

JURY AND JUDICIAL DECISION-MAKING: TOWARD A PROCESSUAL MODEL

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The process whereby juries and judges determine verdicts has remained essentially unexplained despite several attempts by social scientists to establish the determinants of these decision-making behaviors. Prior studies have not related non-legal factors such as race, sex, social class and other similar variables of the social actors in the courtroom in combination with a measure of the testimony and evidence presented during the trial to the resolution of the verdict. Therefore, a major intervening variable has not been controlled. This paper presents a direct observational procedure for quantifying information emanating from the testimony and evidence presented in the courtroom to relate it to the outcome of the trial.¹ The procedure places emphasis on measuring observable variables. The current literature focuses upon non-observables although a few researchers have utilized systematic direct observational procedures to study the courts (Jaros and Mendelsohn, 1967; Lefstein, Stapleton and Teitelbaum, 1969; Mileski, 1971; and Suffet, 1969).

It is our contention that this tendency to focus on non-observable variables is not a good strategy for approaching the study of verdict decisions and that attention to observable variables occurring prior to the deliberation of the jury (or the judge in a bench trial) is a much more logical and potentially effective starting point for developing a causal theory of verdict outcomes.

PRIOR RESEARCH

Before proceeding to an elaboration of our research strategy it is necessary to examine prior research efforts with an eye toward the shortcomings of these studies. The literature on verdicts and jury deliberation can be divided into four types.

Simulation Studies

Over the last decade several simulation studies have been undertaken.

The biggest question as to their usefulness concerns their generalizability or "realism." Many studies (Goldberg, 1970; Stephan, 1974; Boehm, 1968; Mitchell and Byrne, 1973; and Kaplan and Simon 1972) rely purely on written information regarding trial procedures, testimony and evidence in a hypothetical case, usually only a few paragraphs in length, which is read by the subject-juror and upon which he is supposed to base his verdict decision. Sometimes these so-called trials involve nothing more than cheating on or stealing exams.

Stephan's two page synopsis of a murder trial seems to be the best of these written "trials." None can compare with the complexity of the trial proceedings. Several different social actors with varying ethnic, social class, legal experiential and criminal backgrounds are the focal point of this setting. Verbal and non-verbal information is communicated through speech, cues, gestures and clothing. The judge is ever present and capable of intervening at any point and the defendant will suffer real consequences if convicted and the jurors (or judge) know(s) this.²

Perhaps the greatest fault of the simulation studies is their general lack of consideration of jury deliberation. The psychologists are those most often responsible here and, perhaps due to cues from sociological theory, two of the sociologists, Simon and Stephan, attempted to build this aspect of the trial process into their study. Simon actually taped deliberations of the twelve person juries she had set up, while Stephan merely had some groups of three among her "deliberators." Typically, however, each "juror" decides a "case" on an individual basis without the benefit of interaction with other "jurors."

One can readily see, then, that simulation studies lack direct comparability to jury trials and therefore do not provide an avenue toward an empirically grounded causal model of the verdict decision-making process.

Judge-Jury Attitudinal Studies

Authoritarian attitudes and their effects upon verdict in criminal cases have been studied by three of the aforementioned jury simulation researchers. Boehm found that "authoritarians," classified according to scores on her Legal Attitudes Questionnaire (LAQ), were overly "tough" and tended to make errors of convicting the innocent. The opposite relationship was found for "anti-authoritarians." Jurow developed a Capital Punishment Attitudes Questionnaire with two subscales and related it and Boehm's LAQ to verdict decisions. The LAQ turned out to be the best discriminating variable between guilty and not guilty verdicts (Boehm, 1968).

Mitchell and Byrne (1973) utilized an authoritarianism scale and also controlled for similarity of attitudes between "juror" and defendant. They found that the interaction between attitude similarity and authoritarianism significantly predicted certainty of guilt, i.e., "authoritarians" were less certain of guilt in the similarity condition, but "nonauthoritarians" certainty was not affected by similarity.

As for attitude surveys of jurors, a study by Grisham and Lawless typifies the problems involved with this approach. These authors sent questionnaires to jurors to determine their evaluative reactions to different aspects of the trial. Unfortunately about fifty percent of this sample did not return questionnaires. Responses to the items by those who did return questionnaires seemed to indicate general satisfaction with courtroom and jury procedure. It seems highly possible, however, that jurors dissatisfied with the judicial process may have been those least likely to return questionnaires. X

Reed studied jury trials in Baton Rouge, Louisiana for the period 1959 through 1961, analyzing a total of 36 trials and 432 jurors. Fifty-six percent of the juror population responded to their questionnaire survey.

Reed attempted to "reconstruct" some aspects of the deliberation process. Of petit juror respondents, "...the amount of deliberation ranged from 'a great deal' to 'none'...50 percent checked 'some,' 'very little' or 'none'; the other 50 percent thought a 'great deal' of deliberation had taken place" (1965:364).

Juror voting (as to guilt) was significantly related to birthplace, previous jury service and socio-economic class. Prior jury service and a birthplace in the Anglo-Saxon northern part of the state were directly related to guilty verdicts as was relatively high social status (based on occupation and education). "No associations were found between vote and age, marital status, religious preference and church attendance" (Reed, 1965:367).

Jurors of low socio-economic status tended to vote not guilty for both low and high status violators of the criminal code. In sixteen cases the jury sided completely with the state. Results show that only a portion of jury deliberation time is spent on the facts or the evidence in the case. Most of the time is spent conversing about trial functionaries or matters wholly foreign to the trial.

Low response levels are a major problem of attitude survey studies and also all of the potential problems regarding the accuracy of self-report data are present in these studies.

Nagel related background characteristics and attitudes of State Supreme Court judges to the non-unanimous decisions of these judges. He mentions that non-unanimous cases comprise only twelve percent of all the cases handled by the courts and that the data are in this form because they were originally used for the purpose of comparing the judges within each state supreme court. Another methodological or statistical problem is that Nagel's dependent variable is whether or not each judge decided in favor of the defense more often than the average for judges in his court and furthermore, for some

unexplained reason, Nagel dichotomized all of his independent variables.

Another questionable statistical practice is the computation of the individual zero-order correlations among the variables from vastly different size samples.

If Nagel had used the deviation of each judge from his peer group average as his dependent variable and the original interval level scores as his independent variables one would not have to ponder to such a degree the effect that the categorization of his variables had on his results. In a step-wise regression, Nagel's dichotomized independent variables explained 43 percent of the variance although he points out that the relationships between the variables dropped to a lower level when he included judges serving on courts that were homogenous with regard to the characteristics being measured. (He does not say to what extent the relationships decline, however). Political party (Democratic or Republican) and religion (Catholic versus Protestant) proved to be the strongest determinants of whether the judge was pro-defense. Democrats and Catholics were more in favor of the defense.

It must be recognized that Nagel's method of controlling for the content of the cases and the variations in laws from state to state is very ingenious. Through this technique he was able to control these two process related elements but he did not attempt to determine the effect that variation of these variables might have on verdicts.

The greatest problem of these attitudinal studies is the weakness of the pencil and paper format and of trying to predict behavior from internal attitudinal or personality states without theoretically and empirically accounting for the intervening process between attitude and behavior and/or the point at which the attitude becomes salient as a cause in the process. This approach is entirely "static." This criticism has been voiced by McPhail regarding studies

of political violence, but is equally applicable in the verdict decision-making context.

Court Record Studies

Court records have been utilized by researchers to provide data on judicial outcomes and the variables which allegedly determine these outcomes. Typically, background (non-legal) characteristics of defendants are linked to outcomes.

Forslund (1969) gathered data on approximately 2,293 criminal arrestees from 1958-1961 in Stamford, Connecticut finding racial differences in conviction as well as age and class or occupational differences (for whites only). Black males were convicted at a rate of 70.5 percent as opposed to 59.9 percent for whites. Inexplicably, those persons not in the labor force (apparently including those unemployed, especially since these are all male defendants) are not included in the class-occupational analysis.

Forslund mentions that whites have more charges dropped than blacks and that this accounts for the racial conviction differentials. Rather than attributing this to racial discrimination, however, he contends (without any data concerning his own sample) that blacks generally have greater crime rates, recidivism rates, and prior records than whites and that this probably accounts for why blacks are convicted on more charges than whites. He fails to mention the possibility that more extensive prior records of blacks may merely be the result of prior discrimination against blacks by the police or courts.

However, in this study, variables relating to the actual judicial process involved which mediate between background characteristics and dispositional outcome are not taken into account. This problem is characteristic of most or perhaps all "court record" studies.

Adler has studied the effects of the background characteristics of

criminal trial defendants and jurors on verdicts in a sample obtained from the Montgomery County Criminal Court of Pennsylvania for the period January 1965 through May 1967. Fifty not guilty verdicts were matched with fifty guilty verdicts according to age, sex, race and offense. Adler found no significant difference in (NORC) socio-economic levels of not guilty defendants as opposed to guilty defendants, however, juries who found defendants guilty had significantly higher mean socio-economic levels than those who found defendants not guilty.

Furthermore:

...discrepancy in occupational status between juror and defendant is related to trial outcome. High discrepancy between defendant and jurors is more likely to lead to a conviction than a trial situation in which low status discrepancy occurs. This relationship holds under various configurations of occupational level among jurors and defendants (Adler, 1973:10).

Adler's examination of the discrepancies between the socio-economic status of jurors and defendants is an important contribution to the verdict decision-making literature, but as in Forslund's work, no judicial process-related variables were taken into account in her study.

Gerard and Terry (1970) collected a random sample of felony cases from eight Missouri counties. Only those three counties without missing data problems were analyzed. Generally, more than twice as many blacks were represented in the authors' docket studies than were present in the total population of the county. Results regarding bail amount and race were equivocal. Also, similar proportions of blacks as compared with whites received preliminary hearings. As regards disposition, there were virtually no percentage differences in charges dismissed by nolle prosequis or on motions

according to race. Furthermore, both races pleaded guilty an equal proportion of the time. In the nineteen jury trials studies, only 33 percent of the whites tried were found guilty as opposed to 77 percent of the blacks. The type of defender apparently made little difference in jury verdicts according to the findings of these authors. Although bail and preliminary hearing outcomes were considered along with verdict dispositions, the actual trial process was again not given consideration as a variables affecting verdict outcomes.

Burke and Turk (1975) suggest a process-oriented model for analyzing post-arrest dispositions based upon those techniques developed by Goodman concerning log linear analysis of hierarchical models. Although their sample is a twenty percent random sample of adults arrested in Indianapolis in 1964 (N=3,941) the authors present their results as exploratory.

Unfortunately, in their model, the authors did not account for several important aspects of the judicial process which intervene between arrest and disposition. The bond-bail determination proceedings and pretrial hearing or grand jury indictment are not considered. The process whereby the police apply criminal charges to the defendant's actions as well as the district attorney's discretion to drop charges, etc. could have also been brought in, but were not. Certainly the authors could not have been expected to cover "everything" in their first attempt at comprehensively studying the criminal justice process, but these deficiencies should be pointed out nonetheless.

Once again, the major specification error of not considering the supposed legal basis for disposition decisions (where a trial occurred)--the testimony and evidence presented during the trial was made. The effects of the omission of this variable on the parameters of the other variables (which were related to disposition in the "ECTA" analysis) cannot be determined.

"Anecdotal" or "Qualitative" Studies

"Anecdotal" or "qualitative" studies consist primarily of informal observations, reflections, "exposes," "memoirs," etc. of criminal justice practitioners, sociologists, criminologists and political scientists. The observations made are generally not systematic enough to be considered scientific explanations. They do aid in the development of scientific theories or models and may come in to play at advanced stages of the causal modeling process when one has an effective causal model explaining a good portion of the variance in his dependent variables. However, no quantitative data is collected and the empirical observations made are not recorded systematically. The procedure employed could be termed "impressionistic." Few, if any objective criteria for coding or recording data are made explicit. Selection bias is a great problem. A danger exists in that the observer may record only those phenomena supportive of the observer's particular theoretical or perceptual "set"--based on his accumulated experiential knowledge and ignore those phenomena or cases which would negate his/her theory or "world view." The above mentioned criticisms do not apply to all studies, as some studies attempt to build in procedural safeguards, however, this approach alone does not provide an avenue toward building scientific theory. Examples include the scholarly efforts of Holmes, 1881; Pound, 1942; Llewelyn, 1960; Frank, 1950; Botein, 1952; Botein and Gordon, 1963; Sudnow, 1965; and others.

In sum then, although the prior research contains several interesting and informative studies, the recurring weakness of the lack of consideration of the consequences of the actual process involved--the dynamics of the criminal justice process, greatly constrain the scientific explanatory power of these works. This is not to say that we cannot learn from the prior literature, indeed we can learn a good deal from all the different types of studies

reviewed above. However, it is our purpose to attempt to overcome limitations in the prior research in the criminal trial context and to this end we will propose an alternative strategy for studying the courts.

AN ALTERNATIVE RESEARCH STRATEGY

The authors consider the study of observable phenomena/behavior to be crucial in developing a causal model of the operation of the judicial process. Rather than continuing to study the most inaccessible part of this process--the jury deliberation--a more logical, potentially effective, and "optimal" research strategy would be to study the observable portion of the process first, determine how well this portion of the process explains verdict decisions and then studies with the effects of jury deliberation on verdict, but only if necessary. The jury deliberation could, for the present, be considered a "black box."

THE THEORY

Two key theoretical concepts employed are called "designations" and "prescriptions." Designations are "...activities which assert that something exists." Prescriptions are "action specifications," indicating what activity is to be taken regarding some designated object. Evaluations are considered as prescriptions essentially being "...activities which request doing or not doing" (Stewart, 1969). Praising a behavior is an indication that the behavior should continue (in its appropriate context) while decrying a behavior is an indication that the behavior should be stopped or another behavior be undertaken. When several competing prescriptions are presented toward a designated object by different persons specifying different types or degree of behavior to be taken by an individual, his behavior becomes problematic. How the individual resolves this problem has long been a focal issue in social psychology.

The theory utilized has come out of the Woelfel-Haller (1971) research on educational and occupational aspirations, where the expectations of significant others, for an individual, were averaged and found to be highly related to that individual's aspirations. From these basic results, Woelfel has developed a more general theory where the amount of information is aggregated to predict the attitudes and behavior of an individual. The theory denies a discrete-choice notion which would claim that if an individual is confronted with several alternative prescriptions from various persons he will choose the behavior advocated by one of the persons on some basis such as his similarity to this person, the power the person holds over him, the person's credibility, etc. Rather, all such factors are considered by the individual and his response will be that which minimizes the divergence from all stated expectations. In the trial situation, the judge (in a bench trial) is the person receiving information from different sources (prosecuting attorney, defense witness, etc.) recommending different degrees of behavior toward the defendant. He will make his decision based upon the aggregate of that information (the balance of prescriptions).

The theory is also applicable to the decisions of juries. The jury receives information in the same manner which is aggregated to reach a decision. Therefore, the balance of prescriptions will also be a good predictor of the ensuing decision of verdict in a jury trial. However, only some of the information presented is, by law, considered relevant to judge or jury verdicts. Clothing,³ sex,⁴ race,⁵ and stated occupation⁶ constitute non-legal factors which should have no relevance to the judge or jurors' decision.⁷

THE BALANCE OF PRESCRIPTIONS MEASURE

The balance of prescriptions which measures the testimony and evidence presented during the trial will now be discussed. In the overall balance of

prescriptions, prescriptions were coded toward various social objects (prosecuting attorney, prosecution witnesses, prosecution evidence, defense attorney, defense witnesses, defense evidence, and defendant). It was determined how a negative or positive prescription made toward each of the social objects would affect the defendant; then each positive or negative prescription was weighted as such, i.e., a negative prescription toward the prosecution evidence, attorney or witnesses would actually be a positive prescription toward the defendant. Categories for the defense were scored directly (e.g., a positive prescription toward a defense witness is positive toward the defendant). The total number of positive and negative prescriptions was computed for all observers used at the trial, then summed, and divided by the number of observers yielding the overall balance of prescriptions averaged over all observers. Prescriptions in category 1 under positive and negative prescriptions were scored as plus or minus 2 since they seemed to very obviously stand out as being more important than the other prescriptions. Regarding designations, although they were not recorded as such, they indicate the category of social actor to which ensuing prescriptions refer.

Concerning what a prescription is, we are guided by Stewart's theoretical framework. Verbal prescriptions either declare that a specific action be taken or evaluate an object and thus less specifically imply action be taken toward the object. We felt that it is reasonable to assume that one can code the prescriptions according to how they would affect the jury and judge as either positive or negative to the social object. This is rather a gross judgment in most cases. Living in a common culture and sharing a common language with the jurors and judge allows an observer to make this judgment accurately. We have categorized types of positive and negative prescriptions and examples of these types in the following manner:

POSITIVE PRESCRIPTIONS

1. Dissociation of defendant with the alleged crime--"Robert Nelson was at my home when the crime took place."
2. Association of defendant or witness with desirable behavior, quality, state, person, or object (education, experience, training, qualification and situational expertise). "He has been working for me for the past five years." "He is a good father." "He has cooperated fully with the police." "I have a master's degree in chemistry." "I had a clear, unobstructed view of the demonstration."
3. Specification of positive behavior to be taken toward the defendant --"Your Honor, I think that the first two charges against the defendant should be dropped."
4. Sustaining or accepting an attorney's objection of motion.
5. Witness affirms, identifies, or verifies physical evidence (exhibits).

NEGATIVE PRESCRIPTIONS (Stricken testimony notwithstanding)

1. Association of the defendant or witness with the alleged crime--"I saw the marijuana removed from his pocket."
2. Association of defendant or witness with undesirable behavior, quality, state, person or object--"She has been on welfare for the past three years." "I could smell liquor on his breath." "His wife is a prostitute." "I saw a gun in his glove compartment."
3. Specification of negative behavior to be taken toward the defendant--"I recommend that the jury find the defendant guilty as charged."
4. Overruling or denying of an attorney's objections or motions;

negative statements about an attorney's behavior--"I consider this improper cross-examination."

5. Witness states he cannot identify physical objects (exhibits); lawyer brings out inconsistency in opposition and/or witnesses' testimony.

THE SAMPLE

The sample includes 29 felony and misdemeanor trials⁸ collected over the time period of March 1, 1972 to July 14, 1973 from a county court in Illinois with a population of about 100,000.⁹ Each trial usually lasted from three days to one week. In all cases, the defendants pleaded not guilty and a full trial (from opening arguments through closing arguments) was observed. Both jury trials and bench trials were included in the sample. The number of prescriptions made at the trials ranged from 20 to 1,300, so one gets some idea of the task involved in obtaining cases for the sample.

RELIABILITY

Reliability was computed for each pair of observers at trials with more than one observer and are quite high (see Table 1). They are also quite high at a per trial level (see Table 2).

--Tables 1 and 2 about here--

It cannot be denied that at some point individual specific, subjective elements may enter into coding decisions. To mediate this problem, multiple observers were used whenever possible and the mean balance of prescription scores from all observers was used.

RESULTS

The results of Model I will now be discussed. Frequency distributions are presented in Table 3 and correlation coefficients in Table 4.

--Tables 3 and 4 about here--

Model I results will be discussed equation by equation and are in Table 5. Certainly the most crucial equation in terms of legal and non-legal dichotomy is the verdict equation.

--Model I and Table 5 about here--

Results show that the race, age, and dress of the defendant are not significantly related to the verdict. Socio-economic status (SES) is related to verdict such that high status persons are more likely to be found not guilty than low SES persons. This finding is statistically significant. It seems that, regarding the personal characteristics of the defendant, the verdict decisions of juries and judges are not directly affected by the race, age, or dress of the defendant. SES has a strong positive direct effect upon verdict, however, which indicates a bias against lower class defendants. Thus, one non-legal factor, and a very important one, does affect verdict decision-making.

Three legal factors expected to affect the verdict were the type of crime with which the defendant was charged, whether or not the old or the new district attorney was in office and the balance of prescriptions. Type of crime and verdict are not significantly related. The district attorney variable was negatively related to verdict. The new district attorney and staff were more effective in obtaining guilty verdicts than the prior administration. This variable was statistically significant. As predicted, a positive balance of prescriptions increased the likelihood that the defendant be found not guilty. This relationship was statistically significant at the $p < .05$ level. The t-ratio of 1.938 and regression coefficient of (.485) were the largest in the equation and indicate that the balance of prescriptions had the strongest effect upon verdict. The multiple correlations ($R=.532$) indicates that these

variables accounted for 28 percent of the variance in the verdict, although the entire equation is not statistically significant, since the value of F is only 1.184. This is probably due to the large number of variables relative to sample size. The equation in Model II is statistically significant at the $p < .05$ level. In Model II, a revision of Model I, all the paths with t-ratios less than 1.605 were deleted. The strength of the overall relationship is not greatly affected by the deletion of race, dress, age and type of crime and the new R equals .497.

--Model II about here--

In Model II, SES and the balance of prescriptions explain 22 percent of the variance. The SES coefficient is .374, the balance of prescriptions coefficient is .294, so that the non-legal factor slightly dominates the legal one.

The balance of prescriptions has the strongest relationship with the independent variables. The multiple correlation in Model I is .813 and in Model II .738 and both are statistically significant. Race, whether the defendant testifies, and bond, all non-legal factors, have no significant effect on the balance of prescriptions. Age has a significant and positive effect on the balance of prescriptions indicating that older people tend to have a more favorable balance of prescriptions while type of defender has a strong, statistically significant negative relationship to the balance of prescriptions.

Legal factors included the type of crime and whether the new or the old district attorney was in office. Neither of these factors significantly affected the balance of prescriptions. In Model II, the trimmed model, the defendant's age and the type of defender all were significantly related to the balance of prescriptions as in Model I. The type of defender variable had the strongest effect on the balance of prescriptions, with a -.740 regression

coefficient. The next strongest was age with a .317 coefficient. Clearly, with a direct impact of this magnitude upon balance of prescriptions, the indirect effect of type of defender through balance of prescriptions upon verdict must also be strong. Thus, having the public defender as one's attorney is likely to (indirectly) lead to a verdict of guilty.

Sudnow's discussion of the public defender's role suggests that he is expected to direct most of his clients toward a plea of guilty rather than not guilty and a trial. He is likely to feel resentful if he has obtained a good "bargain" which is rejected by the client. The public defender will represent the client in court, but his case is not likely to be strong (Sudnow, 1965). Another factor is the lack of resources of the public defender in terms of time and staffing relative to the prosecutor. Often public defenders do not prepare a defense until handed the "file" on the defendant just before the trial. Consequently, the "defense" is impromptu and often ineffective. This is a reflection of the burdens on the public defender's time and resources. A low salary and over-abundance of clients may serve to destroy the public defender's motivation to do a good job.

Defendant's age is positively related to the balance of prescriptions. Testifying enhanced the positiveness of the balance of prescriptions as predicted. Also, it was predicted that younger persons would get more sympathy in terms of a higher positive balance of prescriptions than older persons; the opposite was true. Both were significant at the $p < .05$ level.

In the equation where whether or not the defendant testifies was the dependent variable, race is significantly and negatively related to testifying; meaning that blacks are more likely to testify. Perhaps this strategy is used to elicit testimony from black defendants which may bring them sympathy from the jury or judge. SES, age, type of crime and type of defender are not signif-

icantly related to whether or not a defendant testifies. Race was carried over into Model II with an R of .323.

In the Model I dress equation, race, age, type of crime, type of defender and bond have no significant effect on dress while SES has a strong significant positive effect upon dress indicating higher SES persons were more formally dressed as predicted.

In Model II, all variables except SES were trimmed due to lack of significance. SES has a strong positive effect (.435) upon dress indicating that it alone explains approximately one-fifth of the variance in dress.

The variables included in the Model I type of defender equation were race, SES and age. Regression coefficients indicated that being black, of low SES or advanced years is associated with representation in court by the public defender. None of these variables is significant at the $p < .05$ level, however.

Interestingly, any variable that has a statistically significant relationship with type of defender will automatically indirectly affect verdict through the type of defender-balance of prescriptions-verdict causal chain. A likely candidate for such a relationship, personal income, unfortunately could not be measured in this study.

Whether or not the defendant was able to post bond was well explained in Model I. The amount of explained variance in this dependent variable was around 57 percent. Race, SES and type of crime had no significant effect on meeting bond while the district attorney variable and the type of defender variable were statistically significant and indicated defendants were better able to make bond under the old district attorney and if they had a private attorney. In Model II, only the latter two variables were included and the amount of explained variance declined only 4 percent to 53 percent. The type

of defender variable had a stronger effect (-.711) than the district attorney variable (-.552). It is assumed that the district attorney variable measures, to some degree, input of the prosecution into the bail determination. These findings reflect the importance of interaction between the two attorneys in determining bail (suffet, 1969).

CONCLUSION

Clearly the most important finding of this study is that only SES and the balance of prescriptions significantly affect verdict. The race, age and dress of the defendant, level of criminal charges against him and a change in district attorneys do not significantly affect verdict. The SES coefficient reflects the causal effect of this variable upon the verdict controlling for the balance of prescriptions--something that, to the authors' knowledge, has never been measured before. The fact that SES has such a strong effect in the courtroom can be viewed as evidence supportive of a proportion in the conflict model of the criminal justice system as posited by Chambliss and Seidman. Clearly, our results bear upon Chambliss and Seidman's proposition 14 which states: "Where laws are so stated that people of all classes are equally likely to violate them, the lower the social position of an offender, the greater is the likelihood that sanctions will be imposed on him" (1971).

Findings actually are mixed, however, since race, age, and dress --other indicators of status and non-legal factors-- had no significant effects on verdicts. This is an indication of equity in the trial process.

These findings roughly coincide with the more recent finding of other studies of the courts that have examined conflict propositions. Results do not seem to be either consistently in favor of or opposed to conflict propositions.

Bernstein, et al. (1977a:377) in studying charge reductions in plea-bargaining cases found that "white defendants are more likely to receive better

reductions than blacks" and that age has an effect but also that sex and level of education have no statistically significant effects. Concerning the severity of disposition in these cases race, sex and age seem to have an effect, but education has no effect.

Bernstein, et al. (1977b:754) found that "age, education, employment stability, marital status, and race have no effects on the first two societal reaction decisions [dismissal and adjournment in contemplation of dismissal] and only small effects on the third societal reaction decision." Results concerning the third societal reaction decision--sentence severity showed that race and time employed prior to arrest did have effects on outcomes. Myers and Hagan (1979) in an excellent study (which did, to a certain degree, examine evidentiary matters) found that defendant age and racial composition of the case (i.e., black defendant versus white victim, white defendant versus black victim, etc.) affected the decision to prosecute a case fully but that sex, and victim employment status had no effects. They also found that sex, age, and victim employment status affected the decision of whether or not to go to trial, but that racial composition had no effect.

Other studies have demonstrated more clear cut results but they vary in direction. Lizotte (1978) found considerable support for conflict propositions by looking at the indirect effects of non-legal factors. On the other hand, Hagan (1974), Burke and Turk (1975), and Chiricos and Waldo (1975) find virtually no support for the conflict theory.

The fact that results are mixed leads one to the conclusion that more research is needed to resolve the issues involved. Further, variables such as geographic location and other structural-level demographic factors may come into play to influence the relationships between variables. This would be an indication that one cannot make general statements about entire nations'

criminal justice systems, but that more limited statements can be made.

A finding of great significance in this study is the strong effect of the balance of prescriptions upon verdict. The fact that this theoretically predicted relationship holds is a form of validation of the testimony measure used here. Furthermore, the fact that the balance of prescriptions was so predictable; i.e., when introduced as a dependent variable had such a strong relationship with the independent variables, is also an indication of validity. Perhaps this operationalization of the balance of prescriptions will provide a strong foundation for building more improved measures of the testimony and evidence presented in the courtroom. The effectiveness of direct observational techniques for studying the courts demonstrated in this study hopefully will bring sociologists out of their "armchairs" into the courtroom to meaningfully study this "real world" phenomenon.

Another important finding is the strong relationship between the type of defender and balance of prescriptions which indicated the public defender was likely to present a weak case relative to that presented by a private attorney. The direct relationship between the balance of prescriptions and verdict means that through the causal chain from defender to balance of prescriptions to verdict, having the public defender as one's attorney causes the defendant to be convicted more often than if he were represented by a private attorney.

In the future, more data can be obtained so that effects of other variables not mentioned to this point could be computed to get an accurate reading of effects of legal versus non-legal factors upon verdict. Background characteristics of juries and judges could have some effects. The procedure developed by Adler concerning SES discrepancies would certainly be of relevance to future analysis. Also, the model developed here could be used to predict

first ballot voting by juries which could then be incorporated into the model to predict verdict outcomes.

Another possibility is to measure the outlets or inputs of SES and race in the courtroom other than through stated occupation. Demeanor, may be another source. It could possibly be that content-wise, the low SES defendant's testimony may elicit sympathy, while the "form" of the presentation of the testimony may present the defendant in an unfavorable light and that the effects of form may outweigh "content." Background characteristics of witnesses and attorneys could also be considered. Hopefully this paper will provide a solid basis for and motivation toward future inquiry along the lines suggested herein.

APPENDIX

Model I--Hypothesized Relationships

The six endogenous variables generated a six equation theoretical model whose specification was based upon the wisdom accumulated in the prior literature on verdict decision-making and on the observations and intuitions of the authors. In the verdict equation, the personal characteristics of race, SES, age and dress were predicted to affect verdict (based upon prior literature mentioned in our theory section) such that blacks, low SES persons, older persons, and those less formally dressed would be more likely to be found guilty. The type of crime was predicted to affect verdict in such a way that jurors would be more reluctant to find the defendant guilty when charged with a very serious crime for which he is likely to be imprisoned for a long period. The variable accounting for the change in the district attorney after the county election of 1972 was expected to affect verdict, because a new district attorney may cause a change in the criteria determining which cases are brought to trial as opposed to which have the charges dropped or which are plea bargained. He may also affect the degree of preparation of cases by his staff due to his higher (or lower) standards regarding this matter. These changes definitely could affect the types of verdicts rendered by judges and juries deciding cases under the new regime. The balance of prescriptions, of course, was predicted to be positively related to verdict.

It was expected that more formal clothing would have a positive effect on the verdict since jurors and judges are generally white, middle class, and over thirty years of age and it was felt that this mode of dress would create a favorable impression on them. Verdict was scored as either zero (guilty), one-half (a hung jury) or one (not guilty). The balance of prescriptions was expected to be positively related to verdict.

The variables posited to affect the balance of prescriptions were the race and age of the defendant, whether he makes his bond, the type of defendant in the case, the type of alleged crime, which district attorney was in office, and whether or not the defendant testifies. Being black or older, not making bond, having the public defender as an attorney, being charged with a serious crime, and not taking the stand were all associated with an unfavorable balance of prescriptions. Direction was not predicted for the district attorney variable.

The predictions concerning race and age have been discussed. Not making bond can effect the balance of prescriptions in that being in jail can limit the defendant's ability to talk to and solicit witnesses for his case. The type of defender, as well as the prosecutor variable, influences the balance of prescriptions through opening and closing arguments and through questions which elicit the testimony from the witnesses thereby indirectly affecting verdict. Following Sudnow, it was predicted that being represented by the public defender would negatively affect the balance of prescriptions. Kalven and Zeisel, among others, have stated that testifying is likely to be favorable to the defendant. The type of crime may affect the balance of prescriptions in that when the defendant is charged with a more heinous crime the prosecutor's description of the details of the act may increase the negative prescriptions even though the defendant is supposed to be assumed innocent until proven guilty. That is, the judge or jury may associate the criminal acts with the defendant merely because the prosecutor is directing the details of the responsibility for the act toward the defendant.

In the equation determining whether or not the defendant testifies, being black or of low SES was expected to inhibit testifying. Age was thought to affect this decision, but no direction could be specified. The type of crime

was thought to affect this decision in that the defendant would be less likely to testify when charged with a serious crime. Type of defender was thought to affect this decision since the attorney would be directly involved in making it.

Dress was predicted using six variables. Race was thought to affect dress in that different races with different cultures generally have different styles of dress. SES should directly affect dress in that those with higher SES have more economic resources with which to purchase formal attire, and since they tend to wear it when at work, are more comfortable and relaxed when wearing it. Older people also tend to dress more formally due to changes in style and taste over the years. The type of crime should affect dress, since in serious crimes where the defendant has much to lose, he may dress more formally hoping to favorably affect the judge or jury. It was thought that having the public defender may cause the defendant to dress informally in that the public defender may have less at stake in terms of winning or losing the case than a private attorney. A defendant who cannot make bond will have less access to his "best clothing" than one who is free on bail and a public defender may feel less inclined to provide access to it than a private attorney.

The type of defender equation contained the personal characteristics variables of race, SES and age. The black and poor were expected to get the public defender more often, for obvious reasons. No direction was predicted for age although it was expected to be related to type of defense counsel since it may be a factor in indigency determinations.

The variables expected to be related to whether or not the defendant meets his bond were race, SES and age of the defendant (blacks and low SES persons were expected to have a harder time making bond, while no prediction of

direction was made for age), *and* the type of crime (obviously the more serious the crime, the higher the bail and the lower the chances of making it). The type of defender obviously affects the process as does the prosecutor (indicating that a change in the district attorney may affect bail outcomes) since they interact with the judge to a certain extent in bail hearings. Private attorneys were thought to be more effective in helping the defendant to get a reasonable bond set and also subsequently to make that bond. Articles by Suffet, and Ebbesen and Konecni (1975) provided the major basis for these theoretical statements of relationship.

FOOTNOTES

¹The focus of this study is primarily exploratory for several reasons. First, to our knowledge no prior study has attempted to quantify the testimony and evidence presented at criminal trials, so a measure had to be developed without the aid of past research. Secondly, the resources of the researchers were limited so that only a relatively small sample size could be obtained despite a great deal of time and effort being expended by the authors. Also, only a limited number of observers could be used at each trial. Thirdly, it was not possible to gather a completely random sample due to the interaction between the variables relating to the manner in which cases are assigned to various courts in the county studied and the time limitations of the observers. Because of these limitations, results are presented as tentative, although they are still the first of their kind in terms of their eliminating the specification error of not controlling or accounting for the effects of testimony and evidence on verdict outcomes.

²Borgatta and Bohrnstedt (1974) in discussing limitations on generalizability in social psychological experiments mention the problems involved when the experimental stimulus is "stronger" or more extreme than that which occurs in real life situations (1974). In jury "simulation" studies, the problem is that the experimental stimulus is "weaker" than that presented by a real trial with a real defendant.

³Dress was coded as either formal ("1") or informal ("0")--formal for men meaning the wearing of a suit and for women being attired in a dress or skirt-blouse outfit. Sport coats for men, pantsuits for women, and other dress styles were considered as informal apparel.

⁴Sex could not be used as a variable in this study because there were only three cases where females were on trial.

⁵Race was scored as either "0" (black) or "1" (white). No other racial types were present in the sample.

⁶Occupation was measured on North-Hatt SES scale.

⁷The hypothesized relationships among all independent and dependent variables in Model I--the initial causal model are presented in the Appendix on page .

⁸Some econometric studies are based on samples of this size or smaller. This does not affect the mathematical properties of the results. Models can be constructed on the basis of this sample size.

⁹Because of our small sample size and because we had two important variables scaled at or near an interval level--the balance of prescriptions and SES, "ECTA" analysis was not applicable. It can be argued that our dependent variable is interval in nature in that a hung jury constitutes a midpoint between a guilty and a not guilty verdict. The dependent variable does take only three values, however, and it is likely to be distributed in a manner approximately the opposite to the normal curve--over the three values, that is, since hung juries are relatively infrequent (about five percent of the 3,576 jury trials studied by Kalven and Zeisel, 1966).

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TABLE 1
PER WITNESS RELIABILITY COEFFICIENTS

<u>Prescriptions</u>	<u>Observer 1 and Observer 2 - N=42</u>	<u>Observer 1 and Observer 3 - N=13</u>	<u>Observer 2 and Observer 3 - N=51</u>
Positive	.85	.94	.95
Negative	.84	.91	.99
Balance	.85	.77	.85

TABLE 2
PER TRIAL RELIABILITY COEFFICIENTS**

<u>Prescriptions</u>	<u>Observer 1 and Observer 2 - N=5</u>	<u>Observer 1 and Observer 3 - N=2*</u>	<u>Observer 2 and Observer 3 - N=4</u>
Positive	.94	--	.99
Negative	.95	--	.99
Balance	.95	--	.90

** More than one observer was present in eleven of twenty-nine trials observed.

* Since there were only two cases here correlations could not be computed.

TABLE 3
DISTRIBUTION DATA

	Frequency Distribution			
	Frequency	Percent	Mean	Standard Deviation
<u>Race</u>				
Black	16	55	.448	.506
White	13	45		
<u>Balance of Prescriptions</u>				
-165 through -64	6	21	-22.897	55.317
-51 through -23	7	23		
-11 through -6	4	14		
1 through 4	4	14		
15 through 25	4	14		
32 through 68	4	14		
<u>Bond</u>				
Did not make bond	11	38	.621	.494
Made bond	18	62		
<u>Socio-Economic Status</u>				
0 (unemployed)	9	31	28.862	27.365
8 through 18	6	21		
22 through 39	4	14		
51 through 65	10	34		
<u>Dress</u>				
Informal	19	66	.345	.484
Formal	10	34		
<u>Age</u>				
18 and 19	5	17	24.103	6.411
20 and 21	6	21		
22 and 23	9	31		
24 through 26	4	14		
32 through 41	5	17		

TABLE 3 (continued)

DISTRIBUTION DATA

	Frequency Distribution			
	Frequency	Percent	Mean	Standard Deviation
<u>If Defendant Testifies</u>				
Does not testify	5	17	.828	.384
Testifies	24	83		
<u>Type of Defender</u>				
Private Attorney	25	86	.138	.351
Public Defender	4	14		
<u>Verdict</u>				
Guilty	11	38	.534	.462
Hung Jury	5	17		
Not Guilty	13	45		
<u>District Attorney</u>				
Cases under old				
District Attorney	16	55	.448	.506
Cases under new				
District Attorney	13	45		
<u>Type of Crime</u>				
Misdemeanor	6	21	1.966	.626
Felony	18	62		
Murder	5	17		

TABLE 4
CORRELATION MATRIX

	1	2	3	4	5	6	7	8	9	10	11
1 Race	1.000										
2 Socio-economic status	-.038	1.000									
3 Age	.205	-.002	1.000								
4 Type of crime	-.302*	-.400*	.026	1.000							
5 District attorney	-.255	-.168	-.092	.382*	1.000						
6 If defendant testifies	-.323*	-.358*	-.021	-.304*	.044	1.000					
7 Type of defender	-.159	-.180	.105	.306*	-.361*	-.082	1.000				
8 Balance of prescriptions	.085	-.037	.225	-.107	.478*	.209	-.676*	1.000			
9 Dress of defendant	.075	.440*	.115	-.089	.221	.331*	-.290*	.368*	1.000		
10 Bond	.419*	.292*	-.010	-.353*	-.296*	.019	-.512*	.143	.119	1.000	
11 Verdict	-.069	.348*	.041	-.279*	-.069	.236	-.471*	.282*	.185	.138	1.000

* significant at the $p < .05$ level

TABLE 5
REGRESSION EQUATIONS

Verdict Equation	MODEL I		MODEL II	
	Standardized Regression Coefficient	t-ratio	Standardized Regression Coefficient	t-ratio
	R=.532 df=21	F=1.184	R=.497 df=25	F=2.728
1 Race	-.157	-.737		
2 Socio-economic status	.387	1.612	.343	1.938
3 Age	-.063	-.315		
4 Type of crime	.038	.146		
5 District attorney	-.277	-1.035	-.190	-.944
8 Balance of prescriptions (testimony)	.485	1.938	.384	1.939
9 Dress of defendant	-.084	-.350		
MODEL III				
Verdict Equation	Standardized Regression Coefficient	t-ratio		
	R=.469 df=26	F=3.661		
2 Socio-economic status	.374	2.160		
8 Balance of prescriptions (testimony)	.294	1.697		

TABLE 5 (continued)

Balance of Prescriptions (Testimony) Equation	MODEL I		MODEL II	
	Standardized Regression Coefficient	t-ratio	Standardized Regression Coefficient	t-ratio
	R=.813	F=5.867 df=21	R=.738	F=15.581 df=26
1 Race	.114	.697		
3 Age	.296	2.252	.299	2.246
4 Type of crime	.011	.058		
5 District attorney	.210	1.084		
6 Defendant testifies	.191	1.317		
7 Type of defender	-.700	-3.589	-.707	-5.317
10 Bond	-.197	-1.020		
Defendant Testifies	R=.541 df=23	F=1.907	R=.323 df=27	F=3.141
1 Race	-.448	-2.243	-.323	-1.772
2 Socio-economic status	.281	1.459		
3 Age	.058	.317		
4 Type of crime	-.238	-1.145		
7 Type of defender	-.063	-.343		

TABLE 5 (continued)

	MODEL I		MODEL II	
	Standardized Regression Coefficient	t-ratio	Standardized Regression Coefficient	t-ratio
Dress Equation	R=.574	F=1.800 df=22	R=.435	F=6.316 df=27
1 Race	.152	.732		
2 Socio-economic status	.510	2.631	.435	2.513
3 Age	.109	.601		
4 Type of crime	.294	1.342		
7 Type of defender	-.286	-1.387		
10 Bond	-.097	-.397		
Type of Defender Equation	R=.283	F=.726 df=25		
1 Race	-.185	-.943		
2 Socio-economic status	-.187	-.976	(same as Model I)	
3 Age	.149	.758		
Bond Equation	R=.757	F=4.911 df=22	R=.726	F=14.473 df=26
1 Race	.190	1.183		
2 Socio-economic status	.085	.552		
3 Age	-.031	-.212		
4 Type of crime	-.089	-.463		
5 District attorney	-.403	-2.083	-.552	-3.816
7 Type of defender	-.591	-3.397	-.711	-4.914

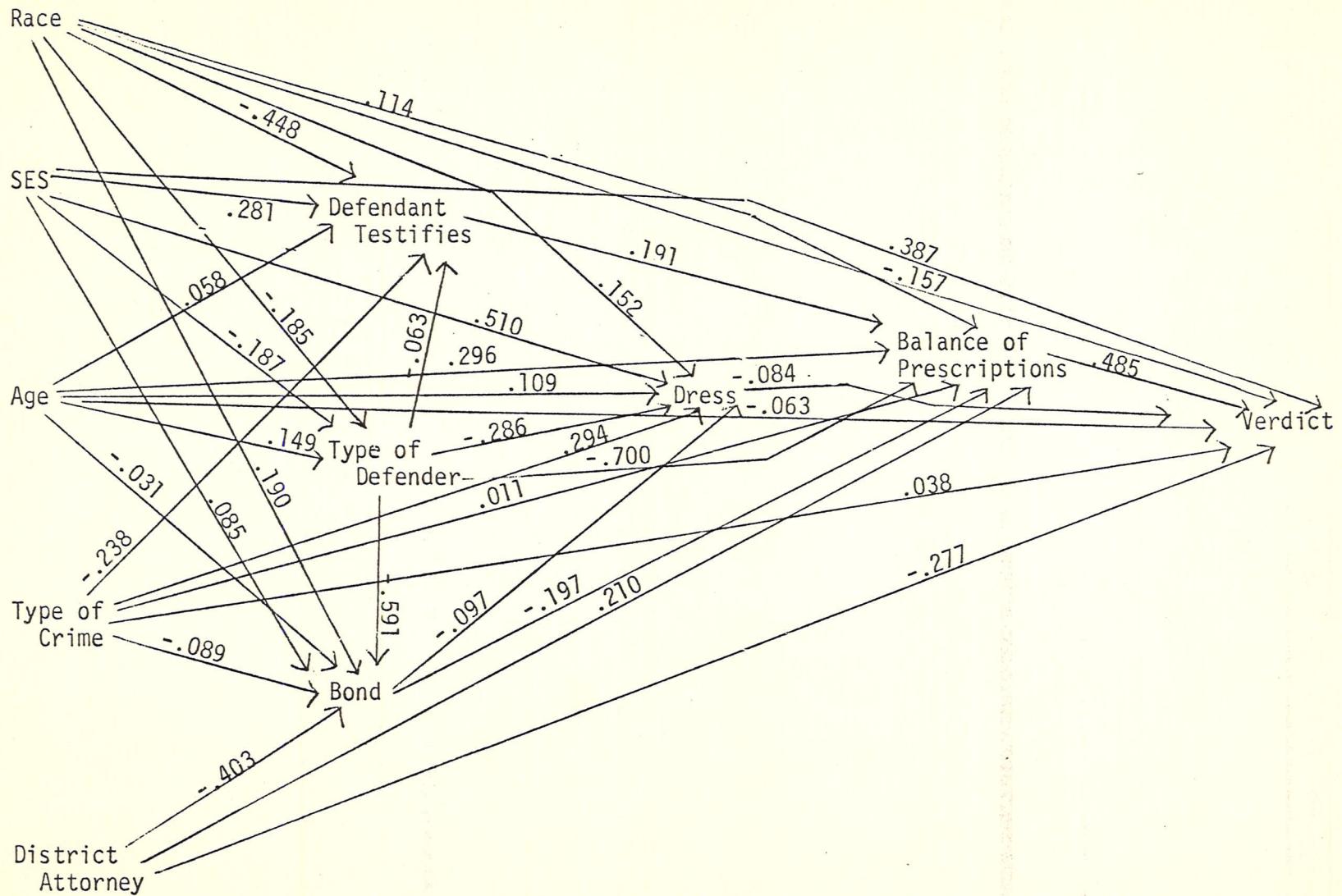
TABLE 6
RESIDUAL (DISTURBANCE) CORRELATIONS

		MODEL I					
		11	8	6	9	7	10
11	Verdict	1.000					
8	Balance of prescriptions	-.323	1.000				
6	If defendant testifies	-.038	.083	1.000			
9	Dress	-.096	.229	.326	1.000		
7	Type of defender	-.271	-.048	-.000	.000	1.000	
10	Bond	-.302	.032	.005	.063	-.000	1.000

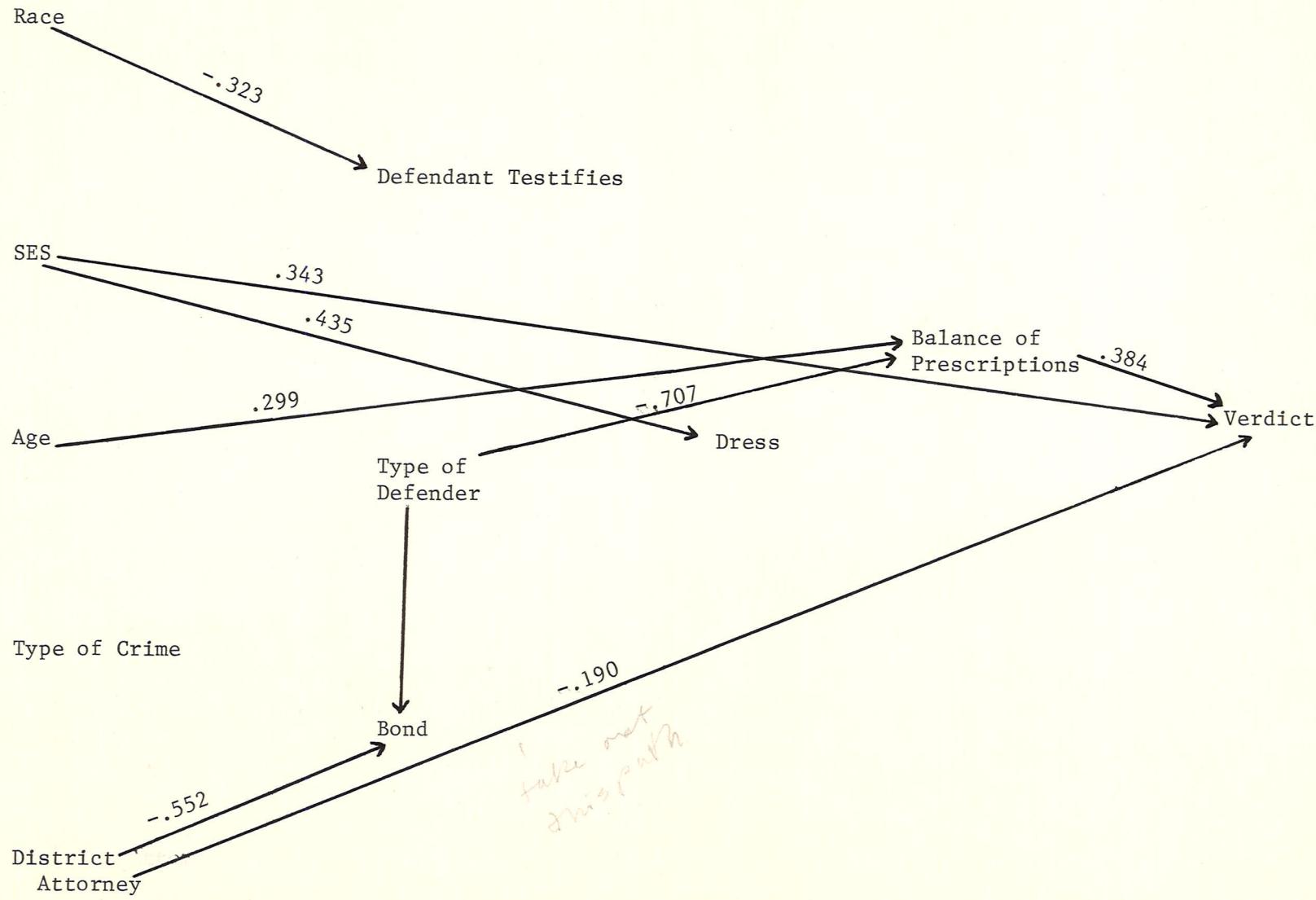
		MODEL II					
		11	8	6	9	7	10
11	Verdict	1.000					
8	Balance of prescriptions	-.235	1.000				
6	If defendant testifies	-.028	.164	1.000			
9	Dress	-.175	.269	.328	1.000		
7	Type of defender	-.282	-.079	-.071	.004	1.000	
10	Bond	-.328	-.197	.012	-.009	.032	1.000

		MODEL III					
		11	8	6	9	7	10
11	Verdict	1.000					
8	Balance of prescriptions	-.221	1.000				
6	If defendant testifies	.004	.202	1.000			
9	Dress	-.109	.337	.225	1.000		
7	Type of defender	-.255	-.076	-.077	-.245	1.000	
10	Bond	-.395	-.168	.060	.005	.063	1.000

MODEL I



MODEL II



CASE NUMBER _____
 DEFENDANT _____
 WITNESS NUMBER _____
 DEFENSE/PROSECUTION _____

DATE: - - 72
 PLACE: _____
 PAGE: ____ of ____
 OBSERVER _____

Social Object	Prosecution Witness		Prosecution Evidence		Prosecuting Attorney		Defense Witness		Defense Evidence		Defense Attorney		Defendant	
Actor	-	+	-	+	-	+	-	+	-	+	-	+	-	
Judge														
Prosecuting Attorney														
Prosecution Witness														
Defense Attorney														
Defense Witness														
Defendant														
Attribute	Defendant		Defense Witness		Prosecution Witness								Time Enter the Box:	
Race	B	W	O	B	W	O	B	W	O	M	F		Length of Time on the Stand:	
Sex	M	F		M	F								Direction Examination: Minutes	
Occupation													Cross Examination: Minutes	
Age														
Dress														
Public Defense Plea														
Jury														
Married-Children														