

THE

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JURY EXPERT

THE ART AND SCIENCE OF LITIGATION ADVOCACY
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Need Help? ASTC's Pro Bono Committee May Be Just What You Need

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The Best Structure for Creating Trial Graphics

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Charlotte A. Morris and
Clint Townson

2016 Attorney Survey: Declining Civil Jury Trials

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Patricia Kuehn and Alexis
Forbes

How Individual Differences Relate to Attitudes Toward the Mentally Ill: Implications for Trial Lawyers

Charles P. Edwards and
Monica K. Miller

NOTE FROM THE EDITOR Farewell!

Rita R. Handrich Ph.D.

IN THIS ISSUE...



- 4** **Need Help? ASTC's Pro Bono Committee May Be Just What You Need**
by Ric Dexter

- 6** **The Best Structure for Creating Trial Graphics**
by Brian Patterson and Jason Barnes

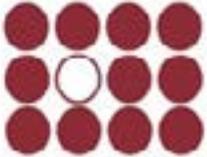
- 10** **Can I Get a Witness? An Interview with Clint Townson**
by Charlotte A. Morris and Clint Townson

- 14** **2016 Attorney Survey: Declining Civil Jury Trials**
by Charlotte A. Morris

- 17** **Public Opinions of Civil Jury Trials**
by Patricia Kuehn and Alexis Forbes

- 20** **How Individual Differences Relate to Attitudes Toward the Mentally Ill: Implications for Trial Lawyers**
by Charles P. Edwards and Monica K. Miller

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NOTE FROM THE EDITOR

Farewell!

AFTER A LENGTHY HIATUS, we are back for a diverse issue containing everything from information on the declining civil jury trial, to an informative article on what ASTC offers in the line of pro bono services for trial consulting. We also have a Q&A on some new witness research done by a student (soon to be a job applicant) as well as another original research paper completed by another graduate student on attitudes toward the mentally ill.

In addition you will find a favorite thing and another article on visual evidence that will help you present your evidence persuasively—remember, a picture is worth a hundred words (or more).

This will be my last issue as Editor of The Jury Expert. We resurrected the publication online in May of 2008 after working for about 6 months on web design and content. Over the years, we have tried to be timely, provocative, challenging, stimulating, and interesting to read. I appreciate the way The Jury Expert has been embraced by the litigation advocacy community. After more than 10 years, it is time for me to step down.

I hope that a new Editor will continue our history of taking risks and highlighting the value of trial consultants to the litigation advocacy community while writing for those on both sides of the aisle.

Rita R. Handrich, Ph.D.
Editor, *The Jury Expert*

Need Help? ASTC's Pro Bono Committee May Be Just What You Need

by Ric Dexter



WHEN THE AMERICAN SOCIETY OF TRIAL CONSULTANTS was formed, over 30 years ago, the Pro Bono Committee was one of the first standing committees to be established. Initially the committee encouraged the members to offer Pro Bono services to their clients. Over the course of years we have reached out beyond our own circle of clients to the pro bono community. We thought this might be a good time to remind you of this program since we anticipate there may be new kinds of what we used to call civil rights cases that will arise in the coming years.

ASTC Pro Bono Initiative offers pro bono services to people through organizations that serve those with limited means and to organizations that protect the civil or public rights of low income or marginalized citizens, individuals who would otherwise be unable to avail themselves of the services of a consultant.

Some cases need a little help, some require a lot more. We have been able to help on many matters with just a few phone conferences or a few visits. In one particular case, a firm put in over 1,000 hours.

Recent ASTC Pro Bono Program cases have involved civil rights, immigration, disability rights, parental rights, patent and trademark, and death penalty defense. Services provided in those cases included theme and story development, community surveys, focus groups, jury selection, witness training, graphics design and development, and focus groups.

The ASTC Pro Bono Initiative has local groups in some areas, but is not limited geographically. Members from across the country work together whenever possible for the common good and towards a common goal, to support the legal community in seeing that equal justice is afforded each person, no matter what they can afford.

Here are just a few examples of ASTC in pro bono service to the community.

“Maria” was a minister in Angola, and after being raped and beaten in her local police station, she escaped to the United States. After her temporary visa ran out she remained. Facing deportation, she sought help from the Human Rights Initiative. Seeing the great difficulty Maria had in presenting her

story, the HRI contacted the ASTC Pro Bono. Recognizing the differences in cultural norms, and reaching back to Maria's experience in helping other women in her church, the responding ASTC consultant helped Maria find her voice. Maria was able to present her story to the immigration court. Bill Holston of the Human Rights Initiative has thanked the ASTC Pro Bono Consultants for "literally helping us to save lives".

The Community Legal Aid program found itself with many young, inexperienced but eager attorneys looking for an opportunity to help. When any of the cases they handled required court appearance, there were not enough volunteers with courtroom experience. Consultants from the ASTC partnered with them to present a CLE on witness training and preparation. Tom Stutz, Director of Legal Aid of North West Texas said, "This program will really help raise the quality of the representation we can provide".

An ASTC Consultant in San Francisco was providing pro bono assistance for a capital murder trial to be held in a small town in Louisiana. The exigencies of scheduling and distance started throwing up roadblocks. Contacting the Pro Bono Committee she was able to find someone in the trial venue who could help with the mini-mock trial. As things developed, she was asked to help with the trial. Coordinated through a consultant in Dallas, TX—AV equipment was provided by a member in Delaware and a local Louisiana trial technologist assisted. Consultants in Louisiana provided last minute analysis of the juror questionnaires. More than a dozen consultants and vendors from three coasts joined forces to bring this trial to a successful conclusion. The San Francisco consultant who initially brought the case to the attention of the Pro Bono Program commented, "This is exactly why ASTC rocks! I cannot say enough about how much of a difference the Pro Bono assistance of ASTC members made on this case.

The Legal Assistance Foundation of Chicago has worked with ASTC members in several cases, their comments describe the importance of the help those consultants provided.

"Thank you for your help on framing and voir dire. It was invaluable. I even said "follow the paper trail" during closing! Others would probably tell you I shouted it. We also picked a really interestingly diverse jury and your advice and voir dire questions helped me feel more comfortable with the process (though I still hate it!). I am so grateful that you were willing to provide this pro bono assistance; LAF could never afford this kind of service for our clients otherwise."

In another case, "[Our attorneys] had a few phone conversations with two of your consultants in the Carson case. We ended up settling that matter, but their questions and comments were probing and insightful and helped us frame some issues, and also realize we probably needed to settle!!"

In 2013, after the County Constable resigned the Williamson County, Texas Commissioners posted for applicants to fill the remaining year of the post. Robert Lloyd, who lived in the county and had 23 years of law enforcement experience, applied for the position. He felt he had a good chance as he was among the most qualified of the five applicants. While not a requirement for the position, the commissioners felt re-electability was an important consideration and Mr. Lloyd did not get the position. He wondered if the questions the Commissioners asked him about his religion and his views on gay rights and abortion had influenced the decision.

Pro Bono Counsel contacted the ASTC for help in developing a theme for what promised to be a contentious federal trial. Mimi Marziani, director of the Texas Civil Rights Project, expressing her appreciation to the ASTC said, "Your consultant was a pleasure to work with, and provided our team some great advice for our trial preparations. Not only did he take the time to understand the complex nature of our case to develop overall themes, but he also worked with our attorneys to refine the details of our Plaintiff's testimony and our cross examinations. Best of all, he seemed to truly enjoy all of it!"

These are just a few of the examples from the ASTC Pro Bono Program's files. For more information about American Society of Trial Consultants Pro Bono Program and contact information, visit our web page. 

ASSERTION EVIDENCE

The Best Structure for Creating Trial Graphics

by Brian Patterson and Jason Barnes

CREATING A TRIAL PRESENTATION is a balancing act. We must balance advocacy with ethics, aesthetics with function, narrative with evidence. We are told that the most effective presentations show instead of tell, but in reality, the showing and the telling are also aspects of the presentation which must be balanced—the testimony of the witness or attorney argument is combined with the visual evidence to create a compelling story.

In previous articles, we critiqued two proposed methods of presentation using PowerPoint – one that claimed the software was “evil” in that it encouraged bad design and inefficiency in communication, and one that called for a different way of presenting using a three act structure and appeal to emotion. We found both ideas had some merit, but that, for the particular creation of trial presentations, both approaches were inadequate.

However, another technique exists that we believe is specifically applicable to and useful in trial. It is called the Assertion-Evidence Structure.

What Is Assertion-Evidence?

The Assertion-Evidence Structure of presentation design consists of two parts: an assertive headline stating the point of the slide, and the visual evidence supporting the asserted point.

Also called “alternative design,” the design was developed at the Lawrence Livermore National Laboratory, and championed in writings by scientists Michael Alley and Kathryn A. Neeley. A similar design model was independently developed by French designer Jean-Luc Doumont in response to Edward Tufte’s “The Cognitive Style of PowerPoint.”

As described by Alley and Neely in their article “Rethinking the Design of PowerPoint Slides: A Case for Sentence Headlines and Visual Evidence”:

Two features distinguish the alternative design from the traditional design: the succinct sentence headline as opposed to a phrase headline, and the use of visual evidence as opposed to a bulleted list. Using a succinct sentence headline is not a new idea. Lawrence Livermore National

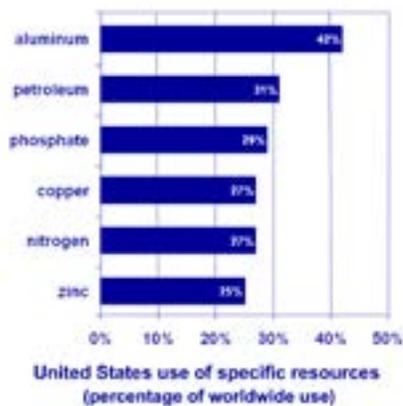
Laboratory has been advocating such a headline since the 1980's. Such a headline responds to the traditional design's failure to clarify the purpose of each slide. Likewise, relying on visual evidence is not new either—many advocates of the “intelligent use” of PowerPoint have made similar calls.

U.S. Resource Use

- The United States uses:
 - 42% of all the aluminum produced worldwide
 - 31% of all the petroleum
 - 29% of all the phosphate
 - 27% of all the copper
 - 27% of the nitrogen
 - 25% of the zinc
- Approximately 30% of all resources worldwide

Before

Although the U.S. has 5% of the world's population, we use an average of 30% of all resources



Students learning from the transformed slide scored higher on an identical test question

Q: Percentage of world's resources that the U.S. uses?

U.S. Resource Use

- The United States uses:
 - 42% of all the aluminum produced worldwide
 - 31% of all the petroleum
 - 29% of all the phosphate
 - 27% of all the copper
 - 27% of the nitrogen
 - 25% of the zinc
- Approximately 30% of all resources worldwide

Although the U.S. has 5% of the world's population, we use an average of 30% of all resources

Led to 71% correct

Led to 82% correct

$p < 0.025$

[Alley et al., 2004]

Assertion

Alley and Doumont agree that the sentence headline should state the purpose of the slide succinctly, using no more than two lines of text. Short, clear, declarative sentences are best – more Hemingway than haiku. The audience should be able to quickly grasp the point you wish to make and move on to the visual evidence, which you will explain orally. Vague slide titles can confuse the audience as to what the purpose of the slide is. A title like “Timeline of Events” adds nothing of value to a slide. The audience knows it's a timeline of events, but what is the point of showing these particular events? “Timeline of Defendant's Violations” is better, but still too vague, and not very persuasive. “Defendant Repeatedly Violated the Contract” tells the audience exactly what you are going to show them.

Stating the point of the slide boldly and succinctly has the added benefit of focusing the slide. Asking, “What do I need to say?” makes the responsibility of the visual evidence very clear: it must support the thesis. The claim can't be made unless it can be backed up with visual evidence. This adds credibility to the argument.

It also helps the audience to see how a piece fits within the whole body of evidence, developing themes and stories into a narrative built with purpose. One headline leads into the next and the pieces begin to form a picture. Sometimes people shy away from using strong headlines, but as advocates, we owe it to the audience to help them understand what we are trying to say. Even with the best made slides, juries can get confused. A strong headline is a way to lead a jury through the many parts of a case using a clearly marked path.

If one is worried that a judge might sustain an objection to an assertive title, simply remove the assertion from the slide – but do not remove it from the presentation. Remember, your presentation is both the showing and the telling. Tell the jury, overtly or in a question to the witness, what the assertion is, then show them the evidence.

Evidence

The evidence portion of the slide can be any visual that backs up the assertion made in the headline. Chart and graphs, timelines, diagrams, photographs, animations, and documents are some of the options for evidence. The evidence should be presented as simply as possible while still supporting your point, leaving out extraneous labeling and details. Excessive color and decoration limit the effectiveness of the slide, giving the audience unnecessary and distracting information to process. This violates the cognitive theory of multimedia learning, which we will discuss in a moment.

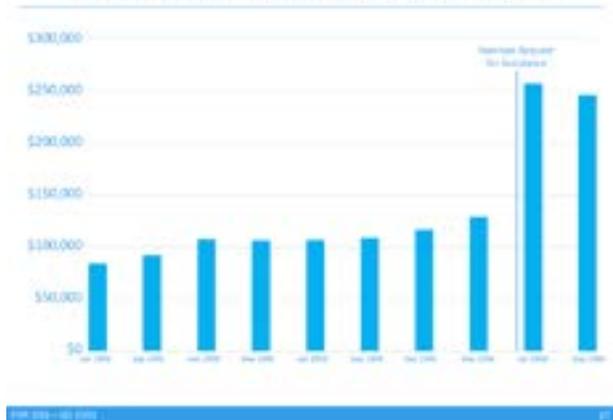
A series of slides accompanying Alley and Neely's article demonstrating how to convert PowerPoint's default template to the Assertion-Evidence model. The third slide compares the two slides' effectiveness.

Analysts Agreed There Had Been an Overreaction

This slide features several text boxes containing snippets from news reports. The text includes phrases like "the market reaction to the recent court judgments has been excessive," "the market overreacted to the news on Friday," and "Friday's 42% sell-off was overdone." A circular inset contains a photograph of a man in a suit and tie, with a speech bubble that says "It's possible even in an efficient market, the market tends to overreact to news about legal cases." The date "December 2001" is visible at the bottom.

“Analysts Agreed There Had Been an Overreaction” This assertive statement is backed up by clips from multiple reports where analysts state their determination that the market overreacted to news of negative court judgments.

EOR Told the Market When Pending Claim Numbers Increased



“EOR Told the Market When Pending Claim Numbers Increased” Fighting a fraud claim, company EOR needed to prove that they did not try to hide the number of claims against it from investors. This timeline chart shows the number of claims made against EOR from quarter to quarter, and that investors were told when the claim numbers spiked.

This timeline slide is titled "Playtex's Patent Application Was Filed Too Late". It shows a horizontal timeline with two years, 1982 and 1983. Key events are marked with yellow boxes: "Filed for 178 Patent" in September 1982, "Playtex files for 178 Patent" in September 1983, and "FILED November 03, 1982" in November 1982. A circular inset shows a document labeled "178 Patent".

“Playtex’s Patent Application Was Filed to Late” This timeline’s single purpose is stated in the title, and needed just three dates to illustrate the point.

This complex timeline is titled "Warning Signs Appeared Throughout the History of the Culvert's Construction". It spans from 1999 to 2001. The timeline is divided into three main sections: 1999, 2000, and 2001. Blue boxes represent milestones, orange boxes represent problems, and yellow boxes represent the final collapse. The timeline includes numerous text boxes with details about construction progress, issues, and court proceedings. A small photo of a man in a suit is also included.

“Warning Signs Appeared Throughout the History of the Culvert’s Construction” This timeline traces the troubled construction of a culvert, showing both the milestones (in blue) and the problems (in orange) and finally the collapse of the culvert (in yellow). In addition to the text on the slide, there are icons which link to photos and documents of the underlying evidence.

Examples of types of visual evidence: testimony slides, documents, graphs, charts, timelines, tables, math, video, animations, illustrations, figures.

In presenting these graphics, one first states the assertion (which is written on the slide), then walks through the proof of that assertion, then state the assertion verbally again after the evidence has been presented. This Aristotelian formula has been an effective presentation tool for 2,400 years, and works especially well with the Assertion-Evidence model.

Well thought out analogies, metaphors, and abstracts can also be effective in an Assertion-Evidence slide. As stated by Carmen Taran in “Rethinking PowerPoint”:

What I think that a lot of PowerPoint users don’t do very well is visualizing abstracts... We all need some more training in visualizing abstracts. How do you bring to life something that you can not touch or put your finger on concretely? For instance, how do you visualize being an alien in a country? How do you visualize feeling alienated? How about a barbed wire. How would you visualize revenge? We used a picture this morning of this Porsche that had a license plate which said WAS HIS. That is how you can visualize revenge. The minute that you put a little extra effort into visualizing abstracts, now you open up new possibilities in your users’ minds.

However, a poorly thought out metaphor can damage your message. We’ve seen mock jury deliberations where metaphors that are widely used in litigation presentations are flatly rejected, and called the presenter’s credibility into question in the mind of the audience.

Multimedia Principles of Learning

In his book “Multimedia Learning,” Richard E. Mayer introduces five multimedia principles to help audiences learn when being presented with multimedia presentations. Using these principles reduces extraneous processing, the processing of ir-

relevant information which can interfere with learning. Here are the five principles and some easy-to-follow advice on adhering to them.

- Coherence – Delete extraneous words, sounds, or graphics.
- Signaling – Highlight essential words or graphics.
- Redundancy – Delete redundant captions from narrated animation.
- Spatial Contiguity – Place essential words next to corresponding graphics on the screen or page.
- Temporal Contiguity – Present corresponding words and pictures simultaneously.

Conclusion

In “Rethinking PowerPoint,” Dan Roam says, “The essence of communication is trying to get what’s in my head into your head in the fastest and most efficient and most believable way possible.” There is not a single solution that works in every situation, but to communicate effectively, knowing which tool to use for every task is vital.

The idea that PowerPoint is evil or inherently produces bad design is simply wrong. The Three-Act Play model is useful in some situations, such as an opening statement. But, when openings are over and all eyes are focused on the presentation of actual evidence with the goals of understanding and persuasion, the Assertion-Evidence model rises to the fore. It meshes with the question-answer format of a trial. It fits well with the way we prepare witnesses and craft outlines. In short, it is the best model we have seen for working attorneys and visual advocacy specialists to use in preparing materials for trial. ¹⁹

Brian Patterson has been a graphic designer since 1990. In 1998, he began work in litigation graphics, working first at DecisionQuest then at Barnes & Roberts. He now works for The Focal Point as a Senior Trial Consultant.

Jason Barnes has been a trial consultant, designing demonstrative evidence and presentations, since 1990. With over 28 years of experience, he has prepared presentations and provided on-site support for hundreds of cases. He writes regularly for The Jury Expert where he is also the Associate Editor.



Can I Get a Witness? An Interview with Clint Townson

by Charlotte A. Morris and Clint Townson

WE FIRST MET along the wide hallway at a conference center hotel on the outskirts of Chicago. Clint is a doctoral student at Michigan State University, so I probably started by paying my respects to Tom Izzo, who is one of the greatest college basketball coaches alive today. (Bill Self and Roy Williams are two others, in case you're wondering.)

I was drawn to Clint's research poster in no small part because I had a case on my desk about which the attorney told me, "We're going to have to totally discredit the state trooper in order to win this case. I'm going to have to destroy him on cross-examination."

Clint's research focuses on an issue trial consultants and their attorney-clients face in every civil and criminal trial: the credibility of witnesses is judged solely (and almost exclusively) by a jury^[1]. So now, Clint and I meet again for a conversation between an aspiring trial consultant conducting empirical research, and a veteran trial consultant with more than two decades of experience in the field.

Charli: Let's start with you giving us the elevator pitch for the research you've done on how jurors respond to different types of witnesses.

Clint: My primary goal for this research was to compare how different types of witnesses are perceived by jurors, regardless of dress, speaking style, and even substance of what the witness says during testimony. I was curious about how the mere labeling of a witness as a "police officer," "expert" or "eyewitness" would change assessments of their trustworthiness and knowledge, and ultimately, a juror's appraisal of the case.

Charli: Where did your idea for the research come from and what were you hoping to discover?

Clint: Well, it was actually the American Society of Trial Consultants' conference in Las Vegas that pushed me in this direction. I presented some undergraduate research there, and the members of the Society encouraged me to continue work in this area. The idea for this specific study came from looking at some credibility research in other persuasive contexts, and I was curious about which specific type of witness would prove

most influential to jurors.

My hunch was that experts are perceived as more knowledgeable than any other witness type, while police are perceived as more trustworthy.

Charli: So tell us how you conducted your experiment.

Clint: I really wanted to isolate the effect of labeling a witness. So I wrote a summary of a hypothetical criminal case, and then designed a two-minute cross-examination between an attorney and a witness on the stand. The cross was designed to be somewhat probative (discussing the defendant's psychological state after a crime), but very general, so it could reasonably be delivered by any of the three witness types: police, eyewitness and expert.

I then video-taped an actor (dressed in a suit and tie) delivering the testimony in a mock court room (I served as the attorney off-camera).^[ii] When the experiment was administered to participants, they read the summary of the case, and then were given one of three brief introductions to the video that described the witness' role in the case.

For the first group, he was described as an officer who conducted interviews at the scene (a police witness); for the second group, he was described as a psychologist who had met the defendant shortly after the crime (an expert witness); for the third group, he was described as a cab driver who had given the defendant a ride shortly after the crime (an eyewitness).

After the video played, these mock jurors were asked about their perceptions of the witness' credibility in terms of trustworthiness and knowledge, and also asked to make a decision about guilt.

Charli: Before you reveal the results of your study, I want to tell you about the case I was working on when we first met and get your reaction, because I think your experimental design would be just as applicable to a civil case fact pattern.

In my case, the defendant company performs roadway maintenance and two employees were each driving slow-moving heavy equipment alongside a two-lane county highway on a clear, dry summer day during a typical busy morning commute. The plaintiff was killed when his motorcycle collided with the vehicle driven by one of the defendant's employees. Like all roadway accident cases, the jury would first have to agree on how the accident happened before they could reach a unanimous verdict on liability, causation and damages.

The defense on liability depended heavily on showing that an inexperienced trooper – who was not trained or qualified in accident reconstruction – made mistakes in his investigation and reached the wrong conclusion about who was at fault.

The defendant hired an experienced investigator who arrived

on the scene within a few hours of the collision to take pictures, to make measurements, and to reach his own conclusions. That investigator was then qualified to testify as an expert witness for the Defense.

Two more pieces of information about witnesses in my case:

The only two eyewitnesses to the accident were the defendant employees who were driving the company vehicles. Bystanders – who may have seen how all three drivers were behaving before the collision – did not stop that morning to render aid at the scene or to give statements to police.

The plaintiff also hired an accident reconstructionist to testify as an expert at trial. He did not visit the accident scene or inspect any of the vehicles until months after the crash, and he admits in deposition that his opinion relies substantially on the trooper's measurements, the trooper's report, and the trooper's photographs taken on the day of the accident.

To summarize, at trial in the case I was working, there would be:

- a police witness testifying for the plaintiff;
- a reconstruction expert witness testifying for the plaintiff;
- a reconstruction expert witness testifying for the defense; and
- two eyewitnesses (company employees) testifying for the defense.^[iii]

So, based on your research (and your knowledge of prior research), what would you expect in terms of juror reactions to witnesses in this case?

Clint: Well this could be a fascinating example of some of the findings of my research.

First, the results of my experiment generally showed that the mere identification of a witness as an expert was enough to result in substantial increases in perceived trustworthiness and knowledge, as compared to either the police witness or eyewitness.

Second, the results also showed that there was no significant difference in the perceived trustworthiness of a police witness as compared to the eyewitness, contrary to expectations.

Charli: I'm sorry to interrupt...but I want people to pause on the second finding above. Police officer witnesses were not perceived as more trustworthy than an eyewitness. This – as you write in your paper– is counter-intuitive.^[iv] Now, back to your results...

Clint: Finally, perceived knowledge of the witness (regardless of how he was identified) exerts some influence on verdict decisions among the participants.

Applying these findings to the civil case, I'd say discrediting

the state trooper might be only a piece of the puzzle. Instead, the disparity between two opposing expert witnesses might be the crucial factor in the jurors' minds: if the defense expert is framed as knowledgeable (through an impressive education), and trustworthy (based on appearance, charisma, et cetera), while the plaintiff's expert is presented as neither of these things (given he is largely relying upon the trooper's report, rather than an independent investigation), jurors might lean toward the defendant on the basis of expert testimony.

My research would suggest the testimony of these experts would be seen as more credible and more probative than either the trooper's testimony or the eyewitness' testimony.

Charli: That's exactly what we found in our focus group research.

The defense expert, with an impressive resume for accident reconstruction that included some work for law enforcement, also had great presence – what you might call charisma – during his deposition. The mock jurors rated him the most important witness in the case.

It wasn't a matter of "destroying" the trooper on cross-examination—as you said, that was just a piece of the puzzle. Instead we focused on putting forth an affirmative response that highlighted, through direct examination of the defense expert, why his calculations and conclusions were more credible than the trooper's.

That said, here's where I might argue a little with the implications and conclusions you write about in your research regarding the importance of expert witnesses. I've long thought we have a problem in civil cases with what I call an expert "arms' race" – where both sides spend small fortunes on experts because they think jurors are more likely to be persuaded by them, or because they don't trust lay witnesses to do the best teaching and explaining in the case.

In my experience, though, experts are vulnerable because they have been paid (handsome sums) to testify. I often tell attorneys that opposing experts have a tendency to "cancel each other out" at trial because I frequently hear mock jurors say, "Both sides hired experts to say whatever they wanted experts to say, so we have to take that into consideration."

I wouldn't argue that experts are not essential, but I will say that how they deliver their specialized opinion testimony is every bit as important as the substance of what they say. A persuasive witness doesn't have to be an expert if he or she is the best teacher or the most likable in front of a jury. In fact, I teach witnesses that there are three components of credibility: Knowledge, Trustworthiness and Likability. I wonder how the next phase of research would take that into account. Any ideas?

Clint: There's definitely some existing work out there discussing the "hired gun effect" of well-compensated expert witnesses

(see Cooper & Neuhaus, 2000; Koehler et al., 2016). Those researchers found that this seems to come up most often in very technical testimony, where the expert comes off as a snobby know-it-all and is disliked by jurors. You're certainly on the right track by pushing these experts to be more like teachers. By making an effort to teach jurors their reasoning process (in language the jurors can understand), the expert may come off as more believable, their compensation becomes less important, and they are seen as more likable (see Brodsky et al., 2009 for more on likability of expert witnesses).

Charli: You've written that findings in your research could be "used to study communication/psychology in legal contexts" and also "by trial consultants in witness preparation." I agree and I actually think there are even more practical applications of research on juror perceptions of witnesses.

Clint: Like what?

Charli: Even in the early stages of consulting, what we know about how jurors perceive witnesses in general can have a profound effect on our plans for measuring those perceptions in research. Once we have feedback from focus groups, we can then develop strategies for how we'll order our witnesses at trial; how they will (or will not) be featured in opening statement; which questions they should be asked on direct or cross-examination; how witnesses should relate to one another; whether we even want to present them at trial (if we have that choice) and how (by video or live); and what exhibits will best illustrate the testimony of each witness.

We really can't overstate the importance of witnesses and jurors' perceptions of them. Lawyers do a lot of talking, but every bit of the actual evidence received by a jury at trial comes in through the testimony of witnesses. Even our exhibits cannot be admitted into evidence except through a witness.

And – by all means – yes, we do use empirical and case-specific research for preparing our witnesses to testify in depositions and trials, but sometimes we are developing strategies for our use or cross-examination of opposing witnesses (who we obviously do not get to prepare).

Clint: You make it sound like there's a lot of exciting work for me to do if I pursue trial consulting as a career.

Charli: There is and we'd be glad to have you join us. Thanks for letting me interview you, Clint, and thanks for adding great research to the field.

Clint: It was an absolute pleasure. I think these conversations and collaboration between practicing trial consultants and graduate researchers elevates both academic research and the real case work. 📍

Charlotte (Charli) Morris has a Master's degree in Litigation Science from the University of Kansas (Rock Chalk Jayhawks) and she has been working with attorneys and witnesses since 1993. She can be reached directly by sending an email to charli@trial-prep.com.

Clint Townson is a doctoral student in communication at Michigan State University, working with Dr. Frank Boster on various persuasion projects, including some involving communication and the law. He completed the above project as part of his Master's thesis at the University of Delaware with Dr. Paul Brewer. He welcomes all correspondence at townsonc@msu.edu.

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[i]Judges, of course, have the ability to exclude expert witnesses before they ever take the stand but, once qualified to testify, experts are subject to the same juror scrutiny as any other witness.

[ii]There are considerations for juror perception of witnesses related to both gender and race, which have been examined in previous studies, but for this experiment the white male actor was selected to be a constant across witness types.

[iii]Other witnesses (types not addressed in your experiment) would include family members to testify about damages and a company owner to vouch for the practices of his employees.

[iv]Clint and Charli agree that there may be certain factors – such as the age of his sample (college students) or recent cases alleging police brutality – that could influence this result.



2016 Attorney Survey: Declining Civil Jury Trials

by Charlotte A. Morris and Clint Townson

Introduction

Research Objective

THE DECLINE IN CIVIL TRIALS has been documented by empirical research and the courts alike, with data that reveal a downward trend since at least 1962. The Civil Jury Project reports that less than 1% of all cases filed were disposed of by bench or jury trial in the years 2010 through 2015.^[1]

The Civil Jury Project is engaged in an empirical assessment of the current role of the jury in our civil justice system, the reasons for its decline, and the impact of that decline on the functioning of the civil justice system overall. The basic question is whether jury trials continue to serve the role anticipated by the Framers of the Constitution. Relatedly, it is important to examine the consequences of the decline and what other institutions may currently fill the void.

To help understand the current state of civil jury trials, the American Society of Trial Consultants (ASTC), as part of the Trial Consultant Advisory Group of the NYU Law School Civ-

il Jury Project, conducted a survey of lawyers who try cases in state and federal courts across the country.

This survey addressed the current involvement by attorneys in jury trials, how they viewed the decline in jury trials, their perceptions of the causes for this decline, their experience with jury trial innovations, and what (if anything) they thought could be done to increase the number of jury trials.

Methodology

The survey was distributed electronically by the Civil Jury Project to a dozen attorney organizations. We received responses from eight of those (shown in chart below) between May 3, 2016 and August 1, 2016.

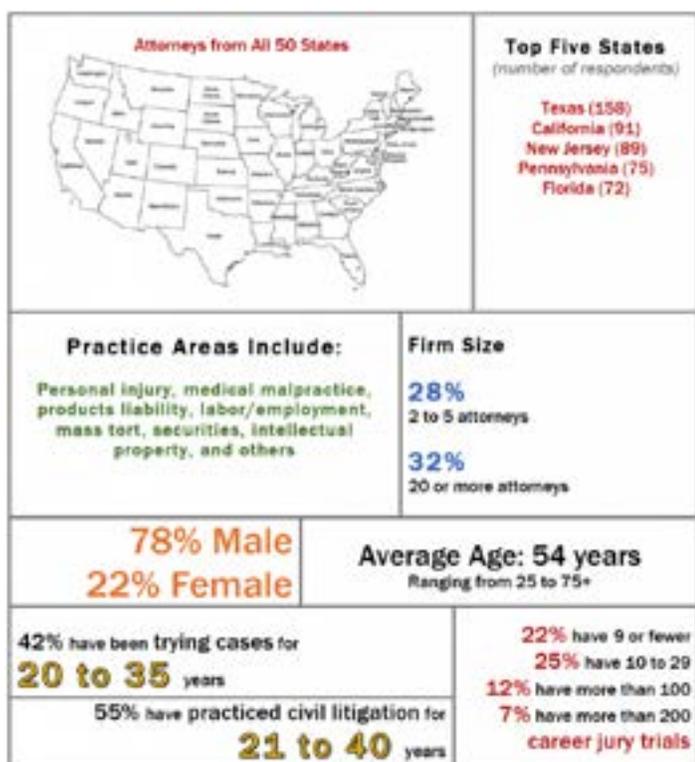
The survey consisted of 25 multiple choice and open-ended items. Respondents were not required to answer each item, but they were given the opportunity in many instances to give multiple responses. Therefore, the number of responses for each survey item varies. We have noted in this report frequencies and/or percentages to provide clarity throughout.



Participants also had the option of providing name and contact information, which will be held confidential.

The chart on the following page summarizes the demographic make-up of our sample and highlights the range of practice areas and attorney experience.

- We received responses from attorneys in all 50 U.S. states, with the highest participation coming from Texas, California, New Jersey, Pennsylvania and Florida.
- Respondents practice in a wide variety of types of civil litigation and in law firms large and small.
- More than three-fourths (78%) are men and the average age of all respondents is 54.^[2]
- More than half (55%) have practiced 21-40 years and a quarter (25%) have up to 30 career jury trial completions.



Section One: Highlights of the Survey

Highlights of the major study findings include:

- A relatively large sample size of attorneys on both sides of the bar in a wide variety of case types nationwide.
- The majority of respondents agree that there are too few jury trials.^[3]
- The perception of major causes for the decline in jury trials for attorneys' own cases include perceived uncertainty in jury decision-making and the cost of litigation.
- Views on the decline in jury trials, in general, include the cost of litigation (which is likely combined with time factors such as delays in getting to trial and/or the length of trials), risk of uncertain outcomes, mandatory ADR, and perceived pressure by judges to resolve cases without trial.
- Attorneys suggest ways to increase the number of jury trials by promoting greater efficiencies in the system, limiting ADR, and increased support from judges for proceeding to trial.

Overall, the survey results support the good ideas that are already alive and well in the Civil Jury Project: raising awareness, providing education, and encouraging greater communication about the decline of civil jury trials.

The Civil Jury Project gives us an opportunity to invite attorneys, judges and trial consultants to talk to each other about how to reform discovery and streamline trials to reduce the cost of litigation as a whole. There are considerable hurdles to clear – consistent/uniform application of reforms across venues and case types will be a tremendous challenge – and meaningful dialogue is a good first step. Of those who oppose jury trial innovations designed to do precisely what attorneys say they want (greater efficiency, lower cost, less time), we also see in the results attorney concerns about: a) losing control over how their cases are tried, and b) judges getting disproportionately more power over case outcomes.

Attorneys surveyed would like to change the hearts and minds of judges who are the gatekeepers of civil jury trials. While they are asking for greater participation of a certain kind (e.g., strict deadlines, consequences for missing them, and strong calendar management), they also want judges to regard jury trials as aspirational rather than as failures of the parties to settle.

Trial consultants have a lot to offer the legal community with respect to attorney perceptions of jury decision-making. Many of the services provided by trial consultants are designed and executed to help lawyers themselves streamline discovery, highlight case strengths, eliminate case weaknesses and minimize risk. We have recurring opportunities in conducting our own jury research to send a positive message of empowerment to jury-eligible citizens about their ability to make decisions and the importance of their jury service. We also regularly provide continuing legal education to improve the trial advocacy skills of attorneys, so that confidence in their ability to try cases with juries (and the confidence of their clients) will increase.

Finally, we recommend further research into the perceived un-

certainty about jury decision-making, which is not currently supported by the literature, and to address this issue in a way that fosters a healthy view of the jury as a dispute resolving institution.

The ASTC Trial Consultant Advisors wish to thank the Civil Jury Project for supporting this survey, including us in the dialogue, and giving an important voice to the promotion of best practices that can restore faith in the civil court system.

To see the complete version of this survey, and all questions asked of attorney- respondents, please visit the Civil Jury website.

This article was originally published in the Civil Jury Project newsletter.

For more information see <http://civiljuryproject.law.nyu.edu/scholarship/>

The full report can be found here: [2016 Attorney Survey: Declining Civil Jury Trials](#)

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Footnotes

[1] Administrative Office of the U.S. Courts, Annual Report of the Director, Table C-4. Galanter, Marc and Angela M. Frozena. "A Grin without a Cat: The Continuing Decline & Displacement of Trials in American Courts." *Daedalus*, the Journal of the American Academy of Arts & Sciences 143 (2014): page 115. http://civiljuryproject.law.nyu.edu/wp-content/uploads/2015/05/Galanter-Frozena_A-Cat-without-a-Grin-2012.pdf

[2] Women attorneys are under-represented in our sample when compared to national averages. See <http://tinyurl.com/hxy9stn>

[3] One additional question that could be addressed by statistical analysis of the data is whether or not there are difference between Plaintiff and Defense attorneys on one or more key issues in the survey.



Public Opinions of Civil Jury Trials

by Patricia Kuehn and Alexis Forbes

PATRICIA KUEHN, ALEXIS FORBES and other American Society of Trial Consultants (ASTC) work in collaboration with the Civil Jury Project at NYU School of Law to save the jury trial. They recently completed a survey looking at public attitudes toward civil jury trials. Read a summary of that survey here and if you'd like to see more information on the entire survey, the link is available at the end of this article.

A special thanks goes out to **FIELDWORK**, Inc. for administering the survey.

America's 7th Amendment right to a civil jury trial has eroded away for years unbeknownst the American citizens. It has reached a critical point where less than 1% of civil cases are resolved by a jury.

In its quest to preserve the American people's right to a civil jury trial the American Society of Trial Consultants in conjunction with the Civil Jury Project, is studying these principals. The current study queried nearly 1500 people to investigate some underlying concepts and assumptions important to retaining civil jury trials.

Decline

Statistics on civil jury trials have been collected for years. Both federal and state court data reveal a downward trend since 1962. This decline had been documented in various ways; yet they all reach the same conclusion—the civil jury trial is vanishing. Since 1960 the amount of federal cases filed has increased, but the disposal rate by juries decreased from 11% to 2%.^[1] In state cases from 1976-2002 cases resolved by a jury fell from 36% to 16%.^[2] Then in 2015 a study found the state court jury trial rate decreased to .1% in 10 urban counties.^[3]

The decline is also evident in data regarding the number of citizens called for jury duty. Federal court encountered a decline of 31% between 2006 and 2016. In 2006, 307,204 people were summoned for jury duty as compared to only 194,211 in 2016. Similarly in 2006, 71,578 people were selected to serve on a jury as compared to 43,697 citizens in 2016—down 39%.^[4]

In search of a way to slow or reverse this trend the ASTC Trial Consulting Advisors studied attorneys' current involvement in jury trials, how they view the decline, and their perceived causes among other things.^[5] They found attorneys are con-

cerned about the decline on a bipartisan level. The majority of attorneys surveyed agreed the number of their own cases which proceed to jury trials were too low and the majority of the cases were resolved without a jury.^[6]

Regardless of the decline, a Pew Research Center survey in April 2017 revealed two-thirds of U.S. adults considered serving on a jury “is part of what it means to be a good citizen.”^[7] Even though it may be recognized in the legal community, Pew’s findings beg the question of whether the American people understand what is happening.

Public Survey I

In order to preserve and revitalize the civil jury trial, the public may need to get involved. Understanding current public perceptions about it is a critical first step. As trial attorneys and consultants alike know, understanding someone’s pre-set attitudes, opinions and frame of reference facilitate effective communication and persuasion. Therefore, Public Survey I is designed to identify and assess a few basic assumptions of public perception of the civil jury trial.

Is the public aware of the decline in civil jury trials and are they upset about the decline? Those were two of the central questions tackled by the ASCT/CJP’s Public Survey I. The survey addressed whether citizens understand there is a decline in civil jury trials, how they feel about decline when informed of it, their perceptions of how important the right to a civil jury trial is and whether prior jury service influences those opinions as primary inquiries.

Based on thousands of anecdotal discussions with jury eligible citizens on hundreds of cases the ASTC’s Trial Consultant Advisors hypothesized people are not aware of the present crisis—the vanishing jury trial. In addition, this study explored whether the public cares about the decline and hypothesized, when people are informed of the decline many would express a neutral or positive view of the decline instead of a negative view. It would indicate they prefer fewer civil jury trials or at least are not upset about the decline. This study suspected the public’s view of how important the right to have a jury decide a lawsuit instead of a judge, arbitrator or mediator might be marginal to moderate. Relationships between these questions and with respondents’ background and demographic information were explored. For example, did a relationship exist between prior jury service and other questions such as respondents’ awareness of the decline, view of the decline or the importance of the right to a civil jury trial?

These inquiries sought to identify general baseline perceptions or gut reactions with virtually no explanation, descriptions or elaborations. The study did not assess the breadth or depth of knowledge a respondent may have on the issue.

Opinions from 1492 citizens across the country are included in this study. The study consists of 6 tests questions and 13

identifying questions for a total of 19 questions. The order of the test questions remained constant to obtain feedback about awareness before providing additional or priming information. This study intentionally limits the questioning to a first level inquiry.

Respondents participated as part of a convenience sample. The sole screening criteria to participate in this study required a respondent to be a U.S. Citizen. One third, or approximately 500 respondents, participated in person to person interviews whereas approximately 1000 completed an on-line survey.

Demographic and Background Highlights

The following includes selected summaries of respondent demographics.

State:

- 33 States
- Majority in Massachusetts (37.9%) and Illinois (27.8%)

Resident Location type:

- Suburban 67.6%
- Urban 26.1%
- Rural 5.9%

Gender

- Female 75.5%
- Male 24.5%

Race

- Caucasian 81.3%
- Black/African American 8.2%
- Hispanic 4.8%
- Asian-American 3.3%
- Multi-racial 1.4%
- Other 0.9%

Education (highest level of education):

- High school or less 8.5%
- Some college 34%
- College degree 35.8%
- Post Graduate degree 21.5%

Political affiliation:

- Democrat 44.2%
- Republican 21.4%
- Other 34.4%

Political orientation:

- Liberal 40.6%
- Conservative 29.5%
- Other 29.8%

The most crucial and pertinent findings from Public Survey I were as follows:

- A large sample size of U.S. Citizens from various demographic backgrounds and areas nationwide.
- **The majority of respondents believed the right to a civil jury trial was important.** Two-thirds of this sample believed the right to a civil jury trial was somewhat to very important.
- **The majority of respondents were unaware the number**

of jury trials has declined. Over three-quarters of the sample thought civil jury trials had either stayed the same or gone up.

- **When informed there has been a sharp decline in civil jury trials over the last ten years, more than half of the sample expressed either no opinion or a neutral opinion about the decline.** Less than half of the respondents expressed an opinion about the decline; less than a quarter viewed the decline as negative.
- **Prior jury service had no influence on any of these three opinions.**^[8] In this survey, prior jury service did not appear to drive opinions about the awareness of the decline, a respondent's opinion of the decline, or a belief in the importance of the right to a jury trial.
- **Opinions of the decline aligned with beliefs about who was most appropriate to decide cases.** Those who viewed the decline negatively were more likely to believe jurors were the most appropriate to decide the case. Those who viewed the decline positively were more likely to think either an arbitrator or judge should decide the case.
- **Opinions of the decline were related to a few demographic factors, including age, region of residence, and type of residence.** This data indicated older people were more likely to view the decline as a positive development. Suburban respondents were more likely to view the decline as a positive development. And those living outside the Midwest were more likely to view the decline as a positive development.
- **Importance of the right to a civil jury trial was related to both residence and to age.** Urban residents viewed the right to a civil jury trial as more important than suburban residents viewed the right to a civil jury trial. Men viewed the right to a civil jury trial as more important than women viewed the right.
- **Beliefs about who is most appropriate to decide civil suits may be affected by prior jury service, but perhaps not in the way previously anticipated.** While prior "service on a jury" exhibited no relationship with the belief that jurors are the most appropriate decision-makers; respondents who had participated in jury service were more likely to believe arbitrators were the most appropriate and less likely to believe judges were the most appropriate, compared to those who hadn't served on a jury.^[9]

To see the complete version of this survey, including the results (importance, decline, most appropriate decision maker, and various relationships) and discussion about these findings please visit the [Civil Jury website](#). 

Patricia Kuehn is a national litigation consultant judicially qualified as a small group decision-making expert. In her role as a trial scientist she concentrates on mock decision research, strategic jury selection and persuasive tactics. A veteran of hundreds of cases over 25 years, Ms. Kuehn helps legal teams construct compelling and prevailing litigation strategy, trial plans and effective courtroom communication. Ms. Kuehn holds a Master of Arts in Social Psychology, is licensed to practice law, and serves as President of the American Society of Trial Consultants.

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Footnotes

[1] Marc Galanter, The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts, 1 J. Empirical Legal St. 459, 507 (2004)

[2] Id at 506.

[3] 23 Jury System Management in the 21st Century: A Perfect Storm of Fiscal Necessity and Technological. Opportunity (2015)

[4] John Gramlich, Fewer Americans are being called for Federal Jury Duty, Pew Research Center from the Administrative Office of the U.S. Courts, August 24, 2017

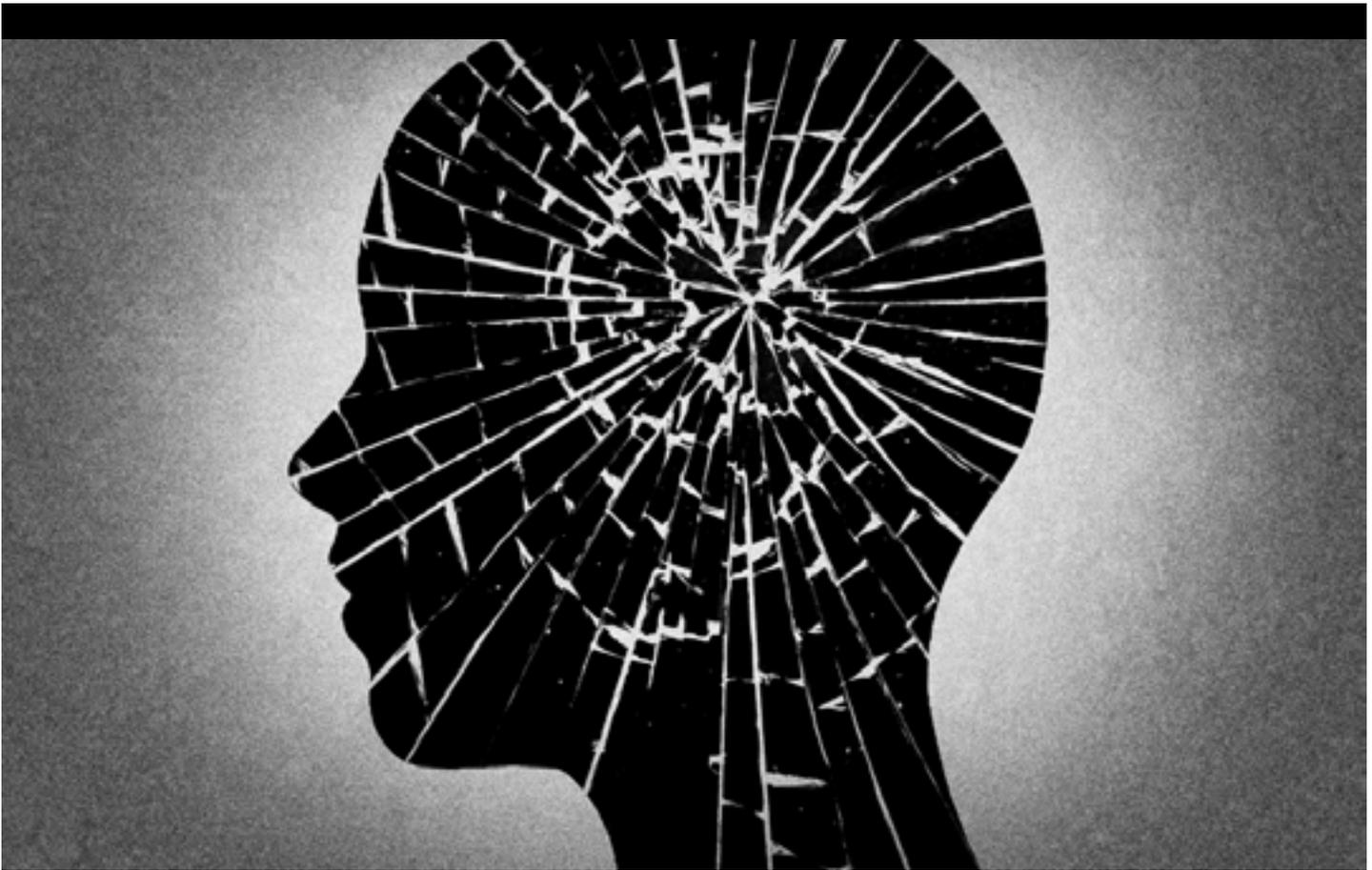
[5] ASTC Consultant Advisors, Summarized Results and Recommendations 2016 Attorney Survey: Declining Civil Jury Trial, NYU Civil Jury Project <http://civiljuryproject.law.nyu.edu/astccjp-surveys/>

[6] Id.

[7] Supra 4.

[8] The phrase "served on a jury" was left undefined. Those taking this survey could interpret jury service as simply responding to a summons or as being sworn as a juror, sitting through trial and rendering a verdict.

[9] Someone summoned for jury duty but who does not experience opening statements, witness testimony, or other aspects of a full trial may view their "service" differently than someone with greater experience in the process. The difference in attitudes may have been a factor in these findings.



How Individual Differences Relate to Attitudes Toward the Mentally Ill: Implications for Trial Lawyers

by Charles P. Edwards and Monica K. Miller

When the average American conjures up thoughts regarding the use of mental insanity as a legal defense, s/he might recall a famous instance such as the trial of John Hinckley Jr. who attempted to assassinate then-President Ronald Reagan ([United States v. Hinckley, 1981](#)). Although this case was fundamental in changing the laws regarding insanity, cases like *United States v. Hinckley* are not necessarily representative of trials involving mental illness or legal insanity ([Fuller, 2000](#)). While only approximately 1% of legal trials utilize mental insanity defenses, jurors in many more trials likely have questions about defendants' mental health ([Daftary-Kapur, Groscup, O'Connor, Coffaro, & Galiotta, 2011](#)). This article will analyze how individual juror characteristics relate to attitudes toward mental illness and the use of mental insanity defenses in legal settings. Additionally, this article will provide suggestions on how this information can be beneficial for jury selection and in crafting case theory.

Mental insanity is used as a defense in approximately 1% of cases ([Daftary-Kapur et al., 2011](#)), but mental illness, in general, affects 1 in 5 Americans ([National Alliance of Mental Illness, 2016](#)). The rate of mental illness is even higher among the

incarcerated population—an estimated 56% of State prisoners, 45% of Federal prisoners, and 64% of local jail inmates have some diagnosable mental health problem ([James & Glaze, 2006](#)) and 16.9% of sampled inmates from local jails have a *serious* mental illness ([United States Department of Justice Archives, 2009](#)). The drastic difference between the rates of mental illness in Americans in general compared to the rates of mental illness amongst the incarcerated populations suggests that mental illness might influence jurors' attitudes and opinions toward defendants.

A jury composed of (typically) twelve people provides the potential for a wide variety of attitudes to be present during the decision-making process. Although the United States Constitution requires that all jurors be fair and impartial ([U.S. Const. amend. VI](#)), decisions made by jurors are susceptible to prejudice and bias. The expression of prejudice and bias occurs in a variety of situations, ranging from law enforcement ([Hall, Hall, & Perry, 2016](#)) to healthcare ([Thompson, 2011](#)). Jurors can exhibit biases toward a defendant based on extralegal factors such as the defendant's gender ([McCoy & Gray, 2007](#)), race ([Minero & Espinoza, 2015](#); [Pearson, Dovidio, & Pratto,](#)

2007; Sommers & Ellsworth, 2001), religion (Johnson, 1985; Miller, Maskaly, Green, & Peoples, 2011), and political affiliation (Kassin & Wrightsman, 1983). Although there have been ample studies investigating bias based on characteristics of the *defendant*, those concerned with jury selection are likely more interested in bias related to characteristics of *jurors*.

Devine (2012) summarizes research regarding relationships between juror characteristics and attitudes or decision-making, but only a small number of studies have specifically examined those relationships in relation to mental insanity defense cases (see Bloechl, Vitacco, Neumann, & Erickson, 2007; Yelderman, West, & Miller, 2017). The limited research has found that males and church attenders have more negative attitudes than their counterparts (Taylor & Dear, 1981). Additional research has also associated politically conservative people and ethnically White people with more negative views of mental illness in general (Alexander & Link, 2003; Corrigan, Edwards, Green, Diwan, & Penn, 2001).

Based on the limited prior research examining individual differences in a legal setting, we conducted two studies to examine whether four variables—gender, race, religion, and political affiliation—are associated with attitudes toward the mentally ill and the use of mental insanity as a legal defense.

Study 1

The first study examined whether individual differences relate to attitudes toward people with mental illnesses. We hypothesized that Whites, religiously affiliated people, political conservatives (i.e., Republicans), and males—compared to their counterparts—would have more negative attitudes toward the mentally ill. These hypotheses were derived from past research (Alexander & Link, 2003; Corrigan et al., 2001; Taylor & Dear, 1981).

Materials

To test this hypothesis, the Community Attitudes Toward the Mentally Ill (CAMI) scale was used (Taylor & Dear, 1981). The CAMI is composed of four subscales—authoritarianism, benevolence, social restrictiveness, and community mental health ideology (CMHI). The authoritarian subscale includes themes related to causes of mental illness, differences between normal and mentally ill people, and how to treat those who have been diagnosed with a mental illness. The benevolence subscale examines attitudes regarding societal responsibility and involvement with those suffering from mental illness. The social restrictiveness subscale measures perceptions of how dangerous the mentally ill are, whether the mentally ill should have any responsibilities, and the normality of mental illness. Lastly, the CMHI subscale examines attitudes about a community's impact on the mentally ill as well as attitudes about the impact of the mentally ill on the community (Taylor & Dear, 1981). Higher scores on the authoritarian and social restrictiveness subscales indicate more negative attitudes toward

people who suffer from mental illness whereas higher scores on the benevolence and CMHI indicate more positive attitudes toward the mentally ill.

All individual characteristics were self-reported. Participants indicated their gender (male or female), political affiliation (no affiliation, Democrat, Republican, Independent, or other), race (White-American, Native-American, African-American, Asian-American, Hispanic-American, or Other), and religion (Catholic, Eastern Orthodox, Protestant, Jewish, Hindu, Buddhist, Muslim, Mormon, Atheist, Agnostic, "I believe in God, but do not have a particular religious affiliation," or Other).

Participants

Participants (n = 441) were students at a university in the western United States who received partial credit in their social science courses. The study was hosted online as part of a larger survey examining attitudes toward a variety of legal issues.

Analysis

Because there were too few participants in some race categories, we separated participants into two groups—White participants and Non-White participants—and, similarly, participants were separated into two religious affiliation groups—those affiliated with a specific religion (Affiliated) and those who were not (Non-Affiliated). Statistical comparisons examined differences in CAMI subscale scores between males and females, White and Non-White participants, Affiliated and Non-Affiliated participants, and participants of various political affiliations: No Affiliation, Republican, Democrat, Independent, vs. Other.

Results

The study found mixed results that supported some hypothesis but not others and, in one instance, suggesting the exact *opposite* of our hypothesis.

Gender. The analyses for gender found no statistically significant differences between males and females on any of the CAMI subscales and, therefore, did not support our hypothesis.

Race. The analyses for race found a statistically significant difference on the authoritarianism, social restrictiveness, and CMHI subscales ($p < .05$) as well as a marginally significant difference on the benevolence subscale ($p < .10$). Surprisingly, White participants had lower authoritarianism and social restrictiveness subscale scores and higher benevolence and CMHI subscale scores, which is the opposite of what was hypothesized based on our review of prior literature.

Religious Affiliation. The analyses for religion found a statistically significant difference only on the authoritarianism subscale, which supported our hypothesis—but the lack of significant differences on the other three subscales made this support questionable.

Political Affiliation. Lastly, the analyses for political affiliation found significant differences on all four subscales. For the authoritarianism subscale, Republicans had significantly higher scores than the Democrat and Independent groups. For the benevolence subscale, Republicans had significantly lower scores than the Democrat and Independent groups. Republicans also had significantly higher social restrictiveness scores than the Independent group and marginally higher scores than the Democrat group. Finally, keeping with the trend, Republicans had significantly lower CMHI (i.e., attitudes toward the mentally ill in communities) scores than the Democrat and Independent groups. These results supported our hypothesis.

Discussion

Overall, Study 1 suggested that there are important differences among participants. Although there were no differences based on gender, the three other variables produced significant differences. Most notably, participants self-identifying as Republican had more negative opinions toward the mentally ill than Democrats and Independents. Additionally, Whites and Non-Affiliated participants had more positive views of the mentally ill than non-White and religiously affiliated participants based on their lower authoritarianism scores along with lower social restrictiveness and higher CMHI scores for Whites. These results would suggest that, in legal cases that have elements of mental illness, a jury composed of White, non-religiously affiliated, non-Republicans would have the most positive views of defendants with mental illnesses.

Study 2

While Study 1 focused on attitudes toward the mentally ill, it did not include any analyses of attitudes toward specific legal defenses. Therefore, a second study was conducted to examine whether individual differences relate to differing opinions regarding the existence of mental insanity and its use as a legal defense. For Study 2, we hypothesized that the same demographic groups from Study 1 (Non-Whites, religiously affiliated, and Republicans) that had more negative attitudes toward people with mental illnesses would also report a significantly lower self-reported belief in mental insanity and less acceptance of insanity defenses. Additionally, because of the Study 1 results, we hypothesized that gender would have no significant relationship with attitudes toward mental insanity or legal defenses.

Materials

To test the hypotheses, the study included questions that specifically asked participants whether they believe mental insanity should be allowed as a legal defense and whether the concept of mental insanity is even real. Participants also reported all demographic information.

Participants and Procedure

Participants ($n = 550$) were students at a university in the western United States who received partial credit in their social science courses for participating. The study was hosted online as part of a larger survey regarding legal attitudes.

Analysis

As with Study 1, certain groups were combined for the analysis because of an insufficient number of participants in certain categories; the same White/Non-White and Affiliated/Non-Affiliated categories were used. Therefore, statistical comparisons examined scores between males and females, White and Non-White participants, Religious Affiliated and Non-Affiliated participants, and political affiliation categories of No Affiliation, Republican, Democrat, Independent, vs. Other.

Results

The results of Study 2 were mixed regarding our hypotheses concerning attitudes about mental insanity and the insanity defense.

Gender. The analyses for gender found no statistically significant differences between males and females on either of the questions relating to mental insanity and, therefore, supported our hypothesis and the findings from Study 1.

Race. The analyses for race found a statistically significant difference only for the question asking whether mental insanity exists, with Whites being more likely to believe that insanity exists than Non-Whites. This finding provided support for our hypothesis and was in line with the findings in Study 1.

Religious Affiliation. The analyses for religion found a statistically significant difference for whether defendants should be able to use insanity as a defense and a marginally significant difference on whether insanity exists. Non-Affiliated participants scored higher on both questions—they were more likely to believe that insanity should be allowed as a legal defense and more likely to believe that insanity exists.

Political Affiliation. In stark contrast to Study 1, the political affiliation variable did not predict differences between the No Affiliation, Democrats, Republicans, Independents, or Other groups on either of the two questions.

Discussion

Results of Study 2 were less robust than Study 1. Significant differences between participants were only found based on race and religious affiliation. Further, differences on race were found for both questions of interest whereas differences based on religious affiliation were only found for one of the presented questions. Still, White and Non-Affiliated participants were more likely to believe that mental insanity exists. In addition, Non-Affiliated participants were more supportive of the idea

that insanity should be allowed as a legal defense. However, neither gender nor political affiliation predicted significant differences for the two questions, suggesting that these two variables might be of limited utility when selecting jurors in mental insanity cases.

General Discussion

Previous research has found that pre-conceived attitudes can affect a person's perception of events and potentially play a role in that person's decision-making (Fazio, 1986). Therefore, prejudicial or biased attitudes toward another person could lead to biased and prejudicial decision-making. The findings from these two studies provide a foundation for attorneys and consultants to apply to the voir dire process. The findings suggest that White potential jurors would have more positive attitudes toward the mentally ill and more acceptance of the existence of mental insanity compared to non-White potential jurors. This finding was surprising and opposite of previous research (Corrigan et al., 2001) as well as what was initially hypothesized. However, this result might have been caused in part by combining all non-White participants into one comparison group. If enough non-White participants completed the survey to allow for multiple group comparisons, the same pattern of results might not be found.

Another significant finding was that non-religiously affiliated people had more positive attitudes toward the mentally ill, were more likely to believe that mental insanity truly exists, and were more likely to believe that mental insanity should be allowed as a legal defense compared to religiously affiliated people. These findings support results of previous studies (Taylor & Dear, 1981) and aligned with the researchers' hypothesis. However, because all religiously affiliated people were combined into one group, the results do not indicate whether certain religious affiliations have more or less positive attitudes toward mental illness and insanity compared to other religious affiliations.

Interestingly, political affiliation was a significant predictor in Study 1, with Republicans having the most negative attitudes toward the mentally ill compared to Democrats and Independents, but was non-significant in Study 2. The results of Study 1 align with findings of previous research regarding the attitudes of conservatives (i.e., Republicans) toward the mentally ill (Alexander & Link, 2003) but this effect did not carry over to conservatives' attitudes toward mental insanity defenses. This lack of a significant effect in Study 2 might be attributable to the legal ramifications and implications. Political conservatism is closely associated with authoritarianism and deferring to authority figures (Perlin, 1997) which could suggest that conservatives would defer to those who make the law (judges, lawmakers, et cetera) and align with the courts which allow mental insanity defenses.

Finally, there were no gender differences on attitudes toward the mentally ill or use of mental insanity as a legal defense,

which contradicts previous research (Taylor & Dear, 1981). Regarding this lack of significant differences across gender, some previous studies have found gender to be a weak predictor in general (Devine, 2012), so it is not entirely surprising that there were no gender differences.

These findings suggest that, for defense attorneys seeking sympathetic jurors for cases dealing with mental illness or insanity, it would be best to keep as many White, non-religiously affiliated potential jurors as possible. If the case involves aspects of a defendant's mental illness but does not use a mental insanity defense, defense attorneys might also try to limit the number of Republicans selected. Conversely, for prosecuting attorneys who seek jurors that are unsympathetic to mental illness and the insanity defense, these results suggest keeping as many non-White and religiously affiliated potential jurors as possible. Maximizing the number of Republicans would also benefit the prosecution if the case involves aspects of mental illness but not a mental insanity defense.

Although keeping or dismissing potential jurors based on these personal characteristics might sound good in theory, it is, in some ways, illegal in practice. Previous Supreme Court rulings such as *J.E.B. v. Alabama* (1994) and *Batson v. Kentucky* (1986) prevent attorneys from dismissing potential jurors based strictly on that juror belonging to a clearly identifiable group (i.e., a specific race, ethnicity, or gender). Therefore, another and possibly more applicable use of this information, especially regarding race, would be in creating case theory. Once the jury has been selected, attorneys could use these results to shape their case theory. For instance, defense attorneys might want to limit the mentioning of the defendant's mental health issues if the jury is composed of primarily non-White, religiously affiliated, Republican jurors. On the other hand, if the jury were composed of White, non-religiously affiliated jurors, these results suggest the jury would be more sympathetic to and accepting of a case theory focusing on the defendant's mental illness.

Lastly, once attorneys know the characteristic make-up of the jury, they could potentially use certain psychological principles to overcome potential disadvantages. Jurors are more likely to show leniency toward a defendant when the defendant is seen as similar to themselves (Abwender & Hough, 2001), but this effect would likely be limited to when the evidence is weak or ambiguous (Kerr, Hymes, Anderson, & Weathers, 1995). Therefore, defense attorneys might focus on accentuating similarities between the defendant and the jurors, such as race or religion, when the evidence is ambiguous or weak to create the perception amongst jurors that the defendant is part of their "in-group." In cases of weak or ambiguous evidence, prosecuting attorneys might focus on the differences between the defendant and jurors to create a perception that the defendant is not similar to jurors and is, rather, part of their "out-group." This similarity-leniency effect does have limitations, however. When the evidence against the defendant is strong, similarities between the defendant and jurors could cause a "black sheep"

effect in which jurors want to distance themselves from the defendant and would be more likely to convict (Kerr et al., 1995).

As with all studies, there are limitations to the presented findings. The primary limitation is participants self-reported their attitudes and opinions in isolation, meaning these findings might not be generalizable to the group context of jury deliberations. Additionally, our sample was composed entirely of students, which might limit the generalizability of the findings. Although a recent meta-analysis by Bornstein et al. (2017) suggests there are few substantial differences between student and non-student mock jurors, it is still a factor that must be considered. A final concern in the study centers around the lack of consequences associated with participant responses. As with some mock jury studies, participants were under no belief that their responses would have any real-life consequences which may have affected responses (Bornstein & McCabe, 2005).

It is crucial for judges and attorneys to identify and remove potential jurors who might use bias or prejudice in their verdict. With such a large percentage of the prison population suffering from some form of mental illness, it is crucial to understand community sentiment toward people with a mental illness and the insanity defense. Further research is necessary to confirm these findings, but the studies provide a foundation for helping make jury selection and case framing decisions when attorneys faced with a case involving mental illness or mental insanity. ©

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