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Witness Preparation for Deposition: Common Attorney Questions and Their Solutions

By **Katherine James, M.F.A.**

Q. How do I get the witness to answer “Yes,” “No,” “I don’t understand,” “I don’t know,” or “I don’t remember?”

Solution: Analyzing Questions versus Giving Answers

Witnesses all believe that they are supposed to give answers in deposition. I tell them that their job is to analyze questions instead. I give them a very particular analysis called “The Form.” “The Form” is a concept developed by Dr. Martin Peterson¹, a trial consultant from Lincoln, Nebraska. It basically involves the witness taking the question asked by the opposing counsel in the deposition and putting it through a series of steps in order to analyze it.

¹Martin Peterson, Ph.D. is the owner of Forensic Anthropology, Inc. of Lincoln Nebraska.

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The steps are:

1. Do I understand the question?
2. Do I know the answer to the question?
3. Do I remember the answer to the question?
4. How do I want to answer the question?

Why these four steps in this order?

1. Do I Understand The Question?

The first question has the witness think through the many issues that make a question good or bad. The idea is to never answer a bad question, i.e., a poorly phrased or misleading question. Therefore, you get rid of all the bad questions immediately with this phrase: “I don’t understand what you’re asking me.”

- Does the witness understand all of the literal words of the question? Example: Where were you prior to accepting the terms of the agreement? (What is acceptance? What is an agreement?)
- Does the witness understand the concept of the question? Example: How do you make one of those?
- Is there something inherently wrong with the question? Example: How old is your son? (The witness only has a daughter.)
- Is the question too broad? Example: What did you do in 1991?
- Is the question compound? Example: Where and when did you meet?

Almost everyone can use “do I understand the question?” as the first step. However, this first question can also be adapted if the witness has a particular idiosyncrasy in learning, listening or processing. For example, I’ve used the phrase “what is the question?” instead of “do I understand the question?” for people who don’t listen all the way

through the question. I've used the phrase "what is he asking me?" for other casual listeners.

2. Do I Know The Answer To The Question?

Once the witness understands the question that is asked, the witness has to have the knowledge to answer the question. To illustrate this concept, I often ask the witness, "On what kind of china should the White House serve dinner tonight?" Most everyone gets that they don't know what the choices of china in the White House are, so they don't know the answer to the question. This step keeps witnesses from answering questions they do not know anything about.

3. Do I Remember The Answer To The Question?

Depositions are filled with witnesses who guess at what they do not remember because they believe they should remember, even when they don't.

This step allows them to say, "I don't remember," when they don't remember. I illustrate this one by asking, "What was the kid who sat behind you in the third grade wearing on the first day of school?" I then illustrate having a memory refreshed by saying, "Now, if I showed you a snapshot taken

of your third grade class the first day of school, you might look at the kid sitting behind you and absolutely remember what he was wearing the first day. Or the picture might not do anything to jog your memory. That's just fine."

4. How Do I Want To Answer The Question?

In this step, the witness thinks through and answers the entire question silently before speaking the answer aloud. This keeps the answer short, sweet, succinct and to the point. This cuts down on volunteering information almost completely. It also limits answers to "yes or no" questions to "yes" or "no," without elaboration.

There are many benefits of "The Form":

- The attorney has time to think.
- The attorney has time to make an objection on the record.
- The witness sets the pace of the deposition since it takes time to go through the questions.
- The witness is able to remain rational instead of flying off the handle: she can think first and speak second.

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- The deposition is much more likely to remain under the control of the witness than under the thumb of the attorney.

Variations

There are easily as many variations on “The Form” as there are learning differences.

I have people who are purely visual learners think through the questions as images rather than as words. With a black marker on a page of butcher paper, I create chaos for “understand,” a box of knowledge for “know,” an open book with a blank page for “remember,” and a set of three stepping stones for “how to answer.” I add a fifth question from time to time, such as “what does my gut say?” for someone who doubts the answer which comes to mind when that answer is always correct.

Q. How Should the Witness Sit?

Solution: The Physical Form

There is a basic physical form that I like witnesses to follow when going through “The Form.” I like them sitting up, with their hands clasped lightly on the table. I like them leaning forward, with an “I can’t wait to answer questions” attitude. Of course, this is easily adapted. The person who turns into an aggressive monster when sitting forward might need to lean back.

Q. Where Should the Witness Look?

Solution: The Focus Swing

Many attorneys love their witnesses looking opposing counsel straight in the eye. I generally don’t like it. Martin Peterson first taught me that attorneys control witnesses through eyeball to eyeball contact. Break the cycle of eyeball contact, and you break that control. Want to keep a witness from fighting with opposing counsel? Or yielding to his will and giving up in fear? Or being twisted around his little finger? Cut the eye contact.

While the opposing counsel asks the question, I ask the witness to focus on the knot of the attorney’s tie, or the hollow of the throat if the attorney is female. If the witness is hard of hearing, the attorney’s lips are a good focus point.

The witness then goes through the analysis – the four questions above – silently. The witness turns to the court reporter, and gives the answer. The witness then turns back to the knot of the tie for the next question.

This focus swing takes time and slows things down. It allows the court reporter to take down accurate testimony. If this deposition is the first step in trial preparation, it allows the witness to practice answering to the jury or judge when asked a question in court. Most importantly, it takes even more control out of the hands of the person taking the deposition and puts it in the hands of the witness.

I often think of video taped depositions as the hardest thing a witness has to do because the witness must have the mind set of deposition (careful, analytical, cautious) and the demeanor of trial (open).

Q. How Do I Prepare the Witness for a Video Tape Deposition?

Solution: Video Tape Deposition – The Hardest Witness Task

There are two major differences between a video taped deposition and a regular deposition: focus and demeanor.

Focus

The first has to do with where the focus swing lands. It lands not on the court reporter, but into the lens of the camera. Ideally, the attorney will make sure the camera is positioned over the shoulder of opposing counsel, who sits across the conference table from the witness (easy swing for the witness). Many times, the camera is placed way at one end of the table and the witness is placed at the other end, like they are the mom and dad at the dinner table. Conference tables are usually great big long affairs, resembling the dining tables of kings and queens. I call this the “Henry the Eighth” position because the camera is so far away, it makes a witness feel like whichever of Henry’s wives he is going to

execute next – hardly an inviting position for the focus swing.

Many attorneys do not understand why so many trial consultants recommend that witnesses address the camera directly. The answer is quite simple and logical. When the tape is played at trial, the witness will be looking at the jurors from the screen in the same way that a witness looks at the jurors from the witness stand.

Most people are able to physically master this rather difficult focus swing with time. It almost always takes more time than does the focus swing of the regular deposition. One of the reasons for this is that there is a real person to talk to in the form of the court reporter, while there is no real person to talk to with the camera. So I create one. I will often stand behind the camera so that the witness can look at a real human being.

Some witnesses cannot master this. You may allow this witness to keep looking at the knot of the tie of the attorney. But put in a few hours trying to get the witness to look in the camera before you allow this solution.

Demeanor

The second issue is demeanor. The demeanor for a video taped deposition has to resemble the demeanor of trial. Even though in a traditional deposition the opposing counsel is looking to see what kind of a witness this person may make in front of a jury, it is not vital that the witness have a trial-ready demeanor.

I often think of a video taped deposition as the hardest thing a witness has to do because the witness must have the mind set of deposition (careful, analytical, cautious) and the demeanor of trial (open). As is the case for the trial, the demeanor that a witness presents in a video taped deposition must be more natural, honest and open. I have helped prepare many, many witnesses, and once or twice in the course of my career, I have run into a person who is not capable of this kind of demeanor. Everyone else is.

Each of us has several personalities within us – several different kinds of demeanor. We use them for the different situations in which we find

ourselves. When it comes to the courtroom – and a video taped deposition is ultimately potentially shown in the courtroom – most people start out with a courtroom personality. The witness may present as flat, angry, stiff, depressed, or any number of things which the stress of deposition and the seriousness of the trial influence. I have a number of ways to find “the real” witness and to get that person to show up for the video taped deposition, and subsequently, the trial.

The primary way is to simply talk to the witness. Chat about real life and their favorite moments in it, and who and what they really are. A person really comes to life when talking about a grandchild, a spouse, a recent trip or the proudest moment in the person’s life.

Many attorneys, especially male attorneys, think that they are talking and sharing with a witness by telling tales of sports, hunting and fishing. Actually, these almost always end up being stories that people hide behind so that they don’t have to reveal their real emotions and who they really are. Instead of talking about the team, why not talk about the grandchildren? Instead of talking about killing fish, talk about a daughter’s first prom. The warm, caring, real human being you want to present to the jurors will come out.

When the person presents as stiff and awkward, alternate “real questions” with questions about the grandchildren, or the son with the rock band. Soon the demeanors will blend and the stiff, formal person will give way to the warm human being that you want on camera in that video taped deposition.

Q. How Do I Get My Witness to Wear What I Want for Deposition?

Solution: Get Them On Board

The problem generally isn’t that attorneys don’t know how they want their witnesses to dress for a deposition, especially a video taped deposition. The problem is that they don’t know how to get them to dress that way.

If I have a witness who I know I’ll need to dress differently, at some point in the initial part of our discussion I’ll ask, “How do you want the jurors to

see you?” I get various responses. Some say, “As an honest person.” Others say, “I want them to see that I care about this case.”

Almost all of the answers are great and can be tucked away and used as ammunition for getting the witness to dress for the deposition. This allows you to say, “I know you want to appear as someone who is truthful to the jurors, and truthful people just don’t wear blouses cut down to their navels.” This allows you to say, “I know you want to appear open and honest to the jurors and that is going to be difficult while you are hiding your face behind that beard.”

Most witnesses respond immediately and positively to dressing as they are told when their appearance is put in the context of juror or judge perception. This is especially true when that juror or judge has been the focus of the witness’s hopes and fears.

I have strong feelings about what witnesses should wear, especially to a video taped deposition. My ideal witness costume is something that makes whoever looks at what the witness is wearing, have no big response to it, and move right to the witness’ eyes and focus there. I don’t like things to stand out at all. When I say no big response I don’t only mean no negative response (“What a crazy tie!”) I also mean positive (“That tie reminds me of good old Uncle Steve!”). Why have the judge or juror off in some memory instead of with your witness and the case?

Q. Should I Use A Translator Only As A Last Resort?

Solution: English as a Second Language – Bring On the Translator

I love witnesses who don’t speak English as a first language. They get translators. In other words, they get to hear the question twice.

I never understand attorneys who insist that their bilingual witnesses, with English as a second language, go into deposition without a translator. The witness is already going to have a whole set of learning, processing and listening issues. In addition, the witness may have any number of other quirks and problems that are discussed in this

article. To expect this person to become proficient in English and Legal Trick Language in addition to getting a deposition taken is simply asking for trouble. I have also seen it backfire over and over. Why not use a translator? These witnesses are human beings. They just happen to be human beings who don’t speak and understand English fluently enough to be deposed in the language.

I often find myself in a room with a witness who is having difficulty learning to stop, listen and think before speaking. I almost always find myself at some point saying out loud, “I wish that English wasn’t your first language, because then we could have a translator for you and you would have to listen to the question twice.” At this point the witness will sigh and say, “Me, too! That would be perfect!”

Q. Should I Prepare More Than One Witness in the Room at a Time?

Solution: The Small Group Preparation Model

The answer is “sometimes yes and sometimes no.” First, it is “no” if there is going to be a privilege violated in your particular jurisdiction. It is also a “no” if you are not also planning on spending individual time with each witness in the group. Again, “no” if your group is too large.

People who learn primarily through watching will get a great deal of benefit out of watching someone else go through an initial questioning sequence. Those for whom watching isn’t the primary learning style will also gain some benefit. Almost everyone learns from watching someone else as long as everyone also gets to practice.

This can work well with an initial rehearsal session. A general group discussion of concerns followed by a taped, 10-minute, role playing segment with critique can be very helpful. Not only do the members of the group learn from one another’s strengths and weaknesses, they start to think and act like a team.

However, after this initial session, you must work with the people individually. Things are going to get tougher on two levels, emotionally and substantively, for each person. They must overcome

individual problems and hone skills and techniques for that particular witness.

Also, in most depositions, not all the people in your group will be in the room at the time of the deposition itself. This may be for one reason, or a combination of reasons. Technically, all the witnesses may not be parties, or may not be allowed in the room for some other reason. It also may be best for some witnesses to not have anyone else in the room with them. Conversely, it may be best for some witnesses to always have someone in the room with them.

I recently helped prepare a family of plaintiffs in a wrongful death case of the father. The family consisted of a mother, an adult daughter and two adult sons. The attorney had originally thought that the whole family should sit through each other's depositions. When given the choice to have others there, the individual needs were quite different. The mother absolutely needed to have her daughter in the room with her when she testified. She needed that support. The daughter needed her mother in the room with her when she testified, except for the part when she talked about what she missed about her father. For that, she didn't want her mother to go through the pain of listening to the story. The sons absolutely did not want to have their mother and sister in the room with them because they had been working with the father on the day he was killed. The older son wanted his brother with him for his entire deposition for support. The younger son wanted his brother with him for everything but the description of finding the dead body of his father. For him, the description was so horrific that he had not told any of the family members the details that he knew he would have to go through in the deposition. He did not want to put them through it, and he knew that he wouldn't fully describe the scene if even his brother were in the room, because he would be protecting his brother emotionally in some way.

The attorney honored those requests and the depositions were great.

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Quick Courtroom Tips

by Bob Gerchen

*Take the Abstract and
Make It Concrete*

• The best way to illustrate this point is to give an example—in other words, I have to make it concrete.

• An acceptable level of a contaminant may be 10 ppb, or ten parts per billion. But what does that mean? If we make it concrete, we could say that ten parts per billion is the same as ten manhole covers within the entire area of say, Seattle.

• To make the abstract concrete, you have to find real-world analogies. Most people think that a 20 mph collision is a minor impact. But if it were illustrated by this analogy, it would seem more significant:

• "Take off running. Get up to full speed. After about thirty yards of going full speed, run into a brick wall. Did that hurt? A lot? Maybe you have a concussion? A few broken bones? You were moving at a rate of speed of about 12 mph."

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• *For more information about Bob's new book, 101 Quick Courtroom Tips for Busy Trial Lawyers, visit www.CourtroomPresentationTips.com.*

The Opening Statement: Developing a Theme

By Ronald J. Matlon, Ph.D.

After opening statements, a case unfolds, not necessarily in any organized manner, but in bits and pieces. The opening statement is your best opportunity to put your entire message in a compact package. The jury and/or judge will be able to get a bird's-eye view that allows better comprehension and appreciation of the issues and the evidence. The opening statement is a preview, road map, or synopsis of what is to follow. Its place in the trial follows the old bromide for public speakers: "Tell them what you're going to tell them (opening statement), tell them (evidence), and then tell them what you told them (closing argument)."

Rationale for Developing a Theme

In order to facilitate the processing of information, the opening statement must provide a single theme or a small number of themes that jurors and the judge can use to integrate witness testimony. Too many themes (or too many defenses) bog a case down and confuse the audience. Hence, thematic development should be kept simple. A thematic framework may be defined as "a subset of existing knowledge, based on prior experience and relevant to a limited domain, that people use as a framework to guide their observation, organization and retrieval from memory of perceived events."¹ These frameworks help jurors make sense out of a rather disjointed array of information that comes forward in a trial.

In addition, themes facilitate juror and judge recall of important aspects of your case.² They affect memory by determining what will be attended to. Themes are encoded in memory, acting as a framework for organizing new information and guiding later retrieval of information.³

Themes determine what audiences pay attention to and what they encode into memory.

Human understanding and accurate recall of facts are eased by the use of themes. One cognitive psychologist maintains that we understand and remember characters best when we can identify with their goals.⁴ Some experimental work in cognition illustrates that as people enhance their understanding of a character's goals, motives and plans, that character's actions are more easily recalled.⁵ He gave his subjects a story about a farmer who tried to put his donkey into its shed. Some of the subjects read a paragraph with this goal explicitly stated. Others read a themeless paragraph without the ultimate goal mentioned. When the ultimate goal was omitted, subjects found the text only half as comprehensible, and they remembered 20 percent fewer action items than the first group. Thus, stories with stated themes help audiences more effectively integrate information. Themes determine what audiences pay attention to and what they encode into memory. Themes act as frameworks for organizing information. Finally, themes guide the retrieval of information from memory. Without knowing personal goals, motives

¹Lingle, J. H. & Ostrom, T. M. (1981). Principles of Memory and Cognition in Attitude Formation. In Petty, R. E., Ostrom, T. M. & Brock, T.C. (Eds.), *Cognitive Responses in Persuasion* (p. 401). Hillsdale, NJ: Erlbaum.

²Anderson, R. C. & Pickert, J. W. (1978). Recall of Previously Unreadable Information Following a Shift in Perspective. *Journal of Verbal Learning and Verbal Behavior*, 17, 1-12; Bower, G. H., Black, J. B. & Turner, T. J. (1979). Scripts in Comprehension and Memory. *Cognitive Psychology*, 11, 177-220.

³Linz, D., Penrod, S. and McDonald, E. (1986). Attorney Communication and Impression Making in the Courtroom. *Law and Human Behavior*, 10, 283.

⁴Bower, G.H. (1975). Cognitive Psychology: An Introduction. In Estes, W. K. (Ed.), *Handbook of Learning and Cognitive Processes*, Volume I (pp. 25-80). Hillsdale, NJ: Erlbaum.

⁵Thorndyke, P. W. (1977). Cognitive Structures in Comprehension and Memory of Narrative Discourse. *Cognitive Psychology*, 9, 77-110.

and plans of witnesses called to the stand, jurors have difficulty accurately recalling and understanding those witnesses' actions. In fact, the bottom line for you is that social science research indicates that trial verdicts tend to favor the party who creates a thematic framework in the opening statement over those who do not develop themes.⁶

Locating the Right Theme

How do you find an appropriate theme or themes? Basically, the facts of the case point toward themes. As you continue to gather facts, you should think of the possible themes that surround those facts. Jeans offers the following illustration of an attorney's theme development based on facts:

Plaintiff is injured when struck by a blade which disengages from a rotary lawn mower operated by A and owned by B. A is a college student who earns money during the summer cutting grass. He has operated many lawn mowers, is an engineering student, and is familiar with their mechanics. He has worked for B on other occasions, and was familiar with B's lawn mower. On a previous occasion he had noticed that the blade was wobbly and had notified B. B had owned the lawn mower for four years and had never had it repaired or overhauled. B acknowledges that A had told him that the blade was wobbly. Assume your suit is against A alone. Your opening statement will attempt to exonerate B from wrongdoing and lay the blame at A's feet. The theme to be developed will be as follows:

A is trained and experienced with lawn mowers. He discovered that the lawn mower was faulty but continued to use it knowing and appreciating the risks that were involved. B, on the other hand, had reason to believe the lawn mower was in working order. It had functioned properly for four years without the need of repair. He was

told by A that the blade was wobbly but he didn't think that this was a dangerous situation. He knew that A was an engineering student, well versed in the handling of lawn mowers, and relied on him to make any necessary repairs or at least tell B that the mower was dangerous and needed repair.

If the suit were against B alone, the theme would be substantially different and proceed as follows:

B had owned this lawn mower for four years and during the entire 48 months had not attended to its servicing or repair. He had been told specifically that the blade was wobbly but rather than have the blade replaced at minimal cost, he elected to expose A and others to the dangers of a malfunctioning power lawn mower. A, a hardworking and conscientious college student, having told B of the defect, assumed that the simple repair had been made.⁷

Embed the theme in the minds of the judge and jury in the opening statement, emphasize it throughout the questioning of witnesses, and stress it once again in summation.

The facts are the same, only the slant has changed. Once you determine the theme or thread woven through the case, you then embed it in the minds of the judge and jury in the opening statement, emphasize it throughout the questioning of witnesses, and stress it once again in summation.

One analyst has identified four representative themes that can be used in opening statements:⁸

⁶Pyszczynski, T.A. & Wrightsman, L.S. (1981). The Effects of Opening Statements on Mock Jurors' Verdicts in a Simulated Criminal Trial. *Journal of Applied Social Psychology*, 11, 301 - 313.

⁷Jeans, J. (1975). *Trial Advocacy* (pp. 200-201). St. Paul, MN: West.

⁸Decof, L. (1982). *Art of Advocacy: Opening Statement* (pp. 1-40 – 1-42). New York: Matthew Bender.

1. The *underdog theme*, which might be developed by a plaintiff suing a giant corporation. The underdog is a little person trying to fight city hall, a person with whom many jurors can empathize. Recall all the underdog boxers who managed to get the spectators to cheer them on.

2. The *undefeated theme*, which focuses on the indomitable fighter who never quits, regardless of the odds. Ernest Hemingway's favorite bullfighter, *Manolete*, and the old fisherman in *The Old Man and the Sea* are classic examples of the person who never succumbs to defeat. If you point out that the disfigured and paralyzed plaintiff bravely continues to function and fight, the jury may find that person truly heroic.

3. The *victim theme*, which deals with people who are put upon by everyone. Charlie Chaplin's characters were victims of society and progress. In the film *Modern Times*, Chaplin was actually sucked into the gears of a machine and spit out the other end. The plaintiff in a consumer fraud case can be portrayed as a victim of advertising, and jurors may become outraged at the defendant. Or, if there has been a permanent disfigurement as the result of an unsafe consumer product, the victim's attorney may focus on the theme of a "lifetime lawsuit." Even the defense can develop a victim theme in a case built on self-defense.

4. The *contrasts theme* creates images for the jury. Simple contrasts that few jurors can miss are best: small/big, weak/strong, human/impersonal, simple/complex, moral/immoral, or careful/careless. In a child dart-out case, think of what can be done by contrasting a 40-pound little girl with a 2.5-ton truck.

Themes are powerful concepts. They require no exaggeration on your part because they are so deeply rooted in our belief-attitude-value structure. Search for effective themes as you think about preparing and presenting your opening statement.

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**RECOMMENDATIONS
FOR
DEVELOPING A THEME**

- Select only one or very few pertinent themes
- Keep the theme simple
- Build the theme around salient case facts
- Common themes refer to underdogs, undefeateds, victims and contrasts
- Repeat your theme during voir dire, the opening statement, witness examination and closing arguments

Political Affiliation, Race, Geographic Location: Insights on Damage Awards?

By Samantha L. Schwartz

When jurors decide damage awards, are Democrats soft-hearted for the plaintiff and Republicans tight-fisted for the defense? Can attorneys benefit from understanding potential jurors' political attitudes? What about other demographic factors? Is there no end in sight to the debate over their use to select and excuse jurors? According to the 2004 American Society of Trial Consultants (ASTC) Research Committee's first ever Collaborative Research Project, questionnaire responses of mock jurors suggest that there is only more to extend the debate, much less end it anytime soon.

Findings support the notion that certain attitudes toward damage awards may reveal whether a potential juror is defense-oriented (i.e., more likely to agree with limits on non-economic damage awards) or plaintiff-oriented (i.e., more likely to disagree with state limits on punitive damage awards).¹ In addition, these orientations were associated with demographic information. Political party affiliation was most strongly associated with attitudes toward damage awards. This research also suggested potential for other demographic factors such as racial/ethnic identity and albeit less vigorously, geographic locale. Specific findings for the effects of these demographic factors are bulleted below, and are followed by a discussion of their implications.

- **Political Party Affiliation:** Potential jurors who identified themselves as Republicans

revealed stronger defense-oriented attitudes about damages. Those who identified themselves as Democrats revealed stronger plaintiff-oriented attitudes about damages. However, Independents fit the profile for plaintiff-oriented viewpoints even more than Democrats.

- **Racial/Ethnic Identity:** Both African and Asian-American respondents were slightly more likely than Caucasian respondents to maintain plaintiff-oriented attitudes, particularly toward tort reform and damages awards. Hispanic respondents tended to have plaintiff-oriented attitudes, but by a smaller margin. Caucasian respondents were more defense-oriented, and expressed attitudes that were somewhat more likely to support limits on punitive damages and to believe that damages drive up the cost of insurance. Furthermore, Caucasians expressed little if any agreement with the argument that damage awards keep big companies "honest." From these findings, one can infer that these respondents maintain pro-defense attitudes and are distinctly defense-oriented in their viewpoints.
- **Geographic Region:** The data suggests that Southern and Midwestern respondents expressed more defense-oriented responses than West Coast or Northeastern respondents²

This research indicates that demographic factors may be useful to better anticipate underlying juror attitudes and orientation towards either the defense or the plaintiff concerning damages. Among the demographics explored in this study, political party identification seems most promising. The fundamental basis to support this finding is the assertion that strong attitudes stem from belief systems that substantially influence individuals'

¹Responses to three of the five questionnaire items were analyzed to discern juror orientation. These items revealed attitudes on whether (1) states should establish limits on punitive damage awards, (2) states should establish limits on non-economic damages, and (3) unlimited damage awards are to blame for the high cost of insurance.

²Southern respondents were from AL, FL, GA, LA, MS, NC, OK, SC, TN and TX. Midwest respondents were from IL, MI, MN and MO. West Coast respondents were from CA, HI, OR and WA. Northeast respondents were from MA, NJ, NY, PA and RI. The only state in the sample from the non-coastal West was Colorado, so these regional comparisons did not include the region of the Rockies.

thinking and behavior. People who identify with a political party are likely to agree with the strong political beliefs held by that party. Therefore, political party identification may reveal the belief systems and fixed values that anchor, if not govern, various juror attitudes.³ Given this, it may be useful to study the defining characteristics of individuals who do not self-identify with either major party. For example, based on our findings, how does political party identification as “Independent” explain potential jurors’ tendency to have stronger pro-plaintiff attitudes toward tort reform?

Political party affiliation was most strongly associated with attitudes toward damage awards. This research also suggested potential for other demographic factors such as racial/ethnic identity and albeit less vigorously, geographic locale.

Although this research suggests otherwise, most demographic factors (e.g., race and geographic location) are generally unreliable in predicting juror attitudes.⁴ This perspective is particularly relevant to the sensitivity for racial discrimination in jury selection, given the potential for a Batson challenge. The discrepancy in findings on race may be clarified by increased knowledge of other associated factors, such as cultural background. If the court accepts removal for cause because a venire member’s belief system is biased in some

way, it may be worthwhile to understand biases inherent in belief systems of cultural backgrounds. Thus, the use of race, often based on one’s skin color, would be less superficial and more similar to the way political party affiliation is used. Consistent with this approach, recent efforts to understand the impact of a juror’s religious denomination indicate its significance in understanding a juror’s belief system.⁵

While the results of this initial ASTC research project are suggestive, the data collected should not in any way be viewed as predictive, projective or conclusive. Moreover, findings should not encourage the reliance on demographic information alone to determine juror orientation. The ASTC Research Committee and Society members are in the process of designing and implementing additional questionnaires intended to gather demographic and attitudinal information from jury-eligible participants in focus groups and mock juries.⁶ Look for reports of its findings in future issues of *The Jury Expert*.

[Study design: This Collaborative Research Project was a shared undertaking between the ASTC’s Research Committee and 12 of the Society’s firms conducted between February and May of 2004. The participating firms administered questionnaires that covered various areas relating to damage awards and tort reforms to jury-eligible participants during focus groups and mock juries. Participants were asked to rate their agreement (or disagreement) with five attitudinal statements about tort reform and damage awards. A total of 1,370 respondents participated across 24 states, thereby ensuring a broad nationwide pool of assorted demographic data including age, gender, race, education level, income and political affiliation. While the sample size and demographic

³Krosnick, J. A. (1991). The stability of political preferences: Comparisons of symbolic and nonsymbolic attitudes. *American Journal of Political Science*, 35, 3, 547-576. Nelson, T. E. & Garst, J. (2005). Values-based political messages and persuasion: Relationships among speaker, and evoked values. *Political Psychology*, 26, 4, 489-506.

⁴Saks, M.J. (2002). Trial outcomes and demographics: Easy assumptions versus hard evidence. *Texas Law Review*, 80, 1878-1887.

⁵Goode, B.P. (2003). Religion, politics, race, and ethnicity: The range and limits of voir dire. *Kentucky Law Journal*, 92, 601-702.

⁶If you have research suggestions, contact Gary R. Giewat, Ph.D., Douglas Green Associates, Inc., 195 Greenbriar Blvd, Suite 201, Covington, LA 70433-7234; (985) 867-3345 office; (985) 893-5701 fax; ggiewat@dgjury.com.

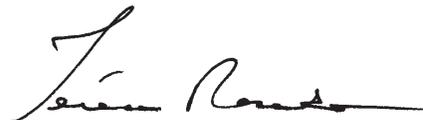
representation of the study are compelling, there are limitations to its quantitative significance. Many states were not included, and sample size fluctuated greatly across the 24 states that were included. Moreover, Asian and Hispanic participants were comparatively few in number. Therefore, these findings should be applied with cautionary attention to the given jury pool's demographic composition.]

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