



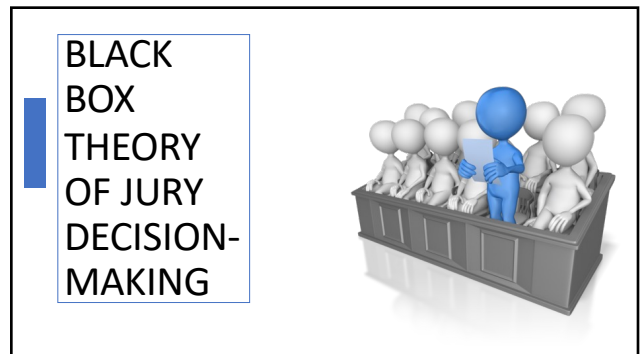
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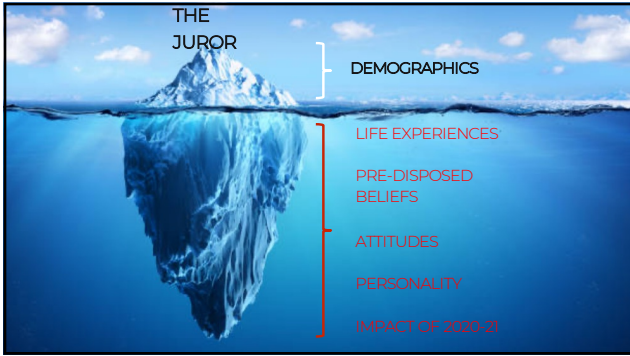
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What did we find?

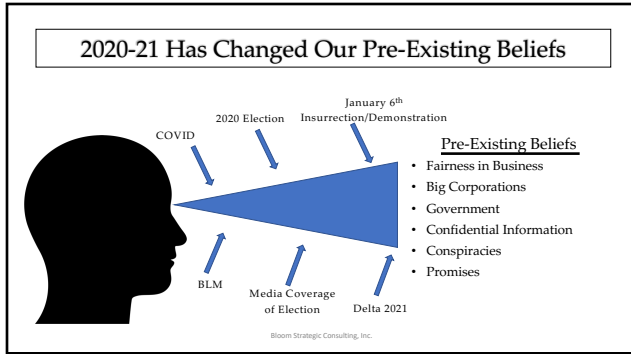
A desperate need for, but a huge lack of:

- Certainty
- Compassion
- Accountability
- Expertise

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This slide features a large orange semi-circle on the left side. The text 'What did we find?' is positioned to the right of the semi-circle. Below it, the phrase 'A desperate need for, but a huge lack of:' is followed by a bulleted list of four items: Certainty, Compassion, Accountability, and Expertise. A small yellow dashed line is located in the bottom right corner of the slide. The company name 'Bloom Strategic Consulting, Inc.' is printed in small text at the bottom center.

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### How 2020 affected Worldviews

- Political Polarization – go with political alliance
- Fake News Has Infected Everything
- Information Speed & Amount – too much
- Social Media as Echo Chamber- No Consequences
- Desire for Certainty in Uncertain Times
- Rise of Conspiracy Theories to fill in Blanks
- Financial Hardships create an “us vs. them”
- Manifestation of the “Trump Effect”
- Distrust of Experts/Authority

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Have we arrived at a

**CRISIS of TRUTH?**

FACTS DON'T MATTER!

*"I'm sorry, Jeannie, your answer was correct, but Kevin shouted his incorrect answer over yours, so he gets the points."*

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# The Psychology of Why

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Naïve Realism

The feeling that one's personal perception of the world is the truth

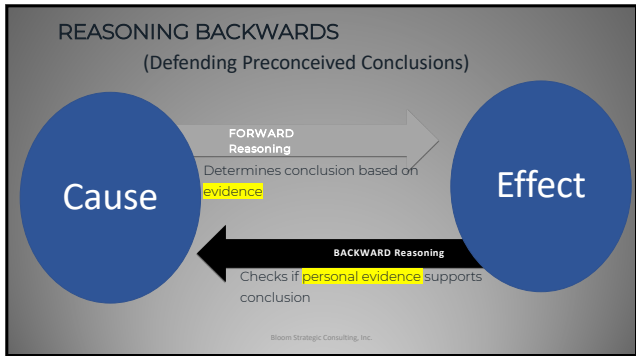
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2020 Psychology

Most people do not really want the truth. They just want constant reassurance that what they believe is the truth.

Spirit Science

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**Confirmation Bias**

Tendency to believe information that comports with existing attitudes, beliefs, and experiences, and discount information which does not.


The background features a dark blue sky with the word "NO" repeated in white, scattered across the scene. Below the sky is a silhouette of a forest of evergreen trees against a dark horizon.

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**I'm with the Ultracrepidarian**

**Ultracrepidarian** 

Adjective: person who offers opinions beyond their own knowledge. This word is used in situations when someone is speaking as an authority on a subject on which they have only limited knowledge.

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The Impact

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Then: How do I get out?

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Now: I want to sit on a jury

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Then: Frivolous lawsuits

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Now: Corporations have  
all the money and can do  
what they want

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Then: The Defendant  
follow policy – they WIN

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Now: The Defendant  
should change the policy  
– they LOSE

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Then: Experts are for real

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Now: Death of the Expert-  
one's own beliefs are more  
powerful than another's  
expertise

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Then: Damages  
ingredients – “make  
them mad, make them  
sad”

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Now: Another  
ingredient – “hold  
them accountable”

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Then: What does the  
Defense have to say about  
the money

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Now: A Defendant offering an alternative damages calculation is an admission of wrongdoing

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### Defendant Damages



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### Questioning Damages



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Bottom Line:  
Chances for Jury Nullification  
are Elevated & Dangerous

"Tyranny of the should's"

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# What Kinds of Cases are Most Impacted?

1. Employment
2. Patent & Trade Secret
3. Negligence
4. Defamation/Media

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## Recent Texas Verdicts

|            |                 |                           |        |
|------------|-----------------|---------------------------|--------|
| • June '21 | Ft Bend, TX     | Wrongful Death            | \$220M |
| • July '21 | San Jacinto, TX | Wrongful Death            | \$10M  |
| • Aug '21  | Bell, TX        | Wrongful Death            | \$5M   |
| • Sept '21 | Tyler, TX       | Dog bite                  | \$2.5M |
| • Oct '21  | Reeves, TX      | Back Injury               | \$21M  |
| • Oct '21  | Houston, TX     | Paraplegia                | \$352M |
| • Oct '21  | Plano, TX       | Gunshot Wound             | \$85M  |
| • Nov '21  | Houston, TX     | Premise Liability/Assault | \$45M  |
| • Nov '21  | Ft. Worth, TX   | Burn                      | \$8M   |

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# What Can We Do

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# How Does this Impact My Themes?

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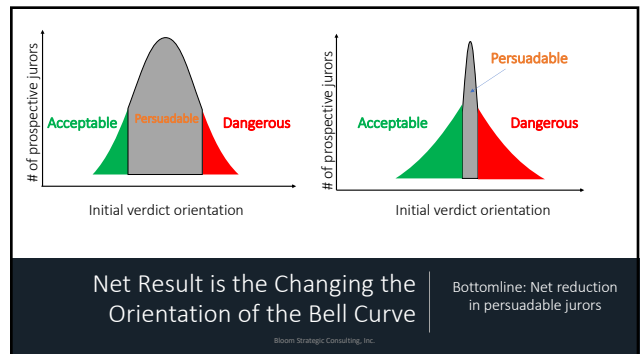
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What Questions are Predictive Now from mock review–

1. If given the chance to lie or cheat, most people would?  
Strongly Agree – Agree – Disagree - Strongly Disagree
2. Lawsuits are necessary to keep companies honest when doing business?  
Strongly Agree – Agree – Disagree - Strongly Disagree
3. Are you more guided by spirit or letter of the law?
4. Are you detail-oriented or a big picture thinker?

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What's Predictive Now –

5. Do you feel like you are someone who worries a great deal about getting taken advantage of?  
Strongly Agree – Agree – Disagree - Strongly Disagree
6. Do you believe that individuals or small businesses have little chance of protecting their interests when they conflict with large corporations?  
Strongly Agree – Agree – Disagree - Strongly Disagree

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How Does this  
Impact Witness  
Preparation?

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How Does this  
Impact Witness  
Preparation?

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### Post 2020 Jury Pool Summary



- Fewer questionable jurors
- Different definitions of truth (degrees of truth, truthiness, alternative facts)
- Credibility of the messenger is key
- Increased desire to figure it out on their own
- Increase in desire to serve on the jury
- New themes: Accountability
- Temporary advantage for Plaintiffs in certain cases

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# What is the Same?

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## Notecard Justice

I voted for the:

Plaintiff/Prosecution  
Defendant

Because:

\_\_\_\_\_

\_\_\_\_\_

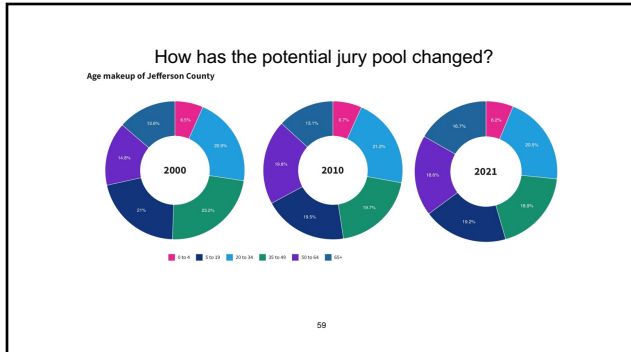
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# THANK YOU!

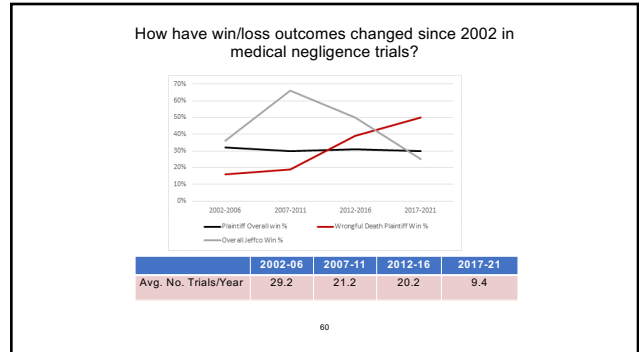
JASON S. BLOOM, M.A.  
JURY CONSULTANT  
BLOOM STRATEGIC CONSULTING, INC.  
DALLAS, TX  
[www.bloomstrategy.com](http://www.bloomstrategy.com)

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### How have Alabama jury awards changed since 2002 in medical negligence trials?

| Year    | Average Plaintiff Award | Average Wrongful Death Award | Average Jeffco Award |
|---------|-------------------------|------------------------------|----------------------|
| 2002-06 | \$1,588,060 (47)        | \$4,086,363 (11)             | \$1,341,092 (14)     |
| 2007-11 | \$2,354,578 (32)        | \$5,366,363 (11)             | \$2,412,500 (11)     |
| 2012-16 | \$7,823,307 (31)        | \$10,786,842 (19)            | \$3,313,502 (10)     |
| 2017-21 | \$4,108,285 (14)        | \$5,408,888 (9)              | \$2,750,000 (2)      |

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- ### Notable verdicts since 2017:
- ♦ **Johnson v. Bednarski (Lee County 2019) → \$9,000,000 (remit \$6.5M)**  
College student died of PE caused by complications of hormonal birth control after missed test showing higher risk and clinical symptoms of PE.
  - ♦ **Sledge v. Bilton (Tuscaloosa County 2019) → \$30,000,000**  
Delay in surgery to treat gunshot wound caused death after on-call surgeon refused to cancel non-emergent procedures.
  - ♦ **Williams v. Pulmonary Med. (Shelby County 2018) → \$3,000,000**  
Failure to diagnose metastatic lung cancer causing death. Largest award in Shelby County history.
  - ♦ **Smith v. Ford Motor Co. (Dallas County 2019) → \$151,791,000**  
Product liability claim by passenger in Ford Explorer that was paralyzed in rollover crash.
  - ♦ **Dailley v. Perfect Place (Jefferson County 2018) → \$30,300,000**  
Two-year old suffered broken skull when another child tripped over cord at daycare, causing TV to fall on him as he slept.
  - ♦ **Albritton v. Merritt Equipmt. (Lowndes County 2017) → \$16,800,000**  
Product liability claim by estate of logging truck driver killed after his load shifted and truck overturned.
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### What is happening in 2022?

- The flood of expected trial activity has not come to fruition (yet).
  - Through the end of September, there were 10 reported jury verdicts across the state in medical negligence trials (6 of the 10 have been for wrongful death). Only one trial has resulted in a plaintiff's verdict.
  - The lone plaintiff's verdict resulted in an award of \$3.5 million by a Mobile County jury. It is currently on appeal. The case involved a death caused by opioid overdose following thumb surgery.
- What does the future hold for Jefferson County jury attitudes in medical negligence trials?

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