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How To Present Yourself In Court To Be Optimally Likable and Persuasive

by Katherine James

Introduction

It is so simple, really. In order to be likable and persuasive in court all you have to do is:

- be yourself
- really listen
- make great eye contact
- smile more than you frown
- have a great voice
- gesture naturally
- become a fabulous story teller

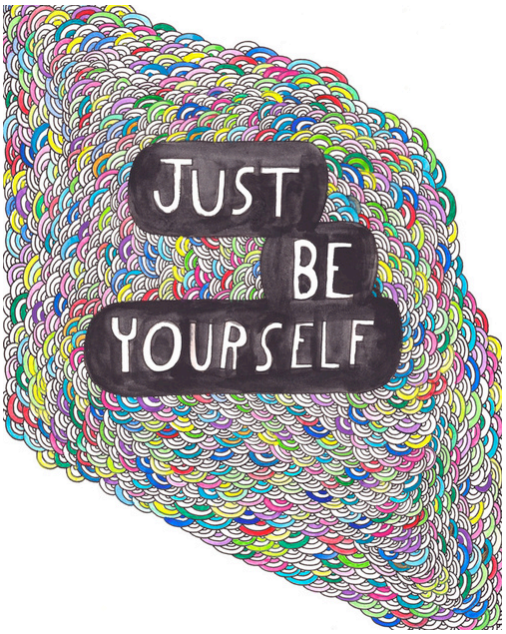
Having trouble with one or two or all seven of these? Don't worry. Here is a series of exercises that can help you develop these tools of likability and persuasion.

Be Yourself

How many times have you heard this advice? It is the best. Of course, there's just one tricky part. No one tells you how to do this. Let me let you in on a secret – you have to not only figure out who you are, you have to practice being yourself in court. Here is an exercise that helps you do both.

Turn on a video camera and point it at yourself.

- Start an opening statement for one of your cases. Deliver it to the camera for about a minute.
- Switch to the story of how you met your husband or wife. Deliver it to the camera for about a minute.
- Switch back to your opening statement and pick up where you left off. Deliver it to the camera for about another minute.
- Switch to the story of the scariest moment of your life. Deliver it to the camera for about a minute.
- Switch back to your opening statement and pick up where you left off. Deliver it to the camera for about another minute.



Turn off the camera and play back what you just recorded. Look at your demeanor. You may very well notice that you are at least two different people on your tape. The one who delivers your opening is your "lawyer" personality. The one who talks about being in love and scared is "the real you". You may notice that as you switch from a real life story back to your opening that your demeanor stays the same for a few seconds. You might find yourself completely stopping – unable to remember your opening. It isn't the opening statement you can't remember – it is that "the real you" is fighting the "lawyer" you.

Repeat this exercise using different stories from real life. Your goal? To deliver the opening statement as "the real you" instead of the "lawyer" you.

Really Listen

Do judges say that you don't listen to them? How about jurors? A juror provided one of my favorite comments ever made about an attorney: "He acted like a bad party guest during voir dire. You know – the guy who is just waiting for your lips to stop moving so that he can start talking about himself."

Before you can adjust your behavior so that you can listen to others, first you need to observe people who are really listening to you. How do you know that your spouse, your friend, your sister is actually listening to you? Here' how. People who listen:

- lean forward slightly toward the speaker
- make great eye contact
- nod to acknowledge that they hear and understand.
- say affirmative things like, "uh-huh" and "yes"
- have "agenda-less" expressions on their faces. For example, an open smile
- don't interrupt
- allow the words that the speaker tells them to affect their facial expressions

Now, practice these listening characteristics with the people you love and live with and with whom you work. You will be amazed at the results. And you may actually discover you really are listening more!

Make Great Eye Contact

Ever heard the expression, "The eyes are the windows of the soul"?

Ever had your most beloved say, "You never look at me anymore"?

The most fun way to develop eye contact is to practice simply looking into the eyes of your most beloved without speaking for a full minute. Breathe and look. Now, take what you have learned here to a small group of people. The next time you are talking in a small group, give one sentence to one person. The next to another. All the while you need to be looking at each person eyeball to eyeball while breathing and speaking. Find yourself talking to the ground or to a spot next to someone? Redouble your efforts. Make sure you are speaking to a set of eyeballs. Once you can do this, you are ready to speak to jurors. One at a time. While really looking at them.

Smile More Than You Frown

"This is a serious case. Of course I am not going to laugh or smile." If I had a dollar for every time an attorney told me that I'd be a wealthy woman. Of course, then the attorney manages to act like a total inhuman stiff instead of a person.

In real life, it is impossible to tell the darkest story of your life without finding the light spots in it. Go ahead. Tell the story of the worst thing that ever happened to you. How quickly do you tell a little joke? Or smile? Or find some way to lighten things up?

Here is the most daring exercise of all for lightening up. Turn on the video camera. Deliver your opening as your somber self. Now, deliver it as if you are a stand up comic and this is a stand up comedy routine. Now deliver your opening just as "yourself". Allow the lighter parts to shine through rather than trying to deliver it all as your "somber" self once more.

Play the whole tape back. Do you see the difference?

Have A Great Voice

You need to make a commitment to yourself that you will work on your speaking voice for ten minutes a day. Then do one of the following:

- Hum…and then sing your favorite song starting softly and then gradually getting fuller. Thinking fuller instead of louder keeps you warming up rather than blowing out your voice.
- Take in a deep breath…exhale all the air…take in a deep breath…exhale all the air while saying "may-ay-ay-ay"…repeat several times also riding out the breath on other vowels: "me-ee-ee-ee" "mah-ah-ah-ah" "moh-oh-oh" "moo-oo-oo". Make sure your voice isn't too high or too low but in your middle.
- Say, "My voice has many notes today" on a note in the middle of your voice (also called the middle of your vocal range).Now, go a half step lower and repeat "My voice has many notes today." A half step is the difference between a white key and a black key on the piano. Go down several half steps (but not until it hurts!). Then build back up again from that lowest note of your vocal range today…past that middle note, and up several steps (but not until it hurts!) and then back down to the middle again.
- Read something out loud you have never read before in your life (poetry, fiction, the newspaper) for five minutes. As you read, make mental notes of what words should be emphasized, where the emotion is, where the pauses should be -- how to make it make sense. Now read the same piece again incorporating all your improvements. The more days you do this exercise the better your ability will be to make sense of something you need to read out loud "cold" in court.
- Listen to someone you hate on a talk show in your car. Turn on your portable audio recorder. Tape yourself giving a short rebuttal. Play your rebuttal back again and listen for ways to improve it: vocally, word choices, content, theme, et cetera. Then turn on the recorder and do a new and improved rebuttal. Play it back for yourself again.

Gesture Naturally

This exercise is a lot of fun – but it takes full out commitment if you want to get results. Turn on the video camera. Do a piece of your opening statement. Turn the video camera off. Now do the same piece as a gigantic pantomime – act it out without words. Make a full commitment. Instead of just walking around really embody each word. Use your whole body. Act out the action parts of the story. Be really daring. Now turn the camera back on. Deliver the same piece of your opening again. You will find you have more relaxed and more expressive and more natural gestures – use them. Don't stop yourself and put yourself back in that old straight jacket of body movement you had before! Now play back the whole tape and watch the difference.

Become A Fabulous Storyteller

Stories are everywhere – especially in court cases. Persuasive and likable attorneys tell stories instead of listing a bunch of facts and laws.

First, be on the lookout for good storytellers. They show up on late night talk shows as great guests. They show up at parties. Sometimes they frequent bars. Occasionally they are your relatives. Oddly

enough, bad storytellers show up in these same places. What do you like about good storytellers? What do you find incredibly boring about bad storytellers?

Next, build your storytelling skills. Find a child. You might live with someone under the age of eight, so this might be easy for you. Tell the child the story of Goldilocks and The Three Bears. Or another fairy tale that you know and loved when you were a child. When the child is totally engaged with you, hanging on your every word, you are doing well. When the child is up, running around and trying to get out of the room, you are not doing well.

Now, turn on your video camera. Pretend that the fairy tale is a court case. Deliver an opening statement for one side or the other. Prosecute Goldilocks. Or represent her parents in a lawsuit against The Bear Family. Play it back. Are you using legal language instead of the clear and simple language you were using when you told the story to your five year old? Is your personality stiff and boring? Have you lost the thrust of the story because you are now pretending to be in court?

Finally, apply your newly minted storytelling skills to your opening statement. Tell it as a story. Really want to be daring? Tell it to your child in such a way that your child doesn't immediately start running for the door. Find the simple language, the storytelling magic in your court case. Retain your storytelling personality.

Conclusion

No one becomes more likable and persuasive overnight. It takes a lot of practice outside the courtroom. It takes dedication and a commitment to working on making yourself better. The attorney who recognizes that he or she wants to improve has already taken a giant first step. Many attorneys who have taken that first step have found that these exercises help them achieve those goals.

Katherine James (ActLawABKJ@aol.com) with husband and partner Alan Blumenfeld is the founder of ACT of Communication, a litigation consulting firm that specializes in live communication skills for lawyers and witnesses. An active theater artist, she acts, writes and directs. ACT's website is www.actofcommunication.com.

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POLITICAL ATTACK ADS: Lessons Learned

by Bill Grimes

There is a decidedly less strident, more civil tone coming from our TVs and radios since November 2nd when the centerpiece of our democracy, Election Day, came and went. It was another banner political season for the champions of free speech. The United States of America set an excellent example for the rest of the world on how to combine the desperation of political candidacy with the sleaze of Madison Avenue. Candidates of all persuasions – Democrats, Republicans, Tea Partiers, Libertarians, liberals, conservatives, incumbents, challengers – use attack ads these days.

Is there anything attorneys can learn from these tactics?

To rise above the noise, ad makers had to get more and more inflammatory as the election approached. In Illinois, Democratic Governor Pat Quinn had viewers cringing with a TV attack ad accusing Republican challenger Bill Brady of supporting mass euthanasia of pets.

In Nevada, Tea Party candidate Sharron Angle claimed in an ad that Senator Harry Reid, a Democrat, supports using taxpayer dollars for convicted sex offenders to get Viagra.

In Florida, incumbent Democratic Congressman Alan Grayson attacked conservative Republican opponent Daniel Webster in an attack ad for wanting to "impose his radical fundamentalism on us," and for being a draft dodger.

In Kentucky, Democratic Senate candidate Jack Conway asked in an ad a rhetorical question about his Tea Party opponent, "Why was Rand Paul a member of a secret society?" And the negative ads went on and on, for weeks and weeks.

The conventional wisdom is that attack ads have become commonplace in election campaigns because they work. The question is, according to whom, and under what criteria? Obviously, not every candidate who used attack ads won, nor did every candidate who used attack ads lose. Pat Quinn beat Bill Brady in the Illinois Governor's race by the slimmest of margins. Harry Reid easily beat Sharron Angle for the U.S. Senate from Nevada. Daniel Webster trounced Alan Grayson for U.S. Representative from Florida. And Rand Paul easily beat Jack Conway for Jim Bunning's old Senate seat from Kentucky.

Certainly there are those in the electorate who will be persuaded by attack ads and vote accordingly, but would the attack ad approach work in court? The instant analysis is that the ads attacking Daniel Webster in Florida and Rand Paul in Kentucky backfired on the candidates that commissioned them. There is probably a greater risk of the "attack" approach backfiring in court, because unlike in the unencumbered world of politics and advertising – especially in 2010 where it wasn't so clear where the

attacks were coming from – an attorney can't fire off a volley in court and then duck behind the podium. The triers-of-fact know exactly who is firing the shots.

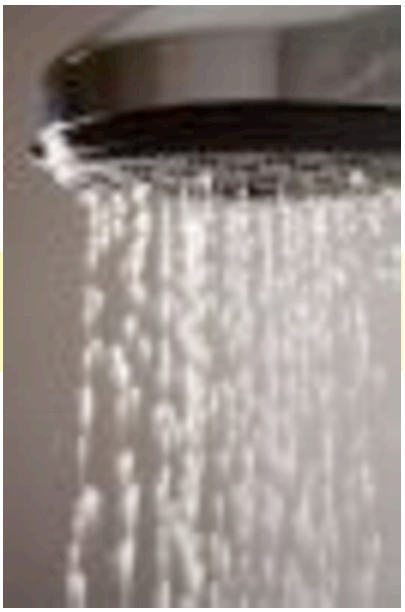
In addition, the decision-making process of an election and a jury trial are fundamentally different. In court you must get all the decision makers to agree after an open discussion (in some cases a 3/4 majority will suffice). In a political election, the winner only needs one more vote than his or her opponent, and the decision makers vote in secret. There is no deliberation in the voting booth.

CAUTION ADVISED

In my opinion, attorneys using any techniques approaching those of attack ads do so at their client's peril. Attack ads are full of invective, stereotypes and insults. Typically the only evidence presented is a quote from a newspaper article or editorial. The content of even the best newspapers is, aside from the Op-Ed page, hearsay, and we all know what judges think of hearsay. Besides violating the rules of civil procedure, attack ads are an insult to all but the most reactionary, and turn many off to the process. An attorney does not want to turn off any jurors. Political "attack" ads are how not to do it.

It's difficult to prove the effect of negative advertising on voter turnout, but I'll go out on a limb and say all the rancor has to be turning some voters away. Individual elections will have a spike in turnout from time to time, but the trend over the long term is down. The 1876 Presidential Election between Rutherford Hayes and Samuel Tilden attracted 82% of the voting age population. Voter turnouts of 75% and higher were common in the late 1800s. By 1996 the presidential election turnout had dropped to 49%. No presidential election turnout has cracked the 60% mark since 1968. Many state and local election turnouts are considerably less. Some scholars point to the diminishing influence of political parties and labor unions, as well as urban and suburban sprawl weakening a sense of community. If voter turnout continues to drop, and negative attack ads are a reason, can we really say they work?

Maybe the lesson learned from all this is from Colorado gubernatorial candidate John Hickenlooper, former mayor of Denver, who used humor in his ad. He said every time he sees a negative ad he "wants to take a shower." The ad shows him taking several. Hickenlooper was elected Governor of Colorado on November 2nd in a landslide.



Bill Grimes is with Zagnoli McEvoy Foley Consulting in Chicago. He has been a litigation consultant since 1990. Bill was a broadcast journalist from 1974 to 1990.

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Our Favorite Thing for November 2010

Our favorite thing this month will (if not already) be a favorite thing of travelers everywhere. It's provided by Bruce Beal--and without further ado: It's SeatGuru!

Bruce says: "One example: It shows the seat maps (with ratings) for all of the major air carriers. I know it is kind of a travel geeky thing to get all hopped up about - but it has already helped me pick better seats and better flights - so I thought I wold pass it along. Also, it is free."

Bruce Alan Beal lives in Chicago, goes wherever you need him to do dial groups, and flies often enough to think it odd he would like a site like SeatGuru so much. Learn more about Bruce at: BealResearch.com

Police Deception during Interrogation and Its Surprising Influence on Jurors' Perceptions of Confession Evidence

by Krista D. Forrest & William Douglas Woody

Police deception raises important ethical and legal questions across a variety of constituents, particularly given several recent and highly publicized miscarriages of justice that resulted from false confessions, such as those involving Marty Tankleff, John Kogut, and the suspects in the Central Park Jogger cases (see Friedman, 2010; Innocence Project, 2010a; Hirschkorn, 2002, 2003, respectively). Inbau and colleagues (2001), authors of the *Criminal Interrogations and Confessions* manual, train police officers in the careful use of trickery and deception. In an additional volume, Jayne and Buckley (1999) go on to say "the use of trickery and deception is of paramount importance to the success of an interrogation" (p. 443).

The materials that follow review our recent study of jurors' perceptions and decisions in cases involving confessions and police deception during interrogation (Woody & Forrest, 2009) and provide additional updates from our ongoing research program. We briefly review the psychological and legal literature related to police deception in the form of false-evidence ploys, and then discuss our methodology and findings. We conclude with a series of concrete recommendations for litigators.

False-Evidence Ploys

One form of deception is the false-evidence ploy, a claim by police to have non-existent evidence that implicates the suspect (see Leo, 2008). A false-evidence ploy is a common police strategy, with 92% of over 630 police detectives from the United States and Canada reporting that they use false-evidence ploys during interrogation (Kassin, et al., 2007). Many forms of false-evidence ploys exist. Leo (2008) identified testimonial ploys (i.e., a claim to have eyewitness or video evidence), scientific ploys (i.e., a false claim to have DNA, footprint, or other scientific evidence), and demeanor ploys (i.e., a false claim that the suspect's behavior indicates guilt). False-evidence ploys raise particular concerns in the social science community because false-evidence ploys increase the likelihood of false confession in laboratory studies (see Kassin & Kiechel, 1996; Nash & Wade, 2009; Perillo & Kassin, 2010; Redlich & Goodman, 2003; Stewart, Woody, & Pulos, 2010) as well as within interrogations described in archival data (Gudjonsson, 2003; Leo & Ofshe, 1998). A recent review of the false confession literature concluded that false-evidence ploys "have been implicated in the vast majority of documented false confession cases" (Kassin et al., 2010, p. 12).

The U.S. Supreme Court has allowed confessions to be admitted to court after police use false-evidence ploys to induce suspects to confess (e.g., *Frazier v. Cupp*, 1969). Additionally, other courts have evaluated false-evidence ploys in several cases, and with some exceptions (discussed subsequently) courts ruled that the voluntariness of a confession was not compromised by the use of false-evidence ploys (see e.g., *State v. Cobb*, 1977 and *State v. Jackson*, 1983 for discussions of false-evidence ploys including fabricated fingerprints and fabricated bloodstains and eyewitnesses, respectively). Courts have recognized limits, however, due to excessive coercion or due to the form of

fabricated evidence. For example, in *Lynum v. Illinois* (1963) police deceived the suspect by telling her that if she did not confess she would lose government benefits as well as custody of her children; the U.S. Supreme Court rejected the suspect's confession. Additionally, if the fabricated evidence could be mistaken for real evidence by the media, appellate courts, or the trial court (e.g., by being printed on official letterhead), courts have ruled that the confession was inadmissible (see e.g., *Florida v. Cayward*, 1989). These rulings have led legal scholars to argue for a variety of positions related to police deception ranging from eliminating police deception outside of severe circumstances (e.g., Paris, 1997) to avoiding deception prior to Miranda (Mosteller, 2007), to leaving current limits unchanged (e.g., Magid, 2001), to increasing the rigor of the limits on police deception (e.g., Slobogin, 1997, 2007; Thomas, 2007).

Despite the legal questions related to police deception, false-evidence ploys during interrogation are generally legal, and these ploys increase the likelihood of false confession. For any confession, if the suspect recants the confession and then goes to trial, the judge may hold a pre-trial hearing to determine whether the confession can be admitted into the courtroom (Kassin & Gudjonsson. 2004). If the judge admits the confession to trial, the next line of protection for the defendant is the jury.

Jurors, Confessions, and False-Evidence Ploys

How do jurors evaluate confession evidence, and how influential is a confession to jurors? According to Kassin and Neumann (1997), jurors rely on confession evidence *more* than other forms of evidence (italics added). Of greater concern is the finding that even if jurors rated a confession as less voluntary and believed that the confession did not affect their decisions, these jurors were *still* more likely to convict than jurors who did not read confession evidence (Kassin & Sukel, 1997). Additionally, since *Arizona v. Fulminante* (1991), jurors carry particular responsibility to evaluate confessions (see Woody, Forrest, & Stewart, in press, for a review). Prior to *Arizona v. Fulminante* (1991), courts "routinely" reversed convictions when a coerced confession was mistakenly admitted to the trial (Kassin & Sukel, 1997, p. 29; see *Chapman et al. v. California*, 1967). In *Arizona v. Fulminante* (1991), however, the U.S. Supreme Court ruled that the mistaken admission of a coerced confession into the trial could comprise a harmless error that does not increase the risk of mistaken conviction and is therefore subject to harmless error analysis. This ruling rests on the assumption that jurors can recognize and reject a coerced confession, even though empirical findings contradict this assumption (Kassin & Sukel, 1997; Kassin & Wrightsman, 1981).

Jurors' perceptions of and decisions about police deception are particularly important because of changes in interview and interrogation protocols across the country. More than ever before, police interrogations are likely to be video-recorded, audio-recorded, transcribed, or all three. Trickery and deception, once hidden within the secretive interrogation process, now becomes clearer, more likely to be viewed by judges and other observers, and more likely to be studied in detail by the jury. These changes taken together raise important concerns about how jurors understand and evaluate interrogation strategies and confession evidence.

Our primary research question is whether jurors decide cases differently when police use false-evidence ploys during interrogation. As triers of fact, jurors must evaluate confessions that judges admit into trials, and jurors must evaluate the veracity of a given confession as well as recognize and reject any coerced confession (*Arizona v. Fulminante*, 1991; see also *Lego v. Twomey*, 1972).

Jurors, however, may not know much about police interrogation (Chojnacki, Cicchini & White, 2008; Leo & Liu, 2009) and may accept what Leo (2008) calls the myth of psychological interrogation, the belief that people will not falsely confess in the absence of mental illness, cognitive limitations, or torture (see also Loftus, 2004). Therefore, in a case involving a disputed confession, the defense may introduce an expert to discuss the possibility of false confession as well as other aspects of police interrogation with which jurors are unlikely to be familiar (see Jayne & Buckley, 1999; Kassin & Gudjonsson, 2004; Leo & Liu, 2009). Our secondary research question is whether an expert witness who informs jurors that false confessions happen and that false-evidence ploys raise important concerns regarding false confessions could affect jurors' perceptions and decisions.

Specific Research Questions

First, we examined whether jurors evaluate confession evidence differently as a function of whether the police used false-evidence ploys during the interrogation. We expected jurors to rate interrogations as more deceptive and more coercive when interrogators used false-evidence ploys, and in these conditions we also expected jurors to render fewer guilty verdicts, rate the defendant as less guilty, and recommend shorter sentences[1]. Second, we expected the presence of an expert witness to help jurors better understand the pressures of the interrogation process as well as the possibility of false confession; therefore, we expected the presence of an expert witness to increase ratings of deceptiveness and coerciveness and to decrease both conviction and sentencing rates. Third, we measured the deceptiveness and coerciveness of different false-evidence ploys. We hypothesized jurors would perceive scientific and testimonial ploys as more deceptive and coercive than demeanor ploys. Finally, we examined the extent to which jurors believe they, themselves, or others would falsely confess and then determined whether these beliefs predict verdicts and sentencing.

Overview of Method

All participants (N = 387) read a trial summary which established the following conditions: First, the murdered victim had been an associate of the defendant. Second, although police did not have any actual scientific, testimonial, or demeanor evidence against the defendant, the police initiated the interrogation. Third, the defendant confessed. We randomly assigned participants to one of two false-evidence ploy conditions (present or absent) and one of two expert conditions (present or absent). Participants in the ploy-present condition read an interrogation transcript that depicted a demeanor, testimonial, or scientific false-evidence ploy. The first author and colleagues developed the 15-page interrogation transcript from a 385 page transcript of an actual

interrogation (see Stastny et al., 2006). Participants then rendered verdicts with those participants convicting the defendant also recommending sentences. Jurors' instructions regarding the definition of the crime, the presumption of innocence, the definition of reasonable doubt, and sentencing guidelines conformed to Colorado law (Criminal Code, 18 CO. Rev. Stat. §§ 3-103, 2004; Criminal Code, 18 CO. Rev. Stat. §§ 1-402, 2004; Criminal Code, 18 CO. Rev. Stat. §§ 1.3-401, 2004, respectively). All participants answered a series of posttest questions regarding the degrees of deception and coercion involved in the interrogation techniques.

The Effects of False-Evidence Ploys

Not all participants correctly identified the false-evidence ploy or control condition in their interrogation transcript; therefore, the analyses described here included data from the 361 participants who correctly identified the false-evidence ploy in their version of the interrogation transcript. As expected, mock jurors reading interrogation transcripts including false-evidence ploys rated their interrogations as more coercive and more deceptive than did jurors who did not read about false-evidence ploys. There were nonsignificant trends such that participants who read a false-evidence ploy appeared slightly less likely to convict the defendant and rated his guilt slightly lower than did participants who did not read about a false-evidence ploy. False-evidence ploys did, however, influence jurors' recommended sentences. Compared to participants in the control condition, mock jurors exposed to false-evidence ploys recommended lighter sentences. Although jurors do not usually recommend sentences, this outcome suggests jurors viewed the defendant exposed to police deception as less deserving of punishment, even though the crime, the evidence, and the presence of the confession were identical across all conditions.

We found few differences between ploy types. Although participants rated scientific and testimonial ploys as more deceptive than demeanor ploys, ratings of coercion did not differ. Additionally, jurors recommended longer sentences for defendants who confessed after a demeanor false-evidence ploy. Jurors reading interrogation transcripts with demeanor false-evidence ploys rated their interrogations as less deceptive; it follows they would also recommend longer sentences for convicted suspects exposed to this interrogation technique.

The Effects of Expert Testimony

Regardless of false-evidence ploy condition, expert testimony influenced jurors' perceptions of confession evidence. Similar to courtroom expert testimony, participants assigned to the expert testimony condition read that false confessions occur and that scholars have particular concerns regarding false-evidence ploys and the potential for false confessions as well as general information concerning the three types of false-evidence ploys discussed previously. Although the expert testimony did not refer specifically to the current defendant, mock jurors exposed to the expert testimony convicted less often, considered their defendants less guilty, and rated their interrogations as more deceptive and coercive (see also Blandon-Gitlin, Sperry, & Leo, 2010). These findings suggest that experts may influence trial outcomes in cases involving false-evidence ploys because many jurors perceive themselves as naïve when it comes to police interrogation (Leo, 2001; 2008; Leo & Liu, 2009).

The Myth of Psychological Interrogation

Leo (2001; 2008) has suggested three reasons why jurors find false confessions difficult to understand in the absence of mental limitations or physical coercion. First, although few jurors understand the degree to which police interrogation is a manipulative form of persuasion, many acknowledge they know less than they should when asked to consider interrogation and confession evidence (Henkel, Coffman & Dailey, 2009). Second, observers find it hard to believe that suspects would go against their own self-interest by confessing to something they did not do (Henkel et al., 2009; Leo, 2008; Leo & Liu, 2009). Third, because those same observers "know" they would never falsely confess, they apply the same logic to their peers. Typically, college students and potential jurors state neither they nor others would falsely confess to crimes not committed (Leo, 2008; Sauer & Wilkens, 1999). Consistent with previous research, more of our participants suggested that false confessions were possible for others (87%) than for themselves (32%). In contrast with previous work, more participants in our study than in previous studies admitted that they could possibly confess to a crime they did not commit in the absence of physical coercion. In the study described here, these differences did not predict jurors' decisions. Our more recent and more thorough investigation of these questions, however, involved a larger sample of participants and demonstrated that a predictor of verdict and sentencing in similar trials is whether or not the juror believes others may falsely confess in the absence of coercion (Woody, et al., 2010). Jurors who believe that others may falsely confess are less likely to convict a confessing defendant than were jurors who do not believe that others may falsely confess. Whether or not the juror believes that he or she would falsely confess was also a significant but less powerful predictor, such that jurors who believe they may confess were less likely than other jurors to convict a confessing defendant (Woody et al., 2010).

Costs of False-Evidence Ploys

The false-evidence ploys result in primary and secondary costs to society. The obvious primary costs of false confession apply most directly to falsely-confessing and therefore mistakenly-convicted defendants, who may spend years or decades in prison for crimes they did not commit. For example, after his false confession Jeff Deskovic spent 16 years in prison for a 1989 sexual assault and homicide, despite the introduction into the trial of DNA evidence that did not implicate him (Innocence Project, 2010b). Only the admission of the actual perpetrator led to Deskovic's freedom. Another primary cost is to the community that faces risk from a perpetrator who remains free as law enforcement officers cease to search for the actual criminal after a suspect falsely confesses. Tragically, the perpetrator who committed the crime for which Deskovic was mistakenly convicted committed another murder in 1994, a murder that could have been prevented had the actual perpetrator been arrested and convicted in 1989 (Innocence Project, 2010b).

Secondary costs of false-evidence ploys affect society and the legal system in many ways. First, deception upsets the individual who has been deceived, and deceived suspects may respond with their own deception or even aggression (see Bok, 1999; Slobogin, 1997). Second, Skolnick and Leo (1992) argue that acceptance of police deception during interrogation may make it easier for police to lie in other situations such as in court, to judges, or to internal affairs investigators. Third, as noted previously, false evidence could appear real to media, trial judges, or appellate judges who could make errors based on the belief that the fabricated evidence is real (see *Florida v. Cayward*, 1989). Fourth,

police deception may affect observers' views of the justice system as a whole as well as observers' views of the judges, attorneys, and police officers who accept and further legitimize police deception (Paris, 1997).

Recommendations

Our improved understanding of jurors' perceptions of and decisions about cases involving police deception during interrogation suggests a series of practical recommendations for litigators. What factors should attorneys consider when going to trial in the cases involving confessions and police deception during interrogation?

1. Defense attorneys should attempt to introduce an expert witness in the area of false confessions to educate jurors about the little-known, manipulative, and potentially deceptive nature of police interrogation. Rather than focusing primarily on the defendant, we recommend that defense attorneys focus instead on how interrogation strategies in general and false-evidence ploys in particular have been shown to influence voluntariness and even elicit false confessions in laboratory studies and archival cases.

2. If the interrogation includes police deception in general or false-evidence ploys in specific, defense attorneys should interview the police officers who interrogated the defendant. Defense attorneys should assess the extent to which these deceptive techniques are considered typical in that officer's working climate and the degree to which deception is involved, if at all, in the particular case.

3. If audio or video evidence of the interrogation has not been suppressed and the interrogators used false-evidence ploys, defense attorneys should identify and discuss each ploy for the jury.

4. In addition to explicit false-evidence ploys, as discussed in this paper, in which investigators explicitly claim to have nonexistent evidence, we also encourage defense attorneys to seriously evaluate implicit false-evidence ploys, called bait questions by Inbau et al. (2001) and Jayne and Buckley (1999). Inbau et al. (2001) state that an implicit false-evidence ploy "is nonaccusatory in nature but at the same time presents to the subject a plausible probability of the existence of some evidence implicating him in the crime" (p. 193). For example, if a suspect has denied that he or she was near the crime scene, an investigator might ask whether the suspect would appear on a hidden camera at the scene without directly claiming that such a recording exists or has been evaluated by police. In an implicit false-evidence ploy there is not an explicit lie about evidence, and legal scholars and social scientists have only recently begun to examine these deceptive interrogation tactics (Gohara, 2006, Forrest, Woody & Hille, 2010; Perillo & Kassin, 2010). Explicit and implicit claims of evidence are legally distinct. For example, Inbau et al. (2001) and Jayne and Buckley (1999) extensively discuss and defend the legality of explicit false-evidence ploys, but neither examines the legality of implicit false-evidence ploys. Despite these distinctions, both explicit and implicit false-evidence ploys induce false confessions at similar rates (Perillo & Kassin, 2010), and jurors cannot distinguish between them (Forrest et al., 2010).

In other words, even if investigators used a seemingly less deceptive implicit false-evidence ploy, defense attorneys should have the same concerns that they would have regarding an explicit false-evidence ploy.

5. Prosecutors should advise police detectives about the potential trial outcomes that stem from deception during interrogation. Not only do false-evidence ploys increase the likelihood of false confessions in experimental studies as well as in the archival data, false-evidence ploys may also lead a jury to perceive the interrogation as more deceptive and coercive. Police deception only marginally decreased the likelihood of conviction in this study, but these changes in jurors' perceptions of deception and coercion raise important concerns. If police interrogators know that deception may reduce the chance of a conviction and lead to shorter sentences for confessing defendants, interrogators may choose to avoid deception during interrogation to reduce these risks. We have an ongoing study to evaluate whether judges are subject to these biases in sentencing.

6. When appropriate, *voir dire* should include questions concerning false confessions and the degrees to which jurors see themselves and others as capable of making a false confession. As we found, jurors who believe that false confession is possible for others or for themselves are less likely to convict than are jurors who believe the myth of psychological interrogation (Woody et al., 2010).

7. Although the study discussed here assessed jurors' perceptions and decisions, we recommend that judges use caution when deciding whether to admit disputed confessions into trial, particularly when a confession follows police deception. We raise these concerns here due to potential effects on jurors, but we strongly recommend that judges consider the experimental and archival evidence that demonstrates that false confession becomes more likely when interrogators use false-evidence ploys (Stewart, Woody, & Pulos, 2010).

Conclusions

Unfortunately, due to the limited effects of the presence of false-evidence ploys on verdicts, jurors do not provide a safety net that prevents false-evidence ploys and potential false confessions from leading to mistaken convictions. Despite the larger potential for false confessions in the presence of false-evidence ploys, jurors were only marginally less likely to convict a defendant who confessed after a false-evidence ploy. Our results suggest that jurors are not likely to act as effective gatekeepers who prevent confessions in response to false-evidence ploys from increasing the likelihood of mistaken convictions.

Without a careful consideration of how false-evidence ploys influence suspects and decision-makers, convictions based on such techniques accompanied by long sentences become the worst deception of all. Despite judicial decisions that assume jurors can appropriately recognize and reject coerced confessions (e.g., *Arizona v. Fulminante*, 1991; *Lego v. Twomey*, 1972), jurors do not appear able to rise to these legal expectations. Beyond all of the previous recommendations, we argue that litigators should be aware of the limitations of jurors and of the disconnections between legal expectations and jurors' actual abilities. The myth of psychological interrogation remains powerful, and it can bring devastating consequences to a falsely confessing defendant. Beyond jurors, we recommend education for police investigators, particularly about the connections of false-evidence ploys and false confessions

and about differences in jurors' perceptions of the interrogation as a function of false-evidence ploys. In court, assessment of the actual interrogation techniques including false-evidence ploys if relevant, inclusion of expert testimony related to interrogation techniques, and education for the jury provide the beginnings of additional safeguards. Across all of the findings in this study and in our ongoing research, we hope to provide litigators with additional tools to help jurors render more accurate decisions about trial defendants.

Krista D. Forrest, Ph.D. [forrestk@unk.edu] is a Professor of Psychology at the University of Nebraska, Kearney. An award-winning teacher in the areas of General Psychology, Human Development, and Group Dynamics, she supervises several students in her Undergraduate Psychology and Law Lab. Current areas of research include prototypes for police interrogation, systematic investigation of interrogation techniques and their influence on confession, and jurors' evaluations of police interrogation and confession evidence. You can review Professor Forrest's research and contact information on her webpage at http://www.unk.edu/academics/psychology/faculty_staff/Krista_D__Forrest/

William Douglas Woody, Ph.D. [william.woody@unco.edu] is a Professor of Psychological Sciences at the University of Northern Colorado. He is an award-winning teacher of psychology who also serves as a research mentor for graduate students as well as advanced undergraduates. His primary research areas are in psychology and law, particularly jury decision making, interrogation, and confession, as well as the history of psychology and the teaching of psychology. You can review Professor Woody's research and contact information on his webpage at http://www.unco.edu/cebs/psychology/woody.html

We asked an experienced trial consultant to respond to this article. After the listing of references, Wayne Wallace offers his thoughts about the impact of false confessions on jurors.

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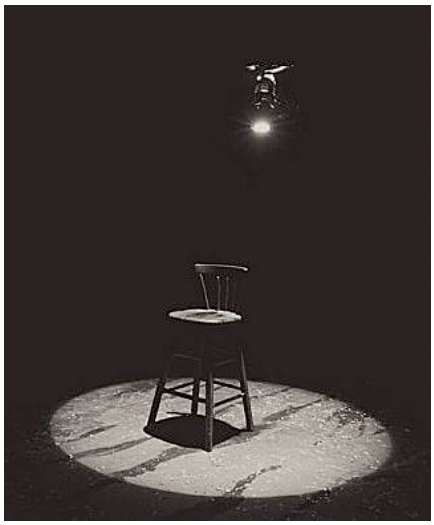

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Footnote

1. Although jurors typically do not sentence defendants, we assessed this dependent variable as a measure of jurors' perceptions of the defendant's need for punishment.

Wayne Wallace responds:

I had the pleasure of reviewing *Police Deception During Interrogation and it's Surprising Influence on Juror's Perceptions of Confession Evidence (2010)*, by Krista Forrest and William Woody. The primary issue raised in this article is whether police deception during interrogation influences a jurors' perception of confession evidence. The surprise was to find that the influence of police deception in confession evidence on juror perception is minimal. The article proceeds valiantly to caution against excessive police coercion, and identifies the potentially devastating consequences that can result from a false confession.

This article shows an intelligent subject knowledge, but appears unwilling to yield to the concept of a jury being competent enough to recognize unreasonable or excessive coercion in a police interview. The article concludes, "*Despite judicial decisions that assume jurors can appropriately recognize and reject coerced confessions…jurors do not appear to be able to rise to these legal expectations.*" The insight continues; "*Litigators should be aware of the limitations of jurors and of the disconnections between legal expectations and jurors actual abilities."* The chief finding in this study appears to be that, "*Jurors are not likely to act as effective gatekeepers who prevent confessions in response to false-evidence ploys from increasing the likelihood of mistaken convictions."* Despite this measure of inadequacy consigned to the common juror, we do not learn who the appropriate "gatekeeper" should be.

My experience with real jurors is that they recognize coercion just fine; they just aren't offended by it when they disbelieve the defendant. As this article illustrates, there are many who are frustrated that juries overwhelmingly reject assertions of police coercion, accounting for the rationale that enlightenment resides only among those with an advanced knowledge of theory.

Prior to becoming a litigation consultant I retired from law enforcement, having served as a criminal investigator, special agent, and prosecutor's detective. I've been trained in most of the conventional interview and interrogation methods available - as well as a few unconventional ones. As a detective with the prosecutor's office, I've observed hundreds of post-conviction, disputed confessions, most of which required a reasonable person to suspend common sense and rational thought (most appeals were written in pencil by the defendants themselves). Judges, considering the totality of the circumstances, overwhelmingly agree.

Trickery and deceit during custodial interrogation can generate spirited debate, particularly among professionals and activists who are passionate about their position. The fact is however, that if denial was not confronted during interrogation, many crimes would never be solved. The issue is understandably controversial, and often results in polarization, however, I've not ever heard from a juror who was offended by coercion that led to a confession.

There is risk involved any time we confront a perceived injustice and attempt to stimulate change. Here, the risk is not just what some social theorists and DNA enthusiasts are focused on, there is also risk in overcompensating, and weakening the system that is intended to protect society from dangerous offenders. In addition to the many safeguards built into the system, common sense and reasoning skills are entrusted to jurors through our justice system. This article disagrees.

Defining and measuring coercion is an inexact endeavor at best, and we know that jurors give considerable latitude to police during a confession. Despite giving police the benefit of the doubt, a jury may require corroborative evidence to convict. The less evidence there is, the better chance a defendant has to confront it, and if a defendant chooses to raise coercion as an issue, he will likely have to tell the court or the jury himself to be successful. This tactical decision should be made by the defendant and his attorney, and can be risky depending on the skill of the prosecutor. Experts may testify at suppression hearings and again at trial to talk about general psychological principles, but an expert may not render an opinion about a particular confession (*US v. Hall, 1997).* In addition to the safeguard of a unanimous jury verdict, there are post-conviction appeals at several levels.

I've been summoned to jails dozens of times by convicts wanting to trade criminal information for leniency or early release, and every one of them was innocent. In reality, most claims of innocence are bogus; wrongful convictions occur in about .5% of all felony cases (Huff, Rattner, & Sagarin, 1996). This article cites an Innocence Project example of a false conviction by wrongful DNA evidence (not police interview coercion) where the actual perpetrator had committed another murder. In reality, in 60% of cases where defendants seek DNA testing or re-testing (cases vetted and supported by Innocence Projects), they were further implicated by the results (Jacobi & Carroll, 2008). Indeed, there are considerably more *wrongful innocence* claims.

As trial consultants, we know that attorneys need information they can use. Initially, voir dire should identify potential jurors inclined to accept a police version of events without question. Preemptory strikes should be used accordingly. The consultant should also recommend that confession evidence be presented to a jury as coercive only if the officer's behavior is egregious enough to offend jurors. The consultant should recognize that the more heinous the crime, the more latitude a juror will give to the interviewer. Another consideration should be the amount of physical evidence that supports the confession. Proper interviewing techniques and strategies will not only break down barriers to confession, they seek evidence that independently corroborates a criminal act. Thus, the overall strength of confession evidence should be considered when electing whether or not to confront it as coercive or not. Consultants who don't frequently work with criminal juries should remember that the prosecutor must convince *every* juror, while the defense needs only *one*.

The article confronts The Reid Technique of Interviewing and Interrogation as a predominant law enforcement interviewing method, bringing up a common misconception. Those not acquainted fully with law enforcement training often have an erroneous understanding of the degree to which the Reid Technique is adopted by police interviewers. Even if an interviewer is certified in every method that Reid offers, as I am, there is no obligation to employ their strategy, at any time. Reid is by no means the most widely used interview and interrogation method in law enforcement, it's just the most recognized by researchers and academics and is thus the most frequently scrutinized. The skills, methods, and nuances comprising the art of police interviewing take years of experience to refine, and the result is an amalgam of techniques that combine with an interviewer's personality. There are many equally effective interview techniques such as behavioral analysis and cognitive interviewing available to law enforcement. Some of the better interview and interrogation training courses such as Lt. Albert Joseph's "We Get Confessions" are restricted to law enforcement, focusing on rapport and listening skills rather than coercion. It's my belief that presupposing Reid (with its distinct 9-step technique) as the predominant law enforcement interviewing method, has the potential to imperil the validity of research on this topic.

Factors that influence how people interpret coercion will differ depending on their role within the system: defendant, researcher, expert, judge, prosecutor, defense, or juror. Coercion resides in the eye of the beholder. The linchpin is in this context is guilty knowledge. If an interviewer employs coercion to overcome a suspect's denial resulting in the acquisition of evidence that corroborates the confession, the coercion is immaterial to a juror.

I'm not sure that there is any effective shotgun approach to eradicating excessive police coercion during interrogation, but I agree that professional, targeted skepticism is warranted. In fact, police conduct cases constitute a majority of my own consultancy, and as a former detective I am extremely skeptical of forensic evidence. This article highlights the need to remain diligent, and contest confession evidence when appropriate with the aid of an expert witness. In my view, education and an expanded knowledge base of law enforcement interview and interrogation will aid researchers in their quest for a comprehensive understanding of this issue. Coordination between disciplines may even accommodate the acquisition of more reliable data, through which less coercive techniques might be conceived. The result could be a scenario where everyone wins.

Wayne Wallace (wayne@strategictrial.com) is a forensic litigation consultant with Strategic Solutions Inc. He holds a Master's degree in Forensic Psychology and is currently earning a PhD. He is a retired police detective, Commonwealth's Detective, and Special Agent and is an adjunct instructor of Criminal Justice.

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Accentuate Your Argument and Increase Your Persuasive Power with a Hyperlinked Brief

by Christine Falcicchio and Dan Wolfe

In late August, global headlines spotlighted a bizarrely epic traffic jam in China. Stretching over one hundred kilometers, the jam left thousands of Chinese drivers stranded on a major expressway for over a week.

Too much traffic slows everything down. In the U.S. legal system, bottlenecks occur in a somewhat different way—most notoriously, in paper chases and information overload. On average, more than 400 new cases are added to a federal district court judge's docket every year, according to the U.S. Courts website. Some courts limit the time judges have to rule on motions, and with overloaded dockets, judges have even less time to review the supporting materials for these motions. It is therefore imperative for an attorney to be able to present a brief to the court in a streamlined and effective way. A party who wants to win must be sure the court can smoothly access critical information in order to quickly grasp and appreciate the argument.

To help manage dockets, federal courts and several state courts have implemented the electronic case filing (ECF) system. ECF has made drastic strides toward streamlining the filing process; however, the system is not without its shortcomings. For example, attorneys are required to provide all of their materials to the court in individual PDFs, and file size limitations often make it necessary to separate a single document into multiple files. In the end, the court must still maneuver through numerous files to review a brief and its supporting materials.

Submitting one consolidated package in an interactive format is the solution. In fact, the utility of a hyperlinked brief picks up precisely where ECF limitations begin. Mirroring the familiar and intuitive logic of clicking through linked Web pages, hyperlinked briefs are a simple and even obvious remedy to streamline the court's normally cumbersome review process. Presenting a hyperlinked brief to the court helps to gain favor with judges, and the brief is sure to stand out among the unwieldy mass of other pending matters.

What is a Hyperlinked Brief?

As the name suggests, this tool attaches hyperlinks to all citations in a brief, providing instant access to a precise reference within a cited document. For example, a hyperlink will deliver the reader to the exact page of an exhibit, pincite within a case or subsection of a statute, where the reader may check the referenced material for accuracy or scroll through the cited document for related information.

After reviewing the supporting document, the reader clicks a button to return to the exact section of the brief and resume reading. Hyperlinks can also attach to video, audio, graphics and custom demonstratives, which often enable the attorney to present evidence more effectively.

Notably, hyperlinked briefs offer full access to all cited legal authorities, which are not commonly included in ECF submissions. The ready availability of all relevant materials is a tremendous convenience for the court because it eliminates several otherwise necessary research steps and enables the court to glide smoothly through the argument without changing course. This additionally results in a subtle but strong advantage to the submitting party by ensuring the court will thoroughly review the support for the argument.

Hyperlinked briefs have been used for over a decade, and they encourage courts to perform an exhaustive review of all supporting documents. Judges, law clerks and arbitrators are receptive to "courtesy" briefs, and some courts even issue invitations and requests to submit corresponding briefs. An interactive format is easier to navigate in a shorter amount of time.

In one case study, hyperlinked briefs were used for filings in a large securities class action in federal court. The case involved numerous banks and creditors. An expert service provider worked with more than ten law firms to create hyperlinked briefs for over 2,500 pages. Although many of the relationships between the parties were adversarial and contentious, all parties agreed that it was best to present the court with one cohesive interactive format. This was a way to ease the court's review and to keep the case on schedule moving toward trial. The judge was so appreciative of the interactive briefs that he has gone on to recommend their use in other matters.

When to Use a Hyperlinked Brief

Hyperlinked briefs can be used to enhance any filing throughout the entire litigation process. They are most commonly used for summary judgment briefs, but they are beneficial as early as motions to dismiss, as well as at the final stage for post-trial findings of fact and conclusions of law. Fact sensitive matters are naturally suited for hyperlinked briefs because the force of a party's exhibits and testimony are pivotal. It is necessary for the judge to read the exact sections of those documents without wasting time thumbing through pages of documents. At the appellate level, hyperlinked briefs can be critical in linking the judge – literally – to the crux of the argument.

Hyperlinked briefs are valuable in other contexts as well. They are frequently used in alternative dispute resolution, especially with arbitration briefs, mediation reports and settlement reports. In fact, a presentation can be enhanced with hyperlinks in ways limited only by an attorney's creativity. Aside from a traditional briefing, this tool can be used to review client or internal memoranda, coverage opinions and expert reports. It also functions to create a catalog of exhibits and trial documents for exchange or to create an exhibit or graphic archive of materials after a case is closed.

How to Submit a Hyperlinked Brief

Many attorneys choose to create hyperlinked briefs on their own using Adobe Acrobat. This can be a viable option in small cases with very few documents, citations and supporting materials. However, attorneys must invest significant time and energy in learning and applying the latest version of this software. As case sizes begin to grow and the number of exhibits and references increase, identifying, locating, creating and testing all of the links can be an overwhelming process to manage. Enlisting the expertise of a trial services provider assures quality control and swift turnaround. Providers can also embed video files with captioning and create custom graphics or animation.

A provider with dedicated resources can simplify the creation of a hyperlinked brief. After filing, an attorney submits electronic files of the brief and supporting materials to a trial services expert. The expert manually creates the links and thoroughly reviews them for accuracy. Many trial services providers offer additional features, such as a detailed bookmarking panel to efficiently categorize content for quick and easy access to every section of the filing, custom highlighting to draw attention to critical passages within supporting materials and web tools allowing the judge or clerk to annotate. After the completion of a project, one attorney commented, "The team obviously made extraordinary efforts to complete the linking for our 230-page brief overnight. Despite the heavy workload, [the expert] was always available to respond to our request and promptly correct any errors. Her professionalism and the dedication of her team were evident from the beginning to the end of the process." In contrast, without ensuring the requisite expertise and resources, a project could easily fall flat.

Upon completion, the attorney has an opportunity to review the proofs before the brief is finalized. The finished brief is then assembled on a CD in PDF format and is also made accessible through a secured website. No case is too voluminous, as the media deliverable can be customized to contain unlimited amounts of data. Most hyperlinked briefs are completed and ready to submit to the court within a few days of filing. Trial services providers can advise on court preferences for submitting to specific venues. Increasingly, courts are encouraging the submission of hyperlinked briefs by including guidelines in their rules.

Conclusion

Judges have repeatedly praised hyperlinked briefs for their convenience and functionality. A California judge stated he "wishes more attorneys would file this way," and he especially "liked that he could take it home." A Wisconsin judge remarked, "I love [hyperlinked briefs]," and the best aspect "is its portability. . . . I took the CD home with me and did not have to drag any boxes with me. . . . I also liked the hyperlink feature . . . it allowed me to check the accuracy of the information cited in the brief . . . I was really impressed with it and showed it to several judges in the courthouse." A Texas arbitrator concurs, "the [hyperlinked brief] makes review of the brief easier, and the easier you make something, the more likely people are to see what you want them to see and to do what you want them to do."

A hyperlinked brief enables the court to perform a critical review of the documents the attorney deems most determinative in the client's case. This intelligent tool is an easy to obtain must-have for presenting a seamless argument to the court, as well as an obvious solution to the longstanding problem of backlogged dockets.

To view a sample of a hyperlinked brief, please visit: http://www.krollontrack.com/iBrief-demo/

Christine Falcicchio, Esq., is a senior iBrief consultant at Kroll Ontrack/ TrialGraphix. She holds a J.D. from Seton Hall University is licensed to practice in Florida. Christine is an expert in the development of interactive court filings for trial attorneys, law firms and corporate counsel. She can be reached for questions or comments at Christine.falcicchio@trialgraphix.com

Dan Wolfe, J.D., Ph.D., is a director of jury consulting at Kroll Ontrack/ TrialGraphix. He provides research-based and experiential data analysis to trial teams nationwide and oversees the standards in practice of the jury consulting department. Dan is an expert in the fields of witness preparation, voir dire and jury selection, and is also skilled in providing quantitative and qualitative analyses of venue through focus groups and mock trials. He can be reached for questions or comments at dwolfe@trialgraphix.com.

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Do We Need Einstein's in the Jury Box? The Role and Impact of Juror IQ

by Alison K. Bennett

What role does a juror's IQ play in jury decision-making? Are low IQ jurors inherently dangerous to defendants? Do we have a right to have a trial by jury with jurors of a certain level of intelligence or mental health? Juror IQ impacts jury decision-making in several ways, and can be an important consideration in jury selection, depending on the type of trial and the complexity of the fact pattern. Low IQ jurors may not be inherently dangerous, but a juror's IQ level warrants attention during jury selection because IQ could be used as the basis for a challenge for cause or may necessitate a peremptory strike.

Intelligence, by Definition

Scientists have strived to define and quantify human intelligence since the Stanford-Binet Intelligence Scale was created in 1916 to measure a person's intelligence quotient, or IQ. Since then, several complementary or alternative theories have emerged. For example, Howard Gardner (1983) proposed the theory of multiple intelligences, in which he postulates the IQ test is inadequate to capture the wide variety of human cognitive abilities. Gardner theorized there are at least eight different types of intelligence, including Spatial, Linguistic, Logical-Mathematical, Bodily-Kinesthetic, Musical, Interpersonal, Intrapersonal, and Naturalistic intelligence. There is also a compelling argument for the role of one's emotional intelligence (EQ), which is purportedly more outcome-determinative of professional success than one's IQ score (Goleman, 1995). As the field of cognitive psychology and related disciplines continue to emerge, so will the theories about how to define and quantify human intelligence.

For the limited scope of this article, a juror's IQ will be discussed in terms of the ability to understand and reason through the facts presented at trial, in a rational manner. This would include people with average or above-average intelligence, as well as those with common sense but slightly below-average intelligence. Thus, a low IQ juror would be defined as one who is fundamentally unable to understand or reason through the facts at a trial, or one who is largely incapable of consistent rational thinking.

Is a "Sound Mind" related to IQ?

In theory, a jury needs to be populated with intelligent, rational thinkers to be able to reach a just and sound verdict. Accordingly, several states, including Texas, require jurors to have "a sound mind." (Sidebar 1) This definition likely originates from the legal concept that a person is presumed to have a sound mind when entering into legal agreements, as defined in Bouvier's Law Dictionary (1984):

> That state of a man's mind which is adequate to reason and comes to a judgment upon ordinary subjects, like other rational men. The law presumes that every person who has acquired his full age is of sound mind, and consequently competent to make contracts and

> perform all his civil duties; and he who asserts to the contrary must prove the affirmation of his position by explicit evidence, and not by conjectural proof.

By this definition, a "sound mind" reflects the ability to apply reason in a rational manner, in order to judge an ordinary matter. However, it is unclear whether or not this definition equates a sound mind with an average or above-average level of intelligence. Equally confusing is the coupling of the requirement for a "sound mind" with an even more subjective requirement for "good moral character." While I have observed attorneys move to strike a juror for cause due to insufficient cognitive capacity, I have never had the pleasure of observing a motion to disqualify a juror on the basis of inadequate moral character.

By contrast, the Federal Juror Qualifications (Sidebar 2) avoids the ambiguous requirement for a sound mind and simply requires jurors to "have no disqualifying mental or physical condition." This suggests the only cognitive requirement for a juror in a Federal trial is the absence of mental illness. This arguably sets a lower bar than the "sound mind" qualification, but also introduces a specific expectation for a juror to be free of mental illness.

SIDEBAR 1

Texas Juror Qualifications

Qualifications for Jury Service

You do not need any special skills or legal knowledge to be a juror!

To be qualified to serve as a juror you must:

1. **Be at least 18 years of age;**
2. **Be a citizen of this state and of the county in which you are to serve as a juror;**
3. **Be qualified under the Constitution and laws to vote in the county in which you are to serve as a juror (Note: You do not have to be registered to vote to be qualified to vote);**
4. **Be of sound mind and good moral character;**
5. **Be able to read and write;**
6. **Not have served as a juror for six days during the preceding three months in the county court or during the preceding six months in the district court; and**
7. **Not have been convicted of, or be under indictment or other legal accusation for, misdemeanor theft or a felony.**

***Note that the completion of deferred adjudication is not a disqualifying "conviction".**

Texas Government Code § 62.102.

General Qualifications for Jury Service

Code of Criminal Procedure, Articles 35.16 et. seq.)

The Impact of Low IQ Jurors on Jury Decision-Making

Generally speaking, jurors with above-average or high IQs are potentially more beneficial to defendants. This is not due to the inherent merit of one side's case over the other; rather, it is reflective of the impact of cognitive deficiencies on decision-making skills. For example, it is a shorter cognitive walk to embrace the presumption of guilt – the notion that the defendant is probably liable or guilty to some degree primarily because a lawsuit or criminal case was filed - than it is for jurors to reason through disputed facts while weighing the burden of proof. Also, low IQ jurors are more likely to rely on their emotions as opposed to trying to analyze a complicated or confusing fact pattern, thus arguments that generate strong negative emotions, such as fear or anger, are more likely to persuade them. Finally, low IQ jurors with a critical thinking skill deficit may depend more on first impressions to make decisions than their tenuous analytical skills, so they are less likely to carefully consider both sides

and more likely to be persuaded by the first arguments they hear.

Juror IQ as a Factor in Jury Selection

SIDEBAR 2

Federal Juror Qualifications:

To be legally qualified for jury service, an individual must:

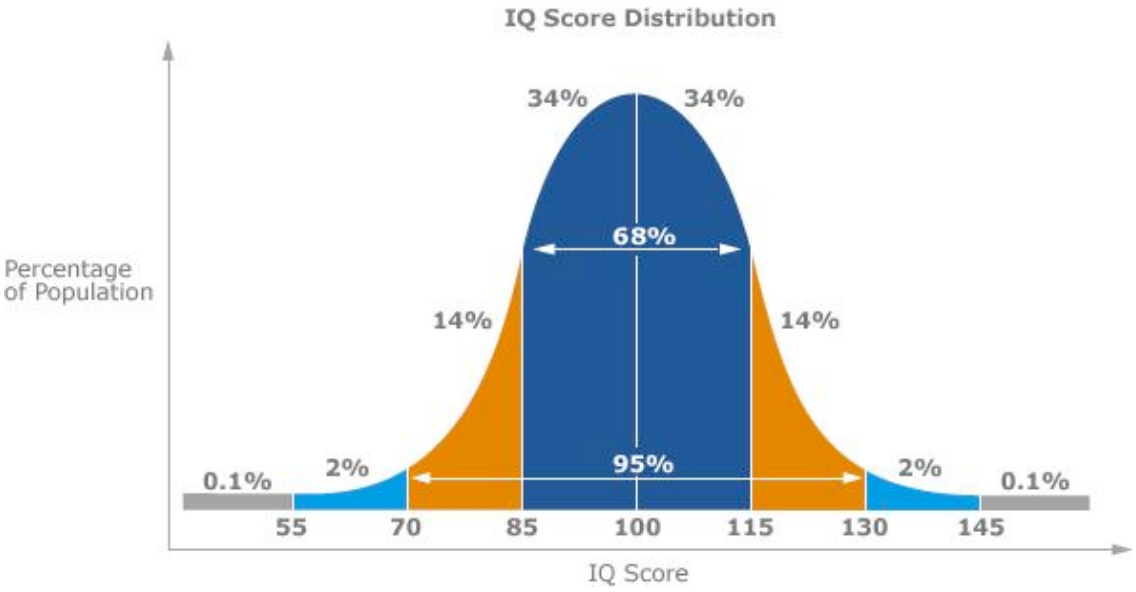
- **Be a United States citizen;**
- **Be at least 18 years of age;**
- **Reside primarily in the judicial district for one year;**
- **Be adequately proficient in English;**
- **Have no disqualifying mental or physical condition;**
- **Not currently be subject to felony charges; and**
- **Never have been convicted of a felony (unless civil rights have been legally restored)**

http://www.uscourts.gov/FederalCourts/JuryService/

Prosecutors in the 2008 Holy Land Foundation terrorism retrial likely benefitted from a jury selection strategy focused on juror IQ. The first trial, in 2007, ended in a mistrial after jurors deadlocked on most of the counts against five defendants, including 197 counts of supporting terrorism, money laundering, conspiracy, and tax fraud. The jury also acquitted one defendant of almost all of the charges against him, although that finding was later thrown out by the judge after one juror recanted her vote. Another juror summed up the trial by saying, "The whole case was based on assumptions that were based on suspicions. If they had been a Christian or Jewish group, I don't think [prosecutors] would have brought charges against them" (Krikorian, 2007). By contrast, in the 2008 retrial, all five defendants were convicted on every single one of the 108 counts against them. It is my opinion, after observing jury selection for the both trials, that a focus on juror IQ during jury selection in the retrial played a significant role in changing the outcome. The evidence was similar for both trials, but the jury panels were very different.

In both trials, Justice Department prosecutors accused five Holy Land Foundation defendants, all but one a U.S. citizen, of raising more than $12 million and wiring it to Palestinian charity committees, who prosecutors said were controlled by the terrorist group, Hamas. Defense attorneys argued that their clients never funded Hamas and sought only to give help to Palestinian families battling poverty caused by the Arab-Israeli conflict. As proof, they pointed to evidence that the foundation had used the funds to purchase school and medical supplies, not weapons. Jurors in both trials had to absorb a complicated storyline, told through FBI testimony, hundreds of documents, videos and translations of wiretapped conversations. Prosecutors dropped the number of charges against the defendants from 197 to 108 in the retrial, but other than that, the evidence presented was essentially the same, except for a stronger emphasis on the “terrorism fear factor” in the retrial.

What turned the results of the first trial into 108 guilty verdicts in the second? Perhaps one major factor was the difference in the makeup of the second jury panel, and their response to the fear tactics employed by prosecutors. In the first trial, a number of hardship releases were granted to lesser educated jurors who had fewer resources to sustain them over the projected length of the trial. This left a panel of more highly educated jurors available for jury selection. However, in the second trial, there were virtually no releases for hardship, despite several jurors’ pleas that jury service for the lengthy trial would force them into bankruptcy. This left the panel with a much higher number of less-educated (and anxiety-ridden) jurors than were available for jury selection in the first trial.



Additionally, the prosecution team, under significant pressure to succeed at the retrial, brought in a trial consultant and changed their jury selection strategy to target the better educated, more articulate and arguably more intelligent jurors for release. As a result, the jurors at the retrial analyzed the same set of facts but convicted each defendant on every single count. Could the IQ level of the jurors at the retrial have played a role in the different outcome? Could fear and anger have clouded their perception of the facts? Could it be the confusing, complex evidence led them to embrace a presumption of guilt, which would be the cognitively less-challenging verdict? Given the changed demographics of the jury panel, it is entirely possible.

A Colorful but Unsound Mind, Released for Cause

While consulting for a criminal defendant in a different case, I witnessed a potential juror released for cause precisely because she did not "have a sound mind." During jury selection, a young female juror caught my attention by occasionally glaring at our client. When questioned, her over-simplistic answers and bizarre questions made it apparent her mental faculties were compromised. However, she did not say anything in particular that we could have used to challenge her for cause. The defendant's attorney was very reluctant to raise the issue of whether or not she had a "sound mind," but eventually brought up her name to the judge, at the bench. Fortunately he did not have to go into any detail about our concerns because when he mentioned the potential juror's name, the bailiff quickly interjected, "Oh yeah, Judge, I meant to tell you, she brought a coloring book and crayons and has been coloring in the lobby during breaks." After this revelation, the judge immediately released her for cause and we saved a peremptory strike.

Clues to a Juror's IQ

One of best ways to estimate a potential juror's IQ level is to read his or her answers on a Supplemental Juror Questionnaire. This is also an opportunity to determine if a person is adequately proficient in English, which is also a qualification for jury service. With this in mind, when drafting a Supplemental Juror Questionnaire, be sure to ask questions about educational background, another indicator, but also include open-ended questions that require critical thinking skills to complete.

During *voir dire*, a potential juror's verbal acuity when answering questions may provide the best means to assess mental capacity. The effect of anxiety created by the *voir dire* process should be taken into account, but overall, verbal skills are a reliable indicator of intellectual capacity. It is also helpful to note other clues, such as whether or not the potential juror brought any reading materials that would reflect a higher IQ. Additionally, personal hygiene, or lack thereof, could be an indicator of low

IQ or mental health. On a light note, mouth-breathing is usually a dead give-away for low IQ, absent physical illness.

Jury Selection Guidelines

In order to work properly, our judicial system needs reasonable and mentally healthy jurors to make rational decisions. A juror's IQ should be a consideration during jury selection. Regarding jury selection guidelines, higher IQ jurors are generally more beneficial to the defendant. However, defense attorneys do not necessarily need to target low IQ individuals for removal from the jury panel unless they have a strong personal bias or a dominating personality, because lower IQ people tend to be followers, rather than leaders, and are typically less of a threat.

Alison K. Bennett, M.S., a Senior Litigation Consultant with Bloom Strategic Consulting, has accumulated extensive nationwide civil and criminal litigation consulting experience. Her specialties include witness communication training, jury research in the form of focus groups and mock trials, and jury selection. Over the years, Ms. Bennett has addressed a variety of courtroom psychology and trial advocacy topics, both as an author and as a featured speaker at a number of conferences, including American Bar Association and Texas Bar Association events.

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The Psychology of Voir Dire

Matthew L. Ferrara

How many times have you debriefed jurors after they rendered their verdict and been surprised by what they told you? In particular, how many times have you had to smile and maintain your composure as jurors tell you about something that played a major role forming the verdict and you thought that factor was practically irrelevant?

I had that kind of experience in the very first focus group I conducted as a trial consultant. This was a criminal case in which aggravated assault had been alleged. I set up the focus group the way I was trained. When the focus group members arrived, they were given two documents. One document was a summary of the case from the point of view of the prosecution. The other document was a summary of the case from the point of view the defense. I had been working in the field of criminal psychology since 1985. I was an expert in violent crime. So, I thought I had a pretty good idea how the focus group would deliberate. I even thought I had a pretty good idea about the verdict they would reach. Boy, was I wrong.

From the outset of deliberations, the discussion took an odd turn. In plain English, I was shocked by the deliberations. My mind was whirling as I silently asked focus group members: "Why are you focusing on that? That is not even relevant." At other times I would silently say, "That is not what the evidence says. Why are we even going down that path?"

Here is the lesson I learned during that focus group and this lesson has been reaffirmed by every focus group I have conducted since that time: jurors don't deliberate based on facts and argument; jurors deliberate based on their perception of the facts and arguments and it is the juror's belief system that accounts for the varying way that jurors perceive facts and arguments.

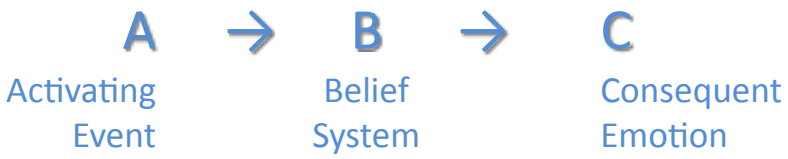
In this paper a psychological approach to conducting voir dire will be presented. The psychological approach to voir dire is based upon psychological factors that are known to impact how a juror reaches a verdict. So, this paper begins with a discussion of the psychology of how a juror forms a verdict. Based upon the psychology of the verdict, a process is proposed for identifying jurors whose belief system would prevent them from a fair hearing of your case.

This paper is written from the perspective of a criminal defense attorney who is involved in a case of alleged child sexual abuse. The discussion and sample questions will be based upon this case.

How a Juror Reaches a Verdict

After my first focus group, I realized that I had information that could have let me anticipate, if not predict what I saw during that focus group session. This information was not some new cutting edge research. Rather, the information was more than a half century old and it was a foundation of current psychology treatment.

In order to understand how jurors reach a verdict, we will take a trip back in time, about sixty years ago, to New York circa 1950. There you will meet an iconoclastic psychologist named, Albert Ellis, who provides us with a cornerstone concept in the field of psychology that is still used to today. He offers us what is referred to as the ABCs of emotion (Ellis, 1957)

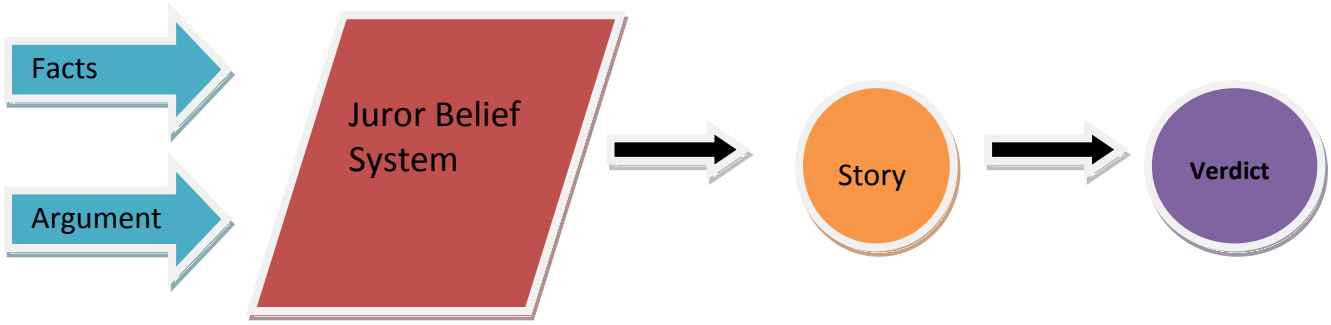


In the ABCs of emotion, A stands for "activating event", or any event that might happen in the environment. B refers to the individual's "belief system". All events are filtered through a set of beliefs and based upon those beliefs, the individual will have a resulting or "consequent emotion."

There is an important implication to the ABCs of emotion that might be readily obvious but it is fundamental to how a juror forms a verdict. The ABCs of emotion reveals that events don't cause emotions; instead, our beliefs regarding the event cause the emotion. Let's take a look at one recent event and it will be easy to show the power of the belief system.

Consider for a moment our last presidential election, in which Barack Obama was the victor. If events determined how an individual felt, then the election of Barack Obama should have made everyone feel the same way but it did not. In general, Democrats were happy with Mr. Obama's election whereas Republicans were not. What caused the different reaction? Not the event, the event was the same for both Democrats and Republicans. The difference was the belief systems that filtered the event.

Let's take what you just learned about the ABCs of emotion and apply it to the behavior of jurors. In the graphic below, it is easy to see the critical role the belief system plays in verdict formation.



The graphic above is the ABCs of emotions translated into a court setting. In this model, the activating events are the facts and arguments used when presenting the case. The juror belief system is the filter through which the facts and arguments must pass. The "Story" refers to the way that the juror uses her beliefs to organize the facts and evidence. The story that the juror tells herself about the case is the basis on which the juror reaches a verdict.

Using what you know about the ABCs of reaching a verdict, the task of voir dire might be stated as, "Voir dire is the process of identifying jurors with beliefs that prevent them from a fair hearing of your case."

How to Conduct Voir Dire

In the psychological approach to conducting voir dire, voir dire is aimed at identifying jurors whose beliefs prevent them from an open and fair hearing of your case. David Ball (2003) has developed a method of conducing voir dire and with a little modification it can serve the purpose of identifying supportive and harmful beliefs held by jurors. The following is the recommended process for conducing voir dire, with goal of identifying juror belief systems.

1. Develop voir dire questions for key evidence and themes.
2. Develop voir dire questions to uncover juror beliefs.
3. Develop voir dire questions regarding juror life experiences.
4. Develop voir dire questions regarding juror demographics.

Step One: Develop Voir Dire Questions for Key Evidence and Themes

All attorneys and trial consultants have developed their own methods for organizing evidence. There is no right or wrong way to organize the evidence. If it works for you, it is the right way to do it.

Regardless of how the evidence is organized, if you are going to take the psychological approach to conducting voir dire, I would ask you to take one extra step after you have your evidence organized: group or categorize the evidence into themes. It is recommended that you have one primary theme and no more than three subthemes.

I have been involved in cases where the attorney took the approach of "throw it all against the wall and see what sticks." On occasion, I have seen this work but I don't think this approach is scientifically or psychologically sound. Research in the area of cognitive psychology has revealed that the average individual can keep three things in mind at one point in time. In other words, the average individual can keep three things in working memory.

If you want to use these scientific data to your advantage, you should organize your evidence so you have one primary theme for your case and no more than three subthemes. You might want to adopt the motto: If you present more than three themes, you have presented nothing at all. All that a juror can take into the deliberation room are three themes; a juror cannot take ten themes or arguments into the deliberation room.

Let's consider a child sexual abuse case in which Mrs. Green accuses her ex-husband of sexually abusing their three year old daughter and the allegations arose during their bitter divorce. In this case, defense counsel's primary theme will be: *The allegations were contrived by a vengeful ex-spouse*. The subthemes in the case could be as follows: (1) *Children in the three to five year age range are at risk for being induced to make a false outcry*; (2) *Mrs. Green has a history of using the children to hurt Mr.*

Green; and (3) *In the past, Mrs. Green has made false statements to the police and child protective services.*

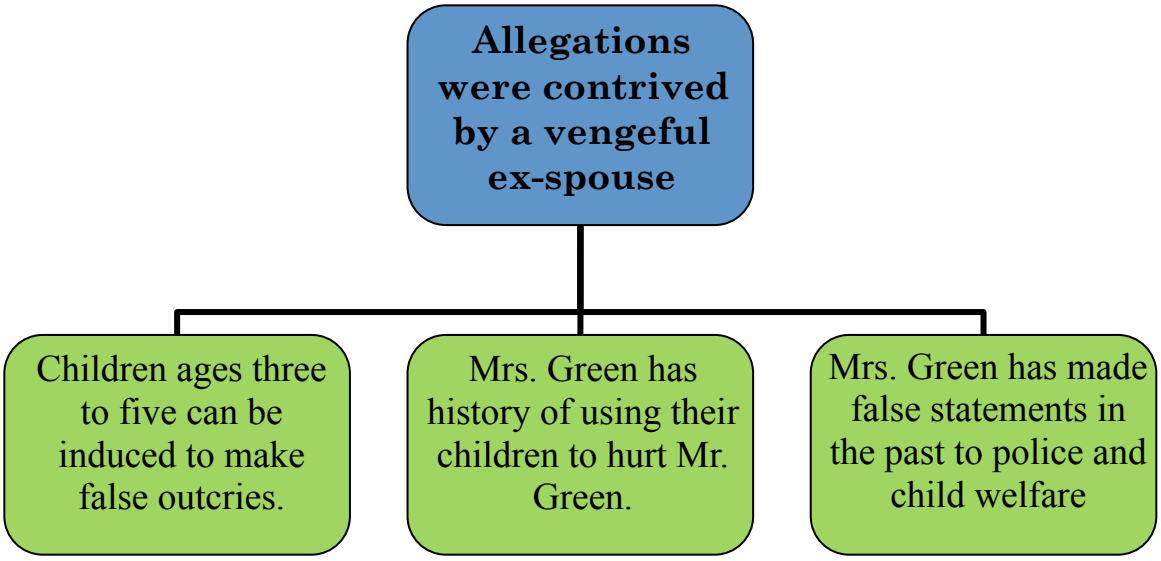
Once you have your primary theme and three subthemes, you are ready to formulate your first set of voir dire questions. The questions you create should be designed to reveal juror beliefs about your evidence and themes. For example, take the first subtheme, *"Children in the three to five year age range are at risk for being induced to make a false outcry."* Your voir dire questions might look something like this:

Q: What weight would you give to scientific research that says a child in the three to five year old age range can be induced to make a false outcry of sexual abuse about 45% of the time?

Q: What weight would you give to scientific research that says a child is equally likely to believe something happened when it actually happened or when she is told by a parent it happened?

Of course, there are many more questions that might be formulated than the two listed above. The questions listed above serve as examples of the type of questions you could ask regarding one of the subthemes in the hypothetical case about child sexual abuse.

For each theme and for each piece of key evidence, you want to develop voir dire questions that will reveal relevant juror beliefs. Your questions should be designed to get jurors talking. Once they are talking, you will begin to see the beliefs they hold regarding the evidence and your themes.



A word of caution is offered. You might instinctively want to avoid voir dire questions regarding evidence that is harmful to your case. Don't do this. Don't avoid asking questions about the potentially harmful topics you know are going to come up. The reason for this is simple, you need identify jurors whose beliefs will be supportive of the damning evidence. Once you have identified the juror whose beliefs support harmful evidence, you can deselect that juror.

You have now completed the first step of the voir dire process. You have written voir dire questions regarding key evidence, your case theme and subthemes, and harmful evidence. Now, you are ready to go to the next step in the process.

Step Two: Develop Voir Dire Questions that Reveal Juror' Belief Systems

Belief system is defined as the totality of an individual's values, attitudes, and opinions. When it comes to the matter of rendering a verdict, nothing is more critical than the juror's belief system. The juror's belief system is the filter through which all evidence and argument must pass. The juror will not deal directly with the evidence and argument when formulating a verdict. The juror will deal with the story he tells himself about the case information and the juror's story is based more on belief than fact.

Your job during the second step of voir dire is to uncover information about each juror's belief system. Once you uncover the juror's belief system, you should determine if your client can get a fair hearing with that belief system in the deliberation room.

There are two ways to identify relevant juror beliefs. First, you can take a rational approach. In the rational approach, you use reason and logic to deduce juror opinions that are relevant to the case. Second you can take an empirical approach. In the empirical approach, you identify relevant juror beliefs by use of the existing scientific literature, or better still you use focus groups.

In order to demonstrate the rational approach to uncovering juror beliefs, let's return to the child sexual abuse case which was introduced when we discussed the first step. Using logic and intuition, what beliefs do you believe would be helpful or harmful to the defense in such a case? Consider the following:

- **Sexually Conservative** –In our culture, sex is supposed to be a private thing, so everybody will be a little shy about sexual matters but the sexually conservative person is extraordinarily shy and might punish the defendant with a guilty verdict for bringing sex out of the bedroom and into the courtroom.
- **Strong Parenting Instinct** – Individuals with a strong parenting instinct might be overprotective towards children and thus inclined to begin hearing evidence in a child sexual abuse case with a guilty verdict already in mind.
- **Law and Order** – Individuals who identify with law enforcement and the courts would from the beginning of the trial be favorable to the prosecution.

The list above is not exhaustive of juror beliefs but it shows you the thought process you must go through to identify relevant juror beliefs. Notice that the beliefs you most want to identify are beliefs that favor your opponent. In the case of the defense attorney preparing to defend Mr. Green, the goal is to identify pro-prosecution beliefs. The reason for this is simple. The only tool you have available to you during voir dire is deselection, so you need to spend the precious little time that you do have determining who you need to deselect.

The second approach to developing voir dire questions designed to uncover juror beliefs is the empirical approach. There has been extensive psychological research regarding the relationship of beliefs and juror verdict. It is beyond the scope of this paper to review the entire body of research regarding juror beliefs. To give you a flavor of the research, consider the following summary of the research regarding three beliefs that have a tremendous impact on verdicts in civil and criminal trials.

- **Authoritarianism** – Authoritarianism is defined as a desire for order, well defined rules, and reliance upon authority when making decisions. Authoritarians have a strong belief in the legitimacy of conventional authority. The research shows that authoritarian individuals tend to convict and give harsher punishment than people who are low on authoritarianism (Narby, Cutler & Moran, 1993). To really appreciate the power of authoritarianism, consider the results of a thirty year old study that showed that authoritarian individuals recall prosecution evidence more than defense evidence (Garcia & Griffitt, 1978). The following are examples of beliefs held by authoritarian individuals:
  - Obedience and respect for authority are the most important virtues children should learn.
  - An insult to honor should always be punished.
  - There is nothing lower than a person who does not feel great love, gratitude and respect for his parents.

- **Locus of Control** – Locus of control means location of control. In the locus of control research, there are two locations for control: internal and external. Individuals with external locus of control believe that their actions matter little and what happens in their life is largely the result of external factors, like fate, luck, or serendipity. Individuals with internal locus of control believe that their personal qualities, such as intelligence, perseverance, and so on, determine what happens in their life.

  You might think something as abstract as locus of control would have no bearing on a verdict but it does. The research shows that persons with a strong internal locus of control are more likely to convict because they view themselves as well as others as accountable for their own actions (Phares & Wilson, 1972). One research study having to do with a drunk driving showed that individuals with strong internal locus of control recommend more harsh punishment than individuals with external locus of control (Sosis, 1974). The following are some examples of beliefs held by internal locus of control:

  - People's misfortunes are the result of mistakes they make.
  - Capable people who fail to become leaders have not taken advantage of their opportunities.
  - When I make plans I am almost always certain I can make them work.

- **Belief in a Just World** – If you believe that people get what they deserve in life, you have a belief in a just world, i.e., good things happen to good people and bad things happen to bad people. The research regarding Belief in a Just World (BJW) is mixed. Some research has shown persons with a strong BJW are more likely to convict but these same individuals might be inclined to blame a rape victim or be less punitive towards a higher status defendant (Lieberman & Sales, 2007). The following are some beliefs held by individuals with strong just world beliefs:
  - I feel the world treats me fairly.
  - I believe that I get what I deserve.
  - I feel that I earn the rewards and punishments I get.

As you can see from the brief overview of the research, there is a wealth of scientific data to guide the formulation of questions designed to uncover a juror's belief system. If you would like to know more about this research, you can get started by Googling "jury selection". Another good option would be to go to Google Books and then Google "jury selection."

A word of caution is warranted regarding the research regarding juror beliefs. This research is general research and the extent to which it applies to your case is unknown. There is a way to determine the extent to which these beliefs apply to your specific case. You could conduct a focus group and test the extent to which these beliefs are related to a verdict in your case.

Focus groups are superior to merely reviewing the scientific research for a variety of reasons: some of the research is old and might be outdated, some research is conducted with college students who are not jury eligible, the research was not conducted in your venue, and the research was not conducted using the unique facts associated with your case. All of these shortcomings can be easily overcome by conducting focus groups. If you don't know how to conduct focus groups, you could contact a trial consultant. A national listing of trial consultants is available at http://www.astcweb.org.

Step Three: Develop Voir Dire Questions about Life Experiences

Juror decision-making is shaped by beliefs and beliefs are shaped by life experiences. So, life experience can be fruitful area of questioning during voir dire, if it is done correctly.

If you want to use questions about life experiences as a means to uncover juror beliefs, the first thing you must do is identify those life experiences that you think would create relevant juror beliefs. For example, in the sexual abuse case regarding Mr. Green, some relevant life experiences might include the following:

- **Sexual abuse history** – "Have you ever been sexually abused, sexually assaulted or raped?" "Has someone close to you ever been sexually abused, sexually assaulted or raped?"
- **Divorce** – "If you have gone through a divorce, was it a bitter divorce?" "Do you have family or friends who were harmed during a bitter divorce?"
- **Child rearing** – "If you have raised children, have you ever seen them get confused about facts or things that happened to them?" "If you have raised children, have you ever seen them make up things to please one or both of the parents?"

Taking a look at the first two life experiences (sexual abuse and divorce), you probably recognize how difficult it would be for prospective jurors to talk about those things in public. Yet, those life experiences are critically important in a sexual abuse case. If you know that you will be asking jurors about such sensitive matters as sexual abuse and divorce you might try to avoid a public discussion of these matters by use of supplemental jury questionnaire. If for some reason you cannot use supplemental questionnaires, then you should attempt to conduct individual voir dire on the sensitive topics.

Whether you are assessing life experiences by means of questionnaire, individual voir dire, or public voir dire, your goal is the same. You want to find out if a juror had the relevant life experience. However, it is not enough to know if the juror had that life experience. You must uncover the juror's beliefs about that life experience.

A life experience itself does not determine a verdict bias. Rather, the juror's beliefs about the life experience determine what if any bias will exist. You must first ask who has had the life experience and then you must follow-up with open-ended questions that reveal the juror's beliefs about the life experience.

Step Four: Develop Voir Dire Questions regarding Demographics

Let me apologize in advance to those traumatized by the LSAT or the GRE similes but I must say: Demographics are to voir dire as the Sirens are to Odysseus. The Sirens I am referring to are the Sirens in the Greek myth, The Odyssey. These are the captivating Sirens who used their beautiful voices to lure Odysseus' ship to the rocks. Odysseus did not wreck his ship upon the rocks and you don't have to wreck your voir dire by over-reliance on demographics.

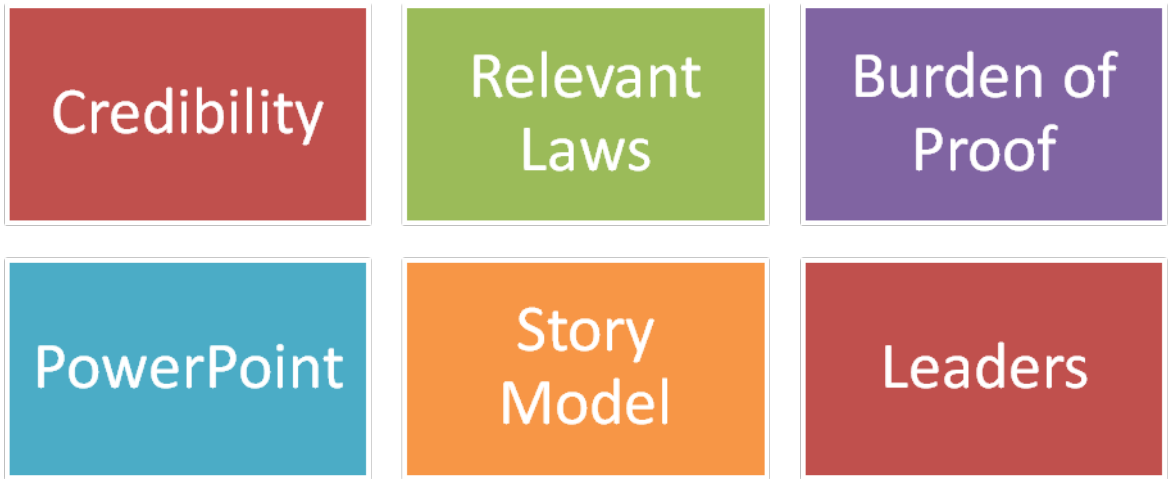
If you want to use demographics effectively, use demographics to probe prospective jurors about beliefs. For example, in the alleged child sexual abuse case, as Mr. Green's defense attorney, you might be interested in knowing who among the prospective jurors has ever worked at a child welfare agency. But it is not enough to know that an individual worked at such an agency. Did that individual have experiences that would lead him or her to mistrust reports of child sexual abuse? Did that individual have experiences that might cause him or her to mistrust official reports of child sexual abuse?

With regard to Mr. Green's criminal case, juror occupation is just one of several demographics that might be relevant demographic areas worth investigation.

- **Occupation** – "Have you worked in a child welfare agency?" "Have you worked in a women's shelter or family shelter?" "Have you ever worked as an investigator for any governmental agency?
- **Parent status** – "Do you have children?" "Do your children live with you?"
- **Social groups** – "Do you belong to a neighborhood watch group?" "Do you do volunteer work for any law enforcement agency or quasi-law enforcement agency?"
- **Bumper Stickers** – "Do you have or have you ever had bumper stickers on your vehicle? If so, what did the bumper sticker say?"

The Context of the Psychological Approach to Voir Dire

The purpose of this paper was to discuss a psychological method for conducting voir dire. In closing, I would like to put this psychological method in context of an overall approach to voir dire. Juror beliefs are just one of many factors to consider when preparing for voir dire.



1. **Credibility** – If jurors don't trust the attorney, they will not listen to the attorney. It is critical to establish credibility as early as possible in the trial.
2. **Relevant laws** – You need to ask questions of jurors about the laws they must consider when deliberating. Jurors often have misconceptions or unusual beliefs about the law.
3. **Burden of proof** – Civil and criminal trials have different burdens of proof but the attorney's task is the same regardless of the type of trial. The attorney should ask questions to identify juror biases regarding burden of proof.
4. **PowerPoint** – There are methods of constructing and presenting PowerPoint presentations that are very powerful. Done correctly, PowerPoint can be used in voir dire, the opening, the case in chief and during closing to convey a compelling story about your case.
5. **Story Model** – Jurors do not base their verdict on facts and argument directly. Rather they base their verdict on the story they tell themselves about the facts and argument. Since you know jurors are going to tell themselves a story, provide them with <u>your</u> story about the case.
6. **Leaders** – It is really important to identify individuals who will become the leaders in the deliberation room. One strong leader can sway an entire jury panel.

Conclusion

Voir dire is the only part of a trial when it is possible for an attorney to dialogue with jurors but getting jurors to talk to you is only part of the task. Jurors need to talk about their beliefs, including their values, opinions and attitudes because these are the filters though which all evidence and

argument must pass. The goal of voir dire is to identify jurors whose belief system would prevent them from a fair hearing of your case. By carefully considering the information regarding juror beliefs, the attorney can do a better of job of deselecting biased jurors.

Matthew L. Ferrara, Ph.D. (mferrara@austin.rr.com) is a trial consultant based in Austin, Texas. Dr. Ferrara has consulted in criminal and civil trials providing a variety of services including focus groups, mock trials, case themes, story model, jury selection, voir dire, closings and witness preparation. You can learn more about Dr. Ferrara and Westlake Trial Consulting at his webpage, http://.www.westlaketrialconsulting.com

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What the Literature Tells us about the Jury Foreperson

by Traci Feller

As evidence and common sense suggest, forepersons have more impact on trial outcomes than the average juror (Devine, Clayton, Dunford, Seying & Pryce, 2001). For this reason, studying them has interested researchers for decades. This accumulated research knowledge reveals common foreperson behavioral tendencies, traits and attributes, as well as possible outcomes associated with being foreperson. The research also offers insights into the method by which jury forepersons are selected and the effect this can have on group deliberation. Finally, a brief study with some insight comparing mock juries *with* a foreperson to mock juries *without* one, aids the analysis of whether or not jury forepersons are beneficial and the impact they have on the process of deliberation.

Foreperson Tendencies, Traits and Attributes

Gender

First and foremost, dating back to the pioneers of foreperson trait research, we have seen that jury "foremen" are just as original lexicon follows, most often men (Boster, Hunter & Hale, 1991; Cowan, Thompson & Ellsworth, 1984; Devine et al., 2001; Hastie, 2002; Hastie et al., 1998). This is not surprising since the struggle to secure equal jury service rights for women went on through the 1970s (Ritter, 2002). In one early study (conducted in Texas from 1971 to 1974) 141 of the total 155 forepersons were men while only 14 were women (Beckham & Aronson, 1978). Given the number of men and women that made up these 155 juries, there should have been 72 female forepersons by chance; this means that only one-fifth (20%) of the expected women actually became foreperson. About a decade later, two studies found that the number of female forepersons was about 22% what it should have been by chance. (Kerr, Harmon and Graves, 1982; Dillhay & Nietzel, 1985). We can see through the years that this male-dominating trend has been diminishing overall, but is still seen today. A study with mock juries done by Ellison and Munro (2010) found that despite a near-even gender split, only two of 14 nominated forepersons (some juries selected randomly or did not select a foreperson) were women, the remaining 12 were men (28% what it should have been by chance). Even more disappointing, both female forepersons volunteered themselves to be foreperson, rather than being nominated by another juror, as was custom in many other juries. Speaking first can be a strong predictor of becoming foreperson, however, in many cases Ellison and Munro reviewed where a female spoke first, it was often to nominate a male peer to be foreperson. This type of observation can suggest that women may be promoting these tendencies. Interestingly, Diamond and Casper's (1992) research did not find gender to predict foreperson selection in their regression analysis. However, gender was *specifically* discussed in four of their 70 mock juries when deciding foreperson. There is no information in Diamond and Casper's (1992) article about *how* gender was discussed in choosing a foreperson, just that it was.

Age

Based on the one study that looked at age, forepersons are less likely than other jurors to be young (aged between 18-35 years old). Although 42% of jurors in Ellison and Munro's (2010) study fell within this age group, only 24% of the selected forepersons did. The majority (65%) of forepersons fell in the highest age group of 45 to 65, despite the fact that only 35% of the jurors made up that group. Although there is no upper age limit to jury service eligibility, and no exemptions for age, most state courts will allow jurors to be excused, at the discretion of the judge, after age 65-75, depending on the state (Skove, 2006). Prior jury experience can be a large predictor of foreperson selection, and with age comes a better chance that a juror has served before. Without controlling for these factors, we cannot be sure if older jurors are selected more because of their age, or if simply experienced jurors are more frequently selected. It may also be a combination of these factors causing this effect. It is surprising that more studies did not consider foreperson age, but this could possibly be a result of the culture of discussing age in the 70s and 80s when the majority of these studies were conducted.

Personality

A Five Factor Model of personality traits done on 764 jury venire members in a Southeastern state found that juror extraversion played a significant role in determining jury foreperson, (Clark, Boccaccini, Caillouet & Chaplin, 2007). This is interesting, because a similar study by Wigley (1999) found that jurors with higher levels of extraversion were more likely to be removed from the jury pool during jury selection. This could be explained by the fact that attorneys look at extraverted jurors as a potentially larger risk *because* they are likely to be foreperson. It follows that extraverted jurors will be watched closely during jury selection and more quickly struck by counsel. Juror extraversion was also correlated with longer deliberation times and perceived foreperson influence (when jurors were polled) in criminal cases (Clark et al., 2007; Marcus et al., 2000).

Education and SES

A common trend in jury research is that jury forepersons are better educated and of higher Social Economic Status (Diamond & Casper 1992; Ellison & Munro, 2010; Hastie et al., 1998; Hastie et al., 2002). In fact, Social Economic Status can have a stronger effect on who is heard in the jury deliberation room than can other demographic factors such as race, gender and age (Hickerson & Gastil, 2008). The finding that "Citizens readily pick up on social cues that help them identify those around them who have real political acumen" could show that this effect is self-promoting by jurors (Gastil, Burkhalter, & Black, 2007, p. 354; Huckfeldt, 2001). Another finding from Hastie et al. (1998) was that in mock trials in the Denver area including 726 mock jurors, jury forepersons tended to have a better memory of the judge's instructions. In a follow-up study, they also recalled more facts of the trial (Hastie et al., 2002). This could be an effect of having a higher education, or it could be the cause of another variable such as jurors with better memory are more comfortable taking charge and ending up with the position of foreperson.

Interestingly, Diamond and Casper (1992) found that jurors who indicated on a pretrial questionnaire that they had taken a statistics course were significantly overrepresented among forepersons. In fact, while this experience had no effect on the perceived influence of non-forepersons, it was crucial to the perceived influence of forepersons. In addition, when a foreperson did not have this

attribute, he/she was seen as no more influential than any other juror (Diamond & Casper, 1992). In this study, the probability of being selected foreperson for jurors with prior statistics training was three times higher than the probability of being selected foreperson without this training (Diamond & Casper, 1992). It is unclear whether forepersons actually made their statistics training evident to the other jurors before selection occurred, or if it is a consequence of higher education that is simply more salient.

Previous Experience on a Jury

Some studies have found that a higher proportion of jury forepersons have previous experience serving on a jury (Cowan et al., 1984; Devine, 2001). One study in 1982 found that 28% of the time, juries with experienced jurors (those who have served on a jury before) will choose one of those experienced jurors as foreperson; this percentage is significantly higher than chance (Dillehay & Nietzel, 1985; Werner, Strube, Cole & Kagehiro, 1982 as cited in Abbott, 1999). In fact, 10 of the 34 experienced jurors chosen as foreperson had actually served as foreperson before (in addition to simply sitting on a jury). A study of 162 criminal trials in San Diego, California showed that if the foreperson selection was random, experienced jurors should have been chosen 65 times (or 41%), however they presided in 83 (51%) of the cases (Kerr, Harmon & Graves, 1982). Similar research on 175 criminal trials (902 jurors) in Fayette County, Kentucky in 1973 found that "seasoned" jurors were chosen at rates significantly higher than chance; 51% were experienced while proportionally only 45% of selected forepersons should have been experienced, (Dillehay & Nietzel, 1985).

These findings have caused researchers to examine whether experienced versus non-experienced jurors yield different verdicts. Results have been mixed, but the general consensus is that if verdict differences are present, they are small at best (Dillehay & Nietzel, 1985; Kerr, 1981). In a laboratory setting in 1982, Kerr, Harmon & Graves compared the verdict results of 239 students hearing between one and five hypothetical cases. Their results showed that there was no pre-deliberation verdict preference difference between students who had experience reading one, two, three, four or all five cases. Aside from being more likely to serve as foreperson in a subsequent trial, there have been no replicated research studies that show any significant differences between experienced and non-experienced jurors (see Kerr 1981; Kerr, Harmon & Graves, 1982; Broeder, 1965; Reed, 1965; as well as Nietzel, Dillehay & Rogers 1976; and Werner, Strube, Cole & Kagehiro, 1982 as cited in Dillehay & Nietzel, 1985), suggesting that it is a perceived increase in competence that leads jurors to choose experienced jurors as foreperson. This could be perceived by the experienced jurors themselves, or by the remaining jurors, or both. In a mock trial survey, experienced jurors were also more likely to be older and male, than inexperienced jurors (Jurow, 1971), so it could be partially due to effects of those traits as well that experienced jurors were chosen as foreperson more often on average.

Foreperson Selection Method

It is customary for a jury to choose their own foreperson however, some states allow the trial judge to select the foreperson as he or she chooses. These states include Maine, New Hampshire, South Carolina and Arizona. In Maryland, Massachusetts and Rhode Island such practice is actually *required* (Horwitz, 2005). Typically a judge will simply choose the juror in the first seat, or they will hand-pick a specific juror they see most fit for the position. It is in the latter case that we see the most objections. This method raises huge concerns among legal scholars and professionals because the judge's particular selection has the potential to convey a wide array of messages to the jury, whether intentional or not. These messages could include the perception that the judge thinks this juror's judgment to be superior to that of the remaining jurors.

It is also possible that the judge actually chooses a juror who seems to have views similar to their own. Many judges might not do this on purpose, but they could still subconsciously respect a juror more who nods at the right times and seems to interpret the case in the same way that judge does. Judges who follow this tradition of choosing a foreperson for the deliberations usually argue that their selection of foreperson is based solely on their observations of how attentive that juror was during the trial. This can be inherently biased because a juror who reacts to testimony in a similar nonverbal way that the judge does would seem to be paying more attention at important times. Judges might also argue that their selection saves the jury a step and can be more efficient. Andrew Horwitz (2005) points out however, that even if the judge chooses the foreperson to help deliberations, it could actually be *counterproductive* because if a foreperson is chosen without the support of the majority of the jury, it could be troublesome for deliberations. Horwitz also explains that even without malicious intent by the judge to control the outcome of the deliberation, selecting the foreperson still controls deliberations in one way or another. This means of selecting a foreperson is very debatable and because it is not the standard, it is not studied to a large degree.

When the jury chooses its own foreperson, the selection process seems to be brief with very little discussion of merit or intent (Devine et al., 2001). As in both of Manzo's (1996) recordings of real jury deliberations, foreperson selection was the first task completed, following a recommendation made by the judge to do so. Most selections occur within the first four minutes, perhaps resulting from a lack of understanding of foreperson role and responsibilities (Ellison & Munro, 2010). A study by Diamond and Casper (1992) found that almost 66% of their (70) mock juries chose a foreperson within the first 10 statements; 90% of the juries chose within the first 20 statements.

There are some other peripheral cues that seem to aid juries in choosing a foreperson. Processing these peripheral cues is easier for jurors than considering the central tendencies and traits of each individual before selecting a foreperson (although more careful consideration may not be a bad idea considering the importance this decision can have). Diamond and Casper (1992) as well as Ellison and Munro (2010) found that the jury foreperson is likely one of the first jurors to speak. He or she is also usually the first juror to mention the need to choose a foreperson (Boster et al., 1991; Devine et al., 2001; Ellison & Munro, 2010). A juror also has a higher chance of being selected as foreperson if s/he is seated at the head of the table (Cowan et al., 1984; Devine, 2001; Diamond and Casper, 1992 Ellison & Munro, 2010; Hastie et al., 2002). In fact, Diamond and Casper's mock trial study in 1992 found that being seated at the head of the table, prior jury service, as well as occupation, education or expertise were attributes commonly mentioned specifically during the brief discussion of choosing a foreperson.

Forepersons' Effects On Deliberation

So what can we gather other than the trends we see in types of forepersons and the means in which they are typically selected? There has been fruitful research on the potential effects of jury forepersons. It is interesting to note that jurors themselves tend to give forepersons more responsibility and power than judges do, yet as discussed above, they are quick to pick a foreperson. In the jury experience of nurse Victoria Hekkers (2002) a fellow male juror suggested that she be foreperson because of her medical background. Others agreed, she consented, and that was that. Most juries operate on the assumption that the foreperson is single-handedly responsible for organizing talking turns, announcing breaks, counting and keeping record of votes, keeping deliberation on topic, etc. What followed for Victoria Hekkers was the heavy responsibility she felt for the entire process and the verdict. Most nerve-wracking, was that a few jurors actually changed their vote to follow the way Victoria voted. This sense of control over something so important made her uncomfortable as it could any person. After all, only a minute ago she was just an ordinary juror, and now her opinion was given more weight than other jurors. Here we see that a foreperson can be given greater power and responsibility than the courts actually intend.

In Devine, Clayton, Dunford, Seying and Pryce's (2001) review of 45 years of jury research, they found that the foreperson typically decides which of two routes the jury takes at the start of deliberations: making deliberation either verdict-driven (usually exemplified by taking a poll at the start of deliberations) or evidence-driven (the jury discusses evidence first and does not pick a side right away)(also Ellison & Munro, 2010). There is much more research to be discussed on this topic, but for purposes of this paper, these two styles can make a substantial difference in the deliberation, and thus possibly the verdict (for more see Cowan, Thompson, & Ellsworth, 1984; Davis, Kameda, Parks, Stasson, & Zimmerman, 1989; Hastie et al, 1983; Kameda, 1991; Kameda & Sugimori, 1995; Sandys & Dillehay, 1995). Also, jury forepersons will usually speak last in the initial go-around the table where each juror will explain his or her position and reasoning (Manzo, 1996). Here, the foreperson is able to define the extent of the disagreement/agreement of the jurors, acting as the expert and initiating where deliberations should go from there.

As far as their effect, jury forepersons participate more than other jury members. We know that although the rules grant jurors equal rights, everyone doesn't participate equally (Fishkin, 2009). In fact, forepersons account for about 25%-31% of speaking during deliberations (Ellison & Munro, 2010). In a mock trial study using real jurors at an Illinois courthouse by Diamond and Casper (1992), jury forepersons spoke an average of about 1770.22 words to a non-foreperson's average 789.35 words. In a different mock jury study by Hastie (1993), forepersons also spoke nearly three times as much as their non-foremen counterparts. Specifically, they made organizational statements five times more, but used a significantly lower percentage of verdict preference statements. Fortunately, this is evidence of a trend of forepersons' respect for verdict fairness and effort towards neutrality. Interestingly however, after controlling for instances of summarizing and paraphrasing, forepersons were still found to have made twice as many statements of novel facts or opinions. Also in two-thirds of these juries, the first ranked talker was the jury foreperson (Hastie, 1993; Hastie et al., 2002). It is important to note however, that in accordance with Massachusetts's court procedure (the judge appoints the foreperson before deliberation begins), forepersons in this study were chosen and appointed by the experimenters. They tried to choose a mock juror who had served on a trial before, but if this wasn't possible, the foreperson was randomly selected. This suggests that forepersons selected because of prior experience

spoke more either because they felt more qualified to speak more, or because they were perceived as more qualified by their peers. It could also be a combination of the two, or suggestive of a third reason, a "foreperson effect" where jurors being named foreperson behave differently, simply as an effect of being given that role, than those without the title.

In addition, fellow jurors view forepersons as more influential than the average juror. Diamond and Casper's (1992) mock trial study included a survey asking jurors to rate the influence of their fellow jurors and they found that forepersons received an average rating of 5.49 while non-forepersons were rated only 4.66 on average. It could seem that forepersons are perceived as more influential *because* they speak more than other jurors, however, when controlled for the number of words spoken, Diamond and Casper still found jury forepersons to be considered more influential. As Gastil (2008) points out, the foreperson's perceived dominance in the group could cause some concern about the speaking opportunities of non-forepersons, especially when those non-forepersons harbor views and opinions contrary to the foreperson and the majority. It is here where we hope for the foreperson's influence to be a positive one, and one conducive to the sharing of views by everyone in the group.

This leads me to the most important power a foreperson may have: their influence on the speaking time, order and focus of the remaining jurors (Ellison & Munro, 2010; Manzo 1996). This is potentially crucial because the jury foreperson can give jurors with strong views on opposing ends unequal talking time and give unfair advantages to certain arguments. It follows that forepersons can have a major effect on damage awards or verdict outcome (Devine et al., 2001). Boster, Hunter and Hale (1991) found a high correlation between foreperson pre-deliberation award preferences and actual jury award amounts. Additionally, Diamond and Casper (1992) found that the correlation between forepersons pre-deliberation award and the actual award was twice as high as the correlation between non-forepersons pre-deliberation award and the actual award.

Note that in this same study, Diamond and Casper (1992) compared the forepersons' pre-deliberation awards to the average of jury's pre-deliberation awards as a whole and found that forepersons are no better than regular jurors at predicting the position of the group. In other words, the foreperson is not a particularly good indicator of where the rest of the group stands before deliberations, yet they *are* a particularly good indicator of where the group will end up. However, not all mock trial research yielded the same results. Hastie et al. (1998) in Denver found that forepersons pre-deliberation verdict correlated to the group's final verdict at a rate slightly higher than non-forepersons (r = .29 and .26, respectively), but at this size, not enough to demonstrate significance.

Importance of Having a Foreperson

Because of Ellison and Munro's (2010) brief comparisons of jury deliberations with groups that chose to select a foreperson and juries that did not, we are able to get a sense for the importance and necessity of a foreperson. For the 27 mock juries studied, Ellison and Munro advised them to choose a foreperson, but told them they were not required to do so. Only 14 of these juries elected a foreperson immediately or shortly after beginning deliberations. Three more juries showed one juror assuming this

role, even though the position was not assigned explicitly. In Ellison and Munro's opinion, only 7 of the 17 juries had effective forepersons that lead organized, orderly and fair deliberations, (none of which were the three who assumed the role) suggesting that deliberations would benefit from brief training or instruction of the foreperson's role and responsibility. However, these 17 foreperson-lead deliberations were still qualitatively better off than those without a foreperson. In the three instances where no foreperson was explicitly chosen, but a person assumed the role, there was a negative effect on deliberations, causing them to be less inclusive and narrower in focus. However, according to the researchers those juries were still better than the juries without a foreperson figure at all. These juries without foreperson figures were unorganized, jumped from topic to topic without thorough discussion, and narrow in participation and scope of participation (Ellison & Munro, 2010).

It is important to bear in mind that this study included a very small number of juries to analyze, and because it is a mock trial, we can speculate that jurors will perceive it as less important and will not take it as seriously as they would a real trial. Also, the mock trial was based on a real trial, but information and facts were simplified and summarized for time purposes, so the need of a foreperson would not be as obvious as in complicated consequential trials. Nevertheless, this study can shed light on the organization troubles and narrower scope that deliberations take without a good foreperson to act as facilitator. In many cases, the foreperson takes this position very seriously and tries hard to maintain a thorough discussion of all the evidence with adequate speaking time for all members of the jury. As James Fishkin puts it, in his book *When the People Speak*, "Jury foremen are not notorious for abusing their position" (p. 69). In fact, according to his research, there have only been a few incidents of abuse over the centuries (Fishkin, 2009).

Discussion

Overall, the research on jury forepersons shows that the foreperson is typically an older, highly educated, extraverted male with prior jury service who was the first one to speak (usually to suggest a foreperson be selected) and sitting at the head of the table. This person given the title of foreperson is likely to speak two to three times more than the average of the remaining jurors, and the verdict is most likely going to reflect what this person thought before deliberations. However, the majority of foreperson research was conducted in the 70s, and 80s and has since dwindled in recent years. We could benefit from some of this research being replicated to test its truth and reliability in more modern times. Research on some common foreperson traits such as age and personality are also limited, but showing evidence of an effect.

Cases going to trial and being decided by a jury have already been diminishing over the years because of early settling in fear of large economic loss, plea bargaining and other alternative methods of dispute resolution (Glaberson, 2001). We should put our trust back into the jury system. More research could be done on the types of forepersons that lead to the most highly deliberative processes possible, then using this research we could develop better instructions to supply the jury about forepersons' responsibilities (for example, making sure each juror has ample speaking opportunities, jurors are respectful of one another and try to keep an open mind, etc.), as well as instruction on how best to select them. This could strengthen the reliability of a verdict reached by an impartial jury, improve the quality and the perceived fairness of a jury deliberation, and eliminate the perception of foreperson tampering, although as Fishkin (2009) reminds us, it is a rare occurrence.

Traci Feller (Traci.Feller@gmail.com) received a B.S. in psychology from the University of Washington in 2008 and has since been a member of the ASTC. Traci interned at Tsongas Litigation Consulting, Inc. in Seattle, Washington for about a year and has been working as a research assistant for University of Washington professor John Gastil. Traci is applying to graduate school to continue studying juries and would like to someday work in the field of litigation consulting.

We asked an experienced trial consultant to respond to this literature review with thoughts on how the literature presented above is supported or not supported in practical, day-to-day experience in the courtroom. A response from Charli Morris follows this bibliography list.

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Surrogate, Secret & Silent:

A Few New Ways to Describe the Jury Foreperson's Identity and Impact

Response by Charlotte A. Morris

Feller begins by asserting that "evidence and common sense" suggest that forepersons "have more impact than the average juror." I'm not so sure. I see 'average' jurors having an above-average impact on jury deliberations all the time.

While it is true that every once in a while I watch a foreperson who is intent on influencing the outcome drive the deliberations, just as often I see others who are not foreperson do the very same thing. In more than fifteen years of watching mock deliberations and interviewing jurors after trial, I have observed that the potential power held by a foreperson is as easily wasted or withheld as it is wielded.

How Do We Define Impact?

The most pressing question I have about Feller's lit review is how the author (or even the underlying research) defines and measures "impact." In my experience, there are a wide variety of ways a foreperson does – and does not – exert influence on both the deliberation process and its outcome.

On the subject of gender, for example, at times I see women accepting or volunteering for the foreperson role because they are perceived by themselves or others to be well-organized, good note-takers or effective administrators. Many times a woman fitting this description who becomes foreperson has less impact on the outcome and focuses more on having an impact on the deliberation process. What I also observe is that some men refuse or demur when asked to be the foreperson because frankly they see it the same way: the job is clerical, something administrative assistants might do. These men would rather have an impact on the outcome and let someone else worry about keeping score.

Deborah Tannen's body of work on gender communication styles would also suggest that when men and women serve as forepersons they bring very different skills. [2] Women are more effective at encouraging others to share their points of view and building consensus, which can have a profound impact on the course of deliberations. But the research also suggests that typically "female" styles of communication get in the way of a woman's ability to persuade, which means that a woman may have much less impact on the outcome. When a male foreperson communicates in a typically "male" style he holds the floor longer, interrupts more frequently, and uses more declarative statements. Arguably, his impact on deliberations is qualitatively different from that of a woman who communicates in a typically "female" style and he is likely to have a greater impact on the outcome as a result.

And then there's the separate question of which tendencies, traits and attributes have an impact on the selection of the

foreperson, which is different from the question of what impact a foreperson has on deliberations or verdicts. It makes good common sense that folks with prior jury duty experience are more often elected to serve as forepersons. But the literature on that topic leaves something to be desired.

In my experience far more people have served on criminal cases because they go to trial more often and are shorter than most civil trials. But criminal cases involve a very different body of law (e.g., burden of proof) with very different consequences (jail time, no fine). I would be delighted to see new research that could tell us if jurors with prior jury duty experience have a greater impact on deliberations and verdicts across case types and in what direction (e.g., Is criminal case experience more likely to produce a particular type of outcome in a civil case?).

Three Types of Foreperson Not Identified in the Research: Surrogate, Secret and Silent

Notwithstanding the importance of having a foreperson, the real leader or leaders on a jury (i.e., people who influence the outcome) are very often not the person who signs the verdict form.

I frequently see jurors acting as "surrogate" foreperson. In a recent focus group demonstration we watched as the group rather quickly elected a foreperson (white male) who was largely ineffective in that role. Very soon, another juror (white female) took over: she led much of the discussion, recorded the votes and greatly influenced the decision on damages. At the end of deliberations, my consultant colleague asked the jury to remind us who was chosen to be the foreperson. Jurors couldn't remember and said it didn't really matter. It was an interesting dynamic to watch, but I have to agree that the identity of the *actual* foreperson didn't matter much when compared to the impact made by the *acting* foreperson.

I have also heard from jurors who served as the "secret" foreperson. One woman on a jury in Florida admitted to me after the trial that she agreed to act as the foreperson for the purposes of deliberations but would not accept the responsibility for writing the notes they sent out to the judge or signing the verdict form. She assigned those chores to another woman. She was the only pro-defense juror on the case and ultimately traded her liability vote for extremely limited damages in a wrongful death case. She reported feeling very satisfied that she was able to get the result she wanted for the case, in spite of being vastly outnumbered. And the court never knew that the foreperson of record was not the same person who unabashedly assumed and used that position of power to achieve her desired outcome.

Finally we have what I will call the "silent" foreperson. This is someone who much prefers to focus on his or her job of recording votes, passing notes to the bailiff and reading the verdict form, precisely because he or she doesn't want to have (or be perceived to have) an impact on the outcome of the case. And yet it does not surprise me when a silent foreperson's fellow jurors tell me in post-verdict interviews that he or she had a significant impact (positive or negative) on the deliberations.

Looking for Leaders

I'd like the focus of future research to shift away from the singular position of jury foreperson to study instead the more dynamic question of jury leadership. From my perspective of working in the real-world practical application of jury research, the question of who will serve as foreperson is less important than the overall composition of the jury.

There are juror qualities and experiences that I find more influential on my own judgment when assisting counsel in jury selection than the foreperson attributes covered by the research to date. We are looking for leadership traits (and the lack thereof) when we try to assess who will have the greatest (or least) impact on jury deliberations. Very often we are trying to build a jury that contains a combination of qualities and attributes, provided we can match them all in one way or another to the important issues in our case.

These qualities can include how articulate a prospective juror is, the language he or she uses, a willingness to take the opposite view on a widely-held proposition, how other jurors react/respond to him or her, leadership experience, non-verbal behavior and so much more. We even try to identify who will be most and least influential on the specific issues of liability, causation and damages as those decisions draw on different types of experience, attitudes, behaviors and beliefs. We keep our evidence and case strategy in mind when considering the jury composition and try to keep a number of people who have the potential to lead on a number of issues most important to our case.

I see jurors drawing heavily on work and family experience in their decision-making during deliberations, so I'd also like to see research done on whether or not a person with significant influence on a jury is more likely to have business ownership, management or supervisory experience. I want to know if the leaders on the jury are in fact people who serve in leadership positions in their community life. I'd like to know if religiosity and political activism are strong predictors of jury leadership. Or if people who tend to be rule followers are more or less likely to lead and have an impact on the deliberation process. And most importantly I'd like to know if any of these or dozens of other traits or tendencies are predictive of jurors' impact on deliberation outcomes.

It would also be great to see research on jury leadership with respect to case type. Is it statistically more likely that women jurors on a case alleging missed diagnosis of breast cancer would have more impact on deliberations regardless of who serves as foreperson? Or that the juror with manufacturing experience would have more impact in a products liability case? Engineers on patent cases? Small business owners on contract cases?

The possibilities for future research on jury leadership are limitless.

Charli Morris is a trial consultant in Raleigh, NC who has worked since 1994 in venues across the country. You can find out more about Charli and her book The Persuasive Edge by checking out http://www.trial-prep.com.

Endnote

[1] Tannen, Deborah (1994). *Gender and Discourse.* New York, NY: Oxford University Press.

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Editor's Note

You know how 'they' say as you get older, time seems to fly by faster? 2010 has absolutely flown by for me. This is our last issue for 2010 and we wanted to offer a full plate (so to speak) as you go into the holidays. To that end, we have articles on self-presentation in the courtroom; thoughts on what we can learn (if anything) from negative political attack ads; a review of the research on police deception in interrogation and how that influences jurors as they consider confessions; using hyperlinked briefs to power up both your argument and your persuasiveness; a look at the role and impact of juror IQ; a psychological approach to *voir dire*; and a review of the research on the role of the juror foreperson. As you peruse these (with holiday fudge and hot cider) all of us at the American Society of Trial Consultants wish you and yours the best of holiday times and success, health and happiness in the New Year.

In 2011, we hope to continue to bring you thought-provoking pieces that make you think as well as improve your litigation advocacy skills. We are in a time in this country where we have to continually assess and re-assess whether strategies in persuasion are still effective or if we have to re-group and re-vamp and re-approach the venire. As you practice and run up against new concerns, perspectives and attitudes--it helps us a lot to hear from you about topics you'd like to learn more about in The Jury Expert. Send me an email and tell me what topics you want to have in our 2011 issues. We'll see what we can do to make that happen. Think of it as our gift to you. Happy Holidays.

Rita R. Handrich, Ph.D., Editor
On Twitter: @thejuryexpert

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