Rapidly Evolving Approaches to **Jury Study** and **Selection**

**Jury Studies:** The same tools being used by social scientist, economist, and marketing companies are now revolutionizing the study of juries, both in policy work (academic, etc.) and in individual cases (private jury studies).

**Juror Research:** The same scraping and background search approaches used in employment, vetting for FBI, or deciding whether to make a loan are now revolutionizing individual juror research.

**Jury Selection:** The same technology used in “apps” is now revolutionizing how to track information on jurors.
Articles

• *Countering the Plaintiff’s Anchor: Jury Simulations to Evaluate Damages Arguments*, 101 Iowa L. Rev. 543 (2016)


• *Lemmings or Lions: Can Attorneys Manipulate Jurors through Belief Mirroring?* __ Nev. L. Rev. __ (forthcoming 2018)

• *Boomerangs, Cliffs, and Inverted U-Curves: Natural Delimitations of Damages: Why Damage Caps Are Unnecessary*

• *A Picture Is Worth What?* (in progress) (a paper investigating the impact bloody images and high-end simulations have on jurors in civil cases)

• *Ocean Front Property in Arizona: Can Jurors Really Set Aside Bias?* (in progress) (a paper investigating whether juror’s can set aside bias or whether rehabbing jurors leads to unconstitutional juries)
Big Data and Jury Research
Why do we need big samples?

Heads 2 out of 10 times = estimate of 20%

Heads 33 out of 50 times = estimate of 66%

Heads 62 out of 100 times = estimate of 62%

Heads 180 out of 350 times = estimate of 51.4%
Why do we need big samples?

Running average of case value by number of jurors responding

<table>
<thead>
<tr>
<th>Number of Observations</th>
<th>Millions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$2.9</td>
</tr>
<tr>
<td>9</td>
<td>$2.2</td>
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<td>17</td>
<td>$1.9</td>
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<tr>
<td>25</td>
<td>$2.1</td>
</tr>
<tr>
<td>33</td>
<td>$1.9</td>
</tr>
<tr>
<td>41</td>
<td>$2.0</td>
</tr>
<tr>
<td>49</td>
<td>$2.1</td>
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<tr>
<td>57</td>
<td>$1.9</td>
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<tr>
<td>65</td>
<td>$1.9</td>
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<tr>
<td>73</td>
<td>$2.0</td>
</tr>
<tr>
<td>81</td>
<td>$2.1</td>
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<tr>
<td>89</td>
<td>$1.9</td>
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<tr>
<td>97</td>
<td>$2.0</td>
</tr>
<tr>
<td>105</td>
<td>$2.1</td>
</tr>
<tr>
<td>113</td>
<td>$1.9</td>
</tr>
<tr>
<td>121</td>
<td>$2.0</td>
</tr>
<tr>
<td>129</td>
<td>$2.1</td>
</tr>
<tr>
<td>137</td>
<td>$1.9</td>
</tr>
<tr>
<td>145</td>
<td>$2.0</td>
</tr>
<tr>
<td>153</td>
<td>$2.1</td>
</tr>
<tr>
<td>161</td>
<td>$1.9</td>
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<td>169</td>
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<tr>
<td>177</td>
<td>$2.1</td>
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<td>185</td>
<td>$1.9</td>
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<td>193</td>
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<td>201</td>
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<td>209</td>
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<tr>
<td>217</td>
<td>$2.0</td>
</tr>
<tr>
<td>225</td>
<td>$2.1</td>
</tr>
<tr>
<td>233</td>
<td>$2.1</td>
</tr>
</tbody>
</table>
Why do we need big samples?

Avoiding false positives

**LIABILITY STATISTICS**

Q1: Did Dr. Smith’s failure to properly read the CT scan cause the plaintiff’s injuries?

<table>
<thead>
<tr>
<th>Group</th>
<th>Total “Yes” Findings</th>
</tr>
</thead>
<tbody>
<tr>
<td>All eJuroirs:</td>
<td>39 of 50, 78%</td>
</tr>
<tr>
<td>Males:</td>
<td>18 of 24, 75%</td>
</tr>
<tr>
<td>Females:</td>
<td>21 of 26, 81%</td>
</tr>
<tr>
<td>Age 30 and Under:</td>
<td>11 of 12, 92%</td>
</tr>
<tr>
<td>Age 31 to 40:</td>
<td>8 of 12, 67%</td>
</tr>
<tr>
<td>Age 41 to 50:</td>
<td>9 of 13, 69%</td>
</tr>
<tr>
<td>Age 51 and Over:</td>
<td>11 of 13, 85%</td>
</tr>
</tbody>
</table>
Mock Jurors
How do you get big samples?

Human Intelligence Tasks on:

Amazon Turk
Yougov
TurkPrime Panels
Qualtrics
SurveyMonkey
Who are these jurors?

- **Age Distribution**: The age distribution of the jurors shows a peak in the 30-40 age range.
- **Income Distribution**: The income distribution is skewed towards lower income brackets, with a mean of approximately $40K.
- **Gender Distribution**: 55% of the jurors are male, and 45% are female.
- **Ethnicity Distribution**: The majority of jurors are White/Caucasian (72%), followed by Asian or Pacific Islander (10%), Black or African American (9%), Hispanic or Latino (6%), and other (2%).
- **Education Level**: The most common education level is High School (61%), followed by Bachelor’s Degree (40%), Associate Degree (14%), Some College (25%), and Some High School (1%).
How can we make sure the data is meaningful?

Ensuring quality data:

• Embedded Attention Checks
• Timing Checks
• Comprehension Checks

Checking for Bias

- Plaintiff: 22% (75)
- Mediator: 15% (22)
- Defendant: 19% (67)
- Court: 5% (16)
- Academic Institution: 39% (135)
Checking for bias

- Academic Institution: 52% (273)
- Court: 6% (30)
- Defendant: 14% (74)
- Mediator: 11% (56)
- Plaintiff: 17% (90)
What Are We Learning?

A few takeaways from Academic work....
And some examples from private cases
What can you learn about per diem demands?

<table>
<thead>
<tr>
<th></th>
<th>Plaintiff</th>
<th>Defendant</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>No Per Diem</strong></td>
<td>188</td>
<td>181</td>
</tr>
<tr>
<td></td>
<td>50.9%</td>
<td>49.1%</td>
</tr>
<tr>
<td><strong>Per Diem</strong></td>
<td>214</td>
<td>149</td>
</tr>
<tr>
<td></td>
<td>59.9%</td>
<td>40.1%</td>
</tr>
</tbody>
</table>
What can we learn about closing argument?
Graphics and Animation Matter

Cooperating with High Impact now to study the impact of graphics/animation/VR on jury awards.

Early research from others shows that blood, animation, etc. drive up emotional response by jurors and that anger + disgust = large awards.
Autonomous Vehicles

• Some empirical research suggests that fault to autonomous vehicles is higher.

• And additional research suggests that algorithms are considered more culpable.
What could we learn about how demands impact liability rates and awards?
What could we learn about whether jurors can identify their own bias?

Did the fact that Mrs. Budding admitted that she would have terminated the pregnancy if the cystic fibrosis test came back positive affect your decision in this case because you believe terminating a pregnancy is wrong?

<table>
<thead>
<tr>
<th></th>
<th>Participants</th>
<th>Win Rate</th>
<th>Win Rate vs Avg</th>
<th>Case Value vs Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>6% (24)</td>
<td>75% (18)</td>
<td>-8% p=0.55</td>
<td>-6% p=0.72</td>
</tr>
<tr>
<td>No</td>
<td>94% (386)</td>
<td>69% (253)</td>
<td>-1% p=0.55</td>
<td>0% p=0.72</td>
</tr>
</tbody>
</table>

Impact pro-life view had on overall case value:

-12%
What can you learn about case value and strength?

Strength of case – with one doctor or both treating doctors

- Two Defendant: 69%
- One Defendant: 42%
What can you learn about case value and strength?

Damage Range

One Defendant
Mean: $14,306,047
Median: $12,000,000

Two Defendant
Mean: $11,980,239
Median: $10,000,000
Answering Pressing Questions
What types of case strategy can you test?

Most effective demand (must consider win rate and award)
What types of case strategy can you test?

In watching the videos of Kelly Davis, I believed his testimony.

<table>
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<th>Win Rate</th>
<th>Win Rate vs Avg</th>
<th>Case Value vs Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agree</td>
<td>28% (118)</td>
<td>90% (106)</td>
<td>78% p=0.00</td>
</tr>
<tr>
<td>No Opinion</td>
<td>16% (66)</td>
<td>77% (51)</td>
<td>53% p=0.00</td>
</tr>
<tr>
<td>Disagree</td>
<td>55% (230)</td>
<td>23% (53)</td>
<td>-54% p=0.00</td>
</tr>
</tbody>
</table>

What jurors think of plaintiff and how much it matters
TOP ISSUES
What can we learn about what jurors value?

Dr. Kesson did not properly follow up after there were signs Frank Jones was not recovering from surgery. 255

Dr. Kesson ignored the advice of another doctor. 172

Dr. Kesson cut an artery. That is negligent. 158

Dr. Kesson should have known morphine did not explain Frank Jones’ symptoms. 121

Pro-Plaintiff Jurors – Top Issues
JURY ANALYTICS
What can you learn about jurors?

Most and Least Valuable Jurors

- Use social media for Religious posts: 42%
- Watch 'Empire': 39%
- Black: 36%
- Has been a victim of gun violence (or has a love one who has been): 25%
- Watch 'Orange is the New Black': 21%
- Consider themselves 'Very private': 21%
- Watch 'Criminal Minds': 19%
- Do NOT think there are too many frivolous lawsuits: 18%
- Use social media for Political posts: 13%
- Parents: 11%
- Use social media for family info and photos: 9%
- Men: -9%
- Has NOT been in hospital during last 10 years: -9%
- Don't use social media: -17%
- Shop for toiletries at local grocery store: -20%
- Live with their parents: -22%
- Think that education is NOT one of the most important things in life: -31%
What can you learn about jurors?
RESULTS

In the last two years, Empirical Jury has been part of multiple eight figure verdicts and settlements.

Verdicts total approximately **$390 million**, and include:

- $56 million verdict in road construction case (Humboldt County, California)
- $8 million medical malpractice verdict (Kentucky)
- $14.9 million medical malpractice verdict (Denver)
- $33.4 million verdict in 500 Madison Case (Chicago)
- $17 million verdict in opioid over-prescription case (St. Louis)
- $90 million verdict – trucking (Houston)
- $130 million verdict – birth trauma – (Detroit)
- $16 million verdict – electrocution – (Boulder)
- $900k verdict – improper lens insertion in eye – (Denver)
- $37.2 million verdict – Defective Seatbelt Claim – (Dallas)
Juror Research
Deep Research on Jurors before Trial

Personal Information

Voter Registration: Republican  Education Level: Post Graduate
Married: Yes  Income: N/A
Criminal Record: No  Facebook URL: http://www.facebook.com/people/134561826
Amazon Wish List: https://www.amazon.com/wishlist/EPG53R37175E

Professional Information

Job Title: Principal Systems Engineer  Employer: NBC  Dates: 1999-Present
LinkedIn URL: https://www.linkedin.com/in/khensch-comビジネス-2750374/

Skills: Not listed

School  Degree  Dates
The University of Dallas  M.S. Information Assurance  2006-2007
Texas Tech University  Not listed  1984-1992

Home Information

Owner Home: Yes  Home Valuation: $296,496
Current Mortgage Amount: $106,300  Google Street View Image:

Neighborhood Information

Median Household Income: $57,826
Population below poverty line: 10.3%
Average Home Valuation: $159,290
Residents with college degree and above: 99.7%
Residents with High School diploma: 99.6%
Jury Selection Apps
Juror View

Questions

At least 1% at fault.

Does anyone have a problem working for a tobacco company?

Would you make cig illegal?

PM/RJ say they are 0% responsible. Offensive?

All smokers addicted?

Cigs addictive because PM makes them that way.

Tobacco companies are worse?

Lost family member/friend?

Comments

re: Neolani
Morally wrong. You’re killing people to make money. Cigarettes do nothing good. Would stick with how I feel.

6 hours ago

re: Neolani
Nodding with Danielle about 1% AT FAULT. I don’t care how much they pay me. Morally wrong to work with them.

5 hours ago

Add Comment
### Empirical Jury

#### Tobacco - Sat p.m.

#### Jurors

<table>
<thead>
<tr>
<th>Name</th>
<th>Followup</th>
<th>Sentiment</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Torres</td>
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<td>Hawaiian?</td>
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<td></td>
<td>2</td>
</tr>
<tr>
<td>Cathy</td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Virginia S</td>
<td></td>
<td></td>
<td>-2</td>
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<td>Desiree</td>
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<tr>
<td>Wrap</td>
<td></td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>Daniel</td>
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</tbody>
</table>

#### Comments

- Morally wrong to sell cigs.
- Tobacco company at least 1% at fault.
- This case is.......
- Would never work for tobacco company.
- Make cigs illegal?

#### Questions

- Frivolous lawsuit?
- Suspicious about merit?
- Supports caps.
- Punitive damages.
- Morally wrong to sell cigs.

- Agree
- Yes
- Agree
- Oppose
- Agree
- Agree
- Agree
- Neutral
- Agree
- Yes
Strikes, Excused by Court, etc.
<table>
<thead>
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<th>Followup</th>
<th>Sentiment</th>
<th>Points</th>
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