the SURVEY RESPONSE RATE TABLE in Appendix A for the more detailed figures.

respond.⁹

As noted in the discussion of the study's research design, the pre-service survey responses and additional demographic information approximate a theoretical control group. Since the panels of prospective jurors are randomly selected from some combination of public lists¹⁰, they are likely to be roughly representative of the population at large to the extent the lists used were representative.¹¹

However, according to the pre-service survey demographic information, the panels of prospective jurors were only very roughly representative of the populations from which they were drawn.¹² Those surveyed (N=751) were

⁹ It was not possible to determine whether non-respondents for whom no data was obtained were significantly different from the population from whom some information was obtained. From what could be observed through the administration of the pre-service surveys, there were no obvious (age, gender or race) differences between the two groups. Some prospective jurors took surveys but later chose not to hand them back.

¹⁰ The Walnut Creek Municipal Court and the Alameda County Superior Court use a combination of driver's license lists and voter registration lists while the U.S. District Court in San Francisco uses only voter registration lists.

¹¹ Because of disqualifications, exemptions and hardship excuses, some subgroups of the population will be screened out (See Chapter Four, Table 4.1 for more information).

¹² Sources for county and state social and economic data: California Department of Finance, "Current Population Survey" (January 1991) and "General Social and Economic Characteristics" (Part 6: California, Section 2) in the 1980 Census of the Population, U.S. Department of Commerce, Bureau of the Census (July 1983).

older (about 15 percentage points more over 40 years old), more white (by about 20 percent), and better educated (25 percentage points more with college education or better) than the populations of their respective communities and the state as a whole. Professionals were overrepresented in the study (by about 15 percentage points) while blue collar workers were substantially underrepresented (by about 30 percentage points).¹³

Blue collar workers are underrepresented in large part due to the fact that hourly wage earners are more likely to be eligible for and receive hardship excuses than salaried employees. If an employer writes a letter to the court on company letterhead stating that the summoned employee cannot be paid during jury service and that jury service would constitute a hardship for both the employee and the employer, then the court will recognize the hardship and excuse the prospective juror. These summoned citizens would be excused from service without reporting to the courthouse.¹⁴

¹³ The state and county occupation figures do not include categories for students, housewives and retirees. These categories are included in this study, however, and the estimated differences between the study and source populations are lower because of the presence of these categories.

¹⁴ The courts in this study include "extreme financial hardship" as an allowable excuse, although the definition differs slightly depending on the court. In the municipal court, where one or two day service is likely, officials

Activists, Spectators and Apoliticals

The expectations regarding the relative representation of different political participation "types" in the study were fairly well confirmed by the data. Apoliticals appear substantially under-represented in the respondent group for the two reasons expected. Spectators appear over-represented. How can this first claim be made absent direct measurement of attitudes in the county in question? Those of lower socio-economic status are substantially under-represented in the study compared to the source population (as described above). Low socio-economic status is a good indicator of political interest, knowledge and activity.¹⁵ The vast majority of study respondents report some interest and participation in politics. The missing low status group is likely to contain most of the Apoliticals described by participation researchers.

The under-representation of Apoliticals, in part, may be because voter registration lists remain a significant source (in addition to driver's license lists) of prospective juror names for the municipal and county courts

excuse less readily. If the court denies an excuse, the prospective juror can still plead his or her case to the judge when arriving for service. These rules are not uniformly true for courts outside this study, however.

¹⁵ See Verba and Nie, Participation in America, p. 131.

and they are the only source of names for the Federal court in this study. In addition, as noted above, there are differential costs to jury service for citizens. Blue collar workers and other hourly wage employees are less likely to be compensated by their employers during jury service. If they cannot shift their work schedule to accomodate their service, these prospective jurors would forego their income, experiencing financial hardship. As a result they are more likely to seek and obtain excuses from service. Since these people are more likely to be Apoliticals, ceterus paribus Apoliticals are less likely to serve.

The great majority of respondents in the study appear to fit the Spectator profile (about 85 percent). Over 82 percent of respondents reported reading the newspaper (v4, N=750) and of this group, 93.9 percent reported paying some or great attention to newspaper political news (v5, N=620).

Of the 97.9 percent who said they watch TV news (v6, N=750), 93.1 percent said they pay some or great attention to television political news (v7, N=734). When asked generally, 91.9 percent said they have followed political news at least once, twice or often (v16, N=736).¹⁶ When

¹⁶ The responses, "Once or twice" and "often" refer to respondent's overall experience. See Pre-Service Survey Question 10 and Codebook Variables v10 - v18 for the exact wording of the relevant questions.

asked who the majority parties were in each House of Congress, 81.8 percent knew that the Democrats controlled the House of Representatives (v48, N=589) and 73.7 percent knew that they controlled the Senate (v49, N=556). In addition, 94.4 percent were able to name either one or both of California's U.S. Senators (v50, N=525).¹⁷ Nearly all respondents said that they vote in national and local elections once, twice or often (91.8 and 90.4 percent, respectively; v10, N=743; v11, N=741).¹⁸ In addition, 89.2 percent said they have discussed politics at least once, twice or often (v14, N=741), while 78.4 percent said they were either somewhat or very interested in political campaigns (v21, N=747). Hence, the vast majority of respondents reported at least some political interest, knowledge and activity.

Few respondents, (about 5 percent) fit the Activist profile. Less than 5 percent of pre-service respondents

¹⁷ At the time of this study, California's U.S. Senators were Alan Cranston and Pete Wilson. 56.1 percent of respondents knew the names of both senators.

¹⁸ For the purposes of this study, it does not matter that many of these respondents are probably overestimating their participation levels; it matters more that they think they should answer these questions affirmatively. The overreporting is a sign that respondents feel a sense of civic duty. It is also a reminder of the possibility of survey-prompted attitude change. See Chapter Four for the discussion of the control groups set up to gauge the magnitude of this problem.

both (a) belong to a political or civic organization (v19, v20) and (b) report trying to solve community problems (v17).

About 14 percent of pre-service respondents said they have often "tried to solve some community problem by writing letters, attending meetings, joining with others, etc (v17, N=739). 16.5 percent report belonging to a political organization (v19, N=745) and 16.3 percent report belonging to a civic organization (v20, N=748). However, only 4.5 percent report both belonging to a political organization and solving community problems often (v19, v17, N=739). Only 4.5 percent report both belonging to a civic organization and solving community problems often (v20, v17, N=737) Finally, only 4.9 percent of respondents report both belonging to a political and civic organization (v19, v20, N=737).

Even fewer respondents report participation in alternative forms of political activity only 6.5 percent reported that they had often "visited, called or written public officials to get help on a personal problem" (v15, N=736).¹⁹ Even fewer, 3.9 percent, indicated that they had

¹⁹ A caution: This question measures "particularized contacting", a kind of participation for which empirical studies have found no significant relationship to other forms. See Verba and Nie, Participation in America, (1972) op.cit.

often "taken part in a demonstration, protest march or sit-in" (v18, N=737).

Taken as a whole the results related to participation profiles reveal a respondent group primarily composed of people fitting the Spectator profile. Both constraints and opportunities flow from this fact. On the one hand, the data cannot tell us much about the effects of jury service on the attitudes of Apoliticals and Activists, except in an anecdotal way, because their numbers are so low. On the other hand, there is plenty of data on the group which was hypothesized to possess the most learning potential.²⁰

Veterans Versus Potential First-Timers²¹

As noted above, because the jury pool represents a fairly random sample of people who have and have not served on juries before, the pre-service survey of this pool provides the first (and largest N) test of the hypotheses advanced in this study.

²⁰ Multiple regression was used as a diagnostic aid in the analysis of results. Its use did not significantly enhance explanatory power except where noted in this chapter.

²¹ "Potential First-Timers" refers to all those respondents with no prior trial service. Some of these people may have been called as prospective jurors and excused without serving on a trial. The phrase does not distinguish between those selected to serve on a trial and those excused during this study.

The pre-service survey results provide reason to believe that there are some educational effects of jury service. Among those with no other court experience (as witness, defendant, etc.) respondents who had previously served as criminal trial jurors were more positive in their evaluations of the courts and the jury system. In addition, previous criminal trial jurors in this group were more likely²² to be prepared to void a conviction based on illegal evidence. They also appeared slightly more politically efficacious, somewhat more attentive to political campaigns, somewhat more positive about the impact of elections, and more likely than others to discuss politics with others and try to solve community problems.

Among those with no other court experience, those who had previously served as criminal trial jurors were 13.8 percentage points more likely than those with no previous trial service to think the courts are 'fair' or 'very fair' (v28, N=380). This same subgroup was 16.1 percentage points more likely to say that the jury system is working 'well' or 'very well' (v3, N=373). Previous criminal trial jurors in this same group were more likely than those with no previous trial service (by 10.7 percentage points) to void a

²² than either a) those with no prior trial service, b) those who served as civil trial jurors or c) those who did not indicate which kind of trial service they experienced (See v1 in Codebook, Appendix A).

conviction based on illegal evidence (v36, N=345).²³

Those who had served on juries before also appeared slightly more politically efficacious than those who had not. Forty-nine percent of previous trial jurors (with no other court experience) disagreed with the statement: "Sometimes politics and government seem so complicated that people like me can't really understand what is going on" (v23, N=149). Among those with no previous trial service (and no other court experience) 39.5 percent responded in the same way (N=253).²⁴ Among women with no other court experience, the kind of trial service seems to make a substantial difference. Women with no other court experience and no previous jury trial service were 11 percentage points less 'politically efficacious' than women with no other court experience who had served as criminal trial jurors before (N=218). Respondents who had previously served only as civil trial jurors or who did not indicate the type of previous trial service experienced were no more efficacious than those with no previous jury trial

²³ 55.7 percent of this group would void the conviction while 45 percent of those with no previous trial service would do the same. Among those with only civil jury trial experience (category 3) or unspecified trial service experience (category 2), 49.1 percent would void the conviction.

²⁴ Significant at .10 level, one-tailed test.

service (v23, N=189).²⁵ The fact of service on a criminal trial appears to have been decisive in this regard.

Veteran criminal trial jurors with no other court experience also appear to be somewhat more politically interested and involved than either those with only civil (or unidentified) trial jury experience or those with none.

43.2 percent of veteran criminal trial jurors in this group reported being "very much interested" in political campaigns compared to 31.7 percent of those with civil or unidentified trial experience and 20.9 percent of those with no previous trial experience (v21, N=404, $r=.26$). Among those with no other court experience, veteran criminal trial jurors were 6 percentage points more likely than potential first-timers and 8.1 percentage points more likely than veteran civil or unidentified trial jurors to report having often tried to solve some community problem (v17, N=399). Veteran trial jurors were also more likely than the other two subgroups to discuss politics with others (v14, N=401). In fact, those veteran criminal trial jurors of lower socio-economic status²⁶ were even more likely (by over 30 percentage points) than either of the other two subgroups to discuss

²⁵ Significant at .10 level, one tailed test.

²⁶ "Lower socio-economic status" is defined as having less than a college education and household income below \$30,000.

politics with others (N=71).²⁷

In general, prospective jurors who had previous experience as trial jurors were likely to be older²⁸. Professionals were slightly less likely ($r=-.18$) to have served as trial jurors before while housewives and retirees were slightly more likely ($r=.18$) to have served before.²⁹

These demographic differences between those who had previous trial jury experience and those who had none are understandable. The older a person is, the longer he or she has been eligible and therefore available to serve as a trial juror. Those with an interest in politics are probably more likely to be registered to vote and voter registration lists used to be (and in some areas, still are) the dominant source for jury panels for state and federal courts. Professionals (defined as doctors, lawyers, psychologists, teachers, etc.) are more likely to be self-employed³⁰ (and, thus, eligible for hardship excuses or postponements). Even if they do get to court, legal and

²⁷ Chi-square significance level of .10, one-tailed test.

²⁸ Age (v51) and whether previous trial service (v1) correlate moderately ($r= .30$).

²⁹ Not surprisingly, when controlled for age, the housewife/retiree "effect" drops significantly.

³⁰ Professionals (subgroup of v54) and self-employment (subgroup of v56) correlated slightly ($r= .19$).

medical professionals may be more likely to be excused during voir dire due to the relevance of their expertise to most cases tried before juries. Finally, housewives and retirees are likely to have more free or flexible time and to be readily available and willing to serve when others are reluctant.

The pre-service differences in due process, judicial and political attitudes might be the result of jury trial selection effects. People who are somewhat more system supportive and somewhat more interested and involved in politics may be more likely selected to serve as criminal trial jurors. As will be seen below, data regarding jury selection from this study support only the possibility that those more interested and involved in politics are slightly more likely to be selected to serve on trials (See next section).

The due process and judicial system differences may be indicative of some attitudinal effects of service. However, no specific information is available from the pre-service survey regarding veterans' previous trial service. It is not possible to explicate the experience effects through the questionnaire alone.

Trial Jurors vs. Non-trial Jurors

What are the differences between those who served as

trial jurors during this study and those who did not? Were there any patterns apparent in jury selection?

By the measures employed in this study, trial jurors were not found to be consistently different from non-trial jurors.³¹ Trial jurors and alternates and non-trial jurors responses to all pre-service survey questions were compared.

These results indicate that non-trial jurors can serve as a useful approximation of a control group, for the purposes of controlling for survey effects. We could not assume random assignment to the two groups because judges, attorneys, and jurors themselves influence who is empanelled (see Chapter Four).

Differences were found in the answers to a only a few questions and the results are, for the most part, inconsistent. Trial jurors and alternates were found to be significantly different from non-trial jurors on one measure related to jury service itself. They were 11.1 percentage points more likely than non-trial jurors to report being interested in jury duty ($v2, N=737, r=.12$). On the other measures where differences were found, the results were not consistent with those of related measures.

Those selected as trial jurors or alternates appear to

³¹ Non-trial jurors are those called to serve who are not selected to serve on a trial jury. All but one panel of prospective jurors (#7) participated in or at least observed jury selection.

be slightly more attentive (by 7.8 percentage points) to political news (v16, N=736, $r=.10$). But there are no significant differences between the two groups on any of the related measures like attention to television political news (v7, N=733) and attention to newspaper political news (v5, N=620). Trial jurors and alternates were also slightly more likely by 9.3 percentage points to have worked with others to solve community problems (v17, N=741, $r=.07$). However, they were not significantly more likely to report belonging to political or civic organizations (≤ 4.2 percent difference for v19, v20 respectively). Finally, those not selected for trial service were marginally more politically knowledgeable according to one measure. Non-trial jurors were 11.3 percentage points more likely to know the names of both of the state's U.S. Senators (v50, N=505, $r=.08$). However, there were no significant differences between the two groups on the two other measures of political knowledge. Non-trial jurors were only 1.1 percentage points more likely to know that the Democrats were the majority party of the House of Representatives (v48, N=589) while trial jurors and alternates were 3.6 percentage points more likely to know that the Democrats were the majority party of the Senate (v49, N=556).

Let us now look closely at each of the hypotheses advanced in Chapter One.

Hypothesis One:

Jury service is likely to increase a juror's knowledge of legal procedural rights, i.e. due process principles.

Null Hypothesis:

Jury service will not increase a juror's knowledge of due process principles.

Because the due process knowledge questions asked in the pre-service survey were general, nearly respondent answered them correctly and therefore, there was not much room for improvement and, in fact, little pre-to-post variation showed up in these measures. The pre-to-post change is summarized in TABLE 5.1, below. At the outset of service, most respondents recognized the due process principles of law. However, much of the pre-service knowledge was apparently superficial. The indepth interviews and open-ended survey questions revealed a deeper, substantive learning regarding due process principles that trial jurors and, to a lesser extent, non-trial jurors experienced. After a brief review of the survey data, this deeper learning will be discussed.

TABLE 5.2
CHANGE IN DUE PROCESS KNOWLEDGE

<u>CONTROL^I</u> <u>PRE/POST</u> <u>QUESTION:*</u>	<u>1ST TIME JA'S</u>	<u>VETERAN JA'S</u>	<u>ALL JA'S</u>	<u>ALL NJ'S</u>	
	pre/post percent:	pre/post percent:	pre/post percent:	pre/post percent:	
Know Right to Attorney (v30/v119) (N= 214) (r=.177)	95.5/98.5 (N=64) (r=.568)	88.6/97.7 (N=44) (r=.326)	92.7/98.2 (N=110) (r=.409)	93.2/98.1 (N=103) (r=-.04)	100/100 (N=8) (r=n/a)
Know Bill of Rights (v41/v117) (N=216) (r=.410)	89.4/89.4 (N=66) (r=.282)	100/95.6 (N=45) (r=n/a)	93.7/91.9 (N=111) (r=.280)	93.3/93.3 (N=104) (r=.574)	100/80 (N=10) (r=n/a)
Know 5th Amendment (v43/v118) (N=215) (r=.543)	59.1/68.2 (N=66) (r=.470)	64.4/75.6 (N=45) (r=.724)	61.3/71.2 (N=111) (r=.572)	72.8/83.5 (N=103) (r=.484)	66.7/66.7 (N=9) (r=1.0)

(All findings significant at .05 level or better (one-tailed test) unless otherwise noted)

KEY: JA's = Trial jurors and alternates NJ's = Non-trial jurors
1ST TIME JA's = Trial jurors & alternates with no previous trial service
VETERAN JA's = Trial jurors, alternates with previous trial service
Superscript I = means the results for this group are not statistically significant because (N) is too small but is included for suggestive information purposes.
CONTROL (GROUP) = Respondents from one panel who were dismissed after 1.5 hours of waiting in the jury assembly room.

NOTES:

* In the analysis of the questions in this table, responses of "neither" & DK were recoded as "not knowing" the principle. (See the CODEBOOK in APPENDIX A for complete wording of each question.)

An overwhelming majority of pre-service survey respondents recognized due process rights at the outset of their jury service. Over 94 percent responding knew that "according to the Supreme Court, any person accused of a felony (or major crime) is entitled to have a lawyer defend him or her even if the state has to supply and pay for one"(v30, N=702). About ninety-five percent knew that "the Bill of Rights...mainly protects certain rights and liberties of citizens from being violated by government"(v41, N=687). Eighty-five percent recognized the right not to testify: "Forcing people to testify against themselves in criminal cases in court is not allowed under our system of justice"(v34, N=578). Finally, a somewhat smaller majority, 65.1 percent, knew that "the Fifth Amendment...mainly guarantees citizens protections against forced confessions"(v43, N=661).³²

Among the smaller group of pre/post survey respondents, the levels of due process knowledge were very high both before and after service on all but one measure (see TABLE 5.2). Respondents selected to serve as trial jurors and alternates (JAs) during this study were no more or less

³² Those answering this question incorrectly may have done so for one of two reasons. Either they did not recognize the guarantee or they did not remember its location. If the latter is the error, there is much less cause for concern.

knowledgeable (before or after service) of due process principles than those not selected (NJs).

On the one question (v43, mentioned above) for which there was greatest room for improvement from pre-service to post, trial jurors and alternates (JA's) did improve significantly. Trial jurors and alternates were 9.9 percentage points more likely to recognize the meaning of the Fifth Amendment as mainly guaranteeing citizens protections against forced confessions. Among all trial jurors and alternates answering both the pre- and post-service surveys, of the 34 who answered the question incorrectly in the pre-survey, 16 of these answered the question correctly in the post-survey (v43/v118, N=111). Of the 22 first time trial jurors who got it wrong the first time, 11 (50 percent) answered the question correctly on the post-service survey (N=66).

Non-trial jurors were also likely to show improvement in the recognition of the Fifth Amendment. Of those who filled out both the pre- and post-service surveys, 72.8 percent of them answered the question correctly before service while 83.5 percent did so after service (N=103).

In addition, one small, but marginally statistically significant³³ difference should be noted among pre-service

³³ Significant at the .10 level (one-tailed test).

respondents: Among NOPREVJ's³⁴, those with no other court experience were 5 percentage points more likely than those with other court experience to think that "forcing people to testify... is allowed when they are accused of very brutal crimes" (v34, N=347).

Should the finding regarding recognition of the Fifth Amendment make us doubt the increased recognition of the meaning of the Fifth Amendment among trial jurors and alternates? Not necessarily. Although non-trial jurors can be considered a partial control for survey effects, they did at the very least, observe jury selection. During this phase of the trial, the judge and attorneys reviewed basic due process rights. Although there is no formal instruction which relates the Fifth Amendment to the right not to testify, references were made by attorneys to the amendment during voir dire in at least 10 of the 22 the trials observed.³⁵ Attorneys (usually the defense attorney) often made the connection during voir dire and again in their opening or closing statements. The judge sometimes referred to the Fifth Amendment in his or her informal explanations during voir dire, as well. Prospective jurors might have

³⁴ NOPREVJ's are those with no previous jury trial service.

³⁵ I cannot say with certainty whether the amendment was referred to in all the trials, since for some trials the notes taken by observers were not detailed enough.

discussed with one another the questions in the pre-service survey while waiting to be called to a department for voir dire.³⁶

One other concern must be mentioned. Asking people questions can stimulate their attention to the issues raised. It is possible that some change in survey response from before to after service may be the result of increased salience of survey questions rather than jury service. For example, a respondent might have asked friends or fellow prospective jurors about the Fifth Amendment after filling out the pre-service survey.

The results for the small control group of prospective jurors dismissed without trial exposure (see Control Group, TABLE 5.2) suggest that this is not likely.³⁷ These pre- and post-service respondents did not change in their ability to recognize the meaning of the Fifth Amendment (N=9, $r=1.0$). They had ample opportunity to discuss the pre-service survey with one another since they were waiting for

³⁶ Since asking people questions can stimulate their attention to the issues raised, some change in survey response from pre-service to post-service may be the result of the increased salience of the survey questions rather than of jury service. Here this has been called the "survey effect" and the study was designed to control for it in two ways. See Chapter Four, especially TABLE 4.2 for more detail.

³⁷ As noted in the table, the numbers in this group are so low that the results are not statistically significant. However, the findings can be considered suggestive.

1.5 hours in the jury assembly room before they were dismissed from service.

Two factors were involved in the intensive, substantive learning of due process principles during jury service. First, all prospective jurors are provided instruction in these legal principles during voir dire. They are told how to apply them. Second, trial jurors are given the responsibility of applying the principles (among others) in order to reach a verdict.

Most people have heard of legal expressions like the 'right to remain silent,' 'taking the fifth,' 'reasonable doubt' and the 'presumption of innocence.' However, many are also unfamiliar with the broader legal decisionmaking logic of which these principles are part. Jury service can teach that logic. It shows prospective jurors the connections among the many legal 'expressions' they have heard on police and law shows.

In the indepth interviews both trial jurors and alternates and non-trial jurors reported some increase in their understanding the process (36 out of N=45). If the indepth interviews are any indication, many non-trial jurors were very attentive to the discussion and instructions regarding the criminal justice process. Of the 13 non-trial jurors interviewed, 9 reported learning something about the process. One non-trial juror summarized what he learned:

"I thought it was [a question of] were they guilty but the decision is did they [the prosecution] prove guilt" (II#8) Another reported that [I learned] how difficult it is to assume that the defendant is completely innocent until proven guilty" (II#14)³⁸ Still another offered, "I knew, but it was reinforced to me that the defendant is presumed innocent and the prosecutor must prove guilt..." (II#27) Finally, one non-trial juror with no previous court or jury experience reported that he learned "the definitions of common terms such as 'reasonable doubt' and innocent until proven guilty" (II#16)

Trial jurors' and alternates reports regarding the due process principles they said they learned were even more substantial. Out of 33 trial juror and alternate interview respondents, 28 said they learned something about the process. One first-time trial juror noted that "there's a different decision-making logic in the legal system than [in] everyday" (II#4) Another reported that, The system was artfully designed to protect the innocent more than to punish the guilty because the burden of proof is on the State and it is rather more difficult to prove someone guilty beyond a reasonable doubt than it would be for the defendant to prove he is not guilty. The individual is protected and rights are respected. (II#15).

A third trial juror described his jury's extensive

³⁸ II# stands for Indepth Interview Respondent Number.

discussion of 'reasonable doubt' during deliberations:

"Based on what we heard, we struggled with the question of 'what is reasonable doubt?' We argued about it quite a bit."

TABLE 5.3
CHANGE IN DUE PROCESS PRINCIPLE SUPPORT

<u>CONTROL^I</u> <u>PRE/POST</u> <u>QUESTION:*</u>	<u>1ST TIME JA'S</u>	<u>VETERAN JA'S</u>	<u>ALL JA'S</u>	<u>ALL NJ'S</u>	
Support for					
Right to	96.8/96.8	88.9/93.3	93.5/95.4	90.8/88.8	87.5/100
Attorney	(N=63)	(N=45)	(N=108)	(N=98)	(N=8)
(v35/v104)	(r=.484)	(r=.671)	(r=.595)	(r=.686)	(r=n/a)
(N=207)					
(r=.620)					
Which worse-					
Convict	83.3/80.3	73.2/87.8	79.3/80.2	70.5/73.3	66.7/77.8
innocent or	(N=66)	(N=45)	(N=111)	(N=105)	(N=9)
acquit guilty?	(r=.309)	(r=.341)	(r=.332)	(r=.525)	(r=.607)
(v31/v102)					
(N=217)					
(r=.452)					
Support Illegal					
Evidence Rule	50/48	52.5/60	51.1/53.3	42.5/44.8	50/50
(v36/v101)	(N=50)	(N=40)	(N=90)	(N=87)	(N=8)
(N=178)	(r=.581)	(r=.614)	(r=.596)	(r=.633)	(r=.50)
(r=.622)					

(All findings significant at .05 level or better unless otherwise noted)

KEY: JA's = Trial jurors and alternates **NJ's** = Non-trial jurors
1ST TIME JA's = Trial jurors & alternates with no previous trial service
VETERAN JA's = Trial jurors, alternates with previous trial service
Superscript I = means the results for this group are not statistically significant because (N) is too small but information is included for suggestive purposes.
CONTROL GROUP = Respondents from one panel who were dismissed after one hour of waiting in the jury assembly room. They were told that the case for which they were called had settled.

NOTES:

* In the analysis of the questions in this table, responses of "neither" and "don't know" were recoded as "not supporting" the principle. (See the CODEBOOK in APPENDIX A for complete wording of each question.)

Hypothesis Two:

Jury service is likely to increase a juror's support for due process principles.

Null Hypothesis:

Jury service is not likely to increase a juror's support for due process principles.

The data suggest change in due process principle support similar in nature to that found regarding knowledge of due process principles. There was initially widespread, apparently superficial, support for widely known due process rights. For example, at the outset of service over 90 percent of respondents supported the right to an attorney. In addition, as will be shown in detail and in TABLE 5.3, there was significant positive change among veteran trial jurors in support of one of the philosophical underpinnings of the criminal justice system. Veteran trial jurors and alternates were 14.6 percentage points more likely after service to think that convicting an innocent person is worse than letting a guilty person go free. When it came to the more technical due process rights, however, respondents' attitudes were divided in their responses both before and after service.³⁹ Technical due process principles such as

³⁹ Pre-service question restrictions limited the amount of evidence available regarding respondents' prior attitudes toward technical due process rights. Judges believed the questions would raise controversial or trial-related issues

the suppression of illegally obtained evidence appear to be controversial.

Respondents were asked both before and after their service a) whether giving everyone accused a qualified lawyer (even if the government has to pay for it) is wasteful or necessary (v35), b) whether they thought it worse to convict an innocent person or to let a guilty person go free (v31), c) whether a person found guilty by evidence gathered illegally should still be convicted (v36) and d) whether they would feel bound to obey an unjust law (v33). The responses to these questions are examined below in more detail.

The Right to an Attorney

This broadly recognized right was also broadly supported by respondents both before and after service. At the outset, almost all respondents (91.6 percent) considered "Giving everyone accused of a crime a qualified lawyer even if the government has to pay for it...absolutely necessary to protect individual rights" (v35, N=691). A look at those responding both before and after service shows no significant change. Of those responding at both T₁ and T₂, 91.8 percent supported the right as "absolutely necessary"

in the minds of prospective jurors.

before service while 92.3 percent did so afterward (v35/v104, N=207).

Indepth interviews revealed some change in the degree of support of this right among some trial jurors. Some respondents commented that the skills of the attorneys were much more important in the case than they had expected. For some, this revelation made the right to a qualified attorney appear more crucial a defendant's right than they had previously thought. One respondent noted, "Now I think [that] even more than a right to a jury trial, a defendant needs a capable attorney. I wouldn't go into court without one" (II#33).

Which is Worse?

At the outset of service, 81.4 percent of those responding to the "Which worse" question thought it worse to convict an innocent person than to let a guilty person go free (v31, N=635). Although support among those who answered this question appears overwhelming, a substantial number of people who responded to other questions in the pre-service survey refused to choose among the alternatives (N=108, 14.5 percent). When these 'DON'T KNOW' (DK) responses are included, the room for attitude change expands. A somewhat lower 69.6 percent of this larger group thought it worse to convict an innocent person.

Somewhat surprisingly, serving for the first time as a juror or alternate appears to have had no significant effect on whether a respondent became more likely to answer that it is worse to convict the innocent than to let a guilty person go free. Both the rhetoric and formal instruction during criminal jury trial selection and proceedings⁴⁰ remind the prospective jurors and later trial jurors of the philosophical underpinnings of the American criminal justice system. Trial and, to a lesser extent, non-trial jurors can see first-hand how different due process principles fit together to safeguard the defendant against wrongful conviction.

Only veteran trial jurors and alternates, showed significant positive change in support of this legal system assumption and negligible negative change (See TABLE 5.3 for percentages). Overall, this group was 14.6 percentage points more likely to support the assumption after service than before (v31/v102, N=41). Of those who were negative⁴¹ or undecided before service (N=11), 72.7 percent changed to the system supportive choice after service. Of those system supportive at the outset of their service (N=30),

⁴⁰ Of course, I refer to the rhetoric and instruction observed in this study.

⁴¹ Negative is defined as choosing the "worse to let a guilty person go free" option.

only 6.7 percent changed to the negative choice after service.

What explains the significant change for veteran trial jurors and the lack of change for first timers? It may be that the more often a person serves on a jury, the more likely likely he or she is to be open to supporting the system's principles. Whatever the case, there was no meaningful increase in support for these principles attributable only to this jury service. Maybe when people see a trial up close they empathize more with the judge or the prosecutor than the defendant.

Should Illegal Evidence be Used?

At the outset of their service, respondents were asked, "If a person is found guilty of a crime by evidence gathered through illegal methods, [whether] he or she should be set free or granted a new trial or he or she should still be convicted if the evidence is really convincing and strong" (v36, N=659). Of those responding, 48.1 percent thought the person should be set free or granted a new trial while 44.9 percent thought he or she should still be convicted. Those who had not served as trial jurors before (v1=1) were less likely (by 10.4 percent) than those who had served before to support the illegal evidence rule (v36, N=613). Among those selected to serve as trial jurors or alternates during the

study, those who were positive about politics (v26, N=152) and opportunities to influence politics (v32, N=157) were more likely (by 18.3 and 21.8 percentage points, respectively) to support the rule.

There was no significant change from pre-to post-service in respondents' illegal evidence attitudes. As TABLE 5.3 reports, trial jurors and non trial jurors alike were not significantly more supportive of the rule after their service than they were before service.

This result does not imply a general conclusion about jury service, however. Based on the instructions and legal issues to which trial, non-trial jurors and alternates were exposed in this study, one would not expect any change in the attitude toward the use of illegal obtained evidence. The issue of illegal evidence was handled in suppression hearings outside the presence and knowledge of the jury.

Nor were there cases in this study in which controversial evidence (i.e., alleged forced confession) was discussed in open court by the attorneys and the judge. In such a situation, the defense attorney could argue that the police abused their authority and that the response of the jury ought to be to ignore the information. In this kind of situation, the question of the most effective means of insuring a defendant's right against illegal search and seizure might come up, either in open court, during jury

deliberations or both.

When respondents were asked in interviews about the illegal evidence rule, it became apparent that it is a controversial mechanism for preventing illegal search and seizure. Some people seemed more offended at the idea that the system would sacrifice "truth" in order to uphold (in their view) a bureaucratic procedure (II #'s 6,18,23,43). Some respondents did not appear to be aware of any practical policy reasons for this rule. They had a vague sense that "there ought to be a better way" in the words of one, to deal with illegal searches and seizures (II#4).

The answers to other post-service technical due process questions support the above interpretation of responses to the illegal evidence rule. After their service, 70 percent of those responding indicated that "If a person is acquitted of a crime because the judge made a mistake in legal procedure during the trial...setting him free for this reason would be carrying legal technicalities too far" (v110, N=250).⁴² On the other hand, 77 percent of post-service survey respondents were supportive of the

⁴² This question was considered by judges to be too controversial to ask respondents before service. A caution regarding its interpretation: Respondents might understand or imagine a judge's mistake as minor, one which would cause no damage to the defendant's rights of due process. To some respondents, "technicality" and "technical mistake" may be associated with minor, peripheral rules.

defendant's right to remain silent when asked whether "The 'right to remain silent' has harmed the country by giving criminals too much protection or is needed to protect individuals from the 'third degree' and forced confessions" (v109, N=257).⁴³

Prospective jurors, trial jurors and alternates are instructed on the "right to remain silent" during voir dire and the trial. They are not instructed on the issue of errors in judicial procedure. The fact that the dramatic differences in support levels correspond to whether or not trial, non-trial jurors and alternates were instructed on the issue lends support to the expectation that increased support for the principle is associated with instruction during jury trial service.

Hypothesis Three:

Jury service is likely to increase a juror's knowledge of and respect for the judicial system, including specific actors such as judges, prosecutors and defense attorneys.

Null Hypothesis:

Jury service is not likely to increase a juror's knowledge of and respect for the judicial system.

The survey and indepth interview data, for the most part, support the proposition that jury service increases juror knowledge of and respect for the judicial system.

⁴³ This question was also not allowed by judges to be used in the pre-service survey.

Respect for the judge was significantly related to these increases but attitudes toward the attorneys were not.

TABLE 5.4 summarizes the findings for the various pre/post survey measures.

Respondents were asked, before service, what they thought of the idea of trial by jury (v27) and whether trial by jury was "overrated" or "still the best way for someone accused to receive a fair judgement" (v40). Respondents were asked before and after their jury service: a) to evaluate the jury system (v3/v91), b) how fair or unfair the courts are (v28/v94), c) whether a judge or jury would be more fair (v29/v90), and d) the likelihood of a wrongful conviction by

TABLE 5.4
CHANGE IN SUPPORT FOR THE JUDICIAL SYSTEM

<u>PRE/POST</u> <u>QUESTION:*</u>	<u>1ST TIME JA'S</u>	<u>VETERAN JA'S</u>	<u>ALL JA'S</u>	<u>ALL NJ'S</u>	<u>CONTROL^I</u>
Evaluation of jury system (v3/v91) (N=201) (r=.528)	20.9/53.3 (N=62) (r=.261)	37.7/44.5 (N=45) (r=.644)	28/49.5 (N=107) (r=.454)	39.8/38.7 (N=93) (r=.617)	75/37.5 (N=8) (r=.204)
How fair are the Courts? (v28/v94) (N=201) (r=.504)	48.4/66.7 (N=60) (r=.359)	55.6/80 (N=45) (r=.650)	51.5/72.4 (N=105) (r=.335)	56.8/67.4 (N=95) (r=.407)	57.1/100 (N=7) (r=n/a)
Judge or Jury more fair? (v29/v90) (N=111) (r=.537)	48.3/48.3 (N=58) (r=.564)	40/33.3 (N=45) (r=.612)	44.7/41.7 (N=103) (r=.579)	43.7/39.1 (N=87) (r=.470)	50/37.5 (N=8) (r=.870)
Likely wrongful conviction by jury (v37/v89) (N=206) (r=.437)	38.5/58.4 (N=65) (r=.253)	34.9/51.1 ^U (N=43) (r=.461)	37/55.6 (N=108) (r=.343)	36.1/44.3 (N=97) (r=.535)	0/33.3 (N=9) (r=-.04)

Results significant at $\geq .05$ level (one-tailed test), unless otherwise noted.

KEY: **JA's** = Trial jurors and alternates **NJ's** = Non-trial jurors
1ST TIME JA's = Trial jurors, alternates with no previous trial service
VETERAN JA's = Trial jurors, alternates with previous trial service
Superscript I = means the results for this group are not statistically significant because (N) is too small but information is included for suggestive purposes.
CONTROL GROUP = Same as in TABLES 5.1 & 5.2. This is a very weak, but suggestive control for survey effects on attitudes.
r= correlation of the pre-service variable to the post-service variable

NOTES:

* In the analysis of the questions in this table (all five point scales),

responses were recoded into 3 categories: "negative", "middling" and "positive". (See the CODEBOOK in APPENDIX A for complete wording of each variable.)

a jury (v37/v89). Finally, respondents were asked after service whether, as a result of their service, their opinions had changed regarding the jury system (v92) and the judicial system (v93).

At outset of their service, the overwhelming majority of respondents were supportive of the 'idea of trial by jury' (v27, N=693) and the 'right to trial by jury' (v40, N=693). Over 97 percent of those responding thought the idea of trial by jury is "good" or "great" while 88 percent thought that "the right to trial by jury is still the best way for someone accused to receive a fair judgement."

How Well Does the Jury System Work?

Both before and after service, respondents were asked, "From what you know at this point, how well do you think the U.S. jury system works?" (v3/v91, N=201). Of the 687 people who answered the pre-service question, 35.3 percent thought the system worked "well" or "very well", 45.4 percent thought the system worked "fairly well" and 29.2 percent thought the system worked "not well" or "very poorly". Thus, over eighty percent of all those responding at T₁ thought the system worked fairly well or better.

At the outset of their jury service, prospective jurors who had previously served as trial jurors (PREVJs) were more positive in their evaluations of the jury system than those

who had not previously served (NPREVJs).⁴⁴ PREVJ's were 9.7 percentage points more likely to indicate that the U.S. jury system works "well" or "very well" compared to NPREVJ's.

Among those respondents with court experience other than jury service (v46), PREVJ's were even more positive in their evaluations of the jury system than NPREVJ's (v46, N=333). While 30.4 percent of NPREJ's in this group evaluated the jury system well or very well, 43.8 percent of PREVJ's made the same evaluations. It may be that other court experiences can positively affect one's expectations and then evaluations of jury trial service which, in turn, positively affect one's evaluation of the jury system. If a person's other court experiences are negative, expectations about the performance of the jury system might be lowered as a result and a better than expected experience would improve a person's opinion of the jury system.

The overall change in respondents' evaluations of the jury system was significantly positive. TABLE 5.4 reports the percentages. While 28.5 percent thought the system worked well or very well at the outset of service, 43.7 percent thought so after their service.

⁴⁴ See variables (v3) and (v91) in the Appendix for the exact wording of the jury system evaluation question. The same question was used in the pre-service and post-service surveys.

Among first-time trial jurors and alternates (N=65), the change in evaluations of the jury system was dramatically positive. Of those whose evaluations were negative at before service (i.e., rating the system poorly or not well), 80 percent changed their evaluations to fairly well, well, or very well. Of those whose evaluations were middling (fairly well) at the outset, 48.7 percent changed their evaluations to well or very well after their service.

Two variables help account for the positive change in first-time trial jurors' evaluations. Among all prospective jurors (trial, alternate, and non-trial jurors, alike), the more positive a respondent's reaction to the judge, the more likely he or she was to evaluate the jury system more favorably after service ($r=.25$). Among trial jurors, if the respondent reacted favorably to the judge and the jury on which the respondent served reached a verdict⁴⁵, he or she was even more likely to evaluate the jury system favorably ($r=.34$) after service.⁴⁶

Veteran trial jurors were less likely than first-timers

⁴⁵ As opposed to a hung jury, when the jury cannot agree on a verdict. In the cases in this study, the agreement had to be unanimous.

⁴⁶ There was no significant correlation between whether respondent's jury reached a verdict (v80) and a respondent's reaction to the judge (v81).

to change their evaluations of the jury system as a result of their service during the period of this study. Compared to the pre-service/post-service evaluation correlation of ($r=.26$) for first-time trial jurors, the evaluation correlation for veteran trial jurors was .64. Veteran jurors' post-service evaluations were substantially predicted by their prior attitudes. Their prior evaluations explained 41 percent of the variation in their post-service evaluations. Although there was less change in the evaluations of veteran trial jurors, even the lesser change in the evaluations of this group was still much more positive than negative.

Finally, trial jurors interviewed after their service were, on the whole, very supportive of the jury system. One trial juror summed up the evaluations of most interviewees when he said, "We all agreed that we would want a jury if we were ever accused of a crime" (II#30).

How Fair are the Courts?

Respondents' evaluations of the degree of fairness of the courts also appear to have changed for the better as a result of jury service. Consider the set of people who answered the following question both before and after service, "From what you know at this point, how fair do you think the courts are?" (v28/v94, N=201). Before service 53.8 percent of respondents who answered the question both before

and after service indicated that the courts were fair or very fair.⁴⁷ After service, 70.1 percent of this same respondent group made the same positive evaluation.

Among first-time trial jurors and alternates, evaluations improved substantially (N=60). TABLE 5.4 reports this finding. While 20.9 percent of this group thought the jury system worked "well" or "very well" before service, 53.3 percent chose one of these evaluations after service. Of those indicating negative (very unfair or unfair) or middling (somewhat fair/unfair) pre-service evaluations, over 50 percent gave the courts positive evaluations (fair/very fair) after their service.

What factors in the jury service experience explain the substantial positive change? Respondents' reactions to the judge had the greatest effect on their evaluations of the court. The more positive a respondent's reaction was to the judge, the more likely he or she was to view the courts as fair after service ($r=.36$). Trial result (whether a jury reached a verdict or not) was not significantly related to pre- or post-service evaluations of court fairness. Among respondents without prior trial juror experience, reaction

⁴⁷ Of all the respondents who answered this question before service, 50.2 percent thought the courts fair or very fair. Unless otherwise indicated, there was no significant difference between pre-service attitudes of those who answered the preservice and not post-service question and those who answered both.

to the judge predicts post-service court evaluations even more ($r=.39$).

The finding which suggests the importance of juror reactions to the judge is consistent with the expectation that judicial behavior would be an important influence on juror reactions to their service and to the judicial system.

For many, the judge personifies the judicial system. He or she is perceived (potentially) as the unbiased authority in the courtroom. Interview respondents considered the judge's performance critical to the effectiveness of the system. When interviewees criticized the process for being inefficient, they often indicated that the judge could have done something to improve the situation. When interviewees pointed to some specific, positive aspect of the process, they were more likely than not to link it to the judge. If a respondent perceived that prospective jurors were treated courteously by court personnel and attorneys, he or she was likely to assume that the judge directed the behavior.

Post-service interviews revealed the importance of three elements in respondent evaluations of the judge: 1) how unbiased the judge appeared to be; 2) how considerate and respectful were the judge and court personnel of all parties involved, jurors included; 3) how much 'control' of the court proceedings the judge exercised.

Is a Jury or Judge More Likely to Arrive at Fair Verdict?

Overall, there was no significant positive change in opinions regarding jury/judge fairness. Respondents were asked both before and after service, "Do you think that it is more likely that a judge or a jury will arrive at a just and fair verdict in a trial? At the outset of jury service, 46.8 percent of the pre/post response group thought that "it is somewhat/or much/ more likely a jury will arrive at a just and fair verdict in a trial" (v29/v90, N=111). After service, out of the same group, 44.1 percent thought that a jury would be more fair.

Overall, there was no apparent change in the attitudes of this group. Both before and after service, 48.3 percent thought the jury somewhat or much more fair than a judge (See TABLE 5.4). However, within this apparent consistency, there was attitude change. Of those with judge-favored (judge somewhat/much more fair) pre-service attitudes, 42.2 percent changed to either a neutral (equally fair) or jury-favored opinion (jury somewhat/much more fair) after service. Of those neutral before service, 54.4 percent changed to jury-favored opinions after service. There was some 'negative' change: Of those neutral before service, 18.2 percent viewed the judge as somewhat or very likely more fair after service while 10.7 percent of those jury-favored before service, were judge-favored after service.

What factors explain the jury-favoring change among first-time trial jurors? The higher the court level (municipal->superior->federal) and correlatively, the more serious the crime (misdemeanor->felony), the more likely a first-time juror would think a jury fairer than a judge (v63,v90, r=.30).

Court observation and indepth interview responses help illuminate the influence of these factors. Many interview respondents (trial jurors) who served in the municipal court in the study expressed concerns about whether the case they served on should have been brought before a jury or made it to court at all. If the defendant was easily convicted, some said that the trial was a waste of taxpayer money. (II#12, II#15) When the defendant was acquitted, municipal court jurors were likely to think that the case should not have been brought before a jury (II#7, II#4). In addition, attorneys in the municipal court were more likely to be perceived as inexperienced by trial jurors (II's#2,#4,#5,#7,#17,#19,#20,#22,#35). Many of these jurors were concerned about the consequences of using criminal trial courts as a training ground for new attorneys (six out of nine). It may be that these jurors believed the judge would be better able to compensate for attorney inadequacies than a jury would.

How Likely Wrongful Conviction by a Jury?

When respondents were asked at the outset of service, "How likely do you think it is that a person could be wrongfully convicted by a jury?," 36.4 percent of those answering before service, thought a wrongful conviction unlikely or very unlikely (v37, N=206). After service, 50 percent of the pre/post response group thought a wrongful conviction was unlikely or very unlikely. Hence, there was a 13.6 percentage point increase in this 'faith' in the jury. Among first-time trial jurors and alternates, the increase was even more substantial. First-timers were 19.9 percentage points more positive after service than they had been before.

What explains this change? The data point to the importance of two factors: a) the respondent's prior political interest and knowledge levels and b) respondent's reaction to the judge. Among those without previous trial service, prior political interest and knowledge levels; (v131, v133)⁴⁸ correlated slightly ($r=.24$ and $r=.18$, respectively) with post-service opinion regarding wrongful conviction (v89). Neither variable correlated significantly

⁴⁸ These two variables (v131, v133) are indices of political interest and political knowledge created by calculating the mean of a series of relevant variables: v131 is equal to the mean of v10, v11, v14 and v16; v133 is equal to the mean of v48, v49 and v50. (See the CODEBOOK in Appendix A for details).

with the "wrongful conviction" prior attitude (v37). In addition, for those who had no previous jury trial experience, the more positive one's reaction to the judge (v81, N=246) the more likely a person's view regarding wrongful conviction would change in a positive direction ($r=.23$).

How can these associations be explained? It may be that those who follow political news and retain political information are more likely to have paid attention to widely publicized jury trials. The jury service experience may bring this information to mind. In many of the more publicized cases, the media report the inner workings of the process, for example, jury selection, judicial rulings, concerns of advocacy groups and experts about fairness. In many of such cases, the evidence against the defendant, as reported, seems overwhelming. Yet in these cases, the defendant may be acquitted. The issues and trial results which were just news may not have been integrated into a respondent's worldview until they were brought to mind as a result of participating in the process.

Once again, reaction to the judge helps explain attitude change. Among those who have not previously served, the judge is apparently viewed, at least in part, as a guarantor of the effectiveness of the jury.

Changed opinions of the jury system?

In addition to the questions duplicated between the pre- and post-service surveys, respondents were asked to report whether their jury service had changed their opinion of the jury system (v92). Of those responding to the question, 28.8 percent indicated that their opinion of the jury system had changed as a result of their jury service (v92, N=261). 12.3 percent reported that the change had been positive while 11.5 percent reported a negative change. 5 percent did not report the direction of their opinion change.

Notably, however, if the respondent was a first-time juror or alternate, he or she was significantly more likely to develop a more positive opinion of the jury system as a result of service than those with previous jury trial experience. Among respondents in the former group, 58.2 percent report no change in opinion, 26.6 percent reported a positive opinion change and 15.2 percent reported negative change.⁴⁹ Veteran trial jurors and alternates were less likely to change their opinions; 81.6 percent of them reported no change while 8.2 percent reported positive change and 10.2 percent reported negative change.

⁴⁹ Those who reported opinion change but did not indicate whether the change was positive or negative were dropped from the analysis at this point.

Respondents who reported positive change tended to refer to the "opportunity to learn how the system works" in a positive way. Those who were negative tended to focus on wasted time and trial management issues.

Indepth interview data shed more light on these findings. In the 45 indepth interviews, 13 of the 19 first-time trial jurors indicated that they viewed learning about and participating in the process a positive experience even though most (11) of these also offered at least one criticism of the system. Even some of those who served on juries that did not reach a verdict (three out of five) felt somewhat positive about the jury system. Some trial jurors who identified the experience as a whole as positive were reluctant to generalize to the jury system as a whole (17 out of 24). They considered the possibility that their jury service might be atypical. Interestingly, trial jurors allowed to take notes and ask questions reported pleasant surprise and satisfaction with the procedures.

Changed opinions of the judicial system?

Post-survey respondents were asked "Did your jury service experience change your opinion about the U.S. judicial system as a whole?"

Respondents did not report substantial change in their opinion of the judicial system as a result of their service.

79.2 percent indicated no change in opinion while 20.9 percent reported some change. Almost half of those who reported change said it was negative (9.5 percent) while 7.2 percent reported positive change.⁵⁰ Another 4.2 percent reported change but gave no indication of the direction.

Positive opinion change has somewhat correlated with positive prior attitudes toward the idea of trial by jury (v27) and how fair the courts are (v28). Together these views correlated significantly ($r=.29$) with whether a respondent's opinion of the judicial system has changed. In such cases, it appears where there was change among the sample, respondents' opinions changed from somewhat positive to more positive.

Reactions to Judge and Attorneys?

A strong majority of jurors (trial and non-trial) reacted favorably to the judge in whose court they served. When asked for their impressions of the judge, 87.4 percent offered a positive or somewhat positive evaluative comment.

Most mentioned "professional", "considerate," or "fair" when reporting their impressions. In light of the fact that the overwhelming majority (96.5 percent) of

⁵⁰ Of the total respondent group, 4.2 percent reported opinion change but did not indicate the direction of the change.

respondents served (trial as well as non-trial jurors) with judges observed to be somewhat or very didactic in their approach to juries, this result is not surprising (v67, N=883).⁵¹ Most judges allowed jurors to take notes during the trial. Two judges allowed jurors to submit questions. Most of the judges instructed juries informally and all provided substantial formal instructions to prospective jurors and trial jurors before the trial and testimony began.

Trial jurors were more dramatically positive in their evaluations of the judge than non-trial jurors. 65.4 percent of trial jurors evaluated the judge positively while 40.9 percent of non-trial jurors did so (v81, N=246). (39.1 percent of non-trial jurors reported a somewhat positive evaluation versus 27.9 percent of trial jurors).

A smaller majority reacted favorably toward the prosecuting attorney. When asked for their impressions of the prosecuting attorney, 55.4 percent reported positive or somewhat positive impressions (v82, n=231). Trial jurors' reactions were 15.2 percentage points more positive than non-trial jurors while non-trial jurors reactions were 17.3 percentage points more neutral.

An even smaller number of respondents reacted

⁵¹ Reactions did not vary significantly from judge to judge.

positively or somewhat positively toward the defense attorney. Overall, 41.9 percent offered a positive or somewhat positive evaluation (v83, n=229). Trial jurors were slightly more likely (by 9.8 percentage points) than non-trial jurors to react negatively or somewhat negatively to the defense attorney.

The jurors appeared to respect the judge as the one clear authority in the courtroom. While attorneys were viewed as advocates and therefore assumed to be biased, the judge was viewed as the guardian of the process. He or she was expected to be unbiased and since there were no incidents in the trials in this study that called these assumptions into question, the expectations may have been easily fulfilled.

The more negative reaction of trial jurors toward the defense attorney may be explained by the somewhat elevated status of prosecuting attorneys who often emphasize their role of fighting crime in service of "the People". Defense attorneys are more easily portrayed by the opposition as 'hired guns.'⁵²

Hypothesis Four:

Jury service is likely to increase a juror's social and political confidence.

Null Hypothesis:

⁵² See Wishman, Anatomy of a Jury, p. 131.

Jury service is not likely to increase a juror's social and political confidence.

Some respondents appear to have been empowered by their jury service experience. The data show a series of gaps. First, there are "gender" and "generation gaps" among the pre-service political efficacy responses of respondents and the other is a "gender gap" in jury service effect on reported feelings of political efficacy.

At the outset of service and again afterward, survey respondents were asked, "Do you agree or disagree with the following statement? Sometimes politics and government seem so complicated that people like me can't really understand what is going on" (v23, v114, N=218).

Before service, women were more likely than men (by 19 percentage points) to choose the inefficacious response to the pre-service political efficacy question. Of all those responding before service, 40.5 percent of men and 55.2 percent of women chose the inefficacious response (v23, N=640, DK responses not included).

There is also a 'political efficacy' generation gap in the pre-service responses among women. Women younger than 40 (N=242) are highly likely (69 percent) to pick the inefficacious response at the outset of their service. Women older than 50 (N=124) are even more likely to pick the inefficacious response (78 percent). However, women aged

40-49 were substantially more likely to choose the efficacious response. Over 66 percent of this group (women aged 40-49) feel politically efficacious by this measure (N=85).

Among all those who answered the question both before and after service, there was no significant increase in reported feelings of political efficacy. At the outset, 52.3 percent of this group chose the efficacious response. After service, 56 percent did so. Trial jurors were not significantly more likely than non-trial jurors to show an increase in feelings of political efficacy. The increase for trial jurors and alternates was 5.3 percentage points while that for non-trial jurors was 1.9 percentage points. Similarly, first-time trial jurors were not significantly more likely than veteran trial jurors to an increase in feelings of political efficacy. As shown in TABLE 5.5, first-time JA's were 5.5 percentage points more likely to report feeling politically efficacious after service than before service while the increase for veteran trial jurors was 2.2 percentage points.

Women trial jurors, especially those without prior jury trial service, were significantly more likely to report feeling politically efficacious after service than before service. The survey questions (v23, v114) reveal this finding and indepth interview data confirm it. TABLE 5.5,

below, summarizes these results. One group apparently stands as an exception to this generalization, however: older women. Women over the age of 50 were not significantly more likely to report feeling efficacious after service than before service.⁵³

TABLE 5.5 shows the significant increase in political efficacy is among women who served as first-time trial jurors. While 44.7 percent of them reported feeling politically efficacious at the outset of their service, 57.9 percent did so after service--an increase of 13.2 percentage points (N=38). Women trial-jurors under age 40 showed an even more substantial increase in feelings of efficacy: From 42.1 percent before service to 57.9 percent afterward (N=19). This last finding should be considered suggestive since the (N) for the result is too low to be statistically significant even with "Don't know" responses included.⁵⁴

⁵³ The numbers at this level of analysis are small (average N of 15) so these results should be considered suggestive only.

⁵⁴ In the analysis of the political efficacy variable, "Don't Know" responses have been included in the analysis, unless otherwise noted.

TABLE 5.5
CHANGES IN REPORTED POLITICAL EFFICACY

"Disagree" Responses to the PRE/POST STATEMENT: Sometimes politics and government seem so complicated that people like me can't really understand what is going on. (v23/v114) N=218, r=.714)

<u>ALL R's</u>	<u>ALL JA's</u>	<u>1ST TIME JA's</u>	<u>WOMEN JA's</u>	<u>WOMEN 1ST TIME JA's^I</u>	<u>CONTROL^I</u>
52.3/56 (N=218) (r=.714)	53.1/58.4 (N=113) (r=.664)	52.2/59.7 (N=67) (r=.572)	43.6/54.5 (N=55) (r=.627)	44.7/57.9 (N=38) (r=.521)	77.8/77.8 (N=9) (r=1.0)
	<u>ALL NJ's</u>	<u>VETERAN JA's</u>	<u>MEN JA's</u>	<u>WOMEN VETERAN JA's^I</u>	
	51.0/52.9 (N=104) (r=.763)	54.3/55.6 (N=46) (r=.46)	62.1/62.1 (N=58) (r=.702)	41.2/47.1 (N=17) (r=.841)	

KEY:
R's = All pre/post respondents **JA's** = Trial jurors and alternates
1ST TIME JA's = Trial jurors & alternates with no previous trial service
VETERAN JA's = Trial jurors/alternates with previous jury trial service
WOMEN JA's = Women who served as trial jurors, alternates in this study
Superscript I = means the results for this group are not statistically significant because (N) is too small but information is included for suggestive purposes.
CONTROL GROUP = Respondents from one panel who were dismissed after one hour of waiting in the jury assembly room. They were called had told that the case for which they were settled.
r= correlation of pre-service variable to post-service variable.

NOTES:
* In the analysis of this question, responses of "don't know" were recoded as "non-efficacious" and included in the analysis. (See the CODEBOOK in APPENDIX A for complete wording of each question and the answer options.)

The indepth interview data can shed some light on the gap-related findings. Some former trial jurors (from three different juries) remarked on the differences in the styles of deliberation participation among women jurors. Older women seemed more inclined to "take a back seat," as one juror described it, during deliberations. They were more likely to corroborate the opinions of others than to assert independently their own points of view. One older woman alternate made a telling comment. When asked whether she regretted that she had not had the chance to discuss her views with the others, she expressed her mixed feelings this way: "I was relieved not to have to decide, although I thought the defendant was guilty. I would've liked to have heard what the others had to say, though."

In contrast to the corroborative style of older women, younger and middle aged women were observed by some jurors to participate more assertively in jury deliberations. Perhaps the tendency to conform to more traditional gender roles cost older women the opportunity to exhaust their doubts and feel integrated into the proceedings. Although younger women were about as likely as older women to report feeling politically inefficacious prior to their service, apparently these feelings did not get in the way of their participation in deliberations. Their feelings of political

inefficacy may have reflected lack of experience rather than conformity to gender roles.

It is possible that the increased confidence felt by many women trial jurors as a result of 'doing justice' will indirectly effect their later participation by increasing their general predisposition to participate. The knowledge and sensitivity they have gained may very well improve the quality of that participation.

Hypothesis Five:

Jury service is likely to increase a juror's support for democratic institutions.

Null Hypothesis:

Jury service is not likely to increase a juror's support for democratic institutions.

For those who serve as trial jurors, jury service is more than just a glimpse into the process. Jurors appear to develop a bit of a better understanding of the judicial system and its challenges that comes from working as part of it. Trial jurors temporarily try to shed their personal, special interests on behalf of the community interest. This "exercise" appears to prompt some community and society-oriented evaluations of many aspects of their experience and the system.

Three kinds of findings provide limited support for the speculation that jury service can increase adherence for

democratic institutions and these combine to paint a positive picture of the likely effects of jury trial service on support for democratic institutions: (a) First-time trial jurors, especially women, reported increased feelings of political efficacy; (b) Trial jurors reportedly felt more informed about the criminal jury trial process; and (c) Trial jurors reportedly felt both somewhat more supportive and somewhat more critical of the criminal jury trial process and institution as a result of their service.

The survey findings in these areas are not very strong. The above noted increases in feelings of political efficacy (v23/v114) indicate that serving, even in very run-of-the-mill cases such as those in this study, can have some effect on political efficacy. Some trial jurors clearly felt more socially confident as a result of the experience. They were impressed by the respectful treatment received from the judge as well as attorneys. Some felt strengthened by their "insider experience." One former trial juror viewed herself as "armed with new information" (II#31).

Juror reports of lessons learned (v88) indicate that they may be learning more about previously accepted principles as well as the way due process principles fit together in the administration of criminal justice. Jurors (trial as well as non-trial) reported both positive and negative comments regarding the process (v84, v85,

respectively). Of the 246 people who answered the question, "What did you like about your service?," 84.6 percent of them mentioned one or two things. A large majority (76 percent) of comments were related to learning about or "seeing the inside of" the process. Of the 239 people who answered the post-service question, "What did you dislike about your service?" 86.8 percent reported either one or two criticisms. The majority (64 percent) of these comments related to court and trial management practices. Many were frustrated by the unpredictable waiting.

When coupled with the results from survey interviews, the above results provide a basis for the conclusion that some learning occurs during service.

In addition, trial jurors appear to become somewhat more oriented toward the social system as a result of their service. When asked in interviews whether their jury service had changed respondents' general thinking or behavior in any way, some jurors did respond in broad systemic terms.

In indepth interviews many (29 of 45) reported concerns about "the system." Most of these (19) expressed concerns about the burden placed on the court to handle wide-ranging social problems. These people were likely to report a greater awareness of the limitations of the courts. Others (6) expressed concern about the quality of court-appointed defense attorneys.

The exposure through jury service to social problems that trial jurors might otherwise not see not only appeared to have broadened their awareness of those problems; for some, it forced a rethinking of their expectations of public institutions. Some noted that the experience had made them think through the issue of the limits of the criminal justice system to 'solve' many of the social problems with which it must currently deal (II#'s 6,15,28,30,40,41,45).

Many offered criticisms of the system. Some were discomfited by the ambiguity. Some said they felt a newfound sympathy for judges and juries. Some said they had developed a greater appreciation for the importance of a defendant's right to an attorney. One former trial juror noted, "from what I've seen, it may be even more important than the right to a jury, to getting a good defense" (II#19).

None of the cases in this study was very long and none of them raised unusual political issues. They were run-of-the-mill cases going on all over the country. Yet they dealt with prevalent problems: drugs, theft, drunk driving.

Jury service appeared to inform trial jurors of how "the system" handles these problems, usually without raising larger political questions about them.

CHAPTER SIX
RESEARCH IMPLICATIONS

From the evidence presented in the previous chapter, it appears that trial jurors and even non-trial jurors learned some lessons from their criminal jury service. To what extent can we generalize from these findings or replicate the study? What do the results tell us about the jury as an institution? How do they relate to the theories of 'legal reasoning' and 'informal social learning'? What are the policy lessons?

This chapter considers the implications of the research findings presented in Chapter Five. It relates the survey and interview results back to the research literatures and forward to new avenues of research. Before turning to the questions noted above, let us briefly review the findings.

A Review of the Findings

The data suggest that most jurors learned something from their jury service experience. Sixty-eight percent reported learning something factual or positive from their service. However, there was only a small amount of learning in many of the ways predicted at the outset of the study.

Trial jurors and to some extent even some non-trial jurors learned about how due process principles fit together in the criminal justice process. Many (44.9 percent) reported learning factual lessons about how the process works. Trial jurors and alternates were more likely than non-trial jurors to say they learned something positive (33.3 versus 9 percent). Trial jurors, especially those serving for the first time, seemed to develop some greater depth of understanding and appreciation of the due process principles which they applied during their service. In interviews, many indicated that they had gained a clearer understanding, as one person put it, of "how the principles fit the logic of the process" (II#25).

The preservice survey showed a widespread, apparently superficial, support for widely known due process rights like the right to an attorney and the right not to testify against oneself. At the outset of their service, over ninety percent of respondents supported the right to an attorney. More than ninety percent recognized the meaning of the Bill of Rights. About 85 percent recognized the right against self-incrimination, as well.

Respondents knew of due process rights before their service. They could easily pick up the rhetoric from television and film, if from no other source. But many trial jurors and even some non-trial jurors reported after

service that their understanding of some of the principles had improved. Many trial jurors (twenty-six out of thirty-one) and even some non-trial jurors (five out of twelve) interviewed after service reported greater depth of appreciation of general procedural rights like the right to an attorney and the presumption of innocence.

On the one survey measure of due process knowledge for which pre-service support was less than overwhelming, there was some small positive change. Trial jurors and non-trial jurors were about 10 percent more likely to recognize the meaning of the Fifth Amendment after their service.

When it came to the more technical due process rights, however, respondents' attitudes were divided both before and after service. Technical due process principles such as the suppression of illegal evidence appear to be controversial, both before and after service.¹ Issues related to technical due process rights were not raised in the cases in this study, so the finding of no change is not surprising.

The data somewhat support the proposition that jury service increases some knowledge of and support for the

¹ Some might object to the characterization of the exclusionary rule as "technical." It can be viewed as technical in the sense that it is one of a series of alternative procedures designed to protect an individual's right against illegal search and seizure. The rule is controversial among legal scholars. In addition, in many civilized countries, e.g. Western Europe, it is not a right or not in the extreme form of the U.S. version.

judicial system. As mentioned above, many respondents indicated that they had learned something about how the process works. In addition, trial jurors' evaluations of the jury system and court fairness improved significantly (by about twenty percentage points) as a result of their service. Respect for the judge was significantly related to these attitude changes.

Finally, some trial jurors appeared to feel both more politically efficacious and more community-oriented after service. Women first-time trial jurors reported a significant thirteen percentage point increase in political efficacy. In addition, some trial jurors report more attention to system concerns as a result of their jury service.

In short, there was some deepening of knowledge and support for the process and system, some increase in reported feelings of political efficacy as well as some negative evaluations (see TABLE 5.1).

The ambitious effects that might be expected by proponents of the jury were not found. The run-of-the-mill kind of trial jury service represented in this study does not dramatically effect its participants.

Consider for a moment the likely reasons for the limited effects. The trial juries in this study were both relatively short (an average of four days long), did not

involve violent crimes and did not raise dramatic or controversial political issues. Most of the deliberations among jurors turned on the question of the definition of reasonable doubt and individual and collective witness credibility. Jurors did not disagree with the implementation of laws against drug dealing, drunk-driving, or securities fraud relevant to most of the cases in the study. Defense attorneys did not argue police brutality, political oppression or discrimination in their statements in any of these cases. Many trial jurors spent a significant amount of time waiting. Many were not allowed to ask questions during the proceedings. Yet, as mundane as these cases were, trial jurors reportedly learned something from their experience.

Generalizing or Replicating the Findings

This study is exploratory. With its small number of survey questions in each subject area and the limited trial, case and sample population variation, the findings are best viewed as suggestive. At the same time, the study represents a successful practical test for a method of jury research which has been viewed with great suspicion by legal professionals.

This study included only criminal jury trials. In addition, none of the trials in this study involved violent

crimes. The overwhelming majority of them involved no direct victim. The most obvious implication is that the results cannot be assumed to apply to other, more violent kinds of cases or to the civil jury trial experience.

Studies similar to this one could be set up to focus on the effects of both kinds of variation, however. The experience of civil jury trial service differs from criminal trial service in some obvious ways. Instead of "beyond a reasonable doubt" the jury must decide according to the "preponderance of the evidence." Instead of due process principles, jurors would use other legal principles.

Exploratory interviews with former civil trial jurors provide a reason to believe that civil trials might be perceived differently. Civil cases often involve disputes among private parties escalated to the public level. When they serve on civil cases, jurors might be more preoccupied with the concern that court time and taxpayer money is being wasted. In criminal cases, even when jurors express concerns about wasted time and money, they also tend to recognize the importance of guaranteeing defendants their rights in the face of potential deprivation of their freedom.

Juror reactions to more serious and violent criminal cases might be substantially different from those reported in this study. The experience of paying close attention to

the facts and evidence involving a very violent crime can be a very sobering experience. Many are convinced that greater public exposure to violence through television news, drama and film has desensitized people. But there is a difference between half-attentively watching a few hours of drama filled with violence, a few minutes of daily news about violence and sitting for six hours a day, every day for three weeks or more, focused on testimony and detailed evidence with the obligation to reconstruct the facts of a violent crime. Trial jurors who had served in serious cases involving violence (observed during the exploratory phase of this study) have referred to "knots in the stomach". One juror who served in an assault case² told the bailiff that when he went home after a day of trial, he did not bother to take his coat off before pouring himself a drink.

Finally, although different courts were included in the study, judge style did not vary substantially. The judges appeared to be attentive to and instructive of jurors. All were relatively didactic in their approach to juries. Most instructed the jury at multiple points throughout the trial.

Most allowed jurors to take notes and three allowed jurors to submit questions during the trial. Research on note-taking and allowing juror questions during trials indicates

² One of the trials observed during the exploratory phase of this study.

that few courts and judges allow jurors to take notes or to ask questions.³ Future research could focus on whether these kinds of differences in judicial behavior affect juror reactions to service.

It may be difficult in studies of this sort to arrange the cooperation of judges who are less than minimally didactic since those who are uninterested in juries are less likely to take the trouble and the risks of participating in such a project. Nevertheless, we can still affirm the importance of judge behavior from jurors' self-reported reactions to the judge and the correlations of those reactions with other reactions to jury service.

None of the fears expressed by some court professionals have materialized. Pre-service survey administration did not disrupt the trial process nor did it appear to burden prospective trial jurors unduly. Some appeared to appreciate having "something to do while waiting for something to happen."

Nor did the worst-case scenario imagined by one judge (reproduced in Chapter Four) become reality. Prospective jurors were informed that the research project had no association with the court or the parties associated with any case. Most people have filled out surveys of one type

³ Kassin and Wrightsman, op.cit., pp. 128-130.

or another before and are capable of understanding and following instructions. At the very least, prospective jurors must have filled out the court's jury service questionnaire and/or summons form. If prospective jurors are capable of filling out jury qualification questionnaires they can surely fill out a short attitude survey. Those who misunderstand the nature of the project are probably also likely to be confused about other instructions they have received. Rather than speak up, a person with this kind of reaction is likely to sit quietly.

'Legal Reasoning' and 'Informal Social Learning'

This study was not specifically designed to study the socio-psychological theory of 'legal reasoning' advanced by Tapp (discussed in Chapter Three). However, the indepth interviews did reveal some anecdotal results consistent with her work. Trial jurors showed signs of the 'legislative perspective' associated with Tapp's post-conventional level of legal reasoning. In interviews following their service, trial jurors were more likely than non-trial jurors to express system concerns and to measure their own performance and the trial process against abstract principles of justice.

McClosky and Brill's theory of 'informal social learning' might be amended, if only hypothetically: Jury

service appears to complement (and to a small extent compensate for deficiencies in) a person's 'informal social learning' through formal legal learning. Trial service does more than 'expose' a person to due process principles. It is a structured participatory experience through which citizens are taught due process principles as they apply them. In their roles as judges of the facts, trial jurors gain the opportunity to develop a concrete sense of the benefits and costs of legal principles.

A Personal Stake in the Public Interest?

The results related to increased sense of political efficacy among women trial jurors are consistent with the expectation that political participation increases political efficacy. Evidence of a political efficacy effect is particularly promising in a study of this nature because the finding is less likely confounded by a motivation effect. We were able to break into the cycle of reciprocal causality because motivation to participate is not a central factor in becoming a juror; in addition, we have been able to approximate an experimental method, testing responses before and after service.

How can there be increased sense of political efficacy when many of the status differences outside the jury room

are reflected within it?⁴ The answer seems to lie in the sense of responsibility among trial jurors. Jurors take the instruction to give an individual verdict very seriously. They might not feel particularly well qualified to judge but they feel the duty and as a result, appear to participate in ways that they did not expect that they could or would.

At the outset of their service, many prospective jurors complained that they had no time to serve, that the court was cutting into their valuable work or vacation time.

But when the burden was pressed upon them, they rose to the occasion. They were compelled to act by obligation not self-interest. Most of those who commented after their service said that they would not have chosen to serve. But when called, they pushed aside other matters to judge on behalf of their community. The experience does seem to rub off a bit of the "rust of society", if only for a brief time.

To return to Tocqueville, increased efficacy and concern for the system may relate in the following way. To the extent that jury participation requires the participant to seek the public good, investing him or her with the responsibility of deciding the public interest, such participation is likely to increase a person's

⁴ See Kassin and Wrightsman, p. 177.

identification with the public interest. When given the job of acting in the public interest, the citizen gains an opportunity to develop a personal stake in the public good.

Asking people to do justice gets them thinking more about what justice means, how it is done and how it should be done.

Conscience of the Community?

A community's approach to practical reason is embodied in the workings of trial jurors. Individual juries define justice in the small. As an institution, the jury helps define the community's sense of justice through its influence on criminal justice administration.

The results from this study suggest that in run-of-the-mill cases in which no controversial political or social issue is raised, trial jurors are accepting of the restrictive role ("as judges of the facts") assigned to them by the judge. In such cases the "conscience of the community" appears comfortable with the status quo.

Juries are not reminded of their power to adjudicate the law through their application of it to the facts. But some number seize the power. There are no examples of such "jury nullification" from the main portion of this study. However, in one case observed during the exploratory phase, the jury did take the opportunity of service to "send a

message" in their own words.

In the case to which I refer, the jury acquitted the defendant of misdemeanor cocaine possession even though they believed he was guilty. They were disturbed by their perception that the police in the case had acted overzealously and perhaps in a discriminatory manner. "We wanted to send a message to the police department about this abuse of authority" said one of the jurors interviewed. The jurors had taken it upon themselves to consider the broader implications of their task though they had not been instructed by the judge or the defense attorney of their power to do so.

The jury functions on the middle ground, in the gray area of criminal justice. When evidence against a defendant is overwhelming, he or she is very likely either to plead guilty or to take a slightly reduced sentence.⁵ When evidence is very weak and the district attorney expects that a jury would not convict based on the State's evidence, then he or she is likely to offer the defendant a substantially reduced sentence--"a deal" that is too good to pass up" in the words of one attorney--or to drop the case entirely. The cases heard by juries tend to be in the middle ground between these two extremes. Over time, criminal juries help

⁵ Unless the person is very unrealistic, stubborn or innocent.

define the boundaries of this middle ground of what prosecutors call 'try-able cases'.

Why will district attorneys not bring what they think are very weak cases to trial? Because losing too many cases has an effect on how plea bargains are set. If juries acquit or hang on a few cases, defense lawyers and defendants learn of this fact and are more likely to prefer a 'gamble' on a jury trial rather than accept the slightly reduced sentence offered by the prosecution. The result of this scenario is either more work for the district attorney taking more cases to trial or being forced to offer what are perceived to be unreasonably light sentences.

Learning the Ambiguity of Justice

How is the pattern of cases tried before juries relevant to juror learning? Deciding justice in the 'gray areas', jurors must confront the complexities and ambiguities in the administration of justice.

The lesson of the "ambiguity of justice" is perhaps the unique insight which people seem to get from jury trial service; the necessity as Kennebeck has described it, "of dealing with shapes and shadows."⁶ Most trial jurors and

⁶ Edward Kennebeck, "A Juror's View of Jury Duty," in The Jury System in America: A Critical Review, Edited by Rita J. Simon, (Beverly Hills: Sage Publishing, 1975), p. 323.

many of the non-trial jurors recognized that the administration of justice could not be efficient in the way businesses are expected to be. Criminal cases do not usually involve Perry Mason-style confessions of guilt in open court. It is more likely that both sides "generate good but somewhat incomplete stories," as one juror put it.

Jurors can usually find reasons to doubt the motives or memory of some or even all key witnesses in a case.

"Justice is not as clearcut a process as I had thought," remarked one juror. "It's just not very easy to figure out all the important facts in the case," noted another.

Many trial jurors interviewed after their service seemed sobered by their recognition that the judicial system can only approximate justice. Those interviewed who had served on hung juries were more likely to discuss the the nature of the system's limits.⁷ In the one hung jury case where most trial jurors believed that one of their number had deceived the court during voir dire, those interviewed showed great concern over the perceived lack of respect for the system.

⁷ Since only 3 of the 25 trials in the study resulted in hung juries, these conclusions should be considered evocative.

Implications for Policy

Didactic judges can make jurors into better citizens. Jury trial service engages citizens in a kind of legal seminar and apprenticeship. Although jurors are not usually given the origins and history of the principles relevant to the case which they must decide, they are informed of the principles and instructed in their meaning to some extent. There is evidence to suggest that the more didactic the judge, the more educative a juror's trial experience, and the more effectively the juror thought he or she performed his or her duty.

Anecdotal evidence from indepth interviews suggests that (a) multiple points of jury instruction, (b) the availability of written instructions, (c) allowing juror notetaking, and (d) allowing juror questions are all related to both juror effectiveness and satisfaction with their service. All are psychologically sound methods of communication although not standard procedure in most criminal jury trials.

Multiple points of jury instruction, together with the availability of written instructions, provided trial jurors with guidance on how to perform their 'listening' function and then evaluate what they had heard and seen. In the shortest cases (1.5 days), the issue was not very salient because there was not much testimony involved and it did not

tend to be complicated. Trial jurors in these cases were less likely to comment on the timing of instructions. But in longer cases, early guidance on the definitions of 'evidence' and 'expert witness' and on how to listen to testimony were perceived as very useful to trial jurors. Although most were not in a position to compare, some trial jurors with previous jury trial experience compared the instruction process favorably with their previous service.

Trial jurors believed that appropriately timed instructions and the availability of the instructions in written form helped them perform their service more effectively. These results are consistent with research on the timing of jury instructions which indicates that "adherence to judge's instructions might hinge on their placement within the trial. 'Better late than never' may apply to some areas of life, but not to the practice of instructing juries."⁸

In the State of California, individual judges decide whether jurors will be allowed to take notes and pattern instructions are available for the judge to use to direct the jury on the use of the notes during deliberations. However, the judge may refuse to allow jurors to take notes.

⁸ S.M. Kassin and L.S. Wrightsman, "On the Requirements of Proof: The Timing of Judicial Instruction and Mock Juror Verdicts," Journal of Personality and Social Psychology, Vol. 37, pp. 1877-1887.

In this study only a few of the judges in the Municipal Court did not allow jurors to take notes.⁹

Although critics suggest that notetaking is a distraction, that notes are likely to be incomplete and inaccurate and that their presence in the jury room would tilt the balance of jury power in favor of notetakers, there was no evidence of these effects in the cases in which notetaking was allowed. Most importantly, jurors who took notes, and even those who did not, considered the opportunity an important means of enhancing their decisionmaking effectiveness.

The CALJIC pattern instructions on jurors' use of notes effectively remind jurors that "notes are for the notetaker's own personal use."¹⁰ These instructions can serve as a model for other states and judges considering the use of this procedure.

Elsewhere, few judges allow jurors to take notes, but even fewer in California or other states allow jurors to ask or submit questions. It apparently takes a very self-assured judge to risk the "anarchy" many believe would result from allowing jurors to ask questions during the

⁹ Since the cases in this court took an average of 1.5 days to try, notetaking was not as critical a tool as in the other, longer cases.

¹⁰ CALJIC 1748.

trial. One such judge was a participant in this study. But the secret to the successful use of this practice is in its implementation.

In the eight trials in this judge's department in this study, there were no problems associated with allowing jurors to ask questions. The key to the effectiveness of this technique is the way in which it is managed. Jurors are told the procedures in advance. They submit questions in writing to the judge when asked for them.¹¹ After the judge reviews the question(s) he or she shows the questions to the attorneys and asks if they have any further questions for the witness. Attorneys might open up a new line of questioning in light of the questions submitted. The judge might also ask the witness some questions based on those submitted.

Trial jurors liked this procedure for submitting questions. It made them feel more like active participants than a passive audience for trial information. These results are consistent with other experiments involving juror questions during trials. These studies have shown that in cases in which jurors are allowed to ask questions, jurors, judges and lawyers were satisfied with the procedure. In one study, jurors who were allowed to ask

¹¹ Jurors are asked for their questions after both attorneys questions for the witness are complete.

questions were more satisfied with their state of information and the thoroughness of lawyers' examinations than those who were not.¹²

In many respects, the jury trials in this study were model learning experiences compared to most other contemporary jury trials. To the extent that procedures enhanced juror decisionmaking and information processing effectiveness, it is easy to justify their wider use in other departments, courts and states. But equally important, jurors who feel they have done a better job at "doing justice" appear to emerge from the process with a deeper appreciation of legal norms and enhanced feelings of political efficacy.

Instead of viewing jurors as completely "passive recipients of information,"¹³ and handicapping their performance and learning potential, most of the judges in this study managed their jury trials based on relatively enlightened views of the jurors and the jury system. The benefits appear to be somewhat more satisfied and effective juries and somewhat more informed citizens. In the next chapter, we turn to the broader implications related to

¹² S. Penrod, "Evaluating Techniques to Improve Juror Performance," Paper presented at American Judicatur Society Conference (1985).

¹³ See Kassin and Wrightsman, The American Jury on Trial, p.131.

juries and citizenship.

CHAPTER SEVEN

CONCLUSION

This Chapter steps back from the details of the survey findings to look at the relationship to the institution of the jury as a whole and, in turn, its relationship to democracy.

The findings from this study show some educational effects of jury service. Trial jurors and non-trial jurors, alike, reported that they learned something from their service. A majority reported learning something factual (44.9 percent) or positive (23.1 percent). Some increased their support for the jury and judicial systems; Some showed increased feelings of political efficacy.

But as noted earlier, the findings were not dramatic. They only weakly support the specific Tocquevillian hypotheses set forth at the outset of the study. Tocqueville believed that the jury was a great educational institution, a " gratuitous public school, ever open."¹ But like the real public schools of our day, there seem to be significant limits to its educational potential.

The contemporary jury trial experience as represented

¹ Tocqueville, Vintage Books, pp. 295.

by the trials in this study² is highly bureaucratized, professionalized. The language of the law is arcane. Jurors' behavior is highly constrained. In most cases they are not allowed to ask questions. In some they are not allowed to take notes.

Jury trials of today seem very little like the idealized juries of our Revolutionary times. Back then, the jury trial was an arena for the confrontation of royal authority. Criminal jury trials were simpler and much shorter summary proceedings. According to some they were more efficient.³ Judges were in control of the proceedings.

There was no right against self-incrimination and judges questioned witnesses and commented on the evidence. Lawyers were not likely to be present and the judge was not highly likely to be professionally trained. Juries were in some respects on a more equal footing with judges. In other respects, they were not. Judges were less professionalized but wielded more power. Studies of how the power of judging was more overtly political during this period remind us of the political potential of the institution.⁴

² The limited representativeness has been noted earlier: no civil trials, no violent crimes, no controversial social or political issues.

³ Multiple cases were adjudicated in a single day. See Langbein, op.cit., pp. 263-264.

⁴ See Shannon Stimson, The American Revolution in the Law: Anglo-American Jurisprudence before John Marshall,

However, most of today's juries do not decide in a context as politically volatile as the prelude to the American Revolution. Today's professionalized and bureaucratized jury trial process defines juries into the relatively narrow role as judges of the facts. Most trial jurors apparently do not feel terribly troubled by the confinement. Perhaps that is because today's jurors are used to bureaucracy. They wait hours in hospital emergency rooms. They wait in line at Social Security Offices and Passport Agencies.

In addition to the general limitations of contemporary juries, we can point to specific limitations of educational potential in the jury trials in this study. Most notable among these are the short length and the relatively uncontroversial nature of the issues involved. In addition, the fact that most jurors were not allowed to ask questions and many were not allowed to take notes should be considered. Unlike the "Wounded Knee" jury trial studied by Tapp and Levine which involved issues of civil disobedience, and racial and cultural discrimination, none of the trials in this study raised similarly global issues.

The limited educational effects found also remind us of the limits of adult socialization. By the time a person

(Princeton: Princeton University Press, 1990).

reaches adulthood, the foundation for his or her political beliefs is probably well-established. With a well-established foundation, attitudes are less easily changed. Room for intellectual growth and attitude change beyond one's foundation of beliefs varies among individuals. Those who have well-formed opinions and world views are likely to fit their experiences and reactions to them into pre-existing categories.

Still, in spite of these limitations, trial jurors tended to learn something by doing justice. Most reported learning more about the judicial process. Some found the decision-making experience empowering. Some found the ambiguities frustrating. Many expressed surprise at the capacity of a group of people from "all walks of life" to reach a consensus. Many were impressed by how seriously their fellow trial jurors took their responsibilities.

All things considered, does jury service make people better citizens? What does it mean to be a good citizen? Three elements seem essential to the ideal of citizenship: knowledge about and attentiveness to the public sphere and public issues; participation in the public realm; and action on behalf of the public interest. Jury trial service, in spite of its limitations, provides participants some opportunities to improve in each of these areas.

As described in Chapter Two, trial jurors are selected

based on their lack of personal interest in the case. They are instructed in legal principles and to some extent exposed to information about social problems. They then use the information and principles provided to make a collective decision on behalf of the community.

Judging from both the indepth interviews and the survey results, trial jurors appeared to improve, at least somewhat, on some of the dimensions of citizenship. Most reported gaining knowledge about the process or the social problems involved in the case on which they served. They accepted and took seriously the responsibility of judging on behalf of the community in an unbiased way.

Are the newly acquired knowledge and system concerns likely to effect future behavior? Will trial jurors participate more or in different ways as a result of their service? The interview results of the few trial jurors contacted fourteen to sixteen months after service may be indicative. Of the three interviewed, two showed apparently persistent effects while one did not.

Sam⁵ said that he had recast his views about the system (II#30). He served on a jury for a felony drug case. He indicated that he was more respectful of the work of the judicial system after his service, but also became convinced

⁵ The names of these respondents have been changed to insure confidentiality.

that the drug problem was too big to be left to the courts alone. "We all came away feeling overwhelmed by the drug problem," he reported. Sam described the setting for the problem--poverty and unemployment-- revealed through the case. He noted that the issue now held more of his attention. He expected that his concern for this issue was now more likely to effect his future voting decisions to the extent the issue was raised in a relevant way.

Consider Betty, whose service on a jury trial was distressing in another way (II#12). She served as a first-time trial juror on a misdemeanor DUI⁶ case. The jury could not reach a verdict. Betty believed that one of the jurors had withheld prejudicial information during the voir dire. She was particularly upset because the juror involved was a professionally well-placed educator. Her faith in the judicial system was shaken. Before her jury service, Betty and her family had had a bad experience with the courts. After jury service, she felt more cynical, but also "felt bad about feeling bad."

Finally, we turn to Ada, whose jury acquitted a DUI defendant. She expressed some frustration over the lack of evidence but was convinced that "we did our job." Ada's behavior is not likely to change as a result of her service.

⁶ Driving under the influence of alcohol.

As a manager, she said that she made decisions all the time, that she is "political in the workplace," but "not a political animal" in the public sphere. Familiar with a wide variety of public and private organizations, Ada interpreted her trial experience in organizational terms. To her, the jury trial involved a different institutional setting for decisionmaking.

How can we understand jury service and its effects in relation to other forms of political participation? As described above, the experience shares several characteristics with other forms. Like voting, jury trial service involves decisionmaking; like some campaign and interest group activity, it can be quite specialized.

But it emphasizes the norm of public interest rather than that of self or group interest. Trial jurors do not volunteer for their service. They are chosen--at first, by lot. Moreover, the obligation has no apparent negative effect on trial juror reactions to service. Participants take their role seriously. They tend to learn something from the experience, some taking on larger concerns for the system in the process. In addition, some feel somewhat more politically efficacious as a result.

The uniqueness of the jury as political participation by lot combined with its small positive educational effects make it a valuable institutional antidote to the extremes of

American individualism. Instead of just consumers of economic and political information, citizens become creators. They share, however briefly, in the administrative functions of the polity. They take time out from their private lives to help rule the republic.

The jury stands out as an institution and form of political participation because the judgement it demands is so complicated. So many of our modern institutions simplify information, decisions, and politics for us. Television provides thirty-second summaries of the events of the day. Political parties and candidates distill politics into symbols and slogans quickly and easily grasped. In contrast, serving as a trial juror forces citizens to confront the uncertainties of administering justice. Actively didactic judges prepare jurors better for the challenge of administering justice, and they enhance the opportunity to learn by doing. Most trial jurors and even some non-trial jurors came away from their service with a better sense of the difficulties involved, and with a greater appreciation for some of the principles upon which the system is based.

METHODOLOGICAL
APPENDICES

(V9.12)

JURY TRIAL DATA FORM

Court: _____ Dept #: _____ Judge _____ Date: _____

Case #: _____ Defendant(s): _____

Charge/Counts: _____

Attorneys: DDA: _____ Def: _____

Court Clerk: _____ Court Reporter: _____

+++++
GENERAL OBSERVATIONS/OPENING REMARKS:

Demographic Characteristics of Principals:

	<u>Sex:</u>		<u>Race:</u>				<u>Age:</u>
Defendant:	M	F	W	B	H	A	_____
Judge:	M	F	W	B	H	A	_____
DDA:	M	F	W	B	H	A	_____
DEF:	M	F	W	B	H	A	_____
Clerk:	M	F	W	B	H	A	_____
Bailiff:	M	F	W	B	H	A	_____
Reporter:	M	F	W	B	H	A	_____

Comments/First Impressions:

JUDGE:

ATTORNEY (Defense):

ATTORNEY (Prosecution):

DEFENDANT:

Comments (about atmosphere, audience, etc.):

JURY SELECTION

START Day/Time: _____

Delays (min): _____

Judge instructions/orientation during selection:
(legal principles mentioned, explained, etc)

What this case is about:
(include charges)

How long will trial take? _____

Judge explains role of jurors? Yes No Extent?

Judge ID's jurors as **judges**: Yes No
If Y, How? (metaphors) Emphasis on difference 'twn law and facts?

Judge mentions/explains/emphasizes value of jury service?
Yes No
Content, each mention:

Delays:___ __

Miscellaneous Instructions Re: principles of law from:

JUDGE:

DA:

DEF:

(Jury selection, continued)

Delays: _____

Judge Style and Tone during Jury Selection:
(Circle one in each row across)

Informal	*	Formal	Can't tell
Interested	*	Bored	Can't tell
Engaged	*	Distant	Can't tell
Concise	*	Long-winded	Can't tell
Plain-speaking	*	Uses lots of Jargon	Can't tell
Smooth Delivery	*	Awkward Delivery	Can't tell

Other descriptors:

Does style/tone vary alot? Yes No Explain:

Comments on Judge style and tone (treatment of attorneys, and prospective jurors):

* * * * *
Objections: Def. _____ Pros. _____

Judge Interventions (Qd, Qp, Dd, Dp, Dj, R): _____

Bench Conferences (J, D, P): _____

Motions (Sp, Sd, Dd, etc): _____

Jury Selection continued...

Delays: _____

PRESSURE TO SERVE--Judge propensity to excuse PJ's:

High (Accepts most hardship claims, admissions of bias)	Moderate Argues/rejects some, accepts some	Low (Rejects/argues with most hardship claims, admissions of bias)
--	---	---

Comments:

Defense Attorney style and tone during jury selection:
(Circle one in each row across)

Informal	*	Formal	Can't tell
Interested	*	Bored	Can't tell
Engaged	*	Distant	Can't tell
Concise	*	Long-winded	Can't tell
Plain-speaking	*	Uses lots of Jargon	Can't tell
Smooth Delivery	*	Awkward Delivery	Can't tell

Other descriptors:

Does style/tone vary alot? Yes No
Explain:

Comments on Def. Attorney style and tone (treatment of
prospective jurors, attitude toward judge and proceedings):

* * * * *

Objections: Def. _____ Pros. _____

Judge Interventions (Qd, Qp, Dd, Dp, Dj, R): _____

Bench Conferences (J,D,P): _____

Motions (Sp, Sd, Dd, etc): _____

Jury selection continued . . . Delays: _____

Prosecution Attorney style and tone during jury selection:
(Circle one in each row across)

Informal	*	Formal	Can't tell
Interested	*	Bored	Can't tell
Engaged	*	Distant	Can't tell
Concise	*	Long-winded	Can't tell
Plain-speaking	*	Uses lots of Jargon	Can't tell
Smooth Delivery	*	Awkward Delivery	Can't tell

Other descriptors:

Does style/tone vary alot? Yes No
Explain:

Comments on Pros. Attorney style and tone (treatment of prospective jurors, attitude toward judge and proceedings):

* * * * *

Objections: Def. _____ Pros. _____

Judge Interventions (Qd,Qp,Dd,Dp,Dj,R): _____

Bench Conferences (J,D,P): _____

Motions (Sp, Sd, Dd, etc): _____

Jury selection continued . . .

Delays: _____

Apologies?

Any discernible prospective juror reactions to principals or proceedings?

Trial Observer's reactions to Jury Selection? (to principals, process, etc.)?

Misc. Notes RE Jury Selection:

JURY SELECTION ENDS Time_____ Date_____

* * * * *

Objections: Def. _____ Pros. _____

Judge Interventions (Qd,Qp,Dd,Dp,Dj,R): _____

Bench Conferences (J,D,P): _____

Motions (Sp, Sd, Dd, etc): _____

OPENING INSTRUCTIONS (by Judge)

START:

Delays: _____

Apologies?

Verbal Intro to Case: Any explanation of how court works?

Y N

Paraphrase:

Judge reads Instructions re: evidence, testimony, etc? Y N

Which? _____

(Opening instructions, continued)

Delays: _____

Did Judge paraphrase, explain instructions in everyday
language, use metaphors? Yes No If Y, examples:

Discernible juror reactions to instructions? Yes No
Comments:

Misc. notes:

OPENING INSTRUCTIONS END:

Time_____ Date_____

Apologies for delays?

OPENING STATEMENTS

START: Time_____ Date_____

Delays: _____

Apologies?

Prosecution.....START->_____

Is the accused present? Y N

Describe the accused (looks, actions, reactions, etc.):

Is there an alleged victim of the crime? Y N

Is alleged victim described, present during opening remarks?

Explain if necessary:

Summary of Opening Argument:

Principles of Law mentioned, emphasized:

* * * * *

Objections: Def. _____ Pros. _____

Judge Interventions (Qd, Qp, Dd, Dp, Dj, R): _____

Bench Conferences (J, D, P): _____

Motions (Sp, Sd, Dd, etc): _____

Prosecution Opening Statement continued... Delays: _____

During this period, did attorney mention, or emphasize importance of jury service? Y N IF Y, paraphrase:

Discernible jury reactions? Y N

Discernible judge reactions? Y N ...defense atty reactions? Y N

Prosecution Attorney style /tone during statement:

Informal	*	Formal	Can't tell
Interested	*	Bored	Can't tell
Engaged	*	Distant	Can't tell
Concise	*	Long-winded	Can't tell
Plain-speaking	*	Uses lots of Jargon	Can't tell
Smooth Delivery	*	Awkward Delivery	Can't tell

Other descriptors?

Does style/tone vary alot? Yes No
Explain:

Misc. Notes:

Prosecution Opening Statement END.... -->Time____Date_____

* * * * *

Objections: Def. _____ Pros. _____

Judge Interventions (Qd,Qp,Dd,Dp,Dj,R): _____

Bench Conferences (J,D,P): _____

OPENING STATEMENT (Defense) Delays: _____

Defense.....START--> Time/Date_____

Does defense offer opening statement before Pros. testimony?
Y N

...after Pros. testimony? Y N

Check here if no opening statement by Defense in this case?
[]

Summary of Opening Argument:

Does defense argument blame alleged victim? Y N If Y,
Paraphrase:

Which principles of law if any, mentioned, emphasized?

During this period, did attorney mention, or emphasize
importance of jury service? Y N IF Y, paraphrase:

Defense Opening continued...

Delays: _____

Any discernible jury reactions? Y N
Describe:

Any discernible judge reactions? Y N ...Pros. atty
reactions? Y N Describe:

Defense Attorney style/tone during opening statement:

Informal	*	Formal	Can't tell
Interested	*	Bored	Can't tell
Engaged	*	Distant	Can't tell
Concise	*	Long-winded	Can't tell
Plain-speaking	*	Uses lots of Jargon	Can't tell
Smooth Delivery	*	Awkward Delivery	Can't tell

Other descriptors?

Does style/tone vary alot? Yes No
Explain:

Misc. Notes:

* * * * *

Objections: Def. _____ Pros. _____

Judge Interventions (Qd,Dp,Cd,Ij,R): _____

Bench Conferences (J,D,P): _____

Motions (Sp, Sd, Dd, etc): _____

(Prosecution Witness #_____ continued) Delays: _____

CROSS-EXAMINATION:

REDIRECT:

ADDITIONAL QUESTIONING:

JUROR QUESTIONS: (Include how handled, who asks them, @ how many?) (or indicate if **not allowed**)

* * * * *

Objections: Def. _____ Pros. _____

Judge Interventions (Qd,Qp,Dd,Dp,Ij,etc): _____

Bench Conferences (J,D,P): _____

Motions (Sp,Sd,Dd,Dp,etc): _____
(Prosecution witness #_____, continued) Delays: _____

Discernible jury reactions to prosecuting attorney? Y N
Describe:

Discernible jury reactions to witness? Y N
Describe:

Discernible jury reactions to defense attorney? Y N
Describe:

Discernible jury reactions to judge? Y N
Describe:

Discernible judge reaction to attorneys? Y N
Describe:

Observer Reaction to--

Witness:

Attorney, Prosecution:

Attorney, Defense:

Prosecution witness #_____ , continued... Delays: ____ ____

Observer reactions to:

Defendant:

Judge:

Jury:

Any judge, jury, or attorney reaction to the observer? (ie. comments to bailiff, questions to observer, etc.) YES NO

If yes, describe:

Assess this witness's credibility: LOW MED HIGH
Comments?

Prosecution witness #___, continued... Delays: _____

Judge tone during testimony of Prosecution Witness #_____:
(Circle one in each row across)

Informal	*	Formal	Can't tell
Interested	*	Bored	Can't tell
Engaged	*	Distant	Can't tell
Concise	*	Long-winded	Can't tell
Plain-speaking	*	Uses lots of Jargon	Can't tell
Smooth Delivery	*	Awkward Delivery	Can't tell

Other descriptors? (ie. impatient, imperious, cool, calm)

Does style/tone vary alot? Yes No
Explain which elements:

Comments on Judge style and tone:

During this period, did judge mention, emphasize, explain importance of jury service? Y N IF Y, how many times?

Paraphrase:

(Prosecution witness, #_____ continued) Delays:_____

Prosecution Attorney style/tone during testimony of this witness: (Circle one in each row across)

Informal	*	Formal	Can't tell
Interested	*	Bored	Can't tell
Engaged	*	Distant	Can't tell
Concise	*	Long-winded	Can't tell
Plain-speaking	*	Uses lots of Jargon	Can't tell
Smooth Delivery	*	Awkward Delivery	Can't tell

Other descriptors? (ie. impatient, imperious, passionate, dramatic, calm, calculating)

Does style/tone vary alot? Yes No
Explain which elements:

How competent or incompetent does attorney appear?
(competent: prepared (materially and mentally), quickly and clearly states objections, etc)

Comments on Prosecuting Attorney's style and tone:

(Prosecution witness, #____continued) Delays: _____

Defense attorney tone during testimony of Witness #_____
(Circle one in each row across)

Informal	*	Formal	Can't tell
Interested	*	Bored	Can't tell
Engaged	*	Distant	Can't tell
Concise	*	Long-winded	Can't tell
Plain-speaking	*	Uses lots of Jargon	Can't tell
Smooth Delivery	*	Awkward Delivery	Can't tell

Other descriptors? (ie. impatient, passionate, dramatic, calm, calculating)

Does style/tone vary alot? Yes No
Explain which elements:

How competent or incompetent does attorney appear?
(competent: prepared (materially and mentally), quickly and clearly states objections, etc)

Comments on defense attorney's style and tone:

Misc. Notes:

PROSECUTION Witness #_____ END-->/time/Date_____

PROSECUTION CASE (if above is last witness) END-->_____

DEFENSE CASE: START-->Time_____Date_____

Delays:_____

Defense Witnesses: brief description (expert witness, defendant?), roughly how long each testifies, how credible each seems:

Witness #_____

Start date/time:_____

When commenting on testimony, include witness interaction with attorney, judge and jury, attitude of witness, etc.)

DURING DIRECT EXAMINATION:

The point(s) of this witness? (I.D., corroboration, etc)

Is witness cooperative or hostile, talkative or reticent?

Any exhibits involved?

Notes on testimony:

* * * * *

Objections: Def. _____ Pros. _____

Judge Interventions (Qd,Dp,Cd,Ij,R): _____

Bench Conferences (J,D,P): _____

Motions (Sp, Sd, Dd, etc): _____
(Defense Witness # _____ continued) Delays: _____

CROSS-EXAMINATION:

REDIRECT:

ADDITIONAL QUESTIONING:

JUROR QUESTIONS: (How handled, who asks them, how many?)

* * * * *

Objections: Def. _____ Pros. _____

Judge Interventions (Qd,Qp,Dd,Dp,Ij,etc): _____

Bench Conferences (J,D,P): _____

Motions (Sp,Sd,Dd,Dp,etc): _____

(Prosecution witness #_____, continued) Delays: _____
Discernible jury reactions to defense attorney? Y N
Describe:

Discernible jury reactions to witness? Y N
Describe:

Discernible jury reactions to D.A.? Y N
Describe:

Discernible jury reactions to judge? Y N
Describe:

Discernible judge reaction to attorneys? Y N
Describe:

Observer Reaction to--

Witness:

Attorney, Prosecution:

Attorney, Defense:

Defense witness #_____, continued...

Delays: ____

Defendant:

Judge:

Jury:

Any judge, jury, or attorney reaction to the observer? (ie. comments to bailiff, questions to observer, etc.) YES NO

If yes, describe:

Assess this witness's credibility: LOW MED HIGH
Comments?

Defense witness #____, continued... Delays: ____ ____

Judge style/tone during testimony of Defense Witness #_____
(Circle one in each row across)

Informal	*	Formal	Can't tell
Interested	*	Bored	Can't tell
Engaged	*	Distant	Can't tell
Concise	*	Long-winded	Can't tell
Plain- speaking	*	Uses lots of Jargon	Can't tell
Smooth Delivery	*	Awkward Delivery	Can't tell

Other descriptors? (ie. impatient, imperious, cool, calm)

Does style/tone vary alot? Yes No
Explain which elements:

Comments on Judge style and tone:

During this period, did judge mention, emphasize, explain importance of jury service? Y N IF Y, how many times?
_____ Paraphrase:

(Defense witnesses, #_____ continued) Delays: _____

Defense Attorney style/tone during testimony of this witness:

(Circle one in each row across)

Informal	*	Formal	Can't tell
Interested	*	Bored	Can't tell
Engaged	*	Distant	Can't tell
Concise	*	Long-winded	Can't tell
Plain-speaking	*	Uses lots of Jargon	Can't tell
Smooth Delivery	*	Awkward Delivery	Can't tell

Other descriptors? (ie. impatient, imperious, passionate, dramatic, calm, calculating)

Does style/tone vary alot? Yes No
Explain which elements:

How competent or incompetent does attorney appear?
(competent: prepared (materially and mentally), quickly and clearly states objections, etc)

Comments on Defense Attorney's style and tone:

(Defense witnesses, #_____continued) Delays: ____ ____

Prosecution attorney style/tone during testimony of Witness #_____:

(Circle one in each row across)

Informal	*	Formal	Can't tell
Interested	*	Bored	Can't tell
Engaged	*	Distant	Can't tell
Concise	*	Long-winded	Can't tell
Plain-speaking	*	Uses lots of Jargon	Can't tell
Smooth Delivery	*	Awkward Delivery	Can't tell

Other descriptors? (ie. impatient, passionate, dramatic, calm, calculating)

Does style/tone vary alot? Yes No
Explain which elements:

How competent or incompetent does attorney appear?

(competent: prepared (materially and mentally), quickly and clearly states objections, etc)

Comments on DA's style and tone:

Misc. Notes:

DEFENSE Witness #_____ END-->Time/Date_____

DEFENSE TESTIMONY (if last witness) END-->Time/Date_____

POST-TESTIMONY INSTRUCTIONS START-->Time_____Date_____

Judge Reads Instructions to Jurors before closing statements? Y N

Does judge read in: monotone, with minimal or moderate inflection or in animated way? (Circle one descriptor or explain below)

If Y, which instructions? (Try to get copy of instructions)

During this period, did judge mention, emphasize, or explain importance of jury service? Y N IF Y, paraphrase:

Is the victim identified, referred to, present during remarks? Y N

Explain if necessary:

Is the accused present during remarks? Y N

Explain if necessary:

* * * * *

Objections: Def. _____ Pros. _____

Judge Interventions (Qd,Qp,Dd,Dp,Ij,etc): _____

Bench Conferences (J,D,P): _____

Motions (Sp,Sd,Dd,Dp,etc): _____

Closing, prosecution, continued... Delays: _____

Prosecution Attorney tone during CLOSING:
(Circle one in each row across)

Informal	*	Formal	Can't tell
Interested	*	Bored	Can't tell
Engaged	*	Distant	Can't tell
Concise	*	Long-winded	Can't tell
Plain-speaking	*	Uses lots of Jargon	Can't tell
Smooth Delivery	*	Awkward Delivery	Can't tell

Other descriptors? (ie. impatient, imperious, animated, exercised)

Does style/tone vary alot? Yes No

Explain which elements:

Comments on prosecuting attorney's style and tone:

* * * * *

Objections: Def. _____ Pros. _____

Judge Interventions (Qd,Qp,Dd,Dp,Ij,etc): _____

Bench Conferences (J,D,P): _____

Motions (Sp,Sd,Dd,Dp,etc): _____

Prosecution closing, continued) Delays: _____

Any discernible jury reaction to prosecution closing? Y N

During this period, did attorney mention, or emphasize importance of jury service? Y N IF Y, paraphrase:

Misc. Notes:

PROSECUTION CLOSING ARGUMENT
DEFENSE CLOSING ARGUMENT:

END-->Time/Date_____
Delays: ___ ___

Defense Closing Argument..... START-->Time____Date____
Summary of Closing:

Which principles of law mentioned, emphasized?

Does defense argument blame the victim? Yes No
Explain:

* * * * *

Objections: Def. _____ Pros. _____

Judge Interventions (Qd,Qp,Dd,Dp,Ij,etc): _____

Bench Conferences (J,D,P): _____

Motions (Sp,Sd,Dd,Dp,etc): _____

Defense closing, continued. . . Delays: _____

Defense attorney style/tone during Closing:
(Circle one in each row across)

Informal	*	Formal	Can't tell
Interested	*	Bored	Can't tell
Engaged	*	Distant	Can't tell
Concise	*	Long-winded	Can't tell
Plain-speaking	*	Uses lots of Jargon	Can't tell
Smooth Delivery	*	Awkward Delivery	Can't tell

Other descriptors? (ie. impatient, imperious)

Does style/tone vary alot? Yes No

Explain which elements:

Comments on defense attorney's style and tone:

Victim present during arguments? Y N

Accused present during arguments? Y N

Defense closing, continued...

Delays: ____ ____

Any discernible jury reaction to defense attorney closing?

During this period, did attorney mention, or emphasize importance of jury service? Y N IF Y, paraphrase:

Misc. Notes:

DEFENSE CLOSING

END-->Time_____Date_____

PROSECUTION REBUTTAL of Defense Closing:

Start: _____

Summary of Rebuttal:

Delays: _____

Which principles of law mentioned, emphasized?

Alleged victim identified, referred to, present during
remarks? Y N
Explain if necessary:

Is the accused present during remarks? Y N
Explain if necessary:

* * * * *

Objections: Def. _____ Pros. _____

Judge Interventions (Qd, Qp, Dd, Dp, Ij, R): _____

Bench Conferences (J, D, P): _____

Motions (Sp, Sd, Dd, etc): _____

Prosecution rebuttal, continued. . . . Delays: _____

Any discernible jury reactions to rebuttal?

During this period, did attorney mention, or emphasize
importance of jury service? Y N IF Y, paraphrase:

Prosecution attorney style/tone during Rebuttal:
(Circle one in each row across)

Informal	*	Formal	Can't tell
Interested	*	Bored	Can't tell
Engaged	*	Distant	Can't tell

importance of jury service? Y N IF Y, paraphrase:

Any discernible jury reactions? Y N

Misc. Notes:

PRE-DELIBERATION INSTRUCTIONS **END** Date/Time: _____
NOTES ON DELIBERATIONS:

Did Jury send any messages, questions to judge? Y N

If yes, describe:

Did jury reassemble for new or repeat testimony or instructions? Y N

If yes, describe:

Was jury polled? Yes No If Y, at whose request? D P

Length of Judge closing: _____minutes (estimate)
Paraphrase:

Verdict and trial closing, continued...

Did Judge conduct debriefing session (allowing questions)?
Y N

If so, describe it and note which jurors question or comment on proceedings:

Miscellaneous Notes on Juror reactions/comments to Judge
and/or attorneys:

TRIAL

END: Date/Time:

LENGTH OF TRIAL: 1.5 days; 0.75 hours deliberations
TRIAL NUMBER: FIVE DATE: 2/90
JUDGE NUMBER: THREE (male)
COURT: Walnut Creek Municipal
NATURE OF CHARGE(S): Embezzlement (less than \$200)
VERDICT: Guilty
COMMENTS: Judge allowed notetaking but no questions from
jurors
LENGTH OF TRIAL: 2 days; 2.5 hour deliberations

TRIAL NUMBER: SIX DATE: 2/90
JUDGE NUMBER: THREE (male)
COURT: Walnut Creek Municipal
NATURE OF CHARGE(S): DUI
VERDICT: Hung Jury (9G-3NG)
COMMENTS: Judge allowed notetaking but no questions from
jurors. Conducted debriefing in light of
failure to reach verdict.
LENGTH OF TRIAL: 2 days; 3 hour deliberations

TRIAL NUMBER: SEVEN DATE: 2/20
COURT: Walnut Creek Municipal
NO TRIAL--Case settled before jury selection began. After 1.5
hour wait, the prospective jurors were thanked and excused by
the judge who explained that the case had settled.

TRIAL NUMBER: EIGHT DATE: 3/90
JUDGE NUMBER: ONE (female)
COURT: Walnut Creek Municipal
NATURE OF CHARGE(S): DUI
VERDICT: Guilty
COMMENTS: Judge did not allow notetaking or questions from
jurors
LENGTH OF TRIAL: 1.5 days; 1.5 hour deliberations

TRIAL NUMBER: NINE DATE: 3/90
JUDGE NUMBER: FOUR (male)
COURT: Walnut Creek Municipal
NATURE OF CHARGE(S): DUI, Malicious Mischief, Battery
(against officer)
VERDICT: Mixed Verdict (Not Guilty of Battery, Guilty of DUI
and Malicious Mischief)
COMMENTS: Judge did not allow notetaking or questions from
jurors

LENGTH OF TRIAL: 2 days; 3.5 hour deliberations

TRIAL NUMBER: TEN DATE: 3/90
JUDGE NUMBER: ONE (female)
COURT: Walnut Creek Municipal
NATURE OF CHARGE(S): DUI
VERDICT: Guilty
COMMENTS: Judge did not allow notetaking or questions from
jurors
LENGTH OF TRIAL: 2.5 days; 4.5 hour deliberations

TRIAL NUMBER: ELEVEN DATE: 3/90
JUDGE NUMBER: TWO (male)
COURT: Walnut Creek Municipal
NATURE OF CHARGE(S): DUI
VERDICT: Not Guilty
COMMENTS: Judge did not allow notetaking or questions from
jurors
LENGTH OF TRIAL: 2 days; 2.5 hours deliberation

TRIAL NUMBER: TWELVE DATE: 4/90
JUDGE NUMBER: THREE (male)
COURT: Alameda County Superior
NATURE OF CHARGE(S): Possession and Sale of Heroin (Felony)
VERDICT: Guilty
COMMENTS: Judge allowed notetaking and written questions
from jurors
LENGTH OF TRIAL: 7 days; 6 hours deliberation

TRIAL NUMBER: THIRTEEN DATE: 4/90
JUDGE NUMBER: ONE (female)
COURT: Walnut Creek Municipal Court
NATURE OF CHARGE(S): DUI
VERDICT: Guilty
COMMENTS: Judge did not allow notetaking or questions
LENGTH OF TRIAL: 2 days; 2.75 hour deliberations

TRIAL NUMBER: FOURTEEN DATE: 4/90
JUDGE NUMBER: FOUR (male)
COURT: Walnut Creek Municipal
NATURE OF CHARGES: DUI
VERDICT: Guilty

COMMENTS: Judge did not allow notetaking or questions
LENGTH OF TRIAL: 1.5 days; 2 hour deliberations

TRIAL NUMBER: FIFTEEN DATE: 5/90
JUDGE NUMBER: FIVE (male)
COURT: Alameda County Superior Court
NATURE OF CHARGE(S): Drug Possession and Sale
VERDICT: Guilty
COMMENTS: Judge allowed notetaking and juror questions
LENGTH OF TRIAL: 8 days; 5 hour deliberations

TRIAL NUMBER: SIXTEEN DATE: 5/90
JUDGE NUMBER: SIX (male)
COURT: U.S. District Court
NATURE OF CHARGE(S): Escape and Accessory to (Bank) Robbery
VERDICT: Escape-Guilty; Accessory to Robbery-Not Guilty
COMMENTS: Judge allowed notetaking and juror questions
LENGTH OF TRIAL: 5 days; 5 hour deliberations

TRIAL NUMBER: SEVENTEEN DATE: 5/90
JUDGE NUMBER: SEVEN (female)
COURT: U.S. District
NATURE OF CHARGE(S): Drug Smuggling
VERDICT: Guilty
COMMENTS: Judge allowed notetaking but no questions
Two defendants: One skipped town the night before the case
went to the jury. Judge declared mistrial for remaining
defendant since flight of the other was prejudicial. Jury
decided on fate of defendant who fled. Found him guilty.
LENGTH OF TRIAL: 7 days; 5 hour deliberations

TRIAL NUMBER: EIGHTEEN DATE: 6/90
JUDGE NUMBER: THREE (male)
COURT: Walnut Creek Municipal
NATURE OF CHARGE(S): DUI
VERDICT: Guilty
COMMENTS: Judge allowed notetaking but no questions
LENGTH OF TRIAL: 2 days; 2 hours deliberations

TRIAL NUMBER: NINETEEN DATE: 8/90
JUDGE NUMBER: SIX (male)
COURT: U.S. District Court
NATURE OF CHARGE(S): Tax Evasion

TABLE A.3
INDEPTH INTERVIEWS

<u>RESPONDENT NUMBER:</u>	<u>TRIAL NUMBER</u>	<u>TJ/ALT OR NJ?</u>	<u>ALLOWED</u>		<u>TIME LAPSE</u>
			<u>VERDICT?</u>	<u>NOTES/ Q'S?</u>	
II#1	1	TJ	G	NO	3 M
II#2	2	TJ	G	NO	3 M
II#3	3	TJ	G	NO	3 M
II#4	3	TJ	G	NO	3 M
II#5	3	NJ	-	-	3 M
II#6	26	TJ	G	N+Q	8 M
II#7	4	TJ	NG	N, No Q	8 M
II#8	4	NJ	-	-	8 M
II#9	5	NJ	G	N, No Q	6 M
II#10	5	TJ	G	N, No Q	6 M
II#11	5	NJ	-	-	6 M
II#12	6	TJ	HUNG	N, No Q	6 M
II#13	6	TJ	HUNG	N, No Q	6 M
II#14	7	NJ	-	-	5 M
II#15	8	TJ	G	NO	5 M
II#16	8	TJ	G	NO	5 M
II#17	9	TJ	NG&G	NO	5 M
II#18	9	NJ	-	-	5 M
II#19	10	TJ	G	NO	6 M
II#20	10	ALT	-	NO	6 M
II#21	10	NJ	-	-	6 M
II#22	11	TJ	NG	NO	14M

<u>RESPONDENT NUMBER:</u>	<u>TRIAL NUMBER</u>	<u>TJ/ALT OR NJ?</u>	<u>ALLOWED</u>		<u>TIME LAPSE</u>
			<u>VERDICT?</u>	<u>NOTES/ Q's?</u>	
II#23	12	TJ	G	N+Q	6M
II#24	12	ALT	-	N+Q	6M
II#25	13	TJ	G	NO	8M
II#26	14	TJ	G	NO	12M
II#27	14	TJ	G	NO	12M
II#28	15	TJ	G	N+Q	8M
II#29	15	NJ	-	-	8M
II#30	25	TJ	G	N+Q	12M
II#31	16	TJ	G/NG	N+Q	11M
II#32	16	NJ	-	-	11M
II#33	17	TJ	G	N, No Q	11M
II#34	17	NJ	-	-	11M
II#35	18	TJ	G	N, No Q	9M
II#36	19	TJ	G	N+Q	8M
II#37	19	NJ	-	-	8M
II#38	20	TJ	HUNG	N+Q	11M
II#39	20	TJ	HUNG	N+Q	11M
II#40	21	TJ	HUNG	N+Q	13M
II#41	21	TJ	HUNG	N+Q	13M
II#42	22	TJ	G	N+Q	13M
II#43	22	NJ	-	-	13M
II#44	23	TJ	G	N+Q	16M
II#45	24	TJ	HUNG	N+Q	16M

KEY: TJ= trial juror ALT= alternate NJ= non-trial juror N= allowed to take notes Q= allowed to ask questions
TIME LAPSE= between service & date of interview (in months)

TRIAL NUMBER: THREE
JUDGE NUMBER: TWO (male)
COURT: Walnut Creek Municipal
NATURE OF CHARGE(S): DUI
VERDICT: Guilty
COMMENTS: Judge did not allow notetaking or questions from
 jurors
LENGTH OF TRIAL: 2.5 days; 2.5 hour deliberations

TRIAL NUMBER: FOUR
JUDGE NUMBER: THREE (male)
COURT: Walnut Creek Municipal
NATURE OF CHARGE(S): DUI
VERDICT: Not Guilty
COMMENTS: Judge allowed notetaking but no questions from
 jurors
LENGTH OF TRIAL: 1.5 days; 0.75 hour deliberations

TRIAL NUMBER: FIVE
JUDGE NUMBER: THREE (male)
COURT: Walnut Creek Municipal
NATURE OF CHARGE(S): Embezzlement (less than \$200)
VERDICT: Guilty
COMMENTS: Judge allowed notetaking but no questions from
 jurors
LENGTH OF TRIAL: 2 days; 2.5 hour deliberations

TRIAL NUMBER: SIX
JUDGE NUMBER: THREE (male)
COURT: Walnut Creek Municipal
NATURE OF CHARGE(S): DUI
VERDICT: Hung Jury (9G-3NG)
COMMENTS: Judge allowed notetaking but no questions from
 jurors. Conducted debriefing in light of
 failure to reach verdict.
LENGTH OF TRIAL: 2 days; 3 hour deliberations

TRIAL NUMBER: SEVEN
COURT: Walnut Creek Municipal
NO TRIAL--Case settled before jury selection began. After 1.5
hour wait, the prospective jurors are thanked and excused.

TRIAL NUMBER: EIGHT
JUDGE NUMBER: ONE (female)
COURT: Walnut Creek Municipal
NATURE OF CHARGE(S): DUI
VERDICT: Guilty
COMMENTS: Judge did not allow notetaking or questions from
 jurors
LENGTH OF TRIAL: 1.5 days; 1.5 hour deliberations

TRIAL NUMBER: NINE
JUDGE NUMBER: FOUR (male)
COURT: Walnut Creek Municipal
NATURE OF CHARGE(S): DUI, Malicious Mischief, Battery (against
 officer)
VERDICT: Mixed Verdict (Not Guilty of Battery, Guilty of DUI
 and Malicious Mischief)
COMMENTS: Judge did not allow notetaking or questions from
 jurors
LENGTH OF TRIAL: 2 days; 3.5 hour deliberations

TRIAL NUMBER: TEN
JUDGE NUMBER: ONE (female)
COURT: Walnut Creek Municipal
NATURE OF CHARGE(S): DUI
VERDICT: Guilty
COMMENTS: Judge did not allow notetaking or questions from
 jurors
LENGTH OF TRIAL: 2.5 days; 4.5 hour deliberations

TRIAL NUMBER: ELEVEN
JUDGE NUMBER: TWO (male)
COURT: Walnut Creek Municipal
NATURE OF CHARGE(S): DUI
VERDICT: Not Guilty
COMMENTS: Judge did not allow notetaking or questions from
 jurors
LENGTH OF TRIAL: 2 days; 2.5 hours deliberation

TRIAL NUMBER: TWELVE
JUDGE NUMBER: THREE (male)
COURT: Alameda County Superior

NATURE OF CHARGE(S): Possession and Sale of Heroin (Felony)
VERDICT: Guilty
COMMENTS: Judge allowed notetaking and written questions
from jurors
LENGTH OF TRIAL: 7 days; 6 hours deliberation

TRIAL NUMBER: THIRTEEN
JUDGE NUMBER: ONE (female)
COURT: Walnut Creek Municipal Court
NATURE OF CHARGE(S): DUI
VERDICT: Guilty
COMMENTS: Judge did not allow notetaking or questions
LENGTH OF TRIAL: 2 days; 2.75 hour deliberations

TRIAL NUMBER: FOURTEEN
JUDGE NUMBER: FOUR (male)
COURT: Walnut Creek Municipal
NATURE OF CHARGES: DUI
VERDICT: Guilty
COMMENTS: Judge did not allow notetaking or questions
LENGTH OF TRIAL: 1.5 days; 2 hour deliberations

TRIAL NUMBER: FIFTEEN
JUDGE NUMBER: FIVE (male)
COURT: Alameda County Superior Court
NATURE OF CHARGE(S): Drug Possession and Sale
VERDICT: Guilty
COMMENTS: Judge allowed notetaking and juror questions
LENGTH OF TRIAL: days; hour deliberations

TRIAL NUMBER: SIXTEEN
JUDGE NUMBER: SIX (male)
COURT: U.S. District Court
NATURE OF CHARGE(S): Escape and Accessory to (Bank) Robbery
VERDICT: Escape-Guilty; Accessory to Robbery-Not Guilty
COMMENTS: Judge allowed notetaking and juror questions
LENGTH OF TRIAL: 5 days; 6.5 hour deliberations

TRIAL NUMBER: SEVENTEEN
JUDGE NUMBER: SEVEN (female)

COURT: U.S. District
NATURE OF CHARGE(S): Drug Smuggling
VERDICT: Guilty
COMMENTS: Judge allowed notetaking but no questions Two
defendants: One skipped town the night before the case went to
the jury. Judge declared mistrial for remaining defendant since
flight of the other was prejudicial. Jury decided on fate of
defendant who fled. Found him guilty.
LENGTH OF TRIAL: 7 days; 4 hour deliberations

TRIAL NUMBER: EIGHTEEN
JUDGE NUMBER: THREE (male)
COURT: Walnut Creek Municipal
NATURE OF CHARGE(S): DUI
VERDICT: Guilty
COMMENTS: Judge allowed notetaking but no questions
LENGTH OF TRIAL: 2 days; 2 hours deliberations

TRIAL NUMBER: NINETEEN
JUDGE NUMBER: SIX (male)
COURT: U.S. District Court
NATURE OF CHARGE(S): Tax Evasion
VERDICT: Guilty
COMMENTS: Judge allowed notetaking and juror questions
LENGTH OF TRIAL: 6 days; 6.5 hour deliberations

TRIAL NUMBER: TWENTY
JUDGE NUMBER: FIVE (male)
COURT: Alameda County Superior Court
NATURE OF CHARGE(S): Drug Possession and Sale
VERDICT: Hung Jury (10G-2NG)
COMMENTS: Judge allowed notetaking and juror questions
LENGTH OF TRIAL: days; hour deliberations

TRIAL NUMBER: TWENTY-ONE
JUDGE NUMBER: FIVE (male)
COURT: Alameda County Superior Court
NATURE OF CHARGE(S): Drug Possession and Sale (Marijuana)
VERDICT: Hung Jury (8NG-4G)
COMMENTS: Judge allowed notetaking and juror questions
LENGTH OF TRIAL: days; hour deliberations

TRIAL NUMBER: TWENTY-TWO
JUDGE NUMBER: EIGHT (male)
COURT: U.S. District Court
NATURE OF CHARGE(S): Securities Fraud (surety bonds)
VERDICT: Guilty
COMMENTS: Judge allowed notetaking and juror questions
LENGTH OF TRIAL: 7 days; 6.5 hour deliberations

TRIAL NUMBER: TWENTY-THREE
JUDGE NUMBER: FIVE (male)
COURT: Alameda County Superior Court
NATURE OF CHARGE(S): Drug Possession and Sale
VERDICT: Guilty
COMMENTS: Judge allowed notetaking and juror questions
LENGTH OF TRIAL: days; hour deliberations

TRIAL NUMBER: TWENTY-FOUR
JUDGE NUMBER: FIVE (male)
COURT: Alameda County Superior Court
NATURE OF CHARGE(S): Drug Possession and Sale
VERDICT: Hung Jury
COMMENTS: Judge allowed notetaking and juror questions
LENGTH OF TRIAL: days; hour deliberations

TRIAL NUMBER: TWENTY-FIVE
JUDGE NUMBER: FIVE (male)
COURT: Alameda County Superior Court
NATURE OF CHARGE(S): Drug Possession and Sale
VERDICT: Guilty
COMMENTS: Judge allowed notetaking and juror questions
LENGTH OF TRIAL: days; hour deliberations

TRIAL NUMBER: TWENTY-SIX
JUDGE NUMBER: FIVE (male)
COURT: Alameda County Superior Court
NATURE OF CHARGE(S): Drug Possession and Sale
VERDICT: Guilty

COMMENTS: Judge allowed notetaking and juror questions
LENGTH OF TRIAL: days; hour deliberations

INDEPTH INTERVIEW QUESTIONS

Name/Respondent # _____ Service
Period_____

Trial Juror? Y N

If Trial Juror, verdict? G NG Mix Hung

What do you remember about your jury service? (Prompts: when you served, kind of court, case, judge, deliberations, verdict, etc.) Ask for description of deliberations, how they proceeded, who spoke, etc.

If juror talks about deliberations, ask the following:
Did you learn anything about group decisionmaking?
[If R mentions reaction to anything remotely 'political', follow up with questions re: differences of perspective, whether disagreement problematic, how appropriate were the 'politics' to Respondent, etc.]

Did being in the jury room, making group decisions, change the way you make other decisions in your life? Or confirm your style of decisionmaking?

If relevant:
Did you take notes? Did others? Were they useful in deliberations? Did you submit any questions? Was the procedure useful? Questions allowed? Did you ask any? Anybody ask any? Good idea? Were formal instructions given before and during trial helpful?

What did you learn from your service, if anything?

INDEPTH INTERVIEW FORM continued. . .

I'm going to mention some of the legal principles that were explained to you/you had to use as trial juror. Please tell me how you understand each and then whether you found it difficult or easy to apply in that case (ask hypothetically if respondent did not serve as trial juror)

REASONABLE DOUBT

INNOCENT UNTIL PROVEN GUILTY

RIGHT NOT TO TESTIFY

Can you tell me what justice means to you? (Prompts: Some say fairness, others restitution, or an eye for an eye, how about you?)

Do you think of justice differently since your service?

Are you any more or less attentive to the courts and judicial system since your service?

We see alot of jury trials in the news these days. Do you relate to or see them differently now that you've been a juror? (Follow-up: Do they seem more familiar now that you've been a juror?)

YES NO

Have you had any experience with the court system since your jury service? [If yes] What kind?

Were you satisfied with the process?
Y N How? Why?

Do you think the experience(s) have had any effects on your views? Your behavior?

Have you have ANY experience that might have affected your views of the courts and/or the jury system? Y N
(news of jury trials-- Kennedy-Smith, etc.)

Have your attitudes toward crime and crime related issues changed in any way? or Do you see crime issues differently since/as a result of your service? [follow-up: Is this issue more important to you? Would you vote based on (mentioned) issue if you had the chance?]

Does public decisionmaking seem more or less worthwhile as a result of your service? (or Do you think differently about politics and political decisionmaking since your jury service?)

Has your experience affected the way you behave in any way? (eg. would you vote differently as a result of your

experience? or be more likely to vote in a particular election if related issues were involved?)

BIBLIOGRAPHY

- Abramson, Henry. The Judicial Process: An Introductory Analysis of the Courts of the United States, England and France. Fifth Edition. Oxford University Press, 1986.
- Abrahamson, Shirley S. "A View from the Other Side of the Bench." Marquette Law Review. 69:463, 1986.
- Abrahamson, Shirley S. "Justice and Juror." Georgia Law Review. 20:257, 1986.
- Allen, James L. "Attitude Change Following Jury Duty." Justice System Journal. 2:246, 1977.
- Almond, Gabriel A. and Verba, Sidney. The Civic Culture. Boston: Little, Brown and Company. 1965.
- Amandes, Richard B. "From Voir Dire to Verdict Through a Juror's Eyes." Practical Lawyer. 9:21. October, 1963.
- Anderson, Frederick Irvin. "A Question from the Jury Box." The Saturday Evening Post. 205:25, November 14, 1931.
- Anonymous Juror. "Justice, the Lady-uh-Woman With the Bandaged Eyes." Connecticut Bar Journal. Volume 47. pp. 241-248, March, 1973.
- Asinof, Eliot. "The Trials of a Juror." New York Times Magazine. p. 40. November 12, 1972.
- Baker, Russell. "My Day in Court." New York Times Magazine. p. 12. August 10, 1980.
- Barber, Benjamin. Strong Democracy: Participatory Politics for a New Age. Berkeley: University of California Press. 1984.
- Becker, T. L. Comparative Judicial Politics. Chicago: Rand McNally and Company. 1970.
- Bellah, Robert N.; Madsen, Richard; Sullivan, William M.; Swidler, Ann; Tipton, Steven M. Habits of the Heart. Berkeley: University of California Press. 1985.
- Bennett, W. Lance. The Political Mind and the Political Environment. Lexington, MA: D.C. Heath. 1975.

Bermant, Gordon. Jury Selection Procedures in the United States District Courts. The Federal Judicial Center. 1982.

Birenbaum, Arnold. "The Sociologist on Jury Duty." Criminology. Volume 8. pp. 195-204. August, 1970.

Bradburn, Norman M. and Sudman, Seymour et al. Improving Interview Method and Questionnaire Design: Response Effects to Threatening Questions in Survey Research. San Francisco: Jossey-Bass. 1981.

Broeder, Dale W. "The University of Chicago Jury Project." Nebraska Law Review. Vol. 38. pp. 744-760. 1959.

Brown, James P. "A Juror's View." Georgia State Bar Journal. 2:1. pp. 225-229. 1965.

California State Legislature Assembly Committee on the Judiciary. Hearing on Jury Selection and Management Process. October 3, 1979.

Cameron, James Duke, "A Judge in the Jury Box," Letter to the Editor. Judicature. 64:9. p. 386. April, 1981.

Chesterton, G. K. "The Twelve Men." in Tremendous Trifles. Beaconsfield, England: Darwen Finlayson. 1968.

Committee on Standard Jury Instructions, Criminal, of the Superior Court of Los Angeles County, California. California Jury Instructions, Criminal. Fifth Edition. St. Paul: West Publishing Co. 1988.

Connelly, Michael J. "Jury Duty: the Juror's View." Judicature. pp. 118-121. 1971.

Converse, Philip E. "Attitudes and Non-attitudes: Continuation of a Dialogue." in The Quantitative Analysis of Social Problems. Edited by Edward R. Tufte. Reading, Mass: Addison-Wesley. 1970.

Conway, M. Margaret. Political Participation in the United States. Washington, D.C.: CQ Press. 1985.

"The Current Controversies About Juries." Massachusetts Law Quarterly. 8:3. pp.31-37. February, 1923.

Dahl, Robert A. Who Governs? Democracy and Power in an

- American City. New Haven: Yale University Press. 1961.
- Deemer, Charles. "The Jury--A Grave Experience." Case and Comment. Vol. 77. pp. 46-49. September/October, 1972.
- DiPerna, Paula. Juries on Trial. New York: Dembner Books. 1984.
- Durand, Richard M.; Bearden, William O.; Gustafson, A. William; Ashworth, G. Edward, Jr. "Individual Perceptions of Jury Service." The Alabama Lawyer. 38:3 pp. 395-404. July, 1977.
- Erlanger, Howard S. "Jury Research in America: Its Past and Future." Law and Society Review. pp. 345-369. July, 1970.
- Fitzpatrick, Collins T. "A Lawyer's Impression of Jury Duty, or Who Would Leave a Lawyer on a Jury?" Illinois Bar Journal. pp. 702-705. August, 1983.
- Fleming, Vic. "An Insider's Look at Jury Duty." Arkansas Lawyer. p. 117. July, 1985.
- Flynn, William J. Jr. "Public Preference for the Jury." New York State Bar Bulletin. 32:103. 1960.
- Forsyth, William. History of Trial by Jury. New York: James Cockcroft and Company. 1875.
- Frank, Jerome. Courts on Trial: Myth and Reality in American Justice. Princeton University Press. 1949.
- Freeman, Jonathan L.; Carlsmith, J. Merrill; Sears, David O. Social Psychology. Englewood Cliffs, N.J.: Prentice Hall. 1974.
- Greene, Edith. "A Jury Researcher Joins the Jury." Case and Comment. 91:1. p. 28-38. January/February, 1986.
- Hans, Valerie P. and Vidmar, Neil. Judging the Jury. New York: Plenum Press. 1986.
- Hastie, Reid; Penrod, Steven D.; Pennington, Nancy. Inside the Jury. Cambridge: Harvard University Press. 1983.
- Higginbotham, Patrick E. "Continuing the Dialogue: Civil Juries and the Allocation of Judicial Power." Texas Law Review. Volume 56. 47-60. 1977.

- Hinchcliff, Carole L. "Portrait of a Juror: A Selected Bibliography." Marquette Law Review. Volume 69. pp. 495-514. 1986.
- Holdsworth, William S. A History of English Law. Seventh Edition. Methuen. 1966.
- Hovland, Carl I. and Irving L. Janis (Eds.) Personality and Persuasibility. New Haven: Yale University Press. 1959.
- Jacobson, Gary J. "Citizen Participation in Policy-Making: The Role of the Jury." Journal of Politics. Volume 39. pp. 73-96. 1977.
- Kadish, Mortimer R. and Sanford H. Kadish. Discretion to Disobey: A Study of Lawful Departures from Legal Rules. Stanford University Press. 1973.
- Kalven, Harry, Jr. "The Dignity of the Civil Jury." Virginia Law Review. Volume 50. pp. 1055-1075. 1964.
- Kalven, Harry, Jr. and Hans Zeisel. The American Jury. Boston: Little Brown and Company. 1966.
- Kaplan, Jack. "In Praise of Juries: A Personal Experience." New York State Bar Journal. Volume 51. p. 384. August, 1979.
- Kassin, Saul M. and Lawrence S. Wrightsman, The American Jury on Trial: Psychological Perspectives. New York: Hemisphere Publishing Corporation, 1988.
- Kerig, Dawn V. "Perceptions from a Jury Box." California State Bar Journal. pp. 306-313. September, 1979.
- Kraft, Ivor. "Happy New Year--You're a Juror." Crime and Delinquency. Volume 28. pp. 838-843. September, 1970.
- Kunstler, William M. "Jury Nullification in Conscience Cases." Virginia Journal of International Law. Volume 10. pp. 71-84. 1969.
- Langbein, John H. "Understanding the Short History of Plea Bargaining." Journal of Law and Society. Vol. 13. Winter 1979.
- Langton, Stuart. Citizen Participation in America: Current Reflections on the State of the Art. Lexington, Massachusetts: Lexington Books. 1978.

- Law Reform Commission of Canada. The Jury in Criminal Trials. Working Paper No. 27. Ottawa: Law Reform Commission of Canada. 1980.
- Leavitt, Jack. "The Jury at Work." Hastings Law Journal. Volume 13. pp. 415-450. 1962.
- Levine, James P. "The Legislative Role of Juries." American Bar Foundation Research Journal. Volume 1984. pp. 605-634. 1984.
- Lind, E. Allan; Kurtz, Susan; Musante, Linda; Walker, Laurens; and Thibaut, John. "Procedure and Outcome Effects on Reactions to Adjudicated Resolutions of Conflicts of Interest." Journal of Personality and Social Psychology. 39 1980.
- Macy, John. "Indiscretions of a Juror: Reflections of a Three Month Siege." Case and Comment. Vol. 17. pp. 607-612. 1910.
- Maxwell, Robert F. "The Case of the Rebellious Juror." American Bar Association Journal. Volume 56. pp. 838-843. September, 1970.
- McClosky, Herbert and Alida Brill. Dimensions of Tolerance: What Americans Believe About Civil Liberties. New York: Russell Sage Foundation. 1983.
- McGuire, William. "The Nature of Attitudes and Attitude Change" in The Handbook of Psychology Edited by Gardner Lindzey and Eliot Aronson. Second Edition. Reading, MA: Addison-Wesley. 1968-1969.
- McNulty, Dan. "Through the Eyes of a Juror." American Bar Association Journal. Volume 67. pp. 1634-1638. December, 1981.
- Milbrath, Lester and M.L. Goel. Political Participation: How and Why Do People Get Involved in Politics. Second Edition. Washington, D.C.: University Press of America. 1977.
- Mill, John Stuart. On Liberty and Considerations on Representative Government. Oxford: Basil Blackwell. 1946.
- Neuman, W. Russell. The Paradox of Mass Politics: Knowledge and Opinion in the American Electorate. Cambridge,

- Mass: Harvard University Press. 1986.
- Nichols, Lee. "Jury Service." Los Angeles Bar Bulletin. 30:11. pp. 343-347. September, 1957.
- Nie, Norman H.; Verba, Sidney; Kim, Jae-on. Participation and Political Equality: A Seven Nation Comparison. Cambridge University Press. 1978.
- Nunn, Clyde A.; Crockett, Harry J., Jr.; Williams, J. Allen, Jr. Tolerance for Conformity: A National Survey of Changing Commitment to Civil Liberties. San Francisco: Jossey-Bass. 1978.
- Olson, Mancur. The Logic of Collective Action. Cambridge, Mass: Harvard University Press. 1965.
- Pabst, William R., Jr.; Munsterman, G. Thomas; Mount, Chester H. "The Myth of the Unwilling Juror." Judicature. 60:4. November. p.164. 1976.
- Pabst, William R., Jr.; Munsterman, G. Thomas; Mount, Chester H. "The Value of Jury Duty." Judicature. 61:1. June-July, 1977.
- Pedersen, Johannes T. "On the Educational Function of Political Participaion: A Comparative Analysis of John Stuart Mill's Theory and Contemporary Survey Research Findings." Political Studies. 30:4. p. 557. 1982.
- Pateman, Carole. Participation and Democratic Theory. Cambridge University Press. 1970.
- Research and Forecasts, Inc. The American Public, the Media and the Judicial System: A National Survey on Public Awareness and Personal Experience. Hearst Corporation. 1983.
- Richert, John P. "Jurors' Attitudes Toward Jury Service." Justice System Journal. p. 233-245. 1977.
- Richert, John. "A New Verdict on Juror Willingness." Judicature. 60:10. May, 1977.
- Sarat, Austin. "Studying American Legal Culture: An Assesment of Survey Evidence." Law and Society Review. 11:3. Winter, 1977.
- Saks, Michael J. Jury Verdicts: The Role of Group Size and Social Decision Rule. Lexington, Massachusetts:

- Lexington Books. 1977.
- Schott, Daniel A. "A Newsman's Reflections on Jury Service." 2:2. Litigation. pp. 24-25. April, 1977.
- Schuman, David. A Preface to Politics. Second Edition. Lexington: D.C. Heath and Company, 1977.
- Seymour, Tryntje Van Ness. "They Don't Care About Us." New York State Bar Journal. Volume 51. August, 1979.
- Sherman, Arthur. "Eliminating Juror Confusion: A Judge's View From The Jury Box." Court Review. Volume 21. pp. 15-17. Winter, 1984.
- Sigel, Roberta S., ed. Political Learning in Adulthood: A Sourcebook of Theory and Research. Chicago: University of Chicago Press. 1989.
- Simon, Caroline K. "The Juror in New York City: Attitudes and Experiences." American Bar Association Journal. Volume 61. pp. 207-211. February, 1975.
- Simon, Rita J. The Jury: It's Role in American Society. Lexington Books. 1980.
- Simon, Rita J., ed. The Jury System in America: A Critical Review. Beverly Hills. Sage Publishing. 1975.
- Sperlich, Peter W. "The Incentive Structure of Lay Adjudicators in Two Legal Cultures." IGS Occasional Paper, Delivered to the XIIIth World Congress of the International Political Science Association. 1985.
- Sperlich, Peter W. "And Then There Were Six: The Decline of the American Jury." Judicature. Volume 63. pp. 262-279. 1980.
- Sperlich, Peter W. "Better Judicial Management: The Best Remedy for Complex Cases." Judicature. Volume 65. pp. 415-419. 1982.
- Sperlich, Peter W. "Lay Participation in Judicial Proceedings in the United States." World Congress. International Political Science Association. Moscow, USSR. August, 1979.
- Sperlich, Peter W. and Jaspovice, Martin J. "Methods for the Analysis of Jury Panel Selections: Testing for Discrimination in a Series of Panels." Hastings Constitutional Law Quarterly. Volume 6. pp.

787-852.

1979.

Sperlich, Peter W. "Trial by Jury in the United States: There May Be A Future." In Supreme Court Review. Edited by Phillip B. Kurland and Gerhard Casper. University of Chicago Press. 1979.

Squire, Peverill; Wolfinger, Raymond; Glass, David. "Residential Mobility and Voter Turnout." American Political Science Review. 81:1 March, 1987.

Stimson, Shannon C. The American Revolution in the Law: Anglo-American Jurisprudence Before John Marshall. Princeton: Princeton University Press. 1990.

Stouffer, Samuel. Communism, Conformity and Civil Liberties. New York: Doubleday. 1955.

Strick, Ann. Injustice for All. New York: G. P. Putnam's Sons. 1977.

Sudman, Seymour; Bradburn, Norman M. Asking Questions: A Practical Guide to Questionnaire Design. San Francisco: Jossey-Bass. 1982.

Sullivan, John L.; Piereson, James E.; Marcus, George E. Political Tolerance and American Democracy. Chicago: University of Chicago Press. 1982.

Tapp, June Louin and Levine, Felice (eds.) Law, Justice and the Individual in Society: Psychological and Legal Issues, New York: Holt, Rinehart and Winston. 1977.

Tapp, J. L., et al. "Socialization: Three Ages, Three Rule Systems." in D. Perlman and P. Crosby (eds.) Social Psychology. New York: Holt, Rinehart and Winston, 1981.

Tocqueville, Alexis de Democracy in America. New York: New York: Vintage Books. 1945.

Tocqueville, Alexis de. Democracy in America. Volume II trans. George Lawrence, ed. New York: Doubleday, Anchor Books. 1969.

Tyler, Tom, et al. "Maintaining Allegiance toward Political Authorities: The Role of Prior Attitudes and the Use of Fair Procedures." American Journal of Political Science. Vol. 33, 1989.

"The View From the Other Side of the Bench: Two Judges
Serve as Jurors." ABA Journal. Volume 67. February,
1986. p. 53.

Wishman, Seymour. Anatomy of a Jury: The System on Trial.
Times Books. 1986.

Wolfinger, Raymond and Rosenstone, Steven. Who Votes? New
Haven: Yale University Press. 1980.

Yankelovich, Skelly and White, Inc. "Highlights of a
National Survey of the General Public, Judges, Lawyers
and Community Leaders" in State Courts: A Blueprint for the
Future. Edited by Theodore J. Fetter. Williamsburg,
VA: National Center for State Courts. 1978.