Sociologists in Action: The McMartin Sexual Abuse Case, Litigation, Justice, and Mass Hysteria

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This paper describes our involvement as jury consultants in one of the most notorious criminal trials in history—the McMartin child-molestation trial in Los Angeles. The McMartin trial was the longest and costliest criminal trial in American history. The prosecution spent $15 million and took nearly six years in making a criminal case against day-care workers, only to have the jurors declare them not guilty. The defendants in the McMartin trial were charged with molesting young children at a preschool in Manhattan Beach, Los Angeles County, California. In 1987, we had performed scientific defense voir dire jury selection to choose the most impartial jurors to try the two defendants, Raymond Buckey and Peggy Buckey McMartin. In performing scientific jury selection, both a community survey and pre-voir dire questionnaires served as an important empirical foundation to assess jurors' attitudinal, demographic, and socioeconomic characteristics to develop the effective juror profiles for the trial.

Introduction

Today, many social scientists claim that sexual abuse of children has become more pervasive than in the past and criminal trials involving children and sexual abuse have dramatically increased in recent years (Fukurai et al., 1993). During 1980s and early 1990s, for example, sexual abuse of children became a national issue and emotional preoccupation. The 1985 Meese Commission claimed that

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the child-pornography industry grossed $675 million per annum. The National Broadcasting Company (NBC) estimated the figure at $3 billion in the white paper, *The Silent Shame,* and the topic of child sexual molestation made the headlines of many major newspapers and national magazines.[1]

These social factors and media hype uniquely frame the McMartin child molestation trial in Los Angeles, which became the costliest criminal jury trial in history (Russell, 1993). Acting as an incendiary capstone in Los Angeles, where there were already deep feelings of helplessness and resentment in the wake of an effusion of sexually overlaid advertising and media hype, the McMartin trial became the most publicized child molestation in the late 1980s and early 1990s. The prosecution spent $15 million and took nearly six years in making a criminal case against two preschool teachers who worked at a day-care center owned by Peggy McMartin Buckey, in Manhattan Beach, California. Ending in 1990 with the defendants' acquittal, the case will likely live on in memory as one charged by high emotions—the media initially acting as accuser, with questionable evidence offered by children influenced and prodded by police and therapeutic professionals.

In 1984, a local TV station broke the story on the alleged child molestation at the preschool and reported that the preschool might have been linked to child pornography rings and sex industries in Los Angeles. The media continued to release additional preindictment materials on the case and alleged defendants, playing a crucial role in influencing the general perception of the case and the probable outcome of the trial. For example, a 1986 pretrial community survey revealed that approximately 90 percent of the residents in Los Angeles County already believed that two of the defendants, Raymond Buckey and Peggy Buckey McMartin, were guilty of child molestation. It is important to note that the trial did not begin until 1987, the following year. Because of the massive publicity on the defendants and their alleged child molestation at the preschool, a fair trial was perceived to be in jeopardy if the traditional method of jury selection was used. Scientific jury selection techniques were thus viewed as the only alternative method to obtain impartial jurors and a fair trial for the McMartin defendants. As jury consultants, the present writers were then asked to assist the defense in jury selection in order to assess prospective jurors in the community, discover their potential biases, evaluate juror profiles for the trial, and select the most impartial jurors for the defendants.

Such court participation by social scientists is not uncommon. In well-publicized criminal trials, the media is more likely to exert significant influence on the general perception of community populations. Consequently, the likelihood of the conviction of criminal defendants increases in such trials. Scientific jury selection then becomes one of few options available to the defense to influence jury composition and possibly the trial outcome. Like the McMartin child molestation trial, defense attorneys have often sought social scientists' assistance in the selection of trial jurors in important criminal cases. While jury selection techniques were not as sophisticated as the one employed in the McMartin trial, scientific and systematic jury selection methods were utilized in many well-

publicized trials, including the 1968 trial of Black Panther Huey Newton, the 1972 trial of the Harrisburg Seven, the Vietnam Veterans Against the War case in 1972, the Attica Prison rebellion trial in 1974, the Wounded Knee trial of native American activists in 1975, the trial of former U.S. Attorney General John Mitchell and Maurice Stans in 1974, the trial of Joan Little in 1975, and other trials that touched on sensitive political and racial issues (Fukurai et al., 1993). More recent cases, including 1992 Rodney King beating trials, 1993 LA Four and Reginald Denny beating trials, and 1994 trials of Menendez brothers and O. J. Simpson in Los Angeles relied on a group of social scientists to screen the prospective jurors in evaluating their possible biases and prejudice (Fukurai et al., 1994).

This paper examines our involvement in the McMartin case and assesses the use of scientific jury selection to obtain impartial jurors to try the unpopular defendants in the well-publicized child molestation trial. Specifically, the paper examines the following substantive issues of the McMartin trial and our participation as jury consultants in the case: (1) the trial background, (2) different stages of jury selection, (3) scientific voir-dire jury selection techniques, (4) empirical analyses to develop impartiality scales, (5) screening prospective jurors during voir dire, a process by which lawyers and the judge examine potential jurors to determine their acceptability to serve as jurors, (6) aftermath of the trial, and (7) conclusions regarding our involvement in the trial and assessments of the use of scientific jury selection techniques in criminal jury trials.

Child-Molestation and the McMartin Trial

For a deeper understanding of the effectiveness of scientific jury selection in the child molestation trial, a brief synopsis of the McMartin case is important. Throughout the 1980s and 1990s, the topic of sexual abuse of children made the headlines of many major newspapers and national magazines. One of the most publicized cases on child molestation was the McMartin Preschool case. The McMartin Preschool was located in Manhattan Beach, the outer reach of suburbia in Los Angeles County, California. In 1983, this middle-class day-care center was placed under police surveillance when one of its clients, Judy Ann Johnson, said that she believed that her 2-1/2 year-old-son was molested by school aide Raymond Buckey, a part-time school aide at the preschool. On September 7, 1983, Raymond Buckey was arrested by the police but released for lack of evidence.

The complaining mother continued to make charges, one being that her son and family dog were both sodomized by her estranged husband, an AWOL Marine. Besides Raymond Buckey, she also accused Roberta Weintraub, a Los Angeles School Board member, and employees at a local gym. Her bizarre accusations also included that her child not only had been molested but had been injured by a lion and an elephant while on a McMartin outing; other McMartin teachers put staples in her child's ears, nipples, and tongue, and scissors in his eyes; and her son was involved in a ritual that involved human sacrifice and drinking a

baby's blood (Butler et al., 1994).

In the letter to the District Attorney, Ms. Johnson maintained that Peggy McMartin Buckey was involved in ritualistic practices featuring both "goatman" and church. "Peggy drilled a child under the arms" and "Ray flew in the air," she said. Less than a month later, police sent letters to approximately 200 parents naming Buckey as a suspected child molester.[2]

In the six months following the initial accusation, nearly 400 children who had attended the school were interviewed, and 41 listed as victims in a complaint filed by the state. The district attorney filed charges after interviewing one-third of the children. Claiming that the McMartin Preschool was linked to a child pornography ring, authorities armed with search warrants visited eleven locations in three counties, but found nothing.

Those locations included the well-attended St. Cross Episcopal Church in nearby Hermosa Beach, Harry's Market—a nearby grocery store, professional photo studios, and homes of defendants' friends. Raids were also conducted at sites identified by children as being among the places where they were taken, molested, and photographed. To discover the origins of purported items of immorality connected with the alleged child molesters, the judge freely signed search warrants. Acting on the children's assertions that they were photographed, the FBI also entered the case looking for the sale of photos of cladless children from the McMartin Preschool (Butler et al., 1994). One of the raids took place at the home of Kent Well, a weight-lifting friend of Raymond Buckey. The police also raided the studio of school photographer, Hanson Williams. The police put Hanson, his wife, daughter, son's wife, 3-year-old granddaughter, and 3-month-old grandson in the living room and proceeded on their fishing expedition to comb the house. No nude photos of children were found and no charges were ever filed against the photographer or any member of his family (Butler et al., 1994).

Another alleged perpetrator was Ray Fadel, owner of Harry's Market in Manhattan Beach. Several McMartin children had identified his back room as the place where they were taken and molested. Raymond Buckey was said to have worked there once as a box-boy. Though Fadel was never charged nor officially named as a suspect, once the district attorney's office publicized these unsubstantiated charges, his store became subject to a boycott and the store was emptied of customers.[3]

On February 2, 1984, Wayne Satz, a reporter of Los Angeles station KABC-TV, ran the story on the alleged child-molestation at the preschool. He stated that more than 60 children "have now each told authorities that he or she had been keeping a grotesque secret of being sexually abused and made to appear in pornographic films while in the preschool's care—and having been forced to witness the mutilation and killing of animals to scare the kids into staying silent." His report had been delayed for several weeks purportedly at the request of the district attorney. The KABC then placed a full-page newspaper ad, featuring a child's teddy bear, mauled, one eye missing and its stuffing spilling out. None of these props were ever part of the case or of the material presented to the court. The ad said, "We beat everybody with the news, but we feel lousy

because the story is so awful. . . . This is a sick, sick story" (Butler et al., 1994). Interestingly, the appearance of the KABC ad coincided with the beginning of "sweeps" month when local television stations broadcast their most attention-getting programming in hopes of attracting high ratings on which local advertising rates are based (Shaw, 1990). Other TV stations then followed with similar reports and created mass hysteria of alleged child-molestation at the preschool.

On March 22, 1984, a grand jury indicted Raymond Buckey, his mother Peggy McMartin Buckey, his sister Peggy Ann Buckey, and his grandmother, Virginia McMartin, and three McMartin teachers—Babette Spitler, Betty Raidor, and Mary Ann Jackson—on 115 counts of child-molestation and conspiracy involving 18 children. Peggy McMartin Buckey and Raymond Buckey were held without bail. The alleged charges included a decade of rape and other sexual molestations involving dozens of children and accusations of drugging and death threats, physical torture and using toddlers for pornography and forced prostitution. The prosecutors alleged that much of the brutality took place at the Virginia McMartin Preschool where all seven defendants had taught (*Los Angeles Times,* 1984, April 29).[4]

On May 23, 1984, district attorney's office also filed 208 count complaints against the defendants and named 42 children as victims. The complaint charged Virginia McMartin with 12 counts of molestation, which called for a prison sentence of 96 years. Raymond Buckey faced 97 counts with a possible prison sentence of 776 years. McMartin's daughter, Peggy Buckey McMartin, was charged with 49 counts of molestation; McMartin's granddaughter was charged with 14 counts; Babette Spitler was indicted on 22 counts; Betty Raidor was named in 32 counts; and Marry Ann Jackson was charged with 15 molestations. In addition, there were specific charges of using "force or fear" to carry out the conspiracy, which allowed defendants, if convicted, to be sentenced consecutively on each individual count rather than as a group. Further, some defendants were accused of having acted in concert while molesting individual children.

A preliminary hearing for Raymond Buckey began on June 6, 1984. Consolidated preliminary hearing for all seven defendants then began on August 17, 1984, and lasted 18 months (Timnick, 1986a). During the preliminary hearing, defendants' lawyers cross-examined 13 child-witnesses, one of whom testified that he and other children played "naked games." The child-testimony also revealed: Satanic rituals, cemetery visits, animal sacrifices, molestations in caves, a market, even a car-wash (McGraw, 1985; McGraw and Timnick, 1985; Timnick, 1985a, b; Timnick and McGraw, 1985). The hearing, however, produced no material evidence to substantiate alleged acts of molestation. The investigation, for example, produced no photographs; no secret tunnels, rooms or doors that the children said existed; no outside adult witnesses of children being molested. Furthermore, none of the defendants came forward or were willing to testify against other defendants in spite of the offer by the district attorney who granted them immunity or leniency during the testimony.

In the wake of the massive publicity and mass hysteria following the original McMartin charges and building on the pathological implications of the case,

other preschools in the area, such as the Children's Path, were investigated with suspects of child molestation having their names released by the prosecution to the media, though none of them were ever charged with any crime. Amid wild accusations of child molestation, seven other South Bay preschools also closed. Only a single person at one of these schools was ever charged with a criminal violation and that trial ended with a hung jury.

On January 9, 1986, Municipal Court Judge Aviva Bobb finally ordered all seven to stand trial with 135 counts of alleged crimes against them (Timnick, 1986b). On January 17, Ira Reiner, the newly elected district attorney, however, dropped the charges against all defendants except the two Buckeys, citing the incredibly weak evidence against the remaining five defendants and saying that it might be unlikely that there had been massive molestation at the McMartin school (*Los Angeles Times,* 1986, January 27). The five released defendants had irregular contact with the school when the acts allegedly occurred. But the charges remained for Raymond and Peggy McMartin Buckey, both of whom were continuously present at the school (Timnick, 1987a).[5]

Judy Johnson whose allegations triggered investigation was later diagnosed to be an acute paranoid schizophrenic and, on December 19, 1986, she was found dead in her home. She died of alcohol-related liver disease, a year before the actual trial took place. However, the information casting doubt on the credibility of statements made by Johnson was purposefully suppressed and kept away from the defense by the chief prosecutor. It seemed that Johnson's bizarre accusations and stories also might have helped condition and preprogram the Children's Institute International through its interviewers who were given the information about the type of molestation that supposedly took place at the preschool. The Children's Institute International is a private research organization specialized in examining child molestation and sexual abuse. The children's stories were then presented in both the preliminary hearing and the trial even though her original charges regarding her son were never followed up. What is significant is that the complete documentation on her long history of mental illness and her bizarre charges were not released to the defense or the court until the end of 1986, long after the preliminary hearing (Timnick and McGraw, 1986).

Meanwhile, Peggy Buckey McMartin was finally released on bail after spending ten months in jail, but Raymond Buckey, at first unbailable, could not raise the $3 million bail and remained in jail nearly five years, while the trial began with jury selection (Timnick, 1987d).[6]

Jury Selection and the Trial Jury of Twelve

The jury for the criminal trial of two preschool teachers emerged through a network of screening processes known as jury selection. The California Code of Civil Procedures specifically provides the guideline for the selection of jurors. While jury selection is an important screening process to empanel a group of citizens selected from a cross-section of the community, the shortcoming of the

jury selection process and its impact on racial and ethnic representation are known. For instance, the jury selection process has its own biases and filtering mechanisms that prevent full community participation by members of racial and ethnic minorities. Past research has substantiated that the current jury and jury selection system has continued to underrepresent prospective minority jurors in the jury box (Fukurai and Butler, 1992; Fukurai et al., 1991a, 1991b, 1993, 1995a, 1995b).

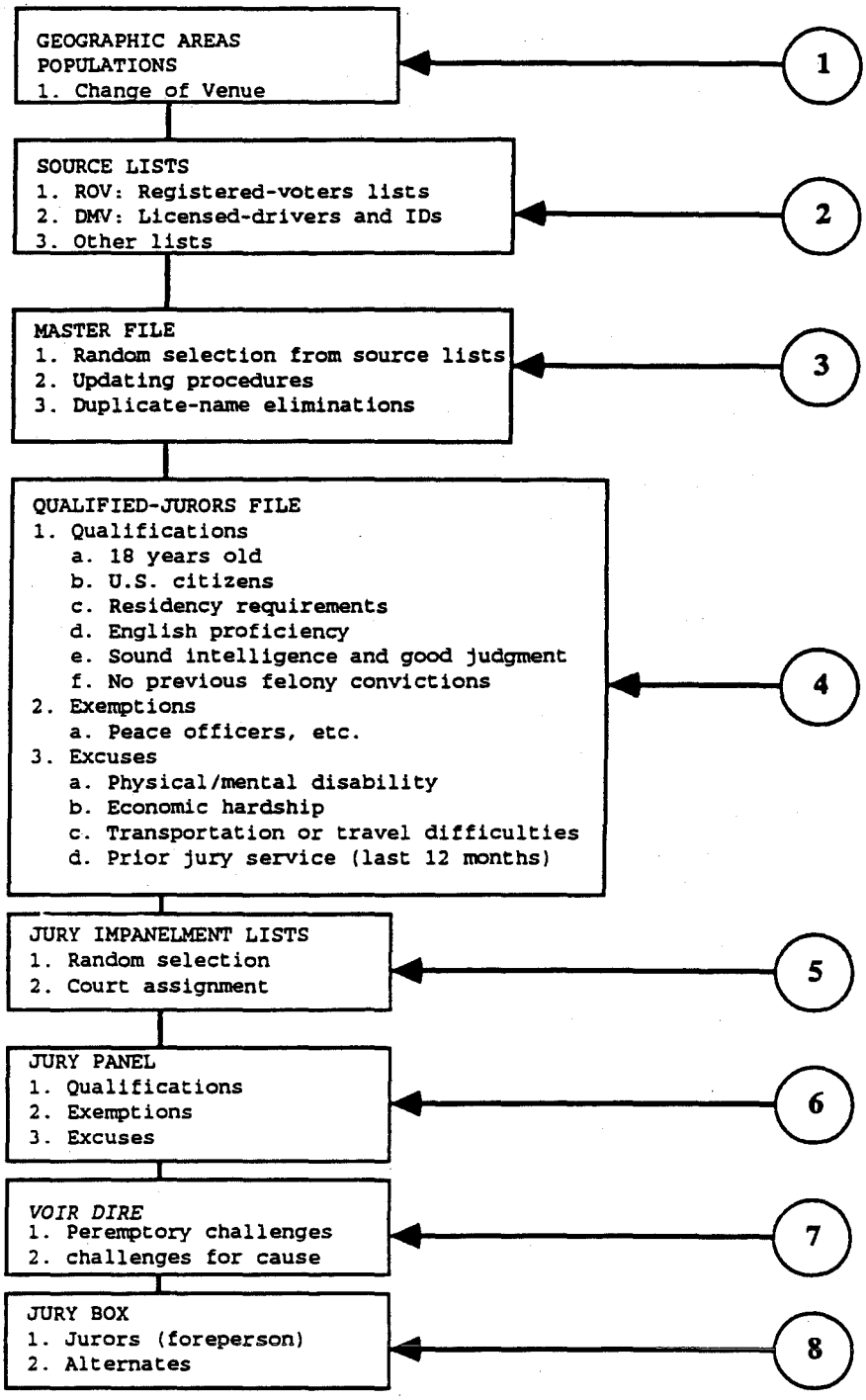
Both grand and petit jury selection processes exercised in California courts are summarized in the schematic, step-by-step process shown in Figure 1. In the figure, each of the eight boxes represents a single stage in the jury selection system. (1) First, a given population in a specified geographical area is defined as eligible for jury service. (2) Then, source lists are obtained and/or generated so as to enable the selection of potential jurors. (3) Next, a master file (or wheel) is constructed, which contains a list of names compiled randomly from the source lists. (4) Jury qualification questionnaires are sent to randomly selected candidates; from the returned questionnaires, a qualified jurors file is constructed, which contains names of those who have met various requirements for jury service, such as residency, citizenship, and English language proficiency. (5) From this juror list, potential jurors are assigned to impanelment lists and to various courts. (6) Jury panels are now brought together, composed of those potential jurors who actually show up at the courthouse. (7) After assignment to a courtroom and a trial, the voir dire screening process begins. It is designed to eliminate potential jurors who may be biased and unacceptable to prosecuting and defense attorneys. (8) This culminates in a selection of specific jurors for the jury box and the alternates.

The logic of the entire selection process is based on screening, from the target population to those who finally enter the jury box. According to the law, the purpose of the selection procedure is to choose a jury that reflects a fair cross-section of the community. The chosen jurors are then viewed as being impartial and qualified to represent the community.

Some of the shortcomings and problems of the selection process are known. How closely juries reflect a community's cross-sectional segments depends on the success of the procedures by which jurors are chosen. For instance, at the first stage of jury selection, the change of venue plays an important role in deciding the trial site and the kind of jury pools available for the trial. As subsequent analyses of public perceptions about the potential outcome of the trial indicate, the request for a change of venue for McMartin defendants was denied and the trial was held in Los Angeles where more than 90 percent of potential jurors surveyed said that the defendants were guilty as charged.

Additionally white, black and Hispanic representation on a master file and source list, as well as their qualifications for jury service, are considered to be important determinants of balanced racial participation on jury panels. Thus, in each of the selection stages, there are many other factors influencing jury participation, and these can have a *cumulative effect* on the racial and ethnic composition of jury panels. In the various stages of jury selection, moreover,

FIGURE 1
Jury Selection Procedures



there are a series of informal filtering techniques that shape and determine the racial, ethnic, and class balance of prospective jurors. In the state trial, two specific stages of jury selection played a key role in determining the jury composition and subsequently the outcome of the trial. Those are: (1) Stage 1 for the availability of potential jurors in the jurisdiction and the change of venue and (2) Stage 7 for voir dire in screening prospective jurors for the final jury.

Jury Selection: The Community, Biases, And A Change of Venue

The jury selection for the trial began on April 10, 1987. In the McMartin trial, the defense sought to impanel jurors with particular qualities, using its peremptory challenges (i.e., those without cause) and challenges for cause to eliminate jurors with certain biases. Rather than using their own subjective and intuitive judgment to evaluate prospective jurors and influence the jury composition, the defense attorneys worked together with jury consultants to prepare scientific questionnaires to be submitted to the potential jurors in determining their preconceptions, biases, feelings, and abilities to reason logically and "legally" about a hypothetical situation that approximated in broad outline the one in question.

The careful examination of potential jurors was considered crucial to obtain a fair trial because the telephone survey in 1986 conducted by researchers at Duke University revealed that pretrial publicity had exerted significant influence on public perceptions of the outcome of the trial in Los Angeles. For example, the telephone survey found that 96 percent of those queried had heard of the case, more than 97% of those with an opinion thought that Raymond Buckey was "definitely or probably guilty," and nearly 93 percent felt that Peggy McMartin was also guilty. In addition, more than 80 percent of the surveyed respondents believed that Raymond Buckey mutilated animals to scare the children into silence, and that he was part of a child pornography ring, and that five defendants against whom charges were dropped were still guilty (Timnick, 1987b). As a result of the survey reports, the defense made a motion for a change of venue to a district where such biases would be minimized (Timnick, 1986c). But the court denied it and McMartin attorneys moved to the next logical stage of scientific jury selection (Timnick, 1987c).

Scientific Jury Selection

The scientific jury selection technique is viewed as an important method to select the pool of impartial jurors so that the defendant has the chance of receiving a fair trial. The use of the scientific jury selection technique was of great importance in the McMartin trial because over 90% of prospective jurors in Los Angeles County already believed that the defendants were guilty of child-molestation. Mass media reports exerted tremendous influence on prospective jurors' perception so that the defense believed that a fair trial would be in jeopardy under the traditional method of jury selection.

The basic strategy of scientific jury selection applied to the McMartin trial was

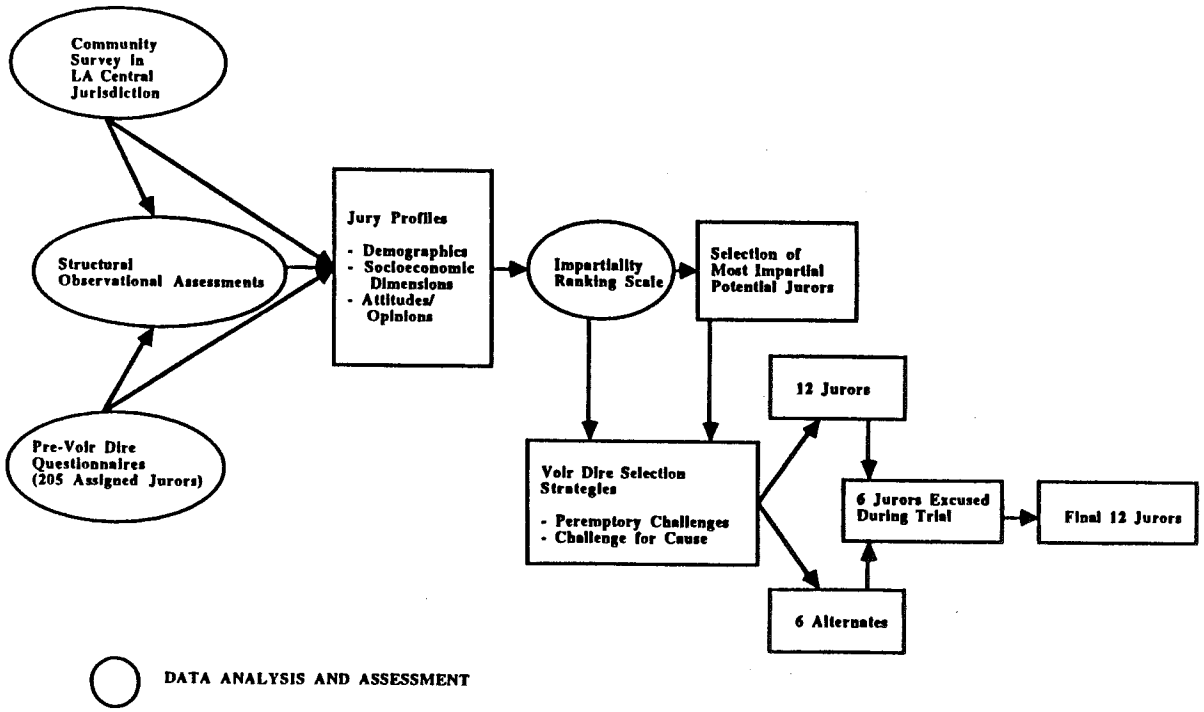
devised by the social scientists. They are summarized in Figure 2. Three different types of information came to serve as an important foundation for the analysis of prospective jurors who lived in the jurisdiction and those who were assigned to the McMartin trial at the courthouse. The empirical information came from the following three different sources: (1) a community survey, (2) pre-voir dire survey questionnaires, and (3) behavioral observations and assessments made during sequestered voir dire sessions. Statistical analyses were then performed on the three data sets to develop complete profiles of prospective jurors in the McMartin trial. Given the extent of media's influence on potential jurors' perception on the probable outcome of the trial, the development of the juror profiles to identify hidden prejudice and biases was considered to be the most crucial aspect of carrying out the scientific jury selection process in the McMartin trial.

As a first step of performing scientific jury selection, community residents of the Los Angeles Central Superior Court judicial district were carefully surveyed and studied. The critical assessment of socioeconomic, demographic, and attitudinal characteristics of the prospective jurors provided crucial information for developing an effective screening strategy for scientific defense voir dire jury selection.

The 1980 U.S. Census information showed that the eligible population in the central judicial district was characterized by the high proportion of racial and ethnic minorities. For instance, while 34.7% of eligible jurors consisted of black and Hispanic jurors in Los Angeles County as a whole, the central judicial district had higher representation for the minority groups (42.3%). Other demographic compositions were similar, yet education differed significantly. For example, there were larger numbers of prospective jurors with less than high school education in the Central district than in the entire county. Similarly, the Central judicial district had a smaller number of prospective jurors with college education. This is perhaps because the high concentration of minority jurors might have lowered the average educational attainment among the eligible jurors.

While the 1980 U.S. Census provided the basic information on prospective jurors in the Central Superior Court district, the census data did not offer more up-to-date and accurate breakdowns of eligible jurors in 1987. Plus, the U.S. Census failed to collect information on attitudinal and ideological profiles of the population. The defense team, thus, proceeded to obtain a list of the prospective jurors from the Jury Commissioner's Office in Los Angeles County in order to examine socioeconomic and attitudinal characteristics of qualified jurors in the judicial district. Those jurors had been already placed on the 1987 master file for jury service. After the pool of randomly selected prospective jurors was created, survey questionnaires were sent to 1,000 jurors in the Los Angeles Central Superior Court Judicial District. A total of 407 prospective jurors responded to the questionnaire (41% response rate). The responses to the questionnaires were then computerized and carefully studied (see Table 1). The response rate in our survey (41%) was similar to the initial response rates in other self-administered questionnaire surveys (Dillman, 1979). But it was lower than the response rate

FIGURE 2
Scientific Jury Selection Procedures in the McMartin Child Molestation Trial



of Los Angeles jury qualification questionnaires survey (56%) in which the jury commissioners office reported that only 44% of prospective jurors failed to respond to qualification questionnaires (Fukurai et al., 1993, p.122). The response rate in our survey could have been higher if we sent a follow-up questionnaire to prospective jurors who failed to respond. However, for the purpose of examining relations between the mass media and general perceptions of the defendants' child molestation, the community survey was extremely useful in providing the jury profile and analytic strategies for scientific jury selection.

The 1987 community survey found that both white and black jurors were overrepresented in the qualified jury list (+10.0 and +5.0% for whites and blacks, respectively). However, the proportion of eligible Hispanic jurors was significantly lower than the total Hispanic eligible population in the jurisdiction (-19.8%). Similarly, females were overrepresented in the qualified jury list. There was a significant underrepresentation of younger jurors, especially those less than 30 years of age. However, the educational comparison revealed that the underrepresented groups were more likely to be characterized by potential jurors with lesser education. For example, while 34.1% of the eligible population had less than high school education, the same group had only 4.9% representation in the survey. On the other hand, two-thirds of respondents had some college experience or had completed college.

Survey findings also indicated that prospective jurors in the jurisdiction had been fully aware of the pretrial publicity surrounding the McMartin child molestation case (see Table 2). For the period between 1984 and 1986, 98.5% of respondents said that they had heard or read about the subject of child sexual abuse. Similarly 96.7% of jurors said that they had specifically heard or read about the McMartin Preschool case over the same period. The survey findings coincided with those of the 1986 telephone surveys conducted by Duke University researchers and showed that the mass media had been active in reporting McMartin events and child molestation. The 1987 community survey results also revealed that almost all respondents believed that McMartin Preschool children had been sexually abused (97.1%). This finding was of great significance since the trial was not to start till the following year. The results further suggested the extent to which the massive publicity had exerted significant influence on the general perception of prospective jurors and that the general tone of the mass media had been more likely to be against the defendants. Similarly, while the charges against five of the original seven McMartin Preschool teachers were dropped, the majority of the respondents still believed that they were guilty of molesting children (58.2%). Though the large number of eligible jurors did not know whether Peggy McMartin Buckey was guilty of the crime, 86% of those who already decided the outcome of the trial said that she was guilty.

Empirical Analyses and Juror Profiles

To search out those who might still be unbiased in the court district, the defense hoped to gain help in selecting jurors for the case by using both statis-

TABLE 1
Eligible Jurors' Profile in Several Stages of Jury Selection for the McMartin Trial

Variable		L.A.[1] County	Central[1] District	Community[2] Survey	Prospective[3] Jurors
RACE	White[4]	58.3%	50.8%	61.8%	43.4%
	Black	11.4	14.6	19.6	31.2
	Hispanic	23.3	27.7	7.9	4.9
GENDER	Male	47.9	47.5	43.5	53.2
	Female	52.1	52.5	56.5	46.8
AGE	18 - 20	7.7	7.6	0.8	3.4
	21 - 29	24.1	24.5	18.5	17.6
	30 - 44	27.9	27.1	32.2	34.1
	45 - 54	13.9	13.4	19.6	19.0
	55 - 64	12.9	12.9	16.3	15.7
	65+	13.5	14.5	12.6	10.2
EDUCATION	Less Thank H.S.	30.1[a]	34.1[a]	4.9	4.9
	High School	30.2	29.5	25.8	21.5
	Some College	21.2	19.7	33.3	55.6
	College	18.5	16.6	31.1	18.1

1. Figures are based on the 1980 U.S. Census.
2. Figures are based on the 1986 community survey in the Los Angeles Central Superior Court Judicial District.
3. Figures are based on the 1987 pre-voir dire screening questionnaires administered at the Los Angeles Central courthouse.
4. Calculated by subtracting the total nonwhite population from the total population (18 years or older) and divide it by the total eligible population.
a. Based on the total population with the age 25 years or older.

tical analysis and observational methods. In order to develop the McMartin jury profile, additional survey data were collected from a court-distributed questionnaire filled out by 205 prospective jurors who were assigned to the case. Similarly, during the pre-voir dire screening session, behavioral observations were made and the information was computerized in order to evaluate the possible hidden prejudice among individual jurors.

Prospective jurors who reported to the Los Angeles Central superior courthouse and were assigned to the McMartin jury trial showed a different outlook from the pool of prospective jurors in the jurisdiction. These assigned jurors at the courthouse were more likely to be black, male, younger, and more educated. For example, while there is a significant overrepresentation of black jurors (31.2%), white and Hispanic jurors were underrepresented in the assigned jury pool (43.4% and 4.9%, respectively). Similarly, male jurors dominated the jury venire by 53% to 47%. In comparing the jury composition in the assigned pool with the community survey results, younger and middle-aged jurors had greater representation. With respect to the educational attainment of assigned jurors, approximately 74% of prospective jurors had a college education. This was a sizable increase

TABLE 2
Community Survey Results:[1]
The Los Angeles Central Superior Court Judicial District[2]

Questions	Responses	N	Percent	Valid Percent
1: During the past two years, have you heard or read about the subject of child sexual abuse?	Yes	394	98.5	98.5
	No	6	1.5	1.5
	N/A[3]	7	--	--
2: During the past two years, have you heard or read about the McMartin preschool case?	Yes	385	96.7	96.7
	No	13	3.3	3.3
	N/A	9	--	--
3: Do you think that most of the children involved in the McMartin preschool case were sexually abused, or some of them were, or a few of them were, or do you think that none of them were sexually abused?	Most	94	23.7	33.3
	Some	146	36.9	51.8
	Few	36	9.1	12.8
	None	6	1.5	2.1
	Don't Know	114	28.8	--
	N/A	11	--	--
4: Have you heard that the charges against five of the seven McMartin preschool defendants were dropped?	Yes	320	82.5	82.5
	No	68	17.5	17.5
	N/A	19	--	--
5: Do you believe that the dismissed defendants were guilty?	Yes	120	41.4	58.2
	No	86	29.7	41.8
	Don't Know	77	29.0	--
	N/A	124	--	--
6: Have you heard about or read anything about Peggy McMartin Buckey? preschool case?	Yes	277	72.1	72.1
	No	107	27.9	27.9
	N/A	23	--	--
7: Based on what you know about Peggy McMartin Buckey, do you think she is:	Guilty	110	29.6	86.0
	Not Guilty	18	4.9	14.0
	Don't Know	243	65.5	--
	N/A	36	--	--
8: Do you feel that children can be trained to testify about things that really did not happen?	Yes	238	60.3	63.6
	No	51	12.9	13.6
	Not Sure	85	21.5	22.7
	Don't Know	21	5.3	--
	N/A	12	--	--
9: Are the laws of California adequate to deal with the problems of sexual abuse?	Yes	94	26.2	29.6
	No	223	62.1	70.4
	Don't Know	42	11.7	--
	N/A	48	--	--

1. The community survey questionnaire was filled by eligible jurors who resided in the Central Superior Court Judicial District in 1986.
2. The total number of respondents are 407.
3. No answer.

compared with the Los Angeles Central residents or those responding to the community survey (see the last column in Table 1, for example).

In order to gain deeper understandings of possible hidden prejudice among

individual jurors, the community survey was also analyzed and the empirical results were then superimposed on the pre-voir dire survey information collected from the court-distributed questionnaire filled by the 205 assigned jurors. Each assigned juror was also empirically evaluated on the basis of their personal characteristics, responses to questions by the judge and both prosecution and defense attorneys, and behavioral observations assessed during voir dire. In addition, the same analyses were carried out by combining the findings from the observational information and the results from survey data.

These statistical analyses of the McMartin jury profiles became the important and necessary aspect of developing jury profiles in scientific defense jury selection. The defense attorneys used the analytical findings to screen prospective jurors during voir dire.

Statistical Modelings for Empirical Analyses

Juror profiles were developed from the result of the community survey, the pre-voir dire questionnaires, and observational data by means of statistical and mathematical models. Those statistical examinations included the following mathematical models: (1) multiple regression analysis, (2) discriminant analysis, (3) logit regression techniques, and (4) factor analysis.

Those four different statistical modelings enabled the defense to objectively and scientifically evaluate the potential biases of prospective jurors assigned to the McMartin trial. For example, the multiple regression technique is perhaps the most widely used analytic model in the behavioral sciences. The model treats a continuous measurement as a dependent variable and a set of continuous independent measurements as predictor variables. The model is then able to simultaneously control effects of predictor variables on a dependent criterion variable. The basic assumption of multiple regression is that the variables have a multivariate normal distribution. That is, all of the variables must be measured in a continuous manner, i.e., or at least interval measures. The criterion measure in this analysis was an evaluation of whether the person assumed the defendants to be (1) guilty, (2) not sure, and (3) not guilty. Some of the assumed predictors of the verdict in the McMartin trial were categorical variables including race and labor force status (working full-time, part-time, not working); these categorical variables were converted into dummy variables and were included in the statistical model. The multiple regression analysis was performed to develop a profile of prospective jurors by identifying a set of predictor variables that significantly explained the large variance in the criterion variable—"Is the defendant guilty?"

In addition to multiple regression, discriminant analysis was performed to provide additional information to assess prospective jurors and overcome the methodological shortcomings of multiple regression, i.e., the use of ordinal measurement in both predictor and criterion variables. Discriminant function analysis asks the question as to which attitudinal and socioeconomic dimensions distinguish these groups from each other. Again, the criterion variable was the assumption of guilt, not sure, or not guilty. Since the mathematical objective of

discriminant function analysis is to weight and linearly combine the discriminating variables so that the groups are forced to be statistically distinct as possible, the discriminant function analysis provided additional information diagnosing the actual variables that significantly distinguished the three groups—guilty, not sure until all evidence was presented and examined and, not guilty.

In addition to multiple regression and discriminant analysis, logit regression was also carried out. Logit regression treats a dichotomous categorical variable as a dependent variable using both dichotomous and continuous variables as predictors. The advantage of logit regression over the other two methods is its ability to identify the set of predictor variables by dichotomizing the variable into two groups: (1) those who said guilty and (2) those who said otherwise. The latter group was created by combing prospective jurors who said not guilty and who were not sure of the trial outcome until all evidence was presented to them. Thus, the outcome variable measured in a dichotomous fashion was regressed against a set of independent variables believed to influence the perceptions of the possible trial outcome in the McMartin case.

Lastly, factor analyses were used to examine the level of jurors' prejudice and biases about their perceptions on child sexual abuse that might prevent them from evaluating the case impartially. The use of factor analyses was of great importance because a single question on the potential outcome of the trial may not be sufficient to evaluate jurors' attitudes about the trial. It is important to note that respondents themselves may not be aware of their biases. Thus, rather than relying upon the single question on the potential outcome of the trial, it was important to look at an array of related variables and questions so that they can be designed to capture some elements of potential biases in child molestation and sexual abuse. In the present analysis, a factor analytic approach was employed to address whether the related variables and questions could be explained by the existence of a hypothetical variable or an unobserved theoretical construct, called "prejudice," as a distinct underlying dimension of the questions in the questionnaire. The factor analysis thus became the important empirical tool in measuring and examining prejudice and evaluating jurors' impartiality in the trial.

Using the results from all of these sources and analyses, every member of 205 assigned jurors was given a numerical value and then rank-ordered from the least to the most partial, number one being the least biased and number 205 the most biased—using the standard of a prospective juror who had already decided upon a guilty verdict before the trial even began.

Scientific Defense Voir Dire Jury Selection

Using the results of the survey data, statistical analysis revealed that despite the massive media coverage, the following characteristics of the jurors demarcated between being impartial or biased, i.e., those who already decided the verdict on the basis of what they had heard through mass media reports.

Behavioral and Attitudinal Dimensions of Juror Biases

Several behavioral and attitudinal variables differentiated those who were impartial from those who were partial to a guilty verdict. Those critical questions included the following:

1. When you were a child, can you remember having any experiences you would consider sexual abuse?
2. Do you feel that children can be trained to testify about things that really did not happen?
3. Do you think that most of the children involved in the McMartin preschool case were sexually abused, or some of them were, or a few were, or do you think that none of them were sexually abused?
4. Has a relative or close friend been a victim of child sexual abuse?
5. Do you believe that the dismissed defendants [of five preschool teachers] were guilty or not guilty?
6. How do you feel law enforcement officials, the district attorneys, and defense attorneys have handled the McMartin preschool case to date?
7. Have you ever served on a federal or local grand jury?
8. In a sexual abuse case, medical evidence is very useful in deciding whether a person is guilty or not guilty?

Those who said "yes" to the first and fourth questions and "no," to the second question, were more likely to have decided on a verdict of guilty. For the third question, assigned jurors who answered "most" were more likely to render a guilty verdict against the McMartin defendants. Potential jurors who said "yes" or "maybe" on the presumed guilt of five preschool teachers whose charges were previously dismissed were more likely to have decided the guilty verdict.

The jurors who previously served on a grand jury were more likely to vote guilty. Similarly, those who believed that medical evidence is very useful in deciding the defendant's guilt or innocence were more likely to have decided on the guilt.

With respect to the attitude on the investigation and disposition of the McMartin case by the prosecution and defense attorneys, those jurors who said "good" were also found to be more guilt-prone than those who said "poor."

A series of other questions focused on sexual abuse to identify those with such a strong emotional response that they might convict anyone thus charged without proof; among these questions were the following:

- Exactly how would you define child sexual abuse?
- Are the laws of California adequate to deal with the problem of sexual abuse?
- During the past two years, have you heard or read about the subject of child sexual abuse?

Also, a battery of questions were utilized to gather information on jurors' attitudes about the criminal court and justice systems; among these questions were the following:

- If the prosecution goes to the trouble of bringing someone to trial the person is probably guilty.
- Even the worst criminal should be considered for mercy.
- Regardless of what the law says, a defendant in a criminal case should be required to prove his innocence.
- The rights of persons charged with child sexual abuse are better protected than the rights of the alleged child victims.
- Too often people accused of serious crimes are treated lightly by the courts.
- If a person is allowed to get out of jail on bail, then that person is probably not guilty.
- In a child sexual abuse case, medical evidence is very useful in deciding whether a person is guilty or not guilty.
- Due to a great deal of media coverage, sometimes the public assumes that a person is guilty when in fact they are not.
- Sometimes political officials prosecute individuals for political gain.
- If a group of persons is charged with a crime and later charges against some of them are dropped, then those still charged are probably guilty.
- Children aged 7-11 almost always tell the truth about their sexual experiences that happened when they were ages 2-5.
- It is highly unlikely that a female would sexually abuse a child.
- Testimony by a child in sexual abuse cases should be confirmed by other evidence.

All of the evidence derived from the various data gathering techniques, statistical analyses, and collective judgments was then utilized to assist in selecting the final jury and its alternates.

Socioeconomic and Demographic Dimensions of Juror Biases

Besides attitudinal and behavioral measurements, the statistical analyses revealed that among many attitudinal variables, race of prospective jurors was found to be one of the most crucial factors separating between those who said that the defendants were guilty and those who were uncertain about the trial outcome—despite the massive media exposure. The conclusions reached were somewhat unexpected. The analyses suggested that both Hispanic and Native American jurors were more likely to have decided on guilt but black, Asian, and Caucasian jurors were more likely to be unsure of the trial outcome.

While racial minorities were generally believed to be more sympathetic to the accused and less likely to identify with the prosecution, the statistical analyses revealed that this was not necessarily the case. Two ethnic minority groups, Hispanics and Native Americans, were clearly more likely to render a pretrial guilty verdict in the McMartin case than were other groups. This is perhaps because the defendants did not share the same racial or ethnic background or because child molestation and sexual experience might carry significant cultural and/or ideological meanings for some ethnic groups. Additional studies obviously are needed to establish the causal relationship between the perception of child molestation and racial and ethnic background of prospective jurors to determine if this was an isolated instance or a general pattern.

Other important socioeconomic and demographic characteristics that demarcated impartial and biased jurors were as follows: (1) *Age,* with older persons being more likely to believe that the defendants were guilty and younger persons more likely to believe otherwise; (2) *gender,* with females being more likely to render a guilty verdict than males; (3) *educational level,* with those with less than a high school education being more likely to believe the defendants to be guilty while those with a college-level education were more likely to be unsure of guilt or innocence; and (4) *income,* with those with lower incomes more biased toward guilt and those with higher level incomes toward not sure or not guilty.

Observational Dimensions of Juror Biases

In order to assess jurors' potential biases through verbal and nonverbal behaviors during the sequestered voir dire session, the structured observational method was also employed to examine and assess potential biases of each assigned juror. This observational method was designed to produce empirical information appropriate for quantitative and statistical analysis. The observational methods normally yield qualitative data and the observations are not easily reducible to numbers. In order to quantify the qualitative nature of the observational measurements, the measurements of personality characteristics were derived and the standardized measures were codified from 1 to 5, 1 being the most acquittal prone and 5 for the most conviction prone.

The empirical dimensions of personality characteristics designed for the McMartin trial included the following: (1) empathy towards defendants, (2) punitiveness, (3) analytic ability, (4) leadership, (5) authoritarianism, (6) gregariousness, and (7) gut reaction. Those personality dimensions are devised to measure potential biases of each prospective juror through direct observations of his/her verbal and nonverbal behaviors and responses to the questions from both public prosecutors and defense attorneys (Butler et al., 1994). For the statistical analysis of the empirical data, those seven personality characteristics were also rank-ordered in terms of their biases towards the McMartin defendants and their alleged crimes of child sexual molestation.

The level of the importance among different personality traits generally depends on the nature of the criminal trials. For the McMartin child sexual molestation case, the prioritized order of personality characteristics were: (1) gut reaction, (2) analytic ability, (3) empathy, (4) gregariousness, (5) authoritarianism, (6) leadership, and (7) punitiveness. Because of the sensitive nature of alleged crimes that involved sexual abuse and children, the observer was required to make critical interpretations of hidden biases and prejudices through verbal and nonverbal behaviors which may be anticipated during the sequestered voir dire session. Thus, the observer's overall evaluation of jurors' personality traits was considered to be the most important measurement of their hidden biases and prejudice.

The punitiveness was considered to be the least important in this case be-

cause the notion of punitiveness was widely shared by almost all of potential jurors and it failed to differentiate prospective jurors according to their perception of the trial outcome. For example, both community survey and pre-voir dire questionnaire survey substantiated the importance of retribution to those who were actually engaged in child sexual abuse. The survey by Duke University researchers also pointed out that child sexual molestation was perceived to be the most serious crime next to cocaine trafficking in Los Angeles areas (Butler et al., 1994). Similarly the important question in the McMartin case was not on the attitude about the imposition of punishment on criminals, but rather on jurors' abilities to independently and objectively evaluate the credibility of children's testimony and material and forensic evidence presented in court. Thus, the scale of punitiveness was considered to be less important than other measurements of personal opinions and characteristics.

In addition to a variety of personality characteristics designed to measure hidden dimensions of personal traits and potential biases, field notes were prepared and ethnographic information was completed with descriptions of empirical observations and overall assessments of each prospective juror. The empirical and structured observations included jurors' appearances, their clothes, speech patterns, and other key verbal and nonverbal identifications. The observational interpretation entailed the "reading" of jurors' intent as well as the selection, recording, and encoding of jurors' behavior and events in the courtroom.

The advantage of the structured observation lies in its greater control of sampling and measurement error, which permits stronger generalizations and checks on reliability and validity of each item of personality characteristics. For example, a juror might exhibit some types of behaviors or verbal/nonverbal responses, perhaps reflecting the sign of biases against the suspects accused of child sexual abuse. Then it was possible for the observer to make the assessment that either the juror might be recommended to be expaneled peremptorily or by challenge for cause. It is also possible to evaluate the juror's biases in conjunction with other objective scores and responses from the pre-voir dire questionnaire.

Given the sensationalized publicity on the defendants and the alleged crime, the selection of individual jurors with fair minds and abilities to objectively assess testimony and trial materials was considered to be an extremely difficult task. Among 205 assigned jurors, for example, the pre-voir dire sequestered questionnaire revealed that only two jurors had believed that the McMartin defendants were "probably not guilty." While there are other potential jurors with "Don't Know" responses on the question of the defendants' guilt, it was important for the defense to identify the certain clues to differentiate impartial jurors from those who already decided on the trial outcome so that the final jurors and alternates might be able to rely on their ability to apply their judgment in an objective fashion.

The two jurors who indicated that the defendants were "probably not guilty" had one of the highest impartiality scale and personality characteristics scores. They were both black males, 56 and 35 years of age, respectively. The prosecutors also identified them to be too biased against the prosecution and tried to

eliminate them by challenge for cause. Eventually both of them did not serve on the jury. The defense assessment of the juror #150 (56 years of age) was the following:

> He dressed in gray suit and tie, has glasses and a mustache. He feels that Peggy (McMartin) was in charge of the school and not directly involved with the children and as such is probably not guilty. He feels that Ray[mond Buckey] was directly involved with the children but as such he has no opinion about his guilt or innocence. . . . He feels that most of the convicted molesters are repeat offenders because their sentences aren't long enough. *He sounds very fair.* He says he feels that the defendants should be able to give their side of the story. He has not been a foreman. He says that maybe some of the parents told their children these tales because they didn't like Ray. "The child would have been coached to say things they say on the stand." He doesn't particularly want to serve as a juror because he doesn't want to judge (biblical admonition).

There were some jurors who initially believed that two McMartin defendants were guilty. However, they also realized that the McMartin case might have been too sensationalized and began to question the objectivity of media reports on the case. It was important to identify individual jurors with the abilities to apply the criterion of objectivity into the case and to judge the information impartially. The final comments on the juror #48, for example, indicated the following:

> He feels that papers tend to sensationalize [the McMartin case]. At first he thought that Ray and Peggy were guilty. He says that being raised in four different countries . . . you must have an "open mind." He knows about the French legal system. "I'm a big boy—I can take care of myself." He is very eloquent and knows a great deal. He says American children are more pampered and that all testimony is questionable (adult and children).

It is important to note that his impartiality scale was one of the highest among 205 jurors and the rating of his average personality characteristics showed that he was capable of being objective in assessing the testimony and evidence presented in court. Interestingly he was later selected to become a jury foreperson in the case.

Several jurors had indicated great difficulties in separating their personal feelings about child molestation from their responsibility as an impartial juror. For example, the juror #161 indicated that he would not be able to separate his personal feelings from the case. He was Hispanic and had a daughter. The defense attorney then challenged him for cause and the judge excluded him from serving on the jury. His impartiality scale was one of the lowest, perhaps reflecting his strong parental and cultural ties with the family and children. It is also important to note that statistical analyses indicated the strong correlation between Hispanic potential jurors and their assumption of the defendants' guilt in the child molestation case. Final comments on him stated that:

> He says that little kids are so vulnerable and he feels that they should be protected He will definitely side with the children! "Sympathy would affect a fair decision. I would be tough to watch little kids on the stand." . . . "I really can't do nothing"—his answer to Danny's [defense attorney] question about what he would do to put aside his feelings about children. "I'll seeing my daughter when the little kids testify. won't be able to separate my feelings." He will have a problem separating parental feelings from his responsibility as a juror.

There were six potential jurors who believed that one or both of the McMartin defendants were "definitely guilty." Four of them were females; three were married and three were single. Three of the six jurors indicated that Peggy McMartin was definitely guilty. All of them, however, agreed that Raymond Buckey was definitely guilty. Subsequently none of those six people were selected for the final jury box. Contrary to their assumption of guilt shown in their responses in the questionnaire, some of those jurors appeared to be willing to exercise their impartiality, objectivity, and open-mindedness in making the final decision. For example, the juror #94 indicated in the questionnaire that Raymond Buckey was "definitely guilty," while she told the judge that she could be fair and unbiased in the trial.

> "I know of nothing that would bias me in any direction." This woman is a very intelligent woman who has not made any opinions about this case. She has a trace of a Bostonian accent. She knows three judges socially. Her husband works for U.S. House of Representative's government committee. She seems fair but we need to know more about her.

While the observational assessment seemed to give every indication that she might be able to judge and decide on the case honestly and objectively, her impartiality scale was found to be one of the lowest and subsequently the defense exercised a peremptory challenge to exclude her from serving on the jury.

Profiles of Final Jurors and Alternates

Table 3 shows the breakdown of the final jury for the McMartin trial: 12 jurors and 6 alternates. All eighteen jurors who reached the jury box were ranked high on their impartiality scale. The important defense strategy had been to select those who had indicated that they were unsure of the trial outcomes unless all the evidence was presented in the trial. Through the use of peremptory challenges and challenge for cause, the defense were able to choose only those from the targeted pool of potential jurors. For example, it is significant to note that all of 12 jurors and 6 alternates had clearly stated in pre-voir dire questionnaires that they were uncertain whether two defendants were guilty of the alleged crime. The response of those selected jurors showed the sharp contrast to the telephone interview results in which almost 98% of potential jurors in Los Angeles said that they were guilty as charged.

What were the jury's proclivities based on their characteristics? In terms of

TABLE 3
Demographic and Attitudinal Profiles of Twelve Jurors and Six Alternates in the McMartin Trial

VARIABLE	FINAL 12 JURORS	EXCUSED[1] JURORS	INITIALLY SELECTED TO JURY BOX	
			12 JURORS	6 ALTERNATES
SEX				
MALE	8 (66.7%)	4 (66.7%)	7 (58.3%)	5 (83.7%)
FEMALE	4 (33.3)	2 (33.3)	5 (41.7)	1 (16.3)
RACE				
WHITE	6 (50.0)	4 (66.7)	6 (50.0)	4 (66.7)
BLACK	3 (25.0)	1 (16.7)	3 (25.0)	1 (16.7)
HISPANIC	1 (8.3)	1 (16.7)	1 (8.3)	1 (16.7)
ASIAN	2 (16.7)	0 (0.0)	2 (16.7)	0 (0.0)
MARITAL STATUS				
SINGLE[2]	2 (16.7)	4 (66.7)	4 (33.3)	2 (33.3)
MARRIED	7 (58.3)	2 (33.3)	5 (41.7)	4 (66.7)
DIVORCED	2 (16.7)	0 (0.0)	2 (16.8)	0 (0.0)
OTHERS	1 (8.3)	0 (0.0)	1 (8.3)	0 (0.0)
EDUCATION				
LESS THAN H.S[3]	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)
HIGH SCHOOL	1 (8.3)	0 (0.0)	1 (8.3)	0 (0.0)
SOME COLLEGE	7 (58.3)	4 (66.7)	8 (66.7)	1 (25.0)
COLLEGE	1 (8.3)	1 (16.7)	2 (16.7)	0 (0.0)
POST-GRADUATE	3 (25.0)	1 (16.7)	1 (8.3)	3 (75.0)
NO. OF CHILDREN				
NONE	2 (16.7)	3 (50.0)	4 (33.3)	1 (16.7)
1 CHILD	3 (25.0)	1 (16.7)	2 (16.7)	2 (33.3)
2 CHILDREN	3 (25.0)	2 (33.3)	4 (33.3)	1 (16.7)
3 OR MORE	4 (33.3)	0 (0.0)	2 (16.7)	2 (33.3)
ATTITUDINAL RESPONSES:				
RAYMOND BUCKEY IS PROBABLY:[4]				
GUILDY	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)
NOT SURE	12 (100.0)	4 (100.0)	12 (100.0)	4 (100.0)
NOT GUILTY	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)
PEGGY BUCKEY MCMARTIN IS PROBABLY:[5]				
GUILDY	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)
NOT SURE	12 (100.0)	4 (100.0)	12 (100.0)	4 (100.0)
NOT GUILTY	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)

1. Those six jurors were excused from jury service during the trial due to illness or job assignments.
2. Never been married.
3. High schools.
4. The question is phrased as: As a result of what you have seen or heard or read about this case, do you think Raymond Buckey is: definitely guilty, probably guilty, not sure/no opinion, probably not guilty, definitely not guilty.
5. The question is phrased as: As a result of what you have seen or heard or read about this case, do you think Peggy McMartin Buckey is: definitely guilty, probably guilty, not sure/no opinion, probably not guilty, definitely not guilty.

racial composition, the initial twelve jurors consisted of six whites (50%), three blacks (25%), two Asians (16.7%), and one Hispanic (8.3%). There were seven

males and five females; eight of the jurors were under 40 years of age and eleven of the jurors had at least some college education. Eleven members of the initial jury belonged to racial and ethnic groups that were found to be less prone to a guilty verdict—Asians, blacks, and whites.

Only one of the jurors was in the ethnic/racial categories identified as being most prone toward conviction—Hispanic and/or Native American. While potential Hispanic jurors were identified as being conviction-prone, this particular Hispanic juror had expressed in the voir dire questionnaire as well as during the voir dire screening session that both Raymond Buckey and Peggy McMartin Buckey were neither guilty nor not guilty unless all the testimony and forensic and material evidence were presented. For example, during voir dire, he stated that his daughter was sexually molested and received psychological counseling by his pastor. While he said that he was more hurt than angered over the incident with his daughter, he stated that "everybody's innocent until proven [guilty]."

The six alternates had somewhat different characteristics; there were four whites (66.7%), one black, and one Asian. The alternates, however, were predominantly male—five out of six. Five of the alternates were less than 50 years of age and all six of them had some college experience and three of them had postgraduate education. With respect to the attitudinal and behavioral characteristics, the overall profile of the alternates indicated greater impartiality than that of the twelve selected jurors.

Thus, the initial twelve jurors and six alternates met the basic demographic, socioeconomic, and attitudinal criteria derived from the statistical analyses. The scientific defense voir dire strategy had successfully selected a group of jurors who appeared to have greater abilities to judge the testimony and court evidence in an open-minded and objective manner. The selection of alternates was also considered to be potentially more important and crucial than the selection of the initial 12 jurors because the defense team anticipated that the trial would last many months and that some alternate jurors might eventually replace original 12 jurors because of various personal and economic reasons that would arise in the future. As it subsequently turned out, the assumption of a lengthy trial was correct and ultimately all six alternates became full-fledged jurors.

During voir dire, the prosecution also received the service of private jury selection consultants to help select jurors in an effort to shape the jury towards one that would convict. They appeared to have relied upon intuitive and subjective selection criteria rather than the systematic and more critical methods of scientific jury selection procedures. With the assistance of scientific jury selection procedures utilized by the defense, the final jury was a well-balanced, unbiased jury with the greater propensity to objectively and open-mindedly evaluate the charges brought against the defendants.

Once voir dire was completed, jurors and their alternates were then assembled. Over the next two and one-half years, the jury was put to the test of listening to evidence, with witnesses being heard, documents submitted, jurors leaving and alternates replacing them.

The Verdict and Aftermath

On January 18, 1990, the twelve jurors acquitted the Buckeys of 52 counts of molestation after deliberating nine weeks over evidence, which had been presented during nearly three years of trial. The jury also reported that it was deadlocked on 13 remaining counts and a mistrial was declared on those allegations. Some of the 13 charges were later pressed by the district attorney against Raymond Buckey. The retrial, however, resulted in a hung jury in August 1990, and the prosecution opted not to seek a future trial (*Press-Enterprise,* 1990). After the verdict was announced, Peggy McMartin Buckey immediately filed suit in the Los Angeles Federal District Court to recoup her losses (Timnick, 1990a). The defendants included: the city of Manhattan Beach, whose police department had sent letters to approximately 200 parents describing the allegations of a single child; Los Angeles County and its former district attorney, who had pressed the case without adequate evidence and possibly for his political goals to help promote his reelection campaign; the Children's Institute International (CII) that had concluded that the children were abused at the McMartin Preschool and had pressured the children to modify their stories to corroborate one another; former CII employee who interviewed children without the proper professional training or license; and Capital Cities-ABC, Inc. along with former reporter Wayne Satz who on February 2, 1984, had created the public panic and made allegations against the Buckeys, based on children's accounts describing dozens of alleged sexual acts at the McMartin Preschool (*Buckey v. County of Los Angeles et al.,* 957 F.2d 652 653, 1992).

In April 1990, Virginia McMartin and Peggy Ann Buckey also filed claims against Los Angeles County, asserting that their lives were ruined because they were unjustly prosecuted (Rohrlich, 1990). And in May 1990, a former defendant, Betty Raidor and her husband Milan Raidor filed a similar suit against Los Angeles County (Timnick, 1990b).

After the trial, nothing much had changed. Reported cases of sexual abuse of young children, for example, had gained broad media attention; nationally reported instances of such sex abuse had tripled from 24,900 in 1980 to 138,000 in 1986 (just before the McMartin trial began), annually rising thereafter; and many social scientists claimed that today's sexual abuse of children had become more pervasive than in the past (Committee on Public Safety, 1987). The 1989 Gallup national survey also revealed that 11% and 18% of males and females had personally known children who had been physically or sexually abused (U.S. Department of Justice, 1991).

Conclusions

This paper described our involvement as jury consultants in the McMartin child-molestation trial in Los Angeles. The McMartin trial was the longest and costliest criminal trial in American history. Our involvement in scientific jury selection of potential jurors in the McMartin trial suggested that when pretrial

publicity exerted significant influence on the general perception of jurors and the resulting trial outcome, the development of juror's profiles and the identification of impartial prospective jurors became a crucial aspect of scientific defense jury selection. The scientific jury selection technique for the McMartin trial has shown effective in developing juror profiles and identifying prospective jurors' partiality and their perception on the probable outcome of the trial. In fact, the pretrial community survey revealed that over 90% of surveyed prospective jurors believed that the defendants had committed the crime in question and, thus, were guilty as charged. Since the survey was conducted in the Central judicial district where the trial was to take place, it was not difficult to estimate the prosecution's confidence in indicting and convicting the McMartin defendants. However, the use of scientific voir dire jury selection was quite effective in creating a ranking scale of jurors' impartiality towards the defendants to assess jurors' biases and their ability to judge the case without prejudice.

While the scientific jury selection method is a powerful tool in influencing jury compositions and potential trial outcomes, there remain important ethical questions for the use of scientific jury selection, perhaps, because, at first glance, the idea of scientific jury selection appears to be antithetical to the juridical practice of picking an impartial body of citizens to judge a case involving a member of the same community. The practice of carefully selecting a jury impartial (or favorable) to the case seems calculated, not to render the justice that the court system is supposed to award, but to provide counsel with a kind of leverage that may have had little or nothing to do with the guilt or innocence of the defendant.

We believe that our actions in this case were completely ethical. While some critics maintain that the legitimacy of the trial and resulting verdicts can be undermined by the use of scientific jury selection, the use of objective, evaluative means of jury selection may be considered to be essential when a fair trial is perceived to be in jeopardy under the traditional method of jury selection. The McMartin trial was a particularly important case since it touched on the very sensitive issues involving both children and sexual abuse. Scientific jury selection was considered to be the only means of securing impartial jurors to try the unpopular defendants and obtaining a fair trial.

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Notes

1. In Sonoma County, California, for example, Ellie Nesler shot to death at the courthouse the man accused of molesting her son and three other boys. Since the 1993 shooting, two trust funds were established to her, a song was written about her, and she received worldwide attention and sympathy (Quinn, 1993).
2. Peggy McMartin Buckey who later filed the suit alleged that several defendants had improper motives that led them to pursue the McMartin case despite the lack of factual foundation for doing so. For example, the Children's Institute International, which conducted interviews of children, needed to unearth a scandal to save its business from bankruptcy; Los Angeles District Attorney Robert Philibosian needed ammunition for an upcoming election battle; Capital Cities/ABC wanted to sell a sensational story and was willing to go beyond the bounds of responsible journalism in which Capital Cities/ABC created rather than simply reported the news; and all of the defendants were in conspiracy to disclose the McMartin affair prior to Buckey's indictment (*Buckey v. County of Los Angeles. et al.*, 57 F.2d 652 653, 1992).
3. While the official investigation was proceeding, parents of the supposedly abused youngsters saw suspects lurking everywhere. The parents also were frustrated by what they viewed as slow and inept police investigation procedures. Some parents thus transformed themselves into amateur detectives. Many were seen diligently rummaging through neighbors' garbage, trying to identify suspects in supermarkets and restaurants, taking down license plate numbers, following cars, and driving their children through various neighborhoods—expeditiously in search of evidence of what they believed was a wide-reaching conspiracy of pedophiles, pornographers, and satanic cultists (Butler et al., 1994). They harassed anyone remotely connected with the case, too, gathering information on people who had not been charged. For example, they spent their time driving by each of new locations on a list provided to them by the District Attorney to see if any of these sites rang a bell with their children. They quizzed their youngsters and gave them rewards for each new name they were able to elicit as a suspect. However, no forensic or material evidence connected to the McMartin defendants was ever discovered as results of the search or raids.
4. Terms such as "young victims," "tormented secrecy," "the assailant" were used with an absence of qualifying adjectives such as "charged" or "alleged." Most of the press in the Los Angeles area wrote about the case using similar terminology (Shaw, 1984).
5. Defense attorney, Dean Gits argued that evidence against Peggy McMartin Buckey was no different from that against five other teachers no longer facing charges. He noted that "[T]here is no material difference between the six . . . after reviewing the children's testimony, videotaped interviews with therapists and other information available to the prosecution and defense." Similar arguments on behalf of defendant Raymond Buckey was presented to the court to consider dismissal of the case (Timnick, 1987a).
6. Peggy McMartin Buckey was free on $295,000 bail. After staying in jail almost five years, Judge William Pounder moved to cut the bail for Raymond Buckey's bail in half to $1.5 million in December 1988 (Timnick, 1988). Raymond Buckey was finally released in February 1989, after Judge Pounder determined that Raymond Buckey met the $1.5 million bail by pledging real estate worth twice that amount, as required by law (Himmel, 1989).

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