

ESSAY

**IS IT POSSIBLE TO PREDICT JUROR BEHAVIOR?**

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**I. Introduction**

Each year in the United States there are over 150,000 jury trials. Theoretically, the jury serves as the conscience of the community. The jury's decision manifests what is acceptable and unacceptable behavior. With this substantial responsibility, jurors are assigned the responsibility of evaluating arguments made by attorneys, determine the truthfulness of witness's testimony, decipher physical evidence, and comprehend jury instructions given by the judge. Therefore, the American adversarial system allows attorneys a great deal of latitude in determining a juror's fitness to serve.

Attorneys often consider many variables important when considering whether to select or excuse a prospective juror. For example, some legal scholars would argue that bumper stickers (attitude), lawn care practices (conscientiousness) and clothing attire (socioeconomic status) are significant factors when selecting or excusing a juror. Others may suggest a person's type of employment (occupation) or view towards war (ideology) are acceptable indicators. Since attorneys utilize predictability measures, caution should be heeded. Research investigating individual differences involving personality, ideologies, attitudes, and demographics as predictors of jury decision making have been widely studied.<sup>1</sup> However, research

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<sup>1</sup> John W. Clark et al., *Big Five Personality Traits, Jury Selection and Case Outcomes in Real Criminal and Civil Cases*, 34 CRIM. JUST. & BEHAV. 641, 642 (2007).

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examining these variables has produced incongruent findings.<sup>2</sup>

Legal scholars must understand that the selection of jurors is but one facet of trial advocacy. Often, attorneys place a great deal of importance in their selection of jurors. However, the individuals selected, as jurors ultimately comprise a group of twelve develop their own sense of justice. The manifestation of a jury's sense of justice is exhibited via a collective personality, ideology, or attitude. However, in some cases, the jury fails to unite and work toward their stated goal i.e. search for the truth. The latter has led one scholar to suggest: "why do jurors who hear the same evidence frequently disagree on the proper verdict? When and how do preexisting prejudices and attitudes influence jurors' decisions? How do jurors comprehend and apply instructions on the presumption of innocence and the standard of proof?"<sup>3</sup>

With the above sentiments, the purpose of this article is to examine social psychological variables that influence jurors beyond the jury selection phase. Importantly, it should be noted that attorneys have very little, if any, control of the extra-legal factors once a trial commences.

## II. Extra-Legal Factors

The majority of persons summoned for jury duty have no prior exposure to American jurisprudence. Thus, their interaction with judges, attorneys, and bailiffs is not contrived. While the goal of a jury is to determine fact from fiction and innocence from guilt, jurors are at best unpredictable. Given this fact, there are no perfect jurors. All cases, trials, and juries are unique. The selection of

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<sup>2</sup> *Id.* at 641.

<sup>3</sup> INSIDE THE JUROR: THE PSYCHOLOGY OF JUROR DECISION MAKING 3 (Reid Hastie ed., 1993).

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jurors is often characterized by controlled chaos. Specifically, the control mechanism lies in the fact that attorneys are attempting to select or deselect jurors by some reason or fancy. Chaos is demonstrated by the unpredictability of twelve ordinary citizens. While the public often accuses attorneys of “stacking the jury,” this is somewhat of a myth often perpetuated in the media.<sup>4</sup>

Once the process of jury selection is complete and the trial begins, a new dynamic begins. This dynamic is manifested by the inability to control jurors in and out of court. As for out of court, when jurors leave the confines of the court they are free to watch the evening news, read the morning newspaper, surf the internet, or even speak to another juror by telephone or email. While a judge may instruct jurors otherwise, the enforcement is next to impossible unless you sequester all jurors, and even then, abuse is a very real possibility. In court, there are extra-legal factors that may influence an individual as well as the collective jury. Extra-legal factors can be thought of as factors beyond the evidence that influence a juror’s decision. What are some extra-legal factors that influence a juror or jury and ultimately undermine the system? Physical attractiveness, social categorization, judicial bias, personality, attitudes, ideologies, and stress appear to be among the strongest factors. It is important to note that these factors operate from the moment the defendant enters the courtroom. Thus, before opening statements, jurors are sizing up the parties involved.

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<sup>4</sup> NEIL J. KRESSEL & DORIT F. KRESSEL, STACK AND SWAY: THE NEW SCIENCE OF JURY CONSULTING 215-16 (2002).

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### A. Physical Attractiveness

Social psychological research indicates that jurors are affected by a defendant's physical attractiveness.<sup>5</sup> According to Franzoi, the way a defendant is physically perceived has a direct bearing on one's degree of responsibility.<sup>6</sup> Moreover, according to Abwender & Hough, "fairly consistent literature suggest that physically unattractive defendants are generally at a disadvantage, with respect to both the likelihood of being found guilty and the severity of the recommended sentence."<sup>7</sup> At the same time, research suggests that people tend to assume that physically attractive people possess an array of socially desired personality traits. For example, attractive people are more intelligent, confident, strong, happy, assertive, honest, and outgoing than those who are less physically attractive.<sup>8</sup>

Ideally, in a criminal trial, the defendant's physical attractiveness should not matter. However, Abel & Watters, suggest attractiveness is a factor that influences the verdict in both simulated and real world trials.<sup>9</sup> Given the above suggestion, DeSantis & Kayson suggest attorneys are well aware of the importance of the bias toward

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<sup>5</sup> Donald M. Burke et al., *Effects of Victim's and Defendants Physical Attractiveness on the Perception of Responsibility in an Ambiguous Domestic Violence Case*, 5 J. FAMILY VIOLENCE, 199, 200 (1990).

<sup>6</sup> See generally STEPHEN L. FRANZOI, SOCIAL PSYCHOLOGY 4th ed. 1996).

<sup>7</sup> David A. Abwender & Kenyatta Hough, *Interactive Effects of Characteristics and Mock Juror in U.S. Participants' Judgment and Sentencing Recommendations*, 141 J. SOC. PSYCHOL. 603, 604 (2001).

<sup>8</sup> Bruce Keisling & Malcolm Gynther, *Male Perceptions of Female Attractiveness: The Effects of Targets' Personal Attributes and Subjects' Degree of Masculinity*, 49 J. CLINICAL PSYCHOL., 190, 190-95 (1993).

<sup>9</sup> Millicent H. Abel & Heather Watters, *Attributions of Guilt and Punishment as Functions of Physical Attractiveness and Smiling*, 145 J. SOC. PSYCHOL. 687, 688 (2005).

attractiveness and often steer their clients to do everything feasible to improve their appearance in the courtroom.<sup>10</sup> An excellent example of this involves the retrial of Andrea Yates. While the jury found her not guilty by reason of insanity for the drowning of her five children in 2001, the strength of evidence was undeniably strong. According to Parker and Kasindorf, Yates was an attractive defendant who seemed pleasant and personable, a person with whom the jurors could readily identify.<sup>11</sup> Another example is the jury in the first murder trial of Eric and Lyle Menendez. There, jurors were deadlocked, thus guilt could not be established. Interestingly, according to Parks & Sanna, some of the jurors when interviewed later revealed they could not believe the brothers killed their parents because the boys looked like nice young men.<sup>12</sup>

## B. Social Categorization

According to Breckler et al., people separate society into two groups: they view others as belonging either to their own group (the in-group) or to another group (the out-group).<sup>13</sup> Most often, these distinctions are based on religion, race, gender, age, ethnic background, occupation, and income.<sup>14</sup> An important component of the in-group/out-group perspective is the belief that a person considered to be in the in-group is perceived to display or

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<sup>10</sup> Andrea DeSantis & Wesley A. Kayson, *Defendants' Characteristics of Attractiveness, Race, and Sex Sentencing Decisions*, PSYCHOL. REP. 679, 679 (1997).

<sup>11</sup> Laura Parker & Martin Kasindorf, *Yates Retrial May Signal Opinion Shift*, USA TODAY, July 27, 2006, [http://www.usatoday.com/news/nation/2006-07-27-yates-verdict\\_x.htm](http://www.usatoday.com/news/nation/2006-07-27-yates-verdict_x.htm).

<sup>12</sup> CRAIG PARKS & LAWRENCE SANNA, GROUP PERFORMANCE AND INTERACTION, 157 (1999).

<sup>13</sup> STEVEN J. BRECKLER, JAMES M. OLSON & ELIZABETH C. WIGGINS, SOCIAL PSYCHOLOGY ALIVE (2006).

<sup>14</sup> *Id.* at 75.

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possess positive characteristics, whereas a person considered to be in the out-group is thought to possess undesirable or negative characteristics.<sup>15</sup> According to Franzio, with respect to social categorization, research suggests that physical features are the most common way to classify people, particularly in the early stages of impression formation.<sup>16</sup> Interestingly, applying social categorization to jurors is effortless. To demonstrate, from the moment a defendant crosses the threshold of the courtroom doors, all eyes are fixated upon him or her. It is important to recognize that jurors identify the defendant as in-group or out-group and evaluate his or her physical attractiveness. In the end, a defendant who is perceived to possess positive characteristics, in-group standing, and physical attractiveness stands a greater chance of acquittal.<sup>17</sup> For example, from the onset of the O.J. Simpson murder trial there was a tremendous amount of media coverage. Simpson was a wealthy and physically attractive former football star at the college and professional level. Because Simpson was a national celebrity, most Americans had preconceived notions of his character. Interestingly, Toobin discovered that halfway through the trial, sixty percent of Caucasians believed Simpson was guilty, whereas, only twelve percent of African-Americans believed in Simpson's guilt.<sup>18</sup> These figures sustain the theory that an in-group/out-group dichotomy exists.

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<sup>15</sup> Alan J. Lambert, *Stereotypes and Social Judgment: The Consequences of Group Variability*, J. PERSONALITY & SOC.-PSYCHOL. 388, 388 (1995).

<sup>16</sup> FRANZOI, *supra* note 8.

<sup>17</sup> MARK CONSTANZO, PSYCHOLOGY APPLIED TO LAW, 138 (2004).

<sup>18</sup> Jeffrey Toobin, *Putting it in Black and White*, THE NEW YORKER, July 17, 1995.

### C. Judicial Bias

Judges maintain a significant amount of discretion in trial outcomes. While jurors render verdicts and judges serve as the impartial referee, judicial figures exercise serious influence in directing the verdict. Aesthetically, in courtrooms throughout the country, judges wear black robes and sit on escalated benches. Further, the courtroom itself forces an intimidating division between the judge and the citizens. Most often, the courtroom is aesthetically pleasing. To demonstrate in courtrooms throughout the country we find high ceilings, wood panels, marble columns, and visible symbols like the scales of justice; all of which reinforce the judicial branch's image as an institution worthy of respect. Despite members of the judiciary maintaining an air of authority and tradition, it may be impossible for judges to remain truly neutral. Judges, like the rest of us are human beings who make mistakes. Despite remaining neutral, judges hold attitudes, values, biases, and political interests that may affect their rulings. When judges attack a witness's credibility or improperly admit evidence, they negatively impact a defendant's verdict.

Throughout a trial, while judges ask juries to weigh the evidence and witnesses' testimony, the judge's biases enter the courtroom, whether intentional or not.<sup>19</sup> Judges are to suspend judgment until all the evidence, witnesses and closing arguments have been concluded. However, judges often draw their own conclusions based on preferences for the prosecution and, as a result, judges may display nonverbal cues which may influence jurors. Research indicates that a judge's appearance and behavior during a trial or while delivering jury instructions can

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<sup>19</sup> *Id.*

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influence the jury.<sup>20</sup> Moreover, the Alabama Supreme Court in *Allen v. State*, suggested that courts have long recognized that nonverbal judicial behaviors (i.e. facial expressions and tone of voice) can influence jury verdicts.<sup>21</sup> Accordingly, when judges expect a guilty verdict, their non-verbal behavior is often perceived as cold, less competent, less wise and more anxious when delivering instructions to the jury.<sup>22</sup> In contrast, judges expecting a not guilty verdict are perceived as warmer, less hostile, and more open-minded.<sup>23</sup>

### D. Personality

The personality of jurors has received minimal attention from academic researchers throughout the years.<sup>24</sup> A person's personality follows him or her throughout life, and is not to be left at the door when serving on a jury.

At present, only a handful of studies have examined the relationship between juror personality and jury decision making. The following studies will show just what was found with the limited research on juror personalities.

One study administered a personality test to 86 individuals from eight deliberating juries to measure the big five model of personality in Texas criminal and civil cases. It was discovered that jurors who reported high levels of conscientiousness were more likely to be influenced by

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<sup>20</sup> Marisa E. Collett & Margaret B. Kovera, *The Effects of British and American Trial Procedures on the Quality of Juror Decision Making*, 27 LAW & HUM. BEHAV. 403, 405-06, 418 (2003).

<sup>21</sup> 276 So.2d 583, 586 (Ala. 1973).

<sup>22</sup> Peter D. Blanck, *Calibrating the Scales of Justice: Studying Judges' Behavior in Bench Trials*, 68 IND. L.J. 1119, 1139 (1993).

<sup>23</sup> *Id.* at 1137.

<sup>24</sup> Dennis J. Devine et al., *Jury Decision Making: 45 Years of Empirical Research on Deliberating Groups*, 7 PSYCHOL. PUB. POL'Y & L. 622, 674-75 (2001).

other jurors.<sup>25</sup> By contrast, jurors reporting high levels of openness were less likely to report being influenced.<sup>26</sup> Further, extraverted jurors were seen as being more influential than jurors who were introverted.<sup>27</sup> One criticism of this study was the failure to administer a personality test to all people summoned for jury duty to compare the personality tests of those jurors who were selected and those who were excused.

Another study discovered that a person's "character structure" (i.e., socialization, empathy, and autonomy) is related to the voting behavior and effectiveness of jurors.<sup>28</sup> According to this study, character structure relates because socialized individuals are often thought to be more inclined to follow societal rules and values.<sup>29</sup> With respect to empathy, these individuals are more inclined to entertain other people's viewpoint and consider either the defendant's or plaintiff's intentions when coming to their ultimate verdict.<sup>30</sup> Autonomous individuals are characterized as being independent and decisive; and, this study found that individuals who are highly autonomous were able to withstand group influence. A 1996 study examining the personality of jurors serving on felony cases found that guilty verdicts rendered by males are related to authoritarianism and socialization.<sup>31</sup> Two years later,

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<sup>25</sup> David K. Marcus et al., *Studying Perceptions of Juror Influence in Vivo: A Social Relations Analysis*, 24 LAW & HUM. BEHAV. 173, 173 (2000).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 184. Extraversion was the only big five-model trait associated with perceptions of being influential. *Id.*

<sup>28</sup> Carol J. Mills & Wayne E. Bohannon, *Character Structure and Jury Behavior: Conceptual and Applied Implications*. 38 J. PERSONALITY & SOC. PSYCHOL. 662, 662 (1980).

<sup>29</sup> *Id.* at 666.

<sup>30</sup> *Id.*

<sup>31</sup> Gary Moran & John C. Comfort. *Neither "Tentative" Nor "Fragmentary": Verdict Preference of Impaneled Felony Jurors as a*

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another research study asked a mock jury to rate the dominance of jurors in the group during deliberations based upon on a videotaped recreation of a criminal trial.<sup>32</sup> The videotaped deliberations indicate that jurors who scored higher in the extraversion measure were more likely to be perceived as dominant by other jurors and more likely to be selected as a foreperson.<sup>33</sup>

To date, there is only one comprehensive study which examines the relationship between the big five model of personality and actual summoned jurors. This research conducted by Clark et al. is the first study which examines the personality of summoned jurors and the relationship to jury selection, excusal, and case outcomes from deliberating juries in real criminal and civil cases.<sup>34</sup> In total, there were 764 jurors who completed the personality and demographic measures. The researchers administered these measures before the jury selection process. A measure was also given after a verdict had been reached. Here, an attempt was made to ascertain jurors' case experiences. Court clerks were very useful in supplying information about the juries composition; verdict; and whether the jurors were struck for cause, excused by the defense, or excused by the prosecution.<sup>35</sup>

Results indicate personality and selection to a jury trial were not associated with a juror's personality traits.<sup>36</sup>

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*Function of Attitude Toward Capital Punishment*, 71 J. APPLIED PSYCHOL. 146, 146 (1986).

<sup>32</sup> K.J. Rotlenberg, M.G. Hewlett, & C.M. Siegwart. *Principled Moral Reasoning and Self Monitoring as Predictors of Jury Functioning*, 20 BASIC & APPLIED SOC. PSYCHOL.173 (1998).

<sup>33</sup> *Id.*

<sup>34</sup> John W. Clark, Marcus Boccacini, Beth Caillouet, & William F. Chaplin, *Five Factor Model Personality Traits, Jury Selection, and Case Outcomes in Criminal and Civil Cases*, 34 CRIM. JUST. & BEHAV. 641, 641 (2007).

<sup>35</sup> *Id.* at 647.

<sup>36</sup> *Id.* at 650-51.

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However, there was an association between a juror's race and sex. Specifically, African-Americans were most likely to be excused from jury duty, and women were more likely to be selected to serve as a juror than a male. Another finding suggests the prosecutor was more likely to excuse younger and employed jurors than the defense.<sup>37</sup> Overall, there were 17 juries that deliberated to a verdict. Researchers found that juror extraversion was associated with case outcomes and processes.<sup>38</sup> Specifically, extraversion was associated with being selected as a jury foreperson.<sup>39</sup> Also noteworthy is the fact that foreperson extraversion was associated with lengthy jury deliberation times and the perceived foreperson influence in criminal cases.<sup>40</sup>

### E. Attitudes

Inside and outside the courtroom, all participants have independent judgments about some aspect of society. Jurors may have strong views about politicians, abortion, law enforcement, or capital punishment. It is an *a priori* assumption that jurors bring their attitudes and life experiences to the jury box. Obviously, in a courtroom where the jury decides guilty versus not guilty and freedom versus incarceration, attitudes of a jury are paramount. Even though *voir dire* may enable an attorney to identify potential jurors who are biased or subjective, impartial jurors still may end up serving in a trial. In the field of social psychology, it is without a doubt that attitudes influence social thought.<sup>41</sup> Accordingly, attitudes often surface in the form of schema. According to Wyer & Srull,

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<sup>37</sup> *Id.* at 651.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 655.

<sup>40</sup> *Id.* at 651, 654-55.

<sup>41</sup> *Id.* at 119.

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schema are cognitive frameworks that help us to organize and analyze information about specific situations, concepts, or events.<sup>42</sup> In a criminal or civil trial, schema may play a crucial role as jurors go through a cognitive process in evaluating the guilt or innocence of an individual. Research conducted by Pennington and Hastie describes a story model for juror decision-making.<sup>43</sup> The authors hypothesize that jurors develop a narrative story of the trial and ultimately organize the trial information into an understandable context. This context enables them to render a decision.<sup>44</sup> Furthermore, the story model suggests that some jurors rely on their world knowledge and life experiences in deciding the guilt of an individual.<sup>45</sup> Most importantly, jurors go through this cognitive story construction from the opening statement to the actual deliberations. To illustrate the above schema or story model, imagine a jury of twelve individuals in which there are seven males and five females. Moreover, there are four jurors with advanced degrees, six with a high school education, and two with a GED. Now imagine four jurors who are Caucasian, five African-Americans, and three Hispanics. Importantly, all of these jurors bring their own biases and prejudices into the courtroom. Furthermore, each one develops his or her own personal schema in evaluating the evidence, the defendant, and events in question.

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<sup>42</sup> HANDBOOK OF SOCIAL COGNITION, 47 (Robert S. Wyer, Jr. & Thomas K. Srull eds., 1994).

<sup>43</sup> Nancy Pennington & Reid Hastie, *The Story Model for Jury Decision Making*, in *INSIDE THE JUROR: THE PSYCHOLOGY OF JUROR DECISION MAKING* (Reid Hastie ed. 1994).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

## F. Ideology

The ideological construct that has received the most attention in jury research is authoritarianism. According to Narby, Cutler, and Moran, the authoritarian is likely to hold or subscribe to conventional values, submit to strong leadership, act aggressively toward out-group members, and “believe in the rightness of power and control, whether personal or societal.”<sup>46</sup>

In essence, a reasonable person could conclude that authoritarianism is the value that a wrong should be punished through retribution.<sup>47</sup> As a result, jurors who are authoritarian are more likely to recommend lengthy sentences, to vote guilty, and to punish the defendant when he or she is of a lower social status than the juror or attitudinally dissimilar.<sup>48</sup> Research on authoritarian jurors has also shown that a juror’s ethnicity, sex, and type of crime committed serve as moderators of the relation between authoritarianism and outcomes.<sup>49</sup>

A second ideology is the belief in a just world. According to Boyll, this person views life as just and fair and ultimately individuals get what they deserve. To illustrate, research conducted by Gerbasi, Zuckerman, and Reiss discovered that mock jurors who demonstrated a

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<sup>46</sup> Douglas Narby, Brian Cutler, & Gary Moran, *A Meta-Analysis of the Association Between Authoritarianism and Jurors’ Perceptions of Defendant Culpability*, 78 J. OF APPLIED 34, 34 (1993).

<sup>47</sup> *Id.* at 35.

<sup>48</sup> Virginia R. Boehm, *Mr. Prejudice, Miss Sympathy and the Authoritarian Personality: An Application of Psychological Measuring Techniques to the Problem of Jury Bias*, 1968 WIS. L. REV. 734, 744 (1968).

<sup>49</sup> Linda A. Foley & Minor H. Chamberlin, *The Effect of Race and Personality on Mock Jurors’ Decisions*, 112 J. OF PSYCH. 47, 47 (1982).

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strong just world belief are more likely to blame the victim for the crime being committed.<sup>50</sup>

### G. Stress

The reality is that most legal scholars forget jurors are placed under a tremendous strain that ultimately manifests as stress. The legal community must be cognizant that jurors may be experiencing extreme levels of stress before, during, and after the trial. Research conducted by the National Center for State Courts suggests that:

[j]urors confront numerous sources of stress at every stage of jury duty, even in routine trials. Beginning with the summons to jury service, they experience disruption of their daily routines, lengthy waits with little information and often in unpleasant surroundings, anxiety from the scrutiny of lawyers and the judge during voir dire, tension from sifting through conflicting versions of facts and unfamiliar legal concepts, conflicts during deliberations, and isolation following the verdict and their release from jury service.<sup>51</sup>

In addition, research conducted by Hafemeister and Ventis indicated that jurors maybe more likely to experience stress in trials that depict unusually violent crimes.<sup>52</sup> Importantly, these trials are characterized by visually graphic and horrific evidence that is often

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<sup>50</sup> Kathleen C. Gerbasi, Miron Zuckerman, & Harry T. Reiss, *Justice Needs a New Blindfold: A Review of Mock Jury Research*, 84 PSYCH. BULL. 323, 330 (1977).

<sup>51</sup> NATIONAL CENTER FOR STATE COURTS, THROUGH THE EYES OF THE JUROR: A MANUAL FOR ADDRESSING JUROR STRESS 1 (1998).

<sup>52</sup> Thomas L. Hafemeter & W. Larry Ventis, *Juror Stress: Sources and Implications*, 30 TRIAL 68 (1994).

accompanied by a recording of the crime scene.<sup>53</sup> It should be noted that jurors in these trials have subsequently gone on to reveal stress related symptoms for months afterward.<sup>54</sup> Some of these jurors have actually sought out professional assistance i.e. counseling which could continue for years. To demonstrate, one juror who served on a capital murder case suggested that she almost divorced over it.<sup>55</sup> This juror experienced depression, a feeling of a lack of control, and nightmares.<sup>56</sup> She ultimately stopped talking. In a second example, a juror who served on a case that was punishable by a life sentence stated:

After the trial, the first day I went back to work, somebody came up and said, ‘Hi you doing?’ I just cut loose crying and I cried for an hour solid, and my boss was in the office that day, just on a routine visit, and that poor man didn’t know what to do! [He] kept saying, ‘she’s got to get some help!’ He thought I was having a nervous breakdown, but I mean, it was just, it had to come out of somewhere, I guess. . . . I thought about it all the time, you know.<sup>57</sup>

A second source of stress is deliberations. According to research conducted by National Center for State Courts, the foremost stressor as reported by jurors in death penalty cases is deciding whether or not to impose the death penalty.<sup>58</sup> Another stressor as reported by these jurors is determining whether the accused is guilty of a capital

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Michael E. Antonio, *I Didn’t Know It’d be so Hard: Jurors Emotional Reactions to Serving on A Capital Trial*, 89 JUDICATURE 282, 286 (2006).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 71.

offense.<sup>59</sup> With respect to non-capital offenses, the number one source of stress is deciding on a verdict.<sup>60</sup> Given this, Bornstein et al. conducted a study that examined juror stress in 28 trials.<sup>61</sup> A total of one hundred and fifty-nine jurors participated in the study, which examined stress immediately after the trial and one month afterward.<sup>62</sup> The results indicate that the greatest amounts of stress resulted from the decision-making tasks itself.

Another source of stress is the *voir dire* process. Most importantly, the National Center for State Courts discovered that over three-quarters of jurors experienced stress during jury selection. This makes perfect sense if we recognize that the majority of jurors are unsure of the process and most often, they are thrown into an awkward situation.<sup>63</sup> Further, *voir dire* is often characterized by intrusion. Attorneys (whom are perfect strangers) ask very personal and private questions about the lives of jurors and this “shocks” and violates all rights of privacy.<sup>64</sup> It should also be noted that stress may arise from responding to surveys that may be administered by the court.<sup>65</sup> To demonstrate, jurors are asked to provide demographic information.<sup>66</sup> This often includes age, gender, race, education status, marital status, and possibly occupation.<sup>67</sup> A second type of survey and most often traumatic is the one that is case specific.<sup>68</sup> Examples here include attitudinal measures such as opinions toward sexual

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<sup>59</sup> NATIONAL CENTER FOR STATE COURTS, *supra* note 61.

<sup>60</sup> *Id.*

<sup>61</sup> B. Bornstein et al., *Juror Reactions to Jury Duty: Perceptions of the System and Potential Stressors*, 23 BEHAV. SCI. & L. 321 (2005).

<sup>62</sup> *Id.* at 326-27.

<sup>63</sup> *Id.* at 16.

<sup>64</sup> *Id.* at 17.

<sup>65</sup> *Id.* at 20

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 20-21.

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offenders, abortion, capital punishment, politics, and religion.<sup>69</sup> Additional questions include victimization, any prior exposure of the case, prior arrest record, and any familiarity with the criminal justice system (i.e. a family member or friend that has or had been incarcerated or arrested.)<sup>70</sup>

Another source of stress is the disruption of the daily lives of jurors.<sup>71</sup> According to research examining juror stress, disruption of daily lives is a serious issue.<sup>72</sup> Serving as a juror means essentially surrendering one's daily schedule in exchange for public service. Interestingly, an argument could be made that the majority of people would consider jury duty as bothersome and at best, undesirable. It should be noted that attorneys should consider the specific circumstances of a prospective juror. Prospective jurors could be experiencing childcare issues, marital and financial problems, as well as health conditions. The last source of stress is the instruction to jurors that forbids them from speaking about the trial.<sup>73</sup> Accompanying this is the restriction from reading the newspaper or viewing the news on local or cable television. According to the National Center for State Courts, 60 jurors were asked, "What were the negatives of serving as a juror?"<sup>74</sup> One juror responded, "It was very difficult because you could not talk or share the internal debate in my mind."<sup>75</sup> There were doubts that could not be shared.

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<sup>69</sup> *Id.* at 21.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 25.

<sup>72</sup> Brian Bornstein, Monica Miller, Robert Nemeth & Gregory Page, *Juror Reactions to Jury Duty: Perceptions of the System and Potential Stressors*, 23 BEHAV. SCI. & L. 321, 321, 346 (2005).

<sup>73</sup> NATIONAL CENTER FOR STATE COURTS, EVALUATION OF THE JURY DEBRIEFING PROGRAM: KING COUNTY SUPERIOR COURT, at Appendix B-2 (2003).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

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A second juror suggested: “Having to keep everything inside of you. If I had to go much longer, thought [I] would go nuts. [I] [w]alked out of [the] courtroom after seeing [a] picture of [the] victim and saw a girl on the bus that looked like [the] victim.”<sup>76</sup> Most intriguingly, research reveals that reaching out and seeking someone else is paramount for an individual’s well being.<sup>77</sup> This is why jurors are psychologically harmed by forced silence and isolation for the duration of a trial.

### III. Conclusion

Trial by jury is a cornerstone of American jurisprudence. The 21<sup>st</sup> century juror is asked to bear a heavy burden. We expect jurors to be impartial and conscientious. In courtrooms across this Country, we strive and desire for just verdicts and equity for all parties. Most importantly, these admirable goals may be undermined by extra-legal factors that cannot be dismissed. This article examined physical attractiveness, social categorization, judicial bias, personality, attitudes, ideologies, and stress. All of these factors collectively, or in part, may undermine the pursuit of justice. Ultimately, how do we predict the unpredictable?

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<sup>76</sup> *Id.*

<sup>77</sup> CHARLES MORRIS & ALBERT MAISTO, UNDERSTANDING PSYCHOLOGY (7<sup>th</sup> ed. 2006).