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Discover the Power of *Conceptual Persuasion*℠

By Karyn J. Taylor

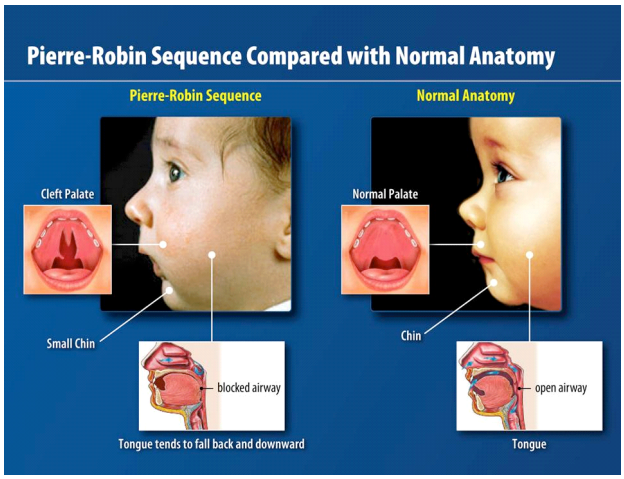
There is only one true measure of a good legal graphic: does it persuade the trier of fact to "buy in" to your client's point of view? That, after all, is the point of *any* courtroom presentation, and it makes no sense to spend your time (or your client's money) creating graphics that won't have a positive impact on the judge's opinion or the jury's vote.

Even with the best of intentions, however, many graphics fail to deliver. They simply have not been designed to change hearts and minds. To discover where the problem lies, let's look at the panoply of legal graphics.

The most commonly produced type of courtroom graphic is the reiterative graphic. As its name implies, it reiterates key case information.

Reiterative graphics are great for:

- Presenting statistics or tracking trends,
- Providing tutorials on virtually any subject, or
- Condensing case facts and information into one simple image that jurors can easily absorb and remember.



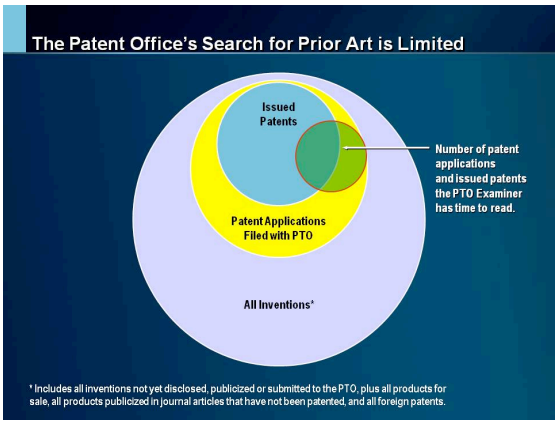
But reiterative graphics rarely convince judges or juries to see the case through your client's eyes. The reason is simple: reiterative graphics typically appeal only to the intellect.

To have an impact on the verdict, you must forge an *emotional* bond between fact finders and your client. That's the job that conceptual graphics are designed to do.

Conceptual graphics...

- Deliver your key case themes & messages
- Reinforce your case story
- Translate your case story into indelible images, and ideally...
- Provoke an *emotional* response

A graphic that delivers your key case themes or reinforces your case story is of obvious value. So, too, is a graphic that turns words or concepts into memorable images.



But why is provoking an emotional response so critical? Because decades of research have shown that people are ruled by their emotions, not their intellect.

In fact, virtually *every* decision we make is dictated by one subconscious but universal need: to feel good about ourselves. Whether we're making major life decisions (what career to pursue; which house to buy; whom to marry), or are simply making everyday choices (which suit shall I wear?), we are subconsciously satisfying our need to be able to look ourselves in the mirror and feel good about who we see.

Of course, we *think* we're basing our decisions on rational thought and clear-eyed intellectual evaluation. We often tout product benefits and features as proof. But psychologists -- and advertisers -- know better. Madison Avenue regularly exploits our emotional needs in order to seduce us into buying all kinds of things we don't physically need, perhaps can't afford, but just *have* to have.

In court, judges and jurors are ruled by emotion too. No matter how objective they vow to be -- and no matter how high the "mountain of evidence" you build -- in the end, a judge will rule, and jurors will vote, not with their heads, but with their hearts. Both may quote the law, cite the facts, or tout the evidence as justification, but they will find for your client only when they can feel good about *themselves* in doing so. The process is largely subconscious, but self-interest trumps intellect every time.

Conceptual graphics are designed to capitalize on that viewer self-interest. They do so by strategically exploiting the viewer's worldview.

A worldview is the sum of all the beliefs, prejudices, and attitudes a person has accumulated over a lifetime. It is the prism of preconceived notions through which a person perceives reality -- the mindset with which he/she travels through life.

While each person's worldview is a function of his/her cultural, socio-economic, educational, religious, and racial background, his/her psychological make-up, and his/her life experiences, there are many widely held beliefs that people share.

COMMONLY HELD BELIEFS

- **Punishment should fit the crime.**
- **A promise made should be a promise kept.**
- **An apple doesn't fall far from the tree.**

When your case story and your graphics reinforce, confirm, or validate what fact finders already believe, your odds of winning increase dramatically. The trick is in knowing exactly *what* fact finders believe relevant to the specific issues in your case.

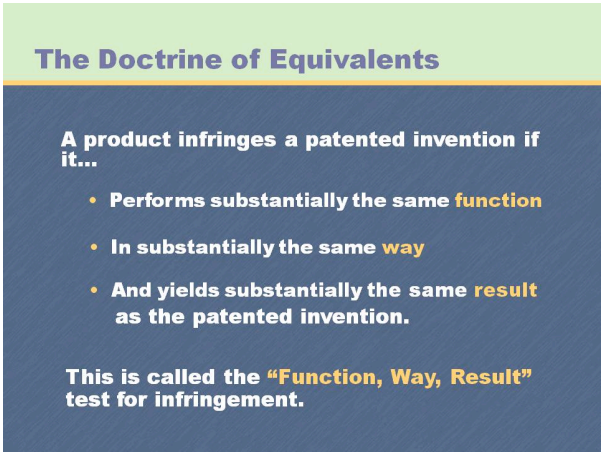
If you're facing a bench trial, you must research prior rulings (or discreetly poll court personnel), to gain insight into the judge's point of view on your type of case. If you're facing a jury trial, formal jury research is the best way to determine jurors' worldviews. Research is indispensable in complex civil litigation, but is advisable in simpler cases too. Many a litigator has lost a case assuming that jurors' beliefs mirrored their own.

Whether you do formal research, or rely on your instinct and experience instead, winning hinges on your ability to identify *which* commonly held belief "trumps" another in fact finders' minds.

For example, in a criminal defense case, jurors who believe that "Murder is morally wrong" might still acquit because they more strongly believe that "Accidents happen," "Love makes us do foolish things," or that "Insane people can't be held accountable for their actions."

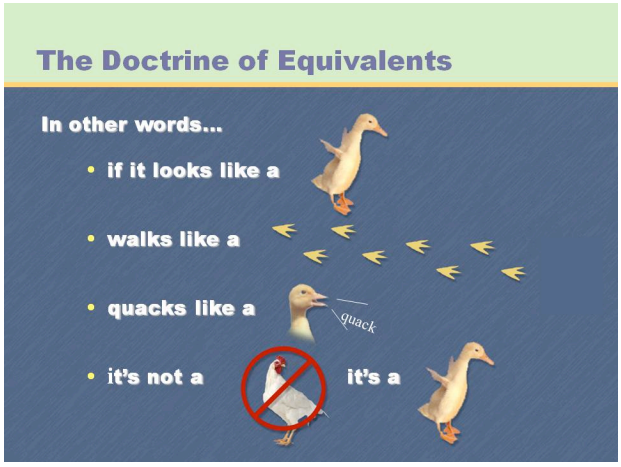
Once you've determined your fact finders' beliefs, conceptual graphics can capitalize on and reinforce those beliefs.

In a patent infringement case, for example, the verdict might hinge on jurors' ability to comprehend the Doctrine of Equivalents. If you take the reiterative approach and merely state the doctrine, certainly *some* of the jurors will get the message.



The Reiterative Approach

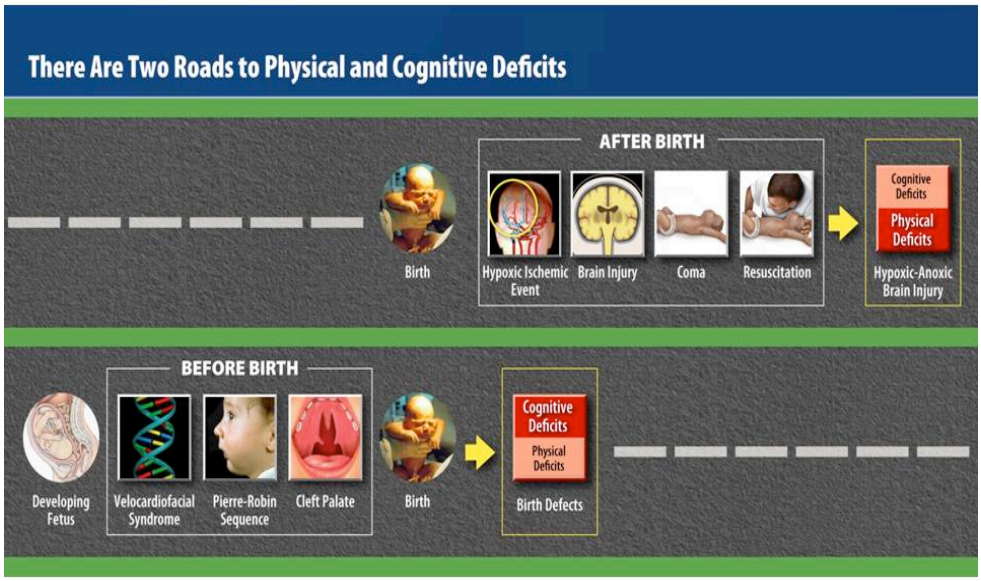
Translate those words into an image that exploits a commonly held belief, however, and jurors will not only "get" the message, they will more likely adopt it as their own.



The Conceptual Approach

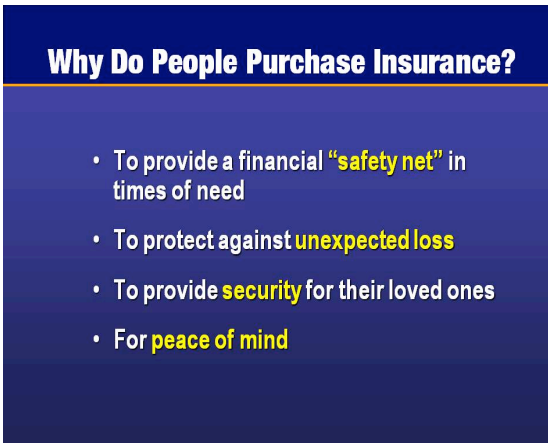
Conceptual graphics need not always be so explicit to be effective. They can be just as powerful when their underlying themes are not stated, merely implied.

In a medical malpractice case, for example, it was imperative that jurors realize that a baby's cognitive and physical deficits may not have been caused by doctors' mistakes. The graphic below reinforced the commonly held belief that there is usually more than one way that something can occur ("Many roads lead to Rome"), and opened jurors' minds to the possibility that Mother Nature, not the doctor, was at fault.

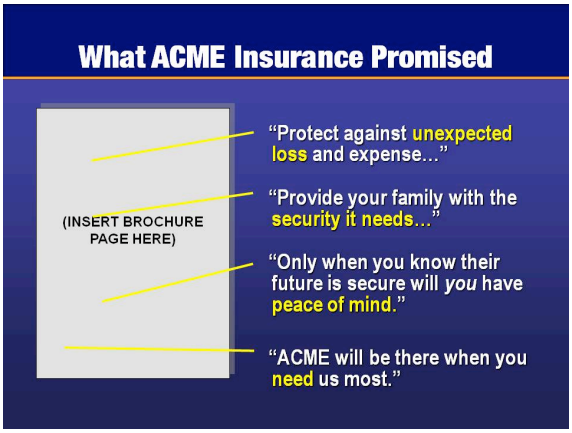


While conceptual graphics typically use strong visuals to evoke a visceral response, words alone can be used to trigger emotions.

For example, in representing the Plaintiff in an insurance bad faith case, you might explain the purpose of health insurance in generic terms during Opening Statement...

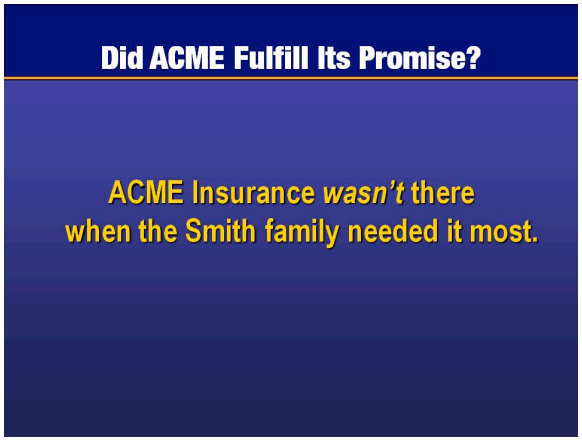


Reiterative graphic designed for Opening Statement



Documentary evidence presented in a reiterative graphic for Case-in-Chief

…use Case-in-Chief to establish (through witness testimony and documentary evidence) that the Defendant's sales brochures made similar promises…



Conceptual graphic designed for Closing Argument

...then pull out the stops in Closing Argument by using a conceptual graphic that delivers your key case theme with an emotional kicker.

What you have done, strategically, is to...

(1) Use Opening Statement to exploit commonly held beliefs and trigger juror self-interest; *("Yes, that's why I buy insurance.")*

(2) Introduce documentary evidence within that (now *personalized*) context; and...

(3) "Seal the deal" in Closing Argument by unleashing jurors' visceral fears of betrayal and abandonment. *("How would I feel if my insurer did that to my family?")*

You have not only framed the key issue to your client's advantage, but you've raised the stakes for jurors, forcing them to "put some skin in the game." Jurors will now be more likely to *care* about the outcome of the case, and will be much more likely to identify with your client's plight.
When used in tandem with conceptual graphics, "reiterative" graphics can thus function in a conceptual way, both triggering the visceral response *and* providing the intellectual rationale fact finders need to justify their emotionally-

based decisions. The Opening Statement "reiterative" graphic in the sample above has done exactly that. It is a conceptual graphic masquerading in reiterative form.

Would judges or jurors be as ready to "buy in" to the Plaintiff's point of view if *only* reiterative graphics were used? Not likely. Information alone rarely prompts a change of heart. Conceptual graphics exploit a point of view – the *viewer's* worldview – providing the emotional "hook" that compels fact finders to vote in your favor and feel good about doing so. They have found validation because you have confirmed what they already "know" or believe.

The strategic use of reiterative and conceptual graphics is at the heart of *Conceptual Persuasion.*SM Use it to change minds *and* hearts, and you'll maximize your odds of winning every case, every time.

Karyn J. Taylor (*thestrategicimage@ca.rr.com*) is a trial consultant and visual storyteller based in Los Angeles. A former broadcast journalist (*60 Minutes, 20/20, Frontline)* trained to make the complex compellingly simple, she helps clients maximize the persuasive power of testimony, argument, and evidence. To learn more about Karyn and her approach to maximizing your odds of winning, visit www.thestrategicimage.com. To use the copyrighted graphics in this article for your trial, mediation, or arbitration, please contact the author.

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Anticipate and Influence Juror Reactions to Successful Women

By Elizabeth J. Parks-Stamm

How do male and female jurors react to a woman who has been successful in a traditionally masculine domain?

Research in social psychology consistently finds that both males and females characterize women who have been successful in male-dominated fields as cold, unlikable businesswomen. However, the motivation behind this derogation of successful women appears to differ for males and females. Based on recent research findings, this article focuses on the role of self-protection in women's derogation of successful women and discusses how it may impact jurors' reactions to successful female lawyers, plaintiffs, or defendants in the courtroom.

Perceptions of Successful Women

Stereotypes impact women in traditionally-male occupations (e.g., management, engineering, and law) in two ways. First, descriptive gender stereotypes influence perceptions of women's competence and the suitability of women for these positions. The characteristics thought to be associated with success in traditionally-male positions (e.g., toughness, confident decision-making, leadership skill) do not mirror the characteristics stereotypically associated with women (e.g., warmth, emotionality, incompetence). These descriptive gender stereotypes can impact women by reducing their perceived suitability for positions typically held by men (Eagly & Karau, 2002; Heilman, 1983).

What happens when women overcome these descriptive stereotypes by demonstrating that they are highly competent and successful in a male-dominated field? Stereotypes influence perceptions of women in a very different way when their success in these domains is clear. Heilman and colleagues (2004)

asked research participants to read about a woman in a stereotypically male position whose competence and success was either known or unknown. Consistent with descriptive gender stereotypes, researchers found that when her competence was unknown, participants assumed her to be less competent, but nicer, than a similarly-described man. However, when participants read about a woman who was clearly competent and successful in this traditionally male position, she was then assumed to be selfish, insensitive, cold, and manipulative—characteristics directly opposed to the female stereotype (Heilman, Block, & Martell, 1995). Researchers found no differences for the personal evaluations of competent men. Women, but not men, who are portrayed as highly successful in traditionally male work domains are disliked and derogated in terms of their interpersonal qualities – what Heilman and colleagues call penalties for success.

Further research showed that it is possible to block this derogation of successful women. When participants were given evidence that a successful businesswoman was helpful and supportive ("communally-oriented"), perceivers no longer disparaged her or disliked her. This suggests that these evaluations of successful women are based on an inference about their likely personal qualities and their likeability, and can be blocked when communal information is provided (Heilman & Okimoto, 2007).

What Motivates Penalties for Success?

Recent research has examined women's motivation to derogate fellow women who have overcome descriptive gender stereotypes. Why would women disparage a woman who has achieved success in a traditionally-male position? Shouldn't they embrace her as a woman who proves the negative stereotypes about women's incompetence are untrue?

We proposed that a successful woman is threatening to other women, because she represents an upward social comparison (i.e., a high standard to judge oneself against). Men, on the other hand, can easily disregard comparisons with successful women, because similarity is needed for social comparisons and gender is a particularly salient category (Brown, Novick, Lord, & Richards, 1992; Festinger, 1954). We proposed that women are therefore motivated to see a successful woman as a cold, manipulative, unlikable businesswoman (i.e., not a "real woman") to accentuate the differences between them and her, and thereby avoid the negative self-perception that comes from comparing themselves with her.

People often find ways to make comparisons with more successful people irrelevant to protect themselves (e.g., "He got the promotion ahead of me, but he doesn't have a social life"; "She makes more money than I do, but her office is in New York"). A classic psychology experiment provides an example: female students who view pictures of more attractive peers usually show subsequent costs in their own attractiveness self-ratings. However, calling the attractive women in the pictures "professional models" (as opposed to other students), eliminated the negative effect on female students' own attractiveness self-ratings (Cash, Cash, & Butters, 1983). People can see a professional model as belonging to a separate category, and is therefore an irrelevant comparison for a typical student. In the same way, we thought that women could use this cold, manipulative businesswoman description to make a successful woman an irrelevant comparison for them.

If so, women (but not men) should judge themselves to be more competent when they can derogate a successful woman than when they are blocked from derogating her. We tested this in a recent study (Parks-Stamm, Heilman, & Hearns, 2008). Male and female participants read about a highly successful woman in a managerial position at a financial company, and then rated her and themselves. We blocked the negative inference about her personal qualities in half of the participants by providing communal information (i.e., examples of her being supportive and understanding), whereas the other half read generally positive information about her. Both male and female participants liked her less and rated her as significantly more abrasive, pushy, insensitive, tough, unkind, manipulative, selfish, and cold when no

communal information was provided. But more interesting was how men and women then saw themselves. Men's competence self-ratings in the two conditions did not differ depending on whether or not they were able to derogate, or disparage, the successful woman. Either way, they saw themselves as very competent. On the other hand, women benefited from derogating the successful woman. Women rated themselves as significantly more skillful, capable, and competent when they were able to derogate her compared to when they were blocked from derogating her (and therefore could not avoid the upward comparison). This demonstrates that when women can characterize a successful woman as unfeminine and unlikable, they can exclude her as a standard of comparison and protect their self-evaluations.

In a separate study, we tested whether this process was motivated; that is, if it only occurs when women feel personally threatened by the other's success (Parks-Stamm, Heilman, & Hearns, 2008). When women were first given positive feedback about their own managerial potential (so another woman who had succeeded as a manager would not be threatening), they no longer took the opportunity to derogate her—in fact, their evaluation of the successful woman looked like the description of the communal woman in the "blocked" condition in the first study. Together, these studies show that the derogation of successful women can function as a self-protective strategy for women.

Implications for the courtroom

Female jurors are often exposed to competent, successful women—whether they be lawyers, expert witnesses, plaintiffs, or defendants. The research shows that reactions to successful women are determined by more than just the information given, and women's negative reactions to successful women can be motivated by self-protection.

Two critical questions relevant to the courtroom emerge from this research.

How can we protect successful women in the courtroom from suffering from "penalties for success"?

Women who have succeeded in traditionally male positions are assumed to be cold, manipulative, unfeminine businesswomen (Heilman et al., 2004). How can we take the edge off these harsh assumptions about successful women?

Reasserting a female's femininity is one way to minimize this derogation. As described above, communal information about a target (i.e., that she is helpful, supportive, and caring) can block negative inferences about her character. For example, jurors may assume a successful female CEO must be extremely tough to survive in a male-dominated workplace, but providing insight into her role as a loving mother may soften these perceptions.

However, femininity is a double-edged sword. When a woman's competence is not known, markers of femininity (i.e., communality, attractiveness, motherhood status) increase perceptions of incompetence through strengthening the descriptive gender stereotype (Heilman & Parks-Stamm, 2007). Cues of femininity can therefore be a curse when they inform competence judgments (i.e., more feminine = more incompetent), but a blessing when they inform personal judgments of highly successful women (i.e., more feminine = more likeable). Thus, emphasizing a woman's femininity should be harmful when her competence is questioned (e.g., a defendant in a malpractice case), but beneficial when her interpersonal qualities or goodness are questioned (e.g., a defendant in a discrimination case). A female lawyer concerned about her perceived intelligence may want to minimize her femininity, whereas a female lawyer concerned that she will be disliked for appearing too aggressive may want to highlight it. Although the effects of gender stereotypes on the evaluations of women are complex, reasserting a woman's communality and femininity is a good idea when she has achieved unambiguous success.

How can we reduce female jurors' feelings of self-threat in response to a successful woman while not diminishing perceptions of competence?

Research shows that women exposed to a highly successful female may be motivated to derogate her to protect the self. In essence, women use a negative description to distance themselves by creating differences between themselves ("normal women") and a highly successful woman (not a "real woman").

One option is to highlight other differences between the successful woman and the self that offer an excuse for different personal choices or levels of success. Did the successful female manager grow up in a family of financial managers? Does the competent female lawyer come from a stereotypically high-achieving immigrant group? Again, similarity is a necessary precondition for social comparison. Any information that suggests the successful woman is an irrelevant standard of comparison will alleviate threat, and thus reduce the need for motivated derogation by other women.

Secondly, recent research suggests that creating a "we" mentality between women allows for non-threatening identification with successful women (Parks-Stamm & Heilman, 2008). An interdependent self-construal (i.e., a way of seeing the self as interdependently connected with others) has been shown to reduce social comparisons (Gardner, Gabriel, & Hochschild, 2002). When female participants were made to view a successful woman with an interdependent "we" mentality, they no longer derogated her (Parks-Stamm & Heilman, 2008). Ratings did not differ regardless of whether or not participants heard about the successful woman's communal behavior; they viewed her positively in both conditions. Moreover, interdependent participants rated themselves high in competence even when

the potential for comparison was provided and penalization was blocked. If female jurors can view successful women as a source of pride rather than competition, it is possible for them to both admire successful women and feel good about themselves at the same time. Thus, increasing identification with a successful woman is a good strategy for getting female jurors to accept a woman who has been successful in a traditionally masculine domain without feeling personally threatened. Addressing women's common struggles and achievements as a group may be one way to activate this "we" mentality in female jurors. This reduces the tendency to engage in social comparison, and therefore the motivation to derogate and dislike the successful woman.

Conclusion

Both male and female jurors are likely to make negative personal attributions about a woman who has achieved success in a traditionally masculine domain. For women jurors, this is often motivated by self-protection. The research reviewed here offers suggestions for how lawyers can mitigate these responses to successful women in the courtroom.

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We asked three experienced ASTC-member trial consultants to respond to Elizabeth Parks-Stamm's article. Anne Reed, and Erica Baer/Joanna Gallant (collaborating on a response) provide their reactions to how this research can be used in the courtroom.

Anne Reed Response to Parks-Stamm

Anne Reed is a jury consultant and trial lawyer who tries to show both competence and communality at her blog, Deliberations (http://jurylaw.typepad.com), and in her practice in Milwaukee, Wisconsin.

"Okay, got it it. Show how communal I am, show women jurors there are reasons I'm competent that have nothing to do with them, and establish a "we" mentality with women jurors. But how do I do that in trial?" Women lawyers reading Elizabeth Parks-Stamm's article may have that question; I know I did.

It's often difficult to translate results from the social science "laboratory" to the courtroom, for several reasons. First, the forms and rules of courtroom expression are confined; you might be able to work your communal orientation into normal conversation, but it's not so easy when opening statement can consist only of statements of evidence, direct examination only of nonleading questions, and so on. Second, there's a lot on your mind in trial. You're responsible for every moving part from the emotional impact of your theme to the timing of your last witness's airplane, and it isn't easy to remember how you planned to work in responses to any jurors who might react negatively to your competence.

As with most good research, though (and I'm convinced Ms. Parks-Stamm is right that women often see other women through the screen of their own self-criticism), a little brainstorming reveals ways to put theories into practice that are easier to remember and to do than you might first have thought. Here are a few ideas:

☑ Communality. You can demonstrate your communal qualities in the way you work with your team and your client. Jurors are watching you every minute they can see you, so they're judging you as much by the way you treat your client and your team as by the way you speak to them. Since jurors often can't hear you, much of what they're judging is body language – whether you smile, the way you lean to speak to someone, whether you're acting patient or petulant. Of course there are other advantages to demonstrating communality in this way: your client and team respond better and it's the right thing to do, to name two.

☑ "Don't hate me because I'm competent." It's tricky, this idea of showing women jurors there are differences between your story and theirs that can let them recognize your competence without criticizing themselves. It's a lot easier with, say, supermodels; we've all said, "Sure, I could be skinny and gorgeous too if it were my *job*." But how does this work with legal competence? Others could be as competent as you if they . . . had the money to go to law school? Had your terrific elementary school education? Worked as hard as you do?

☑ Don't get fancy with this one; keep it as simple and honest as that supermodel distinction. You're good at trials because it's your job. You've spoken to juries before, handled piles of exhibits before, cross-examined a tough witness before. An awful lot of women could do what you're doing if they'd done what you've done. It's true, and it's an easy point to make in trial; you only need to refer to your experience a couple of times, maybe once each in voir dire, opening, and one examination.

☑ "We" mentality. I did a voir dire when I was seven months pregnant. The judge asked the jurors whether anyone would have trouble sitting through long trial days, and one woman said she'd need bathroom breaks because she was (less visibly) pregnant. Of course the whole venire looked at me, and what they saw was me sighing with sincere relief that I wouldn't be the only one. In that moment, that juror and I were definitely "we."

☑ The "mommy war" tension between women who work and those who stay home isn't over. If you let that make you nervous, you'll see only the differences between you and many women jurors, not the things you have in common. But you do have things in common. We all hate pantyhose in the summer; we almost all like chocolate; and when you apply the sincere interest in other people that you need to bring to voir dire anyway, you'll find many more.

Thanks to Elizabeth Parks-Stamm for a candid and thought-provoking study.

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Joanna Gallant/Erica Baer response to Parks-Stamm

Joanna Gallant, Ph.D. (jgallant@precision-trial.com) is Vice President of Jury Research & Trial Services and Erica L. Baer, Ph.D. (ebaer@precision-trial.com) is a Jury Consultant for Precision Trial Solutions, Inc., based in New York, NY. Precision Trial Solutions, a subsidiary of Golkow, Inc., offers unparalleled consulting services, including jury research, trial strategy, graphics and technology, at every stage of litigation.

Elizabeth Parks-Stamm's article is a well-written overview of the stereotypes which can impact successful women. The research covered in this article illustrates several practical implications for today's world of complex litigation, where more and more women are playing prominent roles in the courtroom as attorneys, judges and expert witnesses. The motivation behind juror stereotyping of these female figures and how these perceptions—which could be positive or negative—can affect critical juror decision-making are therefore especially pertinent concerns to any woman involved in litigation. While there is no question that these subjective views should not dictate juror decisions, research suggests that audience receptivity and persuasion are both vulnerable to such influences, necessitating the need for developing successful and proactive strategies to combat such stereotypes.

For example, and as Ms. Parks-Stamm notes, female attorneys have long struggled with finding a way to effectively engage in traditionally male behaviors without entirely losing one's femininity and subsequently being perceived as cold and/or abrasive. Perhaps the most obvious example of where and how this can impact juror perception is when a female attorney engages in a cross examination of a male witness. While a male attorney is expected to be short, quick, and perhaps aggressive or even a bit discourteous with the witness, jurors more often attribute negative traits to female attorneys who engage in the very same behavior since it is out of keeping with the schema of the typical female. To reduce this, we have found that devoting time during witness preparation to assessing the attorney's style and targeting behaviors that enhance these negative views has been somewhat effective, as has been working with the attorneys on utilizing more traditionally feminine behaviors (e.g., smiling, body language, tone of voice, etc.) to specific ends. When used in a strategic way, these more traditionally feminine behaviors can equally, albeit more subtly, convey key information to jurors about a witness's credibility and truthfulness without compromising the attorney's feminine status.

Ms. Parks-Stamm also highlights some concerns for female expert witnesses. When female jurors draw comparisons between themselves and the female expert, they are prone to seeing that expert as more successful than themselves, causing them to engage in denigration of the witness to protect the sense of self. In these situations, we have found that it is especially helpful to establish the witness' credibility and competence at the outset. As Ms. Parks-Stamm stated, by building distance between the expert and the jurors by distinguishing the expert as someone with unique training and specialized skills, jurors become less prone to holding a negative comparative bias since the expert is now placed in a separate class from themselves in which comparisons are not necessary. While reducing negative bias in this way is undoubtedly important, it is also equally important for the expert to develop rapport with the jurors so that they will be more receptive to her opinions. Although asking about children and family can be useful to this end in some situations, more frequently, placing the expert into a teaching role where she can explain an important concept to the jury, which also helps them understand the case issues, is often the most effective means of presenting that expert in a positive light and establishing her credibility and respect.

Regardless of the specific role played, successful women in the courtroom need to be cognizant of the fact that they are judged more harshly than their male counterparts and cannot forget that while perhaps unfair, subjective views of them are likely to influence how their arguments and opinions are perceived by the jury. To this end, we have found that deciding against displaying certain status symbols in court (e.g., designer bags, jewelry, etc.) and ensuring that all female participants in the litigation play active, useful roles (e.g., questioning of witnesses for attorneys) can be beneficial as it helps eliminate certain negative biases that will color juror perception.

Thus, the studies outlined by Ms. Parks-Stamm examine an important aspect of trial consulting. In a perfect world, jurors would weigh arguments and facts in evidence to render a verdict and extralegal factors would not influence decision-making. Unfortunately, jurors in the real world report to jury duty armed with preconceptions and biases which attorneys, witnesses, trial consultants, and others must try to proactively target and diffuse through their trial strategies. Through this, and other applied research, trial consultants can attempt to eliminate some of the negative biases that impact how jurors view the case story so that they can stay focused on the facts in evidence and arrive at thoughtful, considered decisions.

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Citation for this article: *The Jury Expert*, 20*(4)*, 8-15.

TJE's Favorite Thing for November 2008...

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What does a Juror's Generation mean to Trial Consultants?

By Pat McEvoy and Eliza Shepherd

For years we have been reading generalizations about the Generations. Boomers are supposed to be the most generous. The Post-War Generation is more conservative. The claim is that the Generation into which we are born shapes our values. Economic, political and social events influence a person's point of view. While many of the generalizations are based on anecdotal information, not empirical research (Giancola, 2006), we decided to bypass that debate. If our Generation shapes our values, we would expect these characteristics to influence reactions to lawsuits. So, we asked a different question: Does knowing a prospective jurors' Generation inform jury selection strategy?

A Generation is defined by a person's formative years, thought to be roughly the teens. To evaluate generational influences on legal decision-making, Zagnoli McEvoy Foley conducted an analysis of mock juror verdicts from recent personal injury and medical malpractice cases across the country. Our analysis included 43 cases, with a total of 1,321 mock jurors from many venues. Since Generations have been given many names and the date ranges vary, here is the way we defined generations, and the number of jurors evaluated in each generation:

- "World War II" born 1922–1927 (not used in analysis due to small numbers in sample)
- "Post-War" born 1928–1945 (n=239)
- "Boomers I" born 1946–1954 (n=254)
- "Boomers II" born 1955–1965 (n=315)
- "Generation X" born 1966–1976 (n=244)
- "Generation Y" born 1977 and after (n=269)

Liability

Generation was not correlated with favoring either the plaintiff or the defendant.

Damages

Generation was not correlated with the total amount of damages awarded. This is a change from what past research findings have shown. Several years ago we found that Gen Y awarded higher damages than Gen X. This was at a time when we had fewer Gen Ys in our database and there were fewer Gen Ys on juries. So, either Gen Ys have changed or the power of a larger database has altered this finding.

Political Affiliation

We compared those who identified themselves as Democrat or Republican (n=949).

- Gen Y has the least Republicans (21%) and the most Democrats (79%).
- Boomer II and Gen X are the most similar politically; about 70% Democrat and 30% Republican.

This is of interest given the November elections, but we did not find that political party correlates with verdict or damages. Other ZMF research has also determined that political party affiliation does not correlate with liability verdict or damages (Tuerkheimer, in press).

While political party affiliation is not predictive, whether you describe yourself as liberal (higher damages), moderate or conservative (lower damages) is. However, while Gen Yers are more likely to call themselves liberal, they do not award significantly higher damages.

However, Generation is related to the type of damages jurors say they will award.

Damages for Emotional Distress

- Gen X is the most likely to favor awarding damages for emotional distress (86%).
- Boomer I (80%), Boomer II (78%), and Gen Y (77%) are equally likely to favor awarding damages for emotional distress.
- Post-War is the least likely (64%) to favor awarding damages for emotional distress.

Damages for Loss of Enjoyment of Life

- Gen Y is significantly less likely to award damages for loss of enjoyment of life (56%). At least 70% of all other generations awarded damages for loss of enjoyment of life.

One alternate explanation of this finding is that stage of life is involved here; younger people are more likely to take quality of life for granted. A longitudinal study would answer whether this finding is due to age or Generation.

Conclusion

A single research project can never answer a question definitively. However, from this analysis we conclude that knowing a juror's Generation is useful in cases that involve Emotional Distress or Loss of Enjoyment of Life.

Generations are in flux. For example, the oldest Gen Y juror is 31 years old and the youngest is not old enough to sit on a jury. The oldest Boomers are nearing retirement age. Additional differences in liability and damage decisions may be revealed in the future.

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Do Conservatives and Liberals Punish Differently?

by Bryan Koenig

Like lab rats hunger for food, people who judge a moral wrongdoing may hunger for the wrongdoer's punishment. Neuro-imaging research even confirms that anticipation of a wrongdoer's punishment activates a "pleasure center" of the brain (de Quervain, et al., 2004). Simply put, people are driven by *punitive motivation*. Also like a lab rat that has eaten its fill, many people enjoy *punitive satisfaction* from learning that a wrongdoer has been sufficiently punished (Singer, et al., 2006). Ongoing psychological research shows that the desire to punish a wrongdoer is reduced when a wrongdoer is punished. Perhaps most importantly, the moral emotions of punitive motivation and punitive satisfaction may differ for people with liberal and conservative world views.

Punitive motivation and punitive satisfaction are particularly important in the courtroom. Punitive motivation is triggered by the perception that someone has violated a moral value and results in the desire to punish the wrongdoer. For example, you would probably think that a thief who stole your neighbor's plasma TV should be fined or jailed. Punitive satisfaction is triggered when the wrongdoer has been sufficiently punished, extinguishing punitive motivation. You might be satisfied if the thief were fined $1000 and spent a week in jail.

The perception that someone has violated a moral value triggers moral emotions, and research on moral judgments around the world suggests that violations of five moral values – harm, fairness, loyalty, authority, and purity – activate moral emotions in people with a conservative worldview. In contrast, violations of only two of these moral values – harm and fairness – activate moral emotions in people with a liberal worldview. This article explains moral emotions and suggests how you can use knowledge of differences in the moral-emotional systems of liberals and conservatives in the courtroom. But first, you should know why understanding emotions in the courtroom is critical for you.

Moral emotions precede moral reasoning

Judges and jurors should make decisions about topics such as convictions and sentencing based upon logical application of legal rules to a given case. Psychological research, however, shows that emotions can, and often do, overrule reason in moral judgments.

In a laboratory study conducted by Jonathan Haidt, college students morally condemned such acts as adult siblings having consensual sex (having taken *all* possible precautions) before Haidt played devil's advocate (Haidt, 2001). Under his planned out cross-examination, Haidt found the students confabulating: they fabricated a rationale for their judgment, abandoned a rationale if it was shown to be inappropriate, and readily replaced it with alternative rationales. Furthermore, many students became morally dumbfounded: they claimed no knowledge of why the violation was wrong, but insisted that it was nevertheless wrong. The moral judgments of these folks did not depend on a rationale! Haidt concluded that moral-emotion based judgments come first and the ostensible reasoning underlying the judgments are *post hoc*.

The five foundations of morality

Moral judgments are evaluations of the goodness or badness of the actions or character of a person. Humans make moral judgments based on five virtues, or "foundations of morality": harm, fairness, loyalty, authority, and purity (Haidt, 2007; see Table 1). Information about violations of these moral virtues may activate punitive motivation. Importantly, people who label themselves as extreme conservatives rate all five foundations to be of high importance. In contrast, people who label themselves as extreme liberals rate only harm and fairness to be highly important. Self-labeled moderate individuals have similar preferences, but to a lesser degree. In sum, psychological research has shown that conservatives and liberals perceive a divergent moral landscape.

Table 1: The five foundations of morality (Haidt, 2007)

Virtues	Domains	Examples of violations
Harm / Care	kindness, childcare, compassion, cruelty, suffering, aggression	Sticking a pin into the hand of a child you don't know.
Fairness / Reciprocity	justice, honesty, trustworthiness, individual rights, cooperation, cheating	Knowingly accepting a plasma TV from a friend who knowingly bought the TV as stolen property.
Loyalty / Ingroup	patriotism, self-sacrifice, heroism, unity, treason, cowardice, profiteers, slackers	Saying something bad about your nation while calling into a radio show in a foreign nation.
Authority / Respect	obedience, deference, respect for tradition, magnanimity, power, uppityness	Slapping your father in the face.
Purity / Sanctity	chastity, piety, cleanliness, body and spiritual purity, religious sacredness, lust, intemperance, gluttony	Attending a play in which nude performers act like animals: crawling and urinating on the stage.

The motivation-satisfaction model of emotions

Most emotion theories explain one component of emotion, for example, what stimuli elicit emotions (Ortony, Clore, & Collins,1988) or which action tendencies result from each emotion (Frijda, 2007). The motivation-satisfaction model of emotion integrates existing emotion theories to produce a relatively simple overview of the main components of emotion, framed in a timeline for the life of emotions (Koenig, in prep). Although this model applies to emotions generally, it is explained here using punitive motivation and punitive satisfaction as examples (see Figure 1).

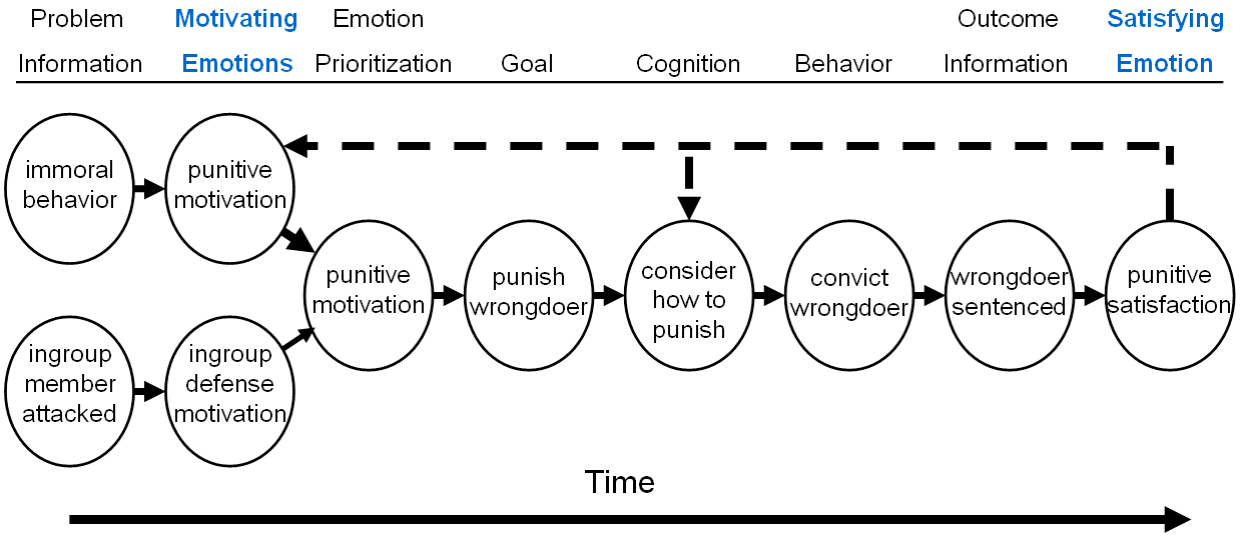


Figure 1. The motivation-satisfaction model of emotions.

Imagine a hypothetical case in which a conservative state senator is accused of failing to report thousands of dollars in gifts from "friends." Further suppose that, for illustrative purposes, a conservative juror in the case perceives on the one hand that the senator should have disclosed the gifts, but on the other that the charges – initiated by a liberal political opponent – are an attack on an ingroup member by an outgroup member. Two moral foundations were violated for the conservative juror: non-disclosure violated the fairness foundation and the political attack violated the loyalty foundation.

Punitive motivation is triggered. Information about multiple ongoing problems activates multiple motivating emotions. In this illustration the two ongoing problems are that the senator acted unfairly (all US senators should declare their received contributions) and that an outgroup member is attacking an ingroup member with an accusation of wrongdoing. These two problems each trigger a motivating emotion: punitive motivation and ingroup defense motivation, respectively. Concurrently activated motivating emotions are prioritized such that the emotion with the strongest absolute amount of hedonic valence (pleasure or pain) is prioritized and thus determines the overarching goal of the mind's information processing. In this example punitive motivation is prioritized over ingroup defense motivation.

Punitive motivation organizes thoughts and behaviors. The goal of information-processing and behavior is the solution to the problem of the motivating emotion that is prioritized. In this example the goal is to punish the wrongdoer. Punitive motivation drives cognition (thinking) towards ways to solve the problem. The person considers available options for punishing the wrongdoer – such as voting to convict the senator or slashing the senator's tires. Once plausible solutions are identified, they are evaluated and behavior ensues: the juror votes guilty. If ingroup defense

motivation had prevailed over punitive motivation, the juror would instead try to think of ways to defend her ingroup member and vote not guilty.

Punitive satisfaction is triggered. Outcome information indicating that the problem is solved triggers a satisfying emotion. Here, the conviction and sentencing of the wrongdoer activates punitive satisfaction. The satisfying emotion in turn deactivates relevant motivating emotions and updates knowledge about how to solve similar problems in the future, as indicated by the dashed line in Figure 1. Punitive satisfaction extinguishes punitive motivation and encodes memories for how the conviction and sentencing occurred. If ingroup defense motivation had prevailed over punitive sentiment, the juror's reaction would depend on whether the jury acquitted or convicted. In the case of an acquittal, the juror may have group-victory satisfaction, like when your team wins the Super Bowl. In the case of a conviction the reverse emotion may occur, group-loss disappointment.

Moral emotions, political orientation, and the courtroom

Given the five foundations of morality, and if liberals and conservatives have different moral-emotional reactions to violations of the five foundations, then knowing whether judges, jurors, or any other decision-makers are conservative or liberal is useful information for framing your arguments in any phase of the legal process.

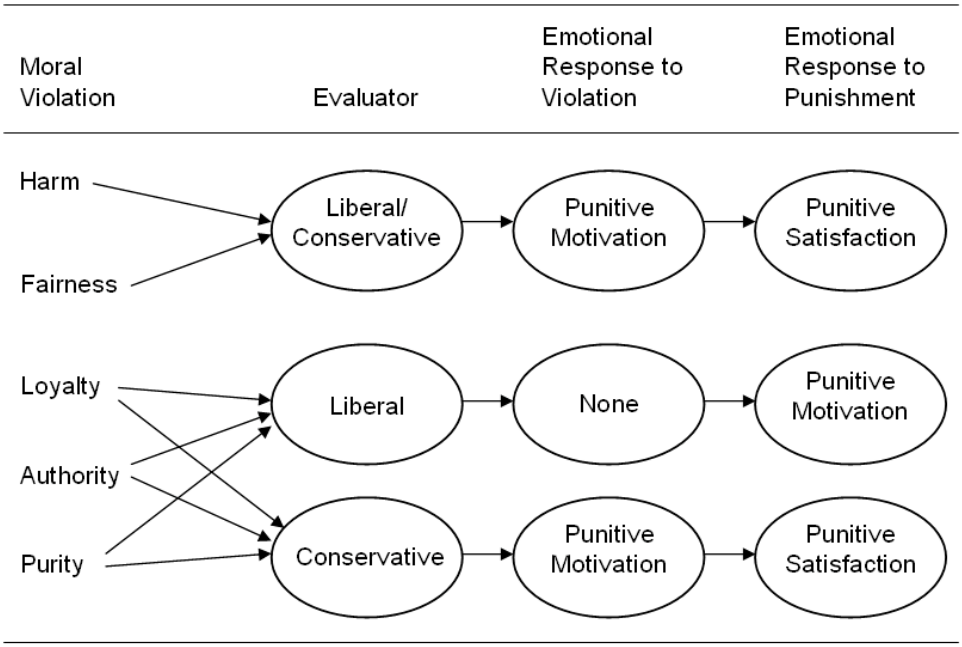


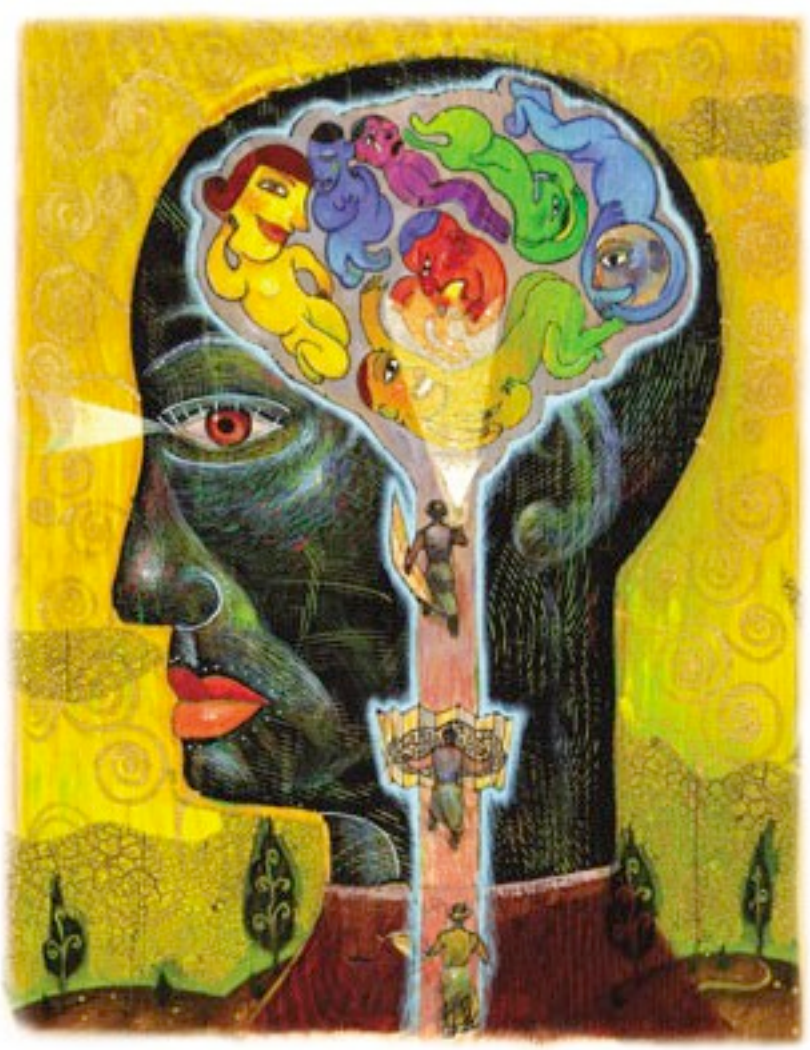
Figure 2. Predicted emotional responses of liberals and conservatives to the violation of the five foundations of morality.

Figure 2 illustrates the emotional reactions of conservatives and liberals to violations of the five foundations of morality. Notice that conservatives and liberals respond the same way to violations of harm and fairness – with punitive motivation. This is the same way that conservatives respond to violations of loyalty, authority, and purity. In stark contrast, liberals are less likely to have an emotional reaction to violations of loyalty, authority, and purity. Instead, since liberals don't see these violations as violations, liberals might react to punishment for these violations as an insult to their sense of harm and fairness and experience punitive motivation (towards whomever is believed to be responsible for the "unjust" punishment). No wonder liberals and conservatives have trouble understanding each other: A single act of punishment can be seen as virtuous for conservatives but unwarranted for liberals. An important implication of this

research for the courtroom is that conservatives may be more likely than liberals to convict, and to require higher punishments, for violations of loyalty, authority, and purity.

Some practical suggestions

Providing appropriate arguments to any given audience and understanding the arguments of the opposing legal team—if they have a different moral system than you do—can be particularly difficult. Your own moral judgments come to you easily and intuitively, but taking the perspective of people with a different moral system takes effort. Thus, lawyers with conservative and liberal worldviews would be well advised to understand their own moral systems and the moral systems of people with a different political orientation.



Frame your case: Cases with violations of loyalty, authority, and purity can split a jury, the conservatives seeing a wrongdoer and the liberals seeing an innocent defendant. In contrast, a consensus among jurors is probably easier to achieve for court cases with violations of harm and/or fairness: all jurors (liberal or conservative) have the same emotional reaction. Thus, if you don't know whether a judge or jury is conservative or liberal, the safest bet is to frame a crime as a harm or fairness violation – you may increase the chances that a judge or jury will agree that a crime has indeed occurred and that a punishment is due. If the judge or jury is conservative, emphasizing violations of all five foundations (whichever are relevant to the case) might give you an edge by showing the pervasiveness of the crime to the sympathetic audience.

Voir Dire: As always, pick the jurors to fit your side of the case. For example, if you are a prosecuting attorney, jurors of any political worldview would suffice for crimes violating the values of harm or fairness, but having conservative jurors is preferable for crimes violating the values of loyalty, authority, or purity. If you are a defense attorney, the reverse advice holds. Liberals tend to weight violations of the values of loyalty, authority, and purity as less important – ideal for acquitting crimes that violate these values. You will be hard pressed to find a juror who will not react to violations of harm and fairness, however, so no advice is provided for such cases.

Self-awareness: The final piece of advice depends upon who you are. If you have conservative values – utilizing the full breadth of humanity's moral virtues – be aware that liberal judges or jurors may not hear your arguments based on violations of the virtues of loyalty, authority, and purity. In contrast, if you are a liberal, you face the opposite problem. Another lawyer may be making arguments that, to you, fall flat – but to your shock and chagrin, the jury or judge is

eating them up! Your liberal ears – your honed moral emotions – are insensitive to information to which conservatives are highly reactive.

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We asked three experienced ASTC-member trial consultants to react to Bryan Koenig's article. Jan Spaeth, Chris Wilson, and Dennis Elias provide their thoughts.

Jan Mills Spaeth responds:

Jan Mills Spaeth, Ph.D., is a litigation consultant and owner of Arizona Jury Research in Tucson, Arizona. Her website is www.azjuryresearch.com.

In reviewing the *"Do Conservatives and Liberals Punish Differently?"* article by Bryan Koenig, I do see the value in identifying five moral values that can trigger emotional reactions from jurors and judges (harm/care, fairness, loyalty, authority and purity). I also appreciate the cognitive effort taken to recognize and define these values.

I can also see where conservatives could traditionally be motivated to punish violations for all five of these moral values. While I can also see some validity to the argument that liberals are less likely than conservatives to punish three of these areas (violations of loyalty, authority and purity), I have also seen factors that could alter this position. I will address this section of Mr. Koenig's article.

For instance, in my experiences, whether liberals will punish violations of loyalty, authority and purity depends, among other things, on a) victim vulnerability, b) defendant wrongdoing , and c) the interactions of the five moral values with each other.

I'll give a recent case example to demonstrate my points. "Jennifer" was a plaintiff in a breach of contract matter against her employer regarding retirement benefits. For years, her employer had verbally promised her $2 million dollars if she was loyal to the company and remained with them. The company made over $100 million in a ten year period. Jennifer was a major player in the company's growth. Forgoing the details, Jennifer was fired when the two owners divorced. She was not paid anything.

Although the alleged promise was never put in writing, after reviewing the case details and documents, in a trial simulation the large majority of mock jurors found in Jennifer's favor. As expected based on Koenig's article, most participants, liberals and conservatives, found that two of the moral values (care and fairness) had been violated and they wanted to punish the defendant. They concluded that the company had cheated Jennifer, and was unfair and dishonest. In addition, testimony indicated that the owners had been verbally abusive and cruel to Jennifer, causing her harm and suffering.

This is where our project result differed from Koenig's article, however. Loyalty became a very critical issue to all mock jurors (conservatives and liberals) because of Jennifer's perceived loyalty to her employer, and the employer's perceived disloyalty toward her. Most jurors punished the employer because of a *loyalty violation* as well as violations of care and fairness.

There's more to the picture, however. The victim of disloyalty, Jennifer, was an "underdog". This was even more critical to liberals than conservatives. The vulnerability of the victim in this case made liberals very willing to punish the defendant for disloyalty. In contrast, had disloyalty been directed at a target viewed as large, distant, strong, indifferent, dominant or oppressive (like some liberals may view a business or nation), disloyalty may not have been a critical issue for liberals.

In addition, there was an interaction between loyalty and unfairness, and loyalty and harm. This interaction caused jurors to become even more angry at the employer, wanting to punish it more severely.

There was also an interaction between authority and unfairness. Mock jurors reasoned that the employer had the power and ability to make things fair for the plaintiff. It also had the obligation and responsibility to do so, and chose otherwise. Although the mock jurors did not view the defendant as having violated authority or having been disrespectful, they did view the defendant as having abused its authority. Thus, authority did play a key role with both liberal and conservative jurors. Most jurors wanted to punish the defendant more because it defied the moral obligation of using authority to improve matters and do no harm.

If gluttony (listed as a violation of the purity moral value) can be construed as greed and over-satiation, the fact that the defendants made over $100 million in 10 years and failed to pay Jennifer anything (after 20+ years of hard work and loyalty) had the same effect as violation of the authority value. Again, the interaction of a purity violation with both the violations of fairness and care caused mock jurors to punish the defendants more than they otherwise would have. (The case settled while the trial was in progress with a very positive result. Juror polling supported a high verdict as well.)

In summary, I point out that the perceived vulnerability of the plaintiff, the perceived wrongdoing by the defendant, and the interaction of these five value violations can result in liberals punishing defendants for violation of all five moral values, not just two of them. It is critical that liberals first find that the values of care and fairness have been violated, however, which the mock jurors in this case did.

In addition, these mock jurors found that the defendant had been disloyal, had failed to use its authority to ensure justice, and had been "gluttonous" and impure. As a result, it punished the defendant for violation of all five moral values, and the perceived combination of five violations appeared to result in higher verdicts than would have two or three combinations, alone. More value violations appeared to lead to higher anger toward the defendant, and a stronger desire to punish. This is certainly an area that warrants further research.

Chris Wilson responds:

Chris Wilson [CWilson@w-r-s.com] is CEO of Wilson Research Strategies, a market research, political and trial consulting firm based in Washington, DC. Chris has worked for over 100 of the Fortune 500 and more than 100 current and former Members of Congress.

As a political pollster, a conservative Republican and a trial consultant, I find Bryan Koenig's article *"Do Conservatives and Liberals Punish Differently?"* fascinating and directionally on target. Koenig provides a useful rule-of-thumb that matches our experience with using behavioral research for jury selection and for tailoring case presentation to a jury.

However, like any simple rule-of-thumb, his recommendations leave out a large amount of information about the way any specific real juror will process information when analyzing ideology.

We do tens of thousands of voter interviews each election cycle, and ask respondent ideology in each study. In a recent WRS national survey 37% percent of the country defined itself as conservative, compared to 24% liberal. In analyzing respondents (most all potential jurors) ideological attitudes, we must account for several different types of conservatives (e.g., social conservatives, fiscal conservatives, Reagan Democrat conservatives, religious conservatives, national security conservatives, etc.).

There are also degrees of conservatism that must be accounted for. In the same WRS national survey cited above, just 18% of respondents identified themselves as "very conservative" while only one in twelve (8%) said they were "very liberal".

Therefore, there is a large group of potential jurors out there who don't fit neatly into the simple dichotomy Koenig presents here.

Our approach to understanding potential jurors starts with data from a community survey. Using community survey data we can understand the mental and emotional "frames" that potential jurors bring to the courtroom. In looking at the survey data, we use statistical models to help identify a few key questions that define unique perspectives in the community—these then make useful additions to jury questionnaires or components of the Vior Dire process.

In some jurisdictions we are able to take this technique a step further by including behavioral data in the survey or appending it to the survey data. This data can include magazine subscriptions, charitable giving, automobile ownership and a variety of other items that help us define groups in the community with unique mental and emotional "frames" about the issues in the case.

The power of this technique is that, where allowed, we can define the same indicators for each member of the jury pool by buying data about them from a consumer data company. In this way we can develop a detailed prediction of the exact mental and emotional frame each potential juror will bring to the issues in a case.

Understanding the sub-groups in a jurisdiction and the mental and emotional frames they will use to process the issues in a case is a powerful advantage. Whether we use key jury questions or purchased data, a jurisdiction-specific research-based approach provides powerful information for jury selection and case presentation.

As you prepare for any case, understanding as much as possible about how potential jurors will process the information and emotional content of your presentation is critical.

Bryan Koenig presents a useful rule of thumb that can be easily applied in any case; this is a good and useful tool.

Conducting research in the specific jurisdiction to identify sub-groups and key jury questions to classify potential jurors is a better and more powerful approach.

Adding behavioral data to the survey and then using purchased behavioral data to classify potential jurors is, when possible, the best approach because it allows us to very accurately define how each potential juror will process your presentation and the other side's presentation of the case.

Dennis C. Elias responds:

Dennis C. Elias, Ph.D. is the Senior Consultant with Litigation Strategies, Inc. (www.litigationstrategiesinc.com) based in Scottsdale, AZ. He serves on the Board of Directors of the American Society of Trial Consultants.

The manifest reality of every jury trial is that jurors selectively attend to facts and testimony that reflect their life experiences, attitudes, values, preferences and personalities. Everything else is ignored, discounted or minimized in importance. Every jury trial is essentially a referendum upon the character of the parties and how that character reflects motivation for the alleged acts, omissions and wrongs. In the minds of each juror a melodrama emerges as narrative. In spite of the face validity and simplicity of such an approach to solving the problem of finding justice, Mr. Koenig's

reified notions of punitive motivation and punitive satisfaction suggest intrinsic structures of human experience that are necessarily over simplified and problematic to ascertain within the constraints of voir dire.

Personality is interior and private, with no direct access to the outside world (everything is filtered through the senses: one's eyes, ears, touch, etc.). For that reason, each person creates a mental world that represents the real one to a greater or lesser degree. Mental models guide each person and how he or she perceives the world, including those social features he or she they prefers or abhors. That mental model provides motives for the full spectrum of behavior, including motives to sit on a jury and post hoc explanations for a verdict.

While personality is typically conceived of as being rather fixed and persistent, the situational vagaries of the individual juror's life, case fact patterns and party personalities can and do elicit choices and behavior from jurors that is apparently "against type". Is there such thing as an invariant conservative or immovable liberal? Even the bell shaped curve of statistical normal distribution tells us that the extremes are indeed rare.

Jurors by and large want to do the right thing. Presented with the legal dispute they consistently ask themselves, "Is it Right?" before they consider "Is it Legal?". Being able to frame and sequence case facts, evidence and testimony in a manner that satisfies their need to make the moral determination empowers jurors in the confusing and often labyrinthine world of the law.

To utilize Koenig's theory, one must be able to reliably determine the moral philosophy of the individual. The real conundrum remains that determining venire panelists moral bent is significantly hampered by limited voir dire, intentional panelist misdirection and fact that no two jurors may agree (or disclose!) exactly what conservative or liberal morality means to them personally.

Koenig's parsing of the moral underpinnings attributed to conservative vs. liberal jurors mirrors significant related research on personality characteristics of such moral types. A recent blog by John Mayer, Ph.D., of Emotional Intelligence fame, reflects the underlying personality foundations suggested by Koenig (http://blogs.psychologytoday.com/blog/the-personality-analyst/200809/voting-your-personality).

"Liberals:

- *View social inequities and preferred groups as unjust and requiring reform.*
- *Prefer atheists, tattoos, foreign films and poetry.*
- *Endorse gay unions, welfare, universal health care, feminism and environmentalism.*
- *Exhibit creativity, which entails the capacity to see solutions to problems, and empathy toward others.*
- *Tolerate complexity and ambiguity.*
- *Are influenced by their work as judges, social workers, professors and other careers for which an appreciation of opposing points of view is required.*

Conservatives:

- *Willing to defend current social inequities and preferred groups as justifiable or necessary.*
- *Prefer prayer, religious people and SUVs.*
- *Endorse the U.S. government, the military, the state they live in, big corporations and most Americans.*
- *Are more likely to be a first-born, who identify more with their parents, predisposing them to a greater investment in authority and a preference for conservatism.*
- *Have a fear of death, reflecting an enhanced need for security.*

- *Are conscientious – the ability to exert personal self-control to the effect of meeting one's own and others' demands, and maintaining personal coherence.*
- *Need simplicity, clarity and certainty."*

There is conceptual and practical utility to Koenig's notions. The "five foundations of morality" have descriptive power applicable to narrative composition. Conceiving of case fact patterns in terms of violations of Harm, Fairness, Loyalty, Authority and Purity has explanatory elegance. Framing argument to address those general moral values as they apply can have real stickiness in the minds of jurors, regardless of moral orientation. Of real utility is the recognition that both liberals and conservatives can resonate with violations of Fairness and Harm in both civil and criminal matters.

No actual jury is "conservative" or "liberal". Effective jury deselection efforts necessarily create panels that are more likely than not going to be an admixture of moral and political philosophies, and thus, neither fish nor fowl. Framing the omnibus issues to meet the ready digestion of the most jurors is the best investment second to having a crystal ball.

My take away from Koenig's article is the "Five Foundations". One possible effective tool suggested by this work would be the generation of voir dire or SJQ items focused upon eliciting responses to the moral weight of Loyalty, Authority and Purity values as discriminators of moral philosophy. Using questions that don't directly suggest a mining for political party affiliation, religious orientation, etc., have a greater chance of being allowed by fussy judges and not being rebuffed by huffy jurors.

Finally, Koenig's admonition to "know thy self" is spot on. Advocates and consultants readily lose sight of their own biases and moral compasses. Knowing is step one to overcoming the blind spots and self delusions that painfully resolve when the foreperson of the jury informs you that you missed the point.

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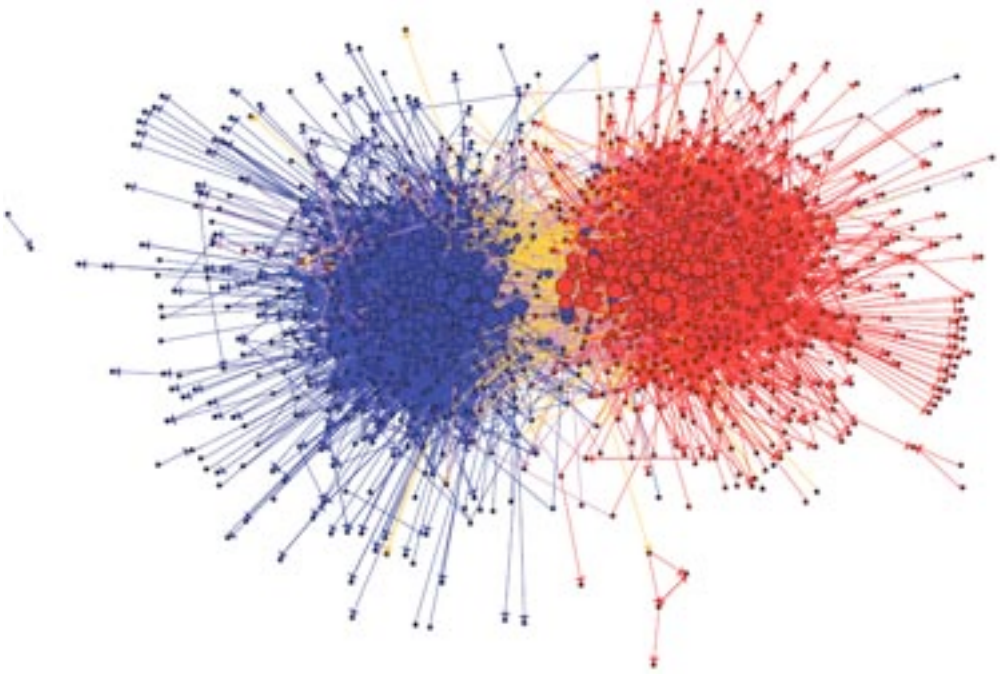

Editors Note: Following publication of our September 2008 feature on the preparation of narcissistic witnesses, Doug Keene received queries about how to conduct cross-examination with a narcissistic witness. This brief article addresses questions on how to approach this challenging cross-examination process.

Cross-Examination of a Narcissistic Witness

By Douglas L. Keene

Have faith

It is natural to fear that a jury will be taken in by a charming and authoritative witness. Thus, the effective cross-examination of narcissistic witnesses requires faith. But not faith in your own knowledge and skills. Instead, it requires faith in the ability of jurors to detect both authenticity and guile.

Fortunately, jurors can be extremely good at this task. In fact, jurors take pride in their ability to see through efforts at deception. In focus group research, perception of witness integrity and credibility is remarkably consistent among jurors. Jurors talk about their pride in detecting a witness's effort to manipulate.

Making use of the guidance in this article does not require any great skill at clinical diagnosis, but it is important to understand the characteristics of narcissistic witnesses. What you should look for is not subtle. An air of superiority, condescension, noble sufferance of the inadequacies of others, and excess pridefulness are all typical of the narcissist.

What we consider our greatest strength may also be our Achilles heel

Narcissistic witnesses can be impressive at first, but are often irritating over time. One advantage that you have in cross-examination is that narcissistic witnesses are rarely insightful, regardless of intelligence. In fact, as a rule they are not as smart as they might initially appear. More importantly, they are not as smart as they think they are, which opens them up to over-reaching. Their biggest vulnerability is getting caught when they go too far.

Preparation for cross-examination of any witness involves study

The arc of a cross examination of a smart, narcissistic witness can be scary, because it defies the common wisdom on effective examination. For that reason, it is best to do this in deposition, rather than at trial. Simply put, you need to give them enough rope to hang themselves. Instead of boxing them in with "Yes or No" questions, ask them open ended questions that encourage reckless rambling. Follow-up questions should be directed at drawing out extreme positions and exaggerations.

If the witness is an expert or is going to be testifying about technical matters, you need to know the specialty as well as he or she does, while keeping your knowledge inconspicuous. Narcissists see deference and ignorance as weakness. Ultimately, you defeat them by encouraging them to climb out on shaky limbs and to take unsupportable positions.

Use their grandiosity to your advantage

These are not disciplined witnesses. They will opine, theorize, and offer conjecture like no one else. The more deferential you are as you ask the questions, the looser they will get. The reason is that they are easy to flatter, and they love demonstrating what they see as their strengths. They tend to assume that anyone that says something nice about them is being genuine, and anyone who criticizes them is stupid, beneath them, or out to get them.

Encourage them to compare themselves to others

Narcissists are prone to offering gratuitous criticism of other witnesses, regardless of how likeable the witness might have been. If such a witness is warned that Dr. Wilson did a good job arguing the opposition point of view and the jury liked him, the narcissistic witness is likely to take that as a challenge to bury the "shockingly misinformed" Dr. Wilson.

Be deferential:

> "Mr. Jones, I'm afraid I don't understand this balance sheet. Are these entries booked properly?"
>
> "How might someone else have done it wrong?"
>
> "How might this have been misinterpreted by someone who did not understand it?"

Allow the witness to demonstrate knowledge:

> "Doctor, when you look at this fetal monitor strip, what do you see?"
>
> "How can you tell that it is reassuring?"
>
> "What would you see if it was non-reassuring?"

Encourage the witness to be unlikeable:

> "Do you know Dr. Smith? Are you familiar with her work?"
>
> "Are you aware that she has expressed an opinion different from yours?"
>
> "Did she get this wrong? What did she miss? Where was she mistaken".

Open the door to arrogance:

> "Ms. Wilson, why do you think that Mr. Jones said you are wrong? Is Mr. Jones qualified to offer these criticisms of you?"

Remain constantly aware of their need to demonstrate their superiority

When I prepare witnesses for direct exam, I often have to caution them not to try to score points, and to be friendly and helpful rather than aggressive. As I noted in my article for the September 2008 issue of *The Jury Expert*, this is not an easy lesson for narcissistic witnesses who have a constant need to demonstrate their superiority. They like to show off their knowledge, sell their viewpoint, score points, and win competitions. "Win-win" outcomes are unthinkable for them. These are witnesses who often believe that lawyers are beneath them, and that they can outsmart them. They often find themselves failing terribly without even realizing it.

Pave the way for jurors to see through the narcissists' self-presentation

At trial it is always worthwhile to prepare the jury for the most important witnesses, so they have a sense of what they will be seeing before the witness is sworn in. In the case of a narcissistic witness, consider crafting an identity for them that they can't resist, and that will put the jury on guard about being manipulated or taken in by deception.

Have early witnesses who know the narcissist talk about him using useful language:

> "He is quite a salesman".
>
> "He is very persuasive".
>
> "Extremely charming. I didn't realize what I had agreed to until much later…"

What the jury hears is that they are about to hear from a snake oil salesman, but the witness often misses the point completely. The irony is that most narcissists hear these comments as compliments, and don't resist them. They are flattered that people find them charming or a great salesman.

In closing

The very thing that frightens you about this sort of blindness in your own narcissistic witnesses can work in your favor on cross, if the witness is not very thoroughly prepared. So, trust that the narcissistic witness will show his or her true character, be deferential, pave the way for the jury so they can see through the self-presentation, show them the shaky limb you want them to stop out on, encourage the witness to denigrate others, and do not become over-confident yourself.

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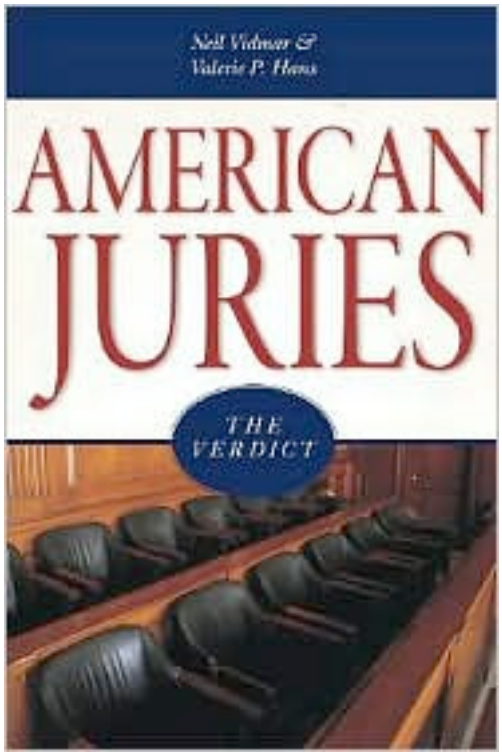
The Jury Judged: A Book Review

by Kevin Boully

American Juries: The Verdict. (2007). Neil Vidmar and Valerie P. Hans. Prometheus Books: New York.

American juries cannot stay out of the spotlight. Go back before Scott Peterson. Go back before the famous white Bronco. Go back nearly one hundred fifty years before Stella Liebeck spilled hot McDonald's coffee to the jury trial of John Hendrickson, Jr. In 1853, a jury tried Hendrickson in Albany County, New York, for allegedly killing his wife with a rare poison. Circumstantial evidence created significant obstacles for Hendrickson's defense, but the testimony of a 28 year-old physician-expert witness who claimed to have found the poison in the wife's intestines, tasted it from his finger, and tested it in his laboratory, finally sealed his conviction. During the appeal, a few vocal critics and then a broad swath of United States medical experts weighed in on the expert and the verdict, which was based in large part on the novel scientific testimony. There was widespread public interest. American medical journal articles challenged the expert's methods, and the hoopla included expert opinions from Ireland and England. Hendrickson's conviction stuck and he was hanged in May of 1854. Many blamed the jury for not scrutinizing the expert evidence more critically.



Since their first collaborative book in 1986, Neil Vidmar and Valerie Hans have been peerless contributors to the jury research literature, authoring highly credible works on the behaviors, competency, and legitimacy of the American jury. Their latest collaboration is *American Juries*, a comprehensive trial of the jury system that renders a useful, data-based verdict with objective and authoritative style. This examination of the American jury is grounded in lively anecdotes (like that of Mr. Hendrickson), evaluated in political and legal context, and combined with current empirical research as Vidmar and Hans explore the jury's evolution and standing in today's legal landscape. Perhaps most importantly, the text acknowledges public opinion and perception, particularly on controversial issues, and responds based on systematic evaluations of a range of available information.

Overtly designed to appeal to a wide audience – "a layperson, a student, or a lawyer" – this book is more broad than it is deep (p. 19). It covers the range of jury issues, and each chapter engages a wide approach to its topic, typically starting with historical context, summarizing key example cases throughout history, and weaving in studies and research updates along the way. It does, however, read mostly like a textbook. Specialists in the legal field (e.g. litigation consultants, jury researchers, or litigation attorneys) should expect to skim parts of the book primarily because you will have your own experiences and familiarity with the history and case examples presented. The research provided is pointed and relevant rather than exhaustive.

Nonetheless, *American Juries* is a definitive text for anyone interested in a comprehensive commentary on the American jury. Perhaps most engaging is Vidmar and Hans' acknowledgement of the American jury's proclivity for the spotlight. The book is framed to recognize public opinion or common criticism and respond through systematic and

empirical examination. The authors address numerous issues, and conclude each discussion with their verdict of the American jury's performance, many in stark contrast to public perception and rumor (e.g. the perception that juries wildly and haphazardly award money damages). The information is evenly presented so the reader can draw her own conclusions before the authors provide closure to each chapter with theirs.

For instance, Chapter Three focuses on the "democratic goal" of achieving a jury of peers. This touchstone of the jury system is supposed to create juries that "represent the various views of the community, serve as a political body, and, through rendering fair and just verdicts, provide legitimacy for the legal system" (p. 66). A history of poor representativeness – including inequitable representation of races, genders, and socio-economic statuses – has placed these lofty ideals in question. But Vidmar and Hans clearly describe the value of a representative jury and lay out an excellent argument that includes observations from the Arizona Jury Project as well as empirical research findings that "diverse juries are better fact-finders" (p.74). The findings that diverse juries engage in longer, more thoughtful deliberations and add legitimacy to the face of our justice system are important benefits and points well-made. Despite eventually labeling representativeness as a key vulnerability in the jury system as a whole, Vidmar and Hans reassure that "the American jury is more representative than ever before in its history" (p. 81). The history, research, and conclusion give readers a broad but objective view of representativeness just like the other key issues covered in the text.

Including students and laypersons in the target audience inherently limits space for more specific and practical content applicable to trial attorneys. While strategic recommendations are purposefully scarce, three chapters at the heart of the book give trial attorneys some practical information for trying civil cases. In these chapters, the authors focus on jury tasks, juror comprehension, and an evaluation of scientific and expert evidence. By framing issues such as jurors' construction of case stories, judge-jury agreement, jury competence in complex civil cases, and reactions to statistical evidence, *American Juries* offers some guidelines for effective trial strategy, allowing the reader to realize jury strengths and deficiencies and adapt accordingly. To a somewhat lesser degree, Chapter Nine ("Judging Criminal Responsibility") and Chapter Ten ("Deciding Insanity") provide similar principles for criminal trials. Still, other than the authors' evaluations at each chapter's end (which are excellent), the intent and flavor of this work is decidedly descriptive rather than prescriptive.

There are a few things that readers will not find in *American Juries*. Generally speaking, you will not find legal citations or case law references applicable to your practice. It has no procedural elements whatsoever. It is not organized to provide practical recommendations for litigators or exhaustive research reviews for researchers and consultants. Trial consultant readers may appreciate some of the legal history and case examples, but most should expect to be generally familiar with the research.

In the end, *American Juries* highlights the strengths, vulnerabilities, and signs of vitality in the America jury system. The authors' final conclusion is not surprising to those who frequently work with juries, and is generally consistent with Vidmar and Hans' view of the American jury in 1986. However, the manner in which the authors reach the conclusion is more comprehensive and expansive than has been accomplished before. It is cogent, complete, and supported through the historical, political, and empirical data presented. *American Juries* is the definitive text on the American jury system.

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Just World Jurors

By Alison K. Bennett

Ain't no living in a perfect world. But we'll keep on dreaming of living in a perfect world.-- Huey Lewis

In a perfectly just world, jurors motivated by perfect justice would make consistently well-reasoned judgments based on the law, the evidence and unbiased wisdom. By contrast, "Just World Jurors" motivated by a need to preserve a Belief in a Just World (BJW) may deliver judgments that normalize or minimize the very injustices criminal and civil victims call on them to address.

Just World Jurors seek to protect their perception of the world as a fundamentally fair and just place to live by psychologically distancing themselves from injustice. They may blame or derogate victims if they cannot compensate them or find a positive way to correct the injustice. In fact, this deep-seated need to protect a Belief in a Just World can cause "Just World Jurors" to distort evidence in an effort to justify the negative outcome. It is a delicious irony – the "Just World Juror" inadvertently creates injustice in an attempt to preserve the perception of a just world.

This article provides an overview of the Belief in a Just World (BJW) theory, discusses how to identify Just World Jurors and concludes with a discussion of its implications for litigation strategy.

What is a "Just World Juror"?

Over 40 years ago, Melvin Lerner (1965) created his Belief in a Just World (BJW) hypothesis to explain a tendency by some people to blame or derogate an innocent victim to protect their own belief that the world is a fair and safe place where people do not suffer undeserved misfortunes. This article explores BJW's effects and impacts on jurors and their decisions.

Lerner's original unidimensional construct described people whose BJW caused them to cling to the notion that "good" people are always rewarded with good fortune while "bad" people are punished as the consequence of their actions. With this distorted perception of a perfect world, BJW people reason that people get what they deserve and deserve what they get. Just world beliefs offer a sense of security in an otherwise random and chaotic world and depending on the strength of their conviction and their motivation for maintaining it, people go to great lengths to protect these beliefs depending on the strength of their conviction and their motivation for maintaining it.

Psychological Origins of Belief in a Just World

Many children are taught to delay gratification and work hard to achieve rewards and avoid punishment. They learn to expect fair treatment in exchange for adhering to societal and moral norms (Daubert, 1999; Hafer, 2002; Lerner, 2002). American culture reinforces just world beliefs through morality-based fairy tales and stories, and an emphasis on religious teachings that highlight the rewards of good character and good deeds rather than the negative consequences that occur when one commits bad deeds.

Positive Psychological Benefits and Negative Outcomes

Although early BJW research was focused on the derogation and blame of innocent victims, research in the past decade has expanded to investigate the positive psychological benefits of this belief system, including its utility as a healthy coping mechanism. People need to assume their actions will have predictable consequences in order to make long term plans or establish goals. Therefore, BJW can provide a psychological buffer against the harsh realities of living in a random world by offering believers an unshakable perception of the world as a stable and orderly environment. In fact, some characterize this attitude as being fundamental in helping people maintain psychological balance and a sense of well-being (Dalbert, 2001).

Another positive benefit of BJW results from the way it can motivate people to act to correct injustice or restore order to the world, inspiring volunteers and heroes who risk their lives for strangers. As Lerner (1981) writes, "We have persuasive evidence that people are strongly motivated by the desire to eliminate suffering of innocent victims".

Unfortunately, the negative side of this otherwise positive psychologically adaptive process is jurors' tendency to blame victims in an effort to "neutralize" injustice. Jurors' actions vary depending on their motivation for maintaining their BJW, their perception of the victim's character and their view regarding the victim's innocence. These types of "Just World Jurors," identified by category (in Table 2 below), can go to great lengths to maintain their beliefs, even in the face of evidence to the contrary (Rubin and Peplau, 1973). Lerner (1998) has characterized this process as a "fundamental delusion."

Identifying Just World Jurors

Since its inception in 1965, investigation of the Just World hypothesis has produced at least two well-researched measurement scales. In 1975, Rubin and Peplau designed a 20-item "Belief in a Just World Scale" to measure

individual differences in just world beliefs. This scale has been included in many justice related studies but has received its share of criticism (Hafer & Begue, 2005), mostly on the grounds that it has low internal consistency. A more robust instrument, the Global Belief in a Just World Scale (GBJWS; Lipkus, 1991) was later developed and offers statements that can be utilized in jury selection to identify Just World Jurors:

1. I feel that the world treats me fairly.
2. I feel that I get what I deserve.
3. I feel that people treat me fairly in life.
4. I feel that I earn the rewards and punishments I get.
5. I feel that people treat me with the respect I deserve.
6. I feel that I get what I am entitled to have.
7. I feel that my efforts are noticed and rewarded.
8. I feel that when I meet with misfortune, I have brought it upon myself.

(Please note the actual questions in the study were measured by a 6 point Likert scale)

These statements could be easily incorporated into Supplemental Juror Questionnaires to identify jurors with a strong BJW. Trial consultants could also use them to examine this construct in jury research to determine if it is predictive for use in jury selection.

General Characteristics of BJW People

Research has identified the following individual characteristics of people with a strong BJW:

- Authoritarianism (e.g., Altemeyer, 1988)
- Conservatism (e.g., Skitka et al., 2002), including being more likely to admire political leaders and existing social institutions
- Endorsement of the Protestant work ethic (e.g., McDonald, 1972)
- Internal locus of control (e.g., Carroll et al., 1987), or the belief that people are responsible for the outcomes of their lives
- They reported fewer acts of personal discrimination against themselves (Lipkus and Siegler, 1993)
- They possessed a strong focus on long-term investments and a strong desire to obtain goals through socially acceptable means (Hafer 2000)
- They exhibited less anger and showed higher levels of self esteem (Daubert 2002)

Other research has identified a few gender differences related to BJW:

- Overall, males are slightly more likely to have a strong BJW (Lipkus, 1996). (See also Table 2.)
- Females level of BJW does not seem to affect their decision-making as it did with males. For example, their levels of BJW did not correlate with their response to rape victims. Also, females with both high and low BJW attributed the same level of responsibility to the plaintiff in civil suits, but –in contrast to

males – females with a strong BJW award more damages. This is an important difference to note for jury selection.

Table 1: Just World Gender Differences

Gender	Characteristic	Criminal application	Civil application
Males	**More likely than females to have a strong BJW**	**More negative to rape victims**	**Strong BJW - Awarded more in damages than men with a weak BJW**
Females	**Less likely than males to have a strong BJW**	**Neutral to rape victims with respect to the strength of the BJW**	**Strong BJW - Awarded more damages than males**

Just World Juror Categories

In recent years the BJW theory has been expanded to redefine it as a multidimensional construct. It has become apparent that not all BJW people make decisions the same way, due to different underlying cognitive processes and differing motivations for maintaining this worldview. This section explores two of the most important findings, the resulting new categories and how Just World Jurors demonstrate these findings.

BJW-Self vs. BJW-Others

In a major innovation to the BJW theory in 1996, Lipkus, Dalbert and Sigeler proposed that BJW is a multidimensional construct that should be broken down into two categories:

1. BJW-Self, which describes a category of BJW people who believe the world is fairer to them personally ("self") but may be unfair to others in different domains for different reasons (such as someone who lives in another country), and

2. BJW-Other, which describes a category of BJW people who believe that the world is fair to all "others" and justice is for all.

Interestingly, those scoring high on BJW-Self measures scored low on depression and stress inventories, had higher scores on optimism, life satisfaction and tended to embrace a belief in a greater purpose in life. In effect, these are people who use BJW as a positive coping mechanism.

Conversely, BJW-Others scored high on measures related to negative social outcomes, such as prejudice towards the elderly, the poor and the disadvantaged. They also showed a higher tendency toward penal punitiveness. These BJW people are more anxious about chaos in the world and will place an inordinate amount of blame on a victim in an attempt to justify whatever happened to him or her. By blaming or derogating the victim they attempt to justify why the bad situation occurred, somehow deriving comfort from the notion that the victim did something to deserve the outcome.

In sum, BJW-Self is associated with the positive psychological benefits noted above and BJW-Other is linked to the desire to minimize threats to just world beliefs posed by "others." Accordingly, it is helpful to identify in

jury selection not only if a juror is a strong Just World Juror, but also if he or she has a positive BJW-Self or negative BJW-Other orientation.

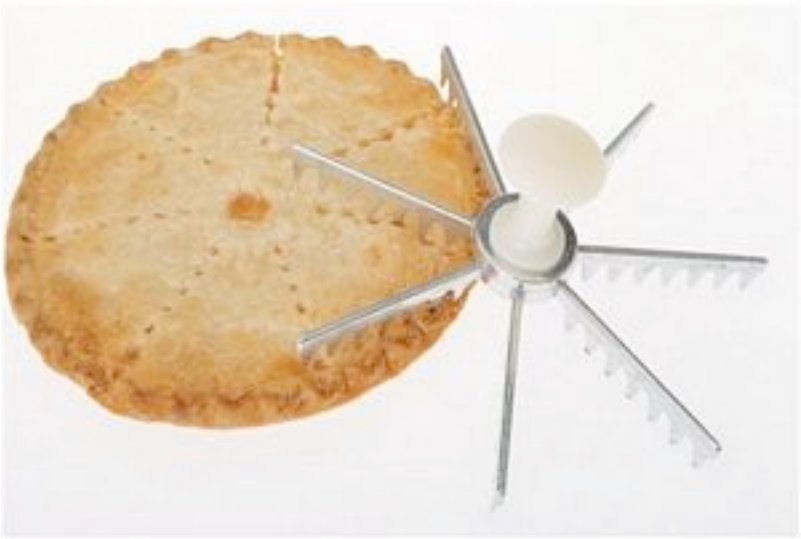
Immanent vs. Ultimate Justice

In 1998, Maes proposed another multidimensional construct, further defining the theory with four categories:

1. "General belief in a just world" describes a category of BJW people who can separate their own just world from the unjust or random world of innocent suffering (like BJW-Self people). Just World Jurors in this category may hold someone to a high level of personal responsibility for any perceived carelessness or negligence that led to the outcome, but are not likely to otherwise "punish" them and deny them all justice.

2. "Belief in ultimate justice" describes a category of BJW people who believe justice will *ultimately* prevail in this life or an afterlife, so they do not have to give up their fundamental BJW when confronted with injustice. People in this category believe the injustice will be resolved in the future or that further such cases can be prevented, allowing them to preserve hope that the world is orderly and safe. Just World Jurors in this category are not likely to hold the victim responsible for the negative outcome being addressed at trial.

3. "Belief in immanent justice" describes a category of BJW people who believe justice is inherent in a given outcome, thus people not only get what they deserve but they deserve what they get. They believe strongly that what goes around *always* comes around. People in this category are motivated by fear to blame and derogate victims even if they have to contort the evidence to do so. They also possess a strong internal locus of control, believing people are personally responsible for what occurs in their personal world and are therefore more threatened by victims who are more similar to themselves.



4. "Belief in an unjust world" describes a category of people who do not view the world as a just, orderly, predictable or safe place to live. These are the people who believe "life happens," demonstrating a strong external locus of control. This means they believe in the randomness of fate and do not define events as being inherently just or unjust. Interestingly, people in this category scored high on measures of anxiety, anger, depression, neuroticism, and displayed defensive coping mechanisms with a tendency to focus on negative events. They also exhibited lower levels of hope and optimism (Lench and Chang, 2007). Jurors in this category may not hold victims accountable for the outcome, but they may also project their negative emotions on the party with which they identify least, even if it is the victim.

Overall, research supports the conclusion that the BJW construct is cross-culturally generalizable and fairly stable (people are reluctant to change it) across the life-span (Furnham, 2003). The research into BJW theory includes over 80 peer-reviewed journal articles and more than a dozen book chapters.

Table 2: Just World Jurors Category Overview

Category Name	Overview	Characteristics	Implications for Plaintiffs/ Prosecutors	Implications for Defendants
BJW-Self (Lipkus et al.)	World is more fair to them; Positive psychological adaptative mechanism	Low depression; Low stress; High optimism, hope and life satisfaction; Believes in a life purpose	Will try to balance the scales of justice in a positive way if possible	*Civil* – Can award lower damages if the victim contributed in any way by action or negligence but probably won't deny them justice
BJW-Others (Lipkus et al.)	World is equally fair to everyone; Negative defense mechanism	Prejudiced towards the disadvantaged, elderly and poor; More anxiety and fear	Will try to blame the victim or hold them accountable in some way; Tendency towards penal punitiveness *if* they find someone guilty	

Category Name	Overview	Characteristics	Implications for Plaintiffs/ Prosecutors	Implications for Defendants
General Belief in a Just World (Maes)	Personal world is just, may not be just for others	Internal locus of control		Civil – Can award lower damages if the victim contributed in any way by action or negligence but probably won't deny them justice
Ultimate Justice (Maes)	Justice will ultimately prevail	Internal locus of control	Criminal & Civil - Less likely to hold the victim responsible. More likely to correct an injustice in a positive way by punishing the defendant	
Immanent Justice (Maes)	Justice is inherent in the outcome	Strong internal locus of control		Criminal and Civil – Most likely to hold victims responsible for the outcome
Belief in an Unjust World (Maes)	World is a random place where your fate is decided for you	Strong external locus of control		

Conclusion

Just World Jurors can be threatened when something terrible happens to another person, depending on the strength of their BJW and their motivation for maintaining it. When they encounter evidence suggesting that the world is not just, they may act to restore justice by either helping the victim or persuading themselves that no injustice has occurred. This may entail the use of one or more coping strategies, such as addressing the injustice directly by compensating victims to reduce their suffering, attributing a victim's suffering to reckless behavior or justifying the victim's suffering if they judge them to be "bad" or unworthy. These rationalizations allow Just World Jurors to maintain their belief that a similar misfortune will not occur to them, as long as they are careful and are of "good" character (Lerner & Miller, 1978).

The Belief in a Just World theory has proven to be a valid construct offering many useful applications for litigation strategy and jury selection. This article discusses how this theory can be applied to jurors, who can be beneficial or detrimental to a case depending on the strength of their BJW orientation and the motivation they have for maintaining those beliefs.

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November's issue of *The Jury Expert* is filled with practical tools to use in a changing world. Whether you want tips on engaging liberals, conservatives, women, varying generations or using the just world belief system to your advantage--it's all here. Plus strategies for cross-examination of narcissistic witnesses and learning about reiterative and conceptual graphics....what more could you want? Something to read? Check out our book review.

***The Jury Expert* is a trial skills journal. Our goal is to be a resource for information on the latest in social sciences research and how those findings can aid your litigation advocacy efforts as well as a place to see what trial consultants are doing, thinking, and considering.**

Tell us what you would like to see in future issues to build your arsenal of tools. Make your requests known via an email and we'll get right on it! What do you want to see in upcoming issues? What topics? More of what? Less of what? Do tell..

Here's a sampling of what we have coming up in future issues: race in juries, confidentiality issues in pre-trial research, a Snyder/Batson update, how disgust figures into decision-making, authoritarianism and litigation, many kinds of bias and how to work around it. And much more. Thanks for being a part of *The Jury Expert* and if you like us, tell your friends and colleagues.

Rita R. Handrich, PhD

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