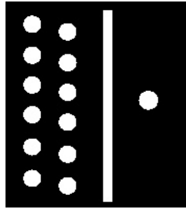

The Jury Expert™

For Excellence in Jury Selection, Communication & Persuasion

Volume 17, Number 6 June 2005

Damages: The Basics

By David Ball, Ph.D

Basic Principle One: Degree of Harm and Loss

Degree of harm and loss is rarely the most important decision-making factor, though it carries significant weight. Yet few attorneys do enough to find out what all the harms and losses were or will be, and few present those harms and losses as effectively as possible. You must seek out and present information about your client's harms and losses as vigorously and thoroughly as you pursue and present liability matters.

I once asked an attorney for a list of the harms and losses in his wrongful death case. He gave me the following:

1. Death
2. Loss of a husband
3. Loss of a father

A guy dies and the whole loss takes only nine words? To anyone who cares about him it should be more like nine volumes. And you want the jury to care about him.

Learn the full range and depth of your client's harms and losses. "Harms and losses" means all the bad things that happened because of the defendant's negligence. It is never only nine, 90, or even 900 words. The best sources include the client, the people who know or knew him, the people who worked with him, helped him, observed him, and experts—such as social workers and other counselors—who work with people with similar harms and losses. The more you listen to those sources, the more you will learn about the harms and losses to your client.

You must seek out and present information about your client's harms and losses as vigorously and thoroughly as you pursue and present liability matters.

Basic Principle Two: Worthwhileness of The Money You Seek

For years, the National Jury Project has been telling us that jurors provide money mainly when they think money will serve some worthwhile purpose. The fact that your client "deserves" money has little persuasive power. Jurors are more likely to provide money for worthwhile purposes such as medical bills or providing for surviving children. Like shoppers, jurors want something for the money. They want to know it will serve some purpose: What makes it worthwhile?

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When a juror says, “Money can’t bring back the dead” or “Money won’t make the pain go away”—common sentiments in deliberations—she is arguing for a small verdict on the grounds that money serves no purpose. This is why death cases usually get less than serious injury cases, where money serves the purpose of care.

When it comes to non-economic damages, you must seek out and show worthwhile purposes. Jurors often don’t see purposes unless you show purposes.[1]

In long-term cases, jurors tend to provide less when you paint a picture of hopelessness and despair. If there’s no hope, what purpose can money serve? So as soon as you get involved in a case, keep your antennae tuned to anything that can be positioned as hope—especially hope that can be fulfilled or encouraged by means of a fair damages verdict. Can money provide training that will put your client back to work? Can money help make a defendant meet his responsibility?

1. Never say “non-economic damages” to jurors. Even when explained, it sounds like “requiring no money.” Every legal term you use hinders your effectiveness. The defense loves it when you talk that way.

In cases where the harms and losses are already over, it can be even harder for jurors to understand what good money will do. Money for last year’s pain does not seem compellingly worthwhile.

Basic Principle Three: Jurors’ Job: To Fix, To Help, To Make Up For

The purpose of a jury is to fix, help, and make up for. Atlanta’s Don Keenan wisely teaches not to make your jurors think their job is to *judge* or to *decide*—as when you say: “Your job will be to decide whether the defendant was negligent.” “Deciders” and “judgers” tend not to incorporate caring into their decisions. Helpers and fixers do.

So, for example, instead of telling jurors they will *decide* who is right or *decide* how much the verdict should be, explain early that you expect that they are here to *figure out how much it will take to make up for the harms and losses.*

“Fix, help, and make up for”[2] is a primary theme of every case. Use it to shape your trial preparation and every element of trial. So don’t dress jurors in judicial robes. Dress them as caretakers: *healers, fixers, balancers.*

The Jury Expert is published monthly by the American Society of Trial Consultants, 1941 Greenspring Drive, Timonium, MD 21093. Phone (410) 560-7949; Fax (410) 560-2563; E-mail: astcoffice@aol.com; URL: www.astcweb.org. The annual subscription rate is $99.95 and includes 12 monthly issues. Single copy price $20. For subscription or renewal information, call (410) 560-7949 or use the order form on the back of this issue.

Publisher: American Society of Trial Consultants
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Basic Principle Four: Proportion of Time Spent on Harms, Losses, and Money

A book, a play, a trial, a sermon, a TV show, a movie: Each is about *whatever it spends its time being about.* It cannot be about what it spends a small proportion of its time on. A sprinkling of testimony about damages followed by a quick mention of damages in closing will not make jurors think the trial's purpose is money. So they won't fight hard to provide it.

Some literary scholars think that a two-minute piece of *Hamlet* in what is called the "closet scene"—means the play is about an Oedipus complex, though the play's other 138 minutes have nothing to do with mother-coupling. Every audience—always miles ahead of literary scholars—knows *Hamlet* is about revenge. How? Because *Hamlet* spends most of its time being about revenge. A play is about mother-coupling only if it spends a large proportion of its time being about mother-coupling, such as *Oedipus Tyrannos* does.

[J]uror anger is our best antidote to tort "reform."

Jurors are like an audience reacting to a play. They make their decisions based on the information made available to them. So you must control the proportion of time your trial spends on damages. A third to a half should be on harm, losses, and money.

Smart defense attorneys try to force you to spend a lot less. They know that the smaller the proportion of time jurors hear and think about harm, losses, and money, the less the jurors will be moved to do much about them. As Don Keenan points out, *liability is defense turf. Damages is your turf.* Fight on your own turf as much as you can. Whether you have a few minutes or a few weeks for jury selection, spend half on harms, losses, and money. Spend a third of opening and direct testimony, a significant chunk of your cross-examinations, and half your closing on harms, losses, and money. Do this no matter how much attention your liability case needs. And to do this, don't abbreviate your liability case. Expand damages to meet the necessary proportions. *Time is money.*

Basic Principle Five: Defendant Conduct

Kentucky's Gary C. Johnson has the long-term track record to support his observation that juror giving is based heavily and often mainly on the bad stuff the defendant did or is doing.

Jurors look at two things to gauge defendant conduct. First, the defendant's negligence. Jurors don't think badly of a defendant who did something inadvertently. An "accident" such as "the trucker missed seeing the red light," is barely "conduct." Jurors tend to forgive such an easy mistake and thus provide less money for it. But they are less likely to discount the trucker's *choice* not to look where he was going. This distinction between inadvertence and choice often makes the difference between an economic-damages-only verdict and one with some non-economic damages.

Further, most jurors expect a defendant to have acted the way most others in the same position would have acted. The more you show that a defendant violated that expectation, the more the jurors are likely to gauge the defendant's conduct as wrong. Jurors gauge conduct by the norm.

2. A theme is not merely a phrase, such as "Didn't have to happen." The phrase is just the theme's label so the jurors can quickly identify it. The theme itself is a concept that you weave into every element of trial.

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Finally, the more outrageous you show the defendant's choices to be, and the more outrageously distant the defendant's conduct is from the norm, the angrier the jury. And juror anger is our best antidote to tort "reform."

The second way jurors gauge defendant conduct goes beyond the actionable negligence. What the defendant does right after the negligence can matter to jurors. The worse it is the less they like it, and that can increase your verdict.

For example, show the defendant's initial attitude towards the negligence. Did he sit in his truck talking to his boss by cell phone while Jane was bleeding in the road? Did he go out in the rain to wave traffic away so Jane would not get run over again? No. Did he hold an umbrella over her? No. Did he help in any other way? No. Did he even call 911? Or apologize?

Only by helping jurors subjectively understand your client's harm—as if standing in your client's shoes—can they gauge its full weight.

In a med-mal case against a hospital, who showed up first in your client's hospital room after the negligence? A social worker to help the family deal with what had happened? Or the hospital's risk manager to put a lid on things? Where was the negligent doctor? What did she say when she realized what happened? Did the hospital tell the family what had happened or hide it? And for how long?

Since the day of the negligence, what machinations has the defense been using to get out of meeting its responsibility? Did the railway company conveniently "lose" the engine's speed records? Did the defense stipulate to liability the day before trial—not out of honesty but as a trial tactic? Is the defense adding insult to injury by attacking your client's good name in saying he is lying, exaggerating his injuries, or malingering?

By choosing to deny responsibility all this time, did the defendant deprive your client of funds needed for care or safety? Deprive him of the peace of closure? Or force him into the stress and delay of litigation?

A defendant's refusal to accept responsibility (which means full compensation) can add significantly to the plaintiff's suffering. Your client's pain and disability are bad enough. They are harder to bear when the defendant says the equivalent of, "Not our fault." Even worse is when the defense stipulates to fault, because then they are saying "We did it and we don't care." These things are harm piled on harm.

Many jurors are reluctant to make "good" people or "good" corporations pay as much as it will take to balance the harms and losses. But jurors have less trouble making "bad" defendants pay. This can neutralize the entire tort "reform" movement. Jurors who say they would never give money for pain and suffering suddenly give lots of it—and sometimes even add extra to make up for your fee.

To anger jurors at the defendant, don't show your own anger. And don't tell jurors what to think and feel. Instead, show the facts that got you angry. Angry jurors punish with or without a punitive damages issue.

Be thorough in your search for things to anger the jury. For example, point out that the defendant's company representative at trial has not been anyone who knows about the case and who cannot make decisions in the company about the kind of thing that happened in this case. "They didn't care then; they don't care now." As Phoenix attorney David Wenner points out, most cases are essentially punitive. So try to show defendant conduct in the light that gets jurors angry.

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Basic Principle Six: Who Gets The Money?

Jurors care how deserving the verdict recipient is. They gauge this by characteristics—*the kind* of person she is—and the extent to which she could have avoided the harms and losses.

Characteristics. Just as jurors will punish a "bad" defendant, so will they withhold money from what they see as "bad" plaintiff, even if the "badness" has nothing to do with what happened in the case. In this respect, obviously some clients are better than others. Maximize whatever you have to work with. Emphasize the good parts-such as having done good works, having accomplishments, working hard, striving to overcome the injuries, being a dedicated parent, helping others or being honest, etc. To the extent you can, show that your client is a responsible person regardless of his station in life.

Try to bar any characteristics or histories from evidence that may be unpalatable to some jurors. Is your client's DWI eight years ago really relevant to any case issues the jurors will decide? Did your client use drugs 30 years ago? Some jurors will worry that if he gets money now, he'll revert and blow it all on drugs.

Personal manner can play a large part. Work with your client—or bring in a specialist—to minimize off-putting characteristics such as arrogance, defensiveness, or vengefulness. With problem clients and other problem witnesses this is always worth the effort. Even—perhaps especially—if you have been preparing witnesses for years, outside advice can help. It is easy for you to do more harm than good on your own.[3] Do not assume that your failure to make coaching headway is your client's fault. It rarely is; progress is almost always possible.

3. See Theater Tips and Strategies for Jury Trials, Third Edition, Chap. Two, by David Ball (NITA, 2003).

You cannot make your client seem good just by telling the jury that she's good. Show the facts that allow jurors to make their own judgments that she's a good person. This can make all the difference in verdict size. Show how her children have turned out well despite the family's economic status. Tell stories that illustrate how he was always the one who helped everyone else.

Avoiding the harm. Many jurors look at what your client did or did not do to avoid or minimize the harm. This is the "If-it-had-been-me" response. Jurors do not want to think that this kind of harm could have happened to them, so they make themselves believe they'd have avoided it. This impulse can lead jurors to blame your client even when there's no contributory or comparative negligence claim. "I would not have done it that way," "Dark or not, I'd have seen that boulder in the road," "If it had been my kid he wouldn't have been using that kind of lawn mower," "If I were 60 and my doc told me my prostate was fine, I'd say, 'Okay, Doc, but I want a second opinion.' "

"Deciders" and "judgers" tend not to incorporate caring into their decisions. Helpers and fixers do.

Many such thoughts are nonsense, but jurors believe them. This can cost you the case on liability. Even when it does not, it can drive your damages verdict lower, often much lower. Even when the juror knows he would have done exactly what Jane did, if the juror can find anything even mildly wrong with it he'll often lower the verdict. "We all speed, but we take our chances when we do and we're responsible for it if we get hurt." Sometimes jurors even fault things your client did that neither were wrong nor had anything to do with what happened to her: "If you're going to live in a place like that, you have to expect drivers like that."

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Basic Principle Seven: Who Really Gets The Money?

Jurors worry about money getting into the wrong hands. The injured child needs treatment, but Dad is a rat who could take the money and run. Or Mom and Dad are great folks but could get run over and bad Uncle Benny would take the money. Don Keenan says every case involving a potentially significant verdict for a child should have a trust account for the child so jurors know the money will go for the *worthwhile* purposes they intend. Keenan also suggests naming the trust holder as a plaintiff: "First National Bank and Bobby Smith versus Acme Trucking." This can allow the trust officer to testify how the money will be controlled for Bobby's benefit.

Not as strong but adequate is to explain or have the judge explain that the court will control the money. But not every judge will allow such an explanation. A legal mind can find it immaterial, but jurors find it extremely material. Even jurors who mistrust the courts would rather have the money there than where Uncle Benny can get his paws on it.

Even with adults, jurors often keep verdicts low because they are worried about who will get their hands on the money. Is the quadriplegic's young wife going to grab it and run? Such thoughts breed smaller verdicts. Be on the lookout for anything that can start such thinking so you can take steps to offset it.

Basic Principle Eight: Client's Point of View

Jurors cannot gauge the full weight of the harm unless you get them to walk in your client's shoes. If you do not, they measure the harm by how it feels to an observer, not the harmed person. "*Your* broken leg is unfortunate and slightly comic. Can I sign your cast?" But, "*My* broken leg is a tragedy! What are you laughing at?"

All non-economic harms and some economic harms are subjective. They can be gauged fairly only from your client's point of view.

Think about a four-year-old child as an emergency room patient. The child's terror—a harm that can be fathomed only through the child's eyes—results in panicky screams as the nurse comes near with a hypodermic. Onlookers who do not view this through the child's eyes are amused at the child making such a big deal out of it, or annoyed at the little brat's racket. That's how jurors can view your client's harms. Only by helping jurors *subjectively* understand your client's harm—as if standing in your client's shoes—can they gauge its full weight.

But be careful. Violating the "Golden Rule" can lead to a no-brainer reversal: "Ladies and gentlemen of the jury, if you run a blowtorch up and down your arm . . . " or "How would *you* feel if it were your dad lying there in pain?"

Basic Principle Nine: Handling Why Jurors Give Less

You need to identify every reason jurors may find to minimize money in your particular case. Jurors sometimes minimize because they are inhumane, selfish, or uncaring. More often they minimize because they think minimizing is the right thing to do. And many give less because they have bought into tort "reform."

Many reasons are case-specific, and are found by doing focus groups.[4] Many specific reasons crop up in cases: "Money won't make the pain go away." "Public assistance programs will take care of this."

4. A focus group (or "mock trial" or "jury simulation" or "trial simulation") involves telling a group of laypeople about your case and then gathering their reactions. If you don't do focus groups—even for small cases—you need to start. See How to Do Your Own Focus Groups by David Ball (NITA, 2001), as well as the video from the same publisher.

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"He had health insurance, so why should we pay the hospital bill?" "The plaintiff (or the deceased's family) would never have had that much money, so why give it now?" "The President of the United States says not to give much." "You can ruin a person's life by giving too much money." "It's a windfall." Or . . . Well, the list is long. The more you can identify the more you can head off at the pass.

Basic Principle Ten: You

Jurors know you get what they see as an unreasonably hefty chunk of the verdict, and many jurors regard that as your primary if not sole motivation. On this basis, the tort "reform" campaign has convinced the public that you and your kind are a crisis in America. This becomes a factor in the decision making of many jurors, including decent-minded citizens who believe in justice and want to help people who have been harmed. As a result, liability is a steeper mountain to climb and damages—especially since the beginning of 1995—is often a formidable cliff looming over you.

Only by helping jurors subjectively understand your client's harm—as if standing in your client's shoes—can they gauge its full weight.

The solution is no longer simply a matter of you being credible and decent. That used to be enough, but today the more credible and decent you are, the more some jurors think it is a result of law school training.

Many of these methods have been developed to contend with the way many of today's jurors think about lawyers and their clients. *Even some of the best of the old ways can ruin your case*—such as saying anything about your client before the jury knows all about what the defendant did. And some new ways that are necessary in today's climate may seem anti-intuitive—which is probably why they work.

David Ball, Ph.D., is the president of JuryWatch, Inc. in Durham, NC. He may be reached at (919) 682-1839 or by e-mail at jurywatch@mindspring.com. *This chapter excerpt is from* ***David Ball on Damages—The Essential Update: A Plaintiff's Attorney's Guide for Personal Injury and Wrongful Death Cases****, Second Edition, by David Ball, Ph.D. ©2005 by the National Institute for Trial Advocacy. Reprinted by permission of the publisher. This book is available from the National Institute for Trial Advocacy for $85.00 (shipping and handling included). To order visit www.nita.org or call (800) 225.6482.*

Quick Courtroom Tips

By Bob Gerchen

The Golden Rule: Never, Ever Underestimate the Intelligence of Jurors

It's amazing how many attorneys look at jurors as if they are another species. "Juries," some attorneys say, as if there is some monolithic being called "jury." And it's even more amazing how many attorneys figure that most jurors "don't get it."

Remember this: they may not think like lawyers, but most of the people you talk to in a courtroom are smarter than you think, and it's a guarantee that every one of them has at least one life experience that you don't have.

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For more information about Bob Gerchen's 101 Quick CourtroomTips, visit www.courtroompresentationtips.com.

Juror Research: Lessons from an Amateur Research Design

By Thomas P. Baggott, Ph.D.

The Case: A lawsuit was filed, charging a major insurance carrier with bad faith. Two women were involved in a relatively minor motor vehicle accident that resulted in soft tissue injuries. Their vehicle was struck by a vehicle operated by a person insured by the subject insurance company. They made no complaints of injuries at the scene. The vehicle damage was relatively minor; neither vehicle needed to be towed. An accident report was submitted and the driver of the striking vehicle was cited for a motor vehicle violation. Subsequent to the accident, both women received chiropractic treatment for soft tissue injury and were required to miss time at work. They filed a claim against the insurance company; the insurance company refused to pay. Ultimately, a claim of bad faith was made against the insurance company. What had been a relatively minor claim now involved the risk of millions of dollars in punitive damages.

The Research: The insurance company's defense team determined it was appropriate to run a trial simulation. I was hired as a consultant to observe surrogate juror deliberations and make recommendations to counsel based upon those observations. I was not consulted in the research design and my role was relatively minor.

The research design contained typical questionnaires and presentation formats. Attorneys represented both sides of the case in an equal fashion. The jurors in both panels, after fairly rapid deliberations, found in favor of the defense. Observation of deliberations as well as discussions with the surrogate jurors during debriefing disclosed their views of the two plaintiffs. They were viewed as malingerers who were either totally faking their injuries or exaggerating minor injuries to major proportions. The jurors clearly believed the women were cheats and the insurance company was simply protecting itself.

The problem with the research design in this case was that the two women were not humanized or presented to the jury in a neutral light. Defense counsel made it clear that he believed the women were cheats. He implied there was little or no injury and the women involved were simply out for money. The plaintiff's attorney presented the women as having legitimate injuries, but was less than enthusiastic in his presentation.

A common mistake by attorneys is the tendency to view a trial simulation as something to be won or lost. It is in fact not a contest, but a social experiment. The only goal is to gather as much information as possible to enable the attorneys to be fully prepared for the actual trial. It is a time to conduct experiments on types of approaches, evidence and graphic presentations. Unfortunately, the attorneys in this case viewed it as a contest and were pleased with the result. Fortunately, they were experienced litigators and were quite open to constructive criticism. I explained to the attorneys that what they did was assist the jurors in forming a cognitive belief, or perception, of

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these two women that would probably not be replicated at trial. The attorneys reported the two women would actually appear as fairly strong witnesses who were reasonable, articulate and well-presented. They would appear at trial as moderately attractive, reasonably educated, middle-class Americans.

We were able to convince the attorneys and their client to perform the research again, adding the new variable of well-presented middle-class women. Two likeable women from the law firm studied the deposition answers of the plaintiffs. A videotape was made of the staff members, acting as the plaintiffs, going through a deposition. Their answers were factually correct and a close representation to what was actually said at the deposition. The women were poised, comfortable and confident in their presentation.

The results were dramatically different. The jurors were far more responsive to the plaintiff's position. The jury awarded punitive damages in the millions of dollars and they were relatively outraged by the conduct of the insurance company. During deliberations, they clearly saw the case as one of two vulnerable women being run over by the faceless insurance company.

Case Findings: This illustrates that research design is critical. Social science research must be carefully controlled and run by professionals. Every design should be case-specific and care should be given to reviewing the design with a trial consultant. One must be extremely wary of firms that use a general design over and over, without regard to case specifics. In this case, if the original research had been relied upon, the insurance company would have lost millions of dollars at trial. The second research design was accurate and allowed the client to take appropriate measures.

Cautionary Steps to Be Followed When Preparing Trial Simulations:

1. If a case is important enough to conduct pretrial research, place the research in the hands of professionals. Behavioral scientists are not properly suited to practice law, even though they may know something about the law. Conversely, attorneys may know something about behavioral science, but they should not conduct research.

2. Consult with your consultant. Although this seems strange, some clients simply turn the research design over to the consultant. It is important the research be a collaborative effort. Every research design should be case-specific. Some of the pre-presentation questionnaires may be boilerplate, but the design itself must be original for each case.

3. If you use the same consultant over and over and it seems every design is an instant replay of the previous one, it may be time to change consultants.

4. Expect your consultant to come up with ideas that have not occurred to you. If the consultant is not coming up with original ideas, he or she will not have an original research design.

5. Pay attention to whom you speak with when designing your research project. If you are talking to a marketer, you are talking to the wrong person. If the consultant does not think enough of your project to dedicate their time to personally design the research with you, it is time to move on to another consultant.

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6. Remember that marketers are in the business of selling. The consultant who controls the research design should be in the business of behavioral science.
7. Always require your consultant to verify that he or she does not use the same surrogate jurors over and over.
8. Ask your consultant if he or she follows A.P.A. ethical guidelines about telling jurors if they have been misled during the research.

Trial consultants walk a very fine line between clients and attorneys. They must, in all cases, provide nothing but science and truth. The second a consulting firm begins coddling their clients and worrying about bruised feelings and egos, their trip to failure is assured. Such human mistakes can cost a client millions of dollars. While consultants must be diplomatic about certain aspects of the research, there is never an excuse for not being frank with their clients. We must remain in the business of increasing strengths and minimizing weaknesses. We must test and determine what strategies will work and which will not. Even in those circumstances where the client has a case that cannot be won, it is the trial consultant's function to tell that to the client before a trial jury does.

Dr. Thomas P. Baggott is the lead consultant at Jury Behavior Research Corp., in Tucson, AZ. He is a Fellow of the American College of Forensics Examiners and a Diplomate of the American Board of Psychological Specialities. Dr. Baggott may be reached at (520) 297-9691 or by e-mail at thomasbaggott@aol.com.

Starting Your Opening with a Silver Bullet

By Tsongas Litigation Consulting, Inc.

It has long been said that it is important to compose your opening in the form of a story. We have long recommended condensing that story to a single, high impact paragraph we call a "Silver Bullet." Using a Silver Bullet to preface your opening is the best technique for controlling how jurors assemble the facts of the entire case into a story. A Silver Bullet gives the jury a roadmap for the information-rich content of the opening. By knowing where the story is headed, the jury can concentrate on retaining your key facts and arraying them in the best possible way to support your client's position.

The goals of a Silver Bullet are to:

- Reframe the opposition's story
- Introduce your version of the story
- Provide the "big picture"
- Provide a roadmap from start to finish
- Satisfy initial juror curiosity
- Answer jurors' initial questions

The goals of a Silver Bullet are not to:

- Respond to the opposition's story
- Tell your entire story
- Provide specific details
- Lay out all your evidence
- Introduce all the witnesses
- Explain the law

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The best vehicle for writing a Silver Bullet is to outline a 10-point story, or the 10 chapter headings that chronologically tell your story from start to finish, and then turn each point into a one-sentence explanation of that point. Sound daunting? That's what many of our clients say. In our strategy sessions, we often hear attorneys say, "My case cannot be condensed into one paragraph. It's just too complex." To prove our point, we endeavored to write a 10-point story and Silver Bullet of the history of the United States. We figured if we could do this daunting task, then you can write a Silver Bullet for any case you try.

The History of the United States: A 10-Point Story

1. The spectacular array of native cultures
2. The establishment of colonies
3. The revolutionary movement to independence
4. A new kind of democracy
5. The westward expansion and ensuing conflicts
6. The union victory, industrial expansion and war
7. The great depression and the New Deal solution
8. World War II and the postwar American engine
9. Decades of change
10. Forging into the new millennium with courage, commitment and innovation

The History of the United States: A Silver Bullet

The North American continent was home to a spectacular array of native cultures before European settlers established colonies along the eastern seaboard. A hundred years of taxing English rule galvanized a broad-based revolutionary movement that resulted in the Declaration of Independence on July 4, 1776, and the successful American Revolution. The newly created United States of America marshaled some of the greatest political philosophers in history to create a new kind of democracy that was able to weather significant early challenges. Fueled by a sense of destiny and undaunted courage, the young nation bargained and fought to control the stunning lands and resources from the Atlantic to the Pacific Oceans. Deep divisions over slavery and politics resulted in the bloodiest war the country ever saw. The Union victory ushered in a period of enormous industrial expansion that survived economic uncertainty, political upheaval, and World War I before running headlong into the jaws of the Great Depression. Relentless economic stagnation was eased by new federal government programs, but it was not swept away until World War II restarted the American industrial engine. The remarkable human sacrifice and ingenuity that won that war set the stage for an unprecedented period of technological innovation and economic growth. Issues raised by people of color, women, the anti-war movement, environmentalists, anti-tax activists, and an increasingly urbanized society deeply divided the country by the dawn of the 21st Century. The destruction of the World Trade Center in New York on September 11, 2001, by Muslim extremists signaled the beginning of a perilous new chapter in the American saga. Its successful conclusion demands the same qualities of courage, commitment, and innovation that have marked the nation's history to date.

Tsongas Litigation Consulting is a full-service trial consulting firm with offices in Seattle and Portland. The authors may be reached at (503) 225-0321 or by e-mail at info@tsongas.com.

Summary of This Issue

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- **Quick Courtroom Tips**—by Bob Gerchen
  "The Golden Rule: Never, Ever Underestimate the Intelligence of Jurors"

- **Juror Research: Lessons from Focus Groups and Trial Simulations**—by Thomas P. Baggott, Ph.D., "Lessons from an Amateur Research Design"

- **Starting Your Opening with a Silver Bullet**—by Tsongas Litigation Consulting

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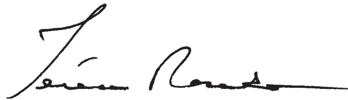

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