



## Cynicism Enters the Courtroom: The Keys to Identifying a Cynical Juror

By George Hunter, Ph.D.

Through the voice of Linus van Pelt—the popular character from the *Peanuts* comic strip—many of us were presented with our first glimpse of cynicism when he said: “I love humanity. It’s people I can’t stand.” With his unbridled optimism and a security blanket to shield him from the dangers of the world, Linus captured the hearts of cynics everywhere, but we never really knew it.

What’s even more compelling is that many people, including a vast number of people involved in the legal process—judges, juries, witnesses, plaintiffs and defendants—misuse the term “cynicism.” Although it has many associations, cynicism has a finite definition.

Cynicism is not, for example, the same as *skepticism*, *pessimism*, *sarcasm*, *ill temper* or *misanthropy*. Cynics are not just sour and hateful, nor are they unfeeling or unsympathetic. In fact, cynics are actually much the opposite. Underlying the cynical attitude is a perception that life could be different, were it not for the self-interested behavior of others. Cynics have an abiding idealism about humanity and how the world “should be,” but their beliefs are offset by the thought that all human behavior is motivated by self-interest.

But let’s leave psychological theory for classrooms, and talk about why cynicism is gaining increased interest from the law. Consider recent current events:

- Our national business community fell under elevated public scrutiny after the financial misconduct of Enron and WorldCom, among others. This has led politicians to call for more diligent policing of accounting practices, notwithstanding the suspicious business history of some of the country’s leaders.

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- The Catholic Church has come under fire for allegedly covering up the sexual misconduct of some priests currently presiding over parishes.
- Martha Stewart, a symbol of grace and charm, has been convicted of stock fraud and served prison time for her offense.

And let's not forget scandalous activity in athletics, government, pop music, advertising and a host of other industries. Cynical tendencies that emerge from consideration of the negative details of our lives steadily spiral into a cynical worldview, implicating everyone. Cynicism is not confined to big business, politics or religion, but affects our perceptions of our friends, family and colleagues.

With its attempts to resist and subvert social themes, cynicism has become a social theme, and has provided an added twist to much of today's complex litigation. The maverick in today's society is no longer the jaded discontent but, instead, the unabused believer who withstands cynical conversion. It is not surprising, then, that psychologists have found that roughly half of all Americans can be classified as cynics, although many may not view themselves as such.

### Cynicism in the Legal System

Cynics are disillusioned idealists who wish that the world would be different, but believe that the greatest barrier to change is humanity's own nature. Cynicism is an irony, and develops as a reaction to dashed hopes and the obvious imperfections of a materialistic, demanding and manipulative society. Cynicism acts as a defense mechanism for the cynic, who is responding to what is perceived as an increasingly and hopelessly corrupt world.

Social scientists have studied many aspects

of cynicism, relating, for example, to health, organizational and work issues. Yet, the role of cynicism in juror decision-making has yet to be extensively investigated. There is virtually no aspect of the courtroom experience that is beyond jurors' abilities to be cynical, considering the behaviors of plaintiffs, defendants, attorneys, witnesses, the judge and even fellow jurors are fair game.

As part of our ongoing research into jurors' perceptions and influences, we examined the effects of cynicism on juror decision-making using mock juries in civil litigation and criminal research. Although cynicism is not related to verdicts in all cases, we discovered that, on a case-by-case basis, cynicism could be a very powerful predictor of which side jurors tend to favor. Cynical jurors are not more likely to systematically favor plaintiffs or defendants. Case-specific facts, however,

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*Underlying the cynical attitude is a perception that life could be different if not ultimately for the self-interested behavior of others.*

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can increase the likelihood of cynics favoring a particular side.

Due to case specifics, it is difficult to know in advance how cynicism

will ultimately affect jurors' perceptions. Because roughly half of the population qualify as cynics, it is almost guaranteed that cynics will appear on a jury. Cynicism is not as immediately obvious as race or gender, however; it is a hidden, but persistent demographic. As with any other demographic issue, it is not possible to make blanket predictions about how it will affect every case.

Recently, there was a case where a pharmacy allegedly dispensed the wrong medicine, thereby poisoning a child. They admitted having made a mistake in the prescription, but argued that this mistake had not caused the child's brain damage.

In this instance, cynics are more likely to favor the plaintiffs because the defense for the pharmacy appeared disingenuous. This

refusal to take personal responsibility for what was an uncontested mistake angered cynics; in pretrial research, cynics were more likely to favor the plaintiffs than were non-cynics.

In a different case where a wealthy businessman was accused of bribing officials, cynics were actually more likely to favor the defense. Because cynics see a corrupt world everywhere they turn, the businessman's behavior was not all that different from what they expected other people would do in the same position. Consequently, cynical jurors were less alarmed by his behavior and were not as punitive as non-cynics.

### Cynicism and Damage Awards

Although cynicism does not cause jurors to systematically favor either the defendants or plaintiffs in litigation, it does have some predictable effects on how jurors approach damages.

As with much of cynicism, however, this varies by the particulars of the damages. Our research has shown significant effects of

cynicism on both compensatory and punitive damages, but these effects go in opposite directions.

For compensatory damages, we have found that cynicism is positively related to award sizes; the more cynical a person is, the higher the likely compensatory award. Although cynics believe that people pretend to care about each other more than they really do, most cynics themselves actually care very much about others. Cynicism is an attribution about how others feel and why others behave as they do.

For example, in a case like Martha Stewart's, cynics would be more likely to believe that she and her broker were guilty of misconduct, given the cynic's general belief that people have selfish and dishonest motives. That does not mean, however, that cynics would personally be more likely to engage in stock fraud. Cynics' attributions about others are not reflections of their own personal behaviors. Instead, the attitudes of cynics come from the position of

frustrated observers.

Cynics believe that, because of people's ultimately selfish natures, others are less likely to help people in need. Given the opportunity to help others, cynics are eager to do so. This brings to balance for cynics how the world is compared to how it "should be." Interestingly, our research has revealed that this effect is enduring. Mock jurors in our exercises who have served as actual jurors are less cynical than those who have not. Being a part of the system and the justice process leads to a more optimistic outlook on humanity.

For punitive damages, however, the effect of cynicism runs opposite of what is observed for compensatory damages. The more cynical a juror is, the lower the punitive damages. Because cynics believe that it is in people's nature to be dishonest and self-interested, there is

little use in punishing selfish or dishonest behavior. Human nature will remain unchanged, and the punishment will likely have no effect on the defendant.

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*Psychologists have found that roughly half of all Americans can be classified as cynics, although many may not view themselves as such.*

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Going back to the case involving the pharmacy and the brain-damaged child, cynics were more likely to award higher amounts for compensatory damages, but awarded less in punitive damages. Although cynics had been angered by the pharmacy's deflection of responsibility, this anger did not increase the size of their punitive awards. Instead, more focus was placed on compensating for the harm done.

Neither effect of cynicism on damages is likely to occur as a conscious process. Many cynics may not even realize that they are, in fact, cynics. Cynicism is pervasive enough in our culture that it is relatively "normal." Thus, cynicism and its effects may occur outside the immediate awareness of jurors but still be contributing to how jurors perceive and respond to a case. Identifying the role that cynicism will have in a case will have implications not only for the jury selection phase of the trial, but also in how the case is presented.

When dealing with cynicism for any case,

attorneys are faced with essentially two choices: remove the cynics from the jury, or understand how cynical jurors are likely to respond to the case and deal with that accordingly.

If the choice is removing cynics, the careful use of *voir dire* or supplemental juror questionnaires can determine whom the cynics are on the jury. Cynics do not systematically favor plaintiffs or the defense, so there is no easy rule about how to handle these jurors.

As with all jurors, cynics' responses to a case depend more on how the facts of the case are explained than on jurors' predispositions. For example, in a case that has some harmful documents, the defense could be that the individual writing those documents was unqualified to do so or was writing about an area outside of his role or his expertise. Attacking the documents through the author, however, would likely not play well with cynical jurors. These jurors already expect that individuals or companies will do whatever is necessary to protect their self-interest, including the betrayal of an inside employee.

Because cynics expect bad behavior in people, the presence of unflattering company documents will not surprise them. Yet, their cynical attributions need not be automatic points for the plaintiffs. In fact, they can be turned against plaintiffs by emphasizing the "cherry-picking" nature of the case. One could instead argue "Of course there are negative documents, there are bound to be some somewhere. But the plaintiffs are being very particular about what they show you; they want to exaggerate the negative." Such an argument targets the cynic's expectations that people will use unfair tactics in order to gain an advantage.

Another common issue is how a company dealt with regulations and how it behaves today. Because cynics expect that people only behave honestly when they are forced to do so, they will also expect that companies will follow regulations only when compelled to or when it is in the company's self-interest.

Cynics do not believe that people are altruistic, so they will not accept an account of good behavior as done "because it was the right thing to do." Although philanthropic or selfless acts may be

thought of as a way to redeem a company in the eyes of some jurors, they are unlikely to persuade cynics. If there is not some other self-interested motive provided, cynical jurors will fill in the blanks themselves, usually creating a more negative image of the company than had been expected. Instead, accept that the company saw an opportunity to benefit from some of its generosity; doing so will not only match the self-interest expectations of the cynic, but it will also help satisfy the standard that cynics have about what people should do for each other.

"Should" is one of the most defining characteristics of cynics, even beyond negative expectations of their fellow humans. Cynics believe that people should act nobly, and are frustrated that people continue to fall short of the ideal. Consequently, one of the most dangerous elements of a case for the defense is what they should have done differently.

If the case is about warnings, for example, cynics will easily seize upon the idea that the company only warned about what it had to, but that it should have done much more.

## Jury Selection

Once the role of cynicism has been identified for a specific case, one should know whether cynical jurors will be favorable to one's side or should be identified for removal from the jury. At the end of this article is a six-item scale containing statements that can easily be adapted for use in *voir dire* or on supplemental juror questionnaires.

Other statements that can assess cynicism include:

- "Most people inwardly dislike putting themselves out to help other people."
- "People claim to have ethical standards regarding honesty and morality, but few people stick to them when money is at stake."
- "Most people make friends because friends are likely to be useful to them."
- "Many people exaggerate their misfortunes in order to gain sympathy."

For each of these statements, agreement reflects possible cynicism. Because of the nature of cynicism, however, one should not attempt to reverse the phrasing of the items. For example, if sixty percent of people agree with the statement, “Most people are not really honest by nature,” this does not mean that forty percent would agree if we removed “not.” Each statement is designed to measure those attitudes toward which a cynic would resonate. Although reversing the phrasing of each item might make them seem more idealistic, remember that cynicism is not the opposite of idealism. In fact, idealism is an important underlying component of cynicism, albeit frustrated.

Follow-up with jurors is also important. A juror may agree with a statement like, “Most people are just out for themselves,” but may do so without any particular value judgment. For many people, including some psychologists and sociologists, there is no such thing as true altruism; every behavior has self-interest at its core. Absent a feeling that people should be different, however, this is simply a description of why people act as they do.

For the cynic, there is an unspoken or implied “should” that accompanies agreement with cynical statements. For example, a cynic would agree with the statement, “People pretend to care more about each other than they really do,” and believe that people should care about each other more. From a cynic’s point of view, people should also look out for each other more, be more honest and be faithful to their moral principles. By following up with jurors during *voir dire*, one can distinguish between jurors who essentially accept the relative selfishness of humanity from the cynics who are frustrated by a world that continues to disappoint their ideals.

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### Are You a Cynic?

The following statements are examples taken from the scale that Zagnoli McEvoy Foley uses to assess cynicism. In each column, mark your level of agreement with each statement.

	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
Statements	1	2	3	4	5
People pretend to care more about each other than they really do.					
Most people are just out for themselves.					
Most people are not really honest by nature.					
I think most people would lie to get ahead.					
Most people will use somewhat unfair means to gain profit or unfair advantage rather than to lose it.					
Most people are not really honest for a desirable reason; they’re afraid of getting caught.					

**Scoring:** For each statement, score your response using the numbers at the top of each column. Sum these scores. A score of 22 or above reflects a cynical outlook.

## What You Should Know About Jury Reform

### Part III: Using Preliminary Jury Instructions

By Debra L. Worthington, Ph.D.

Previous columns on jury reform discussed the effects of juror note-taking and juror notebooks.<sup>1</sup> Drawing on the research from the National Institute of Justice, the National Center of State Courts, and The Public Law Institute, we review another jury reform—preliminary jury instructions.

Traditionally, judges provide jury instructions after closing arguments, just prior to jury deliberations. In contrast, preliminary instructions are provided before the

jurors hear closing arguments, often at the beginning of the trial. In general, preliminary jury instructions introduce the substantive law governing the case. Essentially, preliminary instructions provide a legal road map that jurors can follow as the case unfolds.<sup>2</sup> While some judges review all the instructions of the case, others may provide only the primary or substantive instructions on the law.<sup>3</sup>

#### Theory and Research

Much of the research in this area addresses the advantages pre-instructed jurors have over post-

instructed jurors. For example, in a study which utilized a complex tort case, ForsterLee and Horowitz found jurors who are pre-instructed exhibited improved recall and improved comprehension.<sup>4</sup> Preliminary instructions provide jurors with legal guidelines around which to organize trial facts. Notably, empirical research also suggests that pre-instructed jurors are more likely to delay pre-deliberation verdict decisions until the end of the trial.

State pilot programs in Tennessee, Massachusetts, and other states also report positive responses to pre-instruction.<sup>5</sup> For example, virtually all participants in the Tennessee study found preliminary instructions helpful, with over 80 percent indicating they were “very helpful.” These

findings are bolstered by a Massachusetts test that found that 94 percent of jurors found preliminary instructions to be at least somewhat helpful, if not very helpful, to their understanding of the evidence and trial

processes. Judges and attorneys also believe they are useful. For example, in the Massachusetts study, the vast majority of attorneys and judges believe preliminary instructions aid in juror comprehension and help jurors follow the evidence.

#### In Practice

While judges traditionally instruct jurors after attorney closing arguments, most jurisdictions allow (if not require) trial judges to include a review of applicable legal principles at the opening of the trial.<sup>6</sup> In fact, federal law expressly

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*Empirical research suggests that pre-instructed Jurors are more likely to delay pre-deliberation verdict decisions until the end of the trial.*

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<sup>1</sup>The articles on juror note-taking and juror notebooks may be found in the October 2006 and February 2007 issues of *The Jury Expert*, respectively (Volume 18, Issue 10 and Volume 19, Issue 2).

<sup>2</sup>Dann, B. M., & Hans, V. (2004, Spring). Recent evaluative research on jury trial innovations. *Court Review*, p. 16.

<sup>3</sup>The Center for Jury Studies. *Jury instructions before closing arguments: An overview*. Retrieved May 8, 2007 from <http://www.ncsconline.org/Juries/InnBeforeClosingView.htm>.

<sup>4</sup>ForsterLee, L., & Horowitz, I. (2003). The effects of jury-aid innovations on juror performance in complex civil trials, *Judicature*, 86.

<sup>5</sup>Cohen, N. P. (2000). The timing of jury instructions. *Tennessee Law Review*, 67; Hannaford, P.L., & Munsterman, G. T. (2001).

*Final Report of the Massachusetts Project on Innovative Jury Trial Practices*. National Center for Citizen Participation in the Administration of Justice; Frank, J., & Madensen, T. (2004). *Survey to assess and improved jury service in Ohio*, Appendix B. Report and Recommendations of the Supreme Court of Ohio Task Force on Jury Service; Connor, J. A. (2000). Los Angeles trial courts test jury innovations, *Defense Counsel Journal*, 186.

<sup>6</sup>Dann, B. M., & Hans, V. (2004, Spring). Recent evaluative research on jury trial innovations. *Court Review*, p. 15.

permits substantive preliminary instructions, and no legal statutes or judicial decisions disallow these types of instructions.<sup>7</sup> Beyond believing these instructions assist juror comprehension, trial attorneys can also enjoy practical benefits from pre-instructions. Early instruction allows the attorney to more effectively build her entire case with the instructions in mind, rather than having to try to predict what those instructions will be when they are finally delivered. In this way, messages in opening statement, witness testimony, and closing argument can track more closely with jurors' end goal of applying instructions to verdict questions.

### *The Practical Impact*

The National Center of State Courts and the Public Law Research Institute outline arguments for and against early instruction on the law:

#### Advantages

- Improves jurors' recall because the instructions provide a framework for organizing the evidence;
- Focuses jurors' attention on the relevant issues;
- Accommodates jurors' natural tendency to process evidence when they receive it by providing principles that help jurors organize the evidence, assess its significance, and avoid premature judgment;
- Helps ensure that the jurors evaluate the evidence according to the correct legal guidelines, rather than their own personal criteria;
- Increases juror satisfaction;
- Helps jurors integrate the evidence and the law;
- Enables jurors to better evaluate the closing arguments;

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*The research suggests that almost every case can benefit from preliminary juror instructions.*

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- Frees lawyers from appearing to "predict" how the judge will instruct the jury;
- Closing arguments are more meaningful within the legal framework provided by instructions and, as a result, may improve jurors' recollection of the evidence;
- Trial attorneys know the exact wording of the instructions and can tailor their closing arguments accordingly;
- Trial attorneys can include an explanation of the instructions in their closing arguments and demonstrate how the instructions should be applied to the facts of the case;
- Jurors spend less time during deliberations attempting to reconstruct the judge's instructions; and
- Jurors are less likely to be swayed inappropriately by closing arguments and are more likely to evaluate the evidence according to legally correct guidelines.

#### Disadvantages

- Judges need additional time to evaluate the evidence and law in order to better determine how to word jury instructions;
- It is more difficult for attorneys to adapt and/or abandon legal theories or arguments that are not working for their case;
- Trial delays, and therefore increased expense may result;
- It may encourage jurors to view the trial from too narrow a perspective (i.e., they become overly focused on some aspects of the case and ignore other evidence and arguments);
- It may encourage premature decision making;
- Jurors may focus on the judge's instructions

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<sup>7</sup> Chilton, E., & Henley, P. *Jury Instructions: Helping Jurors Understand the Evidence and the Law*. Public Law Research Institute: UC Hastings. Retrieved May 8, 2007 from <http://w3.uchastings.edu/plri/spr96tex/juryinst.html>.

rather than on closing arguments; and

- Jurors may view the trial from the perspective of the trial judge and will fail to consider the perspectives articulated in closing arguments.

### Improving Your Advocacy

When determining if pre-instruction is right for your particular case, consider how it may be enacted. For example, judges may present all of the instructions prior to the closing argument, or alternatively, they may “instruct the jury on the law before closing arguments, leaving instructions on administrative matters until after the arguments.”<sup>8</sup> Here, jurors are reminded of the previous instructions, while also being instructed “about procedures to follow during deliberations, including asking questions about the instructions or deliberations and reporting the verdict.”<sup>9</sup>

When should you consider using preliminary instructions? Practically, the research outlined above suggests that almost every case can benefit from preliminary juror instructions. However, it is likely that complex cases and extended cases would receive the greatest benefit. These cases are more likely to inherently require the organizational framework jurors need to make sense of information delivered over an extended period or particularly complex information.

### In a Nutshell

As seen above, there appear to be a number of strong reasons for using preliminary instructions (e.g., improved understanding and recall). Moreover, many of the disadvantages listed above are not supported by empirical research (e.g., encourages early verdict decisions, increased expense, narrowed perspective, etc.). As with the other juror reforms we have reviewed, there does not appear to be

a significant downside to utilizing substantive preliminary instructions earlier in trial.

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### Article Ideas?

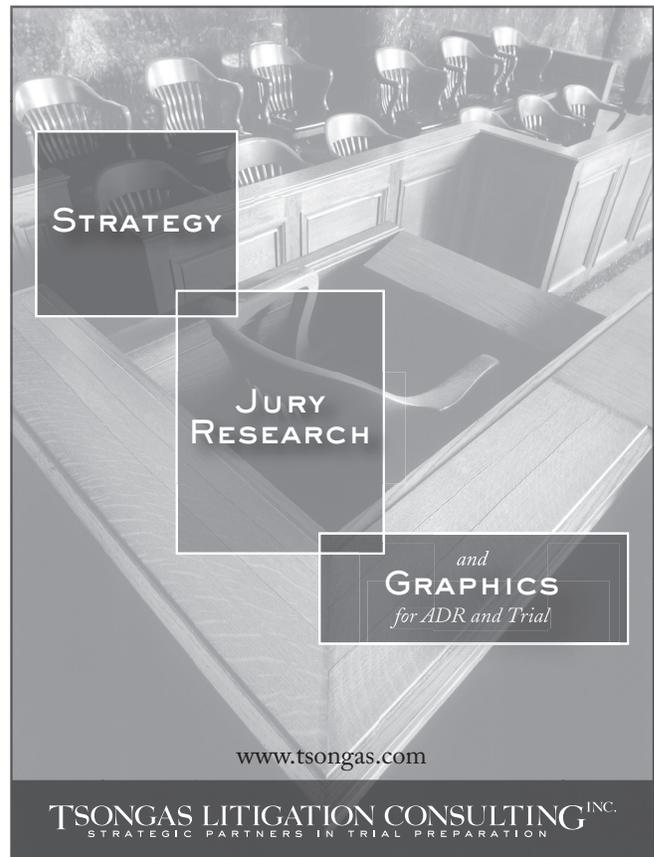
Is there a topic you would like to see covered in *The Jury Expert*? Please feel free to contact me at the e-mail address below with article ideas.

Thanks for reading *The Jury Expert*!



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<sup>8</sup> National Center for State Courts. *Jury Instructions Before Closing Arguments: FAQs*. Retrieved May 8, 2007 from <http://www.ncsconline.org/Juries/InnBeforeClosingFAQ.htm>.

<sup>9</sup>Id.

## Wyzga On Words

### The Devil Is in the Details: The Sensory Language of the Story

By Diane F. Wyzga, R.N., J.D.

A friend of mine was born on the island of Molokai, Hawaii in the early 50s. As a child, he lived and breathed cars. Every chance he got he would sit by the side of the road and wait and watch as cars went by. His older brother could not help but notice the boy's fascination. In an effort to help his little brother, he told him to pay attention to the details: to the headlights, to the fins, to the chrome, to the paint job, to the upholstery, and so on. Today, my friend makes his living designing exquisitely detailed trading cards, and drives a beautifully restored cherry red 1961 Impala. He can tell you any detail you want to know about his car. He will tell you that he learned early on, "the devil is in the details."

One version of this saying implies that the details might cause failure, so pay attention to what you do. Another version suggests that the grandest scheme, like litigation, rises or falls on the success of the smallest components. The details of your client's story may, in fact, be a little devilish, but they are meaningful keys to revealing the client's story.

#### Sensory Language

The language of the client's story is not English. The language of the client's story is sensory detail. Sensory details enrich a story in ways that mere facts alone cannot. Sensory details become the language of the story.

#### Virtual Reality

The language of a story serves as a sign and a signal to draw in listeners, so they occupy the story as a virtual reality. In that virtual reality the listener (or juror) can easily do what the judges admonish the attorneys not to do: invite the juror to step in the client's shoes. By occupying

the virtual reality of the client's story, the listener is in a position to live it, react to it and act upon it when asked to do so.

#### Choose Carefully

There is great power in choice. Jay O'Callahan<sup>1</sup>, an internationally renowned storyteller, trained me in the art of professional storytelling. Jay insisted that I choose: one word over two, two senses over three, and never more than three of anything. When I followed his guidance and chose details with great care, I produced stories that came to life. The details clarified the setting, the characters, the plot and the themes. And the language came alive with power, passion and precision. Jay's instructions are the same skills I teach my clients today.

Likewise, when we choose the sensory details with great care, we can successfully write the client's story. As attorneys, we are mostly a visual lot. We store and retrieve our memories on the basis of what we see and have seen. How often have you asked someone, "Do you see what I'm saying?" Yet, when we rely on the singular sense of sight, how easy to forget the briny smell of an ocean breeze, the clean taste of peppermint toothpaste, the luxurious feel of clean sheets, and the sound of morning birdsong. Most importantly, we are neglecting to speak to the vast range of listeners who rely on auditory or kinesthetic memories.

#### An Exercise

The case you have now or the one that's coming in the door begs you to pay attention to the devil in the sensory details. Ask your client and then ask yourself to describe the event using all the senses. Often, I will walk in a circle with the client while asking them to recount the event through one sense and then another and then another until all five senses are embraced. The reason for walking a circle together allows the client to feel more comfortable than they might when talking with you across a desk. I often begin by asking the client, "What did you notice?" I choose that place to begin because physical sensations arouse feelings, memories and associations. The client hands me a key to unlock the doors to his story.

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<sup>1</sup> You can find more information about Storyteller Jay O'Callahan at [www.ocallahan.com](http://www.ocallahan.com).

## A Place to Begin Asking Questions

### What does an auto accident or rollover

- look like: crumpled metal, shattered plastic, flattened tires, blown out windows, scattered personal effects.
- sound like: shrieking, grinding, collapsing, shattering.
- smell like: burning rubber, leaking gasoline, singed hair, acrid anti-freeze or coolant.
- taste like: blood, grit, dirt.
- feel like (physical sensation): tumbling, tossing, rolling, retching, head slamming, neck snapping, gut-wrenching, out of control, smothering.

### What does a hospital, emergency room, physician's office

- look like: lighting, furnishings, clothing (or lack thereof), cleanliness, hallways, open rooms, examination tables, instruments, families, hurt and injured and pained patients.
- sound like: moaning, groaning, ticking, clicking, flushing, murmuring voices, pounding, running, whispering oxygen, rolling gurneys.
- smell like: bodies, steamed food, soiled laundry, waste, antiseptic.
- taste like: fear, bitter, apprehension, metallic, sorrow.
- feel like (physical sensation): unfamiliar, uncertain, strange, cold, time passing, nervous, tense, waiting, level of comfort, urgency.

### What does a constructive discharge case

- look like: business setting, office, policies and procedures, org chart, CYA memos and e-mails and reports, human resources.
- sound like: blame, resentment, suspicion, voice mail messages.
- smell like: fear.
- taste like: bile.
- feel like (physical sensation): fault, guilt, apprehension, disregard, lost dignity, disbelief, disorientation.

### What does a trip and fall case

- look like: torn ligaments, scraped skin, broken bones, ripped clothes, snapped high heel shoes, dinner plate sized holes in asphalt parking lot, piles of waiting laundry, doubled-up chores and duties, car trips to PT instead of Little League, needle-point instead of gardening.
- sound like: screaming, frustration, impatience.
- smell like: sour body, bad breath, housebound.
- taste like: coated pain pills, someone else's cooking.
- feel like (physical sensation): wrenched back, anger, tears, misery, sleepless nights, sleeping alone, dependency, restless, financial floundering.

### What does a construction site (workers compensation injury) case

- look like: shed, trailer, a finger bleeding into grass, ant hill, traffic, signage, flags, jury-rigged equipment, rust.
- sound like: rushing, growling, grumbling, churning, engines, shouts, lumber and nails, steel and welding, men's voices, shouting.
- smell like: dust, diesel engines, lumber, metal, coffee, roach coach, oil.
- taste like: dirt, dust, tension.
- feel like (physical sensation): hard hats, dizzying heights, physical work, urgency, power, risky.

### Excerpts

Following are a few portions of a short story that shows, among other things, the power of sensory detail.

*We drove south on the Garden State Parkway and exited on a two-lane back road framed by farms, with produce stands announcing a dozen ears of Jersey corn for a dollar. Or a brown sack of Jersey tomatoes for a quarter. There was no air conditioning in our station wagon. No seatbelts. And the seats were covered in hard shiny plastic that stuck to hot bare legs.*

*Seaside Heights Beach was open to the public. We could hear the ocean sigh and collapse as we trekked over a simmering black tar parking lot. Each one of us carried things from the car. Dad balanced the metal cooler chest on his head. We picked our way over the splintered wooden boardwalk cresting the dunes and hopped bare-footed across hot sand.*

*My father walked toward us. He was cupping something in his right hand. He ducked under the umbrella. He plopped it on mom's back: a cold wet dead jelly fish, about the size of a dinner plate.*

*Pulling off a pine-shaded back road in South Jersey, we drove onto the sandy parking lot of a roadside hamburger shack. A grizzled fellow in a blood-stained apron was shaping burgers from freshly ground beef and slapping them on the sizzling grill, made to order, served up on a fluffy sesame seed bun with slices of raw onions, cucumber pickles, and a side of Jersey tomatoes. Real old-fashioned root beer was poured in frosted glass mugs.*

### Renewing Your Senses

Take time over the coming days and weeks to re-orient yourself to your world with senses other than your eyes. When you can, close your eyes and focus on physical sensations and sounds. Become aware of fleeting fragrances, the texture of food, the sensation of fabrics, the sound of colors. As you become aware that our senses provide the language of a story, then you will have made friends with the devil in the details.



*Diane F. Wyzga helps attorneys develop their critical listening and persuasive communication skills. She teaches lawyers how to use storytelling techniques and principles to translate compelling case images into verdict action. With over 20 years' experience, Diane founded Lightning Rod Communications ([www.lightrod.net](http://www.lightrod.net)) to train attorneys to identify, shape and effectively deliver their stories using language with power, passion and precision. She may be reached at (949) 361-3035, or by e-mail at [diane@lightrod.net](mailto:diane@lightrod.net).*

## Quick Courtroom Tips

By  
Bob Gerchen

### Attend to the Witness' Agenda First

Have you ever found yourself saying, "I told him what to say; he just didn't listen?"

Exactly.

So why didn't he listen?

It's easy to tell a witness what they can or can't say on the stand. It's easy to explain what the vulnerabilities of the case are and what the themes and message points are. But unless you've first addressed the witness' issues, your instructions are likely to fall on deaf ears.

Testifying is an unnatural act. Most laypeople approach the experience with nervousness, trepidation and outright fear: fear of humiliation, fear of tanking the case, fear of being made to look like a liar. It's important that your witnesses understand that you understand what they are going through.

So, instead of starting with, "This is what you've got to do..." try starting with, "How are you feeling about all of this?"

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*For more information about Bob Gerchen's book, **101 Quick Courtroom Tips for Busy Trial Lawyers**, visit [www.CourtroomPresentationTips.com](http://www.CourtroomPresentationTips.com).*

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