

## When Jurors Nod

by Stanley L. Brodsky & Michael P. Griffin

The attention of attorneys and witnesses alike is captured is when jurors nod their heads. When attorneys speak or witnesses testify, often there are individuals on the jury who nod their heads up and down, some jurors nodding rapidly and vigorously and some with a barely visible movement of the head. In our own experiences on the stand, jurors who nod as we testify appear to be affirming the worth of what we are saying and, sometimes voluntarily, we find ourselves maintaining eye contact with the nodding jurors as we speak.

New psychotherapists are routinely taught to nod their heads, as a sign of affirmation and acknowledgment of clients' thoughts and feelings (O'Brien & Holborn, 1979). At conferences, members of an audience agreeing with a speaker may be seen moving their heads up and down in shared open patterns of acknowledgment. Indeed, head nodding is seen in western cultures as a nonverbal expression of approval or level of agreement (Feldman, 1985; Helweg-Larsen, Cunningham, Carrico, & Pergram, 2004).

One older study reported that research participants who nodded their heads while listening approved more of the message than those who remained still (Wells and Petty, 1980). Various scholars, such as Harper, Wiens and Matarazzo (1978), Malandro, Barker & Barker (1991) and Richmond & McCroskey (2004), have placed the head nod under the general rubric of gestures, and within that grouping, head nods are described as complex in form, cultural in meaning, and contextual in interpretation. Richmond and McCroskey identified two categories of gestures into which the head nod may be placed. The first simply communicates, "you are being heard" and the second category is an expression of positive and affirming emotions.

Axtell (1998) reported cultural exceptions to the common understanding that nodding the head up and down indicates yes and side to side indicates no. Brodsky (1987) described the cultural equivalent of the affirmative head nod in south India as taking the form of the head-shake from side to side or sideways and up and down in a shallow figure eight.

Induced head nodding has even been reported to produce positive thoughts towards a neutral object. Participants who stared at a pen while nodding their heads had a more positive attitude about the pen than participants who shook their heads sideways (Tom, Petterson, Lau, Burton, & Cook, 1991). The explanation provided by the authors for the increase of positive thoughts is that head nodding influences an individual's judgments while an overall opinion is being formed. Incorporating nonverbal cues of agreement, such as nodding, increases positive thoughts about an issue.

One frame of reference is that head nods may be understood as self-validating behaviors. In a series of studies, Briñol and Petty (2003) reported that "... one's head movements can serve as an internal rather than external cue to the validity of one's thoughts, and thereby provide an alternative mechanism by which head movements can affect persuasion" (p. 1124). They found that nodding increased confidence about whatever one is thinking if the message was strong but decreased confidence when the message was weak.

Briñol and Petty told undergraduate psychology students that they were testing how well stereo headphones performed on sound quality and comfort. Half of the subjects moved their heads up and down (as instructed) about once a second, supposedly to test the headphones, while the other subjects moved their heads from side to side. The critical independent variable was either a strong message or weak message arguing that student identification cards should be required for admission to classes, the library, and other facilities. Head-nodding students had more favorable responses to the strong message, and head-shaking students had more negative ratings of the weak message.



In our own research, we investigated whether head nodding versus stationary head positions on the part of mock jurors would influence the persuasiveness of expert witness testimony. Positive results for the nodding would provide expert witnesses and attorneys with a tool in interpreting how well their arguments are received by a jury.

We drew on 244 undergraduate students from Introductory Psychology courses at a large state university, with 53% of them female and 77% White and 16% African American. A 20-item witness credibility scale (Brodsky, Griffin and Kramer, In Press) with high reliability ( $\alpha = .95$ ) was used to test the results.

Our mock jurors in the nodding condition were instructed to move their heads up and down at the rate of about once per second while watching and listening to a video of an expert witness testifying. Participants in the control condition were instructed to refrain from moving their heads and were monitored to insure they did so. The text of the witness testimony was drawn verbatim from the Krauss & Sales (2000) study of the impact of actuarial and clinical testimony about dangerousness. The testimony began as follows:

“Defense: Good morning. I have several questions for you. Dr. Hoffman, are you absolutely sure that Steven Jones represents a continuing danger to society?”

“Expert: I'm reasonably sure. In my field you can never be 100% sure but I've seen enough psychopaths like Mr. Jones to know that he will continue to present a danger to society.”

There was an overall effect of head nodding on judgments of credibility and on agreement with the expert's testimony ( $F(3, 245) = 3.71, p = .012$ ). The mock jurors who were instructed to nod rated the expert testifying as being more credible than did the control jurors ( $t(247) = 1.996, p < .05$ ). ‘Agreement with expert’ as a dependent variable was also examined. Participant agreement with the testimony based on whether they nodded their heads or did not was not significant ( $t(247) = 1.15, p > .05$ ).

This study is a first step towards investigating the impact of head nodding in the courtroom. We found that juror assignments of expert credibility followed nodding, meaning jurors asked to nod during testimony rated an expert as more credible compared with jurors who did not nod during testimony. However, we did not investigate whether nodding follows credibility. Every attorney, every judge, and many witnesses have observed various ways jurors nod their heads during attorney arguments and during testimony. Multiple meanings are possible; Axtell (1998) points out that “nodding and shaking the head mean different things to different people” (p. 65).

From our own observations, at least four interpretations are possible in the United States context when jurors nod their heads.

1. The jurors are expressing agreement with the statements or testimony.
2. The jurors are indicating they are attending to the nature of the communication.
3. The jurors are indicating they are cognitively and personally present, much as school children say “here” or “present” when their names are called. In these instances, no particular attitude is present. Some people nod their heads absentmindedly in conversations even though they are daydreaming and devote only partial attention to what is being said.
4. Head-nodding jurors are expressing habitual patterns of nodding, fully apart from agreement, approval, attending, or signaling. Just as people may automatically intersperse their verbal statements with words such as “like” and “you know,” some people also have well-established habits of nodding their heads. This category of head nodding does not lend itself to any particular interpretation, and does not necessarily reflect even the expression of attention.

These four categories of head nods should caution us not to assign approval meanings automatically to juror head nods. Nevertheless, our strong and significant results about credibility serve to signal that juror nodding is an important behavior to which witnesses should indeed attend.

In the future we plan research to examine contrasting effects of head nodding and head shaking. Further, we are aiming at using live testimony because it may have a stronger effect than videotaped testimony in its direct attempt to engage the participants. During live testimony reciprocal eye-contact can be made with the mock jurors. In any case jury consultants and attorneys would be well advised to consider head nodding both with promise and caution as a source of information about whether a juror is predisposed to accept their side of the case more than the opposing argument.



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## Editor's Note

This is a very cool issue of *The Jury Expert*. We have an array of articles we think you'll find interesting, thought-provoking and fun to read. First, we have a look at gender and race in the courtroom over time and recommendations for how litigators might use this information with reactions from two trial consultants. Then a look at how the internet has been intruding into the courtroom (it isn't just with jurors) and recommendations on how litigators and judges can minimize the impact through clear and specific education and instruction. Third, we have an article on how research into damage assessments can inform settlement negotiations. Following that, we have an introductory bibliography on the GBMI/NGRI verdicts with thoughts from three trial consultants on learning about this specialty niche, educating jurors, and voir dire. We all pay attention when jurors nod. But what does it mean and when should you really pay attention? Read our fifth article and find out. Our sixth article takes lessons an experienced trial consultant has learned over three decades about communication in the courtroom (and more decades on the stage). Learn about common mistakes and best practices as well as the identity of Konstantin Stanislavski.

Most of us already know who Antonin Scalia is but did you know it's not a good idea to 'poke Scalia'? What can litigators learn from observing our Supreme Court in action? And finally, an instructive piece on 3D animation (with lots of examples) accompanied by an overview of the 3D animation process and recommendations on when to use 3D and when to not use it.

November's issue of *The Jury Expert* also features advertising for the very first time. Publishing this journal has been a very exciting undertaking for the American Society of Trial Consultants (ASTC) but not one that has been without cost. We are grateful to our growing readership base and we are especially grateful to those advertisers who believe in us and show their support by advertising on our website and in the downloadable pdf version of [The Jury Expert](#).

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