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Note/Discussion

Character Proof and the Fireside Induction[1]

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The present research examined psycholegal assumptions about specific acts evidence as a method of character proof. On the basis of "fireside induction" (Meehl, 1971) and social psychological research on inferential processes, it was expected that the logic behind the presumption against specific acts testimony would receive empirical support. In the context of a videotaped automobile negligence trial, nondeliberating experimental jurors were presented with character evidence expressed either in terms of specific acts or in terms of general reputation. Mode of presentation and the amount of testimony also were varied. Only post hoc support for the logic behind the presumption against specific acts testimony was obtained, and several factors that may have constrained its impact were considered.

INTRODUCTION

An increasing number of researchers in psychology and law have translated traditional legal concepts and assumptions into testable behavioral constructs (cf. Tapp, 1976). Green (1968), for example, has investigated the intuitive conception of the "reasonable man" standard. Ostrom, Werner, and Saks (1978) and Saks, Werner, and Ostrom (1975) have used information integration theory to clarify the "presump-

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tion of innocence" assumption. Simon and her colleagues have attempted to quantify in probabilistic terms the "beyond a reasonable doubt" burden of proof in criminal trials (Simon, 1970; Simon & Mahan, 1971). Social psychological assumptions underlying the venerable debate about the nature of adversary legal process have also been the focus of Thibaut and Walker's (1975) programmatic research on "procedural justice" as well as more recent research on the comparative impact of adversary versus nonadversary modes of legal procedure on witness testimony (Vidmar, Note 1). Similarly, Borgida (in press) and Borgida and White (1978) have examined the social psychological assumptions underlying recent evidentiary reform of rape laws.

The present research focused on legal assumptions about specific acts evidence as a method of character proof in criminal and civil proceedings. *The Federal Rules of Evidence* (1975; Rule 405) distinguish three methods of character proof: *reputation,* whereby proof of character may be made by testimony about the person's general reputation in the community; *personal opinion,* whereby proof of character may be made by testimony in the form of opinion; and *specific acts of conduct,* whereby proof of character may be made in terms of specific behavioral instances. In cases where character may be used circumstantially to prove that a person acted in conformity with his or her character, proof by specific acts would not be admissible. However, when character or a particular character trait is "in issue" because it is an essential element of a charge or claim, evidence of specific acts would be admissible in addition to proof by reputation or opinion (Federal Rule 405b). Thus, specific acts proof would not be prohibited in a civil case where character was in issue, or where the evidence was offered to reflect upon the credibility of a witness or to prove intent, knowledge, plan, or some fact other than character (Weinstein & Berger, 1975).

The general presumption against using specific acts testimony in cases where character is not in issue is based on the interesting "fireside induction" (Meehl, 1971) that specific acts have too much probative value as character proof. McCormick, for example, has noted the "pungency and persuasiveness" of specific acts testimony. Other legal scholars, however, have argued that specific acts also possess "the greatest capacity to arouse prejudice, to confuse, to surprise, and to consume time" (Rule 405, Advisory Committee Note, *Federal Rules of Evidence,* p. 29). The concern has been that although specific acts may have probative value, this probative value would be outweighed by the "unfair prejudice" and "confusion of the issues" associated with them. "Unfair prejudice" in this context would be "an undue tendency to suggest decision on an improper basis, commonly, though not necessarily an emotional one" (Rule 403, Advisory Committee Note, *Federal Rules of Evidence,* p. 25). Perceptions of the litigants and even juror verdicts could be influenced by such prejudice and in unpredictable ways. There has also been the practical concern that with specific acts testimony there would be "undue delay, waste of time, and needless presentation of cumulative evidence" in order to verify or rebut specific acts. Therefore, in order to minimize extraneous considerations that might sidetrack a jury from the more important evidentiary issues at bar, the rules of evidence carefully restrict the conditions under which specific acts may be used as proof of character.

The question remains, however, as to whether this presumption against specific acts testimony has an empirical basis. Indeed, there are theoretical reasons to expect that juror perceptions and possibly juror verdicts may be influenced by character testimony conveyed in terms of specific behavioral anecdotes but not by reputation

testimony.[2] Reputation testimony, for example, presumably reflects a distribution or base rate of community sentiment about a person's character. Research on judgment processes has suggested that people tend to regard such base data as uninformative. Perhaps the most impressive demonstration of this inferential failure was conducted by Kahneman and Tversky (1973). They asked subjects to judge the probability that a target individual, described in a brief personality sketch, was an engineer, given: (a) that he was drawn from a population consisting of 70 engineers and 30 lawyers or (b) that he was drawn from a population consisting of 70 lawyers and 30 engineers. Knowledge of the population base rate for occupational categories had virtually no effect on subjects' judgments of the probability that the target individual was an engineer. Instead, subjects relied almost exclusively on the personality sketch in making their predictions. If the sketch appeared to be a representative description of an engineer, they predicted that the target individual was an engineer; if it seemed representative of a lawyer, subjects predicted he was a lawyer.

Nisbett and Borgida (1975) also found that subjects were quite willing to utilize concrete, anecdotal (in effect, specific acts) information in their predictions. Nisbett and Borgida asked subjects to read detailed descriptions of two previously conducted psychology experiments. Some subjects were left ignorant of the behavioral base rates in both experiments and were shown brief videotaped interviews with two students described as subjects in the original experiments. Subjects in this target case condition were told that both subjects in both experiments had behaved in the most extreme possible way. They were then asked to indicate what they thought the distribution of the entire subject population of the experiments would have been. For both experiments, subjects were willing to infer that the population mode was identical to the behavior of the two subjects whom they had observed. This finding was consistent with what Tversky and Kahneman (1971) refer to as a belief in the law of small numbers; namely, an intuitive failure to understand the unreliability of information based on small samples (e.g., target case information) or the robustness of information based on large samples (e.g., base rate information).

It may be the case that such results are found because anecdotal information remains in thought longer and activates further cognitive work because of its greater emotional interest (Borgida & Nisbett, 1977; Nisbett & Ross, 1980). Such information also may trigger more inferences because it may more readily evoke various cognitive structures. For example, *scripts* are a form of cognitive organization or knowledge structure in long-term memory (Abelson, 1976). They represent coherent behavioral scenarios for a variety of familiar social situations encountered in daily experience. Social interaction at a birthday party or in a restaurant, for example, may be mediated by one's script for what to expect in such situations. Abelson (1976) has argued that many inferences about situations in everyday life proceed along the lines of these preestablished scripts. Thus, information that calls to mind a particular script could be assimilated to the script and subsequent inferences and actions could be guided by the script.

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[2]Although general reputation and personal opinion are conceptually distinct, in many instances the two methods of character proof are practically similar. A witness who testifies that another person's reputation for care and cautiousness is good or bad is expressing his/her personal opinion as well (Weinstein & Berger, 1975). The present experiment therefore contrasts reputation or opinion about reputation against specific behavioral instances.

Just as concrete, anecdotal information may be more likely to evoke scripts which in turn may facilitate inferences about behavior, anecdotal information may also evoke another class of knowledge structures called *personae.* A persona is a type of knowledge structure that represents the personal characteristics and typical behaviors of various "stock characters" (Nisbett & Ross, 1980). Some of these personae or characters are idiosyncratic and based on one's personal experience (e.g., Mrs. Marple the English teacher). Others are more culturally shared (e.g., the Good Samaritan, the schlemiel, or Suzy Sorority). Once a particular persona has been evoked by specific features or behaviors of a given individual, subsequent expectations and responses to that individual may be influenced in part by the persona (Nisbett & Ross, 1980).

Two factors may enhance the likelihood that specific acts will evoke these character-related inferences. First, increasing the sheer number of character witnesses who testify might increase the strength of character-related inferences. If this were the case, as some trial lawyers assume, then increasing the number of witnesses who give specific acts testimony may have even more impact on juror responses. On the basis of the "law of small numbers" (Tversky & Kahneman, 1971), however, juror perceptions and verdicts should be insensitive to increasing the number or sample size of witnesses who testify.

A second factor that may enhance the likelihood that specific acts will evoke character-related inferences concerns the vividness of the mode by which such testimony is presented. Sociolegal research on videotaped trials (e.g., Miller, 1975; Bermant & Jacoubovitch, 1975; Bermant, Chappell, Crockett, Jacoubovitch, & McGuire, 1975; Williams, Farmer, Lee, Cundick, Howell, & Rooker, 1975; Farmer, Williams, Cundick, Howell, Lee, & Rooker, 1977) has suggested that the videotape medium has a different impact on jurors' perceptions and verdicts than the widely accepted procedure of reading a transcript of witness testimony. A series of experiments conducted at Brigham Young Law School suggested that this discrepancy may be due to the fact that the transcript method was considerably more abstract and tedious than the *in vivo* quality of videotaped testimony (cf. Williams et al., 1975; Farmer et al., 1977). On this basis, therefore, one might predict that the videotaped presentation of witness testimony, in contrast to the transcript method, will enhance the influence of specific acts on juror responses.

To test these hypotheses, the present experiment was conducted. Experimental jurors took part in a "joint Law School and Psychology Department investigation of different forms of witness testimony." They were asked to serve as nondeliberating jurors for a videotaped enactment of an automobile negligence trial. As part of the trial, experimental jurors were shown character evidence pertinent to a character trait in issue on behalf of the plaintiff in the case. Control jurors, on the other hand, were not exposed to character evidence. Character evidence was either presented in terms of specific acts of conduct or in terms of the plaintiff's general reputation. Cross-cutting method of proof, jurors either received testimony from a low number of character witnesses or from a high number of witnesses. In addition, jurors either received this evidence by viewing a videotaped presentation of character testimony or they received the identical testimony via the read transcript procedure. Upon completion of the videotaped trial, all jurors individually rendered negligence verdicts and answered additional questions about the proceedings.

METHOD

Experimental Jurors

Jurors were 160 University of Michigan undergraduates enrolled in Introductory Psychology. An equal number of male and female jurors were randomly assigned to each experimental condition in a 2 × 2 × 2 factorial design. There were 32 student jurors, also balanced by sex, assigned to an independent control group.

Procedure

Experimental jurors arrived at the University of Michigan's Law School in groups of from three to eight persons per session. An experimental assistant led jurors to a small seminar room, where they were met by the experimenter. Jurors were asked to seat themselves alongside the seminar table so they were facing a 19-in. (48.26-cm) television monitor which was at the head of the table. The monitor was connected to one of two videotape playback decks on a cart adjacent to the seminar table.

After the assistant departed, the experimenter introduced himself as "the principal investigator for this jointly sponsored Law School and Psychology Department study." In further introducing the study, all jurors were told:

> As you may know, the judicial system is tremendously overloaded at the present time with appealed cases waiting for higher court judicial review. A procedure which we here at the Law School and the Psychology Department have been studying to remedy this situation involves the use of videotaped trials. Currently, there's considerable national interest in the use of videotape technology in the courtroom. Videotaped trials would allow both prosecution and defense attorneys to agree in advance that the videotape includes the important facts of the case. Such a procedure also would eliminate the need for a substantial amount of repetitive testimony and argumentation, and hopefully would facilitate the judicial review process.

For those experimental jurors in the *Video* conditions, the experimenter continued his introduction as follows:

> Another distinctive feature of this procedure is the possibility of videotaped testimony of witnesses. As you may know, having to serve as a witness in a lawsuit can be a disruptive and inconvenient event in a person's life. The procedure that is usually followed involves videotaping witness testimony at a time and place convenient to the witness and then showing the videotaped testimony to the jury. This was done in the trial you will see and I'll be showing you some character witness testimony which was given at a different time and therefore is on another videotape. This tape was shown to the jury in the trial you will see after the plaintiff's testimony. The burden of proof, in this case, is on the plaintiff and therefore the defense did not resort to character witnesses.

For those experimental jurors in the *Read Transcript* conditions the experimenter instead continued his introduction by informing jurors that:

> The procedure that is usually followed involves a court-appointed official who interviews the witness at a time and place convenient to the witness. The witness testimony is then transcribed and read to the jury by the court reporter as part of the videotaped case proceedings.

In concluding his cover story, the experimenter explained to experimental as well as control jurors that:

> The trial you will see is the edited version of an actual auto negligence case—Marjorie Nugent versus Frank Clark—which occurred several years ago before no-fault insurance

> laws were enacted here in Michigan. Several years ago, for other research purposes, the Law School obtained the permission of Judge Dale Riker of Genessee County Circuit Court, as well as the litigants involved in the case, to videotape this entire trial. Obviously, we already know the judgment rendered by jurors in the original case. What we are now interested in is whether your judgments as simulated jurors will be similar based on this highly edited version of the trial. You will see the trial and character witness testimony on this monitor and afterwards you will be asked to render a verdict and answer some other questions about the trial. You will not be deliberating as a jury.

At this time, the experimenter distributed to jurors and then read aloud a brief summary of the basic case facts. Jurors then viewed the first portion of a videotaped automobile negligence trial, which included the judge's introductory remarks, opening statements by the plaintiff's attorney and the defense attorney, and the testimony of the plaintiff. As the plaintiff concluded her testimony, the experimenter manually switched the videotape transmission from the trial, mounted on the first playback deck, to the character witness videotape mounted on the second playback deck. The particular segment of character witness testimony shown to jurors was determined randomly prior to the start of any given session and was preset to reduce lag-time in the transition from the trial tape to the character witness tape. This latter transition took approximately ten seconds. Jurors in the control group did not receive character witness testimony, and instead viewed the entire videotaped trial without interruption.

Following the manipulation of character evidence, the experimenter switched back to the trial videotape. Experimental jurors then viewed the remainder of the trial in which they heard the prosecution's closing argument, the defense's closing argument, and the judge's final charge to jurors. At the conclusion of the trial, the experimenter distributed a questionnaire composed of various dependent measures, including the verdict and damage award. Jurors were asked to make independent judgments. Upon completion of this questionnaire, jurors were debriefed. The full procedure required approximately 75 minutes.

Stimulus Materials

Videotaped Trial of an Automobile Negligence Case. The 33-minute videotaped trial developed for the present research was a highly edited version of the trial originally videotaped by Miller and his colleagues for their research on the use of videotape technology in the courtroom (see Miller, Bender, Florence, & Nicholson, 1974; Miller, Bender, Boster, Florence, Fontes, Hocking, & Nicholson, 1975). Miller selected an actual automobile negligence case which occurred in Iron Mountain, Michigan, in 1968. The accident involved a two-car collision at an uncontrolled traffic intersection. The plaintiff, Mrs. Marjorie Nugent, brought suit for a specified amount of money against Mr. Frank Clark, the driver of the other car. The major point of controversy in Miller's simulation, as well as in the present edited version, centered on who had proceeded first into the intersection and on whether the defendant or the plaintiff had exercised improper caution in approaching the intersection.

For the present research, the original 4-hour enactment of this trial was edited to a ½-hour videotaped trial. Certain procedural features, such as the Judge's opening and closing comments, and the opening and closing arguments by the prosecution and defense, were retained in the edited version. Furthermore, in order to construct a case

in which the determination of negligence was ambiguous, all eyewitness testimony was deleted (only the principals testify), and other points of evidence were edited.

Character Witness Testimony. Because the original full-length videotaped trial did not include character witness testimony, it was necessary to construct such testimony. Six character witness scripts, therefore, were developed in accordance with conventional trial procedures (see Ladd, 1939; Udall, 1949; Cleary, 1972; Lempert & Saltzburg, 1977). Four of the scripts presented character testimony expressed in terms of the plaintiff's reputation and the testimony in two scripts was expressed in terms of specific acts. The content of each script was substantively proplaintiff and commented favorably on the plaintiff's "cautiousness," which would be the central character trait in issue in this type of case.[3]

Three women and three men, who in age and appearance resembled the cast of characters in the edited version of the videotaped trial, were recruited to play the roles of four character witnesses, a lawyer, and a court reporter. Two of the four actors were assigned both specific acts and reputation scripts and two other actors were assigned only reputation scripts. Character witness testimony was videotaped in the moot courtroom of the University of Michigan's Law School. With another actor as examining attorney, prompting the witness off-camera, each character witness testified for two to three minutes.

Specific Acts versus Reputation Testimony. Each of the scripts for the two character witnesses who gave specific acts testimony mentioned two specific behavioral examples of the plaintiff's cautiousness. These examples were selected because they were most frequently cited as examples of cautious behavior in a pretest. One example always pertained to the plaintiff's driving ability while the second example cited always referred to another aspect of the plaintiff's cautiousness.

For example, one witness testified that: ". . . for years now, Marge and I have gone grocery shopping together, usually toward the end of the week. Marge always wears her seatbelt and shoulder strap and encourages me to wear mine." The same witness also testified that: "Marge takes a lot of precautions when she leaves the house. I mean she will make sure that the stove is off or that the lights are turned off, anything that's potentially a fire hazard, for example . . ."[4] Another witness testified that: ". . . she makes decisions—whether it's about money matters, whatever—in a

[3]The rationale for this procedure is that 64% of pretest verdicts were prodefendant. In order to avoid a prodefendant ceiling effect, the character evidence was proplaintiff. It should be noted, however, that the rules of evidence require that the accused and not the plaintiff initiate the inquiry into character.

[4]These specific behavioral acts are offered to prove the character trait in issue and not habit. Habit involves invariability of responses to a specific situation. In contrast, "If we speak of character for care, we think of the person's tendency to act prudently in all the varying situations of life, in business, family life, in handling automobiles and in walking across the street" (Cleary, 1972). The distinction between habit and character is especially problematic in a negligence context because "judges must distinguish between what is often called 'habit of care'—*but is actually evidence of general negligent or prudent character*—and repeated specialized responses to a regular, specific situation which can properly be termed a habit" (Weinstein & Berger, 1975, p. 406–409, emphasis added). The present case involves proof of "habit of care." It would be difficult to state specific behavioral acts without the hint of personal opinion in this type of case, i.e., one which involves testimony about good character and testimony offered by friends. One witness states an opinion and then provides specific acts; the other witness provides specific acts and then states an opinion. The point here is that specific acts predominate.

cautious way. She'll read something completely before she signs it, for example . . . I guess what I'm trying to say is that she always reviews a situation thoroughly before making a decision. She's not the type of person to rush into anything." In contrast, each of the four character witnesses who gave general reputation testimony testified that the plaintiff's reputation for cautiousness was good or excellent and that their evaluation was based on community sentiment. A typical exchange between counsel and a general reputation character witness was as follows:

> Attorney: Do you know Marjorie Nugent's reputation for cautiousness—prior to and on the morning of March 11, 1972?
> Witness: Yes, I do, yes.
> Attorney: Okay Mrs. Spicer, then will you please tell the jury whether it is good or bad.
> Witness: It's the same as now, of course, I mean it's very good.
> Attorney: Thank you Mrs. Spicer, I have no further questions.

Number of Character Witnesses. For the low number of specific acts witnesses condition, jurors heard one witness recount two specific behavioral examples of the plaintiff's cautiousness. Similarly, for the low number of reputation witnesses condition, jurors heard one witness testify as to the plaintiff's good reputation in the community. Whereas the low number of witnesses was 1 for both specific acts and general reputation testimony, the high number of witnesses was 2 in specific acts testimony and 4 in reputation testimony.

Instead of matching for number of witnesses, the high conditions were matched on the basis of discrete informational units. This procedure was designed to avoid the tedious format of four specific acts witnesses each of whom would discuss two pertinent specific acts. Thus, the testimony of two specific acts witnesses was equated with four general reputation witnesses, each of whom testified as to the plaintiff's general reputation for caution. Four specific acts were therefore matched with four statements about the plaintiff's general reputation.

In order to ensure that the impact of character witness testimony would not be due to some witnesses whose presentational style was particularly persuasive, some jurors in each condition received testimony from different character witnesses. In the low specific acts conditions, for example, half the jurors only received testimony from one of two specific acts witnesses while half the jurors heard testimony from the other specific acts witness. Although all jurors viewed both specific acts witnesses in the high conditions, the order of presentation was reversed for half the jurors. A similar counterbalancing procedure was followed in the low and high general reputation conditions. Data analyses revealed no order effects.

Video versus Read Transcript Mode of Presentation. Whereas jurors in the Video conditions actually viewed the testimony of character witnesses, jurors in the Read Transcript conditions instead viewed another actor, videotaped while posing as a court reporter in the same courtroom, read verbatim transcripts of the identical testimony.

Dependent Measures

The questionnaire distributed to jurors at the conclusion of the videotaped trial included several dependent measures.

Negligence Verdict and Damage Award. Jurors first were asked to render a verdict and, depending on their verdict, a monetary damage award. Either they found

(a) the defendant not negligent, in which case it was unnecessary to determine a damage award; (b) both the defendant and plaintiff were found negligent (contributory negligence; again no damage award); or (c) the defendant was judged negligent and the plaintiff not negligent, in which case jurors made a damage award assessment to compensate the plaintiff for "pain and suffering." Medical expenses were not included in this assessment. The exact amount of the award was determined by the individual juror and ranged from zero dollars to the plaintiff's maximum request of $42,500. A five-point verdict measure was scaled as follows: 1 = defendant not negligent; 2 = both defendant and plaintiff negligent; 3 = defendant negligent, plaintiff not negligent and awarded ≦ $10,000; 4 = defendant negligent, plaintiff not negligent and awarded ≦ $25,000; 5 = defendant negligent, plaintiff not negligent and awarded ≦ $42,000.

Attribution of Responsibility. Jurors were asked to indicate on separate five-point scales (ranging from "not at all responsible" to "extremely responsible") how responsible they felt the defendant and the plaintiff were "for the automobile accident being tried in this case." A responsibility difference score (defendant's responsibility minus plaintiff's responsibility plus a constant of 10) also was calculated.

Perceptions of the Litigants. Fourteen nine-point semantic differentials required jurors to evaluate the plaintiff and the defendant in terms of such trait adjectives as sincerity, trustworthiness, cautiousness, certainty, likability, and honesty. Jurors also evaluated the character witnesses along identical dimensions. Finally, all jurors were asked to write a brief, open-ended personality sketch describing the plaintiff based on impressions formed during the trial.

Recall Measure. Jurors received a five-item multiple-choice recall measure which tested their recall of basic case facts. Jurors in the experimental conditions were also tested for the accuracy of their memory for character witness testimony.

RESULTS

Juror verdicts are presented in Table 1. A 2 × 2 × 2 (Method of Character Proof × Mode of Presentation × Number of Character Witnesses) analysis of variance on

Table 1. Mean Negligence Rating on Verdict Measure[a]

	Specific acts testimony		General reputation testimony	
Mode of presentation	Low no. witnesses	High no. witnesses	Low no. witnesses	High no. witnesses
Video	2.81	1.50	2.56	2.31
Read Transcript	2.25	2.25	1.94	2.13

[a] n = 16 per cell. Cell means are based on the following five-point scale: 1 = defendant not negligent; 2 = both defendant and plaintiff negligent; 3 = defendant negligent, plaintiff not negligent and awarded ≤ $10,000; 4 = defendant negligent, plaintiff not negligent and awarded ≤ $25,000; 5 = defendant negligent, plaintiff not negligent and awarded ≤ $42,500.

these negligence judgments reveals no main effects for Method of Character Proof or Mode of Presentation (both F's < 1, n.s.) or Number of Character Witnesses $F(1, 120) = 2.00$ n.s. There is a reliable Mode $\times$ Number of Witnesses interaction, $F(1, 120) = 4.25, p < .05$. More proplaintiff verdicts are rendered when jurors view videotaped testimony of a low number of witnesses ($M = 2.69$) than when they view a high number ($M = 1.91$) ($p < .05$). Number of witnesses, however, does not make a difference when testimony is presented by the Read Transcript method.

As the pattern of means in Table 1 suggests, this interaction is probably due to the statistically reliable difference between viewing a low number of specific acts witnesses ($M = 2.81$) and viewing a high number ($M = 1.50$) ($p = .003$). Viewing a high number even results in fewer proplaintiff verdicts than the Control group ($M = 2.44$) which did not receive character evidence, $F(1, 120) = 6.30, p = .01$. Whereas the videotaped testimony of one specific acts witness results in favorable verdicts for the plaintiff, the addition of a second specific acts witness is counterproductive. A comparable pattern of results is found for the proportion of proplaintiff verdicts and the monetary damage award. There are no sex differences on any of these verdict measures.

Postexperimental conversations with jurors suggested an explanation for why a second specific acts witness may reduce proplaintiff verdicts. Jurors who saw testimony presented by a single witness perceived her as cautious. They seemed to believe that the plaintiff was a cautious, prudent person who was not as responsible as the defendant for the accident. On the other hand, jurors who heard specific acts testimony from two witnesses had a different perception of the plaintiff's character. Rather than viewing her as cautious and prudent, additional specific acts testimony suggested that the plaintiff was overly cautious and perhaps the kind of person who would cause an accident merely through excessive anxiety.

An internal analysis of the open-ended personality sketches of the plaintiff suggests that these divergent perceptions did moderate the impact of specific acts testimony. *Cautious attributes* were assigned a value of +1. Statements such as "She is a typical American housewife" were regarded as *neutral attributes* with respect to cautiousness and were assigned a value of 0. A third category, which codes *neurotic attributes,* assigned a value of −1 to such statements as "She seems the forgetful, scatter-brain type" or "She seems overly cautious." For all three content categories, each nonredundant response was coded as a discrete unit. The personality sketches were coded in this manner with an intercoder reliability of 87%.

A cautious characterization of the plaintiff on this index should be correlated positively with proplaintiff scores on the verdict measure. This in fact is the case [$r(158) = .35, p < .01$].[5] Jurors who view the plaintiff as a cautious, prudent person tend to render verdicts that are more favorable to the plaintiff.

The entire set of plaintiff perceptions is displayed in Table 2 (Control

[5]It is interesting to note that there is a similar relationship between this "cautiousness vs. neurosis" index and the amount of money awarded by jurors who find for the plaintiff [$r(47) = .34, p < .05$]. This suggests a degree of "unfair prejudice" in that jurors apparently believe that plaintiff does not deserve as much money because she seems neurotic. On the other hand, there is no relationship between the damage award and the degree of responsibility attributed to the defendant [$r(47) = -.06$, n.s.]. This finding suggests that, as the law requires, jurors did not allow the degree of responsibility to moderate amount of money awarded.

Table 2. Mean Degree of Cautiousness for Open-Ended Personality Sketch of Plaintiff[a]

Mode of presentation	Specific acts testimony		General reputation testimony	
	Low no. witnesses	High no. witnesses	Low no. witnesses	High no. witnesses
Video	+.06	−.27	+.02	−.03
Read Transcript	−.01	−.03	−.15	−.07

[a]The open-ended personality sketch of the plaintiff was content analyzed in terms of cautious attributes (+1), neutral attributes (0), neurotic attributes (−1), and total number of statements. Each of the 16 subjects per cell was assigned a ratio score based on the number of cautious minus neurotic attributes divided by the total number of statements. Cell means reflect the mean of these ratio scores which ranged from +1.00 to −1.00. Positive scores represent a cautious characterization of the plaintiff and negative scores indicate a more unfavorable, neurotic view of the plaintiff.

mean = −.03). As with the verdict measure, there is a reliable Mode × Number of Witnesses interaction, $F(1, 120) = 5.27$, $p < .05$. Post hoc comparisons suggest that jurors who view the videotaped testimony of a low number of witnesses perceive the plaintiff as more cautious ($M = +.04$) than those who view a high number ($p = .05$).

It may also be seen in Table 2 that the plaintiff is perceived as more cautious by jurors who view a low number of specific acts witnesses ($M = +.06$) than by those who view a high number ($M = -.27$), $F(1, 151) = 12.54$, $p = .0005$.

These divergent perceptions of the plaintiff's character receive some support from evaluative ratings of the plaintiff. The plaintiff is rated as more cautious, $F(1, 120) = 6.57$, $p < .025$, and more trustworthy, $F(1, 120) = 7.98$, $p < .01$, by jurors who view a low number of witnesses than by jurors who view a high number. Relative to the plaintiff, the defendant is assigned significantly greater responsibility for the accident by jurors who view a low number of specific acts witnesses ($M = 10.94$) than by those who view a high number ($M = 9.31$), $F(1, 151) = 7.23$, $p = .008$.

Recall. Recall of character witness testimony and basic trial facts is consistently accurate. Contrasts between comparable experimental conditions suggest no differential recall of character witness testimony (all two-tailed t-tests are nonsignificant). And a 2 (Method of Character Proof) × 2 (Mode of Presentation) × 2 (Number of Character Witnesses) analysis of variance on juror recall of trial-related facts suggests no differential recall of trial facts across experimental conditions (all F-tests are nonsignificant).

DISCUSSION

The "fireside induction" about specific acts as a method of character proof, that the probative value of specific acts is outweighed by "unfair prejudice," receives only post hoc support in the present experiment. Neither method of character proof

directly influences juror verdicts. Neither the number of character witnesses nor the vividness of the mode by which character testimony is presented enhances the likelihood that specific acts evoke character-related inferences and influence juror verdicts. There is, however, a statistically reliable interaction between Number of Character Witnesses and Mode of Presentation. When jurors view the videotaped testimony of one witness who corroborates the plaintiff's cautiousness, they render proplaintiff verdicts; increasing the number of proplaintiff witnesses, however, decreases the likelihood of conviction.

The presumption against specific acts gains some support from a post hoc analysis of this finding. When one witness cites specific behavioral examples of the plaintiff's cautiousness, jurors tend to perceive her as a cautious, trustworthy person who is less responsible for the accident. There is in fact a positive correlation between this characterization and proplaintiff verdicts. Increasing sample size, however, seems to create a very different evaluative basis for juror verdicts. Jurors tend to perceive the plaintiff as an overly cautious, neurotic person who is more responsible for the accident. The presumption against specific acts may be justified to the extent that such evaluative judgments in this or any kind of trial raise collateral issues which require additional testimony for purposes of rebuttal. Conclusions about the nature of these evaluative judgments, however, must be tempered by the failure to obtain main effects for method of character proof and design factors which may limit the generalizability of experimental findings to the legal process (cf. Davis, Bray, & Holt, 1976; Colasanto & Sanders, Note 2; Gerbasi, Zuckerman, & Reis, 1977).

There are several reasons why the presumption against specific acts as a method of character proof receives only post hoc support in the present experiment. First, it is not clear that the "unfair prejudice" associated with the admission of specific acts should be directly linked to an outcome measure like juror verdict. Specific acts may have multiplicative effects on perceptions of litigants or the interpretation of case facts, but there is no necessary basis for expecting uniform directional effects on juror verdicts.

Second, the impact of specific acts in this case may have been constrained by a ceiling effect. Jurors already may be quite willing to assume that most people are cautious most of the time but that very few people are cautious all of the time. A few anecdotes suggestive of a person's character, therefore, may not seem pertinent to whether plaintiff acted cautiously in this particular case, especially when they are cautioned about according too much probative value to such testimony in the Judge's final charge.

A third reason focuses on the nature of the character proof manipulation. Whereas presentation time of the trial is 33 minutes, presentation time of specific acts testimony ranges from only two to three minutes for a low number of witnesses to approximately six minutes for a high number of witnesses. Moreover, neither attorney refers to specific acts or general reputation testimony in their opening or closing statements. Character testimony, therefore, constitutes only a fraction of the total amount of evidence presented during this trial. In contrast, similar independent variables manipulated in the context of page-length case descriptions often account for a disproportionate share of the overall trial stimulus (as much as one-fifth to one-third). This makes character or personality far more salient than any single piece of evidence would be in an actual trial (Colasanto & Sanders, Note 2). Thus, the 21-

minute segment of the Nugent v. Clark trial shown to jurors after the manipulation of character proof may have attenuated the effects of specific acts testimony.

Finally, the lack of differential recall in the present experiment does not preclude the possibility that specific acts may have a more significant impact on juror responses over time (e.g., in a trial that lasts several days or even weeks). When judgments are obtained *immediately* after the trial, neither type of character proof is more available in memory for recall. After a time delay, however, one might expect specific acts testimony to remain more available in memory than, for example, bland reputation testimony. In fact, Thompson, Reyes, and Bower (Note 3) recently found support for a similar hypothesis. After a 24-hour posttrial delay, they found that when the defendant was of good character, judgments about defendant guilt shift toward the verdict supported by the more vivid (i.e., concrete, intense, emotionally relevant) evidence. This vividness manipulation, however, had no impact on immediate judgments of the defendant's guilt. Thus, it may be the case that the effects associated with specific acts proof are constrained by a procedure that only involves immediate posttrial judgments.

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