

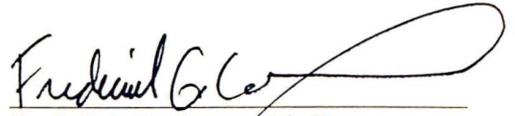
ELIMINATING THE PARTIAL EXPERT WITNESS  
IN PSYCHOLOGICAL TESTIMONY

---

DANNIE SUE HARRIS

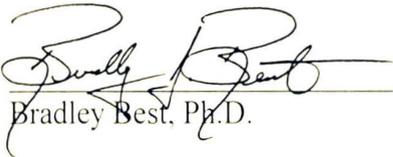
To the Graduate Council:

I am submitting herewith a thesis written by Dannie Sue Harris entitled "Eliminating the Partial Expert Witness in Psychological Testimony." I have examined the final copy of this thesis for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Masters of Arts, with a major in Psychology.



Frederick G. Grieve, Ph.D.  
Major Professor

We have read this thesis  
and recommend its acceptance.



Bradley Best, Ph.D.



LuAnnette Butler, Ph.D.

Accepted for the Council:



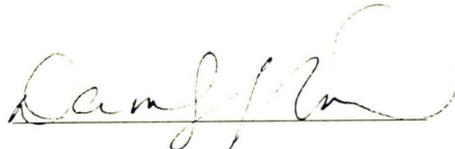
Parris R. Watts  
Dean of the Graduate School

## STATEMENT OF PERMISSION TO USE

In presenting this thesis in partial fulfillment of the requirements for a Master's degree at Austin Peay State University, I agree that the Library shall make it available to borrowers under rules of the Library. Brief quotations from this thesis are allowable without special permission, provided that accurate acknowledgement for the source is made.

Permission for extensive quotation from or reproduction of this thesis may be granted by my major professor, or in his absence, by the Head of Interlibrary Services when, in the opinion of either, the proposed use of the material is for scholarly purposes. Any copying or use of the material in this thesis for financial gain shall not be allowed without my written permission.

Signature

A handwritten signature in cursive script, appearing to read "Campbell", written over a horizontal line.

Date

December 1, 2000

ELIMINATING THE PARTIAL EXPERT WITNESS  
IN PSYCHOLOGICAL TESTIMONY

A Thesis

Presented for the

Master of Arts Degree

Austin Peay State University

Dannie Sue Harris

December 2000

Copyright © Dannie Sue Harris, 2001  
All rights reserved

LIST OF TABLES

TABLE		PAGE
1.	Means and Standard Deviations of Participants' Responses to the Juror Evaluation Questionnaire .. . . . . .	22
2.	Chi-Square Test Results and Expected Frequencies Between Case Outcome and Participant's Verdict . . . . .	23
3.	Chi-Square Test Results and Expected Frequencies Between Type of Testimony and Participant's Verdict . . . . .	23
4.	Percentage of Participant's Returning a Guilty Verdict . . . . .	24

## DEDICATION

This thesis is dedicated to

my husband

Edward Lee Harris

and my parents

Robert and Debra Mezei

for giving me the love and support throughout my educational career.

## ACKNOWLEDGMENTS

I would like to thank my major professor, Dr. Frederick Grieve, for his guidance and support. I would also like to thank Dr. Bradley Best for assisting me in the long process of finding the technical information needed for this project. Also I would like to thank Dr. LuAnnette Butler for her guidance in this and other areas of my education. Additionally, I would like to thank Lee Eckerman and the District Attorney's office of Clarksville, Tennessee for helping me in obtaining the information needed to improve this project. Thank you all so very much for your help, assistance, and patience. I am truly indebted to you all.

## ABSTRACT

The current research focuses on juror perceptions of creating a neutral panel of psychological experts (court-appointed) compared to the traditional attorney hired expert witnesses in a murder trial. The hypotheses suggest that potential jurors would perceive a panel of experts as more believable, fair, and would be more satisfied with their testimony as compared to the traditional expert testimony. A 15-item self-created juror evaluation questionnaire served as the dependent measure and the independent variables of verdict and type of testimony were manipulated through a re-enactment of a murder trial. Several ANOVAs (Analysis of Variance) revealed patterns in the data supporting the hypotheses that the panel of experts condition was more believable and was perceived as less biased. Overall, the implications of this study supported the notion that sampling a more non-adversarial procedure of testimony could enhance the believability of psychological expert witnesses.

# TABLE OF CONTENTS

CHAPTER	PAGE
I.	INTRODUCTION . . . . . 1
	Hired Gun Phenomenon . . . . . 2
	Adversarial versus Nonadversarial Procedures . . . . . 4
	The Influence of Retention Side . . . . . 5
	Attorneys' Use of the Expert Witness . . . . . 7
	Court Appointed Experts . . . . . 10
	The Present Research . . . . . 14
II.	METHODS . . . . . 16
	Participants and Design . . . . . 16
	Measures . . . . . 17
	Demographics . . . . . 17
	Juror Evaluations . . . . . 17
	Videotape . . . . . 18
	Procedures . . . . . 19
III.	RESULTS . . . . . 20
	Juror Evaluations . . . . . 21
IV.	DISCUSSION . . . . . 27
	REFERENCES . . . . . 36
	APPENDICIES . . . . . 40
	Appendix A (Demographics) . . . . . 41
	Appendix B (Questionnaire for Panel of Experts Condition) . . . . . 42
	Appendix C (Questionnaire for Traditional Type of Testimony) . . . . . 44
	Appendix D (Informed Consent Document) . . . . . 46
	Appendix E (Case History for Panel of Experts in a Not Guilty Case) . . . . . 48
	Appendix F (Case History for Panel of Experts in a Guilty Case) . . . . . 49
	Appendix G (Case History for Traditional Testimony in a Not Guilty Case) . . . . . 50
	Appendix H (Case History for Traditional Testimony in a Guilty Case) . . . . . 51
	VITA . . . . . 52

## CHAPTER I

### INTRODUCTION

Expert testimony has been significant in the legal process for some time now (Resnick, 1986, Smith, 1989). It is reported that the first implementations of medical and mental health experts can be traced to the year 1311 (Eigen & Andoll, 1986; Smith, 1989), thus making it a very old tradition. However, it was not until the 1960's that the frequency of mental health testimony increased (Poythress, 1977). Consequently, new strides in testimony were developed, which enabled other professionals to be seen and respected as experts in their field. For instance, a landmark case in 1962 led to the implementation of psychologists as expert witnesses, and thus, did not limit expert opinion to medical doctors (*Jenkins v. United States*, 1962). However, despite court rulings regarding the acceptance of psychiatric and psychological testimony, there appears to be no general acceptance of the testimonial content of psychologists or psychiatrists (Resnick, 1986; Smith, 1989).

Many authors (i.e., Champagne, Shuman, & Whitaker, 1996; Deffenbacher, 1984; Egeth & McCloskey, 1984; Vidmar & Laird, 1983) argue that the way the American legal system obtains information from an expert witness is inherently flawed. Past research suggests a need to explore this issue, mainly to attempt to minimize the biases found in courtroom testimony. More specifically, past research has investigated the impact of several strategies to improve the reliability and usefulness of expert testimony. These include raising the standard of admissibility of expert opinion (Champagne et al., 1996), using court-appointed experts (Champagne et al., 1996; Deffenbacher, 1984;

Egeth & McCloskey, 1984; Fienberg, 1989; Smith, 1989), or developing an interdisciplinary team of experts and attorneys to critique and scrutinize expert opinions prior to delivering testimony (Smith, 1989). All of these areas or hypotheses focus on eliminating partiality in expert opinions presented to jurors. Thus, past research has pointed to the concern of the current study, which is to investigate the impact of court-appointed expert witnesses on potential jurors. This will be accomplished by introducing testimony from a panel of experts rather than relying on experts for the defense and prosecution in a mock trial. The purpose of the current study is to empirically examine how potential jurors would perceive such a system.

### Hired Gun Phenomenon

Intentional bias from a presenting expert, either defense or prosecution, found in testimony is a phenomenon referred to as the “hired gun.” This term implies that an expert witness fabricates testimonial information in exchange for monetary compensation (Fischer, 1997). Fabrication under courtroom scrutiny is known to have dire consequences, not only for the individual but for the profession as well (Fischer, 1997). However, expert testimony may not only be fabricated. Experts also may omit information or lead jurors to perceive half-truths (Fischer, 1997). In addition, there may be other, unintentional biases that enter into expert testimony. These concerns invite debate as to whether psychologists should be allowed to testify as expert witnesses. Thus, there are differences among the intentional fabricated testimony from the hired gun, as opposed to the expert who falls victim to the pressures of the questioning by attorneys and consequently present a biased opinion to the jurors.

Regardless of the manner in which information is presented or withheld, dishonesty in testimony is clearly wrong. Standard 7.05 of the Ethical Principles of Psychologist and Code of Conduct (American Psychological Association, 1992) clearly states “in forensic testimony and reports, psychologists testify truthfully, honestly, candidly, and consistent with applicable legal procedures, describe fairly the bases for their testimony and conclusions” and “whenever necessary to avoid misleading, psychologist acknowledge the limits of their data or conclusions” (p 1610). Prior to any testimony, witnesses are sworn to the court to be truthful regarding their rendition. However, there are legal constraints, other than breaking of a sworn oath, to fabrication of information in the American justice system (Senna & Siegel, 1996). Consequences of perjury range from financial fines, inept testimony, and to possibly discrediting of the witness in the eyes of the jury (Samaha, 1996). Thus, it is evident that fabrication in testimony is not only an ethical violation as a professional, but according to the parameters of witness oath is legally wrong.

Even though a standard or ethical principle exists, the hired gun phenomenon is still prevalent in testimony (Fischer, 1997). Even if there were only one instance of deceitful testimony it would be detrimental to the court system. Thus, the question arises, are there impartial expert witnesses? In a qualitative review of this question, Gorman (1983) found that due to personal beliefs and prejudices, judgments made by an expert are rarely impartial. Gorman also stated that a completely unbiased expert is no more than an “ideal fiction” (p 381).

## Adversarial versus Nonadversarial Procedures

The adversarial system is designed to provide an opportunity for both sides of a case to present their respective arguments. Hence, each side has the opportunity to present their best possible case (Fienberg, 1989). Thus, attorneys are bound by professional ethics to serve as advocates for their clients and, therefore, hire witnesses that enhance their argument (Fienberg, 1989). Consequently, eliminating the adversarial role in expert testimony raises the possibility that the jury will not hear a full explanation of the facts. The adversarial system places fact-finding and presentation in the hands of the individual who will be most directly impacted by the outcome (Vidmar & Laird, 1983). In short, each side has a vested interest in its own presentation. Thus, proponents of the adversarial system suggest that eliminating the hiring of expert witnesses may reduce the motivational level of each side to find the necessary facts and present their case (Vidmar & Laird, 1983).

Others argue that the very nature of the adversarial system may be inherently flawed. The adversarial system invites the dreaded battle of the experts, or differential testimony (Willging, 1986). A direct result of this testimonial bickering is that jurors perceive less consensus in the field than there actually is (Resnick, 1986). As a consequence, jurors may perceive that expert testimony is entirely subjective (Resnick, 1986) and may learn to distrust the profession (Smith, 1989). Also, cross-examination may be the only means to identify the hired gun to the jury (Smith, 1989). In addition, it has been suggested that the process of obtaining an expert witness may be flawed (Resnick, 1986). Possible reasons for expert disagreement include the direct results of the

adversarial system, the selection process of the experts, differing schools of psychology or psychiatry that may influence the expert's opinion, experts receiving different data on the same case, and genuine differences in interpretation of data (Resnick, 1986).

Overall, there are pressures within the adversarial proceedings that may negatively influence evidence that is presented to the jurors (Brekke, Enko, Clavet, & Seelau, 1991). For instance, experts may be pressured to bend the truth (Fienberg, 1989), portray an incomplete story (Fienberg, 1989) and emphasize and exaggerate their expert opinion (Wasyliw, Cavanaugh, & Rogers, 1985). There is evidence to support the notion that the adversarial system has a detrimental impact on expert testimony (Brekke et al., 1991).

### The Influence of Retention Side

Retention side is defined as which side, defense or prosecution, retains or hires the expert to testify on behalf of its case. In an examination of retention side of experts in criminal and civil cases, Otto (1989) hypothesized that the experts' conclusions would favor the side that retained them. This study consisted of psychology graduate students ( $N = 32$ ) instructed to portray mental health professionals who were hired to evaluate the cases. The participants viewed all relevant information regarding two cases, one criminal and one civil. The manipulation was their perceived retention side. The students were randomly assigned to a condition that led them to believe that either the prosecution or the defense retained their expert services. They then viewed the trial information. The results varied by type of case. Significant differences were found only in regard to criminal cases and not civil cases. The results regarding criminal cases indicated that

when participants believed the prosecution side retained them, 78% of the time the participants reached a guilty verdict. However, if they believed the defense retained them, 88% of the time the participants reached a not guilty by reason of insanity verdict.

Therefore, it seems that the retention side of the expert witness for testimony influences their factual determinations. There were no indications of intentional bias from the participants. Possible explanations for the differences between results in criminal and civil cases are that in criminal cases retention side may be more apparent and identifiable to the participants or that retention side is more operative in criminal cases (Otto, 1989). Overall, the results and possible explanations are perceived to be situational and not related to participants' biases. However, one limitation is that in criminal cases experts may be more likely to identify with either the prosecution or defense; thus, this limitation offers an explanation why differences were found in criminal and not civil cases. Additional research is necessary to clarify the difference between civil and criminal case retention side.

Another limitation to Otto's (1989) research is that the participants were graduate students and the results may not be generalizable to professionals in the field (psychiatrist or psychologist). It is possible that graduate students do not represent the typical expert witness, not only because of the differences in the quantity of their education but their experience in the profession as well. Thus, experienced professionals may be less susceptible to the influence of retention side.

Contrary to Otto's (1989) findings, there is evidence that retention may not matter (Kennedy, Kelley, & Homant, 1985). Kennedy et al. conducted a voluntary survey

examining experience as a psychological expert witness for the defense or prosecution with a sample of 262 respondents (147 psychologist and 115 psychiatrists). The sample was randomly drawn from the Biographical Directory of the American Psychiatric Association (1984 Edition) and the National Directory of Mental Health Services Providers in Psychology (1983 edition and Winter, 1983-84 supplement). The sole purpose of the survey was to examine the respondents' relationship and experience with the defense and prosecution in regard to expert testimony. The sample was predominately White (94%) male (74%) participants with an average age of 48 years. Thirty-three percent of the respondents had previously testified in court. The results indicated that the participants could not be exclusively labeled as working as a defense expert or a prosecution expert. Rather, a high correlation ( $r = .78$ ) between amount of experience for the defense and amount of experience for the prosecution indicates that respondents had equal experience with both sides. However, the results of this research are limited by response bias of self-reports and the qualitative differences of participants who respond opposed to those who did not (for a discussion of the influence of self-report data, see Schwarz, 1999). Overall, Kennedy et al. (1985) had a response rate of 26%, which does not necessarily mean the sample is representative of the population. These limitations suggest that the results may not be representative of expert witnesses, and therefore, do not give much insight to the "hired gun" phenomenon.

#### Attorney Use of the Expert Witness

Attorneys employ experts for many purposes in regard to their cases. Typically an attorney may hire an expert to provide essential feedback to their argument or to learn

about the viability of their case. These experts act as consultants, who provide an objective view in order to assess the strengths and weakness of a particular case. On the other hand, attorneys may hire experts with the purpose of testifying in court. Research has been conducted to understand the purpose of attorneys' use of experts and their testimony. However, it is important to note that there may be different motives or expectations that attorneys' possess when they hire an expert for consultation compared to an expert for the purpose of testimony.

Mossman and Kapp (1998) performed survey research to determine why attorneys call mental health experts to testify. The surveys were sent to attorneys and judges with a response rate of 19.9% for attorneys and 39% for judges. The survey of attorneys asked specific demographic and educational information, as well as questions regarding their legal practice. Additional questions on the attorneys' survey were directed at the number and frequency of mental health or disability issues and the frequency with which they sought the testimonial services of mental health experts. If the attorneys did retain or consult mental health experts, they were asked to rate the importance of 10 additional factors on a 4-point scale (0 = not at all important, 1 = somewhat important, 2 = very important, 3 = essential) that were designed to assess the reasons for choosing an expert. The 10 factors were experts' knowledge in a specific legal area, their ability to communicate, local reputation, previous experience with expert testimony, likelihood of giving a favorable opinion, familiarity with legal processes, frequency of appearing as an expert witness, expert's fee, national reputation, and academic writings. The judges' survey contained similar demographic and legal background questions. Judges were also

questioned about typology of cases, the frequency of mental health related cases, and how they believed attorneys selected experts. Judges were also asked to rate the same 10 factors on the 4-point scale, indicating how they believe the factors influence attorneys who hire experts.

All statistics were reported based on the attorneys' or judges' experience in the year prior to the survey. The mean age for the sample of attorneys was 44.6 years ( $SD = 11.2$ ) with 74.5 % being male. The mean age for the sample of judges was 52.3 years ( $SD = 7.1$ ) with 85% being male. Attorneys reported an average of 13.3 ( $SD = 24.6$ ) cases pertaining to mental health or disability issues in the past year. The average number of cases that involved psychological reports or testimony was reported to be 12.1 ( $SD = 24.6$ ) for attorneys and 36.2 ( $SD = 74.9$ ) for judges. Attorneys also responded that they requested mental health opinion an average of 6.69 ( $SD = 18.7$ ) times. Furthermore, 49% of the attorneys who retained psychological assistance reported that it was very important or essential that the expert produce a conclusion that is consistent with their plea (Mossman & Kapp, 1998). Other factors that were relevant in the decision to hire an expert witness include experience, ability to communicate with the jury, reputation, and knowledge. These credentials were rated above that of producing a favorable opinion. Further analysis revealed that the attorneys do not want a dishonest opinion, even though the agreement with the position of retention side is desired. Once again, this research is plagued by self-report limitations; however, it does indicate that attorneys may not be willfully hiring the "hired gun." For example, the attorneys may not know if the

psychologist is testifying honestly or not. In other words, it is possible that attorneys may be unable to gauge the degree of bias present in the expert's opinion.

### Court-Appointed Experts

Bias in expert testimony has been confronted with a variety of possible solutions, many of which focus on court-appointed or neutral experts (Champagne et al., 1996; Deffenbacher, 1984; Egeth & McCloskey, 1984; Fienberg, 1989; Smith, 1989). Manipulation of expert testimony may seem unfair by not permitting the defense or prosecution the opportunity to present their own witnesses; thus, any manipulation may infringe on the premise that individuals have the right to have their side presented (Senna & Siegel, 1996). However, court appointed experts do not infringe on individual rights; experts are considered fact witnesses and not traditional witnesses. Expert witnesses serve to educate the jury and in respect to justice, not allowing the prosecution or defense to hire experts does not impede their argument.

Despite the acknowledgement of the problem and the empirical support for these solutions, court-appointed experts are rarely used. A survey study of 37 District Court judges in Texas found that court-appointed experts were used infrequently (Champagne et al., 1996). A total of 70% of the judges responded to this survey indicating that it is a representative sample of the Texas area. The major finding of this survey was simply that court-appointment of an expert is primarily an individual preference. Reasons given for why judges did not appoint experts included that judges had faith in the adversarial system, that they had no idea where to look for an expert, and some indicated that they did not know they had the authority to appoint experts. Overall, when court-appointed

experts were utilized, it was typically regarding a criminal case in respect to competency to stand trial (Champagne et al., 1996). This study suggests that regardless of the hypotheses, court-appointed or neutral experts are used so infrequently, which in turn limits the analysis of their impact.

Even though court-appointed experts are infrequently used, experimental research is able to investigate their impact on potential jurors. One such study examined the impact of court-appointed and attorney-hired expert testimony on jury decisions (Brekke et al., 1991). A total of 686 mock jurors (277 men, 407 women, and 2 people who did not indicate their genders) were selected from the approximate sample of 4,000 registered voters. The sample was divided into ten, six-person deliberating juries and approximately sixteen non-deliberating jurors. The participants watched a re-enactment of a rape trial and, either individually or based on the jury consensus, rendered their verdict and completed several questionnaires.

The experimental design consisted of manipulations of the experts' credentials, presentation mode of the experts (court-appointed or attorney hired), and the content of the testimony (one-sided or balanced). Overall, Brekke et al. (1991) found that court-appointed status did not enhance the jurors' decisions. Brekke et al. discovered evidence that the court-appointed expert's testimony was more influential on pre-deliberations, but the effect vanished after jury deliberations. The results suggest that the participants regarded the battle of the experts more negatively than the nonadversarial procedures. Overall, the adversarial (attorney hired) and nonadversarial (court-appointed) trials were perceived as equally fair by the participants. However, deliberating jurors appeared to be

less concerned with the content of the court-appointed testimony than the attorney-hired expert testimony. This suggests that jurors tend to be less critical of nonadversarial testimony than adversarial testimony.

The main limitation of this study is that the jurors may not have been aware of the nature of the nonadversarial versus adversarial manipulation. They may not have realized that court-appointed experts are used infrequently. Additionally, in the reenactment of the trial, the attorneys never examined the court-appointed expert. The judge questioned the expert as within the constraints of a nonadversarial system and thus did not invite any critical analysis from the representing attorneys. This may have influenced the jurors to take the testimony at face value and lowered their motivation to scrutinize the testimony. In essence, the jurors may have accepted the court-appointed expert's testimony without much thought. Overall the major implications to this study are that adversarial versus nonadversarial proceedings were viewed as equally fair and both modes of presentation were processed equally by the jurors.

Fukunaga, Pasewark, Hawkins, and Gudeman (1981) reviewed the agreement between psychological evaluations and court verdict regarding insanity cases in a nonadversarial forum. Fukunaga et al. examined this agreement by reviewing the data of 327 Hawaiian criminal cases regarding the Not Guilty by Reason of Insanity (NGRI) plea. In Hawaii, the standard is to appoint 1, 2, or 3 examiners to conduct the relevant forensic evaluations. This research did not evaluate whether the examiners collaborated on the assessments, which is a major limitation of the findings. Based on the appointment, the examiners return their reports to the presiding judge, thus making the

nature of the evaluation nonadversarial because they do not subject their findings directly to the jury. There was 92% agreement between the evaluations of the appointed examiners. This percentage suggests that eliminating the adversarial nature of the court system evolved to a high consensus regarding the psychological conclusions and verdict.

However, there are some concerns as to why this relationship exists. One possibility is that the examiners may confer on the cases via consultation (Fukunaga et al., 1981). This concern was not examined in this study, which results in the inability to account for the affects of consultation. Additionally, the very nature of a consensus may indeed affect the verdict. It is presumably more persuasive to reach a consensus on an issue rather than having a divided opinion. Therefore, the jurors may be influenced by a consensus or a unanimous decision. Also, there are questions as to whether the consensus is directly related to the nonadversarial nature of the evaluations. Thus, by eliminating the typical mannerism used in cross-examinations psychological reports may have a higher agreement because there is no opportunity for courtroom scrutiny.

Moreover, Fukunaga et al. (1981) focused on the agreement between examiners' opinions and the court verdict. A significant agreement rate was found between the two variables. Also, the results led to the conclusion that the expert psychological reports are very influential on the court verdict. It was noted that the courts are also very likely to agree with a unanimous decision from the examiners, thus indicating that a consensus between examiners was influential on the court's overall verdict. Therefore, a non-biased consensus of opinion provided to the courts could assist verdict decisions more reliably.

## The Present Research

The previous research points to the necessity and the timeliness of the current study. This study is intended to examine whether potential jurors perceive a panel of court appointed experts as more believable than witnesses hired by prosecution and defense attorneys. The assumption of eliminating bias from expert testimony (namely that related to retention side) by discarding the independent hiring of experts supports the intent of this study. Also, as demonstrated through the research of Fukunaga et al. (1981), a consensus of opinion and a nonadversarial forum appears to be beneficial to expert opinions and court verdicts. This suggests that implementing a less adversarial system and increasing expert agreement through consultation could indeed benefit the court system. Creating an atmosphere that allows for consultation and discussion between experts could enhance the believability of expert psychological witnesses in the courts. Furthermore, all efforts should be taken to enhance the credibility of the profession.

The overarching hypothesis to be examined is that creating a neutral panel of experts will control for retention bias and subsequently eliminate the “hired gun” phenomenon. Also, allowing the panel to testify in court will sample the nature of the adversarial forum (i.e., cross examination). Yet, the panel will eliminate the possibility of two divergent opinions coming from two separate interviews by two different psychological examiners (which is what happens in the traditional method when prosecution and defense expert witnesses disagree).

The first specific hypothesis under investigation is that a panel of experts will be perceived as more believable to jurors than the traditional expert testimony. Second,

potential jurors will perceive the panel of experts condition to be more fair, in regard to the trial and testimony, and will be more satisfied with their testimony than traditional expert testimony. Third, the panel of experts will be perceived as more believable to jurors than the traditional expert testimony regardless of the verdict. Fourth, potential jurors will perceive the panel of experts to add more beneficial information to the court than traditional expert testimony. Fifth, potential jurors will perceive that the panel of experts has less bias in their testimony than traditional expert testimony. Finally, the participants' verdicts will coincide more so with the panel of experts condition. In other words, juror ratings of the verdict will be more accurate when receiving information from a panel of experts as opposed to the traditional expert testimony.

## CHAPTER II

### METHODS

#### Participants and Design

The participants of this research were 120 undergraduate students at the local university. The sample population was composed of 33 male participants and 87 females. In addition, the mean age of the sample was 24.73 (SD = 7.54) and the average number of years of education was 14.55 (SD = 1.11). The ethnic composite of the sample was 1 American Indian, 5 Hispanics, 90 Caucasians, 18 African Americans, and 6 others. Participation was strictly voluntary with an incentive of possible extra credit based on participation in the experiment. Extra credit, however, was dependent on each participant's professor's discretion.

A 2 (Case Outcome: Guilty versus Not Guilty) x 2 (Type of Testimony: Panel of Experts versus Two Disagreeing Prosecution and Defense Experts) between subjects factorial design was used. The independent variables were the type of testimony, either the panel or the traditional prosecution and defense experts, and case outcome, either guilty or not guilty. Therefore, the design created 4 conditions: a Guilty case with the Panel of Experts, a Not Guilty case with the Panel of Experts, a Guilty case with the Traditional Testimony, and a Not Guilty case with Traditional Testimony. The dependent variable of juror perceptions was measured by a 15-item self-created questionnaire. The items on the questionnaire analyzed juror perceptions regarding the believability of the expert witnesses.

## Measures

Demographics. A demographics questionnaire was given to assess the participants' characteristics and to describe the sample (see Appendix A). This was a four-item questionnaire that measured participants' age, ethnic origin, gender and educational status.

Juror Evaluations. A 15-item questionnaire (see Appendix B and Appendix C) was created to measure the consequences of the manipulations. The majority of the items were assessed on a 9-point Likert type scale (1 = strongly disagree, 5 = neutral, and 9 = strongly agree). The first items addressed the perceived fairness and interest in the trial. Additional questions addressed the credibility, confidence, competence, qualifications, reliability, accuracy, honesty, satisfaction, bias, and benefits of the experts' testimony. The remaining item of the case verdict was answered in a dichotomous format (guilty versus not guilty), followed by a rating of the participants' confidence in their answer. The confidence rating assessed the strength of participants' answers instead of limiting them to a simple all or nothing decision. Since the entire trial was not presented, this item gave the participants flexibility regarding their important decision.

The measurement instrument is derived from a similar questionnaire used in research on juror perceptions of eyewitness testimony (Mezei & Grieve, 1999). In two consecutive studies demonstrated a high Cronbach's Alpha of .86 and .91 (Mezei & Grieve, 1999). Additional items were derived from the research of Brekke et al. (1991) on adversarial versus nonadversarial expert testimony. Their measures reported

Cronbach's Alpha from .61 to .92 (Brekke et al., 1991). Therefore, this measurement instrument appears to be reliable and generalizable to the current study.

### Videotape

There were two major manipulations in the videotape stimulus. The first was the outcome of the case, guilty or not guilty. The other manipulation was presenting either a panel of experts with a designated chairperson to testify (only one person actually testified on behalf of the panel's decision to the court) versus the typical use of experts hired by the prosecution and defense attorneys. The verdict of the case was also manipulated in the traditional testimony condition. The manipulation of which side was found as correct created the verdict of the case. This was demonstrated through the case history. Therefore, in the Guilty verdict, the case history supported the prosecution's side and in the Not Guilty verdict the history supported the defense's argument. Regardless of the verdict in the traditional testimony conditions, the participants viewed expert witnesses testifying for prosecution and defense.

The design is set up for the panel of experts to be correct in their psychological evaluation. Using the facts from a court trial and presenting it to the participants with only information that would support the decision of the court accomplished this. In other words, if the trial findings were created as guilty the participant heard testimony that supported the prosecution's position. Conversely, if the trial findings were not guilty, the participant only heard testimony that supported the defense's position. This manipulation was aimed to enhance the validity of the trial and the results. The panel of experts' opinion was the only expert testimony heard in court.

Overall there were four videotapes created: 1) experts testifying for the prosecution and defense in a guilty case, 2) experts testifying for the prosecution and defense in a not guilty case, 3) the panel's chairperson testifying in a not guilty case, and 4) the panel's chairperson testifying in a guilty case.

### Procedures

Prior to data collection all participants signed an informed consent document (see Appendix D), acknowledging that they were aware and informed of their rights as participants. The demographics questionnaire was completed after the signing of the informed consent document. After random assignment to condition, participants were presented with the case history (see Appendixes E, F, G, and H). This contained the crime committed, why the defendant was on trial, and the reason for expert testimony. It also described what participants would watch. The history also discreetly explained that they would either view a traditional case with a prosecution and defense psychologist testifying, or they would view the chairperson testifying on behalf of a court appointed panel of experts. Additionally, the script of the trial implied strength to either the prosecution or defense to indicate the verdict in the traditional type of testimony condition. Upon completion of reading the history, the participants watched the videotape, approximately 15 minutes in length, and completed the juror evaluation questionnaire.

## CHAPTER III

### RESULTS

The main purpose of the study was to examine the relationship between the panel versus the traditional methods of expert testimony for each item on the questionnaire. Based on those results, the difference between the traditional and panel of experts conditions regarding juror perceptions were interpreted. Thus, a series of 2 (Case Outcome: Guilty versus Not Guilty) x 2 (Type of Testimony: Panel versus Traditional Testimony) analyses of variance (ANOVAs) were performed on the data. An ANOVA is a hypothesis testing procedure that investigates mean differences between groups or conditions (Gravetter & Wallnau, 1999). In the current study a form of an ANOVA will investigate mean differences between the four conditions. More specifically, the participants were randomly assigned to one of the four conditions. The responses on the juror evaluation questionnaire were then averaged and compared to see if there were any significant differences between conditions. Differences were then analyzed to make sure the results did not occur by chance.

In order to correctly use this statistical procedure there are certain assumptions that must be met. First, the dependent variable must be quantitative in nature and measured at least as interval level data (Jaccard & Becker, 1997). The independent variables must be between subjects in design, have at least two or more levels, and be combined to form a factorial design (Jaccard & Becker, 1997). All assumptions are met by the current study.

Further analysis on the dichotomous item (i.e., verdict) was assessed through a chi-square. An additional ANOVA was performed to determine the effects of confidence in the participants' verdicts.

The chi-square procedure is a non-parametric statistic, used when the data is qualitative in nature (Gravetter & Wallnau, 1999). This procedure tests the relationship between variables. Like ANOVA, the chi-square test is based on assumptions that ensure proper use of the test. The first assumption is that random sampling procedures are used, and the second assumption is that the expected frequency of each condition is non-zero (the design is set for two of the cases to be guilty and two not guilty) (Jaccard & Becker, 1997). Both assumptions have been met by the data on the verdict item of the juror evaluation questionnaires.

### Juror Evaluations

All of the items on the questionnaire assess different constructs; however, cumulatively the variables represent the overall believability of the expert witness. Means and standard deviations are reported in Table 1 for all 13 of the dependent variables.

Results indicate interaction effects of case outcome and type of testimony on the perceived fairness of the trial ( $F(1, 116) = 3.80; p < .05$ ), credibility of the witnesses ( $F(1, 116) = 7.41; p < .05$ ), and qualifications of the witnesses ( $F(1, 116) = 18.12; p < .001$ ). In that the participants perceived the guilty outcome with traditional testimony condition as the most fair and having the most credible and qualified experts. Conversely, the guilty outcome with the panel of experts testifying condition was perceived as the least fair and the having the least credible and qualified experts.

Table 1

Means and Standard Deviations of Participants' Responses to the Juror EvaluationQuestionnaire

<u>Items on Questionnaire</u>	<u>Condition</u>			
	G/Panel	NG/Panel	G/Trad	NG/Trad
Fair	5.50 <sup>a</sup> (1.31)	5.90 (2.06)	6.43 <sup>a</sup> (1.36)	5.70 (1.54)
Interest	5.13 <sup>b</sup> (1.78)	6.57 <sup>b</sup> (1.36)	6.47 (1.72)	5.53 (1.78)
Credible	5.00 <sup>a</sup> (1.70)	6.17 (1.82)	6.63 <sup>a</sup> (1.54)	6.07 (1.90)
Confident	4.37 <sup>a</sup> (1.88)	6.47 <sup>a</sup> (1.76)	5.27 (1.80)	5.77 (1.92)
Competent	4.53 <sup>a</sup> (1.96)	6.37 <sup>a</sup> (1.51)	5.97 (1.61)	5.98 (1.75)
Qualified	5.67 <sup>b</sup> (1.88)	7.00 (1.17)	7.23 <sup>b</sup> (1.01)	6.23 (1.76)
Reliable	4.77 <sup>a</sup> (1.79)	6.23 <sup>a</sup> (1.85)	5.70 (1.73)	5.23 (1.94)
Accurate	4.80 <sup>a</sup> (1.73)	6.00 <sup>a</sup> (1.72)	5.57 (1.63)	5.33 (1.85)
Honest	6.23 (1.92)	6.47 (1.38)	5.97 (1.77)	5.63 (1.88)
Expert/Fair	5.93 (1.76)	6.27 (1.48)	6.03 (1.52)	5.87 (1.61)
Satisfied	4.27 (1.95)	5.40 (2.18)	4.48 (1.76)	4.57 (1.79)
Beneficial	6.23 (2.26)	7.17 (1.64)	7.27 <sup>a</sup> (1.53)	5.87 <sup>a</sup> (1.63)
Bias	4.70 (1.58)	5.27 (2.24)	6.27 (1.81)	7.17 (1.62)

G/Panel = Guilty Case Outcome with the Panel of Experts Testifying

NG/Panel = Not Guilty Case Outcome with the Panel of Experts Testifying

G/Trad = Guilty Case Outcome with Traditional Experts Testifying

NG/Trad = Not Guilty Case Outcome with Traditional Experts Testifying

<sup>a</sup> Significant Interaction Effect at the .05 level.

<sup>b</sup> Significant Interaction Effect at the .001 level.

Interaction effects were also noted on the variables of interest in the trial ( $F(1, 116) = 15.14; p < .001$ ), confidence of the experts ( $F(1, 116) = 5.66; p < .05$ ), competence of the experts ( $F(1, 116) = 25.21; p < .05$ ), reliability of the witnesses ( $F(1, 116) = 8.42; p < .05$ ), and accuracy of the witnesses ( $F(1, 116) = 5.12; p < .05$ ). These results indicate that participants perceived the not guilty outcome with the panel

testifying condition as the most interesting and having the most confident, competent, reliable, and accurate experts as opposed to the guilty outcome with the panel testifying condition, which was perceived as the least interesting and having the least confident, competent, reliable, and accurate experts.

Finally, the item regarding the beneficial contribution of the expert witnesses revealed a significant interaction effect ( $F(1, 116) = 12.64; p < .001$ ). In that the guilty outcome with the traditional testimony condition was perceived as providing the most beneficial information, as opposed to the not guilty outcome with the traditional testimony condition, which was perceived as providing the least amount of beneficial information.

There were also main effects for the case outcome ( $F(1, 116) = 4.80; p < .05$ ) and type of testimony ( $F(1, 116) = 26.80; p < .001$ ) on the perceived amount of bias from the witnesses. Overall, the participants perceived the traditional testimony ( $M = 6.72, SD = 1.77$ ) to show the most bias regarding their testimony and the panel of experts ( $M = 4.98, SD = 1.94$ ) was perceived to show the least amount of bias in their testimony.

Additionally, the participants perceived the guilty outcome, regardless of the type of testimony, as less biased ( $M = 5.48, SD = 1.86$ ), as compared to the not guilty case outcome ( $M = 6.22, SD = 2.16$ ), which was perceived to be more biased. There were no significant results for perceived honesty, fairness of the experts, or satisfaction with the witnesses' testimony.

The chi-squared test (Chi-squared data are presented in Tables 2 and 3) was applied to the preliminary verdict of the participants between the actual case outcome and

found no significant difference,  $\chi^2(1, N = 120) = 2.84, p = .09$ ). Additionally, a separate chi-squared test was applied to the participant's preliminary verdict between the type of testimony and again found no significant difference,  $\chi^2(1, N = 120) = 0.18, p = .67$ ).

Table 2

Chi-Square Test Results and Expected Frequencies Between Case Outcome and Participant's Verdict

<u>Case Outcome</u>	<u>Participant's Verdict</u>		
	Guilty	Not Guilty	Total
Guilty	49	11	60
Not Guilty	41	19	60
Total	90	30	120

Table 3

Chi-Square Test Results and Expected Frequencies Between Type of Testimony and Participant's Verdict

<u>Type of Testimony</u>	<u>Participant's Verdict</u>		
	Guilty	Not Guilty	Total
Traditional	46	14	60
Panel	44	16	60
Total	90	30	120

Furthermore, as a result of a 2 (Case Outcome) x 2 (Type of Testimony) ANOVA on the variable of participants' confidence in their verdict, there were no significant results. Overall, of the 120 participants, 90 returned a guilty verdict, resulting in 75% of

the sample convicting the defendant. Regardless of the lack of significant results regarding the verdict, a pattern on conviction percentages did emerge from the verdict data (please see Table 4 for percentages on guilty verdicts).

Table 4

Percentage of Participant's Returning a Guilty Verdict

Condition	Guilty Verdict
Guilty/Panel	87%
Not Guilty/Panel	60%
Guilty/Traditional	77%
Not Guilty/Traditional	77%

In the guilty condition with the panel's chairperson testifying, 13% of the participants returned not guilty verdicts, in the not guilty condition with the panel's chairperson testifying, 40% of the participants committed to a not guilty verdict, and in the conditions of guilty and not guilty cases with the traditional type of testimony, 23% of the participants responded not guilty respectively. Thus, the witness manipulation appeared to present compliance with the actual case outcome more accurately in the panel of experts condition.

In order to understand the verdict data and the relation to participants' confidence in their verdict, a separate 2 (Participants' Verdict: Guilty versus Not Guilty) x 2 (Case Outcome: Guilty versus Not Guilty) ANOVA was performed on the dependent variable of the participants' verdict confidence and found a main effect for verdict ( $F(1, 116) =$

11.48;  $p < .001$ ). In addition, the mean rating for the guilty verdict was 6.76 (SD = 1.44) and for the not guilty verdict was 5.63 (SD = 2.06), indicating participants were significantly more confident in their guilty verdicts regardless of the actual outcome of the case.

In general, results indicate several interaction effects amongst the experimental manipulations and dependent measure. The results suggest support for the panel of experts in a not guilty case in regard to the confidence, competence, reliability, accuracy of the witness and the overall interest in the trial. However, other variables of witness credibility and qualifications and the perceived fairness of the trial were better represented in the guilty case outcome with the traditional type of testimony condition. Also, it was found that the guilty case outcome with the traditional type of testimony condition was perceived to provide more beneficial information to the court. In respect to the dependent variable of verdict, participants were found to be more confident in their guilty verdicts. Additionally, it appeared that the panel of experts condition produced verdicts that coincided more so with the actual case outcome.

## CHAPTER IV

### DISCUSSION

The main purpose of this current study was to examine juror perceptions of the overall believability of a panel of experts testifying as opposed to the traditional methods of testimony (prosecution and defense expert witnesses). The previous research points to the necessity and the timeliness of the current research. Overall, the hired gun phenomenon is detrimental to the psychological profession as a whole; therefore, a need to empirically examine its occurrence is prevalent. Past research has shown that retention side is an influential factor on expert opinions (Otto, 1989), suggesting that the elimination of the actual hiring of the experts could prove beneficial to the credibility of psychologists in the courtroom. This notion is further supported by the research of Fukunaga et al. (1981) in the Hawaiian jurisdiction. The hiring practices in Hawaii of expert evaluators supports the notion that court appointment and consensus may also prove beneficial to expert testimony. Additionally, research on court-appointed experts has supported the notion that jurors may not perceive this nonadversarial manipulation as unfair, thus not compromising the adversarial forum (Brekke et al., 1991).

The first hypothesis under investigation was that a panel of experts would be perceived as more believable to jurors than the traditional expert testimony. In general, the items on the juror evaluation questionnaire represent the believability of the experts. Specifically, the variables of credibility, confidence, competence, reliability, accuracy, honesty, witness qualifications, and satisfaction of the expert's testimony represent believability in the expert's testimony. The overall believability, has support in regard to

the confidence, competence, reliability, and accuracy of the panel's testimony. However, there are several other variables that account for believability that were not perceived as significantly better represented by the panel, such as honesty of the witness, satisfaction in his testimony, credibility of the witnesses, or adding beneficial information to the courts. This data does indeed show a trend and some statistical support that the panel was believable, but overall when compared to the traditional type of testimony the panel is not significantly more believable.

As previously indicated there were several interaction effects among the conditions that indicate a trend of believability in the panel of experts condition. It appears that several of the results support the first hypothesis under study. The dependent variables of interest level in the trial, confidence of the witnesses, competence level of the witnesses, reliability of the witnesses' testimonies, and accuracy of the witnesses' testimonies were rated the highest in the not guilty case outcome with the panel's chairperson testifying condition. In other words, participants perceived the witness in that condition to be more confident, competent, reliable, and accurate. They were also more interested in the trial overall.

However, the guilty case outcome with the panel's chairperson testifying condition was perceived as the least confident, competent, reliable, accurate, and participants rated this condition as the least interesting. One possible explanation for these results is that this condition was flawed as a result of the stimulus tape. The actor made two overt errors that may have influenced participants' decisions and ratings of the trial. More specifically, he mispronounced a word and also broke character. Thus, the

result of being perceived as the worst condition may be due to flaws in the stimulus material itself. This problem will also be referred to among other explanations, which will be discussed later. Regardless of the flaw in the stimulus tape, it appears that the panel of experts was perceived to be very believable in regard to their testimony in the not guilty condition. This supports the first hypothesis; however, the guilty condition is still questionable because of the errors.

Contrary to the support of the first hypothesis is that the witnesses' credibility and qualifications in the not guilty outcome with the traditional expert witnesses condition was perceived as the most credible and qualified. These findings are in contrast, again, to the guilty case outcome and the panel's chairperson testifying condition, which was perceived as the least credible and qualified. This indicates that perhaps the participants felt witness credibility and witness qualifications were better represented by their traditional depiction of the current justice model (two opposing experts). Additionally, one major limitation is that the guilty outcome with the panel of experts testifying condition was plagued by the flaws in the stimulus material, which again leads to questionable result interpretation.

The second hypothesis under study was that potential jurors would perceive the panel of experts condition to be more fair in regard to the trial and testimony, and participants would be more satisfied with the testimony than the traditional expert testimony. Again, the hypothesis is not significantly supported by the results from the statistical procedures used. In respect to fairness, participants rated the traditional expert witnesses in a guilty case to be more fair than the guilty outcome with the panel of

experts testifying condition, and the level of satisfaction among the four conditions did not produce any significant results. Thus, this hypothesis does not seem to be supported by the current data.

Furthermore, it appears that in regard to the dependent variable of trial fairness the results indicate that perhaps the participants felt fairness was better represented by their traditional depiction of the current justice model. Additionally, allowing the panel's chairperson to testify may be overstepping their perceptions of what court is supposed to be, hence fairness. However, one major limitation is that these significant results for trial fairness are significantly higher than the guilty outcome with the panel of experts testifying, which again is plagued by the flaws in the stimulus material, that lead to cautious interpretation of the results.

The third hypothesis under study was that the panel of experts would be perceived as more believable to jurors than the traditional expert testimony regardless of the verdict. This again can be addressed regarding several dependant variables. A significant trend suggests that, depending on a not guilty verdict, the panel was perceived as believable but again, the guilty condition was flawed, thus making this hypothesis difficult to interpret objectively. However, there is one clear main effect for witness credibility ( $M = 6.35$ ,  $SD = 1.74$ ) supporting the traditional testimony from experts regardless of the case outcome, as compared to the panel of experts ( $M = 5.58$ ,  $SD = 1.84$ ). This indicates that the participants were more likely to perceive the traditional testimony to be more credible as opposed to the panel of experts. This main effect is contradictory to the third hypothesis. However, throughout the results, the dependent variables do not significantly support the

notion that the traditional testimony is significantly more believable regardless of case outcome.

The fourth hypothesis stated that potential jurors would perceive the panel of experts to add more beneficial information to the court than traditional expert testimony. The results indicate that the panel indeed added beneficial information (see Table I) but the guilty with traditional expert testimony condition was perceived to add the most beneficial information. Therefore, again there is support that the panel does add beneficial information to the courts, but it is not statistically significant. Another finding is that participants rated the guilty case outcome with traditional type of testimony higher for experts adding beneficial information to the courts, as compared to the not guilty, traditional type of testimony condition. This indicates that the traditional type of testimony, depending on the case verdict, may be beneficial to the courts, as opposed to the panel's testimony, which was perceived overall as adding beneficial information regardless of verdict.

The fifth hypothesis under study was that potential jurors would perceive the panel of experts as having less bias in their testimony than traditional expert testimony. The panel, regardless of case outcome, was perceived to be less biased in their testimony than the traditional type of expert testimony. Overall, the data support the fifth hypothesis. This suggests that jurors perceived the panel of experts were perceived as portraying a more objective view to the court regarding their testimony than the traditional opposing experts. Bias is a critical notion in regard to testimony because objectivity in regard to the expert's testimony is essential to the field. Their testimonial

content typically deals with diagnoses and psychological assessments, which are standardized procedures that attempt to eliminate subjectivity. For the panel of experts to be perceived as less biased in this experiment provides reassurance that the credibility and foundation of the field of psychology in the courts can be maintained.

Finally, the last hypothesis states that the participants' verdicts will coincide more so with the panel of experts condition. In other words, juror ratings of the verdict will be more accurate when receiving information from a panel of experts as opposed to the traditional expert testimony. As previously noted, the overall verdict ratings, even though not significant, did coincide more so with the panel of experts condition. The ratings appeared to be more consistent from the participants who were assigned to the panel of experts conditions.

The result regarding the participants' verdicts was very interesting in respect to their tendency to convict, regardless of their confidence in the witnesses. There was a strong tendency for participants to return a guilty verdict regardless of the condition. This leads to questions regarding the participant's understanding of the verdicts or to their possible reluctance to commit to a not guilty by reason of insanity verdict.

However, even though there were no significant results regarding the verdicts of the participants, in respect to the case outcome and type of testimony variables, it was interesting to note that participants were more likely to comply with the actual case outcome in the panel of experts condition. In other words, participants were more likely to return a guilty verdict in the panel of experts condition than in the traditional type of testimony condition when the actual outcome should have been guilty. Participants were

also more likely to return a not guilty verdict in the panel of experts condition than in the traditional type of testimony condition when the actual outcome should have been not guilty. Moreover, participant's who viewed the panel of experts condition, regardless of verdict, were more likely to produce a consistent verdict with the actual manipulated verdict of the case. Therefore, even though this trend is not significant, it does lead to support of the final hypothesis.

This obvious trend in the verdict data indicates that the participants tend to be more accurate in their verdicts in the panel of experts condition. The accuracy of a verdict is easily assessed in the experimental realm; however, accuracy is vague in regard to an actual trial. The assignment of a jury is to produce a fair verdict and the most accurate one according to the cases that are presented. Therefore, this decision may be the most critical element surpassing the results from the other dependent variables on the juror evaluation questionnaire. The dichotomous decision, between guilty and not guilty, could potentially result in the life or death of a defendant. Therefore, to strive for verdict fairness is essential to our justice system and all possible aspects to enhance this should be entertained. Furthermore, creating such a panel does appear to have potential to produce more accurate decisions regarding the guilt or innocence of a defendant.

Overall, the hypotheses, some with statistical support and others indicating an obvious drift to support for the panel, could have been influenced by the error in the guilty outcome with the panel's chairperson testifying condition. Thus, future research should focus on creating the tapes with no errors, which suggest potential for a replication study.

The notion of having a non-influential or neutral panel is an excellent ideal, yet implementation is the dilemma. Introducing the panel through the court via a chairperson eliminates any comparative evaluations of the experts on superficial grounds. In other words, by only having one expert testifying, the jurors will not be exposed to comparing and contrasting witnesses for the prosecution and defense according to confounding variables (e.g., age, gender). Such comparisons and contrasts are likely found within the traditional legal forum. It is presumed that with such a high agreement rate between verdict and experts' opinions (Fukunaga et al., 1981), the Hawaiian system may perhaps be an decent model.

Another possible design limitation is the testimony from a consensus of experts. As previously stated (Fukunaga et al., 1981) a consensus may be extremely influential and powerful in the eyes of the jury. Thus, future research needs to entail the manipulation of the experts' conclusions or decisions. This could be achieved by having a split decision regarding the case or having one or two dissenters among the experts. This will give insight as to whether the panel is truly beneficial or whether it is the consensus of opinions that leads to more confident juries.

Another limitation to the design is the absence of random sampling. The participants are college students, which is considered a convenient sample and all of which are offered possible extra credit for their participation. This may introduce bias into the results. Despite the motivational incentive of extra credit, it appears that the results will be generalizable to the population of jurors as a whole.

The nature of this research or manipulation of expert witness may seem unfair in which the defense or prosecution are not allotted the ability to present their own witnesses. It is the basis of the American justice system that individuals have the right to have their side presented (Senna & Siegel, 1996). However, expert witnesses are not to be considered fact witnesses for either side. Therefore, eliminating the hiring of the experts from the prosecution and defense does not impede their advocacy; it only introduces impartiality. Yet, participants in the current study viewed the traditional witnesses as more fair. This bias could affect juror beliefs as well.

Overall, this research supports the development of an intervention to eliminate partial testimony. Even though “hired gun” testimony may not be a frequent occurrence, only a single instance is needed to have detrimental effects on the profession. Purposeful false testimony presented in the courts compromises professional ethics and legal parameters as well. Thus, partial expert testimony serves an injustice to the field and other competent experts who routinely testify with truthfulness, candor, and honesty.

The implementation of a panel of experts could in fact reduce some of the biases found in the attorneys’ use of the adversarial system. Experts can easily fall victim to the pressures found in the current system. Further research of a neutral panel of experts could provide evidence on one method aimed at mitigating the influence of retention side and the notion of the hired gun. This current research reveals support for such a panel, which could influence the presentation of expert testimony and the actual process of selecting or hiring expert witnesses.

## REFERENCES

American Psychological Association. (1992). Ethical principles of psychologists and code of conduct. (1992). American Psychologist, 47, 1597-1611.

Brekke, N. J., Enko, P. J., Clavet, G., & Seelau, E. (1991). Of juries and court-appointed experts: The impact of nonadversarial versus adversarial expert testimony. Law and Human Behavior, 15, 451-475.

Champagne, A., Shuman, D. W., & Whitaker, E. (1996). The problem with empirical examination of the use of court-appointed experts: A report of non-findings. Behavioral Sciences and the Law, 14, 361-365.

Deffenbacher, K. A. (1984). Experimental psychology actually can assist triers of fact. American Psychologist, 39, 1066-1067.

Egeth, H. E., & McCloskey, M. M. (1984). The jury is still out: A reply to Deffenbacher. American Psychologist, 39, 1068-1069.

Eigen, J. P., & Andoll, G. (1986). From mad-doctor to forensic witness: The evolution of early English court psychiatry. International Journal of Law and Psychiatry, 9, 159-169.

Fienberg, S. E. (1989). The evolving role of statistical assessments as evidence in the courts. New York: Springer-Verlag.

Fischer, M. (1997). The psychologist as a "hired gun." American Journal of Forensic Psychology, 15, 25-30.

Fukunaga, K. K., Pasewark, R. A., Hawkins, M., & Gudeman, H. (1981). Insanity plea: Interexaminer agreement and concordance of psychiatric opinion and court verdict. Law and Human Behavior, 5, 325-328.

Gorman, W. F. (1983). Are there impartial expert psychiatric witnesses? Bulletin of the American Academy of Psychiatry and Law, 11, 379-382.

Gravetter, F. J., & Wallnau, L. B. (1999). Essentials of statistics for the behavioral sciences: Third edition. Boston: Brooks/Cole Publishing Company.

Jaccard, J., & Becker, M. A. (1997). Statistics for the behavioral sciences: Third edition. Boston: Brooks/Cole Publishing Company.

Jenkins v. United States, 307 F.2d 637 (D. C. Cir. 1962).

Kennedy, D. B., Kelley, T. M., & Homant, R. J. (1985). A test of the "hired gun" hypothesis in psychiatric testimony. Psychological Reports, 57, 117-118.

Mezei, D. S., & Grieve, F. G. (1999, August). Factors influencing juror perceptions of eyewitness testimony. Poster session presented at the annual meeting of the American Psychological Association, Boston. MA.

Mossman, D., & Kapp, M. B. (1998). "Courtroom whores"?--- Or why do attorneys call us? Findings from a survey on attorneys' use of mental health experts. Journal of American Academy of Psychiatry and Law, 26, 27- 36.

Otto, R. K. (1989). Bias and expert testimony of mental health professionals in adversarial proceedings: A preliminary investigation. Behavioral Sciences & the Law, 7, 267-273.

Pedhazur, E. (1982). Multiple regression in behavioral research: 2<sup>nd</sup> edition. Fort Worth, TX: Holt, Rinehart, and Winston, Inc.

Poythress, N. G. (1977). Mental health expert testimony: Current problems. Journal of Psychiatry and Law, 5, 201-227.

Resnick, P. J. (1986). Perceptions of psychiatric testimony: A historical perspective on the hysterical invective. Bulletin of the American Academy of Psychiatry and the Law, 14, 203-219.

Samaha, J. (1996). Criminal procedure: Third edition. Minneapolis/St. Paul: West Publishing Company.

Schwarz, N. (1999). Self-reports: How the questions shape the answers. American psychologist, 54, 93-105.

Senna, J., & Siegel, L. (1996). Introduction to criminal justice: Seventh edition. Minneapolis/St. Paul: West Publishing Company.

Smith, S. R. (1989). Mental health expert witnesses: Of science and crystal balls. Behavioral Sciences and the Law, 7, 145-180.

Vidmar, N., & Laird, N. M. (1983). Adversary social roles: Their effects on witnesses' communication of evidence and the assessments of adjudicators. Journal of Personality and Social Psychology, 44, 888-898.

Wasyliw, O. E., Cavanaugh, J. L., & Rogers, R. (1985). Beyond the scientific limits of expert testimony. Bulletin of the American Academy of Psychiatry and the Law, 13, 147-158.

Willging, T. E. (1986). Court-appointed experts. Federal Judicial Center Staff Paper. Washington, DC: Federal Judicial Center.

## APPENDICES

## APPENDIX A

## Demographics

Please answer the following questions about yourself.

Age: \_\_\_\_\_

Ethnic Origin:      \_\_\_\_\_ American Indian / Alaskan Native  
                           \_\_\_\_\_ Hispanic / Latino  
                           \_\_\_\_\_ Asian / Pacific Islander  
                           \_\_\_\_\_ White  
                           \_\_\_\_\_ Black / African American  
                           \_\_\_\_\_ Other

Gender:            \_\_\_\_\_ Male  
                           \_\_\_\_\_ Female

Educational Status:      \_\_\_\_\_ Freshman  
                                   \_\_\_\_\_ Sophomore  
                                   \_\_\_\_\_ Junior  
                                   \_\_\_\_\_ Senior  
                                   \_\_\_\_\_ 1<sup>st</sup> year Masters  
                                   \_\_\_\_\_ 2<sup>nd</sup> year Masters  
                                   \_\_\_\_\_ 3<sup>rd</sup> year Masters and beyond



10. How FAIR do you think the expert was in his testimony?
- |                     |   |        |   |         |   |      |   |                   |
|---------------------|---|--------|---|---------|---|------|---|-------------------|
| 1                   | 2 | 3      | 4 | 5       | 6 | 7    | 8 | 9                 |
| Extremely<br>Unfair |   | Unfair |   | Neutral |   | Fair |   | Extremely<br>Fair |
11. How SATISFIED are you with the expert's testimony?
- |                         |   |                  |   |         |   |                  |   |                        |
|-------------------------|---|------------------|---|---------|---|------------------|---|------------------------|
| 1                       | 2 | 3                | 4 | 5       | 6 | 7                | 8 | 9                      |
| Not at all<br>Satisfied |   | Not<br>Satisfied |   | Neutral |   | Yes<br>Satisfied |   | Extremely<br>Satisfied |
12. Do you feel that expert psychological testimony is beneficial to the courts?
- |                       |   |          |   |         |   |       |   |                    |
|-----------------------|---|----------|---|---------|---|-------|---|--------------------|
| 1                     | 2 | 3        | 4 | 5       | 6 | 7     | 8 | 9                  |
| Extremely<br>Disagree |   | Disagree |   | Neutral |   | Agree |   | Extremely<br>Agree |
13. Do feel that the expert's testimony was biased in anyway?
- |                       |   |          |   |         |   |       |   |                    |
|-----------------------|---|----------|---|---------|---|-------|---|--------------------|
| 1                     | 2 | 3        | 4 | 5       | 6 | 7     | 8 | 9                  |
| Extremely<br>Disagree |   | Disagree |   | Neutral |   | Agree |   | Extremely<br>Agree |
14. What is your preliminary verdict, based solely on the expert's testimony?  
GUILTY or NOT GUILTY  
Please circle one
15. Please rate your confidence in your preliminary verdict (based on response #14)?
- |                         |   |                  |   |         |   |                  |   |                        |
|-------------------------|---|------------------|---|---------|---|------------------|---|------------------------|
| 1                       | 2 | 3                | 4 | 5       | 6 | 7                | 8 | 9                      |
| Not at all<br>Confident |   | Not<br>Confident |   | Neutral |   | Yes<br>Confident |   | Extremely<br>Confident |

## APPENDIX C

### Questionnaire for Traditional Type of Testimony

1. How FAIR was the trial?
 

1	2	3	4	5	6	7	8	9
Not at all Fair		Not Fair		Neutral		Yes Fair		Extremely Fair
  
2. How INTERESTED were you in the trial?
 

1	2	3	4	5	6	7	8	9
Extremely Disinterested		Disinterested		Neutral		Interested		Extremely Interested
  
3. How CREDIBLE do you feel the experts were in their testimonies?
 

1	2	3	4	5	6	7	8	9
Not at all Credible		Not Credible		Neutral		Yes Credible		Extremely Credible
  
4. How CONFIDENT do you feel the experts were in their testimonies?
 

1	2	3	4	5	6	7	8	9
Not at all Confident		Not Confident		Neutral		Yes Confident		Extremely Confident
  
5. How COMPETENT do you feel the experts were in their testimonies?
 

1	2	3	4	5	6	7	8	9
Not at all Competent		Not Competent		Neutral		Yes Competent		Extremely Competent
  
6. How QUALIFIED do you feel the experts were in their testimonies?
 

1	2	3	4	5	6	7	8	9
Not at all Qualified		Not Qualified		Neutral		Yes Qualified		Extremely Qualified
  
7. How RELIABLE do you feel the experts were in their testimonies?
 

1	2	3	4	5	6	7	8	9
Not at all Reliable		Not Reliable		Neutral		Yes Reliable		Extremely Reliable
  
8. How ACCURATE do you feel the experts were in their testimonies?
 

1	2	3	4	5	6	7	8	9
Not at all Accurate		Not Accurate		Neutral		Yes Accurate		Extremely Accurate
  
9. How HONEST were the experts in their testimony?
 

1	2	3	4	5	6	7	8	9
Extremely Dishonest		Dishonest		Neutral		Honest		Extremely Honest



## APPENDIX D

## Informed Consent Document

You are about to participate in a study that focuses on expert psychology testimony. **Please read the following material carefully.** It describes the purpose of the study, the procedure to be used, risks and benefits of your participation, and what will happen to the information that is collected from you.

1. **The purpose of the study** is to examine juror perceptions of expert psychological testimony.
2. **The procedures to be used in this study.** First you will be asked to fill out a personal information questionnaire. Then you will be asked to read through a one-paged case history of an insanity case. After you read through the case history you will then be asked to watch a video, approximately 15 minutes in length. The video will be a portion of a fictitious mock trial of an insanity case. After you watch the video, you will be asked to complete a 15-item questionnaire regarding the expert psychological testimony. When the questionnaire is completed you will be given a copy of this informed consent and a debriefing form that will explain the research further.
3. **Risks and benefits of participation.** There are no known risks from participating in this study. However, due to the nature of the material presented, it is possible that past experiences or other feelings could arise from participation. It is our responsibility to respond to any and all problems that may occur and appropriate assistance will be provided. You will either be referred to Dr. Grieve, a clinical psychologist, or to the campus-counseling center. Benefits to you are minimal, but we feel that this opportunity to participate will enhance your knowledge about the nature of research in psychology. Extra credit will also be an option depending on your instructor's policy. If your instructors do award extra credit for participating in research, then be sure to obtain the "certificate of participation" from the researchers and take it to your instructor.
4. **After the information or data are collected** from you, it will be securely stored separately from any identifying data; additionally, electronically stored data will be password protected. To ensure confidentiality, you will be assigned a participant number, which will be the only means of identification. In other words, the identities of all participants will not be known at the time of analysis, and will not be presented at any time during the study. All data obtained will be used only for purposes of instruction and scientific publication, and all data will be confidentially protected. Information will be made public in the form of averages, which makes it impossible to tell who the participants were.

If you have any questions regarding this study, please contact Dannie Harris at 221-7233 or Dr. Frederick Grieve at 221-7235.

If you have any questions regarding the right of research participants, please contact the Office of Grants and Sponsored Research, Box 4517, Austin Peay State University, Clarksville, TN 37044, (931) 221-7881.

### **Informed Consent Statement**

Please read the statements below. They describe your rights as a participant in this research study.

1. **I agree to participate in the present study being conducted by Dannie Harris, who is under direct supervision of Dr. Rick Grieve.**
2. **I agree to:**
  1. **Fill out the personal information questionnaire (4 items).**
  2. **Read through a one-paged case history.**
  3. **Watch the video of the mock trial (15 minute in length).**
  4. **Fill out Juror Evaluation Questionnaire (15 items).**
  5. **Total time involved (approximately 30 minutes).**
3. **I have been informed in writing of the procedures to be followed as well as the risks and benefits to me for participating. I have been given an opportunity to ask questions about my participation.**
4. **I understand that I do not have to answer any item that I choose not to.**
5. **I understand that I may terminate my participation at any time without penalty or prejudice and that I may have all data obtained from me destroyed. Data will be destroyed up until the time of publication; for at that time we are unable to remove data.**
6. **I realize that by signing this form, I willingly consent to participate in this study. I also acknowledge that I have been given a copy of this consent form to keep.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

## APPENDIX E

## Case History For Panel of Experts in a Guilty Case

On January 8, 1994, a murder was committed in a small suburb in North Chicago. The details of the crime and the investigation are immense; however, approximately 8 months later the Chicago Police Department made an arrest and charged Scott Webster with the murder of his neighbor. Mr. Webster is 35 years old and has a history of criminal activities. According to his history, Mr. Webster has spent approximately 2 years in a correctional facility.

After the charges were made, Mr. Webster was to be arraigned and officially charged with the crime of First Degree Murder, punishable by death. His siblings arranged for his counsel, Mr. William Sullivan, a known defense attorney in the surrounding Chicago area. The State was represented by the Chicago District Attorney's office, headed by Joseph Haley.

At the time of the arraignment, Mr. Webster plead Not Guilty by Reason of Insanity and later court dates were set to argue the case.

What you are about to view is psychological testimony regarding Mr. Webster's diagnosis and responsibility for the crime. A panel of experts was court appointed to review the case, and Dr. Michael Garfield is testifying on behalf of the panel's consensus that Mr. Webster is not insane and should be held accountable for the murder.

## APPENDIX F

## Case History For Panel of Experts in a Not Guilty Case

On January 8, 1994, a murder was committed in a small suburb in North Chicago. The details of the crime and the investigation are immense; however, approximately 8 months later the Chicago Police Department made an arrest and charged Scott Webster with the murder of his neighbor. Mr. Webster is 35 years old and has a history of psychological problems. According to his history, Mr. Webster has spent approximately 2 years in a psychiatric hospital.

After the charges were made, Mr. Webster was to be arraigned and officially charged with the crime of First Degree Murder, punishable by death. His siblings arranged for his counsel, Mr. William Sullivan, a known defense attorney in the surrounding Chicago area. The State was represented by the Chicago District Attorney's office, headed by Joseph Haley.

At the time of the arraignment, Mr. Webster plead Not Guilty by Reason of Insanity and later court dates were set to argue the case.

What you are about to view is psychological testimony regarding Mr. Webster's diagnosis and responsibility for the crime. A panel of experts was court appointed to review the case, and Dr. Michael Garfield is testifying on behalf of the panel's consensus that Mr. Webster is insane and should not be held accountable for the murder.

## APPENDIX G

## Case History For Traditional Testimony In a Guilty Case

On January 8, 1994, a murder was committed in a small suburb in North Chicago. The details of the crime and the investigation are immense; however, approximately 8 months later the Chicago Police Department made an arrest and charged Scott Webster with the murder of his neighbor. Mr. Webster is 35 years old and has a history of criminal activities. According to his history, Mr. Webster has spent approximately 2 years in a correctional facility.

After the charges were made, Mr. Webster was to be arraigned and officially charged with the crime of First Degree Murder, punishable by death. His siblings arranged for his counsel, Mr. William Sullivan, a known defense attorney in the surrounding Chicago area. The State was represented by the Chicago District Attorney's office, headed by Joseph Haley.

At the time of the arraignment, Mr. Webster plead Not Guilty by Reason of Insanity and later court dates were set to argue the case.

What you are about to view is psychological testimony regarding Mr. Webster's diagnosis and responsibility for the crime. The Defense hired Dr. Anthony Cross testifying that Mr. Webster is insane and should not be held accountable because of his illness. The Prosecution hired Dr. Michael Garfield, testifying that Mr. Webster is not insane and should be held accountable for the murder.

### Case History For Traditional Testimony in a Not Guilty Case

On January 8, 1994, a murder was committed in a small suburb in North Chicago. The details of the crime and the investigation are immense; however, approximately 8 months later the Chicago Police Department made an arrest and charged Scott Webster with the murder of his neighbor. Mr. Webster is 35 years old and has a history of psychological problems. According to his history, Mr. Webster has spent approximately 2 years in a psychiatric hospital.

After the charges were made, Mr. Webster was to be arraigned and officially charged with the crime of First Degree Murder, punishable by death. His siblings arranged for his counsel, Mr. William Sullivan, a known defense attorney in the surrounding Chicago area. The State was represented by the Chicago District Attorney's office, headed by Joseph Haley.

At the time of the arraignment, Mr. Webster plead Not Guilty by Reason of Insanity and later court dates were set to argue the case.

What you are about to view is psychological testimony regarding Mr. Webster's diagnosis and responsibility for the crime. The Defense hired Dr. Michael Garfield to testify that Mr. Webster is insane and should not be held accountable because of his illness. The Prosecution hired Dr. Anthony Cross to testify that Mr. Webster is not insane and should not be held accountable for the murder.

**Dannie Sue Harris**  
Maiden Name: Dannie Sue Mezei

### **Educational History**

*Austin Peay State University*, Clarksville, TN  
Master's Program in Clinical Psychology, December 2000, with honors

*Harriett Cohn Center*, Clarksville, TN  
Clinical Psychology Internship, July to November 2000.

*Austin Peay State University*, Clarksville, TN  
B. S. in Psychology, December 1998, summa cum laude.

*Tennessee State University*, Nashville, TN  
August 1995 to May 1996

*Austin Peay State University*, Clarksville, TN  
June 1995 to August 1995

### **Honors and Awards**

Dean's List (Graduate) Austin Peay State University 1999, 2000  
Austin Peay State University Department of Psychology Outstanding  
Undergraduate Researcher, 1998  
Dean's List (Undergraduate) Austin Peay State University 1996, 1997,  
1998  
Dean's List (Undergraduate) Tennessee State University 1995, 1996  
Dean's List (Undergraduate) Austin Peay State University 1995

### **Professional Memberships**

American Psychological Association; *Student Affiliate*  
Division 41 (American Psychology-Law Society)  
Division 12 (Clinical Psychology)  
Midwestern Psychological Association; *Student Affiliate*

### **Publications and Manuscripts in Preparation**

Grieve, F. G., **Harris, D. S.**, & Fairbanks, S. D. (2000). Extending the fatigue severity scale to an obese population. *Eating and Weight Disorders: Studies on Anorexia, Bulimia, and Obesity*, 5, 161-165.

**Harris, D. S., & Grieve, F. G.** (in preparation). Juror perceptions of eyewitness testimony.

Mukina, S. L., Grieve, F. G., Waterbury, C., **Mezei, D. S.**, Neill, M. E., McCarthy, M. A., Jones, R., Moldiz, D., Estes, K., & Woods, C. B. (manuscript in preparation). Psychometric properties of the eating beliefs questionnaire.

### **Paper Presentations, Symposia, and Invited Talks**

**Harris, D. S.**, Newton, C. C., Minniehan, S. D., & Medure, A. J. (2000, March). Student experiences in graduate school. Invited talk at the Brown Bag Lecture Series at Austin Peay State University, Clarksville, TN.

**Mezei, D. S.** (1999, March). The manipulation of response rate and perceived status in eyewitness testimony. Invited talk at the Brown Bag Lecture Series at Austin Peay State University, Clarksville, TN.

**Mezei, D. S., & Grieve, F. G.** (1999, May). The manipulation of response rate and perceived status in eyewitness testimony. Paper presented at the Midwestern Psychological Association Convention, Chicago, IL.

**Mezei, D. S., & Grieve, F. G.** (1999, August). Juror perceptions of eyewitness testimony. Poster presented at the American Psychological Association Convention, Boston, MA.

Slicton, D. J., Emerson, C., Bethel-Constable, I., & **Mezei, D. S.** (1998, March). Is social physique anxiety related to level of feminist identity? Poster presented at the Austin Peay State University Undergraduate Research Symposium, Clarksville, TN.

Mukina, S. L., Grieve, F. G., Waterbury, C., **Mezei, D. S.**, Neill, M. E., McCarthy, M. A., Jones, R., Moldiz, D., Estes, K., & Woods, C. B. (1998, March). Psychometric properties of the eating beliefs questionnaire. Poster presented at the annual meeting of the Southeastern Psychological Association, Mobile, AL.

Slicton, D. J., Fairbanks, S. D., Emerson, C., McCarthy, M. A., Grieve, F. G., Bethel-Constable, I., Johnson, J., & **Mezei, D. S.** (1998, March). Is social physique anxiety related to level of feminist identity? Poster presented at the annual meeting of the Southeastern Psychological Association, Mobile, AL.

Mukina, S. L., Waterbury, C., & **Mezei, D. S.** (1998, April). Psychometric properties of the eating beliefs questionnaire. Poster presented at the Austin Peay State University Undergraduate Research Symposium, Clarksville, TN.