

THE IMPACT OF TRIAL CONSULTANTS ON PERCEPTIONS OF  
PROCEDURAL JUSTICE AND JUROR VERDICTS:  
AN EMPIRICAL INVESTIGATION

by

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A dissertation submitted to the Graduate Faculty in Psychology in partial fulfillment of  
the requirements for the degree of Doctor of Philosophy, The City University of New  
York

2011

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This manuscript has been read and accepted for the  
Graduate Faculty in Psychology in satisfaction of the  
dissertation requirement for the degree of Doctor of Philosophy.

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## Abstract

THE IMPACT OF TRIAL CONSULTANTS ON PERCEPTIONS OF PROCEDURAL  
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by

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Despite the proliferation of the trial consulting industry in recent years, we know virtually nothing about the impact that the use of a trial consultant may have on a jury. This laboratory study seeks to fill some of the gaps in the trial consulting literature by using the principles of procedural justice to explore what, if any, impact the use of a trial consultant can have on the outcome of a criminal jury trial, as well as the possibility that perceptions of fairness mediate the relationship between the balance of trial consultants and juror verdicts in cases where the evidence is ambiguous. Two hundred fifty-five jury-eligible individuals recruited from the participant pool of the psychology and management departments at Baruch College were asked to complete three questionnaires following the random assignment to a case summary that had been manipulated with respect to evidence strength (SOE) and use of a trial consultant. Hypotheses predicted that (a) a trial would be perceived as being higher in neutrality and global fairness if both the prosecution and defense used a trial consultant than if only one party used a trial consultant, (b) the likelihood of conviction would be highest when the evidence favored

the prosecution, moderate when the evidence was ambiguous, and lowest when the evidence favored the defense, (c) the likelihood of conviction would be impacted by an interaction between SOE and balance of trial consultants such that when the evidence is ambiguous and both sides use a trial consultant, the likelihood of conviction would be higher than when the prosecution alone used a trial consultant but lower than when the defendant alone used a trial consultant, and (d) the relationship between the balance of trial consultants and likelihood of conviction would be mediated by perceptions of neutrality and global fairness when the evidence was ambiguous. Results supported the hypothesized relationship between SOE and likelihood of conviction, but there was only weak to moderate support for the relationship between the balance of trial consultants and perceptions of fairness. No significant interaction or mediation was found among the variables. Implications for the fields of procedural justice and trial consulting are discussed.

## Table of Contents

<b>Chapter 1</b>	<b>Introduction</b>	<b>1</b>
<b>Chapter 2</b>	<b>Review of the Trial Consulting Literature</b>	<b>7</b>
	<i>Trial Consulting: Art or Science?</i>	9
	<i>Are the Procedures Used by Trial Consultant's Effective?</i>	9
	<i>Are the Procedures Used by Trial Consultants Ethical</i>	14
	- <i>Are the poor at a disadvantage?</i>	15
	- <i>Does the use of trial consultants violate principles</i>	17
	<i>Trial Consultants as a Source of Bias</i>	20
<b>Chapter 3</b>	<b>Review of the Procedural Justice Literature</b>	<b>23</b>
	<i>Procedural Justice Background</i>	23
	- <i>The Beginning: Equity Theory</i>	23
	<i>Thibaut and Walker's Contribution</i>	24
	- <i>Thibaut and Walker criticism</i>	27
	<i>Leventhal's Contribution</i>	28
	- <i>Leventhal's six general rules of procedural justice</i>	28
	- <i>Empirical support for Leventhal</i>	31
	- <i>Criticism of Leventhal</i>	32
	<i>Drawing the Theories Together: Sheppard and Lewicki</i>	35
	<i>Tyler's Contribution</i>	38
	- <i>The Chicago study</i>	38
	<i>A Group-Value Theory of Procedural Justice</i>	43
	- <i>Further empirical support for Tyler</i>	47
	- <i>Extending the procedural justice framework</i>	52
<b>Chapter 4</b>	<b>Statement of the Problem and the Present Study</b>	<b>54</b>
	<i>Hypothesis 1</i>	62
	<i>Hypothesis 2</i>	62
	<i>Hypothesis 3</i>	62
	<i>Hypothesis 4</i>	63
	<i>Hypothesis 5</i>	65
	<i>Hypothesis 6</i>	65
<b>Chapter 5</b>	<b>Method</b>	<b>66</b>
	<i>Participants</i>	66
	<i>Design</i>	66
	<i>Materials</i>	67
	- <i>Manipulation of Strength of Evidence</i>	67
	- <i>Manipulation of Use of a Trial Consultant</i>	70

	<i>Measures</i>	71
	- <i>Procedural Justice</i>	71
	- <i>Likelihood of Conviction</i>	75
	- <i>Manipulation Checks</i>	76
	- <i>Demographic and Background Information</i>	76
	<i>Procedures</i>	77
<b>Chapter 6</b>	<b>Pretest of Materials: The Pilot Study</b>	<b>79</b>
	- <i>Descriptive Statistics</i>	79
	- <i>Manipulation Checks</i>	80
<b>Chapter 7</b>	<b>Results</b>	<b>83</b>
	<i>The Present Study</i>	83
	- <i>Descriptive Statistics</i>	83
	- <i>Manipulation Checks</i>	85
	<i>Hypothesis Tests</i>	87
	- <i>Hypothesis 1</i>	87
	- <i>Hypothesis 2</i>	89
	- <i>Hypothesis 3</i>	90
	- <i>Hypothesis 4</i>	94
	- <i>Hypothesis 5 and Hypothesis 6</i>	99
	<i>Open-Ended Questions</i>	99
<b>Chapter 8</b>	<b>Discussion</b>	<b>105</b>
	<i>Balance of Trial Consultants</i>	105
	<i>Strength of Evidence</i>	109
	<i>Interaction</i>	111
	<i>Mediation</i>	114
	<i>Open-Ended Questions</i>	115
	<i>Contributions to the Literature</i>	119
	<i>Limitations and Suggestions for Future Research</i>	125
	<i>Conclusions</i>	130
<b>Appendixes</b>	Appendix A: <i>Case Summaries</i>	<b>133</b>
	Appendix B: <i>Inserted Paragraphs</i>	139
	Appendix C: <i>Juror Instructions</i>	142
	Appendix D: <i>Relational Theory Measure</i>	144
	Appendix E: <i>Likelihood of Conviction Measure</i>	145
	Appendix F: <i>Demographic and Background Information</i>	147
<b>Bibliography</b>		<b>148</b>

## List of Tables

Table 1 – Participants By Experimental Condition.....	67
Table 2 – Cronbach’s Alpha Reliabilities for Scores on Scales and Subscales.....	75
Table 3 – Proportion of Participants Identifying Use of Trial Consultants Per Condition (Pilot).....	81
Table 4 – Proportion of Participants Identifying Use of Trial Consultants Per Condition.....	87
Table 5 – Summary of Logistic Regression Analysis for SOE Predicting Likelihood of Conviction ( $N = 255$ ).....	91
Table 6 – Classification Outcome Table of Observed Versus Predicted Results for Likelihood of Conviction.....	92
Table 7 – Proportion of Verdicts Per Condition ( $N = 255$ ).....	92
Table 8 – Summary of Logistic Regression Analysis for SOE/TC Interaction Predicting Likelihood of Conviction ( $N = 255$ ).....	95
Table 9 – Proportion of Verdicts Per All Conditions ( $N = 255$ ).....	96
Table 10 – Mean Continuous Verdict Measure Scores Across Conditions ( $N = 255$ ).....	98

## CHAPTER 1

## Introduction

Although the trial consulting industry has been in existence for almost four decades and the publication of jury selection guides by attorneys for use by other attorneys dates back more than 100 years (Fulero & Penrod, 1990), the widespread acceptance of trial consultants by many in the legal community is a relatively new phenomenon (“Giving Lawyers,” 2002). Lawyers are increasingly realizing that trial consultants are no longer frivolous luxuries to be used only in highly publicized cases, but rather people who can give invaluable feedback and guidance from the standpoint of someone trained to think more like a juror than a lawyer (Bennett & Hirschhorn, 1993). Trial consultants are often called upon to assist attorneys in all aspects of a trial, ranging from pre-trial community surveys to jury selection and witness preparation. Despite their prevalence in the modern American courtroom, however, we know very little about the impact that the use of a trial consultant may have on a jury. When only one side of a case has access to the resources and skills of a professional consultant, the jury’s notion of a level playing field may be disturbed. The main purpose of the present study is to determine whether the use of a trial consultant by one or more opposing parties in the courtroom can affect a juror’s perception of fairness, ultimately influencing the verdict.

The consulting industry has been quick to respond to the increasing demand for its services; the American Society of Trial Consultants (ASTC), which began in 1982 with only a handful of members, has grown between six percent and twelve percent every year for two decades and now encompasses over 400 members (Myers, 2004), with an estimated 100 to 150 more trial consultants who do not belong to the group (Renaud,

2001). Not everyone is pleased that business is booming, however. Despite the increased use of trial consultants by the legal community the industry remains “a lightning rod for controversy” (Strier, 1999, p. 93). One criticism is the lack of standards in the field. Given the enormous potential for influence in the legal arena, it astounds some critics that the trial consulting industry remains largely unregulated. At the present time, trial consultants can and often do come from a variety of educational and professional backgrounds (e.g., psychologists, sociologist, attorneys) and do not need a specific education or training to practice (Lane, 1999). Furthermore, unlike in the fields of psychology and law, trial consultants have no licensing requirements and are not bound by any ethical guidelines/principles or codes of conduct. “In fact, anyone can be a trial consultant because there are no qualifications or educational requirements” (Griffith, Hart, Kessler, & Goodling, 2007, p. 149).

Some argue that this lack of standards is unfair. For example, Theresa Zagnoli, a past president of the ASTC Foundation, states that, ““Those of us who are leaders in this field and who do solid, scientific research and have years of training...want to continue to enhance the image of the profession...it’s very difficult to do that if you let anyone in your only national organization”” (Myers, 2004, p. 1). Others (e.g., Moran, 2001) believe that enacting regulations and standards for those who practice trial consulting is unnecessary, arguing that, “jury consulting is not an established discipline with a corpus of knowledge prerequisite to competent performance” (p. 83). The first ever formal debate over whether to accredit members of the trial consulting industry was held in 2004 at the annual meeting of the ASTC, and the topic will most likely continue to generate discussion for some time to come. In the meantime, the ASTC has established a Code of

Professional Standards and a formal grievance procedure (New, Schwartz, & Giewat, 2006) to address some of the concerns that plague the field. Essentially, the Grievance Committee of the board has the authority to apply sanctions ranging from written admonishment to suspension or expulsion from ASTC. There is currently no formal professional costs associated with a violation of the code, however, since a member who is expelled from ASTC can continue to practice as a trial consultant (along with the many trial consultants who have chosen not to join the organization in the first place) (Lieberman & Sales, 2007).

Not nearly as straightforward are the issues of efficacy and fairness, the two topics that have generated the most controversy and criticism in the trial consulting industry. Some researchers have speculated that public scrutiny has increased in recent years due to the spate of high profile cases involving trial consultants, such as O. J. Simpson, Rodney King, Reginald Denny, Bernhard Goetz, William Kennedy Smith, and the McDonalds' hot coffee case (Kressel & Kressel, 2002; Strier, 1999). Most recently, trial consultants were used in the trials of Michael Jackson, Scott Peterson, and Martha Stewart (Chawkins, 2005; Dearen, 2004; "Traits of the Right Juror", 2004). In all of these cases, trial consultants were able to help obtain favorable verdicts for their clients, which helped to both increase the popularity of the field and draw attention to its perceived weaknesses. Those in support of the field have gone so far as to speculate that, "there is even talk that in the future, failure to use trial scientists during trial preparation could amount to legal malpractice" (Gordon, 1995, p. 9). Likewise, Atlanta criminal defense attorney Brian Steel says he's "found consultants so critical to the defense team that he calculates their cost when he quotes clients a fee" (Renaud, 2001, p. 3).

Although accolades such as these abound in the legal community, it is critical to address the fact that many in both the legal and social scientific communities are not similarly impressed. Fulero and Penrod (1990b), for example, claim that the academic community is not warmly receptive of the field, remaining skeptical of both the ethics and the efficacy involved in trial consulting. Barber (1994) warns that the growth of jury science over the past decade has ramifications for the fundamental fairness of our jury system. Galen (1992) sums up the feelings of many critics of the industry when he states that the services of a trial consultant may be “more art than science” (p. 108), a statement that will be examined in greater detail in the next section.

Although all of these issues are important, this study focuses on a neglected aspect of the use of trial consultants in jury trials: whether or not the use of a trial consultant by one or more opposing parties in the courtroom can impact the outcome -- the actual determination by a juror of a defendant’s guilt or innocence -- of a trial. An affiliate of the National Legal Research Group asserted that the public has come to see that “we’re not stacking juries and we’re not engaging in mind control. We’re just another member of the team” (Renaud, 2001, p. 5). As consultants become increasingly visible and accepted in the courtroom, there is a need to determine if a trial consultant is just another member of the legal team, or if jurors may perceive the presence of a trial consultant in a negative light. Stolle, Robbennolt, and Wiener (1996) found that a trial was perceived by participants as being more fair if both the prosecution and defense had access to trial consultants or neither did, particularly when the outcome favored the prosecution/plaintiff. Additionally, in the only study known to examine how eligible jurors view trial consultants, Griffith et al. (2007) found that eighteen percent of

participants indicated that if they knew that one side was using a trial consultant, they would be biased against the side that hired the consultant.

Research has also shown that bias tendencies decrease when people are confronted with clear proof of guilt or innocence, and increase when the weight of the evidence decreases (e.g., Baumeister & Darley, 1982; Kaplan & Miller, 1987). It is therefore possible that in cases where the evidence is not clear-cut, an imbalance of trial consultants could impact a juror's likelihood to convict the defendant. The main objective of the present study is to investigate this and related possibilities.

One way of assessing the fairness of trial consulting is through the principles and concepts of procedural justice. Currently, concerns about the processes through which decisions are made form the basis of what is referred to as *procedural justice* (Thibaut & Walker, 1975). As Stolle et al. (1996) state, "The methodologies developed in the context of exploring procedural justice theory provide a suitable framework for operationalizing, quantifying, and measuring soft variables such as fairness. Consequently, procedural justice theory may act as a vehicle for systematically and empirically evaluating the perceived fairness of trial consulting" (p. 7). Research in a variety of other legal arenas have used this framework to evaluate the perceived fairness and overall legitimacy of Supreme Court decision making (Tyler & Rasinski, 1991), alternative dispute resolution techniques (MacCoun, Lind, & Tyler, 1992), methods for resolving medical malpractice claims (Poythress, Schumacher, & Wiener, 1993), and civil tort proceedings (Lind, MacCoun, & Ebener, 1990). Because criteria such as accuracy have traditionally been viewed as easier to operationalize, quantify, and measure than "soft" variables such as fairness (Fondacaro, 1995), empirical trial

consulting literature has tended to focus more on efficacy than ethicality or fairness. Stolle et al. (1996) emphasize, however, that the legal legitimacy of trial consulting is largely dependent upon the criteria of fairness presented in the social scientific procedural justice literature. It is imperative, therefore, that more studies use procedural justice theory to investigate the perceived fairness of trial consulting.

The purpose of this study is twofold. First, this study seeks to fill some of the gaps in the trial consulting literature by exploring what, if any, impact the use of a trial consultant can have on the outcome of a criminal jury trial. Second, this study explores the intervening mechanisms behind the trial consultant - verdict link. Why might the balance of trial consultants affect the likelihood of conviction in a criminal trial? This paper examines the possibility that perceptions of fairness mediate the relationship between the balance of trial consultants and juror verdicts in cases where the evidence is ambiguous. Chapter 2 includes background information on the field of trial consulting, including a summary of the issues surrounding the efficacy and fairness of the industry. Chapter 3 provides a brief literature review on the history of procedural justice, paying particular attention to Lind and Tyler's (1988) group-value model and the relational concerns of trust, neutrality, and status recognition. Chapter 4 summarizes the limitations of the trial consulting research and presents the study's hypotheses. Chapter 5 provides an overview of the methods used to test the hypotheses in the present study. Chapter 6 describes the analyses and results of the pilot study. Chapter 7 describes the analyses and results of the present study. Chapter 8 details the implications and contributions of the present study, as well as its limitations and directions for future research.

## CHAPTER 2

## Review of the Trial Consulting Literature

The roots of scientific jury selection are frequently cited as beginning in 1971 with the trial of the “Harrisburg Seven,” a group of Vietnam War protestors who were accused of conspiring to kidnap then Secretary of State Henry Kissinger (Barber, 1994; Stolle et al., 1996; Strier, 1999). When sociologist Jay Schulman and his colleagues came to the assistance of the defense and helped to select the jury, the verdict was 10 to 2 for acquittal and a new field had taken hold. Prior to this time, attorneys had to rely on their own personal and trial experience, or seek guidance from a variety of trial specialists who offered conflicting guidance (Diamond, 1990). The field has expanded considerably in the past 30 plus years; according to Strier (2001), a 1995 estimate of \$400 million in industry revenues “easily may now have doubled” (p. 70). DecisionQuest, a California-based firm with over a dozen offices nationwide, alone grossed nearly \$300 million in revenues in 2003 (Myers, 2004). More up to date statistics regarding typical fees, individual compensation, and industry revenue are not readily available. In fact, Posey and Wrightsman (2005) report that a participant on the ASTC listserv tried to determine the current range of hourly fees, but the general reaction was a complete rejection of this inquiry.

What is known is that business has been particularly brisk in the past twenty years. As Bennett and Hirschhorn (1993) state, “In the age of massive TV consumption, ‘law and order’ hysteria, the war on crime and tort reform, the need for someone to assist lawyers in jury selection and other emotional parts of a case has become paramount” (p. 2). Celebrity status trials involving O.J. Simpson, the Menendez brothers, and the Exxon

Valdez propelled jury consultants into the limelight (Gordon, 1995). More recently, Martha Stewart's attorneys hired a trial consultant when she was scheduled for trial in early 2004, as did Scott Peterson's attorneys in mid 2004. The use of trial consultants has even been glamorized in popular films such as "Runaway Jury" (Downer & Fleder, 2003). Although the field has garnered much of its attention from the criminal litigation mentioned above, it is now more common for trial consultants to be used in large-scale civil litigations, such as securities fraud and antitrust cases (Ellis, 2005).

Because the field of scientific jury selection now reaches far beyond the jury selection phase of the trial, the term "trial consulting" is more commonly used to reflect the broader role played by those in the industry. Whereas "jury selection consultants" of the past would construct a model of a potential juror favorable to their client's case and use this knowledge to attempt to choose a jury panel to fit this characterization (Lane, 1999), today's trial consultants employ a variety of techniques to assist attorneys during all aspects of a trial. For example, two commonly used methods are the community survey, which is a survey conducted to derive demographic and attitudinal profiles of community members most likely to appear on a jury panel, and the mock trial, which involves a full dress rehearsal of a case in order to assist attorneys with voir dire, opening arguments, witness testimony for each side, closing arguments, judge's instructions, and jury deliberations. As these and other techniques used by trial consultants have gained popularity, the issues of efficacy and fairness have come under increased scrutiny.

With regard to the matter of efficacy, some researchers have asserted that trial consultants cannot effectively predict juror behavior (e.g., Diamond, 1990; Lane, 1999). Other researchers dispute this claim, arguing that there is empirical evidence linking

scientific jury selection with juror behaviors and verdicts (e.g., Fulero & Penrod, 1990b; Stolle et al., 1996). The other issue, fairness, tends to center around two concerns: Whether the industry is inherently unfair because it is accessible only to the wealthy and privileged, and whether the use of a trial consultant violates principles of impartiality, judgment by peers, and democracy. These criticisms will be discussed in greater detail in the next section.

### *Trial Consulting: Art or Science?*

#### *Are the Procedures Used by Trial Consultant's Effective?*

Does hiring a trial consultant really improve the odds of winning a case? Debate on this topic continues to rage, particularly in the academic community. Cases such as the 1980 federal antitrust trial between AT&T and MCI have helped win the support of “some of the finest and most critical legal minds in the nation” (Stolle et al., 1996, p. 4). A mock trial held to pretest the arguments of MCI’s lawyers accusing AT&T of monopolistic practices found that when a jury heard the MCI lawyers mention lost profits totaling \$100 million, those mock jurors decided to award exactly that amount. When another mock trial was held with different jurors and MCI’s lawyers did not request any particular figure, the group awarded \$900 million. As a result of these findings, MCI’s attorneys devised strategies for jury selection and case presentation that ultimately resulted in a \$600 million verdict against AT&T (Kressel & Kressel, 2002).

Despite such successes, critics of the field point to the lack of empirical research supporting its usefulness. Diamond (1990), for example, reminds us that despite the high success rates claimed by consultants in obtaining favorable verdicts for their clients, “no one has yet produced convincing evidence that advice on jury selection made the

difference. The demands of the courtroom preclude a full controlled test of the technique in the courtroom setting” (p. 179). Admittedly, researchers like Diamond (1990) and Strier (1999) are correct when they point out that it is impossible to assert that a successful verdict in an actual trial is directly and solely attributable to scientific jury selection. The factors involved are too confounded: The client who can afford a trial consultant is usually the same client who can afford the best attorneys, the best experts, and the best investigators. However, researchers like Bornstein (1999) have shown that simulation studies can and do provide valid results when doing research in the legal arena; when Bornstein (1999) compared different trial mediums (e.g., live trial vs. brief written summaries in a simulation study), no effect was found in the majority of cases.

One major problem with the empirical research supporting the use of trial consultants is in the way the research is interpreted. While early research investigating the associations between juror characteristics and verdict tendencies found only weak to moderate sized relationships, Wiener and Stolle (1997) point out that more recent studies have found that juror characteristics account for meaningful, albeit small, percentages of variance (4% to 31%) in criminal verdicts (e.g., Penrod, 1990; Visher, 1987). Fulero and Penrod (1990b) examined the results of empirical studies that had attempted to link demographic and personality variables (e.g., gender, race/ethnicity, occupation, demeanor/appearance, wealth and social status, religion, marital status, and age) to jury verdicts. In general, Fulero and Penrod (1990b) detected modest relationships between demographic and personality variables and jury verdicts, with the variance explained in verdict preferences ranging from approximately five to fifteen percent. Although up to that point in time there were a number of studies linking demographic and personality

variables to attitudes, there was much less support for the notion that these variables could be linked to juror verdicts. The distinction is important; as Fulero and Penrod (1990b) make clear, this link must be established in order to show that scientific jury selection works.

Similarly, Visher's (1987) study focused on juror decision making in sexual assault cases. After interviewing 331 jurors, she assessed jurors' characteristics and attitudes on crime as well as defendant and victim characteristics. An evaluation of the trial evidence showed modest but significant correlations between predeliberation verdict preferences and education ( $r = .15$ ), race ( $r = .15$ ), occupational status ( $r = .12$ ), attitudes on crime ( $r = .16$ ), and tendency to blame victims ( $r = .22$ ). Using a hierarchical regression analysis, Visher found that evidence accounted for 34% of the variance in jury verdicts, victim and defendant characteristics accounted for 8% of the variance, and 2% of the variance was accounted for by juror characteristics and attitudes. A mock trial study conducted by Penrod (1990) looked at the verdicts of 367 actual jurors in four simulated trials in order to assess the impact of various attitudinal and demographic characteristics on verdicts. When each verdict was separately regressed over 21 attitudinal and demographic items, the overall variance explained in verdicts by these variables ranged between 4.9% and 14.1% for each variable. Penrod (1990) also found that no single predictor worked in more than two of the cases and the highest correlation between any two verdicts was only  $-.13$ .

While some might view these relatively weak relationships as evidence of ineffectiveness, Fulero and Penrod (1990b) point out that a small amount of variance in this context is not insignificant. As Penrod and Cutler (1985) explain, for example, an

attorney acting randomly on a fifty percent favorable and fifty percent unfavorable jury pool would correctly classify fifty percent of the jurors. If, however, a jury survey detected a relationship in which five percent of the variance in verdict was accounted for by attitudinal and personality measures, an attorney would increase his/her performance to sixty-one percent correct classifications by using that information. If fifteen percent of the variance was accounted for, performance would increase to sixty-nine percent correct. Fulero and Penrod (1990b) believe that this assistance during voir dire should not be minimized: "Clearly, although the percentage of variance explained may be small, the potential improvement in selection performance is not insignificant. If a defendant has his life or millions of dollars at stake, the jury selection advantages conferred by scientific jury selection techniques may well be worth the investment" (pp. 250-251).

In an attempt to further clarify the usefulness of social science for trial preparation, Wiener and Stolle (1997) conducted a series of studies to investigate the influence of demographic and attitudinal variables on jury decision making in a capital murder case. In addition, the researchers examined attorneys' beliefs as to which variables they thought to be predictive of verdicts and sentence outcomes in the same capital murder case. The results indicated that attorneys believed more factors to be influential than actually were. For example, attorneys indicated that marital status, race, political ideology, and attitudes toward African Americans, handgun control, and illegal drugs were all influential in trying to distinguish which way jurors would vote. In fact, none of these factors differentiated between jurors' verdicts or correlated with the certainty of the jurors in their verdicts. On the other hand, some of the factors that did

differentiate among the actual jurors' verdicts were not chosen as significant demographic attributes. For example, the status of parenthood distinguished between the not guilty and guilty voting jurors, but the attorneys did not recognize this variable as an important factor in separating life imprisonment from death sentencing jurors. Wiener and Stolle (1997) speculate that without the assistance of a jury survey, it is very likely that the attorneys would eliminate the wrong variables and would base their selections on faulty assumptions. The skills of a trial consultant would therefore prove to be useful. Summing up an extensive review of the research assessing the effectiveness of scientific jury selection, Lieberman and Sales (2007) conclude that, "determining the effectiveness of scientific jury selection is difficult because there are not many published studies that have directly examined the technique; the studies that do exist are methodologically flawed in a variety of ways" (p. 165). However, they go on to state that, "if scientific jury selection creates even minimal improvement in an attorney's ability to identify and eliminate a biased juror, then the use of this approach can be worthwhile" (p. 165).

The studies examined by Fulero and Penrod (1990b) and the investigation by Wiener and Stolle (1997) illustrate one of the most glaring problems with the research that has been conducted on the effectiveness of the trial consulting industry: the almost exclusive focus upon jury selection. As mentioned before, jury selection is just one part of a trial consultant's job. Nevertheless, investigations into the usefulness of holding mock trials or assisting with voir dire, opening arguments, witness testimony for each side, closing arguments, judge's instructions, or jury deliberations have been virtually ignored (Lieberman & Sales, 2007). Stolle et al. (1996) believe that research that includes these aspects of a consultant's job may very well impact effectiveness; as some

commentators have suggested, the amount of variability in juror verdicts that is accounted for by the trial consultant's intervention may increase considerably if new trial preparation techniques are used in conjunction with scientific jury selection. They lament, however, the fact that no empirical evaluations of the combined use of such techniques currently exist in the academic literature. Clearly, future research on the effectiveness of trial consulting should include variables beyond the dimension of jury selection. The next section will focus on fairness, which has received more attention than efficacy from researchers in the legal and psychological community.

*Are the Procedures Used by Trial Consultants Ethical and/or Fair?*

Debate in this area is focused on two separate issues: Whether the field of trial consulting is inherently unfair because it is accessible only to the wealthy and privileged due to its high cost, and whether its use violates principles of impartiality, judgment by peers, and democracy. Barber (1994) is just one of many detractors who fear that jury science is a "phenomenon that has ballooned over the past twenty years and threatens to undermine the basic values of our jury system" (p. 1226). One problem is the escalating cost of trial consultants; consequently, those litigants most likely to need a consultant are least likely to be able to afford the steep price tag of that consultant. Because corporations, governments, and wealthy people can most typically afford the service, the concept of a fair trial may be undermined. When only one side can afford jury selection experts, it creates an imbalance similar to the imbalance that can result from a mismatch of other client resources (e.g., the quality of lawyer and legal resources one can afford; Strier, 1999).

*Are the poor at a disadvantage?* A position often cited in the literature is that scientific jury selection is only a moderately successful method that is used by zealous attorneys advocating for their clients, and that this usually amounts to an unethical advantage for the rich at the expense of poorer litigants. Furthermore, it is often argued that if the use of a trial consultant can provide an advantage, only large corporations and wealthy individuals will have access to this advantage, therefore leaving the average litigant with “some form of second-class justice” (Stolle et al., 1996, p. 4). Others, on the other hand, argue that trial consultants continue to be unfairly plagued by misunderstanding and skepticism. In the article “Tipping the scales in favor of one side” published in the *Illinois Legal Times* (1996), LaDonna Carlton of Carlton Trial Consulting addresses the public misconception that only people with a lot of money use trial consultants, and thus have the advantage over everyone else in our society. In truth, she explains, trial consultants are used in civil cases as well as in criminal cases by people of varying means. Although corporate defense clients far outnumber plaintiffs lawyers (Gordon, 1995), both plaintiff and defense attorneys use trial consultants to conduct jury-related research and assist in preparing for trial (Yarborough, 1996). An article in *The National Law Journal* discusses how consultants have become fixtures at major trials in criminal matters and products liability cases. Although their services are more likely to be found on the defense side in criminal cases, consultants say that federal prosecutors are making increasing use of their services (Renaud, 2001).

Although a disparity of resources continues to exist, Stolle et al. (1996) point out that inequities abound in the justice system. Research has shown, for example, that jurors make higher awards against corporations and government than against individuals. They

conclude that the high price of trial consulting is no less fair than the high cost of traditional legal services. Similarly, Tanford and Tanford (1988) argue that “the problem of disparity of resources, including legal talent, is not new; it has plagued our system for generations...the solution is not to control or ban the use of psychology, as some have suggested, but to continue to disseminate scientific information to all lawyers and to expand what is already being made available” (p. 25). For attorneys, the practice of hiring consultants is legally permissible, and one could even argue inherently important, if clients are to be represented to the best of their abilities by using all the tools at their disposal (Lieberman & Sales, 2007). Furthermore, Lieberman and Sales (2007) assert that “any imbalance in the courtroom created by the disparate wealth between individuals or corporations involved in litigation would be present regardless of whether jury selection consultants were used” (p. 200). Solomon Fulero, an academic jury researcher and consultant, notes that the Supreme Court determined in 1963 that the assistance of counsel for indigent defendants is a fundamental right essential to a fair trial and protected by the Fourteenth Amendment, and believes that if trial consultants truly are effective an attempt should be made to level the playing field in cases where it is an issue. This can be done by providing free trial consulting services to those who cannot afford them (Kressel & Kressel, 2002).

Such efforts are being made: Some judges have attempted to level the playing field by appointing consultants to assist indigent defendants. In the Reginald Denny trial, for example, Los Angeles Superior Court Judge John W. Ouderkirk appointed a trial attorney at \$175 an hour to assist the defense (Barber, 1994). The National Jury Project (1999) states that it is now almost commonplace in some jurisdictions for public funds to

be used to enable death-penalty defendants to hire trial consultants. An article in *The Legal Intelligencer* featured a retired judge providing free mock jury trials to area attorneys in order to make the service available for low-budget cases (Stewart, 2002). State funding of trial consultants is also a possibility and should be considered (Barber, 1994; Stolle et al., 1996). In addition to the question of whether the use of trial consultants puts the poor at a disadvantage, the issue of fairness has also centered around whether the use of trial consultants impacts our sense of a level playing field.

*Does the use of trial consultants violate principles of impartiality, judgment by peers, and democracy in our jury system?* Of even greater concern to some are the questions the field of trial consulting raises with regard to these aspects of a level playing field. When consultants claim that they can influence the outcome of a case, it reinforces the public's belief that attorneys are capable of manipulating juries, thereby evading the requirement of an impartial jury as mandated by the United States Constitution. Such claims also further the idea that money can buy a verdict, which undermines the public's confidence in the jury's verdict as well as the jury system and the legal profession as a whole (Lane, 1999). Because the Sixth and Seventh Amendments to the United States Constitution ensure the right to a civil or criminal trial by an impartial jury, critics question the ability of a jury to remain fair and impartial when one or both sides take advantage of trial consultants' services. Furthermore, Barber (1994) believes that even if we can ensure that the use of trial consultants are applied even-handedly, utilizing trial consulting techniques may still foster the negative societal perception that the jury system is being undermined or rigged, or that juries can be manipulated and their actions predicted. One attorney stated that trial consultants "do a great job for the defense in

defining a profile of somebody who will help get the defendant off. What does that have to do with rendering a just verdict? Some would argue that jury consultants bastardize the justice system” (“Tipping the scales in favor of one side,” 1996, p. 1). More specifically, Gold (1987) argues that many of the psychological techniques used by trial consultants are designed to influence juries subconsciously and that this “covert advocacy” threatens to deprive the jury of its ability to function properly. In addition, there are some who believe that even if trial consultants do not influence the outcome of a case or unfairly manipulate juries, the field creates a public *perception* of the jury being manipulated by psychological devices (Gold, 1987). Strier (1999) warns against perceptions that may detract from the legitimacy of the jury’s role, pointing out that the appearance of justice is just as important as the reality when striving to preserve and maintain public support for the legal institution.

In response to some of these concerns, advocates of the field argue that jury behavior and trial process are often misunderstood, which in turn exaggerates the negative impact of lawyers aided by psychologists. Tanford and Tanford (1988) claim that rather than arming trial lawyers with psychological weapons that can damage jurors’ abilities to decide cases based on evidence, trial consultants have identified a number of factors that, when communicated to trial lawyers, have decreased the likelihood that these extraneous influences will affect verdicts. Trial consultants can help lawyers by using their understanding of jurors’ cognitive processes to counteract existing biases and make sure their clients’ sides are heard and understood. Tanford and Tanford conclude that the benefits provided by trial consultants outweigh any possible abuses, and that we have no reason to fear scientific knowledge nor should we attempt to control its infusion into the

trial process. Barber (1994) also agrees that using “jury science” helps root out bias by allowing attorneys to see through dishonest answers from potential jurors during voir dire. In addition, he thinks that trial consultants help counter the juror misconception that a defendant is guilty as charged, decreases stereotypes by attorneys, and, when used by weaker defendants, remains a potentially powerful means for balancing inequities.

Drawing on personal experience, some consultants claim that the jurors themselves do not feel as if they are being manipulated. In their book entitled *Bennett’s Guide to Jury Selection and Trial Dynamics in Civil and Criminal Litigation*, Bennett and Hirschhorn (1993) maintain that although jurors “may have felt some resentment during the course of jury selection, once they were sworn in they felt special because they had been approved by one of those ‘new-fangled things’ called a jury and trial consultant” (p. 3). Furthermore, the authors state that, “In hundreds of cases it has been the rare juror who has ever continued to hold resentment toward the lawyer for hiring a consultant” (p. 3). Others believe that there may be a difference in perceptions of fairness depending on whether the trial consultant participates in scientific jury selection or post-selection services. Strier (1999), for example, hypothesizes that post-selection services (e.g., enhancing evidence presentation and argumentation) may seem more acceptable than scientific jury selection techniques that may seem to transgress the rules of what is a “fair trial.” There is evidence to support this viewpoint: A research project conducted by members of the ASTC in 2005 polled more than 500 jury-eligible citizens throughout the United States. The researchers found that 73 percent of respondents believed that preparing witnesses to testify is a good idea, 66 percent agreed that it is appropriate for a witness to practice before testifying, and less than 15 percent believed that witnesses who

practice their testimony have something to hide (New, Schwartz, & Giewat, 2005). Although not conducted with trial consultants in mind, research in the area of jury behavior also indicates that juries are not easy to manipulate. Essentially, the bulk of studies have shown that jurors do not abdicate their responsibility as fact-finders when faced with expert evidence (Vidmar, 2000).

### *Trial Consultants As a Source of Bias*

Despite the fact that “trial consultants are surely changing the ways in which we seek justice in the United States” (Kressel & Kressel, 2002), little empirical evidence related to the field exists. One area that has received virtually no attention is whether trial consultants themselves can serve as a source of bias. Can the use of a trial consultant by one or both opposing parties in the courtroom affect a juror’s perception of fairness, and consequently impact the outcome of a case? As defined by *McDonough Power Equipment, Inc. v. Greenwood* (1984, 464 U.S. 554), an impartial jury is “a jury capable and willing of deciding a case solely on the evidence before it.” Does the presence of a trial consultant make this task more difficult? According to Bennett and Hirschhorn (1993), we should not fear that jurors will resent lawyers who have jury and trial consultants in the courtroom; in fact, jurors interviewed post-trial have consistently said that they felt the need to be even more fair in looking at and verbalizing their biases and prejudices when a trial consultant was present. This issue has not been investigated empirically, however.

The present study will investigate whether the balance of trial consultants can serve as a source of bias, particularly in cases where the evidence is ambiguous. Research has shown that strength of evidence (SOE), a term used to refer to the quantity

and quality of evidence presented by the plaintiff/prosecution during a trial, influences jury decisions (e.g., Green, Johns, & Bowman, 1999; Kerr, Niedermeier, & Kaplan, 1999). After reviewing 45 years of empirical research on jury decision making, Devine, Clayton, Dunford, Seying, and Price (2001) concluded that research related to SOE in both the laboratory and the field has shown a predictable, strong positive association with jury verdicts of guilt/liability. In cases where the evidence is more ambiguous, however, jurors tend to “liberate” themselves from the constraints of the evidence and become more susceptible to influence from extraneous (biasing) factors (Kalven & Zeisel, 1966). In other words, studies indicate that bias tendencies decrease when confronted with clear proof of guilt or innocence, and increase when the weight of the evidence does not clearly favor one side (e.g., Baumeister & Darley, 1982; Kaplan & Miller, 1978).

Baumeister and Darley (1982), for example, investigated whether a jury’s bias in favor of an attractive defendant may be the result of making reasonable inferences about the details of the case, and whether this bias would decrease as factual information increases. The authors conducted two experiments during which they presented undergraduates with a fictional case of a person arrested for drunk driving. Driving speed and intoxication level were either made explicit or left ambiguous, and this variable was crossed with manipulation of the attractiveness of the defendant. Participants answered questions related to sentencing and their recollection of facts. Results indicated that bias of jurors in favor of an attractive defendant was significantly reduced when the factual material in the case was increased.

This paper will investigate the possibility that the balance of trial consultants can serve as a biasing factor when SOE is ambiguous, thus influencing a juror’s

determination of a defendant's guilt or innocence. More specifically, this paper will examine whether a defendant's likelihood of conviction might change as a factor of evidence strength and balance of trial consultants. Jurors may perceive the party without the consultant as an underdog and either exonerate the defendant (in situations where the prosecution alone has a consultant) or compensate the prosecution with a conviction (in situations where the defendant alone has a consultant). In cases where the evidence is ambiguous and trial consultants are not balanced between parties, perhaps perceptions of fairness mediate the trial consultant-verdict link. Based on research that has shown that biasing factors have little to no impact on jurors when SOE is weak or very strong (e.g., Kerr et al., 1999), it is not predicted that the balance of trial consultants will serve as a biasing factor in cases where the evidence either favors the defense or prosecution.

In order to investigate these possibilities, it is important to determine the impact that trial consulting procedures have on the perceived fairness of courtroom proceedings and the outcomes of those proceedings. As mentioned previously, the procedural justice framework provides us with an effective tool to assess perceived fairness in relation to trial consulting. The next section will explore procedural justice theory in more detail.

## CHAPTER 3

### Review of the Procedural Justice Literature

Procedural justice research evolved from two conceptual models: Thibaut and Walker's (1975) focus on dispute intervention procedures and Leventhal's (1980) focus on procedures related to questions of resource allocation. The first section of this chapter briefly reviews these older theories, which emphasize how procedural elements affect justice judgments. The focus will then turn to Tyler's contributions to the field, which target the social cognitive antecedents of procedural justice (beliefs and attitudes that seem to be close causes of the judgment of a fair procedure). Specifically, the group-value model (Lind & Tyler, 1988; Tyler, 1989; Tyler & Lind, 1992) and its three relational concerns will be examined.

#### *Procedural Justice Background*

##### *The Beginning: Equity Theory*

Most of the early research on fairness gave disproportionate emphasis to the study of distributive justice, which focuses on the fairness of rewards (or punishments). The first model of distributive justice, Adams's (1965) equity theory, was originally developed to help explain workers' reactions to their wages. It has subsequently developed into a general theory of justice that is used to explain all types of social interactions, including allocation of pay and romantic relationships (Tyler et al., 1997). The basic underlying principle of equity theory involves the balance between contributions and rewards; it predicts that salaries will be perceived as fair if they are in proportion to the relative contributions made by workers. Furthermore, equity theory predicts that when this principle is violated (people are either over benefited or under

benefited), people will feel upset. When a person feels guilty over receiving too much or angry over receiving too little, he or she is motivated to restore a fair balance between inputs and outcomes.

There are numerous studies that have supported equity theory by showing that people become upset when they are either over- or underpaid (e.g., Pritchard, Dunnette, & Jorgenson, 1972; Greenberg, 1990). Despite the popularity of equity theory and the empirical support it has received, studies have suggested that most of the work conflicts observed involve issues other than pay and performance (e.g., Lissak & Sheppard, 1983; Sheppard & Lewicki, 1987). Questions related to procedure were mentioned by subjects again and again, leading researchers to suggest the need for a broader justice framework that also paid attention to how decisions are made (Tyler et al., 1997). Researchers are now beginning to recognize the critical role played by procedural justice, which focuses on the fairness of the rules and procedures with which the rewards are distributed.

#### *Thibaut and Walker's Contribution*

The systematic study of the psychology of social decision making procedures began in the early 1970s with the work of John Thibaut and Laurens Walker. In their 1975 book entitled *Procedural Justice: A Psychological Analysis*, Thibaut and Walker describe a set of studies they performed on the judicial system. According to these researchers, there are two distinct aspects of legal settings that have the potential to affect satisfaction: (a) the outcome of a trial (the verdict or judgment given), and (b) the manner in which the trial is conducted. Thibaut and Walker concentrated on the second aspect, which they called procedural justice, and explored the nature of the processes governing dispute resolutions and courtroom deliberations.

Thibaut and Walker's theory, which is known as the instrumental model of procedural justice, united two important areas of social psychology- process and fairness- by hypothesizing that the process by which dispute-resolution decisions are made influences the satisfaction of litigants with those decisions. According to Thibaut and Walker (1975), an individual's view about the fairness of procedures is shaped mainly by the distribution of control between disputants and the third-party decision-maker. They identified two types of control: process control, which they refer to as "voice" and refers to the opportunity to present evidence to decision makers in a case, and decision control, which refers to the degree of control any one participant has over determining the outcome of the dispute. Dispute resolution procedures will be perceived as fair to the extent that disputants are given an opportunity to have their say (process control) and an opportunity to influence the final decision (decision control). Thibaut and Walker believed that because people are reluctant to give up control to a third party, the presentation of evidence ("voice") is one way to maintain some degree of indirect control over the decisions of authorities. Thibaut and Walker (1975; 1978) demonstrated that procedural effects occur independent of the outcome of the litigant's case, and that providing disputants with the opportunity to state their claim is the best way to ensure that the process will be perceived as fair and the ultimate decision accepted as just.

Thibaut and Walker's work stimulated a great deal of interest in the area of procedural justice, and their initial research has been confirmed in a wide variety of subsequent studies in many different areas: Procedural justice has been found to be important in citizens' dealings with the police (e.g., Tyler & Folger, 1980), in political allocations (e.g., Tyler, Rasinski, & McGraw, 1985), in interpersonal contexts (e.g.,

Barrett-Howard & Tyler, 1986), and in organizational settings (e.g., Greenberg, 1987; Sheppard & Lewicki, 1987), to name just a few. “The general finding...has been that procedural justice is a remarkably potent determinant of affective reactions to decision making and that procedural justice has especially strong effects on attitudes about institutions and authorities, as opposed to attitudes about the specific outcome in question” (Lind & Tyler, 1988, p. 179). Furthermore, little difference has been found in the importance placed upon procedural justice by various ethnic groups. Huo and Tyler (2001), for example, collected data from a mail survey of Asians, Blacks, Latinos, and Whites working in a public sector organization. When the authors examined the effect of ethnicity on how people define procedural justice, no significant differences were found across ethnic groups. Similarly, Tyler (1988) also found that whites and minorities define procedural fairness in the same way; no differences with respect to ethnicity (or gender, income, or other personal characteristics) were found when citizens were asked to evaluate how fairly they were treated by police officers and judges.

Research has also shown that perceptions of fairness tend to be robust across ideologies. Studies have shown that people who differ in their social values and/or political ideologies often tend to agree on whether a particular procedure is fair. For example, Tyler (1994) sampled Black and White residents of the San Francisco Bay area regarding the fairness of government decision-making procedures and discovered that respondents’ judgments about what makes a procedure fair were not affected by political ideology, ethnicity, gender, education, income, or age.

These empirical findings support the importance that legal scholars attach to the evaluation of trials by both procedural and outcome criteria. Furthermore, legal scholars

(e.g., Mashaw, 1985) have recognized that using fair procedures enhances the dignity of the individual and the individual's commitment to the law. For example, research has shown that the willingness of people to accept mediation decisions when pursuing grievances in federal court was strongly predicted by procedural justice judgments about the way those decisions were made (Lind et al., 1993).

*Thibaut and Walker criticism: extending the framework.* Despite the robustness of their findings, Thibaut and Walker did face skepticism from the legal community and other social scientists (Tyler & Lind, 1991). This skepticism primarily arose because the conclusions reached by the two researchers ran counter to the prevailing thinking under the legal and economics models that dominated the study of dispute resolution during that time period. Whereas the legal and economics models heavily emphasizes issues of outcome favorability and assumes that litigants are primarily concerned with whether or not they win or lose their case (Tyler & Lind, 1991), procedural justice theory asserts that people are willing to accept and view as fair outcomes that they regard as unfavorable because of the process through which those outcomes were derived. In addition, because Thibaut and Walker used a similar approach with almost all of their studies (student subjects and simulated disputes), their conclusions were open to methodological criticism.

Although Thibaut and Walker's model has been important to generating research, Tyler et al. (1997) assert that it has also served to restrict discussions about the criteria of procedural justice to control issues alone. In general, there are two main issues when examining procedural justice: whether procedural justice matters, and the criteria that people use to evaluate the fairness of procedures. The evidence discussed above seems

to indicate quite strongly that procedural justice does matter. Much less is known about the criteria that people use to evaluate procedural fairness. For example, what is it about a courtroom trial that leads people to evaluate it as fair or unfair? Both Leventhal and Tyler address this issue by suggesting much broader frameworks that can be used to evaluate the justice of procedures.

### *Leventhal's Contribution*

Although Thibaut and Walker are recognized as being the first to systematically study the concept of procedural justice, their research focused on the comparison of various dispute resolution procedures available in legal settings. It was not until Leventhal's (1976; 1980) work that procedural justice was recognized as a concept that can be applied to procedures in nonlegal contexts (Folger & Greenberg, 1985). While Thibaut and Walker's (1978) model suggests that people view fair procedures as a means of obtaining equitable outcomes (which is the goal in cases of conflict of interest), Leventhal's model recognizes that people are concerned about how decisions are made in addition to their concerns about what those decisions are.

*Leventhal's six general rules of procedural justice.* In contrast to Thibaut and Walker's orientation toward procedural justice as a consideration in the dispute-resolution process, Leventhal (1976) conceived of procedural justice (what he referred to as "procedural fairness") as a neglected aspect of reward allocation. Because researchers and theorists had come to realize that justice in allocation is a fundamental feature of most social behavior, Leventhal's argument that procedural justice is an important determinant of perceived fairness in the context of almost any allocation decision forged a link to a wide variety of social settings (Lind & Tyler, 1988). Leventhal is also credited

with moving beyond Thibaut and Walker's issues of control and offering other unrelated criteria as potential bases for evaluating the justice of a procedure (Tyler, 1990). He presented his theory in two analyses (Leventhal, 1980; Leventhal, Karuza, & Fry, 1980) in which he identified six general procedural justice "rules" that set fairness standards to which the procedure in question is compared. The six criteria are as follows:

1. *Consistency*, which refers to the perceived similarity in procedures and outcomes across time and people. Consistency across people generally means that all parties believe they have the same rights and are treated similarly, whereas consistency across time generally requires that the procedures follow the same rules and get enacted the same way each time they are used.
2. *Bias suppression*, which refers to the perceived absence of prejudice or partiality in a procedure. Leventhal specifically mentions two potential sources of bias: procedures are unfair if the decision maker has a vested interest in a specific decision, and procedures are unfair if the decision maker is so influenced by his or her prior beliefs that he or she fails to give adequate and equal consideration to all points of view.
3. *Accuracy*, which refers to the perceived use of correct information and honest efforts to maintain exactness in procedures (quality of decision). According to Leventhal, the fairness of a procedure will be higher if an allocation procedure requires keeping thorough and accurate records of contributions.
4. *Correctability*, which refers to the perceived presence of opportunities to amend decisions. Leventhal specifically mentions grievance and appeals procedures, which must themselves meet the standards set by the other rules.

5. *Representativeness* (or “voice”), which refers to the perceived presence of opportunities for people to express their views and exert influence over the process and decision. It is the broadest of all Leventhal’s rules and includes Thibaut and Walker’s (1975) process and decision control variables, as well as subgroup representation in the decision-making group.
6. *Ethicality*, which refers to the extent to which a procedure is perceived to be consistent with accepted values or morals. According to Leventhal, the use of deception, bribery, invasion of privacy, and spying are all examples of how a procedure might violate the ethicality rule.

According to Leventhal’s analysis, the weighting of procedural rules depends on a goal-based analysis of the likely effects of each rule. Greater weight is given to procedural rules when they are believed to promote the attainment of favorable outcomes for the perceiver or fair outcomes for all persons involved. In addition, Tyler et al. (1997) point out that people’s ratings of the importance of the criteria vary depending upon the nature of the situation (e.g., Barrett-Howard & Tyler, 1986; Rasinski, 1992), which suggests that there is no universally fair or unfair procedure. Barrett-Howard and Tyler (1996), for example, report that people linked different procedural criteria to the attainment of different social goals. Whereas accuracy in decision-making was judged as central to economic productivity (as defined by Deutsch (1975)), the attainment of social welfare and harmony were more strongly associated with bias suppression and ethicality. Similarly, Tyler (1988) found that control was important in disputes (conflicts of interest), but not important in problem-solving situations (truth conflicts), where the procedures used for resolving disputes were more likely to be judged in terms of

opportunities for input and consistency of treatment. Studies have also shown that within a given situation people who differ with regard to age, ethnicity, and other background characteristics agree about the criteria for procedural fairness (e.g., Tyler, 1988), which “suggests that there is considerable consensus among Americans about what constitutes a fair procedure within a particular setting” (Tyler et al., 1997, p. 92).

*Empirical support for Leventhal.* Leventhal’s theory stimulated a great deal of research in the area of procedural justice. However, unlike the distributive justice rules that have been found empirically to affect allocation preferences and fairness judgments, critics contend that Leventhal’s procedural justice rules are “largely the result of his intuition and speculation about what makes a procedure fair” (Lind & Tyler, 1988, p. 131). Despite this contention, empirical tests of Leventhal’s model found support for almost all of his procedural justice rules. Specifically, four studies have found that consistency is the major criterion used to assess procedural justice (Barrett-Howard & Tyler, 1986; Fry & Leventhal, 1979; Fry & Chaney, 1981; Greenberg, 1986). More specifically, Barrett-Howard and Tyler (1986) found consistency across people to be much more critical when judging the fairness of a procedure than consistency across time (as reflected by responses to a questionnaire asking subjects to evaluate the importance of Leventhal’s six criteria in the context of particular settings). Accuracy also emerged as important in a number of studies (Barrett-Howard & Tyler, 1986; Cornelius, Kanfer, & Lind, 1986; Sheppard & Lewicki, 1987) as was the issue of suppressing bias (Barrett-Howard & Tyler, 1986) and representation (e.g., Houlden, LaTour, Walker, & Thibaut, 1978; Lind, Lissak, & Conlon, 1983; Sheppard & Lewicki, 1987; Tyler, 1987; Tyler, Rasinski, & Spodick, 1985). After reviewing the research in the area, Fondacaro (1995)

asserted that consistency, accuracy, ethicality, and bias suppression are the dimensions that contribute most to judgments and perceptions of procedural fairness across different types of situations involving allocation decisions. Essentially, individuals who perceived the decision making process to be more consistent, accurate, respectful of personal dignity, and impartial viewed the process as being more fair. Interestingly, all four of these criteria were found to be more important than the representativeness criterion (ranked fifth, for example, in the Barrett-Howard and Tyler (1996) study), which includes the control judgments central to Thibaut and Walker's (1975) theory.

*Criticism of Leventhal.* Because there are six criteria that might be useful when evaluating the fairness of a procedure, it is critical when defining the meaning of procedural justice to know the weight placed on each of these criteria by those affected by decisions. Many researchers, however, fail to operationalize Leventhal's procedural justice rules, thereby making it difficult to identify areas of importance. Other researchers (e.g., Lind and Tyler, 1988) believe that Leventhal's procedural justice rules are too broad to be more than a first cut. Studies have shown that the consistency rule can be broken down, showing a distinction between consistency across persons and consistency across time (e.g., Barrett-Howard & Tyler, 1986). As discussed above, results of Barrett-Howard and Tyler's (1986) study indicate that these two types of consistency differ substantially in their importance, with consistency across people by far the most important criterion for discerning a fair procedure.

Another problem is that Leventhal's notion that "procedural fairness is a necessary precondition for the establishment and maintenance of distributive fairness" (Leventhal, 1976, p. 230) has not been borne out by empirical research (e.g., Alexander

& Ruderman, 1987; Kanfer, Sawyer, Earley, & Lind, 1987). For example, Tyler and his associates have conducted a number of studies investigating whether procedures can have an impact on perceived fairness that is independent of outcomes. While investigating leadership endorsement, Tyler and Caine (1981) found that the actual grade given by a teacher did not significantly influence ratings of overall fairness, although the grading procedures did. Another study (Tyler & Folger, 1980) examined the relationship between outcomes and procedures in the context of police-citizen encounters. The authors found that respondents who felt that they were treated fairly by the police were more likely to have positive evaluations of their encounters with the police than those who felt unfairly treated, irrespective of the outcome (whether the police solved the problem or cited the respondent for a motor vehicle violation). Tyler and Folger (1980) concluded that just as with fair courtroom procedures, a fair manner of treatment by the police can reduce the negative impact of not receiving a desired outcome.

The first researchers to conduct research on this topic in the workplace were Alexander and Ruderman (1987), who looked at the influence of procedural and distributive fairness on important job-related attitudes (e.g., job satisfaction, turnover intention). A survey consisting of 20 questions designed to assess the distributive and procedural aspects of various work activities and policies was administered to government employees at six Federal installations. Results indicate that although both the procedural and distributive measures were significantly related to measures of job satisfaction, evaluation of supervisor, conflict/harmony, trust in management, and turnover intention, procedural fairness accounted for significantly more variance than distributive fairness in each of these criterion measures except turnover intention.

A study conducted by Clay-Warner, Hegtvedt, and Roman (2005a), however, found that Alexander and Ruderman's (1987) conclusions may not be so clear-cut. Unlike Alexander and Ruderman (1987) who used a sample drawn from a single organization, Clay-Warner et al. (2005a) used a representative sample of workers from many different kinds of workplaces to study the effect of downsizing on organizational commitment. They found that distributive justice was a stronger predictor than procedural justice of organizational commitment among victims of downsizing, while procedural justice was a better predictor of organizational commitment among survivors of downsizing as well as among those who had not recently worked in an organization that downsized (unaffected workers). Specifically, procedural justice explained less than 1% of unique variance in the model for downsizing victims and was not statistically significant. Distributive justice, on the other hand, was highly significant and explained 12% of unique variance. In the models for unaffected workers and survivors, procedural justice was statistically significant as well as statistically larger (accounting for 9% of unique variance) than the corresponding distributive justice variable (which accounted for 3.7% of unique variance.) The finding that the relative importance of procedural and distributive justice will vary depending on one's prior experiences with downsizing has been termed the psychological contract model by Clay-Warner et al. (2005a), and research is ongoing. A follow-up study (Clay-Warner, Reynolds, & Roman, 2005b) found that procedural justice was a consistently significant predictor of job satisfaction among all groups of workers surveyed (reemployed victims of downsizing, downsizing survivors, and unaffected workers) and, contrary to the psychological contract model, it is

significantly more important than distributive justice in predicting job satisfaction among victims.

Overall, studies in different domains have provided support for the contention that it is the procedures that are followed, and not the outcomes, that are more likely to influence overall judgments of fairness (Tyler & Blader, 2000). Leventhal's (1976) assertion that procedural justice and distributive justice do not have statistically independent impacts has not been supported by the research. Consequently, "Justice research has followed the path outlined by this evidence because it finds that the primary impact on people comes from their judgments about the fairness of procedures... This does not mean, of course, that people no longer study distributive justice, but that there is a particularly strong focus in current research on issues of procedural justice" (Tyler & Blader, 2003, p. 350).

*Drawing the Theories Together: Sheppard and Lewicki's Contribution*

Some researchers have pointed out that both Thibaut and Walker and Leventhal's different emphases are important; for example, Folger and Greenberg (1985) argue that both the Leventhal and Thibaut and Walker models are relevant in a multitude of managerial and human resource practices. Both theories agree that "procedures providing the involved parties (be they litigants in a courtroom, or reward recipients in an organization) some control over the procedures affecting their outcomes are essential to procedural justice" (Folger & Greenberg, 1985, p. 148). Furthermore, Leventhal and Thibaut and Walker's theories do overlap in the area of representation: Leventhal states that all affected parties should have both process and decision control at all stages of

decision making, and Thibaut and Walker have a conception of control that is fairly equivalent (Tyler, 1990).

A major criticism of the two theories, however, is their failure to adequately describe the sorts of rules underlying perceptions of fairness. Tyler et al. (1997), for example, criticize the popular frameworks, claiming that although the procedural justice framework of Thibaut and Walker (1975) has been the most influential, it does not define the concept of procedural justice broadly. And, while Leventhal (1980) takes a broader theoretical approach, he does not test his ideas (particularly with regard to the weighting of criteria) through empirical research. As Tyler (1988) states, “what is striking about these two bodies of theory is the extent to which the criteria they identify as potential bases for evaluating the justice of a procedure do not overlap. The only common criterion is representation (Leventhal’s category for process and/or decision control” (p. 105).

Sheppard and Lewicki (1987) attempted to fill this void with a study designed to identify a more complete set of principles used to evaluate managerial actions. Up until this point, the criteria used by Leventhal and Thibaut and Walker for assessing the fairness of a procedure had been examined separately. This study brought them together by asking 44 managers and management students to describe recent fair and unfair treatment in seven areas of management responsibility (planning, staff development, delegating, motivating, coordinating, daily activities, and representing the organization to the public). Using Tornow and Pinto’s (1976) taxonomy of managerial behavior as a basis, the authors employed a critical-incident technique to assess the factors that managers use for judging fairness. Subjects were asked to describe both fair and unfair

behaviors for each role domain, and to identify the principle or principles violated or followed by that behavior. Five hundred ten behaviors were ultimately described involving 747 principles. Responses were coded to yield 16 rules guiding judgments about perceived managerial fairness. When these rules were aggregated, six major clusters of fairness concerns emerged: General Rules, Decision-Making Rules, Blaming or Credit-Giving Rules, Work Assignment Rules, Reward Allocation Rules, and Working Within System Rules.

Sheppard and Lewicki (1987) concluded that their findings provide empirical support for several theories related to perceived fairness. All six of Leventhal's principles of fairness emerged as rules and appeared to be useful for describing subject responses, especially consistency, representativeness, and accuracy. The representativeness and accuracy rules identified in the study were found to relate closely to Thibaut and Walker's process control. In addition, Adams' equity theory was often invoked when subjects were explaining perceived unfairness. Nine new principles of fairness also emerged, including reasonableness, golden rule, accountability, communication, information, timeliness, role description, meaningful assignment, and structural integrity. The authors concluded that although the theoretical notions of Leventhal and Thibaut and Walker apply to subordinate perceptions of managerial fairness, neither the procedural nor distributive justice literatures thoroughly describe the basis upon which subordinates make fairness judgments. It should be pointed out that Sheppard and Lewicki's study was concerned with perceptions of *managerial* fairness, and their results cannot be assumed to relate to perceptions of fairness in other contexts such as jury decisions. For example, the authors speculate that role description,

meaningful assignment, and structural integrity may be limited to managerial activities.

It was not until Tom Tyler's research that Thibaut and Walker and Leventhal's principles were examined together in a non-managerial setting.

### *Tyler's Contribution*

*The Chicago study.* In one of the only studies since Sheppard and Lewicki (1987) to combine Thibaut and Walker's criteria for assessing the fairness of a procedure with those of Leventhal, Tyler (1988) tested the degree of variation in the meaning of procedural fairness in a non-managerial setting that stretched beyond the arena of disputes. Tyler (1988) was interested in investigating *what* it is about a legal procedure that causes those involved to consider it to be fair. Using the six criteria of fair procedure suggested by Leventhal to form a basis for exploring the meaning of fair process in the context of citizen dealings with the police and courts, Tyler examined whether the meaning of procedural justice varies depending upon the circumstances of an encounter with a legal authority. Participants were 652 citizens of Chicago who had indicated during a random sample telephone interview that they had had personal experience with the Chicago police or courts within the past year.

The extent to which respondents had process control was measured by asking them "how much opportunity" they were given to present their case to the authorities before a decision was reached. Tyler (1988) measured perceived decision control by asking respondents how much influence they had over the decisions made by the authorities. Because process and decision control were highly intercorrelated ( $r = .56; p < .001$ ), Tyler combined them into a single measure of representation which mirrored Leventhal's representativeness criterion.

Leventhal's (1980) first criterion of procedural justice is consistency, and Tyler (1988) chose to measure four types of consistency. Consistency across time was assessed by asking respondents to compare whether their current outcomes and treatment were the same, better, or worse than the outcomes and treatment they had received in past experiences; consistency across people "in similar situations" was assessed by asking respondents whether the outcomes and treatment they received was the same, better, or worse than the outcomes and treatment others have received in like circumstances; consistency with prior expectations was assessed by asking respondents to indicate whether their outcomes and treatment was the same, better, or worse than they had expected; and consistency in relationships was assessed by asking respondents whether their outcomes and treatment was the same, better, or worse than the outcomes and treatment of friends, family, or neighbors. From these, Tyler (1988) created two indices of consistency: the average of respondent judgments concerning their outcome and the average of respondent judgments concerning their treatment.

Tyler subdivided Leventhal's bias suppression criteria (which Tyler refers to by the dimension name of "impartiality" or "neutrality") into three subcategories consisting of lack of bias, honesty, and effort to be fair. The first, lack of bias, was assessed by asking respondents whether their treatment or outcome was influenced by race, sex, age, nationality, or some other characteristics of them as a person, as well as whether the authorities had favored one party over another. The second, honesty, was assessed by combining the responses to two questions: (1) whether the authorities had done anything that was dishonest or improper, and (2) whether officials had lied to them. The third,

making an effort to be fair, was assessed by asking respondents how hard the police or judge had tried to show fairness.

Tyler (1988) measured the accuracy of decision making by combining responses to two questions: whether the authorities involved had been provided with the information they needed to make good decisions about how to handle the problem, and whether the authorities had tried to bring the problem into the open to be solved. Correctability was measured by asking respondents whether they knew of any agency or organization to which they could have complained of fair treatment. Finally, ethicality was measured by combining responses to two questions: whether the authorities had been polite and whether they had shown concern for their rights.

Tyler's (1988) key dependent variable for the analysis of the meaning of procedural justice was the respondents' judgment about the fairness of the process during their experience with the police and/or courts. Respondents were asked to judge "how fair" the procedures used by the authorities were, "how fairly" they were treated, and how fair the authorities were with whom they had dealt. Six respondent characteristics were also measured: sex, age, race, education, liberalism, and income.

As previous research had found (e.g., Tyler & Folger, 1980; Alexander & Ruderman, 1987), outcome favorability was related to judgments of procedural and distributive fairness (mean  $r = .34$ ), but the two were clearly distinct. Specifically, those who received favorable outcomes thought that those outcomes and the procedures used to arrive at them were more fair. Results of a factor analysis indicated that judgments of procedural justice are multidimensional, involving many issues in addition to favorability of outcome and control of outcome. In fact, consistency, the criterion most closely

related to outcomes, was found to be of minor importance. Rather, judgments related to the social dimensions of the experience, such as ethicality, weighed very heavily in assessments of procedural justice. Seven different aspects of procedure independently influenced citizen judgments regarding whether they were treated fairly by legal authorities: (a) the degree to which the authorities were motivated to be fair; (b) judgments of their honesty (belief that decision makers should be honest and reach their decisions based on objective information about the case); (c) the degree to which the authorities followed ethical principles of conduct (treated politely and having respect shown for their rights and themselves as people); (d) the extent to which opportunities for representation were provided (belief on the part of those involved that they had an opportunity to take part in the decision-making process); (e) the quality of the decisions made (whether the procedures produce fair outcomes); (f) the opportunities for error correction; and (g) whether the authorities behaved in a biased fashion.

Tyler (1988) concluded that the meaning of procedural justice varied according to the nature of the situation, rather than the characteristics of the people involved. While this indicates it is unlikely that there are any universally fair procedures for allocation and dispute resolution, it also suggests that different types of people within American culture have a similar definition of procedural justice. This, in turn, implies that members of our society share cultural beliefs regarding definitions of the meaning of justice within certain settings, a suggestion that has found support in ethnographic studies of the courts (e.g., Merry, 1985; 1986). Tyler (1988) believes that this lack of personal differences has important consequences for interactions between citizens as well as for interactions between citizens and authorities. Common values not only make it more likely that all

parties will focus on similar issues when attempting to find a process for dealing with the issue in question, but will also help facilitate the acceptance of decisions in disputes since both parties are likely to share a conception of what the authorities should be doing.

Although most researchers have followed Thibaut and Walker's lead and emphasized issues related to process and decision control (e.g., representation), results of Tyler's (1988) study indicate that representation is only one of a number of important concerns that define fair processes. As Tyler (1988) points out, "It is noteworthy that the major criteria used to assess process fairness are those aspects of procedure least linked to outcomes- ethicality, honesty, and the effort to be fair- rather than consistency with other outcomes. This reinforces the... suggestion that procedural issues are distinct from concerns with outcomes" (p. 128). Other studies conducted by Tyler and his associates also indicated a noninstrumental benefit of process control (e.g., Tyler et al., 1985; Tyler, 1987; Lind, Kanfer, & Earley, 1990). Lind et al. (1990), for example, found that people value voice even after the decision has been made. People were allowed to present evidence either before a decision that affected them or after the decision had already been made. After comparing these two conditions to a third condition in which people had no input into the decision, the authors found that although the magnitude of the process control effect diminished, it failed to disappear in the post-decision input condition. They concluded that even when people can't influence the likelihood of obtaining desired outcomes, a good process can still lead to satisfaction. In contrast, the instrumental perspective believes that people react to their experiences depending on the favorability of the outcomes of the experiences. It was this evidence indicating that the instrumental

perspective is inadequate to account for procedural justice findings that lead Tyler and Lind (1988) to propose the group-value theory of procedural justice.

*A Group-Value Theory of Procedural Justice: The Relational Model*

Lind and Tyler (1988; Tyler, 1989; Tyler & Lind, 1992) proposed a group-value theory of procedural justice as an alternative explanation for procedural justice effects. Up until this point, there had been an almost exclusive focus on motivational explanations to account for how people decide whether they have received fair treatment from others. The instrumental perspective believes that individuals are viewed as wanting to achieve desired outcomes and as judging the value of their opportunities to speak by the extent to which those opportunities facilitate the achievement of those outcomes (Tyler, 1990). From this perspective, judgments of procedural justice are influenced by procedural justice issues that have little to do with outcome favorability or control. Lind and Tyler's (1988) group-value model suggests that Thibaut and Walker's control theory misses important noninstrumental motives of the psychology of procedural justice. Their theory was extended to the context of authority relations in the relational model of authority (Tyler & Lind, 1992).

Although the relational model and Thibaut and Walker's (1975) control model both assume that the acceptance of the decisions and policies of third-party authorities is linked to perceptions of procedural justice, the relational model provides a different explanation of *why* people are motivated to care about procedural fairness. Instead of the instrumental motive suggested by the control theory, the relational theory is social in nature and believes that individuals are motivated to affiliate with groups and to view themselves as important members of desirable groups. Consequently, it is assumed that

people are concerned about their long-term social relationship with the authorities or institutions acting as third parties, rather than viewing them as one-shot deals. Lind and Tyler believe that people want to be treated fairly as members of a group because fair treatment acknowledges their membership and status within the group, as well as maintains the values of the group.

Research conducted by Tyler (1989; 1994b) found that judgments about the quality of social relationships between individuals and decision makers had a greater influence on procedural justice judgments than instrumental judgments of control over the procedures and the favorability of outcomes resulting from the procedures. Tyler (1989) built upon Leventhal's (1976) framework when he identified three relational concerns that dominate judgments of procedural fairness: the trustworthiness of the authorities enacting the procedures (trust), the neutrality of those authorities (neutrality), and information about the individual's standing in the group (status recognition). The following section explains these three relational concerns in greater detail.

*Trust.* Trust involves assessments of the motives of authorities, such as judgments about their benevolence and concern for the needs of those with whom they deal. Trust also involves the belief that third parties desire to treat people in a fair and reasonable way. Because people's commitment to the group changes as their attributions about the intentions of the authorities change (Tyler, 1989), they are more likely to develop a long-term commitment to the group if they believe that the authorities are trying to be fair and equitable.

*Neutrality.* Incorporates four of Leventhal's (1976) criteria- consistency, bias suppression, accuracy, and correctability. Neutrality involves assessments of the degree

to which decision-making procedures are unbiased, honest, and promote decisions based on evidence. Because in a long-term relationship people cannot always have what they want, it is not realistic to focus on outcome favorability in any specific situation. Lind and Tyler (1988) suggest that people assume that everyone will benefit from fair decision-making procedures over the long-term. The focus, therefore, is not on whether a favorable outcome is received in any situation, but rather whether the authority has created a neutral arena in which to resolve the conflict. It is the “level playing field” that matters; “in any particular situation people will be concerned with having an unbiased decision maker who is honest and who uses appropriate factual information to make decisions” (Tyler, 1989, p. 831).

*Status Recognition.* Similar to Leventhal’s (1976) dimension of ethicality. Status recognition, or standing, involves assessments of politeness, treatment with dignity, and respect for rights and entitlements due to each group member. According to Tyler (1989), people care about their standing in a group, and the way a person is treated during social interactions gives people information about their status within the group. If people are not treated well, they know that the authority they are dealing with regards them as having a low status within the group.

Tyler (1989) acknowledges that merely demonstrating noncontrol effects does not provide adequate support of the group-value theory; rather, valid evidence for the validity of the group-value model must show that people care about neutrality, trust, or standing because they care about group status and group membership. In order to test this theory, Tyler (1989) conducted telephone interviews with a random sample of 652 Chicago residents who had experience with the police or court system. Subjects’ outcome

favorability was assessed in absolute terms by coding respondent statements indicating the nature of the experience's outcome (e.g., in the case of calls to the police, respondents were asked if the police had solved the problem for which they had been summoned). An Outcome Favorability scale was then formed by weighing these judgments of outcome favorability against the self-reported seriousness of the problem. Outcome favorability was also assessed relative to four standards of reference (e.g., respondents were asked to compare their experience with experiences they have had in the past).

Other independent variables examined included process control (assessed by asking how much opportunity was given to present a problem or side before a decision was made) and decision control (assessed by asking how much influence was given over the decisions made by the third party), which were averaged to form a single control index. Scales were also created to reflect responses given by subjects to questions focusing on neutrality, trust, and standing. Dependent variables included respondents' judgment about the fairness of the procedures used during their experience with legal authorities, the fairness of the outcome received, affect felt toward the authorities (e.g., angry, frustrated, pleased) and the overall fairness of the authorities. Tyler (1989) found that the variables of neutrality, trust, and standing accounted for a significantly larger share of the variance in procedural fairness judgments than did the control variables of process and decision control. Furthermore, results of a regression analysis indicate that issues of trust and standing within the group are especially important in determining both people's judgments about whether they have received procedural justice and their reactions to their experience. When the issue of concern is outcome fairness, neutrality becomes the most important variable. Tyler (1989) concluded that people care about

more than just the problem that brought them to a third party: the relationship to the third party is also important.

*Further empirical support for Tyler.* A number of subsequent studies have also found support for the relational model. For example, Tyler (1994) conducted two studies to examine reactions and motives in relation to experiences with two types of authority—legal and managerial. In the first study, survey interviews were conducted over the telephone with a random sample of Chicago residents who had had a personal experience with legal authorities. Participants were asked to evaluate four aspects of their experience that were thought to reflect resource concerns (concerns over maximizing personal rewards when interacting with others): the favorability of the outcome of the experience, the outcome received relative to prior expectations, the outcome relative to what others would have received, and control of the decisions made (decision control). Respondents were also asked about their control over evidence presentation (process control), as well as about their experiences with the relational issues of neutrality, trust, and standing. Tyler used structural equation modeling to compare the fit of various possible models of the dimensions of justice. Six possible models of the justice motive were constructed: (a) a saturated model, in which indices of both the resource and the relational motives were hypothesized to influence distributive and procedural justice judgments; (b) a resource-dominated model, in which the influence of relational motives on distributive justice was removed; (c) a relation-dominated model, in which the influence of resource motives on procedural justice was removed; (d) a resource-only model which hypothesized that resource motives shape judgments of both distributive and procedural justice; (e) a relation-only model which hypothesized that relational

motives shape judgments of both distributive and procedural justice; and (f) the dual process model, which hypothesized that justice judgments are shaped by both distributive justice and its underlying resource motives and procedural justice and its underlying relational motives. When the models were compared, the model that best fit the data was the relation-dominated model. More specifically, Tyler found two distinct justice motives: distributive justice judgments were shaped by both resource and relational judgments, but procedural justice judgments were shaped only by the relational concerns of neutrality, trust, and standing.

In the second study, Tyler examined managerial authority by drawing a random telephone sample of adults in the Chicago area. Respondents were required to work at least 20 hours per week and to have a supervisor with whom they had had a recent personal experience. Participants were asked about their satisfaction with the outcome of their experience and their control over the decisions that were made, as well as to evaluate the outcome they received relative to their expectations and the outcome relative to what others would have received (all reflect resource concerns). Respondents were also asked about their control over evidence presentation (process control) and about their experiences with the relational issues of neutrality, trust, and standing. Just as in the first study, results indicate that the relation-dominated model best fit the data. The second study therefore successfully replicated the first study using an independent data set and a separate setting.

Lind, Tyler, and Huo (1997) performed several studies to investigate how dyadic procedures differ from that of authoritative procedures. In the first study, students were asked to recall a conflict and write a brief description of the dispute on the experimental

questionnaire. In the second study, students were asked to rate third party and dyadic procedures as ways of resolving a hypothetical dispute. Eight different descriptions of the hypothetical dispute were used, constituting manipulations of the following three experimental variables: the relationship of the participant to the other person in the dispute (close or distant), similarity of background (similar or different), and the nature of the disputed issue (insult vs. money). Measures of status recognition, trust in benevolence, neutrality, voice, and procedural fairness were obtained via questionnaires. Findings indicated that the three relational variables together consistently explained much of the variance in the procedural justice ratings. Furthermore, procedural justice judgments during dyadic conflict resolution were primarily shaped by assessments of status recognition and neutrality. Trust was the strongest influence, however, when people dealt with third parties and other authorities. Lind et al. (1997) believe that their series of studies show evidence that voice effects are mediated by relational judgments, which brings together the older research of Thibaut and Walker and Leventhal (with their emphasis on procedural elements affecting justice judgments) and the newer research focusing on the social cognitive antecedents of procedural justice.

Additional support for the relational model comes from studies that show that procedural justice influences individuals' self-esteem, as well as perceptions of their standing within important reference groups. For example, in an experimental study by Koper, Van Knippenberg, Bouhuijs, Vermunt, and Wilke (1993), an academic skills test was given to subjects who had been told that the test was accurate at diagnosing their level of skill. In the unfair treatment experimental condition, a research assistant graded only the student's first three answers and offered no explanation for this decision. In the

fair treatment experimental condition, the entire test was graded very carefully. The authors found that how subjects were treated by the research assistant significantly influenced their self-esteem: Those who were treated fairly had significantly higher self-esteem scores than those who had been in the unfair treatment condition. According to a relational perspective, fair treatment by authorities indicates that a person is a valuable group member, whereas unfair treatment indicates marginality and even exclusion (Tyler et al., 1997). It follows, therefore, that the knowledge that one is valued should increase self-esteem, whereas the knowledge of marginality should decrease it. In another study, Tyler, DeGoey, and Smith (1996) found that fair and respectful treatment by authorities who represent important groups communicates feelings of respect and pride, which, in turn, are related to self-esteem, feelings of obligation to group authorities, and the desire to help the group beyond what is required. Research in this area has also shown that even when the working context encourages short-term and instrumental goals, employees who identify with the company care about fair treatment because of the self-relevant information it communicates to them (Smith, Thomas, & Tyler, 2006).

Recently, the impact of procedural fairness on relationships with individual group members other than the group leader has been investigated. Cornelis, Van Hiel, and De Cremer (2006) hypothesized that even though the strongest reactions to procedural fairness or unfairness is supposedly directed toward the source associated with the authority enacting the procedures, it is not unlikely that reactions extend to other targets at other levels. They provided an explicit test of the relational model of procedural fairness by manipulating both procedural fairness and other group members' support for the leader and examining their effects on relationships between individual group

members. Cornelis et al. (2006) found that when a group member indicated that he or she did not support the leader, procedural fairness did not influence participants' reactions toward this other group member because the leader was not regarded as representative for the other group member. These researchers concluded that this study provides evidence for one of the core assumptions of the relational model- namely, that fairness matters because authorities are regarded as representatives of the whole group.

Another recent study of the group-value model used survey data from people attending U.S. Food and Drug Administration advisory committee meetings to examine the extent to which procedural justice considerations predict satisfaction and outcome acceptance (McComas, Tuite, Waks, & Sherman, 2007). Specifically, the researchers were interested in determining whether, when facing the prospect of real or potential conflicts of interest among advisory committee members, believing that the conflict-of-interest procedures are just and those wielding them are trustworthy, neutral, and respectful of one's rights influence attendees' satisfaction with the meetings and acceptance of meeting outcomes. Questionnaires measured attendees' conflict-of-interest tolerance, procedural knowledge, perceptions of procedural fairness, relational judgments (the group value measure that examined the degree to which an individual viewed the procedures as neutral, the authorities as trustworthy, and treatment by the authorities as dignified and respectful), satisfaction, and willingness to accept outcomes. Results indicate that perceptions of procedural fairness and relational fairness significantly influenced satisfaction with advisory committee meetings, and relational fairness perceptions directly predicted outcome acceptance. Furthermore, when attendees viewed meeting organizers as more trustworthy, neutral, and respectful (i.e., relational

fairness), they were also more tolerant of real or potential conflicts of interest among advisory committee members, more satisfied with the meetings and more willing to accept meeting outcomes.

*Extending the procedural justice framework.* In general, Tyler's work and the supportive results of subsequent research suggest the need to extend the procedural justice framework beyond Thibaut and Walker's control theory. Leventhal (1980) took the first step when he proposed a broader framework and suggested six criteria that might influence judgments about the justice of a procedure. Tyler and his associates built upon Leventhal's framework when they incorporated four of his criteria- consistency, bias suppression, accuracy, and correctability- into the neutrality dimension of their model. In addition, although Leventhal does not frame his theory in terms of individual's long-term connections to social groups (as does the group-value model), Leventhal's dimension of ethicality is similar to Tyler's dimension of status recognition. Although research related to the group-value model is still underway, the studies reviewed in the previous section all seem to indicate that procedural justice judgments are strongly affected by judgments about the quality of social relationships between individuals and decision makers. The neutrality of those decision makers appears to be particularly critical; Tyler's (1989) study, for example, showed that when the issue of concern is outcome fairness, neutrality becomes the most important variable, and Leventhal's consistency dimension (incorporated into Tyler's concept of neutrality) has been found in a number of studies (e.g., Barrett-Howard & Tyler, 1986; Fry & Leventhal, 1979; Fry & Chaney, 1981; Greenberg, 1986) to be the major criterion used to assess procedural justice.

Using the modern American courtroom as a testing ground, the present study seeks to further explore the role that neutrality plays in perceptions of procedural justice. Although the group-value model assumes people are concerned about their long-term social relationships and membership in a jury typically does not involve a significant length of time, it can be argued that people identify with a common membership when a legal-political system is involved. “Although the legal system is a larger group than a family, friendship, or work group, people nonetheless identify strongly with the legal-political system and feel a striking sense of personal obligation to legal and political authorities” (Tyler, 1989, p. 831). In fact, a study conducted by Tyler and McGraw (1986) found that the tendency to focus more on procedures than outcomes when deciding what is fair is especially strong when the object of scrutiny is a system as opposed to an individual. Research also shows that fairness is less important in settings (such as a family) where intense positive feelings exist that hold the relationship together, or when the participants feel no personal or financial ties and therefore care less about whether the relationship is maintained; fairness is more important in relationships of intermediate emotional intensity, whereby participants have no strong feelings toward each other but still benefit from interaction (Barrett-Howard & Tyler, 1986). The next chapter will summarize the gaps in the literature and present the hypotheses that will be tested in the present study.

## CHAPTER 4

## Statement of the Problem and the Present Study

The preceding reviews of both the trial consulting industry and the field of procedural justice suggest several needed directions for research. Two of the most glaring limitations are the lack of research conducted on the perceived fairness of trial consulting and the potential impact that trial consultants may have on the outcome of a jury trial. As the use of a trial consultant's services become more routine, it is important to determine if this use can affect perceptions of procedural justice and, ultimately, juror verdicts.

Unfortunately, there is little empirical research examining the perceived fairness of trial consulting (Strier, 1999). One notable exception is an experimental study conducted by Stolle et al. (1996) which was designed to address three questions regarding observers' judgments of fairness: 1) How will the prosecution/plaintiff's or the defendant's use of a psychologist trial consultant for jury selection and trial preparation impact the perceived fairness of trial procedures and outcomes; 2) How will differences in the outcome of the case impact the perceived fairness of trial procedures and outcomes; and 3) Will the impact of either trial consultant presence or outcome of judgments on fairness generalize across cases in both civil and criminal settings. Using a 2 x 2 x 2 x 2 mixed factorial design, Stolle et al. (1996) manipulated case type (within-subjects, criminal or civil), case outcome (between-subjects, favoring either prosecution/plaintiff or defendant), presence or absence of a trial consultant for the prosecution/plaintiff (between-subjects), and presence or absence of a trial consultant for the defendant (between-subjects). One hundred thirty-two undergraduate students were

presented case summaries of both criminal and civil cases. Both case studies were written in a manner that tilted equity in favor of the prosecution/plaintiff. The criminal summary briefly described a homicide case tried in a Missouri court. The civil summary was based upon a wrongful death case tried in a Texas court. In conditions involving a trial consultant, a one paragraph description of the trial consultant's role (assistance with case presentation and jury selection through the distribution and analysis of a community survey) was inserted in the summary.

Each participant was presented with a packet that included a case summary and a questionnaire that was comprised of 21 procedural justice items measured on Likert-type scales. In conditions where a trial consultant was used, the questionnaire also included an additional question directly assessing the perceived fairness of the use of a consultant. Stolle et al.'s (1996) questionnaire included items from the theoretical justice frameworks of Thibaut and Walker (1975), Leventhal (1980), and Tyler (1989).

Using the procedural justice ratings as dependent variables, a four-way MANOVA was conducted. Stolle et al. (1996) found significant main effects for outcome and type of trial, and a significant interaction between the two on procedural justice ratings. Case outcome was a major contributor to participants' perceptions of procedural justice. When participants were told that the jury found in favor of the prosecution/plaintiff (which was in line with the expectations of participants due to the fact that the case studies were written in a manner that tilted equity in favor of the prosecution/plaintiff), they found that the procedures and the outcome were thought to be more fair, more consistent, less biased, accurate, easier to correct, and more ethical. With regard to the type of trial, the researchers found that although the court was

perceived to have more control over the evidence presented in the criminal case, the results agreed more with the expectations of the participants in the civil case. Furthermore, the jurors in the civil case were thought to have better received and understood the information needed to make a decision, and wrong decisions were thought to be more easily corrected in the civil case. Stolle et al. (1996) found that participants thought that wrong decisions were easier to correct when the outcome favored the prosecution/plaintiff than they would be when the outcome favored the defendant, but this difference only occurred in the civil case. Similarly, in the civil case, the rights of the parties were perceived to be better protected when the outcome favored the prosecution or plaintiff. The results also indicated that the court was perceived to be more controlling of the outcome when the outcome favored the defendant than when the outcome favored the plaintiff. In the criminal case, the court was perceived to be equally controlling regardless of outcome.

The finding that most directly relates to the proposed study involves the impact of the presence of trial consultants on procedural fairness. Multivariate analyses yielded no significant main effects or interaction for the presence of a trial consultant for either the prosecution/plaintiff or the defendant. Consequently, Stolle et al. (1996) also analyzed the data using univariate analyses.<sup>1</sup> They found only one main-effect for the presence of a trial consultant: the legal authorities were perceived to have acted more ethically when the defendant did not have a trial consultant than when the defendant did have a trial consultant. Stolle et al. (1996) found several significant interactions, however. With

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<sup>1</sup> While some significant findings from the univariate analyses emerged, the researchers caution that “main-effects and interactions involving the presence of a consultant for the plaintiff or the defendant, which were not significant in the MANOVA analysis, must be interpreted not as conclusive results but as information useful in guiding future research” (p. 161).

respect to decision control (one of the procedural justice items taken from Thibaut and Walker's (1975) theoretical framework), results indicated that when the defendant had a trial consultant, the parties were seen as having more opportunity to influence the court's decision when the prosecution or plaintiff also had a trial consultant. However, when it was the defendant who did not have a trial consultant, the parties were seen as having equal opportunity to influence the decision whether or not there was a prosecution or plaintiff trial consultant present.

One of the four items Stolle et al. (1996) used in their questionnaire to measure consistency (one of the procedural justice dimensions taken from Leventhal's (1976) framework) assessed participant expectations by asking them to rate the extent to which they believed that the results of the case agreed with their expectations. When participants' expectations were examined, a 4-way interaction was found such that when the defendant alone had a trial consultant and the defendant won, the result agreed more with participants' expectations than either when the defendant did not have a trial consultant or when both sides had them.

With regard to the perceived ethicality of the cases (one of the procedural justice items taken from Leventhal (1976)), Stolle et al. (1996) found that when participants were told that the jury had found the defendant guilty, it was perceived as more fair for the defendant to receive the assistance of a trial consultant. When the defendant was on the winning side, however, whether or not a trial consultant had assisted him/her did not appear to be as highly relevant to fairness. As the researchers noted, "This pattern of findings seems to suggest that future research should focus on the balance of the presence

of a trial consultant between the parties, which may have an important impact on observers' procedural justice judgment" (p. 168).

Stolle et al. (1996) concluded that while the lack of significant multivariate effects for the presence of trial consultants may suggest that consultant presence does not affect judgments of procedural justice, significant univariate analyses may indicate that the presence or absence of a trial consultant gains importance when interacting with other independent variables, such as the presence of a trial consultant for the other party and its interactions with case outcomes. Furthermore, Stolle et al. (1996) emphasized that regardless of its effectiveness or legality, scientific trial consulting carries the potential to undermine the legitimacy of legal authorities and legal proceedings if it is perceived by the public as being a fundamentally unfair trial tactic. Once trial consulting techniques are perceived as unfair or manipulative, both the participants and observers of a trial are in danger of viewing the entire jury system as unfair.

In the only other known study to investigate this topic, Griffith et al. (2007) used a more diverse public sample to explore the question of how eligible jurors view trial consultants. A team of six researchers approached almost 4,000 individuals in the terminals of two major metropolitan airports and outside of two shopping centers in two states (Texas and Pennsylvania). The final sample included 1251 participants from 50 states. All respondents were juror eligible in the state in which they lived. Materials consisted of a survey comprised of general demographic information, as well as questions related to the use of trial consultants. Respondents were provided with a description of some of the services that may be offered by trial consultants (e.g., jury selection, witness preparation, trial strategy) and then asked to rate eight statements about the role of a trial

consultant on a five-point Likert-type scale. Sample questions include “Trial consultants bias the jury,” “Trial consulting services are a waste of money for the attorneys that hire them,” and “Trial consultants should not be permitted in the legal system.” In addition, each participant was asked, “If you were on a jury and found out that one side was using a trial consultant, you would: (a) be biased in favor for the side that hired the trial consultant, (b) be biased against the side that hired the trial consultant, or (c) not be biased toward either side.”

A correlational analysis conducted on some of the sociodemographic variables across the eight trial consultant questions found a distinct pattern such that those who believed the jury system to be fair and those with a higher earned income exhibited more favorable attitudes toward trial consultants. In addition, Anglo American respondents were more favorable toward trial consultants on four items, and age and gender yielded several significant associations. While the authors do point out that the significant correlations found can be largely due to the large sample size and the variance accounted for was minimal, Griffith et al. (2007) conclude that their results point to individual differences regarding how potential jurors view trial consultants, and this might be an important consideration when selecting jurors. For example, in this study individuals who were Anglo American, earned high salaries, and believed that the judicial system was fair had more favorable views toward trial consultants.

With regard to the question: “if you were on a jury and found out that one side was using a trial consultant, you would...,” 18% reported that they would be biased against the side that hired the trial consultant. Less than 0.25% reported that they would be biased in favor of the side that used the trial consultant. Based on these findings,

Griffith et al. (2007) recommend that trial consultants keep a low profile during legal proceedings, not appearing at all if possible. On the other hand, it might be good trial strategy in situations where only one side uses a trial consultant for the side without the consultant to notify the jury of that fact at some point during the proceedings.

Although Stolle et al.'s (1996) and Griffith et al.'s (2007) research provides some initial answers to the question of whether (and under what circumstances) the use of trial consultants is perceived as being unfair, no studies have examined whether the use of a trial consultant by one or more opposing parties can impact a juror's determination of a defendant's guilt or innocence. We know virtually nothing about how the use of a trial consultant may violate a juror's sense of procedural justice. The present study explores the question of whether the balance of trial consultants can affect a juror's perceptions of procedural justice and impact his or her verdict, particularly in cases where the evidence is ambiguous. As discussed previously, research has shown that the bias tendencies of jurors decrease when confronted with clear proof of guilt or innocence and increase when the evidence is more ambiguous (e.g., Baumeister & Darley, 1982; Kaplan & Miller, 1978). This dissertation investigates the possibility that the balance of trial consultants can serve as a biasing factor when evidence strength is ambiguous, thus impacting a juror's determination of a defendant's guilt or innocence. In this study, participants' verdict determinations (both dichotomous and continuous) were assessed in conditions where the presence (or absence) of a trial consultant and SOE were varied.<sup>2</sup> For the purposes of this study, SOE is operationalized as how strongly the evidentiary set favors one of the parties. Unlike in Stolle et al.'s (1996) study where the evidence in the case

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<sup>2</sup> Continuous juror verdicts were also included to provide a more sensitive measure (Kaplan & Miller, 1978; Kerr et al., 1999).

summaries was skewed in favor of the plaintiff/prosecution, the present study uses three case summaries to examine participant response when the evidence favors the prosecution, the defense, or is ambiguous.

As previously mentioned, Tyler (1989) identified three relational issues that people seem to consider most when making procedural justice judgments: (1) *trust*, which refers to inferences about the motivation of authorities, particularly the willingness of authorities to consider needs and make unbiased decisions; (2) *neutrality*, which refers to the belief that there is a level playing field and decisions are based on an accurate and full assessment of the facts; and (3) *status recognition*, which refers to the belief that the authority has treated the person with the respect and dignity that comes with full-fledged group membership. The differences in procedural justice judgments that Stolle et al. (1996) found when there was an imbalance of trial consultants among parties can be viewed as a violation of Tyler's (1989) principle of *neutrality*. Numerous studies have found neutrality to be the major criterion used to assess procedural justice (e.g., Barrett-Howard & Tyler, 1986; Fry & Leventhal, 1979; Fry & Chaney, 1981; Greenberg, 1986; Tyler, 1989). Drawing on the group-value model (Lind & Tyler, 1988), the first hypothesis sought to determine whether a trial was perceived as more neutral if there was a balance of trial consultants during a trial. If both the prosecution and defense used the services of a trial consultant, there is no violation of Tyler's (1989) neutrality principle (notion of a level playing field) and judgments of perceived fairness were expected to be higher than if only one side used a trial consultant. Thus, the following main effect for the use of a trial consultant was predicted:

**Hypothesis 1:** A trial will be perceived as being higher in neutrality if both the prosecution and defense use a trial consultant

than if only one party uses a trial consultant.

Because previous research on the group-value model (Lind & Tyler, 1988) has assessed procedural justice using all three relational concerns, this study measured trust and status recognition in addition to neutrality. For the purposes of this study, these three variables were combined to form a measure referred to as global fairness. The second hypothesis explored whether a trial was perceived as being higher in global fairness if there was a balance of trial consultants during a trial. If both the prosecution and defense used the services of a trial consultant, judgments of perceived fairness were expected to be higher than if only one side used a trial consultant. Thus, the following main effect for the use of a trial consultant was predicted:

**Hypothesis 2:** A trial will be perceived as being higher in global fairness if both the prosecution and defense use a trial consultant than if only one party uses a trial consultant.

The third hypothesis predicted a main effect for SOE that follows from the predictable, strong positive association that the empirical research (e.g., Devine et al., 2001) has found between SOE and jury verdicts of guilt.

**Hypothesis 3:** The likelihood of conviction will be highest when the evidence favors the prosecution, moderate when the evidence is ambiguous, and lowest when the evidence favors the defense.

Hypothesis 3 predicted that jurors would be the most likely to find the defendant guilty when the evidence was in favor of the prosecution and the least likely to find the defendant guilty when the evidence favored the defense. When SOE was ambiguous, the likelihood of conviction would fall somewhere in between.

The fourth hypothesis predicted an interaction effect between the use of trial consultants and SOE on the likelihood of conviction. Specifically, the following was hypothesized:

**Hypothesis 4:** a) When the evidence strongly favors the defense, the likelihood of conviction will be low regardless of the presence or absence of trial consultants; b) When the evidence strongly favors the prosecution, the likelihood of conviction will be high regardless of the presence or absence of trial consultants; and c) When the evidence is ambiguous, the likelihood of conviction will be highest when the defense uses a trial consultant, moderate when both sides use a trial consultant, and lowest when the prosecution uses a trial consultant.

When the evidence strongly favored either the defense or prosecution, it was anticipated that the bias tendencies of jurors would decrease (e.g., Baumeister & Darley, 1982; Kaplan & Miller, 1978) and jurors would reach a verdict based largely on the strength of the evidence presented during trial. When the evidence was ambiguous, however, it was predicted that jurors were more likely to be swayed by biasing factors, such as the presence or absence of a trial consultant. In those conditions where the evidence was ambiguous and the prosecution alone used a trial consultant, it was anticipated that the likelihood of conviction would be lower than when both sides have a consultant. The relational model (Tyler, 1989) would predict that neutrality has been violated, and jurors will therefore perceive the prosecution as having an unfair advantage and will compensate for this by being more likely to find in favor of the defense. It was further predicted that the likelihood of conviction would be the highest when the evidence was ambiguous and the defendant alone used a trial consultant. In those conditions, the relational model (Tyler, 1989) would predict that jurors will perceive the defense as

having an unfair advantage, and will compensate for this by being more likely to find in favor of the prosecution.

Another major purpose of this dissertation was to explore for the first time the possibility that procedural justice, in the form of Tyler and Lind's (1992) relational model of authority, mediated the relationship between the use of trial consultants and the verdict received in criminal trials. The central premise of the relational model is that individuals obtain information regarding their standing within important reference groups from the way in which they interact with authorities. As previously mentioned, research has shown that when the issue of concern is outcome fairness, neutrality becomes particularly important (Tyler, 1989). It is often assumed that features of neutrality are built into the framework of legal procedures. Tyler et al. (1997) pointed out that during trials, for example, a level playing field is created by giving both sides the opportunity to have an attorney and by giving those attorneys equal opportunities to present arguments and question witnesses. What must be addressed is the fact that the level playing field is violated when only one side has access to the resources and skills of a professional trial consultant. In fact, a number of researchers have expressed concern that the basic fairness of our justice system seems to be undermined when one side possesses "scientific methods of persuasion" and the other side does not (Kressel & Kressel, 2002).

This study investigated whether judgments about neutrality acted as a mediator between the balance of trial consultants and juror verdicts in cases where the evidence was ambiguous. It was anticipated that when only one party has a trial consultant, juror perceptions of fairness decrease, which subsequently causes the likeliness of a guilty

verdict to either increase or decrease (depending on which side the inequity lies). The following prediction was therefore advanced:

**Hypothesis 5:** The relationship between the balance of trial consultants and likelihood of conviction will be mediated by perceptions of neutrality (ambiguous evidence only).

In addition, the present study also investigated whether the relationship between the balance of trial consultants and likelihood of conviction was mediated by judgments about global fairness. It was predicted that the three relational concerns of trust, neutrality, and status recognition together contribute to explaining why the use of trial consultants may affect juror verdicts in cases where the evidence is ambiguous.

Hypothesis 6 looked at this possibility:

**Hypothesis 6:** The relationship between the balance of trial consultants and likelihood of conviction will be mediated by perceptions of global fairness (ambiguous evidence only).

The next chapter will describe the participants, design, materials, measures and procedures used to test the six hypotheses.

## CHAPTER 5

## Method

*Participants*

Participants consisted of 255 jury-eligible individuals (120 females, 135 males) recruited from the participant pool of the psychology and management departments at Baruch College. Participation in this experiment fulfilled partial course credit. Four additional participants took part in the study, but failed to complete all of the items in the questionnaire and were excluded from the analyses. The ages of the participants ranged from 18 to 37, with a mean age of 19.96 years and a standard deviation of 2.77 years. Most subjects were White (32.9%) or Asian American/Asian (27.1%). Hispanics/Latinos represented 20.0% of the sample, Black/African Americans represented 9.0%, self-categorized “others” represented 7.5%, and 9 participants (3.5%) choose not to answer this question.

*Design*

The study was a 3 x 3 factorial with Use of a Trial Consultant (Prosecution vs. Defense vs. Both) and SOE (Advantage Defense vs. Ambiguous vs. Advantage Prosecution) as between-subjects factors. Participants were randomly assigned to one of the nine possible experimental conditions. *Table 1* presents a breakdown of participants by cells.

Table 1

*Participants by Experimental Condition*

SOE	<u>Use of trial consultant</u>			Total
	Prosecution	Defense	Both	
Advantage defense	28	28	29	85
Ambiguous	28	29	30	87
Advantage prosecution	28	27	28	83
Total	84	84	87	255

*Materials*

Evidence strength was manipulated by presenting participants with three different versions of a criminal case summary. Use of a trial consultant was manipulated by inserting a one paragraph description into each case summary that allowed the experimenter to vary the presence of a trial consultant.

*Manipulation of strength of evidence.* The criminal case summaries used in this study were based upon an aggravated sexual assault case that was tried in a Texas court. The summaries briefly describe the facts, which involve a man by the name of Jasper Brennan who was accused in 1987 of assaulting and raping a 45 year-old woman in her home.<sup>3</sup> Jasper Brennan was charged with the crime after the victim positively identified

<sup>3</sup> Case summaries were based on the trial of Brandon Moon. Retrieved January 7, 2005, from [http://www.innocenceproject.org/case/display\\_profile.php?id=162](http://www.innocenceproject.org/case/display_profile.php?id=162). The names and many of the facts were altered for the purpose of providing a brief and straightforward summary of the relevant circumstances of the case.

him in police photographs and a live lineup. Two other victims who had been attacked in a similar fashion also positively identified Jasper Brennan during the live lineup.

By varying some of the facts presented as well as the presence and testimony of witnesses, three versions of the case summary were created: The *Ambiguous Evidence* condition, the *Advantage Prosecution* condition, and the *Advantage Defense* condition (See Appendix A). The *Ambiguous Evidence* condition was written so that the evidence against the defendant is substantial but not conclusive. The summary states the facts of the crime and then describes how the victim was called into the police station within the next few days to assist in creating a composite sketch of the perpetrator, to look at photographs of potential suspects, and to view a live lineup in the hopes of identifying her attacker. The summary in the *Ambiguous Evidence* condition states that the victim identified Jasper Brennan as her assailant, but that she could not be certain. Brennan, a college sophomore, was arrested and charged with three counts of aggravated sexual assault. During the trial, the victim testified that she was very confident in her ability to clearly recall details of her attacker, but was then forced to admit that she did not know certain facts, such as whether or not he had a moustache.

The *Ambiguous Evidence* condition also includes testimony from the serologist assigned to the case. The serologist testified that the semen found on the bedding was produced by a non-secretor, and therefore Jasper Brennan (a non-secretor) was a possible contributor. Semen samples from the victim's husband and son were not obtained. The serologist also testified upon cross-examination that no sperm samples were retrieved from the other two victims. The defense produced two witnesses that corroborated Brennan's alibi: Brennan's girlfriend, who claimed to have called him on the telephone

at his home less than an hour before the crime occurred and then saw him in the campus library shortly after the crime occurred, and a second witness who testified that he had seen Jasper Brennan studying in the campus library right before the crime occurred. Furthermore, the defense also argued that since Jasper Brennan did not have a car, he did not have an opportunity to commit the rape.

In the *Advantage Prosecution* condition, the case summary was manipulated to create evidence favorable to the prosecution. This time, for example, when the victim is called into the police station in the week following the attack, she immediately picked out the picture of Jasper Brennan and declared that he looked exactly like the perpetrator. Two other victims of similar crimes also identified Brennan in the lineup. During the trial, the victim testified that due to the ample light in her bedroom, she was very confident in her ability to clearly recall details of her attacker. She also testified that as soon as she saw Jasper Brennan in both the photographs at the police station and in the live lineup, she knew that he was the man who had raped her.

The *Advantage Prosecution* condition also alters the testimony from the serologist assigned to the case. The serologist testified that a blood sample taken from Jasper Brennan put him among just five percent of the population who could possibly have been the source of the semen stains. Furthermore, the semen could not have belonged to the victim's husband or son. The defense produced only one witness, a girlfriend who admitted during cross-examination that she has a car that the defendant drove on occasion.

Lastly, in the *Advantage Defense* condition, the case summary was manipulated to create evidence favorable to the defense. In this condition, the victim was not asked to

return to the police station to view photographs of potential suspects until five months after the crime occurred. Although she identified Jasper Brennan as a possible suspect, the case summary states that he was the only blue-eyed white male in the police photographs. The live lineup was also conducted five months after the crime occurred. The summary states that Brennan was again the only blue-eyed white male, as well as the only person the police had placed in both the photographs and live lineup. During the trial, the victim testified that she was very confident in her ability to remember details of her attacker, and yet was forced to admit during questioning that this was untrue (for example, she could not recall his eye color).

The *Advantage Defense* condition also alters the testimony from the serologist, stating that Jasper Brennan, as well as the victim's husband and son, was a possible contributor of the semen. Furthermore, the summary introduces more doubt into the prosecution's case by stating that the serologist admitted that forensic tests had shown that all other trace evidence analysis found at the crime scene, including pubic hairs, excluded Jasper Brennan as a source. The defense witnesses and alibis were the same as in the *Ambiguous Evidence* condition: a girlfriend and co-student who testified that they saw Brennan in the library around the time that the crime was committed.

*Manipulation of use of a trial consultant.* The second manipulation in this study was a one paragraph description that was inserted into each case summary to allow the experimenter to vary the presence of a trial consultant. There were three different paragraphs reflecting the three possible experimental conditions for this variable (See Appendix B). In those conditions when only the defense used a trial consultant, the paragraph described how the defense hired a consultant to help with jury selection and

case presentation. It detailed how the consultant paid citizens to complete a survey, and how important information gleaned from this survey was passed along to the defense who used this information when planning case strategy and selecting a jury. The paragraph also gave a brief description of a mock trial that was conducted and the benefits this afforded the defense in preparing for trial.

In those conditions when only the prosecution used a trial consultant, the identical paragraph was inserted, except the word “defense” was replaced with “prosecution.” The third paragraph was inserted for those participants assigned to the condition where both the prosecution and defense used a trial consultant. The paragraph in this condition begins by stating that both the defense and prosecution hired consultants to help with jury selection and case presentation. It then goes on to describe the assistance provided by trial consultants for both sides in the same language used in the first two paragraphs. The total summary (including inserted paragraph) was approximately two single spaced typed pages in length.

### *Measures*

*Procedural justice.* Neutrality, trust, and status recognition (Tyler, 1989) were assessed using the Relational Theory measure, which was a questionnaire that consisted of 14 procedural justice items adapted from questionnaires used by Tyler (1989) and Stolle et al. (1996) (see Appendix D for a list of questionnaire items). Together, these three variables comprised the global fairness dimension of this study (Hypotheses 2 and 6). Below is a detailed description of the variables that were measured and how the neutrality and global fairness scores were calculated.

*Neutrality.* As in previous research (e.g., Tyler, 1989; Tyler, 1994b), neutrality was operationalized for the purposes of this study as (a) proper behavior, (b) factual decision making, and (c) a lack of bias. Questions 1-9 were combined to form a neutrality scale that measured participants' perceptions of neutrality (Hypotheses 1 and 5). The neutrality questionnaire was modeled after Tyler (1989), who created subscales to reflect each of the three dimensions of neutrality.

The first subscale, impropriety of behavior (Tyler [1989] labels "proper behavior" as such), was measured with four items (see Appendix D). Participants rated each statement on a 7-point Likert scale, ranging from "strongly agree" (1) to "strongly disagree" (7). Open-ended questions (e.g., "If you thought the use of a trial consultant was dishonest or improper, please explain briefly in the space below") were used to supplement Likert-type responses for each item in order to provide a greater depth of opinion. One exception to this was the second item, whereby participants were asked, "If you thought the witness did something dishonest or improper, please explain briefly in the space below." This question was really serving as a decoy. Because the researcher did not want participants to know the true focus of the study, this open-ended question was inserted into the questionnaire between questions asking for more information about perceived impropriety on the part of either the attorneys or trial consultants. The impropriety of behavior subscale score was calculated by summing the ratings of these four items, with a high score indicating a high level of improper behavior. The internal consistency reliability (coefficient  $\alpha$ ) for the score on the impropriety of behavior subscale in the current study was .60, which did not meet the criterion of .70 that had

been set for the minimally acceptable level of internal consistency (Nunnally, 1978).<sup>4</sup> The removal of the fourth item increased the coefficient  $\alpha$  for the subscale score to .67, so for the current study the subscale score for impropriety of behavior was recalculated after eliminating item four. Item four was also removed from all subsequent calculations.

The second subscale, factual decision making, was assessed by two items (Tyler, 1989). (See Appendix D.) Participants rated each statement on a 7-point Likert scale, ranging from “strongly agree” (1) to “strongly disagree” (7). An open-ended question (“If you thought the jury was not given all of the information needed to render a verdict, please explain briefly in the space below what information you thought was missing”) was used to provide a greater depth of opinion. The factual decision making subscale score was calculated by summing the ratings of these two items, with a high score indicating a high level factual decision making. The coefficient  $\alpha$  for the score on the subscale was .71.

Lack of bias, the third subscale, was measured by three items (see Appendix D). Participants rated each statement on a 7-point Likert scale, ranging from “strongly agree” (1) to “strongly disagree” (7). An open-ended question (“If you thought the legal authorities involved favored one party over another, please explain briefly in the space below”) was used to provide a greater depth of opinion. The lack of bias subscale score was calculated by summing the ratings of these three items, with a high score indicating less bias. The coefficient  $\alpha$  for the subscale score was .76.

A neutrality scale score was calculated for each participant by reverse scoring the negative subscale items (items 5 and 6) and then summing the ratings of the eight

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<sup>4</sup> This was not unexpectedly low, however, as Tyler’s (1989) study had found an alpha level of .61 for the same subscale.

procedural justice items discussed above, with a high score indicating a high level of neutrality. Neutrality was calculated in this way to better reflect the method used by many researchers when developing a total score for a scale that is comprised of multiple subscales (e.g., Minnesota Job Satisfaction Questionnaire (MSQ), 1967; Job Satisfaction Survey (JSS), Spector, 1985; Self-Compassion Scale, Neff, 2003). The coefficient  $\alpha$  for the score on the neutrality scale was .75.

*Trust.* For the purposes of this study, trust was operationalized as the trustworthiness of the motives of the jury system. Since trust involves the belief that third parties desire to treat people in ways that are fair and reasonable (Tyler, 1989), this dimension was assessed using a 2-item scale modeled after Tyler (1989). (See Appendix D.) Participants rated each statement on a 7-point Likert scale, ranging from “strongly agree” (1) to “strongly disagree” (7). The trust scale was calculated by summing the ratings of these two items, with a high score indicating a high level of trust. The coefficient  $\alpha$  for the score on the trust scale was .85.

*Status recognition.* The third relational concern, status recognition, was operationalized as politeness, treatment with dignity, and respect for rights due to each group member. Status recognition was assessed using a 3-item scale modeled after Tyler (1989). (See Appendix D.) The status recognition scale was calculated by summing the ratings of these three items, with a high score indicating a high level of status recognition. The coefficient  $\alpha$  for the score on the status recognition scale was .89.

*Global fairness.* A global fairness score was calculated for each participant by reverse scoring the negative subscale items (items 5, 6, 10, and 11) and then summing the ratings of the 13 remaining procedural justice items in the Relational Theory measure,

with a high score indicating a high level of global fairness. The coefficient  $\alpha$  for global fairness was .85.

*Table 2* presents a summary of the Cronbach's alpha reliabilities for all scores on the subscales and scales. With the exception of the impropriety of behavior subscale, all subscales and scales meet the criterion for the acceptable level of internal consistency (Nunnally, 1978).

Table 2

*Cronbach's Alpha Reliabilities for Scores on Scales and Subscales*

Scale	Number of items	Cronbach's Alpha
Neutrality	8	.75
Impropriety of behavior	3	.67
Factual decision making	2	.71
Lack of bias	3	.76
Trust	2	.85
Status recognition	3	.89
Global fairness	13	.85

*Likelihood of conviction.* The second measure of the questionnaire (see Appendix E) assessed participants' likelihood of convicting the defendant (Hypotheses 3 and 4). Both dichotomous (e.g., guilty vs. not guilty) and continuous (e.g., rating confidence in the likelihood of the defendant's guilt) verdict determinations were measured in an effort to tap both proportional and mean differences in guilt ratings. Question 1 of this measure asked participants to make a dichotomous determination of the defendant's guilt (guilty

or not guilty). Question 2 asked participants to make a continuous determination of Jasper Brennan's guilt on a scale from 1 to 7 (e.g., 1 is "I am positive Brennan is not guilty" and 7 is "I am positive Brennan is guilty"). Hypotheses 3 and 4 were each tested twice: once using the dichotomous verdict measure from Question 1, and then again using the continuous verdict measure from Question 2. In order to get a better sense of the factors influencing their decision, Question 3 asked participants to identify which (if any) factors influenced their determination of guilt or innocence. Answers from Question 3 were not used to test the hypotheses, but rather provided exploratory qualitative data. Question 4 asked participants who answered "guilty" to Question 1 to recommend a prison term between 5 and 20 years or more.<sup>5</sup> Question 4 was also included for exploratory purposes.<sup>6</sup>

*Manipulation checks.* Additional items were included at the end of the questionnaire in order to ensure that the experimenter achieved the desired experimental SOE conditions (*Ambiguous Evidence* condition, *Advantage Prosecution* condition, and *Advantage Defense* condition). Questions 5 and 6 (see Appendix E) asked participants to separately rate the strength of both the defense and prosecution's evidence (taking into account factual presentation and witness credibility) on a scale from 1 (very weak) to 7 (very strong). Question 7 asked participants to rate the strength of the evidence on a scale from 1 (the evidence strongly favored the defense) to 7 (the evidence strongly favored the prosecution). To check on the manipulation of the use of a trial consultant, Question 8 asked participants which party (or parties) received assistance from a trial consultant.

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<sup>5</sup> Questions 1, 2, and 4 were based on similar items used by Kerr et al., 1999.

<sup>6</sup> Although no formal predictions were made, it was expected that as perceptions of fairness increased, recommended jail terms would lengthen.

*Demographic and background information.* The last measure, Demographic and Background Information, was collected in order to determine if there were differences in the results based on age, gender, or ethnic origin (See Appendix F). Participants were also asked if they or anyone they are close to have ever been the victim of a violent crime, and/or if they or anyone they are close to have ever been accused of a violent crime. This information was analyzed to determine if the results of those participants who answered affirmatively to either of those questions differed significantly from the results of other participants.

### *Procedures*

The participants were told that the researcher was studying how people make use of partial or “summary trials,” a quicker and less expensive alternative to conducting full trials, that are being used more frequently in some states (e.g., New Jersey). No oral evidence is given in summary trials; instead, evidence is presented to the judge in the form of written affidavits. Although judgments in summary trials are not binding, they often lead to negotiated settlements prior to jury trials (Cooper & Neuhaus, 2000). Participants were told that the researcher’s interest was in understanding how jurors make decisions in these summary trials. Informed consent was obtained from all student participants. Although participants were informed at the time of signing up through the on-line Participant Pool that the material in this study involved a rape trial, they were reminded again before the experiment began and given an opportunity to withdraw without penalty at that time if uncomfortable.

The condition received by each participant was randomly assigned. Each participant received a packet containing one criminal case summary and a questionnaire

comprised of the four measures discussed above. Participants were instructed to read one of the nine sets of materials as if they were a potential juror, paying close attention to the facts of the case and the arguments presented by both parties. Next, participants were instructed to read standard judge's instructions, which included a description of the presumption of innocence and the reasonable doubt standard of proof (see Appendix C). Participants were asked to work through the questionnaire packet in the order in which the materials were presented, beginning with the Relational Theory measure (see Appendix D), followed by the Likelihood of Conviction measure and Manipulation Check items (see Appendix E), and concluding with the demographic form (see Appendix F). Participants were given one hour to complete the experiment.

## CHAPTER 6

## Pretest of Materials: The Pilot Study

To ensure that subjects were distinguishing among the three evidentiary conditions as well as noticing the use of a trial consultant, a pilot study was conducted on a separate group of participants who were randomly assigned to one of the nine conditions. This chapter begins with basic descriptive statistics that describe the sample, followed by the results of the manipulation checks.

*Descriptive Statistics*

Participants consisted of 50 jury-eligible individuals (25 females, 25 males) who were personal acquaintances of the experimenter ( $n = 25$ ) or recruited from the participant pool of the psychology and management departments at Baruch College ( $n = 25$ ). For the participant pool participants, partaking in this experiment fulfilled partial course credit at Baruch College.

For the pilot sample of 50 individuals, the ages of the participants ranged from 18 to 64, with a mean age of 24.36 years and a standard deviation of 10.77 years. Eighteen subjects (36%) were White, 18 (36.0%) were Asian American/Asian, 6 (12.0%) were Hispanic/Latino, 5 (10.0%) were Black/African American, and 3 (6.0%) were Native American. Forty-eight subjects indicated that they had not been victims of violent crimes and two subjects chose not to answer this question. Five subjects (10.0%) indicated that someone they are close to has been the victim of a violent crime, and 43 did not. Again, two subjects chose not to answer this question. Forty-eight subjects indicated that they have never been accused of committing a violent crime, and two subjects did not respond to this question. Three subjects (6.0%) indicated that someone they are close to was

accused of a violent crime, and 45 did not. Two subjects did not respond. Given the high number of participants who indicated that neither they nor someone they are close to had been the victim of a violent crime or accused of committing a violent crime, no participants were excluded from the analyses.

### *Manipulation Checks*

The two manipulation checks examined in this study are strength of evidence (SOE) and use of a trial consultant. The findings on these manipulation checks are presented next.

*SOE.* The first manipulation check focuses on the SOE manipulation. The relationship between the SOE condition presented in the case and the participants ratings of the strength of evidence presented in the trial on a scale from 1 (the evidence strongly favored the defense) to 7 (the evidence strongly favored the prosecution), where 4 was inconclusive (favored both parties equally) was examined. This item is Question 7 of the LCM. A one-way ANOVA indicated that there was a significant relationship between the strength of evidence presented in the case and the participants' rating of the strength of the evidence presented in the trial,  $F(2, 47) = 15.68, p = .001, \text{partial } \eta^2 = .40$ . The partial eta-squared indicated a large effect size. Follow-up tests were conducted to evaluate pairwise differences among the means. Simple planned contrasts indicated significant differences in the means between the ambiguous condition ( $M = 4.11, SD = 1.19$ ) and the means in both the "favors prosecution" ( $M = 5.44, SD = 1.59$ ) and "favors defense" conditions ( $M = 2.67, SD = 1.34$ ),  $p < .05$ . This pattern of findings indicates that the manipulation successfully moved the means in both directions. Participants in the ambiguous condition tended to give ratings that indicated that the evidence was either

weak or inconclusive. Those whose case favored the prosecution tended to give ratings that favored the prosecution and not the defense, and those whose case favored the defense tended to give ratings that favored the defense and not the prosecution.

*Use of a trial consultant.* The second manipulation check focuses on the use of a trial consultant manipulation. To examine this manipulation, participant ratings of the use of a trial consultant were measured using Question 8 of the LCM. This manipulation check focused on the relationship between participants’ ability to distinguish, among the cases, which parties had used a trial consultant (either the prosecution, the defense, or both) and the actual use of trial consultants in the trial. A chi-square analysis was used to examine this relationship. For use of a trial consultant, prosecution was coded 1, defense was coded 2, and both were coded 3. A significant relationship was found between the participants’ ability to distinguish which party had used a trial consultant in the case and the actual use of trial consultants in the case,  $\chi^2(4, N=50) = 54.18, p=.001, V = .73$ . See Table 3 for a breakdown of the proportion of participants who identified the use of a trial consultant in each condition.

Table 3

*Proportion of Participants Identifying Use of Trial Consultants Per Condition (Pilot)*

Reported use of trial consultant	Actual use of trial consultant		
	Prosecution	Defense	Both
Prosecution	.87	.15	.13
Defense	.0	.80	.07
Both	.13	.05	.80

Taken together, the results indicate that the use of a trial consultant was in general successfully manipulated in the study.

## CHAPTER 7

### Results

The purpose of this chapter is to present the results of the empirical study. First, the results of the study are described, beginning with basic descriptive statistics that describe the sample. Manipulation checks are then presented, followed by the results of hypothesis testing. Hypotheses were primarily tested through a series of analysis of variance (ANOVA), logistic regression, chi-square, and correlation tests. For all comparisons,  $p < .05$  was adopted as the criterion for establishing statistical significance. In addition, judgments regarding the magnitude of effect size follow Cohen's (1988) suggestions for "small," "medium," and "large" effect sizes. The chapter concludes with a look at the responses to the open ended questions that were asked throughout the questionnaire.

#### *The Present Study*

##### *Descriptive Statistics*

Several data checks were conducted on the 255 participants in the sample to determine if the demographics had an impact on key variables in this study. They are listed below. For other details on the sample, please refer to the "Participants" section of Chapter 5.

*Age.* A  $t$ -test was conducted to determine if a relationship exists between age and verdict. The mean age of individuals who chose guilty did not differ significantly from the mean age of individuals who chose not guilty,  $t(252) = .95, ns, d = .12$ . In addition, Pearson correlation coefficients were computed between age and the ratings for neutrality

and global fairness. No significant relationships were found in either case (neutrality,  $r = -.07$ , *ns*; global fairness,  $r = -.07$ , *ns*).

*Gender.* A chi-square analysis was conducted to determine if a relationship exists between gender and verdict. No significant results were found,  $\chi^2(1, N=254) = 1.17$ , *ns*,  $V = .06$ . In addition, *t*-tests were conducted to determine if female and male subjects differed on ratings of neutrality and global fairness. No significant differences were found between females and males on neutrality ratings,  $t(253) = -.64$ , *ns*,  $d = .07$  or on global fairness ratings,  $t(253) = -.48$ , *ns*,  $d = .05$ .

*Ethnicity.* A chi-square analysis was conducted to determine if a relationship exists between ethnicity and verdict. No significant results were found,  $\chi^2(5, N=255) = 2.94$ , *ns*,  $V = .10$ . In addition, a one-way ANOVA was conducted to determine if significant differences exist between the ethnicities on ratings of neutrality and global fairness. No significant differences were found between the ethnicities on neutrality ratings,  $F(5, 249) = 1.54$ , *ns*, partial  $\eta^2 = .03$  or global fairness ratings,  $F(5, 249) = 1.60$ , *ns*, partial  $\eta^2 = .03$ .

*Experiences.* Multiple analyses were conducted to determine if relationships existed between variables based on the participants' personal experiences with violent crimes or the experiences that close friends or family members have had with violent crimes. Participants were compared on questions 1 through 14 of the Relational Theory Measure (RTM), verdict determination, and scores on the neutrality and global fairness scales. There were almost no significant differences in participant responses between those participants who indicated that they had close friends or family members who had experienced violent crimes ( $n = 56$ ) or were accused of committing a violent crime ( $n =$

28) and those who had not. While there were a few significant differences in participant responses between those participants who indicated that they had personally been the victim of a violent crime ( $n = 17$ ) or had personally been accused of committing a violent crime ( $n = 4$ ) and those who had not, these results can be attributed to chance or a small sample size. The decision was therefore made not to exclude any participants based on the responses to the demographic variables. Thus, all manipulation checks presented below were conducted on the total sample ( $N = 255$ ).

### *Manipulation Checks*

As noted in the pilot study, the two manipulation checks examined in this study are SOE and use of a trial consultant. The findings on these manipulation checks are presented next.

*SOE.* The first manipulation check focuses on the SOE manipulation. The relationship between the SOE condition presented in the case and the participants ratings of the strength of evidence presented in the trial on a scale from 1 (the evidence strongly favored the defense) to 7 (the evidence strongly favored the prosecution), where 4 was inconclusive (favored both parties equally) was examined. This item is Question 7 of the LCM. A one-way ANOVA indicated that there was a significant relationship between the strength of evidence presented in the case and the participants' rating of the strength of the evidence presented in the trial,  $F(2,252) = 57.03, p = .001, \text{partial } \eta^2 = .31$ . The partial eta-squared indicated a large effect size. Follow-up tests were conducted to evaluate pairwise differences among the means. Simple planned contrasts indicated significant differences in the means between the ambiguous condition ( $M = 3.87, SD = 1.57$ ) and the means in both the "favors prosecution" ( $M = 5.33, SD = 1.27$ ) and "favors

defense” conditions ( $M = 3.09$ ,  $SD = 1.25$ ),  $p < .001$ . This pattern of findings indicates that the manipulation successfully moved the means in both directions. Those in the ambiguous condition tended to give ratings that indicated that the evidence was either weak or inconclusive. Participants whose case favored the prosecution tended to give ratings that favored the prosecution and not the defense, and participants whose case favored the defense tended to give ratings that favored the defense and not the prosecution. These results closely match what had been found in the pilot study discussed earlier.

*Use of a trial consultant.* The second manipulation check focuses on the use of a trial consultant manipulation. To examine this manipulation, participant ratings of the use of a trial consultant were measured using Question 8 of the LCM, just as had been done in the pilot study described earlier. This manipulation check focused on the relationship between participants’ ability to distinguish, among the cases, which parties had used a trial consultant (either the prosecution, the defense, or both) and the actual use of trial consultants in the trial. A chi-square analysis was used to examine this relationship. For use of a trial consultant, prosecution was coded 1, defense was coded 2, and both were coded 3. A statistically significant and strong association was found between the participants’ ability to distinguish which party had used a trial consultant in the case and the actual use of trial consultants in the case,  $\chi^2(4, N=255) = 195.78$ ,  $p = .001$ ,  $V = .61$ . See Table 4 for a breakdown of the proportion of participants who identified the use of a trial consultant in each condition.

Table 4

*Proportion of Participants Identifying Use of Trial Consultants Per Condition*

Reported use of trial consultant	Actual use of trial consultant		
	Prosecution	Defense	Both
Prosecution	.77	.13	.13
Defense	.10	.68	.09
Both	.13	.19	.78

The results indicate that the use of a trial consultant was in general successfully manipulated in the study.

*Hypothesis Tests*

Hypotheses regarding the effects of the balance of trial consultants on perceptions of neutrality and global fairness (Hypotheses 1 and 2) were tested through Analysis of Variance (ANOVA). ANOVA tests consisted of an overall test of differences in group means along with planned contrasts corresponding to the hypotheses. If the overall *F* test was significant, then *post hoc* comparisons using the Tukey HSD test were conducted to further explore significant differences in group means. The effect of SOE on the likelihood of conviction (Hypothesis 3) and the impact that SOE and balance of trial consultants have on the likelihood of conviction (Hypothesis 4) were tested using logistic regression analysis (for dichotomous verdict measures) and ANOVA (for continuous verdict measures).

*Hypothesis 1.* A main effect for the use of a trial consultant was predicted, such that perceptions of neutrality were expected to be higher when both the prosecution and

defense used a trial consultant than when only one side used a trial consultant. A one-way ANOVA indicated that the neutrality scores of participants did not differ significantly as a function of the balance of trial consultants between parties,  $F(2, 252) = 2.78, p = .06, \text{partial } \eta^2 = .02$ . Because the results approached significance, *post hoc* comparisons using Tukey's HSD were conducted to evaluate pairwise differences among the means. No significant differences between the three conditions were found. The difference between the neutrality measure when both sides used a trial consultant ( $M = 4.99, SD = .99$ ) and when the prosecution alone used a trial consultant ( $M = 4.65, SD = 1.14$ ) approached significance ( $p = .08$ ). Comparisons between the neutrality measure when the defense alone used a trial consultant ( $M = 4.97, SD = 1.01$ ) and the other two conditions were not statistically significant at  $p < .05$  (nor did they approach significance).

Because Tukey results indicated that the defense only use of trial consultants was perceived as equally neutral as when both sides used a trial consultant, a planned contrast ANOVA was conducted collapsing across these two conditions and comparing it to the condition where the prosecution alone used a trial consultant. Results indicated a significant difference between the neutrality score of participants when the prosecution alone used a trial consultant when compared to the neutrality scores of participants in the other two collapsed conditions,  $F(1, 253) = 5.54, p = .02, \text{partial } \eta^2 = .02$ . In addition, a planned contrast ANOVA was conducted collapsing across the conditions where the prosecution only and both sides used a trial consultant and comparing it to the condition where the defense alone used a trial consultant. No significant difference was found,  $F(1, 253) = .69, p = .40, \text{partial } \eta^2 = .01$ . Overall, Hypothesis 1 was not supported.

*Hypothesis 2.* A main effect for the use of a trial consultant was predicted, such that perceptions of global fairness were expected to be higher when both the prosecution and defense used a trial consultant than when only one side used a trial consultant. A one-way ANOVA indicated that there were significant differences in perceptions of global fairness when the prosecution, the defense, or both used a trial consultant,  $F(2, 252) = 4.21, p = .02, \text{partial } \eta^2 = .03$ . The partial eta-squared indicated a small effect size. Tukey post-hoc comparisons of the three conditions indicated that perceptions of global fairness were lowest when the prosecution only used a trial consultant. When the prosecution alone used a trial consultant, the mean global fairness measure was significantly lower ( $M = 4.57, SD = 1.03$ ) than the mean global fairness measure when both parties used a trial consultant ( $M = 4.96, SD = .89$ ),  $p = .02$ , thus supporting Hypothesis 2. Comparisons between the mean global fairness measure when the defense alone used a trial consultant ( $M = 4.91, SD = .96$ ) and the other two conditions were not statistically significant at  $p < .05$ . This finding did not support Hypothesis 2, which predicted that perceptions of global fairness would be higher when both the prosecution and defense used a trial consultant than when only one side used a trial consultant.

Because Tukey results indicated that the defense only use of trial consultants was perceived as equally fair as when both sides used a trial consultant, a planned contrast ANOVA was conducted collapsing across these two conditions and comparing it to the condition where the prosecution alone used a trial consultant. Results indicated a significant difference between the global fairness score of participants when the prosecution alone used a trial consultant when compared to the global fairness scores of participants in the other two collapsed conditions,  $F(1, 253) = 8.31, p = .01, \text{partial } \eta^2 =$

.03. In addition, a planned contrast ANOVA was conducted collapsing across the conditions where the prosecution only and both sides used a trial consultant and comparing it to the condition where the defense alone used a trial consultant. No significant difference was found,  $F(1, 253) = .84, p = .36, \text{partial } \eta^2 = .01$ . Overall, Hypothesis 2 was partially supported. Results indicated that perceptions of global fairness were significantly higher when both the prosecution and defense used a trial consultant than when only the prosecution used a trial consultant, but that perceptions of global fairness were not significantly higher when both sides used a trial consultant if it was the defense alone using a trial consultant.

*Hypothesis 3.* A main effect for SOE was predicted, such that the likelihood of conviction was expected to be highest when the evidence favored the prosecution, moderate when the evidence was ambiguous, and lowest when the evidence favored the defense. This hypothesis was tested in two different ways. In the first analysis, participants' dichotomous verdict measure (guilty vs. not guilty) was used as the likelihood of conviction measure. A logistic regression analysis indicated a significant relationship between SOE and likelihood of conviction. *Table 5* presents a summary of the logistic regression analysis. Dummy codes were used to code the predictors such that the first variable listed in *Table 5*, SOE advantage prosecution, represents "advantage prosecution vs. everyone else," and the second variable listed, SOE advantage defense, represents "advantage defense vs. everyone else." The constant represents the condition where SOE is ambiguous.

Table 5

*Summary of Logistic Regression Analysis for SOE Predicting Likelihood of Conviction (N = 255)*

Predictor	$\beta$	SE $\beta$	Wald's $X^2$	Exp ( $\beta$ )
SOE advantage prosecution	1.84**	.35	28.45	6.32
SOE advantage defense	-.99*	.45	4.77	.37
Constant	-1.28**	.26	24.14	.28
$X^2$	64.28**			
Df	2			

*Note.* Likelihood of conviction predictors coded as 1 for *guilty* and 0 for *not guilty*.  
\* $p < .05$ . \*\* $p < .001$ .

Nagelkerke  $R^2$  for the overall prediction model was .31, which suggests that SOE contributed an estimated 31% of the variance in likelihood of conviction scores among participants. The odds ratio indicates that if SOE favored the defense, participants were 37% less likely to convict the defendant than if SOE was ambiguous ( $p < .01$ ). The odds were six times greater that a participant in the condition where SOE favored the prosecution would convict the defendant than a participant in the condition where SOE was ambiguous ( $p < .001$ ). The overall classification accuracy was 77.6%, which is better than the proportional by chance accuracy rate which was calculated to be .57. Table 6 presents the classification outcome table of observed versus predicted results for likelihood of conviction.

Table 6

*Classification Outcome Table of Observed Versus Predicted Results for Likelihood of Conviction*

Observed	Predicted	
	Not Guilty	Guilty
Not Guilty	145	30
Guilty	27	53

*Note.* The cut value is .50

Table 7 presents a breakdown of the proportion of verdicts per experimental condition.

Table 7

*Proportion of Verdicts Per Condition (N = 255)*

SOE	Verdict	
	Not Guilty	Guilty
Advantage defense	.91	.09
Ambiguous	.78	.22
Advantage prosecution	.36	.64

As Table 7 shows, when the evidence was clearly presented to participants as either favoring one side or another, participants tended to provide a verdict as expected.

What was unexpected, however, was the small difference in the proportion of “not guilty” verdict determinations for those participants whose evidence favored the defense (.91) and those participants whose evidence was ambiguous (.78). Twenty-two percent of the 87 participants whose case was ambiguous chose guilty, while 78% of the

participants whose case was ambiguous chose not guilty. A relatively even split between guilty and non-guilty verdicts had been expected in the ambiguous evidence condition.

In the second analysis, participants' continuous verdict measure (on a scale from 1 to 7 where 1 was "I am positive Brennan is not guilty" and 7 was "I am positive Brennan is guilty") was used as the likelihood of conviction measure. Analysis of variance indicated that there was a significant relationship between the verdict chosen and the strength of evidence,  $F(2, 252) = 59.67, p = .001, \text{partial } \eta^2 = .32$ . Tukey post-hoc comparisons of the three conditions indicated results similar to the first analysis. The likelihood of conviction mean when the evidence favored the prosecution ( $M = 5.20, SD = 1.75$ ) was significantly higher than the likelihood of conviction mean when the evidence was ambiguous ( $M = 3.54, SD = 1.77$ ),  $p = .001$  or when the evidence favored the defense ( $M = 2.42, SD = 1.42$ ),  $p = .001$ . In addition, the likelihood of conviction mean when the evidence was ambiguous was significantly higher than the likelihood of conviction mean when the evidence favored the defense ( $M = 2.42, SD = 1.42$ ),  $p = .001$ .

Overall, Hypothesis 3 was supported. Results indicated that the likelihood of conviction for both dichotomous and continuous verdict measures was highest when the evidence favored the prosecution, moderate when the evidence was ambiguous, and lowest when the evidence favored the defense. When the evidence was clearly presented to participants as either favoring the prosecution or defense, participants tended to provide a verdict as expected. However, when those participants in the ambiguous evidence condition were forced into a dichotomous verdict decision, the expected even split between guilty and non-guilty verdicts was not found. Rather, many more participants chose a non-guilty verdict.

*Hypothesis 4.* It was predicted that likelihood of conviction would be impacted by an interaction between SOE and balance of trial consultants. More specifically, it was expected that (a) the likelihood of conviction would be low regardless of the presence or absence of trial consultants when the evidence strongly favored the defense, and (b) the likelihood of conviction would be high regardless of the presence or absence of trial consultants when the evidence strongly favored the prosecution. When the evidence was ambiguous, however, it was expected that (c) the likelihood of conviction would be highest when the defense used a trial consultant, moderate when both sides used a trial consultant, and lowest when the prosecution used a trial consultant. This hypothesis was tested using both the dichotomous and continuous verdict measures. In the first analysis, participants' dichotomous verdict measure (guilty vs. not guilty) was used as the likelihood of conviction measure. A logistic regression analysis indicated no significant interaction between SOE and balance of trial consultants. *Table 8* presents a summary of the logistic regression analysis. Two separate dummy coded variables were created for both SOE and use of a trial consultant in order to look at the main effects for these variables. The predictors were coded such that the first variable listed in *Table 8*, SOE advantage prosecution, represents "favors prosecution vs. everyone else," and the second variable listed, SOE advantage defense, represents "favors defense vs. everyone else." The third variable listed, TC prosecution, represents "use of TC by prosecution vs. everyone else," and the fourth variable listed, TC defense, represents "use of TC by defense vs. everyone else." The last four variables are the interaction terms, which represent the product of all of the dummy code combinations. Thus, the fifth variable listed, Interaction 1, represents SOE favors defense X TC defense. The sixth variable

listed, Interaction 2, represents SOE favors prosecution X TC prosecution. The seventh variable listed, Interaction 3, represents SOE favors defense X TC prosecution, and the eighth variable listed, Interaction 4, represents SOE favors prosecution X TC defense. Since the constant represents the condition where all of the predictor variables equal zero and zero is not a realistic value for the variables to take, it is not valuable to interpret it in this instance.

Table 8

*Summary of Logistic Regression Analysis for SOE/TC Interaction Predicting Likelihood of Conviction (N = 255)*

Predictor	$\beta$	SE $\beta$	Wald's $X^2$	Exp ( $\beta$ )
SOE advantage prosecution	-2.02**	.60	11.39	.13
SOE advantage defense	1.94	1.11	3.04	7.00
TC prosecution	1.22	1.41	.74	3.38
TC defense	.30	.74	.16	1.35
Interaction 1	-.31	1.39	.05	.73
Interaction 2	.58	.84	.48	1.79
Interaction 3	-1.71	1.30	1.74	.18
Interaction 4	.01	.84	.00	1.01
Constant	-1.30	1.18	1.22	.27
$X^2$	69.59**			
Df	8			

*Note.* Likelihood of conviction predictors coded as 1 for *guilty* and 0 for *not guilty*.  
 \* $p < .05$ . \*\* $p < .001$ .

Nagelkerke  $R^2$  for the overall prediction model was .33, which suggests that the interaction between SOE and the balance of trial consultants contributed an estimated 33% of the variance in likelihood of conviction scores among participants. This is almost the same percentage of variance predicted by SOE alone, as indicated by the results reported for Hypothesis 3. The odds ratios for all of the interaction variables indicate that the likelihood of conviction was not impacted by an interaction between SOE and balance of trial consultants. The overall classification accuracy was 77.6%, which is better than the proportional by chance accuracy rate which was calculated to be .57. This was, however, the same classification accuracy reported for Hypothesis 3, suggesting that the interaction variables added nothing to the model.

Table 9 presents a breakdown of the proportion of verdicts per experimental condition.

Table 9

*Proportion of Verdicts Per All Conditions (N = 255)*

SOE	Use of trial consultant					
	Prosecution		Defense		Both	
	Guilty	Not guilty	Guilty	Not guilty	Guilty	Not guilty
Advantage defense	.18	.82	.07	.93	.03	.97
Ambiguous	.21	.79	.24	.76	.20	.80
Advantage prosecution	.54	.46	.74	.26	.64	.36

As Table 9 shows, when the evidence favored the defense, participants tended to provide a not guilty verdict regardless of the use of trial consultants. When the evidence favored the prosecution, however, Hypothesis 4 predicted that participants would provide a guilty

verdict regardless of the use of trial consultants. While the majority of participants in this condition did convict the defendant, the effect was not as strong as had been anticipated. For example, when the prosecution alone used a trial consultant, only 54% of participants in the condition where SOE favors prosecution voted to convict the defendant. Finally, Table 9 shows that when SOE was ambiguous, participants tended to provide a not guilty verdict regardless of the use of trial consultants.

In the second analysis, participants' continuous verdict measure (on a scale from 1 to 7 where 1 was "I am positive Brennan is not guilty" and 7 was "I am positive Brennan is guilty") was used as the likelihood of conviction measure. Analysis of variance indicated that there was a significant difference between the verdict chosen and the strength of evidence,  $F(2, 252) = 59.67, p = .001$ , partial  $\eta^2 = .32$ . The likelihood of conviction mean when the evidence favored the prosecution ( $M = 5.20, SD = 1.75$ ) was significantly higher than the likelihood of conviction mean when the evidence was ambiguous ( $M = 3.54, SD = 1.77$ ),  $p = .001$  or when the evidence favored the defense ( $M = 2.42, SD = 1.42$ ),  $p = .001$ . In addition, the likelihood of conviction mean when the evidence was ambiguous was significantly higher than the likelihood of conviction mean when the evidence favored the defense ( $M = 2.42, SD = 1.42$ ),  $p = .001$ . No significant differences were found, however, for the main effect of use of a trial consultant,  $F(2, 252) = .40, ns$ , partial  $\eta^2 = .003$  or for the interaction of use of a trial consultant and SOE,  $F(4, 252) = 1.17, ns$ , partial  $\eta^2 = .01$ . These results support parts (a) and (b) of Hypothesis 4, and further supports the significant main effect for SOE found in Hypothesis 3. Table 10 presents a breakdown of the mean continuous verdict measure scores across all conditions.

Table 10

*Mean Continuous Verdict Measure Scores Across Conditions (N = 255)*

SOE	<u>Use of trial consultant</u>		
	Prosecution	Defense	Both
Advantage defense	2.68	2.50	2.10
Ambiguous	3.54	3.55	3.53
Advantage prosecution	4.71	5.52	5.39

Because Hypothesis 4 makes a specific prediction for the effects of the use of trial consultants on verdicts only in the ambiguous condition, a planned contrast ANOVA was conducted using the data from those in the ambiguous condition only ( $n = 87$ ). The data was collapsed across the conditions where the defense only and both sides used a trial consultant and compared to the condition where the prosecution alone used a trial consultant. Results indicated no significant difference in likelihood of conviction scores as a function of use of trial consultants in the ambiguous evidence condition,  $F(1, 87) = .00, ns$ .

Overall, analyses found no significant interaction between SOE and balance of trial consultants using either dichotomous or continuous verdict measures. Hypothesis 4 was therefore not supported. Results indicated that the likelihood of conviction was low regardless of the presence or absence of trial consultants when the evidence strongly favored the defense, and the likelihood of conviction was high regardless of the presence or absence of trial consultants when the evidence strongly favored the prosecution. The likelihood of conviction was moderate when the evidence was ambiguous. No effect was

found to indicate that the use of a trial consultant by one or both sides impacted the likelihood of conviction for those participants in the ambiguous condition.

*Hypothesis 5 and Hypothesis 6.* It was predicted that the relationship between the balance of trial consultants and likelihood of conviction would be mediated by perceptions of neutrality (Hypothesis 5) and global fairness (Hypothesis 6) in the ambiguous evidence condition. No support was found for Hypothesis 4, which had predicted that the use of a trial consultant by one or both sides would impact the likelihood of conviction for those participants in the ambiguous condition. Because results from the previous analyses indicated no support for the expected pattern of data in the ambiguous evidence condition, no further testing was conducted.

#### *Open-Ended Questions*

Open-ended questions were used to supplement Likert-type responses throughout the questionnaire in order to provide a greater depth of opinion. They were not used for the purposes of hypothesis testing. The first three open-ended questions correspond to the three items of the Relational Theory measure that comprise the subscale score for impropriety of behavior. After asking participants to rate whether “the attorneys in this case acted in a manner that was dishonest or improper,” they were asked to provide more information: “If you thought the attorneys did something dishonest or improper, please explain briefly in the space below.” Of greatest interest was whether or not participants would mention the use of trial consultants when not directly prompted to respond to the fairness of their use during the trial. Two hundred and five of the 255 participants did not respond (81.3%). Of the 50 participants who provided more information, 39 (78%) mentioned the use of trial consultants (e.g., “I’m not too familiar with how the system

works but I don't think it's fair to have a full mock trial and pick favorable jurors to choose the verdict"). While 43.6% of the participants who responded affirmatively and mentioned the use of a trial consultant were in the condition where the prosecution only used a trial consultant, 38.5% were in the condition where both the prosecution and defense used a trial consultant. Only 17.9% of participants from the condition where only the defense used a trial consultant described the use of a trial consultant as being dishonest or improper. Possible reasons for this will be discussed in the next chapter.

In the third item to comprise the subscale score for impropriety of behavior, participants were first asked to rate whether "The use of a trial consultant was dishonest or improper" and then asked "If you thought the use of a trial consultant was dishonest or improper, please explain briefly in the space below." The comments of the 53 participants who responded to this item tended to cluster into four major categories: concern over use of a paid survey (e.g., "A trial consultant is improper because consultant paid people to fill out a survey"), concern over the use of the mock trial (e.g., "I thought it was improper because the defense attorneys were getting a chance to refine their case and arguments for a man who quite possibly could be guilty and walk free as a result of the work of the consultant"), concern over the selection of a "favorable jury" (e.g., "I thought it was dishonest because the consultant chose individuals who would most likely agree with the arguments of the prosecution and that isn't right. The people chosen should be neutral"), and a general sense that the use of a trial consultant was not ethical (e.g., "They should be preparing their case based on raw data to genuinely prove Jasper's innocence, not asking a consultant just so that they win their case"). Twenty-six of the 53 participants (49.1%) who commented that the use of trial consultant was dishonest or

improper were in the condition where the prosecution only used a trial consultant, 12 (22.6%) were in the condition where both the prosecution and defense used a trial consultant, and 15 (28.3%) were in the condition where only the defense used a trial consultant. The impact of assigned condition on the comments made will be discussed in the next chapter.

The fourth open-ended question corresponds to the second subscale, factual decision making, of the Relational Theory measure. This subscale was assessed by two items (Tyler, 1989), one of which asked participants to rate whether the jury was given all of the information needed to render a verdict. Participants were then asked to explain briefly what information they thought was missing if they thought the jury was not given all of the information needed to render a verdict. The purpose of this question was to provide supplemental information regarding the SOE manipulation check. Comments such as, “The victim couldn’t identify the attacked (sic). She picked up the man out of the line but she couldn’t even remember the man’s eye color” and “Why was Jasper repeatedly the only blue-eyed white man? Perhaps if there were other white, blue eyed men in the line up, they would have a different suspect” were made by participants in the Advantage Defense condition and supported the success of the SOE manipulation. Participants in the Advantage Prosecution condition did not have these concerns, since their case summary differed with regard to these facts. In another example, some participants in the Advantage Prosecution and Ambiguous Evidence conditions expressed frustration over the failure to obtain semen samples from the husband and/or son of the victim. Comments such as, “The jury needed more evidence from the prosecution side (i.e., semen samples from family members)” also supported the success of the SOE

manipulation. Participants in the Advantage Defense condition did not have these concerns, since their case summary reported that semen samples were obtained from the husband and son.

The fifth open-ended question corresponds to the third subscale, lack of bias, of the Relational Theory measure. This subscale was assessed by three items, one of which asked participants if they thought that the legal authorities involved favored one party over another. Participants were then asked to briefly explain why they thought the legal authorities involved favored one party over another. Of greatest interest was whether or not participants would mention the use of trial consultants when not directly prompted to respond to the fairness of their use during the trial. One hundred eighty-six of the 255 participants did not respond (73.0%). Of the 69 participants who provided more information, 9 (13.0%) mentioned the use of trial consultants (e.g., “the use of a mock trial to find a favorable jury”). Four participants who responded affirmatively and mentioned the use of a trial consultant were in the condition where the prosecution only used a trial consultant and two were in each of the other conditions. The most universal response (25 out of 69, or 36.2%) made reference to the opinion that the victim is often favored over the accused in criminal cases (e.g., “I think that the defendant is always seen as the non-favored one” and “society thinks women are angels in such situations.” This response occurred across all conditions, regardless of the evidence strength manipulation. Possible reasons for this will be discussed in the next chapter.

The sixth and final open-ended question asked participants to list all pieces of evidence or other aspects of the trial that influenced their verdict determination. Responses to this question provided a greater depth of opinion than what could be gained

from a Likert scale rating of guilt or innocence, particularly with regard to what specific factors appeared to be the most influential in the decision. Also of interest was whether participants would mention the use of a trial consultant as a factor in their verdict determination. The responses that appeared repeatedly across all nine conditions could be grouped into the following seven categories (listed in descending order of frequency): semen analysis, alibi, victim ID of Jasper Brennan, ID of Jasper Brennan by other victims, witnesses at library, use of car, and a general “lack of evidence.”

Evidence related to semen analysis was mentioned 150 times across all nine conditions (e.g., “the semen didn’t match 100%”), Jasper Brennan’s alibi was mentioned 92 times across all nine conditions (e.g., “the fact that two witnesses saw him studying when crime occurred”), evidence related to the rape victim’s identification of Jasper Brennan was mentioned 92 times (e.g., “the victim was not sure it was really him”), evidence related to the identification of Jasper Brennan by the other two rape victims mentioned in the case study appeared 81 times (e.g., “he was identified by 2 other women”), the witnesses at the library were mentioned 59 times (e.g., “he had 2 witnesses stating his presence at the library”), evidence related to the role that the car played in the crime was mentioned 37 times across all nine conditions (e.g., “he did not have a car”), and lack of evidence was only mentioned 29 times across all nine conditions as an aspect of the trial that influenced verdict determination (e.g., “There’s no actual proof really”).

Only two participants in the entire sample mentioned the use of a trial consultant as a factor in their verdict determination. One commented that, “...the prosecutors picked the jury whose to say if they also got the witness also to be on their side,” and the other simply mentioned “the trial consultant.” Both of these participants were in the

condition where only the prosecution used a trial consultant and where the evidence strength favored the prosecution. Both verdicts were not guilty. Possible reasons for the lack of importance placed on the use of trial consultants when making verdict determinations will be discussed in the next chapter.

## CHAPTER 8

## Discussion

This chapter discusses the results obtained in the empirical study. The purpose of this dissertation was to fill some of the gaps in the trial consultant literature by using the principles of procedural justice to explore what, if any, impact the use of a trial consultant can have on the outcome of a criminal jury trial, as well as the possibility that perceptions of fairness mediate the relationship between the balance of trial consultants and juror verdicts in cases where the evidence is ambiguous. The findings regarding the hypothesized relationships and questions of interest are discussed first, followed by implications for the fields of psychology and trial consulting. The chapter ends with a discussion of the limitations of the current study, suggestions for future research, and concluding remarks regarding the present study.

*Balance of Trial Consultants*

*Balance of trial consultants and neutrality.* Drawing on the group-value model (Lind & Tyler, 1988), the first hypothesis focused on whether a trial was perceived as being more neutral if there was a balance of trial consultants during a trial. If both the prosecution and defense used the services of a trial consultant, it was hypothesized that there would be no violation of Tyler's (1989) neutrality principle (notion of a level playing field) and judgments of perceived fairness were expected to be higher than if only one side used a trial consultant. Results indicated that there were no significant differences in neutrality scores between participants who were told that only the plaintiff or only the defense utilized a trial consultant and those participants told that both sides

used a trial consultant. While Hypothesis 1 was not supported, further analyses did reveal some interesting trends.

Because the results did approach significance ( $p = .06$ ), the results were examined more closely. While *post hoc* comparisons using Tukey's HSD found no significant differences between the three conditions, simple planned contrasts indicated a significant difference between the neutrality score of participants when the prosecution alone used a trial consultant when compared to the neutrality scores of participants in the other two collapsed conditions. No significant difference was found between the neutrality score of participants when the defense alone used a trial consultant when compared to the neutrality scores of participants in the other two collapsed conditions. Thus, there is some evidence to indicate that it was perceived as more fair for the defense alone to use a trial consultant than for the prosecution alone to use a trial consultant. Perceptions of neutrality when both sides used a trial consultant were the same as when only the defense used a trial consultant.

*Balance of trial consultants and global fairness.* The second hypothesis examined whether a trial was perceived as being higher in global fairness if there was a balance of trial consultants during a trial. In addition to neutrality, the group-value model (Lind & Tyler, 1988) identified two other relational concerns that dominate judgments of procedural fairness: the trustworthiness of the authorities enacting the procedures (trust), and information about the individual's standing in the group (status recognition). While numerous studies have found neutrality to be the major criterion used to assess procedural justice (e.g., Barrett-Howard & Tyler, 1986; Fry & Leventhal, 1979; Fry & Chaney, 1981; Greenberg, 1986; Tyler, 1989), other studies have shown that these three

relational concerns together affect procedural justice judgments (Tyler, 1994; Lind et al., 1997). The global fairness measure is comprised of all three of the group-value model's relational concerns (Lind & Tyler, 1988).

Hypothesis 2 was partially supported. Results indicated that there were significant differences in perceptions of global fairness when the prosecution, the defense, or both used a trial consultant, although the effect size was small. More specifically, Tukey *post hoc* comparisons and simple planned contrasts indicated that perceptions of global fairness were higher when both the prosecution and defense used a trial consultant than when only the prosecution used a trial consultant, but that perceptions of global fairness were not significantly higher when both sides used a trial consultant if it was the defense alone using a trial consultant. Results indicate that the use of a trial consultant significantly impacted perceptions of global fairness only when the prosecution alone used a trial consultant.

*“Benefit of the doubt” effect.* Tukey *post hoc* comparisons found that the mean neutrality and global fairness scores when the defense alone used a trial consultant were nearly identical to the mean neutrality scores when both sides used a trial consultant, and simple planned contrasts indicated a significant difference between the neutrality and global fairness scores of participants when the prosecution alone used a trial consultant when compared to the global fairness scores of participants in the other two collapsed conditions. This pattern of results could be a reflection of a “benefit of the doubt” effect, which refers to the tendency of jurors to presuppose that the defendant is innocent until proven guilty. The assumption of innocence is rooted in our legal system, which imposed

a reasonable doubt standard in 1970 that declared it essential to due process and fair treatment.

The reasonable doubt standard “is bottomed on the fundamental value determination that it is far worse to convict an innocent man than to let a guilty man go free” (Armour, 2008). As such, the Due Process Clause “protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged” (Armour, 2008). According to legal scholars, mandated use of this standard in all criminal proceedings is critical to a free society because it maintains the confidence of community members in the court’s ability to sufficiently protect the innocent (Armour, 2008). Beyond the legal import that the presumption of innocence and the reasonable doubt standard of proof impose, the tendency of jurors to give the defendant the benefit of the doubt is also rooted in human nature. As one legal commentator stated, “Jurors are not legal experts...they are there as the accused person’s peers, with comparable life experience, insight and knowledge of human relationships...It is the duty of the jurors, above all else, to put themselves in the shoes of the defendant” (Power, 2008). The presumption of innocence is a natural human tendency when jurors place themselves in the shoes of the defendant and think about how they would think, behave, or react in similar circumstances (Power, 2008).

It is possible that these legal and moral leanings are responsible for the results of Hypotheses 1 and 2. When the playing field was equal and both sides utilized the services of a trial consultant, the mean neutrality and global fairness scores were nearly identical to the mean neutrality and global fairness scores of participants when the defense alone used a trial consultant. In other words, perceptions of neutrality and global

fairness were not affected when extra assistance was provided to the defense by a trial consultant. Perhaps participants still thought the trial was fair because they were giving the benefit of the doubt to the defendant. When the extra assistance was provided to the prosecution, however, perceptions of neutrality and global fairness lowered significantly. If participants were giving the benefit of the doubt to the defendant, it would follow that they would think it was okay for the defense to benefit from a perceived advantage but that it would be perceived as less fair when the prosecution was the sole beneficiary of a perceived advantage.

### *Strength of Evidence*

The third hypothesis predicted that jurors would be most likely to find the defendant guilty when the evidence was in favor of the prosecution and least likely to find the defendant guilty when the evidence favored the defense. When SOE was ambiguous, the likelihood of conviction would fall somewhere in between. This prediction of a main effect for SOE was based on experiments conducted in both the laboratory and the field that have shown a strong positive association between SOE and jury verdicts of guilt (Devine et al., 2001).

Hypothesis 3 was supported for both dichotomous and continuous verdict measures. A logistic regression analysis using the dichotomous verdict measure indicated a significant relationship between SOE and likelihood of conviction. Furthermore, as predicted, the number of participants whose verdict determination was “guilty” was highest when the evidence favored the prosecution, moderate when the evidence was ambiguous, and lowest when the evidence favored the defense. Analysis of variance using the continuous verdict measure found a significant relationship and large

effect size between the verdict chosen and the strength of evidence. The strong positive association between SOE and juror verdicts of guilt found in numerous other studies (Devine et al., 2001) received further support from the current research.

The dichotomous verdict results of Hypothesis 3 also provide some information that further supports the “benefit of the doubt” theory. Results from the analyses indicate that when the evidence was clearly presented to participants as either favoring one side or another, participants tended to provide a verdict as expected. What was not expected, however, was the large majority of participants in the ambiguous condition who chose “not guilty” when forced into making a decision by the dichotomous verdict option. Twenty-two percent of the participants whose case was ambiguous chose guilty, while 78% of participants whose case was ambiguous chose not guilty. Thus, the expected even split between guilty and non-guilty verdicts was not found for participants in the ambiguous evidence condition who were forced into a dichotomous verdict decision. Rather, many more participants in the ambiguous condition chose a non-guilty verdict, indicating that the defense appears to receive the benefit of the doubt when participants are forced to choose guilty or not guilty. This is an interesting finding, particularly in light of the fact that if participants had only been required to make a continuous verdict determination, this effect would have gone undetected.

The results of the first three hypotheses are similar to those reported by Stolle et al. (1996) in their study. These researchers found a significant interaction such that when the outcome favored the defendant, the use of a trial consultant was thought to be equally fair whether or not the defendant had a trial consultant. When the outcome favored the prosecution/plaintiff, however, the use of a trial consultant was thought to be more fair

when the defendant had a trial consultant than when he did not. Taken together, this pattern of results can be interpreted as a reflection of the philosophy of the American jury system and its emphasis on the presumption of innocence and the reasonable doubt standard. Just as the participants in this study received a Juror Instruction form prior to coming to any conclusions regarding the facts of the case, jurors in the American legal system are provided with instructions prior to deliberation that seek to educate them on the fundamental principles of our law that apply in all criminal trials- the presumption of innocence, the burden of proof, and the requirement of proof beyond a reasonable doubt. The pattern of results seen in the first three hypotheses could be interpreted as supporting the successful application of these standards in a trial situation.

*Interaction Between Balance of Trial Consultants and SOE*

The fourth hypothesis predicted that the likelihood of conviction would be impacted by an interaction between SOE and the balance of trial consultants. More specifically, it was expected that when the evidence was ambiguous, the likelihood of conviction would be highest when the defense used a trial consultant, moderate when both sides used a trial consultant, and lowest when the prosecution used a trial consultant. Research has shown that when the evidence strongly favored either the defense or the prosecution, the bias tendencies of jurors decreased (e.g., Baumeister & Darley, 1982; Kaplan & Miller, 1978) and jurors reached a verdict based largely on the strength of the evidence presented during trial. When the evidence was not clear, however, it was predicted that jurors would be more likely swayed by biasing factors, such as the presence or absence of a trial consultant.

Analyses using both the dichotomous and continuous verdict measures were conducted. Hypothesis 4 was not supported. While analyses showed a significant difference for the main effect of SOE when comparing SOE favors prosecution to the other two conditions, no significant differences were found for the main effect of use of a trial consultant or for the interaction of use of a trial consultant and SOE. As expected, when SOE strongly favored the defense, the likelihood of conviction was low and when SOE strongly favored the prosecution, the likelihood of conviction was high. However, contrary to predictions, the balance of trial consults did not impact the likelihood of conviction in the present study. It had been predicted that when the evidence was ambiguous, the likelihood of conviction would be the highest when the defendant alone used a trial consultant. In those conditions, the relational model (Tyler, 1989) would predict that jurors would perceive the defense as having an unfair advantage and would compensate for this by being more likely to find in favor of the prosecution. The results of the present study indicate that participants perceived no such disadvantage.

Based on the clear “benefit of the doubt” effect found in the results of the first three hypotheses, however, it is possible that the prediction made was incorrect. It was originally expected that when the evidence was ambiguous, the likelihood of conviction would be highest when the defense used a trial consultant, moderate when both sides used a trial consultant, and lowest when the prosecution used a trial consultant. Using the “benefit of the doubt” theory as a basis for prediction, however, it would be expected that when the evidence was ambiguous, the likelihood of conviction when the defense used a trial consultant would be fairly similar to the likelihood of conviction when both sides used a trial consultant. Based on the pattern of findings seen thus far, no unfair

advantage would be perceived when the defense alone used a trial consultant. When the prosecution alone used a trial consultant, however, the “benefit of the doubt” pattern would predict that an unfair advantage would be perceived, causing participants to be less likely to convict the defendant than they would under normal circumstances. Thus, using the “benefit of the doubt” theory as a basis for prediction, it would be expected that when the evidence was ambiguous the likelihood of conviction would be lower when the prosecution alone used a trial consultant than when the defense alone used a trial consultant or both sides used a trial consultant.

In order to test this new prediction as guided by the “benefit of the doubt” premise, a post hoc analysis was performed using the ambiguous condition only ( $n = 87$ ) after collapsing across the conditions where the defense only and both sides used a trial consultant and comparing it to the condition where the prosecution only used a trial consultant. No significant results were found. Thus, Hypothesis 4 continued to find no support even when restricted to the ambiguous condition subsample and altered to take into account the “benefit of the doubt” effect.

The lack of a significant interaction in Hypothesis 4 indicates that the balance of trial consultants did not impact verdict determination in the present study. If only one party in the trial used the services of a trial consultant, it did not have a statistically significant impact on participants’ likelihood to convict or acquit the defendant. Results show that evidence strength was the strongest predictor of likelihood of conviction. One of the major purposes of this study was to explore for the first time whether the balance of trial consultants can affect a juror’s perceptions of procedural justice and impact his or her verdict, particularly in cases where the evidence is ambiguous. Although research

has shown that the bias tendencies of jurors decrease when confronted with clear proof of guilt or innocence and increase when the evidence is more ambiguous (e.g., Baumeister & Darley, 1982; Kaplan & Miller, 1978), the results of this study do not indicate that participants viewed the presence or absence of a trial consultant in the ambiguous condition as an influential factor when making verdict decisions. In the current study, use of a trial consultant did not serve as a biasing factor.

*Mediation: Relationship Between Balance of Trial Consultants and Verdict*

Another purpose of this study was to examine why the balance of trial consultants, particularly in cases where the use of a trial consultant between parties was uneven, would increase or decrease the likelihood that a juror would convict a defendant. It was hypothesized that perceptions of neutrality and/or global fairness would mediate the relationship between the balance of trial consultants and juror verdicts when the evidence was ambiguous. The present study found that the balance of trial consultants had no impact on the likelihood of conviction across any SOE conditions (Hypothesis 4). As discussed above, results show that evidence strength was the strongest predictor of likelihood of conviction. There was no statistically significant impact on participants' likelihood to convict or acquit the defendant as a function of one or both sides using the services of a trial consultant.

The failure of the trial consultant manipulation to produce a biasing effect, particularly in the ambiguous condition, rendered the question of a mediating variable moot. Since the balance of trial consultants did not increase or decrease the likelihood that a juror would convict a defendant, there was no relationship for neutrality and/or global fairness to mediate. Mediation analyses were initiated, but correlations showed

that the use of a trial consultant was unrelated to the likelihood of conviction in the ambiguous condition. Correlations also showed that the likelihood of conviction was unrelated to neutrality and global fairness scores in the ambiguous condition. Perhaps if the evidence did not strongly favor either the defense or prosecution, it was difficult for a relationship to exist between perceptions of neutrality and/or fairness and the likelihood of conviction. Because a precondition for finding significant mediation is that all three correlations among the three variables must be statistically significant (Baron & Kenny, 1986), further analyses were not conducted.

### *Open Ended Questions*

Throughout the questionnaire, open-ended questions were used to supplement Likert-type responses. While the responses to these questions were not used for the purposes of hypothesis testing, a closer examination of some of the informal findings provided some interesting information that would have been impossible to detect from a rated response. In most cases, the pattern of responses reflected the “benefit of the doubt” effect found throughout hypotheses testing.

The first open-ended question asked participants to explain why they thought the attorneys in the case had done something that was dishonest or improper. More than three-quarters of the participants who provided more information mentioned the use of trial consultants, although participants had not been prompted to respond to the fairness of their use during the trial. More specifically, less than one-fifth of the participants who described the use of a trial consultant as being dishonest or improper were from the condition where only the defense used a trial consultant. This pattern of responses supports the “benefit of the doubt” theory discussed earlier in this section. It is possible

that the attorneys in the case were less likely to be perceived as acting dishonestly or improperly when the defense alone used a trial consultant because the participants were already giving the benefit of the doubt to the defendant. More than twice as many participants from the condition where only the prosecution used a trial consultant as well as more than twice as many participants from the condition where both sides used a trial consultant described the use of a trial consultant as being dishonest or improper.

The third open-ended question asked participants to explain why they thought the use of a trial consultant was dishonest or improper. Four major categories emerged: concern over the use of a paid survey, concern over the use of the mock trial, concern over the selection of a “favorable jury,” and a general sense that the use of a trial consultant was not moral/ethical. Based on the literature related to the field of trial consulting that was discussed earlier, these concerns were all logical. The first three comprise the core of the job performed by a trial consultant. The fourth is a reflection of one of the major issues in the trial consulting industry. Responses also provided additional support for the “benefit of the doubt” theory. Approximately half of the participants who commented that the use of a trial consultant was dishonest or improper were in the condition where the prosecution only used a trial consultant. Once again, it appears that it was considered less fair for the prosecution to have a perceived advantage, so more participants in that condition viewed the use of a trial consultant as improper. When the defense had the perceived advantage, fewer participants viewed this as improper because the defense was arguably given the benefit of the doubt.

The fourth open-ended question asked participants to explain what information they thought was missing if they thought the jury was not given all of the information

needed to render a verdict. This question served two purposes: it provided supplemental information regarding the SOE manipulation check, and it provided important information that could be used to strengthen or weaken the SOE manipulation in future studies. As discussed in Chapter 7, participant responses supported the success of the SOE manipulation. The second purpose of this question was to help strengthen the SOE manipulation in future studies. While some of the comments made by participants were the result of a deliberate manipulation by the researcher, other responses were not and could therefore be used to further strengthen or weaken the cases in future studies. Participant responses that did not directly relate to an intended manipulation tended to cluster into four categories: The lack of serology evidence from the other two rape victims discussed in the case, an expressed wish for a phone bill or phone records to verify Jasper's alibi, lack of gun evidence, and lack of DNA evidence. Although DNA evidence was not available at the time the crime in question was committed, it is understandable that some participants would not be aware of this fact and would question its absence in the case. Future studies may want to consider including some or all of these factors when manipulating evidence among conditions.

The fifth open-ended question asked participants to explain why they thought the legal authorities involved favored one party over another. Of greatest interest was whether or not participants would mention the use of trial consultants when not directly prompted to respond to the fairness of their use during the trial. Over one-third of the respondents made reference to the opinion that the victim is often favored over the accused in criminal cases. This response occurred across all conditions, regardless of the evidence strength manipulation. Once again, these responses can be viewed as support

for the “benefit of the doubt” theory; when the participants sensed inequity, they were quick to blame it on a tendency to favor the victim (thus showing support for the defense). Very few respondents mentioned the use of trial consultants (e.g., use of a mock trial, survey, etc.) as a factor in their belief that the legal authorities involved favored one party over another. This failure to single out the use of trial consultants as a source of bias or unfairness during the trial should be viewed as a positive sign from the perspective of those in the trial consulting industry. Their presence during a trial did not appear to have a strong effect on perceptions of fairness in the present study.

Finally, the sixth open-ended question asked participants to list all pieces of evidence or other aspects of the trial that influenced their verdict determination. The most frequently mentioned variables were semen analysis, the alibi of the accused, the rape victim’s identification of the accused, and evidence related to the identification of the accused by two other rape victims. Each of these was mentioned more than 80 times. In contrast, only two participants in the entire sample mentioned the use of a trial consultant as a factor in their verdict determination. The failure to single out the use of trial consultants as a contributing factor in verdict determination supports the lack of significant findings for Hypothesis 4, which found that the balance of trial consultants did not impact verdict determination across any SOE conditions in the present study. Results showed that evidence strength was the strongest predictor of likelihood of conviction, and responses to the open-ended question also show that the most frequently cited reasons for verdict determination were evidence based.

In general, responses to the open-ended questions tended to provide further support for the “benefit of the doubt” theory. When participants were asked to explain

why they thought the legal authorities involved favored one party over another, more than one third of the responses made reference to the belief that the victim is often favored over the accused in criminal cases. Furthermore, half of the participants who commented that the use of trial consultant was dishonest or improper were in the condition where the prosecution only used a trial consultant. The remaining half was split almost evenly between the condition where both the prosecution and defense used a trial consultant and the condition where only the defense used a trial consultant. Perhaps when the defense had the perceived advantage rather than the prosecution, fewer participants viewed this as improper because the defense was being given the benefit of the doubt. The results from the present study are perhaps an indication of just how deeply rooted the belief in the presumption of innocence has become for jurors in our legal system.

#### *Contributions to the Literature*

This dissertation makes several contributions to both the procedural justice and trial consulting literatures. Despite the prevalence of trial consultants in the American courtroom, the role that perceptions of procedural justice play in relation to the use of consultants is an area of critical importance that has gone largely unexplored.

*Implications for the Field of Psychology.* The present study offers a unique contribution to the procedural justice literature. Because variables such as fairness are more difficult to operationalize, quantify, or measure (Fondacaro, 1995), empirical academic literature related to scientific trial consulting has tended to focus more on the objective notion of efficacy (Stolle et al., 1996). The perceived fairness of trial consulting is of vital importance, however. As researchers have pointed out, the perception that procedures are unfair or unethical can undermine the legitimacy of our

entire legal system (MacCoun et al., 1992). Although procedural justice has been confirmed in a wide variety of settings including citizens' dealings with the police (e.g., Tyler & Folger, 1980), political allocations (e.g., Tyler et al., 1985), interpersonal contexts (e.g., Barrett-Howard & Tyler, 1986), and within organizations (e.g., Greenberg, 1987; Sheppard & Lewicki, 1987), there has been very limited application of its principles to the field of trial consulting.

This dissertation expands our knowledge of procedural justice by providing one of the only empirical studies to use Tyler and Lind's (1992) relational model of authority to investigate the impact that trial consulting procedures have on the perceived fairness of courtroom proceedings and the outcomes of these proceedings. Tyler (1989) built upon Leventhal's (1976) framework when he identified three relational concerns that dominate judgments of procedural fairness: the trustworthiness of the authorities enacting the procedures (trust), the neutrality of those authorities (neutrality), and information about the individual's standing in the group (status recognition). As discussed earlier in this chapter, results indicated that the balance of trial consultants did affect perceptions of global fairness (a combination of all three relational concerns), and, to a lesser extent, perceptions of neutrality when the prosecution alone used the services of a trial consultant. The partial support for the main effect of trial consultants is the first time such an effect has been found.

In the present study, results were stronger when perceptions of global fairness were examined than when perceptions of neutrality were examined. One possible explanation for this difference is that all three dimensions of Tyler's (1989) relational model are needed to fully capture perceptions of fairness. It is also possible that the

different results found when examining neutrality and global fairness scores is a result of participants' failure to recognize the role played by trial consultants. In order to investigate this possibility, all analyses were repeated using only the sample for which the trial consultant manipulation was successful ( $n = 190$ ). The results did not differ significantly from the results obtained when using the full sample ( $N = 255$ ).

The present study found marginal support for the critical importance of neutrality as it relates to the use of trial consultants in a courtroom setting. Leventhal's consistency dimension (incorporated into Tyler's concept of neutrality) has been found in a number of studies (e.g., Barrett-Howard & Tyler, 1986; Fry & Leventhal, 1979; Fry & Chaney, 1981; Greenberg, 1986) to be the major criterion used to assess procedural justice, and Tyler's (1989) study showed that when the issue of concern was outcome fairness, neutrality became the most important variable. In the present study, the use of a trial consultant by the prosecution alone impacted both neutrality and global fairness scores. This indicates that the dimension of neutrality is capable of affecting participants' perceptions of fairness when isolated from trust and status recognition, although the effect was stronger when global fairness scores were used.

In addition to applying the relational model of authority to investigate the perceived fairness of trial consulting procedures in a courtroom setting, the present study also examined the impact that perceptions of fairness had on the outcomes of these proceedings. Results indicated that while the use of a trial consultant can affect perceptions of neutrality and global fairness, no support was found for the position that the use of trial consultants impacts the outcomes of these proceedings. Although procedural justice in the present study was affected when the prosecution alone used a

trial consultant, results did not show that verdict determination was affected. The strong positive association between SOE and juror verdicts of guilt found in numerous other studies (Devine et al., 2001) received further support from the current research.

Furthermore, in the course of investigating whether the balance of trial consultants influenced juror verdicts when SOE was ambiguous, this study was unique in its investigation of whether perceptions of fairness mediated this relationship. Because the relationship between trial consultant balance and juror verdicts was untested prior to this study, the lack of significant findings was informative.

*Implications for the Field of Trial Consulting.* One of the main purposes of this dissertation was to examine whether the balance of trial consultants during a trial could affect a juror's perceptions of fairness. Stolle et al. (1996) and Griffith et al. (2007) conducted the only other known studies that have attempted to link the balance of trial consultants to measures of procedural justice, and virtually nothing is known with regard to whether trial consultants themselves can serve as a source of bias. Stolle et al. (1996) found a lack of significant multivariate effects for the presence of trial consultants, which led them to suggest that "consultant presence may not affect judgments of procedural justice at all" (p. 168). The results of the current study indicate that the use of a trial consultant can impact perceptions of fairness under certain conditions. When the prosecution alone used a trial consultant, it was perceived as less fair than when the defense alone used a trial consultant or when both sides used a trial consultant. Attorneys might want to consider the negative impact on a juror's perceptions of fairness when using a trial consultant if the defense is not also using the services of a trial consultant. This finding provides support to those who advocate leveling the playing field during

jury trials. This can be accomplished by using public funds to enable defendants to hire trial consultants (National Jury Project, 1999). State funding of trial consultants is also a possibility and should be considered (Barber, 1994; Stolle et al., 1996), as is encouraging more pro bono assistance (Stewart, 2002). Lieberman and Sales (2007) suggest that, “In addition to the financial needs of a defendant, the seriousness of charges brought against a defendant provides a criterion that could be used for determining whether courts should grant requests for court-appointed scientific jury selection consultants” (p. 197). This is an interesting approach worthy of future attention.

While the importance of a balance of trial consultants between parties had been expected, no support was found for the position that perceptions of fairness were affected when extra assistance was provided to the defense by a trial consultant. In the current study, the benefit of the doubt appeared to go to the defendant such that even when the defense received a perceived advantage, participants still thought that the trial was fair. The results of the present study suggest that while juror knowledge of the use of a trial consultant for the defense may not have any bearing on the perceived fairness of a trial, juror knowledge of the use of a trial consultant by the prosecution alone may affect the perceived fairness of a trial. At the very least, the evidence suggests that in situations where only the prosecution utilizes a trial consultant, trial consultants should follow the recommendation made by some researchers (e.g., Griffith et al., 2007) and remain outside the jury’s awareness. While trial consultants can assist lawyers in such matters as case analysis, *voire dire* questions and presentation, surveys, witness preparation, and mock trials without stepping foot into a courtroom, a major disadvantage of this approach is that the consultant cannot offer his/her expertise as far as evaluating potential jurors or

comparing in-court perceptions against the pre-trial research that has been compiled (Bennett & Hirschhorn, 1993). Therefore, in situations where there is a balance between trial consultants, it may still be best for the trial consultant to be present in the courtroom.

Another major purpose of the present study was to investigate whether perceptions of fairness were partially responsible for increasing (or decreasing) the likelihood that a juror would convict a defendant when SOE was ambiguous and the balance of trial consultants between parties was uneven. Some researchers have warned that the presence of trial consultants can foster the negative societal perception that the jury system is being undermined or rigged, or that juries can be manipulated and their actions predicted (e.g., Barber, 1994). As Posey and Wrightsman (2005) point out, the first book that systematically examined the field of trial consulting is entitled “Stack and Sway” (Kressel & Kressel, 2002), a title that conjures up images of influence and manipulation. Other researchers in the field have insisted that we should not fear that jurors will resent lawyers who have jury and trial consultants in the courtroom. Jurors interviewed post-trial, for example, have consistently said that they felt the need to be even more fair in looking at and verbalizing their biases and prejudices when a trial consultant was present (Bennett and Hirschhorn, 1993). The present study failed to find evidence supporting the position that the use of a trial consultant served as a biasing factor by impacting the verdict determination of jurors. Although the use of a trial consultant was found to affect perceptions of neutrality and global fairness under certain conditions, these perceptions of fairness did not appear to translate into a bias when determining verdicts. Results indicated that the use of a trial consultant was unrelated to the likelihood of conviction in the ambiguous condition. Results did find a significant

and strong association between the verdict chosen and the strength of evidence, however, which supports the outcome found in numerous other studies (Devine et al., 2001).

#### *Limitations and Suggestions for Future Research*

While this study made some unique and potentially important contributions to the trial consulting and procedural justice literatures, the conclusions may be limited by several factors. One potential limitation of this study is the reliability and validity of the scores on the Relational Theory measure. Due to the lack of established neutrality, trust, and status recognition scales, the questionnaire that was used to measure neutrality and global fairness was created by combining items adapted from questionnaires used by other researchers (e.g., Stolle et al., 1996; Tyler, 1989). Future research should replicate this study with the new measure to provide further proof of the reliability and validity of the scores on the items.

In the present study, a potential limitation was the low reliability observed for the impropriety of behavior subscale of the neutrality scale. The removal of the fourth item increased the  $\alpha$  reliability for the subscale to .67 (from .60), but this level is still below the criterion of .70 that had been set for the minimally acceptable level of internal consistency (Nunnally, 1978). In addition, removing this fourth item potentially reduced the construct validity of the measure. Another potential limitation was that the factual decision making subscale and the trust scale both contained only two items. While this is not unusual with scales in the literature (e.g., Kipnis, Schmidt, & Wilkinson, 1980; Tyler, 1989), it does raise concerns about subscale and scale reliability (Nunnally, 1978). Future research should consider lengthening this subscale and scale. The reliability of the

subscales and scales should be further developed before using them to examine perceptions of neutrality and global fairness in future research.

In addition, although the lack of significant correlations among variables in this study prevented mediation analyses, it should be pointed out that some researchers (e.g., James, Mulaik, & Brett, 1982) caution that causal inferences are weakened when using concurrent data with mediators. Because mediation implies that the independent variable affects the mediator and then the mediator affects the dependent variable, mediation should not technically be performed on concurrent data. It is impossible to show that the independent variable caused a change in the mediator rather than vice versa when the data is collected at one time of measurement. Future studies examining the potential mediating role of procedural justice should consider collecting longitudinal data to more accurately determine true mediation.

This study is also potentially limited by the fact that the trial consultant manipulation did not work for a number of participants. While the success of the trial consultant manipulation was statistically significant, 65 participants (25%) did not accurately identify the use of a trial consultant in the case summary. It is not clear why this was the case. Stolle et al. (1996) did not report any problems when using the same trial consultant manipulation in their study. Thus, it may be useful for future research to focus on strengthening the trial consultant manipulation. Perhaps mentioning once again the use of a trial consultant for one or both sides at the end of the case summary or prompting participants to refer back to the case summary if they are unsure of an answer would help to increase reporting accuracy in the future.

Another potential limitation is the concern that the external validity of the results may be lowered as a result of using a student sample (as opposed to a sample comprised of real jurors) and/or a written case summary (as opposed to a more realistic simulation). Most of the studies conducted in the legal field use simulations due to the complications (both legally and logistically) when conducting jury research on actual cases. According to Bornstein (1999), this practice has raised a number of ecological validity concerns with regard to such issues as the mock juror sample (e.g., undergraduates vs. adults in the community), the research setting (e.g., laboratory vs. courtroom), the trial medium (e.g., written summaries vs. realistic simulations), and the consequences associated with the task (e.g., making a hypothetical vs. a real decision).

In order to address some of these concerns, Bornstein (1999) compared different samples of mock jurors as well as research manipulating the medium of trial presentation. After reviewing 26 studies that have looked at the effect of student status on mock jurors' judgments, only five studies were found to have a main effect of sample on participants' verdicts. Similarly, Bornstein found few differences when he looked at studies that allowed for indirect comparison between students and nonstudents by performing multiple experiments in which a particular finding is replicated using a different sample. Trial medium was also examined (e.g., live trial vs. brief written summaries) and not found to have an effect in the majority of cases, with only 3 of 11 studies exerting a main effect on mock jurors' verdicts. Bornstein (1999) concluded that few differences have been found with regard to either who the mock jurors are or how the mock trial is presented.

Further support is provided by Zickafoose and Bornstein (1999), who conducted a couple of experiments in order to determine the effects of comparative negligence on damage awards. In addition to discovering that damage awards were doubly discounted for partially negligent plaintiffs, they also found that the responses of college students did not differ from the responses of those called for jury duty. Thus, although the choice of sample (students) and/or medium (presenting the summary trial in written form) may have potentially limited the external validity of the present study, there is research to suggest that this may not have been the case.

This dissertation exposes many needed directions for future research within the field of trial consulting. As was mentioned earlier, there is a lack of empirical research in general regarding the usefulness of trial consultants. In addition, of the relatively small number of studies that have been conducted to examine the efficacy of trial consultants, the sole focus has been upon jury selection at the expense of investigating other salient aspects of a trial consultant's job (e.g., assisting with *voire dire*, opening arguments, witness testimony for each side, closing arguments, mock trials, judge's instructions, or jury deliberations). A survey conducted by Posey and Wrightsman (1995) found that only 12% of a trial consultant's time was spent on jury selection. Future research should begin to explore the usefulness of all aspects of a trial consultant's job. Ideally, this research should consist of conducting mock trials (using both civil and criminal cases) with the participation of practicing attorneys, an actual judge, and mock jurors who accurately resemble the characteristics of the juror pool. While conducting a study like this would be expensive, "the cost would be trivial compared with the total amount of money that attorneys (through their clients) spend on consultants each year in the absence

of certainty regarding the effectiveness of this approach” (Lieberman & Sales, 2007, p. 206).

Another important focus of future research should be to examine the “benefit of the doubt” theory more thoroughly. In the present study, a pattern emerged in many of the findings that could be interpreted as a byproduct of our jury system’s emphasis on the presumption of innocence and use of a reasonable doubt standard. Perceptions of neutrality and global fairness were not affected when extra assistance was provided to the defense by a trial consultant, but they were significantly lower when the extra assistance was provided to the prosecution. Furthermore, when participants in the ambiguous evidence condition were forced into a dichotomous verdict decision, many more participants than expected chose a non-guilty verdict. This pattern should be tested experimentally. Rather than using the “benefit of the doubt” theory to explain findings post hoc, future studies may want to hypothesize the effect and test whether it can be replicated in a similar study and/or whether the benefit of the doubt continues to go to the defense when circumstances are varied (e.g., extra assistance is provided to one party in the form of a more expensive or experienced attorney).

Future studies may also want to examine the impact that party imbalance may have on the verdict in civil cases, including the potential to affect damage awards. For example, in cases where the evidence is ambiguous and trial consultants are not balanced between parties, might jurors perceive the party without the consultant as an underdog and either exonerate the defendant (in situations where the plaintiff alone has a consultant) or compensate the plaintiff with a conviction and the award of larger damages (in situations where the defendant alone has a consultant)? Or will the “benefit of the

doubt” theory apply to this situation as well, causing the plaintiff to receive less compensation even if the defendant alone uses a trial consultant? Future research should explore these and related possibilities.

Finally, recent research in the field of social justice has demonstrated that procedural fairness effects are often moderated by individual differences and motivations (De Cremer & Tyler, 2005). Given that procedural fairness conveys information relevant to the level of inclusiveness and status that one has within the group (e.g., Tyler & Lind, 1992), it is very possible that the extent to which people attend to procedures and how much they are affected by these procedures may depend on the degree to which they value their inclusion and belonging in a group (e.g., De Cremer & Blader, 2006). Need to Belong is inherently associated with fairness because of its relational implications, and has frequently been shown to moderate people’s interest in and reactions toward procedural fairness (De Cremer & Blader, 2006; De Cremer & Tyler, 2005). Specifically, De Cremer and Blader’s (2006) study has shown that people with a stronger Need to Belong are more attentive to procedural fairness information than individuals with a weaker Need to Belong, and that these differences in belongingness needs have effects on perceived procedural fairness. Perhaps future research should include Need to Belong items to see if there is a difference in perceptions of fairness for individuals along this dimension.

### *Conclusions*

While some attention has been focused on investigating whether the procedures used by trial consultants are ethical and/or fair, this study explored for the first time if (and under what conditions) the use of trial consultants themselves can be perceived as

unfair. It is unique in that it is the first to investigate whether SOE and the balance of trial consultants can influence juror verdicts, and it is the first to use the relational model (Tyler & Lind, 1992) in general, and the concept of neutrality (Tyler, 1989) in particular, as a framework from which to examine this relationship. In addition to examining whether the use of trial consultants could affect juror verdicts, an intention of this study was to explore the intervening mechanisms behind the trial consultant - verdict link. However, because results did not find that the balance of trial consultants affected the proportion of guilty verdicts in a criminal trial, it was not possible to examine perceptions of neutrality and global fairness as mediating variables.

As Stolle et al. (1996) warned, perceptions of fairness are important if our justice system is to work properly. If the use of trial consultants is perceived as unfair or manipulative, both the participants and observers of a trial are in danger of viewing the entire jury system as rigged or unfair. During trials, a level playing field is created by giving both sides the opportunity to have an attorney and by giving those attorneys equal opportunities to present arguments and question witnesses (Tyler, 1997). This study found that the level playing field is violated when only the prosecution has access to the resources and skills of a professional trial consultant.

The law with regard to the use of trial consultants in the courtroom is in its nascent stage. The 3<sup>rd</sup> U.S. Circuit Court of Appeals recently ruled (*In re Cendant Corp. Securities Litigation*, 2003) that the work product (i.e., documents and other items, either tangible or intangible, prepared in anticipation of litigation) of a trial consultant is protected by the attorney work-product privilege. The court also ruled that communications at the core of the work-product doctrine are only discoverable “on a

showing of rare and exceptional circumstances,” such as when there is a charge of falsified testimony. While this means that attorneys are not permitted to ask witnesses to divulge a trial consultant’s mental impressions, opinions, legal theories, and conclusions about the upcoming litigation, it does allow an attorney to ask witnesses whether he/she met with a trial consultant, the date and duration of any meetings, who was present and the purpose of the meeting(s). The degree of disclosure currently permitted highlights the importance of investigating whether trial consultants themselves can serve as a source of perceived bias and consequently affect the outcome of a case. This study did not find evidence that the balance of trial consultants directly impacted verdicts. However, the balance of trial consultants did impact perceptions of fairness under certain conditions. Consequently, until we have a better understanding of the circumstances under which procedural justice can impact the perceptions of jurors and the potential consequences of these perceptions of fairness, every effort should be made to level the playing field in the courtroom, including the playing field as it pertains to the use of trial consultants.

## Appendix A

*Case Summary (Ambiguous Evidence condition)*

Useful definitions:

*Prosecution:* the State as the party that represents the victim and conducts criminal proceedings in court against a person

*Defense:* the party responsible for defending the person accused of a crime

On the morning of March 24, 1987, a 45 year-old woman in El Paso, Texas, was assaulted in her home. A man wearing a stocking mask and carrying a gun broke into the residence and attacked the woman in the hallway of her home. He then forced her onto a bed in a bedroom and threatened to kill her. Although the assailant then claimed he only wanted to rob her, he fondled and raped her before fleeing out the back door.

Frozen with fear, the victim waited nearly an hour before she managed to put on her son's bathrobe and drive herself to a local store. She asked the staff there to contact the police. Once the police arrived, they escorted her to the hospital where a rape kit was collected. The examining physician found sperm present on slides prepared from the vaginal washings.

One day after the attack, on March 25, the victim was asked to come to the police station to help them create a composite sketch of her assailant. On March 26 she again returned to the police station to view photographs of multiple men in the hope of identifying her attacker. After searching through all of the potential suspects, she picked out the picture of a man named Jasper Brennan and stated that he looked like the perpetrator but that she could not be sure. The police obtained an arrest warrant for Jasper Brennan, a sophomore at the University of Texas at El Paso. Jasper Brennan was arrested on March 28, 1987.

The following day, on March 29, 1987, the woman viewed a live lineup at the police station. After all the subjects put on a hat similar to the one worn by the perpetrator, the victim identified Jasper Brennan as the assailant. The police also contacted two other women who had been attacked in a similar fashion. They both identified Brennan in the lineup, but stated that they could not be sure. Jasper Brennan was charged with three counts of aggravated sexual assault.

(Insert applicable paragraphs here- see Appendix B)

Jasper Brennan's trial began in November 1987. When the victim of the March 24, 1987, assault took the stand, she testified that she was very confident in her ability to remember the structure of the assailant's face, his physique, body size, nose, complexion, and the size and shape of his hands. When asked if the perpetrator had a moustache, however, she admitted that she did not know because it was too dark in the hallway where she was

accosted. She also acknowledged that she did not know what color her attacker's eyes were since she only viewed her assailant for "a short period of time."

Aside from the victim herself, the prosecution relied on the testimony of a serologist from the Texas Department of Public Safety (DPS) by the name of Norbert Brown. Mr. Brown was the person responsible for testing the rape kit and bedding taken from the crime scene. Mr. Brown testified that he tested the items and compared the results to samples taken from Jasper Brennan and the victim. Based on the evidence, Mr. Brown testified that the semen was deposited by a non-secretor- a person whose blood type antigens are not found in other body fluids. Mr. Brown concluded that Jasper Brennan, who is a non-secretor, was a possible contributor of the semen. Semen samples from the victim's husband and son were not obtained. On cross-examination, Mr. Brown acknowledged that no sperm samples had been retrieved from the other two women attacked in a similar fashion.

The prosecution was permitted to introduce the testimony of one of the other rape victims who had identified Jasper Brennan. The crimes were similar and distinctive enough in nature for the prosecution to argue that the same man- Jasper Brennan- must have perpetrated both crimes.

The defense claimed that Jasper Brennan was misidentified. The defense produced two witnesses who corroborated his alibi, which was that he was studying for an exam on the campus of his college at the time the crime occurred around 9:00 AM. Brennan's girlfriend, Tracy Reynolds, testified that she had called him on the telephone at his home less than an hour before the crime occurred and had met him shortly after 9:15AM in the campus library. A second witness, Mark Grotty, testified that he had seen Jasper Brennan studying in the campus library sometime before 9:00AM. Furthermore, the defense also argued that since Jasper Brennan did not have a car, he did not have an opportunity to commit the rape.

The jury deliberated for 6 hours before returning a verdict.

*Case Summary (Advantage Prosecution condition)*

Useful definitions:

*Prosecution:* the State as the party that represents the victim and conducts criminal proceedings in court against a person

*Defense:* the party responsible for defending the person accused of a crime

On the morning of March 24, 1987, a 45 year-old woman in El Paso, Texas, was assaulted in her home. A man wearing a stocking mask and carrying a gun broke into the residence and attacked the woman in the hallway of her home. He then forced her onto a bed in a bedroom and threatened to kill her. Although the assailant then claimed he only wanted to rob her, he fondled and raped her before fleeing out the back door.

Frozen with fear, the victim waited nearly an hour before she managed to put on her son's bathrobe and drive herself to a local store. She asked the staff there to contact the police. Once the police arrived, they escorted her to the hospital where a rape kit was collected. The examining physician found sperm present on slides prepared from the vaginal washings.

One day after the attack, on March 25, the victim was asked to come to the police station to help them create a composite sketch of her assailant. On March 26 she again returned to the police station to view photographs of multiple men in the hope of identifying her attacker. After searching through pictures of potential suspects, she immediately picked out the picture of a man named Jasper Brennan and stated that he looked exactly like the perpetrator. The police obtained an arrest warrant for Jasper Brennan, a sophomore at the University of Texas at El Paso. Jasper Brennan was arrested on March 28, 1987.

The following day, on March 29, 1987, the woman viewed a live lineup at the police station. After all the subjects put on a hat similar to the one worn by the perpetrator, the victim positively identified Jasper Brennan as the assailant. The police also contacted two other women who had been attacked in a similar fashion. They both identified Brennan in the lineup. Jasper Brennan was charged with three counts of aggravated sexual assault.

(Insert applicable paragraphs here- see Appendix B)

Jasper Brennan's trial began in November 1987. When the victim took the stand, she testified that she was very confident in her ability to remember the structure of the assailant's face, his physique, body size, nose, eye color, complexion, and the size and shape of his hands. She stated that although the hallway where the initial attack took place was dark, there was ample light in the bedroom to get a good view of her attacker. She also testified that as soon as she saw Jasper Brennan in both the photographs at the police station and in the live lineup, she knew that he was the man who had attacked her.

Aside from the victim herself, the prosecution relied on the testimony of a serologist from the Texas Department of Public Safety (DPS) by the name of Norbert Brown. Mr. Brown was the person responsible for testing the rape kit and bedding taken from the crime scene. Mr. Brown testified that he tested the items and compared the results to samples taken from Jasper Brennan, the victim, the victim's husband, and the victim's son. Based on the evidence, Mr. Brown testified that the semen was deposited by a non-secretor- a person whose blood type antigens are not found in other body fluids. Furthermore, Mr. Brown's serology analysis concluded that a blood sample taken from Jasper Brennan put him among just 5 percent of the population who could possibly have been the source of the semen stains. Mr. Brown concluded that Jasper Brennan, who is a non-secretor, was a likely contributor of the semen. The victim's husband and son, who are secretors, were excluded as possible contributors of the semen.

The prosecution was permitted to introduce the testimony of one of the other rape victims who had identified Jasper Brennan. The crimes were similar and distinctive enough in nature for the prosecution to argue that the same man- Jasper Brennan- must have perpetrated both crimes.

The defense claimed that Jasper Brennan was misidentified. The defense produced one witness who corroborated his alibi, which was that he was still sleeping in the home of his girlfriend at the time the crime occurred around 9:00 AM. Brennan's girlfriend, Tracy Reynolds, testified that was with him the entire morning of March 24, 1987. Furthermore, the defense also argued that since Jasper Brennan did not have a car, he did not have an opportunity to commit the rape. On cross-examination, however, Tracy Reynolds admitted that she had a car that Jasper Brennan drove on occasion.

The jury deliberated for 6 hours before returning a verdict.

*Case Summary (Advantage Defense condition)*

Useful definitions:

*Prosecution:* the State as the party that represents the victim and conducts criminal proceedings in court against a person

*Defense:* the party responsible for defending the person accused of a crime

On the morning of March 24, 1987, a 45 year-old woman in El Paso, Texas, was assaulted in her home. A man wearing a stocking mask and carrying a gun broke into the residence and attacked the woman in the hallway of her home. He then forced her onto a bed in a bedroom and threatened to kill her. Although the assailant then claimed he only wanted to rob her, he fondled and raped her before fleeing out the back door.

Frozen with fear, the victim waited nearly an hour before she managed to put on her son's bathrobe and drive herself to a local store. She asked the staff there to contact the police. Once the police arrived, they escorted her to the hospital where a rape kit was collected. The examining physician found sperm present on slides prepared from the vaginal washings.

One day after the attack, on March 25, the victim was asked to come to the police station to help them create a composite sketch of her assailant. Almost five months later, on August 21, she was again asked to return to the police station to view photographs of multiple men in the hope of identifying her attacker. After searching through all of the potential suspects, she picked out the picture of a man named Jasper Brennan and stated that he looked like the perpetrator but that she could not be sure. Jasper Brennan was the only blue-eyed white male in the police photographs. The police obtained an arrest warrant for Jasper Brennan, a sophomore at the University of Texas at El Paso. Jasper Brennan was arrested on August 22, 1987.

The following day, on August 23, 1987, the woman viewed a live lineup at the police station. Again, Jasper Brennan was the only blue-eyed white male. In addition, he was the only person the police had placed in both the photographs and live lineup. After all the subjects put on a hat similar to the one worn by the perpetrator, the victim identified Jasper Brennan as the assailant. The police also contacted two other women who had been attacked in a similar fashion. They both identified Brennan in the lineup, but stated that they could not be sure. Jasper Brennan was charged with three counts of aggravated sexual assault.

(Insert applicable paragraphs here- see Appendix B)

Jasper Brennan's trial began in November 1987. When the victim took the stand, she testified that she was very confident in her ability to remember the structure of the assailant's face, his physique, body size, nose, complexion, and the size and shape of his hands. When asked if the perpetrator had a moustache, however, she admitted that she

did not know because it was too dark in the hallway where she was accosted. She also acknowledged that she did not know what color her attacker's eyes were since she only viewed her assailant for "a short period of time."

Aside from the victim herself, the prosecution relied on the testimony of a serologist from the Texas Department of Public Safety (DPS) by the name of Norbert Brown. Mr. Brown was the person responsible for testing the rape kit and bedding taken from the crime scene. Mr. Brown testified that he tested the items and compared the results to samples taken from Jasper Brennan, the victim, the victim's husband, and the victim's son. Based on the evidence, Mr. Brown testified that the semen was deposited by a non-secretor- a person whose blood type antigens are not found in other body fluids. Mr. Brown concluded that Jasper Brennan, who is a non-secretor, was a possible contributor of the semen. The victim's husband and son were also found to be non-secretors, and thus could not be excluded as potential contributors of the semen.

The prosecution was permitted to introduce the testimony of one of the other rape victims who had identified Jasper Brennan. The crimes were similar and distinctive enough in nature for the prosecution to argue that the same man- Jasper Brennan- must have perpetrated both crimes.

The defense claimed that Jasper Brennan was misidentified. Norbert Brown was called to testify again, and this time admitted that forensic tests had shown that all other trace evidence analysis found at the crime scene, including pubic hairs, excluded Jasper Brennan as a source. The defense produced two witnesses who corroborated his alibi, which was that he was studying for an exam on the campus of his college at the time the crime occurred around 9:00 AM. Brennan's girlfriend, Tracy Reynolds, testified that she had called him on the telephone at his home less than an hour before the crime occurred and had met him shortly after 9:15AM in the campus library. A second witness, Mark Grotty, testified that he had seen Jasper Brennan studying in the campus library sometime before 9:00AM. Furthermore, the defense also argued that since Jasper Brennan did not have a car, he did not have an opportunity to commit the rape.

The jury deliberated for 6 hours before returning a verdict.

## Appendix B

*Inserted Paragraphs*<sup>7</sup>

*For conditions where there was no TC for prosecution and there was a TC for defense the following paragraph was inserted:*

The defense hired a consultant to help with jury selection and case presentation. The consultant approached the case by first distributing a survey to citizens living in the jurisdiction of the crime, and paid the citizens to complete the survey. From the survey results the defense's consultant found several facts which people reading this case considered most important, and he determined which personal characteristics are highly correlated with an individual's likelihood to agree with the arguments of the defense. The consultant then informed the defense attorneys of this information, and the defense attorneys used this information in planning a case strategy and in questioning and selecting a favorable jury. Next, the consultant conducted a mock trial. This consisted of a full dress rehearsal of the case using mock jurors during which the attorneys for the defense were given an opportunity to practice and refine their opening and closing arguments, prepare witnesses for trial, and listen in on jury deliberations. As a result of feedback provided by the mock jurors during the mock trial, the defense attorneys were able to refine their case before the real trial actually began. During the trial, the consultant sat with the defense attorneys to provide further assistance if needed.

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<sup>7</sup> Some of the details of these paragraphs have been taken from Stolle et al. (1996)

*For conditions where there was a TC for prosecution and there was no TC for defense the following paragraph was inserted:*

The prosecution hired a consultant to help with jury selection and case presentation. The consultant approached the case by first distributing a survey to citizens living in the jurisdiction of the crime, and paid the citizens to complete the survey. From the survey results the prosecution's consultant found several facts which people reading this case considered most important, and he determined which personal characteristics are highly correlated with an individual's likelihood to agree with the arguments of the prosecution. The consultant then informed the prosecution's attorneys of this information, and the prosecution attorneys used this information in planning a case strategy and in questioning and selecting a favorable jury. Next, the consultant conducted a mock trial. This consisted of a full dress rehearsal of the case using mock jurors during which the attorneys for the prosecution were given an opportunity to practice and refine their opening and closing arguments, prepare witnesses for trial, and listen in on jury deliberations. As a result of feedback provided by the mock jurors during the mock trial, the prosecution attorneys were able to refine their case before the real trial actually began. During the trial, the consultant sat with the prosecution attorneys to provide further assistance if needed.

*For conditions where there was a TC for defense and a TC for prosecution the following paragraph was inserted:*

Both the defense and prosecution hired consultants to help with jury selection and case presentation. The defense's consultant approached the case by first distributing a survey to citizens living in the jurisdiction of the crime, and paid the citizens to complete the survey. From the survey results the defense's consultant found several facts which people reading this case considered most important, and he determined which personal characteristics are highly correlated with an individual's likelihood to agree with the arguments of the defense. The consultant then informed the defense attorneys of this information, and the defense attorneys used this information in planning a case strategy and in questioning and selecting a favorable jury. Next, the consultant conducted a mock trial. This consisted of a full dress rehearsal of the case using mock jurors during which the attorneys for the defense were given an opportunity to practice and refine their opening and closing arguments, prepare witnesses for trial, and listen in on jury deliberations. As a result of feedback provided by the mock jurors during the mock trial, the defense attorneys were able to refine their case before the real trial actually began. The prosecution's consultant used a similar approach as the defense's consultant, whereby he paid citizens living in the jurisdiction of the crime to complete a survey. The survey results allowed the prosecution's consultant to find several facts which people reading this case considered most important, and he determined which personal characteristics are highly correlated with an individual's likelihood to agree with the arguments of the prosecution. The consultant then informed the prosecution attorneys of this information, and the prosecution attorneys used this information in planning a case strategy and in questioning and selecting a favorable jury. The prosecution's consultant also conducted a mock trial, which consisted of a full dress rehearsal of the case using mock jurors during which the attorneys for the prosecution were given an opportunity to practice and refine their opening and closing arguments, prepare witnesses for trial, and listen in on jury deliberations. As a result of feedback provided by the mock jurors during the mock trial, the prosecution attorneys were able to refine their case before the real trial actually began. During the trial, the prosecution's consultant sat with the prosecution attorneys and the defense's consultant sat with the defense attorneys to provide further assistance if needed.

## Appendix C

*Juror Instructions*<sup>8</sup>

We now turn to the fundamental principles of our law that apply in all criminal trials- the presumption of innocence, the burden of proof, and the requirement of proof beyond a reasonable doubt. Throughout these proceedings, the defendant is presumed to be innocent. As a result, you must find the defendant not guilty, unless, on the evidence presented at this trial, you conclude that the People have proven the defendant guilty beyond a reasonable doubt.

In determining whether the People have satisfied their burden of proving the defendant's guilt beyond a reasonable doubt, you may consider all the evidence presented, whether by the People or by the defendant. In doing so, however, remember that, even though the defendant introduced evidence, the burden of proof remains on the People.

The defendant is not required to prove that he/she is not guilty. In fact, the defendant is not required to prove or disprove anything. To the contrary, the People have the burden of proving the defendant guilty beyond a reasonable doubt. That means, before you can find the defendant guilty of a crime, the People must prove beyond a reasonable doubt every element of the crime including that the defendant is the person who committed that crime. The burden of proof never shifts from the People to the defendant. If the People fail to satisfy their burden of proof, you must find the defendant not guilty. If the People satisfy their burden of proof, you must find the defendant guilty.

What does our law mean when it requires proof of guilt "beyond a reasonable doubt"? The law uses the term, "proof beyond a reasonable doubt," to tell you how convincing the evidence of guilt must be to permit a verdict of guilty. The law recognizes that, in dealing with human affairs, there are very few things in this world that we know with absolute certainty. Therefore, the law does not require the People to prove a defendant guilty beyond all possible doubt. On the other hand, it is not sufficient to prove that the defendant is probably guilty. In a criminal case, the proof of guilt must be stronger than that. It must be beyond a reasonable doubt.

A reasonable doubt is an honest doubt of the defendant's guilty for which a reason exists based upon the nature and quality of the evidence. It is an actual doubt, not an imaginary doubt. It is a doubt that a reasonable person, acting in a matter of this importance, would be likely to entertain because of the evidence that was presented or because of the lack of convincing evidence.

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<sup>8</sup> Taken from <http://www.nycourts.gov/cji/1-General/cjigc.html#PRESUMPTION>

Proof of guilt beyond a reasonable doubt is proof that leaves you so firmly convinced of the defendant's guilt that you have no reasonable doubt of the existence of any element of the crime or of the defendant's identity as the person who committed the crime.

In determining whether or not the People have proven the defendant's guilt beyond a reasonable doubt, you should be guided solely by a full and fair evaluation of the evidence. After carefully evaluating the evidence, each of you must decide whether or not that evidence convinces you beyond a reasonable doubt of the defendant's guilt.

Whatever your verdict may be, it must not rest upon baseless speculations. Nor may it be influenced in any way by bias, prejudice, sympathy, or by a desire to bring an end to your deliberations or to avoid an unpleasant duty.

If you are not convinced beyond a reasonable doubt that the defendant is guilty of a charged crime, you must find the defendant not guilty of that crime. If you are convinced beyond a reasonable doubt that the defendant is guilty of a charged crime, you must find the defendant guilty of that crime.

## Appendix D

*Relational Theory Measure*

The following scale was used for all items:

strongly agree	moderately agree	slightly agree	neutral	slightly disagree	moderately disagree	strongly disagree
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*Neutrality Items*Impropriety of behavior:

1. The attorneys in this case acted in a manner that was dishonest or improper.
2. The witnesses in this case acted in a manner that was dishonest or improper.
3. The use of a trial consultant was dishonest or improper.
4. The procedures followed in this case are similar to those followed in most other cases. (reverse-scored)

Factual decision making:

5. The jury was given all of the information needed to render a verdict. (reverse-scored)
6. The jurors in this case received and understood the information needed to make a good decision. (reverse-scored)

Lack of bias:

7. The treatment of the prosecution or defense was influenced by the characteristics (sex, race, age, education, income, status) of the parties in the case.
8. The outcome of the trial will be influenced by the characteristics (sex, race, age, education, income, status) of the parties in the case.
9. The legal authorities involved favored one party over another

*Trust Items*

10. The jury system tried to be fair to Jasper Brennan.
11. The jury system treated Jasper Brennan in a reasonable manner.

*Status Recognition Items*

12. Jasper Brennan was treated politely in this case.
13. Jasper Brennan was treated with respect in this case.
14. Jasper Brennan was treated with dignity in this case.

Appendix E

*Likelihood of Conviction Measure:  
Verdict Determinations and Manipulation Check Items*

1. a) What would your verdict be if you were a juror in this case? (please circle one)

Not Guilty

Guilty

2. Rate the guilt of Jasper Brennan on a scale from 1 to 7 using the following guidelines: (Please circle the number that best describes how you feel)

- 1= I am positive Brennan is not guilty
- 2= I think Brennan is not guilty, but I have some doubt
- 3= I think Brennan is not guilty, but I have a lot of doubt
- 4= I can not decide if Brennan is guilty or not guilty
- 5= I think Brennan is guilty, but I have a lot of doubt
- 6= I think Brennan is guilty, but I have some doubt
- 7= I am positive Brennan is guilty

3. In the space below, please list all pieces of evidence or other aspects of the trial that influenced your decision.

4. If you circled “Guilty” to Question 1, please continue. Otherwise, please skip this question and go to Question 5.

What would be your recommended prison term for Jasper Brennan? (Please circle the appropriate number, keeping in mind that 5 years is generally the minimum sentence in sexual assault cases)

- |         |          |          |           |
|---------|----------|----------|-----------|
| 5 years | 9 years  | 13 years | 17 years  |
| 6 years | 10 years | 14 years | 18 years  |
| 7 years | 11 years | 15 years | 19 years  |
| 8 years | 12 years | 16 years | 20 years  |
|         |          |          | >20 years |

5. Rate the strength of the **prosecution's** evidence (taking into account such factors as factual presentation and witness credibility) on a scale from 1 to 7 using the following guidelines: (Please circle the number that best describes how you feel)

- 1= The prosecution's evidence was very weak
- 2= The prosecution's evidence was moderately weak
- 3= The prosecution's evidence was slightly weak
- 4= The prosecution's evidence was inconclusive (favored both parties equally)
- 5= The prosecution's evidence was slightly strong
- 6= The prosecution's evidence was moderately strong
- 7= The prosecution's evidence was very strong

6. Rate the strength of the **defense's** evidence (taking into account such factors as factual presentation and witness credibility) on a scale from 1 to 7 using the following guidelines: (Please circle the number that best describes how you feel)

- 1= The defense's evidence was very weak
- 2= The defense's evidence was moderately weak
- 3= The defense's evidence was slightly weak
- 4= The defense's evidence was inconclusive (favored both parties equally)
- 5= The defense's evidence was slightly strong
- 6= The defense's evidence was moderately strong
- 7= The defense's evidence was very strong

7. Rate the strength of the evidence presented in the trial:

- 1= The evidence strongly favored the defense
- 2= The evidence favored the defense
- 3= The evidence slightly favored the defense
- 4= The evidence was inconclusive (favored both parties equally)
- 5= The evidence slightly favored the prosecution
- 6= The evidence favored the prosecution
- 7= The evidence strongly favored the prosecution

8. In this trial, which party received assistance from a trial consultant? (Please circle the number that best describes your memory)

- 1= Prosecution
- 2= Defense
- 3= Both prosecution and defense



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