

Social Work Research and the Court

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Based on his social work practice experience, the author argues that the court system is an appropriate location for the practice of social work research. Survey research methodology skills are demonstrated to be useful for many court officials, including defense attorneys, prosecuting attorneys, and judges. Examples are given that illustrate how social work research has been used. Ethical issues for implementing and interpreting research are also addressed.

On the basis of practice experience, it can be concluded that social work research skills can be useful to collect and organize data to assist in fair and impartial decisions to be made by judges, defense attorneys, prosecuting attorneys, parole boards, and juries. Before a social worker becomes involved in research for the legal system, three areas of concern should be considered: a) appropriate level of research and theory skills; b) appropriate circumstances; and c) ethical considerations. Each of these is discussed.

Research and Theory Skills

Prosecuting attorneys, defense attorneys, and judges have professional and moral obligations to monitor the community standards of their districts. Without a doubt, survey research methods are the most prized methodological skill for assisting criminal justice officials in this effort.

Prosecuting attorneys are typically elected by the district voters. They are obligated to protect the interests all of the citizens. When legal precedent and

statute dictate that an outcome of a particular case be decided upon the basis of a "community standard," prosecuting attorneys must have an intimate understanding of the "community standards" within their districts.

Opinion surveys of voters can have a profound influence on the priorities set by district attorneys. What cases should be given the highest priority on the basis of time and money? For example, in the past ten years of observing the court, this author has noticed a passionate change of attitudes toward wife abuse cases. In earlier days, district attorneys identified wife abuse as less of a criminal justice matter and more of a mental health concern. Citizen groups and social service professionals have had an impact on a change in attitude. Recently, the author had an opportunity to witness a domestic violence case in court. It was obvious that the district attorney used a great deal of his energy and resources to prosecute the husband. Similar zealotry has been observed in drunk driving cases brought before the court. The desires of the community have a profound influence on the behavior of

district attorneys.

Defense attorneys and judges are also influenced by "community standards." For example, "Community standard" is the catch phrase used to determine if material can be considered obscene. With the movement toward a more conservative Supreme Court, we may witness a proliferation of many systemic surveys. These surveys have the potential to encapsulate a clearer picture of attitudes toward sexually explicit material. Defense attorneys and judges are most interested in what their community assesses as obscene.

Change of venue motions, which request the court to move the of a trial to a court in another location, are considered extremely important by all court officers. For obvious reasons, both judges and district attorneys are generally not amenable to a change of venue motion. The motion is usually made by the defense attorney. However, the presiding judge makes the final decision about the appropriateness of such a motion.

Social workers involved in doing survey research for a change of venue motion must be familiar with their state's criteria. The criteria articulated in the statutes should be used as a foundation for constructing a survey instrument. Most statutes [including change of venue statutes] are written in "legalese." The social worker should get a copy of the statute and other relevant material from the defense attorney. It is not recommended that social workers find the statute independently. There are two reasons for acquiring the material from the lawyer: a) it is extremely important

that the social work researcher and the lawyer are operating on the same wave length; b) by using his/her guidance, an important rapport emerges between the social worker and the lawyer.

In non-legalese, courts in the State of North Carolina essentially require two criteria that would produce a successful change of venue motion. Other states are not significantly different. Two criteria that affect the construction of a questionnaire include:

- a) Highly publicized trial.
- b) Publicity will have an impact on opinions of jurors.

The social worker should read the material very carefully and then go over the relevant sections with the defense attorney. Attorneys are not skilled at operationalizing social science concepts and can offer little assistance in constructing a survey instrument. However, they do have the skills to critique the instrument. They usually have a firm grasp of how a judge and a district attorney will respond to the empirical findings of a scientific survey.

Based on ethical considerations, the author also asked the defendant to critique the survey questionnaire throughout its development. In fact, it is good practice to have both the defense attorney and the defendant comment on the instrument prior to submitting it to the judge and district attorney. Often, the instrument developed by the social worker must be approved by the presiding judge. The district attorney's objections to the instrument are seriously considered by the judge.

Quantitative Skills

Although judges and attorneys tend to be impressed with computer technology and skill, they are not impressed with sophisticated statistical procedures. However, anything beyond chi square may cause format frustration. Judges and attorneys tend to favor percentages, frequency distributions, and other descriptive statistics. Most importantly, judges often express a sharp interest in the process of data collection. They demand to be assured that every effort is made to avoid bias -- both bias in favor of the defendant and bias against the defendant. In particular, judges have been concerned with:

- 1) how sample size was determined;
- 2) how the sample was collected;
- 3) calculations of confidence intervals;
- 4) citations that support the above decisions; and
- 5) tools that were used.

Judges demand that all of these five issues be clearly spelled out. They expect more detail about sampling than do editors and referees of scholarly periodicals. Judges tend to be impressed with computer generated random samples. For example, the author periodically reports to judges information that includes computer programs used to generate random telephone numbers. When the task is completed with the cooperation of the local telephone companies, there is an acknowledgement of whomever provided assistance, and an explanation of how

the numbers were generated. The work of Lavrakeas (1987) is particularly helpful in compiling a report for a judge.

Theory and Group Dynamics

Researchers who have been involved with change of venue motions are also likely to be asked about jury selection. Both district and defense attorneys express concerns regarding the selection of jurors. The researcher is expected to be knowledgeable about the theoretical foundation of group dynamics.

Although having an academic background in social psychology is a necessary condition to assist with jury selection, it is not a sufficient condition. It is also necessary for the researcher to have an intimate understanding of the structural components that comprise the community in which the case is being heard. Every community has unique characteristics. Social psychological dynamics, combined with a thorough knowledge of the community, are the major tools to assist with jury selection.

For example, the author practices social work in a tri-racial community [approximately 33 percent Black, 33 percent Native American, and 33 percent White] with high rates of crime and poverty. The people of the community have a long tradition of being preoccupied with racially sensitive issues. When recommendations had been made for jury selection in this community, it was pointed out that social structure parameters should influence the decision making process. Each community has a unique personality. Such factors influence the selection of jurors.

Appropriate Circumstances

In this field, the author has encountered four areas of appropriate social work research intervention. Some have been mentioned earlier. They include: a) working with the district attorney; b) change of venue motions for the defense attorney; c) jury selection; d) civil suits. The author's experiences in these areas will be briefly discussed.

District Attorney

In this case, the district attorney had worked hard to produce 19 felony convictions involving fraud with public funds. The defendant was the director of a local housing authority. The amount of misused funds was in the millions. For his offenses, the defendant could have received a sentence of 205 years.¹ It would seem that the district attorney would have been pleased with a long sentence. However, after the judge sentenced the defendant to a minimum term of prison of 7 years and a maximum of 10 years, the Governor of the State reduced his sentence to a minimum of 1 year and a maximum of 10 years. The district attorney then called for the author's assistance after the defendant had served less than 2 years of his original 7 to 10 years sentence.

The district attorney demonstrated "restrained anger," perhaps because he was distressed with two aspects of the case. He had worked diligently to successfully try the case, and was also personally offended that a local person would profit from public funds in one of the poorest counties in the state. Furthermore, and most importantly, the

defendant was white. Blacks and Native Americans in the community were outraged. They believed that if the defendant had been a racial minority, he would have received the sentence of 205 years. Based on his sense of frustration and feeling the pulse of the community, the district attorney studied the statutes that addressed the issue of "Parole eligibility, consideration and refusal." He asked me to study them as the basis of completing a scientific survey.

According to the statutes, the Parole Board is expected to consider public attitude when making decisions. In particular, the North Carolina Parole Board uses two criteria to decide the appropriateness of a decision:

- 1) Would the parole decision promote a "disrespect for the law" by the community?
- 2) Would the community think that the Parole Board "depreciates the seriousness" of the crime?

A short questionnaire was developed in concert with the district attorney's office. The district attorney requested that the survey focus on areas of the county that had the highest population of racial minorities. It was pointed out that a scientific survey had to be random and that the sampling frame must be the community [predominately white] in which the funds were expropriated. Initially, a question regarding racial category was included in the questionnaire. However, the district attorney insisted that it would not be prudent to attempt to establish any causal relationship. The telephone survey included three questions. The

first question involved age in order to assure that the respondent was an adult. The other two questions involved "respect for the law" and "level of seriousness" of the crimes. Although the sampling frame was limited to the predominantly white community in which the funds were taken, 66 percent of the sample were outraged that the defendant could receive an early parole. The Parole Board read the results of the survey and the denied the request for early parole.

The Board's decision made the local newspaper and the Raleigh newspaper [state capital, approximately 100 miles away from the scene of the crime]. There seemed to be a relief in the Black and Native American communities. The racial minorities began to see the district attorney as unbiased. "He hates everybody equally," one Native American told me.

Change of Venue Motion

On March 26, 1988, Julian Pierce, a Native American lawyer who was running for a new Superior Court Judgeship, was murdered. Before the end of the day, rumor had it that there was not one bullet available for purchase in any of the county's stores. Many of us anticipated a violent race riot. One local newspaper called the event "The Assassination of Hope." The murder received national attention, including spots on the evening news of three major networks, articles in People Magazine and U.S. News and World Report [among others], and at least one half-hour documentary on public television,

broadcast nationally.

The county sheriff devoted most of his resources to investigating the crime. Within a very short time, he proclaimed the alleged murderer to be John Anderson Goins. He concluded that Goins and a friend murdered Pierce because Goins believed that Pierce was trying to prevent him from reconciling with his former girlfriend. Immediately following the murder, Goins allegedly returned to his home, entered a closet, and committed suicide. Goins' friend, Sandy Jordan Chavis, was arrested for the first degree murder of Julian Pierce. Although the murder took place three years ago, some local citizens are dissatisfied with the outcome.

The law office of Britt and Britt requested a scientific survey to determine if a change of venue motion was appropriate (Marson, 1988). Six questions were asked in a random phone survey that included persons eligible for jury duty. Sixty percent of the respondents in the county in which the crime took place indicated that Mr. Chavis could not receive a fair trial locally. The author's paper was submitted in support of a change of venue motion. Although it was evident that a change of venue appeared appropriate, the special prosecutor had many objections.² It took two days of testimony for the change of venue motion to be approved by the judge.

The author has conducted change of venue research for two other cases (Marson, 1989a; Marson and Hedgpeth, 1991). Both surveys indicated that a change of venue would not be appropriate. The two cases were very

different. In the first case, Daniel McKinnon was charged with the rape and vicious murder of a 17-year-old Black high school student. She lived with her grandmother, was a cheer leader, worked hard in school, and was an above average student. Because of the outstanding reputation of the victim, the case received a great deal of local press coverage. The random survey of eligible jurors indicated that sixty-two percent had never heard of the murder. Fifty-nine percent stated that Mr. McKinnon could receive a fair trial in the local district. The results of the survey were surprising to the defense attorney. Based on the survey results, it would be easy to find 12 people who never heard of the charges.

The second case is still being heard; therefore, few details can ethically be revealed at this time. The author was very reluctant to accept the research project because he had never heard of the crime, and felt sure that others in the community would also not have heard of the crime. After a considerable amount of prodding, the defendant and the defense attorney convinced the author to complete a preliminary study on a pro bono basis. The results indicated that over 95 percent of the eligible jurors had never heard of the crime. The defense would have no problems finding an impartial jury. At this time, the defendant is still requesting a change of venue motion.

Jury Selection

Although the survey results of the Daniel McKinnon charges did not support a change of venue motion, they did

support caution in jury selection. Fifty-nine percent of the respondents stated that Mr. McKinnon could get a fair trial, which meant that 41 percent indicated that he could not. Furthermore, prior to the hearing, 19 percent stated that he was guilty and approximately 13 percent indicated that if they were on the jury they would make sure to give him a fair trial but "hand'em" immediately afterwards.

Although it was evident that the court could find 12 peers for jury duty, a supplement was included with the survey report. The final section of the report included recommendations for jury selection. The recommendations were made within the context of the results of the survey, the history of racial tension in the community, and social psychological theory on decision making processes. On the basis of the recommendation for jury selection, the judge accepted a motion to have each juror interviewed in private, that is, in the presence of only the judge, district attorney and defense attorney.³ The defense attorney felt good about the jury composition. However, the evidence against the defendant was overwhelming and he is presently serving a life sentence.

Civil Suits

Research for criminal charges [particularly, change of venue motions] involved traditional survey methodology that is relatively uncomplicated for an experienced researcher. Civil suits, although less prominent, would require a considerable amount of creativity. For example, in a pending case a local entrepreneur is distressed because he

believes that other business men have used several signs on the freeway to confuse tourists away from his business establishment. The author was charged with designing an experiment to determine if the signs are truly confusing. Since the case is still pending, additional details may not be divulged. However, it is suggested that litigants would be much more interested in inferential statistics than would criminal court officers.

Ethical Considerations

The foundation for all social work research for the court system must be ethics. The NASW Code of Ethics provides an effective backdrop for communicating professional standards to lawyers and judges. For example, in change of venue research, this author includes a special paragraph in the cover letter:

First, I do not have a vested interest in the outcome of this trial. For example, I have never met the defendant. Second, I do have a vested interest in unbiased social science research. The quality of the research I complete is a direct reflection on my professional ability and integrity

The research agenda must be a search for the truth. Professionals who oppose the death penalty may massage research results to obtain success with a change of venue motion when, in fact, the community [that is pro-death penalty] can offer a fair and impartial trial.

Change of venue motions can be ethically distressing for a social worker.

In cases in which the defendant is indigent, the court allocates funding for the survey. Such a procedure opens the door to a variety of possible objections by the district attorney. For indigent defendants, all of the officers of the court become aware that the defense attorney will move for a change of venue (Marson, 1988b). If the data supports the change of venue, all is well for the defendant. If the data does not support a change of venue motion, the district attorney and judge will wonder what happened to the data and analysis. In these cases, the data can potentially be used against the interests of the defendant -- particularly if the defendant insists on a change of venue motion when the data does not support such an effort.

When the defendant has his/her own financial resources to pay for an attorney and survey, the court is not made aware of the research until it is submitted with the change of venue motion. In this case, the defendant has a better chance to pursue a change of venue motion because only the defense attorney, the defendant, and researcher are aware that a survey was completed. The district attorney does not have the opportunity to see the results of a survey which does not support the defendant's motion. Many lawyers who have been consulted on the issue agree that the system is not equitable. At best, the researcher must warn the indigent defendant that the completed survey can potentially be used against him/her.

Lawyers [both defense and prosecuting] have strong desires to win their cases regardless of financial rewards. Lawyers tend to be driven by

the intrinsic value of winning. Sometimes their zealousness has the potential of producing results that will favor their needs, but may not be a reflection of reality. From past experience, the author has learned not to involve attorneys in the initial development of the survey. Lawyers tend to want to use words that induce the respondent to reply in a manner that is most favorable to their case. After explaining that neutral language must be used in questionnaires, lawyers back off.

My most difficult ethical decision involved how much to charge for research activities. Although the author is a full-time faculty member, he completes socio-legal research as part of a part-time private practice. The issue was resolved by accepting the first contract pro bono, and the first experience was used as an opportunity for learning about expectations of judges and lawyers. A sense of how much time and effort must go into these research projects was also gained.

Summary

Social work researchers have an appropriate role to play in providing impartial research findings that enable lawyers, judges, juries, and parole boards to make ethical decisions. The court, however, does not want the type of research desired in scholarly journals. It tends to be interested in using survey results to capture the pulse of the community. Civil cases may have different needs for research. Although more study is required, civil suits are likely to demand a inferential statistics and creative research designs.

ENDNOTES

1. This is not a typographical error. The defendant could have received a sentence of 205 years.
2. The case was so controversial that the court approved a defense motion for a special prosecutor. The special prosecutor was a district attorney from the state capital [100 miles away from the community]. He unsuccessfully resisted all efforts to have the case moved to the state capital.
3. The defense attorney surprisingly gave the judge a copy of the report which contained the negative results.

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