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To: Jim Greiner
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RE: Larry Heuer & Steven Penrod, *Trial complexity: a field investigation of its meaning and its effects,* 18 Law Hum. Behav. 29 (1994).
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Title: Trial complexity: a field investigation of its meaning and its effects
Authors: Larry Heuer and Steven Penrod
Location: United States
Sample: N = 160
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Target group: Jury Regulation
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Abstract

Some scholars have criticized the American jury system, saying that some cases are too complex for the average jury to handle. Researchers Heuer and Penrod set out to define the nature of trial complexity and analyze the benefits of proposed trial reforms to help jurors manage complex cases. They found that significant markers of trial complexity were complexity of the law; complexity of the evidence; and quantity of evidence and that complexity does not substantially alter jurors' decision-making process.

I. Policy Issue

American juries are made of average laymen who do not necessarily have any specialized legal knowledge but must render a verdict on any given trial. Some scholars have criticized the jury system, saying that the average juror is ignorant and is incapable of providing an unbiased, informed, and rational decision. Other scholars have responded to this claim by criticizing judges, saying that they are individuals who are often politically biased without the advantage of collective recall. The juror system has also been called into question by U.S. appellate courts when discussing the complexity exception to the Seventh Amendment right to a jury trial. Some courts believe that trial length and overly complex issues can make a case overwhelm the means of a jury that is comprised by the "average" American juror.

Several additional scholars have attempted to examine the question of trial complexity with the goal of improving jury performance. Their belief was that by identifying procedural factors of trial complexity, they could suggest reforms that would aid jurors in rendering a verdict. Some of these proposed reforms included restructuring cases, restructuring jury makeup, and utilizing case management techniques.

II. Context of Evaluation

A Wisconsin court had performed a similar experiment without analyzing for significance and had reported positive results. The researchers included this anecdote in an invitation sent out to 2,000 judges asking them to participate in the study, one hundred and three of whom participated in one or more trial. The one hundred and three judges were spread across thirty-three states in the U.S.A.

III. Details

The researchers randomized their procedures based on three factorials: juror note-taking (present vs. absent), juror question asking (present vs. absent), and type of trial (civil vs. criminal). The researchers recruited judges in thirty-three states by sending out invitations that provided a brief overview of the study and a participation request. They sent participating judges who were involved in more than one trial and expected at least one trial to be lengthy or complex two packets with directions specifying their combination of note-taking or question-asking. The first packet was to be used in their next trial, regardless of length or complexity, and the second packet was to be used in the next trial expected to be lengthy of complex.

The researchers used numerous variables, including Likert-type response scales, for constructing their definition of trial complexity, which included factors like number of witnesses, duration of trial, number of charges, number of documents, and number of parties. Judges had to rate each criterion from one to nine.

This experiment included 160 trials and the questionnaires from the judges and juries associated with each respective trial. They received completed questionnaires from 94 percent of judges and 81 percent of jurors.

IV. Results and Policy Lessons

Based on judges' questionnaire responses, the researchers found that the significant variables contributing to trial complexity were complexity of the law; complexity of the evidence; and the quantity of the evidence were most chosen by court judges ($p < 0.05$).

When evaluating complexity effects on jurors' questionnaires, only seven out of the thirty-three tests were significant ($p < 0.05$). Those that were significant showed as a case became more complex the jury felt more well informed and believed that the prosecution did a good job. At the same time, they reported greater difficulty reaching a verdict and they felt that the judge's instructions were less clear.

Within the judges' questionnaires, researchers found that judges' satisfaction with verdicts was not statistically affected by any of the measures of trial complexity. The complexity did significantly affect how judges assessed the severity of the jurors' verdict ($p < 0.05$). Judges believed that as the case became more complex, the jurors in turn became harsher.

In cases where jurors were instructed to ask questions, the coefficient between juror questions and evidence or legal complexity were positive, indicating questions are most positive when the evidence or law is complex. In relation to quantity of information the coefficient was negative. As the quantity of information increased, jurors felt less well informed by the trial even though they could ask questions. Jurors who were not allowed to ask question felt better informed as information quantity increased. There was a positive main effect of questions, which was stronger in less complex cases than in more complex cases.

There were no main effects of the notetaking procedure for any variables.

Neither trial complexity, trial procedures, nor their interactions significantly affected judge-jury agreement.

V. Quality of the Study

Judges were allowed to suggest their own note-taking systems to jurors. Judges and attorneys could also suspend note taking at any time, for example closing arguments. The inability to take notes during key times in the trial could have caused some jurors to rate that note taking was not as helpful for navigating the complexity of a case.

Jurors in trials with the question-asking factorial could submit questions to the judge, and the judge would either accept or deny the question and then confer with counsel on any potential objections before presenting the question to the witness. The authors did not analyze how many questions presented by jurors were actually answered by witnesses, which could have affected jurors' evaluation of clarifying questions.

The authors decided to test whether judges would decide cases differently than juries but they only had the judge's verdict preference for 122 out of 160 trials and decided to not test for three-way interactions between complexity, trial procedure, and type of trial. This does not consider the fact that the judge could also have been more informed by juror question-asking, and it represents an uneven sample because some judges responded to one of their cases but not the other, which defeated the purpose of comparing two cases presided over by one judge.

Finally, the researchers present these findings but do not provide recommendations as to whether judges should explicitly recommend note taking or question asking to address trial complexity.