

## *Is Justice Blind or Just Visually Impaired? The Effects of Eyeglasses on Mock Juror Decisions*

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Previous research has demonstrated the importance of a defendant's physical appearance on juror decision-making (e.g., Stewart, 1980; Efran, 1974). The face, in particular, is often used as a means of assessing a defendant's character, intelligence, and culpability. The eyes are the first thing we notice, and the facial feature we spend the most time looking at when meeting an unfamiliar person (Janik, Wellens, Goldberg, & Dell'Osso, 1978). Also, the size of an individual's eyes is often used as a means of appraising his or her personality (Geldart, Maurer, & Carney, 1999; Paunonen, Ewan, Earthy, Lefave, & Goldberg, 1999). It follows that appliances that resize, obstruct the viewing of, or otherwise alter the appearance of the eyes – namely eyeglasses – may influence our perceptions of an individual who uses such devices.

Research into the physical and personality traits often attributed to people who wear eyeglasses has found that these devices significantly alter our perceptions of individuals who wear them – in both positive and negative ways. Thus, it is important to examine how eyeglasses might influence jurors' decisions when evaluating a defendant. This article describes some of the research my colleagues and I have conducted in this area.

### *Traits Associated with People Who Wear Eyeglasses*

In one of the earliest studies to examine the physical and personality traits attributed to individuals who wear eyeglasses, Thornton (1943) found that participants rated models wearing eyeglasses higher in intelligence, dependability, industriousness, and honesty. Reports of these attributions have remained relatively consistent despite variations in methodology and the passage of time



(Thorton, 1944; Manz & Lueck, 1968). A more recent nationwide survey of over 3,000 individuals revealed that individuals, whether they wear eyeglasses or not, tend to perceive those who wear eyeglasses as smart (40%) and sophisticated (39%) (Essilor of America, Inc., 2004 February).

However, not all of the characteristics associated with eyeglasses are necessarily positive. Elman (1977) examined the effects of eyeglasses on the perception of an individual's masculine and feminine personality traits. Elman found that participants who viewed a male model who was wearing eyeglasses judged the man as weaker and more of a follower than participants who viewed the same male model without eyeglasses. In a similar study, Terry and Krantz (1993) reported that eyeglasses on both men and women were associated with attributions of diminished forcefulness. Furthermore, several researchers have shown that although people who wear eyeglasses are often judged as more intelligent (Boshier, 1975; Terry and Krantz, 1993), they are also considered less socially (Terry and Macy, 1991) and physically attractive (Edwards, 1987; Hasart and Hutchinson, 1993).

The effects of a defendant's attractiveness on jurors' decisions have been well documented. In a study of mock jurors, Efran (1974) discovered that physically attractive defendants were judged with less certainty of guilt than unattractive defendants. Likewise, Smith and Hed (1979) found that attractive defendants in a burglary case were judged less harshly than unattractive defendants. Attractiveness might also be used as a means of assessing other personal characteristics of a defendant. In Darby and Jeffers's (1988) study, participants rated attractive defendants as more happy, likeable, trustworthy, and less responsible for the charges against them than unattractive defendants. Even when convicted of a crime, attractive defendants appear to have an advantage in the sentencing process. They are consistently given "softer" punishments than unattractive defendants (Efran, 1974; Leventhal & Krate 1977; Smith & Hed 1979). Field studies in actual legal settings have yielded comparable results (Downs & Lyons 1991; Stewart 1980). However, attractiveness is not always an advantage in the courtroom. Sigall and Ostrove (1975) found that attractive defendants were treated more harshly than unattractive defendants when attractiveness was relevant to the crime (e.g., a swindle).

Because eyeglasses have a notable effect on the judgment of an individual's appearance and character, both of which play an important role throughout the criminal justice process, it is important to evaluate their influence on the perception of a defendant who wears such devices. The existing research offers contradictory implications. Eyeglasses are associated with intelligence, honesty, industriousness, and dependability - characteristics that are favorable to a defendant. However, eyeglasses are also associated with unattractiveness - a quality that has been shown to have damaging implications for a defendant.

### *The Effects of Eyeglasses on Juror Decisions*

In 2008, my colleagues, Jennifer Groscup and Ernesto Henriquez, and I published a study that examined the effects eyeglasses have on perceptions of a defendant who wears such devices. Specifically, we examined the interaction between a defendant's race and whether he wears eyeglasses on jurors' decisions.

Two hundred and twenty undergraduate students participated in our study. We used a vignette of a fictitious trial in which a defendant was accused of committing an armed robbery. Purposefully ambiguous evidence was presented to the participants. We constructed our experimental conditions by photographing two models (one African-American and one Caucasian) while they were wearing eyeglasses and while they were not wearing eyeglasses. The same pair of eyeglasses was used in each of the photographs. We selected models of comparable age, height, weight, hair color, hair length, and other physical characteristics (i.e. facial hair and eye size). We also created a brief physical description of

the defendant by averaging our models' actual age, height, and weight. This description was attached to each photograph. Each participant was given a folder that contained a photograph of a defendant, the defendant's physical description, the vignette, and a survey asking participants to render a verdict (guilty or not guilty) and to rate the defendant as more or less intelligent, attractive, friendly, and physically threatening.

Overall, defendants who wore eyeglasses received fewer guilty verdicts (44%) than defendants who did not (56%). However, this difference was only moderately significant. Using path analysis, we found that eyeglasses had a significant indirect effect on verdict by increasing ratings of intelligence, which in turn was related to not guilty verdicts. Defendants who wore eyeglasses were also rated as less physically threatening; however, this was not a significant predictor of verdict.

There was no significant difference between the number of guilty verdicts Caucasian (51%) and African-Americans (49%) defendants received. However, race was a significant predictor of several perceived defendant characteristics. African-American defendants were rated as less attractive, less friendly, and more physically threatening. We also found interaction effects between the defendant's race and the presence of eyeglasses for ratings on a number of these characteristics. The African-American defendant was rated as more attractive when he was wearing eyeglasses, and the Caucasian defendant was rated as less attractive when he was wearing eyeglasses. Likewise, the African-American defendant was rated as more friendly when he was wearing eyeglasses; while the Caucasian defendant was rated as less friendly when he was wearing eyeglasses. Both defendants were rated as less physically threatening when they were wearing eyeglasses. However, this effect was greater for African-American defendants than Caucasian defendants.

### *Follow-Up Study: White-Collar Crime*

We recently conducted a follow-up study (manuscript under review) examining the effects of eyeglasses on mock juror decisions involving a case of white-collar crime. We used the same general methods used in the original study; however, participants were asked to read a vignette of a fictitious trial in which a bank employee was accused of creating a computer program to embezzle funds from costumers' accounts. Overall, we found that Caucasian defendants received more guilty verdicts (58%) than African-American defendants (38%). Consistent with our previous findings, defendants who wore eyeglasses were rated as significantly more intelligent than defendants who did not wear eyeglasses. However, in this scenario, higher ratings of intelligence were associated with more guilty verdicts. That is, eyeglasses had a detrimental indirect effect of defendants by making them appear more intelligence, which in turn was associated with guilty verdicts. In this study, eyeglasses did not affect perceptions of defendants' friendliness or attractiveness, and there were not significant interaction effects for defendants' race and the presence of eyeglasses.

### *Conclusion*

Our line of research suggests that the presence of eyeglasses on a defendant may significantly affect verdict outcome. However, this effect is likely to be small and indirect. In both scenarios, the presence of eyeglasses increased ratings of defendants' intelligence. For the violent crime scenario, this increase was associated with less guilty verdicts. Eyeglasses also decreased ratings of defendants' as threatening; however, this decrease was not significantly related to verdict. Thus, how intelligent a defendant appeared was a better predictor of verdict outcome than how physically threatening he appeared. Future research should examine if other indicators of intelligence (level of education, vocabulary, etc.) produce the similar effects.

Our African-American defendant was rated as more attractive and more friendly when he was wearing eyeglasses. However, there were no such effects for Caucasian defendants. These results suggest that some of the stereotypes associated with people who wear eyeglasses found in previous studies may no longer apply to Caucasians. Furthermore, the presence of eyeglasses on an African-American defendant may not be consistent with the stereotype of the “violent Black criminal.”

The presence of eyeglasses also increased ratings of defendants’ intelligence in our white-collar crime scenario. However, in this case, increased ratings of intelligence were associated with more guilty verdicts. These findings support the notion that white-collar crimes require a certain level of intelligence and skill to carryout. Overall, Caucasian defendants received more guilty verdicts than African-American defendants; however, there were no interaction effects for defendant’s race and the presence of eyeglasses.

Research on criminal stereotypes suggests that certain crimes are associated with members of certain races. For example, in Gordon, Michels, and Nelson’s (1996) study, participants ranked “white-collar crimes” as more common for Caucasians and “blue-collar crimes” as more common for African-Americans. There is also evidence that jurors punish criminals more severely when they commit stereotype-consistent crimes. Gordon, Bindrim, McNicholas, and Walden (1988) found that participants gave a Caucasian embezzler longer jail sentences than an African-American embezzler, and an African-American burglar longer sentences than a Caucasian burglar. The results of our studies suggest that the presence of eyeglasses may help reduce juror bias in cases where an African-American defendant is accused of a stereotype-consistent crime. In cases of white-collar crime, eyeglasses may actually reinforce the juror bias – especially for Caucasian defendants.

Although these results have potential theoretical and practical implications, we must note that they were demonstrated using only one African-American and one Caucasian model. Also, our participants did not view a mock trial. They only read a vignette. Replication of our findings, preferably with a non-student sample, and with more realistic stimuli (i.e. a video-taped trial with opening and closing statements, witness testimony, cross examination, etc.), is necessary to determine if our results are reliable. It would also be interesting to examine the effects of eyeglasses of juror decisions involving defendants of other races / ethnicities.

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## *Tara Trask Response*

*Tara Trask is CEO of [Tara Trask and Associates](#), a full service Litigation Strategy, Jury Research and Trial Consulting practice with offices in San Francisco and Dallas. She has 17 years' experience in the field and focuses her practice on complex commercial litigation including products, securities and intellectual property cases.*

Michael J. Brown's piece, *Is Justice Blind or Just Visually Impaired? The Effects of eyeglasses on Mock Juror Decisions*, comports with many of the general trends that I see in my practice. I read the results of his research with great interest, mostly because I do almost no criminal work and this research clearly has implications across civil work as well. I would be interested in further research in how these issues impact juror decision making in securities, tort cases and intellectual property, which is where most of my work is focused.

Brown lays out the history of the benefits often afforded to attractive defendants over less attractive defendants and I have observed similar ratings of both witnesses and attorneys. I think there is significant documentation that attractive witnesses are viewed as more likeable, more trustworthy and generally more credible than their less attractive counterparts. I do believe that the question remains whether this is an outcome determinative issue and I believe that, generally speaking, it is not. In fact, we recently reviewed and compared data from several mock trials, all completed by the same law firm over several years to determine whether attractiveness and likability of the attorneys presenting at the mock trials had been an outcome determinative issues. Counsel had grown concerned that the mock trials, all highly technical patent cases, had become "beauty contests" with the mock jurors simply voting for the side who had the "best" or "most liked" attorney. We found no data to suggest that. In fact, we found that on multiple occasions, the lawyer they deemed as most credible was not the lawyer of the side they voted for.

I found the fact that Brown's results changed based on the crime, (either a physical crime or an "intelligent" crime) to be fascinating. Because I rarely work on cases where there is a physical nature to them, I wondered, as I read along, how eyeglasses, or lack thereof, would impact jurors' views of an inventor of patented software, for example.

My personal experience in patent cases is that jurors expect inventors to be smart and even a little geeky. Credentials are helpful but not absolutely necessary. Brown touches on the heart of the matter when he begins to discuss stereotypes. I have seen that jurors tend to assign credibility to those who fit the stereotypes they have. Jurors tend to view inventors as geeky, intelligent people who often are missing certain social graces and, in my experience, jurors tend to excuse inventors for a lack of social grace, and often even hold it against them if they seem too "slick." If I had to guess, I would say that further research might show a large gap of credibility between inventors who wore glasses and those who did not. My experience has been that jurors tend to be more critical of inventors with highly polished social graces, those who are attractive, or those who have highly refined business acumen.

It is clear from Brown's research, however, that although eyeglasses had an impact, it was small. It seems that there are so many other factors that go into how attorneys and witnesses are perceived. I would certainly be interested in Brown's suggested further research as well as my suggestions in the civil realm.

## *Joe Guastaferra Response*

*Joe Guastaferra is a trial consultant based in Atlanta, GA.*

*He works nationwide with criminal and capital punishment defense teams.*

When the great rhetorician Quintilian was asked the secret to persuasive oratory his reply was: be well-liked. Persuasion has been linked to likeability since we began trying to figure out how to quantify its elements. In modern times there has been an element of 'slick' and 'manipulative' attached to the concept of persuasion that reduces and diminishes it. The knee-jerk reaction to the piece by Dr. Brown and his colleagues is to assume that he is packaging a manipulative gimmick. Such a reaction would be unfortunate.

Exposure in the press and the media rarely works out well for the defendant and his team. It seems that exposure has done a disservice to this research as well. Dr. Brown's piece has received shallow headline notoriety that could cause some to believe that his point is: Eyeglasses = Not Guilty. His message is more complex. The research attempts to help us understand subjective aspects of Quintilian's glib response. The study is about attractiveness, likeability if you will, and how it affects perception and influences decisions.

There is no need for panic in the legal or consulting community about the gimmicky connotations created by those reporting on the article. The authors tell us the outcomes are "small and indirect." Brown et al, point to the limitations of their study and they do not attempt to convince us of the equation: Eyeglasses = Not Guilty. The finding is that eyeglasses influenced whether the jurors saw the defendant as less threatening and this perception, along with other things, affected the verdict. In the white-collar crime scenario, glasses negatively influenced the jurors but, again, the effect was small and indirect. Therefore our primary focus must remain on the evidence, theory of the case and communication. In my consulting work I try to shake lawyers free from the notion that the case is composed of 'elements' that they have been trained to think of as discrete pieces of the case they have to prove or refute. The work is a collaboration to see the trial as a whole that starts with brainstorming and ends with closing argument. This research reveals and reminds us of the difficulty and complexity of presenting an accused person to members of the community where the offense occurred.

This research has an 'ignore at your own peril' subtext. Few would disagree with the proposition that it is advantageous to the defense that criminal defendants appear less threatening. As consultants, we should direct time and concern to ensure appearance and attractiveness are included in the persuasive message and narrative presented to the jury. Anyone who has worked on a case with a string of co-defendants has been called on to help craft a strategy to keep out the array of booking photographs (mug shots) that were taken at what is possibly the worst moment of the defendant's life. The client's appearance is at its absolute worst and our awareness of the prejudicial effect of displaying a "rogues gallery" is motivated by our sense of how important it is for the client(s) to look less threatening. We cannot dismiss the study's findings.

The importance of appearance motivates us to further action. Jails are about control. To gain control there are accepted practices and policies imposed to achieve conformity and strip the accused of a sense of individuality. Hair and clothing are the first to go. When we dress an accused person who has been in jail we are trying to give them a sense of dignity that will affect how they respond

in the courtroom as well as how people in the courtroom will respond to them. Appearing in a jail-issued orange jump suit is not acceptable. Dignity and respect are not gimmicks but they are crucial elements in persuasion. Often the indigent client's clothing needs will prompt a trip, funded by the defense lawyer, to Target or Wal-Mart for appropriate clothing. When the client is not in custody there is always a meeting about what they should choose from their wardrobe to appear in court. As consultants, we have been aware of the importance and power of appearance and attractiveness for a long time.

All studies can, in hindsight, be better. But we know that small studies are necessary to design larger more complicated studies. Jury pools continue to grow in complexity. We have four distinct generations of Americans from which jury panels are drawn. Racial and ethnic diversity continues to be a labyrinth of unknowns as the population moves and shifts. Insight into the perceptions and the cognitive processes entailed in juror decision making are vital to be aware of even if they are not immediately useful. Future researchers will build on these findings with improved study designs and additional insight will be revealed. Shifting the study from burglary to white collar crime exemplifies the authors' efforts in this regard.

The original paper from which this piece was adapted was titled, "The effects of eyeglasses and race on juror decisions involving a violent crime." Shifting the study to include white collar crime showed vision but much more needs to be learned about jurors' perceptions of people accused of violent crime. By no means do I underestimate the difficulty of designing a study that tries to capture and measure attributes such as threat or attractiveness. The authors acknowledge that reading a scenario about a crime is static and limited. It is not only the recreation of the crime that poses a problem for future studies. The courtroom setting is stereotyped as sterile and monotonous. This is not the case for the person accused, sitting at counsel table listening to others talk about him as if he is not even there. It is a shifting and dynamic interplay of unfamiliar elements. Observing the client's reaction and interaction with that environment is something that has to be incorporated in an assessment of threat and attractiveness.

The over-arching value of this study, and the issue that we should applaud, is that this new work once again keenly focuses consultants and lawyers on the complexity of jury selection. We all endeavor to design the questions that tap into the subtleties of feelings about sensitive issues. Working exclusively in criminal cases, one becomes inured to the usual battles: getting judges in some jurisdictions to allow attorneys to participate in voir dire, getting the court to allow a jury consultant at all, trying to educate the court to the value of a supplemental questionnaire, time to meaningfully review it, and empowering the lawyers to ask open-ended questions about sensitive issues such as race. The nature and context of the crime also matters and we know there are preconceived notions associated with certain types of crimes. The value of this work is that amidst all the usual endeavors it gets us to consider how the jurors are looking at our client, literally.



## *Holly G. VanLeuven Response*

*Holly G. VanLeuven, MA, has been a practicing Trial Consultant since 1972.  
She is president of Genesis Group in Scottsdale, Arizona.*

My comments come from the perspective of a Trial Consultant, not from an academic perspective. I am visually impaired myself and thus am looking hard for the relevance of this research as presented.

For the findings of this line of inquiry to be of true value to me and to my attorney clients, the following changes would be necessary: Forget the photos of 1 black man and 1 white man. Lose the vignettes. Get 6 black men and 6 white men, 12 pair of glasses and put on a brief, authentic mock trial or two. Then ask the questions. I would find information gathered this way to be far more useful and the findings likely to be more valid, not to mention having more practical applications

The cast of characters in a jury trial does not arrive from Central Casting. These are real people with foibles of manner and appearance that may or may not strengthen their believability, their attractiveness, their appeal for a particular jury at a particular point in time, given a particular set of facts. Just as there is a legitimate role for planning the processing of a case, for refining trial strategy, for developing a trial theme, for scripting opening and closing statements, for planning an informative voir dire, etc., it is every bit as important to deal forthrightly with the image of key participants in a trial for which you have responsibility. Of course, that might involve adding a pair of glasses here and there - or not! Or, add a sweater! Tame a stutter, or embrace it. Maybe make slight changes of hairstyle. Maybe shave off the facial hair. Or, in some venues, leave it or even grow some! In my practice, I fully endorse carefully conceived alterations of the appearance and behavior of key trial participants when appropriate. If there is a perceived problem, something that could be an impediment to having the jurors relate positively to the case or to various witnesses, then serious, skilled image work should be done. And, if at all possible, plan on a couple of evaluation sessions to make sure that the changes are effective. For example:

### **The witness stutters.**

Is this a plus or a minus given the evidence in the case? Maybe it doesn't matter at all. Maybe it evokes empathy but, if it makes him sound like a liar, watch out! Get him some help.

### **Bad hair day every day?**

Decide what would work better for the venue, for the age and stage of the witness, in consultation with an image specialist, and get the problem taken care of in time to make changes if necessary.

### **Too smart for his own good?**

In a small town, your client is a prominent businessman known for being brilliant, arrogant, and successful. But he is suing his accountants for altering his books, under-reporting his income and getting him in deep trouble with the IRS. Will Mrs. Smith down the street believe this is possible? Will any typical small town juror? At the very least we need to make the witness seem impeccably honest, trusting and vulnerable, but not quite as smart as his reputation would imply.

Years ago, Joel Boyden, a legal legend in Michigan but someone I had never worked with, called

me into his office and handed me a file - and his credit card! Besides preparing for a traditional jury selection, Joel wanted me to dress his client, her husband and two daughters for a three-week civil trial. I met the next day with the client and her family in their home. Having reviewed the file, I knew that this 35-year-old school bus driver had sustained severe head injuries when the car in which she was a passenger had been hit by a commercial truck running a red light at a high rate of speed.

It was her day off and she and a friend were on their way to celebrate the client's birthday over lunch when suddenly this truck drove over Life as she and her family knew it. The woman I met lived in a house with all the shades drawn. Dressed only in her husband's undershirt, her hair was straggly and matted, her voice was flat, and her eyes were dull. The young woman who was hit was attractive and vivacious and accomplished. She enjoyed her family and they adored her. And yet not one penny had been offered in this case which was scheduled for trial in a month! The defense saw this woman as a drug-addicted failure and was sure the jury would too. "Any jury would see a damage award as money down a rat hole," is an actual quote from the lead defense attorney.

The task was clear: bring the appearance of this family back to what it was. That meant shopping and much more. Wanting everything this family was presented in to be understated, nice, but not new, I even gave the client several outfits of my own. We shopped at J.C. Penney for everything from bras and shoes to slacks; two classic sport jackets, shirts, a belt, socks, shoes and underwear for him; and several outfits for the girls. Then we went to a salon for an easy, attractive hairstyle for each of them, tasteful makeup for the client, and all the products necessary to maintain the new look. Long story short: shock from the defense as the family entered the courtroom and a multi-million dollar settlement offer immediately following jury selection. That credit card really paid off!

### *Caveats*

There are two important issues to consider when reshaping images

#### **1. Before and After**

If there is any possibility that you are going to want to change the image of someone involved in a principal role, especially the litigant, avoid any visually recorded depositions until after the changes are in place. A tasteful, sensitive makeover can turn into a disaster if the person on the screen during trial undermines the authenticity of the person sitting at the table with you or in the witness box. I once made over a plaintiff, a wildly successful businessman who's normal appearance resembled a Las Vegas gigolo. His lawyer had forgotten the videotaped depositions and hadn't included them in the file. Fortunately, all was revealed during a mock trial and in plenty of time to soften some of the changes.

#### **2. Comfort of the Witness**

If change or changes are determined to be advisable, by all means, leave enough time for the person or persons to be comfortable with the changes, to feel natural. Any discomfort is easily telegraphed to observers and the intended advantages can be destroyed in an instant. For example, if a person hasn't worn them before, glasses can be really annoying

### *Conclusion*

Attorneys and Trial Consultants, what vision Justice has is in your hands and you are responsible for fine-tuning the correction. It is your job to bring as much clarity to the jury's vision as you possibly can, including intelligent, sensitive reshaping of the annoying, dysfunctional aspects of a principal's appearance and behavior.

### *Walter Katz Response*

*Walter Katz served for seventeen years as a criminal defense attorney in Southern California first at the San Diego Public Defender and then the Los Angeles County Alternate Public Defender. He left the defense practice in late 2010 to join the Office of Independent Review which manages the oversight and monitoring of the Los Angeles Sheriff's Department and other agencies. He has also taught courses in the use of technology and persuasion in the courtroom.*

Of the seventy-five or so cases that I took before juries, the vast majority were for alleged violent crimes and about half of those had some form of gang enhancement. (See Calif. Penal Code § 186.22.) Very few of my trials involved familial crimes, meaning that most relied upon some form of out-of-court identification to corroborate the in-court identification that the prosecutor hoped to elicit before the jury.

In trying these cases, there was one constant that I always wanted to be able to rely on – my own credibility. From the moment a jury venire walked into the courtroom to when a panel filed out to start deliberating, my every word and action was designed to project trustworthiness. Hence, I avoided anything that could visibly undermine that trust. The notion that I would dress up my client to render him a “harmless nerd” would have done nothing but to make a mockery of my attempts at projecting credibility, because jurors – who are already cynical – would see right through such a hackneyed ploy.

While Dr. Brown does raise some interesting issues regarding the impact of race (especially in crimes supposedly requiring intelligence) and attractiveness, he fails to take into account the structure and design of a criminal trial when he makes statements such as, “the eyes are the first thing we notice, and the facial feature we spend the most time looking at when meeting an unfamiliar person.” Dr. Brown posits the wearing of eyeglasses distorts that initial perception in significant ways. He suggests that if a defendant is wearing eyeglasses, the initial reaction of a juror will be that the defendant seems relatively smart and non-threatening and, therefore, “less guilty.”

In reality, the start of trial is very ritualistic. When the venire walks in, I would study them intently. I was looking at their clothing and jewelry style, what books they were carrying if at all, and especially whether they were looking at my client and how. Jurors often feel intimidated by the ritual of the clerk's orders, the bailiff's demeanor and the black-robed judge and avoid looking at anyone too closely as they shuffle in knowing they are very far outside their comfort zone. In my experience, the very potential jurors who spent a lot of time peering at my client were the most judgmental in their opinions about presuming the defendant innocent. The peering juror was most likely to say, “he looks guilty,” or “I am afraid of him,” during voir dire. Needless to say, such a potential juror never made it onto a panel. In other words, the very type of juror that Dr. Brown identifies as allowing the presence of eyeglasses to impact their decision-making is the impulsively judgmental person that I would try to identify and weed out.

The logical response to my argument may be to ask if my strategy didn't prove Dr. Brown's point that the wearing of eyeglasses negates the threat level, as it were, of the defendant and makes him a more cuddly proposition? That may be true if the wearing of eyeglasses was the only variable I

had to worry about, but if his study finds that the chance of conviction drops by twelve percent due to the wearing of glasses, I know that in that 12% sub-group lies the very type of juror that scared me the most because they would allow any random factor – glasses, the way a pencil is held, the color of his shirt, whether I talked too fast – to drive their decision-making. No thanks.

The presence of eyeglasses is not the only variable, of course. The study conducted by Brown is akin to a laboratory test tube when, in fact, a jury trial is a bowl of macaroni salad left out in the sun – a hot mess. As mentioned above, most of my trials were for charged violent crimes – often murder – and many involved defendants who were alleged to be members of a criminal street gang. In almost all of those cases, the homicide detective arranged a six-pack photo lineup for witnesses to attempt to make an out-of-court identification by using booking or driver's license photos. The jury would see each of those photos. Was my client wearing glasses? If not, the jury would probably ask, "Then why is he wearing glasses in court now?"

California has a very strict criminal street gang enhancement which can add many years to a sentence if pled and proven. To prove that the crime was committed for the benefit or at the direction of a criminal street gang, the prosecutor would attempt to introduce evidence showing that defendant was either a member of or associated with the particular gang in question. The claim was usually made through evidence of past admissions to officers, associations with known members, found snapshots of the defendant with gang members and menacing bare-torso photos of his gang-related tattoos taken by the police for trial which often were very influential on jurors. Again, if he wasn't wearing glasses then, why was he in trial? Since I often started a trial by inoculating the jury by telling them about my client's gang history, and thus gain credibility by not seeming unreasonably resistant to the inevitable evidence, popping a pair of thoughtful-looking spectacles on his brow would have only hurt my credibility and my cause.

In sum, violent crimes are horrific enough. Jurors will see autopsy photos, scenes of the crime, and the murder weapon. It takes every ounce of energy of a defense attorney to try to keep a jury from hating the defendant. I tried three murders in the last five years of my defense career where the defendant was wearing glasses. One was convicted of first degree murder – the one who always wore glasses. The second defendant was middle-aged, so it made sense that he would wear glasses, with a mixed result; and the third - where he tried the nerd defense on his own by showing up in glasses - hung 10-2 for not guilty. Looking back, I don't think their wearing of glasses made one bit of difference in the outcome. In fact, in the last one, our defense was that my client was too ignorant to have known what was really going on during the murder he allegedly set up.

While studies, such as Dr. Brown's, are interesting in the abstract, in the reality of the trenches of criminal trials, the ploy of wearing glasses is easy to spot as an amateur move. I preferred to re-arrange the pieces of the chessboard subtly where neither the prosecutor nor the jury knew what I was up to.

### *Michael Brown Response*

Staying true to the stereotype of the “absentminded professor,” I was unaware of the extent of the controversy the media portrayal of our research had generated until after I had written this piece for *The Jury Expert*. I typically decline media requests for interviews about my work because of the misrepresentation that often follows. However, when the *Daily News* approached me for comment on our study, the results of which they intended to include in their article, I saw this as an opportunity to add nuance to the discussion and help lessen any potential sensationalism. I spent nearly half an hour discussing the results of our research with the reporter, so I was surprised to see that my “interview” had been reduced to just two sentences. Live and learn.

It is important to put our research in its proper context. These studies were designed to examine if a particular extra-legal factor (i.e. eyeglasses) moderates juror bias in stereotype-consistent crimes – a largely social-psychological topic with possible implications for the legal system. Our studies are small first-steps in examining an issue that had not been studied before (at least not in the scientific literature). We never intended for our results to be used in the realm of jury consulting. As we’ve noted, there are too many limitations to our methodology for the results of our studies to be readily applied in the courtroom.

We should note that experimental research, by its nature, is limited. When manipulating a particular variable we must hold all other variables constant so that we can tease out the effects of our manipulation. This type of control often compromises the generalizability of research findings to real-world settings, where there is a virtual free-for-all of factors that can affect the outcome variables of interest (in our case: verdict and ratings of defendant characteristics).

Furthermore, we need to focus on the size of the effects reported in any study. With a large enough sample size, even the smallest effects are likely to be “statistically significant.” The effects found in our studies were significant and meaningful; however, they were relatively small and indirect. That is, even after holding all other variables constant, eyeglasses had a small effect in increasing the perceived intelligence of a defendant, which in turn had a small effect on verdict. It is not known whether this effect will stand up in an actual courtroom environment or whether participants who were most influenced by the presence of eyeglasses on a defendant would survive the voir dire process.

However, a wealth of evidence from scientific studies and public opinion polls has shown that people who wear eyeglasses are rated differently on a number of physical, social, and personality traits than people who do not wear eyeglasses. These differences are fairly strong and consistent, so it is important to examine how they might influence juror decisions. Our studies scratched the surface of this previously unexamined topic. Further research, using more realistic methods and settings, is certainly needed.

One of the ethical dilemmas researchers often face is how others will use the results of their studies. The general consensus is that such concerns are likely to stifle scientific inquiry. Thus, we try to report the results and limitations of our work as objectively as possible and hope for the best. This is why it is extremely important to seek out the primary source of any research results presented elsewhere.