Civil Juries and the Gordian Knot of Complex Litigation

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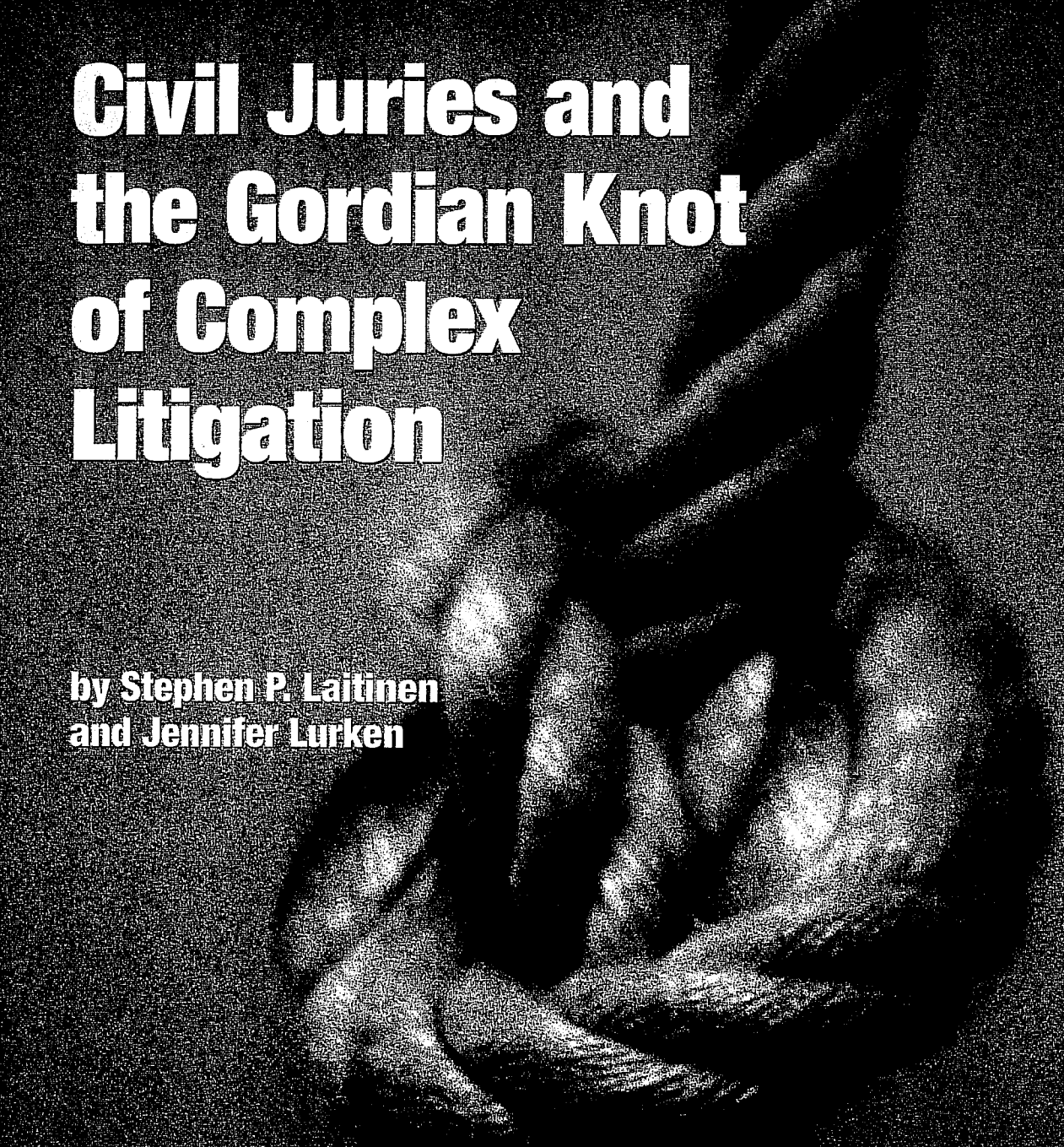

The Seventh Amendment reserves the right to a jury in civil cases. Yet many cases submitted to juries today involve increasingly complex issues and information. Moreover, rapid advances in technology and the exponential growth of human knowledge have placed huge burdens on attorneys and the justice system to present complicated information to jurors in ways that they can both understand and assimilate. Unfortunately, confidence in civil juries for complex cases has declined. As a result, the viability of the civil jury and its ability to handle complex litigation has come under intense scrutiny in recent years. Some legal commentators have posited that a "complexity exception" to the Seventh Amendment should be applied to jury trials in complex cases. However, other techniques and recommendations are available for attorneys who must present a complex case before a jury.

The recommendations of the authors are not at this time official policies or recommendations of DRI.

The Jury Dilemma in Complex Cases

"If you can find a jury that's both a computer technician, a lawyer, an economist, knows all about that stuff, yes, I think you could have a qualified jury, but we don't know anything about that." (Quote from the jury foreperson of a deadlocked jury in response to a judge's inquiry as to whether such a complex antitrust case should ever be submitted to a jury. *ILC Peripherals Leasing Corp. v. Int'l Business Machines Corp.*, 458 F.Supp. 423, 447 (N.D. Cal. 1978) (quoting from transcript at 19,548) (hereafter *ILC Peripherals*).)

Justice Warren Burger, a leading advocate for the attack on the civil jury system, once said, "[i]t borders on cruelty to draft people to sit for long periods [of time] trying to cope with issues largely beyond their grasp." Nat'l L.J., August 12, 1985 at 15 (quoting the N.Y.L.J., Aug. 13, 1979 at 21). Perfectly illustrating Justice Burger's point, the jury in a complex antitrust case became hopelessly deadlocked after being deluged with numerous exhibits on advanced computer technology, complex economic analysis, and the testimony of 87 witnesses during 96 days of trial. *ILC Peripherals*, 458 F.Supp. at 444.

As a result, some courts have denied a jury trial in complex cases. For example, a jury trial demand was denied in a gigantic case where the nine-year discovery period had produced literally millions of documents. Rita Sutton, *A More Rational Approach to Complex Civil Litigation in the Federal Courts: The Special Jury*, 1990 U. Chi. Legal F. 575 (unpublished manuscript available on Westlaw, 1990 UCHILF 575, P 1) (citing *In re Japanese Electronic Products Antitrust Litigation*, 631 F.2d 1069, 1073–74 (3d Cir. 1980) (hereafter *Japanese Litigation*)). The *Japanese Litigation* trial, expected to last one year, would have required jurors to analyze Japanese market conditions and business practices over a 30-year timeframe, and to engage in detailed price comparisons involving literally thousands of electronic products based upon their marketability, performance and production costs. *Id.*

Indeed, a series of colossal antitrust trials in the late 1970s fueled the perception that juries were a hindrance in complex cases. *See, e.g., Radial Lip Mach., Inc. v. Int'l Carbide Corp.*, 76 F.R.D. 224 (N.D. Ill. 1977); *Wheeler v. Shoemaker*, 78 F.R.D. 218 (D. R.I. 1978); *Japanese Litigation*. Commentators debated whether ordinary jurors were able to render competent decisions in complex civil cases. For example, in *MCI Communications v. American Telegraph & Telephone*, the jury returned a verdict of $600 million without realizing a trebling provision was involved. 708 F.2d 1081 (7th Cir. 1983). When the jury foreman learned of the trebling of damages after the trial, he candidly admitted: "I'd feel much better about the whole thing if they reduced the damages." *See* N. Y. Times, June 19, 1980, §D, at 5, col.1.

The fact that large jury verdicts concern many is no secret. Critics of the current jury system maintain that complex business litigation, in turn, spawns the majority of multi-million dollar verdicts in this country. *See* Stephen Daniels, *The Question of Jury Competence and the Politics of Civil Justice Reform: Symbols, Rhetoric and Agenda Building*, 52 Law & Contemp. Probs. 269, 269–73 (Autumn 1989). Public opinion demonstrates not only vague disquiet with jury verdicts, but also a distinct lack of confidence in jurors to arrive at "fair" damage awards, with substantial majorities favoring either the judicial determination of damages after the jury decides the merits of the case, or enabling judges to give jurors strict guidelines for awarding damages in specific instances. *Id.* at 307.

One possible reason jurors may have problems handling a complex case is that the jury pool in such cases is typically not the same as that in a regular case. On average, jurors in standard cases sit for four to five days, but jurors in complex cases oftentimes are forced to sit for several weeks or more. Most citizens with the wherewithal to sit on a jury for more than a month are arguably not taken from a fair cross-section of the community. Larry Alexander, *et al., Developments in the Law: The Civil Jury—The Jury's Capacity to Decide Complex Civil Cases*, 110 Harv. L. Rev. 1408, 1492 (1997) (*Jury's Capacity*). Instead, the majority of people who can take time away from their everyday lives to participate in jury duty in such trials are more likely to be elderly, uneducated or unemployed. *Id.*

The Supreme Court has ruled that the Sixth Amendment right to a jury trial in criminal cases incorporates the right to a jury drawn from a "fair" cross-section of the community. *See Taylor v. Louisiana*, 419 U.S. 522, 527 (1975). The Court indirectly addressed this issue in the civil context in *Colgrove v. Battin*, 413 U.S. 149 (1973), and implied that the right to a jury trial in civil cases imposes the same fairness requirement as in the Sixth Amendment. However, the Court's holding that the Seventh Amendment is not essential to due process, and therefore not applicable to the states, suggests that the Sixth Amendment standards may be more stringent. *Compare Duncan v. Louisiana*, 391 U.S. 145 (1968) (Sixth Amendment applicable to

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the states through the Fourteenth Amendment) *with Walker v. Sauvinet*, 92 U.S. 90 (1875) (Seventh Amendment inapplicable to states). Although the Constitution may not compel a fair cross-section requirement in state civil jury trials, Congress has made this a clear mandate in federal cases. The Federal Jury Selection and Service Act explicitly requires jury selection from a fair cross-section of the community in civil cases. 28 U.S.C. §1861. Disturbingly, complex cases often present difficult fact patterns and convoluted legal issues to jurors who are sometimes alleged to be incapable of effectively understanding and fairly deciding such cases. This concern has fostered the Seventh Amendment "complexity exception" debate, which has raged over the legal landscape for several decades. A historical perspective on that wide-ranging discourse follows.

The Complexity Exception to the Seventh Amendment

The Seventh Amendment specifically reserves the right to a trial by jury "[i]n suits at common law." U.S. Const. amend. VII. The amendment was intended to preserve the right to a jury trial as it existed in 1791, when the amendment was first adopted. *U.S. Financial Securities Litigation v. Bache & Co.*, 609 F.2d 411, 421 (9th Cir. 1979) (hereafter *Financial Litigation*). As a result, the amendment has repeatedly been interpreted in conjunction with the English common law as it existed in 1791. *United States v. Wonson*, 28 F.Cas. 745, 750 (Cir. Ct. D. Mass. 1812); *Dimick v. Schiedt*, 293 U.S. 474, 476 (1935).

The Seventh Amendment right to a jury depends on whether the case would have been heard in equity or at common law in 1791. J. Fleming, Jr., *Right to a Jury Trial in Civil Actions*, 72 Yale L. J. 655, 655–56 (1963). If the nature of the issues presented is essentially equitable, no jury trial is available. If they are predominantly legal in scope, however, a right to a jury trial exists. Interestingly, in 1791, most multi-party, multi-issue suits were heard in equity. Douglas King, *Complex Civil Litigation and the Seventh Amendment Right to a Jury Trial*, 51 U. Chi. L. Rev. 581, 603–06 (1984). Some advocates maintain that since such cases were not heard at law, the Seventh Amendment does not currently "preserve" the right to a trial by jury in complex civil litigation. *Id.* at 608–613.

In the now-infamous "*Ross* footnote," the United States Supreme Court embellished upon prior decisions in determining whether a case is "legal" or "equitable" in nature: "The 'legal' nature of an issue is determined by considering, first, the pre-

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merger custom with reference to such questions; second, the remedy sought; and third, the practical abilities and limitations of juries." *Ross v. Bernhard*, 396 U.S. 531, 538, n.10 (1970). Some commentators believe that *Ross* has paved the way for a judicially crafted complexity exception beyond the "practical abilities and limitations" of juries. *See* Rita Sutton, *A More Rational Approach to Complex Civil Litigation in the Federal Courts: The Special Jury*, 1990 U. Chi. Legal F. 575 (1990).

However, jurists have not uniformly agreed that a complexity exception should be applied in complex civil cases. The *Ross* footnote, along with the case trilogy of *Japanese Litigation*, *Financial Litigation*, and *ILC Peripherals*, led to intense debate and a circuit split as to whether judges have the discretion to disallow jury trials in complex civil cases. The Ninth Circuit literally construed the Seventh Amendment as granting a flat guarantee of a jury trial in all cases, whether complex or not. That contrasted sharply with the Third Circuit's call for a hierarchical structuring of amendment freedoms, where, in effect, Fifth Amendment protections would reside on a higher plane of importance than those found in the Seventh Amendment. *See Japanese Litigation*, 631 F.2d at 1073–74, 1088; *Financial Litigation*, 609 F.2d at 431.

In 1979, a year before *Japanese Litigation* was decided, the Ninth Circuit upheld the right to a jury trial in complex cases in the *Financial Litigation* case, explaining that "[j]urors, if properly instructed and treated with deserved respect, bring collective intelligence, wisdom, and dedication to their tasks, which is rarely equaled in other areas of public service." 609 F.2d at 429–30. Regarding the imputed import of the *Ross* footnote, the Ninth Circuit sharply retorted: "it is doubtful that the Supreme Court would attempt to make such a radical departure from its prior interpretation of a constitutional provision *in a footnote*." *Id.* at 425 [emphasis added].

In *Tull v. United States*, 481 U.S. 412 (1987), the Supreme Court appeared to affirm the Ninth Circuit's position that no complexity exception was specifically established by the *Ross* footnote. *Tull* cryptically suggested that meaningful inquiry into "the practical abilities and limitations of juries" should be limited to consideration of the Seventh Amendment's applicability to administrative law courts. 481 U.S. at 418 n.4. This apparent analytical shift away from questioning the individual abilities of jurors in complex cases to the functional capabilities of the jury mechanism within the context of administrative proceedings was made clear in *Granfinanciera, S.A. v. Nordberg*, where the Court emphasized that proper Seventh Amendment analysis is more heavily weighed in favor of the second prong of the *Ross* test. 492 U.S. 33, 42 (1989) (hereafter *Nordberg*).

However, seven years later, the Supreme Court compared the respective abilities of both judge and jury when it decided against a right to have a jury interpret the validity of patent claims. *See Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996). In *Markman*, the Court not only surveyed the law as it existed in 1791 and the remedy sought, but it also analyzed the "functional considerations" of judges and jurors in that context. *Id.* at 388. Although the Court did not explicitly reference the so-called complexity exception, it certainly weighed the respective capabilities of judge and jury in ultimately deciding the issue. *Id.*

After *Markman*, one could have surmised that the Supreme Court had sufficiently clarified the *Ross* footnote and firmly settled the question of the complexity exception's inviability under the Seventh Amendment. However, *Markman* rekindled the firestorm of debate on this issue, which continues today. Regardless of the present status of the complexity exception, its advocates have performed a great service for the American legal system. Indeed, the battle over the Seventh Amendment's complexity exception may be a blessing in disguise, for the complexity exceptionists have forced the majority to consider alternatives and draft proposed changes to the existing jury system. Several of these proposed reforms follow.

Recommendations for Complex Cases

Over the years, several organizations have conducted jury trial research in the effort to solve the daunting jury trial issues created by complex litigation. Most recently, the National Center for State Courts (NCSC), as part of the National Program to Increase Citizen Participation in Jury Service through Jury Innovations, has been involved in the process of gathering essential data on all components of state jury systems across the country. To do this, the NCSC has surveyed state judges, trial lawyers, court administrators and community leaders. When completed, this groundbreaking study will offer invaluable data on jury policies and practices across the nation. The NCSC survey will be instrumental in providing decision-makers the opportunity to assess several jury trial innovations that have been developed in recent years. (Trial attorneys can help promote these changes by completing the NCSC survey. For information about the NCSC survey or the NCSC program, please contact Christopher Connelly at cconnelly@ncsc.dni.us.)

A Special Jury

To those who believe lay jurors are unduly influenced by external forces, and who also reason that certain people lack the proper education to understand complex commercial cases, the "special jury" may be the answer. In early medieval England (circa 1200), when juries were first employed on a regular basis, all juries were "special" for one reason or another. For example, in the 14th century, jurors were specifically chosen from the locale where conflicts arose, because the court presumed they would already know the disputed facts. James C. Oldham, *The Origins of the Special Jury*, 50 U. Chi. L. Rev. 137, 164 (1983). In fact, it was *expected* that these jurors would be biased; these people were not merely passive receptors of evidence, but rather were active investigators and participants in the case. John H. Langbein, *The Origins of Public Prosecution at Common Law*, 17 Am. J. Legal Hist. 313, 314 (1973).

Some medieval juries were also "special" because of the jury panel's particular knowledge or experience. In 1394, fishmongers and cooks were assembled as a jury in a suit alleging the sale of tainted food. Oldham, *supra* at 174. It was a common practice during the 15th, 16th, and 17th centuries to impanel special juries of clerks and attorneys once every three years to investigate possible ethical misconduct by public officials. *See* J.H. Baker, *The Attorneys and Officers of the Common Law in 1480*, 1 J. Legal Hist. 182, 184 (1980). In the 1663 libel trial of John Twyn, the defendants requested an expert jury: "We desire we may have a jury of booksellers and printers, they being the men that only understand our business." *Id.* (recounting the case of *Rex v. Twyn*, 6 State Trials 513, 519 (Old Bailey 1663)). Half the jury was composed as requested, as the special jury members would be able to make the rest understand it. *Id.*

During the 17th Century, a female criminal defendant convicted of a capital crime was permitted to allege pregnancy and "plead her belly." Oldham, *supra* at 171. In such cases, the court selected an all-female jury for the limited purpose of determining whether the woman's claimed pregnancy was genuine. *Id.* The "matrons" on those panels were either married women or widows who had experience with pregnancy and childbirth. *Id.* at 172. As Oldham notes, "[n]aturally courts used the all-female jury for reasons of delicacy, but they primarily viewed the women as *experts* on the subject of their inquiry." *Id.* at 171–72 [emphasis added].

As a result of the increasing frequency of legal questions regarding mercantile importance in the 16th and 17th centuries, "merchant juries" were created. The role of merchants on these tribunals was not restricted to the medieval jury custom of being witnesses to the facts; rather, merchants helped formulate the principles of English commercial law because of their special knowledge and experience with trade customs. William V. Luneburg & Mark A. Nordenberg, *Specially Qualified Juries and Expert Nonjury Tribunals: Alternatives for Coping with the Complexities of Modern Civil Litigation*, 67 Va. L. Rev. 887, 903 (1981).

This pattern continued until the 19th Century, when accusations of jury packing in special tribunals in England brought them under the intense examination of Parliament reformers. *Id.* at 210. Eventually, by the end of the 19th century, the popularity of the special jury dwindled. *Id.* In 1949, the special jury was abolished in all but one locale, the "City of London Special Jury," and even that final bastion toppled in 1971. *Id.* at 210 n. 453.

Throughout the first half of the 20th century, special juries were utilized in the United States in limited forms. *See* Richard C. Baker, "In Defense of the 'Blue Ribbon' Jury," 35 Iowa L. Rev. 409, 409–10 (1950). Up until the mid-1960s, New York employed special juries upon the motion of either party, if the importance or intricacy of the case appeared to justify an expert fact-finder. Sutton, *supra* at 580 (citing 1938 N.Y. Laws Ch. 552, Art. L8-B at 1488 (Apr. 7, 1938) (repealed 1965)). The constitutionality of New York's special jury selection process was upheld by the Supreme Court in *Fay v. New York*, 332 U.S. 261, 270 (1947), observing that "(e)ach of the grounds of elimination is reasonably and closely related to the juror's suitability for the kind of service the special panel requires or to his fitness to judge the kind of cases for which it is most frequently

utilized." The New York Legislature later repealed its special jury statute in 1965, although it has since developed an alternative specialized business court.

The State of Delaware resuscitated the special jury in 1988. 10 Del. Code Ann. §4506 (Supp. 1988). Delaware's special jury statute allows the use of special juries in only complex civil cases. *Id.* Although the U.S. Supreme Court has not yet considered the constitutionality of this statute, Delaware's highest tribunal, the Court of Chancery, upheld the law under both the state and federal constitutions. *See In re Asbestos Litigation*, 551 A.2d 1296 (Del. 1988). *See also Nance v. Rees*, 161 A.2d 795 (Del. 1960) (upholding a similar law); *Haas v. United Technologies Corp.*, 450 A.2d 1173 (Del. 1982) (upholding a similar law).

Courtroom Technology

In complex trials, the use of visual aids has always been vital, because "the more complex the issues become, the greater the likelihood that jury interest, comprehension, and retention will diminish." Mark Dombroff, *Canny Trial Lawyers Employ "Show and Tell" Tactics*, Legal Times, October 1982, A4. The use of technology increases juror comprehension and interest, and decreases the time spent on acquainting the jury with the evidence, which is essential to effectively presenting complex cases. Increased juror comprehension results from "[t]he dramatic increase in retention affected by a combination of telling and showing...." *Id.*

Specifically, federal courts around the country are increasingly using courtroom monitors to visually display trial exhibits instantly and simultaneously to jurors during trial witness testimony. In fact, the Judicial Conference Committee on Automation and Technology Assessment of Certain Technologies in Federal Courts recently found that when technology that simultaneously displayed evidence to judge and jury via individual monitors was used at trial, roughly 90 percent of all jurors surveyed believed that they were able to examine the evidence and follow the presentations of the trial attorneys more closely. *See* Fredric I. Lederer, *The Road to the Virtual Courtroom? A Consideration of Today's—and Tomorrow's—High Technology Courtrooms*, 50 S.C. L. Rev. 799, 814 (1999).

Technology is also extremely useful for reducing the length of a complex trial. First, in many federal courtrooms today a party can "burn" a set of trial exhibits onto a CD-ROM for use at trial, which eliminates the need for the trial team to manually search through a voluminous stack of exhibits in order to find and offer a particular document. Instead, the electronic exhibit is easily accessible and can be quickly displayed on demand. Once an exhibit is entered into evidence, it is immediately "published" to the jury, which also improves efficiency. This procedure also allows for better jury comprehension because each juror can review the exhibit at the same time a trial witness is testifying about that particular document.

The battle over the Seventh Amendment's complexity exception may be a blessing in disguise.

Clearly, the burgeoning use of technology yields increases in juror comprehension and interest and decreases the potential length of complex jury trials. Attorneys litigating complex cases not only need to embrace the use of new technology as it becomes available in today's courtrooms, but also must refine their trial skills in conjunction with the modern set of available electronic tools that can greatly enhance the presentation of complex evidence to juries at trial.

Mini-Summaries

This heavily endorsed procedural change would enable attorneys to offer oral mini-summaries of evidence or testimony to jurors throughout trial. *See, e.g.*, Franklin Strier, *The U.S. Jury System Is Failing*, The Nat'l L.J., April 13, 1992 at 17. Mini-summaries allow trial lawyers the ability to highlight the key testimony of expert witnesses in advance, and can also be used to better explain the relevance of difficult or otherwise conceptually complex evidence before it is introduced. The mini-summation technique gained instant fame during Gen. William C. Westmoreland's celebrated trial against C.B.S. in 1985. Arthurs, *Mini-summation Lauded in Libel Case*, Legal Times, February 1985, 1. The technique, which allowed lawyers to interrupt the presentation of evidence periodically and argue their case directly to the jury, "was a highly significant innovation," according to attorneys involved in the "interim summations" to the jury. Over the course of the five-month trial, each side was allotted a total of two hours between opening and closing to make "interim summations." *Id.* The mini-summations were timed by the judge; with nearly four days of testimony remaining before the case was settled, each side had used roughly 100 minutes of its allotted time. *Id.* This enhanced line of communication between attorneys and jurors is "of paramount importance in getting jurors to understand the key points of contention in a trial." *Id.* at 23.

Special Verdict Forms

Under Rule 49 of the Federal Rules of Civil Procedure, federal courts can allow jury verdicts in one of three forms: (1) general verdicts; (2) general verdicts with interrogatories; and (3) special verdicts. Either party may request a general verdict, specific verdict, or general verdict with interrogatories, but the final decision is ultimately reserved for the trial judge. *Id.* Each of these verdict forms has advantages and disadvantages in complex cases. First, general verdicts with interrogatories appear to be the most desirable verdict forms. General verdicts with interrogatories may be preferable because they represent a compromise between the possibility of "black box" decisions of general verdicts and the shift of power to judges that occurs with special verdicts. *Jury's Capacity, supra* at 1500. Also, some believe

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general verdicts with written interrogatories minimize the risk of judgments notwithstanding the verdict, retrial or remittitur in lieu of a new trial. *See id.*

Special verdicts are arguably the next most desirable form. *Id.* This is because special verdicts "enhance the quality of jury decision-making by minimizing misinterpretations of law and by providing a framework that helps to identify and organize the issues that the jury may consider." *Id.* (*citing* Joe S. Cecil, *et al.*, *Citizen Comprehension of Difficult Issues: Lessons from Civil Jury Trials*, 40 Am. U.L. Rev. 727, 736 (1991)). Additionally, special verdicts promote efficiency because if a jury returns inconsistent answers to specific questions it may be possible to relitigate only a discrete portion of the case rather than the entire case, which would be necessary in the case of a general verdict. *Id.*

Lastly, the general verdict has been criticized for allowing the jury to potentially decide a case on emotion, rather than by objectively applying the law to the facts of each case. A specific verdict allows the judge to "monitor" the jury to some extent, to ensure that the jury debated every significant aspect of the case and correctly applied the appropriate law. However, both the general verdict with interrogatories and the special verdict have been criticized in certain circles because they: (1) cause prolonged deliberations and hung juries; (2) inhibit the jury's ability to decide a case based on contemporary community values; and (3) cause problems and uncertainty when juror answers are inconsistent with one another. *Id.*

One suggestion to resolve these problems is for the court to order a series of separate judgments at the end of the trial, or to separate the evidence on important issues and receive verdicts on those separate issues as the trial progresses. *See* Elizabeth A. Faulkner, *Using the Special Verdict to Manage Complex Cases and Avoid Compromise Verdicts*, 21 Ariz. St. L.J. 297, 316–20 (1989) (giving examples of cases that have used this method and describing the process in more detail). The use of periodic, segmented special verdicts, as suggested by Faulkner, can separate the issues for the jury, reducing the complexity of the case. *Id.*

Juror Questions

Another recommendation suggests that jurors be allowed to anonymously submit written questions to witnesses, to be asked by the presiding judge. If one favorably likens the courtroom to a classroom, logic supports the assertion that jurors can improve their understanding, or simply clear up any ambiguities they may perceive, by the written question method. *See generally* J. McElhaney, *McElhaney's Trial Notebook*, 587–95 (3d ed. 1987). Advocates believe that allowing jurors to ask questions keeps jurors interested and helps judges and attorneys assess which parts of a case need clarification. *Jury's Capacity*, *supra* at 1508. Opponents argue that juror questions may fall either outside the scope of the evidentiary rules or in areas that one or all parties cannot answer, due to stipulations or pretrial rulings on motions *in limine*. Critics also worry that attorneys will be afraid to object to juror questions for fear of making a negative impression. *Id.* Judges have also expressed concern that juror questions will hamper an attorney's ability to control the presentation of the case. *Id.* Critics feel that this would lead to unwarranted confusion, delay and added expense. McElhaney, *supra* at 587–95.

On the other hand, some courts have sparingly allowed jurors to ask limited questions. *Jury's Capacity*, *supra* at 1508. Arizona has actually codified this concept in its Rules of Civil Procedure by permitting jurors to ask questions, despite the existence of policy arguments to the contrary. Ariz. R. Civ. Pro. 39 (b) (2004). In such cases, however, the trial judge must allow the attorneys the opportunity to object to the jurors' questions outside the presence of the jury. *Id.* Admittedly, the overall response and reaction of the Arizona Bar to this procedure has been somewhat mixed. Janessa E. Shtabsky, *A More Active Jury: Has Arizona Set the Standard for Reform with Its New Jury Rules?*, 28 Ariz. St. L.J. 1009, 1021–22 (1996). To coin a popular phrase, it appears that "the jury is still out" on this proposed reform measure.

Conclusion

Confucius once observed, "In presiding over lawsuits, I am as good as any person. The thing is to aim that there should be no lawsuits." 142 The Wisdom of Confucius 198 (Lin Yutang ed. 1938). While laudable, this position is decidedly untenable in the 21st century. Indeed, as science and technology progress at an exponential rate in the Internet age, jury trials in the civil arena will no doubt become increasingly complex. It appears unlikely that the so-called "complexity exception" will ever attain the critical mass necessary to radically change the legal terrain in this area. However, the modest jury trial proposals listed here should aid trial lawyers in effectively presenting the complex case to a jury. FD

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lants squeezed 104 post-trial issues into 11 appellate issues, with numerous sub-parts. In disapproving this approach, the appellate court stated:

> The Defendants' Statements of questions involved do not identify the issues in the briefest and most general terms. Furthermore, both the Defendants' Statements of issues also exceed 15 lines. We note that the Defendants were only able to contain their Statements of the question on one page through use of single spacing, decreased font size, and altered margins. The Defendants disregarded Rule 2116(a) despite the fact that the Rule plainly states that it "is to considered in the highest degree mandatory."

Kanter v. Epstein, 2004 Pa.Super. 470 (2004).

An appellate attorney certainly does not want his or her brief to sidetrack the reviewing judges' attention from substantive arguments to considerations of format or technical compliance. When this occurs, persuasiveness undoubtedly suffers. While conformance with formal and technical requirements may not guarantee you a winning brief, violating those requirements can give you a losing one. FD