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**AN EXAMINATION OF VOIR DIRE FROM  
AN INTERACTIONIST PERSPECTIVE**

by

**Peter R. Stevenson**

**A Dissertation  
Submitted to the  
Faculty of The Graduate College  
in partial fulfillment of the  
requirements for the  
Degree of Doctor of Philosophy  
Department of Sociology**

**Western Michigan University  
Kalamazoo, Michigan  
August 2000**

AN EXAMINATION OF VOIR DIRE FROM  
AN INTERACTIONIST PERSPECTIVE

Peter R. Stevenson, Ph.D.

Western Michigan University, 2000

Trial attorneys, historically, have used both scientific and unscientific selection techniques to empanel a jury, and these methods continue to be used in contemporary courtrooms. The ability of these techniques to pick a "good" jury has been shown to have limited utility. This ineffectiveness may be due, in part, to a false assumption about the passivity of prospective jurors during questioning. An interactionist perspective sees individuals as much more active in that they control the information given out. Most potential jurors offer genuine presentations of self during jury selection in that they truthfully respond to the questions posed by courtroom actors. However, it has been found that some prospective jurors have their own goals and actively alter their presentations of self so the courtroom actors will define them as suitable or unsuitable for jury service, consistent with these goals. This suggests that certain potential jurors may enhance or suppress specific biases or willingness to serve on a jury to fit their needs. For these potential jurors it is suggested that they play an active role in the jury selection process as the impressions they give out become a factor in determining whether they will be empaneled on a jury.

These contrived, strategic presentations of self can be aided or hindered by the manner in which questions are posed to a potential juror. Questions asked of the entire panel, where they respond as a group, are shown to aid the presentational efforts of some potential jurors while one-on-one questioning makes a non-genuine presentation of self more difficult for them to manage. This demonstrates one's presentational strategies are mediated by the context within the questions are given to potential jurors. Because of this effect, it is suggested that individual questioning is a much more effective way to deal with strategic self-presentational efforts of some potential jurors during voir dire.

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Peter R. Stevenson

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## CHAPTER I

### INTRODUCTION

#### Impression Management and Voir Dire

This project will attempt to provide an interactionist understanding of voir dire occurring in criminal court. Trial attorneys have used both scientific and unscientific selection techniques to empanel a jury. The ability of these techniques to pick a good jury has been shown to have only marginal utility. This ineffectiveness may be due to a false assumption about the passivity of prospective jurors during questioning. Researchers and attorneys have taken voir dire far too literally, in assuming that prospective jurors tell the whole truth. Because of this view, researchers and attorneys have assumed that jurors passively disclose their biases during questioning without engaging in impression management. This suggests that the truth may be managed for some prospective jurors. An interactionist perspective sees individuals as much more active in that they control the information given out. Some jurors may have their own goals and actively alter their presentations of self so the courtroom actors will define them as suitable or unsuitable for jury service, consistent with these goals. If this does occur, then some jurors would play an active role in the jury selection process as the impressions they give off become the primary determinate for whether they are selected to a jury. This would result

in voir dire being, in part, a self-selecting process.

The jury selection process is deeply intertwined with the courtroom setting. Administrative pressures to speed trials along and personal bias against the use of juries by some courtroom personnel has an effect upon how jury selection takes place. This context has a direct impact upon the self-presentational efforts of some jurors. Because of these concerns, this study will examine the role jurors play in their selection for jury service mediated by the environment within which voir dire occurs.

#### Historical Overview and Functioning of the Jury

Before a detailed analysis of the jury selection process begins it is important to provide one with the history and evolution of the jury system in the United States (U.S.), as well as an overview of the jury selection process as it occurs in contemporary trial courts. Like so many of our modern institutions, the jury can trace its lineage back to early Greek civilization (Levine, 1992). Around 500 B.C. the Greek Dicastery, the earliest form of a jury, was composed of approximately 500 to 6000 volunteers who decided the fate of individuals accused of a crime. Evidence of similar jury systems has been found in both Roman and Anglo-Saxon records. The Anglo-Saxon tradition became the blueprint for more modern conceptions of the jury developed by the British Empire.

William the Conqueror (1066 A.D) and Henry II (1166 A.D.), two English monarchs, began formal experiments using juries as the find-

ers of fact in crimes against the crown (Levine, 1992). These juries investigated crimes and also determined guilt, serving much broader function than today's jury. Members of the jury were appointed by the crown and required to answer to the crown. Therefore they acted as an enforcement tool for the crown rather than an independent body to protect individuals from state persecution.

Further development of the jury system continued in England; the Magna Carta contained a passage that required that those to be imprisoned must be found guilty by the judgment of their peers. At first peers were considered witnesses and guilt was decided by personal observation (Levine, 1992). Later juries were comprised of those individuals unattached to the crime and they became finders of fact and also creators of law. Many early English juries refused to find defendants guilty because they found British law too harsh (Green, 1976): jury nullification is not a new phenomenon as it has been a part of the process since its conception.

Framers of the United States constitution primarily used the English system as a guide in the creation of our legal system including utilizing juries as finders of fact (Levine, 1992). Trial by jury is specified in both the bodies of the Constitution and in the Bill of Rights. The sixth amendment of the Bill of Rights requires that in all trials judgements of guilt are to be determined by a jury of their peers. At that time the definition of a peer was very tightly constructed as males with land. This effectively

eliminated the poor, women, and other nonwhite minorities from service on a jury. Juries at that time, and with most respects' today as well, never adequately reflected a representative cross section of the population. Most defendants were at the mercy of the white male, landed class. These early juries were also allowed to interject their own feelings into the case, to go beyond just the facts, in determining guilt or innocence. This served to make the inherent bias mentioned above more overt by people freely interjecting their own prejudices into their decisions.

Originally all cases were decided by juries. However, as the population increased, the courts became overburdened and this became impractical (Levine, 1992). Starting in the late nineteenth century a reform movement, headed by judges and prosecutors with legislative support, pushed to handle cases administratively rather than adversarially. Judges and prosecutors could now process cases by allowing the defendant to plead guilty through plea bargaining which eliminated the need for a jury trial. Further judicial reform allowed the defendant, with agreement of the judge and prosecutor, to waive their right to trial by jury and to have the matter settled by a judge. This was supported by a 1937 Supreme Court decision that said the right to a trial by jury was not fundamental to the due process of law. Therefore, the 14th amendment didn't extend this right to state trials. The right to a jury trial was determined by state legislators, not the constitution. The power of the jury was further reigned in by judges taking control of the deliberation pro-



cess by mandating, through the issuance of detailed instructions, what they could and could not consider as finders of fact. Until the right to counsel was granted to all defendants in the 1960's, jury trials became largely the luxury of the rich who could afford counsel and those accused of the most serious crimes (Auerbach, 1976).

The right to a trial by jury has a longstanding place in judicial history; but, as mentioned above, the power of juries as finders of fact has been slowly given over to judges and other legal professionals. There have however, been some recent changes increasing the role of the jury as finders of fact. The most profound change was the 1968 decision of *Duncan v. Louisiana*. In this case the Supreme Court changed direction and said that right to trial by jury was covered in the 14th amendment and should be extended to state courts when the defendant had the possibility of receiving more than six months in jail (Levine, 1992). Later this was extended to those with less than the possibility of six month sentence if the state deems the crime serious. The logic behind the Supreme Court decision for keeping juries as finders of fact was not that they felt they did a good job--there have been many legal scholars who question their decisions, especially in complex cases with very technical evidence (e.g., the O.J. Simpson trial). It was stated in their decision that juries form an important barrier against government oppression. These important decisions coming out of the Warren Courts have cemented the use of juries in the

U.S. legal tradition, especially in criminal trials.

### The U.S. Jury's Structure

As the Constitution states nothing about the makeup of U.S. juries, the federal courts decided to continue with the same jury structure that existed in Colonial America which was based on the English legal system (Levine, 1992). This required all federal juries to have twelve jurors who are required to achieve an unanimous verdict in order to determine guilt. The Supreme Court has decided that this structure has no rational basis and is due to historical providence. Therefore, states have been given the freedom to alter the structure of juries to suit their needs. The federal government, however, has decided to maintain the twelve person unanimous verdict format.

Although the states have been allowed to alter jury size, the minimum number of jurors has been set at six by the U.S. Supreme Court. In Florida's attempt to reduce jury size to five people, the Court found this created a possible bias in the composition of the jury panel. Many scholars were critical of the decision to allow juries of six as they felt anything less than twelve jurors could lead to bias juries being impaneled. These experts thought the statistical research cited in the decision was misused by the Supreme Court as a back door means to curb national government intrusion to state matters, thus preserving our federalist system (Levine, 1992).

The Supreme Court has also allowed states to eliminate the unanimity rule in 12 person juries, with a minimum of 9 for their respective position and 3 against. Only eight states today allow less than a unanimous verdict in criminal cases although it has gained more acceptance in civil trials where individual freedom is not at stake. The unanimity rule has been upheld for six person juries because in such small juries the potential for bias is greater.

In summary, the jury has maintained its historical function as finder of fact in both criminal and civil trials despite various efforts to limit its use. These efforts to limit functioning have decreased the use of juries in both civil and criminal trials. In criminal matters only about 10% of all trials are adjudicated by a jury decision: this drops to one to two percent for all civil trials (Levine, 1992).

Additionally, today's jury also may play an important role in sentencing those found guilty. In states allowing capital punishment it is the jury's responsibility to sentence the defendant to death on behalf of the state. In a few states they also do the sentencing in other criminal matters as well. In terms of sentencing, the jury has had the biggest impact in civil trials, in those cases not settled by agreement between the plaintiffs, as they have the responsibility of assigning both compensatory and punitive damages.

## CHAPTER II

### VOIR DIRE AND SELF-PRESENTATION

#### Empirical Studies of Jury Selection

There are many techniques trial attorneys use to select members of the jury. Typically, rules of thumb have been the traditional standard in both civil and criminal courts. Lawyers examine the existing data from background questionnaires received from each prospective juror (Mackey, 1980). They use these data to formulate specific questions to ascertain bias for or against their respective positions. These questions are shaped around the existing folklore in the field as to what characteristics a prospective juror should have. Much of this existing folklore has been written in the myriad of jury selection manuals available to trial attorneys (Mahoney, 1982). There is much disagreement among attorneys as to the validity of these traditional selection methods. Hindman (1971) found, in a 1970 survey of Chicago lawyers, that most felt these rules were meaningless, but they still were used as cognitive maps to guide the selection of jurors. These rules seem to reflect many social stereotypes that have been modified to guide the selection of jurors. For example: Latinos are too emotional, Jews are too liberal, bankers favor the state, and women tend to favor the defendant. There has been almost no empirical evidence available that supports the validity of selection folklore (Mahoney, 1982). As a

result, none of these techniques really offer a credible way to select potential jurors.

Some lawyers have found the services of social psychologists important in the scientific selection of jurors. Scientific jury selection (SJS) typically consists of the use of attitudinal surveys to be completed before the actual voir dire process begins. However, in some instances attorneys use SJS principles, especially when they have limited resources, to guide their questioning. They suggest it works better than using the old standard rule of thumb questions (Levine, 1992). These scientific selection services are usually costly and are found primarily in civil trials involving corporations, which can afford such services more than the average civil defendant. They have also been used in criminal trials, usually only by wealthy clients (Levine, 1992). Therefore, SJS is considered a rarity in the criminal courts, reserved for more celebrated cases, not as a practical tool used in the typical criminal trial.

The various survey instruments used in jury selection are of varying lengths and contain questions designed to elicit demographic characteristics, attitudes associated with a favorable or unfavorable verdict (depending on which side one is on), and more direct questions concerning which side the respondent would favor in trial. These questionnaires are administered either to the entire venire or selected members of the venire up for questioning (Mahoney, 1982). Once the responses are collected, either in written or oral forms, the data are then analyzed. Based on this analysis, the suitability

of jurors, usually in terms of bias, is determined, and those unsuitable are removed through the use of preemptory challenges and challenges for cause during the voir dire process.

The reactions to the effectiveness of SJS methods are somewhat mixed. Early results were encouraging. Schulman (1973) and Horowitz (1980) found that, in mock trial situations, lawyers who used SJS techniques more often won their cases than those who did not use such techniques. However, more recent studies of these techniques suggest some problems. First, there is always the chance that studies conducted on mock juries are not generalizable to real trial settings (Diamond, 1990). Second, and more importantly, the work by Penrod (Diamond, 1990) and Hastie (1993) found that certain questions or combinations of questions explained a very large proportion of the variance in the way jurors vote. In Penrod's instrument one predictor, the defendants race, accounted for over seven percent of the explained variance, in terms of jurors votes, while in Hastie's study, four demographic questions were responsible for four percent of the explained variance. In using these instruments one must hope that the judge will allow all of the instrument to be used. However, if one of these key indicators is excluded by the judge, which often happens due to a national trend in limiting voir dire, then the predictive validity of the instrument must be questioned (Diamond, 1990). Along similar lines, if one of the main predictors is found to be gender or race, then this is of little value to the attorney as the courts have ruled that one can't exclude jurors based

on these characteristics. Additionally, judges have the power to exclude certain questions which may appear to be irrelevant to a particular case. Judges may exclude important questions that function as main predictors, which again calls into question the predictive power of the instrument. Finally, correlations between the various predictors based on possible evidence presented at trial, jury voting preferences formed from the evidence viewed, and juror voting behavior are quite low. Diamond's review of various instruments found that on average the items on these questionnaires, taken together, account for only 15% of the overall variance in voting preferences (1990). This questions the ability of such instruments to be a meaningful predictors of juror voting behavior.

It appears that both traditional and SJS techniques do a relatively poor job in assessing jurors' attitudes. Traditional questions based on stereotypes are easily criticized, as stereotypes often contain information based on unsubstantiated information (Franzoi, 2000), therefore their predictive power should be considered low. SJS does not appear to be much better due to the problems mentioned above.

Another problem with both traditional questioning and SJS selection techniques is that individuals who believe in the use of these methods assume prospective jurors are passive actors. Attorneys and SJS experts feel that most individuals are unaware of their biases, or are very reluctant to reveal them in open court (Adler, 1994; Vinson, 1986). The logical course of action would be

to use SJS techniques to uncover these hidden biases.

The problem in using SJS techniques is that asking questions about prospective jurors' biases, especially in a limited voir dire format, may cause them to become salient, as attitudinal measures tend to bring relevant schemas to the surface (Markus, 1977). This effect may be enhanced in the courtroom due to the obvious nature of questioning by the attorneys. Because these issues are salient, some jurors may actively try to manage the information they provide about themselves, depending on their motivational structure, so they are perceived as either biased or unbiased by the attorneys and judge. If this does occur, it may be beneficial to examine the voir dire process from an interactionist perspective because this perspective requires one to see potential jurors as active and purposive individuals who do alter their presentations of self to achieve individual goals (Mead, 1934; Goffman, 1959). This becomes important as it provides information as to how individuals manage their impressions of self during questioning, which is something that is rarely considered in the literature and by the courtroom actors who assume potential jurors present a whole, unmanaged, picture of their biases. If the results of this study demonstrate individuals manage the information they give off to the courtroom actors, this would lend further support to the weakness of traditional and scientific jury selection techniques, as some prospective jurors may or may not reveal important information about their biases in order to achieve a desired goal; to serve or not serve as a juror.



## Perspectives of Impression Management

Before developing an interactionist perspective of the *voir dire* process, a discussion of symbolic interactionist and psychological social psychological work on impression management is necessary. Then, in the following sections, I will examine the *voir dire* process using a combination of the two frameworks.

### An Overview of Goffman

In The Presentation of Self in Everyday Life, Goffman (1959) asserts that individuals seek out information from others in order to behave appropriately and successfully when they find themselves in social situations. This information allows performers to infer the characteristics, attitudes, and self-conceptions of the other interactants, and is useful in predicting their behavior when interacting in face-to-face situations. These inferences are used by the actors to shape their interaction strategies. Based on their knowledge of others, actors will adjust their performances in order to bring about the responses they desire.

Since the information that performers glean from others is important in choosing appropriate interaction strategies, actors must pay attention to the way they present themselves so that others will respond in ways that produce desired interactional consequences. Goffman describes three forms of desired consequences that can be gained from the presentation of self in a social setting: the interaction can be facilitated by reaching a common definition

of the situation; the definition of the situation can be controlled to get others to act voluntarily in accordance with one's own plans (goals); and the actor can obtain approval and/or material benefit (Goffman, 1959).

The information that actors provide about themselves defines their identity in that particular social situation. An actor's self-presentation represents who he/she claims they are in that situation. Goffman suggests that there are certain moral obligations attached to self-presentation that set normative parameters that govern self-presentations and curb false presentations of self. The first obligation is that others will value and treat actors in a manner that is consistent with the identities presented. Secondly, the actor must keep his/her presentation in line with the qualities contained within their own identity.

Goffman's (1959) theoretical framework contains both self-serving and ethical aspects. He points to the ethical imperatives that guide a person's development of performance strategies that follow these normative guidelines which enhance the communicative interactions between social actors. However, in the same section of his writings he also focuses on implementing performance strategies that bring with them some form of material benefit or approval. This can be problematic in that some people devise non-normative performance strategies that are not in line with who they claim they are so they can reap the benefits of a favorable presentation (impression management). Current self-presentation theorists, accord-

ing to Chriss, have chosen to ignore the ethical implications and communicative aspects of Goffman's (1995) theory, and instead emphasize the more instrumental aspects of presenting one's self in such a way that always produces some sort of benefit, regardless of the moral imperative to be true to one's real identity.

Even though there has been this shift toward emphasizing the goal achievement aspects of self-presentation, as previously mentioned, it is important to keep in mind any disparities between one's performance and one's true beliefs because when one engages in a strategic self-presentation the danger always exists that the lies, half-truths, exaggerations, and evasions will be discovered (Vinitzky-Seroussi & Zussman, 1996). If the discrepancy between the inner identity, or true self, and the dramaturgical image portrayed by the individual is great, then the potential exists for that person to feel large amounts of distress if this discrepancy is revealed to those around themselves. This is why Vinitzky-Seroussi and Zussman (1996) identify a strong need by individuals to maintain their true inner identity. They suggest that individuals don't stray too far from their true identity by engaging in modest alterations in the presentation of self. There is also a need to maintain close contact to some sense of a higher truth. In this instance the individual places an emphasis on another more important aspect of the self such as the belief that over all they are a good person in some meaningful way and any temporary deviation from that image, from an exaggerated or feigned presentation of self, is

justifiable because the central area of the self is still intact. This works as a way to neutralize the dramaturgical setting as a source of identity much as Sykes and Matza (1959) and Scully and Marolla (1984) have suggested in their work on deviant groups.

#### An Overview of Instrumental and Cybernetic Self-Presentation

Psychological social psychologists have adopted the general analytical framework offered by Goffman, adding ideas about social reinforcement drawn from the work of B.F. Skinner and cybernetic theorists to develop a related but different theory of self-presentation than offered by Goffman (Arkin, 1981; Tedeschi & Riess, 1981; Giacalone & Rosenfeld, 1991; Bozeman & Kacmar, 1997). Self-presentation theory, according to these social psychologists, suggests that the way individuals interact in a group is dependent upon the approval or disapproval of others in the group (Arkin, 1981; Bozeman & Kacmar, 1997). Winning the approval of others by meeting their expectations supplies the motivation for an individual to maintain an interaction that promises either an immediate direct reward or the potential of a future reward. From this perspective, individuals engage in role performance primarily to receive some type of benefit, and will readily change their self-presentations to maximize rewards suggesting a self-regulating cybernetic system (Gardner & Martinko, 1988; Leary & Kowalski, 1990; Bozeman & Kacmar, 1997).

A cybernetic view more specifically suggests that individuals

create a social identity that will achieve a desired goal then act in accord with the created identity to fulfill the goal. The actor then examines the results of his/her behavior; did my behavior produce the results I wanted? Depending on the degree of discrepancy between the desired outcome and the actual outcome, which the actor has received in the form of behavioral feedback, the individual will continue with the same presentational strategy. However, if the discrepancy was small or non-existent the individual will alter his/her identity and subsequent performance to achieve the intended results (Bozeman & Kacmar, 1997). This view suggests that the individual's primary motivation is not to express some form of ideal or inner identity they have created, but to maximize their rewards, and that they will alter their identities to conform to others' expectations in order to do so. This suggests a situational or transient identity where the feedback one receives is intended to self-verify his/her current identity that is being presented (Leary, 1995). Rewards will motivate actors to perform or simulate whatever behavior is expected by others.

This narrower view of self-presentation is based on Goffman's view but differs significantly from his actual writings (Chriss, 1995). Psychological social psychologists focus on only one of several possible motivations governing the presentation of self. In suggesting that we present ourselves only in ways that maximize potential rewards, Arkin (1981), Tedeschi and Bozeman (1981) emphasize the instrumental and self serving aspects of self-pre-

sentation and neglect the normative and communicative dimensions of role performance.

### Comparing the Two Views of Self-Presentation Theory

What is left is to take elements of varied interpretations to create a useful set of tools to explain why people may alter their behavior when engaged in any social interaction. First, individuals may shape their identities to engage in a performance that is socially expected or demanded. This will occur when the actor defines the situation as requiring a particular behavior because the other interactants expect or require that a certain performance be enacted. For example, when there is an emergency, men are usually expected to go and offer help (an instrumental gender role), while women are expected to offer comfort to the victims and their families (an expressive gender role). If the men and women in this example do not present themselves by exhibiting the proper behavior, some form of social sanction may be levied against them.

The second explanation for changes in one's role presentation has to do with situations where a particular behavior has not been socially defined. When individuals encounter a situation where there are no preset social expectations or sanctions, they then present themselves in a way that will best maintain or control the interaction, or facilitate their goals or plans. Self-presentation strategies involve behaving in a manner that meets others' expectations in order to fulfill individual goals and creating a common

definition of the situation in order to maintain the interaction while not straying too far from their inner identify. For example, two strangers sit next to each other on an airplane. There may not be any preset rules as to how one is to behave, but they present themselves in a way best to enhance the interaction and perhaps develop a social relationship. In maintaining the interaction, the individual does not reap any great reward or escape a sanction, but does achieve desired support for the role created. In this example, the individuals are creating an identity that reflects their goals and there is no reward achieved beyond that of gaining support for one's identity in the form of social acceptance of their performance.

By comparing the psychological social psychological and the symbolic interactionist view of self-presentation theory, it becomes clear that social interactions do not always require the adoption of a particular self-presentation to meet established expectations as Arkin (1981) and Tedeschi (1981) suggest. Roles may not be so tightly defined. Instead, the roles that individuals create may be so loosely defined that they will allow for presentation of their identity that may serve to validate one's self views while still achieving desired outcomes (Chriss, 1995).

#### In the Court Room

During the voir dire process, impression management plays an important role as prospective jurors find themselves in an inter-

actional process with the attorneys and judge. Both Mead (1934) and Goffman (1959) suggest individuals in social situations attempt to negotiate a shared understanding of the social context or definition of the situation. This suggests that, during the questioning process, the potential juror is actively engaged in a process with the other courtroom actors to achieve a common definition of the situation, specifically that they are suitable or unsuitable for jury service. In turn this implies that potential jurors have several self-presentational styles when they start the interaction process with the courtroom actors. Most jurors will engage in a genuine presentation of self where their biases or non-biases are clearly communicated allowing an accurate assessment of their qualifications for jury service. For these individuals their performance will match or be in line with their true identity. A smaller group of potential jurors may engage in a less than accurate portrayal of who they are. These individuals will engage in impression management to either be selected, if they want to serve, or rejected, if they do not want to serve. Accordingly, individuals would alter their performance to exhibit clear biases or suppress biases to impact upon the selection process. Those who present themselves positively would be doing so to maintain the interaction so the lawyers and judge evaluate them as suitable for jury service. Their motivations may be from feelings of support for the criminal justice system, perceived civic obligations, and/or simple curiosity (Levine, 1992). Such individuals are motivated to portray themselves in a socially



desired manner because they want to maintain their line of action and be selected as a jury member. This requires them to fit their self-presentation into a predefined role as a fair, attentive, and impartial person. If they don't conform their behavior to these broad expectations, they run the risk of being rejected. Beyond that the potential juror has the freedom to present themselves in line with their inner identity as long as they stay within the box created by general social expectations for jury service. Ultimately if they are selected, this confirms the identity they have created and leads to a positive evaluation of self producing a pleasant affective response according to Goffman's constructs. So in the broadest sense, these jurors tell the court what they think the court wants to hear to conform to general social expectations as to what constitutes the "good juror" while still satisfying their internal identity; consequently, the questioning may not uncover the hidden biases they may have as it was intended to do.

The motivational structure that exists for those who want be rejected for service on a particular jury is slightly different. They do not wish to maintain the interaction. They desire a common definition of the situation, namely that they and the other courtroom actors agree they are unsuitable for service. In this instance, rejection would produce a positive affective response as they have been relieved of a duty and identity that they never desired. Using an economic rationale these prospective jurors, may perceive participation on a jury as too costly (Bowles, 1980).

These costs, in terms of time and income lost, would be greater than any potential benefits such as enjoyment, fulfillment of civic duties, and the status of being a juror. Another motivation for not serving may have to do with feelings of alienation by jurors. Minority populations have long felt disenfranchised from the judicial process causing them to want to avoid jury service (Levine, 1992). It is important to note that those who probably hold the strongest motivations not to serve will have circumvented this entire process by ignoring their jury summons. However, many individuals who do not wish to serve will still show up out of fear of some sort of social sanction (i.e., punishment by the court, condemnation from acquaintances, etc.).

In summary, potential jurors may alter their presentations of self during voir dire in order to satisfy goals of either wanting or not wanting to serve on a jury. In the courtroom, traditional and SJS questioning bring salience as to the type of biases the courtroom actors are looking for, and then, depending on an individual's motivational structure, he/she will actively begin to negotiate the definition of the situation with those present in the court, consistent with their own goals. Those with a motivation toward service will emphasize those qualities that would make them attractive to both the defense and prosecution. Those with a desire not to serve will respond so as to show bias either toward the prosecution or defense, thus allowing them to be eliminated by peremptory challenges and challenges for cause from service on that particular

jury.

### Purpose of This Study

The purpose of this research project is to determine if and perhaps how prospective jurors do manage their impressions of self during the voir dire process. According to the interactionist perspective, the presentations one uses during questioning will largely reflect their specific goals as they enter the selection process: to be selected or rejected. To assess the performance/motivation relationship, it will be necessary to assess the following hypotheses:

1. Do some individuals who have strong motivations toward jury service present themselves in one of the following ways: as neutral individuals or as capable of setting their biases aside so they appear as fair or favorable to both sides?

2. Do some individuals who have strong motivations against jury service present themselves as possessing some type of specific or general bias against the defendant or prosecution?

There are also some related research questions stemming from the above two hypotheses:

1. Are the jurors' presentations of self successful (Those who express bias should be excluded and those who appear favorable to both sides should be empaneled)?

2. Are there some individuals whose presentation of self was good enough to allow them to be empaneled despite a predisposition

for biased against the defense or prosecution?

3. Are there jurors who are not biased being excluded because they have a motivation not to serve?

4. Does the courtroom setting or context help or hinder those prospective jurors using a strategic self-presentational style?

Since voir dire is an interactional process between the potential jurors and the courtroom actors, detail on the motivations and understandings of this process from the perspective of the judge and trial attorneys is also important: How do they view this process? What do they look for in questioning prospective jurors? Are there common recipes for action they use to determine bias? Do they feel jurors' presentations are generally representative of who they really are? Furthermore, it is important to examine routines within the process as well. Do the routinized actions of the courtroom actors aid or hinder the presentation strategies of potential jurors. Answers to these types of questions would help to understand the perspective of the courtroom actors and the negotiation of the definition of the situation during voir dire.

Exploration of these questions is necessary to more fully understand the voir dire process as an interactional setting where participants arrive at an accepted conclusion as to one's fitness for service. If some jurors are actually changing their identity to fit their motivational structure, then the voir dire process is a process of self-selection where the jurors themselves play the largest part in determining their "fitness" for service. The attor-

neys' best efforts at uncovering bias may be thwarted by the prospective jurors' performance. This would suggest that questioning by courtroom actors has a latent effect in that it guides the performance of the prospective juror but does not probe for potential bias as intended. This again would add support to conclusions reached in past research which demonstrate that selection techniques don't work very well. The use of impression management by jurors raises questions about voir dire in general: does it really work to eliminate bias fitting current conceptions of a "fair" trial? It may be that individuals who really do not have specific biases toward the prosecution or defense may be excused because they just didn't want to serve or, more importantly, some jurors who were empaneled may have managed to hide their biases through a "good performance." If this occurs, then biased individuals may be empaneled, seriously jeopardizing the chances for a fair trial. If these assertions are supported, then this will further demonstrate that voir dire has only limited utility as a jury selection method.

## CHAPTER III

### METHODS

#### A Note About Using a Multi-Method Approach

This project used a multi-method approach. Denzin (1989) suggests that the study of most social phenomenon can benefit from this type of approach: one can begin to triangulate in on the social processes at work in the situation of interest by analyzing the data obtained through the use of various methods. In this study, survey, observation, and interviewing methods were used. The use of these various methods can only enhance this study by providing a heightened understanding of the subject of interest as one can build off the strengths of the various methods. Surveying the potential jurors before the voir dire process provided insights into their attitudes toward jury service. Observing the voir dire process was the best way to view their performance as they interacted with the other courtroom actors during questioning. This is something that other methods just can't do. Interviewing participating jurors allowed me to hear their motivations in their own words. These techniques added a richness to the data that one can not get from a survey alone. Additionally, these multiple methods enhanced the overall validity of this qualitative study (a detailed discussion follows below). As data was gathered in a variety of ways, individual responses were cross-checked against each other to see if

similar trends are emerging across all three sources. Therefore, I feel that the most thorough examination of the presentations of self during voir dire is through a process of triangulation, as each of the methods would not be adequate on its own.

### The Sample and Universe

The universe for this study are all licensed drivers residing in Kalamazoo County. It is from this list, the master wheel, that all potential jurors in this study were randomly selected. This process is supposed to create a jury pool that is representative of the citizens of Kalamazoo County. The list ideally should encompass the entire community so all residents have an equal chance of selection: the problem is that many people are excluded from this list. Using drivers license records excludes those who don't drive. This may eliminate the poor and elderly who may have no need for a drivers license (Levine, 1992). There have been many empirical studies, as previously discussed in the introduction, to support the contention of inherent bias in master wheels based on drivers licenses and/or voter lists. The Eastern District of the United States District Court clearly found an over representation of white, male, middle-aged, upper-middle class, and educated people while the poor, racial minorities, the elderly and women were under-represented on this list (Alker, 1976). The Kalamazoo County list seemed to contain such biases as well. Based on 24 of the 96 participants who provided basic demographic information and courtroom observation,

those individuals who came for jury service were predominantly white, middle aged, upper-middle class, and well educated. The only difference from the Eastern District study was that males and females were empaneled relatively equally, 57% and 43% respectively. More specifically, the 96 participants in this study consisted of 41 females and 55 males. The sample was predominantly white, as there were only 2 African-American males and 2 African-American females with no other racial/ethnic groups being observed or indicated. Therefore it is important to recognize that those involved in this study may not be representative of the general population, but should be representative of the population of the typical jury master wheel and those who actually appear for jury service. Despite these limitations, this sampling frame does appear to offer a fairly typical representation of citizens in Kalamazoo County who answer their jury summons.

It is important to note, however, that those who volunteer for this study may be atypical. They may possess some characteristics different from those who did not volunteer. There is no way to prevent this due to the voluntary nature of jury participation. As a result, the general representitiveness of those in this study should always be in question, but not the general representativeness of those who came to participate in the trial process as they appear to be typical of all potential jurors.

The participants in this study are either those who agreed to participate in this project before jury service or those who repre-



sent individuals who were observed in the three Circuit Court courtrooms whose judges agreed to participate in this study (The Circuit Court in the State of Michigan is the trial court of general jurisdiction as it handles all felony trials). This project focused only on felony criminal trials over a six month period of investigation. Four trials make up the bulk of this study. The four young African-American males on trial were all accused of moderately serious felonies consisting of embezzlement, resisting arrest/fleeing and eluding police, felonious assault, and robbery/home invasion.

The participating judges, the prosecutors, and defense attorneys appearing in the courtroom were also briefly interviewed for this project. These individuals are fairly typical courtroom actors in Kalamazoo County and should offer useful insights into the voir dire process.

#### The Pre-Voir Dire Survey

A pre-service survey was administered to 24 of the 96 participants. These 24 were composed of 12 white men, 11 white women and one African American male. In order to administer this pre-service survey, an extremely wide variety of courtroom personnel had to grant their consent. The judges, the court clerk, county prosecutor, each assistant county prosecutor, the defense attorney, and the defendant had to first agree to the administration of the survey before jury selection took place. Gaining consent became a daunting task as the defense attorneys and the county prosecutors were con-

cerned that exposing potential jurors to this instrument could somehow affect trial outcomes or lead to a possible avenue for appeal. The prosecutors' concerns were lessened by having each defendant who agreed to participate sign a waiver that eliminated their right to appeal based on participation in this study. The county prosecutor felt that defense attorneys could use participation in this project as an easy avenue for appeal, and he did not want to dedicate any extra resources to handle any possible appeals that this project may generate. The defense attorneys were extremely reluctant to grant their permission, as stated above, due to concerns that participation could somehow taint the process and lead to a conviction. Two of the four defense attorneys who participated in the study, both of whom denied consent for the pre-service survey, felt that anything that could remotely alter the outcome of the trial needed to be avoided, as their reputations as defense attorneys were dependent on getting the best possible outcomes for their clients. It should be noted that these were younger defense attorneys whose conviction rates would have an impact on attracting future non-court-appointed clients. Because of the defense attorneys' concerns, consent was given for only two of the four trials used in this study.

The purpose of this pre-service questionnaire was to assess the potential jurors' motivation, for or against, jury service (See Appendix A for the full instrument). Results from the survey reveal the juror's initial motivation that can be used to assess their performance and selection or rejection for jury service to see if

their performance matches their initial motivation.

Respondents were asked if they strongly agreed or disagreed with a series of statements assessing their attitudes toward jury service. Responses are measured using a standard 5-point Likert response scale. A high overall score indicated a strong motivation toward service while a lower score represented a weak motivation toward service. This portion of the instrument was not used because 72 of the 96 participants were denied permission by the defense attorneys, or did not volunteer to complete the survey. Due to the small response rate it makes it difficult to assess the reliability and validity of this measure. An initial test of the reliability of this measure produced some problematic results. The measure was designed to measure one distinct construct, motivation toward service. A factor analysis indicated two conflicted constructs with overlapping items. With only five items in this portion of the instrument any divergence from one factor is of concern. A Cronbach's Alpha reliability test was also conducted. An alpha coefficient of .48 was achieved. This is well below the accepted level of .80. Because of the unclear results, most likely due to sample size, this portion of the pre-service questionnaire as whole was not used.

Individual questionnaire items were still used for analysis. Responses to individual items were taken at face value for some potential jurors and used as a speculative indicator of their disposition toward service. For example, one statement on they sur-

vey was: I would feel good about sitting on a jury. If they responded by circling a one, they agree with the statement, this then indicates support for the statement, that they agree that they would feel good about sitting on a jury.

Two open-ended questions were used from this instrument to further assess the jurors motivations toward service. Those who completed the survey were asked to list several qualities they would associate with being good jurors. This was followed by a question that asks them to list qualities that would make them a potentially poor juror. It is suggested that if a juror lists many more poor qualities, then one would expect they are focusing on the negatives associated with service and would have a low motivation to serve, while the opposite would hold for those listing many positive features. Of further use, these responses were compared with the prospective juror's actual performance during the jury selection to see if they exhibited any of the good or bad characteristics they listed, or suppressed any of the information indicated in this portion of the survey. Such a comparison did yield information on what qualities they used as the foundation for their presentation of self during the selection process.

The final part of the survey covered standard demographic characteristics (see Appendix A for the full instrument). Questions were asked concerning age, sex, race, income, educational attainment, and occupation to provide some basic descriptions of the sample. To insure anonymity the only identifying mark on the survey

was the respondent's juror number.

### Observations During Voir Dire

Staying loyal to Goffman's dramaturgical sociology, it is important to observe the interactions between the prospective jurors and the courtroom actors to see how prospective jurors may manipulate their presentation of self. Adler and Adler (1994) note that observation is well suited to investigate strategic self-presentation. The role of the observer, according to Goffman, is to be passive and fits within the realm of naturalistic research (Brissett & Edgley, 1990). This requires the observer to be fundamentally removed from the setting. This non-interactive role is the only appropriate one for observing the courtroom interactions as the researcher can't take part in the voir dire process.

For this project observational data were collected by using field notes supplemented by court transcripts when available. Video taping the proceeding would have been the best way to supplement the field notes, however, the Supreme Court of Michigan does not allow video tape recording of juries. Enhancing field notes through the use of video tape would be preferred as it allows one to gain access to the full richness of the interaction, or what Denzin (1989) terms as deep understanding, which is not possible through the collection of field notes alone. In light of this drawback, field notes became even more crucial.

For this project I was aided by three undergraduate assis-

tants. They were offered class credit, as an independent study, for acting as my assistants during the project. For each of the four trials I was present and aided by at least one of my assistants. Occasionally, when their schedules permitted, another assistant was added. The observers took due care to record the prospective jurors number, their gestures, their speech, an inference as to the juror's motivation; did they want to serve or not, and the outcome of the interaction; were they accepted or rejected. More specifically, a running narrative of the interaction was kept, each statement made was recorded and supplemented by their non-verbal behavior (Examples were: smiling, looking away from courtroom actors, squirming, leaning back, leaning forward, making eye contact with courtroom actors, increasing or decreasing the volume of their speech, blushing and sleeping). Although both observers were responsible for both the verbal and non-verbal interaction one aspect was given primacy to each observer. Therefore the one observer was able to focus more on speech patterns during the interaction while the other was able to focus both on general impressions, gestures, intonation, and demeanor estimates of each prospective juror. As stated above, the verbal responses of the prospective jurors were supplemented by court transcripts so there is a verbatim record of their responses. From the commonalities found in those patterns, presentation strategies that prospective jurors use, as well the techniques the judge and attorneys use to elicit their responses during voir dire were then analyzed to understand various self-presentation strategies

that potential jurors may display.

The main criticism of observational research is the lack of validity. Typically the coding of data relies on the perceptions of one person which can lead to subjective interpretations and biases. Multiple observers that vary on a wide variety of demographic characteristics are preferred (Denzin, 1989). For this study there were always two observers present and on some occasions three. After each court session field notes were compared by all observers present to look for agreement on general impressions, demeanor estimates, and verbal utterances, for each juror observed. Agreement between observers was generally good. There was an average agreement of 78% for verbal utterances and any disagreements were corrected by reviewing the court transcripts. Agreement of impressions and demeanor estimates was slightly lower at 74%. In this area, if a disagreement of an impression or the prospective jurors demeanor occurred, the observers would discuss what they saw and felt. If a consensus could be reached then the field notes would be amended. If agreement could not be reached as to our impressions of what we saw then this portion was not used in the study.

The validity of this research was enhanced by adopting an analytic induction style (Adler & Adler, 1994). By allowing the study to remain emergent in nature, one can start with the above mentioned propositions and hypotheses but alter them as negative findings suggest modifications during both pretesting and the course of the study. For example, court room procedure often limits the

ability of any juror to engage in any meaningful interaction, thus making self-presentation a mute issue. The study's initial propositions had to be altered to consider how this lack of interaction affects the jury selection process.

Denzin (1989) and Phillips (1985) also suggest one should also be concerned with validity as it is difficult to conduct any statistical tests to determine the significance of observed patterns and trends. If one can make repeated observations over the course of multiple instances of voir dire questioning, then one can be confident that the observations were not due to chance. In this study, multiple observational sessions were conducted encompassing a wide variety of prospective jurors. This allowed emergent trends to be detected over the course of the study. By obtaining repeated observations over time it is less likely that any emergent patterns are due to chance. These trends can be further supported through the use of multiple methods. If the data are collected in a variety of ways, as in this study, trends that appear robust across methods will enhance validity of the observations, confidence in the findings, and the conclusions drawn from the study.

There are some ethical issues surrounding observational research. When doing field observations one usually tries to be inconspicuous (Adler & Adler, 1984). Overt actions that inform the subjects of the observer's presence may cause the participants to alter their performance. Therefore, it is best to be unobtrusive as possible. The ethical dilemma concerning observational research



centers on the issue of informed consent. Do the participants have a right to be informed about the observers presence and reasons for observation? Current wisdom on this subject suggests that the participants should be informed in private settings (Adler & Adler, 1994). In this study, the courtroom is legally defined as a public space, unless the judge closes the courtroom to outside observers which did not happen in this study. Had a judge decided to close his courtroom those individuals involved with that trial would not be included in the study. However, based on the public nature of the courtroom, consent was not sought from the prospective jurors before they were observed, and should not be considered an issue.

#### Post Voir Dire Interviewing

A post voir dire phone interview was conducted with all consenting participants, regardless of their selection or rejection for service. In this study 13 of the 96 participants agreed to be interviewed. The courtroom actors were interviewed in person as well. Lofland (1971) suggests that interviewing fits well with the observational method as it allows the investigator to be flexible in the formulation and testing of propositions. This will allow the researcher to more clearly understand how the participants view their self-presentations as well as provide insight as to their motivational structure during the voir dire questioning.

Using a semi-structured interview schedule, interviews were conducted by phone at a prearranged time with the participant and

were tape-recorded for clarity. This involved the interviewer having a list of topics to be addressed during the interviewing session (Denzin, 1989). (See Appendix B for an example of the interview schedule.) The character of this interview was free flowing and emergent in nature: the interviewer only impinged upon the direction of the conversation when moved away from topic of interest (Fontana & Frey, 1994). Offering as little guidance/comments as possible should help thwart the efforts of those individuals (self-monitors) who may be inclined to present the researcher with the image they desire rather than reflecting their own perceptions of the voir dire process. For this project it was important to make it clear to the participant that the interviewer is not an agent of the court/state and that they are independent of criminal justice system. This should have aided in establishment and maintenance of rapport and the free-flow of information.

For this project it was important as well to gain information about the individual's motivational structure during voir dire. Therefore it is necessary to try keep the conversation focused on what they wanted to have happen during the voir dire questioning; in other words, did they want to be accepted or rejected for jury service. Also, to clearly understand their perspective, it is important to understand their expectations associated with jury service and how they may have changed (for those who actually served) during the course of service.

The interviews took place at prearranged times after the trial

had completed. Permission for this was sought early, before the selection process occurred, during the administration of the pre-service questionnaire. An informed consent agreement was attached to the phone interview solicitation. The consent agreement asked prospective jurors to give three convenient times for researcher to call them to conduct a short, 15 minute interview about the jury selection experience. It was made clear that they could withdraw consent at any time during the actual phone interview.

Interviewing is open to the same criticisms that are levied against the observational method (Fontana & Frey, 1994). However, the validity of the data obtained from interviews can be enhanced in the same ways as well. By using a multi-method approach, following the tenants of analytic induction, and carefully recording interviews for cross interpretation, the researcher should be able to draw valid conclusions from the data obtained.

The ethical criticisms regarding interviewing are also similar to those associated with field observation (Fontana & Frey, 1994). In this study individuals were told enough to insure they understood the nature of the research without giving away the hypotheses. It was also made clear that their participation was truly voluntary (they could terminate the interview at any moment), and their responses were being recorded.

#### Analysis of the Data

The purpose of the analysis will be to determine if the data

collected supports the central hypothesis: Do some individuals, during voir dire questioning, depending on their motivations favoring or disfavoring jury service, manipulate their presentation of self to either be selected for jury service or be rejected? The data collected from the pretrial survey, voir dire observations, and post-voir dire interview will be used to examine this question.

The analysis of the data for this project was rather straight forward by categorizing or "tagging" prospective jurors as fitting into various groups based on the previously discussed hypotheses and research questions. Once categorized, the groups were examined to look for differences between the groups and how the data, both verbal and written as well as non-verbal behavior, relates to impression management theory to explain these differences. When differences were found, and if warranted, further sub-categorization took place based on these differences and then explained until no further differences were found or impression management theory could not offer an explanation.

It is also important to note that the data obtained from potential jurors was enhanced with material obtained from the judges, defense attorneys, and prosecutors involved with each of the four trials. Information about their views of voir dire and interpretations of specific jurors behavior became invaluable in creating the main categories for comparison and aided understanding how they perceived their interactions with specific jurors so I could better account for some of the differences.

To begin, all available information for each juror was bundled together to include the pre-voir dire survey, observation notes, and post-service interviews. This varied for each juror as more data were available for some jurors than others due to varying rates of consent as described above. Once bundled jurors were classified into two broad categories that fit the general hypothesis of the study in that some potential jurors alter their impressions of self to be selected or rejected for jury service due to motivations for or against jury service. The two categories are:

1. Genuine self-presenters, whose survey and interview responses matched their presentation of self during voir dire. For example, a prospective juror who indicates no bias during voir dire and in their survey and during their interview. These individuals are portraying themselves as who they say they are.

2. Impression managers, jurors who's statements or remarks in the survey or during the interview did not fit with the way they presented themselves during voir dire. For example indicating a specific bias during the interview and/or on the questionnaire but not indicating that bias during voir dire questioning.

Once the participants were placed into these two categories the genuine self-presenters were largely ignored as the main focus of this project is on the effect of impression management during voir dire process. The impression managers were broken down into various groups based on differences found in the data. This group was further broken down into sub-groups those who were selected with

those who were rejected for service to see if any differences existed in the data obtained. Once examined the most salient difference between the those who were selected and those who were rejected centered around how questions were posed; were they asked panel directed questions where the entire panel responds directly with an answer or were they asked direct questions where an individual responds to one of the courtroom actors. This became the focal point of the study, attempting to explain how the way questions are delivered by courtroom actors impacts the effectiveness of impression management by some prospective jurors during voir dire.

## CHAPTER IV

### RESULTS AND DISCUSSION

#### The Context Within Which Voir Dire Occurs

It is important to start this discussion by framing the context within which the voir dire process takes place. The courtroom is a very unique environment in that its daily procedures are governed by a complex web of legally proscribed actions, customs, and personal preferences. In each courtroom where the voir dire was observed the overall pattern of the process remained similar. There were, however, subtle differences in each of the courtrooms that had an impact upon potential jurors as they engaged in their interactions with the various courtroom actors (the judge, attorneys, and defendant) during jury selection. These differences will be discussed later.

In the three courtrooms observed, the jury selection process began in primarily the same way. Thirty to forty potential jurors were led into the courtroom by the court clerk/bailiff and seated in the front of the gallery. As they were led in the entire complement of courtroom actors in the well (the portion of the court near the judge's bench) are present and standing in deference to the potential jurors. Standing is considered a sign of respect for the potential task at hand. Once the entire panel had entered and been seated in the courtroom, the courtroom personnel and observers sat

down and the jury selection process began.

### The Judge

The judges in each of the three courtrooms included in this study began the jury selection in a similar process with an opening statement about the importance of jury service. While each opening statement varied in form the content was similar. The judges tried to convey that becoming a finder of fact in a criminal proceeding is one of the most important civic duties one can be called on to perform. Each judge emphasized this importance by reminding the panel of prospective jurors that an individual's freedom was at stake and the whole trial process should not be taken lightly. This was also an opportunity to introduce the other courtroom actors including the defendant and the charges.

During this initial introduction, one could see each judge at perhaps their most judicial moment during the trial. The judges tended to emphasize the status of their position by using a stern, almost fatherly tone, as all the judges were male. One could see this in the seriousness of their tone and inflection as they introduced themselves and made remarks to the jury pool. The judges also made an effort to make eye contact with all the potential jurors seated in the gallery. It became clear from the way they acted toward the jury and in follow-up interviews with the judges that they were attempting to build a rapport with the jury as well as reinforcing their status as the one who stands above the fray in



the courtroom.

This attempt to gain rapport by tempering openness with a sense of deference helped enhance the interaction process between the judge and the potential jurors. The judges were offering a genuine presentation of self in that they were open and approachable but also represented the final arbiter as to all matters in the courtroom. This fits well within Goffman's theoretical framework in that individuals do have an obligation to portray themselves as accurately as possible, which the judges did, in order to facilitate future open interactions with a particular individual or individuals (Goffman, 1953; Chriss, 1993). In conveying a sense of openness to the jury, the judges were creating a positive environment through which potential jurors should have felt the ability to express their beliefs and opinions in an open and non-judgmental way. Several of the jurors indicated that they did feel they could fully express their beliefs and attitudes in the courtroom when questions were posed due to a sense of liking and trust they felt they had with the various judges.

Due to the thoughtful nature of the opening statements, the judges set the stage that would enhance the open and honest presentation of self that is desired in such a forum because freedom to express one's values, attitudes, and beliefs is so important to the jury selection process. It is important to note that even though the judge created an optimal environment for genuine presentations of self, it does not mean that all jurors did so. This interaction

process is affected by the behaviors of both the prosecutor and defense attorneys, and ultimately by the individual prospective jurors which will be discussed further in later sections.

Once the brief statements and introductions were finished, each judge started the voir dire process. In each courtroom the judge began the process by asking a series of general questions concerning each potential jurors fitness for jury duty. One of the first questions the judges asked had to do with hardship. In various ways, the potential jurors were asked if serving on a jury would be too burdensome or produce some sort of undesirable consequences for them (e.g., conflicts with work, child care, or personal health reasons) and if necessary, some type of follow-up questions were asked of those who gave affirmative responses. For example, one potential juror ran an in-home day care and she indicated that serving is a hardship for her. The Judge asked, "would your service today cause you to lose any income or have any consequences for the children who are in you care?" The juror's reply was,

Yes, I have to pay my mother to watch my kids for me, and she can't do it every day. I don't know what I'd do if this trial were to go on for days at a time. I can't do this to my kids, I just don't know, I just can't.

As a result of the initial screening question followed by further questioning, the judges released those jurors for whom jury service would pose a hardship serious enough to impair their ability to render a verdict due to their over-focusing on their hardship.

The next group of questions focused on knowledge of particular individuals involved with the case, as well as previous contact with

the court. In all of the courtrooms, jurors were asked if they knew any of the courtroom actors or any of the potential witnesses to be called. Finally, a series of questions to determine general bias were asked. These centered around different issues, including the ability to sit in judgement of others and general bias against the criminal justice system and its agents. Typical questions used to determine the jurors' ability to act as the finders of fact consisted of the following: "Do any of you feel that you can not sit in judgement of the defendant today?" or "The law requires that, if chosen to do so, you will have to determine guilt or innocence. Do all of you feel comfortable acting in that capacity?" In a similar vein, potential jurors were also asked in various ways if they had served on a jury before or had been to court before, and to elaborate on that experience. This question usually led in to the next question asked specifically by one judge; "Based on your previous experience, would this affect your ability to act as a juror (determining guilt or innocence) in this case?" Again, the main emphasis was on the ability of the juror to act as a finder of fact in a neutral way without their previous experiences with the court clouding their judgement.

General bias questions had a slightly narrower focus without going into specific areas of bias. For example, "Do any of you have any strong feelings, good or bad, for any of the people you see in the courtroom today or any of the potential witnesses from the list read off earlier?" Specific bias questions are left up to the

attorneys such as, "Do you dislike the defendant because he is a young Black man?". In this way the judge can keep his distance or stand above the fray of the selection process. These areas are seen as the domain of the defense and prosecution attorneys.

There were some procedural differences between the three judges when it came to asking these screening questions. One judge asked these screening questions of the entire venire, the pool of potential jurors, when they were still seated in the gallery. The other two judges asked these screening questions to only those potential jurors who had been randomly selected from the gallery and placed in the actual jury box. The same questions were then repeated as new potential jurors were seated in the box. This difference in the way the selection process started in each courtroom did not seem to produce any impact upon the jury selection process except that several jurors did indicate some mild frustration with the courts where questions were only of those in the box. One young female juror, number 48, remarked that, "I guess as I thought about it, it was frustrating. I came home and I thought how many times do we have to go through this. Each one of us who was new has to answer the same question over and over." It must be made clear that most of her frustration as well that of others who indicated similar attitudes, was directed primarily at the two trial attorneys and less so the judges because the attorneys tended to ask the same questions repeatedly to individual jurors, especially new jurors who had been called to replace those

excused. No potential juror who was interviewed indicated that this repetition bothered them to the point where it would affect their objectivity. Most seemed to have just written this off as an unavoidable annoyance suffered by all jurors.

In the courtroom where the judge asked the entire venire (the pool of jurors present in the court as a whole not just those in the jury box) screening questions, there were no comments about repeated questioning from the judge, and there was only one disparaging comment by a juror. In this environment, repeated questioning seemed less of an issue to the prospective jurors and also seemed to be a more efficient way to ask these broad screening questions.

#### The Judge's View of Juries and the Selection Process

All of the judges involved with this study indicated they were strongly in favor of the jury system. The jurists all had relatively similar responses when asked. Their responses centered around the importance of juries as finders of fact in that they represent a diverse set of community interests so that no one set of values or biases dominates decision making. The jury serves as a buffer between the state and the accused. This fits well with the parameters laid out by Levine (1992) when discussing the primary purpose behind the use of juries in criminal trials. The most interesting thoughts the judges had centered on how jury service acts as an important civics lesson. One judge stated, "I don't know any better way for an ordinary person to learn about criminal trials. After

serving on a jury one should truly appreciate and support the beauty of our system of justice." It is clear that the judges consider jury service as a very good way to expose individuals to the criminal justice system so they can learn about and support our system of justice.

Two of the three judges were strong proponents of the existing system. Both indicated they would like to see the processes made more efficient. One the two judges remarked, "[I]t would be nice to speed up the process, but I don't know how you would do that without compromising the defendants rights to pick a fair jury." The other judge is in favor of judge-directed voir dire. This is where the judge does all the questioning and, based on the responses, the judge will remove those who show a specific bias, and the attorneys can remove those whom they feel are unsuitable with one of their preemptory challenges. Over time this judge has, "[S]lowly increased the number of questions I ask while limiting the time the attorneys get to ask questions. They now have 20 minutes each. I can foresee the day when I will do all the voir dire." Judge-directed voir dire is gaining increased popularity in many courtrooms because it is seen as more efficient (Levine, 1992).

#### The Prosecution and Defense Attorneys

Once the judges had finished screening out some of those who indicated a general bias or hardship, the prosecution and defense were allowed by the judge to begin their questioning of individual

jurors. In each court, as a matter of custom, the prosecution first asked a series of four to five questions to the panel or a specific juror(s). Then the defense attorney asked a series of questions to the panel as whole or to a specific juror(s). When both attorneys were done, each attorney was given the opportunity to strike or remove a potential juror for cause (where it can be shown they have a specific bias that would cloud their objectivity during the course of the trial), or use one of their limited preemptory challenges (where a potential juror can be removed without any specific justification). This process then repeats itself until both attorneys are satisfied they have a jury that suits their needs.

During voir dire there are four primary groups of questions that attorneys use in determining a juror's fitness for service: questions to uncover specific bias; questions designed to impart information concerning their side of the case so they can assess the potential juror's reaction to the information that was posed; questions to see if the potential juror has the cognitive capacity to understand the legal/technical nuances of their case; and questions designed to ingratiate themselves to the pool of jurors. Questions related to uncovering specific bias are the most common questions asked. It is this type of question that was the main focus of the study.

Jurors who engage in strategic self-presentation, as hypothesized, may downplay or not answer truthfully to these types of questions in order to serve on the jury. When questioned in follow-

up interviews, both the defense and prosecuting attorneys suggested it was important to get rid of any juror who may have a some form of specific bias against their position in the trial. This is not to say they want to do away with all bias per se because it is in each attorneys interest to have a juror biased toward their position (Levine, 1992). Questions they asked are primarily designed to detect specific bias against their position, and also to detect any support for their position.

There are several different ways these bias-detecting questions manifest themselves. Many times the attorney uses questions defined as stand alone questions. For instance one prosecutor asked, "Do you [their name] have any problem finding a person guilty if you were asked to do so by this court despite having sympathy for the defendant?" This question has probative value for the prosecutor such that indicates a specific bias against the trial process where an individual is required to determine guilt or innocence. If the juror responds negatively to this question, he/she no longer fits the requirements of an unbiased juror. However, there are instances where questions become part of deductive strings where the attorney starts with a broad general question which generates further probing to determine specific bias. A defense attorney asked one potential juror the following deductive string line of questioning. The defense attorney asked Juror 82, "you indicated to the judge you had been the victim of crime before. Can you elaborate upon that?" Juror 82 responded, "Some neighborhood kid broke in



and took my son's bike." The defense attorney asked, "It was a kid who broke into your garage?" and the juror's response was "yes, that's right." The defense attorney then asked him how that made him feel and the juror's answer was "It made me angry, mad I guess." The defense attorney asked, "was the kid white, black, or something else?" Juror 82 said "the kid was black." The defense attorney then asked, "Since the defendant is a young black man do you think, based on what happened to you a year ago, can you be fair when it comes to the defendant?"

With this line of questioning one can see the logical progression from the general to the specific in trying to discover specific bias. In this case, the attorney was looking for both racial bias and age-related bias. These two types of questions represent the most typical forms of questions to uncover specific bias during voir dire.

The attorneys also often asked questions designed to impart information about their particular side of the case to assess the potential jurors reaction. These questions started by telling a story. For instance, a defense attorney made the following statement to a potential juror,

Mr. [the defendant] is accused of assaulting another young man with a pair of scissors. We claim that [the defendant] felt threatened by the victim and was acting to protect himself from what he felt, in his heart, was certain danger. Do you feel it is alright for a person to defend themselves if they feel threatened?

While this question attempts to uncover bias, it is also designed to tell the jurors about their side of the case so they can judge the

potential juror's reaction. In my follow-up interview, the attorney who posed the question said he felt that it was important to test the waters to see how aspects of his case would be interpreted by the jury, so he could determine if these points should be stressed during the actual trial, or if they should not present this information to the jury.

Most of the attorneys were aware that juries tend to think of each trial as a competition between differing stories or versions. Work by Pennington and Hastie (1992) has shown that juries do tend to use a story model when deciding guilt or innocence. If trial attorneys can start off making an impression upon the jury by presenting their version of the events in question it is hoped that their story will act as a mental simulation for the jurors and they will accept their particular story.

In general, the defense attorneys felt this type of question was also useful in terms of helping the jury see their side of the story. During trial the attorneys, due to the use of multiple witnesses to testify to certain small aspects of the case, had a hard time presenting a well-connected story to the jury. Their opening statement and closing statement were designed to connect the dots for the jury so they could see their complete argument or story. By giving potential jurors condensed versions of their story during voir dire the attorneys feel that this repetition will help make their argument more salient and acceptable. Social psychologists would call this the mere exposure effect, where re-

petition fosters familiarity which in turn creates a sense of liking (Franzoi, 2000). For example, the more one hears a song on the radio, the more one tends to like that song. Familiarity breeds a sense of liking for that song. The same can be said with the arguments posed by the attorneys; the more the jurors hear their side the more familiar they become with it and eventually they would accept their version because it is the one they, the jury, liked the best.

During the course of the trial, jurors were required to determine if the behavior of the defendant fit within the confines of the criminal law. Much of the criminal law is of a highly technical nature and often difficult for the lay person to understand. Attorneys, particularly the prosecutor, wanted to determine if the potential juror had the cognitive ability to interpret the law in a way they deemed desirable. For instance, one of the cases involved the theft of some property from a private home (burglary). Some of the items stolen were animal pelts. The prosecutor, in charging the individual with burglary, also charged the defendant with violation of Michigan's poaching laws. In this instance the prosecutor was trying to extend tractional poaching laws to cover pelts stolen from the victims dwelling. During voir dire, the jurors were asked by the prosecutor,

Based on my description of the law as it relates to this matter and the behavior I just described performed by Mr. Jones (a hypothetical person whose behavior mirrored that of the defendant) could you apply that law to Mr. Jones's behavior?

This question became a litmus test for the potential jurors. Four of the prospective jurors were removed because they didn't answer in the affirmative or after further refinement the prosecutor didn't get a sense they really understood the law. The prosecutor indicated that, "This is a very tricky issue, bringing case law that I'm not sure I totally understand, if I have any doubts they can't understand the law and how I want them to use it, I'm going to get rid of them."

The final type of question is an ingratiating question. This question really is a two part question. First a question is asked where the attorney is confident of the potential juror's response followed by an ingratiating statement. Ingratiation has been identified as a strategy used in strategic self-presentation (Jones & Wortman, 1973; Jones, 1990). The purpose of ingratiating yourself to others is to get them to like you so they will respond in some positive way toward you. Trial attorneys want juries to like them. They often blatantly ask, as a way to determine specific bias, if a potential juror likes him/her or has any negative feelings toward them so it is reasonable to assume that a good attorney will try to do what ever he/she thinks is necessary to get a juror to like them so they will respond favorable toward their side. One defense attorney near the end of the voir dire session asked three potential jurors in a row if they were nurses. After all them responded in the affirmative, as he knew they would because every potential juror gives their occupation as a part of filling out they jury

service/history card, he responded with the following statement, "Boy if I were to get sick today I know I would be in good hands with so many nurses on the jury."

This represented an attempt to ingratiate himself to at least these three nurses by stating he was trusting his health to them. In return he stated he was hoping "that they would respond in a favorable way toward me and my client."

The problem with ingratiation is that it usually does not work that well. Gordon (1996) found in his meta-analysis of 69 ingratiation studies that most people tend to question the motives of the person ingratiating him/herself. In a sense, these people were viewed as brown nosers and suck-ups which reflected negatively upon them. The same was true with the example used above. Juror number 31 indicated that,

The message I got was that he liked the fact that...nurses do have to take care of people they don't like. I think he was trying to show special appreciation for the nurses in the group who may be more open minded to his side. It [this question] did bother me.

This juror and the other two nurses indicated that the question didn't bias her opinions of the defense to the point where it affected their deliberations, but it was clear that all of them didn't like it either as all of them mentioned this to me during the formal interview and in informal contacts right after the trial. Again, this shows that such questioning, although designed to gain some form of positive response, usually has negative consequences for the individual who uses ingratiation as a self-presentation

strategy.

### The Attorneys' Views of the Selection Process

The prosecution and defense attorneys have vastly different perceptions of both the selection process and jury service.

Prosecutors. The county prosector and his assistant prosecutors all indicated a general dislike for the jury system. Their arguments centered around the unpredictable nature of jurors. One assistant remarked that,

Many of them (jurors) are incapable of following the law and are constantly interjecting their opinions and beliefs so you are never sure what they are going to do. We would be better off with a European system where a panel of judges decide guilt or innocence. Then we (the prosecution) wouldn't have to worry as much about nullification and other stupid outcomes.

Their dislike for the jury system centers around the unpredictability of outcomes. A three judge panel, as suggested, would help remove some of the uncertainty as these judges, as trained attorneys, will be thinking in much the same way as the prosecutors do. They share similar subcultural viewpoints as those who have studied the law, making their behavior more predictable and the outcome of the trial more predictable.

The assistant prosecutors also were ambivalent when it came to voir dire. The attitudes expressed in the above paragraph suggest that the prosecutors would take a rather hands off approach to jury selection as juries are unpredictable. Two of the three prosecutors who participated in this study indicated just that. They asked very

few questions during voir dire, and both stated they preferred the first twelve men in the box. This was best summed up by one senior assistant prosecutor who said,

Since, in my experience, I can't figure out what they are going to do, the first twelve are fine with me. I don't have any magic selection techniques, as long as they don't hate me, my witnesses, including the cops, we are good to go. If my case is strong enough any reasonable person should see my side.

This sentiment was echoed by his younger counterpart as well.

I don't really care about picking a jury. They do what they want to do. Sure I can ask questions, but what does that get me; except just a bunch more questions they gotta answer. I don't have the time for that. The less I know the better I feel.

In the three trials that involved these attorneys, on average, they asked one question for every three posed by the defense. This suggests they really don't feel a need to be vested in the process.

The other assistant prosecutor involved with the remaining trial made the opposite argument by stating,

I don't really ask questions to try to remove the prospective juror. I want to know as much about them as I can so I can figure out how to present my case to them, that way I can have some confidence they will see my side.

This attorney, like his colleagues, does not trust the jury either because they are unpredictable but he feels the need participate in the process to anticipate which strategy to use in presenting the case to the jury.

Defense Attorneys. Defense attorneys generally approve of the jury system and see voir dire as important part of the trial process. They feel that the jury is an important independent barrier between

the state and the defendant, therefore service is seen as an important part of the due process model where the state must be challenged to demonstrate guilt when an individual is accused of a crime (Packer, 1968). The defense attorneys, like the prosecutors, acknowledge the unpredictability of the jurors. As mentioned by one of the defense attorneys,

Sometimes juries do stupid things they go on feelings, they don't listen, who the hell knows. In reality and most of the time, I think, they can see through the other guy's case if it is weak and give my client the benefit of the doubt.

For the defense, picking a jury is important because they want jurors capable of thinking for themselves, and who won't blindly accept the prosecutor's arguments. One of the defense attorneys remarked, "I need to find out if a juror can listen to our case or believe in what we are trying to present to them. The only way to it is by asking them questions during voir dire." Again this supports the overall contention that defense attorney see voir dire, despite its faults, as crucial to their winning of the case. For this reason all of the defense attorneys were in support of retaining the jury system and having lawyer-driven voir dire, where the lawyers, not the judges, ask most of the questions.

#### Genuine Self-Presentation and Voir Dire

Before a discussion of the problems associated with strategic self presentation (i.e., presenting oneself as something one is not to achieve a desired goal or outcome and jury selection) it is important to note that most prospective jurors engage in a genuine



presentation of self. Most jurors portrayed themselves as who they are; if they had biases they were candid; if they would suffer a hardship, they were honest. Out of the 96 participants, only six clear cases of impression management could be found. It is not to say there were not more, as there were several attempts to embellish when they didn't want to serve. However, there were only six cases where there were distinct differences between pre and post-service statements and responses to questions posed during voir dire. This suggests that most people, at least when it comes to voir dire, are who they say they are.

The rest of this chapter will focus on those who engaged in impression management, embellishment of their genuine presentation of self, and problematic issues associated with questions posed to the entire jury panel where they respond as a group.

#### Panel Directed Questions

As previously mentioned, there are several different types of questions that attorneys and judges used to determine the prospective jurors' fitness for jury service. These types do, however, fit into two larger categories of questions that have been previously alluded to, but have yet to be clearly defined. Questions to prospective jurors can either be panel directed, where the same question is asked to the entire panel and they respond as a group, or questions can be specifically directed at an individual prospective juror and he/she alone responds to the inquiry. This section will

focus on aspects of the panel directed questions, while an upcoming section will focus on individually-directed questions.

#### Time Pressures That Limit Voir Dire

The courtroom context had an effect upon voir dire in that it limited and enhanced the likelihood of impression management. The selection process was very repetitive and time consuming. As previously stated, many times the same question, although rephrased in various forms, was asked by all the courtroom actors, or the same question was asked of each prospective juror as one of the attorneys or judge felt the need to have an individual respond to a particular question. This desire to have individual responses takes place under some rather overt time pressures imposed by the trial judges. Each judge made it clear that for the average felony case voir dire should take a specific period of time. Two of the judges allowed the attorneys from the time the jury pool was brought into the courtroom (10-11:00 am) until the end of the business day (4:30 pm) to select a jury, while the other judge limited voir dire to 20 minutes per side (which in reality was about two hours). This means there was pressure "to get it done," as one judge stated. So asking enough questions to determine if jurors have any relevant potential biases was a rather hurried affair. Due to this organizational pressure to rapidly select a jury, the attorneys and judges, as stated above, used a blend of panel-directed questions where the entire jury responds to a question with a yes or a no answer, as

opposed to direct questions posed to individual jurors where an individual response is given. It is with these two types of questions that there was a differential impact upon strategic impression management. Panel-directed questions make impression management much easier as there was very little interaction between the juror and the actor asking the question. Individual questions make impression management much more difficult as the judge or attorneys have the ability, if they choose, to look for weaknesses or inconsistencies in the prospective juror's performance. The rest of this section will examine these differences in greater detail.

#### Informal Race-Related Operational Norms That Limit Voir Dire

In my interviews, two of the three judges said they were concerned with the lack of minority representation in the jury pool. One judge stated informally that,

we would like to see greater participation by certain segments of the community but we (the court) are not sure how to correct the problem. It is most likely a reflection of larger social issues. It is discouraging when there are two to six African-Americans and no Hispanics in the jury pool.

For this study there were two African-Americans in each trial's jury pool, half of which were called to the jury box for voir dire. This fits earlier findings by Levine (1992) that there is a concern regarding minority participation in the jury system, but very little is done to actually encourage these segments of the population to actually answer the jury summons. This suggests that generally, and for Kalamazoo County specifically, lack of minority participation is

a problem that the court tolerates.

As stated earlier, jury selection practices differed slightly for each court. There were differences in the way African Americans were treated in comparison to other non-minority jurors in the three trial courts. African-Americans were never asked a direct question unless they responded to a screening question in a negative manner, such as responding to a question where a "yes" is the desirable choice with a "no." This may, at first glance, appear to be a non-difference, as approximately half of all jurors in this study were never asked a direct question, only panel-directed questions. However in discussing African-American jurors with the assistant prosecutors they stated the following:

A senior prosecutor stated,

we (the prosecutors office) need to be aware of appearance of bias. With Supreme Court decisions like Batson (v. Kentucky), we can't get rid of a Black juror just because they are black. There needs to be a clear reason why. The last thing I want, and my boss wants, is for us to be called racists. So, to answer your question we leave them (African-Americans) alone unless we have a clear reason to question them further.

A junior prosecutor added, "there are some judges around here that would make my life harder if they thought I was finding ways to excuse these people (African-Americans)."

Statements like these suggest there are informal operational norms that guide the treatment of African-Americans such as, they are not to be vigorously questioned during voir dire as this increases the chances that they will be removed. In the two instances where African-American jurors were questioned further, both were

struck from the jury panel.

The defense attorneys involved generally liked having African-American jurors on the jury panel if the defendant is African-American. Two specifically commented they preferred to have African-Americans on the jury. Defense Attorney one suggested "they (African-Americans) are more likely to be skeptical of the prosecution's case based on what they have seen on T.V. So I will work hard to keep them on the jury." While defense Attorney two stated, "You know if I got a black defendant I want one (an African-American) on the jury. They know the system isn't always fair. Besides, what I don't know will probably benefit my side and hurt the prosecution." These statements may reflect attitudes, but it appears they are put into practice as only one African-American prospective juror was posed direct questions by a defense attorney, and this only happened after attorney number two connected the prospective juror to a former client.

As elected officials, the judges and the prosecutor are aware of the appearance of bias. While the court is unable or unwilling to do more to encourage African-Americans to come for jury service, they do have some control over what happens to those who do answer the summons. In creating a normative climate that supports the empanelment of African-Americans on the jury by lessening the aggressiveness of voir dire, the judges can see a more representative panel and the prosecutor's office will appear unbiased as well. The defense attorneys also feel they benefit because African-

Americans may be more sympathetic toward their client. Thus with African-Americans, the use of panel-directed questions fulfills organizational goals of both the court, the defense attorney's, and the prosecutor's office.

#### The Problems with Panel-Directed Questions

As stated above, the voir dire process begins with the judge asking the entire pool, or those who have been placed into the jury box, a set of panel-directed questions where jurors respond as a group. They typically respond with a yes or a no, for example, "Have any of you served on a jury before?" Depending how members of the panel respond more individual questioning took place. For the above example, a response of no led to no further questioning, while a yes caused the judge to further probe into the juror's past experience. The questioning by both the prosecution and defense was very similar. They each tended to start with very broad panel-directed questions then moving to the more specific.

If a potential juror was interested in engaging in strategic impression management, by specifically suppressing a bias to get selected or feigning hardship or bias to get rejected, this type of questioning would allow the potential juror to engage in strategic impression management as it limits one-on-one interaction. This makes detection much more difficult. As Goffman suggests, one of the ways we attempt to determine if a person is engaged in false or exaggerated presentation of self is by the expressions given off

(1959). This leakage represents a wide range of mostly nonverbal behavior that is unintended, which may indicate that their expressions and the actual speech they are using may not truly represent who they are (Goffman, 1959). Examples of expressions given off consist of such behaviors as stuttering, blushing, fidgeting of one's hands and feet, failing to maintain eye contact, and the repeated touching of ones nose, as President Clinton did during his deposition before the Special Prosector (Franzoi, 2000). These expressions are subtle indicators that the person may not be entirely candid in his/her presentation of self. Research has shown that 80% of the time these types of behaviors do indicate some type of deception (Ekman & O' Sullivan, 1991).

If a prospective juror is confined to a "yes" or "no" response to a question, the chances of becoming aware of any of these indicators is greatly reduced. Goffman (1959) suggests that leakage occurs throughout the interaction, as with this type of question there really is no interaction of any consequence. If there is any leakage at all it would be hard to detect as the rapid pace of voir dire allows for very little time for the judge or attorneys to process the response of twelve to fourteen potential jurors beyond their verbal utterances as they are already moving on to the next question or targeting a juror who did not respond verbally in a way they deemed appropriate to their position. So, as a matter of economy, the attorneys have to focus only on verbal responses, as it would seem unreasonable to suggest that the attorney or judge would

have the cognitive capacity to simultaneously monitor each juror's leakage. This is perhaps the key to why strategic presentation is easy with these panel-directed questions as a "yes", "no," or other one word response by the entire panel are that is required, because of the limited interaction, one can not look for inconsistencies in the verbal presentation and for non-verbal indications of untruthfulness because the context is so prohibitive in terms of a meaningful interaction between the potential juror and the attorney or judge.

#### The Ceremonial Order

There were numerous examples of the problematic nature of panel-directed questions. In each trial, the potential jurors, as a group, were asked by each judge and then again by the prosecutor in three of the four cases, "[If] they could pass judgement upon another person." With regard to all 42 participants who were asked, only nine responded with a "no." The rest indicated that they could pass judgement. The nine who indicated they could not pass judgement were dismissed after giving the reason for their responses. The problem is that four out of the remaining participants who indicated they could pass judgement gave conflicting written and verbal accounts.

Evidence of this conflict is contained in the following statements: Juror 51, an older female, said, "I am reluctant to condemn/punish anyone. I find it is somewhat strenuous for me to



pass judgement on anyone." Juror 64, a younger female, wrote (who was dismissed for other reasons), "I don't think I could be impartial enough to decide on a person's guilt or innocence!" Juror 48, an older male, wrote, "I could have too much empathy for persons being punished. It is hard to punish someone you feel sorry for." Juror 57, an older African-American male, said, "You know man, it bothers me to be sitting in the seat of judgement of anyone. I've done bad stuff in my life so who am I to judge. My momma used to say it's like the pot calling the kettle black. That's what this is you know."

It is also important to contrast their reluctance to pass judgement with their feelings or motivations toward jury service. In discussing their feelings jurors 51 and 48 responded with the following statements: Juror 51, "It is hard to arrange ones life and time. You know I got things to do, a life to live. I was not pleased about coming down here." Juror 48 responded by stating,

I was not thrilled with doing it I thought jury service man oh man you got to hate that. I thought the odds would be in my favor and I just wouldn't have to do it. So to really answer you, no it wasn't a real high priority on my list.

Juror 57 did not make any remarks concerning his attitudes toward jury service.

These remarks are very conflicting. One of the main hypotheses of this study is that people who are highly motivated to serve, which these jurors, for the most part, were clearly not, would be the most likely to engage in impression management. This raised the question of whether the above inconsistencies are an

example of strategic impression management. A genuine presentation of self would have them indicating their reluctance to serve on the jury, yet they do not. It becomes unclear as to what is motivating their performance; they really don't want to serve and they have a reluctance to judge others yet they indicate they do not. If, as strategic self-presentation theorists suggest, presentations achieve a desired goal or outcome, their behavior is counter productive (Gardner & Martinko, 1988). Their performance is achieving undesirable results as they give the appearance of being fit for jury service.

Goffman (1967) may provide an explanation for this seeming anomaly. Instead of giving a presentation of self it may be plausible that these prospective jurors are responding to ceremonial order inherent in this type of mass questioning situation. Goffman wrote about the problems associated with presentations of self in public settings. Individuals who know that their behavior is going to be known to others often conform their behavior to fit contextual norms, or taking part in the ceremony. Jury selection is a highly public ordeal. Every potential juror knows that their responses and behavior are subject to scrutiny by the judge and attorneys creating a context in which individuals may feel the pressure to conform to fit known expectations. This could only be enhanced by the rapid pace of the panel-directed questions where jurors have little time to think of a response on their own. They, instead, may look to others to see how they are defining the

appropriate response.

These jurors were not strongly motivated to serve, yet they responded in a way that made them desirable jurors. This would have been a good situation for them to indicate or emphasize their not wanting to serve in order to be struck from the panel, but they did not. One way to account for this behavior is to suggest that they were responding to the normative pressure the ceremony induced by the situational context. Others around them responded in the affirmative setting up the normative pressure. Furthermore, they know that jurors are required pass judgement on a defendant, or they wouldn't have indicated their concerns in the pre-service questionnaire. Yet, they responded in a way that contradicts their earlier statement. Their behavior is due to situational forces pressuring conformity to the group. In this case, the potential jurors responded with socially desirable behavior in a time sensitive situation when they said they could pass judgement when inside they felt they could not. This analysis suggests that these individuals were not engaged in impression management, yet the consequences of their actions, not truthfully responding to the court's questions, produced some very undesirable consequences due to the manner in which the questions were posed.

It is important to finish this section by noting that three of the four discussed were sworn in and served on two of the juries in this study. This may seem like a small number, but verdicts in criminal cases must be unanimous and it takes only one juror to

alter the outcome. As one prosecutor stated, "I don't want anybody on a jury who had a problem with finding a person guilty." Here it is clear that some of the jurors did have a problem with passing judgement on another person, and if they indicated this during voir dire they probably would have been struck by either the judge or the prosecutor.

#### Strategic Self-Presentation Made Easy

There are, however, instances of strategic self-presentation with panel-directed questions. During the start of the voir dire for the assault trial one of the jurors responded that they were "pro-prosecution" when questioned by the defense attorney. This juror was later dismissed by the defense attorney using one of her peremptory challenges. She acknowledged the response, and then asked the entire panel "Is there anyone else here who would consider themselves pro-prosecution or that all defendants are guilty if they are seated where my client is?" The rest of the panel responded with a "no..." in unison with nothing to raise her suspicions. The defense attorney then moved on with a new line of questioning. This question, like the question surrounding the ability to pass judgement, produced a differential response for one potential juror. Juror 36 responded with a "No, not at all." He said this (while leaning forward and maintaining direct eye contact with the defense attorney a style seen as trustworthy by all the attorneys in the study) emphatically, and louder than the surrounding jurors.

Earlier, before voir dire began, he had indicated that,

I know from what I've seen that it is more than likely all criminal defendants in Kalamazoo County have done something wrong. If the prosecutor goes to the point of taking a case to trial they are guilty. It makes no sense to spend these court hours on 'iffy' cases where the prosecution's case is clear.

If this is his true attitude, he should have responded in the affirmative to the defense attorney's question yet he did not. He also indicated in the pre-service survey that jury participation is important and he feels good about service in fact he "thinks it is great I really wanted to do this." After the trial he remarked,

well, knowing what I do about our justice system, I was a lot fairer than I thought I would or could be. I think I clearly listened to both sides and gave him (the defendant) the benefit of my doubts, but I still knew the guy was guilty. The defense would have had to have been much more persuasive than they were.

The remarks made by juror 36 are contradictory. He indicated during voir dire that he did not have any preferential feelings toward the prosecution. However, his remarks clearly indicate that he does have a bias toward the prosecution in that guilt is a for-gone conclusion. This does appear to be an example of impression management, as his behavior fits one of the main hypotheses of this research project where it is suggested that a juror who is motivated to serve on the jury does not portray themselves genuinely to achieve the more paramount goal of being empaneled on the jury. This juror appeared to be very motivated to serve, but was also severely biased against the defense. The problem was this bias didn't come out in court during voir dire because he did not want it

to as it would have most likely resulted in his dismissal from the panel. In this case voir dire did not work as intended because juror 36 portrayed himself as desirable to both the defense and prosecution as he did not speak the truth. Had the defense attorney been privy to his pre-voir dire statement he most certainly would have been dismissed.

Juror 36 was aware of his own inconsistency. He indicated that he was predisposed toward guilt yet he could be fair. In his pre-service questionnaire he indicated that his sense of fairness and "good morals" qualified him for service. Throughout the interview he mentioned that he was, "fairer than [he] thought [he] would or could be" and that "[he] could put aside his feelings and be somewhat fair." This was his attempt to deal with the inconsistency between his strategic behavior and his real attitudes by reminding himself of a valued part of his true or inner-identity. This parallels findings by Vinitzky-Seroussi and Zussman (1996) who found that individuals who engage in impression management often deal with inconsistencies by accentuating a valued area of their self-conception such as goodness, respectability, successfullness, and fairness. Juror 36 justified his performance in the jury box by reminding himself that he was fair, or at least fairer than he thought he would be.

Another example of strategic impression management occurred during panel-directed questions. During the voir dire for the robbery trial, the panel was asked by the prosecution whether they

had known anyone who had been the victim of a crime or who had been involved with criminal activity. All but two answered, again in unison, with the expected "no." The two that answered "yes" were questioned further and were dismissed as they both had indicated they had been victims of burglary and assault. Juror 76, a young male, who did say "no" to that question and answered in a positive way to all other panel-directed questions indicated before voir dire that,

I have had many expertise [sic] with criminal activities in my life. I feel such things make me a good juror. I know what its like to be on the other side. That makes me better than them other people. They should let me do it.

Further information on his motivation toward service and his criminal background are limited as he did not consent to the post-service interview.

In another contradictory statement, Juror 76 stated with a "no," in response to the questioning by the prosecution as to whether he had ever been involved with criminal activity, yet he had indicated the opposite before jury selection. Once again it appears that this is a person who wants to serve and gives an inaccurate response to the prosecution that, had he responded truthfully, he would have been dismissed. Juror 76's responses fit the same pattern as discussed with juror 36.

For jurors 76 and 36 the panel-directed responses made strategic impression management much easier. Each of these potential jurors were never asked a direct question. In the forthcoming section one will be able to see that asking direct

questions becomes an important way to try to counter the effects of impression management as these questions elicit an interaction between the prospective juror and the courtroom actors where they can then look for inconsistencies and leakage in a potential juror's behavior that can not be ascertained from asking a list of "yes" or "no" questions to fourteen potential jurors. Overall, 48% of the jurors were never asked a direct question. Of that 48%, 92% were sworn on to a jury. This means for nearly half of all the jurors in the study, there were very few opportunities for the judge and attorneys to look for the inconsistencies in their responses, or non-verbal indicators of untruthfulness (Goffman's leakage). This suggests that the court, in these four cases, knew very little about the fitness of approximately half the jurors who deliberated on those cases. It is important to note that for the two cases where detailed before service and after service data had been obtained (the robbery and assault trials), each panel had one clear example of strategic self-presentation with jurors 36 and 76 respectively.

The suggestion that two out of 24 jurors were tainted may seem trivial, however, when a verdict has to be unanimous the influence of one biased juror can have a marked impact upon the outcome of the robbery trial. The impact of juror 76 seemed to be minor, as no one who served on the jury indicated a problem with his service. The most disturbing finding in this study was that juror 36 did influence the decision-making process of juror 57. With the assault



trial juror 57 indicated the following,

You know like during the trial I thought, you know, it might be self-defense. You know it seemed good to me. But man, when we started talking, the jury, here were these people on the panel who says they was with the court or knew what was going on. One of these people, one guy who got on me, said you know he was a probation officer (Juror 36). This probation man told me that you know his actions fit the law and think. (pause) You know (pause) he did it. I just wasn't sure I sat there for almost two days you know and said you prove it to me. After, like I felt not so good about this, now I'm ok, yea I'm sure now he did it.

It was clear that juror 57 felt some pressure from juror 36 to convict when he had reservations. It is impossible to know if his absence would have produced a different outcome, but it is clear that this juror shouldn't have been empaneled due to his bias against the defendant, and that he did directly influence the deliberation process of at least one of the jurors. Thus in this instance the self-presentation strategy of one juror to get empaneled did have an impact upon the trial's outcome.

#### Questions Directed at the Individual Juror

Questions posed directly to a single juror comprised slightly more than half (52%) of all questions used during the voir dire process. Typically these questions were in the form of a follow-up question asked when a juror who responded in an undesirable way to a panel-directed question. The direct question is used to ascertain whether the potential juror has any underlying bias that would disqualify him/her from service on a particular jury. These questions also are designed to test the person's understanding of legal

principles. The most profound difference between the direct question and the panel-directed question is that it creates an interaction between the potential juror and the attorney or judge that lasts more than just a few seconds. If one direct question is asked in a logical string, it usually leads to more direct questions as the attorney or judge is trying to best ascertain the juror's fitness for service.

Because this type of question does lead to an interaction between the courtroom actors and the prospective juror, one sees two distinct features in the interaction. First, the potential to actually engage in impression management is greater. As stated earlier, with panel-directed questions, the potential for interaction does not exist as there is not communicative interaction due to the number of interactants and the speed with which the questions are asked. With direct questions there is time for the potential juror and the attorney or judge to engage in a negotiation where one's fitness for jury service can be determined. If a juror was going to engage in impression management, it is here where they would have to manage their impression of self because counterclaims can be made challenging their presentation of self. This leads to the second point. Since the attorneys or judge can challenge the identity claim of a potential juror, impression management is harder because one does have to engage in management of one's identity. With panel-directed questions all the prospective juror had to do if they wanted to engage in strategic

presentation management was to make a positive initial presentation of self, which usually went unchallenged.

### Presenting Oneself as Unfit for Jury Service

Self-presentations that involve the invocation of negative characteristics to disqualify one for jury service were found in this study. Thirteen of the 96 participants gave a negative portrayal of their suitability for jury service. Most of these presentations started early in the selection process through the use of body language to connote unfitness. Each of the 13 jurors used overt body language such as, moaning, falling asleep, tightly crossing their arms, constantly looking downward even when directly questioned, and looking directly away from those talking to them. All but two of these individuals were quick to verbally indicate they were unsuitable for service by responding to the question asked to each of the four jury pools, "Is there any reason or hardship that would make it impossible for you to serve on a jury today?" The eleven jurors, who indicated they did not want to serve, responded to this type of question immediately after it was posed by the judge by raising their hand and/or blurting out their justification for being removed. The responses the jurors gave focused on hardship (4 of the jurors) and ability to pass judgement/bias related issues such as unwillingness to pass judgement, distrust of the State, and past victimization (7 of the jurors). The remaining two didn't say anything but later indicated a strong

bias against law enforcement officers when asked by the prosecution.

The jurors who indicated hardship as reason to be dismissed all used job-related pleas, although each one was different: Juror 3, a young white female, stated, "I run my own day care your Honor and I have really don't have anyone to watch my own kids." Juror 16, an older white male, said, "My supervisor has scheduled me to go to Minneapolis on Thursday and I'm the only one who can go!" Juror 12, an older white male, stated, "My boss won't pay me when I'm here, I just can't afford to do this." Juror 31, an older white female, said, "I work third shift and I'm just too tired to be here." None of these initial statements resulted in the judge granting a dismissal as the validity of each statement was challenged by the judge. The judge questioning or challenging their presentation of self set up an interaction where the unsuitability for jury service had to be negotiated by both the prospective juror and the judge.

One can see the negotiation process in the following interactions with the judge. The Judge asked, "Would your service today cause you to lose any income or have any consequences for the children who are in your care?" Juror 3's response was,

Yes, I have to pay my mother to watch my kids for me, and she can't do it every day. I don't know what I'd do if this trial were to go on for days at a time. I can't do this to my kids, I just don't know, I just can't (loudly and on the verge of crying).

The Judge asked, "Can you call your mother to see if she could run

your day care for the remainder of the week? I can't foresee this trial going more than two to three days." Juror 3 said, "I can, but I still worry about them. I really love my kids. I don't know if I could concentrate on the trial. I think I'd be pretty upset the whole time." The Judge said, "Well alright, Juror 3, you are dismissed from this trial."

The Judge asked Juror 12, "Your boss won't pay you when you are here. Would you like me to call him and remind him that jury service is every citizen's duty and you should not be penalized for that?" Juror 12 answered, "He is pretty strict it won't do any good I wouldn't even bother. I can do it if I have to." The Judge asked, "So you can serve?" Juror 12 replied, "I can but I'm going to be pretty mad. How would you feel if you lost your pay for a week (raising his voice)? I've lost today's pay." The Judge said, "I imagine I'd be upset. Will this effect your ability to be a juror?" Juror 12 said, "I'd try to be fair but you know I think I'd hold it against all of you," and the Judge then asked, "Are you saying you would have a hard time being fair and your objectivity would be clouded?" The Juror's reply was "yes" and the Judge excused him.

The Judge asked Juror 31 if he was tired. Juror 31 said "Yes, I work nights at the paper mill. I can hardly stay awake." The Judge said, "well, if we got you some coffee during breaks would that help?" Juror 31 answered, "No your Honor it won't, I can't stay here all day and work all night when would I sleep? You know, I can hardly pay attention now, you already yelled at me for

sleeping. Would you want me on a jury?" The Judge replied, "Yes I do if you can do your best to cope," and the juror's reply was "Lets be honest, if I sit on the jury I'm going to be tired and mad. I don't think you would want that" (angry and loud). The Judge then said, "I'm not sure I like your tone sir. I do think you can serve." The Prosecutor then asked the Judge if he could ask a question and the Judge said he could. The Prosecutor asked Juror 31, "Would you hold it against me if I let you sit on the jury?" The juror responded, "Yes I would. I might hold a grudge, I don't want to do this," and the Prosecutor asked the judge if juror 31 could be dismissed for cause. The Judge said, "Alright, juror 31 is dismissed for cause."

Juror 16 ask the Judge, "Your Honor, I have to be out of town this Thursday, I'm an account supervisor and this is my account." The Judge asked, "Can you make any arrangement where someone could go in you place or you could post-pone the trip?" The juror responded, "No, I'm the only one who could go!" The Judge said, "Would you like me to call your boss to see if an alternative could be reached?" The juror responded, "If you must, but it won't do much good," to which the Judge replied, "I can be pretty persuasive." The juror's response to that was, "Your Honor, you may be able to square this with my boss but let me tell you I'm not so sure I'd be any good up here watching the trial. I'd be worrying about my account." The Judge then said, "Are you saying that you won't be able to concentrate and this could effect your performance as a juror?" The

juror said, "I'm not sure I'd be fair since I wouldn't be able to pay attention." The Judge then excused juror #16 and asked that he see the jury clerk before leaving the building.

Each of these interactions was similar in that each of the jurors claimed hardship as a reason to be excused from jury service was eventually excused but only after modifying their performance. One could see the cybernetic nature of the self-presentational interaction. For instance, juror 16, the original line was not producing desirable feed-back, in that the judge was not excusing him from service. However, the judge continued to find ways that would accommodate his concerns and allow him to serve. It was clear he did not want to serve, and in his pre-service questionnaire he indicated that he did not want to participate as he had "[B]etter uses for [his] time." Consistent with a cybernetic model, this potential juror altered his behavior to produce a more desired result. When 16 switched from the hardship line to a biased based self-presentation, as each of the other jurors did in this example, he presented himself in a way that would produce the desired result, namely, his dismissal from service. There is no way to know for sure if this was indeed what juror 16 was thinking, as he and the other jurors discussed here declined to be interviewed later, but it seems reasonable since he had seen two other jurors dismissed for bias. Furthermore, each of the remaining three jurors discussed, altered their self-presentation to be more biased. The day-care owner's argument went from financially based to bias based

when she indicated she hold it against the court. Juror 12 who claimed hardship also suggested that he was mad to the point where their objectivity would be compromised. Similarly, juror 31, with the help of the prosecutor, made statements that went from presenting hardship to presenting bias against the court.

For each of these prospective jurors who justified their reluctance to serve based on hardship, their self-presentational efforts were quite extensive compared to most of the jurors in this study. In other words, these individuals really had to "work" to negotiate their unsuitability. Their original claim of hardship didn't work well enough so they had to engage in impression management to achieve their over-arching goal of not serving. This involved switching to a biased presentation of self. The reason why these jurors had to undergo a relatively arduous negotiation with the judge is that each judge indicated their reluctance to dismiss based on hardship. One judge seemed to best indicate this when he said,

They better have a damn good reason for being excused for hardship. If I were let them go for any old reason, justified or not, I run the risk of having to excuse the entire jury pool. Everybody has a good reason not to be here. In order to not sit on one of my juries they have to have an extraordinary reason.

The judges seemed most fearful of a snowball effect, if they excused one juror they would have to excuse them all. It would then be impossible to empanel a jury. For this reason, these four individuals had to work much harder than most fit jurors, because hardship is not really seen as a justification by the court.



Ultimately these active and purposive individuals had to find a line that worked, claiming that they may be biased, as this usually required very little elaboration or explanation. Every prospective juror who claimed bias was dismissed for cause, or was removed by preemptory challenge. The seven jurors who had claimed bias initially were subject to very little resistance by the court.

Initial statements of those perspective jurors who indicated some form of bias that should disqualify them for service included the following, "My beliefs prevent me from standing in judgement of others." "Only God can stand in judgement." "I feel very uncomfortable deciding the fate of others." "I don't trust the police, I've seen them do some bad [things]." "I've been the victim of crime I feel that most of them (pointing to the defendant) deserve to be locked up and off the streets." Most of these utterances met with very little resistance from the judges or attorneys. Once a statement indicating bias was made, a judge may have asked him or her to elaborate, but no real negotiation takes place as each statement is taken at face value. Presenting information on bias is how 82% of all jurors in this study were disqualified for service; the remaining 18% were removed because they had personal contacts with people in the criminal justice system, or knew a non-criminal justice related witness. Bias is clearly the standard by which suitability is determined, and why those who had claimed hardship had to include bias into their performance before they received the desired result of being dismissed by the court.

Presenting Oneself as Fit for Jury Service In Response to Direct Questions

Genuine self-presentations under direct questioning, involving a positive (enthusiastic about serving) or neutral (ambivalent toward serving) portrayal of self as an acceptable juror, were the most common form of self-presentation strategy. As with panel-directed questions, there were a handful, less than four percent for this grouping (three in total), of prospective jurors who engaged in strategic impression management during direct questioning by the courtroom actors. These individuals portrayed themselves as fit for jury service while indicating in their pre-service questionnaire, during voir dire, and/or in their post-service interview they had some form of clear bias against the defendant or prosecution.

Two of the prospective jurors who engaged in strategic impression management, who were on the robbery and assault panels respectively, had a clear bias against the defendant manifesting in a pro prosecution stance. Juror 45, a young white male, said, "I feel pretty confident they (the defendant) are guilty if they have been arrested. I guess if you had to put a label on me I'm pretty 'pro' prosecution." Juror 33, an older white male, stated, "You know I have a conservative bias. I read a lot of their material and I agree with them we need to be tough on these people. One thing our government should do is lock them up and keep em' there." Another juror, a young African American female, juror 103, indicated to the prosecution, during the embezzlement trial,

near the end of her voir dire a bias against the state and the defense as she suggested,

I've seen the news, I watch CNN and Channel 3, you know, and I talked to people. You know, we aren't ignorant or nothin', you can't tell me a Black person can get a fair trial in this town (Kalamazoo). That man (the prosecutor) is out to get you and that one (the defense attorney) don't know what he doin' either. He (the defense attorney) didn't even try to get my brother off" (loudly and staring right at the defense attorney)!

Each of these statements indicate some form of direct bias that should result in their dismissal from jury service if these attitudes become known. However, during the voir dire each one of these jurors presented themselves as fair and unbiased, with jurors 45 and 33 never admitting their bias during voir dire and with juror 103 waiting to reveal her bias until dismissal was evident when the defense attorney realized, some ten minutes into her questioning, that he had represented her brother several weeks earlier. The defense attorney stated the following during an interview:

You know it was strange she kept looking at me, in not a good way. You know the way someone who knows you does. I got the feeling I'd seen her but I wasn't sure until I looked at her juror sheet and saw her last name, I thought, then it clicked. So I asked her. Up till then I was going to let her on but once I figured out who she was I worried she may try to screw me because her brother already filed paperwork claiming I was ineffective.

The prosecution also indicated he saw no reason to dismiss her until her last statement (quoted above). He states:

She seemed fine to me. Man, when [the defense attorney] asked her how he knew her, she went off. When I heard that I thought if he doesn't strike her I will. This just goes to show you we really know nothing about them (potential jurors).

The unique finding with the three prospective jurors who

engaged in impression management was that they were all dismissed for bias because the attorneys had time to assess their fitness for jury service through direct questions. In these cases, there was an interaction between each of the potential jurors and the courtroom actors within which fitness could be negotiated through discourse. As in cases where potential jurors portrayed themselves as unfit for service, this interaction fits nicely within a cybernetic model. When a particular actor's self-presentation is challenged, they then alter their chosen presentation to achieve the desired feedback in order to achieve their goal of serving on the jury. In these cases jurors portrayed themselves as fit, but that definition was challenged by the defense or prosecution. In response to these challenges or probing these jurors tried to emphasize their fitness, but to no avail because their verbal responses and leakage gave indications that they were biased and unsuitable as jurors causing them to be dismissed from jury service.

Juror 33 provides the best example of this negotiation process. This particular juror was a replacement juror for one of the original group of 14 prospective jurors who was dismissed from service. The Judge asked, "Do you juror 33 have any concerns about jury service or want to respond to any questions asked by myself or the other attorneys," to which the juror responded, "No sir your honor." The Judge said, "Well then Mr. [the prosecutors name] you may begin your voir dire." The Prosecutor asked, "Have you ever served on a jury before?" The Juror responded "yes." The Prosecu-

tor asked, "Could you please tell me what verdict was?" Juror 33 responded, "I've proudly served twice. Once was a shoplifting case and the other was a B&E (Breaking and Entering). In both cases we found them guilty." The Prosecutor said, "So you can find someone guilty then can't you?" After the Juror responded he could, the prosecutor then asked, "Can you be impartial here with this case despite those other cases?" To that the juror responded, "Yes, sure I can. If I could just say, I feel I'm a fair and honest person" (smiling and looking right at the prosecutor).

This concluded the prosecutors questioning. Up until this point juror 33 had genuinely portrayed himself in a positive way. Both prosecution and defense attorneys felt there was no reason to dismiss him at this time.

The defense attorney began her questioning with a statement to see if he had ever been the victim of crime. The defense attorney asked Juror 33 if he had ever been the victim of crime and the juror said he had. The defense attorney then asked the juror to describe what happened, and the juror responded, "my truck was broken into by some kids in my neighborhood. They took my radio and some tools." The defense attorney asked, "Do you have a problem with some of the youths in your neighborhood?" The juror responded, "yep, we do, I've been followed and some have jumped people I know." The defense attorney asked, "Do you think having your stuff taken by a young person would affect your decision in this case?" The juror responded no that he didn't think it was relevant. The defense

attorney then asked, "Could you judge [the defendant] impartially because he is a young black man? Would that affect your judgement?" Juror 33 responded, "No (looking at the judge then at the floor) I am an open minded person. I would hear the facts first. I believe I can be fair to that young man." After this statement, the juror 33 was excused by the defense.

The discourse between the attorneys and juror 33 during the interaction process may seem somewhat short, but it was much longer than most in this study. Juror 33 went from being defined as acceptable by both the defense attorney and prosecutor, to unacceptable by the defense. During this exchange one could hear juror 33 attempting to manage his impression of self. When the defense began to challenge his impartiality based on his life experiences, he tried to counter this challenge by insisting her concerns were not relevant. Still being challenged, he tried to reassert his moral superiority to show the defenses concerns were unfounded. Furthermore, juror 33 also gave off cues as to his dislike for the defense attorney's line of questioning. When questioned by the prosecutor he always looked directly at him but when the defense challenged him he would look away either at the judge or the floor. The defense attorney remarked that in her

twenty years of experience it isn't so much what they say but the way they act. It was pretty clear to me that the gentleman didn't like me. I don't trust a juror that won't look at me when I ask a question. He kept looking at [the judge] for help...that isn't a good sign. So after sizing him up as well as looking at his behavior plus his experience getting his truck trashed I let him go.

The defense attorney's perception of juror 33 were not unfounded.

After his dismissal he indicated that defense attorney was

an older woman there defending a young man, you know its the mother syndrome. Like I said I read a lot of conservative material, I also listen to a lot of Rush Limbaugh. He has his little term for her, have you heard of a fem-a-nazi. It bothered me to be removed, I still feel I could have been fair.

This suggests that although he knew he wasn't making a genuine presentation of self he still tried to ground his presentation in a core portion of his identity; his sense of fairness. In sum, Juror 33 was strongly motivated to serve and did try to portray himself as an unbiased and good juror. Had it not been for the this longer interaction, the defense attorney may not have been given the opportunity to evaluate what he said and his non-verbal behaviors. Had the opportunity not been there to ask direct questions he may have been empaneled on a jury where his attitudes clearly were biased against the defendant.

There were similar results for jurors 45 and 103. Both jurors continually attempted to portray themselves as unbiased like juror 33. The prosecutor asked juror 45 "Since you are new to the panel I'd like to go over some issues. Are you capable of finding some one guilty?" The juror replied, "Yes, I don't have a problem with that," to which the prosecutor said, "Ok, how do you feel about me?" Juror 45 said, "I'm sorry I don't know what you mean," and the prosecutor said, "Well, you've heard other jurors say they don't like me or the cops or the defendant. Do you feel like you are for or against any side or person involved with this case?" Juror 45

replied, "Oh no, I'm not against anybody here." The prosecutor said, "Alright...this case involves a lot of testimony by the police do you think we can trust what the cops have to say?" The juror said, "Well I guess we have to believe the police. Isn't it their job to be trustworthy?" The prosecutor responded that he'd like to think so. He later contradicted himself when he was again asked the following by the defense, "You like the police?" The juror responded "I don't like or dislike them." The defense attorney then asked if the juror could trust them to which the juror replied he guessed, but was looking away when he said that. Then the defense attorney asked, "How about my client. Can you believe the testimony of a person charged with a crime over the police if the evidence supports it?" The juror replied, "Sure, we have to give them the benefit of the doubt," to which the defense attorney asked, "Who to you trust more my client or the police?" The juror responded that he guessed he had to trust them both.

The defense attorney then struck him from the jury because of these conflicting statements. In this instance juror 45 was telling both the defense and prosecution what they wanted to hear, managing his impressions of self, because he had already indicated in the pre-service questionnaire that he would be disappointed if he did not serve. Juror 103 also wanted to serve and most likely would have served, as previously stated, had the defense attorney not become concerned that she might be biased against him.

With direct questioning this type of detailed assessment is



possible because one can "interact" with the juror. With panel-directed questions this is not possible thus the utility that particular questioning technique should be called into question. In the cases of jurors 103, 45, and 33, each juror was questioned in greater detail giving the attorneys the time to really assess their suitability for service. This type of one-on-one interaction is crucial in determining the fitness of prospective jurors. Had jurors 33 and 45 not been asked direct questions that led to further probing questions, each of these jurors may have been empaneled. Dismissing juror 103 was more of a matter of luck in that the defense attorney remembered the jurors identity. Asking the juror a series of questions gave him the time to make the connection, time he may not have had if she were asked only panel-directed questions. In this case, voir dire worked-biased jurors were removed from service. One juror can make all the difference in a trial's outcome since the verdict has to be unanimous. Thus the time spent asking probing questions of each of these jurors was justified.

#### Why Were These Jurors Singled Out for Direct Questioning?

One would think that there was something these jurors did or said that would draw the attention of the judge or attorneys to ask them direct questions. However, it is more likely that it was just a coincidence. Each of these jurors was a replacement juror, one who replaced an initially selected juror, which seems to be a major factor in their direct questioning. In each of the four juries

observed, eight to 10 of the original prospective jurors were actually empaneled. This means that from four to six jurors were replaced. It was these replacement jurors who were subject to the bulk of the direct questioning. In discussing this with courtroom actors, they all said that the only real reason for the direct questioning is a need to "catch them up." They directly ask them the questions that were asked previously to the entire panel. "Once you start asking them questions, it's very easy to keep going and ask them more because their answers tend to raise more questions" remarked one defense attorney. Similar statements were made by all of the prosecutors and defense attorneys involved with this project. They then admit that direct questions provide them with more information to better assess the fitness of a potential juror. One can also see this in dismissal patterns for these replacement jurors. In this study three out of every five replacement jurors were replaced at least once. As one juror put it, "Those was the 'hot seats' man, those who was picked later got asked a lot of questions and then were booted off and it kept going on over and over." Often on single jury, three or four replacement jurors would have sat in the same seat there before a suitable juror was found. The selection behavior of both the defense and prosecution supports the notion that, direct questioning is a better selection technique. Each side is able to gather more information and that allows identification of problematic jurors. The higher dismissal rates for these jurors in the "hot seats" tend to support the ability of

direct questions to assess the fitness of prospective jurors.

The jurors who were interviewed were also concerned with the inability of panel directed questions to identify problematic jurors. Each of the jurors who was asked direct questions, except juror 33 who was rejected and felt he could still be fair, indicated that they felt the attorneys got a good picture of who they were as potential jurors. The jurors who were asked only panel-directed questions felt the courtroom actors really didn't get a good picture of who they were as potential jurors. One juror, 18, remarked that she was "[S]urprised that with so much at stake that [the attorneys] didn't have the where-with-all to ask me any questions. How are they supposed to know if I am any good." This caused jurors to question the utility of asking only panel-directed questions when the jurors themselves recognize the limits of this practice. Jurors expect to be questioned as part of the process, as well they should, since this is the best way to understand the motivations of potential jurors in order to see through any erroneous presentations of self.

## CHAPTER V

### CONCLUSIONS

It has been suggested that a primary reason Diamond's (1990) findings that both scientific jury selection techniques and lawyer's old rules of thumb had little utility in selecting jurors for criminal and civil trials was because jurors are active and purposive individuals. As informed by theories of Mead (1934) and Goffman (1959) and more recent impression management theorists, some jurors may control the selection process by changing their impressions of self to be selected or rejected for jury service. This then supports both Goffman's and Instrumentalist perspectives of impression management. The majority of potential jurors fall within Goffman's moral imperative; to present oneself as who they really are (Genuine self-presentation). A small group of potential jurors, however, engaged in instrumental impression management. A false identity was portrayed to achieve a desired goal, in this case to serve or not serve on a jury. Support for these two views is likely a reflection of most individuals as we routinely portray ourselves in an accurate and genuine manner. In order to achieve an important goal or objective we will deviate from the imperative and engage in impression management as it serves as a tool we can use to achieve an overarching goal.

Furthermore, this limited study of voir dire also supports the

contention that prospective jurors do, to some extent, have an effect upon the selection process. In each of the four trials there were at least two potential jurors who engaged in impression management. As noted in the previous discussion, jurors who really want to serve or who really do not want to serve use strategic impression management to further these goals. However, to call this a self-selecting process, as suggested earlier, may be going too far afield especially for potential jurors who mask their biases to be selected for jury service (however, for those who claim bias when claims of hardship do not produce the intended results, it is more of a case of self-rejection). Judges and especially trial attorneys are capable of assessing a potential jurors fitness for jury service. This is because the judges and attorneys are active and purposive individuals as well, and they do their best to actively assess fitness by analyzing the presentations of potential jurors during voir dire. The courtroom actors work hard to clarify the work that goes into the managed impressions of some potential jurors when given the time to do so.

#### The Negative Impact of Panel-Directed Questions

George Ritzer (1996, 1999) has discussed the effects of rationalization upon modern societies. In his discussion Ritzer points out that most often, the search for rationality and one of its hallmarks, efficiency, often produce irrational behavior. He has termed this the irrationality of rationality (Ritzer, 1996).

The way jury selection is conducted in Kalamazoo County is just such an example. One of the features of the American justice system is its large backlog of cases awaiting trial (Cole & Smith, 1998). Because of this judges feel a substantial amount of administrative pressure to move trials along. One way to hasten the pace of a trial is to impose time limits upon voir dire and/or have judge-directed voir dire. Superficially, this seems like the most rational and efficient way to speed up the trial process because it would be hard to limit the presentation of evidentiary items or limit the time allowed for witness's testimony. Limitations such as those would call into question the fundamental fairness of the trial itself. Therefore, it seems quite logical that the one place to cut some time from the trial process is by imposing time limits on voir dire.

By putting limits on the time allowed for voir dire, judges and attorneys have had to devise an efficient way to make use of their time to assess the fitness of potential jurors. This search for the most efficient selection method has manifested itself in the form of the panel-directed question. This may seem like the most efficient, and thus rational way to conduct voir-dire, however it leads to the irrational consequence of seriously limiting the ability of the judge and attorneys to assess a potential jurors fitness for jury service. This study has found that this search for efficiency has produced the irrational and undesirable consequence of empaneling jurors whose fitness may have not been assessed at an

acceptable level, allowing biased jurors to be impaneled on a jury.

As noted in the last chapter, panel-directed questions are quite problematic on two dimensions. First, such questions can create a normative climate where potential jurors are responding to the ceremonial order of the situation rather than the question posed, producing erroneous responses by some prospective jurors. Second, these questions make impression management easier. Without one-on-one interactions between the courtroom actors it is much easier to manage impressions of self, as all a prospective juror is required to provide is a "yes" or "no" to a statement rather than a detailed account of their attitudes or understanding of a particular question posed. If an individual juror is motivated to serve on a jury then these types of responses are much easier to manage, in that their biases are suppressed and socially desirable responses are given. The consequences of using this type of question can be immense. In one out of the four trials examined for this study it was clear that one juror (juror 36) had easily managed his impressions of self, due to the use of panel-directed questions, to be empaneled on a jury. Once impaneled his behavior did potentially effect the outcome of the assault trial. For the young African-American defendant on trial, the presence of juror 36 seriously impaired his chances for a fair trial.

The direct questioning of jurors is much more effective at detecting potential jurors who are using strategic impression management to suppress their biases. Potential jurors who engaged

in this type of impression management were more easily detected when posed direct questions. This suggests that potential jurors should be questioned more, not less. This is in direct opposition to current courtroom management trends to reduce the time allowed for voir dire because asking direct questions would require more time. However, the possible price seems too high, as voir dire was designed for the express purpose of weeding out potential jurors with a specific bias against the defendant. Current trends to limit voir dire have latently eroded away at the attorneys' ability to assess a potential jurors fitness for jury service. Because of this, what is needed is more direct questioning of potential jurors not less.

From a larger perspective, the effects of imposing time limits and judge directed voir dire should be seen as fundamentally subversive to the entire trial process, even to the point of infringing upon a defendants right to a fair trial. As stated above, imposing time limits upon voir dire has a detrimental impact upon the ability of an attorney to assess a potential jurors fitness for service. When unrestricted questioning takes place attorneys are much better at selecting appropriate jurors. Any limits on voir dire should be seen as violation of the defendants rights to a fair trial because they could not properly assess potential jurors. This again suggests more voir dire of potential jurors is needed rather than less.



### The Negligible Consequences of a Negative Portrayal of Self

Potential jurors who were motivated not to serve because they felt or perceived they would be suffering some form of hardship were most likely to use strategic impression management to be struck from a jury. These individuals would move from a genuine hardship based presentation to one based on bias when claims of hardship were resisted by the judge. Ultimately their impression management strategies proved to be the most effective in the study as each one of these potential jurors was dismissed from jury service. It was suggested in chapter two that even though these jurors were not motivated to serve they may have still had the potential to be good jurors. This appears to be a groundless statement. Based on a review of the available data these potential jurors would most likely be poor jurors. When motivated not to serve their objectivity would appear to be clouded. They may in fact at best be unable to pay attention to the proceedings and worst their objectivity would be clouded and they would "hold it against [someone]." The judges concern of a snowball effect (as discussed in the previous chapter) are not baseless, however these potential jurors should be easily dismissed. This may be an instances where the courtroom actors should put on a good show by making it look difficult to be dismissed for hardship, to reduce the snowball effect, but with the overall understanding that regardless of their theatrics these prospective jurors would be dismissed. This should be enough to discourage those potential jurors who are on

the fence vacillating between a neutral stance toward service and mildly desiring a way out of jury service preventing a snowball effect.

#### Directions for Future Research

This study should be seen as a good first look into the effects impression management has upon the voir dire process, however, much more work has to be done. Due to the various logistical problems, the infrequency of trials, and the inability to gain compliance from certain courtroom actors, it was very difficult to obtain the requisite data from the pre-service survey, observation, and post-service interview which gives the most complete picture of each potential juror. Data provided by all three data collection techniques added a richness to the accounts of each individual jurors' behavior. Because data was obtained in this way for only a small number of jurors, much of potential richness that existed was lost. Furthermore, additional participants need to be examined to determine if the findings of this study are isolated incidents or are occurring elsewhere. Because of these limitations, my next study is to continue this research in other jurisdictions. Doing so should yield a more detailed analysis than what was done for this study. First, more participants would allow for a quantitative assessment of prospective jurors attitudes toward jury service and being empaneled on a jury. As stated in chapter three, this was something that was intended with this project but due to the small

number of participants such an analysis became problematic. A large number of participants would greatly help in this area. A second area of qualitative analysis would be to look at the relationship between the use of direct questioning and rejection for jury service. This would add additional support to the finding that direct questioning appears to be a better way to assess potential jurors fitness for jury service.

A final area of future study should focus on the differential treatment of African-Americans during voir dire. In this study African-Americans were treated differently. The operational norms of Kalamazoo County may differ elsewhere or they may not. Again the examination of other jurisdictions to see if there is this tendency to not ask them direct questions during voir dire. Furthermore, a surprise finding not discussed until this point as it doesn't directly relate to this line of research, African-Americans, when asked if they have been to court before, had higher dismissal based on previous direct or indirect experience with the criminal justice system. Given the inequities of our criminal justice system such a result is not surprising. Hagan and Peterson (1995) have pointed out that overall, African-Americans account for one-third of all arrests and all incarcerations in the United States. Furthermore, one-fifth of African-Americans ages 16 to 34 are under court supervision. Because of their abnormally high personal or family contacts with the criminal justice system African-American jurors who identified such contacts were abruptly dismissed by the

prosecution while those who did not were not. Is this a case of racism where prosecutors can, with reasonable justification, remove African-Americans from the jury or just a latent artifact of a biased criminal justice system? It is hard to answer this question without further analysis of this area as well as the other areas of concern discussed above with a much larger sample than could be obtained for this project.

**Appendix A**  
**Pre-Service Survey**

Juror# \_\_\_\_\_

Directions: The statements which follow describe ways of thinking, feeling, or behaving. Please describe the degree to which you agree or disagree with each statement by circling the appropriate number.

- 1 - Strongly Agree
- 2 - Somewhat Agree
- 3 - Nether Agree Nor Disagree
- 4 - Somewhat Disagree
- 5 - Strongly Disagree

In order to insure your privacy do not put any identifying marks on this sheet such as your name or social security number.

1. Jury participation is an important part of this country's legal process.  
1      2      3      4      5
2. People who participate on juries should not be paid for their services.  
1      2      3      4      5
3. Obligations such as work or child care are more important than sitting on a jury.  
1      2      3      4      5
4. I would not feel badly if I were excused from jury service.  
1      2      3      4      5
5. I would feel good about sitting on a jury.  
1      2      3      4      5

Directions: For the following two questions please respond in your own words.

6. Please list several qualities/traits you possess that would make you a good juror.
7. Please list several qualities/traits you possess that may make you a poor/bad juror.

Directions: The following questions are to ensure we have a representative sample of Kalamazoo County jurors. Your responses will be kept private. Please place a check mark by the category that best represents you. Please check only one category per question.

8. What is your gender? Female \_\_\_\_\_ Male \_\_\_\_\_
9. What is your racial background?  
 White/Caucasian \_\_\_\_\_  
 Hispanic/Latino \_\_\_\_\_  
 Black/African-American \_\_\_\_\_  
 Asian American \_\_\_\_\_  
 Alaskan Native \_\_\_\_\_  
 Multiracial \_\_\_\_\_  
 Pacific Islander \_\_\_\_\_  
 American Indian \_\_\_\_\_  
 Other \_\_\_\_\_
10. In which of the following categories does your age fall?  
 18-25yrs. \_\_\_\_\_  
 26-35 \_\_\_\_\_  
 36-45 \_\_\_\_\_  
 46-55 \_\_\_\_\_  
 56-65 \_\_\_\_\_  
 65+ \_\_\_\_\_
11. Which of the following categories represents your highest level of educational attainment?  
 Some High School \_\_\_\_\_  
 High School Degree \_\_\_\_\_  
 Two-Year College Degree \_\_\_\_\_  
 Four-Year College Degree \_\_\_\_\_  
 Graduate Degree \_\_\_\_\_
12. Which of the following category best represents your annual household income?  
 Under \$10,000 \_\_\_\_\_  
 \$10,000 - 25,000 \_\_\_\_\_  
 \$25,000 - 40,000 \_\_\_\_\_  
 \$40,000 - 55,000 \_\_\_\_\_  
 \$55,000 - 75,000 \_\_\_\_\_  
 Over \$75,000 \_\_\_\_\_
13. What is your current occupation?

**Appendix B**  
**Interview Response Sheet**



Juror# \_\_\_\_\_

**Guiding Questions:**

**How do you feel about the jury selection process?**

**Did it change during the course of the process?**

**Why do you think the attorneys and judge ask you questions during jury selection?**

**Did you like any of the courtroom actors?**

**Did you dislike any of the actors?**

**Did you generate any opinions about the prosecutor or defendant during jury selection?**

**Did you hold back any information when questioned by the attorneys?**

**From the questions the attorneys asked, do you think they get an accurate picture of who you are?**

**Notes:**

**Selected:    Y   /   N**

**Appendix C**

**Protocol Clearance From The Human Subjects  
Institutional Review Board**

Human Subjects Institutional Review Board



Kalamazoo, Michigan 49006-3600

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**WESTERN MICHIGAN UNIVERSITY**

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**Date:** 6 May 1998**To:** Ronald Kramer, Principal Investigator  
Peter Stevenson, Student Investigator**From:** Richard Wright, Chair

Handwritten signature of Richard A. Wright in cursive.

**Re:** HSIRB Project Number 98-03-18

This letter will serve as confirmation that your research project entitled "An Examination of Voir Dire From an Interactionist Perspective" has been approved under the exempt category of review by the Human Subjects Institutional Review Board. The conditions and duration of this approval are specified in the Policies of Western Michigan University. You may now begin to implement the research as described in the application.

Please note that you may only conduct this research exactly in the form it was approved. You must seek specific board approval for any changes in this project. You must also seek reapproval if the project extends beyond the termination date noted below. In addition if there are any unanticipated adverse reactions or unanticipated events associated with the conduct of this research, you should immediately suspend the project and contact the Chair of the HSIRB for consultation.

The Board wishes you success in the pursuit of your research goals.

Approval Termination: 6 May 1999

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