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JUDGING BY THE NUMBERS: AN EMPIRICAL STUDY OF THE POWER OF STORY

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This document describes the mechanics of a study conducted from January through March, 2009, in which volunteer appellate judges, law clerks, appellate practitioners and law professors were asked to read two briefs on the same side of a case. Following are the instructions e-mail to every participant in the study:

Instructions

Welcome to the 2008 Persuasion Study, and thank you for volunteering.

This study is an attempt to measure empirically what technique or techniques might lead to more persuasive writing. We have recruited a group of appellate judges, staff counsel for appellate courts, appellate law clerks, appellate practitioners and law professors to participate in the study. All participants will be asked to review a pair of briefs from either the Petitioner or the Respondent side of a fictional case, set in a fictional jurisdiction. Once you have read the two briefs, you will be asked to visit an online website to fill out a brief survey and to record which of the two briefs you found more persuasive.

Each of the pairs of briefs have been written with different persuasive strategies. You have been randomly assigned one pair of briefs.

The Case

At one level, the case involves a zoning dispute in a suburban community. However, the dispositive question in the case involves the constitutionality of a county ordinance which prohibits corporations from spending money to try to influence public opinion in any way. The matter is pending before the Supreme Court of West Dakota, which has granted review only on the issue of whether or not the county ordinance violates either the free speech clause of the First Amendment to the United States Constitution, or an equivalent provision of the West Dakota Constitution.

Materials for the Study

The materials for this study consist two briefs, a copy of the county ordinance in question, and this set of instructions. All participants have received this set of

instructions and the ordinance, but the set of briefs you receive will depend on which side you have been randomly assigned to.

The briefs are somewhat unrealistic in that, in order to save space and reading, there is no Appendix or Record, other than the copy of the fictional county ordinance at issue in the case (which is attached to this set of instructions). Because there is no record, there are no citations to the record anywhere in the briefs. you should assume that all facts recited in these briefs are accurately reported and are supported in the record of the court below.

All of the citations to West Dakota statutes, its Constitution and West Dakota case law are fictional, although they are realistic; they have been excerpted, renamed, and occasionally modified slightly from actual statutes, Constitutions or cases from a variety of states. All references to the United States Constitution, cases of the United States Supreme Court, and secondary authorities are real. The factual scenario is, of course, wholly fictional.

Instructions for Completing the Study

Please read the two briefs that have been sent to you with these instructions. Then go to the following website to answer a brief questionnaire about the briefs:

<http://tinyurl.com/persuasionstudyquestionnaire>

At that site you will need your Participant Number, which was sent to you by e-mail when you got confirmation of your participation in the study as well as with the delivery of the briefs and these instructions.

The survey site will ask a few demographic questions, primarily to assist the Principal Investigator in determining whether the sample is representative or not. You will then be asked several questions about the brief. First, you will be asked to report which brief you found more persuasive. Second, you will be asked to score the persuasiveness of each brief, or parts of the brief, on a scale of 1-5. There will also be an optional text field in which you can record observations or comments if you so choose. *Please do not include any information in this box which could identify you, however.*

Please direct any questions to the Survey Administrator at appellatebriefresearch@yahoo.com. Please note that the Survey Administrator is not permitted to disclose the identity of any participant at any time to the Principal Investigator of this study.

Once again, we thank you for participating in this study.

Survey Questions

Following is the list of questions that participants in my online survey were asked after they read the briefs.

1. Participant number
2. Type of participant (check one)
 - a. Appellate judge
 - b. Appellate court staff attorney
 - c. Law clerk
 - d. Appellate practitioner
 - e. Law professor
3. Are you (choose one)
 - a. Active
 - b. Retired
4. Length of service in the profession identified in question 2
 - a. 0-4 years
 - b. 5-9 years
 - c. 10-14 years
 - d. 15-19 years
 - e. 20-24 years
 - f. Over 25 years
5. Gender
 - a. Male
 - b. Female
6. Region
 - a. 1 (Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands)
 - b. 2 (Alabama, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia)
 - c. 3 (Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Wisconsin)
 - d. 4 (Colorado, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma, Texas, Utah, Wyoming)
 - e. 5 (Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington)
7. Question 7 is for judicial participants only. Level of court you serve (or formerly served) on.
 - a. State appellate
 - b. Federal appellate

8. Question 8 is for law professor participants only. Choose the option which best describes your teaching responsibilities:
 - a. I am (or was) a full-time professor whose primary teaching responsibilities are teaching legal writing and analysis.
 - b. I am (or was) a full-time professor who teaches a complex mixture of live-client clinic courses, legal writing and analysis courses, and/or other courses.
 - c. I am (or was) a part-time professor.
9. Question 9 is for practicing attorney participants only. Choose the option which best describes your practice:
 - a. More than 50% of my practice involves (or involved) writing briefs and arguing cases in appellate courts.
 - b. More than 25%, but less than 50%, of my practice involves (or involved) writing briefs and arguing cases in appellate courts.
 - c. Less than 25% of my practice involves (or involved) writing briefs and arguing cases in appellate courts.
10. Which of the two briefs you read was more persuasive for the position being advocated?
11. On a scale of 1 to 5 (with 1 being not very persuasive and 5 being very persuasive), how would you score each brief overall?
12. On a scale of 1 to 5 (with 1 being not very persuasive and 5 being very persuasive), how would you score the recitation of the facts of each brief?
13. On a scale of 1 to 5 (with 1 being not very persuasive and 5 being very persuasive), how would you score the argument section of each brief?
14. Please provide any final comments you would like to make about the briefs you read (things that worked particularly well, things that did not work well at all, or any other observations that you would like to make about either brief).