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AND INTERPERSONAL FACTORS IN JURY VERDICTS

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In American jurisprudence, the right to a trial by jury has traditionally been symbolic of protection against the arbitrary exercise of state power. Over time, however, jury power has declined considerably while criticism of the competence and fairness of the system has increased. A major criticism aimed at the jury system is that non-evidentiary, extraneous, and emotional factors affect juror decision-making processes.

Ideally, jurors reach verdicts utilizing facts and evidence while putting aside preexisting bias, emotions, feelings, and so on; however, particularly in equivocal cases, this ideal does not coincide with human nature. As one expert has stated, "So overwhelming is the data on behalf of juror bias throughout the trial, that for the most part behavioral scientists do not accept the idea of impartiality and regard it as legal fiction." Considerable evidence supports the assumption that the strength of the evidence presented is the primary influence in juror decision-making.¹ As the strength of the evidence increases, the effects of non-legal or extra-evidentiary factors decrease, and vice versa.

The conclusion reached by certain studies is that if the strength of evidence in the case is clearly superior, the other factors are less meaningful.² However, this tends to occur in cases that are settled before trial. Estimates are that less than two percent of cases even go to trial. Consequently, cases that reach trial are often the evidentially close, emotionally charged, high-risk or large-stake ones. In these cases non-evidentiary factors—a critical moment of emotion or an impressive key witness—can be crucial and may be outcome-determinative.

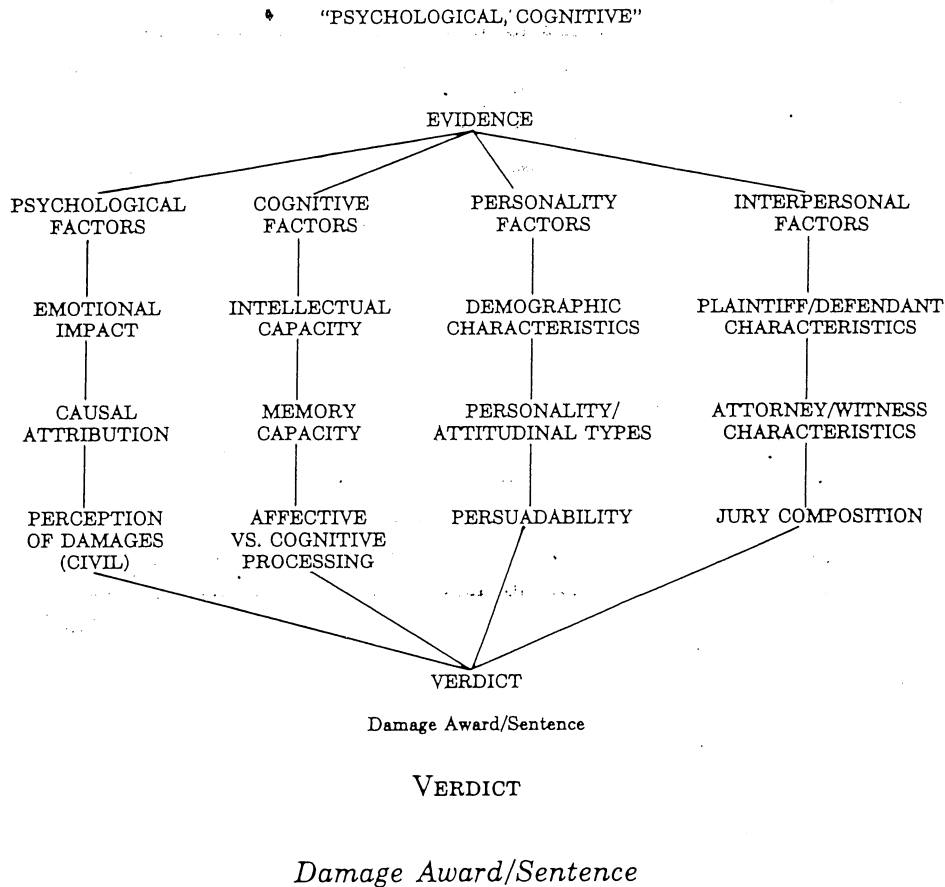
Following an exhaustive review of mock jury research, Gerbasi, Zuckerman and Reis concluded, "It is beyond argument that a multitude of extra-evidentiary factors influence jury decisions."³

1. See Ford, *The Role of Extralegal Factors in Jury Verdicts*, 11 *Jus. Sys. J.* 16 (1986).

2. Reskin & Visser, *The Impacts of Evidence and Extralegal Factors in Jurors' Decisions*, 20 *LAW & Soc'y REV.* 423 (1986).

3. Gerbasi, Zuckerman & Reis, *Justice Needs a New Blindfold: A Review of Mock Jury Research*, 84 *PSYCHOLOGICAL BULL.* 323, 323 (1977).

The purpose of this article is to broadly examine the factors that influence jury decision-making processes. The following diagram outlines the primary areas behavioral and social science have found to be influential in affecting jury behavior.



Evidence is presented at the top of the diagram to represent its ultimate importance. As mentioned earlier, the strength of the evidence plays the most vital role in the trial and thus may counteract the effects of the four other broad categories of extra-evidentiary factors. These categories are psychological, cognitive, personality and interpersonal. Each of these areas will be discussed in turn.

PSYCHOLOGICAL FACTORS

Emotional Impact

Jurors reach verdicts, at least in part, based on emotions and feelings. For example, if a female juror reports that the accused rapist "gave me a creepy feeling," the effectiveness of the accused's testimony, as well as evidence supporting his innocence, is severely compromised.

Most of the information and data derived from research of extra-evidentiary factors were gleaned from review of empirical studies, post-trial interviews with jurors, and pre-trial research utilizing focus groups, mock trials, shadow juries, and so forth.⁴ The findings from these studies are reasonably consistent in that 1) many jurors come to decisions very early in the trial, 2) their decisions are frequently based on "gut" or emotional reactions, and 3) these initial impressions are very resistant to change.⁵

The majority of jurors formulate an impression about the verdict very early in the litigation proceedings. This so-called "primacy effect" has been scientifically documented numerous times. For example, in one early study, subjects were asked to describe the personality of a fictitious person using descriptive adjectives, such as intelligent, critical stubborn, etc. The subjects' subsequent descriptions of this imaginary person varied considerably, simply by the order in which the words were presented.⁶ Specifically, when the words intelligent and industrious were presented first, the man was described in far more gracious terms than when envious and stubborn were presented first.⁷ Researchers have determined that a sizable percentage of jurors have made their decision by the end of the opening statement.⁸ Further, this research has shown that jurors are reluctant to modify their initial impressions, and therefore these opinions tend to persist, even in the face of contrary evidence presented later.

4. The limitations regarding generalizing such studies to actual trials is outlined. *Id.* at 335.

5. D. VINSON, *JURY TRIALS: THE PSYCHOLOGY OF THE WINNING STRATEGY* (1986).

6. Lawson, *Experimental Research on the Organization of Persuasive Argument: An Application to Courtroom Communications*, 1970 LAW & SOC. ORD. 579, 597.

7. H. KALVEN & H. ZEISEL, *THE AMERICAN JURY* (1966).

8. *See id.*

Advertisers typically use brief, emotionally laden, initial impressions to convey their messages. For example, a recent billboard showed a convertible BMW automobile with only the word "SEXY" emblazoned at the top. No facts regarding the engine, cost, or other features were given. This ad was strictly an emotional appeal to consumers. In a typical trial, similar immediate emotional impressions will be formed by jurors regarding the defendant, plaintiff, judge and so forth. For example, if jurors experience sorrow, pity and remorse for the plaintiff while they also experience disgust, rage and contempt for the defendant, much of the effectiveness of evidence and experts may be lost. The damage award is likely to reflect to some degree the strength and direction of these emotions.

Another finding from juror research is that despite the length or complexity of the case, the jury's verdict will generally be based on three to four salient issues, sometimes called psychological hooks or anchors.⁹ These issues can be either evidentiary or non-evidentiary and are typically a combination of both. In many cases the salient issues for jurors, whether emotional or evidentiary, are not those that legal counsel predicted or even intended.

In sum, most attempts to convince jurors, are at least to effectively change their attitudes, typically rely on information such as relevant facts, issues and legal instructions. Providing pertinent information is the most logical method to influence jurors; however, this assumes that jurors follow the judge's instructions, such as, "Wait until all the facts are presented" or "Disregard that last statement." Unfortunately, the effect of letting the facts speak for themselves is not particularly reliable, especially in emotionally charged cases. Generally, inducing emotions and altering the affective or feeling component of an attitude will affect juror decision-making.

Causal Attribution

How do jurors make decisions about liability or fault in litigation? Social psychologists have been studying this issue for years, generally under the heading of "attribution theory."¹⁰ Such research focuses on how humans attribute causality or blame, as well

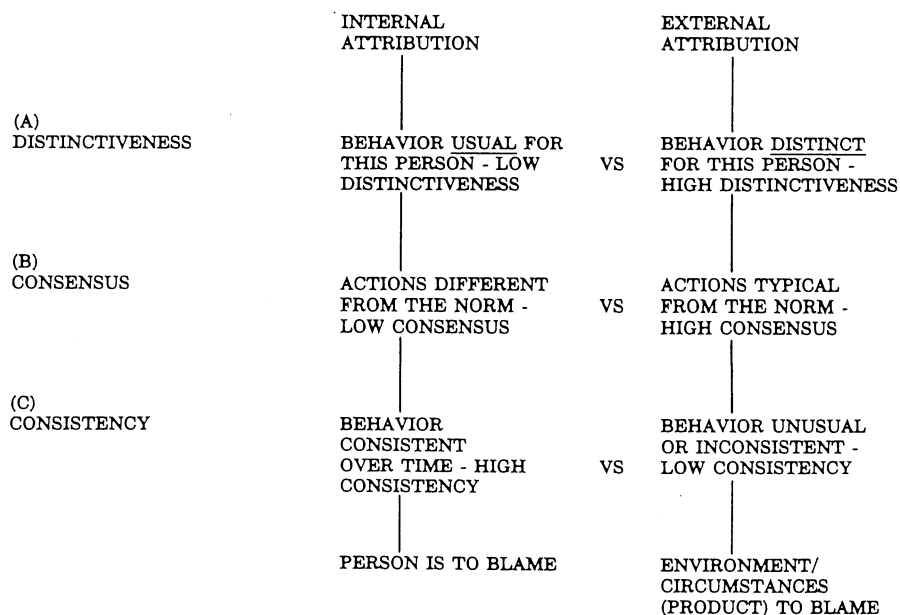
9. D. VINSON, *supra* note 5, at 173.

10. Kelley, *Attribution Theory in Social Psychology*, NEB. SYMP. MOTIVATION, UNIV. NEB. 192-238 (1967 D. Levine ed.).

as more general explanations of how humans assess the motivations, judgments, emotions and actions of others. Essentially, when people judge any interpersonal situation, they judge the people involved. Evaluations are made by considering the facts and determining who, if anyone, was at fault. This determination is based on the interaction between external circumstances and perceived personality or internal characteristics of the individual. In other words, did he act that way because of the situation (external attribution) or because of the kind of person he is (internal attribution)? If the latter conclusion is accepted, judgments of guilt and liability will likely be forthcoming.

Consider a hypothetical products liability case. Assume that a man was seriously injured while riding a ten-speed bicycle and the jury has been told that the man was seen careening wildly out of control at a high speed before crashing. The plaintiff claims the brakes were defective and malfunctioned. The defendant manufacturer contends that the plaintiff was reckless and careless. The following is a schematic drawing of juror attribution processes.

"PSYCHOLOGICAL, COGNITIVE"



A. *Distinctiveness*

If the plaintiff's behavior is high in distinctiveness such that it is unusual for this person, the behavior will probably be interpreted as an external attribution. If the circumstances or environment caused the person to act differently or distinctly from his usual behavior, such as the failing of brakes, the interpretation is that it is not the plaintiff's fault.

B. *Consensus*

Would other people act the same way under similar circumstances? If the answer is yes, again the circumstances are to blame. If however, the juror decides that they, and other reasonable people, do not act in such a manner, the actor is to blame on the basis that only he would take such a dangerous road.

C. *Consistency*

Is the person's behavior consistent over time? If so, an internal attribution is suggested, and it may be thought that he has always courted danger. If there is a great deal of inconsistency among the actions under review, an external attribution is more likely.

Causal attribution in a sexual assault case might be as follows: (Statements that produce internal attributions are followed by (I), external by (E).) Prosecution will present evidence that the accused is a corrupt person (I), that he has a prior criminal record showing inability to learn right from wrong (I), and that he has no personal regard for the rules of society (I). The defense may counter this with the argument that he was seduced by the *situation*, i.e. the victim's miniskirt, sexy clothes and seductive demeanor (E).

If jurors are most persuaded by arguments regarding internal attributions, they will likely assume the defendant is a bad person who deserves punishment. Conversely, they will be lenient if the circumstances are perceived to be to blame. This will be particularly true if the defense convincingly presents evidence of internal attributions regarding the alleged victim, such as the victim is a chronic liar (I), is sexually promiscuous (II), and so forth.

Litigators who have considered the above factors are likely to structure arguments so that attributions are made which are favorable to their case. In some cases, however, "defensive attribu-

tion" can cause a reverse effect on jury verdicts despite their initial acceptance of an external attribution. This frequently occurs in cases that involve a victim. Research has shown that if a juror perceives the similarities between the victim and himself and realizes that this accident could happen to him, the juror may actually blame the victim.¹¹ Why? To some degree, people maintain a view of reality that life is safe from catastrophe, especially if they "live right" and follow the rules of society. Faced with the uncomfortable reality that such a horror could happen to them, jurors may react defensively and try to find reasons as to why this event happened to the victim, while it could not possibly happen to them. Thus, this anxiety-provoking situation is neutralized by eliminating outside forces or blind fate (external attribution) and then concluding that the victim suffered injury because of the type of person he or she is (internal attribution). What this undesirable process may mean for plaintiffs' counsel in personal injury cases is that typical methods of producing sorrow or pity for the victim, for example, utilizing "day in the life" videotapes, may sometimes backfire if they are too frightening and if the similarity elements exist to produce a defensive attribution.

Finally, subsequent research has added to basic attribution theory.¹² In recent models, attributions of responsibility are distinguished from attributions of causality. In other words, a person may be determined to have caused something, but also be found not to be morally responsible. Consequently, juries do not always hold litigants responsible for the outcomes of their actions. Many statutes outline a number of additional requirements for an inference of guilt or liability even after an attribution of causality. These requirements might include questions of intent, foreseeability, coercion, capacity, and duty. Additionally, in many civil cases, jurors are asked to decide whether the defendant's *failure to act* implies liability.

Perception of Damages

In recent years, the enormous size of some seemingly unpredictable and possibly inequitable civil damage awards have sparked debate over the effectiveness of the jury system in civil

11. D. VINSON, *supra* note 5, at 56.

12. MacCoun, *Getting Inside the Black Box: Toward a Better Understanding of Civil Jury Behavior*, RAND NOTE, RAND INST. CIV. JUST. (1987).

litigation. For example, one jury estimated the plaintiff's attorney's fees, and then multiplied that figure by ten to derive a damage award.¹³ A recent newspaper report detailed a case in which a woman received \$600,000 for injuries sustained after a roll of toilet tissue fell on her head while she was shopping. Even more astonishing is the reported \$21 million awarded to Rock Hudson's former lover who *feared* he had AIDS.

How juries calculate damage awards needs much research. Jurors' computational methods have been examined primarily by use of the mock jury. For example, awards are typically larger when the defendant in a wrongful death action is male rather than female. This suggests that jurors tend to assume a greater loss in potential future income for males.¹⁴

"Evidence from post-trial interviews with civil jurors . . . suggests that the ad damnum—the plaintiff's requested damage award— . . . serves as a reference point for the jury's calculations."¹⁵ In one study, ten "[mock] juries tried a personal injury case in which the ad damnum was systematically varied. Each jury received one of four different damage requests: \$10,000, \$75,000, \$150,000 or an open-ended request for "substantial compensation."¹⁶ The average award in the first three conditions were \$18,000, \$62,800 and \$101,400, respectively; 474,600 was awarded after the request for "substantial compensation."¹⁷ This indicates that a mean increase of over \$83,000 was obtained from jurors by simply requesting a larger award.¹⁸ Consequently, "[a]ttorneys are believed to exploit this phenomenon by exaggerating the ad damnum."¹⁹

Additionally, juries may discriminate against defendants perceived as having "deep pockets."²⁰ Several studies have found that

13. Kalven, *The Dignity of the Civil Jury*, 50 VA. L. REV. 1055, 1069 (1964).

14. MacCoun, *supra* note 12, at 31 (citing Goodman, Loftus & Greene. *Mock Jurors' Damage Awards in Civil Cases*, presented at the annual meeting of the Law and Society Association, Washington, D.C., June 1987).

15. *Id.* at 32 (citing Zuehl, *The Ad Damnum, Jury Instructions, and Personal Injury Damage Awards*, unpublished manuscript, Dept. of Sociology, U. Chicago, Aug. 4, 1982).

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* (citing Broeder, *The University of Chicago Jury Project*, 38 NEB. L. REV. 744, 758 (1959)).

20. *Id.* at 34 (citing Hans & Ermann, *Attitudes Toward Corporate Versus*

mock jurors attribute significantly more liability to well endowed litigants.²¹ This phenomenon occurs when one alters the description of the defendant to "the Jones Corporation" from "Mr. Jones."²² Consistent with this, archival analysis also indicates that juror awards are larger when the defendant is a large corporation or government entity.²³

Summary

There is considerable evidence that psychological factors are influential in juror decision-making. A complex interaction of emotions, causal attribution, the impact of damage requests, and the perception of "deep pocket" defendants have been found to impact jury verdicts and subsequent damage awards.

COGNITIVE FACTORS

Intellectual Capacity

Trial attorneys can unknowingly present arguments and issues that exceed jurors' capacity to understand.²⁴ It is possible that some attorneys, inherently possessing above average intelligence due to years of education and expertise in the law, sometimes fail to realize that the average juror does not share these attributes.²⁵ In fact, many jurors may fail to understand the most basic concepts and issues.²⁶ They most particularly fail to understand legal jargon.²⁷

For example, consider the Wechsler Adult Intelligence Scale-Revised (WAIS-R),²⁸ commonly used to obtain estimates of IQ for legal and educational purposes.²⁹ "Assuming that all prior ques-

Individual Wrong-Doing, presented at the annual meeting of the Law & Soc. Assoc., Chicago, Ill., June 1986).

21. *Id.*

22. *Id.*

23. *Id.* at 32 (citing Chin & Peterson, *Deep Pockets, Empty Pockets: Who Wins in Cooke County Jury Trials*, 1985 RAND CORP. R-3249-1CJ).

24. D. VINSON, *supra* note 5, at 184.

25. Boyll, *Enhancing Juror Comprehension and Memory Retention*, 12 TRIAL DIPL. J. 194, 196 (1989).

26. *Id.*

27. *Id.*

28. Wechsler, D., *Manual for the Wechsler Intelligence Scale-Revised*, The Psychological Corp., Harcourt Brace Jovanovich, Inc. (1981).

29. Boyll, *supra* note 26, at 196.

tions were answered correctly, a thirty-five- to forty-four-year-old adult of "average" intelligence (IQ = 100, sub-scale score = 10) may be unable to:"

- define words such as "perimeter, generate, matchless, and fortitude;"
- "conceptualize how yeast causes dough to rise;"
- "name three types of blood vessels in the human body;"
- explain why land in the country costs less than in metropolitan areas;
- state what similarity a statue and a poem have in common.³⁰

"What does this indicate for attorneys asking jurors to evaluate the complexities of antitrust litigation between rival computer technology firms?"³¹ The complexities of litigation issues coupled with the average juror's intelligence bring the jury's ability to process the masses of sophisticated and technical information in complex litigation into question. In fact, a "complexity exception" to the Seventh Amendment has been proposed by some, reflecting the idea that the typical jury is not competent to decide complex civil suits.

Thus, a juror's ability to comprehend information presented at trial, as well as how intellectual capacity influences perception of facts and issues, may have a significant impact upon verdict decisions. Other issues related to juror cognitive ability and the effects on their decisions involves the interaction among: 1) the ability of jurors to follow judges' instructions regarding evidence and pretrial publicity; 2) the effects of the number and severity of decision alternatives offered to jurors, and 3) the ability of jurors to understand and apply definitions of guilt and liability. The fourth area, that of the number of arguments presented and the length of the trial, is discussed in the following section.

Memory Capacity

With the increasing complexity of trials comes both an increase in the amount of facts and issues to be presented, as well as the total time duration of the trial. What jurors remember about the trial will affect deliberations and, ultimately, the verdict.

30. *Id.*

31. *Id.*

Assuming that the information is presented in a manner that is comprehended by jurors, how much will they retain? We can approach this question by utilizing norms derived from clinical neuropsychological tests. For example, the Wechsler Memory Scale³² is a standardized and often used device for clinical memory testing.³³ The Logical Memory Section is intended to measure immediate recall of logical material and most closely resembles what is expected of jurors.³⁴ Subjects are required to remember a passage containing twenty-four bits of information.³⁵

The short story used in the study involves a crime whereby a woman is held up and robbed.³⁶ "The average number of *informational segments* immediately recalled by 'normals' is as follows:

Ages 20-29

Mean = 9.80

Ages 40-49

Mean = 8.65"³⁷

As much as two-thirds of what is heard may be *immediately* forgotten.³⁸ Further, recall that follows time or interference may result in additional forgetting. Thus, "due to limitations in human memory, more than two-thirds of the information given in a single presentation during the trial will be forgotten."³⁹

Advertising research has found that "one exposure to a message induced content recall in only 14% of subjects."⁴⁰ Reports of similar studies have revealed that "up to seven exposures may be required to activate accurate recall."⁴¹ One of the consequences of poor memory retention during deliberations occurs when a juror associates some facts or witnesses for one side of the case with the wrong party. To avoid the potentially disastrous effects of false associations, litigators may need techniques to enhance juror retention.⁴² Repetition to the point of redundancy is often needed to reinforce learning.⁴³

32. Wechsler, *supra* note 28, discussed in Boyll, *supra* note 30, at 196.

33. *Id.*

34. Boyll, *supra* note 26, at 196.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.* at 197 (quoting D. VINSON, *supra* note 5, at 38).

41. *Id.* (quoting D. VINSON, *supra* note 5, at 38).

42. *Id.*

43. *Id.*

In sum, research on intelligence and memory would suggest that, unless steps are taken by trial attorneys, much of what is presented may be misunderstood, and two-thirds or more may be forgotten.⁴⁴

As a result of problems with juror comprehension and memory retention, legal scholars have recently formulated some noteworthy suggestions. These include litigating complex issues sequentially, providing special training for juries, permitting jurors to ask questions, allowing a day's end summary by counsel and utilizing a panel of experts from the particular technical arena the case involves.

AFFECTIVE VS. COGNITIVE PROCESSING

Thus far, we have focused on how *well* jurors can understand and remember information presented at trial. This section examines how information is *processed* by jurors in order to reach decisions.

There are basically two ways in which people reach decisions: cognitively and affectively. Cognitive thinkers reason inductively; they process bits of information in a relatively logical sequence, mentally weigh and evaluate it, and come to a conclusion. This method is typically how attorneys present the case to jurors, partly because it is generally how attorneys are taught to think. Lawyers engage in the logical reasoning of the A-B-C variety. Many people, and consequently many jurors, however, do not think this way. Most people instinctively utilize deductive reasoning. They first form a conclusion based on how they feel and subsequently fit all other data presented into this framework. This process is just the opposite of inductive reasoning. As mentioned earlier, initial impressions are resistant to change. As a result, deductive thinkers, having made up their mind based on initial impressions, will selectively perceive as salient only information that fits with their beliefs about the case. Thus, these jurors make decisions primarily by emotion and attempt to validate them with logic.

If jurors reach decisions quickly based on emotions and affective thinking and then resist arguments in opposition to these attitudes, of what value is the remainder of the trial? Fortunately attitudes can be changed, although it is sometimes quite difficult.

44. *Id.*

Research on cognitive processing suggests that jurors often experience what is termed "cognitive dissonance." Cognitive dissonance, originally proposed by Leon Festinger, can be defined as a state of psychological disequilibrium that occurs when a person's beliefs and behavior are discrepant, or when a person is confronted with facts inconsistent with what he or she "knows" to be true. This mental confusion often happens during the course of a trial as attorneys attempt to persuade or produce attitudinal change.

Behavioral science research suggests that in order to get someone to perform a specific behavior, it must be congruent with his beliefs about that behavior. Take for example the difficulty a firearm salesman will encounter in attempting to persuade a consumer to buy a firearm when the consumer strongly *believes* that individual firearm ownership should be illegal. However, attitudinal change, and subsequent behavioral change, can occur as a result of cognitive dissonance. In the above example, assume this staunch anti-firearm believer inherits a beautiful gun collection. His behavior (as a gun owner) is now incongruent with his beliefs (individuals should not own guns). One of two things must occur in order to reduce cognitive dissonance:

- 1) The individual sells the guns (no attitude or behavioral change: cognitive dissonance relieved); or
- 2) The individual keeps the guns and changes his beliefs regarding gun ownership. Again, a reduction in cognitive dissonance. This individual simply cannot continue to own the guns unless attitudinal change occurs. To do so would be consciously hypocritical. He is now much more likely to be supportive of gun ownership (attitudinal change) and vote for liberalized gun laws (behavioral change).

Litigators routinely induce cognitive dissonance on the part of the jury. As noted, this inducement results in temporary feelings of psychological discomfort and even anxiety. To avoid these tensions, jurors will engage in a variety of coping mechanisms, including: 1) minimizing the importance of the information, 2) distorting the information to make it consistent with previously held beliefs, and 3) rejecting the dissonance-inducing information altogether, or 4) changing their original beliefs and attitudes.

An example of cognitive dissonance occurred with many staunch Republicans and Nixon supporters during the Watergate scandal. Nixon's backers first reacted with denial ("It didn't hap-

pen"), then with distortion ("The facts are not the way the media presented them"), and lastly by discounting and substitution ("The important thing is his good work with China and foreign relations"). Only in some cases and very late was there a real attitudinal change ("I don't trust him anymore"). Changing strongly held attitudes often involves a journey through these stages.

Summary

A critical aspect of the juror decision-making process involves the capacity to comprehend and retain information presented at trial. Further, how jurors process information—cognitively versus affectively, as well as how they deal with cognitive dissonance—will affect verdict decisions.

PERSONALITY ISSUES

Demographic Characteristics

Every juror evaluates what transpires in the courtroom on the basis of his or her life experiences, attitudes and predispositions. Jurors do not come to the trial "tabula rasa," that is, with a blank slate. Their beliefs, attitudes, and morals are well entrenched, and everything that is heard will be filtered and colored by these attitudes. That is precisely the reason for voir dire—to eliminate potential jurors who are too biased to fairly try the case at hand. This goal does not suggest that remaining jurors are always unbiased, but simply that those excused seemingly represent the extremes at the opposite ends of a continuum.

There is a considerable body of literature to support the contention that jury selection is one of the most vital components of the trial proceedings. The case may be one or lost at voir dire. The advent of social science techniques and survey data used to construct "ideal juror profiles," though debated, may be so powerful a technique as to create an unfair advantage.

Nearly everything about a person, from biographical personality to personality features can affect verdict predisposition. These features clearly interact in complex and individual ways, making prediction of juror decision-making extremely difficult, even with the use of large community surveys and complex statistical analysis. The following is a nonexhaustive list of demographic and other variables generally believed to be associated with juror decision-making.

Demographic and Related Variables

Age	Marital Status
Sex	Alcohol Consumption
Race	Crime Victim
Occupation	Place of Residence
Religion (Denomination)	Children
Religion (Frequency/Intensity)	Political Affiliation
Magazines/Subscriptions	Prior Jury Service
Hobbies/Activities	Education
Community Organizations	Income/Economic Status

Obviously, accurate information in each of the categories above will tell a great deal about a prospective juror. It should be reiterated that demographic variables alone are reasonably poor predictors of verdict preference. Because of the extreme variability in individuals, demographics have been found to account for only 15 to 18 percent of the variance in regression models. This finding is not particularly good; however, considering the high stakes in many trials, it still represents an edge unavailable without social science methods.

It is interesting to note that for many years attorneys have relied mostly on hunches, guesswork, stereotypes and folk wisdom in selecting jurors. For example, Clarence Darrow once wrote: "An Irishman . . . is emotional, kindly and sympathetic. If a Presbyterian enters the jury box . . . let him go. He is cold as the grave Then, too, there are the women. These are now in the jury box I formed a fixed opinion that they are absolutely dependable, but I did not want them."⁴⁵

It is not surprising that attorneys have begun moving towards more scientific and reliable methods of jury selection. One of the most consistent findings from systematic or "scientific jury selection" is that demographics used for prediction are nearly always region-specific and case-specific. In other words, community attitudes vary considerably. To use information gleaned from demographic jury studies in Los Angeles would not adequately represent potential jurors from Boston or Atlanta. Regarding case specificity, the effects of various configurations of demographic characteristics will depend on the specific case. For example, in a liability case

45. Darrow, C., *Attorney for the Defense*, ESQUIRE, 1936, reprinted in C. DARROW, VERDICTS OUT OF COURT 315 (1963).

involving an injured child, females, housewives, teachers and those in child-oriented occupations may more likely to be sympathetic to the plaintiff than those not in child-oriented occupations.

Of the few nationwide general findings, the most noteworthy are: 1) females and jurors over the age of thirty tend to award larger punitive damages in civil cases;⁴⁶ 2) young jurors (under 25) are more likely to be lenient in verdict and sentencing;⁴⁷ and 3) a relationship between gender and criminal verdict exists but is mediated by type of crime (females are more willing to convict in rape cases).⁴⁸ The following section examines pre-existing variables that have been somewhat more reliable in predicting verdict preference.

PERSONALITY/ATTITUDINAL TYPES

For many years psychologists have studied personality and attitudinal types as well as the relationship between personality and behavior. Voir dire represents, in part, an attorney's task of determining which of a juror's personality traits, attitudes and beliefs will predispose the juror to be favorable. Many of the conclusions derived from this area of research as applied to litigation are tentative. The following attitudinal "types" have, however, been found to affect verdict decisions.

Authoritarianism: One having this view holds a strong identification with law and order and the rules of society. Authoritarians are predisposed to accept the prosecutor's case in criminal proceedings and are more likely to assume *a priori* guilt. Thus, they tend to make excellent prosecution jurors. In civil proceedings, if jurors identify strongly with big business, the predisposition may be favorable to the defense. However, because of a general punitive tendency towards anyone accused of breaking rules, such as corporate failure to comply with safety standards, authoritarians may side for the plaintiff. Since authoritarianism has been found to be one of the most reliable predictors of bias,

particularly towards criminal defendants, as such, psychological test instruments have been developed to assess authoritarianism, as well as recommendations that such measures be used

46. D. VINSON, *supra* note 5, at 161.

47. Ackerman, MacMahon & Fehr, *Mock Trial Jury Decisions as a Function of Adolescent Juror Guilt and Hostility*, 144 J. GENETIC PSYCHOLOGY, 195 (1984).

48. Ford, *supra* note 1, at 18.

as a screening device in voir dire.⁴⁹

Locus of Control: One having this predisposition views events in life as either caused by external circumstances (e.g., luck, fate), or controlled by internal events (e.g., skill, hard work). Individuals with an internal locus of control are more likely to adopt internal attributions and hold individuals responsible for their actions.

Just World: One having this trait has a general view of life as fair and just, that people get what they deserve and deserve what they get. For this reason, bad things happen only to bad people. Consequently, these types are more likely to adopt defensive attribution in personal injury or products liability cases, resulting in smaller damage awards.

Sense of Entitlement vs. Tort Reformers: While no specific data on this dichotomy exists, there appears to be an attitudinal set predisposed to feel that victims should always be compensated, regardless of fault. This idea is contrasted with that of tort reformers, who strongly hold that damage awards are excessive and must be curtailed. It should be noted that tort reformers often are correlated occupationally, that is, having a personal and financial interest in tort reform, such as business owners, corporate executives, doctors and those in the insurance industry.⁵⁰

Depression/Emotional Stability: Jurors in this category allow mood states, particularly depression, to affect their verdicts. Depressed jurors may be particularly willing to award large damage awards in civil litigation.⁵¹ Apparently, such jurors may tend to identify strongly with others felt to be victimized. Along the same line, mock jurors scoring high on a measure of guilt were more lenient with alleged criminals. Apparently individuals who tend to find fault with themselves are more sympathetic to the plight of others.

Persuadability

Much of the research on persuadability generally falls under the topic of "conformity," and relates to the type of people who

49. Boehm, *Mr. Prejudice, Miss Sympathy, and the Authoritarian Personality: An Application of Psychological Measuring Techniques to the Problem of Jury Bias*, 1968 WIS. L. REV. 734 (1968).

50. See Blue & Boudreaux, *The "Liability Crisis" and Voir Dire*, TRIAL, 59, 60 (Feb. 1987).

51. D. VINSON, *supra* note 5, at 130.

will conform to the wishes of others and under what circumstances they will do so. For example, if an individual is made to feel like a deviant, conformity is likely, especially if he or she values the group highly. Further, the more cohesive the group is or the more attracted the person is to the group, the greater the conformity. During lengthy trials, what effects these findings have on sequestered juries, members of which have developed strong social bonds, can only be estimated.

Why are some people more resistant to attitudinal change than others? Early social psychology researchers pointed to what was termed "psychological reactance" as an explanation underlying resistance to attitudinal change. This phenomenon occurs most frequently when an individual perceives a threat to his or her independence and, in order to reassert that independence, does the opposite of what he or she is being influenced to do. Other research has suggested that more effective persuaders are resistant to persuasion themselves. Those who are Machiavellian—a term used to describe a personality type that is verbal, manipulative, intelligent, socially astute, and persuasive—are particularly highly resistant to persuasion from others.

Another aspect of persuadability relates to the intellectual capabilities and educational level of the audience. For example, two-sided communications, which present both the pros and cons, are more effective than one-sided communications for better-educated audiences. One-sided communications have been found more effective for less educated and initially sympathetic audiences. Intelligent people "are insulted by a 'one-sided message,' but ignorant people are influenced by it."⁵² Further, in lower-educated audiences, persuasive impact is increased if the speaker explicitly draws the conclusion which the audience is supposed to reach.

In general, certain individuals are quite resistant to persuasive arguments, while others are simply gullible. In the trial setting, however, the willingness of a juror to be persuaded by arguments clearly interacts with a multitude of factors, such as preconceived beliefs, intellectual level, self-esteem, and so forth. It is also quite likely that juror types easily persuaded by counsel will be more prone to accept the persuasive arguments of fellow jurors during deliberation.

52. D. VINSON, *supra* note 5, at 130.

SUMMARY

The makeup of the jury panel has often been cited as having nearly as much to do with the verdict as the case itself. For this reason, strategic methods of improving voir dire, including "scientific jury selection," have been employed with mixed results. Demographic factors, including place of residence, age, race, sex, and others, have been utilized in attempts to predict "ideal" jurors. More successful, however, are evaluations of critical attitudinal/personality types, such as authoritarians, and emotional features, such as depression. Lastly, intellectual and personality features may dictate how susceptible a juror will be to persuasive arguments.

INTERPERSONAL FACTORS

Plaintiff/Defendant Characteristics:

As human beings, we typically make judgments regarding the character and likability of another person very quickly and with little information. Much has been written about the importance of the first impression in any interpersonal situation. Likewise, plaintiff and defendant will be immediately sized up and evaluated by jurors. Couple this action with the ideas that 1) jurors are consistently harsh towards litigants they dislike, and 2) initial judgments are resistant to change, and one comes to understand that initial impressions are a decisive factor in the case.

Research indicates that some of the primary characteristics jurors evaluate in making their impression of others are as follows:

Attractiveness—This important and essentially uncontrollable variable has consistently been documented to affect interpersonal evaluations. In research simulations, with other variables held constant, more attractive people are more likely to be hired for a job, selected to be on a team, given higher grades, and shown leniency for transgressions. Even as early as kindergarten, children assessed to be more attractive are also rated by their teachers as better behaved and more well adjusted. It is not surprising that criminal mock trial studies have found jurors markedly lenient towards more attractive defendants. An exception to this rule is when the defendant's attractiveness facilitated the crime, as in a swindle.⁵³

Similarity—Numerous studies have found a consistent and

53. Gerbasi, Zuckerman & Reis, *supra* note 3, at 333.

significant negative relationship between severity of verdict and the fact-finders' perceived similarity to the defendant. Often one of the attorney's goals during voir dire is to obtain jurors similar to her client. In persuasive arguments, attorneys seek to maximize jurors' feelings of similarity towards their client.

Remorse vs. Suffering—Jurors will form impressions regarding the victim's suffering and the defendant's remorse. These impressions can have tremendous impact in the outcome of the case. For example, a recent beating and gang rape incident by a group of youths in New York's Central Park received extensive national publicity and public outrage. Why? Not only was the crime despicable, but the youths arrested reported they were "wilding" and "it was fun." Their apparent lack of remorse over their actions, including leaving the victim permanently brain-damaged, had even the most forgiving types demanding harsh penalties for such behavior.

ATTORNEY/WITNESS CHARACTERISTICS

Much has been written about the persuasive power of attorneys. Given the same case, with identical facts and evidence, there are some attorneys who will be more effective in persuading jurors than others. What characteristics differentiate superb litigators from less superb litigators? Clearly the answer to this question is not a simple one, and there are volumes of instructional manuals designed to teach litigation skills. Much of this talent seems to be inherited, or to come naturally. To some extent this idea is true; however, psychologists and communication scientists have identified several key variables that consistently improve the persuasive impact of a message. Initially and most importantly, the attorney must be perceived as credible. People are more easily influenced by those they consider to be honest and credible. Credibility is generally based on three primary factors:

- A. Competence/Expertise (skill and knowledge)
- B. Trustworthiness (unbiased and fair)
- C. Dynamism (forceful, bold, active)

Second, persuasive techniques used in sales apply to the courtroom. For example, attorneys often attempt to induce reciprocity (people feel obligated to repay others and can be made to feel in-

debted to the attorney). Additionally, obtaining commitments is extremely helpful. Once a juror has conceded on a small point, the odds of further concessions increase. This effort is sometimes referred to as the "foot-in-the-door" technique.

Furthermore, communication scientists have studied the use of "powerful speech" and "linguistic engineering" to assess the impact of the message.⁵⁴ Powerful speech refers to rate, phraseology, tempo and so forth. For example, "powerless" style is characterized by the use of hedges, such as "I think" or "It seems like." Linguistic engineering primarily involves utilizing words and phrases with more effective connotations. For example, referring to "the unborn baby" rather than "the fetus," would affect the listener by suggesting a more human, living being. According to one commentator, "[a] lawyer's linguistic style can mean the difference between winning and losing a case."⁵⁵

In general, how attorneys and witnesses make an impact on jurors from an interpersonal standpoint is affected by many of the variables discussed previously, including appearance, credibility, likability, believability and persuasiveness, and use and style of language.

Jury Composition

Last to be discussed in the area of interpersonal issues deals with how jurors interrelate with each other. A considerable amount of this article has been devoted to the examination of the effects of various extra-evidentiary factors on *individual* juror decision-making. The final verdict in any jury trial, however, results from a *group* decision.

Much information in this area is derived from sociological and psychological studies on group processes. These studies reveal that during deliberations, some jurors will participate far less than others, some will attempt to persuade others, some may acquiesce to others' persuasiveness, while others will hold firm to their beliefs. It has been noted that the failure to strike a few antagonistic jurors can result in disastrous consequences. If a juror has the leadership skills and persuasive ability, the potential to sway the verdict of the others certainly exists. Since the social/psychological composition of the jury as a group affects the ultimate verdict, at-

54. Andrews, *Trial by Language*, Oct. 1983 STUDENT LAWYER 11, 12.

55. *Id.*

torneys often attempt to select favorable jurors also perceived as "leaders" or "persuaders."

Additional research in jury composition has examined the effects of six- versus twelve-person juries. Studies of this type do suggest that jury size affects the outcome. For example, several studies have found that when incriminating evidence is strong in criminal cases, it is to the defendant's advantage to have a twelve-member jury. Further, minority members appear to yield more influence than majority members in smaller jury panels. Overall, these studies often disagree with the Supreme Court ruling of 1972, which indicated that six-and twelve-person juries would yield equivalent outcomes.⁵⁶

CONCLUSION

This article was intended to broadly review the critical psychological, cognitive, personality, and interpersonal factors found by research to affect jurors' verdicts. This article is not meant to suggest that the current jury system is incapable of adequately reaching just decisions or that a substantial revision of current procedures is warranted. To the contrary, the jury system performs remarkably well and remains a proud symbol of American democracy. Further, as mentioned at the outset, extralegal factors generally intrude most prominently in cases where the evidence is evenly matched or where emotional issues are involved. Consequently, the extent and degree of influence of any extra-evidentiary factors will be case-specific. However, due to the nature of human beings, particularly in the context of judging the actions and intentions of others, factors other than hard evidence will intervene. As a result, litigators should critically evaluate their case with regard to these factors.

56. Gerbasi, Zuckerman & Reis, *supra* note 3, at 342.