

Take Me to Your Leader: An Examination of Authoritarianism as an Indicator of Juror Bias

By Gayle Herde

Voir dire focused only on juror demographics offers very little insight into potential jurors' inherent biases, deeply-held prejudices, and overall world views. Knowing what individuals believe, how they interpret life, and the filters through which they make judgments is of far greater value than knowing where they live and what they do. A large number of studies have been done over many years, finding legal authoritarianism to be a more reliable predictor of juror bias and verdicts than any other *demographic* indicator. Because understanding authoritarianism is so critical, this article defines authoritarianism and legal authoritarianism, explains the relevance to litigation, and offers assistance in identifying people with high levels of legal authoritarianism.

Understanding Authoritarianism

It is important to give the historical context in order to understand the differences in the terms “authoritarianism,” “right-wing authoritarianism” and “legal authoritarianism.” First, the academic foundation of authoritarianism.

The duration and aftermath of World War II brought about an unprecedented amount of scholarly research. Among the social questions being examined was that of the rise of fascism and anti-Semitism (Altemeyer, 1994; Christie, 1991). Research done by a group at the University of California-Berkeley found that persons maligning Jews were ethnocentric and disparaging of nearly everyone else in the “out-group.” This generated additional questions about what makes a bigot tick (Altemeyer, 1994).

Further research produced the California F-Scale (for Fascism) from which was derived information about the personality trait¹ of authoritarianism. The original work was criticized for obtaining data from persons not representative of the general population (e.g., prisoners incarcerated in California, female undergraduates) but a substantial amount of subsequent research confirmed several initial key findings. The most significant of these findings are included below:

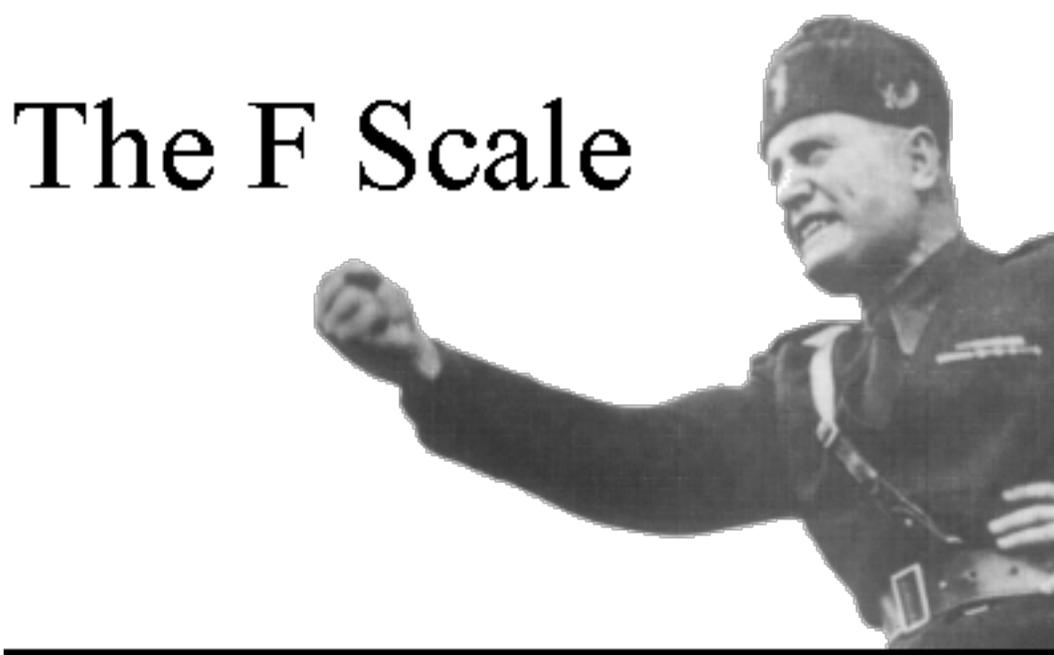
Persons high in authoritarianism are likely to:

- Condemn persons who question and/or deviate from societal norms;
- View the world as black and white;
- Engage in stereotyping of in-group and out-group members;
- Hold conventional or traditional values;
- Wish to be part of an orderly and powerful society;



- Submit to established authority; and
- Ostracize or otherwise act aggressively against out-group members (Butler & Moran, 2007; Narby, et al, 1993).

Altemeyer's measure of right-wing authoritarianism (RWA), developed in 1973, was a substantial refinement of the California F-scale. The term "right-wing" is not used in the economic sense², but in the sense of submission to established authority. Thus, persons in Communist countries who support the hard-line, traditional regimes are right-wing according to this usage, though they may be considered economically "left-wing" (Altemeyer, 1994).



Essentially, authoritarianism may be called a basic *predisposition*, while RWA is a scale of the expression of the attitudes of authoritarianism, such as adherence to convention, submission to authority, and aggression against the out-group (Stenner, 2007).

Persons high in 'right wing authoritarianism' were:

- highly prejudiced
- disliking of most ethnic groups and nationalities, homosexuals, feminists, atheists, and non-mainstream religions

Altemeyer also found that while those high in RWA believe in freedom, they value equality much less.

In the 1990's, Kravitz, Cutler and Brock (1993) set out to continue work begun by Boehm (1968) that separated authoritarianism into three subscales:

- authoritarianism,
- anti-authoritarianism (blaming antisocial acts on societal structure; rejection of authority), and
- equalitarianism (liberal, non-extreme).

The items on the resulting questionnaires (Legal Attitudes Questionnaire "LAQ" [Boehm, 1968] and Revised Legal Attitudes Questionnaire "RLAQ" [Kravitz, 1993]) contained questions focusing on attitudes about the legal system. Kravitz, et al., found that there is substantial overlap between traditional authoritarianism and legal authoritarianism (LA), but more interestingly, they found that *LA correlated more closely with verdicts than standard authoritarianism*. Legal authoritarianism can be defined as "an orientation toward criminal defendants and the legal system that emphasizes crime control over due process" (Skeem & Golding, 2001, p. 584).

Linking Authoritarianism and Litigation

How, then, is knowledge about authoritarianism generally and legal authoritarianism specifically useful to an attorney?

Legal authoritarianism (LA) is an insight into certain jurors' predisposition to vote in a particular way in deliberations. For example, LA "*is one of the most effective predictors of mock jurors' decisions in criminal cases and has been shown to predict insanity decisions in criminal cases*" (Skeem & Golding, 2001, p. 584). I want to make something perfectly clear at the outset of this discussion: in no way am I saying that this is the key that unlocks the minds of the venire. I will say, though, that many studies have been done over many years and LA has been demonstrated to be a more reliable predictor of juror bias and verdicts than any *demographic* indicator (Matlon, 1988; Moran, Cutler & DeLisa, 1994). On that basis, legal authoritarianism (LA) deserves a closer look.



Studying Legal Authoritarianism

Boehm's 1968 study of authoritarianism in the legal setting concluded that persons prone to convict, *even when the evidence was deliberately slanted toward innocence*, scored higher in authoritarianism than persons who acquitted, confirming previous studies showing that high authoritarians tend to be punitive. Authoritarian jurors are more likely to convict in criminal trials and are more severe in their punishments (e.g., Cowan, Thompson & Ellsworth, 1984; Kassin & Wrightsman, 1983; Mitchell & Bryne, 1973; Moran & Cutler, 1989). Authoritarian jurors assign higher probabilities of a defendant's likelihood of guilt (Garcia & Griffit, 1978). Women high in LA are more likely to convict than those low in LA (Moran & Comfort, 1982). When creating the Revised Legal Attitudes Questionnaire (RLAQ), Narby et al. found LA to be a reasonable gauge of proneness to convict and stated outright that "measures of legal authoritarianism may be valuable in the identification and dismissal of potentially biased jurors" (1993, p. 40). Just last year, Butler & Moran (2007) found that persons that were "death-qualified" for capital murder trials were high in LA.

Applying Legal Authoritarianism

While case-relevant *attitudes* are highly significant in understanding a potential juror's mindset, personality traits, such as authoritarianism, also strongly influence juror decisions. Consider the following:

- Authoritarianism has been found to correctly predict verdicts more often than any other trait measured (Moran, Cutler & DeLisa, 1994).
- High authoritarians (HA) by nature will favor the prosecution's witnesses and evidence in a criminal trial. The prosecutor, police officer, medical examiner, and others have powerful positions of authority and carry the heady title "officer of the court."
- Jurors high in LA may be inclined to deny a defendant his or her civil rights (e.g., presumption of innocence, burden of proof) in order to convict a defendant, thereby meeting the definition of a biased juror (Narby, et al., 1993).
- High authoritarians are likely to acquiesce to the perceived authorities in the jury room, such as a police officer, medical professional, attorney, CPA, or others who have superior knowledge of and/or experience relating to the subject, no matter how tangential.
- In civil trials, persons high in LA care as much or more about the *character* of the defendant and witnesses as they care about the evidence. They will resonate with voir dire questions about traditional or family values, personal accomplishment, family and national security, and conservative religious organizations. Interact with them about what groups they belong to and the nature of their involvement.

Identifying Authoritarian Jurors

Authoritarians identify with the majority. If your client belongs to an "out-group" (e.g., racial or ethnic minority; sexual orientation; "adult" industry or other questionable employment), especially if it is relevant to the trial, you want to locate and eliminate the high authoritarians.³ On the other hand, if your client is an unequivocal member of "mainstream society," you will want to emphasize those characteristics for your high-authoritarian jurors.

The following are a few of the statements from the Revised Legal Attitude Questionnaire, which, when jurors are in agreement, have been found to effectively identify persons high in legal authoritarianism (Kravitz, Cutler & Brock, 1993):

- Too many obviously guilty persons escape punishment because of legal technicalities;
- A lot of recent Supreme Court decisions sound suspiciously Communistic;
- The law coddles criminals to the detriment of society; and
- Upstanding citizens have nothing to fear from the police.

Additional questions that might be useful for locating high authoritarianism in jurors include:

- How would you feel if a family member wanted to marry someone who is [African-American, Muslim, an exotic dancer, etc.]?
- Have you ever been invited to the home of someone who is [homosexual, Hispanic, Jehovah's Witness, etc.]?
- Is it justifiable to suspend a person's civil rights in the interests of national security?
- How do you feel about the government using wiretaps and other types of electronic surveillance in investigating potential criminal activity?

Conclusion

Jurors high in legal authoritarianism are submissive to conventional moral authority and require predictability in their world. They prefer a powerful, orderly society with well-defined rules. Conformity is the order of the day and they tend to stereotype others as a way of establishing "boxes" for their assessments. They are more likely to condemn those who question societal norms and deviate from those norms. Academic research demonstrates that questions regarding legal authoritarianism may be useful in both identifying juror bias and for predicting some types of verdicts, particularly those in cases involving parties who are members of an "out-group" or violations of social norms.

Endnotes

¹A *trait* is distinguished from a *state* by its enduring nature. A state refers to an emotional condition that is temporary, while a trait is stable across situations.

² In the sense of wanting to limit governmental involvement in the economic and business affairs, also known as *laissez faire* conservatism.

³ However, you must beware of asking questions whose answers appeal to social acceptability needs, such as "who of you would have a problem giving my client a fair hearing just because he's black (gay, a member of the Communist party, etc.)?" Only the most hard-nosed bigots (and more likely those trying to get out of serving) would answer "yes" to this type of question.

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Gayle W. Herde, Ph.D. [gherde@integrityservicesgroup.com] is a litigation and communication consultant with Integrity Services Group (www.integrityservicesgroup.com) based in the Denver, Colorado area. She specializes in mock trials, focus groups and survey research for the legal and corporate communities and has given numerous Continuing Legal Education seminars on presentation skills. She has an extensive background in medical malpractice, personal injury and patent litigation. Future articles in *The Jury Expert* will examine the correlation between religiosity, political persuasion, and authoritarianism.

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-- [Rita R. Handrich, PhD](#)



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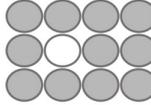
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Vince Plunkett of *Persuasium Consulting*

Editors

Rita R. Handrich, PhD — Editor
rhandrich@keenetrial.com

Kevin R. Bouilly, PhD — Associate Editor
krbouilly@persuasionstrategies.com

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