

OPENING AND CLOSING THE JURY ROOM DOOR: A SOCIOHISTORICAL CONSIDERATION OF THE 1955 CHICAGO JURY PROJECT SCANDAL*

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In 1954 social scientists and legal scholars from the University of Chicago Law School's Jury Project recorded six jury deliberations in Wichita, Kansas. Over a year later, news of the recordings erupted into a national scandal, and the researchers were subpoenaed to testify before the Senate Subcommittee on Internal Security. This article examines how the recordings came to be viewed as a violation of the tradition of trial by jury and a "stepping stone to wrecking the entire system of justice." I begin by reviewing letters exchanged among the researchers, which illustrate how they easily arranged the jury recordings with the help of both judges and lawyers. I then analyze arguments against the jury recordings expressed in more than 100 newspaper editorials about the incident. Vehement criticisms of the jury recordings indicate that secret deliberations are viewed as both practical and symbolic underpinnings of the tradition of trial by jury. I conclude by discussing the relevance of this case for more recent revelations of jury room discussions.

In the summer of 1954, University of Chicago researchers recorded six jury deliberations in Wichita, Kansas. The recordings had been approved by the judges and lawyers involved. The jurors, however, were unaware that the heating units inside their jury room had concealed microphones. The recordings were intended to supplement the first major social-scientific study of the jury, conducted by the University of Chicago Law School Jury Project, which also included surveys, post-verdict interviews, and mock jury experiments. Despite the fact that the researchers encountered surprisingly few obstacles in arranging the study, their recordings became national news, condemned as jury "snooping" (A9).¹ Editorialists expressed surprise that "anyone would be so debased as to put a microphone in a jury room" (A4). They called the recordings a "stepping stone to wrecking the entire system of justice" (A18) and accused the researchers of providing "ammunition for the Communist propaganda campaign" by

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¹ Newspaper articles and editorials regarding the Chicago Jury Project scandal that are analyzed in this article were taken from a four-volume set of more than 500 press clippings regarding the scandal. These articles were collected for the University of Chicago by Romeicke Press Clipping Service. They are currently available at the University of Chicago D'Angelo Law Library. To streamline the text, I reference these articles using codes beginning with "A1," "A2," and so on. The corresponding article's title, date, and publication information—as available in the collection of news clippings—are presented at the end of this paper.

creating a “fissure under the very cornerstone of our national freedom and independence” (A25). Just five days after the appearance of these inflammatory articles, the Chicago Jury Project researchers received subpoenas to testify before the Senate Subcommittee on Internal Security.

Previous research on the Chicago Jury Project scandal has primarily treated it as a cautionary tale about the perils of using concealed microphones in research involving human subjects (see, e.g., Amrine and Sanford, 1956; Burchard, 1958; Ferguson, 1955). Others have considered the effects of the episode on subsequent jury research. Subsequent social-psychological research on jury deliberations, for instance, primarily relies on mock juries, which have obvious limitations. Some argue that the inability to validate experimental research with details from actual deliberations has discouraged many social scientists from entering the field of jury studies (Erlanger, 1970; Hans and Vidmar, 1991; McCabe, 1974).

Less attention has been devoted to the consideration of how and why the recording of these six juries in Wichita, Kansas incited a national scandal. The historical context of the 1950s certainly contributed. The government felt threatened by liberal academics who possessed secrets—political, military, or scientific—that could potentially undermine national security (Hofstadter, 1963; Shils, 1956). The end of the McCarthy hearings was still fresh, and fears of subversion remained (O’Neill, 1986). These contextual factors undoubtedly influenced the Senate’s investigation of the Chicago Jury Project, but they contribute less to an understanding of why the recordings were regarded as so dangerous to the jury system.

In this article, I consider what the jury project and resulting arguments about jury secrecy reveal about the American jury system. I first examine letters and memoranda exchanged among the researchers and judges while planning the jury recordings, which illustrate the ease with which the researchers were able to open the door to the jury room.² Then, by analyzing transcripts from the hearings of the Senate Subcommittee on Internal Security and newspaper opinion pieces—including editorials, columns, letters to the editor, and cartoons—I review the political and media reaction to the scandal. While the Senate hearings largely reflect the anti-intellectualism of the McCarthy era, the media response is informative regarding the perceived tradition and roles of jury secrecy. The tradition of jury room secrecy was portrayed by the media as an integral part of the jury process, the loss of which could diminish justice and threaten the entire democratic system.

My examination of this scandal ultimately illustrates a disjuncture between the informal norms of jury procedure and the long-standing, idealized tradition of the jury as viewed from the outside. It is also clear that the sociocultural context of the 1950s

² Records, letters, and memoranda from the Chicago Jury Project referenced are archived in the University of Chicago Law School Jury Project Records, 1953-1959. These items are owned by the University of Chicago Library’s Special Collections Research Center. Items used in this article were located in folders labeled “Jury Project Controversy,” contained within Box 25. These items will be indicated in parenthetical citation by “JPC” followed by the item’s author and date.

jury recordings, including political instability, anti-intellectualism, and criticisms of the jury system, contributed to the development of the scandal. I conclude by considering how more recent forays into the jury room are both similar to, and different from, the Chicago Jury Project's recordings, and the extent to which the 1950s arguments about the sanctity of the jury room are relevant today.

OPENING THE JURY ROOM DOOR

The Chicago Jury Project was a landmark undertaking. At the time, the researchers considered the project to be the most comprehensive study of the workings of the American jury system that had ever been conducted (Ferguson, 1955). Today, it is perhaps most notable as an early success in uniting legal scholars with social scientists in the study of the legal system (Hans and Vidmar, 1991; Simon and Lynch, 1990).

The project began, in 1952, with a grant from the Ford Foundation.³ It was jointly coordinated by Edward Levi, then dean of the University of Chicago Law School, and law professor Harry Kalven. Bernard Meltzer, a professor at the law school, Fred Strodbeck, a professor of sociology who held a joint appointment in the law school, and Chicago lawyer Abner Mikva also worked on the study. The goal was to employ a variety of methods to examine jury behavior and decision making. In particular, the researchers sought to examine assumptions about how juries operate, in order to inform substantive and procedural law and to address “continuing criticism” of the jury (U.S. Senate, 1955:229).

Chicago Jury Project researchers observed trials, interviewed jurors, surveyed judges and jurors, gathered public opinion about the jury through questionnaires, and conducted mock-jury experiments using recorded transcripts of trials. But they had assumed that their inquiry into the jury system stopped at the jury room door—until several colleagues and lawyers suggested otherwise. After a statement on the jury project, written by Meltzer,⁴ had been circulated among members of the American Bar Association, the researchers began to receive letters from lawyers criticizing the project because it would not be “sufficiently realistic” without analysis of actual jury deliberations (U.S. Senate, 1955:7).

A particularly convincing letter came from Paul Kitch—a lawyer, colleague of Levi, and graduate of the University of Chicago Law School. Kitch and his fellow members of the Wichita Bar Association were dismayed by articles in the local paper criticizing recent civil jury damage awards. The articles suggested that jury

³ In August 1952, the University of Chicago Law School received from the Ford Foundation a grant of \$400,000 to support a three-year research program in law and the behavioral sciences. By May 1953, the funded research was further specified to address three topics: the jury system, the increasing use of commercial arbitration, and public attitudes toward taxation. The study of the American jury system became the largest of the three projects, claiming more than half of the Ford Foundation funds given to the law school, which eventually totaled over \$1.4 million (U.S. Senate, 1955:4-5, 38-39).

⁴ This statement was later published as Meltzer, 1953.

awards were becoming excessive and inappropriate⁵ and that lawyers were able to use “trickery” to win jury cases (U.S. Senate, 1955:153). After learning of the Chicago project, Kitch and his colleagues decided that recording actual jury deliberations might help to bolster public support of the jury system. They viewed it as an opportunity to “tell the American people how good the jury system [is], instead of how bad it [is]” (U.S. Senate, 1955:7).

In May 1953, in response to Meltzer’s formal announcement of the jury project, Kitch wrote to the Chicago researchers and suggested recording actual jury deliberations:

I am certain that you could get the cooperation of various courts in permitting you to install secret transcribing devices in jury rooms so that . . . you could accumulate a substantial number of actual verbatim case histories. Adequate safeguards can be arranged with the courts for the protection of the identity of the individuals involved.

Once you accumulated [sic] a sufficient body of factual information the possible uses which you could make of the material would be of inestimable value to the profession and to the public. I do not think such a study has ever been made but from the standpoint of its future public interest and public contribution I am sure that its value will be many times greater than the value of the project outlined (U.S. Senate 1955:164).

The jury project researchers were intrigued by the idea of recording actual jury deliberations, which would allow them to validate other portions of their research and determine the extent to which deliberations in their mock-jury experiments resemble actual jury deliberations. The researchers also later noted that recording actual deliberations would allow them to assess “whether post-trial interviews with jurors permit reconstructions of the events of the jury room” (Kalven and Zeisel, 1966:xiv-xv).

The researchers were doubtful that any judge would consent to the jury recordings, but Kitch insisted that he could convince several Wichita-based district court judges to allow the recordings to be made in their courtrooms. In fact, the doors of the jury room had been opened to researchers nearly two decades before the Chicago Jury Project. In a little-known study conducted by Marston (1935), “psychological observers were planted in the jury-room to find out how errors in fact-finding were made.” The research, published in *Esquire* magazine, apparently drew no public criticism or media attention.

At the same time, research norms around the study of human subjects were murky. While current Institutional Review Boards and codes of research ethics preclude the recording of subjects’ interactions without their knowledge and informed consent, this was not the case in the early 1950s. Recording subjects—with or without their knowledge, inside or outside of the jury room—was not necessarily ethically questionable. Tape-recording had only recently emerged as a new method for research in psychological clinical and laboratory settings, which allowed the minimally intrusive documentation of interactions. However, norms and ethics around tape-recording in sociological field research, data collection, and interviewing were also largely undefined (Bucher, Fritz, and Quarantelli, 1956).

⁵ Fred Strodtbeck, personal communication, April 5, 2002.

It is also important to note that, at the time of the Chicago Jury Project, regulations regarding privacy in the jury room were, at best, only assumed to exist. No laws, formal prescriptions, or procedures specifically prohibited the recording of juries (Ferguson, 1955). At the time of the jury project, several judicial rulings had implied that jury deliberations should remain private (see, e.g., *Clark v. United States*, 1933; *Remmer v. United States*, 1954; *McDonald v. Pless*, 1915), but others actually permitted some degree of inquiry into jury deliberations (see, e.g., *Mattox v. United States*, 1892). However, these cases had primarily focused on post-verdict interviews to prevent challenges to the verdict, rather than recording juries for scientific research. Thus, the suggestion of recording juries was novel, but it did not constitute an overt violation of existing laws.

Given the previous jury observations, the apparent lack of formalized rules about jury secrecy, and Kitch's confidence that he could arrange the recordings, Levi and the rest of the jury project researchers became "sold" on the idea.⁶ As Kitch later recalled,

To get out from under any commitment on it, [Levi] said, "Well, I can see that it has got merit," but he said, "How are you going to get permission to do that sort of thing?" He passed the buck back on that. I was ready. I said . . . "I guarantee to you that we will find judges in Kansas who will give you this kind of consent" (U.S. Senate, 1955:153).

Kitch made the initial connection between the Chicago researchers and Wichita judges by contacting Judge Orie Phillips, the chief judge of the 10th Circuit Court of Appeals, as well as Circuit Court Judge Delmas Hill. By early November 1953, Judge Hill was willing to have the recordings conducted in his courtroom, as long as Chief Judge Phillips approved.

Because no formal guidelines existed regarding the procedures for jury recording, the researchers, judges, and lawyers together negotiated a set of provisional guidelines for the Wichita recordings. In a letter to Judge Phillips, Kitch provided a starting point. He outlined a set of rules for the jury recordings, designed by himself and the Chicago researchers. The rules reflected concern for the sensitivity and confidentiality of the deliberations. They included the following key stipulations: 1) the recorder should be located in the judge's chambers and operated only by a researcher or court reporter designated by the judge; 2) the recordings would only be made in civil trials and only with the consent of the counsel for each party; and 3) the project was to receive no publicity until the recordings were completed. The guidelines specified that the recordings would be sealed and remain in the trial judge's custody until a final judgment was entered in the related case and all appeals were dismissed. Following that, the

⁶ The number of juries that Kitch and the researchers sought to record is unclear. Kitch indicated that the project initially hoped to assemble a "minimum of 500 recordings over the next few years" (JPC: Kitch, November 23, 1953). Dean Levi and Kalven later suggested that they had decided to record only a "handful" of juries because of the time and resources required (U.S. Senate, 1955:59, 62). There is evidence, however, of negotiations for "confidential" recordings in a Texas District Court jury room (JPC: Levi, August 5, 1955) and with several circuit judges in Oklahoma (U.S. Senate, 1955:165-67).

recordings would be forwarded to the research team, who would prepare a single transcription of each deliberation and destroy the original recording. The research team was to supervise the editing of the transcript and remove all identifying statements, personal names, and geographical references (JPC: Kitch, November 25, 1953).

Correspondence between Kitch, the researchers, and the judges suggested that the group would defer to the judges' authority for the definition and ultimate approval of the jury-recording procedures. Chief Judge Phillips agreed with the procedures that had been outlined by Kitch, but he proposed one additional stipulation. He suggested that jurors should be informed that they would be recorded and told that the recording would "only be released in a form which is wholly impersonal and [would] not disclose to the public the identity of the jurors or of the trial in which the recording was made" (JPC: Phillips, November 25, 1953).

But Kitch and the researchers did not agree. They were concerned that if the jurors knew they were being recorded, the nature of the deliberations would change such that they were no longer representative of a typical jury. Kitch explained that, as a result, the "accuracy of any conclusions drawn from the transcriptions [would] be subject to serious challenge." In such a situation, making the recordings might not be worth the "tremendous expense involved in the undertaking," as the recordings would neither provide an example of typical jury deliberations nor serve to validate the researchers' previous work (JPC: Kitch, January 20, 1954). Only if the jurors did not know that they were being recorded could the researchers be certain that the deliberations would be unaffected.

Judge Hill also balked at this additional requirement. Kitch explained that, "[Judge Hill] was afraid we would be unable to get the consent of counsel in very many cases if counsel knew the jury was to be advised of their transcription. He felt that any trial lawyer with a particularly weak case would not want the jury to think it was being policed" (JPC: Kitch, December 1, 1953). The implication here is that trial lawyers rely on juries to feel free to voice subjectivities or viewpoints that they might not express if they thought their rationale would be under review or investigation. (This idea will be considered below.) It is notable, however, that Hill was against notifying jurors because he was concerned that this would limit the number of cases in the study. This is an important point because it makes clear that the only disagreement in the jury-recording guidelines did not revolve around the legality of jury recordings or the perception of the jury room as an impenetrable or sacred space.

Kitch visited Judge Phillips again, and in February 1954, the disagreement about notifying jurors was resolved. Kitch indicated in a telegram to the researchers that Judge Phillips, in separate conversations with both himself and Judge Hill, had waived his additional stipulation that jurors be informed of the recordings (JPC: Kitch, February 13, 1954). The jurors would enter the jury room and conduct deliberations as usual, without any knowledge that their discussions were being recorded.

With the verbal agreement and research guidelines in place, the researchers began preparations to make the recordings, and in May 1954, the project commissioned the

installation of recording devices inside heating units of the jury room attached to Judge Hill's courtroom. Cords were strung through the walls to a binaural tape recorder, which was hidden in Judge Hill's chambers (U.S. Senate, 1955:116). This relatively new technology produced a single recording from two separate microphones. Representatives of the project remained in Wichita for several weeks, during which time they recorded six actual jury deliberations (regarding five cases).⁷ Others affiliated with the project, including Harold Garfinkel, Saul Mendlovitz, and Abner Mikva, visited Wichita regularly to observe the trials and conduct post-verdict interviews of jurors. Back in Chicago, the researchers began to transcribe the deliberations following the guidelines approved by Judge Phillips. Three of the five cases were appealed, and those tapes were returned to Judge Phillips until a final verdict had been entered.

In the summer of 1955, nearly a year after the recordings, Judge Phillips arranged to play excerpts of the tapes at the Annual Judicial Conference for the 10th Circuit. Judge Phillips was eager to publicize the groundbreaking research that had been conducted under his auspices. However, Levi and Kitch later suggested that the researchers had been uncomfortable with Judge Phillips's plan to play the recordings at the conference. But Kitch told Levi that he was in "no position to deny it," and Levi finally said that "he would do what Judge Phillips requested . . . that he would release an edited recording for the program but that he would have no connection with it whatever" (U.S. Senate, 1955:181-82).

The researchers prepared excerpts from a recording that had been edited to remove all identifying information. They provided Judge Phillips with a transcript of the recording and he shared it with two Wichita lawyers, who prepared case summaries that could be presented before playing the tapes. But the judge could not find the proper equipment to play the tapes. He asked Levi to send someone from the project to bring the equipment and operate it. As Kitch later recalled, Levi agreed to send Strodtbeck, "provided [that he was] not identified with the university, and it was only to bring the instrument and play the recording" (U.S. Senate, 1955:183). Strodtbeck traveled to Estes Park, Colorado to attend the conference on July 7, 1955; assist with the operation of the tape recorder; and observe the judges' discussion of the edited deliberations.⁸

The session, which lasted more than two hours, was attended by approximately 100 people, including about 20 judges (U.S. Senate, 1955:108-12). Reactions to the recordings were largely positive. The audience was impressed with the way the jury balanced its responsibility for finding the preponderance of the evidence and its sympathy for the female plaintiff in the case (U.S. Senate, 1955:128). Several judges in attendance noted that the recordings would aid lawyers and judges and benefit the jury

⁷ One of the cases was bifurcated—so that one portion of the trial required a jury to determine guilt before a second portion of the trial required a second jury to deliberate regarding damages (U.S. Senate, 1955:21).

⁸ To conceal the location of the jury recordings and the university conducting the research, Strodtbeck was introduced as "Mr. X," a researcher from "X University" who was involved with the jury recordings (U.S. Senate, 1955:126).

system as a whole, by indicating whether instructions are clear and whether jurors understand the issues in a case. However, reactions also conveyed concern for the sensitivity of the tapes, and some suggested that the recordings should be sealed for several years to make sure that the cases would be completely anonymous. One attendee challenged that “eavesdropping on juries is a criminal offense,” but another countered that the recordings could not be defined as “eavesdropping” because they were not intended to be used for anything but gathering general information about how juries operate (U.S. Senate, 1955:142-43).

The conference marked the first (and only) public presentation and discussion of the jury recordings, and it also precipitated the first media account of the research. On July 8, 1955, the *Rocky Mountain News* of Denver printed an article about the conference. Embedded within an overview of several topics discussed at the conference, the article reported that attorneys and judges had listened to excerpts from secretly recorded jury deliberations. “The idea of a ‘bugged’ jury brought some protests from the assembled jurists, but others heartily approved of the idea,” the story reported (Margolin, 1955).

While the judges at the conference had largely been supportive of the recordings, their reactions also made clear that the researchers may need to tread carefully when reporting their findings from the recordings. The researchers continued their work of analyzing the transcripts and a few weeks later, Strodtbeck wrote Kitch that he was curious about the “technique we use to get the clearances” to publish research using the recordings. “Don’t worry,” Strodtbeck assured, “We won’t rush into anything” (JPC: July 20, 1955).

Then, on October 5, 1955—nearly three months after the judicial conference—the front page of the *Los Angeles Times* announced that the Justice Department was investigating secret jury recordings conducted by the Chicago Jury Project. The headline claimed, “Eavesdropping on Jury Under Probe by U.S.,” and the article announced, “The Justice Department is investigating the almost incredible ‘bugging’ of a jury room to eavesdrop on and record deliberations of jurors in the supposed sanctity of a Federal court.” The newspaper further conveyed its disapproval of the recordings by suggesting (in the second sentence of the article) that “[n]either FBI agents nor nosy newspapermen were brazen enough to pioneer the wiring for sound of that last refuge of liberty. Instead, it was done in the name of scholarship by a University of Chicago Law School team financed by the Ford Foundation” (Hartmann, 1955).

The ease with which the researchers designed and implemented the recordings could not have prepared them for the media and political outcry that followed. The Chicago Jury Project researchers had encountered surprisingly few roadblocks and formal procedures suggesting the sanctity of the jury room. They had received support from lawyers and judges, who had shepherded them through the process of gaining access to deliberations. In some ways, the lawyers and judges had opened the door of the jury room and invited the researchers inside. By the next morning, the story had spread to newspapers across the nation, beginning a deluge of critical and disparaging

articles about the project and the researchers themselves—and suggesting that nothing less than the tradition of the jury and democratic government itself was at stake.

MEDIA AND POLITICAL RESPONSE TO THE JURY RECORDINGS

In the days and weeks following the October 5, 1955 article in the *Los Angeles Times*, hundreds of newspaper articles decried the Chicago researchers' jury recordings. Editorialists, columnists, and cartoonists denounced the researchers' actions as a threat to the jury system, and popular radio personalities, like Fulton Lewis, Jr., even joined in the criticism of the project.

By the 1950s, the American mass media had developed incredible capacity to educate citizens about political, social, and international events (Page and Shapiro, 1992). News traveled quickly, and individuals were able to learn about a wide variety of events without having to personally experience them (Mayer, 1992). However, journalists and editorialists, in particular, are not necessarily objective recorders of these events. They have interests and biases of their own, which may be subtly communicated through story selection and presentation. Research on scandals has noted that members of the press often become stakeholders in the development of a scandal, as the quest for financial gain and expanding readership fuels the search for increasingly shocking stories (Thompson, 2000). To the extent that journalists' work is affected by a concern with the interests of their readers, their writing may be viewed as reflective of public opinion and responsive to the cultural, social, and economic trends that surround them (Page and Shapiro, 1992). In this way, the media may both shape, and be shaped by, public opinion.

Given the variety of influences and motivations of the media, we cannot assume that media responses to the jury recordings reflect public opinion. In fact, there is some evidence that news reports may have overestimated opposition to the recordings. In a survey of lawyers, political scientists, and sociologists, Burchard (1958) found that 32 percent of the lawyers and less than 20 percent of the social scientists were against the recording of jury deliberations. However, some of the articles on the jury recordings refer directly to public outcry over the recordings:

The furore that arose when it first became known that jury deliberations had been recorded was spontaneous and was, in fact, evidence of the determination of the American people to allow no tampering with the ancient rights guaranteed them in the Constitution, no matter how plausible the excuse offered might be (A17).

Such references to public attitudes in articles about the jury recordings are rare. Thus, it is difficult to know how members of the public viewed the jury recordings.

My goal in this article is to identify and analyze the various arguments for and against jury recording that were expressed in the media at the time of the scandal. To this end, I examine 102 opinion-based newspaper articles published between October 5, 1955 and July 13, 1956 regarding the Chicago Jury Project scandal. The articles were provided by a clipping service to the University of Chicago Law School's press

Table 1
Groups Blamed for the Jury Recordings
by Opinion-Based Articles that Criticized the Recordings

Group Blamed	Opinion-Based Articles Criticizing the Recordings (n=77)	
	Number of Articles	Percentage of Articles
Researchers	76	98.7
Judges	44	57.1
Lawyers ^a	26	33.8
Ford Foundation	30	39.0
Fund for the Republic	11	14.3

^a This group includes the Wichita lawyers who helped to coordinate the research and the mention of lawyers who approved the jury recording in their capacity as counsel in the cases where jury recordings were conducted.

office during the time of the scandal. The collection of articles includes 69 newspaper editorials, 17 syndicated columns, 13 letters to the editor, and 3 cartoons.⁹

Of the 102 opinion-based articles collected and archived by the University of Chicago Law School, 77 articles explicitly argued that recording jury deliberations is wrong. Table 1 shows how blame was distributed among the groups involved with (or thought to be involved with) the jury recordings. All but one of the articles criticizing the recordings suggested that the researchers were responsible for the misstep. Editorialists showed their distaste for the researchers by referring to them as “a smug body of investigators” (A21), “nosy researchers” (A11), and an “arrogant group” of “so-called scientists” (A30). About half of the articles attributed responsibility to one or both of the judges who facilitated the jury recordings. Only 26 articles (33.8 percent) claimed that lawyers from the Wichita Bar Association who helped arrange the recordings, or those who gave permission for jury recording in their cases, were at fault. The Ford Foundation, which funded the research, was referred to as a “tax-free [foundation] . . . allowed to hand out money for prying into the affairs of government and individual alike” (A4).¹⁰ It was blamed in about a third of the articles. Interestingly, 11 (14.3 percent) of the 77 articles suggested that the Fund for the Republic was to blame, at least in part, for the invasion of the jury room. The Fund for the Republic was a highly controversial subsidiary of the Ford Foundation, but it was not involved in any way with the Chicago Jury Project research.

It is not surprising that the blame for the recordings centered on the researchers. The media’s coverage of the jury recordings certainly reflects larger tensions and strug-

⁹ Additional information about the collection and analysis of these articles is described is available upon request to the author.

¹⁰ The Ford Foundation was often attacked during the McCarthy era for its funding of liberal academic research. Indeed, the foundation was instrumental in the survival of the behavioral sciences in the 1950s, when the organization gave over \$23 million to graduate departments and research programs (Jacoby, 1987:262-63).

gles for power between politicians and academics in the 1950s. As scientists were attained more credibility and power in advising governmental and military action, politicians became increasingly skeptical of researchers (Shils, 1956; Hofstadter, 1963). The widely publicized hearings of the House Committee for Un-American Activities and the Senate hearings led by Joseph McCarthy often focused on exposing academics as suspicious subversives or even spies (see, e.g., O'Neill, 1986).

While the anti-intellectualism of the McCarthy era affected the academic community as a whole, behavioral scientists were sometimes singled out (Lazarsfeld and Thielens, 1958). Their topics of study, including segregation, political behavior, child rearing, and delinquency—as well as their examination of group processes and interactions, as in the Chicago Jury Project—were viewed as a threat to the status quo (Proshansky and Evans, 1963; Hofstadter, 1963). In addition, Proshansky and Evans (1963:93) emphasize that the social-scientific research methods contributed to suspicions; the behavioral scientist's "invasion of privacy in psychological testing or survey interviewing is motivated by his determination to 'brainwash' and 'demoralize' the individual; and these purposes in turn reflect his fundamental objective of destroying the American way of life." Accordingly, attacks against social scientists often claimed to be defending traditional morals and values (Shils, 1956).

In line with these ideas, the editors of the *Washington News* noted that the jury recordings were just another indicator that "some professional intellects seem to think that our time-honored institutions can't be quite right until they have applied their precious minds to them" (A9). Another editorialist speculated that researchers' next step may be to "[hide] microphones in private homes to record conversations of husband and wife . . . so that they may plan for our improvement" (A14). The supposed tension between research in behavioral science and American traditions is a central theme in many of the articles criticizing the Chicago Jury Project.

The Tradition of the Jury. About one-third of the 87 articles that criticized the recordings argued that they violated the American tradition of trial by jury. For example, the editors of the *Pasadena Star News* wrote, "The American jury system . . . is almost as old as the Anglo-Saxon people, themselves, and has been regarded as a sacred inheritance from the distant past, therefore the very idea of 'bugging' an American jury, while it is deliberating a case, is shocking to the average American" (A28). Other editorialists suggested that the jury recordings amounted to a serious threat against American democracy. "Trial by jury is one of the foundations of American liberties," wrote the editors of the *Des Moines Register* (A3). Editors in Altoona, Pennsylvania argued that "taking advantage of a juror is a stepping stone to wrecking the entire system of justice" (A18).

It is unclear whether the long-standing tradition of the jury included—explicitly or implicitly, by law or by custom—secret deliberations. Several articles regarding the jury recordings noted that secret deliberations are implied in the history of the jury system. "The secrecy of the jury room . . . has been in the Anglo-American legal system a long time," wrote the editors of the *Los Angeles Times* (A2). Editors of the *Chicago*

American said that jury recording represented “willful disregard of the Seventh Amendment . . . [which] calls for preservation of the right to trial by jury. Eavesdropping is a violation of a basic aspect of that right” (A5).

Other writers claimed that the secrecy of the jury room is implied by customs and norms. One editorialist pointed out that, “The guarantee of total privacy has been taken as implicit, by the bench, the bar, the talesmen, the litigants, and by Britons and Americans in general” (A9). And a former juror described in a letter to the *Los Angeles Times* how informal jury procedures indicate the sanctity of jurors’ deliberations. “Having been on a number of juries it was my own opinion that the laws provided that its deliberations should be secret,” he wrote. “Certainly the court officers always knocked on the door, even to tell us it was dinnertime” (A8).

Still other writers suggested that we need not look to the law for evidence of the protected nature of jury deliberations. They suggested that there was no need for a law ensuring jury secrecy because the tradition was so universally recognizable. “There seems to be no law about a microphone,” wrote one columnist. “Perhaps it never occurred to our law-makers that anyone would be so debased as to put a microphone in a jury room” (A1). Similarly, an *Oakland Tribune* editorial states, “Surprising as it may seem, there apparently is no law against secreting microphones in jury rooms in federal courts and using the recordings without knowledge of the jurors for open discussion by inquisitive professors” (A4). Thus, whether the prohibition was thought to come from formal law, informal norms, or time-honored traditions, most editorialists assumed that there was some normative barrier that should have prevented the jury recordings.

The invocation of the sacred tradition of the jury is somewhat puzzling in light of concurrent criticism of the system as fraught with delays, incompetent jurors, and racially biased decisions. At the time, a Wichita Bar Association study suggested that 30 to 40 percent of jurors would want their own case to be tried by a judge (A27). And, in September 1955, an all-white jury in Mississippi acquitted two white men who had been accused of murdering Emmett Till, a young African-American boy from Chicago.¹¹ The *New York Times* announced the verdict in a front-page story on September 24, 1955—less than two weeks before the *Los Angeles Times* article on the Chicago Jury Project. Protests and demonstrations broke out across the nation, with more than 20,000 citizens protesting the verdict in Chicago (Jalon, 1985). African-American and Jewish organizations in New York denounced the Till verdict as racist, “shameful,” and “anti-democratic” (“Mississippi Jury Denounced Here,” 1955). In contrast to the editorialists who extolled the jury as a cornerstone of American democracy and liberty, the Till verdict served as a poignant reminder that the jury could be a flawed and racist dispenser of justice.

¹¹ Till had been visiting relatives in Mississippi when he allegedly insulted a white woman outside a downtown store. That night, Till was taken from his uncle’s home by three white men, two of whom were identified by a witness. Till’s body was found in a river several days later. After the men were acquitted, they confessed to the murder. (See, for example, “Trial by Jury.” *Time*, October 3, 1955, 18-19 and S. J. Whitfield, *A Death in the Delta: The Story of Emmett Till* [Baltimore: Johns Hopkins University Press, 1991].)

Not all editorialists agreed that the tradition of the jury should unquestionably trump the need for research and improvements to the legal system. “Goodness knows, the American jury system could do with some laboratory study. . . . Trial by jury is one of the foundations of American liberties. It is also one of the most tradition-encrusted of our institutions, and one of the least touched by progress,” wrote the editors of the *Des Moines Register* (A3). Other writers similarly recognized that Americans put a great deal of stock in the jury, yet know very little about how it operates. “I wonder what is so wrong about scholars who want to narrow the area of ignorance that still envelops us on an institution so important to our welfare,” wrote one columnist. However, he specified that “it was not the aim that was wrong, but the method” (A16). Others saw the jury tapings as innocuous and justified by the information that they would provide about the operation of the jury. “There is not the slightest jeopardy to the jury system as an institution by an inquiry so limited in scope. . . . Indeed, the vitality of the jury as an institution in a democratic society depends upon informed understanding and criticism” (A6).

Thus, reactions to the jury recordings based on ideas of the tradition of the jury were mixed. Many editorialists assumed that the recordings threatened the jury system, but others suggested that the research might strengthen it. In the end, the value and appropriateness of research into a traditional American institution was one of the more divisive points in the arguments for and against the jury recordings.

The Threat to National Security. Beyond the perceived threat posed to the tradition of trial by jury, both politicians and editorialists saw the potential for the jury recordings to bring about cascading effects that could threaten national security and weaken democracy in the face of communism. Irving Ferman, president of the Washington office of the American Civil Liberties Union (ACLU) explained that the six jury recordings were related to broader philosophical questions regarding systems of governance. As he wrote in a letter to the *New York Times*:

[The jury recordings] create a small fissure under the very cornerstone of our national freedom and independence. In the forum of the world struggle between the philosophies of a free life as we know it and regimented life under a Communist dictatorship, that very freedom is the biggest and most important argument in trying to dissuade wavering, undecided peoples from accepting Red ideologies (A24).

Ferman was not alone in his concern that the jury recordings posed a threat to national security. Just days after the initial *Los Angeles Times* story, several of the Chicago Jury Project researchers received subpoenas to appear before the Senate Subcommittee for Internal Security. On October 12 and 13, 1955, less than a week after the scandal made headlines, the researchers, including Strodbeck and Levi, were questioned about their motivations for recording jury deliberations.

The purpose of the hearings, as explained by Senator Eastland, chairman of the Subcommittee, was to “make a public record of the facts behind the reports respecting the recording of the deliberations of juries” to “permit assessment of the impact of this

activity upon the integrity of the jury system, as a basis for decision respecting what legislation may be necessary to protect the jury system” (U.S. Senate, 1955:1). Senator Jenner emphasized that the hearings were held in public session, and therefore were a “public inquiry” rather than an investigation into subversive activity. Levi, Strodbeck, Kalven, Kitch, and Mikva were questioned, along with three Wichita lawyers who had consented to the jury recordings in their cases. Notably, neither Judge Phillips nor Judge Hill testified before the committee.

In addition to asking about the process of making the jury recordings and the reasons for doing so, members of the Senate subcommittee aggressively probed the researchers’ political and ideological affiliations. Levi, for example, was questioned about his involvement in numerous organizations that the senators considered to be subversive, including the National Lawyers’ Guild, the ACLU, and the Hillel Club.¹² And Kalven spent more time explaining his activities advocating clemency for convicted spies Ethel and Julius Rosenberg than he spent detailing the operations of the jury project (U.S. Senate, 1955:23-31, 47-57, 85-102). Two lawyers who had approved of the jury recordings in their cases also testified before the committee, but neither was asked about his background, potentially subversive activities, or organizational memberships.

The subcommittee’s questioning of the researchers’ backgrounds reflected not only skepticism about liberal academic researchers and the tensions between politicians and intellectuals, but also lingering instabilities and suspicions of the McCarthy era. While the McCarthy hearings had ended in 1954, both Senators Eastland and Jenner had been associated with Senator McCarthy. Some of the tactics of the McCarthy hearings were certainly reflected in the Chicago Jury Project hearings, and media accounts indicated lingering support for investigations into intellectuals’ activities and affiliations. Some editors suggested that investigating the researchers’ activities was warranted and informative as to the motivation behind the jury recordings. “Neither Dean Levi nor [Professor] Kalven could see anything wrong in ‘bugging’ the jury room,” wrote the editors of the *Chicago American*. “Then part of their backgrounds came out” (A12).

However, others criticized the Senate’s investigation as “miserably handled” (A22) and wondered “how the Senate committee gets into the picture, unless the Senators assume that anyone studying the jury system in an unorthodox way must be about to overthrow it” (A16). Editorialists further suggested that it had been unnecessary and insulting to subpoena the researchers “as if they had been about to flee the country” (A26) and lamented that the jury recordings “triggered the Red hunters” (A23). Finally, a cartoon in the *Washington Post* suggested that the Senators overreacted and used heavy-handed tactics for the investigation of the jury recordings. The cartoon depicted a member of the “Eastland Committee” swinging an oversized axe and chopping off the heads of some very surprised academics (A15). Indeed, the hearings

¹² Levi indicated that he had once been a member of the National Lawyers’ Guild, but had never been affiliated with the ACLU or the Hillel Club (U.S. Senate, 1955:23-24, 29-30).

were reflective of the context of the post-McCarthy era, but the Chicago Jury Project scandal was not just another in a long line of investigations of liberal intellectuals and academic research.

Secrecy and the Work of the Jury. Media accounts of the jury recordings did not portray jury secrecy as merely an empty tradition. They also pointed to a number of pragmatic functions that are fulfilled by the protection of jury room discussions. They suggested that the jury is able—or better able—to accomplish its goals because of the secrecy of deliberations. Case law has similarly outlined the functions of jury secrecy with respect to two procedural issues: pre-verdict judicial inquiry of deliberating jurors in instances where a problem arises in the jury room and jurors' post-verdict disclosures of details about deliberations (see, e.g., Chopra and Ogloff, 2000; Markovitz, 2001). Although not specifically related to jury recording or to academically motivated observation of the jury, the arguments are instructive. In both types of cases, courts have maintained that the protection and security of jury deliberations is “essential to the work of juries in the American system of justice” (*United States v. Thomas*, 1997:623).

Jury secrecy has been justified in case law on at least four key grounds: that it ensures the finality of verdicts, protects jurors from harassment, promotes free and open deliberations, and secures public confidence in the system. Similar notions about the functions of secrecy have been noted in sociological research. These points are also reflected in many of the editorials criticizing the jury recordings, suggesting that the contribution of jury secrecy to the work of the jury is recognized not just in legal and social-scientific theorizing, but also in more practical images or understandings of how the jury can best accomplish the tasks set before it.¹³

Public Confidence in the Jury. The protection of jury secrecy has been justified in case law according to its role in enhancing public confidence in the jury system. In *Tanner v. United States* (1987:121), the Court explained that “the community’s trust in a system that relies on the decisions of laypeople would . . . be undermined by a barrage of postverdict scrutiny of juror conduct.” In other words, if the public could scrutinize jurors’ discussions and rationale, it might begin to question the extent to which jury verdicts are accurate or fair.

The idea that jury secrecy enhances public confidence in the system is echoed in sociological theories suggesting that secrecy begets idealization. As Simmel explains, “From secrecy . . . grows the typical error according to which everything mysterious is something important and essential. Before the unknown, man’s natural impulse to idealize and his natural fearfulness cooperate toward the same goal: to intensify the unknown through imagination” (1950:333). The tradition of secret jury deliberations

¹³ Similar arguments were presented as rationales for establishment of the Federal Rules of Evidence 606(b) (as Dec. 12, 1975, P.L. 94-149, § 1(10), 89 Stat. 805; Mar. 2, 1987, eff. Oct. 1, 1987), which provides guidelines for juror testimony. The rules specifically preclude juror testimony about internal aspects of deliberations, such as a juror’s mental processes or opinion formation, but allows testimony about extraneous prejudicial information (e.g., news reports) or outside influences that may have improperly shaped a juror’s opinion (see Notes of Committee on the Judiciary, Senate Report 93-1277 [1975]).

may, therefore, contribute to the sanctification of the jury in the public eye and in the democratic tradition.

It is worth noting, however, that the protection of jury secrecy goes against the grain of a contemporaneous focus on uncovering secrets. The early and mid-1950s were characterized by widespread suspicions about secrecy and an almost obsessive drive to reveal secrets through the investigation of subversive activities (O'Neill, 1986). Social historians argue that the government of the 1950s sought to reveal secrets to diminish mystery and fear, discourage dissent, create solidarity, and maintain power (Shils, 1956). In fact, just before the jury project scandal broke, Attorney General Herbert Brownell had proposed a bill that would expand the use of wiretapping in the investigation of suspected criminals (A13). It is remarkable that, amid such large-scale efforts to reveal secrets, a scandal arose in the name of protecting jury secrecy and the power that it provided to citizens serving as jurors.

The editors of the *Chicago Daily News* seemed particularly aware of the fascination created by jury secrecy when they noted, "Many mysteries would not appear sacred if the facts about them were fully known. If we really knew more than we do about jury deliberations we could better judge the infallibility with which they are theoretically endowed" (A19). Thus, jury secrecy not only idealizes the jury, it also ensures that deliberations are protected from criticism. Some authors further suggested that discovering the content of deliberations would lead the jury system to ruin, because we might be disappointed by the "all too human" discussions we would discover (A29). As one editorialist concluded, "The jury room is one place where secrecy in government is good government" (A10).

The content of a secret, however, is often far less shocking, important, or sacred than secrecy suggests (Simmel, 1950). Jury secrecy itself, rather than the merit or value of the deliberations that are concealed, is perhaps the most important guarantee of public confidence and support that is available for the jury system. Secrecy allows the jury—an institution lacking permanent members and largely unable to defend itself against attack or decline—to maintain its status as a sacred and venerable institution.¹⁴

Protection from External Influences. In addition to its latent function of creating fascination or sacredness, secrecy also serves the more obvious, manifest function of concealing information. Behind the tradition of the jury as a foundation of democracy is the notion that the jury reconciles the written rules of law with changing community conceptions of justice. In this way, juries play an integral role in helping liberal democracies balance competing ideals, such as due process and absolute power, government rule and community rule, and the private and the public. Even though publicity of governmental affairs is necessary to encourage citizens' participation, democracies also have a need for secrecy in "deliberations of councils, tribunals, and juries,"

¹⁴ From another point of view, the secret process of decision making limits the jury's power within the legal system. Because judges, lawyers, and legal researchers are unable to study or follow the reasoning employed by juries in particular cases, the applicability of a jury verdict is limited to the case at hand (Fred Strodtbeck, personal communication, April 19, 2002).

which must “be protected from premature disclosure” (Shils, 1956:24). That is, an area exists within established processes of governance where secrecy may be beneficial—even essential—for insulating decision-making groups from external surveillance, which could threaten or coerce them.

Jury secrecy makes possible the jury’s unique position as an institution. As jurors walk this line between private and public and between government and community, secret and secure deliberations protect them from external threats or coercion that might cause them to render a verdict based on something other than the facts and merits of the case (*McDonald v. Pless*, 1915). Furthermore, after the verdict is delivered, secrecy of the deliberations protects jurors from harassment by dissatisfied parties who might seek information in an effort to establish jury misconduct or force jurors to defend their decisions (Lawsky, 1994; *Rakes v. United States*, 1948).

About one-fourth of the opinion-based articles that criticized the Chicago Jury Project suggested that surveillance of juries would somehow contaminate or endanger the deliberative process. As Shils (1956:24) cautioned against “premature disclosure” of governmental discussions or deliberations, several editorialists argued that disclosing the content of jury deliberations could subject jurors to coercion, pressure, or bribes brought by the involved parties. Editors noted, for example, that “[i]t is essential that we keep completely private what transpires in a jury room during the deliberative stage.” The right to trial by jury must “involve the greatest assurance that the jury’s impartiality will be protected from any kind of surveillance, embarrassment or possibility of coercion” (A11).¹⁵ If jury deliberations are not kept secret, “Every juror would be subject to any pressure that either of the litigants, or an accused man’s family, could bring against him” (A9).

Free and Open Deliberations. Secrecy also protects free speech within the jury room. Social theorists have noted that secrecy is necessary to foster open discussions in a very few groups and collectivities that are uniquely poised as power brokers or mediators between the government and the public (Bok, 1979). Groups like juries must be able to “state their views with a frankness which would be inhibited if they felt subject to popular misunderstanding and criticism” (Shils, 1956:25). Case law also emphasizes the relationship between jury secrecy and free and open debate within the jury room. For example, in *Clark v. United States* (1933:13) the Supreme Court emphasized that “[f]reedom of debate might be stifled and independence of thought checked if jurors were made to feel that their arguments and ballots were to be freely published to the world.”

Editors responding to the jury recordings made similar arguments, suggesting that jurors might not reveal their opinions if they suspect that they are being recorded. “If the individual jurymen has reason to believe that anything he says in the jury room is

¹⁵ The possibility that surveillance of jury deliberations could bring external coercion was depicted quite dramatically in a popular 1995 novel, *The Juror*, by George Dawes Green (New York: Warner Books) and the 1996 film (of the same title) based on the novel. In the story, a female juror is targeted and threatened by one of the parties in the trial. She is then forced to wear a concealed microphone in the jury room so that the deliberations are transmitted, while they instruct her on what type of arguments to make on their behalf.

to later become public property he is more than apt to keep his mouth shut and thus deprive the other members of the jury of the weight of his opinion," wrote editors of the *Fayetteville (NC) Observer* (A10). Other editors similarly predicted that jurors who even suspect that they might be recorded would "fear to speak their minds" (A2) and "become tongue-tied" (A7). The implication is that jurors should be free to voice opinions or viewpoints that may be controversial and not universally accepted by lawyers, judges, and the larger community. Jury secrecy thereby affords jurors the space to make decisions that balance the sometimes competing demands of the law, the facts of the case, and community standards of justice.

Closing the Jury Room Door. Shortly after the hearings, senators advocated legislation intended to prevent any jury recordings (U.S. Senate, 1956). In 1956 Congress passed a law prohibiting the recording of federal jury deliberations, and most states followed suit shortly thereafter. This was the first time that a social-scientific research program resulted in federal legislation aimed to protect the public from exploitation by research (Amdur, 2003).

The Senate subcommittee's report about the Chicago Jury Project's jury recordings reprimanded the researchers involved and stipulated that they destroy the tapes, transcripts, and any notes related to the deliberations.¹⁶ While the senators initially implied that they might seek impeachment of Chief Judge Phillips, Attorney General Brownell eventually absolved the judge of any blame in the matter. Judge Phillips, who was reported to be a close friend of President Eisenhower, denied that he had ever granted permission for the recordings (A20).

The shame of the hearings and the scandal that played out in the media haunted the Chicago Jury Project researchers for years to come. Hans Zeisel, who had worked closely with the researchers on related projects, has said that the media attacks of the jury recordings left the researchers feeling that they "hadn't a friend in the world." Levi reportedly feared for the continued existence of the University of Chicago Law School (Hans and Vidmar, 1991:326). Mikva went on to an extensive political and judicial career, but with each new appointment he was asked to explain his involvement in the jury recordings.¹⁷

The story of the jury recordings has also impacted scientific research methods and the general direction of social-scientific research on the jury. The jury recordings are, in fact, used as a cautionary tale regarding social-scientific research involving human subjects and the observation of social interactions (Amrine and Sanford, 1956; Burchard, 1958; Ferguson, 1955; Katz, 1972). Training manuals or programs for groups such as the Institutional Review Board have featured the story of the jury recordings

¹⁶ 18 U.S.C. § 1508 (as revised in 1971) states, in part: "Whoever knowingly and willfully, by any means or device whatsoever—(a) records, or attempts to record, the proceedings of any grand or petit jury in any court of the United States while such jury is deliberating or voting; or (b) listens to or observes, or attempts to listen to or observe, the proceedings of any grand or petit jury of which he is not a member in any court of the United States while such jury is deliberating or voting—shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

¹⁷ Abner Mikva, personal communication, April 9, 2002. Mikva served on the Illinois House of Representatives and in the United States Congress.

as an example of a situation where research must be limited to protect the integrity of a social institution (Perlstadt, 2005).

Social-scientific interest in the jury system waned following the jury project scandal through the early 1970s, and since then, research on the jury has been primarily the domain of psychologists who rely on mock juries and experimental groups (Devine et al., 2001). As Kitch and others noted at the outset of the Chicago Jury Project, there are obvious limitations to studying the jury through observations of mock juries and post-verdict interviews. Thus, the social interactions, debates, and exchanges that occur among the cross-section of the community that gathers inside the jury room remain, largely, a mystery.

CONCLUSION

By exploring the internal planning of the Chicago Jury Project's recordings and the external reaction to them, this article illuminates the contrast between the actual functioning and procedures of the jury system and the traditions and ideas that inform public rhetoric about the importance of the jury. In media responses to the scandal, secrecy was depicted as a key element of jury tradition, and secret deliberations were heralded as essential for the work of the jury. In this view, jury secrecy creates a protected space in the jury room, allows free and open debate, and sanctifies verdicts. In fact, editors suggested that secrecy is so ingrained in tradition and so integral to the functioning of the jury in American society that its violation was inconceivable.

In contrast with these grand claims about the role of the jury and the importance of jury secrecy, the Chicago Jury Project researchers did not encounter formal barriers and legal procedures that prohibited jury recording. In fact, no law existed to protect jury secrecy. Members of the legal community, including lawyers and judges, helped to make possible the recordings and were eager to use the results to improve jury procedures. The ease with which planning and negotiations for the jury recordings proceeded stand in stark contrast to the subsequent media outcry, governmental reprobation, and personal attacks of the scandal.

In many ways, the distinction between the researchers' experiences in planning the recordings and the public scandal that emerged nearly eighteen months later is shaped by the cultural and social context of the scandal and the incentives that existed for its exposure. Political instability, the distrust of intellectuals and academic research, and recent criticism of the jury system created a climate in which jury recordings drew public attention. On the other hand, arguments regarding the secrecy of jury deliberations depart from outcries about secrecy that were so typical during the 1950s. Rather than advocating the exposure of secrets, editorialists and politicians protected the confidentiality of the jury room. Thus, the political and social context of the 1950s does not fully explain the emergence of the Chicago Jury Project scandal.

The jury-recording scandal made clear that many of the factors that give the jury power and legitimacy are not seen from the inside of the system. The strength of the jury lies not in formal procedures but in the public's belief about what the jury does

and what it stands for. The jury's power is derived from symbolic and traditional authority rooted in the public perception that juries continue to achieve justice in the time-honored way that they have always achieved justice—safely sequestered behind the jury room doors.

An important irony of this story is that the law passed by Congress did not prevent all jury recordings, as one might have expected given the response to the Chicago Jury Project and the outcries demanding the absolute secrecy of jury deliberations. In the past several years, the Arizona Jury Project, led by a group of well-respected jury researchers, videotaped jury deliberations in at least fifty civil trials (Diamond and Vidmar, 2001; Hans, 2001). This research has contributed to the consideration of the costs and benefits of allowing jurors to submit questions during trial (Diamond et al., 2006) and provided a detailed look at jurors' decision making and evaluations of expert testimony (Vidmar and Hans, 2008).

Jury deliberations have also been filmed for journalistic purposes. PBS's *Frontline* filmed a Wisconsin jury deliberation with permission from all jurors and involved parties. The episode, called "Inside the Jury Room," was originally broadcast in 1986. Jury deliberations were also broadcast on a 1997 CBS program called *Enter the Jury Room* and a 2002 ABC News program titled *State v.* In response to the latter, an editorialist in the *New York Times* echoed the arguments against jury recording that were voiced in the 1955 scandal. "Even in our open society," she noted, "confidentiality is sometimes necessary for a full airing of the issues" (Babcock, 2002). An editorial in *Judicature* (American Judicature Society, 2003) drew a clear distinction between jury filming by the Arizona Jury Project for research purposes and jury filming for television programs. The editors suggested that jurors may change their behavior if they expect that their deliberations will be seen by a public audience.

If the media's reaction to the Chicago Jury Project was an attempt to protect the sanctity and power of the American jury system, does the relative lack of response to recent jury recordings suggest that the contemporary jury system is less threatened by a loss of privacy? Differences in the sociocultural context have certainly changed the extent to which academic research is seen as a threat to traditional American values. Cold War instability has diminished, and while terrorism has emerged as a new threat to national security, efforts to root out subversives have not focused on intellectuals. Furthermore, rather than being linked to government wiretapping or social scientists' efforts to destroy traditional values, contemporary invasions of individual privacy are regularly regarded as entertainment. Critics' reviews of *State v.*, for example, classified it as another example of the wildly successful business of reality television (Zurawik, 2002). And, today, individuals regularly open up their private lives to public viewing through Internet blog posts, Webcams, and social-networking sites. In fact, some of the most recent questions about the sanctity of the jury room have been related to information flowing out of the jury room and onto the Internet—as jurors themselves share details of their deliberations on blogs, personal Web sites, and Twitter (see, e.g., Baldas, 2009; Schwartz, 2009).

Another key difference between the Chicago Jury Project and the more recent recordings is jurors' awareness of the recordings. All of the recent recordings have obtained consent from the jurors involved, as well as the judges, lawyers, and parties for each case. Recall that this was a point of debate in the arrangement of the Chicago Jury Project recordings, with the researchers and judges deciding to proceed without juror consent. It is not likely that the vehement arguments about jury recording expressed in the 1950s would have been ameliorated had the researchers obtained jurors' consent. In fact, most of the arguments against jury recording that were voiced during the 1955 scandal implied that jury recordings would be *more* harmful to the jury process if jurors are aware that their deliberations are being recorded.

When jurors know that they are being taped, and the public is aware of the recordings, the dangers of opening the jury room door escalate. Jurors might not speak freely, outsiders might attempt to tamper with the jury, and verdicts are open to question. In the Chicago Jury Project recordings, however, the jurors did not know that they were being recorded, so there is no reason to believe that their discussions were stifled. Outsiders did not know of the recordings, so there was no danger that the recordings would be used to bribe the jurors or contaminate the deliberations. Finally, because the public never knew which jury deliberations had been recorded, the mystery and sanctity of the verdicts remained unquestioned. Ironically, then, the recorded jurors of the Chicago Jury Project may have been less subject to the dangers of the open jury room than those who are knowingly recorded today.

Of course, the social and cultural context has shifted in the past fifty years so that views of the jury and broader ideas about secrecy and publicity have also changed. Despite this, criticism of the jury recordings in 1955 offers some strong arguments against the recording of jury deliberations that continue to be relevant today. It remains to be seen how more recent glimpses into the jury room—conducted in the name of research, captured for entertainment, or posted on Internet Web sites and blogs by jurors themselves—will ultimately shape the jury's role in American traditions and the legal system. **jsj**

REFERENCES

- Amdur, R. (2003). *The Institutional Review Board Member Handbook*. Boston: Jones and Bartlett Publishers.
- American Judicature Society (2003). "Editorial: The Media and Jury Deliberations: Education or Invasion?" 87 *Judicature* 48.
- Amrine, M., and F. H. Sanford (1956). "Across the Secretary's Desk: In the Matter of Juries, Democracy, Science, Truth, Senators, and Bugs," 11 *American Psychologist* 54.
- Babcock, B. A. (2002). "Preserving the Jury's Privacy," *New York Times*, July 24.
- Baldas, T. (2009). "For Jurors in Michigan, No Tweeting (or Texting, or Googling) Allowed," *National Law Journal*, July 1.

- Bok, S. (1979). *Secrets: On the Ethics of Concealment and Revelation*. New York: Vintage Books.
- Bucher, R., C. E. Fritz, and E. L. Quarantelli (1956). "Tape Recorded Interviews in Social Research," 21 *American Sociological Review* 359.
- Burchard, W. W. (1958). "Lawyers, Political Scientists, Sociologists—and Concealed Microphones," 23 *American Sociological Review* 686.
- Chopra, S. R., and J. R. P. Ogloff (2000). "Evaluating Jury Secrecy: Implications for Academic Research and Juror Stress," 44 *Criminal Law Quarterly* 190.
- Devine, D. J., L. D. Clayton, B. B. Dunford, R. Seying, and J. Pryce (2001). "Jury Decision Making: 45 Years of Empirical Research on Deliberating Groups," 7 *Psychology, Public Policy, and the Law* 622.
- Diamond, S. S., M. R. Rose, B. Murphy, and S. Smith (2006). "Juror Questions During Trial: A Window into Juror Thinking," 59 *Vanderbilt Law Review* 1927.
- Diamond, S. S., and N. Vidmar. (2001). "Jury Room Ruminations on Forbidden Topics," 87 *Virginia Law Review* 1857.
- Erlanger, H. S. (1970). "Jury Research in America: Its Past and Future," 4 *Law and Society Review* 345.
- Ferguson, G. W. (1955). "Legal Research on Trial," 39 *Journal of the American Judicature Society* 78.
- Hans, V. P. (2001). "Comment: Inside the Black Box: Comment on Diamond and Vidmar," 87 *Virginia Law Review* 1917.
- Hans, V. P., and N. Vidmar (1991). "*The American Jury at Twenty-Five Years*," 16 *Law and Social Inquiry* 323.
- Hartmann, R. T. (1955). "Eavesdropping on Jury Under Probe in U.S.," *Los Angeles Times*, October 5, p. 1.
- Hofstadter, R. (1963). *Anti-Intellectualism in American Life*. New York: Knopf.
- Jacoby, R. (1987). *The Last Intellectuals: American Culture in the Age of Academe*. New York: Basic Books.
- Jalon, A. (1985). "1955 Killing Sparked Civil Rights Revolution: Emmett Till: South's Legend and Legacy," *Los Angeles Times*, October 7, p. 1.
- Kalven, H., Jr., and H. Zeisel (1966). *The American Jury*. Boston: Little, Brown and Company.
- Katz, J., ed. (1972). *Experimentation with Human Beings*. New York: Russell Sage Foundation.
- Lawsy, B. M. (1994). "Limitations on Attorney Postverdict Contact with Jurors: Protecting the Criminal Jury and Its Verdict at the Expense of the Defendant," 94 *Columbia Law Review* 1950.
- Lazarsfeld, P. F., and W. Thielens, Jr. (1958). *The Academic Mind*. Chicago: Free Press.
- McCabe, S. (1974). "Jury Research in England and the United States," 38 *British Journal of Sociology* 199.
- Markovitz, A. (2001). "Jury Secrecy During Deliberations," 110 *Yale Law Journal* 1493.

- Margolin, M. L. (1955). "Court Rules on Criminal Insanity Opposed," *Rocky Mountain News*, July 8, p. 20.
- Marston, W. M. (1935). "Is the Jury Ever Right?" *Esquire*, July, p. 466.
- Mayer, W. G. (1992). *The Changing American Mind: How and Why American Public Opinion Changed Between 1960 and 1988*. Ann Arbor: University of Michigan Press.
- Meltzer, B. (1953). "A Projected Study of the Jury as a Working Institution," *287 Annals of the American Academy of Political and Social Science* 97.
- "Mississippi Jury Denounced Here: N.A.A.C.P. Brands Acquittal of 2 in Negro Boy's Killing a 'Shameful Verdict'" (1955). *New York Times*, September 25, p. 33.
- O'Neill, W. L. (1986). *American High: The Years of Confidence, 1945-1960*. New York: Free Press.
- Page, B. I., and R. Y. Shapiro. (1992). *The Rational Public: Fifty Years of Trends in Americans' Policy Preferences*. Chicago: University of Chicago Press.
- Perlstadt, H. (2005). "Caught in Ethical and Scientific Crosscurrents: Competing Explanations of the Wichita Jury Study." Paper presented at the Annual Meeting of the American Sociological Association, Philadelphia, August 12.
- Proshansky, H. M., and R. I. Evans (1963). "The 'Radical Right': A Threat to the Behavioral Sciences," *19 Journal of Social Issues* 86.
- Schwartz, J. (2009). "As Jurors Turn to Web, Mistrials are Popping Up," *New York Times*, March 18.
- Shils, E. A. (1956). *The Torment of Secrecy: The Background and Consequences of American Security Policies*. New York: Free Press.
- Simon, R. J., and J. P. Lynch (1990). "The Sociology of Law: Where We Have Been and Where We Might Be Going," *23 Law and Society Review* 825.
- Simmel, G. (1950). *The Sociology of Georg Simmel*. Trans. by K. H. Wolff. Glencoe, IL: Free Press.
- Thompson, J. B. (2000). *Political Scandal: Power and Visibility in the Media Age*. Cambridge: Polity Press.
- United States Senate (1956). *Recording of Jury Deliberations: Report of the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws to the Committee on the Judiciary*. March 20, 1956. Washington, DC: U.S. Government Printing Office.
- (1955). *Recording of Jury Deliberations: Transcripts of Hearings by the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws. October 12 and 13, 1955*. Washington, DC: U.S. Government Printing Office.
- Vidmar, N., and V. P. Hans (2007). *American Juries: The Verdict*. Amherst, NY: Prometheus Books.
- Zurawik, D. (2002). "Real Deal: Clever Production, True Drama, and Low Costs Make an Open-and-Shut Case for a New Breed of Network Reality Shows," *Baltimore Sun*, June 4.

CASES CITED

- Clark v. United States*, 289 U.S. 1 (1933).
McDonald v. Pless, 238 U.S. 264 (1915).
Mattox v. United States, 146 U.S. 140 (1892).
Rakes v. United States, 169 F.2d 739 (1948).
Remmer v. United States, 347 U.S. 227 (1954).
Tanner v. United States, 483 U.S. 107 (1987).
United States v. Thomas, 116 F.3d 606 (2d Cir. 1997).

OPINION-BASED NEWSPAPER ARTICLES (1955-1956)

Codes used in the text refer to articles found in the four-volume scrapbook collection, *University of Chicago Jury Project Press Clippings*, compiled in 1993 and held by the University of Chicago D'Angelo Law Library.

**Text
Code****Article**

- A1 Sokolsky, G. (1955). "Eavesdropping on Jury Arouses Indignation," *Tampa Times*, October 5.
- A2 "Bugging a Jury Needs Congressional Act (1955)." Editorial, *Los Angeles Times*, October 6.
- A3 "This Won't Wreck Jury System" (1955). Editorial, *Des Moines Register*, October 7.
- A4 "Microphones in Jury Rooms Raise Serious Questions for Courts" (1955). Editorial, *Oakland Tribune*, October 7.
- A5 "Eavesdrop Outrage" (1955). Editorial, *Chicago American*, October 8.
- A6 Green, H., and A. Krash (1955). "Jury Tapping," Letter to the Editor, *Washington Post*, October 9.
- A7 "'Monitoring' Juries" (1955). Editorial, *Gainesville Sun*, October 11.
- A8 Houston, J. B. (1955). "Wire-Tapping of Jury Room," Letter to the Editor, *Los Angeles Times*, October 12.
- A9 "Paternalistic Snoopers" (1955). Editorial, *Washington News*, October 13.
- A10 "The Taped Jury: A Mistaken Experiment" (1955). Editorial, *Fayetteville Observer*, October 14.
- A11 "Snoopers Grow Arrogant" (1955). Editorial, *Philadelphia Evening Bulletin*, October 14.
- A12 "Two Bad Ones" (1955). Editorial, *Chicago American*, October 14.
- A13 "Brownell Is Not the One to Become Indignant" (1955). Editorial, *Modesto Bee*, October 14.
- A14 "Going Too Far in the Name of Research" (1955). Editorial, *Burlington Free Press*, October 15.
- A15 Block, H. (1955) "What's All This Fooling Around with the Judicial Process?" Cartoon, *Washington Post*, October 16.
- A16 Lerner, M. (1955). "Bugs and the Jury," *New York Post*, October 16.
- A17 "The Sanctity of the Jury" (1955). Editorial, *Chicago Tribune*, October 16.
- A18 "Jurors Wiretapped" (1955). Editorial, *Altoona Mirror*, October 17.
- A19 "Jury Tapping" (1955). Editorial, *Chicago Daily News*, October 17.
- A20 Pearson, D. (1955). "Brownell Stymie in 'Bug' Probe," *Chicago American*, October 17.
- A21 "'Bugging' the jury" (1955). Editorial, *Albany Knickerbocker News*, October 18.
- A22 "No Call for Impeachment" (1955). Editorial, *Riverside Press*, October 18.
- A23 "Jury Bugging Should Not Revive Witch Hunt Era" (1955). Editorial, *Fresno Bee*, October 18.
- A24 Ferman, I. (1955). "Privacy of Jury Discussed: Recording of Deliberations Criticized as Inviting Abuses," Letter to the Editor, *New York Times*, October 19.
- A25 Lewis, F, Jr. (1955). "Washington Report: Invasion of the Jury's Private Parley Harmful to Justice," *Niagara Falls Gazette*, October 20.
- A26 "Microphone Study of Juries Sets Off a Phony Investigation" (1955). Editorial, *Milwaukee Journal*, October 22.
- A27 Lindsay, M. (1955). "Jury System Needs More Than Tributes," *Washington Post Times-Herald*, October 24.
- A28 "Jury System Well Guarded" (1955). Editorial, *Pasadena Star News*, October 28.
- A29 Creagh, E. (1955). "Now It's Jury 'Bugging' For Us to Argue About," *Syracuse Herald-American*, November 6.
- A30 "End the Outrage of Jury Snooping" (1956). Editorial, *Monroe Morning World*, January 11.