Honors Thesis Proposal
For
Downfalls and Solutions to the Florida Jury Process

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Truth and justice are two ideals that Americans hold above many others. The entire judicial branch of the United States Government is built upon finding the truth and meting out justice. The judicial branch has many tools at its disposal for following this mission such as: trials, hearings, mediations, arbitrations, judges, and juries. However, one tool needs to be scrutinized in order to address modern issues. This thesis will be scrutinizing the jury process for the increasing number of obstacles to fairness and analyze solutions to those obstacles. The American jury system is rife with problems that cause unfairness and manipulation of a system designed to bring about justice. These problems are firmly rooted in two areas. First, jurors have many biases and expectations which sway their perception. Second, jury members also lack understanding of the complex jargon that they are expected to decipher, such as jury instructions and technical evidence. For the United States judicial system to be fair and just, alternatives and solutions must be examined and implemented to bring the American jury up to date.

The intention of the jury trial system is to protect the rights of American citizens in both civil and criminal cases. As one Supreme Court case addressing this right as to criminals in criminal cases held, “[I]t is also a system designed to protect "freedom" by insuring that no one is criminally punished unless the State has first succeeded in the admittedly difficult task of convincing a jury that the defendant is guilty” (Williams v. Florida, 1970). The citizenship and not the government must establish guilt.

The Constitutions of the United States Federal and State governments protect the right of its citizens to have a trial by jury. The Sixth and Seventh Amendments to the United States Constitution guarantee a right to jury trials in certain circumstances. The sixth amendment to the Constitution states, “In all criminal prosecutions, the accused shall enjoy the right to a speedy
and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.” U.S. Const. amend. VI. The seventh amendment goes on to state that, “[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.” U.S. Const. amend. VII. Furthermore, the Florida Constitution reads, “The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.” Art. I, §22, Fla. Const. (1885). Both the highest laws at the federal and state level affirm that Americans have an inviolate right to a trial by jury.

Juries are a concrete, immovable part of the American justice system. However, research conducted by the University of Cincinnati Law Review has discovered an unsettling trend in highly complex cases.

The results reveal that juror comprehension declines as complexity increases (particularly when the complexity arises from the presence of multiple claims or parties) even among relatively well-educated individuals with prior jury experience. The results suggest that existing concern about juror comprehension is not misplaced and that courts should “pull out all the stops” with respect to juror education and use all available devices to improve and assist jury decision making in these cases (Reiber & Weinberg, 2010).

This decrease in comprehension hinders the ability of jurors to fairly decide plaintiffs and defendants cases. To make matters worse, other research has concluded that many jurors form an opinion before all of the evidence and arguments has been heard (O’Brien, Sommers, & Ellsworth, 2011). The case of Gonzalez v. Florida is an example of this, where the case was reversed and remanded for a new trial because a juror believed that the insanity defense was a “cop-out” (Gonzalez v. Florida, 1987). Even when jurors do hear the evidence, they tend to give
undue weight to certain forms of evidence such as DNA evidence; this trend is especially common in cases with high media exposure (Lieberman, Carrell, Miethe, & Krauss, 2008).

This bias towards certain types of evidence is also known as the CSI Effect. Authors Simon Cole and Rachel Dioso-Villa explained the CSI Effect by stating,

The theme of CSI is that people lie, but science always tells the truth. The CSI Effect refers to the idea that this shift in the content of typical Americans' police procedural viewing fare might affect jury decision making. A number of scholars have noted that such an effect is not implausible either from media studies or psychological points of view (Cole & Dioso-Villa, 2007).

The increasing dangers of bias towards certain evidences and people are beginning to outweigh the benefits of jury trials.

Since the jury system plays an integral part in our legal process, all solutions must either be pre-trial or augment the jury process to mitigate the current problems. In regard to jury instructions, one simple solution that has been suggested is revising the administration of jury instructions. Despite the government moving towards plainer language, jury members are still struggle to comprehend instructions given to them (Miles & Cottle, 2011). Research suggests that potential jurors will better understood and retain the instructions if given in an auditory and visual way (Brewer, Harvey, & Semmler, 2004). An alternative to civil litigation is the rising practice of collaborative-law which has attorneys agreeing to settle the case without a trial (Bryan, 2009). Other common pre-trial negotiations include mediation and arbitration.

Mediation is a non-binding negotiation mediated by a legal professional outside the case. Arbitration is much like mediation in that the arbitrator is a legal professional outside of the case,
however, the arbitrators decision is binding. These kinds of pretrial solutions would solve many of the fairness issues caused by the current jury system by avoiding the jury system altogether.

The thesis will examine different biases including those towards people and types of evidence used in trial. The thesis will also explore options to address these biases. In many ways, there has been an increase in the amount of bias due to modern technology. The internet has enabled the modern juror to read about the background of the case, the plaintiff, defendant, and counsel. In many cases, this affects how jurors decide issues at trial (Haralambous, 2010). Other research has shown that those with exposure to certain types of media (primarily viewing television) are more likely to place unfair reliability on certain types of evidence (Brewer & Ley, 2010). Since bias is becoming increasingly pervasive, all potential jurors develop a bias towards or against something. In many cases the bias is caused by past experience: the case of *Adkins v. Florida* is a strong examples of this. In this case, bias was caused by a family member who had recently experienced trauma that closely resembled the facts of the case the juror was hearing (*Adkins v. Florida*, 1999). The judicial process must be aware of the increasing threats to justice and address them in an effective way.

The Florida legislature also notably does not give any qualifications for an individual to be a member of a jury besides the following:

Jurors shall be taken from the male and female persons at least 18 years of age who are citizens of the United States and legal residents of this state and their respective counties and who possess a driver’s license or identification card issued by the Department of Highway Safety and Motor Vehicles pursuant to chapter 322 or who have executed the affidavit prescribed in s. 40.011.” Fla. Stat. §40.01 (2011).
The legislature does indicate who is disqualified from serving on a jury. This list includes but is not limited to: convicted felons, certain members of government, the elderly, the mentally infirm, etc. Fla. Stat. §40.013 (2011). There are, however, no requirements regarding educational standards or any work experience. In today’s society, this is a potentially dangerous oversight considering the quantity of technical evidence that jurors are expected to read and understand in deliberation.

This thesis will examine the primary ways that modern juries currently fail to support the justice system in the ways intended. Those primary faults include bias and the lack of understanding for complex legal material. The thesis will also explore a few pretrial alternatives and possible solutions to the problems. The thesis will include background related to communication and psychology theories and how they apply to this area of research. This research will primarily include how biases function, how biases can be prevented or mitigated, and effective teaching techniques which could be used for jury instructions. An example of articles relating to the function of bias are *Ask and What Shall Ye Recieve? A Guide for Using and Interpreting What Jurors Tell Us* (O’Brien, Sommers, & Ellsworth, 2011) and *Dangerously misunderstood: Representative jurors’ reactions to expert testimony on future dangerousness in a sexually violent predator trial* (Krauss, McCabe, & Lieberman, 2012). Both of these articles explore how biases function in trial scenarios. One article, *Implicit Bias in the Courtroom* (Kang, et al., 2012), discusses both how biases function and many potential preventative solutions for addressing juror bias. The articles *Improving Comprehension of Jury Instructions with Audio-Visual Presentation* (Brewer, Harvey, & Semmler, 2004) and *Beyond Plain Language: A Learner-Centered Approach to Pattern Jury Instructions* (Miles & Cottle, 2011)
both discuss teaching techniques focused on helping jurors retain instruction. These articles and more will be used to explore the issues and seek solutions to the developing modern issues.

It is important to scrutinize juries primarily because of the impact they have on the Florida justice system. Traditional research of modern communication regarding biases and persuasion are not typically applied to juries. Juries are not professional members of the legal community and have many biases that they bring into the trial scenario (Kang et al., 2012). Jury members are also more likely to believe an easily understood argument rather than complex actuarial arguments (Krauss, McCabe, & Lieberman, 2012). Even if the actuarial arguments are more factual, juries tend to err on the side of what they understand. Frequent exposure to evidence in the media is an especially effective tool for manipulating a jury. It is incredibly important to the legal community to understand and address the issues facing the jury system; otherwise one of the pillars of our judicial system will fail.

This thesis will answer some of the following questions and possibly raise some other questions with the hope of strengthening the Florida trial process.

- What trends can be found among jury decisions?
- How does case law address issues of pre-existing biases?
- How does case law address issues of a lack of understanding for technical evidence or legal terminology?
- How can jury instructions be revised to more effectively communicate to the average juror with little to no legal background?
- What biases are most prevalent among jurors?
- Does media exposure bias jurors towards certain types of evidence?
• What forms of evidence have the biggest effect on jurors and is that effect due to preconceived notions about that type of evidence?
• What are the most effective pre-trial techniques for reaching a settlement?
• How do juries react to highly technical evidence versus simpler forms of evidence?
• Do juries deliver higher awards or harsher verdicts than judges or vice versa?
• Should different or additional criteria be used to select juries?
• Should juries be used in all types of trials?
• What are the alternatives to juries?

To answer these questions I will primarily examine law reviews, Florida and Federal case law, statutes, and communication sciences journals that discuss the issues facing juries and solutions. These sources will also enable me to evaluate pre-trial alternative effectiveness by demonstrating settlement rates and how legal professionals deal with the issues in contrast to non-professional juries. The thesis will also examine the Florida jury instructions comparing them to alternative instructions and Florida’s definition of jury eligibility. Modern communications research will also be used to understand how biases affect groups, how they affect juries in particular, and methods for reducing biases. Other research in this field which focuses on persuasion techniques that capitalize on biases that give the persuader an unfair advantage in the courtroom will also be considered. Most, if not all, communications research will be paired with law reviews and case law to demonstrate the real world applications of said research.

The goal of this thesis is not to promote disbanding the jury process from the Florida or United States justice system. The thesis will suggest ways that the current process is inadequate
for the modern era because of the ways we are failing to address rising issues and solutions to problems. If these issues continue to go unchallenged then the jury process will continue to dangerously deteriorate. Biases will impede the deliberative process and jury instructions will continue to be misunderstood. These problems must be explored and solutions as well as alternatives should be developed where possible. Modern society and technology has introduced many new problems to the jury process and we can only have justice if the system operates efficiently and fairly.
Annotated Bibliography

Adkins v. Florida, 98-00651 (District Court of Appeals June 11, 1999).

Adkins was convicted for battery of a police officer. He appealed the conviction because of two jury members who were allegedly biased against him. One juror’s nephew (a police officer as well) had just been attacked in a similar situation. The other juror had stated that he would believe a police officer more readily simply because he was a police officer. The court of appeals reversed and remanded the case.


Jury instructions are extremely important for a fair trial to take place. Unfortunately, instructions are being misunderstood by people with little to no legal background. This study tried three different jury instruction techniques: audio, audio-elaborated, and audio-visual. The mock jury was then given a comprehensive test on the instructions. Law students tested much higher than those with no legal background when given the audio-only instructions. However, those with no background in law tested as high as law students when given audio-visual instructions.

Research has shown that the viewing of certain types of media tends to affect the public's perception of scientific evidence. The reliance on DNA evidence in particular has steadily trended upwards since 2000.


The article in the Alabama Law Review explains the development of collaborative-law process. Collaborative-law is a pre-litigation process that is built on the idea of preventing further litigation. All parties sign an agreement stating that the representing attorneys are not allowed to continue representing their clients should the case proceed all the way to trial. The end result is more effective pre-trial negotiations with a higher satisfaction rate amongst clients.


This article examines the CSI Effect; a theory that states that jurors are swayed by media. The article examines the show "CSI" to determine how it is connected to this theory. It also traces where the term came from and the possible consequences of the CSI Effect. Finally, the article examines evidence in support of the CSI Effect. The article claims that the CSI Effect is in fact a myth brought on by media panic; however the effect caused by the panic might bias jurors away from scientific evidence.
Gonzalez v. Florida, 86-2285 (District Court of Appeal August 1987).

The District Court of Appeals held that the murder trial of Gregorio Gonzalez was not a fair trial by impartial jury. The Circuit Court failed to properly investigate claims by jurors that another juror had described the insanity defense as a “cop-out.” The lack of voir dire regarding the alleged comment caused the District Court to reverse and remand the case for a new trial.

Haralambous, N. (2010, October). Educating jurors: technology, the Internet and the jury system. *Information and Communications Technology Law*, 255-266.

The internet has begun to affect juries in increasingly pervasive ways. Due to online news and social networking, jurors are able to research the case they are serving on, allowing them to form an opinion before the real evidence and arguments have been made. They are also able to ask for advice from friends and family about the decision. Other jurors have used social networking to look up the parties of the case or their counsel in order to learn more about them. This usage of networking by juries allows and fosters the development of biases that jurors cannot have if a fair trial is to be held.


Kang and other researchers examine implicit bias in courtroom settings. Since many people have various stereotypes about a multitude of different people, those stereotypes ultimately affect how juries and judges make decisions. One of the suggested methods for reducing implicit bias would be to test individual jurors on their biases in order to weed out more biased jurors.

This study examines how juries respond to expert testimony about supposed future actions of a sexual predator. Juries tended to place more weight on less complex, more inaccurate testimony rather than actuarial testimony from expert witnesses.


This article demonstrates the public perceptions of DNA evidence in jury trials. It is found that DNA evidence is very difficult to overcome, especially to those jurors with exposure to media. Focused cross examinations tended to help jurors understand the weaknesses of DNA evidence.


The inability of jurors to understand jury instructions is a consistent trend that unnecessarily muddies the deliberation process. Despite the government’s move towards plainer language for jury instructions, jury members are still unable to grasp the concepts being presented to them by the judge. The authors of this article propose that jury instructions be revised to a more learner-centric style of conveying jury instructions and have more guidance in how to interpret the complex instructions.

This article depicts how jurors are not understanding jury instructions and are tending to decide the facts of the case before the end of trial. The misunderstanding of jury instructions typically leads to jury findings in conflict with the law or the facts of the case. In order to attain more accurate findings, the delivery of jury instructions should be augmented.


This article details how juror competence trends downward as the complexity of the case rises. This inclination towards incompetency makes complex trials by jury nearly impossible to reach a fair and educated verdict. Juries do not understand the vast amount of technical evidence since they are not trained to understand those specific fields. As a result, the evidence that they do understand is given more weight even if it is less accurate than other, more complex, evidence.

U.S. Const. amend. VI, VII.

The U.S. constitution guarantees a trial by an impartial jury in the region where the crime occurred. The constitution also ensures a jury trial for civil controversies where the matter is greater than 20 dollars. Any possible solutions to the problems presented by juries must therefore take place before the jury process since a trial by jury is a constitutional right.
Williams v. Florida (U.S. Supreme Court 1970).

A case in which Williams petitioned for a 12 man jury and the courts denied his petition. The holding stated that the 12 man jury found at common law was not a fixed number. The holding went on to state that a jury’s purpose is to defend against an overly powerful government judicial system.