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DIPLOMACY

JOURNAL

**Attorneys and Jurors:
Do They Have *Anything* in Common?**

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John Wiley & Sons, Inc.
Wiley Law Publications
7222 Commerce Center Drive, Suite 240
Colorado Springs, Colorado 80919

Attorneys and Jurors: Do They Have *Anything* in Common?¹

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When evaluating case facts, the trial attorney may rely on his or her own attitudes, values, and beliefs. However, are those attitudes, values, and beliefs derived from life experiences that are, by societal definition, "normal"? These authors performed a first-of-its-kind study to compare attorneys and jurors on a variety of characteristics. Their findings can help attorneys understand why their own evaluation of the case facts may differ from that of jurors and can be helpful in trial strategy planning.

As consultants, we are involved frequently in situations in which our client, the trial attorney, has a very different opinion about the facts, and the conclusions to be drawn from the facts, than the conclusions drawn by our (mock) juries after hearing the case presentation. When this occurs, our clients turn to us for help in understanding why this "irrational" or "illogical" situation has developed. The attorney may say, "I don't see why that juror (or jury) arrived at that decision," or, "Why can't they see things my way?" or, "Didn't they hear what I told them?"

It appears many attorneys believe that, if they, their colleagues, and their staff arrive at a particular conclusion when presented with a factual scenario about a case, then the same conclusion should be apparent to anyone and everyone, including a jury. Attorneys, like most people, tend

to think their views are similar to others' views. Social psychologists refer to the tendency to perceive false consensus as the egocentric bias.² False consensus bias among attorneys leads to the erroneous belief that the jurors' behavior is unusual, undesirable, or wrong, and can result in alienation between attorneys and their audience, the jury.

While it is true that there are some similarities between jurors and attorneys, generally speaking, the life experiences and values held by trial attorneys are within the context of all the experiences

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related to being a trial attorney. Research on stereotypes has demonstrated that stereotypes are based on an individual's "in-group" membership.³ Thus, as a frame of reference, the trial attorney may rely on his or her own attitudes, values, and beliefs when evaluating case facts. However, it is important to recognize that the attitudes, values, and beliefs of attorneys are derived from life experiences which are, by societal definition, not typical or "normal." Anthropologists might go as far as to say that attorneys exist in a subculture of their own.

A COMPARISON STUDY

To illuminate what we have observed as consultants, we undertook a study to compare attorneys and jurors on a variety of characteristics. Jurors were jury-eligible citizens who participated in "mock trial" research conducted on behalf of our clients over the past three years. We randomly selected responses of 363 mock jurors for inclusion in this analysis. In addition, attorneys completed 366 surveys that contained questions identical to many questions completed by the mock jurors. (The attorney surveys did not contain case-specific questions present in the juror surveys.) Attorney respondents included 130 plaintiff personal injury attorneys, 29 defense personal injury attorneys, 26 commercial attorneys, 83 criminal defense attorneys, and 98 criminal prosecution attorneys (state attorneys).

ARCHIVAL RESEARCH

Before conducting our comparison study of attorneys and jurors, we reviewed the available literature on these two distinct populations. We searched psychological, sociological, and legal research databases to include all relevant findings regarding attorney-juror attitudes. We also evaluated general media reports on those topics. Our literature search revealed no studies similar to ours. The results of the literature search we conducted did, however, yield relevant findings in several categories. In general, studies have researched various specific issues as they relate to juries. In only a few instances did the researchers compare the knowledge or attitudes of jurors and attorneys. Further, it should be noted that most research on juries involves criminal matters. Because civil and criminal cases are conceptually different, generalizations must be made with caution. (Additionally, some academic research has limitations due to the nature of the research, for example,

studies that use college students as mock jurors. Studies with the greatest potential for external validity were included in this review.)

Eyewitness Testimony

There has been a great deal of research in the area of eyewitness identification and testimony. Research has demonstrated that jurors may be overbelieving of eyewitnesses.⁴ Because eyewitnesses are difficult to discredit, correct and careful procedures at the police level are critical. One study evaluated the idea, put forth by some courts, that eyewitness experts should not be allowed to testify because their expertise falls within the domain of jurors—that is, it is common sense.⁵ This study demonstrated that common sense assumptions regarding eyewitnesses, made by both jurors and attorneys, are often inaccurate, suggesting a need for experts to enlighten jurors regarding the fallacy of eyewitnesses. Survey research has demonstrated that prospective jurors overestimate the correct "hit rate" of eyewitnesses.⁶ In addition, it has been shown that judges and jurors are not aware of the extent to which eyewitness testimony is unreliable.⁷ This study found that prosecutors believed about 95 percent of eyewitness identifications were accurate, while defense attorneys believed 75 percent were accurate. A corollary study revealed that convenience store clerks were actually accurate in identifying a perpetrator between 34 percent and 47 percent of the time.⁸ The public falls between prosecutors and defense attorneys in their estimates of eyewitness identification accuracy.⁹

Juror Expectations

As readers will note from the data reported later in this article, jurors are active in terms of leisure pursuits and obtaining sources of news and other information. Thus, it is no surprise that there is some research, though somewhat anecdotal, that jurors experience "entertainment overload."¹⁰ This has implications for attorneys' presentations, in that jurors expect to be entertained, or at least kept interested. According to one report, "[T]he newest participants in the nation's slug-paced judicial system switch off tedium with a remote control."¹¹

Demographics, Stereotypes, Verdicts, and Voir Dire

Considerable research has focused on the relationship (or lack thereof) between juror demo-

graphics and verdicts. Countless studies have shown that demographics account for only a small variance in jury verdicts.¹² A frequently cited article that explored the accuracy of attorneys in selecting favorable juries noted that “[w]hatever skills attorneys have in their selection of jurors, their expectations appear to be heavily colored by stereotypic beliefs.”¹³ These researchers found attorneys used only one to two items (e.g., occupation) to evaluate the desirability of prospective jurors. Part of their study demonstrated that attorneys and laypeople (college students in this case) used the same stereotypes in making their choices; the results were that both students and attorneys were more in error than accurate in making their choices of favorable jurors. The researchers state, “We suggest that persistence of prior beliefs is a major impediment to selection accuracy. These beliefs often lead to incorrect and ineffective selection strategies.”¹⁴ It has been noted that, in some respects, attorneys are increasingly forced to rely on demographics when voir dire is conducted by judges in an effort to be more efficient.¹⁵ This means we can expect attorneys to become less, not more, accurate in judging jurors’ propensities.

Tort Crisis/Reform

Research has shown that jurors who favor tort reform favor the prosecution in criminal cases and the defendant in tort litigation.¹⁶ While this finding comes as no surprise, other findings from this study are noteworthy. For example, “[T]ort reformers appear to be older, conventional, anti-civil libertarians who feel somewhat powerless and alienated. They do not believe in imminent justice and they *do believe in taking legal action in their own self-interest.*”¹⁷

In a study exploring tort crisis issues, it was noted that 46 states enacted 208 pieces of tort reform legislation in 1985.¹⁸ Evidence was cited that the “tort crisis” is widely overstated—that is, that median damage awards have not increased. The study found that 11 percent of all jurors believed that half of all damage awards exceed \$1 million, while only 50 percent made estimates in line with Rand Corporation studies demonstrating that less than 6 percent of all damages awards are greater than \$1 million. However, it was also found that, if jurors thought high awards were frequent, they awarded more in damages in a mock trial. It seemed that jurors used their estimates of high verdicts as a “benchmark” by

which to make their own determinations. Other findings of this study were that 91 percent of jurors thought there were too many lawsuits, and 58 percent said lawyers encourage suits. The jurors agreed that as verdicts increase, insurance premiums increase; 62 percent said verdicts are too high, and 48 percent said an insurance crisis exists. Jurors also agreed that people often underestimate pain and suffering.

[A] study found that 11 percent of all jurors believed that half of all damage awards exceed \$1 million, while only 50 percent made estimates in line with . . . studies demonstrating that less than 6 percent of all damages awards are greater than \$1 million.

Another study found evidence for a widespread perception that there is a litigation crisis.¹⁹ These researchers noted that any increase in litigation is (1) a result of population growth, and (2) due to an increase in government actions. The study revealed that, in fact, some categories of litigation have decreased; studies of injuries show that only a small number of injuries result in litigation. Perceptions of the growth of suits and “excessive awards” create a phenomenon in which juries who believe a crisis exists award lower damages. Related perceptions included the belief that the civil justice system is in trouble. Public knowledge of courts was found to be low and to vary among demographic groups. Jurors who believed most strongly that there is a litigation crisis were more likely to have the following characteristics: low sense of political efficacy; low belief in a just world; a high degree of claims consciousness (i.e., they tended to report consumer and other problems more frequently and/or consult lawyers more frequently); and a greater likelihood to be white, Protestant, and older. The authors suggested that over time, people have come to expect fair compensation, and therefore younger people see current litigation trends as consistent with this belief.

Perception of Attorneys

Related to tort reform issues is the public’s perception of attorneys. Attorneys are aware that their public perception is, at best, poor. In fact, the membership of the Florida Bar rates “poor image/perception” as the “most serious problem faced by the

law profession today."²⁰ This survey of attorneys demonstrates that attorneys perceive that public opinion of the legal profession has become less favorable in the last decade. In 1993, a similar membership study reported that 75 percent of the attorneys responding said that public opinion of lawyers had become less favorable over the past decade; two years later, the 1995 study reported that 87 percent of attorneys agreed with this statement.

Consumers . . . did not agree with the majority of attorneys in thinking that advertising decreases the public's image of attorneys.

Though no direct comparison exists, similar studies of jurors and citizens demonstrates that these attorneys are on target in their understanding of their public image.²¹ It was reported that only 12 percent of the surveyed respondents had a "positive" general feeling about lawyers, 40 percent were neutral, and 48 percent were negative or very negative. This study also reported similar findings regarding low public confidence in the legal/court system, with only 40 percent of the respondents rating Florida courts as good to excellent, and 13 percent claiming to be extremely or very confident in Florida courts (the news media, public schools, and local government were among those institutions rated more favorably). (This study was conducted in May and June of 1996. Respondents also were asked if the O.J. Simpson trial had changed their attitudes about Florida's courts, and 83 percent said "not at all.") Finally, a recent study found that 25 percent of respondents would say that they trust lawyers more than they do the average person. At the same time, only 50 percent of the respondents were shown to have favorable impressions of lawyer honesty.²²

Attorney Advertising

This hot button for attorneys has, as expected, generated some research. One study compared attorneys and jurors regarding their attitudes toward attorney advertising.²³ Attorney attitudes varied with length of time in practice, firm size, and community of practice. Consumers were more favorable toward ads than were attorneys, as consumers found that ads were helpful in providing greater amounts of information with which to make decisions. Consumers, thus, did not agree

with the majority of attorneys in thinking that advertising decreases the public's image of attorneys. The Florida Bar's 1995 member survey reports that 57 percent of Florida attorneys oppose attorney advertising.²⁴

Perceptions of Jurors Regarding Jury Service

Other research compared attitudes of prospective jurors who had served on previous juries with those of citizens who had not served.²⁵ There was a perceptual difference in these dichotomous groups; jurors with prior service were more likely to see serving as a meaningful civic duty. However, jurors had differing expectations with regard to the use of their time; those jurors without prior service needed to be assured that their time would not be wasted needlessly.

Another study examined the notion that less experienced jurors are less likely to convict.²⁶ There was a modest, but significant, increase in probability of conviction as the number of jurors with prior experience increased on a given jury. Given that some research has shown that the first ballot determines the final verdict 90 percent of the time,²⁷ the finding regarding prior service may have a greater impact on trial results if this tendency increases.

Jurors' Reliance on Attitudes or Schemas for Decision Making

Some studies have examined the relationship between jury instructions and trial outcome. One such study noted that preinstructed juries in both civil and criminal trials seemed better able to make distinctions in the evidence.²⁸ It asserted that preinstruction provides jurors with a legally relevant schema to make their decisions. These authors noted that "jurors tend to rely on heuristics when the evidentiary content or task is complicated."²⁹

Heuristics are common-sense reasoning strategies employed by laypersons; they are often based on life experiences and may or may not be accurate. People also have scenarios or inner scripts (for example, experiences, good or bad, with police officers)³⁰ that cannot be rewritten during voir dire or opening statements. Scripts may be personal, cultural, or come from a combination of factors that are not conscious. Some scripts, heuristics, and attitudes may be contradictory with one another, but given the uncertainties present at trial, they are

a method for dealing with new, and possibly complex, information. Jurors focus on what is salient to them during the decision-making process.³¹

The results of our analyses demonstrated significant differences between attorneys and jurors on 49 out of the 57 survey questions.

Because attorneys think inductively (and assume others do as well), they present bits and pieces of evidence and expect jurors to come to reasoned conclusions from these pieces.³² In contrast to what most attorneys believe, most people make an immediate judgment and seek evidence or information to confirm their position. "No one is ever unbiased and intellectually neutral. As human beings we bring into any situation an inventory of past experiences, attitudes, values, beliefs, and traditions learned at an early age and reinforced throughout our adult life."³³ These beliefs form a "lens" through which we see and understand.

Personality Variables

Psychologists have spent considerable effort in the study of personality. As this relates to jurors, variables such as authoritarianism (specifically, legal authoritarianism) have been shown to have a positive correlation with a tendency to convict.³⁴ An empirical relationship has been found between acquittal proneness and liberalism and conviction proneness and conservatism.³⁵ In this research, it was possible to distinguish between persons committed to procedural due process and due

process/crime control. Mock jurors who were committed to procedural justice were more likely to judge a defendant equivalently in terms of conviction rate and were able to disregard illegal evidence.

RESULTS OF THE AUTHORS' STUDY

As stated previously, we undertook our study to reveal areas of similarity and difference between attorneys and jury-eligible citizens. A second goal of the research was to compare the five types of attorneys in our sample (plaintiff personal injury, defense personal injury, commercial, criminal prosecution, and criminal defense) on the wide variety of areas that our survey assessed. This latter comparison allowed us to evaluate which types of attorneys are most closely aligned with jurors in life experiences, attitudes, values, and beliefs.

For purposes of simplification, the 57 items on the questionnaire were broken into the following categories: demographics, life experiences, lifestyle, health behavior, personality, tort/lawsuit issues, and locus of control. In addition, results were of two possible types: (1) statistically significant, with attorneys and jurors responding in different (often opposite) patterns; and (2) nonsignificant, reflecting similarity between attorneys and jurors. The results of our analyses demonstrated significant differences between attorneys and jurors on 49 out of the 57 survey questions (86 percent of the total number of questions). On only 8 items (14 percent of the total) were attorney and juror responses similar (these are the "nonsignificant" results). The results are summarized on the following pages.

Table 1a. Significant Results*—Demographics³⁶

	Jurors	Plaintiff PI	Defense PI	Commercial	Criminal Defense	Criminal Prosecution
Age	54% between 25 & 24; all age categories represented approximately equally	93% between 25 & 54	93% between 25 & 54	96% between 25 & 54	98% between 25 & 54	97% between 25 & 54
Race	87% white	91% white	90% white	96% white	89% white	88% white
Gender	48% male 52% female	85% male 15% female	69% male 31% female	65% male 35% female	74% male 26% female	57% male 43% female
Marital Status	60% married 14% never married 16% divorced/ separated 10% widowed	71% married 22% never married 7% divorced/ separated	66% married 28% never married 6% divorced/ separated	69% married 19% never married 12% divorced/ separated	53% married 29% never married 16% divorced/ separated 2% widowed	62% married 33% never married 5% divorced/ separated
Income	54% earn less than \$35K	73% earn more than \$75K	59% earn more than \$75K	54% earn more than \$75K	62% earn more than \$55K	59% earn more than \$55K
Education	mostly high school graduates or some college	J.D.	J.D.	J.D.	J.D.	J.D.
Occupation	variety—mostly business owners, clerical, homemakers, sales, teachers	attorney	attorney	attorney	attorney	attorney
Spouse's Occupation	variety—mostly business owners, sales, teachers	health care, homemaker, legal, teacher	homemaker, legal, teacher	legal	legal, teacher	legal, sales, teacher
Children	44% have 2 or 3 children	39% no children	41% no children	54% no children	54% no children	47% no children

* Attorneys and jurors significantly different in their responses

Table 1b. Significant Results*—Life Experiences

	Jurors	Plaintiff PI	Defense PI	Commercial	Criminal Defense	Criminal Prosecution
Political Philosophy	29% conservative 56% middle of the road 15% liberal	24% conservative 53% middle of the road 23% liberal	41% conservative 52% middle of the road 7% liberal	19% conservative 72% middle of the road 8% liberal	16% conservative 44% middle of the road 40% liberal	41% conservative 47% middle of the road 12% liberal
Jury Experience	73% none	91% none	90% none	96% none	82% none	88% none
Lawsuit Experience	81% never been a party	54% have been a party	72% never been a party	54% have been a party	47% have been a party	62% never been a party
Supervisory Experience	52% have supervised 6 or more people	56% have supervised 1-5 people	59% have supervised 1-5 people	69% have supervised 1-5 people	39% have supervised 1-5 people	47% have supervised 1-5 people
Specialized Training	accounting, banking, bookkeeping, communications, computers	law	law	law	law	law
Business Management Experience	50% never managed 34% used to manage 16% currently manage	36% never managed 11% used to manage 53% currently manage	45% never managed 38% used to manage 17% currently manage	50% never managed 23% used to manage 27% currently manage	55% never managed 24% used to manage 21% currently manage	62% never managed 34% used to manage 4% currently manage
Business Ownership Experience	56% never owned 29% used to own 15% currently own	36% never owned 9% used to own 55% currently own	55% never owned 31% used to own 14% currently own	50% never owned 15% used to own 35% currently own	59% never owned 23% used to own 18% currently own	77% never owned 20% used to own 3% currently own
Crime Victimization	53% yes 47% no	78% yes 22% no	79% yes 21% no	69% yes 31% no	86% yes 14% no	86% yes 14% no

*Attorneys and jurors significantly different in their responses

Table 1c. Significant Results*—Lifestyle

	Jurors	Plaintiff PI	Defense PI	Commercial	Criminal Defense	Criminal Prosecution
Investments**	50% bonds, 50% CDs, 44% real estate, 42% gems/precious metals, 42% stocks, 40% mutual funds, 35% art/antiques, 30% Treasury bills	30% art/antiques, 29% Treasury bills, 25% real estate	none	none	none	none
Type of Residence	61% single family home	83% single family home	69% single family home	69% single family home	72% single family home	68% single family home
Length of Residence	29% > 10-20 years, 24% > 20 years	24% > 10-20 years, 32% > 20 years	3% > 10-20 years, 44% > 20 years	15% > 10-20 years, 42% > 20 years	28% > 10-20 years, 22% > 20 years	20% > 10-20 years, 27% > 20 years
Entertainment**	movies, fine dining, nightclubs/bars, sporting events, concerts, plays, theme parks, museums	sporting events	none	none	none	none
Hobbies**	fishing, boating, leisure, sports, gardening, dancing, exercising, bicycling, reading, photography, arts/music	scuba diving, exercising, skiing, reading, arts/music	none	none	exercising, reading, arts/music	exercising, skiing, reading, arts/music
Volunteer Work	26% never, 40% former, 34% current	9% never, 45% former, 46% current	10% never, 52% former, 38% current	0% never, 42% former, 58% current	6% never, 57% former, 37% current	9% never, 42% former, 49% current
Organizations**	educational, religious, service, social	educational, fraternal, professional, religious	none	none	professional	educational, professional, religious, service
Religious Activity	21% never, 24% sometimes, 55% often	24% never, 45% sometimes, 31% often	10% never, 65% sometimes, 25% often	0% never, 66% sometimes, 34% often	39% never, 40% sometimes, 21% often	16% never, 55% sometimes, 39% often

*Attorneys and jurors significantly different in their responses

**25% or higher responses reported

Table 1d. Significant Results*—Health Behavior

	Jurors	Plaintiff PI	Defense PI	Commercial	Criminal Defense	Criminal Prosecution
General Health	56% excellent	78% excellent	72% excellent	81% excellent	64% excellent	67% excellent
Hospitalization	7% never 50% childbirth or minor illness 43% major illness	14% never 52% childbirth or minor illness 34% major illness	14% never 52% childbirth or minor illness 34% major illness	12% never 58% childbirth or minor illness 30% major illness	19% never 63% childbirth or minor illness 18% major illness	17% never 63% childbirth or minor illness 20% major illness
Seat Belt Use	6% never 32% sometimes 62% always	1% never 28% sometimes 71% always	3% never 31% sometimes 66% always	0% never 24% sometimes 76% always	6% never 45% sometimes 49% always	2% never 24% sometimes 74% always
Smoking	36% never 37% former 27% current	63% never 26% former 11% current	79% never 14% former 7% current	58% never 42% former 0% current	41% never 37% former 22% current	65% never 18% former 17% current
Alcohol Consumption	25% never/former 59% sometimes 16% often	11% never/former 56% sometimes 33% often	3% never/former 72% sometimes 25% often	4% never/former 58% sometimes 38% often	13% never/former 55% sometimes 32% often	9% never/former 72% sometimes 19% often
Traffic Accidents	23% never 58% minor 19% serious	7% never 66% minor 27% serious	10% never 65% minor 25% serious	4% never 66% minor 30% serious	11% never 65% minor 24% serious	10% never 73% minor 17% serious

*Attorneys and jurors significantly different in their responses

Table 1e. Significant Results*—Personality

	Jurors	Plaintiff PI	Defense PI	Commercial	Criminal Defense	Criminal Prosecution
Focus on:	60% details 40% big picture	41% details 59% big picture	38% details 62% big picture	65% details 35% big picture	38% details 62% big picture	48% details 52% big picture
Work Preference	38% one thing at a time 62% multitask	20% one thing at a time 80% multitask	17% one thing at a time 83% multitask	27% one thing at a time 73% multitask	22% one thing at a time 78% multitask	26% one thing at a time 74% multitask
Decision Making	39% quick 61% slow	53% quick 47% slow	69% quick 31% slow	42% quick 58% slow	51% quick 49% slow	54% quick 46% slow
Money Philosophy	46% free spender 54% tight with money	64% free spender 36% tight with money	66% free spender 34% tight with money	50% free spender 50% tight with money	50% free spender 50% tight with money	52% free spender 48% tight with money

* Attorneys and jurors significantly different in their responses

Table 1f. Significant Results*—Lawsuit/Tort Issues

	Jurors	Plaintiff PI	Defense PI	Commercial	Criminal Defense	Criminal Prosecution
Automobile manufacturers hide product defects from the public.	83% agree 17% disagree	95% agree 5% disagree	53% agree 47% disagree	62% agree 38% disagree	85% agree 15% disagree	82% agree 18% disagree
There should be a cap on pain-and-suffering damages.	62% agree 38% disagree	5% agree 95% disagree	47% agree 53% disagree	31% agree 69% disagree	24% agree 76% disagree	54% agree 46% disagree
Most eyewitness testimony is accurate.	53% agree 47% disagree	48% agree 52% disagree	46% agree 54% disagree	50% agree 50% disagree	24% agree 76% disagree	67% agree 33% disagree
I give benefit of the doubt to:	39% plaintiff 61% defendant	91% plaintiff 9% defendant	25% plaintiff 75% defendant	48% plaintiff 52% defendant	23% plaintiff 77% defendant	47% plaintiff 53% defendant
Government can pay what it wants when it takes land in eminent domain actions.	9% agree 91% disagree	6% agree 94% disagree	3% agree 97% disagree	8% agree 92% disagree	4% agree 96% disagree	4% agree 96% disagree
I would hesitate to turn a plaintiff's misfortune into a fortune.	64% agree 36% disagree	20% agree 80% disagree	69% agree 31% disagree	54% agree 46% disagree	31% agree 69% disagree	62% agree 38% disagree
Hospitals owe a greater duty to their patients than other organizations owe to their customers.	81% agree 19% disagree	90% agree 10% disagree	83% agree 17% disagree	80% agree 20% disagree	88% agree 12% disagree	83% agree 17% disagree
Insurance companies care more about making money than taking care of policy holders.	79% agree 21% disagree	98% agree 2% disagree	75% agree 25% disagree	84% agree 16% disagree	95% agree 5% disagree	98% agree 2% disagree
The intent of the parties who sign contracts is more important than what is written.	45% agree 55% disagree	57% agree 43% disagree	45% agree 55% disagree	35% agree 65% disagree	49% agree 51% disagree	58% agree 42% disagree

* Attorneys and jurors significantly different in their responses

Table 1f. Significant Results*—Lawsuit/Tort Issues (cont'd)

	Jurors	Plaintiff PI	Defense PI	Commercial	Criminal Defense	Criminal Prosecution
Most medical malpractice lawsuits arise from an honest mistake made by a doctor.	69% agree 31% disagree	54% agree 46% disagree	68% agree 32% disagree	69% agree 31% disagree	53% agree 47% disagree	61% agree 39% disagree
Jury verdicts have the effect of rewarding the injured party.	73% agree 27% disagree	61% agree 39% disagree	72% agree 28% disagree	70% agree 30% disagree	74% agree 26% disagree	69% agree 31% disagree
I am suspicious of citizens who sue in eminent domain cases.	10% agree 90% disagree	1% agree 99% disagree	3% agree 97% disagree	0% agree 100% disagree	2% agree 98% disagree	5% agree 95% disagree
Most personal injury suits are worthwhile.	44% agree 56% disagree	95% agree 5% disagree	39% agree 61% disagree	48% agree 52% disagree	64% agree 36% disagree	38% agree 62% disagree
Most medical malpractice suits are worthwhile.	53% agree 47% disagree	97% agree 3% disagree	43% agree 57% disagree	60% agree 40% disagree	71% agree 29% disagree	50% agree 50% disagree

* Attorneys and jurors significantly different in their responses

Table 2a. Nonsignificant Results*—Life Experiences

	Jurors	Plaintiff PI	Defense PI	Commercial	Criminal Defense	Criminal Prosecution
Military Experience	72% never served 28% have served	77% never served 23% have served	83% never served 17% have served	89% never served 11% have served	86% never served 14% have served	88% never served 12% have served

Table 2b. Nonsignificant Results*—Lifestyle

	Jurors	Plaintiff PI	Defense PI	Commercial	Criminal Defense	Criminal Prosecution
Neighborhood	47% urban 11% rural 42% suburban	39% urban 10% rural 51% suburban	41% urban 0% rural 59% suburban	46% urban 4% rural 50% suburban	33% urban 14% rural 53% suburban	35% urban 9% rural 56% suburban
News Sources	TV, radio, newspaper, magazines, talking to friends					

Table 2c. Nonsignificant Results*—Personality

	Jurors	Plaintiff PI	Defense PI	Commercial	Criminal Defense	Criminal Prosecution
Decision Making	91% logical 9% emotional	87% logical 13% emotional	90% logical 10% emotional	100% logical 0% emotional	84% logical 16% emotional	86% logical 14% emotional
Planning	75% long range 25% spur of the moment	70% long range 30% spur of the moment	76% long range 24% spur of the moment	77% long range 23% spur of the moment	63% long range 37% spur of the moment	74% long range 26% spur of the moment

*Attorneys and jurors similar in their responses

Table 2d. Nonsignificant Results*—Locus of Control

	Jurors	Plaintiff PI	Defense PI	Commercial	Criminal Defense	Criminal Prosecution
Success depends more on:	93% skill/hard work 7% luck/fate	97% skill/hard work 3% luck/fate	93% skill/hard work 7% luck/fate	89% skill/hard work 11% luck/fate	88% skill/hard work 12% luck/fate	88% skill/hard work 12% luck/fate
My success depends on:	93% what I do to control life 7% fate/destiny	92% what I do to control life 8% fate/destiny	97% what I do to control life 3% fate/destiny	89% what I do to control life 11% fate/destiny	89% what I do to control life 11% fate/destiny	88% what I do to control life 12% fate/destiny
I usually:	40% get what I want easily 60% have to work hard to succeed	43% get what I want easily 57% have to work hard to succeed	35% get what I want easily 65% have to work hard to succeed	58% get what I want easily 42% have to work hard to succeed	50% get what I want easily 50% have to work hard to succeed	52% get what I want easily 48% have to work hard to succeed

*Attorneys and jurors similar in their responses

DISCUSSION OF THE FINDINGS

The results of our study reveal that jurors are more representative than attorneys of the population as a whole in terms of age, race, gender, marital status, education, income, occupations (including those of spouses), and children.³⁷ Mock jurors are more likely than attorneys to have been jurors on real cases; however, attorneys are more likely to have been personally involved as a party to a lawsuit. Perhaps, due to the extensive travel demands attorneys face, attorneys are considerably more likely to have been in automobile accidents and victims of crime. These findings demonstrate the familiarity of attorneys with many aspects of the legal system outside of those directly related to working as an attorney and well beyond the experiences of average jurors. Many of the findings demonstrate that jurors' experiences are more wide ranging than attorney's experiences. Comparisons of jurors and attorneys on factors such as investments, entertainment, hobbies, community involvement, and religious activities are illustrative in this regard. While attorneys report to be in better health overall than the jurors, and they are less likely to smoke and more likely to wear their seatbelts, they are more likely than jurors to consume alcohol.

The results were examined to determine which attorney types most closely resembled the profile of our prototypical juror. There was no single type of attorney—plaintiff personal injury, defense personal injury, commercial, criminal defense, or criminal prosecution—that closely matched jurors. In some instances, jurors shared traits with prosecutors; in others, commercial litigators; in still others, defense personal injury attorneys (jurors appeared to have the least in common with plaintiff personal injury attorneys and criminal defense attorneys). Thus, a ramification of our findings is that no one type of attorney appears better able to relate to jurors in terms of demographics, life experiences, lifestyle, health, personality, or attitudes pertaining to the legal system. Our study lends credibility to the common-sense assumption that jurors and attorneys represent two distinct populations, sharing little in common. It appears, then, that attorneys really do exist in a unique subculture within our society, one which, for the most part, is impenetrable by the average citizen.

In addition to comparing attorneys and jurors on a variety of characteristics, our analysis allowed us to look at differences among types of attorneys.

Examination of the preceding tables yields a general picture of the range of similarities and differences among the various categories of attorneys who participated in our survey. Just as in the attorney-to-juror comparison, the comparison among attorneys indicates that, in some respects, plaintiff personal injury attorneys are similar to criminal defense attorneys; in others, defense personal injury attorneys are similar to commercial attorneys; and in others, prosecutors are similar to defense personal injury attorneys. Because no clear pattern emerged when attorneys were examined in this detail, it appears that each subgroup of attorneys is unique in its own right. In fact, in some ways, attorneys are as varied among themselves as they are different from the citizens they represent in court.

APPLICATION

This article increases readers' knowledge of past and current research on attorney/juror attitudes and characteristics. In the event that the reader's reaction to this knowledge is "So what?" or "Why should I, the trial attorney, care about these results?" or "Why are psychologists and other consultants more interested in scientific research than war stories of past cases?," this portion of the article will help the trial attorney apply our findings to the practice of law.

We believe that it is important for the trial attorney to understand that jurors are not "irrational" or "illogical" in their decisions; rather, they arrive at decisions using different "filters" in the form of life experiences and attitudes. These filters result in variations in the way information is processed and decisions are made. The reflection of the self as seen in the mirror is different for trial attorneys and jurors, especially when it comes to decisions in the legal arena. While the legal arena is comfortable and familiar for attorneys, it is not for jurors, and, as noted earlier, the "system" is viewed by jurors with suspicion. Jurors, therefore, rely on experiences that are not related to the knowledge of law to make decisions that ultimately affect the attorney and client. The jurors aren't simplistic; in fact, they have wide-ranging experiences that provide a solid foundation for their decisions. Our study revealed that attorneys' life experiences are far more narrow in comparison to jurors' experiences. On the other hand, while attorneys excel in their knowledge of all things legal, jurors' knowledge of the law and legal proceedings

is limited. They will rely on attorneys to provide them with the proper foundation in the law, but if it is not provided to their satisfaction, they will draw upon their considerable experiences to arrive at a verdict.

It is easier to change or modify the attitudes and behavior of one person, the trial lawyer, than to change the opinions of six to twelve jurors.

Knowledge gleaned from the current study can be put to use when designing trial strategy. Although certainly the trial attorney can grasp the nuances of a case, use inductive reasoning and other forms of logic to arrive at the "only possible solution," and isolate extraneous information to paint the big picture, it is important to keep in mind that many jurors cannot do any of these things without great difficulty. The attorney must be flexible in his or her approach to trial, because the jurors are, for the most part, inflexible in their view of the world. Stated another way, it is easier to change or modify the attitudes and behavior of one person, the trial lawyer, than to change the opinions of six to twelve jurors. It is highly unlikely, over the course of even the longest trials, that the attorney will change the long-held attitudes of jurors. Because these attitudes are derived from life experiences, the attorney must understand these experiences and make the most out of an imperfect situation.

Trial strategy, of course, includes communication with jurors. A recent article stated that "the language of a case—words, metaphors, analogies, and other rhetorical devices that could be used with different types of juries—should be established before trial, reviewed after voir dire, and changed, if necessary, to reflect what you have learned about the jurors."³⁸ These outstanding lawyers go on to say, "[Y]our aim, always, is to use the language that will be most readily accepted, understood, retained, and recalled by the jurors assigned to your case."³⁹ The bottom line, then, is to know the audience, and to communicate effectively with the audience (the jurors), the trial lawyer must understand the source of their perceptions of the world, the community, and the case—that is, their frame of reference. Understanding the jurors' frame of reference will allow the attorney to come up with meaningful analogies and not appear out of touch or aloof. His or her ability to persuade will increase exponentially.

Because jury-eligible citizens appear uninformed and/or misinformed about certain aspects

of the law and the legal system, there is merit in educating the general public through "advertising" (of the public service variety), community involvement, and other means of reducing the gap of knowledge between attorneys and potential jurors. With regard to perceptions on such issues as tort reform, the effectiveness of the jury system, and the like, there is a wide chasm between public perceptions and what can be demonstrated as "truth."⁴⁰ Reducing this gap will lead to better jury decisions, made with full information, instead of media-driven misperceptions. It is critical that the attorney evaluate a case, before trial or mediation, with the realities of the differences between the attorney and the jury in mind. Pretrial jury research can be a tremendous aid in this regard, because it allows the attorney to understand the issues and to develop the most effective trial presentation based on jurors' views of the case. Jury research should be case specific, because "generalizing about jurors from case to case is not just inadvisable, it is downright hazardous."⁴¹ Moving away from stereotypic decision making and into the realm of scientific understanding will help the attorney focus his or her lens.

This study represents a first of its kind to attempt to compare and contrast two key components of our legal system, the attorneys who try cases and the jurors who ultimately decide them. It is our goal to provide the trial attorney with a different kind of tool, resulting from a new perspective, that will yield more effective courtroom techniques. We consider our efforts a starting point, rather than the final word, in raising the awareness of attorneys regarding the realities they face.

ENDNOTES

¹A preliminary version of this article, involving a reduced number of attorney and juror participants, was presented at the Academy of Florida Trial Lawyers Spring Ski seminar, Steamboat Springs, Colorado, in February 1996.

The authors would like to thank the following people, law firms, and organizations for their assistance throughout various stages of this research: Academy of Florida Trial Lawyers, with special thanks to John Romano, Jeff Liggio, and Richard Slawson for their cooperation in arranging for the participation of 1996 AFTL Workhorse attendees and the 1995 Bad Faith Seminar participants (with appreciation of the efforts of Jeanie Hinkle, Debbie Sapp, and Jackie Pichè at these conferences); Florida Public Defenders, with special thanks to Skip Babb for the cooperation of the 1996 Public Defenders Summer Conference attendees; Florida State Attorneys, 8th Judicial Circuit (with special thanks to Bill Cervone and Rod Smith) and 15th Judicial Circuit (with special thanks to Ted Borris and Barry Krischer for cooperation of CLE program attendees); the

- Kubicki Draper law firm, with special thanks to Cliff Gorman for arranging the participation of Ft. Lauderdale litigators; the Conrad, Scherer and Jenne law firm, with special thanks to Vicki Grady and Vito Cardioppolo for arranging the participation of litigators; the Holland & Knight law firm, Jacksonville office, with special thanks to Larry Hamilton and Mark Alexander for arranging participation of CLE participants; Hispanic Bar Association of Palm Beach County; Mike Eriksen and Barney Salzberg, with special thanks for serving as pretest participants to establish completion parameters; and Cindy Holloway, for assistance throughout all phases of the research.
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