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Trial Jurors and Variables Influencing Why They Return the Verdicts They Do - A Guide for Practicing and Future Trial Attorneys

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TRIAL JURORS AND VARIABLES INFLUENCING WHY THEY RETURN THE
VERDICTS THEY DO—A GUIDE FOR PRACTICING AND FUTURE TRIAL
ATTORNEYS

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"[There is an] inherent mystery [to] jury deliberations. In a given case it is virtually impossible to determine what influenced a particular juror's vote; an unlimited number of factors may contribute to such a decision."[1]

"I have given up trying to figure why jur[ors] do what they do."[2]

I.   INTRODUCTION

The trial lawyers have presumably done their best. The court has instructed the jurors on the law they are to follow in reaching their verdict. They rise and leave the courtroom to go behind closed doors to deliberate on their verdict.

The parties and their lawyers now begin a wait that may last minutes, hours, days, or, occasionally, even a week or more. For the lawyers, who are trained to try to control as much as possible of what occurs inside a courtroom, knowing that ultimate or even substantial control is impossible; thus commences the ultimate loss of control.

Eventually the jurors return, and in most cases bring with them a verdict. The only trial attorneys who have never been surprised by what its contents reveal are those who have not tried enough cases. And from

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[1] People v. Hill, 4 Cal. Rptr. 2d 258, 269 (Cal. Ct. App. 1992), *disapproved of by* People v. Nesler, 941 P.2d 87, 101 n.5 (Cal. 1997).

[2] Hebron Volunteer Fire Dep't, Inc. v. Whitelock, 890 A.2d 899, 906 (Md. Ct. Spec. App. 2006) (statement to the trial court by counsel for Appellant as part of his argument for remittitur of what he argued was a grossly excessive verdict).

whence does this surprise come? It comes from the inability, except in those cases where juror interviews are permitted,[3] to invade what the law has termed the "sanctity of deliberations."[4]

It is at this point that the efforts of trial lawyers, to solve the "inherent mystery"[5] of why jurors do what they do, must end and the efforts of jury researchers may begin. It is outside the purview of this article to serve as a compilation of jury research.[6] Rather, its purpose is, through a survey of 955 real jurors, to shed light on this mystery and thereby add to our understanding of how this most important institution functions.

As there are so many variables that may account for the verdicts these jurors returned that were not covered even by this 204-question survey— only beginning with the facts these jurors gathered through testimony or exhibits, the appearance and demeanor of the witnesses who appeared, and the law given to them by the court—unless otherwise noted this article does not contend that the variables analyzed herein, or any of them, "caused" these verdicts. Rather, insofar as variables are statistically significant, they are presented as being associated with these verdicts. Current practicing trial attorneys, and those yet to come, may wish to pay heed to each of them—because taken together they can provide a basis upon which their chances of success at trial may be improved. This will be of benefit to such attorneys, to be sure—but more importantly it will be of benefit to the clients who rely on counsel to protect the clients' freedom or their assets.

It is the intent of this article to focus on the relationship between pertinent variables in the survey and the verdicts returned. This is the third of a trilogy of articles based on this survey. The first focused on whether jurors in criminal cases were upholding the presumption of innocence and

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[3] While Federal Rule of Civil Procedure 47 does not mention jury interviews, other authorities do. *See, e.g.*, FLA. R. CIV. P. 1.431(b); M.D. FLA. R. 5.01(d).

[4] Ross v. Petro, 515 F.3d 653, 668 (6th Cir. 2008).

[5] *Hill*, Cal. Rptr. 2d at 269.

[6] For examples of such compilations, *see generally* Dennis J. Devine et al., *Jury Decision Making: 45 Years of Empirical Research on Deliberating Groups*, 7 PSYCHOL. PUB. POL'Y & L. 622 (2001); Marilyn Chandler Ford, *The Role of Extralegal Factors in Jury Verdicts*, 11 JUST. SYS. J. 16 (1986); Thomas Sannito & Edward Burke Arnolds, *Jury Study Results: The Factors at Work*, TRIAL DIPL. J., Spring 1982, at 6; Franklin Strier, *The Educated Jury: A Proposal for Complex Litigation*, 47 DEPAUL L. REV. 49 (1997) [hereinafter Strier, *The Educated Jury*]; Franklin Delano Strier, *Through the Jurors' Eyes*, A.B.A. J., October 1988, at 78 [hereinafter Strier, *Through the Jurors' Eyes*].

the right of a defendant not to testify.[7] The second examined jurors' evaluations of their advocates' performance.[8] For many of the variables examined herein, tabular data may be found in these articles.[9] Because it is the intent of this article to focus on a different topic—the relationship between important survey variables and the verdicts returned—these tables are not included here.

After this Introduction in Part I, Part II provides the methodology and organization of the survey, including how the statistical analyses were performed. The results of these analyses are reported beginning in Part III with how jurors' demographics bear on their verdicts. In Part IV, demographics of the attorneys are analyzed. Part V examines the effects of the jurors' trial attorneys': (1) understanding (or misunderstanding) of the strengths and weaknesses of their cases; (2) honesty or lack thereof; (3) asking questions that were important in deciding the case; (4) strength of personality; and (5) being perceived by the jurors to be either public defenders or private counsel. Part VI examines the effect of how jurors rated the likeability and ability of their trial attorneys. In Part VII, the article looks at how the trial lawyers' use of exhibits may have played a role in the verdicts they received. In Part VIII, the analyses turn to demographics of the parties. Part IX examines credibility of the parties—specifically whether the jurors liked them or felt sympathy for them, and, in civil cases, whether blaming someone else for what had transpired produced an effect on the verdicts. Part X is exclusively devoted to criminal cases, particularly the effect of the credibility of a defendant who testified, whether jurors presumed the defendant innocent, and whether it would have been better if he or she had not testified. Part XI examines the length of deliberations. Part XII is also devoted to criminal cases, and includes a logistic regression to determine predictors of guilt or innocence using multiple variables. The article concludes with Part XIII, and is followed by a statistical appendix.

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[7] *See generally* Mitchell J. Frank & Dawn Broschard, *The Silent Criminal Defendant and the Presumption of Innocence: In the Hands of Real Jurors, Is Either of Them Safe?*, 10 LEWIS & CLARK L. REV. 237 (2006).

[8] *See generally* Mitchell J. Frank & Osvaldo F. Morera, *Professionalism and Advocacy at Trial—Real Jurors Speak in Detail About the Performance of Their Advocates*, 64 BAYLOR L. REV. 1 (2012).

[9] *See id.* at 40–41.

II.   THE JURY SURVEY: ORGANIZATION AND METHODOLOGY

Actual jurors who sat from jury selection through deliberations in civil and criminal trials, from October, 2003 through September, 2004, were asked to respond to the survey. Because alternate jurors did not participate in deliberations, they were not included. Geographically, the survey site covered three judicial circuits in the central Florida area, comprised of nine counties.[10] A total of 955 jurors responded.[11] It is still believed to be the second largest survey of real jurors ever performed.[12] Demographically:

- ●60% of the jurors responding were female and 40% percent were male.

- ●85.0% were White Non-Hispanic, 6.4% were White Hispanic, 5.2% were Black, 1.3% were Asian. Other ethnicities that were endorsed were African American Hispanics 0.1%, American

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[10] These were the 9th Circuit (Orange and Osceola counties), the 7th Circuit (Volusia, St. Johns, Flagler, and Putnam counties) and the 18th Circuit (Seminole and Brevard counties). The 5th Circuit (comprised of Lake, Citrus, Sumter, Marion, and Hernando counties) originally was part of the survey as well, with the support of its Chief Judge, the Honorable Victor Musleh, but no surveys were returned due to the apparent unwillingness of its trial judges to participate. The author gratefully acknowledges the support and cooperation of the Chief Judges of the 9th, 7th, and 18th Circuits, respectively the Honorable Belvin Perry, Jr., the Honorable Julianne Piggotte, and the Honorable James E. C. Perry; the trial judges in these Circuits who participated, and whose cooperation and assistance was essential; and the jurors who gave their time, often immediately after spending days in trial. Finally, this survey would not have been logistically possible without the substantial and able assistance of court administrative personnel. For this, the author further gratefully acknowledges Karen Levy in the 9th Circuit, Mark Weinberg in the 7th Circuit, Wendy Witsett in the 18th Circuit, and their staffs.

[11] Logistical barriers, including the number of courthouses and judges potentially distributing the survey, coupled with concerns over both case and juror anonymity, did not allow for an actual count of the surveys given to jurors. Calculating from the number of surveys printed, the number retrieved post-survey and those returned by jurors, the survey response rate was not less than 14.9%. This figure in reality is almost certainly much higher, as post-survey comments by court personnel indicate that a significant number not given to jurors were discarded or lost and not returned. The authors' best estimate of the actual response rate, considering these factors, is between 25% and 30%.

[12] The largest survey of real jurors ever performed, the Los Angeles Jury Survey, was conducted during 1987–1988. Strier, *The Educated Jury, supra* note 6, at 67. It generated 3830 responses from civil and criminal jurors. *Id.* at 67 n.92. From those 3830, 2533 respondents actually served on a jury. *Id.*; *see also* Strier, *Through the Jurors' Eyes, supra* note 6, at 79.

Indians 0.3%, Others 0.6% and 10 participants did not indicate their ethnicity 1.0%.

- 10.1% were over 65, 27.5% were 55–64, 28.8% were 45–54, 22.1% were 35–44, 8.1% percent were 25–34, and 2.7% were under 25.

The following table shows how many jurors served in the four types of trials surveyed:

Type of trial in which you participated:

Valid	Type of Proceeding	Frequency	Percent	Valid Percent	Cumulative Percent
	Civil: personal injury or wrongful death	107	11.2	11.4	11.4
	Civil: other type of claim	52	5.4	5.5	16.9
	Criminal: circuit court (felony)	568	59.5	60.5	77.4
	Criminal: county court (misdemeanor)	212	22.2	22.6	100.0
	Total	939	98.3	100.0	
Missing	System	16	1.7		
Total		955	100.0		

As to the attorneys these jurors evaluated as part of this survey:

- 66.4% of plaintiffs'/prosecuting attorneys were male; 32.4% were female; data concerning plaintiff/prosecuting sex was not provided for 1.3% of the participants.

- 80.6% of defense attorneys were male; 17.9% were female; data concerning defense attorney sex was not provided for 1.3% of the participants.

- •84.9% of plaintiffs'/prosecuting attorneys were White Non-Hispanic; 4.7% were White Hispanic; 7.1% were Black; 1% were Asian; and .8% were Black/Hispanic.

- •For defense attorneys, 81.5% were White Non-Hispanic; 6.6% were White Hispanic; 6.6% were Black; .8% were Black/Hispanic; and .9% were Asian.

- •As close as the jurors could determine as to the age of the plaintiffs'/prosecuting attorneys, 9.0% were over 50; 67.9% were 31–50; and 22.3% were under 30.

- •For defense attorneys, 12.5% were over 50; 76.1% were 31–50; and 9.9% were under 30.

In evaluating what factors are consistent with or causally related to jurors' verdicts at trial, real jurors, as opposed to mock jurors, would appear to be the "gold standard." In this survey the former participated in actual full-length trials, and all that this connotes. They were questioned during jury selection and actually interacted with their attorneys. They were exposed to, or experienced the variables discussed in this article, at least for days if not longer. Finally, they participated in actual deliberations at the end of the trial, after being instructed on the law by their judge.

On the other hand, one disadvantage to surveying real jurors, it has been noted, is that this method is "limited by the cognitive biases and limitations of respondents, which can make it difficult to reconstruct an accurate picture of what happened during deliberation[s]."[13] This, however, will be true in all studies except where deliberations are videotaped. In sum, two things seem clear. Real jurors by definition enjoy the maximum "immersion" experience in a trial. They are, from voir dire forward, far more involved in the trial process than are mock jurors. Secondly, real

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[13] Devine et al., *supra* note 6, at 627. This article compiled all empirical research studies on jury decision making published from 1955 to 1999. *Id.* at 622. Of these 206 studies, only seventy involved real jurors. *Id.* at 627. Of these, fourty were done through archival analysis (typically court files), thirteen used field studies or experiments with actual jurors, and three combined two of these methodologies. *Id.* Only fourteen of these 206 involved surveys or interviews with ex-jurors. *Id.* In addition to compiling the research, the article discusses "Participant Characteristics" as found in the literature, including those of attorneys, in detail. *Id.* at 673–84.

jurors bring a uniquely advantaged viewpoint to answering questions as to what lies behind their verdicts.

The survey was sponsored by Barry University School of Law in Orlando, Florida. It was designed to encompass by far the bulk of all jury trials taking place. It included jurors who sat on criminal felony cases tried in circuit court, misdemeanor cases in county court, and general civil cases in circuit court.[14] There were two exceptions. First, jurors in death penalty trials were not surveyed due to: (1) the inapplicability of the survey design to penalty phase proceedings; and (2) the uncertainty of preserving the confidentiality of the responses of death penalty jurors, in the face of anticipated intense efforts to obtain their surveys to seek grounds for appeal after conviction. Second, general civil cases in county court, whose jurisdiction includes claims of $15,000 or less,[15] were not surveyed due to the minimal number of civil jury trials taking place there.

The survey was extensive. It was comprised of 204 separate statements in a number of subject areas, on nine double-sided pages, following which jurors were asked in most cases to state whether they strongly disagreed, disagreed, agreed, or agreed strongly with the statement. Discrete sections applied to civil and criminal trials, and jurors responded only as applicable to their type of trial. These areas generally included, but were not limited to: (1) jurors' assessment of the conduct, ability, and demeanor of trial counsel; (2) jurors' decision-making process in various respects, both before and during deliberations; (3) feelings about all portions of the trial, from jury selection through closing argument, and including direct examination, cross-examination, and objections; (4) their assessment of parties and witnesses, both lay and expert; (5) in criminal cases, the presumption of innocence and the effects of defendants testifying or not testifying; (6) the efficacy of various types of evidence, both physical and non-physical, and its impact upon their decision-making process; and (7) for jury instructions, jurors' assessment of them, including whether and how well the jury applied or followed them.

Additional categories asked jurors to provide information concerning: (1) demographic information about themselves, as well as what they perceived to be true of parties and trial counsel; and (2) the verdicts they

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[14] *See* FLA. STAT. ANN. § 26.012(2)(a), (c) (West 2009) (circuit court has jurisdiction, respectively, of felony cases and claims in excess of $15,000); FLA. STAT. ANN. § 34.01(1)(a), (c) (West 2010) (county court has jurisdiction, respectively, of misdemeanor cases and claims of not more than $15,000).

[15] *See* FLA. STAT. ANN. § 34.01(1)(c) (West 2010).

returned in both criminal and civil cases, including, as to the latter, their findings on liability, damages, and comparative negligence (where applicable). Finally, jurors were given an opportunity to state in writing what they felt would have made their jury service a better experience.

Trial judges were asked to employ the following procedures:[16]

1. After the jury returns its verdict, ask jurors to complete the juror survey and return it in its prepaid return envelope to Barry University School of Law.

2. Read the cover letter[17] to jurors or hand it out along with the survey and return envelope.

3. Emphasize that all individual responses will be kept confidential and that the survey is anonymous.

4. Tell the jurors their participation is voluntary; however, everyone's participation is essential to the research that is being conducted.

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[16] Undoubtedly, there was variation in how the several dozens of trial judges in these three circuits explained the survey to the jurors.

[17] The cover letter stated:

On behalf of the Chief Judge of this Judicial Circuit, I want to thank you for your jury service. I also want to ask for your help in filling out this highly important survey. Its purpose is to educate our Judges and lawyers on your experiences as a jury, so that improvements can be made within the court system both in this Circuit and in Florida. You are in a unique position to help make the jury system better precisely because you have just served as a juror. Through this survey, you are being given the opportunity to express your likes and dislikes about what you saw.

Your responses will be kept **completely anonymous** and your participation is **completely voluntary**. There is nothing in the survey that would call for your name, the case you participated in, or the names of the Judge, attorneys or witnesses. Please **do not** add any such information. You are under no obligation whatsoever to reveal your survey responses to anyone who might ask.

This Circuit is one of only a few in Florida that has been selected to give this feedback. Given the importance of this survey, I ask that you answer the survey with the same seriousness that you devoted to your jury service. And, given that your memory of your jury service is still fresh, I ask that you complete it before you leave the courthouse and then mail it in the postage paid envelope you have been provided. It takes about 20 to 30 minutes to complete. If you cannot complete the survey today, please complete it and mail it by tomorrow or the next day at the very latest. In addition, please attempt to complete the survey prior to speaking with anyone, other than your fellow jurors, or reading or hearing any news about the trial. Once you have finished the survey, please **do not** hand it to any lawyers, court personnel or anyone else; please only return it by mail.

5. Tell the jurors it is preferable for them to complete the survey while they are still in the courthouse, and thank them for their participation.

Jurors were prompt in completing the surveys before mailing: 29.1% did so on the same day; 26% the next day; 23.8% within two to five days; and 12.1% within six to ten days. Only 6.7% took eleven days or more to do so.

In examining associations between variables, statistical significance of each test was established at $\alpha = 0.05$ level. The analyses that were performed for this article consisted of the following:

- When the item had four possible answers and it represented an ordering of increased value (disagree strongly, disagree, agree, agree strongly), the item was treated as continuous. Otherwise, the categories of the variable were treated as categorical.

- Associations between continuous variables were determined with a Pearson product moment correlation coefficient. To assess strength of relationship in the association between two continuous variables, we used the following:

  - "Not statistical" or "not statistically significant"— it has a p-value > 0.05.

  - "Weakly associated"—statistically significant; it has a p-value < 0.05, and the magnitude of the absolute value of the correlation is smaller than 0.20.

  - "Somewhat associated"—statistically significant; it has a p-value less than < 0.05, and the magnitude of the absolute value of the correlation equals or exceeds 0.20 but is less than 0.30.

  - "Moderately associated"—statistically significant; it has a p-value less than < 0.05, and the magnitude of the absolute value of the correlation equals or exceeds 0.30 but is less than 0.40.

●"Strongly associated"—statistically significant; it has a p-value less than < 0.05, and the magnitude of the absolute value of the correlation equals or exceed 0.40 but is less than 0.50.

●"Very strongly associated" —statistically significant, it has a p-value less than < 0.05, and the magnitude of the absolute value of the correlation exceeds 0.50.

●A chi-square test of independence, which allows for an examination of association between categorical variables, was also conducted to determine associations between categorical variables. Associations between categorical independent (predictor) variables and continuous dependent (outcome) variables were assessed with analysis of variance, which allows for the assessment of mean differences across levels of the categorical variables. When multiple continuous dependent variables were involved, a multivariate analysis of variance was conducted first. Statistical significance of the multivariate test was followed by assessing the statistical significance of each item separately. In addition, we accompanied those tests with a measure of effect size. The measure of effect size is called eta-squared (and is denoted η^2), and it represents the proportion of the variance in the dependent variable that is attributed to the independent variable. The following guidelines were used to interpret the magnitude of the effect: values of eta-squared:

●Approaching 0.05—indicative of "weak" associations.

●Approaching 0.10—indicative of "moderate" associations.

●Approaching 0.15—indicative of strong effects. As in many instances, the size of the effect depends on context such that weak associations could be meaningful and strong associations could be meaningless.

●Finally, when the dependent variable only assumed two values (some form of guilt versus no guilty finding), we conducted a logistic regression to see if we could predict guilt from the independent variables under investigation.

Insofar as pertinent tables and statistical analyses are not included herein, the reader will find them, identified by section, in the Appendix that follows. The statements for which jurors gave their ratings may also be found therein. Hereinafter these "statements" will be called "variables" for ease of understanding and clarity. Unless otherwise noted: (1) the survey variables paired prosecutors with plaintiffs' attorneys, and criminal and civil defense attorneys; and (2) attorneys will be referred to herein as "prosecuting attorneys" or "prosecutors," and "defense attorneys," except as the variable may pertain to civil matters only, in which case "plaintiffs' attorneys" will be identified.

III. JURORS' DEMOGRAPHICS—GENDER, AGE, AND RACE—AND HOW THEY RELATE TO THE VERDICTS THAT WERE RETURNED

If a dozen trial lawyers were asked if they believed certain demographic types of jurors were better in certain cases, and why, one would likely receive a high majority of affirmative responses to the former, and among this subset an array of differing responses to the latter. Rarely if ever, the experience of the lead author shows, do trial lawyers base their beliefs on statistically valid analyses of jurors' verdicts. Instead, they go with their "gut," likely in combination with anecdotal evidence based on their prior jury verdicts.

The findings of this survey show that with one exception, their beliefs were inconsistent with predictability of jurors' verdicts based on juror demographics.

A. Results Analyzed By Gender

The following table illustrates the results in criminal cases:

Verdict	Male juror	Female juror	Total
Not guilty on all charges	119 (32.8%)	214 (39.4%)	333
Guilty on all charges	163 (44.9%)	222 (40.9%)	385
Guilty on 1+ charge and not guilty on 1+ charge	37 (10.2%)	32 (5.9%)	69
Some form of guilt on lesser charges	29 (8.0%)	42 (7.7%)	71
No Verdict	15 (4.1%)	33 (6.1%)	46
Total	363	543	906

1. Findings

    •There is a statistically significant relationship between juror gender and verdicts in criminal cases.

    •Female jurors were more likely to return a verdict of "not guilty" (39.4%, vs. 32.8% for males).

    •Male jurors were more likely to find the defendant "guilty on all charges" (44.9% vs. 40.9%), and also on one or more charges (10.2% vs. 5.9%).

    •In all, males found at least some form of guilt in 60.3% of the cases, vs. 54.5% for women.

    •No statistical relationship was found to exist in civil cases between jurors' genders and their verdicts.

Jury research has produced differing results when examining juror demographics.[18] In a survey of actual jurors performed throughout 33 states and Canada, with 323 jurors reporting, women convicted more often than men by 60% to 53%.[19] A study of 197 Baltimore jurors who returned verdicts in three different types of felony cases (rape, robbery and murder), however, found that the jurors' gender was predictive only in robbery cases, with women being more likely to convict than men.[20] A trial lawyer who wanted to fully inform his beliefs as to which juror demographics lead to verdicts in particular types of cases would have a difficult time indeed, for this subject has been the subject of extensive research.[21]

B. Results Analyzed by Age and Race

While gender of the jurors was predictive in criminal cases, it was the only variable that was significant. There was no relationship between verdict and juror age or race in criminal cases. Similarly, in civil cases, juror demographics for age and race were non-predictive.

These results may be contrasted with other research findings. As to juror race, one author framed the issue as "Why Juror Race Influences Jury Decisions."[22] The reason given for the implicit assumption that race did influence jury decisions, leaving only the cause in question, was that "jurors, like all of us, are influenced by stereotypes about racial groups and members of racial groups. Negative racial stereotypes produce a 'reverse

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[18] *See, e.g.*, Devine et al., *supra* note 6, at 673–74 (providing a multitude of references); Ford, *supra* note 6, at 17–19 (providing an excellent compendium of research on the correlation between jurors' demographics and verdicts).

[19] Sannito & Arnolds, *supra* note 6, at 6, 10. It should be noted that this article does not define "guilt," or, make clear whether or how much of the 60% is, as categorized separately in the instant survey, "guilty on all charges," "guilty on 1+ charge and not guilty on 1+ charge," or guilty on "some form of lesser charges." *Id.* Assuming that "guilty" in the cited survey included these additional gradations of guilt, its results were opposite those of the instant survey: findings of "guilty" by 60.3% for men vs. 60% for women.

[20] Carol J. Mills & Wayne E. Bohannon, *Juror Characteristics: To What Extent Are They Related to Jury Verdicts?*, 64 JUDICATURE 22, 26–30 (1980).

[21] *See generally, e.g.*, Devine et al., *supra* note 6, (providing a multitude of references); Ford, *supra* note 6 (providing an excellent compendium of research on the correlation between jurors' demographics and verdicts).

[22] Nancy J. King, *Postconviction Review of Jury Discrimination: Measuring the Effects of Juror Race on Jury Decisions*, 92 MICH. L. REV. 63, 77 (1993) (capitalization in original).

halo effect': members of negatively stereotyped groups are assumed to possess negative traits, and positive information them is devalued."[23]

In civil cases, one survey of 239 mock jurors found that "race did affect subjects' verdicts [in that] [m]inority subjects were significantly more likely to decide in favor of the plaintiff than white subjects."[24]

In sum, research as to the effect of juror demographics, including the instant survey, is far from consistent.[25]

C. Results Analyzed by Damages and Degree of Fault

Additionally, jurors' demographics were non-predictive for:

- •The amount of the awards returned.

- •Whether the award would be closer to the dollar figure suggested by the plaintiff's attorney than that of the defense attorney.

- •The degree of fault ascribed to the plaintiff.

IV. ATTORNEYS' DEMOGRAPHICS—GENDER, AGE AND RACE—AND HOW THEY RELATE TO THE VERDICTS THAT WERE RETURNED

A. Results Analyzed by Gender

Whereas the survey found that jurors' demographics might not play a significant role in their verdicts, there was a much greater role played by the demographics of the lawyers appearing before them. This result is

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[23] *Id.* (citing ELLIOT ARONSON, THE SOCIAL ANIMAL 136–37 (1992)); *see also id.* at 80–86 for a compendium of studies showing that juror race plays a possible role in verdicts. *But see id.* at 82 n.65 (noting studies that show race does not have an effect on the verdict).

[24] Brian H. Bornstein & Michelle Rajki, *Extra-Legal Factors and Product Liability: The Influence of Mock Jurors' Demographic Characteristics and Intuitions About the Cause of an Injury*, 12 BEHAV. SCI. & L. 127, 132, 134 (1994).

[25] Perhaps the best single source for research as to the effects of both jurors' and attorneys' demographics may be found at Devine et al., *supra* note 6, at 632–36, particularly in Table 2, "Summaries of Empirical Research on Participant Characteristics, Ordered by Date" (1955–1999). There can be little question that research results in this area are far from homogeneous.

consistent with other jury research finding that the attorney's gender "affects a jury's decision-making because the factors surrounding gender affect the jury's perception of attorneys and consequently their verdicts."[26]

The results by gender of the prosecutors are shown by the following:

Verdict	Male prosecutor	Female prosecutor	Total
Not guilty on all charges	235 (39.0%)	97 (32.8%)	332
Guilty on all charges	250 (41.5%)	132 (44.6%)	382
Guilty on 1+ charge and not guilty on 1+ charge	49 (8.1%)	18 (6.1%)	67
Some form of guilt on lesser charges	36 (6.0%)	35 (11.8%)	71
No verdict	32 (5.3%)	14 (4.7%)	46
Total	602	296	898

1. Findings

- There is a statistically significant relationship between the sex of the prosecutors and their verdicts.

- Male prosecutors were more likely to receive "not guilty on all charges" verdicts than were female prosecutors (39.0% vs. 32.8%).

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[26] Mary Stewart Nelson, *The Effect of Attorney Gender on Jury Perception and Decision-Making*, 28 LAW & PSYCHOL. REV. 177, 192 (2004) (providing an excellent source for reviewing jury research on the relationship between attorney gender and verdicts). *But see* David L. Cohen & John L. Peterson, *Bias in the Courtroom: Race and Sex Effects of Attorneys on Juror Verdicts*, 9 SOC. BEHAV. & PERSONALITY 81, 81 (1981) (sex of criminal defense attorneys did not have an effect on the jurors' verdicts).

•Female prosecutors, by 44.6% to 41.5%, were more likely to receive "guilty on all charges" verdicts.

•Again, female prosecutors, by 11.8% to 6.0%, were more likely to obtain verdicts of "some form of guilt on lesser charges."

•Overall, these results appear to show that female prosecutors obtained better results than their male counterparts.

As for defense attorneys, there was no relationship between their gender and the jurors' verdicts.

In civil cases, a statistically significant relationship was found to exist between verdicts and the gender of plaintiffs' attorneys.

Verdict	Male plaintiff	Female plaintiff	Total
Favor of plaintiff	57 (51%)	1 (10%)	58
Favor of defense verdict	54 (49%)	9 (90%)	63
Total	111	10	121

•51% of the verdicts of male plaintiff attorneys were favorable, while only 10% of the verdicts were obtained by female attorneys. However, this should be interpreted cautiously because only 10 out of the 121 plaintiffs' attorneys were female.

And, the same was true for defense attorneys.

Verdict	Male defense attorney	Female defense attorney	Total
Favor of plaintiff	55 (52%)	3 (19%)	58
Favor of defense verdict	50 (48%)	13 (81%)	63
Total	105	16	121

> ●48% of the verdicts obtained by male defense attorneys were
> favorable—while an extremely high 81% of the verdicts
> favored female defense attorneys.

However, consistent with research results being far from homogeneous,[27] the authors of one study with 135 mock jurors summarized existing research by stating that "[i]n general, research has found no consistent effect of attorney gender."[28]

B. Results Analyzed by Race

Again, a demographic for prosecutors (here, race) proved to be related to the verdicts they received. The same, again, was not true for defense attorneys.[29]

Verdict	White prosecutor	African-American prosecutor	Other (Latino, Asian) prosecutor	Total
Not guilty on all charges	270 (34.9%)	35 (50.0%)	24 (40.7%)	329
Guilty on all charges	336 (43.5%)	21 (30.0%)	29 (49.1%)	386
Guilty on 1+ charge and not guilty on 1+ charge	65 (8.4%)	1 (1.4%)	3 (5.1%)	69
Some form of guilt on lesser charges	64 (8.3%)	4 (5.7%)	3 (5.1%)	71
No verdict	38 (4.9%)	9 (12.9%)	0 (0%)	47
Total	773	70	59	902

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[27] *See generally* Devine et al., *supra* note 6.

[28] Peter W. Hahn & Susan D. Clayton, *The Effects of Attorney Presentation Style, Attorney Gender, and Juror Gender on Juror Decisions*, 20 LAW. & HUM. BEHAV. 533, 538 (1996).

[29] *But see, e.g.*, Cohen & Peterson, *supra* note 26, at 84 (noting that mock jurors showed significant main effects of defense attorneys' race as demonstrated by their returning fewer guilty verdicts for white attorneys than African-American attorneys).

1. Findings

>●White prosecutors were least likely, by 34.9% to 50% and 40%, to receive complete acquittals. African-American prosecutors were most likely to do so.

>●Latino or Asian prosecutors were most likely to receive verdicts of "guilty on all charges" (49.1%), followed by whites (43.5%) and African-Americans (30%).

In civil cases, however, no statistical correlation was found between verdicts and the race of either plaintiffs' or defense attorneys.

C. Results Analyzed by Age

These jurors proved consistent in again demonstrating that a demographic (here, age) of their prosecutors was related to their verdicts, but was not for their defense attorneys.

Verdict	Less than 30	31–50	Over 50	Total
Not guilty on all charges	85 (41.1%)	215 (35.1%)	30 (36.1%)	330
Guilty on all charges	79 (38.1%)	263 (43.0%)	43 (51.8%)	385
Guilty on 1+ charge and not guilty on 1+ charge	13 (6.3%)	52 (8.5%)	4 (4.8%)	69
Some form of guilt on lesser charges	12 (5.8%)	55 (9.0%)	4 (4.8%)	71
No verdict	18 (8.7%)	26 (4.3%)	2 (2.4%)	46
Total	207	611	83	901

1. Findings

●These results clearly demonstrate that the greater the age—and
therefore the greater the experience[30]—the better the
prosecutors' results, and vice versa.

●The youngest attorneys (less than thirty years old) received the
highest percentage of unwanted results ("not guilty on all
charges"), 41.1%.

●The oldest attorneys did the best—"guilty on all charges" in
51.8% of their cases, while those less than 30 did far worse.

In civil cases, however, age played no statistically valid role vis-à-vis
verdicts for either plaintiffs' or defense attorneys.

V.   HOW JURORS VIEWED THEIR ATTORNEYS IN
RELATION TO THE VERDICTS THEY RETURNED

A. *The Attorneys Understood Both the Strengths and Weaknesses of Their Case*

One would hope that this would always be true, but the reality is that on
occasion it will not be. Trial preparation is an intense task, and an attorney
can lose focus on what is important—or not have identified all the
important issues to begin with. Few experienced trial attorneys have not had
the experience of having the jury return to the courtroom during
deliberations with a question they wished the judge to answer, prompting
the thought by the attorney, "*why* would they ask that?" Some states, such
as Florida, subsequent to this survey, have allowed jurors to have their
questions answered by the witness while still on the stand, if the judge

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[30] It cannot reasonably be disputed that far more attorneys leave district attorneys' offices to
enter private (often criminal defense) practice than do the opposite. Therefore, older prosecutors
should be far more likely to be "career" prosecutors, having started in this area immediately
following or not long after law school graduation, with greater experience than their newer
counterparts. It would seem that the older prosecutor who is new to this area of practice would be
much more the exception than the rule.

approves.[31] In such a case, the attorney can thus receive at least some indication if he or she is "on the mark." These jurors reported that failing to understand their case's strengths and weaknesses can cost the attorney.

1. Findings

- •Statistically, prosecutors were perceived to better understand the strengths and weaknesses of their cases when their verdicts were "guilty on all charges" than when they were "not guilty" (mean of 3.34 vs. 2.87).

- •The same effect was found for criminal defense attorneys. The mean rating for "not guilty on all charges" was 3.35 vs. 3.08 for "not guilty on all charges."

- •In civil cases, this effect holds true for plaintiffs' attorneys. They were perceived by jurors to understand their case better when they won than when they lost (mean of 3.23 vs. 2.98). There was no effect for defense attorneys, however.

- •In terms of the damages awarded, understanding by plaintiffs' attorneys was not statistically significant. However, it was for defense attorneys. The mean for their understanding was 3.54 for cases in which up to $50,000 was awarded, and 3.13 for cases in which the award was higher.

- •Attorneys at trial often—but not always—suggest in closing argument an amount that the jury should award. As any such attorney knows, great care must be taken in determining this figure. As only two reasons of many that

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[31] *See, e.g.,* FLA. R. CIV. P. 1.452, Questions by Jurors:

(a) Questions Permitted. The court shall permit jurors to submit to the court written questions directed to witnesses or to the court. Such questions will be submitted after all counsel have concluded their questioning of a witness.

(b) Procedure. Any juror who has a question directed to the witness or the court shall prepare an unsigned, written question and give the question to the bailiff, who will give the question to the judge.

(c) Objections. Out of the presence of the jury, the judge will read the question to all counsel, allow counsel to see the written question, and give counsel an opportunity to object to the question.

could be given for this: (1) on the plaintiff's side, to request too much may be to have it rejected entirely; and (2) on the defense side, to suggest a figure at all may give the perception that the attorney does not really believe his or her argument that the defendant is not liable at all. The survey tested this through the use of a variable that asked jurors to rate whether the amount of the award was closer to the dollar figure suggested by the plaintiff attorney than that suggested by the defense attorney. While there was no relationship between the jurors' perception of the plaintiffs' attorneys' understanding of the case and the amount awarded being closer to that suggested by him or her, there was a strong association between these variables for defense attorneys. The more strongly the jurors believed the defense attorney understood the strengths and weaknesses of the case, the more likely they were to return a damages award that was *not* closer to the amount suggested by the plaintiff's attorney.

B. *The Attorneys Were Honest with the Jury at all Times*

To be otherwise is both unprofessional and to risk losing one's credibility. And, unlike the situation where a witness at trial is found not credible, an attorney's loss of credibility at least may and likely will inhere throughout that attorney's entire case. These jurors in most part confirmed this.

1. Findings

- The more jurors found prosecutors to be honest at all times, the more likely they were to convict (mean for "guilty on all charges" was 3.34 vs. 3.02 for "not guilty on all charges").

- Similarly, the more jurors found defense attorneys to be honest at all times, the more likely they were to acquit the defendant (mean for "not guilty on all charges" was 3.05 vs. 2.72 for "guilty on all charges").

- In civil cases, although the effect of honesty on verdicts was not found for plaintiffs' attorneys, it was for defense

attorneys. Those who rendered a verdict in favor of the defense thought the defense attorney was more honest than those who returned a verdict for the plaintiff (mean for defense verdict of 3.15 vs. plaintiffs' verdict of 2.79).

C. The Effect of Asking Questions that Were Important in Deciding the Case

In an average trial, jurors likely will listen to thousands of questions. The survey found that asking the important questions did produce an effect on the verdicts these jurors returned.

1. Findings

- •Jurors who rendered full guilty verdicts thought the prosecutor did a better job of asking the witnesses important questions than did jurors who fully acquitted (mean of 3.33 vs. 2.88).

- •The same effect was found for defense attorneys (mean of 3.16 for acquittals vs. 2.96 for full guilty verdicts).

- •In civil cases, the effect between asking the important questions was found for defense attorneys but not plaintiffs' attorneys. Jurors who returned defense verdicts thought the defense attorney did a better job of asking witnesses the important questions than did those who returned plaintiff's verdicts (mean of 3.27 for defense verdicts vs. 2.97 for plaintiff's verdicts).

D. The Effect of Strength of Personality

Jurors have a *long* time to observe, and form impressions about, the personalities of their attorneys—days, weeks, or even occasionally, months, for the better part of six or seven hours per day. The survey tested for the effect of the strength of personality by asking these jurors to rate whether the prosecuting or plaintiff's attorney overall showed a stronger personality in the courtroom than the other, and then compare this against the verdicts that were returned.

1. Findings

> •In criminal cases, there was a correlation between strength of personality and verdict. Jurors who rendered full guilty verdicts thought the prosecutor showed a stronger personality than did the defense attorney, compared to jurors who rendered an acquittal (mean of "guilty on all charges" of 2.82 vs. "not guilty on all charges" of 2.22).

> •In civil cases there was no statistical association.

Although framing the personality issue of trial attorneys as either "aggressive" or "passive," one study of mock jurors concluded that the former style "may be an advantage in the courtroom:"

> Aggressive attorneys were found to be more successful than passive attorneys, and the effect of presentation style was moderated by both attorney and juror gender. In particular, male (but not female) participants were more influenced when a female, or especially a male, attorney was aggressive than when that attorney was passive.[32]

The authors then explained why this would be so:

> In the passive attorney condition, participants may have become bored with the material and found concentration difficult, while the aggressive attorney's presentation techniques may have captivated the participants' attention, making it easy for them to concentrate on the attorney's points. Since the aggressive attorney's points were more salient than the passive attorney's points, participants who saw the aggressive attorney were more likely to acquit the defendant than were those who saw the passive attorney.[33]

Before the reader concludes from this that an "aggressive" style is best, it must be remembered that the *only* alternatives given to these jurors to describe their attorneys was "aggressive" or "passive."[34] No gradations of

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[32] *See* Hahn & Clayton, *supra* note 28, at 548.

[33] *Id.*

[34] *See id.* at 540.

these variables were offered to them.[35] And, the study was limited.[36] Only the defense attorney appeared on videotape to interrogate a witness; the prosecutor did not.[37] Closing arguments were conveyed to the jurors through transcripts, with that of the defense attorney in the "passive" condition containing "hedges, intensifiers, qualifiers, and interrupted words and sentences, which are characteristic of passive speakers."[38] This is very different from real jurors having the opportunity, as in the instant survey, to view their attorneys' closing arguments and then provide a much more fully-informed opinion about them.[39] Finally, as "passive" would seem to have a significantly negative connotation for a trial attorney, these results are not surprising. A more nuanced study would likely reveal that most actual trial attorneys are neither "aggressive" nor "passive," but rather somewhere in between.

E. *Private Defense Attorney or Public Defender—If the Jury Perceived Defense Counsel Was One or the Other, Was There an Effect on Their Verdicts?*

Jurors in criminal cases were asked to state whether "[t]he defense attorney was: (a) a public defender, (b) private attorney, or (c) it was not made known to the jury." The following table shows that 62% of the jurors (453 out of 729) did not know the status of their defense attorneys. The remaining 38%—somehow[40] having received information on the attorney's status—did.

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[35] *See id.*

[36] *See id.*

[37] *See id.*

[38] *Id.*

[39] *See* Frank & Morera, *supra* note 8, at 35–39 (particularly Section V, for a full discussion of how this survey's jurors perceived their attorneys' closing arguments).

[40] The jurors were not asked how they could have received such information. Possible sources could be: (a) they assumed the attorney's status based on their perception of the attorney's ability; (b) the appearance of the attorneys, e.g., wearing a diamond Rolex watch would likely be perceived as being inconsistent with a public defender; (c) the attorneys themselves, or the court, identified who counsel was employed by; or (d) they found out through obtaining extrajudicial information such as, after trial ended for the day, performing a Google search on counsel.

Type of attorney	Not guilty on all charges	Guilty on all charges	Guilty on 1+ charge and not guilty on 1+ charge	Some form of guilt on lesser charges	No verdict	Total
Public defender	39	57	14	17	4	131
Private attorney	65	42	18	9	11	145
Not known	164	188	30	41	30	453
Total	268	287	62	67	45	729

1. Findings

●A statistically valid association existed between the verdicts returned and the status of the defense attorney.

●Of the 131 cases defended by a public defender, 88 of them (67%) resulted in a finding of guilt at least in part. Of the 145 cases defended by private counsel, 69 (48%) of them did. Where the attorney's status was unknown, 259 of the 453 cases (57%) did. Public defenders were most likely to have their clients found guilty to at least some degree.

●The effect is even more apparent when one focuses only on the category of "guilty on all charges". There, 43% (57 out of 131) of the public defender cases resulted in this verdict, as against 41% (188 out of 453) for those whose status was not known—but only 29% (42 out of 145) of the cases handled by private defense attorneys resulted in this outcome.[41]

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[41] Reasons for this effect may be explained by, as concerns private defense counsel: (a) greater experience, including possibly having left public defenders' offices after rising to senior trial status; (b) greater ability; (c) lower caseloads and therefore more (or perhaps much

While this survey showed that criminal defendants were generally better off in the hands of a privately retained attorney, research reveals that the issue is far from settled.[42]

VI. LIKEABILITY AND ABILITY OF THE ATTORNEYS

A. Before the Jury, Does Being Likeable Matter?

Contrary to the belief that it would matter for all attorneys and verdicts, the survey found that the answer is a limited "yes"—if the attorney has the burden of proof, be it as prosecutor or plaintiff, it does.

1. Findings

- •Albeit not with a strong associative value, prosecutors are more likeable when the defendant is found guilty on all charges than when he or she is acquitted entirely (mean of 3.11 vs. 2.95).

- •In civil cases, the effect is slightly greater. Jurors who found for the plaintiff found the plaintiff's attorney more likeable (mean of favoring the plaintiff in their verdicts of 3.08 vs. those favoring the defense in their verdicts of 2.86).

- •In regard to damages being awarded, which assumes a plaintiff's verdict, the awarding of a lower monetary amount is associated with greater likeability of the defense attorney (mean likeability for damages awarded of no more than $50,000 of 3.21 vs. 2.88 for damages awarded of more than $50,000).

- •The extent to which jurors liked the defense attorney is moderately associated with their verdicts being closer to the defense attorney's suggested value than that of plaintiff's

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more) time to prepare; and (d) greater resources, whether financial, investigative or otherwise. This is not intended to be an exhaustive list.

[42] *See* David S. Abrams & Albert H. Yoon, *The Luck of the Draw: Using Random Case Assignment to Investigate Attorney Ability*, 74 U. CHI. L. REV. 1145, 1152–53 (2007) (and particularly the numerous surveys recited at notes 20 and 21).

counsel. There is no valid association for plaintiff's counsel.

B. Ability—Don't Leave Home, and Enter the Courtroom, Without It

Attorneys who believe they do not have the overall ability to try cases, but do so anyway, would, according to these jurors, be advised to do what is necessary to become more able.

1. Findings

●Prosecutors are perceived by jurors to have the greatest ability when the defendant is found guilty on all charges (mean of 3.24 for ability when found guilty on all charges vs. 2.57 for acquittal).

●Criminal defense attorneys are found to have the greatest ability when their client is acquitted (mean of 3.10 for ability when acquitted vs. 2.78 for "guilty on all charges").

●In civil cases, while there is no effect found for defense attorneys, jurors who returned plaintiffs' verdicts found plaintiffs' counsel to be more able (mean of plaintiffs' verdicts of 3.22 vs. 2.86 for defense verdicts).

●The extent to which jurors rated the overall ability of the defense attorney in civil cases more highly is somewhat associated with their awards being closer to the defense attorney's suggested value. However, where damages were awarded, which presumes a plaintiff's verdict, there was no relationship between the ability of plaintiff's counsel and the amount awarded being closer to that suggested by him or her.

One survey substantially agreed with these results, finding that "the characteristics of the prosecutor, especially his ability, was about three times more important in predicting the jurors' pre-deliberation feelings and their verdict than the qualities of the defense attorney."[43] These results, the

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[43] Sannito & Arnolds, *supra* note 19, at 9.

more able the trial attorneys the more likely the favorable results, should not be surprising. It is important, however, to know that there is statistical backing for this belief, so that the (hopefully rare) attorneys who believe that their personality alone will carry the day—separate and apart from their ability, which will be determined by preparation, among other factors—may reconsider.

VII. ATTORNEYS' USE OF EXHIBITS—DOES IT PLAY A ROLE IN VERDICTS?

In short, for the most part, the answer is yes.

A. Findings

- Jurors were first asked to rate their agreement or disagreement with the statement that the attorney before them "used his/her exhibits as effectively as possible to present his/her case." In criminal cases, jurors who rendered verdicts with any form of guilt thought the prosecutor used exhibits better than those jurors who rendered a not guilty verdict (mean of "guilty on all charges" of 3.13 vs. 2.62 for acquittal).

- Defense attorneys were subject to the same effect. Jurors who returned acquittals thought their defense attorneys used exhibits better than those who returned verdicts of guilty on all charges (mean of acquittal of 2.87 vs. 2.63 for "guilty on all charges").

- In civil cases, however, there was no relationship between the use of exhibits and the verdicts returned for either plaintiffs' or defense counsel.

- Jurors were next asked to respond to the statement that their attorneys' exhibits "were important to me in reaching my verdict." In criminal cases, there was a relationship for prosecutors, in that jurors who returned full guilty verdicts indicated more importance in his or her exhibits than did jurors who returned an acquittal (mean of "guilty on all charges" of 2.97 vs. 2.56 for acquittal).

●In civil cases, there was no relationship for defense counsel. However, jurors who found for the plaintiff thought the exhibits used by plaintiff's counsel were more important than did those who returned defense verdicts (mean of 2.86 for plaintiffs' verdicts vs. 2.61 for defense verdicts).

The import of these findings is two-fold. First, trial counsel should avoid the temptation to "throw everything into the hopper," and instead use only those exhibits that are: (1) obviously important in and of themselves; (2) illustrative of important points; and (3) necessary for technical reasons, e.g., to prove the prima facie elements of a claim or defense. Second, to the extent counsel is not adept at laying predicates, getting his or her exhibits into evidence, and then publishing them to the jury, efforts at improvement should be made. These jurors indicated that both the adept selection and use of exhibits mattered to them.

VIII. DEMOGRAPHICS OF THE PARTIES—GENDER, AGE AND RACE—AND HOW THEY RELATE TO THE VERDICTS THAT WERE RETURNED

Research on the subject of parties' demographics is extensive, and far from consistent in its results.[44] The following is offered from this survey.

A. Results Analyzed by Gender

By "parties" the survey meant, in a criminal case, the victim and the defendant; and, in a civil case, the plaintiff or the defendant. Across all four categories, no association was found to exist in any connection between gender and the verdicts returned in either criminal or civil cases.

B. Results Analyzed by Age

No relationship was found to exist between the age of any of the parties and verdicts in criminal cases. A relationship was found as between age of the defendant and verdicts in civil cases. The following table shows the jurors' responses.

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[44] *See* Devine, et al., *supra* note 6, at 627.

Age of defendant	Favor of plaintiff	Favor of defendant	Total
Less than 20 yrs old	4 (7.1%)	0 (0%)	4
Between 21 and 40	21 (37.5%)	20 (33.9%)	41
Between 41 and 60	18 (32.1%)	35 (59.3%)	53
Over 60	13 (23.2%)	4 (6.7%)	17
Total	56	59	115

1. Findings

•An association was found to exist between the age of the defendant and verdicts in civil cases.

•The majority of the verdicts that favored the defendant took place for those defendants who were between forty-one and sixty years of age. Specifically, 59.3% of all verdicts that favored the defendant occurred in that age group. In contrast, the distribution of the age of defendant for verdicts that favored the plaintiff appears more evenly distributed; 37.5% of verdicts that favored the plaintiff took place when the defendant was aged between twenty-one and forty.

Reframing the above table additionally shows this relationship between age of the defendant and verdicts.

Verdict	Less than 20	Between 21 and 40	Between 41 and 60	Over 60	Total
Favor of plaintiff	4 (100%)	21 (51.2%)	18 (34%)	13 (76.5%)	56
Favor of defendant	0 (0%)	20 (48.7%)	35 (66%)	4 (23.5%)	59
Total	4	41	53	17	115

•Albeit with a small sample, defendants under the age of 20 all received verdicts against them. Almost half of the defendants between the ages of 21 and 40 prevailed while only one third of the verdicts for individuals aged 41 through 60 went in favor of the plaintiff. Finally, almost three-quarters of the verdicts for defendants aged 60 or older went in favor of the plaintiff. In summary, it appears that younger and older defendants are more likely to receive unfavorable verdicts.

•As to the victim in criminal cases and the plaintiff in civil cases, no relationship was found to the verdicts that were returned.

C. Results Analyzed by Race

While race of the parties was not statistically related to verdicts in civil cases, it was a factor in criminal cases—for both the victim and the defendant.

1. Race of the Victim

The following table reflects the results for victims by race as against the verdicts in their cases.

Verdict	White victim	African-American victim	Other victim	Total
Not guilty on all charges	153 (32.1%)	80 (48.5%)	37 (29.1%)	270
Guilty on all charges	230 (48.3%)	51 (30.9%)	53 (41.7%)	334
Guilty on 1+ charge and not guilty on 1+ charge	32 (6.7%)	16 (9.7%)	12 (9.4%)	60
Some form of guilt on lesser charges	33 (6.9%)	13 (7.9%)	22 (17.3%)	68
No verdict	28 (5.9%)	5 (3.0%)	3 (2.4%)	36
Total	476	165	127	788

2. Findings

●When an African-American was the victim, defendants were found not guilty more often—by far—than they were when facing white or "other" victims. (48.5% vs. 32.1% and 29.1%). The differences in these percentages are compelling.

●This effect held true for "guilty on all charges" as well. Cases with white victims resulted in such verdicts 48.3% of the time, as against 41.7% of the time for "other" victim races—and a far-lower 30.9% of the time for African-American victims.

●These survey results support the finding that race of the victim, particularly when the race is African-American, plays a definite role in influencing jury verdicts.

3. Race of the Defendant

The following table shows the results of race of the defendant as compared to the verdicts they received.

Verdict	White defendant	African-American defendant	Other defendant	Total
Not guilty on all charges	191 (37.5%)	82 (39.6%)	34 (25.3%)	307
Guilty on all charges	222 (43.6%)	76 (36.7%)	64 (47.8%)	362
Guilty on 1+ charge and not guilty on 1+ charge	33 (6.5%)	17 (8.2%)	17 (12.7%)	67
Some form of guilt on lesser charges	37 (7.3%)	16 (7.7%)	15 (11.2%)	68
No verdict	26 (5.1%)	16 (7.7%)	4 (3.0%)	46
Total	509	207	134	850

4. Findings

- While African-American race of victims is correlated with higher verdicts of "guilty on all charges" and lower verdicts of acquittal, the opposite is found here for African-American defendants.

- Among these race categories—White, African-American and Other—African-American defendants were most likely to be acquitted and, least likely to be found "guilty on all charges" (39.6% to 37.5% and 25.3%, and 36.7% to 43.6% and 47.8% respectively).

IX. THE PARTIES IN THE EYES OF THE JURORS: CREDIBILITY, LIKEABILITY, SYMPATHY, AND, BLAMING SOMEONE ELSE—TO WHAT EFFECT, IF ANY, ON VERDICTS?

The survey asked jurors to share their feelings on a number of factors about the parties, and thereby attempt to discern whether or which of them played a role in their verdicts. The results were surprising.

A. The Parties' Credibility "Was an Important Factor in Deciding the Entire Case"

There was no statistical evidence showing that this factor played a role in the jurors' verdicts. This was true both in criminal[45] and civil cases, and for all parties and victims. This finding was surprising, in that 22.5% of those responding "agree(d) strongly" that credibility was important for the victim/plaintiff, and an additional 60.9% "agree(d)." For defendants, the responses were 18.7% and 60.8% respectively. And, 19.9% agreed strongly that "the credibility of the parties was the most important factor for me in deciding on my verdict," with an additional 37.3% agreeing—57.2% in all.

It is difficult to believe that the credibility of these victims or parties was not tested. With likely only rare exception, the victims, plaintiffs and defendants in civil cases would have testified—and been cross-examined. Any criminal defendants who testified would have been cross-examined as well. Within the limits of the Florida Evidence Code that governed these jurors' trials, all would have been thereby at risk of having their credibility

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[45] *But see* discussion *infra* Section X.A.

attacked by being questioned about their character,[46] confronted with prior convictions,[47] impeached through inconsistent statements[48] or testifying to matters that were not credible.

One possible explanation for there being no effect on their verdicts was initially thought to be significantly ineffective cross-examination, but this would have had to have been to an extensive degree, and such was not the case. Thirty-nine percent of all jurors "decided the case more on cross-examination than on direct examination." Another possible explanation may be found in the non-specific phrasing of this variable.[49]

B. "I Liked" the Victim, Plaintiff, or Defendant

Again, no association for this factor was found, whether in criminal or civil cases.

C. "I Felt Sympathy for the Victim, Plaintiff, or Defendant

1. Findings

- There was only one association of note as between all cases and parties or victims. Interestingly, in civil cases, jurors whose verdicts favored the defense felt more sympathy for *the plaintiff* than did jurors whose verdicts favored the plaintiff (mean of 2.86 for those rendering pro-defense verdicts, vs. 2.47 for those whose verdicts favored the plaintiff). The most likely explanation here would seem to be the simplest—that jurors felt badly for those they were ruling against.

D. "The Plaintiff Was Trying to Blame Someone Else for What Was His/Her Fault"

This commonly used theme of defense lawyers in civil cases was proven to be related to defense verdicts.

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[46] *See* FLA. STAT. ANN. §§ 90.404–405 (West 2011) (regarding when character evidence may be used).

[47] *See* FLA. STAT. ANN. § 90.610 (West 2011) (regarding when conviction of certain crimes may be used for impeachment).

[48] *See* FLA. STAT. ANN. § 909.608 (West 2011) (regarding who may impeach).

[49] *See* discussion *infra* Section X.A.

•Jurors who favored the defense, by a substantial margin, felt that the plaintiff was trying to blame someone else for something that was his or fault (mean of 2.69 for those favoring the defense in their verdict vs. 2.11 for those favoring the plaintiff).

X.   IN CRIMINAL CASES, AN ANALYSIS OF THE EFFECT ON VERDICTS WHERE THE JURORS: (1) SPECIFICALLY "FOUND THE DEFENDANT TO BE CREDIBLE", (2) "BELIEVED THROUGHOUT THE ENTIRE TRIAL THAT THE DEFENDANT WAS PRESUMED INNOCENT," AND (3) BELIEVED "IT WOULD HAVE BEEN BETTER FOR THE DEFENDANT IF HE/SHE HAD NOT TESTIFIED IN THE TRIAL"

A.   *"I Found the Defendant To Be Credible"*

Where jurors believe this it is validly associated with their verdicts. At first blush, this may seem inconsistent with the lack of associative effect discussed in Section IX.A. above as to the "import(ance)" of "the parties' credibility." Reconciliation may be based, however, on two explanations. First, this factor is much more specific than the overall importance of the parties' credibility. Second, this factor *already* assumes that the *defendant had testified.* No citation should be needed for the axiomatic proposition that when a criminal defendant testifies, his or testimony at least may and often will be the "turning point" in the case. One would, even without statistics, expect this factor to have an effect on verdicts. Whether or not a defendant will testify, therefore, is a decision of critical importance.

1. Findings

•Jurors who acquitted the defendant found him or her, by a substantial margin, to be more credible than those who not only returned full guilty verdicts, but who found any guilt at all (mean of 2.73 for "not guilty on all charges," 2.24 for "some guilt on lesser charges," 1.98 for "guilty on 1+ charge and not guilty on 1+ charge, and 1.93 for "guilty on all charges").

The import of these findings is that criminal defense attorneys, in their analysis of whether or not to have the defendant testify, should give great weight to how likely it will be that the jurors will find the defendant credible. Certainly, a diligent attorney can discern, although only to a probability at best, how likely his or her defendant's credibility will be to "hold up" at trial. Given the substantial advantage credible defendants were given by these jurors, it can reasonably be said that their attorneys were on the whole making wise decisions in having them testify. Had this advantage been narrower than the range between 2.73 and 1.93, for acquittal and guilty on all charges respectively, that would have been evidence that fewer defendants were found to be credible.

B. "I Believed Throughout the Entire Trial that the Defendant Was Innocent"

This basic right inuring to criminal defendants was tested by having jurors respond to the above statement. While 54.6% agreed with it, only 24.3% agreed strongly. And, 18.4% disagreed, with an additional 2.7% strongly disagreeing. The importance of this right, and how jurors in this survey felt about it, was previously discussed at length by the senior author.[50] Here, this statement was tested to see if there was a valid association between these jurors' beliefs and their verdicts. The answer is, none was found. Further research is well warranted on this important subject to see if in fact there may be, although not found here, a valid association between this fundamental right and verdicts in criminal cases.[51]

C. "It Would Have Been Better for the Defendant if He/She Had Not Testified in the Trial"

Consistent with the belief that the criminal defense attorneys appearing in these jurors' cases were, overall, making sound decisions as to whether

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[50] *See* Frank & Broschard, *supra* note 7, at 259–61.

[51] One would logically assume that the stronger a juror's belief in this precept, the more likely he or she would be to return acquittals or verdicts of guilty on lesser or not all charges, and vice versa. One explanation for this lack of association may be in the phrasing of the statement—some jurors may have interpreted "throughout the entire trial" to mean "up to and including the rendition of their verdict." If so, and if they found the defendant guilty to any degree, then they logically would have disagreed with the statement and thereby caused this lack of associative value.

their defendants should testify,[52] the jurors felt as follows: 22.5% strongly disagreed, 47.3% disagreed, and only 21.2% and 9.0% respectively strongly agreed or agreed. And, in terms of whether this belief played a statistically valid role in their verdicts, the answer is that it did.

1. Findings

●The greatest disagreement with this statement was found with jurors who returned acquittals (mean of 1.80). The next greatest disagreement was found for those who found only "some guilt on lesser charges" (mean of 2.14). The greatest agreement with this statement was from jurors who found the defendant either guilty on all charges (mean of 2.48), or "guilty on 1+ charge and not guilty on 1+ charge" (mean of 2.59).

XI. THE PICTURE BECOMES CLEARER IN CRIMINAL CASES—USE OF THE LOGISTIC REGRESSION ANALYSIS TO EXAMINE SURVEY VARIABLES IN COMBINATION, AND THE EFFECTS ON VERDICTS OF GUILTY OR INNOCENT THAT EMERGE

The analyses shown above were substantially in the form of comparing a single variable, e.g., whether the attorney was honest with the jury at all times, with the verdicts returned.[53] In the logistic regression analysis that is used in this section, multiple survey variables were combined to create new variables,[54] which then were analyzed to determine what effects, if any, they had on these jurors' verdicts of guilt or innocence.[55]

In addition, this analysis allows the simultaneous incorporation of many variables to examine the effects of the different variables in the model, while taking into account other important variables. In the model, the following variables were included:

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[52] *See* discussion *supra* Section X.A.

[53] *See* discussion *supra* Section V.B.

[54] For a full explanation of what variables were combined, and which new variables were created, see Appendix at Section XI.

[55] Because there were not nearly as many jurors' responses in civil cases as in criminal cases. *See*, Section II, Table *Type of trial in which you participated*. Given the complexity of the logistic regression analysis, it was applied here only to criminal cases.

●Juror gender, age, race, education, income, and previous experience as a juror.

●Prosecuting attorneys' gender, age, and race.

●Defense attorneys' gender, age, and race.

●For both prosecutors and defense attorneys, composite variables consisting of competence, likeability, and whether they made too many objections.

●Defendants' gender, age, race.

1. Findings

●Male jurors were 1.88 times more likely to find at least some form of guilt than were women.

●White prosecutors were 2.53 times more likely to receive a verdict of at least some form of guilt than were African-American prosecutors.

●Prosecutors between the ages of 31 and 50 were 1.93 times more likely to receive such a verdict than were prosecutors under the age of 30.

●Defendants between the ages of 41 and 60 were 2.11 times more likely to be found guilty at least to some degree than were defendants under the age of 20.

●As the perceived ability of prosecutors rises, so does the likelihood of their obtaining verdicts of guilty to at least some degree. And, this effect is dramatic.[56]

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[56] This index of perceived ability of the prosecutor resulted from summing four items, and the reliability of the resulting scores was $\alpha = .74$. This composite resulted in scores that ranged from four to sixteen, where increasing scores indicate increased ability of the prosecutor. As scores increased on this composite, so did the likelihood of a guilty verdict. In fact, an increase of one point on this composite resulted in the odds of a guilty verdict being increased 1.69 times.

●As the perceived ability of defense attorneys rises, so does the likelihood of their obtaining verdicts of not guilty or reduced guilt. Increased ability is associated with an increase in the defense attorney's desired outcome.[57]

●As likeability of the prosecutor in the eyes of the jurors is found to increase, the likelihood of a guilty verdict in at least some form goes down. This is explained by the fact that, as noted above,[58] the effects of likeability, when analyzed individually, were modest. When included in a model that contains attorney ability, competence emerges as a more important predictor of a guilty verdict than likeability.[59]

●As likeability of the defense attorney is perceived to increase, the likelihood of a guilty verdict in at least some form goes up.[60] Again, the effect of this variable, when analyzed individually, was modest.[61] This seeming anomaly may be further explained by the limited reliability or precision in which this construct was measured.[62]

●When ability and likeability are included in the model, it is clear that prosecutors and defense attorneys who are seen

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[57] This index of perceived ability of the defense attorney resulted from summing four items, and the reliability of the resulting scores was $\alpha = .70$. This composite resulted in scores that ranged from four to sixteen, where increasing scores indicate increased ability in the defense attorney. As scores increased on this composite, the likelihood of a guilty verdict decreased. An increase of one point on this composite resulted in the odds of a guilty verdict increasing 0.71 times. In other words, as scores of defense attorneys' ability increased, the likelihood of guilty verdicts dropped.

[58] *See* discussion *supra* Section VI.A.

[59] This index of likeability of the prosecutor resulted from summing two items, and the reliability of the resulting scores was $\alpha = .63$. An increase in one point on this composite resulted in the odds of a guilty verdict increasing 0.71 times. The low reliability of $\alpha = .63$ may be another reason for this contradictory finding.

[60] This index of likeability of the defense attorney resulted from summing two items, and the reliability of the resulting scores was $\alpha = .62$. An increase of one point on this composite resulted in the odds of a guilty verdict increasing 1.36 times. The low reliability of $\alpha = .62$, again, may explain this contradictory finding.

[61] *See* discussion *supra* Section VI.A.

[62] *See* discussion *supra* Section VI.A.

as able are more likely to get the outcome they want, while those who are seen as likeable are less likely to get the outcomes they want. Based on these analyses, it is clear that it is better to have a more able attorney than a likeable one.

XII. CONCLUSION

To the extent trial attorneys' beliefs about what will succeed at trial are not based even in part on statistically associative findings, as opposed to anecdotal experiences, they are failing to use a valuable tool that could contribute to greater success on behalf of their clients. This article has pointed the way in various respects toward that success. It is hoped that such attorneys will avail themselves of the findings and analyses found herein, and also take time to review other areas of their choosing in the ever-expanding field of jury research. Statistically associative tools do exist that will help enable new trial attorneys to become good more quickly, and make experienced trial attorneys better. Their use is highly recommended.

APPENDIX[63]

SECTION III: JUROR DEMOGRAPHICS—GENDER, AGE, AND RACE—AND HOW THEY RELATE TO THE VERDICTS THAT WERE RETURNED

This section consists of Items 1, 2, and 3 associate with Items 196 and Item 197. The items are as follows:

Item 1	Sex of the juror.
Item 2	Age of the juror is: (a) under 25; (b) 25–34; (c) 35–44, (d) 45–54; (e) 55–64, 65 and over.
Item 3	Race of the juror is: (a) White, Non-Hispanic; (b) White, Hispanic; (c) African-American, Non-Hispanic; (d) African-American, Hispanic; (e) Asian; (f) American Indian, (g) Other.
Item 196	The jury found: (a) not guilty on all charges; (b) guilty on all charges; (c) guilty as charged on 1+ charge, not guilty on 1+ charge; (d) some form of guilt on lesser charge(s); (e) no verdict was reached.
Item 197	Choose one: (a) we found liability in favor of the plaintiff; (b) we found no liability and it was a defense verdict; (c) no verdict was reached due to a hung jury; (d) no verdict was reached because the case was settled. In these analyses for Item 197, we looked at judgments in the favor of the plaintiff or judgments in favor of the defense verdict.
Item 198	The amount of damages awarded was: (a) 1000 or less, (b) 1001–5000; (c) 5001–10,000; (d) 10,001–25,000; (e) 25,001–50,000; (f) 50,001–100,000; (g) 100,001–250,000; (h) 250,000–500,000; (i) 500,001–1 million; (j) more than 1 million.

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[63] The sections of the appendix are numbered so that they correlate to the relevant textual section. Thus, the first section in the appendix is section III, and it correlates to the textual Section III.

Item 199	The amount of the award was closer to the dollar figure suggested by the plaintiff's attorney than the dollar figure suggested by the defense attorney which was answered on a 4 point scale ranging from "disagree strongly" to "agree strongly."
Item 200	We found the plaintiff to be: (a) not at fault; (b) 10% or less at fault; (c) between 11% and 20% at fault; (d) between 21% and 30% at fault; (e) between 31% and 40% at fault; (f) between 41% and 50% at fault; (g) between 51% and 60% at fault; (h) between 61% and 70% at fault; (i) between 71% and 80% at fault; (j) between 81% and 90% at fault; (k) between 91% and 100% at fault.

Section 3.1: Associations with Item 196

Item 1 by Item 196: $X^2(4) = 10.28$, $p = .036$. There is a relationship between verdict and juror sex.

Item 2 by Item 196: $X^2(16) = 26.71$, $p = .144$. There is no relationship between verdict and juror age.

Item 3 by Item 196: $X^2(8) = 8.05$, $p = .43$. There is no relationship between verdict and juror race.

Section 3.2: Associations with Item 197

Item 1 by Item 197: $X^2(1) = 0.144$, $p = .705$. There is no relationship between civil verdict and juror sex.

Item 2 by Item 197: $X^2(4) = 4.103$, $p = .392$. There is no relationship between civil verdict and juror age.

Item 3 by Item 197: $X^2(2) = 1.033$, $p = .60$. There is no relationship between civil verdict and juror race.

Section 3.3: Associations with Item 198

Item 1 by Item 198: $X^2(1) = 1.938$, $p = .164$. There is no relationship between amount of award and juror sex.

Item 2 by Item 198: $X^2(4) = 1.295$, $p = .862$. There is no relationship between amount of award and juror age.

Item 3 by Item 198: $X^2(2) = 0.669$, $p = .716$. There is no relationship between amount of award and juror race.

Section 3.4: Associations with Item 199

Item 1 by Item 199: $F(1, 60) = 0.005$, $p = .942$, $\eta^2 = .000$. There is no relationship between evaluation of award being closer to plaintiff and juror sex.

Item 2 by Item 199: $F(4, 56) = 1.585$, $p = .191$, $\eta^2 = .102$. There is no relationship between evaluation of award being closer to plaintiff and juror age.

Item 3 by Item 199: $F(2, 59) = 0.500$, $p = .609$, $\eta^2 = .017$. There is no relationship between evaluation of award being closer to plaintiff and juror race.

Section 3.5: Associations with Item 200

Item 200 reads, " We found the plaintiff to be: (a) not at fault; (b) 10% or less at fault; (c) between 11% and 20% at fault; (d) between 21% and 30% at fault; (e) between 31% and 40% at fault; (f) between 41% and 50% at fault; (g) between 51% and 60% at fault; (h) between 61% and 70% at fault; (i) between 71% and 80% at fault; (j) between 81% and 90% at fault; (k) between 91% and 100% at fault."

This item was treated as continuous and ANOVA's were performed treating this variable as the dependent measure.

Item 1 by Item 199: $F(1, 103) = 1.048$, $p = .308$, $\eta^2 = .010$. There is no relationship between degree of fault and juror sex.

Item 2 by Item 199: $F(4, 97) = 0.772$, $p = .546$, $\eta^2 = .031$. There is no relationship between degree of fault and juror age.

Item 3 by Item 199: $F(2, 101) = 2.584$, $p = .08$, $\eta^2 = .049$. There is no relationship between degree of fault and juror race.

Section 3.6: Associations with Item 200

This section consists of Items 1, 2, and 3 associate with Items 196 and Item 197. The items are as follows:

Item 5	Education of the juror is: (a) high school or less; (b) post-high school but no college degree; (c) 4-year college; (d) at least some graduate work.
Item 6	Age of the juror is: (a) under 25; (b) 25–34; (c) 35–44; (d) 45–54; (e) 55–64, (f) 65 and over.
Item 196	The jury found: (a) not guilty on all charges; (b) guilty on all charges; (c) guilty as charged on 1+ charge, not guilty on 1+ charge; (d) some form of guilt on lesser charge(s); (e) no verdict was reached.
Item 197	Choose one: (a) we found liability in favor of the plaintiff; (b) we found no liability and it was a defense verdict; (c) no verdict was reached due to a hung jury; (d) no verdict was reached because the case was settled. In these analyses for Item 197, we looked at judgments in the favor of the plaintiff or judgments in favor of the defense verdict.

Item 5 by Item 197: $X^2(12) = 9.89$, $p = .63$. There is no relationship between verdict and juror education.

Item 5 by Item 198: $X^2(3) = 4.05$, $p = .26$. There is no relationship between liability and juror education.

Item 6 by Item 197: $X^2(12) = 11.49$, $p = .49$. There is no relationship between verdict and juror salary.

Item 6 by Item 198: $X^2(3) = 3.31$, $p = .35$. There is no relationship between liability and juror salary.

SECTION IV: ATTORNEYS' DEMOGRAPHICS—GENDER, AGE AND RACE—AND HOW THEY RELATE TO THE VERDICTS THAT WERE RETURNED

The following items were used to analyze data for this section of the report:

Item 12	The (sex) of the prosecuting attorney.
Item 13	The (sex) of the defense attorney.
Item 14	The (race/ethnicity) of the plaintiff/prosecuting attorney was coded as: (a) White; (b) Black (African-American or Black Hispanic); or (c) Other (Hispanic, Asian, American Indian).

Item 15	The (race/ethnicity) of the defense attorney was coded as: (a) White; (b) Black (African-American or Black Hispanic); or (c) Other (Hispanic, Asian, American Indian).
Item 16	The (age) of the plaintiff's/prosecuting attorney was coded as: (a) 30 years of age or younger; (b) 31–50 years of age; or (c) over 50 years of age.
Item 17	The (age) of the defense attorney was: coded as: (a) 30 years of age or younger; (b) 31–50 years of age; or (c) over 50 years of age.
Item 196	The jury found: (a) not guilty on all charges; (b) guilty on all charges; (c) guilty as charged on 1+ charge, not guilty on 1+ charge; (d) some form of guilt on lesser charge(s); (e) no verdict was reached.
Item 197	Choose one: (a) we found liability in favor of the plaintiff; (b) we found no liability and it was a defense verdict; (c) no verdict was reached due to a hung jury; (d) no verdict was reached because the case was settled.

Section 4.1: Associations with Juror Verdict (Item 196)

Item 12 (Sex of Prosecuting Attorney) by Juror Decision: $\chi^2(4) = 12.378$, p = .015. There is a relationship between sex of prosecuting attorney and juror decision.

Item 13 (Sex of Defense Attorney) by Juror Decision: $\chi^2(4) = 5.831$, p = .212. There is no relationship between sex of prosecuting attorney and juror decision.

Item 14 (Ethnicity of Plaintiff/Prosecuting Attorney) by Juror Decision: $\chi^2(8) = 24.468$, p = .002. There is a relationship between race-ethnicity of prosecuting attorney and juror decision.

Item 15 (Ethnicity of Defending Attorney) by Juror Decision: $\chi^2(8) = 6.677$, p = .572. There is no relationship between race-ethnicity of the defense attorney and juror decision.

Item 16 (Age of Prosecuting Attorney) by Juror Decision: $\chi^2(8) = 16.428$, p = .037. There is a relationship between the age of the prosecuting attorney and juror decision.

Item 17 (Age of Defense Attorney) by Juror Decision: $\chi^2(8) = 4.855$, p = .773. There is no relationship between the age of the defense attorney and juror decision. This is in contrast to the prosecution finding immediately above.

Section 4.2: Associations with Civil Trial Verdict (Item 197)

Item 12 (Sex of Plaintiff) by Juror Decision: $\chi^2(1) = 6.285$, p = .012. There is a relationship between sex of prosecuting attorney and juror decision.

Item 13 (Sex of Defense Attorney) by Juror Decision: $\chi^2(1) = 6.29$, p = .012. There is a relationship between sex of defense attorney and civil verdict.

Section 4.3: Associations with AMOUNT of Civil Trial Verdict (Item 198; coded < 50,000 or > 50,000)

Item 12 (Sex of Plaintiff) by Amount of Civil Verdict: All of the plaintiff attorneys were men, so there is no association between sex of plaintiff and amount of civil verdict.

Item 13 (Sex of Defense Attorney) by Juror Decision: $\chi^2(1) = 0.29$, p = .865. There is no relationship between sex of defense attorney and amount of civil verdict.

Item 14 (Ethnicity of Plaintiff/Prosecuting Attorney) by Civil Verdict Decision: $\chi^2(1) = 0.043$, p = .84. There is no relationship between race-ethnicity of prosecuting attorney and amount of civil verdict.

Item 15 (Ethnicity of Defending Attorney) by Civil Verdict Decision: $\chi^2(1) = 2.677$, p = .102. There is no relationship between race-ethnicity of the defense attorney and the amount of civil verdict. Only 3 of the 61 attorneys were "other" and 58 were white.

Item 16 (Age of Prosecuting Attorney) by Civil Verdict Decision: $\chi^2(1) = 0.032$, p = .86. There is no relationship between the age of the prosecuting attorney and the amount of civil verdict. There were no plaintiff attorneys younger than 30 involved in these cases.

Item 17 (Age of Defense Attorney) by Civil Verdict Decision: $\chi^2(2) = 1.685$, p = .43. There is no relationship between the age of the defense attorney and the amount of civil verdict.

SECTION V: HOW JURORS VIEWED THEIR ATTORNEYS IN RELATION TO THEVERDICTS THEY RETURNED

The following items were analyzed for this section of the report:

Item 20	The plaintiff's/prosecuting attorney understood both the strengths and weaknesses of his/her case.
Item 21	The defense understood both the strengths and weaknesses of his/her case.
Item 196	The jury found: (a) not guilty on all charges; (b) guilty on all charges; (c) guilty as charged on 1+ charge, not guilty on 1+ charge; (d) some form of guilt on lesser charge(s); (e) no verdict was reached.
Item 197	Choose one: (a) we found liability in favor of the plaintiff; (b) we found no liability and it was a defense verdict; (c) no verdict was reached due to a hung jury; (d) no verdict was reached because the case was settled.
Item 198	The amount of damages awarded was: (a) 1000 or less, (b) 1001–5000; (c) 5001–10,000; (d) 10,001–25,000; (e) 25,001–50,000; (f) 50,001–100,000; (g) 100,001–250,000; (h) 250,000–500,000; (i) 500,001–1 million; (j) more than 1 million. Anything up to 50,000 was considered in one group (n = 28), while any award over 50,000 was considered as a second group (n = 35).
Item 199	The amount of the award was closer to the dollar figure suggested by the plaintiff attorney than the dollar figure suggested by the defense attorney, which was answered on a 4 point scale ranging from "disagree strongly" to "agree strongly."

Section 5.1: Relationship between Item 196 and Items 20 and 21

In this analysis Item 196 (which is Item 197 in the data set) has been recoded into the following groupings (this coding is different from a previous variable that had been coded in the data set):

Group 1: not guilty on all charges.

Group 2: guilty on all charges.

Group 3: guilty as charged on 1+ charge; not guilty on 1+ charge.

Group 4: some form of guilt on lesser charge(s).

Group 5: no verdict was reached.

A one-way MANOVA with this recoded Item 196 as the independent

variable and items 20 and 21 as dependent variables was conducted. The MANOVA was followed up with individual univariate ANOVA's.

Multivariate Test

Main Effect for q196 (criminal trial verdict): Wilks' $\lambda = 0.851$, Multivariate $F(8, 1768) = 18.58$, $p = .000$, $\eta^2 = .078$.

Univariate Tests

Dependent Variable	Main Effect for Verdict
Item 20: Plaintiff/prosecutor understood strengths and weaknesses of their case	$F(4, 885) = 22.66$, $p = .00$, $\eta^2 = .093$
Item 21: Defense attorney understood strengths and weaknesses of case	$F(4, 885) = 7.90$, $p = .00$, $\eta^2 = .034$

Section 5.2: Relationship between Item 197 and Items 20 and 21

In this analysis Item 197 (which is Item 198 in the data set) has been recoded, into the following groupings:
Group 1: favor of the plaintiff.
Group 2: favor of the defense.

Dependent Variable	Main Effect for Verdict
Item 20: Plaintiff/prosecutor understood strengths and weaknesses of their case	$F(1, 116) = 4.48$, $p = .04$, $\eta^2 = .037$
Item 21: Defense attorney understood strengths and weaknesses of case	$F(1, 116) = 0.18$, $p = .89$, $\eta^2 = .000$

Section 5.3: Relationship between Item 198 and Items 20 and 21

In this analysis Item 198 (which is Item 199 in the data set) has been recoded, into the following groupings:
Anything up to 50,000 was considered in one group (n = 28), while any award over 50,000 was considered as a second group (n = 35).

Dependent Variable	Main Effect for Verdict
Item 20: Plaintiff/prosecutor understood strengths and weaknesses of their case	$F(1, 58) = 0.26, p = .61,$ $\eta^2 = .004$
Item 21: Defense attorney understood strengths and weaknesses of case	$F(1, 58) = 7.14, p = .01, \eta^2 = .11$

Section 5.4: Correlations between perception of attorney understanding of case and whether the amount of the award was closer to dollar figure suggested by plaintiff

Correlation (Item 20, Item 199) = $-0.065, p = .62$, N = 61
<u>not associated</u>
Correlation (Item 21, Item 199) = $-0.441, p = .000$, N = 61
<u>strongly associated</u>

Section 5.5

In addition, the following items were analyzed for this subsection:

Item 18	The plaintiff's/prosecuting attorney understood both the strengths and weaknesses of his/her case.
Item 19	The defense attorney believed in his/her case.
Item 24	I believe the plaintiff's/prosecuting attorney was honest with the jury at all times.
Item 25	I believe the defense attorney was honest with the jury at all times.
Item 26	The plaintiff's/prosecuting attorney asked the witnesses questions that were important to deciding the case.
Item 27	The defense attorney asked the witnesses questions that were important to deciding the case.
Item 28	The plaintiff's/prosecuting attorney, overall, showed a stronger personality in the courtroom than did the defense attorney.
Item 196	The jury found: (a) not guilty on all charges; (b) guilty on all charges; (c) guilty as charged on 1+ charge, not guilty on 1+ charge; (d) some form of guilt on lesser charge(s); (e) no verdict was reached.

Item 197	Choose one: (a) we found liability in favor of the plaintiff; (b) we found no liability and it was a defense verdict; (c) no verdict was reached due to a hung jury; (d) no verdict was reached because the case was settled. In these analyses for Item 197, we looked at judgments in the favor of the plaintiff or judgments in favor of the defense verdict.

Section 5.5.1: Item 196 Analysis

In these analyses, a one-way MANOVA was performed, where Item 196 served as the independent variable and Items 18, 19, 24, 25, 26, 27, and 28 served as the dependent variables. The MANOVA was followed up with individual univariate ANOVA's.

Multivariate Test

Main Effect for q196 (verdict): Wilks' $\lambda = 0.717$, Multivariate $F(28, 3105.802) = 10.723$, $p = .000$, $\eta^2 = .080$. This is statistically significant, which suggests the evaluations depend on the verdict in the case.

Univariate Tests

Dependent Variable	Main Effect for Verdict
Item 18: The plaintiff's/prosecuting attorney understood both the strengths and weaknesses of his/her case.	$F(4, 867) = 34.981$, $p = .00$, $\eta^2 = .139$
Item 19: The defense attorney believed in his/her case.	$F(4, 867) = 26.922$, $p = .00$, $\eta^2 = .110$
Item 24: I believe the plaintiff's/prosecuting attorney was honest with the jury at all times.	$F(4, 867) = 8.48$, $p = .00$, $\eta^2 = .038$
Item 25: I believe the defense attorney was honest with the jury at all times.	$F(4, 867) = 10.437$, $p = .00$, $\eta^2 = .046$
Item 26: The plaintiff's/prosecuting attorney asked the witnesses questions that were important to deciding the case.	$F(4, 867) = 21.014$, $p = .00$, $\eta^2 = .088$

Item 27: The defense attorney asked the witnesses questions that were important to deciding the case.	$F(4, 867) = 6.311$, $p = .00$, $\eta^2 = .028$
Item 28: The plaintiff's/prosecuting attorney, overall, showed a stronger personality in the courtroom than did the defense attorney.	$F(4, 867) = 21.010$, $p = .00$, $\eta^2 = .088$

Section 5.5.2: Item 197 Analysis

As a second analysis, a one-way MANOVA was performed, where Item 197 served as the independent variable and Items 18, 19, 24, 25, 26, 27, and 28 served as the dependent variables. The MANOVA was followed up with individual univariate ANOVA's.

Multivariate Test

Main Effect for q197 (verdict): Wilks' $\lambda = 0.828$, Multivariate $F(7, 110) = 3.264$, $p = .003$, $\eta^2 = .172$.

Univariate Tests

Dependent Variable	Main Effect for Verdict
Item 18: The plaintiff's/prosecuting attorney understood both the strengths and weaknesses of his/her case.	$F(1, 116) = 1.378$, $p = .24$, $\eta^2 = .012$ NOT STATISTICAL
Item 19: The defense attorney believed in his/her case.	$F(1, 116) = 2.66$, $p = .11$, $\eta^2 = .022$ NOT STATISTICAL
Item 24: I believe the plaintiff's/prosecuting attorney was honest with the jury at all times.	$F(1, 116) = 2.30$, $p = .13$, $\eta^2 = .019$ NOT STATISTICAL
Item 25: I believe the defense attorney was honest with the jury at all times.	$F(1, 116) = 8.86$, $p = .004$, $\eta^2 = .071$ STATISTICAL
Item 26: The plaintiff's/prosecuting attorney asked the witnesses questions that were important to deciding the case.	$F(1, 116) = 1.233$, $p = .27$, $\eta^2 = .011$ NOT STATISTICAL

Item 27: The defense attorney asked the witnesses questions that were important to deciding the case.	$F(1, 116) = 9.22, p = .003,$ $\eta^2 = .074$ STATISTICAL
Item 28: The plaintiff's/prosecuting attorney, overall, showed a stronger personality in the courtroom than did the defense attorney.	$F(1, 116) = 0.848, p = .36,$ $\eta^2 = .007$ NOT STATISTICAL

Section 5.6

The following variables were analyzed for this subsection:

Item 75	I felt the amount of money the plaintiff was claiming in the case was too high.
Item 76	I felt the amount the defendant said the plaintiff should get was too low.
Item 196	The jury found: (a) not guilty on all charges; (b) guilty on all charges; (c) guilty as charged on 1+ charge, not guilty on 1+ charge; (d) some form of guilt on lesser charge(s); (e) no verdict was reached. Due to the small sample sizes, we created two categories for Item 196, where comparisons involved some form of guilt or no form of guilt (by combining not guilty and no verdict).
Item 197	Choose one: (a) we found liability in favor of the plaintiff; (b) we found no liability and it was a defense verdict; (c) no verdict was reached due to a hung jury; (d) no verdict was reached because the case was settled. In these analyses for Item 197, we looked at judgments in the favor of the plaintiff or judgments in favor of the defense verdict.

Section 5.6.1: Item 196 Analysis

In these analyses, a one-way MANOVA was performed, where Item 196 served as the independent variable and Items 75 and 76 served as the dependent variables. The MANOVA was followed up with individual univariate ANOVA's.

Multivariate Test

Main Effect for q196 (verdict): Wilks' $\lambda = 0.912$, Multivariate $F(2, 112) = 5.413$, p = .006, $\eta^2 = .088$. This is statistically significant, which suggests the evaluations depend on the verdict in the case.

Univariate Tests

Dependent Variable	Main Effect for Verdict
Item 75: I felt the amount of money the plaintiff was claiming in the case was too high.	$F(1, 113) = 0.896$, p = .35, $\eta^2 = .008$ NOT STATISTICAL
Item 76: I felt the amount the defendant said the plaintiff should get was too low.	$F(1, 113) = 10.85$, p = .001, $\eta^2 = .088$ STATISTICAL

Section 5.6.2: Item 197 Analysis

In these analyses, a one-way MANOVA was performed, where Item 197 served as the independent variable and Items 75 and 76 served as the dependent variables. Since the MANOVA was not significant, Wilks' $\lambda = 0.967$, Multivariate $F(2, 95) = 1.61$, p = .21, $\eta^2 = .033$, and none of the univariate ANOVA's were significant, we conclude the groups in Item 197 did not differ on these items.

Section 5.7

The following variables were analyzed in this subsection:

Item 40	I believed before the trial actually began that plaintiff's attorneys are on the side of right.
Item 41	I believed before the trial actually began that (non-criminal) defense attorneys are on the side of right.
Item 196	The jury found: (a) not guilty on all charges; (b) guilty on all charges; (c) guilty as charged on 1+ charge, not guilty on 1+ charge; (d) some form of guilt on lesser charge(s); (e) no verdict was reached. Due to the small sample sizes, we created two categories for Item 196, where comparisons involved some form of guilt or no form of guilt (by combining not guilty and no verdict).

Item 197	Choose one: (a) we found liability in favor of the plaintiff; (b) we found no liability and it was a defense verdict; (c) no verdict was reached due to a hung jury; (d) no verdict was reached because the case was settled. In these analyses for Item 197, we looked at judgments in the favor of the plaintiff or judgments in favor of the defense verdict.

Section 5.7.1: Item 196 Analysis

In these analyses, a one-way MANOVA was performed, where Item 196 served as the independent variable and Items 40 and 41 served as the dependent variables. However, the main Effect for q196 was not significant, Wilks' $\lambda = 0.988$, Multivariate $F(2, 155) = 0.944$, $p = .391$, $\eta^2 = .012$. In addition, none of the univariate tests were significant, indicating that the two groups did not differ on these items.

Section 5.7.2: Item 197 Analysis

In these analyses, a one-way MANOVA was performed, where Item 197 served as the independent variable and Items 40 and 41 served as the dependent variables. Since the MANOVA was not significant, Wilks' $\lambda = 0.963$, Multivariate $F(2, 110) = 2.10$, $p = .13$, $\eta^2 = .037$, and since none of the univariate ANOVA's was significant, we conclude the groups in Item 197 did not differ on these items.

Section 5.8

The following variables were analyzed in this subsection:

Item 42	I believed before the trial actually began that prosecuting attorneys are on the side of right.
Item 43	I believed before the trial actually began that criminal defense attorneys are on the side of right.
Item 196	The jury found: (a) not guilty on all charges; (b) guilty on all charges; (c) guilty as charged on 1+ charge, not guilty on 1+ charge; (d) some form of guilt on lesser charge(s); (e) no verdict was reached.

| Item 197 | Choose one: (a) we found liability in favor of the plaintiff; (b) we found no liability and it was a defense verdict; (c) no verdict was reached due to a hung jury; (d) no verdict was reached because the case was settled. In these analyses for Item 197, we looked at judgments in the favor of the plaintiff or judgments in favor of the defense verdict. |

Section 5.8.1: Item 196 Analysis

In these analyses, a one-way MANOVA was performed, where Item 196 served as the independent variable and Items 42 and 43 served as the dependent variables. The MANOVA was followed up with individual univariate ANOVA's.

Multivariate Test

Main Effect for q196 (verdict): Wilks' $\lambda = 0.972$, Multivariate $F(8, 1420) = 2.555$, $p = .009$, $\eta^2 = .014$. This is statistically significant, which suggests the evaluations depend on the verdict in the case.

Univariate Tests

Dependent Variable	Main Effect for Verdict
Item 42: I believed before the trial actually began that prosecuting attorneys are on the side of right.	$F(4, 711) = 2.40$, $p = .05$, $\eta^2 = .013$ STATISTICAL
Item 43: I believed before the trial actually began that criminal defense attorneys are on the side of right.	$F(4, 711) = 3.411$, $p = .01$, $\eta^2 = .019$ STATISTICAL

Section 5.8.2: Item 197 Analysis

There were only three individuals who provided a rating to Items 42 and 43 and all 3 were in the condition of favor of the defense verdict. Since no one in the other condition answered Items 42 and 42, the groups cannot be compared.

Section 5.9

This section consists only of how one item, Item 44, associates with Item 196 and Item 197. Item 44 is as follows: the defense attorney was (a) a public defender; (b) a private attorney; or (c) it was not made known to the jury.

Item 196 Analysis: a cross-tab was performed to assess the association between the type of attorney and outcome of the trial. The outcome indicated that an association existed, $\chi^2(8) = 20.793$, $p = .01$.

Item 197 Analysis: there were only three individuals who provided a rating to Items 42 and 43 and all 3 were in the condition of favor of the defense verdict. Since no one in the other condition answered Items 42 and 42, the groups cannot be compared.

SECTION VI: LIKEABILITY AND ABILITY OF THE ATTORNEYS

The items that were analyzed in this section of the survey were as follows:

Item 34	The plaintiff's/prosecuting attorney was a likeable person.
Item 35	The defense attorney was a likeable person.
Item 38	Please rate the overall ability of the plaintiff's/prosecuting attorney.
Item 39	Please rate the overall ability of the defense attorney.
Item 196	The jury found: (a) not guilty on all charges; (b) guilty on all charges; (c) guilty as charged on 1+ charge, not guilty on 1+ charge; (d) some form of guilt on lesser charge(s); (e) no verdict was reached.
Item 197	Choose one: (a) we found liability in favor of the plaintiff; (b) we found no liability and it was a defense verdict; (c) no verdict was reached due to a hung jury; (d) no verdict was reached because the case was settled.

Item 198	The amount of damages awarded was: (a) 1000 or less, (b) 1001–5000; (c) 5001–10,000; (d) 10,001–25,000; (e) 25,001–50,000; (f) 50,001–100,000; (g) 100,001–250,000; (h) 250,000–500,000; (i) 500,001–1 million; (j) more than 1 million. Anything up to 50,000 was considered in one group (n = 28), while any award over 50,000 was considered as a second group (n = 35).Anything up to 50,000 was considered in one group (n = 28), while any award over 50,000 was considered as a second group (n = 35).
Item 199	The amount of the award was closer to the dollar figure suggested by the plaintiff attorney than the dollar figure suggested by the defense attorney, which was answered on a 4 point scale ranging from "disagree strongly" to "agree strongly."

Section 6.1

In this analysis Item 196 (which is Item 197 in the data set) has been recoded, into the following groupings (this coding is different from a previous variable that had been coded in the data set):

Group 1: not guilty on all charges.

Group 2: guilty on all charges.

Group 3: guilty as charged on 1+ charge; not guilty on 1+ charge.

Group 4: some form of guilt on lesser charge(s).

Group 5: no verdict was reached.

Dependent Variable	Main Effect for Verdict
Item 34: Plaintiff/prosecutor likeable	$F_{(4, 882)} = 5.438$, $p = .00$, $\eta^2 = .024$
Item 35: Defense attorney likeable	$F_{(4, 882)} = 0.218$, $p = .93$, $\eta^2 = .001$
Item 38: Overall ability of plaintiff/prosecutor	$F_{(4, 882)} = 36.68$, $p = .00$, $\eta^2 = .143$
Item 39: Overall ability of defense attorney	$F_{(4, 882)} = 7.61$, $p = .00$, $\eta^2 = .033$

Section 6.2

In this analysis Item 197 has been recoded, into the following groupings:

Group 1: favor of the plaintiff.

Group 2: favor of the defense.

A series of independent measures t-tests were performed to determine if these groups differed on Items 34, 35, 38 and 39.

Item 34: The two groups are statistically different, $t(121) = 2.063$, $p = .041$.

Item 35: The two groups are not statistically different, $t(120) = 0.07$, $p = .95$.

Item 38: The two groups are statistically different, $t(121) = 2.711$, $p = .008$.

Item 39: The two groups are not statistically different, $t(120) = -0.50$, $p = .62$.

Section 6.3

In this analysis Item 198 (which is Item 199 in the data set) has been recoded into the following groupings: $1 =$ no more than 50,000 awarded; $2 =$ at least 50,000 awarded.

A series of independent measures t-tests were performed to determine if these groups differed on Items 34, 35, 38 and 39.

Item 34: The two groups are not statistically different, $t(61) = -1.516$, $p = .135$.

Item 35: The two groups are statistically different, $t(59) = 2.49$, $p = .016$.

Item 38: The two groups are not statistically different, $t(61) = -1.43$, $p = .158$.

Item 39: The two groups are not statistically different, $t(59) = 1.61$, $p = .11$.

Section 6.4

This analysis measures the associations between perception of amount of award being closer to plaintiff with likeability, overall ability, and offensiveness of requested award.

Correlation (Item 34, Item 199) $= .105, p = .416, N = 62$
        not associated

Correlation (Item 35, Item 199) = -.333, p = .009, N = 61
   moderately associated
Correlation (Item 38, Item 199) = .063, p = .625, N = 62
   not associated
Correlation (Item 39, Item 199) = -.264, p = .04, N = 61
   somewhat associated
Correlation (Item 133, Item 199) = -.078, p = .584, N = 52
   not associated
Correlation (Item 134, Item 199) = .124, p = .392, N = 50
   not associated

SECTION VII: ATTONEYS' USE OF EXHIBITS—DOES IT PLAY A ROLE IN VERDICTS?

The following items were analyzed in this section of the report:

Item 112	The plaintiff's/prosecuting attorney used his/her exhibits as effectively as possible to present his/her case.
Item 113	The defense attorney used his/her exhibits as effectively as possible to present his/her case.
Item 114	The plaintiff's/prosecution's exhibits were important to me in reaching my verdict.
Item 115	The defense's exhibits were important to me in reaching my verdict.
Item 196	The jury found: (a) not guilty on all charges; (b) guilty on all charges; (c) guilty as charged on 1+ charge, not guilty on 1+ charge; (d) some form of guilt on lesser charge(s); (e) no verdict was reached.
Item 197	Choose one: (a) we found liability in favor of the plaintiff; (b) we found no liability and it was a defense verdict; (c) no verdict was reached due to a hung jury; (d) no verdict was reached because the case was settled. In these analyses for Item 197, we looked at judgments in the favor of the plaintiff or judgments in favor of the defense verdict.

Section 7.1: Associations by Item 196

<u>Multivariate Test</u>

Main Effect for q196 (verdict): Wilks' $\lambda = 0.829$, Multivariate $F(16, 1958.93) = 7.73$, $p = .000$, $\eta^2 = .046$. This is statistically significant, which suggests the evaluations depend on the verdict in the case.

<u>Univariate Tests</u>

Dependent Variable	Main Effect for Verdict
Item 112: The plaintiff's/prosecuting attorney used his/her exhibits as effectively as possible to present his/her case	$F(4, 644) = 18.65$, $p = .00$, $\eta^2 = .104$ STATISTICAL
Item 113: The defense attorney used his/her exhibits as effectively as possible to present his/her case	$F(4, 644) = 4.98$, $p = .001$, $\eta^2 = .03$ STATISTICAL
Item 114: The plaintiff's/prosecution's exhibits were important to me in reaching my verdict	$F(4, 644) = 10.28$, $p = .00$, $\eta^2 = .06$ STATISTICAL
Item 115: The defense's exhibits were important to me in reaching my verdict.	$F(4, 644) = 1.581$, $p = .18$, $\eta^2 = .01$ NOT STATISTICAL

Section 7.2: Associations by Item 197

<u>Multivariate Test</u>

Main Effect for q197 (verdict): Wilks' $\lambda = 0.946$, Multivariate $F(4, 107) = 1.52$, $p = .20$, $\eta^2 = .054$. This is not statistically significant, which suggests the evaluations do not depend on the verdict in the case.

Univariate Tests

Dependent Variable	Main Effect for Verdict
Item 112: The plaintiff's/prosecuting attorney used his/her exhibits as effectively as possible to present his/her case.	$F(1, 110) = 1.08$, $p = .30$, $\eta^2 = .01$ NOT STATISTICAL
Item 113: The defense attorney used his/her exhibits as effectively as possible to present his/her case.	$F(1, 110) = 1.00$, $p = .32$, $\eta^2 = .01$ NOT STATISTICAL
Item 114: The plaintiff's/prosecution's exhibits were important to me in reaching my verdict.	$F(1, 110) = 4.79$, $p = .03$, $\eta^2 = .042$ STATISTICAL
Item 115: The defense's exhibits were important to me in reaching my verdict.	$F(1, 110) = 0.23$, $p = .64$, $\eta^2 = .002$ NOT STATISTICAL

SECTION VIII: PLAINTIFF DEMOGRAPHICS—GENDER, AGE AND RACE—AND HOW THEY RELATE TO VERDICTS THAT WERE RETURNED

The following variables were used in this section of the paper:

Item 67	Gender of the plaintiff/victim: male or female.
Item 68	Race of the plaintiff: White, African American, or Other.
Item 69	Age of the plaintiff: less than 20, between 21 and 40, between 41 and 60, over 60.
Item 70	Gender of the defendant/corporate defense representative: male or female.
Item 71	Race of the defendant/corporate defense representative: White, African American, or Other.
Item 72	Age of the plaintiff: less than 20, between 21 and 40, between 41 and 60, over 60.
Item 196	The jury found: (a) not guilty on all charges; (b) guilty on all charges; (c) guilty as charged on 1+ charge, not guilty on 1+ charge; (d) some form of guilt on lesser charge(s); (e) no verdict was reached.

Item 197	Choose one: (a) we found liability in favor of the plaintiff; (b) we found no liability and it was a defense verdict; (c) no verdict was reached due to a hung jury; (d) no verdict was reached because the case was settled. In these analyses for Item 197, we looked at judgments in the favor of the plaintiff or judgments in favor of the defense verdict.

Section 8.1: Associations between Items 67–72 and Item 196

In this section, we examined how items 67–72 associate with the verdicts rendered in Item 196.

Item 67: not associated with Item 196, $\chi^2(4) = 2.164$, p = .71.

Item 68: associated with Item 196, $\chi^2(8) = 37.77$, p = .00.

Item 69: not associated with Item 196, $\chi^2(12) = 19.86$, p = .07.

Item 70: not associated with Item 196, $\chi^2(4) = 8.40$, p = .08.

Item 71: associated with Item 196, $\chi^2(8) = 18.79$, p = .02.

Item 72: not associated with Item 196, $\chi^2(12) = 16.77$, p = .16.

Section 8.2: Associations between Items 67–72 and Item 197

In this section, we examined how items 67–72 associate with the verdicts rendered in Item 197.

Item 67: not associated with Item 197, $\chi^2(1) = 0.04$, p = .84.

Item 68: not associated with Item 197, $\chi^2(2) = 0.75$, p = .69.

Item 69: not associated with Item 197, $\chi^2(3) = 7.13$, p = .07.

Item 70: not associated with Item 197, $\chi^2(1) = 0.24$, p = .63.

Item 71: not Associated with Item 197, $\chi^2(2) = 1.89$, p = .39.

Item 72: associated with Item 197, $\chi^2(3) = 14.18$, p = .003.

SECTION IX: THE PARTIES IN THE EYES OF THE JURORS: CREDIBILITY, LIKEABILITY, SYMPATHY, AND BLAMING SOMEONE ELSE—TO WHAT EFFECT, IF ANY, ON VERDICTS?

The following items were used for this section of the report:

Item 73	The plaintiff's credibility was an important factor in deciding the entire case.
Item 74	The defendant's credibility was an important factor in deciding the entire case.

Item 77	I liked the plaintiff.
Item 78	I liked the defendant/defense corporate representative.
Item 79	I felt sympathy for the plaintiff.
Item 80	I felt sympathy for the defendant/defense corporate representative.
Item 81	I generally believe that an adult should take responsibility for his/her actions.
Item 83	The plaintiff was trying to blame someone else for what was his/her fault.
Item 196	The jury found: (a) not guilty on all charges; (b) guilty on all charges; (c) guilty as charged on 1+ charge, not guilty on 1+ charge; (d) some form of guilt on lesser charge(s); (e) no verdict was reached. Due to the small sample sizes, we created two categories for Item 196, where comparisons involved some form of guilt or no form of guilt (by combining not guilty and no verdict).
Item 197	Choose one: (a) we found liability in favor of the plaintiff; (b) we found no liability and it was a defense verdict; (c) no verdict was reached due to a hung jury; (d) no verdict was reached because the case was settled. In these analyses for Item 197, we looked at judgments in the favor of the plaintiff or judgments in favor of the defense verdict.

Section 9.1: Associations as a Function of Item 196

In these analyses, a one-way MANOVA was performed, where Item 196 served as the independent variable and Items 73, 74, 77, 78, 79, 80, 81, and 83 served as the dependent variables. The MANOVA was followed up with individual univariate ANOVA's.

<u>Multivariate Test</u>

Main Effect for q196 (verdict): Wilks' $\lambda = 0.879$, Multivariate $F(8, 122) = 2.101$, $p = .041$, $\eta^2 = .121$. This is statistically significant, which suggests the evaluations depend on the verdict in the case.

Univariate Tests

Dependent Variable	Main Effect for Verdict
Item 73: The plaintiff's credibility was an important factor in deciding the entire case.	$F(1, 129) = .452$, $p = .50$, $\eta^2 = .003$ NOT STATISTICAL
Item 74: The defendant's credibility was an important factor in deciding the entire case.	$F(1, 129) = 0.32$, $p = .58$, $\eta^2 = .002$ NOT STATISTICAL
Item 77: I liked the plaintiff.	$F(1, 129) = 1.31$, $p = .26$, $\eta^2 = .01$ NOT STATISTICAL
Item 78: I liked the defendant/defense corporate representative.	$F(1, 129) = 0.67$, $p = .42$, $\eta^2 = .005$ NOT STATISTICAL
Item 79: I felt sympathy for the plaintiff.	$F(1, 129) = 0.09$, $p = .77$, $\eta^2 = .001$ NOT STATISTICAL
Item 80: I felt sympathy for the defendant/defense corporate representative.	$F(1, 129) = 0.01$, $p = .93$, $\eta^2 = .000$ NOT STATISTICAL
Item 81: I generally believe that an adult should take responsibility for his/her actions.	$F(1, 129) = 15.66$, $p = .00$, $\eta^2 = .108$ STATISTICAL
Item 83: The plaintiff was trying to blame someone else for what was his/her fault.	$F(1, 129) = .123$, $p = .73$, $\eta^2 = .001$ NOT STATISTICAL

Section 9.2: Associations as a Function of Item 197

In these analyses, a one-way MANOVA was performed, where Item 196 served as the independent variable and Items 73, 74, 77, 78, 79, 80, 81, and 83 served as the dependent variables. The MANOVA was followed up with individual univariate ANOVA's.

Multivariate Test

Main Effect for q196 (verdict): Wilks' $\lambda = 0.766$, Multivariate $F(8, 97) = 3.71$, $p = .001$, $\eta^2 = .234$. This is statistically significant, which suggests the evaluations depend on the verdict in the case.

Univariate Tests

Dependent Variable	Main Effect for Verdict
Item 73: The plaintiff's credibility was an important factor in deciding the entire case.	$F(1, 104) = 1.00$, $p = .32$, $\eta^2 = .009$ NOT STATISTICAL
Item 74: The defendant's credibility was an important factor in deciding the entire case.	$F(1, 104) = 0.50$, $p = .48$, $\eta^2 = .005$ NOT STATISTICAL
Item 77: I liked the plaintiff.	$F(1, 104) = 0.30$, $p = .59$, $\eta^2 = .003$ NOT STATISTICAL
Item 78: I liked the defendant/defense corporate representative.	$F(1, 104) = 0.26$, $p = .61$, $\eta^2 = .002$ NOT STATISTICAL
Item 79: I felt sympathy for the plaintiff.	$F(1, 104) = 5.84$, $p = .02$, $\eta^2 = .053$ STATISTICAL
Item 80: I felt sympathy for the defendant/defense corporate representative.	$F(1, 104) = 0.75$, $p = .39$, $\eta^2 = .007$ NOT STATISTICAL
Item 81: I generally believe that an adult should take responsibility for his/her actions.	$F(1, 104) = 3.34$, $p = .07$, $\eta^2 = .031$ NOT STATISTICAL
Item 83: The plaintiff was trying to blame someone else for what was his/her fault.	$F(1, 104) = 11.14$, $p = .001$, $\eta^2 = .097$ STATISTICAL

SECTION X: IN CRIMINAL CASES, AN ANALYSIS OF THE
EFFECT ON VERDICTS WHERE THE JURORS:
(1) SPECIFICALLY "FOUND THE DEFENDANT TO BE
CREDIBLE", (2) "BELIEVED THROUGHOUT THE ENTIRE
TRIAL THAT THE DEFENDANT WAS PRESUMED
INNOCENT," AND (3) BELIEVED "IT WOULD HAVE BEEN
BETTER FOR THE DEFENDANT IF HE/SHE HAD NOT
TESTIFIED IN THE TRIAL"

Section 10.1.1

The following items were analyzed in this subsection of the report:

Item 84	I found the defendant to be credible.
Item 86	I believed throughout the entire trial that the defendant was presumed innocent.
Item 87	It would have been better for the defendant if he/she had not testified in the trial.
Item 196	The jury found: (a) not guilty on all charges; (b) guilty on all charges; (c) guilty as charged on 1+ charge, not guilty on 1+ charge; (d) some form of guilt on lesser charge(s); (e) no verdict was reached.

Multivariate Test

Main Effect for q196 (verdict): Wilks' $\lambda = 0.739$, Multivariate $F(12, 1339.04) = 13.52$, $p = .000$, $\eta^2 = .098$. This is statistically significant, which suggests the evaluations depend on the verdict in the case.

Univariate Tests

Dependent Variable	Main Effect for Verdict
Item 84: I found the defendant to be credible.	$F(4, 508) = 34.241$, $p = .00$, $\eta^2 = .212$ STATISTICAL
Item 86: I believed throughout the entire trial that the defendant was presumed innocent.	$F(4, 508) = 1.46$, $p = .21$, $\eta^2 = .011$ NOT STATISTICAL

Item 87: It would have been better for the defendant if he/she had not testified in the trial.	$F(4, 508) = 21.08, p = .00,$ $\eta^2 = .142$ STATISTICAL

Section 10.1.2

These variables were analyzed in this section of the report:

Item 84	I found the defendant to be credible.
Item 85	The credibility of the defendant was an important factor in deciding the entire case.
Item 196	The jury found: (a) not guilty on all charges; (b) guilty on all charges; (c) guilty as charged on 1+ charge, not guilty on 1+ charge; (d) some form of guilt on lesser charge(s); (e) no verdict was reached. This variable was recoded such that 0 = not guilty or no verdict; 1 = some form of guilty.

Here, we tried to predict responses to Item 196 from a comparison of Items 84 and 85 to 196. Because we tried to predict a variable that has only two values, we used logistic regression to predict these type of variables. The logistic function can be expressed as:

Probability of guilt = $1/[1 + \exp(-\beta_0 - \beta_1 X)]$, where β_0 is the intercept and β_1 is the slope of a predictor. Any equivalent way of expressing this formula is $\log_e[P/(1-P)] = \beta_0 + \beta_1 X$.

One nice feature of this equivalent expression is that $P/(1-P)$ refers to the *odds* of an event. For example, if a male defendant is just as likely to be found guilty as a female defendant, those probabilities equal 50%. Expressing this in odds, the odds of a male being found guilty is $.50/(1-.50) = .5/.5 = 1.0$. If the odds of male guilty were higher than 1.0, we would say that males are more likely to be found guilty than females.

In these logistic regression models, we can then refer to the β_1 (from $\beta_1 X$, above), as the change in the log odds every time the value of the X variable (the independent variable) increases by 1 point (or 1 unit). Sometimes, the one unit denotes a difference between two groups (where a "0" denotes male sex and a "1" denotes female sex) and

sometimes one unit denotes an increase on a composite measure.

To describe how well the regression model explained the data, we use several indices of model fit. The model yielded an accuracy of 71.4%, as 165 of the 245 jurors who found the defendant not guilty or no verdict were correctly classified and 226 of the 303 juror who found the defendant guilty were correctly classified.

Finally, both Item 84 and Item 85 were predictors of classification. Higher scores on Item 84 were associated with an increased inclination not to find guilt.

In other words, for every 1 point increase in Item 84 (a score going from "1" to "2" or from "2" to "3" or from "3" to "4"), there was an increase in the odds of finding the defendant not guilty by a factor (or ratio) of 3.45. Item 85 was also a predictor of finding guilt, but a 1 unit increase in Item 85 was associated with an increase in the likelihood of finding the defendant guilty by a factor (or ratio) of 1.475.

Section 10.2.1

The following variables were analyzed in this section of the report:

Item 88	It was an important factor for me that that the defendant had been previously convicted.
Item 89	Because the defendant had been previously convicted, I believed his/her testimony in the trial less than I would have if there had been no other convictions.
Item 196	The jury found: (a) not guilty on all charges; (b) guilty on all charges; (c) guilty as charged on 1+ charge, not guilty on 1+ charge; (d) some form of guilt on lesser charge(s); (e) no verdict was reached.

First, we examined the relationship between verdict and responses to Item 88 and there was a relationship, $F(4, 150) = 2.80$, $p = .028$, $\eta^2 = .069$.

Section 10.2.2

As we did in Section 10.1.2, we performed a logistic regression to predict the lack of guilt/guilt outcome from Items 88 and 89. The model

yielded an accuracy of 60%, as 15 of the 65 jurors who found the defendant not guilty or no verdict were correctly classified and 73 of the 81 juror who found the defendant guilty were correctly classified.

Only Item 88 was a predictor of classification. Higher scores on Item 88 were associated with an increased inclination to find guilt. For every 1 unit increase in Item 84 (again, as scores increase from "1" to "2" or "2" to "3" or "3" to "4") there was an increase in the likelihood of finding the defendant guilty. That increased likelihood of finding guilt was two, so that people who scored "2" on Item 84 are twice as likely to find guilty than people who scored a "1" on Item 84. Similarly, people who scored a "3" on Item 84 were twice as likely to find guilt than people who scored a "2" on Item 84. Item 85 was not a predictor of finding guilt.

Section 10.3

The following variables were analyzed in this section of the report:

| Item 90 | If defendant had not testified in the trial, I believe the jury would have found him/her innocent of all charges. |
| Item 196 | The jury found: (a) not guilty on all charges; (b) guilty on all charges; (c) guilty as charged on 1+ charge, not guilty on 1+ charge; (d) some form of guilt on lesser charge(s); (e) no verdict was reached. |

A one-way ANOVA was performed to assess group differences in response to this item as a function of verdict. There were group differences, $F(4, 291) = 7.69$, $p = .000$, $\eta^2 = .096$.

Section 10.4

The following variables were analyzed in this section of the report:

Item 91	I believe the defendant had an obligation to testify.
Item 92	It mattered to the jury in deliberations that the defendant did not testify.
Item 94	The jury discussed the fact that the defendant did not testify.
Item 95	The defendant not testifying made it more likely that he/she would be found guilty.
Item 96	If the defendant had testified in the trial, I believe jury would have found him innocent of all charges.

| Item 196 | The jury found: (a) not guilty on all charges; (b) guilty on all charges; (c) guilty as charged on 1+ charge, not guilty on 1+ charge; (d) some form of guilt on lesser charge(s); (e) no verdict was reached. |

Multivariate Test

Main Effect for q196 (verdict): Wilks' $\lambda = 0.924$, Multivariate $F(16, 886.602) = 1.45$, $p = .11$, $\eta^2 = .019$. This is not statistically significant, which suggests the evaluations did not depend on the verdict in the case.

Univariate Tests

Dependent Variable	Main Effect for Verdict
Item 91: I believe the defendant had an obligation to testify.	$F(4, 293) = 2.39$, $p = .051$, $\eta^2 = .032$ NOT STATISTICAL
Item 92: It mattered to the jury in deliberations that the defendant did not testify.	$F(4, 293) = 0.96$, $p = .43$, $\eta^2 = .013$ NOT STATISTICAL
Item 94: The jury discussed the fact that the defendant did not testify.	$F(4, 293) = 0.287$, $p = .89$, $\eta^2 = .004$ NOT STATISTICAL
Item 95: The defendant not testifying made it more likely that he/she would be found guilty.	$F(4, 293) = 3.36$, $p = .01$, $\eta^2 = .044$ STATISTICAL

We then conducted a one-way ANOVA with Item 96 as the dependent variable and the levels of Item 196 as the independent variable, where there were group differences, $F(4, 199) = 3.69$, $p = .017$, $\eta^2 = .069$.

Finally, we conducted a series of logistic regressions to predict the dichotomized no guilt/guilt outcome variable.

Item 91 and Item 92 Predicting Dichotomized Item 196:

Neither variable added to the predictability of the model, as none of the predictors were significant.

Item 92 and Item 94 Predicting Dichotomized Item 196:

Neither variable added to the predictability of the model, as none of the predictors were significant.

Item 94 and Item 95 Predicting Dichotomized Item 196:
Neither variable added to the predictability of the model, as none of the predictors were significant.

SECTION XI: THE PICTURE BECOMES CLEARER IN CRIMINAL CASES—USE OF THE LOGISTIC REGRESSION ANALYSIS TO EXAMINE SURVEY VARIABLES IN COMBINATION, AND THE EFFECTS ON VERDICTS OF GUILTY OR INNOCENT THAT EMERGE

A logistic regression was conducted to predict some form of guilt from a finding of no form of guilt (not guilty or no verdict). The variables that were simultaneously entered in the model were as follows:

Characteristics of the juror
Juror sex, age, race, education, income, previous experience on a jury
Characteristics of the plaintiff's attorney
Attorney sex, age, race
Characteristics of the defense attorney
Attorney sex, age, race
Characteristics of the defendant
Defendant sex, age, race
Perception of the plaintiff's attorney

To create these variables, we summed several items to create a new variable. The reliability of these variables (denoted by the coefficient alpha statistic) is a measure of the average correlation in a set of items. Values closer to 1.0 are indicative of increased reliability. It is known that coefficient alpha increases as the number of items in the composite increases, so we deemed composites consisting of only two items as being accepted if their coefficient alpha estimate exceeded 0.60.

Competence = q18 + q20 + q24 + q26 (reliability estimate is α = .74).

So, plaintiff competence is the summation of items 18, 20, 24, and 26. The lowest possible score on this composite is 4 and the highest possible score on this composite is 16.

Too many objections = q30 + q32 (reliability estimate is α = .74).

Plaintiff making too many objections is the summation of items 30 and 32. The lowest possible score on this composite is 2 and the highest possible score on this composite is 8.

Likeability = q34 + q36 (reliability estimate is α = .63).

Plaintiff likeability is the summation of items 34 and 36. The lowest possible score on this composite is 2 and the highest possible score on this composite is 8.

Perception of the defense attorney

Competence = q19 + q21 + q23 + q25 (reliability estimate is α = .70).

Defense attorney competence is the summation of Items 19, 21, 23 and 25. The lowest possible score on this composite is 4 and the highest possible score on this composite is 16.

Too many objections = q31 + q33 (reliability estimate is α = .67).

Defense attorney making too many objections is quantified by summing Items 31 and 33. The lowest possible score on this composite is 2 and the highest possible score on this composite is 8.

Likeability = q35 + q37 (reliability estimate is α = .62).

Defense attorney likability is the sum of items 35 and 37. The lowest possible score on this composite is 2 and the highest possible score on this composite is 8.

The logistic regression model to predict verdict

Of the 248 individuals who were found not guilty or no verdict, the regression model correctly classified 149 of them as such, which is 60.1%. Of the 390 individual who were found with some form of guilt, the model correctly classified 326 of them, which is 83.6%. Overall, 74.5% of the individuals in this sample were correctly classified, which is indicative of a good model.

We then examined which predictors were statistically significant when they were all entered into the model at the same time. The odds, denoted Exp(B), indicate the increased likelihood of obtaining a guilty verdict.

Juror sex: Exp(B) = .531; 95% CI (0.355, 0.795).

Female jurors were .531 times more likely to find guilt than were men. Put another way, men were 1.88 times more likely to find some of guilt than were women.

Ethnicity of the plaintiff's attorney: Exp(B) = 0.394; 95% CI (0.186, 0.835).

African American plaintiffs were 0.394 times more likely to find guilt than were white plaintiffs. Put another way, white plaintiffs were over twice as likely (2.53 times more likely) to find some of guilt than were African-American attorneys.

Age of the plaintiff's attorney: Exp(B) = 1.927; 95% CI (1.13, 3.29).

Plaintiffs aged 31-50 were 1.93 times more likely to have rendered a guilty verdict than were plaintiffs under 30 years of age.

Age of the defendant: Exp(B) = 2.108; 95% CI (1.06, 4.18).

Defendants aged 41-60 were 2.11 times more likely to have been found guilty than were defendants aged less than 20 years of age.

Competence of the plaintiff: Exp(B) = 1.694; 95% CI (1.48, 1.94).

For every 1 unit increase in increased competence of the plaintiff, the likelihood of finding guilt increased 1.69 times. As the lowest possible score on this composite is 4 and the highest possible score on this composite is 16, an increase in the score on this composite from 4 to 5 is associated with the likelihood of finding guilt increasing by a factor of 1.69. The same increased likelihood of obtaining guilty verdict can be said for differences in individuals who score "5" and "6" and so on.

Competence of the defense attorney: Exp(B) = 0.608; 95% CI (0.53, 0.70).

For every 1 unit increase in increased competence of the plaintiff, the likelihood of finding guilt increased 0.61 times (put another way, decreases 1.64 times). As the lowest possible score on this composite is 4 and the highest possible score on this composite is 16, an increase in the score on this composite from 4 to 5 is associated with the likelihood of finding guilt decreasing by a factor of 1.64. The same increased likelihood of obtaining guilty verdict can be said for differences in individuals who score "5" and "6" and so on.

Likability of the plaintiff: Exp(B) = 0.708; 95% CI (0.54, 0.92).

For every 1 unit increase in increased likability of the plaintiff, the likelihood of finding guilt increased .71 times. Put another way, every 1-unit increase in likeability is associated with being 1.4 times more likely to find lack of guilt. As the lowest possible score on this composite is 2 and the highest possible score on this composite is 8, an increase in the score on this composite from 2 to 3 is associated with the likelihood of finding lack of guilt increasing by a factor of 1.40. The same increased likelihood of obtaining can be said for differences in individuals who score "3" and "4" and so on.

Likability of the defense attorney: Exp(B) = 1.36; 95% CI (1.07, 1.74).

For every 1 unit increase in increased likability of the plaintiff, the likelihood of finding guilt increased 1.36 times. As the lowest possible score on this composite is 2 and the highest possible score on this composite is 8, an increase in the score on this composite from 2 to 3 is associated with the likelihood of finding guilt increasing by a factor of 1.36. The same increased likelihood of obtaining can be said for differences in individuals who score "3" and "4" and so on.

The interpretation of these relationships between the predictor variables and the outcome variable assume the other variables in the model are held constant. Nonetheless, when competence and likeability are included in the model, it is clear that attorneys who are seen as competent are more likely to get the outcome they want while attorneys who are seen as likeable are least likely to get the outcomes they want.