UNLOADING THE HIRED GUN: INOCULATION
EFFECTS IN EXPERT WITNESS TESTIMONY

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Abstract

The current projects investigated the efficacy of inoculation as a trial strategy designed to counter mock jurors' perceptions that an expert is a hired gun. Additionally, the projects also examined whether the manner in which experts responded to these questions had a significant effect on their ratings as a hired gun and overall credibility. The project contained two independent studies with parallel manipulations. Study 1 examined the previously mentioned effects in a civil trial while study 2 examined them in a criminal trial. The effects of these variables on measures of case outcome were also examined.

Results revealed that, in a civil setting, inoculation significantly affected mock jurors' views of psychology in general, but had no significant effect on ratings of the expert as a hired gun, expert credibility, or case outcome. However, experts who responded to questions about bias in a narrative versus a fragmented manner were viewed as less of a hired gun. These results were not replicated in the criminal context. In that setting, not using inoculation led to higher ratings of expert knowledge. No other significant effects of inoculation or response style were found in the criminal setting.

Implications of these results regarding current theory about hired gun expert witnesses are discussed. Additionally, suggestions for the fields of trial strategy and expert witness testimony are made. Finally, due to the context dependent nature of the results that were obtained, these findings suggest that future research in this area should be wary to generalize findings from a civil context to a criminal context and vice versa.

LIST OF ABBREVIATIONS AND SYMBOLS

ANOVA	Analysis of Variance
B	Computed value of the unstandardized regression coefficient
df	Degrees of freedom: number of values free to vary after certain restrictions have been placed on the data
F	Fisher's F Ratio
LSD	Least significant difference
M	Mean (arithmetic average)
MANOVA	Multivariate Analysis of Variance
MANCOVA	Multivariate Analysis of Covariance
p	Probability
p.	Page number
r	Measure of Pearson Correlation
SD	Standard deviation
t	Computed value of t test
$<$	Less than
$>$	Greater than
$=$	Equal to

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1. Introduction

The field of forensic psychology involves psychologists performing a wide variety of psychological tasks that relate to the legal system. These tasks include trial consultation, jury selection, performing forensic evaluations, and a wealth of other similar tasks (Greene, Heilbrun, Fortune, & Nietzel, 2007). Yet, even with this great diversity within the field, the cornerstone of forensic psychology involves psychologists assuming the role of expert witness and testifying in court (Colbach, 1997). One study stated that 86% of civil trials surveyed utilized expert testimony (Gross & Syverud, 1996). Melton, Petrila, Poythress, and Slobogin (2007) state that mental health experts in the legal system have been met with greater cynicism and apathy in recent years. They hypothesize that this is due to a belief that experts may be acting as hired guns and selling their testimony to the highest bidder (Melton et al., 2007).

Research into the efficacy of expert testimony can be important for the field. One avenue that could be particularly valuable is to explore possible ways for expert witnesses to avoid being labeled as a hired gun. Being labeled a hired gun can happen to any type of expert who testifies in court, from chemists and engineers to physicians and psychologists. While actual hired guns are probably few in number, the perception of a witness being a hired gun is often cultivated by the attorney on cross examination as a way to discredit the testimony of an expert and portray the expert as less trustworthy (Melton et al., 2007). The current study examined persuasive techniques that could be used by both attorneys and experts to avoid the expert being labeled as a hired gun.

What is a Hired Gun?

Easton (2000) suggests that the idea of a hired gun was originally formed and subsequently popularized in the mythology of the American West. In this context, a hired gun “was one who was paid to engage in gun fights for the person or persons who hired them” (Easton, 2000, p.3). Easton (2000) suggests that expert witnesses in general, and hired guns specifically, are selected for their ability to articulate and defend their position in court. A hired gun, then, is a witness who takes the position that his or her client (the attorney) wants them to take in exchange for their fee (Easton, 2000). Simply put, a hired gun, in the most blatant form, is an expert who forms an opinion based solely on the request of the retaining attorney. While base rate information is understandably unavailable concerning hired guns, one can hope that this most blatant form of hired gun testimony is rare. Whereas most ethically acting experts base their opinions and findings on a combination of objective psychological assessments, clinical interviews, and clinical experience, hired guns focus on providing the strongest and most helpful opinion possible for the retaining attorney.

Although an important aspect of hired gun experts is to provide the strongest opinion possible for their attorney, it should be pointed out that there is no ethical standard prohibiting any expert from providing persuasive testimony as long as that testimony is based on honest, accurate, and objective procedures (American Academy of Psychiatry and Law, 2005; American Psychological Association, 2002; Committee on the Revision of the Specialty Guidelines for Forensic Psychology, 2008). In fact, the newest draft of the *Specialty Guidelines for Forensic Psychology* states that the ethical obligation to provide fair and accurate testimony “does not preclude forceful presentation of the data and reasoning upon which a conclusion or professional product is based” (Committee on the Revision of the Specialty Guidelines for Forensic

Psychology, 2008, p. 15). Clearly, persuasion is an important part of ethical forensic practice. Even so, persuasion always takes a backseat to honest and objective representation of the evaluation. The *Ethics Guidelines for the Practice of Forensic Psychiatry* state it most clearly, saying “Psychiatrists should not distort their opinions in the service of the retaining party” (American Academy of Psychiatry and Law, 2005, p.2). Therein lies the crux of hired gun testimony; whereas ethical professionals seek to present persuasive testimony based on honest and objective procedures, unethical professionals acting as hired guns seek to provide the most persuasive testimony tailored to the needs of the retaining attorney.

Another important feature of a hired gun is that they are highly paid for their tailor-made opinions (Fischer, 1997). The distinction between being paid for an opinion versus being paid for one’s time can be important when testifying in court. When questioned about their pay, experts frequently point out that they are paid for their time rather than their opinions (Brodsky, 2004). The implication is that an expert who is paid for their time would come to the same opinion regardless of which side hired him or her. However, an expert who is paid for his or her opinion would readily change that opinion depending on which side retains the expert. In addition to being highly paid, hired guns are also thought to testify frequently (Cooper & Neuhaus, 2000). This makes sense going back to the classic Old West definition of a hired gun put forth by Easton (2000) and brings to mind an image of an expert witness traveling around the country offering his or her testimony to the highest bidder where ever it is needed.

Experts must walk a fine line between being effective and persuasive advocates for their data and being viewed as a hired gun. Like the distinction between being paid for one’s time and being paid for one’s opinion, an equally subtle distinction exists between being an advocate for one’s data and being an advocate for the retaining attorney (Melton et al., 2007). Again, an

expert who is a persuasive advocate for their data would draw the same conclusions regardless of the side that retained the expert. Conversely, an expert who advocates for the attorney would change their opinion based on the side that retained them. This expert would be correctly labeled as a hired gun.

Hired Gun Effects in Expert Witness Testimony

Research has shown that experts who are viewed as hired guns are less effective than other experts (Cooper & Neuhaus, 2000; Levett & Kovera, 2009). Given this finding, it is surprising that very little empirical research has been conducted examining the hired gun effect. A search of PsychINFO revealed that only 24 peer-reviewed journal articles have discussed the hired gun effect. Of these articles, only six contained empirical or survey data on hired gun testimony. The majority (16) of the articles dealt with theory or ethical concerns regarding the perception of being a hired gun, although these articles did not always focus on forensic issues. These articles discussed the concept of hired guns in social marketing (Dann, 2007), workplace management (Inkson, Heising, & Rousseau, 2001), and even primate social behavior where it has been argued that female primates exchange sex for protection by males (i.e. the males are hired guns protecting the females in exchange for sex; Brereton, 1995). This relative dearth of research means that experts and the attorneys that retain them have little empirical material upon which to base their testimony strategy.

Cooper and Neuhaus (2000) conducted a series of three studies examining the hired gun effect in expert witness testimony. They examined the effects of pay, frequency of testimony, and complexity of testimony on several variables assessing the efficacy of expert witness testimony. This study utilized a civil trial in which two opposing experts in biochemistry testified. Pay (\$4,500 vs. \$600), frequency of testimony (14 vs. 2 times testifying), and

complexity of testimony were compared between experts. The authors found that experts who were highly paid were neither liked nor believed by mock jurors (Cooper & Neuhaus, 2000). Mock jurors also made personal attributions about experts who were perceived as a hired gun (high pay and frequent testimony); they rated hired gun experts as less likeable, believable, honest, and trustworthy (Cooper & Neuhaus, 2000). Finally, the authors manipulated the complexity of the testimony presented. They found that mock jurors hearing complex testimony were more likely to use peripheral persuasion cues such as pay and frequency of testimony to decide whether or not to believe the expert (Cooper & Neuhaus, 2000). The results of this study show that high paid experts who testify frequently and offer complex testimony are not effective in presenting their opinions to the jury. Results from this study have not been replicated using a criminal case scenario or a psychologist as the expert. It has also yet to be examined whether a single high-paid frequently-testifying expert is perceived as a hired gun when no opposing expert is present.

Levett and Kovera (2009) recently examined the effect of opposing expert testimony on jurors' perceptions of expert witnesses. This study utilized a civil trial scenario in which a psychologist served as the expert witnesses. They found when an opposing expert questions the methodology of the initial expert, the initial expert is more likely to be viewed as a hired gun (Levett & Kovera, 2009). Interestingly, this finding occurred with no mention of the expert's pay or frequency of testimony. Levett and Kovera (2008) previously found that the mere presence of an opposing expert caused mock jurors to question the validity of all expert testimony. This skepticism effect was found regardless of the content of the opposing expert's testimony. These studies would suggest that the presence of an opposing witness reduces the

persuasive power of both witnesses; simply put, opposing witnesses seem to cancel each other out.

Although not an empirical study, Ivkovic and Hans (2003) presented qualitative information from a sample of actual jurors serving on juries in civil trials. The authors presented information from interviews with jurors following their trial experience. Although no statistical tests were conducted, the authors concluded that the jurors attempted to interpret each expert's motives for testifying. Examination of these motives never increased the expert's perceived credibility and often led to reduced ratings of credibility (Ivokovic & Hans, 2003). Motives that the jurors attributed to the expert included monetary gain, friendship with the retaining attorney, and sympathy with the defendant in medical malpractice cases (Ivokovic & Hans, 2003). In line with the findings of Cooper and Neuhaus (2000), jurors in this study frequently discounted the testimony of experts who testified in a number of similar cases for the same attorney (Ivokovic & Hans, 2003). The authors concluded that motives were an important category that was mentioned by at least one juror in each case in the sample (Ivokovic & Hans, 2003). Although this study could not make causal claims, its enhanced external validity can help bolster the findings of previous studies.

Moreover, a telephone survey of adults revealed potential jurors are more likely to believe an expert witness who sees patients as opposed to a purely academic expert (Boccaccini & Brodsky, 2002). A majority of respondents (57%) stated that they would be most likely to believe an expert who has previously testified for both the prosecution and the defense. This survey also showed that potential jurors were most likely to believe novice experts and experts who received no compensation for testifying (Boccaccini & Brodsky, 2002). Responses to this

survey show that potential jurors are sensitive to variables that could be associated with the expert being perceived as a hired gun.

Jurors are not the only people in the courtroom to label experts as hired guns. A study of attorneys revealed that attorneys, like jurors, view experts who work consistently for both sides as less biased (Dattilio, Commons, Adams, Gutheil, & Sadoff, 2006). However, attorneys stated that they preferred to use experts who testify only for one side (Dattilio et al., 2006). This study also showed that attorneys have higher regard for experts who are regularly court appointed (Dattilio et al., 2006).

As previously stated, most experts are thought to be ethical professionals. Yet, a common tactic for an opposing attorney is to discredit the expert by implying that the expert is a hired gun (Gutheil, Simon, & Simpson, 2006). Attorneys seem to be going to great lengths to paint experts as hired guns. Some attorneys have requested complete tax returns from expert witnesses seeking to establish a financial link between the expert witness and the retaining attorney for the purpose of suggesting the expert is a hired gun for that attorney (Gutheil et al., 2006). As such, it is of increasing importance for attorneys and expert witnesses to know how to avoid being perceived as a hired gun.

Hired Guns and Expert Credibility

Prior research has shown that experts who are viewed as hired guns are less effective at convincing the jury to adopt their opinions (Cooper & Neuhaus, 2000). However, this research did not speak to the mechanism behind this reduced efficacy. Melton et al. (2007) posits that the credibility of the expert is important in getting the jury to believe their opinions. The authors suggest that, rather than attempting to reveal the “truth” behind the expert’s opinion in a given case, attorneys either attempt to enhance or undermine the credibility of the testifying expert

(Melton et al., 2007). In their view, credibility is broken down into three components: expertise, trustworthiness, and dynamism (Melton et al., 2007). Other research has broken down credibility in a slightly different manner, creating four instead of three components (Brodsky, Griffin, & Cramer, 2010). These authors divided credibility into knowledge, trustworthiness, likeability, and confidence. Within both of these models of credibility, trustworthiness is the aspect of credibility most likely to be tainted when hired gun questions are asked.

Melton and colleagues (2007) define trustworthiness as perceptions formed regarding the honesty of an expert witness. They go on to state that trustworthiness may be the most important aspect of credibility. They explain that attacks to an expert's trustworthiness are likely to occur during cross examination through the use of questions designed to make the expert appear to be a hired gun. Though not addressed using these terms, Cooper and Neuhaus' (2000) findings suggest that reduced credibility may be the reason witnesses viewed as hired guns are neither liked nor believed. Similarly, Williams, Bourgeois, and Croyle (1993) found that attorneys' and experts' level of trustworthiness significantly predicted mock jurors' findings.

Clearly, trustworthiness is important in expert testimony. If a jury does not trust an expert, they are unlikely to agree with the expert's findings (Williams et al., 1993). Additionally, witnesses viewed as hired guns are neither trusted nor believed by the jury (Cooper & Neuhaus, 2000). There is an extensive literature on expert witness testimony that offers many suggestions for how to appear as credible as possible to the jury; however, none of these studies offer suggestions for how to avoid being labeled as a hired gun. On the most basic level, this is a question of persuasion. One side is trying to convince the jury that the expert is a hired gun while the other side seeks to prove the opposite. Several social psychological studies on persuasive techniques are relevant to this task.

Inoculation against Persuasion

A great number of social psychology experiments have been conducted on different aspects of persuasion. The current study will focus on the idea of inoculation against attitude change put forth and studied by William McGuire in the 1960s. First discussed as an “immunization effect,” the basic idea behind inoculation is to provide arguments against an opposing idea before the opposing idea is presented (McGuire & Papageorgis, 1961). In doing this, the target is “inoculated” against the full-strength version of the argument in much the same way that vaccines offer weakened versions of viruses to prevent the later effects of the full-strength virus (Papageorgis & McGuire, 1961; McGuire, 1999).

McGuire (1961) examined the role of passive versus active immunization. In this context, passive immunization involved being exposed to a message and two counter arguments that were then refuted in detail. Conversely, active immunization involved being exposed to the same message and counter arguments but then asking participants to come up with their own ways to refute the counter arguments (McGuire, 1961). Basically, passive immunization did not involve any effortful rebuttal of the arguments. Results showed that, when later presented with the same counter arguments, passive immunization conferred stronger immunity than active immunization; however, when presented with novel counter arguments active immunization resulted in stronger immunity. In short, if participants were presented with counter arguments that had previously been disproven, passive immunization was effective. However, if presented with new counter arguments (which had not been previously disproven) active immunization was more effective. In the context of hired gun testimony, there are a limited number of possible arguments one could make to try to convince the jury that an expert is a hired gun. Accordingly,

passive immunization has theoretical support to be effective at inoculating the jury against the belief that the expert is a hired gun.

Rogers and Thistlethwaite (1969) examined passive versus active immunization further. They examined the time delay between exposure to immunizing information and exposure to counter arguments. They found an interaction between time delay and immunization type. Specifically, a long delay after active immunization produced greater resistance as opposed to a short delay whereas a short delay after passive immunization produced greater resistance than a long delay (Rogers & Thistlethwaite, 1969).

Stiff and Mongeau (2003) point out inoculation strategies do not always need to present the original attack message to be effective. They showed that in some instances, such as anti-smoking messages aimed at teens, the original attack message is obvious and does not need to be presented. In these cases, Stiff and Mongeau (2003) argue that it is only necessary to provide a counter argument for inoculation to work. This has been the case when inoculation has been used with teenagers to help form resistance to alcohol and tobacco use (Pfau, Van Bockern, & Kang, 1992; Goldberg, Niedermeier, Bechtel, & Gorn, 2006).

The medium used in inoculation treatments has also been examined recently. Pfau and colleagues (2000) examined the relative efficacy of print and video arguments in conferring resistance. The authors found that video-based arguments produced an immediate resistance whereas print arguments required time to produce their resistance (Pfau, Holbert, Zubric, Pasha, & Lin, 2000). Although it has not yet been examined, it makes sense to believe that arguments made in person would produce results similar to those presented through video.

On a cognitive level, inoculation works as a persuasive communication technique by presenting and immediately disproving arguments that go against the speaker's interest. By

bringing these arguments up on their own, prior to the opposing side mentioning the arguments, the communicator theoretically gains a measure of credibility and trust from the person being persuaded. Moreover, by effectively explaining away the counter arguments, the communicator in effect neutralized the argument the opposing side was hoping to use in the future.

Inoculation and Hired Gun Testimony

One possible way to counter the perception of being a hired gun is to utilize inoculation theory. Using inoculation would involve exposing the jury to information used to suggest the expert is a hired gun on direct rather than cross examination. After presenting this information on direct examination, the attorney and expert would quickly provide testimony showing that the expert is not biased in favor of the retaining side. In theory, this inoculation could prevent the juror from being convinced the expert is a hired gun on cross examination. Melton and colleagues (2007) suggest that admitting to weaknesses and alternate explanations of data in a case may serve to increase the expert's credibility to the judge and jury. The authors stated that admitting to such flaws could inoculate the judge and jury against future challenges to the expert's findings (Melton et al., 2007). It makes sense that admitting to possible biases and providing evidence showing that the expert is not biased could also increase the expert's credibility. Although this theory has never been tested in relation to expert witness testimony, it has been used in various contexts, including political confirmation hearings, to control the release of potentially damaging information.

Inoculation in expert witness testimony would involve the retaining attorney questioning the expert witness about level of pay, frequency of testimony, allegiance to a given side, and other related topics on direct examination. This would allow the retaining attorney and expert to control how this information is presented to the jury and present counter arguments before the

opposing attorney makes accusations of bias (Posey & Wrightsman, 2005, Williams et al., 1993). Inoculation theory has been applied to trial contexts in the past, but has not been applied to expert witness testimony. Research on trial strategy suggests that it is beneficial for an attorney to admit to weaknesses in their case before the opposing attorney has a chance to point those weaknesses out to the jury (Williams et al., 1993). In this study, the defense attorney was rated as more trustworthy and mock jurors were less likely to believe his client was guilty when the defense attorney pointed out weaknesses in the case as opposed to when the prosecutor pointed out the same weaknesses.

This type of inoculation would take the form of passive immunization, as defined by McGuire (1961). Jurors are presented with counter arguments and not required to come up with any arguments on their own. Because of the short time period between direct and cross examination, Rogers and Thistlethwaite's findings (1969) would suggest that this passive immunization strategy could be effective in producing resistance to counter arguments. Finally, this type of inoculation should produce an immediate effect because it would be presented in-person to the jury by the attorney (Pfau et al., 2000).

Stealing Thunder

While no published studies of inoculation theory have been conducted in the legal context, several studies have been conducted on what has been labeled "stealing thunder" in a trial setting (Dolnik, Case, & Williams, 2003; Howard, Brewer, & Williams, 2006; Williams et al., 1993). In these studies stealing thunder is viewed as a tool similar to inoculation. In this literature, stealing thunder is defined "as revealing negative information about oneself (or, in a legal setting, one's client) before it is revealed or elicited by another person" (Williams et al., 1993, p. 597). Relating this literature to the hired gun effect, stealing thunder would include the

side retaining the expert asking the “hired gun” questions on direct examination. In doing so, the retaining side would steal the opposing counsel’s thunder by revealing potentially damaging information on direct examination.

Williams and colleagues (1993) originally examined stealing thunder as a persuasive tactic used in both criminal and civil cases. In the criminal context, the authors presented vignettes to mock jurors that manipulated the release of information in an assault case. In their criminal vignettes, information regarding the defendant’s history of prior convictions for assault was either brought up by the defense attorney on direct examination (stolen thunder) or by the prosecutor on cross examination (labeled the “thunder” condition). The results showed that mock jurors were less likely to find the defendant guilty when the damaging information was addressed on direct examination than on cross examination (Williams et al., 1993). Path analyses revealed that stealing thunder affected mock jurors’ guilt judgments by increasing the perceived credibility of the defense attorney and the defendant.

In their second study, Williams et al. (1993) examined stealing thunder in a civil case context. This study examined revealing negative information about an expert witness. Specifically, the expert witness revealed either on direct (stolen thunder) or cross examination (thunder) that he had previously given testimony that was contradictory to his findings in the current case. The findings from this study replicated and extended findings from the prior criminal study to the civil context (Williams et al., 1993). Path analysis showed that the effect of stealing thunder on mock juror findings was mediated by the expert’s perceived credibility. Findings also suggest that stealing thunder may be an effective tactic to counter potentially negative information about an expert witness.

Further examining this effect, Dolnik et al. (2003) asked whether or not it was necessary to frame, or downplay the importance, of the damaging information for stealing thunder to be effective. In this criminal scenario, the authors found that it was not necessary for the attorney to frame the damaging information in any particular manner. In fact, they found that downplaying the importance of the damaging information reduced the effectiveness of stealing thunder (Dolnik et al, 2003).

Stealing thunder works cognitively in much the same way as inoculation. When utilizing stealing thunder, the communicator is thought to gain trust and credibility by revealing potentially damaging information about their side. This increase in favorable ratings obtained by revealing potentially damaging information has then been shown to lead to more favorable outcomes.

The stealing thunder literature clearly shows that mock jurors may be swayed by persuasive trial techniques (Dolnik et al., 2003; Williams et al., 1993). However, only one study has addressed the nature of revealing potentially damaging information about an expert witness (Williams et al., 1993). In this study, the damaging information only was addressed on direct examination. Dolnik et al. (2003) state that such a scenario is unlikely, because once potentially damaging information is addressed on direct examination it would be logical for the information to be examined further during cross examination. Even so, despite the limited examination of stealing thunder in regards to expert testimony, several prominent resources for forensic experts suggest using this technique to control the release of potentially damaging information during trials (Melton et al., 2007; Rogers & Shuman, 2005).

In spite of the previously discussed differences between inoculation and stealing thunder, it should also be pointed out that the two strategies have much in common. Both at their core

deal with effective means of revealing potentially damaging information. Inoculation, however, goes one step further than stealing thunder. Whereas in stealing thunder the damaging information is simply revealed, with inoculation the damaging information is not only revealed in a manner that increases the communicator's positive attributes, the information is also effectively explained away. In this way, stealing thunder can be thought of as a way to increase positive attributes whereas inoculation can be thought of as a method to both increase positive attributes and prevent the formation of future negative perceptions of the communicator. In this formation, since stealing thunder has been shown to be an effective trial strategy in previous studies (Williams et al., 1993) inoculation should be an even more effective strategy as it takes the stealing thunder literature one step further.

To summarize and apply these findings to the hired gun metaphor, stealing thunder could be thought of as a way to increase the perceived positive attributes of a hired gun expert witness. In effect, this strategy could lead to the jurors still believing that the expert is a hired gun, but having more favorable ratings of the expert than they would have had stealing thunder not been used. In contrast, as the title of this paper suggests, inoculation is thought of as a strategy by which the retaining attorney can "unload the hired gun" and prevent the jurors from ever forming the perception that the expert has been bought in the first place.

Expert Witness Response Style

Another variable worthy of examination is the response style of the witness in the face of hired gun questions. Response style relates to the credibility aspects of dynamism (Melton et al., 2007), confidence, and likeability (Brodsky et al., 2010). One can easily imagine an expert becoming defensive when asked these hired gun questions on cross examination by a defense attorney, but responding more calmly when asked the same questions as inoculation on direct

examination by their retaining attorney. An extension of this idea leads to an examination of fragmented versus narrative responding. Using a narrative response style, the witness would expand upon the question asked by the attorney to answer it in a more complete manner. For example:

Attorney: How much are you being paid?

Expert: I charge \$200 an hour for my services. In all, on this case I have spent approximately 25 hours interviewing and evaluating various parties, writing a report, and testifying here today.

On the other hand, a fragmented response style would mean that the witness would only answer the question asked by the attorney. This style would require more questions being asked to get the same amount of information. For example:

Attorney: How much are you being paid?

Expert: I charge \$200 an hour for my services.

Attorney: How many hours have you spent on this case?

Expert: Approximately 25.

Attorney: What have you spent all that time doing?

Expert: I have interviewed and evaluated various parties involved, written a report, and testified here today.

In both instances, the same information is presented; however, using a fragmented response style the witness may come across as less genuine and as having something to hide. Past research has shown that witnesses using a narrative response style have been judged as more credible than those using a fragmented response style (Barry, 1991). Additionally, Melton and colleagues (2007) argue that a narrative response style is related to increased ratings of dynamism and, hence, increased credibility.

O'Barr (1995) explains that the ultimate control over response style is vested in the questioning attorney, not the witness. In order for the expert to respond in a narrative fashion the attorney must give up some control (O'Barr, 1995). Because of this fact, narrative responses are more likely to occur on direct examination whereas fragmented responses occur as the attorney

tries to tightly control the flow of information on cross examination. Although the idea of narrative versus fragmented response style has been examined previously with regards to expert witnesses (Lind, Erickson, Conley, & O'Barr, 1978; Barry, 1991), it has not been examined with respect to psychologist expert witnesses or in the context of hired gun testimony.

Pretrial Juror Attitudes

Research suggests that jurors rely on more than just the evidence presented in a case when reaching a verdict (Hans & Jehle, 2003; Lieberman & Arndt, 2000). Jurors have been shown to rely on a variety of external factors including life experiences, attitudes about the parties involved, and general attitudes toward civil and/or criminal proceedings (Hans & Jehle, 2003; Peck, 2004). Researchers have gone so far to state “the accurate identification of individual differences in pretrial juror attitudes is of paramount importance to understand juror decision making” (Lecci & Myers, 2008, p.2011). One way to help identify these biases and avoid their effects is through the use of pretrial questionnaires during voir dire (jury selection) (Lecci & Myers, 2008; Peck, 2004). Research has yet to examine the effect of pretrial bias on the efficacy of expert witness testimony. The current studies will examine possible moderating effects of pretrial attitudes in both civil and criminal cases and potential impacts on expert witness testimony.

The Current Project

The current project sought to fill some of the gaps that exist in the literature on expert testimony. Specifically, this study examined persuasive tactics that may be used to avoid an expert being labeled as a hired gun. This project utilized a two-study design that examined the hired gun effect in both civil and criminal cases. Study 1 examined the hired gun effect in civil cases and Study 2 examined the same variables in a criminal context. Past research on the

subject has focused on civil cases and no study could be found examining the hired gun effect in a criminal context. While the results from the two studies are not directly comparable because of necessary differences in the testimony scenarios, I examined whether similar patterns held for experts in both types of cases.

Research that has been conducted on different aspects of expert testimony routinely examines the constructs of interest in either a civil or criminal scenario. Unfortunately, very little is known about any differences in testimony strategy in civil vs. criminal law. No prior published studies could be found in which the parallel experiments were conducted across the two legal contexts. As such, past research has often generalized results found in a civil context to a criminal context and vice versa with no empirical evidence that that results would hold in the differing context. The two study design of this project allowed the researcher to examine whether the same effect found in a civil scenario applied to a criminal context. Not only did this allow for greater confidence and applicability in the current findings, it also provides suggestions as to whether or not it is proper to generalize results found in one domain to the other domain as well. This constitutes a significant advance in the study of expert testimony and speaks to the generalizability of findings in this field.

Whereas past studies have examined the hired gun effect with competing experts, the current study examined whether the hired gun effect was found when only a single expert testified. Levett and Kovera (2008) showed that the mere presence of an opposing witness calls the original witness's findings into question. The current project provides a more pure test of whether high pay and frequent testimony alone are enough to trigger the hired gun schema.

In addition to examining the hired gun effect in criminal trials, the current project also applied inoculation theory to expert witness testimony. No previous research has examined the

effect of inoculation in expert witness testimony. While literature on stealing thunder informs the current project, these studies will provide a more externally valid test of this construct by utilizing inoculation theory. In the stealing thunder literature, damaging information has often only been addressed on direct or cross examination (Williams et al, 1993). It seems unlikely that once damaging information has been brought up on direct examination that the opposing attorney would not pursue that information further during cross examination (Dolnik et al., 2003). Thus, in the current study, the hired gun questions were always asked on cross examination. The difference was whether inoculation questions appeared during direct examination and the response style the expert used when answering those questions asked. Using this inoculation framework provided a more externally valid test of a possible trial strategy than the stealing thunder literature provides. Specifically, this project examined whether asking hired gun questions on direct examination as inoculation and immediately refuting the idea that the expert is biased produced resistance to the idea that the witness may be a hired gun.

Finally, the current project examined the relation between narrative and fragmented response styles and the perception of a witness being a hired gun. While previous research has found experts using a narrative response style to be more credible than those using a fragmented response style (Barry, 1991), this finding has not been replicated with a psychologist as the expert or in concert with the hired gun effect.

Hypotheses

Both Study 1 and Study 2 have the same main hypotheses. The hypotheses for these studies were as follows:

H1: There will be separate main effects of use of inoculation and response style on ratings of the expert as a hired gun, ratings of expert credibility as a whole and trustworthiness in

particular, and case outcomes. Mock jurors will rate the expert as being significantly less of a hired gun and significantly more credible when the expert is asked inoculation questions during direct examination than when inoculation is not used. Mock jurors will decide in favor of the defense (the side calling the witness) when inoculation is used as opposed to when inoculation is not used. Although no prior research has examined inoculation in a trial context, results from past studies suggest that inoculation is an effective persuasive tool and that similar persuasive strategies (i.e. stealing thunder) have been successfully used in trial context (McGuire, 1999; McGuire & Papageorgis, 1961; Williams et al., 1993). Mock jurors will also rate experts as being significantly less of a hired gun and more credible when the expert responds to hired gun questions in a narrative vs. a fragmented manner. Moreover, mock jurors will decide in favor of the defense (the side calling the witness) more often when a narrative response style is used as opposed to when a fragmented response style is adopted. Past studies have shown that experts who utilize a fragmented response style appear to be less credible and may appear to be defensive (Barry, 1991). I hypothesize that using a fragmented response style will also produce effects on ratings of the expert as a hired gun. Whereas past studies have examined response style in general expert testimony, the current study will examine response style only in the context of hired gun questions.

H2: There will be significant correlations between participants' ratings of the expert as a hired gun and ratings of expert credibility in general and trustworthiness in particular. Experts who are rated as more of a hired gun will be rated as less likeable, trustworthy, honest, knowledgeable, and credible than experts not judged to be a hired gun.

- H3: The amount of monetary award given (civil context), continuous ratings of guilt (criminal context), and general confidence in the verdict (civil and criminal contexts) will be significantly correlated to the mock juror's perception of the expert as a hired gun and the expert's credibility. As credibility and perceptions of the expert as a hired gun are expected to be correlated (see H2), it follows that monetary awards in study 1 and ratings of guilt in study 2 will also be correlated to opinions about the expert. Specifically, I hypothesize that monetary awards in study 1 and ratings of guilt in study 2 will be positively correlated to ratings of expert credibility and negatively correlated to ratings of the expert as a hired gun
- H4: The effect of inoculation on monetary awards in study 1 and ratings of guilt in study 2 in the case will be significantly mediated by mock juror ratings of the expert as a hired gun (see Figure 1). This hypothesis proposes an explanation for how inoculation can affect case outcomes through ratings of the expert as a hired gun. Past studies have shown that inoculation is an effective tool that can be used to reduce the likelihood of negative appraisals (McGuire, 1999; McGuire & Papageorgis, 1961). This hypothesis hopes to explain these findings in a trial context.
- H5: The effect of response style on findings in the case will be significantly mediated by mock juror ratings of expert credibility (see Figure 2). Past studies have linked response style to ratings of expert credibility (Barry, 1991). Additionally, past studies have linked expert credibility to case outcomes (Williams et al., 1993). This hypothesis seeks to combine these two prior findings into an explanatory model.
- H6: The effect of response style (narrative vs. fragmented) on ratings of expert credibility will be significantly mediated by mock juror ratings of the expert as a hired gun (see Figure

3). Prior findings have linked response style to credibility and credibility is theoretically linked to perceptions of the witness as a hired gun, I hypothesize that the effect of response style on expert credibility will be mediated by ratings of the expert as a hired gun (Barry, 1991).

Exploratory Hypotheses

EH1: Pretrial mock juror attitudes will significantly affect both ratings of the experts as hired guns, expert credibility, and case outcomes.

EH2: Hypothesis 1 will be re-examined looking for a potential interaction of inoculation and response style on the dependent variables (the witness as a hired gun, expert credibility, and case outcome). While there is not a sufficient research base for me to predict an interaction a priori, it makes sense that these variables could interact. For example, an expert could be rated as more credible and less of a hired gun when using a narrative response style even when inoculation is not used as opposed to when inoculation is used with a fragmented response style. This exploratory hypothesis will examine whether the two independent variables have simple additive effects or more complex synergistic effects on the dependent variables.

Although the results of the two studies will not be directly comparable due to necessary methodological differences, the following exploratory hypotheses will also be examined:

EH3: Expert witnesses who are viewed as a hired gun in a criminal context will be judged more harshly than those viewed as a hired gun in a civil context. This difference will be found because of the increased seriousness of the penalties in criminal contexts. There will be a larger magnitude difference on ratings of expert witness credibility between witnesses not

rated as a hired gun and those rated as a hired gun in the criminal context as opposed to the civil context.

Figure 1

Proposed Model Showing the Mediation of Inoculation on Juror Decisions by Ratings of the Expert as Unbiased

Figure 2

Proposed Model Showing the Mediation of Response Style on Juror Decisions by Ratings of Expert Credibility

Figure 3

Proposed Model Showing the Mediation of Response Style on Ratings Expert Credibility by

Ratings of the Expert as Unbiased

2. Method

Design

Both Study 1 and Study 2 utilized a 2 X 2 between subjects design. The independent variables were the use of inoculation (present vs. absent) and the response style of the expert witness when asked the hired gun questions (narrative vs. fragmented responses). Each study also contained a control group in which the expert was not asked about his pay, frequency of testimony, and other questions designed to make him appear to be a hired gun. This control group was selected as it served as a good comparison for each independent variable. In this condition participants were given no information about pay or frequency of testimony, thus they were left entirely to their own biases to decide how much of a hired gun they perceived the expert to be. As such, the control group also provided valuable information about how participants viewed experts without these types of information. Dependent measures for both studies included the Witness Credibility Scale, a hired gun scale, a measure of pretrial juror bias, and a measure of case outcome.

Participants

Mock jurors were recruited from the Introductory Psychology Research Subject Pool and given research credit in return for their participation. Participants were recruited through a research website and received credit in partial completion of a course requirement. The research website summarized the study and allowed participants to select times for data collection sessions. Due to the similarities of the two studies, participants were only allowed to participate in either study 1 or study 2, not both. After participating in one study, participants were

restricted from signing up for the other study. Research has indicated that few differences have been found between different mock juror samples, showing that students serve as acceptable substitutes for community jurors (Bornstein, 1999).

Participants in study 1 consisted of 218 undergraduates at The University of Alabama who were at least 17 years of age (mean age = 19.02, SD = 2.86). Participants were approximately evenly distributed across experimental condition. The sample was 51% female and 49% male, 76% percent of whom were Caucasian, 16% of whom were African American, and 8% of whom were from a different racial background. A breakdown of demographic characteristics by experimental condition for study 1 is provided in Table 1.

Participants in study 2 consisted of 230 undergraduates at The University of Alabama who were at least 17 years of age (mean age = 18.77, SD = 1.35). Participants were approximately evenly distributed across experimental condition. The sample, like the sample for study 1, was 51% female and 49% male. Eighty-one percent of the sample for study 2 was Caucasian, 14% were African American, and 5% were from a different racial background. A breakdown of demographic characteristics by experimental condition for study 2 is provided in Table 2.

Materials

Pilot Study of Case Scenarios. Four civil scenarios (Appendices A-D) and four criminal (Appendices E-H) scenarios were created and tested in a pilot study. All civil case scenarios described events in which a plaintiff was injured and brought suit against a large corporation. Although the injury was held constant between scenarios, the events leading to the injury and the corporation involved differed between scenarios. Similarly, all criminal case scenarios described events in which the defendant got in a fight with another individual and was charged with 2nd

Table 1

Demographic Characteristics of Experimental Conditions in Study 1

Condition	N	Gender	Mean Age	Ethnicity
Inoculation Narrative	45	34% Female	18.82 (1.45)	67% Caucasian 24% African American
Inoculation Fragmented	46	71% Female	18.70 (2.17)	84% Caucasian 13% African American
No Inoculation Narrative	43	44% Female	20.07 (5.61)	72% Caucasian 23% African American
No Inoculation Fragmented	41	76% Female	18.71 (1.05)	88% Caucasian 3% African American
Control	43	28% Female	18.81 (.98)	72% Caucasian 14% African American

Table 2

Demographic Characteristics of Experimental Conditions in Study 2

Condition	N	Gender	Mean Age	Ethnicity
Inoculation Narrative	47	38% Female	18.70 (.88)	72% Caucasian 26% African American
Inoculation Fragmented	47	49% Female	18.79 (1.20)	81% Caucasian 13% African American
No Inoculation Narrative	47	32% Female	19.11 (2.29)	87% Caucasian 13% African American
No Inoculation Fragmented	45	71% Female	18.42 (.72)	82% Caucasian 11% African American
Control	44	55% Female	18.81 (.99)	82% Caucasian 7% African American

degree assault. The criminal case scenarios also described the defendant's history of mental illness, setting the ground for a not guilty by reason of insanity (NGRI) plea in the expert testimony. The criminal case scenarios were adapted from an actual case in which a defendant was found NGRI of 2nd degree assault. In the criminal scenarios, the injury to the victim was held constant, but the circumstances surrounding the assault were manipulated between scenarios. The goal of the pilot study was to find at least two civil and two criminal case scenarios that could be used in the actual studies. Two of each type of scenario was desired to increase the generalizability of findings from the main studies. Using at least two comparable cases allowed me to be more confident that any significant findings are not due to idiosyncratic factors of the case itself. However, I also thought it was important to hold certain key factors of the scenarios (seriousness of the injury, complexity of the case, etc.) constant; hence, the pilot study was conducted.

Participants in the pilot study were recruited from the Introductory Psychology Research Subject Pool and given research credit in return for their participation. Data were collected from 58 participants in groups of up to 20 participants in available classrooms in Gordon Palmer Hall. Participants were predominantly female (64%) and Caucasian (78%). African Americans represented 14% of the sample while the rest of the sample (8%) identified their ethnicity as "Other." The average age in the sample was 19.40 (SD = 2.61).

After going over an informed consent sheet (Appendix I) participants were given a randomly assigned packet of two case vignettes, vignette rating forms, and a demographic questionnaire to fill out. Each participant read one civil and one criminal case vignette. To eliminate order effects, a Latin square counterbalancing design was used. Participants read each case vignette and filled out the appropriate rating form (see Appendix J for civil vignette rating

form and Appendix K for criminal vignette rating form). Each rating form asked participants to rate the seriousness of the injury and complexity of the case. The civil case rating form also asked participants to rate how responsible the company and the victim were for the injury sustained. The criminal case rating form asked participants to rate the seriousness and level of violence of the crime described. All questions were answered on a ten-point Likert scale with higher scores corresponding to greater amounts of the rated construct. To gain additional information about perceptions of psychologist's pay in the cases, each participant was also asked to complete the following statements with a dollar amount: "I think that a psychologist testifying in a case such as the one described should earn \$_____ per hour" and "I **would not** believe a psychologist that was paid more than \$_____ per hour." These questions were asked to gain information relevant to the pay manipulation in the current studies. After completing the case rating forms, participants then filled out the demographic questionnaire (Appendix L) to provide descriptive information on the sample. After completing the packet of questionnaires, participants were given a debriefing form (Appendix M) and thanked for their participation. Participation took approximately 15 minutes.

Results for Civil Case Scenarios. Data obtained for the civil case scenarios are presented in Table 3. No significant differences were found between any of the case scenarios on any of the rated domains ($p > .05$ for all paired comparisons). Because no significant differences occurred, I selected case scenarios 1 and 4 for use in the main study. Case scenario one was selected because this scenario has been used in prior research regarding expert testimony and is currently being used in research examining hired gun testimony. Case scenario four was selected because it was judged to be most similar to case scenario 1, ($p > .50$ for paired comparisons of responsibility, case complexity, and injury seriousness). To further reduce the impact of any

Table 3

Means (and Standard Deviations) of Ratings of Civil Vignettes

Scale	Civil Vignette 1 (Appendix A)	Civil Vignette 2 (Appendix B)	Civil Vignette 3 (Appendix C)	Civil Vignette 4 (Appendix D)
N	16	15	13	14
Company Responsibility	8.69 (1.70)	9.07 (1.91)	8.31 (2.10)	9.07 (1.59)
Plaintiff Responsibility	2.56 (1.63)	3.60 (3.29)	3.15 (2.23)	2.21 (1.48)
Case Complexity	4.31 (1.92)	4.67 (2.42)	4.62 (2.14)	3.57 (2.41)
Injury Seriousness	6.13 (2.16)	5.67 (2.16)	5.77 (1.79)	6.00 (1.11)
Psychologist Should Be Paid	49.75 (34.55)	90.33 (144.50)	72.92 (51.18)	102.50 (120.89)
Would Not Believe Psychologist if Paid	114.06 (122.76)	213.67 (324.33)	232.31 (277.74)	345.71 (540.83)

Note. No significant differences were found between vignettes on any scales.

case-specific information on the results, all statistical analyses controlled for the case background information provided to the participants.

Both civil case scenarios utilized the same expert testimony. The testimony for these scenarios consisted of a neuropsychologist giving testimony in a law suit in which the plaintiff suffered a head injury. In case scenario one, the plaintiff's vehicle was struck by a large truck that ran a red light. The truck was owned and the driver employed by a large commercial moving company. In case scenario four, the plaintiff was struck on the head by a piece of falling debris while walking past a construction site. In each case, the plaintiff was seeking \$2,000,000 in damages from the defendant, a large national corporation. The expert in this case was called by the defense and provided testimony regarding the results of a neuropsychological evaluation he conducted to determine the nature and extent of the plaintiff's cognitive disabilities due to the accident. The expert concluded that the plaintiff suffered some cognitive impairment, but also appeared to exaggerate his symptoms on some tests. This testimony scenario has been used in previous studies and is thought to offer an appropriate degree of ambiguity so that mock jurors could reasonably find for either the plaintiff or the defense.

Results for Criminal Case Scenario. Data for the criminal case scenarios are presented in Table 4. Case scenario one was judged to be significantly less serious and less violent than case scenario two, $p < .05$ for each. Case scenario one was also judged to be significantly less violent than case scenario three, $p < .05$. Finally, psychologists testifying in case scenario one were also judged to require significantly less pay than those testifying in case scenario three, $p < .05$. Accordingly, case scenario one will not be used in the main study. No significant differences existed between scenarios two, three, and four on any domains, $p > .05$ for each. Ultimately, I selected case scenarios two and three for use in the main study because they were judged to be

Table 4

Means (and Standard Deviations) of Ratings of Criminal Vignettes

Scale	Criminal Vignette 1 (Appendix E)	Criminal Vignette 2 (Appendix F)	Criminal Vignette 3 (Appendix G)	Criminal Vignette 4 (Appendix H)
N	15	13	15	15
Crime Seriousness	4.67 _a (1.54)	6.08 _b (1.71)	5.87 _{ab} (1.30)	5.87 _{ab} (2.10)
Crime Violence	4.67 _a (1.29)	6.00 _b (1.63)	6.20 _b (1.32)	5.27 _{ab} (1.83)
Case Complexity	5.33 (2.38)	5.15 (2.85)	5.80 (2.83)	4.87 (3.02)
Injury Seriousness	4.27 (1.33)	5.08 (1.98)	5.00 (1.77)	4.40 (1.99)
Psychologist Should Be Paid	57.53 _a (71.09)	69.54 _{ab} (45.86)	138.20 _b (176.19)	75.67 _{ab} (50.32)
Would Not Believe Psychologist if Paid	159.67 (261.80)	225.23 (272.51)	306.00 (528.36)	295.33 (336.34)

Note. Means in the same row that do not share subscripts differ significantly.

the most similar of the remaining scenarios ($p > .50$ for paired comparisons of crime seriousness, violence, case complexity, and injury seriousness). To further reduce the impact of any case-specific information on the results all statistical analyses will control for the case background information provided to the participants.

Both criminal case scenarios utilized the same expert testimony. The testimony for these scenarios consisted of a forensic psychologist giving testimony regarding the defendant's mental state at the time of the offense. In case scenario two, the defendant got in a fight with a stranger at a bus stop. In case scenario three, the defendant got in a fight with a stranger while watching a sporting event at a restaurant. In each case, the defendant was arrested and charged with second degree assault, a Class C felony in Alabama. A less serious, Class C felony was selected so that mock jurors will not be overly influenced by the details of a more serious or violent crime. The injury caused and the defendant's history of mental illness were held constant across scenarios. In the testimony presented the defense stipulated to the facts of the case and called the expert to provide testimony in which he states that, due to a mental disease or defect, the defendant did not understand the nature of his acts at the time of the offense. This ultimate legal opinion was included in order to provide jurors with a clear and concise statement of the expert's opinion of the case, and to reduce any confusion that may have been present if the expert did not address the ultimate opinion. Mock jurors were asked to decide whether the defendant is guilty or not guilty by reason of insanity (NGRI). This testimony scenario was adapted from a scenario used in prior research to suit the needs of the current study.

Inoculation/Hired Gun Manipulation. The inoculation manipulation consisted of the five questions that tap into the hired gun construct being asked at the start of direct examination (Appendix N). Half the participants in experimental conditions saw testimony in which these

questions are asked as inoculation and half did not. All participants in experimental conditions heard questions designed to portray the expert as a hired gun asked on cross examination. The expert responded to all of these questions in the same tone of voice. He attempted to appear neither defensive nor evasive. Only the presence or absence of the inoculation questions varied between scenarios. The hired gun questions asked on cross examination consisted of 13 questions asking about the expert's rate of pay, history of testifying, and allegiance to one side or the other. In order to have a robust test of the inoculation hypothesis, the witness provided answers consistent with what Cooper and Neuhaus (2000) found to be rated as a hired gun. In the current study the witness was highly paid (\$200 per hour for 25 hours, or a total of \$5,000) and had a history of testifying frequently (18 times).

This rate of pay is also consistent with data from the previously described pilot study. As previously stated, participants were asked to complete the statement: "I **would not** believe a psychologist that was paid more than \$_____ per hour." Several participants in that study stated that high rates of pay (\$1,000-2,000 per hour) would be necessary for them to question the testimony of the expert. Data from these participants significantly increased the mean response for this question. Due to this fact the median response was examined to provide more representative measure of central tendency. The median response for both the civil and criminal case scenarios was \$100 per hour. These data show that the rate of pay used in the current study (\$200 per hour) should be more than enough to trigger thoughts of bias in at least 50% of the participants. Specifically, the proposed \$200 per hour payment fell at the 75th and 69th percentile of responses for civil and criminal cases, respectively. These data support the argument that this manipulation was enough to produce thoughts of bias in some mock jurors, but not so extreme as to cause thoughts of bias in all jurors.

Response Style Manipulation. The expert responded to the hired gun questions on cross examination in either a narrative (Appendix O) or fragmented manner (Appendix P). Narrative and fragmented responses were based on Barry's (1991) description of narrative and fragmented testimony. The responses in the current study were expanded from examples offered by Barry (1991). Prior to the manipulation being finalized, each script was also reviewed by members of the Witness Research Lab, an advanced law student, a practicing attorney, and a licensed clinical psychologist (and Certified Forensic Examiner) to ensure a high level of ecological validity of the manipulation. In both the narrative and fragmented conditions the same information was presented, but in the fragmented response style more questions were used to reveal the same amount of information. In Study 1(civil case) the narrative condition consisted of eight questions being asked with a mean response of 38.5 words to each question. The fragmented condition consisted of 15 questions being asked with a mean response of 20.3 words to each question. Similarly, in Study 2 (criminal case) the narrative condition consisted of eight questions being asked with a mean response of 39.9 words per question. The fragmented condition consisted of 15 questions being asked with a mean response of 21.1 words to each question. Again, in both scenarios the expert responded to the questions in the same tone of voice, so that only the number of questions used will vary between scenarios.

Testimony Scripts. Five scripts of the expert witness testimony were produced for both Study 1 (Appendices Q-U) and Study 2 (Appendices V-Z). These scripts contained the previously described inoculation and response style manipulations. As previously mentioned, each script was reviewed by qualified practicing professionals in the field to ensure a high level of external validity prior to being finalized. The scripts were filmed after Institutional Review Board (IRB) approval was granted. Two male actors (both having prior courtroom experience)

portrayed the expert witness in the various testifying scenarios. The actors received feedback from the researcher and colleagues until the scripts were performed flawlessly. Two actors were used to eliminate potential effects of the individual on the results. These actors were matched on variables such as age and physical appearance. To ensure that the actors were rated equally, data from the control condition in each study were compared on Witness Credibility Scale domains between the actors. No significant differences existed on these domains ($p > .40$ for all paired comparisons). Still, to further reduce any impact of individual actor on the results, all analyses statistically controlled for which actor the participants viewed delivering the testimony. All scripts began with questions about the witness's qualifications after which the witness was offered as a qualified expert in his field. The scenarios then proceeded with the direct and cross examinations which included the experimental manipulations.

Demographic questionnaire. Participants were asked to complete a questionnaire in which they reported their gender, age, ethnicity, annual family income, and previous experience serving on a jury (Appendix L). Age, gender, ethnicity, and income information were controlled for in all statistical analyses. Other information was used as descriptive data on the groups.

Juror Decision Scale. The juror decision scale assessed each mock juror's verdict in the case presented to them. Mock juror decisions were assessed dichotomously and continuously. Collecting continuous data on juror decisions allowed me to conduct more advanced statistical analyses than could be performed on dichotomous data. In Study 1, mock jurors indicated whether they found for the plaintiff or the defendant, how confident they were in their verdict (using a ten-point Likert-type scale ranging from "very confident" to "not at all confident"), and how responsible they felt both the plaintiff and the defendant were for the injury. If the mock

jurors found for the plaintiff they were also asked to decide on the amount of monetary award (Appendix AA).

Similarly, in Study 2 mock jurors indicated whether they find the defendant guilty or not guilty by reason of insanity (Appendix BB). They also provided ratings of confidence in their verdict (using the previously described scale) and continuous ratings of guilt (using a ten-point Likert-type scale with anchors on each end labeled “definitely guilty” and “definitely not guilty by reason of insanity”). Mock jurors who gave a guilty verdict were asked what level of punishment they felt was appropriate (using a ten-point Likert-type scale ranging from “as lenient as possible” to “as harsh as possible”).

Witness Credibility. The Witness Credibility Scale (WCS) used twenty items that are rated on a ten-point Likert scale (Appendix CC). These items provided scores on the four separate domains: confidence, likeability, trustworthiness, and knowledge (Brodsky et al., 2010). This scale had participants rank the expert on a ten-point scale anchored on either side by an adjective and its antonym. Two examples of adjective pairs are unkind-kind and unpleasant-pleasant. Alpha coefficients for each subscale were as follows: confidence (civil: .87, criminal: .87), likeability (civil: .91, criminal: .92), trustworthiness (civil: .96, criminal: .95), and knowledge (civil: .85, criminal: .86). All four subscales are totaled to get an overall credibility score. The alpha coefficient for the total score was .94 for both the civil study and criminal study. The current study utilized ratings of expert credibility on all domains as well as the full scale.

Hired Gun Questionnaire. The Hired Gun Questionnaire (HGQ) consisted of 31 statements that were judged on a six-point Likert-type scale ranging from “strongly disagree” to “strongly agree” (Appendix DD). Items were adapted from Levett and Kovera (2009). The

original scale contained scales measuring attitudes about opposing experts, research the experts had conducted, and the general acceptance of the research presented in the case that were not applicable to the current study and were therefore removed. Further adaptation included replacing names used in the original study with more general terms to be used in the current study (i.e. using “the defense” instead of the defendant’s name). The majority of the items that were used in the current studies were unchanged from their original form. The HGQ provided scores on seven domains: evidence strength, expert relevance, expert qualifications, expert motivation, the specific expert as unbiased, experts in general as unbiased, and feelings regarding psychology in general. Previous research has also used a summation of all items on the questionnaire as a global measure of perceived expert bias (Ziemke et al., 2011). An example of an item from the specific expert as unbiased scale is “The expert witness could likely be paid to give the opposite opinion.” Higher sum scores indicate more positive ratings on each scale (higher scores on the specific witness as unbiased scale indicate that participants perceived the expert to be unbiased and did not perceive him to be a hired gun). Alpha coefficients for each subscale are as follows: evidence strength (civil: .27, criminal: .24), expert relevance (civil: .78, criminal: .78), expert qualifications (civil: .68, criminal: .70), expert motivation (civil: .71, criminal: .65), the specific expert as unbiased (civil: .73, criminal: .71), experts in general as unbiased (civil: .84, criminal: .80), and feelings regarding psychology in general (civil: .55, criminal: .65). The alpha coefficient for the total score was .90 for the civil study and .89 for the criminal study. The current study utilized ratings of expert credibility on all domains as well as the full scale.

Corporate Litigation Bias Scale. The Corporate Litigation Bias Scale (CLBS; Peck, 2004) contains 37 items that were judged on a seven-point Likert-type scale ranging from

“strongly disagree” to “strongly agree” (Appendix EE). This scale pertains only to civil trials and was only used in Study 1. This scale measures mock juror levels of general bias towards corporations and plaintiffs who bring forth civil suits. The CLBS provides scores on the scales of corporate bias and plaintiff bias. Alpha coefficients were .81 for the corporate bias and .65 for the plaintiff bias scales. An example of an item from the corporate bias scale is “Corporations will try to cover up or deny wrongdoing.”

Pretrial Juror Attitude Questionnaire. The Pretrial Juror Attitude Questionnaire (PJAQ; Lecci & Myers, 2008) contains 29 items rated on a five-point Likert-type scale ranging from “strongly disagree” to “strongly agree” (Appendix FF). As this scale pertains only to criminal trials, it was only used in Study 2. This scale measured pretrial mock juror attitudes towards the legal system and defendants in general. The PJAQ provided scores on the scales of legal system confidence, conviction proneness, cynicism toward the defense, racial bias, social justice, and innate criminality. An example of an item from the conviction proneness scale is “Too often jurors hesitate to convict someone who is guilty out of pure sympathy.” Alpha coefficients for each subscale were as follows: legal system confidence (.52), conviction proneness (.60), cynicism toward the defense (.53), racial bias (.60), social justice (.46), and innate criminality (.45).

Manipulation Check. The manipulation check consisted of five questions that measured the mock jurors’ level of recall for information that may be important for their decision in the case and their perception of the witness as a hired gun (Appendices GG and HH for study 1 and study 2, respectively). Mock jurors were asked to recall which side called the expert, how much the expert was paid, how many times the expert had testified previously, and whether testifying

in court was the expert's main source of income. Participants were also asked to summarize the expert's opinion.

Procedure

Both studies in this project followed the same procedure. Data were collected from groups of up to 30 participants each in available classrooms in Gordon Palmer Hall. Upon arrival, participants were given an information sheet containing a brief description of the study and a description of informed consent. The study was described as examining several factors that may be important for juror decision making. Once the study was described and assent was obtained from all participants, the experimenter distributed a questionnaire packet to the participants (see Table 5). Participants first filled out either the CLBS (Study 1) or the PJAQ (Study 2) to assess pretrial bias. Next, participants read one of the two randomly assigned case background sheets. These sheets were identical to those tested in the previously discussed pilot study. The sheets summarized the case in which the participants would hear testimony and set up the testimony scenario. After all participants had read the case background sheet, the experimenter played a DVD containing video of the expert testifying. Participants were unaware of the experimental manipulation and that other versions of the testimony exist. Once the testimony was viewed, participants filled out the juror decision scale, HGQ, WCS, the manipulation check, and the demographic questionnaire. Once participants completed these measures they were given a debriefing form and thanked for their time and participation.

Statistical Analyses

Data were entered into SPSS for analyses. All analyses reported statistically controlled for any effects of the individual actor and case background used as well as the age, gender, and income level of the participant. Hypotheses 1 was tested using between-subjects MANOVAs.

Table 5

Order of Measures and Stimuli

Study 1	Study 2
Corporate Litigation Bias Scale	Pretrial Juror Attitude Questionnaire
Read Randomly Assigned Case Scenario	Read Randomly Assigned Case Scenario
Watch Testimony Video	Watch Testimony Video
Juror Decision Scale - Civil	Juror Decision Scale - Criminal
Hired Gun Questionnaire	Hired Gun Questionnaire
Witness Credibility Scale	Witness Credibility Scale
Manipulation Check	Manipulation Check
Demographic Form	Demographic Form

Three MANOVAs examined the effect of inoculation on the subscales of the HGQ, WCS, and ratings of case outcome (study 1: confidence in verdict, defendant responsibility, plaintiff responsibility, monetary award; study 2: continuous rating of verdict, confidence in verdict, level of punishment, commitment to level of punishment). Two additional MANOVAs examined the effect of response style on the subscales of the HGQ, WCS, and case outcome. For these analyses, if the overall MANOVA was significant, univariate ANOVAs and subsequent LSD post-hoc tests were conducted to explore the nature of the effect.

Pearson correlations were conducted to test hypotheses 2 and 3. These analyses examined the relation between jurors' perceptions of the expert as a hired gun, their ratings of the expert's credibility, and their findings in the case. Regression analyses and subsequent Sobel tests of mediation were conducted to test hypotheses 4-6.

The first two exploratory hypotheses were tested using the same MANOVA and ANOVA procedures used to test hypothesis 1. The first exploratory hypothesis re-examined data from hypothesis 1 with information from the CLBS (Study 1) or PJAQ (Study 2) entered as continuous moderators. This allowed me to examine any effects of pretrial bias on the dependent measures, control for these effects while examining the effects of inoculation and response style, and examine possible interactions between pretrial bias and inoculation or response style. The second exploratory hypothesis was also tested using the same procedures used to test hypothesis 1; however, whereas the previous analyses examined each independent variable separately, these analyses examined possible interactions of inoculation and response style on the dependent measures. The second exploratory hypothesis was tested using MANOVAs. The third exploratory hypothesis was not tested statistically. Charts were constructed to examine the relative magnitude of differences in mock juror ratings of the expert across the two studies.

3. Results

Before conducting any analyses, I examined whether the statistical assumptions (equal variance, normal distribution, and independence) were violated. No statistical assumptions were found to be violated for any analyses reported. All analyses statistically controlled for any effects of the actor the participants saw in the role of the expert and the case background sheet participants were provided. Any effects of age, sex, ethnicity, and income were controlled for in these analyses.

Study 1

All MANOVAs reported in this section controlled for effects of actor, case background information, participant age, gender, ethnicity, and income. Effects of inoculation and response style are considered separately rather than as part of the same model so that the control group could be included for each independent variable. As predicted, the test of the overall MANOVA controlling for the previously mentioned effects revealed a significant main effect of inoculation on HGQ scales, Wilk's Lambda = .85, $F(16, 388) = 2.14$, $p = .007$. This can be described as a medium effect with partial $\eta^2 = .08$. Univariate ANOVAs revealed a significant main effect of inoculation on mock juror feelings of psychology in general, $F(2, 201) = 3.44$, $p = .03$. A partial η^2 of .03 indicates inoculation had a small effect on mock juror perceptions of psychology in general. LSD post-hoc comparisons showed that mock jurors viewed psychology significantly more positively when the hired gun questions were asked on direct examination as inoculation ($M = 19.60$, $SD = 2.57$) than when they were only asked on cross-examination ($M = 18.81$, $SD = 2.47$) or when those questions were not asked at all ($M = 18.26$, $SD = 2.88$), $p = .05$ and $.02$,

respectively (see Figure 4). There was not a significant difference between when inoculation was not used and the control condition. There were no significant effects of inoculation on any other scales of the HGQ.

Contrary to expectations, the test of the overall MANOVA found no significant main effect of inoculation on WCS scales, Wilk's Lambda = .96, $F(8, 396) = 1.02$, $p = .42$, partial $\eta^2 = .02$. An additional MANOVA similarly revealed no significant main effect of inoculation on case outcome, Wilk's Lambda = .95, $F(12, 392) = .79$, $p = .66$, partial $\eta^2 = .02$. In sum, in study 1 inoculation only had a significant main effect on ratings of psychology in general. There were no main effects on any aspect of witness credibility or case outcome.

Next, I continued to test hypothesis 1 by examining possible effects of response style on the dependent variables. As predicted, the test of the overall MANOVA controlling for the previously mentioned effects showed a significant main effect of response style on HGQ scales, Wilk's Lambda = .85, $F(16, 388) = 2.00$, $p = .01$. This can be described as a medium effect with partial $\eta^2 = .08$. A subsequent univariate ANOVA revealed a significant main effect of response style on ratings of the specific expert as unbiased, $F(2, 201) = 5.19$, $p = .006$. A partial η^2 of .05 indicates response style had a small effect on mock juror perceptions of the expert as unbiased. LSD post-hoc comparisons revealed that mock jurors rated the expert in the video as significantly less biased when he responded to the hired gun questions in a narrative ($M = 12.50$, $SD = .44$) than fragmented ($M = 11.01$, $SD = .48$) manner, $p = .004$. Mock jurors also rated the expert to be less biased when he responded in a narrative manner than when the hired gun questions were not asked ($M = 10.97$, $SD = .55$), $p = .02$ (see Figure 5). There was no significant difference of ratings of the expert's bias between when the expert responded to the

Figure 4

Ratings of Psychology in General Across Inoculation Conditions in a Civil Context

Figure 5

Ratings of the Expert as Unbiased Across Response Conditions in a Civil Context

hired gun question in a fragmented manner and when the questions were not asked, $p = .95$.

There were no additional significant effects of response style on any other scales of the HGQ.

Contrary to expectations, the test of the overall MANOVA found no significant main effect of response style on WCS scales, Wilk's Lambda = .97, $F(8, 396) = .78$, $p = .62$, partial $\eta^2 = .02$. Another MANOVA similarly revealed no significant main effect of response style on case outcome, Wilk's Lambda = .97, $F(12, 392) = .43$, $p = .95$, partial $\eta^2 = .01$. To summarize, in study 1 response style only had a significant effect on mock jurors' ratings of the expert's perceived bias. There were no significant main effects of response style on any aspect of witness credibility or case outcome.

To test the second hypothesis, I obtained Pearson correlation coefficients for the relation between the scales of the HGQ and WCS. These correlation coefficients are presented in Table 6. As the table shows, the two measures were highly correlated to one another. As predicted, the HGQ scales of ratings of the specific expert as unbiased and ratings of experts in general as unbiased had a higher correlation with the WCS trustworthiness scale than with any other WCS scale, $r(218) = .43$ and $r(218) = .40$, respectively, $p < .001$ for each. The total score obtained on the HGQ also had a higher correlation with WCS trustworthiness than any other WCS scale, $r(218) = .61$, $p < .001$. The only scales between the HGQ and WCS that were not significantly correlated were the HGQ scale of expert motivation and the WCS scales of expert knowledge and confidence, $r(218) = .11$, $p = .08$ and $r(218) = .12$, $p = .12$, respectively; however, these correlations approached statistical significance.

To test the third hypothesis, I obtained Pearson correlation coefficients for the relation between the scales of the HGQ and WCS and the case outcome measures (confidence in verdict, Likert and percentage ratings of defendant and plaintiff responsibility, and monetary award). As shown

in Table 7, there were no significant correlations between case outcome and ratings of the expert as unbiased, ratings of experts in general as unbiased, and any facet of the WCS. The scale which showed the largest correlations with case outcomes was the HGQ evidence strength scale. This scale was significantly correlated to all measures of case outcome and was the only scale to show a significant correlation with the monetary award given, $r(218) = .25, p < .001$. As the evidence was rated to be stronger, mock jurors provided larger monetary awards. While it is logical that the strength of the evidence would be related to case outcomes, these findings are also noteworthy due to the low internal consistency of the evidence strength scale, as having such a low reliability produces a bias against obtaining significant results.

Although ratings of defendant and plaintiff responsibility and case outcome were not correlated with any other HGQ or WCS scales, ratings of mock jurors' confidence in their verdicts were significantly correlated to several scales. Confidence in the verdict was significantly correlated to the HGQ scales of evidence strength ($r(218) = .25, p < .001$), expert relevance ($r(218) = .34, p < .001$), expert qualification ($r(218) = .27, p < .001$), views of psychology in general ($r(218) = .30, p < .001$), and the overall HGQ total score ($r(218) = .23, p < .001$). As ratings on these scales became more positive, mock jurors became more confident of their verdict. The only HGQ scales which were not significantly correlated to mock jurors' confidence in their verdicts were the scales examining expert motivation, the specific expert as unbiased, and experts in general as unbiased. Confidence in the verdict was also significantly correlated to the WCS scales of likeability ($r(218) = .17, p = .01$), trustworthiness ($r(218) = .15, p = .02$), knowledge ($r(218) = .18, p = .007$), confidence ($r(218) = .15, p = .02$), and the overall credibility score ($r(218) = .20, p = .003$). Again, as ratings on these scales became more positive mock jurors became more confident of their verdict.

Table 6

Pearson correlation coefficients between HGQ and WCS scales for Study 1

		1	2	3	4	5	6	7	8	9	10	11	12	13
1	Evidence Strength	1.00												
2	Expert Relevance	.52**	1.00											
3	Expert Qualification	.41**	.65**	1.00										
4	Expert Motivation	.16*	.27**	.24**	1.00									
5	Specific Expert as Unbiased	.22**	.32**	.34**	.48**	1.00								
6	Experts in General as Unbiased	.11	.28**	.30**	.59**	.61**	1.00							
7	Psychology in General	.27**	.37**	.48**	.18**	.29**	.33**	1.00						
8	HGQ Total	.44**	.65**	.64**	.69**	.72**	.82**	.57**	1.00					
9	Likeability	.20**	.44**	.43**	.19**	.20**	.16*	.23**	.35**	1.00				
10	Trustworthiness	.31**	.54**	.49**	.36**	.43**	.40**	.30**	.61**	.54**	1.00			
11	Knowledge	.35**	.54**	.54**	.11	.25**	.20**	.29**	.42**	.54**	.54**	1.00		
12	Confidence	.19**	.48**	.40**	.12	.14*	.14*	.23**	.32**	.54**	.50**	.68**	1.00	
13	Credibility	.32**	.62**	.57**	.26**	.31**	.30**	.34**	.54**	.80**	.83**	.80**	.81**	1.00

* $p \leq .05$; ** $p \leq .001$

Table 7

Pearson correlation coefficients between HGQ, WCS, and Case Outcome for Study 1

		Confidence in Verdict	Defendant Responsibility (Likert Scale)	Plaintiff Responsibility (Likert Scale)	Defendant Responsibility (Percent)	Plaintiff Responsibility (Percent)	Monetary Award
1	Evidence Strength	.25**	.29**	-.21**	.26**	-.23**	.25**
2	Expert Relevance	.34**	.11	-.16*	.07	-.06	0
3	Expert Qualification	.27**	.19*	-.21*	.17*	-.15*	.04
4	Expert Motivation	.03	.05	-.08	.07	-.06	-.05
5	Specific Expert as Unbiased	.03	.02	-.04	-.05	.07	-.08
6	Experts in General as Unbiased	.07	0	-.04	-.04	.03	-.09
7	Psychology in General	.30**	.13	-.10	.06	-.04	0
8	HGQ Total	.23**	.13	-.15*	.08	-.06	-.02
9	Likeability	.17*	-.03	.01	-.03	.04	.06
10	Trustworthiness	.15*	.04	-.01	-.02	.03	.07
11	Knowledge	.18*	.02	-.10	.08	-.06	.02
12	Confidence	.15*	-.01	-.06	.01	-.01	-.02
13	Credibility	.20*	-.01	-.04	0	.01	.05

* $p \leq .05$; ** $p \leq .001$

The remaining hypotheses dealt with proposed mediational relations between the independent variables (inoculation and response style) and several outcome measures. Initially, it was proposed that, following Baron and Kenny (1986), I would conduct regression analyses and subsequent Sobel tests of mediation; however, the procedures outlined by Baron and Kenny (1986) and Kenny, Kashy, & Bolger (1998) require a direct effect of the independent variable on the outcome measure. Kenny et al. (1998) explain that a direct effect is necessary to show that “there is an effect that may be mediated” (p. 259). However, these direct effects were not present in the current study, making Sobel tests of mediation inappropriate. Instead, data analyses followed the more recent recommendations of Shrout and Bolger (2002) and Preacher and Hayes (2004). These authors argue that the direct effect requirement of Baron and Kenny’s (1986) mediation guidelines should not be a requirement for mediation if there is the belief that the effect size is small. Additionally, Preacher and Hayes (2004) state that an indirect effect may be present even when no direct effect is found. In their view, a mediated effect is a special form of an indirect effect in which the initial direct effect is present. Preacher and Hayes (2004) state that the assumption of a significant direct effect does not have to be met in order to assess an indirect effect. As such, the following analyses followed the recommendations of Shrout and Bolger (2002) and Preacher and Hayes (2004) to assess the possibility of indirect effects in the previously proposed mediational relations.

There were no mediated patterns or indirect effects of either inoculation or response style on case outcomes through ratings of the expert as unbiased in study 1. Thus, hypotheses four and five were not supported for study 1. However, there was a significant indirect effect of response style on expert trustworthiness through ratings of the expert as unbiased (Figure 6). First, to explore possible mediation of response style by ratings of the expert as unbiased,

Figure 6

Indirect Effect of Response Style on Expert Trustworthiness Through Ratings of the Expert as Unbiased

Note. * $p < .01$

following Preacher and Hayes (2004), I obtained the unstandardized regression coefficient for the effect of response style on ratings of the expert as unbiased ($B = -1.29$, $t(173) = -2.69$, $p = .008$). When response style and ratings of the expert as unbiased were entered simultaneously, the impact of response style was significant ($B = 2.55$, $t(172) = 2.44$, $p = .02$). In addition, the effect of ratings of the expert as unbiased on expert trustworthiness was significant ($B = 1.01$, $t(172) = 6.19$, $p < .001$). To test the indirect effect of this pattern, I employed bootstrapping procedures outlined by Shrout and Bolger (2002; see also Preacher & Hayes, 2004). Preacher (2001) states that bootstrapping methods should be used whenever researchers have access to raw data, as these methods provide a better alternative to the traditionally used Sobel tests. Bootstrap methods produce greater statistical power when examining indirect effects when the sampling distribution is positively or negatively skewed. In the event that the distribution is not skewed, bootstrapping procedures produce the same results as standard procedures and are not more powerful. The analysis revealed that the bootstrapped estimate of the indirect effect ($M = -1.28$) was significantly different from zero ($p < .01$, CI 99: between -2.80 and -.05). When experts used a narrative response style they were perceived as less biased. As experts were rated to be less biased they were also rated to be more trustworthy.

There was also a significant indirect effect of response style on expert likeability through ratings of the expert as unbiased (Figure 7). Following the same procedures as previously reported, I first obtained the unstandardized regression coefficient for the effect of response style on ratings of the expert as unbiased ($B = -1.29$, $t(173) = -2.69$, $p = .008$). When response style and ratings of the expert as unbiased were entered simultaneously, the impact of response style was significant ($B = 2.49$, $t(172) = 2.66$, $p = .009$). The effect of ratings of the expert as

Figure 7

Indirect Effect of Response Style on Expert Likeability Through Ratings of the Expert as Unbiased

Note. * $p < .01$

unbiased on expert likeability was significant ($B = .50, t(172) = 3.40, p < .001$). To test the indirect effect of this pattern, I again employed bootstrapping procedures outlined by Shrout and Bolger (2002; see also Preacher & Hayes, 2004). The analysis revealed that the bootstrapped estimate of the indirect effect ($M = -.63$) was significantly different from zero ($p < .01$, CI 99: between -1.60 and -.02). When experts used a narrative response style they were perceived as less biased. As experts were rated to be less biased they were also rated to be more likeable.

There were no indirect effects of response style on either expert knowledge or confidence through ratings of the expert as unbiased. Despite those non-significant findings, there was a significant indirect effect of response style on overall expert credibility through ratings of the expert as unbiased (Figure 8). Again, I first obtained the unstandardized regression coefficient for the effect of response style on ratings of the expert as unbiased ($B = -1.29, t(173) = -2.69, p = .008$). When response style and ratings of the expert as unbiased were entered simultaneously, the impact of response style was significant ($B = 7.21, t(172) = 2.50, p = .01$). The effect of ratings of the expert as unbiased on expert credibility was significant ($B = 2.16, t(172) = 4.82, p < .001$). To test the indirect effect of this pattern, I again employed bootstrapping procedures outlined by Shrout and Bolger (2002; see also Preacher & Hayes, 2004). The analysis revealed that the bootstrapped estimate of the indirect effect ($M = -2.75$) was significantly different from zero ($p < .01$, CI 99: between -6.37 and -.12). When experts used a narrative response style, they were perceived as less biased. As experts were rated to be less biased, they were also rated to be more credible.

Exploratory Analyses

The first set of exploratory analyses re-examined the previously reported MANCOVAs, this time with scores from the CLBS entered as continuous moderators. These analyses

Figure 8

Indirect Effect of Response Style on Expert Credibility Through Ratings of the Expert as Unbiased

Note. * $p < .01$

examined possible effects of pretrial bias on the dependent measures as well as possible interactions between the independent variables and pretrial bias. As in the primary analyses, all analyses reported statistically controlled for any effects of the actor, case background information, and demographic variables (age, gender, ethnicity, and income) as these variables were not of theoretical interest to the current study. Results revealed significant effects of bias against corporations on HGQ scales (Wilk's Lambda = .83, $F(8, 192) = 4.94$, $p < .001$) but no significant effect of bias toward plaintiffs on HGQ scales (Wilk's Lambda = .96, $F(8, 192) = .95$, $p = .48$, partial $\eta^2 = .04$). A partial η^2 of .17 indicates that bias against corporations had a large effect on ratings of the HGQ scales. Univariate ANOVAs revealed that bias against corporations had significant effects on ratings of expert motivation ($F(1, 199) = 10.73$, $p = .001$, partial $\eta^2 = .05$), the expert in the video as unbiased ($F(1, 199) = 3.81$, $p = .05$, partial $\eta^2 = .02$), experts in general as unbiased ($F(1, 199) = 20.42$, $p < .001$, partial $\eta^2 = .09$), and the HGQ total score ($F(1, 199) = 7.41$, $p = .007$, partial $\eta^2 = .04$). Parameter estimates showed that as mock jurors bias towards corporations increased they rated the expert as having more questionable motivations ($B = -.09$) and as being more biased ($B = -.05$). As corporate bias increased mock jurors also held more negative views about experts in general ($B = -.23$) and scored lower overall on the HGQ ($B = -.38$). Even after controlling for the effects of bias toward plaintiffs and corporations, inoculation still only had a significant main effect on the HGQ subscale measuring views towards psychology in general and response style only significantly affected views of the expert as unbiased. There were no significant interactions between either bias against corporations or plaintiffs and inoculation or response style on scales of the HGQ, $p > .31$ for all interactions.

Another MANCOVA revealed no significant effects of bias against plaintiffs (Wilk's Lambda = .98, $F(4, 196) = 1.11$, $p = .35$, partial $\eta^2 = .02$) or bias against corporations (Wilk's Lambda = .96, $F(4, 196) = 2.05$, $p = .09$, partial $\eta^2 = .04$) on the WCS ratings. A final MANCOVA examined the same effects on case outcome and again found no significant effects of bias against plaintiffs (Wilk's Lambda = .95, $F(6, 194) = 1.55$, $p = .17$, partial $\eta^2 = .05$) or bias against corporations (Wilk's Lambda = .97, $F(6, 194) = .99$, $p = .44$, partial $\eta^2 = .03$). Again, there were no significant interactions between either bias against corporations or plaintiffs and inoculation or response style on either WCS ratings or measures of case outcome, $p > .21$ for all interactions.

A final set of exploratory analyses examined possible interactions of inoculation and response style on the dependent measures. As in all other analyses, the effects of actor, background, and demographic variables were controlled for statistically. These analyses also controlled for any effects of corporate or plaintiff bias. A MANCOVA revealed significant main effects of inoculation (Wilk's Lambda = .88, $F(8, 149) = 2.55$, $p = .01$, partial $\eta^2 = .12$), response style (Wilk's Lambda = .89, $F(8, 149) = 2.32$, $p = .02$, partial $\eta^2 = .11$), as well as a significant interaction between inoculation and response style (Wilk's Lambda = .87, $F(8, 149) = 2.69$, $p = .009$, partial $\eta^2 = .13$) on the HGQ scales. Despite the overall MANCOVA being significant for the interaction of inoculation and response style, univariate ANOVAs showed no significant interaction effects on any individual scales of the HGQ. Additional MANCOVAs revealed no significant interactions of response style and inoculation on either the WCS scales (Wilk's Lambda = .99, $F(4, 153) = .54$, $p = .71$, partial $\eta^2 = .01$) or measures of case outcome (Wilk's Lambda = .97, $F(6, 151) = .83$, $p = .55$, partial $\eta^2 = .03$).

Study 2

As in Study 1, all MANOVAs reported in this section controlled for any effects of actor, case background information, participant age, gender, ethnicity, and income. Contrary to expectations, the test of the overall MANOVA controlling for the previously mentioned effects showed no significant main effect of inoculation on HGQ scales, Wilk's Lambda = .91, $F(16, 414) = 1.28$, $p = .21$, partial $\eta^2 = .05$. The test of the overall MANOVA showed a marginally significant effect of inoculation on WCS scales, Wilk's Lambda = .94, $F(8, 426) = 1.69$, $p = .10$, partial $\eta^2 = .03$. Subsequent univariate ANOVAs revealed that this marginally significant effect was driven by a small, but significant, effect of inoculation on ratings of expert knowledge, $F(2, 216) = 3.82$, $p = .02$, partial $\eta^2 = .03$. LSD post-hoc comparisons revealed that mock jurors rated the expert as significantly more knowledgeable when no inoculation was used ($M = 47.28$, $SD = .62$) than in the control condition ($M = 45.24$, $SD = .73$), $p = .009$ (see Figure 9). Mock jurors also rated the expert as marginally more knowledgeable when inoculation was not used as opposed to when inoculation was used ($M = 46.14$, $SD = .59$), although this difference did not reach statistical significance, $p = .07$. There was no significant difference between ratings of knowledge in the inoculation and control conditions. There were no additional significant effects of inoculation on any other scales of the WCS. Finally, an additional MANOVA revealed no significant main effect of inoculation on case outcome, Wilk's Lambda = .98, $F(8, 296) = .47$, $p = .88$, partial $\eta^2 = .01$. In summary, the only significant effect of inoculation in study 2 was on ratings of expert knowledge. Contrary to hypotheses, there were no significant effects of inoculation on any scales of the HGQ or measures of case outcome.

Figure 9

Ratings of Expert Knowledge Across Inoculation Conditions in a Criminal Context

Next, I continued to test hypothesis 1 by examining possible effects of response style on the dependent variables. Unexpectedly, a MANOVA controlling for the previously mentioned effects revealed no significant main effect of response style on scales of the HGQ, Wilk's $\Lambda = .94$, $F(16, 414) = .83$, $p = .66$, partial $\eta^2 = .03$. Another MANVOA similarly revealed no significant effect of response style on scales of the WCS, Wilk's $\Lambda = .95$, $F(8, 426) = 1.47$, $p = .17$, partial $\eta^2 = .03$. Finally, a last MANOVA showed there were no significant effects of response style on case outcome, Wilk's $\Lambda = .97$, $F(8, 296) = .64$, $p = .74$, partial $\eta^2 = .02$.

To test the second hypothesis, I obtained Pearson correlation coefficients for the relation between the scales of the HGQ and WCS. These correlation coefficients are presented in Table 8. As the table shows, the scales of the two measures were highly correlated to one another. Replicating the findings from study 1, the HGQ scales of ratings of the specific expert as unbiased and ratings of experts in general as unbiased had a higher correlation with the WCS trustworthiness scale than with any other WCS scale, $r(230) = .38$ and $r(230) = .42$, respectively, $p < .001$ for each. The total score obtained on the HGQ also had a higher correlation with WCS trustworthiness than any other WCS scale, $r(228) = .65$, $p < .001$. The only scales of the WCS and HGQ which were not significantly correlated were the WCS scale measuring perceived expert confidence and the HGQ scales measuring expert motivation and views of experts in general as unbiased, $r(230) = .11$, $p = .11$ and $r(230) = .04$, $p = .55$, respectively. Though the correlation between expert likeability and views of experts in general as unbiased was not technically significant, this relation approached significance, $r(230) = .13$, $p = .06$.

Table 8

Pearson correlation coefficients between HGQ and WCS scales for Study 2

		1	2	3	4	5	6	7	8	9	10	11	12	13
1	Evidence Strength	1.00												
2	Expert Relevance	.38**	1.00											
3	Expert Qualification	.27**	.71**	1.00										
4	Expert Motivation	.04	.34**	.44**	1.00									
5	Specific Expert as Unbiased	.16*	.30**	.28**	.30**	1.00								
6	Experts in General as Unbiased	-.07	.28**	.38**	.59**	.45**	1.00							
7	Psychology in General	.15*	.43**	.47**	.25**	.22**	.32**	1.00						
8	HGQ Total	.30**	.68**	.74**	.71**	.61**	.79**	.58**	1.00					
9	Likeability	.21**	.41**	.42**	.15*	.21**	.13	.34**	.38**	1.00				
10	Trustworthiness	.27**	.55**	.63**	.35**	.38**	.42**	.35**	.65**	.59**	1.00			
11	Knowledge	.31**	.50**	.54**	.23**	.17*	.16*	.42**	.46**	.51**	.55**	1.00		
12	Confidence	.26**	.41**	.36**	.11	.12*	.04	.27**	.29**	.55**	.45**	.61**	1.00	
13	Credibility	.32**	.57**	.60**	.26**	.28**	.24**	.42**	.55**	.84**	.82**	.79**	.79**	1.00

* $p \leq .05$; ** $p \leq .001$

To test the third hypothesis, I obtained Pearson correlation coefficients for the relation between the scales of the HGQ and WCS and the case outcome measures (continuous ratings of verdict, confidence in verdict, punishment severity, and confidence in ratings of punishment). These correlation coefficients are presented in Table 9. As expected, there were significant correlations between continuous ratings of verdict and ratings of the expert as unbiased, $r(230) = -.14, p = .03$. As mock jurors rated the expert to be more biased they also rated the defendant as more guilty (i.e. they disagreed with the expert). Similar correlations were found between continuous ratings of the verdict and ratings of expert relevance ($r(230) = -.47, p < .001$), expert qualification ($r(230) = -.46, p < .001$), expert motivation ($r(230) = -.27, p < .001$), views of experts in general as unbiased ($r(230) = -.25, p < .001$), views of psychology in general ($r(228) = -.20, p = .002$), and the HGQ total score ($r(228) = -.40, p < .001$). There were also significant correlations between continuous ratings of guilt and ratings of expert trustworthiness ($r(230) = -.34, p < .001$), knowledge ($r(230) = -.22, p = .001$), and credibility ($r(230) = -.22, p = .001$) such that as experts were rated more trustworthy, knowledgeable, and credible the verdict tended towards not guilty by reason of insanity (i.e. they agreed with the expert). In contrast to study 1, in study 2 evidence strength was not significantly correlated to any measure of case outcome.

As in study 1, the remaining main hypotheses dealt with proposed mediational relations between the independent variables (inoculation and response style) and several outcome measures. These mediations were examined using the same data analytic strategies previously discussed for study 1. No mediation or indirect effects were found in study 2.

Table 9

Pearson correlation coefficients between HGQ, WCS, and Case Outcome for Study 2

		Verdict (Continuous)	Verdict Confidence	Punishment Severity	Punishment Confidence
1	Evidence Strength	-.06	.06	.09	.01
2	Expert Relevance	-.47**	.37**	-.24*	-.15*
3	Expert Qualification	-.46**	.41**	-.32**	-.16*
4	Expert Motivation	-.27**	.17*	-.20*	-.03
5	Specific Expert as Unbiased	-.14*	.16*	.01	.12
6	Experts in General as Unbiased	-.26**	.14*	-.10	0
7	Psychology in General	-.20*	.30**	-.14	.01
8	HGQ Total	-.40**	.34**	-.22*	-.04
9	Likeability	-.07	.26**	-.17*	.05
10	Trustworthiness	-.34**	.31**	-.24*	-.17*
11	Knowledge	-.22**	.34**	-.18*	-.04
12	Confidence	-.09	.30**	-.06	0
13	Credibility	-.22**	.37**	-.21*	-.05

* $p \leq .05$; ** $p \leq .001$

Exploratory Analyses

The first set of exploratory analyses re-examined the previously reported MANCOVAs, this time with scores from the PJAQ entered as continuous moderators. As in the primary analyses, all analyses reported controlled for any effects of the actor, case background information, and demographic variables (age, gender, ethnicity, and income) which were not of theoretical interest to the current study. These analyses examined any effects of pretrial bias on the dependent measures, and controlled for pretrial bias while probing for additional effects of the independent variables. Any interactions between pretrial bias and the independent measures were also examined. Results showed a significant medium effect of cynicism towards the defense on HGQ scales (Wilk's Lambda = .90, $F(8, 201) = 2.87$, $p = .005$, partial $\eta^2 = .10$). None of the other PJAQ scales were significantly related to HGQ scales. Univariate ANOVAs revealed that cynicism towards the defense had significant effects on ratings of expert motivation ($F(1, 208) = 4.18$, $p = .04$, partial $\eta^2 = .02$) and views of experts in general as unbiased ($F(1, 208) = 9.10$, $p = .003$, partial $\eta^2 = .04$). Parameter estimates showed that as mock jurors were more cynical toward the defense, they also rated the expert's motivation as more suspect ($B = -.13$) and had more negative views of experts in general ($B = -.37$). After controlling for the effects of pretrial bias, inoculation had a marginally significant effect on HGQ scales (Wilk's Lambda = .89, $F(16, 402) = 1.53$, $p = .09$, partial $\eta^2 = .06$); however, subsequent univariate ANOVAs failed to reveal any significant effects of inoculation on individual HGQ scales. Even after controlling for the effects of pretrial bias, response style failed to have any significant effects on HGQ scales (Wilk's Lambda = .92, $F(16, 402) = 1.13$, $p = .32$, partial $\eta^2 = .04$). There were no interactions between measures of pretrial bias and either inoculation or response style on HGQ scales, $p > .37$ for all interactions.

Next, results showed significant effects of confidence in the legal system (Wilk's Lambda = .94, $F(4, 207) = 3.31$, $p = .01$, partial $\eta^2 = .06$) and views of the defendant as innately criminal (Wilk's Lambda = .91, $F(4, 207) = 4.94$, $p = .001$, partial $\eta^2 = .09$) on the WCS. Univariate ANOVAs showed that confidence in the legal system had a small, but significant effect on ratings of the expert's trustworthiness, $F(1, 210) = 4.24$, $p = .04$, partial $\eta^2 = .02$ with parameter estimates revealing that mock jurors with higher levels of confidence in the legal system rated the expert as significantly less trustworthy ($B = -.34$). Univariate ANOVAs failed to reveal any significant effects of views of the defendant's innate criminality on individual WCS scales. Even after controlling for the effects of pretrial juror bias, the effect of inoculation on WCS scales remained marginally significant, Wilk's Lambda = .93, $F(8, 414) = 1.65$, $p = .10$, . Similarly, after controlling for pretrial bias the effect of response style on WCS scales remained non-significant, Wilk's Lambda = .95, $F(8, 414) = 1.38$, $p = .20$, partial $\eta^2 = .03$. While there was no significant interaction between measure of pretrial bias and inoculation on WCS measures ($p > .22$ for all interactions), analyses revealed a small, but significant interaction between pretrial measures of innate criminality and response style on the WCS, Wilk's Lambda = .92, $F(8, 402) = 2.06$, $p = .04$, partial $\eta^2 = .02$. However, despite the significant overall interaction, univariate ANOVAs did not reveal significant interactions of innate criminality and response style on any of the individual scales of the WCS, $p > .22$ for all interactions.

Finally, no scales of the PJAQ had significant effects on any measure of case outcome. Moreover, after controlling for these effects of pretrial bias the effects of inoculation (Wilk's Lambda = .97, $F(8, 284) = .56$, $p = .81$, partial $\eta^2 = .02$) and response style (Wilk's Lambda = .96, $F(8, 284) = .72$, $p = .67$, partial $\eta^2 = .02$) on measures of case outcome remained non-

significant. There were no significant interactions between measures of pretrial bias and either inoculation or response style on case outcomes, $p > .25$ for all interactions.

A final set of exploratory analyses examined possible interactions of inoculation and response style on the dependent measures. As in all other analyses, the effects of actor, background, and demographic variables were controlled for statistically. These analyses also controlled for any effects of pretrial bias. First, a MANOVA failed to reveal a significant interaction of inoculation and response style of HGQ scales, Wilk's Lambda = .97, $F(8, 157) = .66$, $p = .73$, partial $\eta^2 = .03$. Another MANOVA similarly showed no significant interaction of inoculation and response style on the WCS, Wilk's Lambda = .98, $F(4, 162) = .80$, $p = .53$, partial $\eta^2 = .02$. The last MANOVA revealed no significant interaction of inoculation and response style on case outcomes, Wilk's Lambda = .97, $F(4, 111) = .78$, $p = .54$, partial $\eta^2 = .03$.

Comparison of Study 1 and Study 2

Due to the inherent methodological differences between a civil and criminal case, it would be inappropriate to test statistically for differences between the two studies. Despite the lack of statistical tests between the two studies, means on the various scales are presented here for descriptive purposes and in hopes to inspire future research ideas. Means presented in the following figures are obtained from the entire sample and combine the different experimental groups. First, Figure 10 presents the means of the HGQ scales for the civil and criminal studies. For this graph, the means have been adjusted so that each individual scale could have a mean between 1 and 6 with higher values indicating more positive views of the expert. As can be seen from examining this figure, no clear trend emerges for differences between civil and criminal studies. Mean differences between studies are quite small, with the largest mean difference

Figure 10

Ratings of the HGQ Compared Across Civil and Criminal Contexts

being .2. If statistical tests were conducted, it is unlikely that any significant differences would exist between the civil and criminal studies on the HGQ scales.

Figure 11 presents the means of the WCS for comparison between the civil and criminal studies. For these scales, the possible scores could range from 5 to 50 with higher scores again indicating more positive views of the expert. For both studies, the expert obtained scores on these scales near the maximum obtainable scores, indicating that mock jurors found the experts to be quite credible in general. As opposed to the scores on the HGQ, a clear pattern emerges for the scores on the WCS. The experts obtained higher mean scores on every scale of the WCS in the criminal as opposed to the civil studies. The largest mean difference was obtained on the trustworthiness scale (mean difference = 1.64). These data reveal a general trend for experts to be rated as more credible in criminal versus civil contexts. Despite this apparent trend, also notice that the standard deviations are large, suggesting that the likelihood of finding significant differences between the contexts would be small.

Finally, Figure 12 presents the mean ratings of the expert as unbiased, broken down by condition, and compared across studies (recall that higher scores indicate the expert was rated as less biased with low scores indicating the expert is biased or a hired gun). Because this was one of the main variables of interest in this project, I wished to examine differences on this variable between civil and criminal settings. As can be seen in this figure, there does not appear to be a clear pattern of differences between civil and criminal cases. Mean differences between cases were small and standard deviations were relatively large, making the possibility of statistically significant differences between the case contexts quite small. In sum, there do not appear to be meaningful differences between the perceptions of the expert as unbiased in civil versus criminal contexts.

Figure 11

Ratings of Expert Credibility Compared Across Civil and Criminal Contexts

Figure 12

Ratings of the Expert as Unbiased Compared Across Conditions and Context

4. Discussion

Study 1

Inoculation was hypothesized to be an effective method through which experts could avoid having jurors form the impression that they are hired guns. This hypothesis was not supported. Mock jurors judged the expert to be just as biased when inoculation was used as when it was not. In addition, neither of these conditions was significantly different from the control condition in which questions about pay and frequency of testimony were not addressed. In short, in study 1, inoculation did not prove to be an effective technique by which one could unload the hired gun. How the information designed to call the expert's impartiality into question was presented did not seem to have an effect on perceptions of the expert's biases. This is not to say, however, that participants in the study did not question the impartiality of the expert. Indeed, the full range of scores were obtained on scales measuring how much mock jurors perceived the expert in the video, and experts in general, to be hired guns. These scores did not change systematically based on the presence or absence of inoculation.

Inoculation, however, did have a significant effect on mock jurors' feelings about psychology in general. Mock jurors reported significantly more favorable attitudes toward psychology when inoculation was used than in when it was not used or when questions about pay and frequency of testimony were not addressed. For the scale measuring attitudes toward psychology, the effect of inoculation was in the hypothesized direction. Despite significant correlations between the scale measuring attitudes toward psychology and the scale measuring ratings of the expert as a hired gun (see Table 4), only ratings of attitudes toward psychology

were significantly affected by inoculation. Perhaps this is because the use of inoculation, rather than preventing a future decrease in negative scores, actually led to an increase in positive ratings relative to baseline measures (i.e. the control group). Put another way, instead of preventing mock jurors from forming the impression that the expert was a hired gun, the use of inoculation may have cultivated the impression that psychologists are generally honest and upfront about potentially biasing information, thus increasing favorable impressions of psychology in general. Instead of unloading the hired gun, inoculation seems to have primed more positive attitudes about psychology in general.

Inoculation had no significant effect on mock jurors' ratings of any aspect of the expert's credibility or the outcome of the case. Again, after looking at descriptive data for these variables these findings do not appear to be due to a restricted range of responses. Mock jurors' ratings of the expert's credibility and the case outcome did vary, but the variation was not systematic with regard to the experimental groups.

Response style was also hypothesized to be an important factor mock jurors would utilize to make judgments regarding the expert's perceived bias. As expected, using a narrative response style did succeed in unloading the juror's ratings of the expert as a hired gun. When the expert responded to questions relating to bias in a narrative manner, giving full and complete answers (the *whole* truth), mock jurors rated the expert as less of a hired gun than when he responded in a fragmented manner, giving short and less complete answers. Despite that difference, there was no difference between the control condition in which questions about bias were not asked and the fragmented response condition. This finding suggests that the fragmented response style did not hurt the experts per se, but rather that answering these questions in a narrative manner significantly helped the experts to form a better impression. It

should also be noted that these significant differences occurred while attempting to hold the expert's vocal inflection and non-verbal behavior constant. In both narrative and fragmented conditions, experts responded to these questions about perceived bias with neither an evasive nor a defensive demeanor. They responded with neutral affect so that only the response style varied between conditions. Hence, this effect may be larger and more robust in a real world setting where these other factors are not controlled.

Despite the significant and expected effect of response style on the scale measuring ratings of the expert as a hired gun, this variable had no other significant effect on other scales of the HGQ, the WCS, or measures of case outcome. While these non-significant findings were unexpected, they suggest that response style had a specific impact on ratings of the expert as a hired gun rather than on more general measures of credibility. This result is in contrast to prior research (Barry, 1991), which showed a general effect of response style on credibility. It may be that in the current study the specific effect on ratings of the expert as a hired gun was found because the response style of the expert was only manipulated when the expert responded to questions about bias. Perhaps if the response style had been manipulated throughout the entire testimony rather than in the one specific area more general effects of response style would have been discovered.

I also hypothesized that the scores on the HGQ and WCS would be correlated with one another. This hypothesis was supported as the correlations were obtained in the expected direction. In general, high scores on the HGQ were related to high scores on the WCS. No correlations were found in the opposite direction. The HGQ scales measuring mock jurors' perceptions of the specific expert as a hired gun and experts in general as hired guns were more strongly correlated to the WCS trustworthiness scale than any other measure of credibility. This

finding bolsters the notion that trustworthiness is the aspect of credibility that is most damaged when an expert is judged to be a hired gun. Although significant correlations were found between all scales of the WCS and these two scales of the HGQ, this relation was the most theoretically interesting and relevant to the current project.

Contrary to predictions, the HGQ and WCS scales were not significantly correlated to case outcome, for the most part. The exception to this pattern was the HGQ scale measuring ratings of evidence strength. As one would expect, higher ratings of evidence strength corresponded to higher ratings of defendant responsibility and larger monetary awards for the plaintiff. It is intuitive that mock jurors who viewed the evidence as stronger would act on these perceptions accordingly. What is more telling is that the scales measuring potential expert bias (HGQ scales of expert motivation, the specific expert as a hired gun, and experts in general as hired guns) had no significant correlation to any measure of case outcome. The rest of the scales of the HGQ and WCS showed significant correlations to ratings of confidence in the verdict. It is curious that the three scales measuring potential bias were not also correlated to confidence in verdict. Perhaps this can be explained by jurors focusing on more centrally important information, such as evidence strength and perceived credibility, when deciding the case outcome as opposed to more peripheral information, such as the potential for expert bias.

Also, there were no significant mediated or indirect effects of inoculation or response style on measures of case outcome. In study 1, it appears that neither of these manipulations had any significant effects of any kind, direct, mediated, or indirect, on measures of case outcome. Although these results are contrary to expectations, they do have a plausible explanation. Perhaps the evidence presented in study 1 was so strong that it overwhelmed any effect that inoculation or response style could have had. When the evidence is overwhelmingly in favor of

one side or the other, peripheral information provided by the expert may have had little impact on the outcome. Indeed, because evidence strength was strongly correlated with the amount of monetary award given while no other measures were, this could suggest that mock jurors engaged in primarily central processing of the information provided. If central processing was used to decide in favor of the plaintiff, then the information provided by the defense expert could have been viewed as irrelevant when mock jurors decided the case outcome. This explanation would predict the significant correlation between evidence strength and case outcome and the failure to find any direct, mediated, or indirect effects of inoculation or response style on case outcomes.

Despite the fact that there were no significant effects on case outcomes, I was able to demonstrate significant indirect effects of response style on ratings of expert credibility through the expert as a hired gun. As previously discussed, the expert was rated as less of a hired gun when he used a narrative versus fragmented response style. Additionally, when the expert was rated as less of a hired gun, he was also rated to be significantly more trustworthy, likeable, and generally credible. There were not indirect effects of response style on either expert knowledge or confidence through the ratings of the expert as a hired gun. These findings imply that the hired gun takes aim specifically at ratings of expert trustworthiness and likeability. Although it was predicted that trustworthiness in particular would be affected by ratings of the expert as a hired gun, it is not surprising that likeability was also affected. It seems that when mock jurors believed the expert was a hired gun they resented the implication that the expert was paid to mislead them.

It makes sense that there was no indirect effect on ratings of expert knowledge in study 1, as regardless of how the expert viewed the witness the same information was presented. It is

somewhat more curious that there were no indirect effects on witness confidence. Going back to the traditional view of the hired gun expert, one would presume that this type of practiced expert who travels across the country selling his or her testimony to the highest bidder would have the skill to appear quite confident in his/her testimony. A hired gun would be valued particularly because he or she could provide polished and confident testimony whenever paid to do so. The failure to find this effect goes back to the manipulation used and, more generally, the goal of the study in general. First, recall that this study did not directly manipulate whether mock jurors would view the expert as a hired gun. Instead, variables that were thought to be able to prevent mock jurors from forming that impression were manipulated. I also attempted to control for and minimize any non-verbal behaviors that could have led to the formation of the idea that the expert was a hired gun. Put another way, the manipulation in this study sought to control and minimize the pizzazz and polish that may be present in *actual* hired gun testimony. This manipulation was used due to the purpose of the study in general. Recall, again, that the purpose of the study was not to discover ways for actual hired guns to go undetected; rather, the purpose was to develop strategies that could be used by ethical professionals to help ensure that jurors do not view them as hired guns. As such, the testimony presented was balanced and included ethically appropriate hedging of opinions. The expert in the videos appeared confident and sure of his opinion, but not to an arrogant or inappropriate degree. The focus on presenting more ethically sound testimony than an actual hired gun would present could account for the failure to find an indirect effect on witness confidence.

Exploratory analyses conducted on study 1 revealed no additional significant effects of either inoculation or response style after controlling for pretrial bias against corporations or plaintiffs. Despite the lack of additional significant findings for the independent variables, these

analyses did reveal a significant effect of bias against corporations on ratings measuring perceptions of expert bias. In general, the more biased against corporations the mock jurors were coming into the study, the more negatively they rated the expert, who in this case was retained by a corporation. This is understandable in that the more negatively jurors view corporations the more negatively they would view people associated with corporations, in this case, the expert. The fact that the expert was retained by the corporation also explains why pretrial bias against plaintiffs had no effects on ratings of the expert. Perhaps if the expert had been retained by the plaintiff the opposite pattern of results would have emerged. This question could easily be examined in future research.

Despite these effects of corporate bias on perceptions of the expert as a hired gun, there were no significant effects of pretrial bias, either against corporations or plaintiffs, on witness credibility or case outcome. It should be noted that the effect of pretrial bias against corporations on witness credibility was marginally significant, which can be understood given the previously discussed relation between ratings on the HGQ and WCS. It is somewhat counter-intuitive that ratings of pretrial bias had no significant effect on ratings of case outcome. That said, this finding fits in with the previously posited explanation that mock jurors engaged in central rather than peripheral processing of the information presented (i.e. were more influenced by the strength of the evidence than by other factors). It is possible that when it came to making their final decisions, mock jurors relied on the evidence alone and were not influenced by other factors, including their own biases or opinions regarding the expert's potential biases.

Finally, the last analyses in study 1 examined any interactions inoculation and response style may have had on the dependent measures. Results showed that inoculation and response style did have a significant interaction on the scales of the HGQ taken as a whole; however,

results failed to show any significant interaction on the individual scales of this measure. There were no significant interactions on either the WCS or measures of case outcome. No prior research suggested that these variables would interact, hence the exploratory nature of the analyses.

Study 2

Switching to the criminal context, the same hypotheses were examined again, but some different results were obtained. As in study 1, in study 2 the use of inoculation had no significant effect on ratings of the expert as a hired gun. In fact, in study 2 inoculation had no significant effect on any scale of the HGQ. Again, as in study 1, this was not due to a restricted range of responses. The full range of scores was obtained on all scales of the HGQ, indicating that some mock jurors did perceive the expert as being a hired gun while others viewed the expert as being relatively free of bias. The variation in these scores, however, did not change as a function of the experimental inoculation manipulation.

Contrary to the findings in study 1, in the criminal context inoculation did have a marginally significant effect on overall witness credibility. Specifically, inoculation significantly affected ratings of the expert's knowledge. The expert was unexpectedly rated as being more knowledgeable when inoculation was *not* used as opposed to inoculation was used and when questions about pay were not asked. One possible explanation for these unexpected results is that when inoculation was not used (i.e. questions about pay were only asked on cross examination) mock jurors interpreted the expert's calm and non-defensive responses to these questions as more spontaneous. When asked these questions on cross examination the expert was required to think on his feet and was still able to provide calm and neutral responses to challenging questions as opposed to simply providing prepared responses when the questions

were asked on direct examination. The fact that the expert responded to these questions in a calm and poised manner could have also influenced his overall perceived knowledge. There were no additional significant effects of inoculation on other aspects of expert credibility or on measures of case outcome.

In study 2 the response style utilized by the expert had no significant effect on ratings of the expert as a hired gun, expert credibility or case outcome. As such, study 2 failed to replicate the significant effect of response style on ratings of the expert as a hired gun which was found in study 1. Taken as a whole, neither inoculation nor response style helped the expert unload the hired gun in a criminal context. Although these null results were unexpected, they speak to one important strength of the current project: the ability to examine the presence or absence of the same effects across different legal contexts. It appears that while response style has a significant effect on perceptions of the expert as a hired gun in civil settings this effect was not found in a criminal setting. One possible explanation for this is the increased stakes involved in a criminal context. While civil law focuses on assigning blame and awarding damages, criminal law is concerned with punishing wrongdoers. Criminal trials result in the loss of individual freedom and liberty whereas civil trials result in the loss of money. Perhaps the increased stakes involved make jurors less susceptible to persuasive communication strategies in the criminal context and increase their reliance on centrally rather than peripheral processing of information.

As in study 1, it was also hypothesized that the scales of the HGQ and WCS would be highly correlated. This hypothesis was again supported. Results show that as experts were rated to be less biased overall they were also rated as being more credible. These results fit nicely with the theory that biased experts are neither liked nor believed. Again, the HGQ scales measuring perceptions of the specific expert and experts in general as hired guns were more

strongly correlated to ratings of expert trustworthiness than to any other aspect of credibility. This replication of the previous findings strengthens the confidence with which it can be stated that trustworthiness is the aspect of credibility most impacted when an expert is viewed as a hired gun. Although views of the specific expert as a hired gun were correlated to all aspects of credibility, views of experts in general as hired guns were only correlated with trustworthiness, knowledge, and overall credibility. Views of experts in general were not correlated to ratings of the expert's likeability or confidence (although the correlation with likeability approached significance). These findings make sense in that opinions regarding experts in general being biased should be less strongly correlated to ratings of a specific expert's credibility than ratings of that expert's perceived bias.

Diverging from the results of study 1, in study 2 measures of expert bias and credibility were significantly correlated to case outcome. In this setting, increased ratings of perceived expert bias were correlated to increased findings of guilt (disagreeing with the expert testimony). The more biased jurors believed the expert to be the less they tended to agree with the expert. Increased ratings of expert trustworthiness, knowledge, and credibility were similarly correlated to increased opinions that the defendant was not guilty by reason of insanity (agreeing with the expert testimony). Ratings of expert likeability and confidence were not correlated with continuous ratings of the verdict. Taken together, these findings suggest that jurors in a criminal setting may consider whether they trust the expert and how knowledgeable they consider the expert to be when making a verdict, but they are less likely to be influenced by how much they like the expert or how confident the expert seems. Again, this suggests that jurors may be using more central processing as they consider the knowledge and perceived bias of the expert, but not peripheral cues such as how much they like the expert.

All measures of expert bias and credibility were also significantly correlated to how confident the mock jurors were in their verdicts. More positive ratings of the expert were related to increased confidence in their verdicts. Again, this finding falls in line with the theory that the more positive an expert is judged to be the more confident a juror can be in relying on the information and opinions provided. The one scale in study 1 which was related to case outcomes, the scale measuring evidence strength, was not significantly correlated to any outcomes in study 2. This could be partly due to the differences between the evidence presented in each study.

The next hypotheses of this study examined proposed mediational or indirect effects of inoculation and response style on case outcomes through ratings of the expert as a hired gun and expert credibility. As in study 1, the predicted patterns of results were not obtained. Although ratings of perceived expert bias and credibility were significantly correlated to case outcome, there were no mediated or indirect effects of inoculation or response style on case outcome through these ratings. Whereas study 1 showed significant indirect effects of response style on ratings of expert credibility through ratings of the expert as a hired gun, those results were not replicated in study 2. It simply appears that inoculation and response style had less of an impact overall in a criminal versus civil context.

Finally, exploratory analyses on study 2 re-examined the previously discussed effects this time controlling for any effects of pretrial bias. These analyses revealed a significant effect of cynicism toward the defendant on ratings of expert motivation and views of experts in general as hired guns. Mock jurors who were more cynical towards defendants also perceived the expert's motivation as more suspect and viewed experts in general as more biased. That said, cynicism did not affect ratings of the expert's credibility. These differing effects of cynicism can be

explained in that cynicism would be linked to perceived bias and not aspects of credibility. One can imagine that someone who is more cynical would perceive greater bias than someone who is less cynical give the same evidence. Despite controlling for these significant effects, no additional effects of inoculation or response style were discovered.

Exploratory analyses also revealed significant effects of pretrial bias on ratings of the expert's credibility. Mock jurors who had less confidence in the legal system rated the expert as being more trustworthy. Though somewhat counterintuitive, this result can be understood when viewed from the mock juror's perspective. Despite having low confidence in the legal system, a juror is still required to make a decision in the case. This juror is therefore unlikely to rely on or trust people who are part of the legal system such as the attorney, judge, and courtroom personnel. As such, the juror may be more likely to rely on information from people who are less traditionally thought of as part of the legal system, which in the case presented would be the expert. Again, after controlling for these significant effects of pretrial bias, no additional effects of inoculation or response style were discovered. While a significant overall interaction for innate criminality and response style was found on WCS measures, analyses on the individual scales did not reveal significant interactions. Last, it was discovered that no measures of pretrial bias were significantly related to case outcome. This null finding helps to support the proposition that mock jurors engaged in central processing of the facts of the case with less regard to their own personal biases and other peripheral information. As in study 1, no significant interaction effects of inoculation and response style were found on any measures of perceived expert bias, expert credibility, or case outcome.

General Discussion

One of the main goals of this project was to examine the efficacy of using inoculation as a persuasive tool in expert testimony to avoid having jurors form the impression that an expert is a hired gun. Results of the two studies in this project showed that inoculation was not a successful strategy to unload the hired gun in either a civil or criminal setting. Likewise, inoculation did not affect ratings of case outcome in either setting. Inoculation did have two significant effects, though they differed between legal contexts. In the civil setting, inoculation significantly influenced mock jurors' perceptions of psychology in general. In the criminal setting, inoculation significantly influenced ratings of the expert's knowledge. Why, then, were these differing results obtained?

First, it should be noted that the current project was the first to examine inoculation as a legal strategy. As such, to increase the confidence in the results, the findings should be replicated within the context in which they were obtained. This is especially true since the findings appear to be context specific. That is, the findings from the civil study were not replicated in the criminal study and vice versa. One possible explanation for these conflicting results could be due to the inherent differences between civil and criminal contexts and the nature of the expert testimony presented. The expert testimony presented in the two studies, while sharing the same experimental manipulations, focused on different issues as was necessary due to the differences in civil and criminal settings. In the civil setting, the expert was a neuropsychologist who provided testimony about cognitive impairments suffered due to an accident. In the criminal setting, the expert was a forensic psychologist who provided testimony about the defendant's mental state at the time of the alleged offense. It may be that the necessary differences in testimony content led to the differential effects of inoculation.

This leaves the question of why did inoculation not prove to be an effective strategy at reducing perceptions of bias? It is clear from examining the descriptive data from each study that these results are not due to a restricted range of responses. In each study the full range of possible bias scores was obtained. Although inoculation has been shown to be an effective persuasive tool in previous studies, the current project was the first to examine inoculation in a legal context. It may be that in a legal context, people know they are going to be subjected to persuasive forms of communication and are more likely to recognize and be critical of persuasive attempts. Prior research on other forms of persuasive communication has shown that when people know that others are trying to persuade them they are less likely to be persuaded (Jones, 1964; Treadway, Ferris, Duke, Adams, & Thatcher, 2007). Because mock jurors knew they would be subject to persuasive communication, they could have been inoculated against the use of inoculation, or any other persuasive strategy. This theory is supported by the findings of Ziemke et al. (2011) that examined the effects of stealing thunder on hired gun testimony. This study utilized a similar manipulation to the current project, but within the stealing thunder rather than inoculation framework. Ziemke and colleagues (2011) found that stealing thunder, like inoculation, had no effect on ratings of perceived expert bias, credibility, or case outcome. Thus, neither inoculation nor stealing thunder appears to be an effective tool with which attorneys can attempt to unload the hired gun.

If inoculation and stealing thunder are not effective strategies, what can experts do to avoid the dreaded hired gun perception? The results of the current study suggest that, in a civil context, experts should respond to questions about potential bias in a full and complete manner, providing as much information as possible in each answer to the question. The civil study showed that experts who responded to these questions in a narrative manner were viewed as less

of a hired gun than experts who responded in a fragmented fashion. Put another way, responding in a narrative manner seems to be a first step that could be used to begin to unload the hired gun. This finding fits well with the findings of previous research (Barry, 1991) and also coincided with the theory on response style. It is somewhat troubling, though, that the finding was not replicated in the criminal context. One possible explanation for these differing results, the increased stakes of criminal as opposed to civil trials, has been discussed previously. It is possible that mock jurors in the criminal setting were less susceptible to persuasive communication attempts than they were in civil settings due to the increased consequences of their decisions.

Response style showed no effect on any aspect of witness credibility or case outcome in either study. This finding is possibly due to the nature of the manipulation. In this project, response style was only manipulated with regard to questions about potential bias. Thus, it is logical that the manipulation would only affect scales measuring perceived bias. Had the manipulation been carried through the entire testimony scenario, there may have been additional significant results on measures of expert credibility or case outcome. This is a research question that could be addressed by future studies.

In sum, the findings from this project suggest that the trial strategy used by the retaining attorney will have little impact on ratings of the expert's perceived bias or credibility. More research is necessary to replicate the effects of inoculation that were found. The findings also suggest that it may be beneficial for experts to offer more elaborative and complete responses to questions. Experts should take their oath to "tell the *whole truth*" seriously and respond to questions in a narrative manner. In the civil context, this type of responding led to decreased belief that the expert was a hired gun. While this finding was not replicated in the criminal

context, this type of responding was not shown to be statistically different from other types of responding. Even though significant benefits of a narrative response style were not discovered in the criminal context, experts should be encouraged to respond in a narrative manner in this setting as well, unless future research demonstrates that narrative responses are harmful in a criminal setting.

While it was discouraging to find no effects of inoculation, it is perhaps more encouraging to discover the positive effects of response style. In order to utilize inoculation, an expert would have to rely on an attorney to implement this strategy. Experts may face an uphill battle in convincing lawyers to adopt trial strategies put forth from a psychological standpoint. On the other hand, once a question is asked, an expert has relatively more license to respond in the style he or she chooses. That said, some lawyers may interrupt or push for yes-no responses, curtailing some of the freedoms experts have in choosing how to respond. Even so, skilled experts can utilize linguistic response strategies such as the “admit-deny” and other strategies described by Brodsky (1991, 2004) to exert a greater degree of control over their testimony.

This project also provided insight into the nature of the hired gun expert witness. This project demonstrated for the first time that a single expert, testifying without being opposed by an expert retained by the other side, can still be viewed as a hired gun. Previous studies had only examined hired gun experts in the context of two competing experts (Cooper & Neuhaus, 2000; Levett & Kovera, 2008). These research paradigms frequently compared an expert who was highly paid to one who was not, or an expert with impressive credentials to one with less impressive credentials. The current project showed that even an expert who testifies unopposed can be viewed as a hired gun. This finding is of practical importance to testifying experts who

should now be aware that, even when unopposed, their perceived biases can be brought into question.

This project also provided empirical insight into what aspect of credibility is most affected by the suggestion that the expert is a hired gun. In both civil and criminal contexts, ratings of the expert as a hired gun were more highly correlated to ratings of expert trustworthiness than to any other aspect of credibility. This result replicates previous findings and makes logical sense. If jurors believe that the expert's testimony has been purchased by the attorney, they are unlikely to trust what the expert says. As previously mentioned, this finding was found in both the civil and criminal setting, suggesting that it is robust across different settings and testimony scenarios. This suggests that an expert who feels his or her testimony has been damaged by these types of hired gun questions should seek to remedy this by bolstering his or her perceived trustworthiness whenever possible.

Study 1 also found significant indirect effects of response style on ratings of expert credibility through ratings of the expert as a hired gun. However, these indirect effects were not replicated in study 2. This is likely due to the significant effect of response style on ratings of the expert as a hired gun which was obtained in the civil but not the criminal context. Even so, the correlations obtained between ratings of the expert as a hired gun and expert credibility show that whatever affects views of the expert as a hired gun will also likely have some effect on ratings of expert credibility, either directly or indirectly.

Exploratory analyses conducted on both studies speak to the role of pretrial bias on views of the expert. In both civil and criminal contexts, measures of pretrial bias had significant effects on ratings of the expert's perceived bias. In the criminal setting, pretrial bias significantly affected ratings of the expert's trustworthiness. Controlling for pretrial bias did not reduce or

enhance the effects of trial strategy or response style. Moreover, no significant interactions of pretrial bias and inoculation or response style were discovered, suggesting that what effects these constructs have operate independent of one another. This means that, while bias would obviously be an important consideration for attorneys during jury selection, once a jury is obtained the level of bias has been set and should not affect the attorney's trial strategy or the expert's approach to testimony.

As previously discussed, the two studies that comprised this project were not directly comparable due to the intrinsic differences between civil and criminal law. Despite these differences, the studies were designed to be as similar as possible. Both utilized the same experimental manipulation and the same actors were used in making the stimuli for both settings. The main difference between the two studies came in the content of the testimony. Because different issues were discussed the testimonies were necessarily different. The civil testimony considered the extent of an injury sustained by the plaintiff while the criminal context considered the defendant's mental state at the time of the offense. These differences may account for some of the differing results obtained between the two contexts. Even so, each context attempted to control for case specific information by providing jurors with two randomly assigned sets of background information. Controlling for background information increases the generalizability of the results within each context.

The differing results between civil and criminal context provide valuable information for future research conducted in the areas of trial strategy and expert testimony. Previous research conducted in these areas has been performed in either civil or criminal contexts, but not both. Indeed, this is the first project known to me to utilize a two study design with parallel manipulations. Results found in a civil setting are traditionally assumed to generalize to a

criminal setting and vice versa. The findings from the current project caution against making these generalizations. Instead, these findings suggest that the same trial or testimony strategy may have differing effects in civil and criminal settings. As such, future research should examine effects in both settings before making generalizations.

The current projects did suffer from several weaknesses. First, the study utilized college students as mock jurors. While Bornstein (1999) showed college students to be an acceptable substitute for a community sample, the results from the current study caution against over-generalizing findings. As such, the findings should be replicated and examined in a community sample. The study also only examined decisions from individual mock-jurors independently, despite actually jury decision making being a group process. As such, future studies could examine the impact of deliberations on perceptions of bias. It may be that discussing potential bias with other jurors could either exacerbate or attenuate the perception of an expert's bias. A deliberation study would also increase the ecological validity of the findings, as jurors always deliberate in actual cases.

Second, the projects discussed examined response style as a dichotomous variable and only in response to a select subset of questions dealing with the potential for expert bias. While this manipulation was suitable for the purposes of the current study, actual response style exists on a continuum from entirely narrative to entirely fragmented. Future research could manipulate response style in a continuous fashion to more precisely discover the optimal response style. The future studies could examine the effects of response style throughout an expert's testimony. In study 1, the relatively short response style manipulation had a significant effect on ratings of the expert as a hired gun. Had the manipulation continued throughout the testimony scenario, it is

possible that, more significant results would have been obtained on measures of overall credibility or case outcome. This hypothesis could be tested in future research.

The current study unfortunately also utilized some measures with poor psychometric properties. When scales have such low internal consistency this stacks the deck against the probability of finding any significant results. This means that, had better psychometric properties been obtained or different scales been utilized, more significant results may have been obtained. Specifically, all scales of the PJAQ fell short of acceptable internal consistency standards. As such, I would recommend that this measure not be used in future research unless it undergoes significant revisions and validations. Other measures of pretrial bias with better psychometric properties should be utilized instead. Moreover, several scales of the HGQ also fell short of acceptable standards (evidence strength and views of psychology in general), although the main scales of interest (specific expert as unbiased and experts in general as unbiased) displayed acceptable internal consistency. Scale construction efforts are currently underway to improve this measure's internal consistency and increase its utility for future research.

Finally, the current project only examined the effect of the independent variables on one expert testifying unopposed. Though this study showed for the first time that a single expert can still be viewed as a hired gun, it cannot speak to the efficacy of inoculation when an opposing expert is involved. It may be that inoculation is an effective persuasive strategy when one expert testifies against another. In that case, the jurors could look for a way to differentiate the two experts' perceived bias. If one attorney utilized inoculation while the other did not, this could lead to significant differences in perceptions of the expert.

In spite of these limitations, the project did have a number of strengths. As previously stated, this is the first known study to examine parallel manipulations in both civil and criminal contexts. The findings have far-reaching implications for all research conducted on trial variables; from the effects of eyewitness testimony and jury instructions to possible effects of expert testimony and trial strategy. This study suggests that results from one context should not automatically be generalized to another setting. Future research in this area could follow the two study approach set forth by this project.

This project has shown that one expert testifying unopposed can still be viewed as a hired gun. Previous studies have examined perceptions of two competing experts as hired guns (Cooper & Neuhaus, 2000; Levett & Kovera, 2009). This finding shows that experts should not assume they will automatically be believed and trusted when no opposing expert is present. Indeed, even when no opposition is presented an expert can still be viewed as a hired gun.

Finally, this project, taken as part of an even larger research scheme with Ziemke and colleagues (2011), offers data about a plethora of variables that are relevant to trial strategy and expert testimony. Taken together, the current project and Ziemke et al. (2011) suggest that neither inoculation nor stealing thunder are effective strategies at reducing perceptions of an expert as a hired gun. These findings using similar manipulations, the same case scenarios, and independent samples provide strong evidence that these strategies are not effective for the current purpose. Indeed, only the response style of the expert had any significant effects on views of the expert as a hired gun. This larger research scheme demonstrates the ability of large scale projects to examine several variables using similar manipulations.

Despite the strides made by this project in evaluating inoculation as a trial strategy in regard to the perception of a hired gun, there is still much work in the area that could be done.

For instance, though inoculation was not effective at reducing perceptions of the expert as a hired gun, it could be an effective strategy to counter other variables. Future research could examine inoculation as a strategy for when an attorney is faced with an expert who is known to be extremely likeable. In this setting, the attorney could attempt to inoculate the jury against the expert's likeability in opening statements before the jury is exposed to the expert.

Another possible future direction is to examine the use of inoculation in the face of a more aggressive and attacking cross examination. Examining the descriptive data from the WCS (see Figure 11), it is clear that the expert in the study, despite obtaining the full range of scores on measures of bias, was generally well liked. Put another way, the no inoculation condition did not significantly decrease the credibility of the expert. Hence, one may infer that the cross examination used in this study was not aggressive enough to produce negative effects. It seems that the cross examining attorney may have been too easy on the expert. Future research examining inoculation could compare it to a more aggressive "attack" condition as well as a more passive "no inoculation" condition, as was used in this study. Perhaps a more aggressive attack on the expert would produce a significant drop in credibility and increase in perceived bias. If these results are produced, then inoculation could emerge as a useful and effective strategy to counter the negative perceptions cultivated in the more aggressive "attacking" cross-examination.

There is also much that could still be discovered about the effects of expert response style. As previously discussed, expert response style could be examined in future research as a continuous rather than dichotomous variable. It was posited that the increased stakes of the criminal versus civil context may have accounted for the differing effects of response style. As such, future research could examine response style in differing criminal contexts ranging from

relatively minor misdemeanors to more serious felonies. If the theory put forth is correct, researchers could expect increased effects of response style on minor as opposed to more serious crimes.

Finally, the empirical study of the perception of experts as hired guns is still in its infancy with much still to be learned. As previously discussed, the expert in the current project was rated by some participants as being a hired gun but by others as being completely bias-free. Thus, a third variable appears to be accounting for this variability in ratings of expert bias. Future research could attempt to pin down what accounts for these differing perceptions of the expert.

Future research should also seek to improve the psychometric properties of the HGQ. Improving the ability to accurately measure perceived expert bias will increase the ability of other researchers to examine this construct and could serve as a pivotal advance in this field of study. In addition to improving the psychometric properties of the HGQ, future research should also seek to provide normative data on ratings of experts on this scale. This could lead to descriptive classifications and a system of cut scores which could place experts on a spectrum from completely bias free to a definite hired gun.

In sum, the results of this project suggest that inoculation is not related to ratings of the expert as a hired gun. Instead, at least in a civil context, experts should seek to answer questions fully in a narrative fashion to avoid jurors forming the perception that they are a hired gun. Although this effect was not found in a criminal setting, there were no adverse effects of narrative responses found in that setting either. This suggests that, although narrative responding has not been shown to have beneficial effects, it still makes sense to advise this type of responding. The findings from this project show that experts should be aware of how the jury views them even when there is no opposing expert in the case. Though the current project made

significant strides in understanding the hired gun phenomenon, this subfield of expert witness testimony and trial strategy is still ripe for future research. While the current study demonstrated that the hired gun can begin to be unloaded by encouraging experts to respond to questions in a narrative manner, findings also show that several rounds remain in the metaphorical clip. Future research can build on the findings in the current study and seek to one day unload completely the perception of expert as a hired gun.

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Appendices

Appendix A

Case Background

Instructions: The following is a brief description of the case on which you will be asked to render an award decision. Please read the following details carefully

On April 15, 2007, Mr. Don Barrett was involved in a motor vehicle accident. Witnesses reported that his car was struck by a large commercial moving truck that ran a red light. The truck was owned by USA Movers, Inc., the largest interstate moving company in the United States.

In addition to the irreparable damage to his car, Mr. Barrett also sustained a head injury in the accident. Witness reports indicate that Mr. Barrett's "head was bleeding" and he was briefly unconscious (estimated at approximately 2-3 minutes). When he was revived, he complained of a headache and nausea, while appearing confused and disoriented. Mr. Barrett was transported by ambulance to the local hospital. He was examined by an emergency room physician and underwent a computerized tomography (CT) scan of his head. All tests came back normal, but Mr. Barrett did sustain a concussion. He also suffered a cut on the right side of his forehead, requiring four stitches. He was discharged from the hospital that evening with a diagnosis of mild traumatic brain injury.

Mr. Barrett's medical bills, lost wages, and cost of a replacement vehicle amounted to approximately \$50,000. He is filing a civil lawsuit against USA Movers, Inc. for these damages. Mr. Barrett is also seeking financial compensation for pain, suffering, and loss of future earning potential in the amount of \$2,000,000. The moving company has accepted complete responsibility for their driver and for the accident. The events surrounding the accident are not in dispute. However, the moving company is contesting the extent of Mr. Barrett's disabilities as a result of the accident.

Since the accident, Mr. Barrett reports difficulty concentrating, memory problems, and significant fatigue. As a result, he has been unable to return to a full-time work schedule. Mr. Barrett has undergone a neuropsychological evaluation to determine the nature and extent of his cognitive disabilities.

You are to think as if you are a juror on this case and determine what amount, if any, of compensation is appropriate for Mr. Barrett's case. Even though you may want additional details regarding this case, specific questions regarding the case history or testimony will not be answered. Like all jurors, you must rely on the information you have been presented to reach your decision.

Thank you for participating in this important study on juror decision making.

Appendix B

Case Background

Instructions: The following is a brief description of the case on which you will be asked to render an award decision. Please read the following details carefully

On April 15, 2007, Mr. Don Barrett was involved in a motor vehicle accident. Witnesses reported that his car ran a red light and was struck by a large commercial moving truck. Mr. Barrett had just picked up his car from USA Mechanics, Inc., a large nationwide chain of auto mechanics. Investigators found that the mechanic working on Mr. Barrett's car had accidentally damaged the breaks of the car during the other repairs. This damage went unnoticed by the mechanics and resulted in the loss of breaking ability to Mr. Barrett's car.

In addition to the irreparable damage to his car, Mr. Barrett also sustained a head injury in the accident. Witness reports indicate that Mr. Barrett's "head was bleeding" and he was briefly unconscious (estimated at approximately 2-3 minutes). When he was revived, he complained of a headache and nausea, while appearing confused and disoriented. Mr. Barrett was transported by ambulance to the local hospital. He was examined by an emergency room physician and underwent a computerized tomography (CT) scan of his head. All tests came back normal, but Mr. Barrett did sustain a concussion. He also suffered a cut on the right side of his forehead, requiring four stitches. He was discharged from the hospital that evening with a diagnosis of mild traumatic brain injury.

Mr. Barrett's medical bills, lost wages, and cost of a replacement vehicle amounted to approximately \$50,000. He is filing a civil lawsuit against USA Mechanics, Inc. for these damages. Mr. Barrett is also seeking financial compensation for pain, suffering, and loss of future earning potential in the amount of \$2,000,000. The mechanic company has accepted complete responsibility for the damage to the breaks and the accident. The events surrounding the accident are not in dispute. However, the mechanic company is contesting the extent of Mr. Barrett's disabilities as a result of the accident.

Since the accident, Mr. Barrett reports difficulty concentrating, memory problems, and significant fatigue. As a result, he has been unable to return to a full-time work schedule. Mr. Barrett has undergone a neuropsychological evaluation to determine the nature and extent of his cognitive disabilities.

You are to think as if you are a juror on this case and determine what amount, if any, of compensation is appropriate for Mr. Barrett's case. Even though you may want additional details regarding this case, specific questions regarding the case history or testimony will not be answered. Like all jurors, you must rely on the information you have been presented to reach your decision.

Thank you for participating in this important study on juror decision making.

Appendix C

Case Background

Instructions: The following is a brief description of the case on which you will be asked to render an award decision. Please read the following details carefully

On April 15, 2007, Mr. Don Barrett was involved in an accident at ShopMart department store, a large nationwide chain of stores. Witnesses reported that Mr. Barrett slipped on a wet area of floor. This section of the floor had previously been mopped by a ShopMart employee, but was not properly marked as being slippery. As Mr. Barrett fell, he hit his head on a nearby display rack and then on the floor.

Witness reports indicate that Mr. Barrett's "head was bleeding" and he was briefly unconscious (estimated at approximately 2-3 minutes). When he was revived, he complained of a headache and nausea, while appearing confused and disoriented. Mr. Barrett was transported by ambulance to the local hospital. He was examined by an emergency room physician and underwent a computerized tomography (CT) scan of his head. All tests came back normal, but Mr. Barrett did sustain a concussion. He also suffered a cut on the right side of his forehead, requiring four stitches. He was discharged from the hospital that evening with a diagnosis of mild traumatic brain injury.

Mr. Barrett's medical bills and lost wages amounted to approximately \$50,000. He is filing a civil lawsuit against ShopMart, Inc. for these damages. Mr. Barrett is also seeking financial compensation for pain, suffering, and loss of future earning potential in the amount of \$2,000,000. The ShopMart store has accepted complete responsibility the accident. The events surrounding the accident are not in dispute. However, the store is contesting the extent of Mr. Barrett's disabilities as a result of the accident.

Since the accident, Mr. Barrett reports difficulty concentrating, memory problems, and significant fatigue. As a result, he has been unable to return to a full-time work schedule. Mr. Barrett has undergone a neuropsychological evaluation to determine the nature and extent of his cognitive disabilities.

You are to think as if you are a juror on this case and determine what amount, if any, of compensation is appropriate for Mr. Barrett's case. Even though you may want additional details regarding this case, specific questions regarding the case history or testimony will not be answered. Like all jurors, you must rely on the information you have been presented to reach your decision.

Thank you for participating in this important study on juror decision making.

Appendix D

Case Background

Instructions: The following is a brief description of the case on which you will be asked to render an award decision. Please read the following details carefully

On April 15, 2007, Mr. Don Barrett was involved in an accident while walking past a construction site. Witnesses reported that Mr. Barrett was struck on the head with a large piece of falling debris while walking on the sidewalk past a construction site. This construction site was run by USA Builders, Inc., a large nationwide construction company.

Witness reports indicate that Mr. Barrett's "head was bleeding" and he was briefly unconscious (estimated at approximately 2-3 minutes). When he was revived, he complained of a headache and nausea, while appearing confused and disoriented. Mr. Barrett was transported by ambulance to the local hospital. He was examined by an emergency room physician and underwent a computerized tomography (CT) scan of his head. All tests came back normal, but Mr. Barrett did sustain a concussion. He also suffered a cut on the right side of his forehead, requiring four stitches. He was discharged from the hospital that evening with a diagnosis of mild traumatic brain injury.

Mr. Barrett's medical bills and lost wages amounted to approximately \$50,000. He is filing a civil lawsuit against USA Builders, Inc. for these damages. Mr. Barrett is also seeking financial compensation for pain, suffering, and loss of future earning potential in the amount of \$2,000,000. The USA Builders, Inc. has accepted complete responsibility for the accident. The events surrounding the accident are not in dispute. However, the company is contesting the extent of Mr. Barrett's disabilities as a result of the accident.

Since the accident, Mr. Barrett reports difficulty concentrating, memory problems, and significant fatigue. As a result, he has been unable to return to a full-time work schedule. Mr. Barrett has undergone a neuropsychological evaluation to determine the nature and extent of his cognitive disabilities.

You are to think as if you are a juror on this case and determine what amount, if any, of compensation is appropriate for Mr. Barrett's case. Even though you may want additional details regarding this case, specific questions regarding the case history or testimony will not be answered. Like all jurors, you must rely on the information you have been presented to reach your decision.

Thank you for participating in this important study on juror decision making.

Appendix E

Case Background

Instructions: The following is a brief description of the case on which you will be asked to render an award decision. Please read the following details carefully.

On May 7, 2007, Gary Wilder was arrested and charged with second degree assault, a class C felony. Mr. Wilder was involved in an argument with his neighbor. The police were called after Mr. Wilder punched his neighbor in the mouth and pushed him off his front porch, causing him to strike his head on the ground. The neighbor's wife witnessed the exchange and called the police. When the police arrived, Mr. Wilder appeared agitated and made many odd statements. The officers thought that Mr. Wilder may have had a mental illness. The neighbor was taken to a hospital where he was examined and underwent a computerized tomography (CT) scan of his head. All tests came back normal, but the victim did sustain a concussion. He also suffered a cut to his head (where it hit the ground) which required four stitches. He was discharged from the hospital later that evening.

Mr. Wilder was taken to jail and charged with the crime. While in jail, Mr. Wilder continued to make odd statements. He yelled that he was "God's messenger" and that he had a device implanted in his head which allowed him to read people's minds. Mr. Wilder was assigned a court appointed attorney who discovered that Mr. Wilder had previously been diagnosed with Schizophrenia – Paranoid Type, a mental illness which includes experiencing hallucinations and delusions. People with this mental illness often believe that others are "out to get them" or cause them harm in some way. Mr. Wilder was diagnosed with this mental illness approximately 15 years before the incident. Over this time period, Mr. Wilder received mental health treatment in and out of hospitals. At the time of the incident, Mr. Wilder had stopped taking his prescribed medications because he had ran out of the medication and could not afford to refill the prescription. This was the first time that Mr. Wilder was accused of committing any type of violent act.

At his arraignment, Mr. Wilder pled Not Guilty by Reason of Insanity to the charge of second degree assault. This means that Mr. Wilder is claiming that he was suffering from a mental illness at the time of the crime. Because of the mental illness, Mr. Wilder is stating that he did not know that his acts were wrong at the time he committed them. The events surrounding the accident are not in dispute. If found not guilty by reason of insanity, Mr. Wilder would be committed to a secure medical facility until the judge believes that he is no longer a danger to himself or others. If found guilty, Mr. Wilder would likely be sentenced to time in prison.

You are to think as if you are a juror on this case and determine what the verdict should be in Mr. Wilder's case. Even though you may want additional details regarding this case, specific questions regarding the case history or testimony will not be answered. Like all jurors, you must rely on the information you have been presented to reach your decision.

Thank you for participating in this important study on juror decision making.

Appendix F

Case Background

Instructions: The following is a brief description of the case on which you will be asked to render an award decision. Please read the following details carefully.

On May 7, 2007, Gary Wilder was arrested and charged with second degree assault, a class C felony. Mr. Wilder was involved in an argument with a stranger at a city bus stop. Witnesses stated that Mr. Wilder punched the stranger in the mouth and pushed him off the bench he was sitting on, causing him to strike his head on the ground. Another person at the bus stop witnessed the exchange and called the police. When the police arrived, Mr. Wilder appeared agitated and made many odd statements. The officers thought that Mr. Wilder may have had a mental illness. The victim was taken to a hospital where he was examined and underwent a computerized tomography (CT) scan of his head. All tests came back normal, but the victim did sustain a concussion. He also suffered a cut to his head (where it hit the ground) which required four stitches. He was discharged from the hospital later that evening.

Mr. Wilder was taken to jail and charged with the crime. While in jail, Mr. Wilder continued to make odd statements. He yelled that he was “God’s messenger” and that he had a device implanted in his head which allowed him to read people’s minds. Mr. Wilder was assigned a court appointed attorney who discovered that Mr. Wilder had previously been diagnosed with Schizophrenia – Paranoid Type, a mental illness which includes experiencing hallucinations and delusions. People with this mental illness often believe that others are “out to get them” or cause them harm in some way. Mr. Wilder was diagnosed with this mental illness approximately 15 years before the incident. Over this time period, Mr. Wilder received mental health treatment in and out of hospitals. At the time of the incident, Mr. Wilder had stopped taking his prescribed medications because he had ran out of the medication and could not afford to refill the prescription. This was the first time that Mr. Wilder was accused of committing any type of violent act.

At his arraignment, Mr. Wilder pled Not Guilty by Reason of Insanity to the charge of second degree assault. This means that Mr. Wilder is claiming that he was suffering from a mental illness at the time of the crime. Because of the mental illness, Mr. Wilder is stating that he did not know that his acts were wrong at the time he committed them. The events surrounding the accident are not in dispute. If found not guilty by reason of insanity, Mr. Wilder would be committed to a secure medical facility until the judge believes that he is no longer a danger to himself or others. If found guilty, Mr. Wilder would likely be sentenced to time in prison.

You are to think as if you are a juror on this case and determine what the verdict should be in Mr. Wilder’s case. Even though you may want additional details regarding this case, specific questions regarding the case history or testimony will not be answered. Like all jurors, you must rely on the information you have been presented to reach your decision.

Thank you for participating in this important study on juror decision making.

Appendix G

Case Background

Instructions: The following is a brief description of the case on which you will be asked to render an award decision. Please read the following details carefully.

On May 7, 2007, Gary Wilder was arrested and charged with second degree assault, a class C felony. Mr. Wilder was involved in an argument with a stranger at a restaurant. Witnesses stated that both Mr. Wilder and the stranger had been at the restaurant watching a sporting event for approximately 2 hours. Mr. Wilder and the victim got in an argument about the game and Mr. Wilder punched the stranger in the mouth and pushed him off his chair, causing him to strike his head on the floor. The waiter witnessed the exchange and called the police. When the police arrived, Mr. Wilder appeared agitated and made many odd statements. The officers thought that Mr. Wilder may have had a mental illness. The victim was taken to a hospital where he was examined and underwent a computerized tomography (CT) scan of his head. All tests came back normal, but the victim did sustain a concussion. He also suffered a cut to his head (where it hit the floor) which required four stitches. He was discharged from the hospital later that evening.

Mr. Wilder was taken to jail and charged with the crime. While in jail, Mr. Wilder continued to make odd statements. He yelled that he was “God’s messenger” and that he had a device implanted in his head which allowed him to read people’s minds. Mr. Wilder was assigned a court appointed attorney who discovered that Mr. Wilder had previously been diagnosed with Schizophrenia – Paranoid Type, a mental illness which includes experiencing hallucinations and delusions. People with this mental illness often believe that others are “out to get them” or cause them harm in some way. Mr. Wilder was diagnosed with this mental illness approximately 15 years before the incident. Over this time period, Mr. Wilder received mental health treatment in and out of hospitals. At the time of the incident, Mr. Wilder had stopped taking his prescribed medications because he had ran out of the medication and could not afford to refill the prescription. This was the first time that Mr. Wilder was accused of committing any type of violent act.

At his arraignment, Mr. Wilder pled Not Guilty by Reason of Insanity to the charge of second degree assault. This means that Mr. Wilder is claiming that he was suffering from a mental illness at the time of the crime. Because of the mental illness, Mr. Wilder is stating that he did not know that his acts were wrong at the time he committed them. The events surrounding the accident are not in dispute. If found not guilty by reason of insanity, Mr. Wilder would be committed to a secure medical facility until the judge believes that he is no longer a danger to himself or others. If found guilty, Mr. Wilder would likely be sentenced to time in prison.

You are to think as if you are a juror on this case and determine what the verdict should be in Mr. Wilder’s case. Even though you may want additional details regarding this case, specific questions regarding the case history or testimony will not be answered. Like all jurors, you must rely on the information you have been presented to reach your decision.

Thank you for participating in this important study on juror decision making.

Appendix H

Case Background

Instructions: The following is a brief description of the case on which you will be asked to render an award decision. Please read the following details carefully.

On May 7, 2007, Gary Wilder was arrested and charged with second degree assault, a class C felony. Mr. Wilder was involved in an argument with a clerk at a grocery store. Witnesses stated that Mr. Wilder approached the clerk and began yelling complaints at him. Mr. Wilder then punched the clerk in the mouth and pushed him hard, causing him to fall and strike his head on the floor. Another employee witnessed the incident and called the police. When the police arrived, Mr. Wilder appeared agitated and made many odd statements. The officers thought that Mr. Wilder may have had a mental illness. The manager was taken to a hospital where he was examined and underwent a computerized tomography (CT) scan of his head. All tests came back normal, but the victim did sustain a concussion. He also suffered a cut to his head (where it hit the floor) which required four stitches. He was discharged from the hospital later that evening.

Mr. Wilder was taken to jail and charged with the crime. While in jail, Mr. Wilder continued to make odd statements. He yelled that he was “God’s messenger” and that he had a device implanted in his head which allowed him to read people’s minds. Mr. Wilder was assigned a court appointed attorney who discovered that Mr. Wilder had previously been diagnosed with Schizophrenia – Paranoid Type, a mental illness which includes experiencing hallucinations and delusions. People with this mental illness often believe that others are “out to get them” or cause them harm in some way. Mr. Wilder was diagnosed with this mental illness approximately 15 years before the incident. Over this time period, Mr. Wilder received mental health treatment in and out of hospitals. At the time of the incident, Mr. Wilder had stopped taking his prescribed medications because he had ran out of the medication and could not afford to refill the prescription. This was the first time that Mr. Wilder was accused of committing any type of violent act.

At his arraignment, Mr. Wilder pled Not Guilty by Reason of Insanity to the charge of second degree assault. This means that Mr. Wilder is claiming that he was suffering from a mental illness at the time of the crime. Because of the mental illness, Mr. Wilder is stating that he did not know that his acts were wrong at the time he committed them. The events surrounding the accident are not in dispute. If found not guilty by reason of insanity, Mr. Wilder would be committed to a secure medical facility until the judge believes that he is no longer a danger to himself or others. If found guilty, Mr. Wilder would likely be sentenced to time in prison.

You are to think as if you are a juror on this case and determine what the verdict should be in Mr. Wilder’s case. Even though you may want additional details regarding this case, specific questions regarding the case history or testimony will not be answered. Like all jurors, you must rely on the information you have been presented to reach your decision.

Thank you for participating in this important study on juror decision making.

Appendix I

Participant Information Sheet

Title of Research Project: *Criminal and Civil Case Studies. You Rate the Case!*

Investigators: Mitchell Ziemke, M.A. & Stanley Brodsky, Ph.D.

It is important that you read the following explanation of this research study. This document describes the purpose, procedures, possible benefits and risks, and confidentiality of this study.

Purpose and Procedures

The current study is examining mock-jurors perceptions of criminal and civil cases. If you decide to be in this study you will be asked to read two one-page case background summaries. You will then be asked to complete a written questionnaire. The questionnaire asks you to provide your perceptions of the case described and give a short demographic description of yourself (e.g., age, gender, ethnicity, and prior jury experience).

Participating in this study will take about one-half hour.

Benefits and Risks

There are no direct benefits to you for participating in the study, but you will receive 1 research credits.

Potential benefits include gaining insight into your personal beliefs regarding justice and learning how research is conducted. This study will help psychologists and lawyers understand aspects of the cases presented and inform future research. There are minimal foreseeable risks or discomforts involved with participating in this study. If at any point you feel uncomfortable, you may stop participating without any penalty.

Confidentiality

Your name will only be recorded to ensure you receive credit for your participation and will be kept separate from the other study materials. The documents containing participant names will be destroyed once all credit has been awarded. There will be no identifying information on the demographic sheet or questionnaires that would allow the researcher, or anyone else, to determine which person completed the materials.

Withdrawal without Prejudice

Your participation is voluntary. You may choose not to take part at all. If you decide to participate, you are free to withdraw at any time. Leaving the study will not result in any penalty, and you will still receive the 1 research credits.

Cost of Participation

There will be no cost to you for participating in the current research study. All materials needed for the study will be provided for you.

Alternative Procedures

Please see your class professor for any alternative procedures or assignments you can complete if you choose not to participate in this study.

Questions

If you have any questions regarding the research study or any possible research related injuries right now, please ask them. If you have questions about the study later on, please contact Mitch Ziemke at mhziemke@crimson.ua.edu or Dr. Stanley Brodsky at sbrodsky@bama.ua.edu. Dr. Brodsky is a licensed clinical psychologist and is available if any aspect of participation is emotionally difficult or upsetting. If you have any questions about your rights as a research participant, you may contact Ms. Tanta Myles, The University of Alabama Research Compliance Officer, at 348-8461 or 1-877-820-3066.

Appendix J

Instructions: Please answer the following questions as best you can. If you have no opinion, please provide YOUR BEST JUDGMENT.

Please circle the number that best represents your opinion for the following questions

1. How responsible is the company for Mr. Barrett's injury?

1	2	3	4	5	6	7	8	9	10
Not responsible at all								Completely responsible	

2. How responsible is Mr. Barrett for his own injury?

1	2	3	4	5	6	7	8	9	10
Not responsible at all								Completely responsible	

3. How complicated is the case described in the scenario?

1	2	3	4	5	6	7	8	9	10
Not complicated at all								Extremely complicated	

4. How serious is the injury Mr. Barrett sustained?

1	2	3	4	5	6	7	8	9	10
Not serious at all								Extremely serious	

Please fill in the blank with a dollar amount for the following questions.

5. I think that a psychologist testifying in a case such as the one described should earn

\$_____ per hour.

6. I **would not** believe a psychologist that was paid more than \$_____ per hour.

Appendix K

Instructions: Please answer the following questions as best you can. If you have no opinion, please provide YOUR BEST JUDGMENT.

Please circle the number that best represents your opinion for the following questions.

1. How serious is the crime described in the scenario?

1	2	3	4	5	6	7	8	9	10
Not serious at all								Extremely serious	

2. How violent is the crime described?

1	2	3	4	5	6	7	8	9	10
Not violent at all								Extremely violent	

3. How complicated is the case described in the scenario?

1	2	3	4	5	6	7	8	9	10
Not complicated at all								Extremely complicated	

4. How serious is the injury the victim sustained?

1	2	3	4	5	6	7	8	9	10
Not serious at all								Extremely serious	

Please fill in the blank with a dollar amount for the following questions.

5. I think that a psychologist testifying in a case such as the one described should earn

\$_____ per hour.

6. I **would not** believe a psychologist that was paid more than \$_____ per hour.

Appendix L

Demographics

1. My gender is:
☐ Male ☐ Female

2. I am _____ years old.

3. I consider myself to be:

☐ African American	☐ Native American
☐ Asian	☐ Pacific Islander
☐ Biracial	☐ White
☐ Hispanic (non-white)	☐ Other (Specify _____)
☐ Hispanic (white)	

4. School Status (please circle response): Fresh. Soph. Jr. Sr. Grad Other

5. What is your yearly household income? (Please circle response)

Less than \$10,000	\$10-20,000	\$20-30,000	\$30-40,000	\$40-50,000	\$50-60,000
\$60-70,000	\$70-80,000	\$80-90,000	\$90-100,000	\$100-110,000	Over \$110,000

6. Have you ever been on a jury? YES NO

6a. If yes, was it a civil or criminal case? (Please circle response) CIVIL CRIMINAL

6b. If yes, what was your verdict : _____

Appendix M

Debriefing Form

To the participant:

If you have any questions or concerns following this session, you may contact the primary investigator, Mitch Ziemke, at mhziemke@crimson.ua.edu. Further, you may contact the faculty supervisor, Dr. Stanley Brodsky at sbrodsky@bama.ua.edu. Dr. Brodsky is a licensed clinical psychologist and is available if any aspect of participation is emotionally difficult or upsetting. If you have questions about your rights as a person taking part in a research study, you may call the Research Compliance Officer at UA at (205) 348-8461 or 1-877-820-3066.

As you already know, the study you participated in today was examining mock-juror perceptions of criminal and civil cases. Specifically, we wanted to investigate how jurors perceive the cases presented so that appropriate cases can be selected for future research.

The overall goals of the current study are to:

1. Determine how jurors perceive the cases presented. Four different criminal and civil cases were randomly assigned to participants in this study. Each participant read and rated one criminal and one civil case. We hope to find civil and criminal case vignettes that are of similar complexity and seriousness to use in future research. We are also curious about how much mock-jurors think psychologists should be paid to testify in court.
2. Allow you to better understand the legal system and the function of legal research, and to allow you to examine your thoughts about the function of the legal system.

If you want to obtain the results of the study once it is complete, you may email the primary investigator. He will keep your contact information on file and send the results once the data has been analyzed.

Thank you for taking the time to participate in this study. Your cooperation is appreciated.

Sincerely

Mitch Ziemke, M.A.
Department of Psychology
The University of Alabama
404 Gordon Palmer Hall
mhziemke@crimson.ua.edu

Appendix N

Inoculation Questions

Attorney: Dr. Smith, you were retained by the defense in this case, is that correct?

Expert: That is correct.

Attorney: And you're being paid for your testimony today, is that also correct?

Expert: No. I am being paid for my time today. My testimony is based on my extensive evaluation of the defendant.

Attorney: So you're stating that being hired by the defense in no way influences your findings?

Expert: Correct.

Attorney: Dr. Smith, have you ever testified for the plaintiff (prosecution) in a case similar to this?

Expert: I have testified for both plaintiffs (the prosecution) and defendants (the defense) in several personal injury cases (cases regarding criminal responsibility).

Attorney: So Doctor, are you saying that being paid by one side or the other does not impact your findings in any way?

Expert: That is correct. I use the same objective procedures to come to my conclusions regardless of what side hires me. If an attorney does not the conclusions I draw he is in no way obligated to call on me to testify.

Appendix O

Hired Gun Questions Narrative Responses

Attorney: Dr. Smith, are you being paid for your time here today?

Expert: Yes. I am being paid \$200 an hour. I'm not exactly sure how much time I've spent working on the case, but I would guess that including reviewing records, speaking with attorneys, evaluating the plaintiff, and testifying in court today that I've spent somewhere in the neighborhood of 25 hours on this case.

Attorney: So that would be a total of approximately \$5,000?

Expert: That sounds correct.

Attorney: That sounds like a lot of money to make for working on one case. What are you going to do with all the money?

Expert: It does sound like a large sum, but that amount is not all profit. Most of my fee goes towards the costs of maintaining my private practice including rent, office supplies, and test supplies. The fee also includes reimbursement for travel expenses necessary for evaluating the plaintiff. I'm not sure what other experts charge, but I would guess that my fee is similar to theirs.

Attorney: And Dr. Smith, is it correct that you are paid this fee for what you say in court?

Expert: No, I am paid for my time evaluating the plaintiff and my time in court today. I am paid for my services regardless of my findings.

Attorney: Have you ever disagreed with the attorney that retained you?

Expert: Yes, my findings have not supported the side that hired me on several occasions. On those occasions I was not asked to write a report or testify in court.

Attorney: Isn't it true that being paid this large amount of money could influence your findings?

Expert: No, I am a trained professional and my opinions are based on my scientific evaluation of the plaintiff. If attorneys do not like what I find, they are under no obligation to ask me to testify, but my findings will not change based on who hires me or the amount that I am paid. My opinions are not for sale.

Attorney: How many times have you testified in court?

Expert: In all, I've testified 18 times. Over my career I have testified for both sides in both criminal and civil cases.

Attorney: Aren't you even a little concerned that you will not be asked to testify again if you don't provide testimony that supports the attorney that hired you?

Expert: No, my testimony is based solely on my examination of the plaintiff. If an attorney is not happy with my services they are free to not hire me in the future; however, if they do hire me again they know they will get my honest expert opinion regardless of other factors.

8 Questions Total

Average length of response: 38.5 words

Appendix P

Hired Gun Questions Fragmented Responses

Attorney: Dr. Smith, are you being paid for your time here today?

Expert: Yes I am.

Attorney: How much are you being paid?

Expert: I charge \$200 an hour.

Attorney: What have your responsibilities on this case included?

Expert: My duties on this case included reviewing records, speaking with attorneys, evaluating the plaintiff, and testifying in court today.

Attorney: In total, approximately how much time have you spent working on this case?

Expert: I'm not exactly sure, but I would guess that I've spent somewhere in the neighborhood of 25 hours on this case.

Attorney: So that would be a total of approximately \$5,000?

Expert: That sounds correct.

Attorney: That sounds like a lot of money to make for working on one case. What are you going to do with all the money?

Expert: It does sound like a large sum, but that amount is not all profit. Most of my fee goes towards the costs of maintaining my private practice.

Attorney: What does that cost include?

Expert: It includes rent, office supplies, and test supplies. The fee also includes reimbursement for travel expenses necessary for evaluating the plaintiff.

Attorney: How does this figure compare to what other experts in your field make on a case?

Expert: I'm not sure what other experts charge, but I would guess that my fee is similar to theirs.

Attorney: And Dr. Smith, is it correct that you are paid this fee for what you say in court?

Expert: No, I am paid for my time evaluating the plaintiff and my time in court today. I am paid for my services regardless of my findings.

Attorney: Have you ever disagreed with the attorney that retained you?

Expert: Yes, my findings have not supported the side that hired me on several occasions.

Attorney: And what happened on those occasions?

Expert: On those occasions I was not asked to write a report or to testify in court.

Attorney: Isn't it true that being paid this large amount of money could influence your findings?

Expert: No, I am a trained professional and my opinions are based on my scientific evaluation of the plaintiff. If attorneys do not like what I find, they are under no obligation to ask me to testify, but my findings will not change based on who hires me or the amount that I am paid. My opinions are not for sale.

Attorney: How many times have you testified in court?

Expert: In all, I've testified 18 times.

Attorney: Do you typically testify for the plaintiff or defense?

Expert: Over my career I have testified for both sides in both criminal and civil cases.

Attorney: Aren't you even a little concerned that you will not be asked to testify again if you don't provide testimony that supports the attorney that hired you?

Expert: No, my testimony is based solely on my examination of the plaintiff. If an attorney is not happy with my services they are free to not hire me in the future; however, if they do hire me again they know they will get my honest expert opinion regardless of other factors.

15 Questions Total

Average length of response: 20.33 words

Appendix Q

CIVIL CASE CONTROL CONDITION

QUALIFICATION QUESTIONS

Attorney: Your Honor, the defense would like to call Doctor Taylor Smith. Doctor Smith, please state your name for the court.

Expert: My name is Doctor Taylor Smith.

Attorney: Where did you earn your degree and do your training?

Expert: I received my Ph.D. from Loyola and did a post-doctoral fellowship in neuropsychology at Rochester Medical Center.

Attorney: Would you tell the Judge and jury what your profession is?

Expert: I am a psychologist and I specialize in clinical neuropsychology.

Attorney: Can you briefly describe the specialized training you've received in the area of neuropsychology?

Expert: Yes. I took several classes on neuropsychology while I was in graduate school. I was trained in the use of specific measures and scales that are used in neuropsychology. I conducted several neuropsychological assessments while in graduate school and was supervised by a licensed clinical psychologist who also specialized in neuropsychology. I also completed two years of post-doctoral training with a specialization in neuropsychology.

Attorney: Are you licensed in this state?

Expert: Yes, I have been licensed in this state for over 10 years.

Attorney: Where are you currently employed?

Expert: I teach at Purdue University and have a private practice where I primarily conduct neuropsychological assessments.

Attorney: What are your duties at the University?

Expert: I teach classes at both the graduate and undergraduate level. I also conduct research in the area of neuropsychology.

Attorney: Has any research you've conducted been published?

Expert: Currently, I have been an author on 32 published articles. I also have several articles under review by journals.

Attorney: Your Honor, I move that the court accept Dr. Taylor Smith as a qualified expert in the field of neuropsychology.

Judge: Plaintiff, any objections?

Plaintiff: No, Your Honor.

Judge: Dr. Taylor Smith is admitted as a qualified expert in the field of neuropsychology. Proceed counselor.

SUBSTANTIVE DIRECT TESTIMONY

Attorney: Alright, Dr. Smith, please tell the court what neuropsychology is.

Expert: Neuropsychology is essentially the study of brain-behavior relationships. A neuropsychologist uses validated testing instruments and assessment procedures to evaluate cognitive functioning. Determining the nature and extent of a patient's cognitive complaints can be quite complex and neuropsychologists rely on a variety of materials to arrive at diagnoses and recommendations.

Attorney: Dr. Smith, how did you become involved in this case?

Expert: In May of 2007, I was contacted by the defense and was asked to perform a neuropsychological evaluation on Mr. Barrett.

Attorney: Did you receive any records prior to the evaluation?

Expert: I did receive his hospital records from the day of the injury, including his physician's reports and the radiologist's report from his CT. I also looked over Mr. Barrett's employment records, including the incident reports from that day, his employment history prior to the event, and behavior at work following the event.

Attorney: Would you please tell the court what you discovered based on this information?

Expert: Well, Mr. Barrett appears to have suffered from a mild traumatic brain injury.

Attorney: How is it determined whether a head injury is mild or severe?

Expert: These decisions are based on the amount of time the individual is unconscious and the presence or absence of amnesia following the injury. Probably the most commonly used system to assess head injuries is the Glasgow Coma Scale, or the GCS. The GCS tests the ability to respond to commands, control movements, and awareness of

surroundings. A low GCS score means a severe injury; a higher score means the patient probably experienced a mild injury.

Attorney: What was Mr. Barrett's score?

Expert: His treating physician at the emergency room assessed his GCS score at 12. The range is 3-15, so his score was relatively high.

Attorney: Okay. So, what else did your tests reveal for Mr. Barrett?

Expert: Mr. Barrett's profile of results was quite variable. For example, his performance was significantly better on complex items than simpler items, and he had many discrepancies between measures that assessed the same cognitive domain, particularly memory tasks. His results were fairly inconsistent.

Attorney: What did you make of this?

Expert: Well, those results can occur when someone is not giving their best effort. This can be intentional or unintentional. And it can be due to a number of different reasons, such as fatigue, psychological symptoms, or malingering.

Attorney: What is malingering, Doctor?

Expert: According to the Diagnostic and Statistical Manual of Mental Disorders, malingering is when someone intentionally fakes or grossly exaggerates symptoms for an external reward.

Attorney: Could you please explain what you mean?

Expert: In a civil case there is an incentive to fake or exaggerate symptoms when monetary gains are dependent on the nature and extent of an injury. Therefore, it is important to be mindful of malingering, particularly in forensic cases.

Attorney: Was Mr. Barrett malingering?

Expert: He did malingering on some tests designed to assess effort, but performed adequately on others.

Attorney: Were you able to determine whether he has any cognitive disabilities?

Expert: Yes. Mr. Barrett does have some legitimate cognitive impairments, particularly in the domain of attention, but he also had a tendency to exaggerate some of his symptoms or deficits. For example, his processing speed was slowed on tests of reaction time and his distractibility was elevated in comparison to same-aged peers. These results were found on empirically derived neuropsychological tests, and also evident in his conversational speech and behavior during the evaluation. Attention deficits are not

uncommon in cases of mild traumatic brain injury, and Mr. Barrett's testing results are consistent with that profile. In some cases, attention difficulties will lead an individual to think they have memory impairments. In my opinion, this is a probable explanation for the intentional or unintentional exaggeration I observed in Mr. Barrett's performance on the memory tasks.

Attorney: What are the consequences of attention problems?

Expert: Individuals often experience decreased concentration levels, heightened distractibility, and difficulty multi-tasking. In addition, some people report heightened confusion and difficulties thinking clearly. The result is often increased irritability and fatigue as they try to focus their efforts, with limited success.

Attorney: Dr. Smith, what is your expert opinion regarding Mr. Barrett's cognitive functioning?

Expert: It is my opinion that Mr. Barrett is experiencing significant cognitive deficits that are related to the head injury he sustained. However, Mr. Barrett also appeared to exaggerate the extent of his existing disability.

Attorney: Do you think there is a neuropsychological basis for the symptoms he has reported?

Expert: Yes, I do.

Attorney: Nothing further Your Honor.

Judge: Any questions from the plaintiff?

Pros Att: Yes, Your Honor.

SUBSTANTIVE CROSS EXAMINATION

Pros Att: Dr. Smith, if you already knew that Mr. Barrett's head injury was mild prior to the evaluation, what was the purpose of your evaluation?

Expert: I was requested to evaluate Mr. Barrett's current functioning—to determine if his injury resulted in any long-term disabilities.

Pros Att: What symptoms did Mr. Barrett complain of?

Expert: He said that he had difficulties with concentration and memory. He also reported that he becomes so tired that he is unable to work more than two or three hours at a time.

Pros Att: When did you examine Mr. Barrett?

Expert: I saw him over three separate occasions, for a total of 15 hours. In the first session, a clinical history was taken to establish the nature of Mr. Barrett's background, family

history, education, work experiences, and current symptoms. The next two sessions were spent on neuropsychological testing.

Pros Att: Dr. Smith, did you do all of the testing yourself?

Expert: Yes I did.

Pros Att: What type of testing did you do?

Expert: I administered a comprehensive battery of neuropsychological tests and procedures to determine his current level of cognitive functioning. These tests are designed to assess a wide variety of areas involved in cognition.

Pros Att: Do you mean that you just asked him some questions, or gave him some problems to solve?

Expert: In the simplest form: yes. But I used neuropsychological measures that have been developed specifically for the assessment of cognitive functioning. These measures have been tested with large groups of people, up to thousands of people in some cases. And they have been proven to be reliable and valid. That means that the measure provides accurate, consistent results. After all, these tests are an important component of what we neuropsychologists base our conclusions on and they need to be the best measures available.

Pros Att: Okay. Let's start there.

Expert: I conducted a thorough assessment of his verbal functions. This initially included evaluating his vocabulary skills and reading and writing achievement scores. Many of these areas are over-learned. That is, they are not as vulnerable to neurological injuries because the information is deeply entrenched. Therefore, these instruments are typically a good estimate of a patient's premorbid abilities, or level of functioning prior to a neurological injury.

Pros Att: Is this for a comparison basis?

Expert: Yes. Having a good estimate of what a patient was capable of before the injury can help me determine if their performance on other tests is below what I would expect.

Pros Att: So what other things do you assess?

Expert: In addition to the measures of premorbid abilities, I examined his orientation and attention. A patient can be oriented to person, place and/or time. Attention includes vigilance or concentration, working memory, and the ability to switch back and forth between tasks. I evaluated Mr. Barrett's memory functioning, in verbal and visual domains, and immediate and remote contexts. Finally, I examined his executive functioning.

Pros Att: What is executive functioning?

Expert: Executive functioning refers to the cognitive abilities necessary for goal-directed action and adaptation to a range of environmental conditions and demands.

Pros Att: Do you feel your testing results are a valid estimate of Mr. Barrett's true functioning?

Expert: Yes, I do.

Pros Att: One last question Dr. Taylor. The results of the CT scan conducted the night of the accident showed that everything was normal, yet you have testified that Mr. Barrett suffers from a cognitive impairment, how can you explain these conflicting results?

Expert: The CT scan conducted the night of the accident was simply looking for any structural damage to the brain. A CT scan is unable to assess any types of functional disabilities. My examination of Mr. Barrett was concerned with his neuropsychological functioning. Despite the fact that Mr. Barrett did not suffer any structural brain damage, he does demonstrate disabilities in his cognitive functioning.

Pros Att: Nothing further Your Honor.

Judge: The witness may step down.

Appendix R

CIVIL CASE INOCULATION CONDITION FRAGMENTED TESTIMONY

QUALIFICATION QUESTIONS

Attorney: Your Honor, the defense would like to call Doctor Taylor Smith. (takes the stand) Doctor Smith, please state your name for the court.

Expert: My name is Doctor Taylor Smith.

Attorney: Where did you earn your degree and do your training?

Expert: I received my Ph.D. from Loyola and did a post-doctoral fellowship in neuropsychology at Rochester Medical Center.

Attorney: Would you tell the Judge and jury what your profession is?

Expert: I am a psychologist and I specialize in clinical neuropsychology.

Attorney: Can you briefly describe the specialized training you've received in the area of neuropsychology?

Expert: Yes. I took several classes on neuropsychology while I was in graduate school. I was trained in the use of specific measures and scales that are used in neuropsychology. I conducted several neuropsychological assessments while in graduate school and was supervised by a licensed clinical psychologist who also specialized in neuropsychology. I also completed two years of post-doctoral training with a specialization in neuropsychology.

Attorney: Are you licensed in this state?

Expert: Yes, I have been licensed in this state for over 10 years.

Attorney: Where are you currently employed?

Expert: I teach at Purdue University and have a private practice where I primarily conduct neuropsychological assessments.

Attorney: What are your duties at the University?

Expert: I teach classes at both the graduate and undergraduate level. I also conduct research in the area of neuropsychology.

Attorney: Has any research you've conducted been published?

Expert: Currently, I have been an author on 32 published articles. I also have several articles under review by journals.

Attorney: Your Honor, I move that the court accept Dr. Taylor Smith as a qualified expert in the field of neuropsychology.

Judge: Plaintiff, any objections?

Plaintiff: No, Your Honor.

Judge: Dr. Taylor Smith is admitted as a qualified expert in the field of neuropsychology. Proceed counselor.

INOCULATION QUESTIONS

Attorney: Dr. Smith, you were retained by the defense in this case, is that correct?

Expert: That is correct.

Attorney: And you're being paid for your testimony today, is that also correct?

Expert: No. I am being paid for my time today. My testimony is based on my extensive evaluation of the defendant.

Attorney: So you're stating that being hired by the defense in no way influences your findings?

Expert: Correct.

Attorney: Dr. Smith, have you ever testified for the plaintiff in a case similar to this?

Expert: I have testified for both plaintiffs and defendants in several personal injury cases.

Attorney: So Doctor, are you saying that being paid by one side or the other does not impact your findings in any way?

Expert: That is correct. I use the same objective procedures to come to my conclusions regardless of what side hires me. If an attorney does not the conclusions I draw he is in no way obligated to call on me to testify.

SUBSTANTIVE DIRECT TESTIMONY

Attorney: Alright, Dr. Smith, please tell the court what neuropsychology is.

Expert: Neuropsychology is essentially the study of brain-behavior relationships. A neuropsychologist uses validated testing instruments and assessment procedures to evaluate cognitive functioning. Determining the nature and extent of a patient's cognitive complaints can be quite complex and neuropsychologists rely on a variety of materials to arrive at diagnoses and recommendations.

Attorney: Dr. Smith, how did you become involved in this case?

Expert: In May of 2007, I was contacted by the defense and was asked to perform a neuropsychological evaluation on Mr. Barrett.

Attorney: Did you receive any records prior to the evaluation?

Expert: I did receive his hospital records from the day of the injury, including his physician's reports and the radiologist's report from his CT. I also looked over Mr. Barrett's employment records, including the incident reports from that day, his employment history prior to the event, and behavior at work following the event.

Attorney: Would you please tell the court what you discovered based on this information?

Expert: Well, Mr. Barrett appears to have suffered from a mild traumatic brain injury.

Attorney: How is it determined whether a head injury is mild or severe?

Expert: These decisions are based on the amount of time the individual is unconscious and the presence or absence of amnesia following the injury. Probably the most commonly used system to assess head injuries is the Glasgow Coma Scale, or the GCS. The GCS tests the ability to respond to commands, control movements, and awareness of surroundings. A low GCS score means a severe injury; a higher score means the patient probably experienced a mild injury.

Attorney: What was Mr. Barrett's score?

Expert: His treating physician at the emergency room assessed his GCS score at 12. The range is 3-15, so his score was relatively high.

Attorney: Okay. So, what else did your tests reveal for Mr. Barrett?

Expert: Mr. Barrett's profile of results was quite variable. For example, his performance was significantly better on complex items than simpler items, and he had many discrepancies between measures that assessed the same cognitive domain, particularly memory tasks. His results were fairly inconsistent.

Attorney: What did you make of this?

Expert: Well, those results can occur when someone is not giving their best effort. This can be intentional or unintentional. And it can be due to a number of different reasons, such as fatigue, psychological symptoms, or malingering.

Attorney: What is malingering, Doctor?

Expert: According to the Diagnostic and Statistical Manual of Mental Disorders, malingering is when someone intentionally fakes or grossly exaggerates symptoms for an external reward.

Attorney: Could you please explain what you mean?

Expert: In a civil case there is an incentive to fake or exaggerate symptoms when monetary gains are dependent on the nature and extent of an injury. Therefore, it is important to be mindful of malingering, particularly in forensic cases.

Attorney: Was Mr. Barrett malingering?

Expert: He did malingering on some tests designed to assess effort, but performed adequately on others.

Attorney: Were you able to determine whether he has any cognitive disabilities?

Expert: Yes. Mr. Barrett does have some legitimate cognitive impairments, particularly in the domain of attention, but he also had a tendency to exaggerate some of his symptoms or deficits. For example, his processing speed was slowed on tests of reaction time and his distractibility was elevated in comparison to same-aged peers. These results were found on empirically derived neuropsychological tests, and also evident in his conversational speech and behavior during the evaluation. Attention deficits are not uncommon in cases of mild traumatic brain injury, and Mr. Barrett's testing results are consistent with that profile. In some cases, attention difficulties will lead an individual to think they have memory impairments. In my opinion, this is a probable explanation for the intentional or unintentional exaggeration I observed in Mr. Barrett's performance on the memory tasks.

Attorney: What are the consequences of attention problems?

Expert: Individuals often experience decreased concentration levels, heightened distractibility, and difficulty multi-tasking. In addition, some people report heightened confusion and difficulties thinking clearly. The result is often increased irritability and fatigue as they try to focus their efforts, with limited success.

Attorney: Dr. Smith, what is your expert opinion regarding Mr. Barrett's cognitive functioning?

Expert: It is my opinion that Mr. Barrett is experiencing significant cognitive deficits that are related to the head injury he sustained. However, Mr. Barrett also appeared to exaggerate the extent of his existing disability.

Attorney: Do you think there is a neuropsychological basis for the symptoms he has reported?

Expert: Yes, I do.

Attorney: Nothing further Your Honor.

Judge: Any questions from the plaintiff?

Pros Att: Yes, Your Honor.

HIRED GUN QUESTIONS - FRAGMENTED RESPONSES

Pros Att: Dr. Smith, are you being paid for your time here today?

Expert: Yes I am.

Pros Att: How much are you being paid?

Expert: I charge \$200 an hour.

Pros Att: What have your responsibilities on this case included?

Expert: My duties on this case included reviewing records, speaking with attorneys, evaluating the plaintiff, and testifying in court today.

Pros Att: In total, approximately how much time have you spent working on this case?

Expert: I'm not exactly sure, but I would guess that I've spent somewhere in the neighborhood of 25 hours on this case.

Pros Att: So that would be a total of approximately \$5,000?

Expert: That sounds correct.

Pros Att: That sounds like a lot of money to make for working on one case. What are you going to do with all the money?

Expert: It does sound like a large sum, but that amount is not all profit. Most of my fee goes towards the costs of maintaining my private practice.

Pros Att: What does that cost include?

Expert: It includes rent, office supplies, and test supplies. The fee also includes reimbursement for travel expenses necessary for evaluating the plaintiff.

Pros Att: How does this figure compare to what other experts in your field make on a case?

Expert: I'm not sure what other experts charge, but I would guess that my fee is similar to theirs.

Pros Att: And Dr. Smith, is it correct that you are paid this fee for what you say in court?

Expert: No, I am paid for my time evaluating the plaintiff and my time in court today. I am paid for my services regardless of my findings.

Pros Att: Have you ever disagreed with the attorney that retained you?

Expert: Yes, my findings have not supported the side that hired me on several occasions.

Pros Att: And what happened on those occasions?

Expert: On those occasions I was not asked to write a report or to testify in court.

Pros Att: Isn't it true that being paid this large amount of money could influence your findings?

Expert: No, I am a trained professional and my opinions are based on my scientific evaluation of the plaintiff. If attorneys do not like what I find, they are under no obligation to ask me to testify, but my findings will not change based on who hires me or the amount that I am paid. My opinions are not for sale.

Pros Att: How many times have you testified in court?

Expert: In all, I've testified 18 times.

Pros Att: Do you typically testify for the plaintiff or defense?

Expert: Over my career I have testified for both sides in both criminal and civil cases.

Pros Att: Aren't you even a little concerned that you will not be asked to testify again if you don't provide testimony that supports the attorney that hired you?

Expert: No, my testimony is based solely on my examination of the plaintiff. If an attorney is not happy with my services they are free to not hire me in the future; however, if they do hire me again they know they will get my honest expert opinion regardless of other factors.

SUBSTANTIVE CROSS EXAMINATION

Pros Att: Dr. Smith, if you already knew that Mr. Barrett's head injury was mild prior to the evaluation, what was the purpose of your evaluation?

Expert: I was requested to evaluate Mr. Barrett's current functioning—to determine if his injury resulted in any long-term disabilities.

Pros Att: What symptoms did Mr. Barrett complain of?

Expert: He said that he had difficulties with concentration and memory. He also reported that he becomes so tired that he is unable to work more than two or three hours at a time.

Pros Att: When did you examine Mr. Barrett?

Expert: I saw him over three separate occasions, for a total of 15 hours. In the first session, a clinical history was taken to establish the nature of Mr. Barrett's background, family history, education, work experiences, and current symptoms. The next two sessions were spent on neuropsychological testing.

Pros Att: Dr. Smith, did you do all of the testing yourself?

Expert: Yes I did.

Pros Att: What type of testing did you do?

Expert: I administered a comprehensive battery of neuropsychological tests and procedures to determine his current level of cognitive functioning. These tests are designed to assess a wide variety of areas involved in cognition.

Pros Att: Do you mean that you just asked him some questions, or gave him some problems to solve?

Expert: In the simplest form: yes. But I used neuropsychological measures that have been developed specifically for the assessment of cognitive functioning. These measures have been tested with large groups of people, up to thousands of people in some cases. And they have been proven to be reliable and valid. That means that the measure provides accurate, consistent results. After all, these tests are an important component of what we neuropsychologists base our conclusions on and they need to be the best measures available.

Pros Att: Okay. Let's start there.

Expert: I conducted a thorough assessment of his verbal functions. This initially included evaluating his vocabulary skills and reading and writing achievement scores. Many of these areas are over-learned. That is, they are not as vulnerable to neurological injuries because the information is deeply entrenched. Therefore, these instruments are typically a good estimate of a patient's premorbid abilities, or level of functioning prior to a neurological injury.

Pros Att: Is this for a comparison basis?

Expert: Yes. Having a good estimate of what a patient was capable of before the injury can help me determine if their performance on other tests is below what I would expect.

Pros Att: So what other things do you assess?

Expert: In addition to the measures of premorbid abilities, I examined his orientation and attention. A patient can be oriented to person, place and/or time. Attention includes vigilance or concentration, working memory, and the ability to switch back and forth between tasks. I evaluated Mr. Barrett's memory functioning, in verbal and visual domains, and immediate and remote contexts. Finally, I examined his executive functioning.

Pros Att: What is executive functioning?

Expert: Executive functioning refers to the cognitive abilities necessary for goal-directed action and adaptation to a range of environmental conditions and demands.

Pros Att: Do you feel your testing results are a valid estimate of Mr. Barrett's true functioning?

Expert: Yes, I do.

Pros Att: One last question Dr. Taylor. The results of the CT scan conducted the night of the accident showed that everything was normal, yet you have testified that Mr. Barrett suffers from a cognitive impairment, how can you explain these conflicting results?

Expert: The CT scan conducted the night of the accident was simply looking for any structural damage to the brain. A CT scan is unable to assess any types of functional disabilities. My examination of Mr. Barrett was concerned with his neuropsychological functioning. Despite the fact that Mr. Barrett did not suffer any structural brain damage, he does demonstrate disabilities in his cognitive functioning.

Pros Att: Nothing further Your Honor.

Judge: The witness may step down.

Appendix S

CIVIL CASE INOCULATION CONDITION NARRATIVE TESTIMONY

QUALIFICATION QUESTIONS

Attorney: Your Honor, the defense would like to call Doctor Taylor Smith. (takes the stand) Doctor Smith, please state your name for the court.

Expert: My name is Doctor Taylor Smith.

Attorney: Where did you earn your degree and do your training?

Expert: I received my Ph.D. from Loyola and did a post-doctoral fellowship in neuropsychology at Rochester Medical Center.

Attorney: Would you tell the Judge and jury what your profession is?

Expert: I am a psychologist and I specialize in clinical neuropsychology.

Attorney: Can you briefly describe the specialized training you've received in the area of neuropsychology?

Expert: Yes. I took several classes on neuropsychology while I was in graduate school. I was trained in the use of specific measures and scales that are used in neuropsychology. I conducted several neuropsychological assessments while in graduate school and was supervised by a licensed clinical psychologist who also specialized in neuropsychology. I also completed two years of post-doctoral training with a specialization in neuropsychology.

Attorney: Are you licensed in this state?

Expert: Yes, I have been licensed in this state for over 10 years.

Attorney: Where are you currently employed?

Expert: I teach at Purdue University and have a private practice where I primarily conduct neuropsychological assessments.

Attorney: What are your duties at the University?

Expert: I teach classes at both the graduate and undergraduate level. I also conduct research in the area of neuropsychology.

Attorney: Has any research you've conducted been published?

Expert: Currently, I have been an author on 32 published articles. I also have several articles under review by journals.

Attorney: Your Honor, I move that the court accept Dr. Taylor Smith as a qualified expert in the field of neuropsychology.

Judge: Plaintiff, any objections?

Plaintiff: No, Your Honor.

Judge: Dr. Taylor Smith is admitted as a qualified expert in the field of neuropsychology. Proceed counselor.

INOCULATION QUESTIONS

Attorney: Dr. Smith, you were retained by the defense in this case, is that correct?

Expert: That is correct.

Attorney: And you're being paid for your testimony today, is that also correct?

Expert: No. I am being paid for my time today. My testimony is based on my extensive evaluation of the defendant.

Attorney: So you're stating that being hired by the defense in no way influences your findings?

Expert: Correct.

Attorney: Dr. Smith, have you ever testified for the plaintiff in a case similar to this?

Expert: I have testified for both plaintiffs and defendants in several personal injury cases.

Attorney: So Doctor, are you saying that being paid by one side or the other does not impact your findings in any way?

Expert: That is correct. I use the same objective procedures to come to my conclusions regardless of what side hires me. If an attorney does not the conclusions I draw he is in no way obligated to call on me to testify.

SUBSTANTIVE DIRECT TESTIMONY

Attorney: Alright, Dr. Smith, please tell the court what neuropsychology is.

Expert: Neuropsychology is essentially the study of brain-behavior relationships. A neuropsychologist uses validated testing instruments and assessment procedures to evaluate cognitive functioning. Determining the nature and extent of a patient's cognitive complaints can be quite complex and neuropsychologists rely on a variety of materials to arrive at diagnoses and recommendations.

Attorney: Dr. Smith, how did you become involved in this case?

Expert: In May of 2007, I was contacted by the defense and was asked to perform a neuropsychological evaluation on Mr. Barrett.

Attorney: Did you receive any records prior to the evaluation?

Expert: I did receive his hospital records from the day of the injury, including his physician's reports and the radiologist's report from his CT. I also looked over Mr. Barrett's employment records, including the incident reports from that day, his employment history prior to the event, and behavior at work following the event.

Attorney: Would you please tell the court what you discovered based on this information?

Expert: Well, Mr. Barrett appears to have suffered from a mild traumatic brain injury.

Attorney: How is it determined whether a head injury is mild or severe?

Expert: These decisions are based on the amount of time the individual is unconscious and the presence or absence of amnesia following the injury. Probably the most commonly used system to assess head injuries is the Glasgow Coma Scale, or the GCS. The GCS tests the ability to respond to commands, control movements, and awareness of surroundings. A low GCS score means a severe injury; a higher score means the patient probably experienced a mild injury.

Attorney: What was Mr. Barrett's score?

Expert: His treating physician at the emergency room assessed his GCS score at 12. The range is 3-15, so his score was relatively high.

Attorney: Okay. So, what else did your tests reveal for Mr. Barrett?

Expert: Mr. Barrett's profile of results was quite variable. For example, his performance was significantly better on complex items than simpler items, and he had many discrepancies between measures that assessed the same cognitive domain, particularly memory tasks. His results were fairly inconsistent.

Attorney: What did you make of this?

Expert: Well, those results can occur when someone is not giving their best effort. This can be intentional or unintentional. And it can be due to a number of different reasons, such as fatigue, psychological symptoms, or malingering.

Attorney: What is malingering, Doctor?

Expert: According to the Diagnostic and Statistical Manual of Mental Disorders, malingering is when someone intentionally fakes or grossly exaggerates symptoms for an external reward.

Attorney: Could you please explain what you mean?

Expert: In a civil case there is an incentive to fake or exaggerate symptoms when monetary gains are dependent on the nature and extent of an injury. Therefore, it is important to be mindful of malingering, particularly in forensic cases.

Attorney: Was Mr. Barrett malingering?

Expert: He did malingering on some tests designed to assess effort, but performed adequately on others.

Attorney: Were you able to determine whether he has any cognitive disabilities?

Expert: Yes. Mr. Barrett does have some legitimate cognitive impairments, particularly in the domain of attention, but he also had a tendency to exaggerate some of his symptoms or deficits. For example, his processing speed was slowed on tests of reaction time and his distractibility was elevated in comparison to same-aged peers. These results were found on empirically derived neuropsychological tests, and also evident in his conversational speech and behavior during the evaluation. Attention deficits are not uncommon in cases of mild traumatic brain injury, and Mr. Barrett's testing results are consistent with that profile. In some cases, attention difficulties will lead an individual to think they have memory impairments. In my opinion, this is a probable explanation for the intentional or unintentional exaggeration I observed in Mr. Barrett's performance on the memory tasks.

Attorney: What are the consequences of attention problems?

Expert: Individuals often experience decreased concentration levels, heightened distractibility, and difficulty multi-tasking. In addition, some people report heightened confusion and difficulties thinking clearly. The result is often increased irritability and fatigue as they try to focus their efforts, with limited success.

Attorney: Dr. Smith, what is your expert opinion regarding Mr. Barrett's cognitive functioning?

Expert: It is my opinion that Mr. Barrett is experiencing significant cognitive deficits that are related to the head injury he sustained. However, Mr. Barrett also appeared to exaggerate the extent of his existing disability.

Attorney: Do you think there is a neuropsychological basis for the symptoms he has reported?

Expert: Yes, I do.

Attorney: Nothing further Your Honor.

Judge: Any questions from the plaintiff?

Pros Att: Yes, Your Honor.

HIRED GUN QUESTIONS - NARRATIVE RESPONSES

Pros Att: Dr. Smith, are you being paid for your time here today?

Expert: Yes. I am being paid \$200 an hour. I'm not exactly sure how much time I've spent working on the case, but I would guess that including reviewing records, speaking with attorneys, evaluating the plaintiff, and testifying in court today that I've spent somewhere in the neighborhood of 25 hours on this case.

Pros Att: So that would be a total of approximately \$5,000?

Expert: That sounds correct.

Pros Att: That sounds like a lot of money to make for working on one case. What are you going to do with all the money?

Expert: It does sound like a large sum, but that amount is not all profit. Most of my fee goes towards the costs of maintaining my private practice including rent, office supplies, and test supplies. The fee also includes reimbursement for travel expenses necessary for evaluating the plaintiff. I'm not sure what other experts charge, but I would guess that my fee is similar to theirs.

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Expert: No, I am paid for my time evaluating the plaintiff and my time in court today. I am paid for my services regardless of my findings.

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Expert: Yes, my findings have not supported the side that hired me on several occasions. On those occasions I was not asked to write a report or testify in court.

Pros Att: Isn't it true that being paid this large amount of money could influence your findings?

Expert: No, I am a trained professional and my opinions are based on my scientific evaluation of the plaintiff. If attorneys do not like what I find, they are under no obligation to ask me to testify, but my findings will not change based on who hires me or the amount that I am paid. My opinions are not for sale.

Pros Att: How many times have you testified in court?

Expert: In all, I've testified 18 times. Over my career I have testified for both sides in both criminal and civil cases.

Pros Att: Aren't you even a little concerned that you will not be asked to testify again if you don't provide testimony that supports the attorney that hired you?

Expert: No, my testimony is based solely on my examination of the plaintiff. If an attorney is not happy with my services they are free to not hire me in the future; however, if they do hire me again they know they will get my honest expert opinion regardless of other factors.

SUBSTANTIVE CROSS EXAMINATION

Pros Att: Dr. Smith, if you already knew that Mr. Barrett's head injury was mild prior to the evaluation, what was the purpose of your evaluation?

Expert: I was requested to evaluate Mr. Barrett's current functioning—to determine if his injury resulted in any long-term disabilities.

Pros Att: What symptoms did Mr. Barrett complain of?

Expert: He said that he had difficulties with concentration and memory. He also reported that he becomes so tired that he is unable to work more than two or three hours at a time.

Pros Att: When did you examine Mr. Barrett?

Expert: I saw him over three separate occasions, for a total of 15 hours. In the first session, a clinical history was taken to establish the nature of Mr. Barrett's background, family history, education, work experiences, and current symptoms. The next two sessions were spent on neuropsychological testing.

Pros Att: Dr. Smith, did you do all of the testing yourself?

Expert: Yes I did.

Pros Att: What type of testing did you do?

Expert: I administered a comprehensive battery of neuropsychological tests and procedures to determine his current level of cognitive functioning. These tests are designed to assess a wide variety of areas involved in cognition.

Pros Att: Do you mean that you just asked him some questions, or gave him some problems to solve?

Expert: In the simplest form: yes. But I used neuropsychological measures that have been developed specifically for the assessment of cognitive functioning. These measures have been tested with large groups of people, up to thousands of people in some cases. And they have been proven to be reliable and valid. That means that the measure provides accurate, consistent results. After all, these tests are an important component of what we neuropsychologists base our conclusions on and they need to be the best measures available.

Pros Att: Okay. Let's start there.

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Pros Att: Is this for a comparison basis?

Expert: Yes. Having a good estimate of what a patient was capable of before the injury can help me determine if their performance on other tests is below what I would expect.

Pros Att: So what other things do you assess?

Expert: In addition to the measures of premorbid abilities, I examined his orientation and attention. A patient can be oriented to person, place and/or time. Attention includes vigilance or concentration, working memory, and the ability to switch back and forth between tasks. I evaluated Mr. Barrett's memory functioning, in verbal and visual domains, and immediate and remote contexts. Finally, I examined his executive functioning.

Pros Att: What is executive functioning?

Expert: Executive functioning refers to the cognitive abilities necessary for goal-directed action and adaptation to a range of environmental conditions and demands.

Pros Att: Do you feel your testing results are a valid estimate of Mr. Barrett's true functioning?

Expert: Yes, I do.

Pros Att: One last question Dr. Taylor. The results of the CT scan conducted the night of the accident showed that everything was normal, yet you have testified that Mr. Barrett suffers from a cognitive impairment, how can you explain these conflicting results?

Expert: The CT scan conducted the night of the accident was simply looking for any structural damage to the brain. A CT scan is unable to assess any types of functional disabilities. My examination of Mr. Barrett was concerned with his neuropsychological functioning. Despite the fact that Mr. Barrett did not suffer any structural brain damage, he does demonstrate disabilities in his cognitive functioning.

Pros Att: Nothing further Your Honor.

Judge: The witness may step down.

Appendix T

CIVIL CASE NO INOCULATION CONDITION FRAGMENTED TESTIMONY

QUALIFICATION QUESTIONS

Attorney: Your Honor, the defense would like to call Doctor Taylor Smith. (takes the stand) Doctor Smith, please state your name for the court.

Expert: My name is Doctor Taylor Smith.

Attorney: Where did you earn your degree and do your training?

Expert: I received my Ph.D. from Loyola and did a post-doctoral fellowship in neuropsychology at Rochester Medical Center.

Attorney: Would you tell the Judge and jury what your profession is?

Expert: I am a psychologist and I specialize in clinical neuropsychology.

Attorney: Can you briefly describe the specialized training you've received in the area of neuropsychology?

Expert: Yes. I took several classes on neuropsychology while I was in graduate school. I was trained in the use of specific measures and scales that are used in neuropsychology. I conducted several neuropsychological assessments while in graduate school and was supervised by a licensed clinical psychologist who also specialized in neuropsychology. I also completed two years of post-doctoral training with a specialization in neuropsychology.

Attorney: Are you licensed in this state?

Expert: Yes, I have been licensed in this state for over 10 years.

Attorney: Where are you currently employed?

Expert: I teach at Purdue University and have a private practice where I primarily conduct neuropsychological assessments.

Attorney: What are your duties at the University?

Expert: I teach classes at both the graduate and undergraduate level. I also conduct research in the area of neuropsychology.

Attorney: Has any research you've conducted been published?

Expert: Currently, I have been an author on 32 published articles. I also have several articles under review by journals.

Attorney: Your Honor, I move that the court accept Dr. Taylor Smith as a qualified expert in the field of neuropsychology.

Judge: Plaintiff, any objections?

Plaintiff: No, Your Honor.

Judge: Dr. Taylor Smith is admitted as a qualified expert in the field of neuropsychology. Proceed counselor.

SUBSTANTIVE DIRECT TESTIMONY

Attorney: Alright, Dr. Smith, please tell the court what neuropsychology is.

Expert: Neuropsychology is essentially the study of brain-behavior relationships. A neuropsychologist uses validated testing instruments and assessment procedures to evaluate cognitive functioning. Determining the nature and extent of a patient's cognitive complaints can be quite complex and neuropsychologists rely on a variety of materials to arrive at diagnoses and recommendations.

Attorney: Dr. Smith, how did you become involved in this case?

Expert: In May of 2007, I was contacted by the defense and was asked to perform a neuropsychological evaluation on Mr. Barrett.

Attorney: Did you receive any records prior to the evaluation?

Expert: I did receive his hospital records from the day of the injury, including his physician's reports and the radiologist's report from his CT. I also looked over Mr. Barrett's employment records, including the incident reports from that day, his employment history prior to the event, and behavior at work following the event.

Attorney: Would you please tell the court what you discovered based on this information?

Expert: Well, Mr. Barrett appears to have suffered from a mild traumatic brain injury.

Attorney: How is it determined whether a head injury is mild or severe?

Expert: These decisions are based on the amount of time the individual is unconscious and the presence or absence of amnesia following the injury. Probably the most commonly used system to assess head injuries is the Glasgow Coma Scale, or the GCS. The GCS tests the ability to respond to commands, control movements, and awareness of surroundings. A low GCS score means a severe injury; a higher score means the patient probably experienced a mild injury.

Attorney: What was Mr. Barrett's score?

Expert: His treating physician at the emergency room assessed his GCS score at 12. The range is 3-15, so his score was relatively high.

Attorney: Okay. So, what else did your tests reveal for Mr. Barrett?

Expert: Mr. Barrett's profile of results was quite variable. For example, his performance was significantly better on complex items than simpler items, and he had many discrepancies between measures that assessed the same cognitive domain, particularly memory tasks. His results were fairly inconsistent.

Attorney: What did you make of this?

Expert: Well, those results can occur when someone is not giving their best effort. This can be intentional or unintentional. And it can be due to a number of different reasons, such as fatigue, psychological symptoms, or malingering.

Attorney: What is malingering, Doctor?

Expert: According to the Diagnostic and Statistical Manual of Mental Disorders, malingering is when someone intentionally fakes or grossly exaggerates symptoms for an external reward.

Attorney: Could you please explain what you mean?

Expert: In a civil case there is an incentive to fake or exaggerate symptoms when monetary gains are dependent on the nature and extent of an injury. Therefore, it is important to be mindful of malingering, particularly in forensic cases.

Attorney: Was Mr. Barrett malingering?

Expert: He did malingering on some tests designed to assess effort, but performed adequately on others.

Attorney: Were you able to determine whether he has any cognitive disabilities?

Expert: Yes. Mr. Barrett does have some legitimate cognitive impairments, particularly in the domain of attention, but he also had a tendency to exaggerate some of his symptoms or deficits. For example, his processing speed was slowed on tests of reaction time and his distractibility was elevated in comparison to same-aged peers. These results were found on empirically derived neuropsychological tests, and also evident in his conversational speech and behavior during the evaluation. Attention deficits are not uncommon in cases of mild traumatic brain injury, and Mr. Barrett's testing results are consistent with that profile. In some cases, attention difficulties will lead an individual to think they have memory impairments. In my opinion, this is a probable explanation for the intentional or unintentional exaggeration I observed in Mr. Barrett's performance on the memory tasks.

Attorney: What are the consequences of attention problems?

Expert: Individuals often experience decreased concentration levels, heightened distractibility, and difficulty multi-tasking. In addition, some people report heightened confusion and difficulties thinking clearly. The result is often increased irritability and fatigue as they try to focus their efforts, with limited success.

Attorney: Dr. Smith, what is your expert opinion regarding Mr. Barrett's cognitive functioning?

Expert: It is my opinion that Mr. Barrett is experiencing significant cognitive deficits that are related to the head injury he sustained. However, Mr. Barrett also appeared to exaggerate the extent of his existing disability.

Attorney: Do you think there is a neuropsychological basis for the symptoms he has reported?

Expert: Yes, I do.

Attorney: Nothing further Your Honor.

Judge: Any questions from the plaintiff?

Pros Att: Yes, Your Honor.

HIRED GUN QUESTIONS - FRAGMENTED RESPONSES

Pros Att: Dr. Smith, are you being paid for your time here today?

Expert: Yes I am.

Pros Att: How much are you being paid?

Expert: I charge \$200 an hour.

Pros Att: What have your responsibilities on this case included?

Expert: My duties on this case included reviewing records, speaking with attorneys, evaluating the plaintiff, and testifying in court today.

Pros Att: In total, approximately how much time have you spent working on this case?

Expert: I'm not exactly sure, but I would guess that I've spent somewhere in the neighborhood of 25 hours on this case.

Pros Att: So that would be a total of approximately \$5,000?

Expert: That sounds correct.

Pros Att: That sounds like a lot of money to make for working on one case. What are you going to do with all the money?

Expert: It does sound like a large sum, but that amount is not all profit. Most of my fee goes towards the costs of maintaining my private practice.

Pros Att: What does that cost include?

Expert: It includes rent, office supplies, and test supplies. The fee also includes reimbursement for travel expenses necessary for evaluating the plaintiff.

Pros Att: How does this figure compare to what other experts in your field make on a case?

Expert: I'm not sure what other experts charge, but I would guess that my fee is similar to theirs.

Pros Att: And Dr. Smith, is it correct that you are paid this fee for what you say in court?

Expert: No, I am paid for my time evaluating the plaintiff and my time in court today. I am paid for my services regardless of my findings.

Pros Att: Have you ever disagreed with the attorney that retained you?

Expert: Yes, my findings have not supported the side that hired me on several occasions.

Pros Att: And what happened on those occasions?

Expert: On those occasions I was not asked to write a report or to testify in court.

Pros Att: Isn't it true that being paid this large amount of money could influence your findings?

Expert: No, I am a trained professional and my opinions are based on my scientific evaluation of the plaintiff. If attorneys do not like what I find, they are under no obligation to ask me to testify, but my findings will not change based on who hires me or the amount that I am paid. My opinions are not for sale.

Pros Att: How many times have you testified in court?

Expert: In all, I've testified 18 times.

Pros Att: Do you typically testify for the plaintiff or defense?

Expert: Over my career I have testified for both sides in both criminal and civil cases.

Pros Att: Aren't you even a little concerned that you will not be asked to testify again if you don't provide testimony that supports the attorney that hired you?

Expert: No, my testimony is based solely on my examination of the plaintiff. If an attorney is not happy with my services they are free to not hire me in the future; however, if they do hire me again they know they will get my honest expert opinion regardless of other factors.

SUBSTANTIVE CROSS EXAMINATION

Pros Att: Dr. Smith, if you already knew that Mr. Barrett's head injury was mild prior to the evaluation, what was the purpose of your evaluation?

Expert: I was requested to evaluate Mr. Barrett's current functioning—to determine if his injury resulted in any long-term disabilities.

Pros Att: What symptoms did Mr. Barrett complain of?

Expert: He said that he had difficulties with concentration and memory. He also reported that he becomes so tired that he is unable to work more than two or three hours at a time.

Pros Att: When did you examine Mr. Barrett?

Expert: I saw him over three separate occasions, for a total of 15 hours. In the first session, a clinical history was taken to establish the nature of Mr. Barrett's background, family history, education, work experiences, and current symptoms. The next two sessions were spent on neuropsychological testing.

Pros Att: Dr. Smith, did you do all of the testing yourself?

Expert: Yes I did.

Pros Att: What type of testing did you do?

Expert: I administered a comprehensive battery of neuropsychological tests and procedures to determine his current level of cognitive functioning. These tests are designed to assess a wide variety of areas involved in cognition.

Pros Att: Do you mean that you just asked him some questions, or gave him some problems to solve?

Expert: In the simplest form: yes. But I used neuropsychological measures that have been developed specifically for the assessment of cognitive functioning. These measures have been tested with large groups of people, up to thousands of people in some cases. And they have been proven to be reliable and valid. That means that the measure provides accurate, consistent results. After all, these tests are an important component of what we neuropsychologists base our conclusions on and they need to be the best measures available.

Pros Att: Okay. Let's start there.

Expert: I conducted a thorough assessment of his verbal functions. This initially included evaluating his vocabulary skills and reading and writing achievement scores. Many of these areas are over-learned. That is, they are not as vulnerable to neurological injuries because the information is deeply entrenched. Therefore, these instruments are typically a good estimate of a patient's premorbid abilities, or level of functioning prior to a neurological injury.

Pros Att: Is this for a comparison basis?

Expert: Yes. Having a good estimate of what a patient was capable of before the injury can help me determine if their performance on other tests is below what I would expect.

Pros Att: So what other things do you assess?

Expert: In addition to the measures of premorbid abilities, I examined his orientation and attention. A patient can be oriented to person, place and/or time. Attention includes vigilance or concentration, working memory, and the ability to switch back and forth between tasks. I evaluated Mr. Barrett's memory functioning, in verbal and visual domains, and immediate and remote contexts. Finally, I examined his executive functioning.

Pros Att: What is executive functioning?

Expert: Executive functioning refers to the cognitive abilities necessary for goal-directed action and adaptation to a range of environmental conditions and demands.

Pros Att: Do you feel your testing results are a valid estimate of Mr. Barrett's true functioning?

Expert: Yes, I do.

Pros Att: One last question Dr. Taylor. The results of the CT scan conducted the night of the accident showed that everything was normal, yet you have testified that Mr. Barrett suffers from a cognitive impairment, how can you explain these conflicting results?

Expert: The CT scan conducted the night of the accident was simply looking for any structural damage to the brain. A CT scan is unable to assess any types of functional disabilities. My examination of Mr. Barrett was concerned with his neuropsychological functioning. Despite the fact that Mr. Barrett did not suffer any structural brain damage, he does demonstrate disabilities in his cognitive functioning.

Pros Att: Nothing further Your Honor.

Judge: The witness may step down.

Appendix U

CIVIL CASE NO INOCULATION CONDITION NARRATIVE TESTIMONY

QUALIFICATION QUESTIONS

Attorney: Your Honor, the defense would like to call Doctor Taylor Smith. (takes the stand) Doctor Smith, please state your name for the court.

Expert: My name is Doctor Taylor Smith.

Attorney: Where did you earn your degree and do your training?

Expert: I received my Ph.D. from Loyola and did a post-doctoral fellowship in neuropsychology at Rochester Medical Center.

Attorney: Would you tell the Judge and jury what your profession is?

Expert: I am a psychologist and I specialize in clinical neuropsychology.

Attorney: Can you briefly describe the specialized training you've received in the area of neuropsychology?

Expert: Yes. I took several classes on neuropsychology while I was in graduate school. I was trained in the use of specific measures and scales that are used in neuropsychology. I conducted several neuropsychological assessments while in graduate school and was supervised by a licensed clinical psychologist who also specialized in neuropsychology. I also completed two years of post-doctoral training with a specialization in neuropsychology.

Attorney: Are you licensed in this state?

Expert: Yes, I have been licensed in this state for over 10 years.

Attorney: Where are you currently employed?

Expert: I teach at Purdue University and have a private practice where I primarily conduct neuropsychological assessments.

Attorney: What are your duties at the University?

Expert: I teach classes at both the graduate and undergraduate level. I also conduct research in the area of neuropsychology.

Attorney: Has any research you've conducted been published?

Expert: Currently, I have been an author on 32 published articles. I also have several articles under review by journals.

Attorney: Your Honor, I move that the court accept Dr. Taylor Smith as a qualified expert in the field of neuropsychology.

Judge: Plaintiff, any objections?

Plaintiff: No, Your Honor.

Judge: Dr. Taylor Smith is admitted as a qualified expert in the field of neuropsychology. Proceed counselor.

SUBSTANTIVE DIRECT TESTIMONY

Attorney: Alright, Dr. Smith, please tell the court what neuropsychology is.

Expert: Neuropsychology is essentially the study of brain-behavior relationships. A neuropsychologist uses validated testing instruments and assessment procedures to evaluate cognitive functioning. Determining the nature and extent of a patient's cognitive complaints can be quite complex and neuropsychologists rely on a variety of materials to arrive at diagnoses and recommendations.

Attorney: Dr. Smith, how did you become involved in this case?

Expert: In May of 2007, I was contacted by the defense and was asked to perform a neuropsychological evaluation on Mr. Barrett.

Attorney: Did you receive any records prior to the evaluation?

Expert: I did receive his hospital records from the day of the injury, including his physician's reports and the radiologist's report from his CT. I also looked over Mr. Barrett's employment records, including the incident reports from that day, his employment history prior to the event, and behavior at work following the event.

Attorney: Would you please tell the court what you discovered based on this information?

Expert: Well, Mr. Barrett appears to have suffered from a mild traumatic brain injury.

Attorney: How is it determined whether a head injury is mild or severe?

Expert: These decisions are based on the amount of time the individual is unconscious and the presence or absence of amnesia following the injury. Probably the most commonly used system to assess head injuries is the Glasgow Coma Scale, or the GCS. The GCS tests the ability to respond to commands, control movements, and awareness of surroundings. A low GCS score means a severe injury; a higher score means the patient probably experienced a mild injury.

Attorney: What was Mr. Barrett's score?

Expert: His treating physician at the emergency room assessed his GCS score at 12. The range is 3-15, so his score was relatively high.

Attorney: Okay. So, what else did your tests reveal for Mr. Barrett?

Expert: Mr. Barrett's profile of results was quite variable. For example, his performance was significantly better on complex items than simpler items, and he had many discrepancies between measures that assessed the same cognitive domain, particularly memory tasks. His results were fairly inconsistent.

Attorney: What did you make of this?

Expert: Well, those results can occur when someone is not giving their best effort. This can be intentional or unintentional. And it can be due to a number of different reasons, such as fatigue, psychological symptoms, or malingering.

Attorney: What is malingering, Doctor?

Expert: According to the Diagnostic and Statistical Manual of Mental Disorders, malingering is when someone intentionally fakes or grossly exaggerates symptoms for an external reward.

Attorney: Could you please explain what you mean?

Expert: In a civil case there is an incentive to fake or exaggerate symptoms when monetary gains are dependent on the nature and extent of an injury. Therefore, it is important to be mindful of malingering, particularly in forensic cases.

Attorney: Was Mr. Barrett malingering?

Expert: He did malingering on some tests designed to assess effort, but performed adequately on others.

Attorney: Were you able to determine whether he has any cognitive disabilities?

Expert: Yes. Mr. Barrett does have some legitimate cognitive impairments, particularly in the domain of attention, but he also had a tendency to exaggerate some of his symptoms or deficits. For example, his processing speed was slowed on tests of reaction time and his distractibility was elevated in comparison to same-aged peers. These results were found on empirically derived neuropsychological tests, and also evident in his conversational speech and behavior during the evaluation. Attention deficits are not uncommon in cases of mild traumatic brain injury, and Mr. Barrett's testing results are consistent with that profile. In some cases, attention difficulties will lead an individual to think they have memory impairments. In my opinion, this is a probable explanation for the intentional or unintentional exaggeration I observed in Mr. Barrett's performance on the memory tasks.

Attorney: What are the consequences of attention problems?

Expert: Individuals often experience decreased concentration levels, heightened distractibility, and difficulty multi-tasking. In addition, some people report heightened confusion and difficulties thinking clearly. The result is often increased irritability and fatigue as they try to focus their efforts, with limited success.

Attorney: Dr. Smith, what is your expert opinion regarding Mr. Barrett's cognitive functioning?

Expert: It is my opinion that Mr. Barrett is experiencing significant cognitive deficits that are related to the head injury he sustained. However, Mr. Barrett also appeared to exaggerate the extent of his existing disability.

Attorney: Do you think there is a neuropsychological basis for the symptoms he has reported?

Expert: Yes, I do.

Attorney: Nothing further Your Honor.

Judge: Any questions from the plaintiff?

Pros Att: Yes, Your Honor.

HIRED GUN QUESTIONS - NARRATIVE RESPONSES

Pros Att: Dr. Smith, are you being paid for your time here today?

Expert: Yes. I am being paid \$200 an hour. I'm not exactly sure how much time I've spent working on the case, but I would guess that including reviewing records, speaking with attorneys, evaluating the plaintiff, and testifying in court today that I've spent somewhere in the neighborhood of 25 hours on this case.

Pros Att: So that would be a total of approximately \$5,000?

Expert: That sounds correct.

Pros Att: That sounds like a lot of money to make for working on one case. What are you going to do with all the money?

Expert: It does sound like a large sum, but that amount is not all profit. Most of my fee goes towards the costs of maintaining my private practice including rent, office supplies, and test supplies. The fee also includes reimbursement for travel expenses necessary for evaluating the plaintiff. I'm not sure what other experts charge, but I would guess that my fee is similar to theirs.

Pros Att: And Dr. Smith, is it correct that you are paid this fee for what you say in court?

Expert: No, I am paid for my time evaluating the plaintiff and my time in court today. I am paid for my services regardless of my findings.

Pros Att: Have you ever disagreed with the attorney that retained you?

Expert: Yes, my findings have not supported the side that hired me on several occasions. On those occasions I was not asked to write a report or testify in court.

Pros Att: Isn't it true that being paid this large amount of money could influence your findings?

Expert: No, I am a trained professional and my opinions are based on my scientific evaluation of the plaintiff. If attorneys do not like what I find, they are under no obligation to ask me to testify, but my findings will not change based on who hires me or the amount that I am paid. My opinions are not for sale.

Pros Att: How many times have you testified in court?

Expert: In all, I've testified 18 times. Over my career I have testified for both sides in both criminal and civil cases.

Pros Att: Aren't you even a little concerned that you will not be asked to testify again if you don't provide testimony that supports the attorney that hired you?

Expert: No, my testimony is based solely on my examination of the plaintiff. If an attorney is not happy with my services they are free to not hire me in the future; however, if they do hire me again they know they will get my honest expert opinion regardless of other factors.

SUBSTANTIVE CROSS EXAMINATION

Pros Att: Dr. Smith, if you already knew that Mr. Barrett's head injury was mild prior to the evaluation, what was the purpose of your evaluation?

Expert: I was requested to evaluate Mr. Barrett's current functioning—to determine if his injury resulted in any long-term disabilities.

Pros Att: What symptoms did Mr. Barrett complain of?

Expert: He said that he had difficulties with concentration and memory. He also reported that he becomes so tired that he is unable to work more than two or three hours at a time.

Pros Att: When did you examine Mr. Barrett?

Expert: I saw him over three separate occasions, for a total of 15 hours. In the first session, a clinical history was taken to establish the nature of Mr. Barrett's background, family history, education, work experiences, and current symptoms. The next two sessions were spent on neuropsychological testing.

Pros Att: Dr. Smith, did you do all of the testing yourself?

Expert: Yes I did.

Pros Att: What type of testing did you do?

Expert: I administered a comprehensive battery of neuropsychological tests and procedures to determine his current level of cognitive functioning. These tests are designed to assess a wide variety of areas involved in cognition.

Pros Att: Do you mean that you just asked him some questions, or gave him some problems to solve?

Expert: In the simplest form: yes. But I used neuropsychological measures that have been developed specifically for the assessment of cognitive functioning. These measures have been tested with large groups of people, up to thousands of people in some cases. And they have been proven to be reliable and valid. That means that the measure provides accurate, consistent results. After all, these tests are an important component of what we neuropsychologists base our conclusions on and they need to be the best measures available.

Pros Att: Okay. Let's start there.

Expert: I conducted a thorough assessment of his verbal functions. This initially included evaluating his vocabulary skills and reading and writing achievement scores. Many of these areas are over-learned. That is, they are not as vulnerable to neurological injuries because the information is deeply entrenched. Therefore, these instruments are typically a good estimate of a patient's premorbid abilities, or level of functioning prior to a neurological injury.

Pros Att: Is this for a comparison basis?

Expert: Yes. Having a good estimate of what a patient was capable of before the injury can help me determine if their performance on other tests is below what I would expect.

Pros Att: So what other things do you assess?

Expert: In addition to the measures of premorbid abilities, I examined his orientation and attention. A patient can be oriented to person, place and/or time. Attention includes vigilance or concentration, working memory, and the ability to switch back and forth between tasks. I evaluated Mr. Barrett's memory functioning, in verbal and visual domains, and immediate and remote contexts. Finally, I examined his executive functioning.

Pros Att: What is executive functioning?

Expert: Executive functioning refers to the cognitive abilities necessary for goal-directed action and adaptation to a range of environmental conditions and demands.

Pros Att: Do you feel your testing results are a valid estimate of Mr. Barrett's true functioning?

Expert: Yes, I do.

Pros Att: One last question Dr. Taylor. The results of the CT scan conducted the night of the accident showed that everything was normal, yet you have testified that Mr. Barrett suffers from a cognitive impairment, how can you explain these conflicting results?

Expert: The CT scan conducted the night of the accident was simply looking for any structural damage to the brain. A CT scan is unable to assess any types of functional disabilities. My examination of Mr. Barrett was concerned with his neuropsychological functioning. Despite the fact that Mr. Barrett did not suffer any structural brain damage, he does demonstrate disabilities in his cognitive functioning.

Pros Att: Nothing further Your Honor.

Judge: The witness may step down.

Appendix V

CRIMINAL CASE CONTROL CONDITION

QUALIFICATION QUESTIONS

Attorney: Your Honor, the defense would like to call Doctor Taylor Smith. (takes the stand)
Doctor Smith, please state your name for the court.

Expert: My name is Doctor Taylor Smith.

Attorney: Where did you earn your degree and do your training?

Expert: I received my Ph.D. from Loyola and did a post-doctoral fellowship in forensic psychology at the University of Massachusetts Medical Center.

Attorney: Would you tell the Judge and jury what your profession is?

Expert: I am a clinical psychologist and I specialize in forensic psychology.

Attorney: Can you briefly describe the specialized training you've received in the area of forensic psychology?

Expert: Yes. I took several classes on forensic psychology while I was in graduate school. I was trained in the use of specific measures and scales that are used in forensic psychology. I conducted several forensic assessments while in graduate school and was supervised by a licensed clinical psychologist who also specialized in forensic psychology. I also completed two years of post-doctoral training with a specialization in forensic psychology.

Attorney: Are you licensed in this state?

Expert: Yes, I have been licensed in this state for over 10 years.

Attorney: Where are you currently employed?

Expert: I teach at Purdue University and have a private practice where I primarily conduct forensic psychological assessments.

Attorney: What are your duties at the University?

Expert: I teach classes at both the graduate and undergraduate level. I also conduct research in the area of forensic psychology.

Attorney: Has any research you've conducted been published?

Expert: Currently, I have been an author on 32 published articles. I also have several articles under review by journals.

Attorney: Your Honor, I move that the court accept Dr. Taylor Smith as a qualified expert in the field of forensic psychology.

Judge: Prosecution, any objections?

Pros.: No, Your Honor.

Judge: Dr. Taylor Smith is admitted as a qualified expert in the field of forensic psychology. Proceed counselor.

SUBSTANTIVE DIRECT TESTIMONY

Attorney: Alright, Dr. Smith, please tell the court what forensic psychology is.

Expert: Forensic psychology is essentially the specialty of psychology that deals with the intersection of psychology and the law. A forensic psychologist uses validated testing instruments and assessment procedures to evaluate different aspects of an individual that could impact legal matters. Two areas that forensic psychologists routinely assess are competence to stand trial and criminal responsibility. Coming to conclusions about these matters can be quite complex and forensic psychologists rely on a variety of materials, including standardized assessment instruments and structured interviews to arrive at their conclusions.

Attorney: Dr. Smith, how did you become involved in this case?

Expert: In June of 2007, I was contacted by the defense and was asked to perform a neuropsychological evaluation on Mr. Wilder.

Attorney: Did you receive any records prior to the evaluation?

Expert: I did receive the police records from the day of the incident as well as Mr. Wilder's past inpatient hospital records. I also looked over Mr. Wilder's employment records, including his employment history, and behavior at work.

Attorney: You mentioned that you reviewed hospital records?

Expert: Yes, Mr. Wilder has been hospitalized three times since he was 22 due to his mental illness.

Attorney: What mental illness does he have?

Expert: Throughout his hospitalizations he has been diagnosed with several different mental illness including Schizophrenia, Schizoaffective Disorder, and Psychotic Disorder – Not Otherwise Specified.

Attorney: Doctor, in your opinion, does Mr. Wilder suffers from a mental illness?

Expert: Yes. Based on my evaluation and review of the records, I believe that Mr. Wilder suffers from Schizophrenia – Paranoid Type.

Attorney: Can you explain for the jury what Schizophrenia – Paranoid Type is?

Expert: Certainly, Schizophrenia is a severe mental illness. It causes severe disruption of almost all mental functioning and is considered perhaps the most serious of all mental illnesses. The core symptoms are hallucinations, which are perceptions that have no basis in reality, such as hearing voices when no one is there. Another core symptom is experiencing delusions, which are false beliefs held with conviction, even though they have no basis in reality. An example of a delusion is a paranoid thought that someone is trying to kill you. Another symptom is thought disorder. Patients who suffer from schizophrenia say they can't get their thoughts straight. They can't think properly or reach logical conclusions. Schizophrenics get confused and their speech is often hard to understand or illogical. Then there is a disturbance in emotional expression; called "constricted emotions" where they don't show the full range of emotions. They appear flat, dull, spacey, or they may show inappropriate emotions.

Attorney: When does this disease generally start?

Expert: Symptoms usually begin to appear during a person's late teens or early 20s. In Mr. Wilder's case, records suggest that he began experiencing symptoms around age 19 and he was first hospitalized when he was 22.

Attorney: Why was Mr. Wilder hospitalized?

Expert: Based on the records and interviews with Mr. Wilder's family, it appears that he was hospitalized the first time because he was experiencing psychotic symptoms. During his first hospitalization he was diagnosed with Schizophrenia – Paranoid Type, stabilized, and released. Mr. Wilder's subsequent hospitalizations were due to the increase of psychotic symptoms that probably resulted from Mr. Wilder not taking his prescribed medication.

Attorney: Is this a common course of the illness doctor?

Expert: Yes, it is. There are usually times in which the patient's symptoms become more intense than usual. With medication, these major symptoms may subside, but the medications cannot control the thought disruption, so they tend to be unable to work or maintain relationships. Schizophrenic patients may become belligerent or even aggressive. So, they have a level of baseline functioning, and then from time to time

the severe symptoms of hearing voices or becoming agitated can flare up. It is also quite common for patients with Schizophrenia to stop taking their medications and need to be re-hospitalized.

Attorney: Dr. Smith, do you know whether or not Mr. Wilder was taking his medication on and around May 7, 2007?

Expert: Medical records indicate that he was not taking his medication at that time.

Attorney: Do you know why not?

Expert: According to Mr. Wilder, he had run out of his medication and could not afford to refill his prescription. His family stated that they were not aware he had run out of his medication until after the crime occurred. This is also quite common in patients with Schizophrenia.

Attorney: Dr. Smith, do you know if Mr. Wilder has any history of past violent acts?

Expert: Based on interviews with Mr. Wilder, his family, and jail personnel as well as a thorough review of his medical and employment records, this appears to be the first incident of violence that Mr. Wilder has committed.

Attorney: I see, and did you have an opportunity to speak to Mr. Wilder about the events of May 7?

Expert: Yes. He was able to describe the event accurately. He stated that he got in an argument with the victim. He also reported that he does not know why he engaged in that argument. He was able to accurately describe the assault and the events that followed.

Attorney: In your expert psychological opinion, what have you concluded about that incident?

Expert: He assaulted the victim at a time when he was off his medication and his psychotic symptoms were at their worst. He could not think or plan. He had no reason. It was a sudden psychotic act.

Attorney: One final question, doctor. Can you render an opinion to a reasonable degree of scientific certainty whether Gary Wilder, because of his mental illness, lacked substantial ability to know or understand the quality and consequences of his actions or that such conduct was wrong during the incident on May 7, 2007?

Expert: I can render an opinion. To the best of my expert scientific knowledge, I believe that at that time, he did not know the quality and nature of his actions or that they were wrong.

Attorney: Nothing further Your Honor.

Judge: Any questions from the prosecution?

Pros Att: Yes, Your Honor.

SUBSTANTIVE CROSS EXAMINATION

Pros Att: What symptoms of Schizophrenia has Mr. Wilder suffered?

Expert: Records indicate that prior to his first diagnosis Mr. Wilder had been hearing voices and began to believe that strangers were trying to harm him. He also suffered significant impairments in his attention and concentration abilities. Additionally, he displayed a flat affect, which means that he did not respond in an emotionally appropriate manner to emotional events in his life. Since the symptoms first appeared, Mr. Wilder has experienced minimal symptoms when he has been on his medications.

Pros Att: What about when he wasn't on his medications?

Expert: When not on his medications Mr. Wilder begins to hallucinate and experience delusional beliefs that strangers are trying to hurt him. When he experiences these delusions he has become belligerent and hostile towards individuals.

Pros Att: Belligerent and hostile? Doctor, I thought that you had testified that this was Mr. Wilder's first violent act?

Expert: That is correct. Prior to May 7th there is no indication that Mr. Wilder has ever engaged in violence towards another individual. His prior belligerence and hostility consisted of yelling at people, mainly family members and hospital staff, and then walking away.

Pros Att: So Dr. Smith, is it fair to say that Mr. Wilder's symptoms are getting worse?

Expert: No, I do not believe that is a fair assessment.

Pros Att: Why not doctor?

Expert: Prior to running out of his medication, Mr. Wilder was functioning very well in the community. He was holding down a job and living independently, under the supervision of his family. If anything, I would say that Mr. Wilder has been managing his mental illness much better recently, with the exception of the events of May 7th.

Pros Att: I see doctor. When did you examine Mr. Wilder?

Expert: I saw him over three separate occasions, for a total of 15 hours. In the first session, a clinical history was taken to establish the nature of Mr. Wilder's background, family history, education, work experiences, and his history of mental illness. The next two sessions were spent on psychological testing and more psychological interviews.

Pros Att: Dr. Smith, did you do all of the testing yourself?

Expert: Yes I did.

Pros Att: What type of testing did you do?

Expert: I administered a comprehensive battery of psychological tests and procedures to determine his current level of psychological functioning. These tests are designed to assess a wide variety of areas including the symptoms of his mental illness. I also spent a great deal of time speaking to Mr. Wilder about the days leading up to May 7th and what occurred on that day.

Pros Att: Do you mean that you just asked him some questions, or gave him some problems to solve?

Expert: In the simplest form: yes. But I used psychological measures that have been developed specifically for the assessment of forensic issues. These measures have been tested with large groups of people, up to thousands of people in some cases. And they have been proven to be reliable and valid. That means that the measure provides accurate, consistent results. After all, these tests are an important component of what we forensic psychologists base our conclusions on and they need to be the best measures available.

Pros Att: Okay. Let's start there. Tell me about the evaluation.

Expert: I conducted a thorough assessment of his mental illness to arrive at an accurate diagnosis. To achieve this I used the Structured Clinical Interview for DSM Disorders, or SCID. This interview helped me to arrive at my final diagnosis of Schizophrenia – Paranoid Type. In addition to this interview I also administered the Personality Assessment Inventory, a measure of personality functioning, and the Rogers Criminal Responsibility Assessment Scale, the R-CRAS, a measure designed to help a psychologist determine an examinee's psychological functioning at the time of the crime.

Pros Att: What were the results from these tools?

Expert: The results indicated that Mr. Wilder was suffering from Schizophrenia – Paranoid Type. They also indicated that his personality was consistent with an individual with Schizophrenia. These results may seem redundant, but it is important for forensic psychologists to base their conclusions on results from different sources.

Additionally, the R-CRAS indicated that Mr. Wilder did not understand the nature of his acts at the time of the crime or that they were wrong.

Pros Att: Do you feel your testing results are a valid estimate of Mr. Wilder's true functioning?

Expert: Yes, I do.

Pros Att: Nothing further Your Honor.

Judge: The witness may step down.

Appendix W

CRIMINAL CASE INOCULATION FRAGMENTED RESPONSES

QUALIFICATION QUESTIONS

Attorney: Your Honor, the defense would like to call Doctor Taylor Smith. (takes the stand) Doctor Smith, please state your name for the court.

Expert: My name is Doctor Taylor Smith.

Attorney: Where did you earn your degree and do your training?

Expert: I received my Ph.D. from Loyola and did a post-doctoral fellowship in forensic psychology at the University of Massachusetts Medical Center.

Attorney: Would you tell the Judge and jury what your profession is?

Expert: I am a clinical psychologist and I specialize in forensic psychology.

Attorney: Can you briefly describe the specialized training you've received in the area of forensic psychology?

Expert: Yes. I took several classes on forensic psychology while I was in graduate school. I was trained in the use of specific measures and scales that are used in forensic psychology. I conducted several forensic assessments while in graduate school and was supervised by a licensed clinical psychologist who also specialized in forensic psychology. I also completed two years of post-doctoral training with a specialization in forensic psychology.

Attorney: Are you licensed in this state?

Expert: Yes, I have been licensed in this state for over 10 years.

Attorney: Where are you currently employed?

Expert: I teach at Purdue University and have a private practice where I primarily conduct forensic psychological assessments.

Attorney: What are your duties at the University?

Expert: I teach classes at both the graduate and undergraduate level. I also conduct research in the area of forensic psychology.

Attorney: Has any research you've conducted been published?

Expert: Currently, I have been an author on 32 published articles. I also have several articles under review by journals.

Attorney: Your Honor, I move that the court accept Dr. Taylor Smith as a qualified expert in the field of forensic psychology.

Judge: Prosecution, any objections?

Pros.: No, Your Honor.

Judge: Dr. Taylor Smith is admitted as a qualified expert in the field of forensic psychology. Proceed counselor.

INOCULATION QUESTIONS

Attorney: Dr. Smith, you were retained by the defense in this case, is that correct?

Expert: That is correct.

Attorney: And you're being paid for your testimony today, is that also correct?

Expert: No. I am being paid for my time today. My testimony is based on my extensive evaluation of the defendant.

Attorney: So you're stating that being hired by the defense in no way influences your findings?

Expert: Correct.

Attorney: Dr. Smith, have you ever testified for the prosecution in a case similar to this?

Expert: I have testified for both the prosecution and the defense in several cases regarding criminal responsibility.

Attorney: So Doctor, are you saying that being paid by one side or the other does not impact your findings in any way?

Expert: That is correct. I use the same objective procedures to come to my conclusions regardless of what side hires me. If an attorney does not the conclusions I draw he is in no way obligated to call on me to testify.

SUBSTANTIVE DIRECT TESTIMONY

Attorney: Alright, Dr. Smith, please tell the court what forensic psychology is.

Expert: Forensic psychology is essentially the specialty of psychology that deals with the intersection of psychology and the law. A forensic psychologist uses validated testing instruments and assessment procedures to evaluate different aspects of an individual that could impact legal matters. Two areas that forensic psychologists routinely assess are competence to stand trial and criminal responsibility. Coming to conclusions about these matters can be quite complex and forensic psychologists rely on a variety of materials, including standardized assessment instruments and structured interviews to arrive at their conclusions.

Attorney: Dr. Smith, how did you become involved in this case?

Expert: In June of 2007, I was contacted by the defense and was asked to perform a neuropsychological evaluation on Mr. Wilder.

Attorney: Did you receive any records prior to the evaluation?

Expert: I did receive the police records from the day of the incident as well as Mr. Wilder's past inpatient hospital records. I also looked over Mr. Wilder's employment records, including his employment history, and behavior at work.

Attorney: You mentioned that you reviewed hospital records?

Expert: Yes, Mr. Wilder has been hospitalized three times since he was 22 due to his mental illness.

Attorney: What mental illness does he have?

Expert: Throughout his hospitalizations he has been diagnosed with several different mental illness including Schizophrenia, Schizoaffective Disorder, and Psychotic Disorder – Not Otherwise Specified.

Attorney: Doctor, in your opinion, does Mr. Wilder suffers from a mental illness?

Expert: Yes. Based on my evaluation and review of the records, I believe that Mr. Wilder suffers from Schizophrenia – Paranoid Type.

Attorney: Can you explain for the jury what Schizophrenia – Paranoid Type is?

Expert: Certainly, Schizophrenia is a severe mental illness. It causes severe disruption of almost all mental functioning and is considered perhaps the most serious of all mental illnesses. The core symptoms are hallucinations, which are perceptions that have no basis in reality, such as hearing voices when no one is there. Another core symptom is experiencing delusions, which are false beliefs held with conviction, even though they have no basis in reality. An example of a delusion is a paranoid thought that someone is trying to kill you. Another symptom is thought disorder. Patients who suffer from schizophrenia say they can't get their thoughts straight. They can't think properly or reach logical conclusions. Schizophrenics get confused and their speech is often hard to understand or illogical. Then there is a disturbance in emotional expression; called "constricted emotions" where they don't show the full range of emotions. They appear flat, dull, spacey, or they may show inappropriate emotions.

Attorney: When does this disease generally start?

Expert: Symptoms usually begin to appear during a person's late teens or early 20s. In Mr. Wilder's case, records suggest that he began experiencing symptoms around age 19 and he was first hospitalized when he was 22.

Attorney: Why was Mr. Wilder hospitalized?

Expert: Based on the records and interviews with Mr. Wilder's family, it appears that he was hospitalized the first time because he was experiencing psychotic symptoms. During his first hospitalization he was diagnosed with Schizophrenia – Paranoid Type, stabilized, and released. Mr. Wilder's subsequent hospitalizations were due to the increase of psychotic symptoms that probably resulted from Mr. Wilder not taking his prescribed medication.

Attorney: Is this a common course of the illness doctor?

Expert: Yes, it is. There are usually times in which the patient's symptoms become more intense than usual. With medication, these major symptoms may subside, but the medications cannot control the thought disruption, so they tend to be unable to work or maintain relationships. Schizophrenic patients may become belligerent or even aggressive. So, they have a level of baseline functioning, and then from time to time the severe symptoms of hearing voices or becoming agitated can flare up. It is also quite common for patients with Schizophrenia to stop taking their medications and need to be re-hospitalized.

Attorney: Dr. Smith, do you know whether or not Mr. Wilder was taking his medication on and around May 7, 2007?

Expert: Medical records indicate that he was not taking his medication at that time.

Attorney: Do you know why not?

Expert: According to Mr. Wilder, he had run out of his medication and could not afford to refill his prescription. His family stated that they were not aware he had run out of his medication until after the crime occurred. This is also quite common in patients with Schizophrenia.

Attorney: Dr. Smith, do you know if Mr. Wilder has any history of past violent acts?

Expert: Based on interviews with Mr. Wilder, his family, and jail personnel as well as a thorough review of his medical and employment records, this appears to be the first incident of violence that Mr. Wilder has committed.

Attorney: I see, and did you have an opportunity to speak to Mr. Wilder about the events of May 7?

Expert: Yes. He was able to describe the event accurately. He stated that he got in an argument with the victim. He also reported that he does not know why he engaged in that argument. He was able to accurately describe the assault and the events that followed.

Attorney: In your expert psychological opinion, what have you concluded about that incident?

Expert: He assaulted the victim at a time when he was off his medication and his psychotic symptoms were at their worst. He could not think or plan. He had no reason. It was a sudden psychotic act.

Attorney: One final question, doctor. Can you render an opinion to a reasonable degree of scientific certainty whether Gary Wilder, because of his mental illness, lacked substantial ability to know or understand the quality and consequences of his actions or that such conduct was wrong during the incident on May 7, 2007?

Expert: I can render an opinion. To the best of my expert scientific knowledge, I believe that at that time, he did not know the quality and nature of his actions or that they were wrong.

Attorney: Nothing further Your Honor.

Judge: Any questions from the prosecution?

Pros Att: Yes, Your Honor.

HIRED GUN QUESTIONS FRAGMENTED RESPONSES

Attorney: Dr. Smith, are you being paid for your time here today?

Expert: Yes I am.

Attorney: How much are you being paid?

Expert: I charge \$200 an hour.

Attorney: What have your responsibilities on this case included?

Expert: My duties on this case included reviewing records, speaking with attorneys, interviewing third parties such as the defendant's family and jail personnel, evaluating the defendant, and testifying in court today.

Attorney: In total, approximately how much time have you spent working on this case?

Expert: I'm not exactly sure, but I would guess that I've spent somewhere in the neighborhood of 25 hours on this case.

Attorney: So that would be a total of approximately \$5,000?

Expert: That sounds correct.

Attorney: That sounds like a lot of money to make for working on one case. What are you going to do with all the money?

Expert: It does sound like a large sum, but that amount is not all profit. Most of my fee goes towards the costs of maintaining my private practice.

Attorney: What does that cost include?

Expert: It includes rent, office supplies, and test supplies. The fee also includes reimbursement for travel expenses necessary for evaluating the defendant.

Attorney: How does this figure compare to what other experts in your field make on a case?

Expert: I'm not sure what other experts charge, but I would guess that my fee is similar to theirs.

Attorney: And Dr. Smith, is it correct that you are paid this fee for what you say in court?

Expert: No, I am paid for my time evaluating the defendant and my time in court today. I am paid for my services regardless of my findings.

Attorney: Have you ever disagreed with the attorney that retained you?

Expert: Yes, my findings have not supported the side that hired me on several occasions.

Attorney: And what happened on those occasions?

Expert: On those occasions I was not asked to write a report or to testify in court.

Attorney: Isn't it true that being paid this large amount of money could influence your findings?

Expert: No, I am a trained professional and my opinions are based on my scientific evaluation of the defendant. If attorneys do not like what I find, they are under no obligation to ask me to testify, but my findings will not change based on who hires me or the amount that I am paid. My opinions are not for sale.

Attorney: How many times have you testified in court?

Expert: In all, I've testified 18 times.

Attorney: Do you typically testify for the prosecution or defense?

Expert: Over my career I have testified for both sides in both criminal and civil cases.

Attorney: Aren't you even a little concerned that you will not be asked to testify again if you don't provide testimony that supports the attorney that hired you?

Expert: No, my testimony is based solely on my examination of the defendant. If an attorney is not happy with my services they are free to not hire me in the future; however, if they do hire me again they know they will get my honest expert opinion regardless of other factors.

SUBSTANTIVE CROSS EXAMINATION

Pros Att: What symptoms of Schizophrenia has Mr. Wilder suffered?

Expert: Records indicate that prior to his first diagnosis Mr. Wilder had been hearing voices and began to believe that strangers were trying to harm him. He also suffered significant impairments in his attention and concentration abilities. Additionally, he displayed a flat affect, which means that he did not respond in an emotionally appropriate manner to emotional events in his life. Since the symptoms first appeared, Mr. Wilder has experienced minimal symptoms when he has been on his medications.

Pros Att: What about when he wasn't on his medications?

Expert: When not on his medications Mr. Wilder begins to hallucinate and experience delusional beliefs that strangers are trying to hurt him. When he experiences these delusions he has become belligerent and hostile towards individuals.

Pros Att: Belligerent and hostile? Doctor, I thought that you had testified that this was Mr. Wilder's first violent act?

Expert: That is correct. Prior to May 7th there is no indication that Mr. Wilder has ever engaged in violence towards another individual. His prior belligerence and hostility consisted of yelling at people, mainly family members and hospital staff, and then walking away.

Pros Att: So Dr. Smith, is it fair to say that Mr. Wilder's symptoms are getting worse?

Expert: No, I do not believe that is a fair assessment.

Pros Att: Why not doctor?

Expert: Prior to running out of his medication, Mr. Wilder was functioning very well in the community. He was holding down a job and living independently, under the supervision of his family. If anything, I would say that Mr. Wilder has been managing his mental illness much better recently, with the exception of the events of May 7th.

Pros Att: I see doctor. When did you examine Mr. Wilder?

Expert: I saw him over three separate occasions, for a total of 15 hours. In the first session, a clinical history was taken to establish the nature of Mr. Wilder's background, family history, education, work experiences, and his history of mental illness. The next two sessions were spent on psychological testing and more psychological interviews.

Pros Att: Dr. Smith, did you do all of the testing yourself?

Expert: Yes I did.

Pros Att: What type of testing did you do?

Expert: I administered a comprehensive battery of psychological tests and procedures to determine his current level of psychological functioning. These tests are designed to assess a wide variety of areas including the symptoms of his mental illness. I also spent a great deal of time speaking to Mr. Wilder about the days leading up to May 7th and what occurred on that day.

Pros Att: Do you mean that you just asked him some questions, or gave him some problems to solve?

Expert: In the simplest form: yes. But I used psychological measures that have been developed specifically for the assessment of forensic issues. These measures have been tested with large groups of people, up to thousands of people in some cases. And they have been proven to be reliable and valid. That means that the measure provides accurate, consistent results. After all, these tests are an important component

of what we forensic psychologists base our conclusions on and they need to be the best measures available.

Pros Att: Okay. Let's start there. Tell me about the evaluation.

Expert: I conducted a thorough assessment of his mental illness to arrive at an accurate diagnosis. To achieve this I used the Structured Clinical Interview for DSM Disorders, or SCID. This interview helped me to arrive at my final diagnosis of Schizophrenia – Paranoid Type. In addition to this interview I also administered the Personality Assessment Inventory, a measure of personality functioning, and the Rogers Criminal Responsibility Assessment Scale, the R-CRAS, a measure designed to help a psychologist determine an examinee's psychological functioning at the time of the crime.

Pros Att: What were the results from these tools?

Expert: The results indicated that Mr. Wilder was suffering from Schizophrenia – Paranoid Type. They also indicated that his personality was consistent with an individual with Schizophrenia. These results may seem redundant, but it is important for forensic psychologists to base their conclusions on results from different sources. Additionally, the R-CRAS indicated that Mr. Wilder did not understand the nature of his acts at the time of the crime or that they were wrong.

Pros Att: Do you feel your testing results are a valid estimate of Mr. Wilder's true functioning?

Expert: Yes, I do.

Pros Att: Nothing further Your Honor.

Judge: The witness may step down.

Appendix X

CRIMINAL CASE INOCULATION NARRATIVE RESPONSES

QUALIFICATION QUESTIONS

Attorney: Your Honor, the defense would like to call Doctor Taylor Smith. (takes the stand) Doctor Smith, please state your name for the court.

Expert: My name is Doctor Taylor Smith.

Attorney: Where did you earn your degree and do your training?

Expert: I received my Ph.D. from Loyola and did a post-doctoral fellowship in forensic psychology at the University of Massachusetts Medical Center.

Attorney: Would you tell the Judge and jury what your profession is?

Expert: I am a clinical psychologist and I specialize in forensic psychology.

Attorney: Can you briefly describe the specialized training you've received in the area of forensic psychology?

Expert: Yes. I took several classes on forensic psychology while I was in graduate school. I was trained in the use of specific measures and scales that are used in forensic psychology. I conducted several forensic assessments while in graduate school and was supervised by a licensed clinical psychologist who also specialized in forensic psychology. I also completed two years of post-doctoral training with a specialization in forensic psychology.

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Expert: Yes, I have been licensed in this state for over 10 years.

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Expert: I teach at Purdue University and have a private practice where I primarily conduct forensic psychological assessments.

Attorney: What are your duties at the University?

Expert: I teach classes at both the graduate and undergraduate level. I also conduct research in the area of forensic psychology.

Attorney: Has any research you've conducted been published?

Expert: Currently, I have been an author on 32 published articles. I also have several articles under review by journals.

Attorney: Your Honor, I move that the court accept Dr. Taylor Smith as a qualified expert in the field of forensic psychology.

Judge: Prosecution, any objections?

Pros.: No, Your Honor.

Judge: Dr. Taylor Smith is admitted as a qualified expert in the field of forensic psychology. Proceed counselor.

INOCULATION QUESTIONS

Attorney: Dr. Smith, you were retained by the defense in this case, is that correct?

Expert: That is correct.

Attorney: And you're being paid for your testimony today, is that also correct?

Expert: No. I am being paid for my time today. My testimony is based on my extensive evaluation of the defendant.

Attorney: So you're stating that being hired by the defense in no way influences your findings?

Expert: Correct.

Attorney: Dr. Smith, have you ever testified for the prosecution in a case similar to this?

Expert: I have testified for both the prosecution and the defense in several cases regarding criminal responsibility.

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SUBSTANTIVE DIRECT TESTIMONY

Attorney: Alright, Dr. Smith, please tell the court what forensic psychology is.

Expert: Forensic psychology is essentially the specialty of psychology that deals with the intersection of psychology and the law. A forensic psychologist uses validated testing instruments and assessment procedures to evaluate different aspects of an individual that could impact legal matters. Two areas that forensic psychologists routinely assess are competence to stand trial and criminal responsibility. Coming to conclusions about these matters can be quite complex and forensic psychologists rely on a variety of materials, including standardized assessment instruments and structured interviews to arrive at their conclusions.

Attorney: Dr. Smith, how did you become involved in this case?

Expert: In June of 2007, I was contacted by the defense and was asked to perform a neuropsychological evaluation on Mr. Wilder.

Attorney: Did you receive any records prior to the evaluation?

Expert: I did receive the police records from the day of the incident as well as Mr. Wilder's past inpatient hospital records. I also looked over Mr. Wilder's employment records, including his employment history, and behavior at work.

Attorney: You mentioned that you reviewed hospital records?

Expert: Yes, Mr. Wilder has been hospitalized three times since he was 22 due to his mental illness.

Attorney: What mental illness does he have?

Expert: Throughout his hospitalizations he has been diagnosed with several different mental illness including Schizophrenia, Schizoaffective Disorder, and Psychotic Disorder – Not Otherwise Specified.

Attorney: Doctor, in your opinion, does Mr. Wilder suffers from a mental illness?

Expert: Yes. Based on my evaluation and review of the records, I believe that Mr. Wilder suffers from Schizophrenia – Paranoid Type.

Attorney: Can you explain for the jury what Schizophrenia – Paranoid Type is?

Expert: Certainly, Schizophrenia is a severe mental illness. It causes severe disruption of almost all mental functioning and is considered perhaps the most serious of all mental illnesses. The core symptoms are hallucinations, which are perceptions that have no basis in reality, such as hearing voices when no one is there. Another core symptom is experiencing delusions, which are false beliefs held with conviction, even though they have no basis in reality. An example of a delusion is a paranoid thought that someone is trying to kill you. Another symptom is thought disorder. Patients who suffer from schizophrenia say they can't get their thoughts straight. They can't think properly or reach logical conclusions. Schizophrenics get confused and their speech is often hard to understand or illogical. Then there is a disturbance in emotional expression; called "constricted emotions" where they don't show the full range of emotions. They appear flat, dull, spacey, or they may show inappropriate emotions.

Attorney: When does this disease generally start?

Expert: Symptoms usually begin to appear during a person's late teens or early 20s. In Mr. Wilder's case, records suggest that he began experiencing symptoms around age 19 and he was first hospitalized when he was 22.

Attorney: Why was Mr. Wilder hospitalized?

Expert: Based on the records and interviews with Mr. Wilder's family, it appears that he was hospitalized the first time because he was experiencing psychotic symptoms. During his first hospitalization he was diagnosed with Schizophrenia – Paranoid Type, stabilized, and released. Mr. Wilder's subsequent hospitalizations were due to the increase of psychotic symptoms that probably resulted from Mr. Wilder not taking his prescribed medication.

Attorney: Is this a common course of the illness doctor?

Expert: Yes, it is. There are usually times in which the patient's symptoms become more intense than usual. With medication, these major symptoms may subside, but the medications cannot control the thought disruption, so they tend to be unable to work or maintain relationships. Schizophrenic patients may become belligerent or even aggressive. So, they have a level of baseline functioning, and then from time to time the severe symptoms of hearing voices or becoming agitated can flare up. It is also quite common for patients with Schizophrenia to stop taking their medications and need to be re-hospitalized.

Attorney: Dr. Smith, do you know whether or not Mr. Wilder was taking his medication on and around May 7, 2007?

Expert: Medical records indicate that he was not taking his medication at that time.

Attorney: Do you know why not?

Expert: According to Mr. Wilder, he had run out of his medication and could not afford to refill his prescription. His family stated that they were not aware he had run out of his medication until after the crime occurred. This is also quite common in patients with Schizophrenia.

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Attorney: I see, and did you have an opportunity to speak to Mr. Wilder about the events of May 7?

Expert: Yes. He was able to describe the event accurately. He stated that he got in an argument with the victim. He also reported that he does not know why he engaged in that argument. He was able to accurately describe the assault and the events that followed.

Attorney: In your expert psychological opinion, what have you concluded about that incident?

Expert: He assaulted the victim at a time when he was off his medication and his psychotic symptoms were at their worst. He could not think or plan. He had no reason. It was a sudden psychotic act.

Attorney: One final question, doctor. Can you render an opinion to a reasonable degree of scientific certainty whether Gary Wilder, because of his mental illness, lacked substantial ability to know or understand the quality and consequences of his actions or that such conduct was wrong during the incident on May 7, 2007?

Expert: I can render an opinion. To the best of my expert scientific knowledge, I believe that at that time, he did not know the quality and nature of his actions or that they were wrong.

Attorney: Nothing further Your Honor.

Judge: Any questions from the prosecution?

Pros Att: Yes, Your Honor.

HIRED GUN QUESTIONS NARRATIVE RESPONSES

Attorney: Dr. Smith, are you being paid for your time here today?

Expert: Yes. I am being paid \$200 an hour. I'm not exactly sure how much time I've spent working on the case, but I would guess that including reviewing records, speaking with attorneys, interviewing third parties such as the defendant's family and jail personnel, evaluating the defendant, and testifying in court today that I've spent somewhere in the neighborhood of 25 hours on this case.

Attorney: So that would be a total of approximately \$5,000?

Expert: That sounds correct.

Attorney: That sounds like a lot of money to make for working on one case. What are you going to do with all the money?

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Attorney: And Dr. Smith, is it correct that you are paid this fee for what you say in court?

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Attorney: Have you ever disagreed with the attorney that retained you?

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SUBSTANTIVE CROSS EXAMINATION

Pros Att: What symptoms of Schizophrenia has Mr. Wilder suffered?

Expert: Records indicate that prior to his first diagnosis Mr. Wilder had been hearing voices and began to believe that strangers were trying to harm him. He also suffered significant impairments in his attention and concentration abilities. Additionally, he displayed a flat affect, which means that he did not respond in an emotionally appropriate manner to emotional events in his life. Since the symptoms first appeared, Mr. Wilder has experienced minimal symptoms when he has been on his medications.

Pros Att: What about when he wasn't on his medications?

Expert: When not on his medications Mr. Wilder begins to hallucinate and experience delusional beliefs that strangers are trying to hurt him. When he experiences these delusions he has become belligerent and hostile towards individuals.

Pros Att: Belligerent and hostile? Doctor, I thought that you had testified that this was Mr. Wilder's first violent act?

Expert: That is correct. Prior to May 7th there is no indication that Mr. Wilder has ever engaged in violence towards another individual. His prior belligerence and hostility consisted of yelling at people, mainly family members and hospital staff, and then walking away.

Pros Att: So Dr. Smith, is it fair to say that Mr. Wilder's symptoms are getting worse?

Expert: No, I do not believe that is a fair assessment.

Pros Att: Why not doctor?

Expert: Prior to running out of his medication, Mr. Wilder was functioning very well in the community. He was holding down a job and living independently, under the supervision of his family. If anything, I would say that Mr. Wilder has been managing his mental illness much better recently, with the exception of the events of May 7th.

Pros Att: I see doctor. When did you examine Mr. Wilder?

Expert: I saw him over three separate occasions, for a total of 15 hours. In the first session, a clinical history was taken to establish the nature of Mr. Wilder's background, family history, education, work experiences, and his history of mental illness. The next two sessions were spent on psychological testing and more psychological interviews.

Pros Att: Dr. Smith, did you do all of the testing yourself?

Expert: Yes I did.

Pros Att: What type of testing did you do?

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Pros Att: What were the results from these tools?

Expert: The results indicated that Mr. Wilder was suffering from Schizophrenia – Paranoid Type. They also indicated that his personality was consistent with an individual with Schizophrenia. These results may seem redundant, but it is important for forensic psychologists to base their conclusions on results from different sources. Additionally, the R-CRAS indicated that Mr. Wilder did not understand the nature of his acts at the time of the crime or that they were wrong.

Pros Att: Do you feel your testing results are a valid estimate of Mr. Wilder's true functioning?

Expert: Yes, I do.

Pros Att: Nothing further Your Honor.

Judge: The witness may step down.

Appendix Y

CRIMINAL CASE NO INOCULATION FRAGMENTED RESPONSES

QUALIFICATION QUESTIONS

Attorney: Your Honor, the defense would like to call Doctor Taylor Smith. (takes the stand) Doctor Smith, please state your name for the court.

Expert: My name is Doctor Taylor Smith.

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Expert: I received my Ph.D. from Loyola and did a post-doctoral fellowship in forensic psychology at the University of Massachusetts Medical Center.

Attorney: Would you tell the Judge and jury what your profession is?

Expert: I am a clinical psychologist and I specialize in forensic psychology.

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Expert: Yes. I took several classes on forensic psychology while I was in graduate school. I was trained in the use of specific measures and scales that are used in forensic psychology. I conducted several forensic assessments while in graduate school and was supervised by a licensed clinical psychologist who also specialized in forensic psychology. I also completed two years of post-doctoral training with a specialization in forensic psychology.

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Expert: Yes, I have been licensed in this state for over 10 years.

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Expert: Currently, I have been an author on 32 published articles. I also have several articles under review by journals.

Attorney: Your Honor, I move that the court accept Dr. Taylor Smith as a qualified expert in the field of forensic psychology.

Judge: Prosecution, any objections?

Pros.: No, Your Honor.

Judge: Dr. Taylor Smith is admitted as a qualified expert in the field of forensic psychology. Proceed counselor.

SUBSTANTIVE DIRECT TESTIMONY

Attorney: Alright, Dr. Smith, please tell the court what forensic psychology is.

Expert: Forensic psychology is essentially the specialty of psychology that deals with the intersection of psychology and the law. A forensic psychologist uses validated testing instruments and assessment procedures to evaluate different aspects of an individual that could impact legal matters. Two areas that forensic psychologists routinely assess are competence to stand trial and criminal responsibility. Coming to conclusions about these matters can be quite complex and forensic psychologists rely on a variety of materials, including standardized assessment instruments and structured interviews to arrive at their conclusions.

Attorney: Dr. Smith, how did you become involved in this case?

Expert: In June of 2007, I was contacted by the defense and was asked to perform a neuropsychological evaluation on Mr. Wilder.

Attorney: Did you receive any records prior to the evaluation?

Expert: I did receive the police records from the day of the incident as well as Mr. Wilder's past inpatient hospital records. I also looked over Mr. Wilder's employment records, including his employment history, and behavior at work.

Attorney: You mentioned that you reviewed hospital records?

Expert: Yes, Mr. Wilder has been hospitalized three times since he was 22 due to his mental illness.

Attorney: What mental illness does he have?

Expert: Throughout his hospitalizations he has been diagnosed with several different mental illness including Schizophrenia, Schizoaffective Disorder, and Psychotic Disorder – Not Otherwise Specified.

Attorney: Doctor, in your opinion, does Mr. Wilder suffers from a mental illness?

Expert: Yes. Based on my evaluation and review of the records, I believe that Mr. Wilder suffers from Schizophrenia – Paranoid Type.

Attorney: Can you explain for the jury what Schizophrenia – Paranoid Type is?

Expert: Certainly, Schizophrenia is a severe mental illness. It causes severe disruption of almost all mental functioning and is considered perhaps the most serious of all mental illnesses. The core symptoms are hallucinations, which are perceptions that have no basis in reality, such as hearing voices when no one is there. Another core symptom is experiencing delusions, which are false beliefs held with conviction, even though they have no basis in reality. An example of a delusion is a paranoid thought that someone is trying to kill you. Another symptom is thought disorder. Patients who suffer from schizophrenia say they can't get their thoughts straight. They can't think properly or reach logical conclusions. Schizophrenics get confused and their speech is often hard to understand or illogical. Then there is a disturbance in emotional expression; called "constricted emotions" where they don't show the full range of emotions. They appear flat, dull, spacey, or they may show inappropriate emotions.

Attorney: When does this disease generally start?

Expert: Symptoms usually begin to appear during a person's late teens or early 20s. In Mr. Wilder's case, records suggest that he began experiencing symptoms around age 19 and he was first hospitalized when he was 22.

Attorney: Why was Mr. Wilder hospitalized?

Expert: Based on the records and interviews with Mr. Wilder's family, it appears that he was hospitalized the first time because he was experiencing psychotic symptoms. During his first hospitalization he was diagnosed with Schizophrenia – Paranoid Type, stabilized, and released. Mr. Wilder's subsequent hospitalizations were due to the increase of psychotic symptoms that probably resulted from Mr. Wilder not taking his prescribed medication.

Attorney: Is this a common course of the illness doctor?

Expert: Yes, it is. There are usually times in which the patient's symptoms become more intense than usual. With medication, these major symptoms may subside, but the medications cannot control the thought disruption, so they tend to be unable to work or maintain relationships. Schizophrenic patients may become belligerent or even aggressive. So, they have a level of baseline functioning, and then from time to time the severe symptoms of hearing voices or becoming agitated can flare up. It is also quite common for patients with Schizophrenia to stop taking their medications and need to be re-hospitalized.

Attorney: Dr. Smith, do you know whether or not Mr. Wilder was taking his medication on and around May 7, 2007?

Expert: Medical records indicate that he was not taking his medication at that time.

Attorney: Do you know why not?

Expert: According to Mr. Wilder, he had run out of his medication and could not afford to refill his prescription. His family stated that they were not aware he had run out of his medication until after the crime occurred. This is also quite common in patients with Schizophrenia.

Attorney: Dr. Smith, do you know if Mr. Wilder has any history of past violent acts?

Expert: Based on interviews with Mr. Wilder, his family, and jail personnel as well as a thorough review of his medical and employment records, this appears to be the first incident of violence that Mr. Wilder has committed.

Attorney: I see, and did you have an opportunity to speak to Mr. Wilder about the events of May 7?

Expert: Yes. He was able to describe the event accurately. He stated that he got in an argument with the victim. He also reported that he does not know why he engaged in that argument. He was able to accurately describe the assault and the events that followed.

Attorney: In your expert psychological opinion, what have you concluded about that incident?

Expert: He assaulted the victim at a time when he was off his medication and his psychotic symptoms were at their worst. He could not think or plan. He had no reason. It was a sudden psychotic act.

Attorney: One final question, doctor. Can you render an opinion to a reasonable degree of scientific certainty whether Gary Wilder, because of his mental illness, lacked substantial ability to know or understand the quality and consequences of his actions or that such conduct was wrong during the incident on May 7, 2007?

Expert: I can render an opinion. To the best of my expert scientific knowledge, I believe that at that time, he did not know the quality and nature of his actions or that they were wrong.

Attorney: Nothing further Your Honor.

Judge: Any questions from the prosecution?

Pros Att: Yes, Your Honor.

HIRED GUN QUESTIONS FRAGMENTED RESPONSES

Attorney: Dr. Smith, are you being paid for your time here today?

Expert: Yes I am.

Attorney: How much are you being paid?

Expert: I charge \$200 an hour.

Attorney: What have your responsibilities on this case included?

Expert: My duties on this case included reviewing records, speaking with attorneys, interviewing third parties such as the defendant's family and jail personnel, evaluating the defendant, and testifying in court today.

Attorney: In total, approximately how much time have you spent working on this case?

Expert: I'm not exactly sure, but I would guess that I've spent somewhere in the neighborhood of 25 hours on this case.

Attorney: So that would be a total of approximately \$5,000?

Expert: That sounds correct.

Attorney: That sounds like a lot of money to make for working on one case. What are you going to do with all the money?

Expert: It does sound like a large sum, but that amount is not all profit. Most of my fee goes towards the costs of maintaining my private practice.

Attorney: What does that cost include?

Expert: It includes rent, office supplies, and test supplies. The fee also includes reimbursement for travel expenses necessary for evaluating the defendant.

Attorney: How does this figure compare to what other experts in your field make on a case?

Expert: I'm not sure what other experts charge, but I would guess that my fee is similar to theirs.

Attorney: And Dr. Smith, is it correct that you are paid this fee for what you say in court?

Expert: No, I am paid for my time evaluating the defendant and my time in court today. I am paid for my services regardless of my findings.

Attorney: Have you ever disagreed with the attorney that retained you?

Expert: Yes, my findings have not supported the side that hired me on several occasions.

Attorney: And what happened on those occasions?

Expert: On those occasions I was not asked to write a report or to testify in court.

Attorney: Isn't it true that being paid this large amount of money could influence your findings?

Expert: No, I am a trained professional and my opinions are based on my scientific evaluation of the defendant. If attorneys do not like what I find, they are under no obligation to ask me to testify, but my findings will not change based on who hires me or the amount that I am paid. My opinions are not for sale.

Attorney: How many times have you testified in court?

Expert: In all, I've testified 18 times.

Attorney: Do you typically testify for the prosecution or defense?

Expert: Over my career I have testified for both sides in both criminal and civil cases.

Attorney: Aren't you even a little concerned that you will not be asked to testify again if you don't provide testimony that supports the attorney that hired you?

Expert: No, my testimony is based solely on my examination of the defendant. If an attorney is not happy with my services they are free to not hire me in the future; however, if they do hire me again they know they will get my honest expert opinion regardless of other factors.

SUBSTANTIVE CROSS EXAMINATION

Pros Att: What symptoms of Schizophrenia has Mr. Wilder suffered?

Expert: Records indicate that prior to his first diagnosis Mr. Wilder had been hearing voices and began to believe that strangers were trying to harm him. He also suffered significant impairments in his attention and concentration abilities. Additionally, he displayed a flat affect, which means that he did not respond in an emotionally appropriate manner to emotional events in his life. Since the symptoms first appeared, Mr. Wilder has experienced minimal symptoms when he has been on his medications.

Pros Att: What about when he wasn't on his medications?

Expert: When not on his medications Mr. Wilder begins to hallucinate and experience delusional beliefs that strangers are trying to hurt him. When he experiences these delusions he has become belligerent and hostile towards individuals.

Pros Att: Belligerent and hostile? Doctor, I thought that you had testified that this was Mr. Wilder's first violent act?

Expert: That is correct. Prior to May 7th there is no indication that Mr. Wilder has ever engaged in violence towards another individual. His prior belligerence and hostility consisted of yelling at people, mainly family members and hospital staff, and then walking away.

Pros Att: So Dr. Smith, is it fair to say that Mr. Wilder's symptoms are getting worse?

Expert: No, I do not believe that is a fair assessment.

Pros Att: Why not doctor?

Expert: Prior to running out of his medication, Mr. Wilder was functioning very well in the community. He was holding down a job and living independently, under the supervision of his family. If anything, I would say that Mr. Wilder has been managing his mental illness much better recently, with the exception of the events of May 7th.

Pros Att: I see doctor. When did you examine Mr. Wilder?

Expert: I saw him over three separate occasions, for a total of 15 hours. In the first session, a clinical history was taken to establish the nature of Mr. Wilder's background, family history, education, work experiences, and his history of mental illness. The next two sessions were spent on psychological testing and more psychological interviews.

Pros Att: Dr. Smith, did you do all of the testing yourself?

Expert: Yes I did.

Pros Att: What type of testing did you do?

Expert: I administered a comprehensive battery of psychological tests and procedures to determine his current level of psychological functioning. These tests are designed to assess a wide variety of areas including the symptoms of his mental illness. I also spent a great deal of time speaking to Mr. Wilder about the days leading up to May 7th and what occurred on that day.

Pros Att: Do you mean that you just asked him some questions, or gave him some problems to solve?

Expert: In the simplest form: yes. But I used psychological measures that have been developed specifically for the assessment of forensic issues. These measures have been tested with large groups of people, up to thousands of people in some cases. And they have been proven to be reliable and valid. That means that the measure provides accurate, consistent results. After all, these tests are an important component of what we forensic psychologists base our conclusions on and they need to be the best measures available.

Pros Att: Okay. Let's start there. Tell me about the evaluation.

Expert: I conducted a thorough assessment of his mental illness to arrive at an accurate diagnosis. To achieve this I used the Structured Clinical Interview for DSM Disorders, or SCID. This interview helped me to arrive at my final diagnosis of Schizophrenia – Paranoid Type. In addition to this interview I also administered the Personality Assessment Inventory, a measure of personality functioning, and the Rogers Criminal Responsibility Assessment Scale, the R-CRAS, a measure designed to help a psychologist determine an examinee's psychological functioning at the time of the crime.

Pros Att: What were the results from these tools?

Expert: The results indicated that Mr. Wilder was suffering from Schizophrenia – Paranoid Type. They also indicated that his personality was consistent with an individual with Schizophrenia. These results may seem redundant, but it is important for forensic psychologists to base their conclusions on results from different sources. Additionally, the R-CRAS indicated that Mr. Wilder did not understand the nature of his acts at the time of the crime or that they were wrong.

Pros Att: Do you feel your testing results are a valid estimate of Mr. Wilder's true functioning?

Expert: Yes, I do.

Pros Att: Nothing further Your Honor.

Judge: The witness may step down.

Appendix Z

CRIMINAL CASE NO INOCULATION NARRATIVE RESPONSES

QUALIFICATION QUESTIONS

Attorney: Your Honor, the defense would like to call Doctor Taylor Smith. (takes the stand) Doctor Smith, please state your name for the court.

Expert: My name is Doctor Taylor Smith.

Attorney: Where did you earn your degree and do your training?

Expert: I received my Ph.D. from Loyola and did a post-doctoral fellowship in forensic psychology at the University of Massachusetts Medical Center.

Attorney: Would you tell the Judge and jury what your profession is?

Expert: I am a clinical psychologist and I specialize in forensic psychology.

Attorney: Can you briefly describe the specialized training you've received in the area of forensic psychology?

Expert: Yes. I took several classes on forensic psychology while I was in graduate school. I was trained in the use of specific measures and scales that are used in forensic psychology. I conducted several forensic assessments while in graduate school and was supervised by a licensed clinical psychologist who also specialized in forensic psychology. I also completed two years of post-doctoral training with a specialization in forensic psychology.

Attorney: Are you licensed in this state?

Expert: Yes, I have been licensed in this state for over 10 years.

Attorney: Where are you currently employed?

Expert: I teach at Purdue University and have a private practice where I primarily conduct forensic psychological assessments.

Attorney: What are your duties at the University?

Expert: I teach classes at both the graduate and undergraduate level. I also conduct research in the area of forensic psychology.

Attorney: Has any research you've conducted been published?

Expert: Currently, I have been an author on 32 published articles. I also have several articles under review by journals.

Attorney: Your Honor, I move that the court accept Dr. Taylor Smith as a qualified expert in the field of forensic psychology.

Judge: Prosecution, any objections?

Pros.: No, Your Honor.

Judge: Dr. Taylor Smith is admitted as a qualified expert in the field of forensic psychology. Proceed counselor.

SUBSTANTIVE DIRECT TESTIMONY

Attorney: Alright, Dr. Smith, please tell the court what forensic psychology is.

Expert: Forensic psychology is essentially the specialty of psychology that deals with the intersection of psychology and the law. A forensic psychologist uses validated testing instruments and assessment procedures to evaluate different aspects of an individual that could impact legal matters. Two areas that forensic psychologists routinely assess are competence to stand trial and criminal responsibility. Coming to conclusions about these matters can be quite complex and forensic psychologists rely on a variety of materials, including standardized assessment instruments and structured interviews to arrive at their conclusions.

Attorney: Dr. Smith, how did you become involved in this case?

Expert: In June of 2007, I was contacted by the defense and was asked to perform a neuropsychological evaluation on Mr. Wilder.

Attorney: Did you receive any records prior to the evaluation?

Expert: I did receive the police records from the day of the incident as well as Mr. Wilder's past inpatient hospital records. I also looked over Mr. Wilder's employment records, including his employment history, and behavior at work.

Attorney: You mentioned that you reviewed hospital records?

Expert: Yes, Mr. Wilder has been hospitalized three times since he was 22 due to his mental illness.

Attorney: What mental illness does he have?

Expert: Throughout his hospitalizations he has been diagnosed with several different mental illness including Schizophrenia, Schizoaffective Disorder, and Psychotic Disorder – Not Otherwise Specified.

Attorney: Doctor, in your opinion, does Mr. Wilder suffers from a mental illness?

Expert: Yes. Based on my evaluation and review of the records, I believe that Mr. Wilder suffers from Schizophrenia – Paranoid Type.

Attorney: Can you explain for the jury what Schizophrenia – Paranoid Type is?

Expert: Certainly, Schizophrenia is a severe mental illness. It causes severe disruption of almost all mental functioning and is considered perhaps the most serious of all mental illnesses. The core symptoms are hallucinations, which are perceptions that have no basis in reality, such as hearing voices when no one is there. Another core symptom is experiencing delusions, which are false beliefs held with conviction, even though they have no basis in reality. An example of a delusion is a paranoid thought that someone is trying to kill you. Another symptom is thought disorder. Patients who suffer from schizophrenia say they can't get their thoughts straight. They can't think properly or reach logical conclusions. Schizophrenics get confused and their speech is often hard to understand or illogical. Then there is a disturbance in emotional expression; called "constricted emotions" where they don't show the full range of emotions. They appear flat, dull, spacey, or they may show inappropriate emotions.

Attorney: When does this disease generally start?

Expert: Symptoms usually begin to appear during a person's late teens or early 20s. In Mr. Wilder's case, records suggest that he began experiencing symptoms around age 19 and he was first hospitalized when he was 22.

Attorney: Why was Mr. Wilder hospitalized?

Expert: Based on the records and interviews with Mr. Wilder's family, it appears that he was hospitalized the first time because he was experiencing psychotic symptoms. During his first hospitalization he was diagnosed with Schizophrenia – Paranoid Type, stabilized, and released. Mr. Wilder's subsequent hospitalizations were due to the increase of psychotic symptoms that probably resulted from Mr. Wilder not taking his prescribed medication.

Attorney: Is this a common course of the illness doctor?

Expert: Yes, it is. There are usually times in which the patient's symptoms become more intense than usual. With medication, these major symptoms may subside, but the medications cannot control the thought disruption, so they tend to be unable to work or maintain relationships. Schizophrenic patients may become belligerent or even aggressive. So, they have a level of baseline functioning, and then from time to time the severe symptoms of hearing voices or becoming agitated can flare up. It is also quite common for patients with Schizophrenia to stop taking their medications and need to be re-hospitalized.

Attorney: Dr. Smith, do you know whether or not Mr. Wilder was taking his medication on and around May 7, 2007?

Expert: Medical records indicate that he was not taking his medication at that time.

Attorney: Do you know why not?

Expert: According to Mr. Wilder, he had run out of his medication and could not afford to refill his prescription. His family stated that they were not aware he had run out of his medication until after the crime occurred. This is also quite common in patients with Schizophrenia.

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Expert: Based on interviews with Mr. Wilder, his family, and jail personnel as well as a thorough review of his medical and employment records, this appears to be the first incident of violence that Mr. Wilder has committed.

Attorney: I see, and did you have an opportunity to speak to Mr. Wilder about the events of May 7?

Expert: Yes. He was able to describe the event accurately. He stated that he got in an argument with the victim. He also reported that he does not know why he engaged in that argument. He was able to accurately describe the assault and the events that followed.

Attorney: In your expert psychological opinion, what have you concluded about that incident?

Expert: He assaulted the victim at a time when he was off his medication and his psychotic symptoms were at their worst. He could not think or plan. He had no reason. It was a sudden psychotic act.

Attorney: One final question, doctor. Can you render an opinion to a reasonable degree of scientific certainty whether Gary Wilder, because of his mental illness, lacked substantial ability to know or understand the quality and consequences of his actions or that such conduct was wrong during the incident on May 7, 2007?

Expert: I can render an opinion. To the best of my expert scientific knowledge, I believe that at that time, he did not know the quality and nature of his actions or that they were wrong.

Attorney: Nothing further Your Honor.

Judge: Any questions from the prosecution?

Pros Att: Yes, Your Honor.

HIRED GUN QUESTIONS NARRATIVE RESPONSES

Attorney: Dr. Smith, are you being paid for your time here today?

Expert: Yes. I am being paid \$200 an hour. I'm not exactly sure how much time I've spent working on the case, but I would guess that including reviewing records, speaking with attorneys, interviewing third parties such as the defendant's family and jail personnel, evaluating the defendant, and testifying in court today that I've spent somewhere in the neighborhood of 25 hours on this case.

Attorney: So that would be a total of approximately \$5,000?

Expert: That sounds correct.

Attorney: That sounds like a lot of money to make for working on one case. What are you going to do with all the money?

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Attorney: And Dr. Smith, is it correct that you are paid this fee for what you say in court?

Expert: No, I am paid for my time evaluating the defendant and my time in court today. I am paid for my services regardless of my findings.

Attorney: Have you ever disagreed with the attorney that retained you?

Expert: Yes, my findings have not supported the side that hired me on several occasions. On those occasions I was not asked to write a report or testify in court.

Attorney: Isn't it true that being paid this large amount of money could influence your findings?

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Attorney: How many times have you testified in court?

Expert: In all, I've testified 18 times. Over my career I have testified for both sides in both criminal and civil cases.

Attorney: Aren't you even a little concerned that you will not be asked to testify again if you don't provide testimony that supports the attorney that hired you?

Expert: No, my testimony is based solely on my examination of the defendant. If an attorney is not happy with my services they are free to not hire me in the future; however, if they do hire me again they know they will get my honest expert opinion regardless of other factors.

SUBSTANTIVE CROSS EXAMINATION

Pros Att: What symptoms of Schizophrenia has Mr. Wilder suffered?

Expert: Records indicate that prior to his first diagnosis Mr. Wilder had been hearing voices and began to believe that strangers were trying to harm him. He also suffered significant impairments in his attention and concentration abilities. Additionally, he displayed a flat affect, which means that he did not respond in an emotionally appropriate manner to emotional events in his life. Since the symptoms first appeared, Mr. Wilder has experienced minimal symptoms when he has been on his medications.

Pros Att: What about when he wasn't on his medications?

Expert: When not on his medications Mr. Wilder begins to hallucinate and experience delusional beliefs that strangers are trying to hurt him. When he experiences these delusions he has become belligerent and hostile towards individuals.

Pros Att: Belligerent and hostile? Doctor, I thought that you had testified that this was Mr. Wilder's first violent act?

Expert: That is correct. Prior to May 7th there is no indication that Mr. Wilder has ever engaged in violence towards another individual. His prior belligerence and hostility consisted of yelling at people, mainly family members and hospital staff, and then walking away.

Pros Att: So Dr. Smith, is it fair to say that Mr. Wilder's symptoms are getting worse?

Expert: No, I do not believe that is a fair assessment.

Pros Att: Why not doctor?

Expert: Prior to running out of his medication, Mr. Wilder was functioning very well in the community. He was holding down a job and living independently, under the supervision of his family. If anything, I would say that Mr. Wilder has been managing his mental illness much better recently, with the exception of the events of May 7th.

Pros Att: I see doctor. When did you examine Mr. Wilder?

Expert: I saw him over three separate occasions, for a total of 15 hours. In the first session, a clinical history was taken to establish the nature of Mr. Wilder's background, family history, education, work experiences, and his history of mental illness. The next two sessions were spent on psychological testing and more psychological interviews.

Pros Att: Dr. Smith, did you do all of the testing yourself?

Expert: Yes I did.

Pros Att: What type of testing did you do?

Expert: I administered a comprehensive battery of psychological tests and procedures to determine his current level of psychological functioning. These tests are designed to assess a wide variety of areas including the symptoms of his mental illness. I also spent a great deal of time speaking to Mr. Wilder about the days leading up to May 7th and what occurred on that day.

Pros Att: Do you mean that you just asked him some questions, or gave him some problems to solve?

Expert: In the simplest form: yes. But I used psychological measures that have been developed specifically for the assessment of forensic issues. These measures have been tested with large groups of people, up to thousands of people in some cases. And they have been proven to be reliable and valid. That means that the measure provides accurate, consistent results. After all, these tests are an important component of what we forensic psychologists base our conclusions on and they need to be the best measures available.

Pros Att: Okay. Let's start there. Tell me about the evaluation.

Expert: I conducted a thorough assessment of his mental illness to arrive at an accurate diagnosis. To achieve this I used the Structured Clinical Interview for DSM Disorders, or SCID. This interview helped me to arrive at my final diagnosis of Schizophrenia – Paranoid Type. In addition to this interview I also administered the Personality Assessment Inventory, a measure of personality functioning, and the Rogers Criminal Responsibility Assessment Scale, the R-CRAS, a measure designed to help a psychologist determine an examinee's psychological functioning at the time of the crime.

Pros Att: What were the results from these tools?

Expert: The results indicated that Mr. Wilder was suffering from Schizophrenia – Paranoid Type. They also indicated that his personality was consistent with an individual with Schizophrenia. These results may seem redundant, but it is important for forensic psychologists to base their conclusions on results from different sources. Additionally, the R-CRAS indicated that Mr. Wilder did not understand the nature of his acts at the time of the crime or that they were wrong.

Pros Att: Do you feel your testing results are a valid estimate of Mr. Wilder's true functioning?

Expert: Yes, I do.

Pros Att: Nothing further Your Honor.

Judge: The witness may step down.

Appendix AA

Juror Decision Scale (Civil Case)

Instructions: Please answer the following questions as best you can. If you have no opinion, please provide YOUR BEST JUDGMENT. Remember, the defendant is the company and the plaintiff is the person who was injured (Mr. Barrett).

1. Which side do you find in favor of?

Plaintiff (Mr. Barrett)

Defendant (Company)

2. How confident are you in your verdict?

1	2	3	4	5	6	7	8	9	10
Not at all									Very
Confident									Confident

3. On a scale of 1-10, how responsible is the defendant for Mr. Barrett's injury?

1	2	3	4	5	6	7	8	9	10
Not responsible									Completely
at all									responsible

4. On a scale of 1-10, how responsible is Mr. Barrett for his own injury?

1	2	3	4	5	6	7	8	9	10
Not responsible									Completely
at all									responsible

5. Given the incident in question, what percentage of responsibility belongs to the plaintiff, Mr. Barrett, versus the defendant, USA Movers, Inc.?

(These two percentages should equal a total of 100%)

a. _____ % Mr. Barrett's responsibility

b. _____ % USA Movers, Inc.'s responsibility

6. In a dollar amount (ranging from \$0 to \$2,000,000), indicate how much money you believe USA Movers, Inc. should be required to pay Mr. Barrett.

\$_____

7. What factors influenced your decision the most?

Appendix BB

Juror Decision Scale (Criminal Case)

Instructions: Please answer the following questions as best you can. If you have no opinion, please provide YOUR BEST JUDGMENT.

1. What is your verdict? (Please circle)

Guilty

Not Guilty by Reason of Insanity

2. How confident are you in your verdict?

1	2	3	4	5	6	7	8	9	10
Not at all					Very				
Confident					Confident				

3. Where on the following scale would your verdict fall?

1	2	3	4	5	6	7	8	9	10
Definitely					Definitely				
Not Guilty by					Guilty				
Reason of Insanity									

4. If you gave a guilty verdict, what should the level of punishment be?

1	2	3	4	5	6	7	8	9	10
As Lenient					As Harsh				
As Possible					As Possible				

5. If you gave a guilty verdict, how committed are you to your level of punishment?

1	2	3	4	5	6	7	8	9	10
Not at all					Very				
Committed					Committed				

6. What factors influenced your decision the most?

Appendix CC

WCS

Instructions: Rate the expert on a 10-point scale for each of the adjectives listed below. Please circle your answer.

1)	Friendly 10	9	8	7	6	5	4	3	2	Unfriendly 1
2)	Respectful 10	9	8	7	6	5	4	3	2	Disrespectful 1
3)	Kind 10	9	8	7	6	5	4	3	2	Unkind 1
4)	Well-mannered 10	9	8	7	6	5	4	3	2	Ill-Mannered 1
5)	Pleasant 10	9	8	7	6	5	4	3	2	Unpleasant 1
6)	Trustworthy 10	9	8	7	6	5	4	3	2	Untrustworthy 1
7)	Truthful 10	9	8	7	6	5	4	3	2	Untruthful 1
8)	Dependable 10	9	8	7	6	5	4	3	2	Undependable 1
9)	Honest 10	9	8	7	6	5	4	3	2	Dishonest 1
10)	Reliable 10	9	8	7	6	5	4	3	2	Unreliable 1
11)	Confident 10	9	8	7	6	5	4	3	2	Not Confident 1
12)	Well-spoken 10	9	8	7	6	5	4	3	2	Inarticulate 1
13)	Relaxed 10	9	8	7	6	5	4	3	2	Tense 1
14)	Poised 10	9	8	7	6	5	4	3	2	Shaken 1
15)	Self-assured 10	9	8	7	6	5	4	3	2	Not Self-assured 1
16)	Informed 10	9	8	7	6	5	4	3	2	Uninformed 1
17)	Logical 10	9	8	7	6	5	4	3	2	Illogical 1
18)	Educated 10	9	8	7	6	5	4	3	2	Uneducated 1
19)	Wise 10	9	8	7	6	5	4	3	2	Unwise 1
20)	Scientific 10	9	8	7	6	5	4	3	2	Unscientific 1

Appendix DD

HGQ

Instructions: Indicate your level of agreement with each of the following items by writing the appropriate number next to each statement in the space provided. Use the following scale:

1	2	3	4	5	6
Strongly Disagree	Disagree	Slightly Disagree	Slightly Agree	Agree	Strongly Agree

- _____ 1. The expert witness was well-qualified to provide expert testimony.
- _____ 2. The victim should be compensated for his injuries.
- _____ 3. The expert's testimony was very helpful in reaching a decision.
- _____ 4. I believe the testimony presented by the expert witness.
- _____ 5. In my opinion, the testimony of the expert witness was "junk science."
- _____ 6. The expert witness' testimony lacked scientific rigor.
- _____ 7. I found the expert witness to be annoying.
- _____ 8. I think the expert provided valuable information.
- _____ 9. The expert witness was likely paid for his opinion rather than his time.
- _____ 10. The expert witness gave his testimony because he is knowledgeable about psychological problems.
- _____ 11. The evidence presented by the expert was strong.
- _____ 12. The expert witness could likely be paid to give the opposite opinion.
- _____ 13. No amount of money would cause the expert witness to offer a different opinion about this case.
- _____ 14. The expert witness' gave his testimony because he makes money by giving such

testimony.

- _____ 15. The expert witness' testimony was relevant to the case.
- _____ 16. In my opinion, the evidence presented by the expert witness was very convincing.
- _____ 17. The expert witness gave his testimony because he was paid to give his testimony.
- _____ 18. The expert witness would always give the same opinion based on the facts of the case.
- _____ 19. The expert witness' testimony was very persuasive.
- _____ 20. The expert witness' findings would have been different if the other side had hired him.
- _____ 21. In general, expert witnesses usually testify because that is how they make money.
- _____ 22. Psychology is generally a reliable science.
- _____ 23. Generally, expert witnesses will always reach the same conclusion, no matter how much they are paid.
- _____ 24. Expert witnesses, in general, can be paid to give any opinion.
- _____ 26. Psychological science generally provides good information about human behavior.
- _____ 27. Having a psychological expert witness damages a case.
- _____ 25. In general, expert witnesses are "hired guns," meaning that they will give any opinion if the price is right.
- _____ 28. Expert witnesses are likely paid for their opinions.
- _____ 29. Expert witnesses could likely be paid to give the opposite opinion.
- _____ 30. Psychologists are generally competent.
- _____ 31. No amount of money would cause an expert witness to offer a different opinion because their opinions are based on research.

Appendix EE

CLBS

Directions: Please indicate your level of agreement with the following statements by writing the appropriate number next to each statement in the space provided. Use the following scale:

1 2 3 4 5 6 7

Strongly Disagree

Strongly Agree

- _____ 1. There are too many lawsuits in America.
- _____ 2. The law may not be fair, but I am, and I will vote my conscious regardless.
- _____ 3. Corporations are only concerned with worker and product safety because they are afraid of being sued.
- _____ 4. Corporate lawyers don't care about justice, they only care about winning.
- _____ 5. Social costs of excessive jury awards are reason for concern.
- _____ 6. Frivolous lawsuits harm the rest of us by driving up prices.
- _____ 7. People should take responsibility for their actions.
- _____ 8. Plaintiffs are usually hardworking people like me.
- _____ 9. The media harms corporate images.
- _____ 10. Too many people file frivolous lawsuits to try to make money.
- _____ 11. Individuals are intimidated because they don't know legal rules and terms.
- _____ 12. Corporations want to settle quietly to protect their image.
- _____ 13. People suing corporations usually have a valid reason.
- _____ 14. Corporations have the financial means to win.
- _____ 15. Corporations don't adequately inform the public about hazardous products.
- _____ 16. Corporations should have perfect safety/environment records.
- _____ 17. Individuals must take a stand and hold corporations accountable.

- _____ 18. Corporations need to be more restricted by new laws.
- _____ 19. Corporations will try to cover up or deny wrongdoing.
- _____ 20. Lawsuits harm corporations, stock holders, and the economy.
- _____ 21. Jurors can easily be fooled by the best-sounding lawyer.
- _____ 22. Frivolous lawsuits serve to discredit legitimate ones.
- _____ 23. Jury decisions should set new precedent and have a lasting impact on justice.
- _____ 24. The media influences justice more than it should.
- _____ 25. Corporations have media plans to counter any suits brought against them.
- _____ 26. Corporations will try to save their public image at all costs.
- _____ 27. People shouldn't be able to sue for harms they contributed to (e.g. smoking).
- _____ 28. Personal responsibility has decreased significantly in America.
- _____ 29. People should take responsibility for their own negligence in injury-causing incidents.
- _____ 30. Plaintiffs have less chance of winning because they have less money.
- _____ 31. Corporations win more simply because they have better lawyers.
- _____ 32. Corporations can keep cases tied up for years on appeals.
- _____ 33. Large corporations are only interested in profits.
- _____ 34. At one time or another we have all been victims to another person's or company's actions.
- _____ 35. Corporations will win because they have more money.
- _____ 36. Frivolous lawsuits are clogging courts.
- _____ 37. Most corporations are greedy.

Appendix FF

PJAQ

Instructions: This is a questionnaire to determine the legal attitudes and beliefs of different people on a variety of statements. Please answer each statement by giving as true a picture of your own beliefs as possible. Rate your level of agreement with each statement using the 1-5 scale below. Place your response in the space provided for each item.

1	2	3	4	5
Disagree Strongly	Disagree Mildly	Neither Agree nor Disagree	Agree Mildly	Agree Strongly

- _____ 1. If a suspect runs from the police, then he probably committed the crime.
- _____ 2. A defendant should be found guilty if 11 out of 12 jurors vote guilty.
- _____ 3. Too often jurors hesitate to convict someone who is guilty out of pure sympathy.
- _____ 4. In most cases where the accused presents a strong defense, it is only because of a good lawyer
- _____ 5. Out of every 100 people brought to trial, at least 75 are guilty of the crime which they are charged with.
- _____ 6. For serious crimes like murder, a defendant should be found guilty so long as there is a 90% chance that he committed the crime.
- _____ 7. Defense lawyers don't really care about guilt or innocence, they are just in business to make money.
- _____ 8. Generally, the police make an arrest only when they are sure about who committed the crime.
- _____ 9. Many accident claims filed against insurance companies are phony.
- _____ 10. The defendant is often a victim of his own bad reputation.
- _____ 11. Extenuating circumstances should not be considered – if a person commits a crime, then that person should be punished.

- _____ **12.** If the defendant committed a victimless crime, like gambling or possession of marijuana, he should never be convicted.
- _____ **13.** Defense lawyers are too willing to defend individuals they know are guilty
- _____ **14.** Police routinely lie to protect other police officers.
- _____ **15.** Once a criminal, always a criminal.
- _____ **16.** Lawyers will do whatever it takes, even lie, to win a case.
- _____ **17.** Criminals should be caught and convicted by “any means necessary.”
- _____ **18.** A prior record of conviction is the best indicator of a person’s guilt in the present case.
- _____ **19.** Rich individuals are almost never convicted of their crimes.
- _____ **20.** If a defendant is a member of a gang, he/she is definitely guilty of the crime.
- _____ **21.** Minorities use the “race issue” only when they are guilty.
- _____ **22.** When it is the suspect’s word against the police officer’s, I believe the police.
- _____ **23.** Men are more likely to be guilty of crimes than women.
- _____ **24.** The large number of African Americans currently in prison is an example of the innate criminality of that subgroup.
- _____ **25.** A Black man on trial with a predominantly White jury will always be found guilty.
- _____ **26.** Minority suspects are likely to be guilty, more often than not.
- _____ **27.** If a witness refuses to take a lie detector test, it is because he/she is hiding something.
- _____ **28.** Defendants who change their story are almost always guilty.
- _____ **29.** Famous people are often considered to be “above the law.”

Appendix GG

MC (Civil Case)

Instructions: Please answer the following questions to the best of your ability in the space provided. If you are unsure of the correct answer please GIVE YOUR BEST GUESS.

1. Which side called the expert witness? (Please circle response)

Plaintiff

Defense

2. How much was the expert witness in the video paid for his services? _____

3. How many times has the expert witness testified in court? _____

4. Is testifying in court the main source of the expert witness' income? (Please circle response)

YES

NO

If NO, what is the main source of the expert witness' income?

5. What was the expert witness' opinion regarding the plaintiff's cognitive functioning?

Appendix HH

MC (Criminal Case)

Instructions: Please answer the following questions to the best of your ability in the space provided. If you are unsure of the correct answer please GIVE YOUR BEST GUESS.

1. Which side called the expert witness? (Please circle response)

Prosecution

Defense

2. How much was the expert witness in the video paid for his services? _____

3. How many times has the expert witness testified in court? _____

4. Is testifying in court the main source of the expert witness' income? (Please circle response)

YES

NO

If NO, what is the main source of the expert witness' income?

5. What was the expert witness' opinion regarding the defendant's mental state at the time the offense occurred?