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The Effects of Juror Disclosiveness, Empathy, and Interpersonal Communication Competence on Jury Selection

Owen P. Terry
University of Southern Mississippi

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The University of Southern Mississippi

The Effects of Juror Disclosiveness, Empathy, and Interpersonal Communication
Competence on Jury Selection

by

Owen Terry

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The University of Southern Mississippi
in Partial Fulfillment
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Approved by

Lawrence Hosman, Ph.D., Thesis Adviser
Professor of Communication Studies

Charles Tardy, Ph.D., Chair
Department of Communication Studies

Dave Davies, Ph.D., Dean
Honors College

Abstract

The trial jury is one of the most basic elements of our court system and is vital for ensuring a fair trial for all parties involved in a case. This research was concerned with the final stage of the jury selection process in which attorneys are able to select, through various challenges, the jurors who are most well suited for service. Particularly, the goal of this research was to determine whether certain juror communicator characteristics, namely interpersonal communication competence and its derivatives, had effects upon jury selection. A sample of potential jurors completed questionnaires related to these characteristics, and the court indicated to the researcher which jurors were empanelled for and excused from service. The communicator characteristics of these two groups were compared, but no statistically significant results were returned. A lack of significant results indicates that such juror characteristics do not bias jury selection; however, the same results may suggest other potential problems within the trial jury system.

Key Words: jury trial, *voir dire*, jury selection, disclosiveness, empathy, interpersonal communication competence

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Chapter 1 – Introduction

In the American legal system, the process of *voir dire*, or jury selection, is essential for a court to be able to arrive at justice in a fair manner. This pre-trial process is designed to allow for jurors who are unbiased concerning a particular case to be empanelled for jury duty. However, because empanelled jurors have to decide, during jury deliberation, the verdict of a case based on their reception of messages—from the attorneys, from the witnesses, from the judge, and from one another in the deliberation room—the communication predispositions of those jurors will have a direct impact upon that verdict. Therefore, an attorney will use jury selection as a way of understanding those predispositions of potential jurors in order to make judgments about which jurors will most effectively serve the purposes of his or her client’s case, by being receptive to the case themes or the client’s personality. Furthermore, the presence or absence of empanelled jurors with certain communication predispositions may prevent the jury panel from faithfully representing a cross section of communication predispositions within the court’s jurisdiction. Therefore, as proposed by Wigley (1995), “Is it a denial of due process of law (specifically, of equal protection) for defendants to have juries composed of individuals failing adequately to reflect a representative cross section of the community at large (with respect to individual personality differences)?” (p. 342)

Indeed, previous research has observed the effects of juror characteristics on jury selection. However, one of the first studies to explore the relationship between juror communication characteristics and jury selection discovered an effect on jury selection from the juror characteristics of disclosiveness—a measure of one’s propensity to reveal personal predispositions in an interpersonal communication setting—and apprehension—

a measure of one's anxiety for communicating with others. Likewise, that study marginally suggested an influence on jury selection from juror willingness to communicate (Wigley, 1986). Therefore, the author of that study conducted a follow-up study to his initial work in which he tested specific hypotheses concerning the effects on jury selection from disclosiveness, apprehension, and willingness to communicate. In that follow-up study, the author confirmed his hypothesis predicting that jurors with higher levels of disclosiveness, particularly positive disclosiveness, would be more likely to be selected for jury duty (Wigley, 1995). In addition to testing those previous findings, this research expanded the previous research by studying a wider array of juror communication characteristics.

For the process of building relationship intimacy, disclosiveness and empathy have both been described as essential (Reis & Shaver, 1988). Furthermore, empathy, a measure of one's ability to identify with another person, has been established as an element of interpersonal communication competence—a construct of which disclosiveness is also a fundamental element (Rubin & Martin, 1994). Likewise, one can argue that jurors will exhibit varying degrees of disclosiveness and empathy during jury selection. The goals of this research were to determine whether these two characteristics, disclosiveness and empathy, and the construct of interpersonal communication competence have significant effects upon jury selection and what the implications of those findings are in terms of assessing the effectiveness and/or fairness of jury selection practices.

This research polled actual jurors before jury selection by way of a questionnaire with a measure of interpersonal communication competence, a construct of which

disclosiveness, empathy, and eight other communication characteristics are derivatives. Upon the conclusion of each studied trial, the results of the jury selection were disclosed, indicating which jurors were empanelled and which jurors were excused. Those results were compared to the questionnaires in order to determine any correlations.

Chapter 2 – Literature Review

In order to understand the relevance of this research, a discussion of the previous research is necessary. First, the history of the jury trial will be reviewed, and the procedures of jury selection will be discussed. Then, the effects upon jury selection of various juror characteristics, including the pertinent communication characteristics, will be examined in order to arrive at research questions.

The Jury Trial

The origin of the modern jury can be traced back to the English leaders William the Conqueror and Henry II, who empanelled common citizens on decision-making bodies to account for the nation's wealth and population and to determine the validity of criminal accusations. The latter of these duties can be likened to the modern grand jury, and the Magna Carta, signed by King John in 1215, further developed the role of this formative grand jury in English society. By the mid-1300s, the trial jury was differentiated from the grand jury and charged with concluding the verdicts of criminal cases instead of deciding whether or not those cases should be tried. However, officials of the court and of the government still had the power to overturn a trial jury's decision until the late-1600s case of William Penn and William Mead. In this case the jurors were forcefully instructed by the court to return a verdict against these two men; however, the jury, in the face of the court's threats, determined that the men were not guilty.

Therefore, the court fined and jailed the jurors for returning a verdict that was not favored by the court. Incessantly holding that such court oversight was unjust, the imprisoned jurors asked to appear before an appellate court on the grounds of their unlawful imprisonment. Then, in order to set the precedent for the independence and validity of trial jury decisions, the Court of Common Pleas ruled that the court could not punish a dissenting jury. The reasoning behind this judgment was based in the fact that a trial jury is to be representative of the community in which the crime was committed; therefore, the decision of the jury must be an opinion solely from the local community—free from the opinion of the state.

In colonial America, privately practicing attorneys were few, and great distances existed between municipalities within colonies. Therefore, the majority of prosecutors were attorneys of the government, so a representative jury was essential for preventing oppression by the state prosecutors. Indeed, to secure an individual's right to a trial by jury, the Bill of Rights included amendments that specifically guaranteed impartial trial juries that could make decisions free from the state's oversight. Likewise, the idea of a jury of one's peers or community has developed over time in the American judicial system. Originally, a jury of one's peers was understood as being a decision-making body of individuals from the defendant's social, economic, and racial class. However, a jury of such a particular group of peers was not representative of the community as a whole, and the community was often the group who was injured by a legal offense. Therefore, Congress passed the Jury Selection and Service Act of 1968 in order to officially establish a randomized trial jury. Prescribing how to select this representative jury from the community, the government mandated that the names of all eligible citizens

would be compiled in order to select, through statistical randomization, the jurors to be summoned for duty. Logically, this method for selecting juries is most impartial because the likelihood that each of the community's demographic groups will be represented on juries is equal to its statistical representation within the community (Van Dyke, 1977).

Jury Selection

According to the previously mentioned Jury Selection and Service Act, the list used for impartially selecting citizens to serve on the jury *venire*—or pool of potential trial jurors—is the registered voter roll. Chiefly, this method for jury selection is administratively efficient because the voter rolls are computerized for easy randomization and are on file at a government agency, making them inexpensive to access and readily available. Through the use of this list for jury selection, modern juries are more diverse than those juries previously selected by court discretion; however, the representativeness of juries remains incomplete. This continued misrepresentation is due to the fact that certain demographics are less likely to register to vote. Particularly, citizens who are in poverty, who are young, and who are not white register to vote less frequently than the average rate (Van Dyke, 1977). Proponents of this method for jury selection believe that the voter registration requirement is justified because it prevents apathetic and legally ineligible citizens from serving on such important decision-making bodies. In addition, the voter registration prerequisite for jury service is considered to be an objective qualification because it does not discriminate according to any demographic characteristic.

However, opponents of the requirement claim that excluding a certain group of the community—those citizens who are apathetic about voting—from jury service is

contradictory to the establishment of the jury as a representative body of the community as a whole. Moreover, the procedures for registering to vote are often difficult to navigate, so many citizens are excluded from voter registration due to lack of convenience or information. Similarly, those individuals who do not register to vote in order to avoid jury service are being prevented from voting because of this jury selection method. Therefore, according to the Jury Selection and Service Act, other lists should supplement the voter registration roll when the standard method for jury selection produces a largely disproportionate representation of the community.

Following initial selection to service on a jury panel, jurors may be excused from duty for a number of reasons. These excusals from service are normally requested for and obtained by jurors when returning the questionnaire that accompanies their summonses. First, jurors may be dismissed for financial reasons, for some jurors may lose income for serving on a jury. However, courts are reluctant to financially excuse jurors who are on salary because their incomes will continue during service. Similarly, the amount of time for which a juror is required to serve is a consideration for excusal. In some courts jurors have been required to serve for up to a year, being required to report to court for a number of weeks during that time or remaining on call for the duration of the year. This uncertainty regarding the timing of one's service on the jury panel may conflict with employment and other aspects of one's livelihood. Indeed, extended times of service may even cause jurors to become disenchanted with the entire jury trial system. In order to prevent the excessive burdening of jurors, some courts have limited the length of time for which jurors are required to serve; however, these limits are not pervasive in the judicial system. Therefore, in order to meet with as little resistance as possible in

developing a jury panel, courts often excuse any juror who claims an inconvenience regarding the time for which he or she is required to serve.

In the same way, excuses are granted to many women because of their motherhood. In other words, because many women are the primary caregivers of their children, courts will automatically excuse them from duty. Some courts will provide these excuses for mothers of children up to the age of sixteen, and some courts avoid sending jury duty summonses to women because of their high rate of excusal.

Furthermore, citizens may be excused from jury duty due to their age—old or young. Different courts have varied policies concerning the aged; however, some courts excuse citizens as young as age 60 on the basis of age. For the young, excusals from jury duty are common because they may be attending school, financially unstable, new parents, serving in the armed forces, or new residents. Likewise, jurors may be excused due to the distance from which they would have to travel to serve and due to health concerns or illnesses.

These reasons for excusal—particularly excusal on the basis of finances, time commitment, sex, age, and distance—are often causes of misrepresentation on the jury panel, excluding particular demographics of the population. Therefore, some courts have developed policies that excuse jurors more conservatively. Similarly, another juror demographic that affects jury selection is occupation. Some individuals, such as elected officials, medical doctors, clergy, police officers, military service men and women, and attorneys, are excused from jury duty because their occupations are believed to be vital to everyday society, are too highly trained in the legal process, or are prejudiced toward moral judgments of innocence and guilt.

Some jurors are not even considered for inclusion in the juror pool because of personal disqualifications. These disqualifications are ruled against non-citizens, individuals younger than the voting age, residents who have lived in the court's district for less than one year, individuals who cannot complete the paperwork to become eligible for service due to illiteracy, individuals with infirmities that would inhibit them from service, and convicted felons. Additionally, jurors may fail to return the questionnaires that accompany their summonses; therefore, these jurors are often excused from service because the courts cannot administratively handle follow-up with every juror. As with the other excusals, these exemptions, disqualifications, and response delinquencies can reduce the representativeness of jury panels.

The third stage of the jury selection process affects representativeness the most, and the study of this phase was the emphasis of this study. During this phase, the challenge phase, attorneys from both sides of the case subject the potential jurors to questioning in order to further develop the unbiased nature of the jury. However, attorneys frequently use this phase of jury selection as a means for ensuring the dismissal of jurors who may be critical of their case or sympathetic to the case of the opposition. This jury selection phase includes two different types of challenges: challenges that are based on evidence of juror bias, called challenges for cause, and challenges that require no reasoning, called peremptory challenges.

In the matter of challenges for cause, the presiding judge for the case must be convinced of the validity of the challenge in order for the juror to be dismissed. These challenges for cause are generally granted if the jurors are related to the parties involved in the case, have interest in the case stemming from occupational involvement, have

previously served on juries for cases with similar elements and themes, or have other apparent prejudices that would prevent them from serving in an unbiased manner. These prejudices may be related to juror demographics such as ethnicity or religion (Van Dyke, 1977; Jonakait, 2003).

On the other hand, peremptory challenges do not require any reasoning or evidence of juror bias; moreover, the judge's approval is not required in order to dismiss a juror with a peremptory challenge. Therefore, following questioning, an attorney may have formed a suspicion regarding a juror's bias, so he or she can remove the juror based on that suspicion without having to prove the bias to the judge. These suspicions are based on attorney observations of clothing, attitudes, or demographics that may allude to biases concerning the case. As attorneys have a great deal of unchecked power through this challenge phase, arguments have been made for the ineffectiveness of this method for selecting an impartial jury because attorneys may unjustly bias the jury in favor of their cases (Van Dyke, 1977). Moreover, peremptory challenges have been suspect of creating misrepresentation in juries, which are supposed to be cross sections of the local communities (Jonakait, 2003). Thus, limits have been established regarding the number of peremptory challenges that are allowed during jury selection (Rieke & Stutman, 1990; Van Dyke, 1977). Despite the concerns regarding peremptory challenges, attorneys use the process as a method for persuasion, and a number of other factors contribute to which jurors are empanelled for and excused from service.

Effects of Questioning and Juror Characteristics upon Jury Selection

As previously noted, in addition to aiding the courts in determining which jurors are suitable for service on a jury, jury selection may be used for various persuasive

functions, as well. Indeed, some experts consider jury selection as a type of strategy game in which attorneys on both sides of the case are tasked with outmaneuvering their opponents in order to successfully select a jury that will not be harmful to their respective cases (Futterman, 2011). Therefore, one must study the effects and techniques of jury selection in order to determine if juries are affected to the point that it might reasonably hinder justice.

Chiefly, various types of strategic jury selection questions have been observed to produce significant persuasive effects on jurors. Indeed, the persuasive effects upon jurors of jury selection questioning have been previously documented. In previous research (Reinard & Arsenault, 2000), the mere presence of juror questioning has been observed to successfully improve juror ratings of defendant competence and guilt. In the same way, intentionally strategic jury selection questions can produce effects upon juror opinions. These effects have been observed in ratings of defendant guilt, defendant competence, defendant character, defense attorney credibility, and prosecuting attorney credibility. These types of strategic jury selection questions include questions for training jurors to intelligently resist counterpersuasion from other trial participants and fellow jurors, questions for introducing case elements, questions for establishing attorney affinity among jurors, and questions for encouraging reciprocation by jurors of the trust given to them by attorneys. However, those jury selection questions that were unrelated to case evidence were observed to lose effect following jury deliberation (Reinard & Arsenault, 2000; Reinard, 2009). In the same way, other types of jury selection questions have been established as means for eliciting desired responses and information from jurors in order to develop cause for challenges. For example, attorneys may inquire about

the professions of the jurors in order to determine whether or not any jurors have personal experience or interest concerning the themes of the case. Likewise, if a juror has been involved—personally or by way of a relative—in a previous case regarding the subject matter of the current case, he or she may have preconceived notions regarding the subject matter. Therefore, attorneys will ask questions about such previous experience.

Moreover, attorneys may ask questions concerning the jurors' consumption of trial publicity since publicity often has biasing effects. On the other hand, biases of jurors may be related to racial or ethnic prejudices. Because many jurors will not honestly respond to a direct question concerning such prejudices, attorneys will ask questions that elicit jurors to describe personal experiences regarding racial or ethnic issues (Van Dyke, 1977).

Attorneys may also use jury selection as a means for accomplishing goals unrelated to the actual empanelling of jurors. One such goal is establishing rapport, in which attorneys will bolster their credibility in the jurors' minds (Fargo, 2007). An attorney who develops credibility among the jurors will have his or her case better received than an attorney who does not develop such rapport, and attorneys will accomplish such receptivity through a few methods—one of which is humor.

Particularly, self-deprecating humor is effective in garnering support from jurors (Rieke & Stutman, 1990). Such self-humor should only be directed toward the attorney's profession, not his or her person; otherwise, credibility is lost (Chang & Gruner, 1981; Gruner, 1985; Hackman, 1988).

A second attorney goal for jury selection is the gathering of juror commitments to his or her respective case, whereby he or she will ask targeted questions of the jurors in

order to elicit committal responses to be recorded by the court. Undoubtedly, the attorneys will remind the jurors of these previous verbal commitments during later portions of the trial (Rieke & Stutman, 1990). The purpose of such commitments is to guard against future persuasive appeals, which have been shown to decrease in effectiveness after such commitments have been made (Kiesler, 1971).

Furthermore, the third attorney-focused goal of jury selection is to preview the case themes (Fargo, 2007). Although the central case arguments may not be presented until opening statements, such theme appeals may be necessary for understanding potential jurors' opinions concerning key issues. As will be discussed further, the nature of the case often has an effect upon a juror's likelihood to convict (Rieke & Stutman, 1990).

Previously, certain characteristics of jurors have been studied and have been proven to affect jury selection. Many of these characteristics are essential to jury selection because of conviction rates by certain demographics and psychographics. The first of these characteristics is gender, and although the research is mixed regarding whether one gender is more likely to convict or harshly punish a defendant, differences do exist between the genders in cases that pertain to certain themes. Women more harshly consider rape charges than men do (Miller & Hewitt, 1978; Rumsey & Rumsey, 1977). Thus, attorneys will take the nature of the charges and the genders of the jurors into account when conducting jury selection. However, in the case of *Batson v. Kentucky* (1986), the United States Supreme Court ruled that attorneys violate the equal protection of the jurors when they base peremptory challenges solely on race and later ruled the same in regard to gender (*J.E.B. v. Alabama*, 1994; *Georgia v. McCollum*,

1992). Attorneys must be careful not to use peremptory challenges in such a way as to exclude an entire gender or a great number of a gender from the jury (Jonakait, 2003).

Another juror characteristic that attorneys note is race. Although *Batson v. Kentucky* (1986) applies to this case in the same way as it applies to juror gender, differences have been noted in racial biases. Attorneys assume that whites are more prone to convict than blacks are. Indeed, previous research has demonstrated that defendants will exclude white jurors more frequently than black jurors, and vice versa for prosecutors (Turner, Lovell, Young, & Denny, 1986). In addition, depending on the race of the victim in the case, whites and blacks will consider the case more harshly—being harsher when the victim is of their own race (Ugwuegbu, 1976). Further research has suggested that the races of jurors may also influence the jurors' opinions of the attorneys in the case, according to the races of the attorneys (Robinson, 2011). Moreover, some research has suggested that racial diversity within a jury may lead to improved decision-making (Sommers, 2006). Consequently, although the research may be mixed regarding the effects of race upon jury selection, attorneys will invariably consider it during the process.

Additionally, the age of jurors may affect jury selection, as previous research has demonstrated that younger jurors are more prone to acquit than older jurors are (Hepburn, 1980; Sealy, 1981). Various factors such as political beliefs (Rieke & Stutman, 1990), education (Reed, 1965), and learning styles (Keene & Handrich, 2013) cause this difference among generations of jurors and lead to the consideration of such factors during jury selection.

Personality traits such as authoritarianism and dogmatism have been observed to affect juror ratings of guilt. Authoritarians, who tend to view the issues of a case in a strictly right versus wrong manner, are harsher toward defendants who are different and who are of a lower status (Rieke & Stutman, 1990). Similarly, dogmatic jurors are equally prejudiced against unconventional persons, having been observed to rate homosexual defendants as guiltier than heterosexual defendants (Shaffer & Case, 1982). Such personality traits of jurors may be difficult for attorneys to decipher, so their effects on jury selection may be limited.

A number of other juror characteristics have been shown to affect jury selection. A juror's opinion of capital punishment may influence jury selection because those jurors who are more favorable toward capital punishment decide more guilty verdicts than jurors who are not favorable to such sentencing. Also, whether a juror has an internal or external locus of control—the idea that one has personal control of his or her destiny—may influence his or her identification with the defendant, and such identification may precipitate less harsh verdicts. Prior jury experience will also affect jury selection since those facts and beliefs that the juror learned and formed in a previous trial may bias his or her opinion in the current trial (Rieke & Stutman, 1990).

Despite this previous research concerning the effects of juror characteristics upon jury selection, the characteristics that have not been heavily studied are the personal communication characteristics of jurors. In order to fill this gap in the research, this study will question whether such communication characteristics may produce similar effects as these other juror traits.

Juror Communication Characteristics

Certain communication characteristics of jurors may affect jury selection.

Previous research has suggested the effects of some characteristics, such as disclosiveness and empathy (Wigley, 1995; “Empathy as a Mediator,” 2011); and therefore, the effects of other communication characteristics, such as interpersonal communication competence and its derivatives, should also be researched.

Disclosiveness, or Self-Disclosure

Disclosiveness, or self-disclosure, is a measure of how readily one is able to reveal personal characteristics or information to another person (Rubin & Martin, 1994). This disclosiveness is vital for establishing relationships among individuals (Jourard, 1971). Because some short-term relationships must be formed between attorneys and jurors, disclosiveness is essential for jury service. Indeed, one study observed that juror disclosiveness had a positive effect upon jury selection (Wigley, 1995). Furthermore, as the establishment of an attorney’s rapport among the jurors was previously discussed as a goal of jury selection, such rapport has been shown to increase disclosiveness of jurors (Rieke & Stutman, 1990).

Empathy

Empathy has been described as one’s ability to understand, through emotional responses, the perspective of another person (Redmond, 1985). Because arriving at a verdict will require jurors to identify—in varying degrees—with the participants in a case, a juror’s level of empathy will directly influence verdicts, and as previously noted (Rieke & Stutman, 1990), juror locus of control will contribute to these feelings of

identification. In addition, previous research has established that empathy has a direct effect upon juror ratings of trial participant credibility (“Empathy as a Mediator,” 2011).

Interpersonal Communication Competence

Interpersonal communication competence has been described as a measurement of a person’s ability to adequately manage an interpersonal relationship through communication (Rubin & Martin, 1994). This competence is founded in the principles of appropriateness and effectiveness. The various situations in which communication occurs can have different expected behaviors. When one meets these expectations, his or her communication is said to be appropriate to the situation (Spitzberg, 1983). Also, interpersonal communication is usually associated with some goal or goals, and effective communication successfully accomplishes the goal or goals (McCroskey, 1982). Moreover, the juror characteristics of disclosiveness and empathy have both been established as elements of interpersonal communication competence. In addition to these elements, interpersonal communication competence’s eight other elements include: social relaxation, an absence of apprehension while communicating; assertiveness, a measure of one’s willingness to speak up for his or her rights; interaction management, one’s ability to use appropriate customs during commonplace interactions; altercentrism, one’s propensity to pay attention and respond appropriately to others’ communication; expressiveness, the ability to use appropriate nonverbal behaviors and verbal expressions to express oneself; supportiveness, creating equality within a conversation by way of owned feelings and confirmation of others; immediacy, one’s openness for communication as perceived by others; and environmental control—similar to the

previously discussed effectiveness—one’s ability to achieve communication goals (Rubin & Martin, 1994).

Effects of Juror Communication Characteristics on Jury Selection

Questioning that encourages the jurors to reveal personal experiences and biases is considered vital for successfully conducting jury selection as an attorney. One attorney, Mark Bennett (2010), instructed that attorneys should allow jurors to talk “90 percent of the time (or more)” during jury selection (p. 21). By asking questions that invite the jurors to talk, an attorney is able to learn more about the jurors than he or she would while asking numerous questions and talking incessantly (McElhaney, 1993). Indeed, jurors must exhibit a certain level of disclosiveness for such questioning to be effective, and those jurors who disclose more personal information may reveal their predispositions for exhibiting empathic responses to certain types of testimony. Therefore, disclosiveness and empathy may affect jury selection in such a way as to develop misrepresentation of communication styles within the empanelled jury or inaccuracies of justice within jury verdicts.

RQ1: What effect, if any, does juror disclosiveness have on jury selection?

RQ2: What effect, if any, does juror empathy have on jury selection?

If these juror characteristics influence jury selection, empanelled jurors and excused jurors may exhibit different levels of interpersonal communication competence. Because disclosiveness and empathy have been described as elements of interpersonal communication competence, one can predict—to some degree—that a juror who demonstrates disclosiveness and empathy will have increased levels of interpersonal communication competence. Therefore, interpersonal communication competence, and

its other derivatives, may affect jury selection in similar ways to disclosiveness and empathy (Rubin & Martin, 1994).

RQ3: What effects, if any, do interpersonal communication competence and its derivatives have on jury selection?

Through this review of previous research, the histories of the jury trial and jury selection have been reviewed. Also, previous research regarding juror characteristics' effects upon jury selection has been discussed in order to establish this communication research's relevance.

Chapter 3 – Method

This chapter will briefly discuss the methods used for gathering this jury selection research. First, the venue at which the research was conducted will be identified. Next, the particular quantitative methodology and questionnaire will be described. Then, the sample size will be disclosed, and the statistical tests from which the results were gathered from data will be discussed.

For this research project, a quantitative study was conducted, following a methodology similar to a research design that was successfully used by Wigley (1995; 1999), in which the research data was collected via questionnaires and court records. In preparing for the collection of the data, the researcher contacted the court administration (Kristen Martin, staff attorney) in the Eighteenth Circuit Court District of the State of Mississippi (Judge Billy Joe Landrum, presiding), and upon discussing the study with the administration, the researcher was granted permission by the court to conduct research during trials that it would hear. Subsequently, on two occasions the researcher was

informed of trials that the court would hear and reported to the court at the time for which the potential jurors were arriving.

As is the practice of the courts, the potential jurors were randomly selected from the voter roll of the local jurisdiction, and the participants were at least eighteen years of age, in accordance with voter registration laws. When the Circuit Clerk (Bart Gavin) had introduced himself to the potential jurors and had seated them in order, assigning them each a number, he introduced the researcher to the jury pool and allowed the administration of the research. First, the research was explained to the potential jurors, and subsequently, the two documents that would be administered to the potential jurors were explained. The first document, which was administered to every potential juror, was an informed consent document (Appendix A). The second document was a questionnaire, the abbreviated version of Rubin & Martin's (1994) Interpersonal Communication Competence Scale (Appendix B), a measure which includes ten statements that each correspond to a derivative of the construct. Each statement describes a way in which people interact, such as, "I allow friends to see who I really am," in order to describe disclosiveness; and the respondents are instructed to indicate on a scale of one to five (1-5) how often each of the ten statements describes their own communication behavior (Rubin & Martin, 1994, p. 39). This measure was administered only to those potential jurors who had consented to participate. The potential jurors, identifying themselves by their juror numbers only, completed the questionnaire and returned it to the researcher, who thanked everyone for their participation before exiting the courtroom. Then, following the jury selection, the court administration informed the researcher via e-

mail as to which potential jurors, identified by juror number only, were empanelled for jury service.

From the first trial (Trial A), 43 potential jurors consented to participate and completed a questionnaire. Of those potential jurors who participated from Trial A, 14 were selected for service. From the second trial (Trial B), 48 potential jurors consented to participate and completed a questionnaire. Of those potential jurors who participated from Trial B, 11 were selected for service. Therefore, the research included a total of 91 participating potential jurors with 25 empanelled for jury service and 66 excused from jury service.

Finally, the questionnaires of those jurors who were empanelled were compared to the questionnaires of those jurors who were excused, identifying any differences between the two groups with regard to interpersonal communication competence and its derivatives. In order to conduct this comparison, independent samples *t*-tests were performed on each interpersonal communication competence derivative—each question corresponding to a particular communication trait as described above: disclosiveness, or self-disclosure; empathy; social relaxation; assertiveness; interaction management; altercentrism; expressiveness; supportiveness; immediacy; and environmental control. In addition, a mean of the ten questions was computed as an overall measure of interpersonal communication competence, which was also compared between the two groups via an independent samples *t*-test.

Therefore, using this described methodology, the researcher was able to gather the necessary data for research analysis and was able to answer the aforementioned research

questions with statistical results, which will be disclosed and discussed in the following chapters.

Chapter 4 – Results

The following explanation of research findings provides statistical answers to the researcher's questions regarding the effects of juror communication characteristics on jury selection. Due to an observation during data analysis, the juror data was tested twice, as will be described in this chapter; and the statistical findings will be reported.

An initial round of independent samples *t*-tests was conducted as described above; however, during the course of the results examination, the researcher made an interesting discovery. In both trials, those potential jurors who were empanelled were discovered to all have relatively low juror numbers. In Trial A, these jurors were empanelled: 5, 8, 9, 10, 12, 18, 23, 25, 28, 32, 36, 38, 42, and 43; and these jurors were excused: 1, 2, 3, 4, 7, 11, 17, 19, 21, 22, 24, 26, 27, 30, 31, 33, 34, 35, 37, 39, 40, 44, 46-48, and 50-53. In Trial B, these jurors were empanelled: 4, 9, 16, 21, 22, 23, 25, 26, 28, 30, and 32; and these jurors were excused: 1, 2, 3, 5, 6, 7, 10, 11, 13, 14, 17, 20, 35-37, 40, 41, 43-50, 55, 57, 59-61, 65, 66, 68, 69, 72, 73, and 88. After a certain juror number in each trial, it appeared as if no more juror numbers were selected or even questioned. Apparently, with the jury selection beginning from juror 1 and proceeding sequentially through the jury pool, once a full jury was empanelled for each trial, the jury selection ended; and those potential jurors who were neither empanelled nor excused were then “excused by default” (These issues regarding potential jurors being excused by default will be further discussed). Therefore, the researcher determined that those jurors who were excused by

default should be excluded from the independent samples *t*-tests. This secondary testing produced a second set of results.

Upon the initial testing of juror disclosiveness (RQ1), no statistically significant differences were obtained: $t(88) = -0.307$, $p = 0.759$. For the secondary testing, no statistically significant differences were found: $t(56) = -1.482$, $p = 0.144$.

Likewise, during the initial testing of juror empathy (RQ2), the study found no statistically significant differences: $t(88) = 0.228$, $p = 0.820$. During the secondary testing, no statistically significant differences were realized: $t(55) = -0.259$, $p = 0.797$.

When conducting the initial testing on juror interpersonal communication competence (RQ3), no statistically significant differences were found: $t(84) = 0.053$, $p = 0.958$. Indeed, neither were statistically significant differences observed during the secondary testing: $t(53) = -0.817$, $p = 0.418$.

Similarly, no statistically significant differences were returned upon the initial testing of juror social relaxation (RQ3): $t(89) = 0.587$, $p = 0.559$. For the secondary testing, no statistically significant differences were achieved: $t(56) = 0.194$, $p = 0.847$.

Upon the initial testing of juror assertiveness (RQ3), no statistically significant differences were found: $t(89) = -0.716$, $p = 0.476$. Neither during secondary testing were any statistically significant differences returned: $t(56) = -1.756$, $p = 0.085$.

The initial testing of juror interaction management (RQ3) returned no statistically significant differences: $t(89) = -0.900$, $p = 0.371$. Likewise, the secondary testing observed no statistically significant differences: $t(56) = -0.385$, $p = 0.701$.

Moreover, initial testing of juror altercentrism (RQ3) delivered no statistically significant differences: $t(89) = -0.294$, $p = 0.770$. Also during the secondary testing, no statistically significant differences were found: $t(56) = -0.452$, $p = 0.653$.

When initially testing juror expressiveness (RQ3), with equal variances not assumed ($F = 4.418$, $p = 0.038$), no statistically significant differences were found: $t(35.687) = 0.948$, $p = 0.350$. For the secondary testing, again with equal variances not assumed ($F = 7.137$, $p = 0.010$), no statistically significant differences were returned: $t(39.878) = 0.446$, $p = 0.658$.

Likewise, initial testing of juror supportiveness (RQ3) revealed no statistically significant differences: $t(87) = -0.292$, $p = 0.771$. For the secondary testing, no statistically significant differences were observed: $t(55) = -0.415$, $p = 0.680$.

Upon the initial testing of juror immediacy (RQ3), no statistically significant differences were returned: $t(89) = 0.718$, $p = 0.475$. Also for the secondary testing, no statistically significant differences were found: $t(56) = 0.134$, $p = 0.894$.

Indeed, from the initial testing of juror environmental control (RQ3), no statistically significant differences were realized: $t(88) = 0.574$, $p = 0.568$. Neither were statistically significant differences returned from the secondary testing: $t(55) = 0.089$, $p = 0.930$.

Using these statistical findings, the researcher will be able to draw conclusions concerning his research questions and will be able to provide further discussion regarding the effects of juror characteristics upon jury selection.

Chapter 5 – Discussion

For discussion purposes, the researcher will first answer his initial research questions with regard to the statistical findings of this research. Then, the researcher will be able to discuss further implications of the findings and the limitations of this research project.

Explanations and Implications of Findings

The intentions of this research were to determine whether certain juror communication characteristics—disclosiveness, empathy, and the multi-characteristic interpersonal communication competence—have effects upon jury selection. Thus, the researcher asked in RQ1, “What effect, if any, does juror disclosiveness have on jury selection?” According to the statistical results of this research, the amount of personal information that a juror is willing to divulge (disclosiveness) does not have any statistically significant effect upon jury selection. In the same way, RQ2 addressed empathy, “What effect, if any, does juror empathy have on jury selection?” and similar statistical results were discovered: how readily a juror is able to identify with another person does not have any statistically significant effect upon jury selection. Furthermore, interpersonal communication competence and its derivatives were discovered to have no statistically significant effects upon jury selection, and RQ3, “What effects, if any, do interpersonal communication competence and its derivatives have on jury selection?” was answered. Therefore, the three research questions that were the focus of this research were answered negatively; however, the researcher may speculate concerning the reasons for these findings and concerning other observations made during the research.

As none of the findings from this research were statistically significant, one must speculate concerning the reasons for such findings when previous research had indicated that such juror communicator characteristics might influence jury selection. However, what first must be acknowledged is the lack of statistically significant findings indicates that citizens with certain communication predispositions are not more likely to be empanelled for jury service than other citizens. Therefore, to counter what was suggested from previous research, juror communicator characteristics might not bias attorneys during jury selection—meaning that juries are not disproportionately composed of jurors who may be, for example, more disclosive or more empathetic. On the other hand, these statistically insignificant findings may also be attributed to other sources of unfairness within the jury trial system—unfairness that must be addressed.

As previously mentioned, many of the potential jurors from the two sampled trials were “excused by default.” To revisit what is meant by this phrase, the results of the jury selections suggest that the attorneys from each trial began with juror 1, questioned him or her, decided whether to empanel or excuse him or her, and proceeded to repeat the process with each sequential juror. Once every seat in the jury was filled, those potential jurors with whom the attorneys did not interact were “excused by default,” having been unquestioned whatsoever by either trial party. Although this method for jury selection may be the simplest to execute, the attorneys are not taking full advantage of the size of the jury pool, possibly overlooking potential jurors who may be well suited for service. In other words, if one selects a twelve-person jury from a pool of 50, he or she has fewer options than one who selects from a pool of 100. Clearly, the odds of finding more

suitable jurors are greater when the selection pool is larger, yet the attorneys in these two cases appeared to be unconcerned. This disinterest may be explained in a couple ways.

First, the trial participants—both the attorneys and the judge—may be influenced by expediency. In some courts, the judge’s goal may be to proceed through business as quickly as possible in order to return to other work or lack thereof. A judge may place time limits for jury selection upon the attorneys, and the desires of the court are placed ahead of the rights of the accused. Additionally, attorneys may consider some trials to be of lesser importance to them. An attorney with a private practice in real estate law who also performs public defender services for the court may perceive his public service to be of lesser worth and may be influenced to proceed quickly through the more routine proceedings of such trials. Whether the judge or the attorneys are influenced by expediency, the rights of the accused are still jeopardized, for every person is assured a fair trial with an impartial jury of his or her peers. A jury selection that is rushed may not be entirely impartial and fair.

Second, the type of trial for which the proceedings are occurring may cause the disinterest in jury selection. For trials concerning lesser crimes such as felony shoplifting, the crime with which Trial B was concerned, jury selection may be perceived as being of lesser importance. For trials concerning more serious crimes like murder, the crime with which Trial A was concerned, jury selection may be treated more seriously. Indeed, the number of potential jurors who appear to have been “excused by default” from each trial confirm the truth to this point. Trial B had a much larger number of potential jurors who were excused in this way, and that trial was concerned with a lesser crime. Therefore, the trial topic may also create disinterest in jury selection, and in the

same way, trial topic may similarly influence the previously discussed expediency. These causes of expediency and trial topic may both cause disinterest in jury selection, leading to jury selection in which many jurors are “excused by default” and the fairest jury is not assured.

Another, less problematic, explanation for the lack of significant findings from this research may be based in the types of juror characteristics that attorneys are attempting to discover during jury selection. From this research’s findings, juror communicator characteristics appear to be of lesser importance to attorneys who are conducting jury selection. As previously noted, other characteristics may be of greater importance to attorneys. The type of business in which one is trained may be related to the trial in some way and may be important to include in or exclude from a certain jury. Additionally, one’s predispositions concerning certain case themes may be of greater importance to attorneys. If a case involves first-degree murder, one’s beliefs concerning the death penalty may be relevant. Likewise, women may more readily identify with rape victims since their sex is more commonly the victims of such offenses. Other factors such as age, race, and previous jury experience may be more significant than communication characteristics for attorneys who are conducting jury selection. Therefore, the findings from this research, although positive in terms of fairness from communication predispositions of jurors, suggest other problems and norms of the trial jury system used by our courts.

Limitations

A major limitation to this research was the lack of multiple courts at which to conduct the research. Because both trials occurred in the same court, the judge and

prosecutors—who were the same in both cases—may have influenced the results. The researcher received permission to conduct research at another court, but during the data collection period of the research, no cases went to trial in that jurisdiction. Likewise, the low number of participants may have limited the research findings. In the previous research conducted via this methodology, a few hundred potential jurors were gathered for the sample. However, once again, the time frame of the data collection only realized the trials of two cases.

Another limitation to the research may have been the depth of the questionnaire. The time in which the researcher had to work before the beginning of jury selection was small, and the researcher did not want to inconvenience the court with a long-winded study. Additionally, a longer questionnaire might not have received even as many participants as this shorter questionnaire did. The downfall of the shorter questionnaire is that each communication trait was measured by only one question. For instance, disclosiveness, which in previous research was measured by a full-length disclosiveness questionnaire and was found to have significant influence upon jury selection, was reduced to one question on the questionnaire used for this research and was discovered to be insignificant. Perhaps, the shortened questionnaire may have influenced this research reversal.

Thus, the statistical results of this research answered negatively the original research questions, but the findings were, nevertheless, revealing. Moreover, the researcher, through an understanding of this research's limitations, should be able to provide suggestions for improvements to such jury selection research in the future.

Chapter 6 – Conclusion

Therefore, the results of this study, which was conducted in order to determine whether juror communicator characteristics had biasing effects on jury selection, have revealed that such biases do not exist. However, due to the lack of statistically significant results, the researcher has speculated that other problems and norms may exist within the trial jury system: problems regarding disinterested jury selection by judges and attorneys and norms regarding those juror behaviors and characteristics that are examined most closely by those same parties.

Suggestions for Future Research

In the future, research should use a more qualitative approach for jury selection research in order to confirm these speculations through first-person observation. A more qualitative approach would compile more information concerning the types of questions asked during jury selection and the responses given to such questions. These questions and responses may give researchers a deeper understanding of the important themes of jury selection, those themes that the attorneys find to be most important. Likewise, qualitative data collection will allow researchers to more accurately identify the specific processes used for jury selection in the sample court. A first-person account of the communication of potential jurors may be more easily explained than quantitative data, which can only identify statistical trends.

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Appendices

Appendix A

The University of Southern Mississippi Authorization to Participate in Research Project

Consent is hereby given to participate in the study titled: *The Effects of Juror Disclosiveness, Empathy, and Interpersonal Communication Competence on Jury Selection*

Purpose:

The purpose of this study is to determine the effects of certain communicator characteristics on jury selection.

Description of Study:

As a participant in this project, I will be asked to complete a questionnaire. The questionnaire takes about five (5) minutes to complete. I understand that all responses will be kept confidential with all identifying information removed and that my responses, and the responses of other subjects, will be combined and appropriately analyzed.

1. **Benefits:**

There are no direct personal benefits from this study. However, I will be contributing to vital research concerning the jury process.

2. **Risks:**

This is a minimal risk questionnaire that does not ask significantly personal questions and as a result there do not appear to be any major risks related to my completion of the questionnaire. I can skip questions or discontinue from further participation in the study at any time without consequence. I will be able to contact the researcher, Owen Terry, at any time throughout the study.

3. **Confidentiality:**

I will use my assigned juror identification number in order to identify myself on the questionnaire. I understand that the researcher will not receive any of my personal identifying information and that the court administrators will only share my juror identification number with the researcher. Upon receipt, my responses will be stored in a locked file cabinet in the Department of Communication Studies at USM. I understand that my responses will be entered into a computer database, will be combined with the responses of other subjects, and will be appropriately analyzed, with the only identifying information being my juror identification number.

4. **Alternative procedures:**

I may discontinue participation in this study at any time or choose not to answer questions without consequence.

5. **Subject's assurance:**

Whereas no assurance can be made concerning results that may be obtained (since results from investigational studies cannot be predicted) the researcher will take every precaution consistent with the best scientific practice. Participation in this project is completely voluntary, and subjects may withdraw from this study at any time without penalty, prejudice, or loss of benefits. Questions concerning the research should be directed to Owen P. Terry at (601) 498-4678 or owen.terry@eagles.usm.edu. This project and this consent form have been reviewed by the Institutional Review Board, which ensures that research projects involving human subjects follow federal regulations. Any questions or concerns about rights as a research subject should be directed to the Chair of the Institutional Review Board, The University of Southern Mississippi,

118 College Drive #5147, Hattiesburg, MS 39406-0001, (601) 266-6820. A copy of this form will be given to the participant.

6. **Signatures:**
In conformance with the federal guidelines, the signature of the participant or parent or guardian must appear on all written consent documents. The University also requires that the date and signature of the person explaining the study to the subject appear on the consent form.

Signature of the Research Subject: _____ Date: _____

Signature of the Researcher: _____ Date: _____

Appendix B

INSTRUCTIONS: Here are some statements about how people interact with other people. For each statement, circle the response that best reflects YOUR communication with others. Be honest in your responses and reflect on your communication behavior very carefully.

If you ALMOST ALWAYS interact in this way, circle the 5.

If you communicate this way OFTEN, circle the 4.

If you behave in this way SOMETIMES, circle the 3.

If you act this way only SELDOM, circle the 2.

If you ALMOST NEVER behave in this way, circle 1.

-
- | | | | | | |
|------------------------------------------------------------------------------------|---|---|---|---|---|
| 1. When I've been wronged, I confront the person who wronged me. | 1 | 2 | 3 | 4 | 5 |
| 2. I am comfortable in social situations. | 1 | 2 | 3 | 4 | 5 |
| 3. I can put myself in others' shoes. | 1 | 2 | 3 | 4 | 5 |
| 4. My conversations are pretty one-sided. | 1 | 2 | 3 | 4 | 5 |
| 5. I accomplish my communication goals. | 1 | 2 | 3 | 4 | 5 |
| 6. I allow friends to see who I really am. | 1 | 2 | 3 | 4 | 5 |
| 7. My friends truly believe that I care about them. | 1 | 2 | 3 | 4 | 5 |
| 8. My communication is usually descriptive, not evaluative. | 1 | 2 | 3 | 4 | 5 |
| 9. My conversations are characterized by smooth shifts from one topic to the next. | 1 | 2 | 3 | 4 | 5 |
| 10. My friends can tell when I'm happy or sad. | 1 | 2 | 3 | 4 | 5 |

Appendix C



THE UNIVERSITY OF
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NOTICE OF COMMITTEE ACTION

The project has been reviewed by The University of Southern Mississippi Institutional Review Board in accordance with Federal Drug Administration regulations (21 CFR 26, 111), Department of Health and Human Services (45 CFR Part 46), and university guidelines to ensure adherence to the following criteria:

- The risks to subjects are minimized.
- The risks to subjects are reasonable in relation to the anticipated benefits.
- The selection of subjects is equitable.
- Informed consent is adequate and appropriately documented.
- Where appropriate, the research plan makes adequate provisions for monitoring the data collected to ensure the safety of the subjects.
- Where appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of all data.
- Appropriate additional safeguards have been included to protect vulnerable subjects.
- Any unanticipated, serious, or continuing problems encountered regarding risks to subjects must be reported immediately, but not later than 10 days following the event. This should be reported to the IRB Office via the "Adverse Effect Report Form".
- If approved, the maximum period of approval is limited to twelve months.
Projects that exceed this period must submit an application for renewal or continuation.

PROTOCOL NUMBER: **13081204**

PROJECT TITLE: **The Effects of Juror Disclosiveness, Empathy, and Interpersonal Communication Competence on Jury Selection**

PROJECT TYPE: **Thesis**

RESEARCHER(S): **Owen Terry**

COLLEGE/DIVISION: **College of Arts and Letters**

DEPARTMENT: **Communication Studies**

FUNDING AGENCY/SPONSOR: **N/A**

IRB COMMITTEE ACTION: **Expedited Review Approval**

PERIOD OF APPROVAL: **08/14/2013 to 08/13/2014**

Michael Madson, Ph.D.
Institutional Review Board

Appendix D



THE UNIVERSITY OF
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INSTITUTIONAL REVIEW BOARD

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- The selection of subjects is equitable.
- Informed consent is adequate and appropriately documented.
- Where appropriate, the research plan makes adequate provisions for monitoring the data collected to ensure the safety of the subjects.
- Where appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of all data.
- Appropriate additional safeguards have been included to protect vulnerable subjects.
- Any unanticipated, serious, or continuing problems encountered regarding risks to subjects must be reported immediately, but not later than 10 days following the event. This should be reported to the IRB Office via the "Adverse Effect Report Form".
- If approved, the maximum period of approval is limited to twelve months.
Projects that exceed this period must submit an application for renewal or continuation.

PROTOCOL NUMBER: **CH13081204**

PROJECT TITLE: **The Effects of Juror Disclosiveness, Empathy, and Interpersonal Communication Competence on Jury Selection**

PROJECT TYPE: **Change to a Previously Approved Project**

RESEARCHER(S): **Owen Terry**

COLLEGE/DIVISION: **College of Arts and Letters**

DEPARTMENT: **Communication Studies**

FUNDING AGENCY/SPONSOR: **N/A**

IRB COMMITTEE ACTION: **Expedited Review Approval**

PERIOD OF APPROVAL: **10/01/2013 to 09/30/2014**

Lawrence A. Hosman, Ph.D.
Institutional Review Board