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Thin Slices of Testimony

Thirty seconds of testimony will not tell you all you need to know

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LAWYERING IS FULL OF MYTHS and superstitions¹, even more so than baseball in which many players do not change underwear during hitting streaks and refuse to step on chalk lines for fear of jinxing their teams. Some courtroom myths have elements of truth in them, and those elements make it especially hard to tease out the useful from the superstitious and frivolous. One of those persistent half-truths is that first impressions lay a foundation of thinking and believing that is, by nature, hardened-steel resistant to change, no matter what happens next. Moreover, such brief first impressions are often viewed as crystal balls, thought to forecast judgments accurately that would be otherwise reached with more consideration.

The large and robust psychological literature on brief first and other impressions uses the more precise term of thin slices (Allport, 1937; Ambady & Rosenthal, 1992; Funder, 1987;

Gray, 2008; Kenny & Albright, 1987; Kruglanski, 1989; Swann, 1984). In this paper we look at the essential aspects of thin slice knowledge and discuss our research on effects of thin slices of expert testimony. Finally, we discuss what thin slices mean in the courtroom for understanding jury decision-making.

“Blink” (Gladwell, 2005) versus “Think” (LeGault, 2006)

The tendency to form quick impressions of the world around us is not up for debate (Gray, 2008). Nor is the usefulness of our reliance on cognitive shortcuts, or heuristics, to process information to save mental energy and manage a stimulating environment (Tversky & Kahneman, 1974; Kelman, Rottenstreich, & Tversky, 1996). There exists, however, a debate about whether humans are just as good at making “blink

of an eye” (Gladwell, 2005) decisions as they are when relying on thoughtful, critical analyses (LeGault, 2006). In their provocative popular books, the authors of *Blink* and *Think* take opposing points of view on the issue, as emphasized in their respective title subheadings: “The Power of Thinking without Thinking” and “Why Crucial Decisions Can’t be made in the Blink of an Eye.” The root of the issue lies in the relative “value” (Gladwell, 2005, p. 17) in snapshot judgments compared to longer periods of exposure and rational analysis. LeGault (2006) espouses the superiority of critical thinking in decision-making outright but also acknowledges the prevalence of snapshot-like judgments in our modern society. LeGault challenged us to do more – to think more. As LeGault (2006) stated, “...there is a direct connection between the way we think and the society we get” (p. 16).

Do Jurors Blink or Think During Expert Testimony?

From Gladwell’s (2005) perspective, buttressed by decades of social psychological research (e.g., Tversky & Kahneman, 1974), expert testimony represents an ideal scenario for reliance on impression-based processing due to the complexity, novelty, and pressure of the situation. Conversely, given the importance of their duty as jurors and individual differences in effortful thinking, juror decision-making also may elicit cognitively complex and in-depth processing. Still, the likelihood is real that impression-based judgments arise when jurors evaluate experts’ credibility and testimony (e.g., Bennett & Feldman, 2003; Fiske & Taylor, 1991; Pennington & Hastie, 2003). Take, for example, this illustrative scenario of a juror’s thinking:

You have been sitting in an uncomfortable chair for four hours. You haven’t been to your job in days. Instead, you’ve earned \$18 as “Juror Number Nine” in the state’s case against a criminal defendant. By now you learned the facts of the case each side seeks to show. You’ve grown accustomed to the voices of the prosecutor, defense attorney, and the judge. Despite the tedious nature of the proceedings, you

looked forward to today to hear “the expert.” “Finally,” you think, “I’ll hear some hard facts, some real evidence that will help me make heads or tails of all this bantering back and forth.” You soon discover you were wrong. Through 3 hours of “expert testimony,” you find yourself lost in jargon, academic-speak, and drawn-out responses. You are sure you could reproduce the intricate design on the expert’s shirt if asked, and, truth be told, the task would be less dull than listening to another minute of testimony. You think, “Get to the point. I zoned out after 30 seconds.”

One question that trial consultants, experts, and lawyers face is whether 30 seconds of testimony is enough to make a meaningful impression. Of course, meaningful must be operationally defined. For instance, does meaningful equate decision-making? This influence can, at times, be ambiguous in research and trial consultation. We turn to the thin-slice literature to define accuracy in impressions-based judgments, looking especially at research on how well thin slices predict judgments.

A thin slice is anywhere between 30 seconds and 5 minutes of exposure, based on thinly sliced time periods within this range (Ambady & Rosenthal, 1992). This includes brief judgments on topics such as deceptiveness, psychopathology, personality, relationship stability, and intentions (Ambady, Hallahan, & Rosenthal, 1995; Ambady & Rosenthal, 1992; Fowler, Lilienfeld, & Patrick, 2009; Funder & Colvin, 1988; Gray, 2008). In these and many other professional and social contexts thin slice impressions have shown to be accurate. Accuracy of thin slices can be defined a number of ways, most commonly either (1) the agreement between various raters of thin slice exposures, or (2) the agreement between thin slice judgments and those judgments based on longer, fuller exposures to the testimony (Ambady & Rosenthal, 1992; Gray, 2008; Kruglanski, 1989). These judgments have been tested by observing very thin slices (e.g., 30 seconds) to longer thin slice exposures (e.g., observing verbal interactions between a couple for 3 minutes to predict their likelihood of divorce). Overall, the research has supported the accuracy of thin slices

in social contexts and interpersonal judgments (e.g., Ambady & Rosenthal, 1992).

Accuracy in thin slice judgments lies in its predictive utility, but not necessarily how it predicts decisional outcomes such as verdict. As Gladwell (2005) stated, the goal is to compare the effectiveness and relative usefulness of a “thin” versus “thick” slice of evaluation (p. 34).

Expert Witness Testimony

Impression formation is particularly relevant to understanding how jurors evaluate evidence, assess witness credibility, and determine verdicts; however, there is little research in this area upon which trial consultants and lawyers can draw. We wondered: Does just 30 seconds of exposure to an expert (or a lawyer’s opening remarks, a judge’s instructions, etc.) yield the same impressions as would fuller exposures to that same stimulus? Jurors are charged with evaluating evidence for credibility and relative utility and are also encouraged to avoid any bias on their task. Bias can be explicit, such as pro-prosecution sentiments or racial discrimination, but it can also be implicit in decision-making processes. It is not our place to determine what is and is not biased decision-making of a juror. However, we can report that cognitive shortcuts are likely to yield biased decisions and erroneous decisions (Funder, 1987; Greene & Ellis, 2007; Kamin & Rachlinski, 1995).

You may wonder, “Why does it matter what 30 seconds of testimony means, since jurors will always hear all of the testimony?” We have two responses. The first answer is globally rooted in decades of research on how people think and process information: What we hear is not the same as what we encode, retain, and consider in our evaluations of others (Chaiken, 1980; Tversky & Kahneman, 1974). Take for instance, the juror’s experience provided above. Then think back to the last time you sat through a 3 hour lecture and evaluate what you retained and how much central versus peripheral processing dominated your thinking style.

The second response draws on the nature of trial consultation and interpretations of evidence

interpretations. In multimedia or in vivo simulations of expert testimony, or in lawyer arguments, consultants often show a brief excerpt, for example, five or ten minutes worth, of the stimuliⁱⁱⁱ. The justification goes like this. The mock jurors need to experience enough of the testimony to form an impression of it. Two assumptions underlie this practice: (1) impressions act as strong influences in decision-making, and (2) impressions are just as predictive as judgments based on a fuller experience. Given the influence of these assumptions on trial consultation practices, it is critical that they be tested and validated from an empirical standpoint. Suppose an attorney asks a trial consultant, for example, “Don’t we need to show more than five minutes of testimony to get it right?” To answer this question, we turn to research on jury decision-making.

In academic research, mock jurors are given little time – often 5 to 10 minutes – to view experimentally manipulated excerpts from testimony or opening/closing statements prior to making credibility or outcome decisions. The practicality of mock jury data collection in both academic and trial consultation contexts must be balanced with the relative usefulness or predictive utility of information obtained. So how do we draw the line? How short is too short of an exposure when it comes to uncovering accurate impressions of an expert’s credibility, the relative weight of testimony, or the impact of a lawyer’s opening statement? In our own investigation, we used a thin slice manipulation of expert testimony – the first empirical use of thin slice methodology in this context.

We included a manipulation of deliberation in our study, where half of the participants deliberated for a short period and half completed an unrelated group task. The case was adapted from *People v. Goldstein* (1999), in which a defendant pled Not Guilty by Reason of Insanity to Second Degree Murder. We created three testimony conditions delineated by the amount of exposure to a defense expert witness. Thus, 188 mock jurors (undergraduates at a large southern university) were randomly assigned to one of three testimony conditions: 30 seconds, 5 minutes, or 10 minutes. The 30 second and 5 minute window were the thinly sliced exposures to the expert. An experienced forensic psychologist was filmed. Each excerpt included the expert’s opinion regarding the defendant’s impaired mental state at the time of the offense. In addition, to balance factual information, all mock jurors were given a handout outlining the primary facts from both the prosecution and defense in the case.

What We Found

Mock jurors were asked to rate the expert’s credibility, using Brodsky and colleagues (2010) four-facet Witness Credibility Scale, as well as the likelihood of awarding a NGRI verdict. Recall that participants exposed to the 30 second or 5 minute condition were forced to rely on this “thinly sliced” testimony in their judgments. We examined these impressions relative to “thicker sliced” experiences (the 10 minute condition), and to see if this comparison differed after deliberation. In other words, were thin versus thick impressions more in line with each other before or after deliberation, or not at all?

When jurors did not deliberate, thin slices were not fully

predictive of the thicker slice. Credibility and verdict ratings were significantly different for the thinnest slice (compared to the fuller 10 minute slice), while five minutes of testimony was indeed equivalent to the longer condition.

When jurors deliberated, thin slices were not predictive of verdict of the thicker slice. However, after accounting for deliberation, 30 seconds of exposure to the testimony was in fact enough to generate accurate credibility ratings. In other words, there were no meaningful differences in credibility judgments across all three time slice conditions when deliberation was considered. As noted, for verdict, deliberation made a difference in the pay-off of thin slice judgments. While 5 minutes of testimony yielded accurate verdicts pre- and post-deliberation, 30 seconds of testimony generated different verdicts pre- and post-deliberation. We came to these conclusions:

- Snapshot-like, very brief impressions of about 30 seconds do not hold much predictive utility due to their susceptibility to influence from deliberations.
- The longer of the thinly sliced impressions (5 minutes) emerged as a meaningful predictor in overall credibility ratings and verdict, even when compared to the thicker time slice and even after deliberations.
- The 5 minute impression provided predictive ratings of expert witness knowledge and confidence. However, expert trustworthiness and likeability continued to increase over time, which suggests that these may be more malleable and may change (increase or decrease) over longer exposures to testimony. Thus, 5 minute-impressions may not accurately account for ratings of trustworthiness and likeability.

Practical Applications

How thin can attorneys go without jeopardizing their payoffs? Just 30 seconds of testimony will likely not work in credibility and evidence interpretations, but 5 minutes might. However, it is not known at what point between 30 seconds and 5 minutes usefulness begins to take effect.

People are bad at introspecting and even worse at understanding why they make the decisions they do. As Gladwell (2005) emphasized, “There are times when we demand an explanation when an explanation really isn’t possible,” (p. 71) which he refers to as the “locked door” of our unconscious. As empiricists, we do not go that far. However, we acknowledge the quicker we make decisions (form impressions), the less likely we are to understand what led us to that judgment. Longer exposures to the stimuli may generate more useful data and malleable outcomes. Still, information obtained from only a thin slice of exposure (5 minutes) to testimony or lawyering can help, given jurors’ likely reliance on these impressions.

Deliberation makes a difference for impressions’ predictive utility: Had we not included a 30-second deliberation condition in our study, our results would have been different and, less informative. Our findings speak to the importance of considering group effects and the power of time exposure when relying on impression-based data to inform trial consultation (Salerno & Diamond, 2010). ●

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[i] See <http://legalcareers.about.com/od/practicetips/a/lawyermyths.htm>

[ii] See <http://keenetrial.com/blog/2012/03/16/feeling-good-about-yourself-allow-us-to-introduce-our-mock-jurors/> for one such example of a mock juror evaluation of a witness's testimony, provided with just six minutes of exposure in some cases.