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Are Today's Young People Really That Different from Previous Generations?

A Skeptical Perspective on "Generation Me"

by Kali H. Trzesniewski and M. Brent Donnellan

Commentators suggest that socio-cultural changes in recent decades, such as the rise of the culture of self-worth, declines in social connectedness, changes in parenting practices, and increases in perceptions of threat, have coalesced to create a relatively unique generation of young people (e.g., Bellah, Madsen, Sullivan, Swidler, & Tipton, 1985; Lasch, 1979; Putnam, 2000; Twenge, 2006). Many of these accounts portray recent generations in a negative light. For example, Americans born in the 1970s, 1980s, and 1990s have been grouped into a single cohort, and labeled "Generation Me" because they seem to have a heightened sense of egotism, increased self-esteem, and unrealistically high expectations for their future (Twenge, 2006). This generation is also alleged to exhibit elevated levels of misery and other symptoms of psychological distress (Twenge, 2006; but see Arnett, 2007). In 2008, *60 Minutes* ran a story about members of the so-called "Millennial" generation (individuals born between 1982 and 2002) in the workplace and proclaimed that a "new breed of American worker is about to attack everything you hold sacred" (Safer, 2008).

The program described Millennials as cynical, unaccustomed to hard work, and having fragile egos because their "... childhoods filled with trophies and adulation didn't prepare them for the cold realities of work" (Safer, 2008). All in all, there seems to be considerable concern over the apparently unique characteristics of today's young people.

However, concerns about generational decline are not new. Past concerns are most clear when examining the generational gaps of the 1960s and the 1920s. For example, a 1967 *Time Magazine* article about the "hippies" stated, "To their deeply worried parents throughout the country, they seem more like dangerously deluded dropouts, candidates for a very sound spanking and a cram course in civics—if only they would return home to receive either" (The Hippies, 1967). An unnamed businessman offered a similar perspective about the "flappers" of the 1920s in a 1926 issue of the *Dallas Morning News*: "The worst part is that they don't care what people – their mothers and fathers and uncles and aunts – think of them. They haven't any sense of shame, honor or duty...Daily doses of good, old-fashioned discipline is what restless youth need" (Richardson, 1926). The psychologist G. Stanley Hall wrote in 1904 that "Modern life is hard, and in many respects increasingly so, on youth. Home, school, church, fail to recognize its nature and needs and, perhaps most of all, its perils" (p. xiv). It wouldn't surprise us if we heard older individuals make any of the preceding remarks about the young people of 2009.



As social scientists we approach questions about generational change from an empirical perspective and with a healthy dose of skepticism. This skepticism is informed by our knowledge of the complexities of birth-cohort analyses as well as our conviction that scientific research should not be used to fuel unfounded stereotypes of young people (see also Arnett, 2007). Indeed, an appreciation for the long history of sentiment regarding generational decline suggests that recent pronouncements about generational excesses should be taken with a grain of salt. In this essay we describe our perspectives on the methodology of generational studies and reiterate some of our concerns with the "Generation Me" perspective of today's young people.

What Are Cohort Effects and How Should They Be Studied?

Social scientists who study generational changes are interested in the study of birth cohort effects. A birth cohort is simply a group of individuals who share similar birthdays and are therefore thought to have experienced a common set of developmental experiences. To date, there is no universal standard for defining birth cohorts and different authors lump and split birthdates into different cohorts in fairly idiosyncratic ways. Nonetheless, the basic idea of a birth cohort effect is that individuals born in the 1960s, for example, are somehow different than individuals born in the 1970s because they had different life experiences, experiences which exerted a relatively consistent effect across all members of the birth cohort (e.g., perhaps all people exposed to the Watergate hearings as young adolescents became particularly cynical).

Unfortunately, the study of cohort effects is exceedingly difficult. At first blush, the most difficult challenge is the need for historical data. If a researcher wants to know if adolescents in 2009 have higher self-esteem than adolescents did in 1959, then such a researcher needs data on the same self-esteem measure from both groups. This

hypothetical researcher would also ideally want to document that the properties of the measurement instrument have not changed over time such that the measure was more or less valid for making trait inferences in 1959 versus 2009.

One solution to this challenge of needing historical data to identify cohort effects is to use a method known as the cross-temporal meta-analysis (see Twenge, 2006). This approach takes advantage of the extensive questionnaire data about attitudes and personality traits that different researchers have collected over the last decades. The strategy is straightforward: Collect all of the studies that included a particular measure on an age-restricted sample (e.g., college students, adolescents) and compute the association between the year of data collection and average scores on that measure. If average scores from college students on a given measure have changed from say the 1950s to the 2000s, then researchers might infer that there has been a cohort-related change in that attribute. A fundamental question is whether such an inference is valid.

We have argued that such inferences are usually not valid (e.g., Trzesniewski, 2008a). Simply put, we believe that researchers need data that are suitable for making population-based inferences and the data used in most relevant cross-temporal meta-analyses are not appropriate (see Costello, Erkanli, & Angold, 2006 for an appropriate use of the cross-temporal meta-analytic method for making population inferences). To be sure, researchers interested in generational changes are interested in generalizing to a very broad class of people (e.g., all Americans born within a certain time frame). This means that data used for generational analyses should be collected using a scientific sampling plan, a plan which permits valid inferences from a sample to a defined population of interest (e.g., all young people born from 1972 to 1980). This principle is taught in virtually all methods courses in the social sciences. As noted by Pedhazur and Schmelkin (1991), "... the incontrovertible fact is that, in nonprobability sampling, it is not possible to estimate sampling errors. Therefore, validity of inferences to a population cannot be ascertained" (p. 321). This concern with valid population-based inferences is the reason that there are professional pollsters and companies that specialize in assessing public opinion. A good resource for understanding some of the more technical issues behind scientific polling is available in a report entitled "20 Questions a Journalist Should Ask about Poll Results" produced by the National Council on Public Polls (<http://www.ncpp.org/?q=node/4>).

In short, our objection is not with the cross-temporal meta-analytic method per se, but rather our objection is that the method is usually applied to studies that are inappropriate for population-based inferences. The reality is that the college student samples that are incorporated into many of these cross-temporal meta-analytic studies were not generated using probability-based sampling methods. They are convenience samples, and as noted by Schwarz, Groves, and Schuman (1998), "[s]uch samples, be they college students who voluntarily sign up for a study or readers who respond to a questionnaire printed in a magazine, do not allow inferences to any population because their representativeness is unknown" (p. 145). In other words, the studies analyzed in the typical cross-temporal meta-analysis are not appropriate for making inferences to a defined population, such as all young people of a particular generation. Aggregating the data cannot solve this inferential dilemma.

We should also point out that college students from conventional 4-year institutions, the primary participants in most psychological research, are a fairly select group of young people. They represent approximately 20% of all American youth aged 18 to 24 (U.S. Census Bureau, 2005a, Table 9; U.S. Census Bureau, 2005b, Table 2). Thus, even if these college student samples were designed to make inferences to that population of Americans (and remember they are not), it would still leave a clear majority of 18 to 24 years olds unrepresented in the samples analyzed by researchers using college student samples.

Given our perspective on valid population inferences, we have been relatively critical of the evidentiary basis for many of the "Generation Me" effects Twenge and her colleagues identify in their work. Twenge has responded that "it is odd they [Trzesniewski, Donnellan, and our colleague, Richard Robins] would argue for the analysis of only

randomly sampled, nationally stratified data. Very little such data exists” (Twenge, 2008, p. 1450). Here we are reminded of the valuable insights of the statistician John Tukey: “The data may not contain the answer. The combination of some data and an aching desire for an answer does not ensure that a reasonable answer can be extracted from a given body of data” (p. 74 - 75).

Importantly, there are actually existing resources that can be used to study cohort effects in a way that is valid for making population-based inferences. One such resource is the Monitoring the Future (MTF) project, an ongoing, nationally representative study of high school seniors that began in the mid 1970s (see Bachman, Johnston, & O’Malley, 1996; Johnston, O’Malley, Schulenberg, & Bachman, 1998 for a more detailed description). Across the 30 years of the study, over 450,000 high school seniors have participated in this project. Schools and participants are selected using carefully designed sampling techniques to provide a final sample each year that is generally representative of the population of high school seniors living in the 48 coterminous states who agreed to participate. Over 95% of schools



approached agreed to participate and over 80% of students within those schools participated. Of those who did not participate, the most common reason was being absent from school. Although the study is voluntary (as are all survey studies conducted by ethical social scientists), only a very small portion of the students actively refused to participate (1%). Accordingly it is reasonable to assume the final sample of participants represents U.S. high school students quite well. Data were collected following standardized procedures via closed-ended questionnaires administered in classrooms by University of Michigan representatives and their assistants. This study is close to ideal for testing cohort effects because a large, representative sample of individuals of the same age have been asked the same questions for 30 years, and a full set of raw data from 1976 to 2006 is readily available in electronic format for interested researchers.

What Can Be Learned from The Monitoring the Future Survey (1976-2006)?

We conducted an analysis of change in 31 constructs that were measured in the MTF to try to address many of the “Generation Me” claims made by Twenge and her colleagues. We quantified generational changes by simply correlating year of administration with observed scores. Overall, we found little support for generational differences, finding typically small correlations, if any, between year and levels of each construct. In fact, we found no meaningful change in 22 constructs (Trzesniewski & Donnellan, in press). In particular, we found correlations that were close to zero (defined here as any correlation smaller than $|.10|$; Cohen, 1988) for the constructs summarized in Table 1.

Only nine effects were substantial enough to be considered a small effect (i.e., a correlation somewhere between $|.10|$ and $|.30|$), and none were large enough to be considered a large effect (i.e., a correlation above $|.50|$). Most notably, members of more recent cohorts expressed fewer worries and concerns about social issues ($r = -.23$), they were less trusting of others ($r = -.12$), and were more cynical of institutions (e.g., $r = .11$). Members of more recent cohorts expressed less interest in keeping up with materialistic trends ($r = -.14$); however, at the same time they were more tolerant of blatant consumerism and the marketing of unnecessary material goods ($r = .17$). In line, with “Generation

Me” ideas, members of more recent cohorts tended to have higher expectations for their future (e.g., $r = .23$ for expecting to graduate college) and they seemed less convinced that working hard will lead to desired jobs ($r = .11$).

Table 1: Constructs Not Showing Generational Change (i.e., r with year of data collection less than $|.10|$)

Egotism	Self-Enhancement
Individualism	Self-Esteem
Locus of Control	Hopelessness
Happiness	Life Satisfaction
Loneliness	Antisocial Behavior
Time Spent Working	Political Activity
Time Spent Watching Television	The Importance of Social Status
The Importance of Religion	

Our primary conclusion from these analyses was that the bulk of the results pointed to generational consistency rather than generational differences. In fact, the direction of some correlations ran counter to the “Generation Me” profile. For example, the correlation for self-esteem ($r = -.02$) was actually negative in sign (i.e., if anything, more recent cohorts had lower scores than older cohorts), whereas the correlations for happiness ($r = .02$) and life satisfaction ($r = .02$) were positive in sign (i.e., if anything, more recent cohorts had higher scores on these variables than older cohorts, counter to a prediction of increased misery). However, given how extremely close these effects are to zero, we did not consider these constructs as showing any meaningful change over time.

All in all, we found little reason to conclude that the average member of “Generation Me” is dramatically different from members of previous generations. Today’s youth seem to have the same self-esteem scores as previous generations and they appear to be just as happy and satisfied as previous generations. In fact, based on the variables we examined, today’s youth seem to have psychological profiles that are generally similar to youth from the past 30 years. The potential qualifications to this generalization are that we found that more recent generations have higher expectations for their educational careers and they are a bit more cynical and distrusting than previous generations (although these trends seem to predate “Generation Me”; see Robinson & Jackson, 2001). Nonetheless, using the Monitoring the Future datasets, we found little evidence to support the conclusion that the youth of 2006 were considerably different from the youth of the late 1970s.

What About Narcissism?

There has been considerable attention to whether today’s youth are more narcissistic than previous generations. Indeed, Twenge and her colleagues have recently raised concerns about an emerging “epidemic” of narcissism (e.g., Twenge & Foster, 2008). One limitation of our MTF analyses is that there was no direct measure of narcissism. Narcissism is a complex construct and it is important to understand what it is and how it is typically assessed before getting into issues of generational changes. Narcissism has a long history in psychoanalytic writings as it was perhaps first discussed Havelock Ellis (1898) who wrote of a “Narcissus-like tendency” for sexual urges to be directed toward the self in the form of autoeroticism. That said, it is difficult to precisely define narcissism as it is understood by

contemporary psychologists because researchers in psychiatry, clinical psychology, and personality/social psychology do not always agree about the best ways to conceptualize this construct (e.g., Cain, Pincus, & Ansell, 2008).



The vast majority of social and personality psychology research uses a measure called the Narcissistic Personality Inventory (NPI; Raskin & Terry, 1988) to study narcissism. Cain et al. (2008) estimate that over 75% of social/personality research on narcissism since the mid-1980s has used this measure. In many ways, the NPI's content has come to define the construct of narcissism for social and personality researchers. However, Cain et al. (2008) also note that the “content of the NPI total score may reflect a confusing mix of adaptive and maladaptive content” (p. 643). Likewise, Emmons (1987) noted that “Narcissism [as assessed by the NPI], rather than being a unidimensional construct, consists of four moderately correlated factors tapping the domains of leadership, self-admiration, superiority, and interpersonal exploitiveness [sic].” (p. 15). There is debate over the underlying structure of the measure and different groups argue that there are two, three, four, or seven reasonably separable constructs embedded within the NPI. The reality is that the NPI total score seems to capture some amalgam of confidence, leadership, and social potency along with more socially harmful elements of personality such as a sense of entitlement and a willingness to exploit others. This fact makes it

difficult to give a clear and unambiguous interpretation of what is represented by a relatively high score on this measure, as it might reflect heightened levels of socially toxic traits (e.g., entitlement), somewhat obnoxious traits (e.g., vanity), socially adaptive traits (e.g., leadership), or some indeterminate mixture of these components.

Despite concern about interpretation of the total NPI score, this measure has been used to examine whether narcissism is increasing in today's youth (e.g., Trzesniewski et al., 2008b; Twenge et al., 2008). Here we should emphasize that none of the results from these studies should be used to generalize to all American young people because none were collected with scientific sampling plans. At most, these studies should spark curiosity and fuel debate about an important topic. The earliest NPI data point is from Raskin and Terry (1988) who collected data from students at U.C. Santa Cruz and U.C. Berkeley from 1979 to 1985. The average response at that time was to endorse 39% of the items in a narcissistic fashion. We reported that the average score for a large sample of University of California at Davis undergraduates was about 38% in 2006 (Trzesniewski et al., 2008b). This figure was quite similar to the mean reported by Raskin and Terry (1988) and thus we were not terribly impressed by the evidence for secular changes at U.C. schools from Northern California, the epicenter of the self-esteem movement. That said, we also issued this caveat about our own work: “...consistent with our sampling concerns, these results should be interpreted cautiously because they are based on convenience samples” (Trzesniewski et al., 2008a, p. 910). Twenge et al. (2008) estimated that the average NPI score in 2006 was 43% versus 38% in 1982. The absolute difference between these estimates amounts to around 2 items on the NPI. In all, the recent discussion about an “epidemic” of narcissism boils down to a small number of items and a fairly small range of average scores (38% to 43%) on a measure that can be controversial to interpret. Viewed from such a perspective, it is not clear that any of these NPI findings should be used to make the case that there is an emerging epidemic of narcissism.

Furthermore, the actual meta-analytic results in Twenge et al. (2008) paint a more nuanced picture of secular increases in narcissism than is often portrayed in summaries and media accounts. Simply put, increases may be due to increased confidence or self-sufficiency in young women attending college today. Twenge et al. (2008) reported that the trend for increasing narcissism was apparently more pronounced for women than men. The trend for an increase in men was not even statistically detectable based on their sub-analysis of the 44 studies that had information reported by gender (out of 85 total studies). This gender effect may have profound implications for how the purported secular

change in narcissism is best interpreted, especially in light of the perspective that the NPI measures multiple traits, including things like leadership, social potency, and confidence. The Twenge et al. analysis might simply indicate that today's generation of women who attend college are more confident and assertive than previous generations of women who attended college. This seems to be an equally plausible but far less nefarious interpretation for any observed changes in the NPI (e.g., as an indicator of an epidemic). In short, we are very reluctant to conclude that any observed changes in the NPI are an indicator an epidemic of pathological traits.

Finally, we should add that full blown Narcissistic Personality Disorder (NPD) or the personality disorder that is diagnosed by clinicians and psychiatrists is very rare (Lenzenweger, Loranger, Korfine, & Neff, 1997; Torgersen, 2005; see Cain et al., 2008; p. 648 for a review). In fact, NPD appears to be one of the least commonly observed "official" personality disorders (Torgersen, 2005). These considerations have made us very skeptical of the idea that there is good evidence for an epidemic of narcissism. To be clear, we are not saying that the claim has been definitely falsified rather we are saying that there are reasons to be skeptical of such a claim.

Summing Up

Questions about generational differences are inherently difficult to address and this is bound to create discussion, dissent, and even outright controversy. As it stands, we believe that the best evidence thus far points to consistency over the past 30 years, whereas Twenge and her colleagues believe the evidence points to widespread generational changes. We imagine that readers might be puzzled by the seemingly inconsistent portraits of today's youth described in this increasingly contentious debate. Moreover, to many non-social scientists it might seem painfully obvious that today's young people are ruder, cruder, and more self-important than previous generations, based on their own observations and experiences.

In response to any of these anecdotal impressions of youth we point to the considerable amount of psychological research suggesting that great care should be exercised when forming generalizations about entire groups of people (e.g., all individuals born in a particular decade) based on limited perceptions that might be unduly influenced by extremely memorable exemplars. Consider how easy it is to think of a particular young person who is arrogant, egotistical, miserable, extremely lazy, or any of the other less flattering adjectives used in reference to that segment of the population. This ease may simply reflect an availability bias, reflecting the fact that more "memorable individuals" stick out in our memories (Tversky & Kahneman, 1974). It is also the case that once a stereotyped generalization is established, a confirmation bias may set in whereby individuals selectively attend and recall pieces of information that are consistent with that generalization. It appears that individuals are less likely to pay attention and remember pieces of information that are inconsistent with their preconceptions. Thus, there may be psychological reasons for the impressions held by adults about kids "these days" that have little to do with actual generational differences (for a review of social cognitive mechanisms involved in stereotype formation and maintenance see Hamilton & Sherman, 1994).

We are also convinced that there is reasonably good evidence for normative personality development with age (see e.g., Caspi, Roberts, & Shiner, 2005) such that individuals, on average, appear to become more conscientious, more emotionally stable, and more agreeable as they age. It might simply be that older adults in 2009 overlook the personality changes that they themselves experienced as they matured from young people into full-fledged adults with the "typical" responsibilities of adulthood such as earning a living, participating in a committed romantic partnership, and taking care of children. Thus, the somewhat negative impressions of the characteristics of today's young people might just reflect contrasts between the personalities and preoccupations of those in their 40s and 50s as compared with the personalities and preoccupations of those in their late teens and early 20s.

The more difficult question then remains – is there any way to reconcile our position with that of Twenge and her colleagues? Overall, we believe that the differences in our respective positions boil down to two main issues: (1) differences in the willingness to generalize to entire populations of young people from convenience samples that were not collected using scientific sampling methods and; (2) differences in the interpretation of effect sizes associated with available generational trends. The first issue seems to us to be fairly cut-and-dry as we believe that relatively few social scientists would disagree with our position that inferences from convenience samples are more like “faith-based” appeals rather than scientifically valid inferences.



The second issue regarding effect sizes is more of a matter of style and preference as the interpretation of trends requires the application of subjective judgment. For example, let's assume that the rise in narcissism truly amounts to an increase of two scale points on the NPI from 1982 to 2006 (the estimate from the Twenge et al. meta-analysis). Is a change of two scale points practically or theoretically important and noteworthy? Different researchers will attach different degrees of significance to a change of two scale points on a self-report measure that is based on an arbitrary metric (see Blanton & Jaccard, 2006). We admit that we are unsure as to the real-world meaning of such a change and we

strongly question whether a two scale point increase has any bearing on who should be selected for a jury trial. We submit that no one knows when a change of a few scale points on the NPI becomes problematic or whether two scale points on this kind of measure should provide an impetus for societal concern. The bottom line is that we are uncertain as to what kind of applied significance should be attached to any apparent changes on the NPI.

In light of these issues, we argue that a conservative approach to generational change is warranted given the quality of the existing evidence and the real possibility that negative stereotypes of today's young people might be reinforced by potentially flawed studies (Arnett, 2007). To be frank, we are concerned that the findings reported by Twenge and her colleagues may help justify negative impressions of youth given that apparently long-held stereotypes (see the opening paragraph) are now somehow “validated” by scientific research. At this point, we are simply not convinced that the evidence warrants any strong conclusions about generational changes that have applied significance. In line with our conservative approach, the editors of a special issue of the *Journal of Managerial Psychology* summarized the literature with respect to the evidence and implications of generational differences at work: “many of the empirical findings are less strong and consistent than popular sentiment suggests. Indeed, there may be more variation among members within a generation than there is between generations” (Macky, Gardner, Forsyth, 2008, p. 860). At this point, we strongly concur.

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References

- Arnett, J. J. (2007). Suffering, selfish, slackers? Myths and reality about emerging adults. *Journal of Youth and Adolescence*, 36, 23-29.
- Bachman, J. G., Johnston, L. D., & O'Malley, P. M. (1996). *The Monitoring the Future project after twenty-two years: Design and procedures*. (Monitoring the Future Occasional Paper No. 38). Ann Arbor, Michigan: Institute for Social Research, The University of Michigan.
- Bellah, R.N., Madsen, R., Sullivan, W.M., Swidler, A., & Tipton, S.M. (1985). *Habits of the heart: Individualism and commitment in American life*. Berkeley: University of California Press.
- Blanton, H., & Jaccard, J. (2006). Arbitrary metrics in psychology. *American Psychologist*, 61, 27-41.
- Cain, N. M., Pincus, A. L., & Ansell, E. B. (2007). Narcissism at the crossroads: Phenotypic description of pathological narcissism across clinical theory, social/personality psychology, and psychiatric diagnosis. *Clinical Psychology Review*, 28, 638-656.
- Caspi, A., Roberts, B. W., & Shiner, R. L. (2005). Personality development: Stability and change. *Annual Review of Psychology*, 56, 453-484.
- Cohen, J. (1988). *Statistical power analysis for the behavioral sciences* (2nd ed.). Hillsdale, NJ: Erlbaum.
- Costello, E. J., Erkanli, A., & Angold, A. (2006). Is there an epidemic of child or adolescent depression? *Journal of Child Psychology & Psychiatry*, 47, 1263-1271.
- Ellis, H. (1898). Auto-eroticism: A psychological study. *Alienist and Neurologist*, 19, 260-299.
- Emmons, R. A. (1987). Narcissism: Theory and measurement. *Journal of Personality and Social Psychology*, 52, 11-17.
- Hall, G. S. (1904). *Adolescence: Its psychology and its relation to physiology, anthropology, sociology, sex, crime, religion, and education* (Vol. 1). New York: Appelton.
- Hamilton, D. L., & Sherman, J. W. (1994). Stereotypes. In T. K. Srull & R. S. Wyer (Eds.), *Handbook of Social Cognition* (2nd ed., Vol. 2, pp. 1-68). Hillsdale, NJ: Erlbaum.
- Johnston, L. D., O'Malley, P. M., Schulenberg, J. E., & Bachman, J. G. (1998). *The aims and objectives of the Monitoring the Future study and progress toward fulfilling them*. (2nd ed.) (Monitoring the Future Occasional Paper No. 34). Ann Arbor, Michigan: Institute for Social Research, The University of Michigan.
- Lasch, C. (1979). *The culture of narcissism: American life in an age of diminishing expectations*. New York: Norton.

- Lenzenweger, M. F., Loranger, A. W., Korfine, L., & Neff, C. (1997). Detecting personality disorders in a nonclinical population: Application of a 2-stage procedure for case identification. *Archives of General Psychiatry, 54*, 345-351.
- Macky, K., Gardner, D., & Forsyth, S. (2008). Generational differences at work: Introduction and overview. *Journal of Managerial Psychology, 23*, 857-861.
- Pedhazur, E. J., & Schmelkin, L. P. (1991). *Measurement, design, and analysis: An integrated approach*. Hillsdale, New Jersey: Lawrence Erlbaum.
- Putnam, R.D. (2000). *Bowling alone: The collapse and revival of American community*. New York: Simon & Schuster.
- Raskin, R., & Terry, H. (1988). A principal-components analysis of the Narcissistic Personality Inventory. *Journal of Personality and Social Psychology, 54*, 890-902.
- Richardson, V. (1926, July 11). What about this flapper generation. *Dallas Morning News, Section VII*, 5-6. Retrieved April 10, 2009, from <http://freepages.history.rootsweb.ancestry.com/~jwheat/flappers.html>.
- Robinson, R. V., & Jackson, E. F. (2001). Is trust in others declining in America? An age-period-cohort analysis. *Social Science Research, 30*, 117-145.
- Safer, M. (2008, May 23). The “Millennials” are coming. *60 Minutes*. Retrieved June 29, 2008 from <http://www.cbsnews.com/stories/2007/11/08/60minutes/main3475200.shtml>.
- Schwarz, N., Groves, R. M., & Schuman, H. (1998). Survey Methods. In D. T. Gilbert, S. T. Fiske, & G. Lindzey (Eds.). *Handbook of Social Psychology Vol 1* (4th Ed). (pp. 143-179). New York: McGraw-Hill.
- The Hippies (1967, July 07). *Time, 90* [CANNOT FIND ORIGINAL PAGE NUMBERS]. Retrieved April 10, 2009, from <http://www.time.com/time/magazine/article/0,9171,899555,00.html>.
- Torgersen, S. (2005). Epidemiology. In J. M. Oldham, A. E. Skodol, & D. S. Bender (Eds.), *Textbook of personality disorders* (pp. 129-141). Washington, DC: American Psychiatric Publishing, Inc.
- Tukey, J. W. (1986). Sunset salvo. *The American Statistician, 40*, 72-76.
- Tversky, A., & Kahneman, D. (1974). Judgment under uncertainty: Heuristics and biases. *Science, 185*, 1124-1131.
- Trzesniewski, K. H., & Donnellan, M. B. (in press). Rethinking “Generation Me”: A study of cohort effects from 1976-2006. *Perspectives in Psychological Science*.
- Trzesniewski, K. H., Donnellan, M. B., & Robins, R. W. (2008a). Is “Generation Me” really more narcissistic than previous generations? *Journal of Personality, 76*, 903-917.
- Trzesniewski, K. H., Donnellan, M. B., & Robins, R. W. (2008b). Do today's young people really think they are so extraordinary? An examination of secular changes in narcissism and self-enhancement. *Psychological Science, 19*, 181-188.

- Twenge, J. M. (2006). *Generation Me: Why today's young Americans are more confident, assertive, entitled – and more miserable than ever before*. New York: Free Press.
- Twenge, J.M. (2008). Generation Me, the origins of birth cohort differences in personality traits, and cross-temporal meta-analysis. *Social and Personality Psychology Compass*, 2/3, 1440–1454.
- Twenge, J. M., & Foster, J. D. (2008). Mapping the scale of the narcissism epidemic: Increases in narcissism 2002-2007 within ethnic groups. *Journal of Research in Personality*, 42, 1619–1622.
- Twenge, J. M., Konrath, S., Foster, J. D., Campbell, W. K., Bushman, B. J. (2008). Egos inflating over time: a cross-temporal meta-analysis of the Narcissistic Personality Inventory. *Journal of Personality*, 76, 875-902.
- U.S Census Bureau. (2005a). *School enrollment*. Retrieved August 26, 2007, from <http://www.census.gov/population/www/socdemo/school/cps2005.html>, Table 9.
- U.S Census Bureau. (2005b). *Source of the data and accuracy of the estimates for the October 2005 CPS Microdata File on School Enrollment*. Retrieved August 26, 2007, from <http://www.census.gov/population/www/socdemo/school/2005SchoolS&A.pdf>, Table 2.

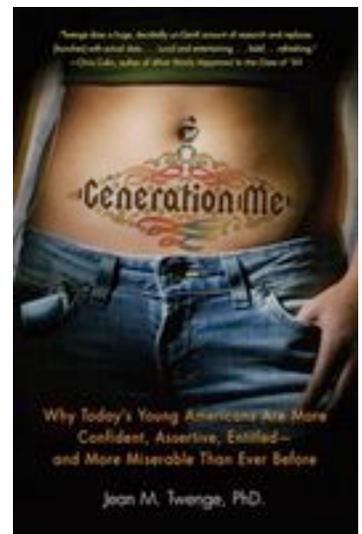
Generation Me in the Jury Box

by Jean Twenge and W. Keith Campbell

A group of strangers sits in front of you in the courtroom. Who are these people? What are their individual experiences? How will those experiences influence their decisions in your case? Some might start to answer these questions by putting jurors into categories – how many are male, how many are female, how many of each race or ethnicity. Most would also notice age, and would wonder how that will affect jurors' perceptions. But age is actually two variables – age itself, or how experiencing more years of life affects one's perspective – and generation, or how one's attitudes and personality have been shaped by the culture of the times.

Until recently, much of the material on generational differences was based on conjecture. Authors such as William Strauss and Neil Howe (*Generations, Millennials Rising*) argued that generations came in cycles of four (for example, they predicted that those born after 1982 would resemble the “Greatest Generation” who fought WWII and would thus be civically-oriented rule followers). However, outside of some broad behavioral data from the U.S. Census, they had no real data to support their theories – nothing that would confirm or disconfirm the psychological differences captured in their ideas.

I have spent my research career trying to change that, conducting almost 20 studies that explore how generations differ from each other psychologically. Initially, I had no agenda and was a fan of Strauss and Howe's books. In the end, however, much of what my research uncovered was inconsistent with Strauss and Howe's theories. At least in terms of psychological differences, generations do not occur in cycles; instead, the changes are primarily linear, with each generation taking the previous generations' traits to the next level. There is no sudden shift in personality for someone born before or after 1982 (Strauss and Howe's cutoff for what they



call the “Millennial” generation). Thus generational labels such as Boomers, Xers, and GenY are of limited use. What’s more important is the number of birth years separating two people – e.g, 20 years or 40 years. Although I occasionally use generational labels (such as Generation Me or GenMe to describe today’s young people), I primarily rely on labels such as “older” and “younger” generations; those in the middle in terms of age (today, the GenXers in their 30s and 40s) will typically fall in the middle in terms of traits and attitudes.

The Data Don't Disagree: Younger Jurors Are Likely To Be More Narcissistic

There is another major difference between my findings and Strauss and Howe’s theories: the most consistent finding across all of my studies was an increase in individualistic traits. Many other authors (e.g., David Myers in *The American Paradox*, Francis Fukuyama in *The Great Disruption*) have documented the shift toward more individualistic behaviors and attitudes, and the trend appears in psychological data as well. I’ve found that younger generations score significantly higher in individualistic traits such as assertiveness, agency (including acting as a leader and being dominant), self-esteem, and even extremes of individualism such as narcissism (Twenge, 1997, 2001; Twenge & Campbell, 2001; Twenge et al., 2008). This, of course, contradicted Howe and Strauss’ idea that those born after 1982 would be concerned more with society than with themselves.

The finding regarding narcissism resulted in a research paper that purported to show different effects (Trzesniewski et al., 2008). However, it is somewhat strange that these allegedly opposing findings have been framed as a “debate,” mostly because our datasets and theirs actually show very similar results. Our study of narcissistic traits, drawn from the responses of college students across the country, showed an increase in narcissistic traits between 1982 and 2006 using 85 samples, with the change especially strong since 2000. Trzesniewski and colleagues’ (2008) data from UC Davis also show an increase in narcissism between 2002 and 2007, with the year-by-year rate of change the same or even larger than the increase in our analysis (Twenge & Foster, 2008). Thus both datasets show an increase in narcissism during the most recent decade.

The only place we differ is in what happened before 2002, and the divergence stems from a substantial difference in the data used in each evaluation. Their analysis includes just two datapoints prior to 2002 (one from 1982 and one from 1996). Our analysis includes 58 datapoints collected between 1982 and 2001 that also include their two. In addition, these two datapoints are from a different campus (UC Berkeley) than their later data (from UC Davis). Thus it is very possible that differences by campus are causing or contributing to the variation – with time and campus perfectly confounded, drawing conclusions is difficult. After 2002, when the data are all from one campus, they show the same rise in narcissism we found. In short, everyone agrees narcissism has been rising the last five years.

A completely independent study has also found evidence for a generational difference in narcissism. A group sponsored by the National Institutes of Health interviewed a nationally representative sample of almost 35,000 Americans in 2005 and asked them if they had ever experienced certain symptoms; they then determined if these symptoms met the criteria for Narcissistic Personality Disorder (NPD, the clinical form of the trait). Because the researchers asked about lifetime experience, one would expect that older people, who have lived many more years, would be more likely to have experienced the disorder. However, the data showed the opposite: Only 3% of people over age 60 had experienced NPD, compared to 9% of people in their twenties – even though a 25-year-old has had only 7 years to experience the disorder (which cannot be diagnosed until one is 18), compared to 40 years for someone who is 65 (Stinson et al., 2008). Even if older people failed to recall some earlier instances of symptoms, this suggests a strong generational increase in narcissism.

There is also cultural evidence supporting the conclusion: Plastic surgery and procedures have increased fivefold in just 10 years; even invasive surgeries like breast augmentations quadrupled between 1997 and 2007 (American Society for Aesthetic Plastic Surgery, 2008). The square footage of U.S. homes nearly doubled in 30 years (National Association of Homebuilders, 2006), and levels of debt rose from 16% of disposable income in 1978 to 19% in 2007 (United States Federal Reserve, 2008). The circulation of celebrity gossip magazines has surged even as other types of magazines have faltered. High school students are markedly overconfident about their future educational and career prospects (Reynolds et al., 2006). Other changes are less quantifiable but more stunning: In 2006, it became possible to hire fake paparazzi to follow you around when you go out at night. Most packages include a copy of one of the shots on a fake celebrity magazine cover. These changes are so large and pervasive that they suggest the change in individual-level narcissism is a pale reflection of the much bigger sea change in the culture. (Twenge & Campbell, 2009; we discuss these changes at length in *The Narcissism Epidemic*, also addressing where they came from).

There Are Meaningful Generational Differences

Trzesniewski and Donnellan (in press) also present a critique based on their analysis of data from a nationwide sample of high school students called Monitoring the Future. This paper concludes that there are few generational differences. However, the data show many statistically significant generational differences, most of which are consistent with my findings. Since the 1970s, high school students have become more likely to agree that “people should do their own thing,” that having lots of money is important, and that it’s okay to buy things you don’t need. There are also small increases in self-satisfaction and believing one is more intelligent than peers. Consistent with a cultural boosting of self-feelings, GenMe students are twice as likely to report earning an “A” average even though fewer do many hours of homework (Twenge, in press). More recent generations are also more likely to anticipate that they will be “very good” at important adult roles such as spouse, parent, and worker (Twenge & Campbell, 2008). As before, this is not a “debate” with competing data, as both datasets show similar results.



However, not all of the results are consistent with our data. For example, Monitoring the Future does not show an overall increase in self-esteem, as our data does across middle school, high school, and college samples. It does show a small increase in self-liking, however (Twenge & Campbell, 2008). In science as in law, the best approach is to rely on the preponderance of the evidence, and most of the evidence, from most sources, shows an increase in positive self-feelings over the generations.

There are other meaningful generational differences as well. Other data showed increases in anxiety and poor mental health, perhaps the price of focusing on the self rather than relationships (Twenge, 2000). Younger generations have a more external locus of control, meaning they are more likely to believe that their fate (and that of the country and world) is determined by luck and powerful others rather than their own actions (Twenge et al., 2004). The upside of individualism is evident as well: Less prejudice, more tolerance, and more opportunities regardless of

a person's background (Twenge, 2006). Younger generations take it more or less for granted that women and minorities will participate fully in society and in the workforce.

Generational Differences Are Clearly Relevant

Trzesniewski and Donnellan (in press) also argue that generational changes are too small to be relevant. However, many generational changes are in fact quite large. For example, 82% of 1990s college students scored higher on anxiety than the average college student in the 1950s (Twenge, 2000); 65% of college students in 2006 scored higher in narcissism than the average 1982 student (Twenge et al., 2008).

Yet even the smaller generational differences are worth noting. Whether a given difference is large enough to matter is an extremely subjective judgment. The effect of secondhand smoke on lung cancer, which has spawned restrictive laws across the country, is less than one-fourth the size of the change in narcissism over 24 years in the nationwide data. It is less than a tenth of the size of the change in anxiety over 50 years. It is half the size of the change in agreeing it is good to "do your own thing," which the other authors considered too small to deign to discuss in their paper. It is also smaller than the increase in thinking one is more intelligent than one's peers, which the other authors also dismissed as negligible.

There are several reasons to take relatively small effects seriously. First, small changes at the average multiply into larger ones at the extremes. In a bell curve, a small shift at the middle pushes the tail of the distribution higher so that two or three times as many people now fall into the extreme category. Narcissism is a good illustration – the small to moderate change at the average translates into three times as many people in their twenties having experience with NPD as compared to people in their sixties. So if one generation scores higher in assertiveness on average, there will certainly be those who fit this generalization and those who are notable exceptions. An average change does not mean that everyone fits the profile. But there will be two or three times as many who are highly assertive in the younger generation compared to the older one.

Many generational differences are the same size (or in many cases larger) than gender differences. Yet few would question the wisdom of paying attention to the gender composition of a jury. Gender is also an illustration of small average changes multiplying into larger ones at the extreme: On average, the gender difference in aggression is just a little larger than the change over time in narcissism in 24 years. Yet our courtrooms and prisons are filled with many, many more men than women who have committed violent crimes.

Trzesniewski & Donnellan (in press) have also argued that we believe there are generational differences because older people's perceptions have changed over time. However, all of the data presented in this article – and by Trzesniewski and Donnellan themselves -- come from reports from young people themselves. Thus this explanation does not fit the data. In fact, a recent Harris poll suggests that members of the younger generations actually have more negative views of their generation than those in older generations do (Harper, 2008).

It is also very important to note that these changes are not just generational: They are cultural (this is covered in more depth in our book, *The Narcissism Epidemic*). As authors like Myers and Fukuyama pointed out, Western cultures shifted decisively away from duty and social rules throughout the 1960s, 1970s, and into the 1980s and beyond, actively promoting the notion that the individual should come first. As I document in *Generation Me* (Twenge, 2006), parents began to tell children they could be anything they wanted to be. Popular songs declared that loving yourself was the greatest love of all. Schools began programs to raise children's self-esteem. Pop psychology taught that you have to love yourself first before you can love someone else. When a culture changes, the younger members experience and reflect the changes most strongly; however, the young do not raise themselves.

Generational Differences Are Important To Your Trial Practice

In practical terms, what do these generational differences mean for the pool of potential jurors sitting in front of you? Younger jurors are more likely to be blind to differences in gender, race, and sexual orientation. A case of gay domestic violence, for example, would not faze many of them, whereas many older jurors would be confused or disturbed by such a case. Due to their more external locus of control, younger jurors will be more willing to believe arguments that defendants acted due to outside circumstances (e.g., childhood abuse, coming from a disadvantaged background). The older the juror, the more likely he or she respects authority and the rules of society. They may be more willing to automatically believe the testimony of law enforcement. In addition, the older generation is more likely to do what they are told. In contrast, younger generations need to be told *why* they are doing something. Younger generations may feel more entitled to perks and time off. Especially among those high in narcissistic traits (especially among the 9% with experience with NPD), younger jurors may feel less empathy for people (whether victims or perpetrators). A more engaging style may be necessary to engage younger jurors, who are used to multimedia and multitasking; many schools, for example, have abandoned the straight lecture because it puts this generation to sleep.

Overall, there are meaningful and important generational differences in personality traits and attitudes. Many other factors, such as gender, race, and class, will also influence jurors' viewpoints, but generation should certainly be considered. We might ask, "Why *not* consider generation?" Even if a generational effect is small, it could mean the difference between a favorable trial result and an unfavorable verdict for your client.

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References

American Society for Aesthetic Plastic Surgery (2008). Cosmetic Surgery National Data Bank Statistics, 1997-2007. <http://www.surgery.org/press/statistics-2007.php> (viewed online 9/18/08).

Fukuyama, F. (1999). *The great disruption: Human nature and the reconstitution of social order*. New York: Free Press.

- Harper, J. (2008). Boomer narcissism, ageism debunked: Poll exposes generation myths. *Washington Times*, August 26, 2008.
- Howe, N., & Strauss, W. (2000). *Generations*. New York: Harper Perennial.
- Howe, N., & Strauss, W. (2000). *Millennials Rising*. New York: Vintage.
- Myers, D. G. (2000). *The American Paradox: Spiritual hunger in an age of plenty*. New Haven: Yale University Press.
- National Association of Homebuilders (2006). Housing facts, figures, and trends. <http://www.soflo.org/report/NAHBhousingfactsMarch2006.pdf> (viewed online 6/8/2008).
- Reynolds, J., Stewart, M., MacDonald, R., & Sischo, L. (2006). Have adolescents become too ambitious? High school seniors' educational and occupational plans, 1976 to 2000. *Social Problems*, 53, 186-206.
- Stinson, F. S., Dawson, D. A., Goldstein, R. B., Chou, S. P., Huang, B., Smith, S. M., Ruan, W. J., Pulay, A. J., Saha, T. D., Pickering, R. P., & Grant, B. F. (2008). Prevalence, correlates, disability, and comorbidity of DSM-IV Narcissistic Personality Disorder: Results from the Wave 2 National Epidemiologic Survey on Alcohol and Related Conditions. *Journal of Clinical Psychiatry*, 69, 1033-1045.
- Trzesniewski, K. H., Donnellan, M. B. (in press). Rethinking "Generation Me:" A study of cohort effects 1976-2006. *Perspectives in Psychological Science*.
- Trzesniewski, K. H., Donnellan, M. B., & Robins, R. W. (2008). Do today's young people really think they are so extraordinary? An examination of secular trends in narcissism and self-enhancement, *Psychological Science* 19, 181-188.
- Twenge, J. M. (1997). Changes in masculine and feminine traits over time: A meta-analysis. *Sex Roles*, 36, 305-325.
- Twenge, J. M. (2000). The age of anxiety? Birth cohort change in anxiety and neuroticism, 1952-1993. *Journal of Personality and Social Psychology*, 79, 1007-1021.
- Twenge, J. M. (2001a). Birth cohort changes in extraversion: A cross-temporal meta-analysis, 1966-1993. *Personality and Individual Differences*, 30, 735-748.
- Twenge, J. M. (2001b). Changes in women's assertiveness in response to status and roles: A cross-temporal meta-analysis, 1931-1993. *Journal of Personality and Social Psychology*, 81, 133-145.
- Twenge, J. M. (2006). *Generation Me: Why Today's Young Americans Are More Confident, Assertive, Entitled--and More Miserable Than Ever Before*. New York: Free Press.
- Twenge, J. M. (in press). Birth cohort differences in the Monitoring the Future dataset: Further evidence for Generation Me. *Perspectives in Psychological Science*.
- Twenge, J. M., & Campbell, W. K. (2008). Increases in positive self-views among high school students: Birth cohort changes in anticipated performance, self-satisfaction, self-liking, and self-competence. *Psychological Science*, 19, 1082-1086.

- Twenge, J.M., & Campbell, W. K. (2009). *The Narcissism Epidemic: Living in the Age of Entitlement*. New York: Free Press.
- Twenge, J. M., & Foster, J. D. (2008). Mapping the scale of the narcissism epidemic: Increases in narcissism 2002-2007 within ethnic groups. *Journal of Research in Personality*, 42, 1619-1622.
- Twenge, J. M., Konrath, S., Foster, J. D., Campbell, W. K., & Bushman, B. J. (2008). Egos inflating over time: A cross-temporal meta-analysis of the Narcissistic Personality Inventory. *Journal of Personality*, 76, 875-901.
- Twenge, J. M., Zhang, L., & Im, C. (2004). It's beyond my control: A cross-temporal meta-analysis of increasing externality in locus of control, 1960-2002. *Personality and Social Psychology Review*, 8, 308-319.
- United States Federal Reserve (2008). *Household Debt Service and Financial Obligations Ratios*. <http://www.federalreserve.gov/releases/housedebt/default.htm> (viewed online 6/8/2008).

We asked three experienced trial consultants to respond to the preceding and opposing perspectives on narcissism in our youth. Ken Broda-Bahm, Beth Foley and Doug Keene offer their thoughts on the implications of the foregoing research for jury selection, case narrative, and evidence-gathering.

Your Juror's Generation is a Clue, But Not a Verdict

by Ken Broda-Bahm

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Earlier this Spring, former professor Ward Churchill won a wrongful termination case against the University of Colorado. As Plaintiff, he argued that the lengthy investigation of his scholarship that led to his termination was a direct response to an essay he wrote after September 11th, 2001, comparing the victims of that attack to "little Eichmann's" who could be blamed for the suffering caused by America's financial empire. The jury was notable not only for its verdict, but also for its composition: Many of the more vocal members of this Denver jury were in their twenties and the oldest juror on that panel was just thirty-six.

Clearly in that case, and with any case, the jurors' verdict reflects a complex reaction to the evidence and to the particular story. But the practical question raised by these essays is whether we are reasonable to suspect that a generational effect may also be at work. If the Plaintiff believed that a younger cohort of jurors would be more likely to be assertive individualists apt to be impressed by a self-styled anti-authoritarian professor, and less likely to be civically-oriented social rule-followers who would be shocked by a lack of patriotism, was he on firm or shaky ground?

I will leave it to others more familiar with the various datasets in the preceding essays by Twenge and Campbell and by Trzesniewski and Donnellan to weigh in on their scientific value. But what seems clear to

me from the essays is that there are at least some indicators from nationally representative samples showing modest to high generational differences consistent with a turn toward greater narcissism. But it also seems clear that there are some strong reasons to believe that such differences are not uniform across either the spectrum of narcissistic attitudes or the relevant populations.

Faced with that, the option of saying “the jury isn’t in yet” on generational differences, may be an academic luxury. For all of the jury selections, witness preparation meetings, and pre-trial research projects that are happening now, the question is what the practicing attorney and litigation consultant should do with the issue of generational difference at the present stage.

My own response is that the current knowledge on generational differences within the jury pool serves a heuristic function (a reason to ask further), but not a determinative function. That is, they don’t provide a complete answer – at least not one that reliably applies to a given individual in the jury box. Twenge and Campbell, for example, note in their opening paragraph that the natural reaction to the group of strangers in the jury box is to start putting them into categories – age, gender, race, etc. While it is only human to notice those distinctions, experienced trial attorneys and litigation consultants are no doubt aware that these demographics are not the place to start, not only because they are unlikely to legally serve as a basis for a peremptory challenge, but more so because they serve as only weak and unreliable markers of what really counts when the case comes down to deliberations: attitudes. While a large-sample study might tell you that a given demographic category has a modest relationship to an attitude of interest, in the small-sample setting of the jury box, it is just the attitude that matters, and one cannot presume that an individual carries the same attitudes as the majority of her gender, race, or age-cohort.

While there are well-known risks to applying an analysis of the aggregate to a decision on an individual, the generational findings – even as they are contested – do provide good reasons to ask further about jurors’ attitudes, using their generation as a clue to associated attitudes, but not as a reliable predictor. That is, while social scientists may or may not be able to make a reliable generalization, attorneys should not make a strike based solely on the presumption that a general trait adheres to an individual in question. But as jury pools include more and more individuals born after 1982, attorneys would still be well advised to ask voir dire questions focusing on attitudes that tend to be associated with narcissism.



Specifically, there are several potential attitudes of younger jurors that would be highly relevant in a litigation context, but they would not necessarily be all in the same direction. Jurors with a higher external locus of control, for example, would find it easier to side with a plaintiff in blaming factors like management and work conditions for a termination, and would be less likely to focus on that worker’s personal responsibility. Jurors who tend to be more individualistic rather than relational, however, may be less interested in evidence about a given manager’s poor relational style in the same case. Jurors who are less oriented toward rule-following could more easily base their verdict on fairness or personal ethics rather than the law. However, those jurors who show less empathy may be less motivated to identify with the

interests of the plaintiff as the injured party. The relevance of each of these attitudes will vary for every trial. Ultimately, the attorney will need to identify the specific relevant attitudes in a given juror instead of relying on broad categories like narcissism.

While attorneys and consultants will have many ways of addressing locus of control, individualism, and the like, there are also themes to be drawn from the Narcissistic Personality Inventory questions which could serve as a foundation for voir dire. While some questions would seem too personal or too “psychological” to ask a juror in open court, others would sound more natural. For example, the common question about whether one “enjoys managing other people on the job,” gets at the dimensions of leadership and authority. The question of whether a person “enjoys taking responsibility for a decision” or whether they “feel better about a decision made by a group” gets at the dimension of individualism. The question of whether “accidents just happen,” or whether “accidents usually have a cause” gets at the dynamic of locus of control.

Of course, the relevance and phrasing of these questions will vary for each case. But in the end, a potential juror’s answers to questions like these will matter much more than their membership in a given generational cohort, or even their score on the Narcissistic Personality Inventory. Importantly, I would give the same advice even if the validity of “Generation Me” were undisputed. Knowing that there is, or may be, an aggregate difference is just the first step when the goal is to assess the individual.

Returning to the example of the case of the fired professor used to begin this response, it is likely that Churchill’s legal team would agree with Twenge and Campbell’s conclusion that jurors’ generational effect, at least as a starting point, “could mean the difference between a favorable trial result and an unfavorable verdict.” However, it is also likely that the trial team would be quick to add that one shouldn’t take that conclusion too far, especially when looking at damages in that case. The younger generation’s attributed support for wealth, conspicuous consumption, and material goods was not in evidence, however, since they awarded the Plaintiff just \$1.

Response to two perspectives on Narcissism in the Jury Box

by Beth Foley

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I have great respect for the cohort concept and have found it can provide valuable information for trial consultants as we try to understand how individuals and small groups make decisions in litigation. I'm convinced there are important distinctions between different cohorts that matter, but I'm not convinced narcissism is one of them.

To begin, I understand a cohort to be a group of people born over a relatively short and contiguous time period who are deeply influenced and bound together by events that happened in their formative years (approximately 14 to 18 years of age). Cohorts are best identified by distinct differences in values and attitudes from the cohort that immediately preceded them. For example, Gen X does not make much sense as a cohort unless you view them relative to the characteristics that defined the long-running baby boomer cohort. To my knowledge, no cohort has ever been defined by one characteristic or one personality trait like Gen Me.

Twenge and Campbell's article uses the concepts of generation and cohort interchangeably throughout its discussion and this is confusing because generation and cohort don't mean the same thing. Trzesniewski and Donnellan's article applies these two terms in a more disciplined way, which is important. Sociologists like Norman Ryder, a pioneer in cohort research, have always acknowledged that separating generational effects from other significant life and psychological influences is complex. Cohorts are vast groups of individuals with unique personalities and myriad traits, so studying a cohort is always a bit elusive. Overall, I think Twenge and Campbell's approach is too loose and inconsistent with these important concepts.

Twenge and Campbell's article starts out using the concept of a cohort and even refers to the most commonly accepted cohort groups (WWII, baby boomers and Gen X) but then in the next sentence abandons the paradigm of a cohort and loosely defines groups by age: "Although I occasionally use generation labels (such as Generation Me or Gen Me to describe today's young people), I will primarily rely on labels such as "older" and "younger" generations; those in the middle in terms of age (today the Gen Xers in their 30s and 40s) will typically fall in the middle in terms of traits and attitudes as well."

It's difficult for me to get my arms around Twenge and Campbell's conclusions because I wonder if the research is describing a sociological trend in the young generation or a psychological description of a cohort. It's also unclear to me which cohort they are referring to in the narcissism epidemic. The Gen Me cohort they arbitrarily define is anyone born after 1970. However, there is already a cohort born after 1970 and that is Gen X (1966 to 1976) The newest cohort is Gen Y, also known as the Millennials. Although there is much debate as to the years that define Gen Y, many believe it is anyone born from 1977 to the present. Is Gen Me a sub-cohort of Gen X or Gen Y?

I agree with Trzesniewski and Donnellan's conclusion that Gen Me is a pejorative term to describe America's youth. I have studied cohorts for several years, and although individualism and selfishness have been observed in Gen X and Y, it certainly does not accurately define them or the complexity of their cohorts.

The “convenience samples” used in Twenge and Campbell’s article make me doubt the validity of the research. The sample of college students ages 18 to 24 indicates the data is skewed in many ways, the most obvious being socioeconomic. The sample doesn’t seem adequate to reflect the whole population of young people driving a sociological trend.

The historical Monitoring the Future Survey data that Trzesniewski and Donnellan looked at may be a better sample because most psychologists define a person’s “formative years” as starting before they go to college (if they go to college at all), 14 to 20 years of age, so a sample of high school students may be more appropriate for cohort analysis than a college sample.

Overall, I’m not surprised that Trzesniewski and Donnellan’s research did not find evidence to support significant difference in personality traits between the youth of 1970 and 2006. Nor am I surprised that it did not see signs of an emerging epidemic of narcissism in young Americans.

The Narcissistic Personality Inventory (NPI) raises more questions than answers and is clearly difficult to interpret. Maybe someone who scores high on the NPI is just a confident leader, not a narcissist. Just because some people reported they experienced symptoms on the NPI measurement does not mean they are narcissistic or behave in narcissistic ways. Even if people have some symptoms on the NPI measurement, it doesn’t mean that it’s the most important aspect of their decision making. Twenge and Campbell’s argument goes beyond describing what characteristics they see in younger people, to making subjective interpretations about their personalities,



One conclusion I do agree with Twenge and Campbell about is that even if a generational effect is small, it could make all the difference in the world in a jury trial. I do think the identification of a possible sociological trend in young people is insightful. I will look for markers of this in mock jurors and real jurors, not to diagnose narcissism, but to identify self-centered jurors and how that might influence decision making in a specific lawsuit, if at all.

As a trial consultant, I’ve always known I live somewhere between practitioners and statisticians. That is to say, I fly at 30,000 feet looking for clues or trends that will help me figure out what is driving decision-making, but I can’t stay there. I have to get in the weeds to help my clients strategize and pick juries. I start with statistics and trends drawn from large populations, but I have to verify it is actually influencing decision making in my client’s specific case. My experience is that in the world of small group decision-making (aka jury trials) qualitative research methods are the best tools to help a researcher see the distinctions between cohorts and how personality traits may affect decision making. Subtleties like rhetorical preferences, notions of witness credibility or the best way to teach a complicated concept to different cohorts can be identified in qualitative research.

I think it is possible that the younger generations studied by Twenge and Campbell may exhibit higher levels of selfishness than older generations, but I doubt it. One could argue the baby boomers are a self-absorbed cohort

too. I can say that because I am a baby boomer. I always cringe when I am reminded that one characteristic of boomers is we came of age in the self-help era, e.g., I'm okay; you are okay and how to be self-actualized So, if there is a "Gen Me" it might actually have started with, well, me.

A more apt distinction of the baby boomer cohort is their most predominant economic value: "spend, spend, borrow, spend more. Boomers are the first cohort to make credit and debt a way of life. I think it's safe to say, this value has caused some boomers to do some very selfish things. Most of the CEOs running Wall Street for the last 10 years are baby boomers. Who knows about the deregulators, mortgage bankers, politicians and borrowers, but it's a good bet more of them are boomers than Gen Xers. A recent report from the Center for Economic Policy shows that it's baby boomers who are getting hit particularly hard in the current housing market.

This all indicates to me that the baby boomers are probably driving trends Twenge and Campbell describe, such as an increase in the square footage of homes and a fivefold increase in plastic surgery. I am not a clinical psychologist, so I don't know if the boomers are narcissistic or not. At the very least, we have to acknowledge that if the baby boomers' children are a little bit too self-absorbed, it's understandable.

If the baby boomers are just as self-centered as their kids, that would explain why Trzesniewski and Donnellan's findings indicate more consistency in young generations since the 1970s than differences.

In conclusion, I agree that normative personality development with age is a better explanation for any trend detected in data presented by Twenge and Campbell. One fundamental reason for this conclusion is that the qualities that distinguish a cohort don't change as they age as evidenced by the baby boomers. The WWII generation starts and ends with the same core values consistently throughout their lives. Maybe all people are just a little more self-centered in their twenties, but that fact alone does not adequately define a cohort.

TJE: Comment on Narcissism articles

by Douglas L. Keene

Dr. Doug Keene (dkeene@keenetrial.com) is a psychologist and founder of a national trial consulting firm, Keene Trial Consulting, based in Austin, Texas. He is the current President of the American Society of Trial Consultants.

As someone who has taught both statistics and personality assessment before finding my way to litigation consulting, these articles felt like a trip home after many years on the road. The issues and concerns of both authors are very familiar.

A litigator can't help but to read (or at least scan) the heavy statistics battle in the article without asking a couple of very sensible questions:

1. Is there a difference between generations?
2. Should I be concerned about it as it affects litigation?

The answer to the first question is “Yes”. [Although we can't rule out the possibility that it is essentially narcissistic to assume that ones' generation is unique. Usually, these kinds of analyses seem to criticize a current trajectory, such as calling younger age groups lazy or narcissistic.] The harder part of Question 1 regards what the differences are, and how they shape juror behavior. How are younger people going to respond to the issues in a case differently than older jurors? To the characters in the story, and to the kinds of decisions they will have to make? Will their behavior as jurors be controlled by swelling levels of traits such as narcissism, or will they be more affected by worries about soaring unemployment and a nagging head cold?



The answer to the second question is essentially “Yes and No”. There are differences between generations, or social cohorts, that are associated with age groups. Developmental experiences shape one cohort differently than another. The “No” part of the answer is that this is merely a fact, not necessarily a problem. The research described in the articles claims trends of research in populations, or samples that disclose population characteristics. The research results may be accurate, and may not be. But as a litigation consultant, I use the understanding of cohorts as a tool while looking at juror as being far more complex than that. Cohort is one color band in a wide spectrum. If a jury was made up predominantly of a single age cohort, I would be far more comfortable predicting certain characteristics based on membership, because there is a group-think that can be powerful. But that is not how most juries are composed, and not typically how they make decisions. In my experience, if you think of the juror as

an individual, and try to understand what sort of life experience that person has had (including features attached to their age cohort status), how it has shaped their attitudes, what their affiliations are, what they like to think about, who they like to listen to—essentially, what lens they use to view the world—the big questions resolve themselves. There will be intergenerational differences, but the generational personality drift will not be any more influential than the continental drift. Characteristics ebb and flow.

Related to the idea of cohort is the developmental tasks of different age groups. The task of late teens through mid-twenties in past generations has been to settle into the working world, marry, and begin raising children. That is far less common now, with education taking longer, young adults leaving the home of their parents later, and overall delays in experiencing the weight and rewards of adulthood. Thus, the developmental tasks of young adulthood have changed,

or shifted to a slightly older age bracket than a generation ago. Whether that is a function of a shift in personality traits (which I doubt) or of broader sociological (which seems more sensible) is hard to tease out in research. At trial, though, I am extremely interested in understanding what obligations and attachments someone has (to work, a spouse, children, extended family). Are they in their eighth year of undergraduate study, or are they going to night school while working and raising kids? Do they spend their spare time following sports and surfing the internet, or do they attend church and participate in after-work group social activities? Personality plays a part in everything we do, but as a factor in juror behavior, knowing lifestyle factors is more powerful.

A large part of the discussion by both the Trzesniewski and Donnellan article and the Twenge and Campbell article is about narcissism, not global intergenerational personality differences. What I find in talking with over 1000 jurors every year is not that younger people are more or less narcissistic than they were when I was their age, but that they talk about things differently. They are more willing to talk about their aspirations, their idealized hopes for the future, their dreams of a utopian world, sex, violence, and myriad other things that my parents would consider arrogant and unseemly. So, my mother would never be willing to say “I see myself as a good leader”, despite the fact that she was, but my kids wouldn’t be so shy.

I am uncomfortable with the inherent sloppiness of the term ‘narcissism’. While Narcissistic Personality Disorder can exist as a stand-alone problem, it usually is seen as a descriptive component of very disabling conditions, including drug abuse, anxiety disorders, and serious mood disorders. It is what we used to refer to back in my clinical practice days as a ‘garbage can diagnosis’. Along with ‘borderline personality’, it said more about how much you disliked the person it refers to than it does a clinical syndrome. Yes, it does exist as a separate syndrome, but as Trzesniewski and Donnellan’s article points out, it is very unusual. As a trait it is more common, but more often it is nothing more than an adjective (and not a flattering one).

Physical appearance and body preoccupation ties in with the notion of narcissism in Greek mythology and also on the Narcissistic Personality Inventory (see Question 19: a. “I don’t particularly like to show off my body” or b. “I like to show off my body”). This is not a question that anyone would even ask polite company 50 years ago, but now we can all talk about it on surveys and it is likely endorsed by droves of people. Again, a big difference is in what we are comfortable discussing, not simply how we are different. As far as cosmetic surgery goes, the use of plastic surgery as an indicator of narcissism is counter-intuitive. A truly narcissistic person wouldn’t feel a need to undergo modification—they are already perfect. Cosmetic surgery is for the ‘worried well’—those who think that they aren’t quite good enough, young enough, appealing enough. Anxious or depressed? Feelings of inadequacy? Maybe. Narcissistic? I don’t think so.

As I studied the articles I asked myself “How would the questions in the Narcissistic Personality Inventory (or a history of cosmetic surgery, ideal aspirations, etc.) disclose a juror’s approach to issues in litigation?” It provides us questions that are worth pondering.

Is a person with anxiety over their appearance (plastic surgery candidate) distressed by the idea of disfigurement more than someone who accepts being less attractive as a simple fact of life?

Will someone who feels that they have great potential but who is clearly stuck in a mid-level career have especially strong feelings about a business fraud case?

Will someone who feels, “I can usually talk my way out of anything” see that trait in others, including defendants who are trying to explain their conduct?

I also thought about issues that might affect one age cohort more than another. Different ages bring different awareness about the lessons of life. Younger people—with less life experience under their belt, and a sense of larger potential for the possibilities of the future—tend to endorse ideas such as:

Any achievement is possible.

I have time to fulfill my dreams.

I am in control of my future.

If you made an error, don't blame anyone else for it.

Attitudes such as these may sound like narcissism, but they are also indicative of optimism, confidence, faith in the future, and determination. On a jury, there may be obstacles to identifying with people who blame others for their failure to advance in a job, for their inability to recover from the death of a loved one, or accepting limitations following an injury.

As people age, they gain perspectives on the nature of life that teaches different things, and the impact on their role as jurors is also substantial.

Some injuries can hold you back forever.

Psychological injury can be as devastating as physical injury.

The mistreatment at one job has undermined a whole career.

People can feel trapped by circumstances into doing things they regret.

Narcissism is clearly a significant trait, and one of the hallmark characteristics of narcissistic people is not touched on in either paper: Their limited ability to experience empathy. Truly narcissistic people are emotionally disconnected, and can't share emotionally. When I see someone who appears to be unusually self-absorbed or lacking empathy (whether they are narcissistic or not) they become a more important factor in jury selection. This sort of juror is made uncomfortable by intense emotions from others and by feeling emotionally responsible. They may get angry at a person who causes this discomfort, they may blame the victim out of their own fear of victimhood, and overall they would rather keep emotions superficial.

Instead of true change in personality, what jurors have taught me is that there are age differences in what is comfortable to discuss, in preferences for how stories are told, for the language that is used, for a wish for particular kinds of demonstrative evidence, etc. But core values are not significantly different. Looking at a 20 year old in 2009 with an expectation that their core personality is different than a 20 year old in 1985 is a mistake. There are too many other things that will affect their decision-making far more. The challenge is to find jurors who will be engaged by the trial story that you can tell them, and to shape your story so that it speaks to their learning style, values, and experiences.

What trial lawyers need to know to be effective is far simpler than the nuances of this social science debate. With regard to personality styles and traits, it is as simple (and difficult) as figuring out which venire members are really interested in other people, which ones care only about what affects them and their own life, and which jurors you feel (as a lawyer) you can trust with such important decisions. Personality traits do have ramifications for how jurors process information, and how they make decisions. The reason that litigation consultants have insight into these subtle dynamics, is that through training and listening to thousands of jurors, consultants have the opportunity to learn where the subtle patterns lie. It is not usually with generational differences; more often it lies with values, traits, life experiences, and priorities.

A reply: Why generational differences have an impact

By Jean M. Twenge and W. Keith Campbell

Although we appreciate the cordial tone of this debate, there were several misconceptions that need to be remedied.

- The most serious misconception, raised by several authors, is that the differences we find are due to age and not generation. For example, Foley states, “normative personality development with age is a better explanation for any trend detected in data presented by Twenge and Campbell.” This is not possible, as our data rely on people of the same age, comparing them across historical time. For example, the study on narcissism compares college students who completed the measure at some point between 1982 and 2006. Thus it compares different generations *when they were the same age*, so age cannot be causing any of the differences. That is, in fact, the most significant strength of the research method we use.
- Foley states, “Just because some people reported they experienced symptoms on the NPI measurement does not mean they are narcissistic or behave in narcissistic ways.” Yes, it does. The NPI is the definitive measure of narcissism among normal populations. Thus when we report research about the negative outcomes associated with narcissism, these are the outcomes of someone who scores high on the NPI, because narcissism is *defined* as a high NPI score. This is also why the statement, “Maybe someone who scores high on the NPI is just a confident leader, not a narcissist” is also incorrect -- unless one believes that confident leaders regularly lack empathy, shirk responsibility for failure, take more for themselves and leave less for other people, and act aggressively toward those who insult them, all outcomes associated with high NPI scores.
- Keene states, “A truly narcissistic person wouldn’t feel a need to undergo modification—they are already perfect. Cosmetic surgery is for the ‘worried well’—those who think that they aren’t quite good enough, young enough, appealing enough. Anxious or depressed? Maybe. Narcissistic? I don’t think so.” According to several medical journal articles, this statement is wrong. Narcissistic personality disorder (NPD), along with histrionic personality disorder and body dysmorphic disorder, are the three most prevalent personality issues in those seeking cosmetic surgery (Malick, Howard, & Koo, 2008; Napoleon, 1993). About 25% of cosmetic surgery patients have been diagnosed with NPD – a very high figure, considering that 6% of the U.S. population, on average, has ever suffered from NPD (Napoleon, 1993).
- Keene states, “Yes, [NPD] does exist as a separate syndrome, but as Trzesniewski and Donnellan’s article points out, it is very unusual.” The National Institutes of Health study we cited in our original article – the most definitive on the topic to date – finds that almost 10% of Americans in their 20s have already experienced NPD; the prevalence across all age groups was 6%. Thus, NPD is far from unusual. And if almost 1 out of 10 people in their 20s experiencing NPD isn’t an epidemic, we don’t know what is.
- Trzesniewski and Donnellan cannot conclude from their MTF analyses that there are few generational differences, as they analyzed only 135 items of the more than 1,000 items in the Monitoring the Future dataset. As these 135 variables were not randomly chosen, and the MTF dataset does not contain all variables sensitive to cohort change, counting how many variables show change is not informative.
- The “convenience samples” argument made by Trzesniewski and Donnellan and picked up by several of the commentators is problematic. There is a fair amount of debate about how to define a convenience sample. A

collection of one's friends would certainly qualify, as they would likely differ in substantial ways from a random sample of the general population. But college students? As long as they weren't selected on a particular attribute, the worst that can be said is perhaps the results only apply to college students. This is not as selected a group as some have argued: 67% of high school graduates enroll in college. At the worst, one could conclude that the generational differences apply only to those who have had some college, which is still a good proportion of a jury pool. The most important point: This is *not* a challenge to the validity of the studies (as, for example, Foley states), but to their generalizability – a very different question. The studies are still valid (meaning they show a true effect) even if they apply to only part of the population.

- In addition, many of the cohort changes do apply to broader populations, as the Monitoring the Future dataset shows many results consistent with the college student data. In addition, my meta-analyses have replicated many of the college student results among samples of elementary, middle school, and high school students. Interestingly, by the definition of a convenience sample used by Trzesniewski and Donnellan, the MTF dataset is also a convenience sample, as only about three out of four of students agree to participate, and many of those don't answer all of the questions. It also does not include anyone who dropped out before spring of their senior year of high school. The MTF study originators note that "nonresponse in the MTF is more common among boys, nonwhites, students in lower academic tracks, and students with lower grade point averages." So it's not a perfect sample either, and the people who don't participate are systematically different from the people who do.
- Trzesniewski and Donnellan state that there are more similarities among generations than differences. However, this is true of virtually every study finding average differences among groups. For example, there are many more similarities among men and women than differences, but few argue that sex differences don't exist or are not meaningful, even though they are the same size (and often even smaller) than generational differences. Broda-Bahm makes a similar argument in saying, "one cannot presume that an individual carries the same attitudes as the majority of her gender, race, or age-cohort." We agree – these are differences on average, and will not apply to every individual.
- Foley states, "This all indicates to me that the baby boomers are probably driving trends Twenge and Campbell describe, such as an increase in the square footage of homes and a fivefold increase in plastic surgery." Yes, they did drive those trends, and we address this in the article – the rise in narcissism goes beyond generations, and beyond individual personality traits. And since the rise in narcissism and all of the other traits is linear, it is not just possible but likely that this trend started with the Baby Boomers. But the data clearly show it going up from there.
- Foley seems to misunderstand our argument about not using generational labels. The changes are linear, so the narcissism epidemic has not affected just one generation; narcissism has slowly continued to rise. The later one was born, the higher one is likely to score on narcissism. This obviates the need for debate over whether the cutoff between GenX and GenY should be 1970, 1977, 1982, or some other date. The GenMe label is not meant to replace these other generational labels; it is simply descriptive of personality traits that are now more common.

References

- Malick, F., Howard, J., & Koo, J. (2008). [Understanding the psychology of the cosmetic patients](#). *Dermatologic Therapy*, 21, 47-53.
- Napoleon, A. (1993). The presentation of personalities in plastic surgery. *Annals of Plastic Surgery*, 31, 193-208.

The Limited Value of “Generation Me” in the Jury Box*

by M. Brent Donnellan and Kali H. Trzesniewski

We appreciate the comments and thought-provoking responses to our original paper. All in all, we have gained greater insight into whether any of the current discussions of generational change (or lack thereof) have practical relevance for trial consultants. In this response we briefly comment on this issue as well as mention a few of the other salient issues that have emerged in this exchange.

Debates Over “Generation Me” Have Limited Value for Trial Consultants

A major role of the trial consultant is to provide guidance on the selection of potential jurors for specific trials. Many of the responses from the trial consultants hinted that our exchanges with Twenge and Campbell provided little in the way of guidance for this basic task. We agree. It is interesting and even fun to debate research methodology, speculate about cultural changes, and engage in pop sociology; however, those are ultimately tangential issues for the day to day tasks of the jury consultant. Attorneys facing a pool of potential jurors are presented with a cross-section of people of different ages and backgrounds. The most basic message of personality psychology is that there are substantial individual differences in the traits that are likely to be relevant for a particular trial (e.g., prejudice, authoritarianism, empathy, intelligence). A trial consultant might like to know whether any of these relevant individual differences are linked with age, a variable that is completely redundant with birth cohort in this context. Knowing for certain whether the average 22 year old of 2009 is different from the average 22 year old of 1979 is of little value. The relevant issue is how much predictive value the age of a potential juror *at this moment in time* has for understanding how that individual will behave in the context of a specific trial. Today’s trial consultants must deal with age differences as they manifest themselves in 2009.

Let’s assume that a legal team determines that the attributes assessed by the Narcissistic Personality Inventory (NPI; Raskin & Terry, 1988) are relevant for a particular trial so that the team is interested in potential age differences on this measure. Foster, Twenge, and Campbell (2003) reported one of the most well known studies on this topic. They conducted a cross-sectional study in which they collected responses to the NPI from a sample of participants who responded to an advertisement on the internet. Note that with this design, age and birth year are perfectly correlated just as they are in any real jury selection context. Foster et al. found that the correlation between age and NPI scores was $-.17$ (p. 476); participants aged 20 to 24 scored about 15.50 on this measure, whereas participants aged 40 to 44 scored about 12.50. The overall standard deviation was 6.7. Let’s ignore for the sake of this argument that Foster et al. was a convenience sample of self-selected participants and stipulate that their pattern of results generalizes to the population of potential jurors.

Just how diagnostic is age in this context? We assert that age (and thus generation) is *relatively uninformative in the context of actual jury selection* when considering NPI scores. We will simply quote Foster et al. (2003) directly on this point “[a]ge explains approximately 4% of the variance in reported [NPI scores], not a large amount by any measure” (p. 481). This conclusion seems to stand in stark contrast to the more optimistic conclusions about the importance of generation made by Twenge and Campbell.

To be sure, attorneys for both sides are permitted to ask questions of potential jurors both through direct questioning and through questionnaires as part of voir dire in hopes of winnowing away unqualified or unsuitable jurors. In other words, all parties involved in the legal dispute have a chance to get to know something about the individual qualities of potential jurors. Against that background, we think that those engaged in jury selection would be far better off if they focused on direct indicators of case-relevant traits rather than dwell on distal demographic variables like age or generational status. Drs. Keene and Broda-Bahm and Ms. Foley seem to agree on this point and

all three provided helpful applied guidance on this topic. Wasting a preemptory challenge on a potential juror simply because she or he was part of Twenge's so-called "Generation Me" does not strike us as good practice. We would push our recommendation a bit farther by suggesting that the possible stereotypes inspired by "Generation Me" type-accounts might get in the way of removing the most "unfit" potential jurors for a given trial. In sum, there is nothing that we read from Twenge and Campbell or from the professional trial consultants that made us rethink our tentative conclusion that current academic discussions over potential generational changes in narcissism or any other "Generation Me" trait have little applied value in this context.



Responding to Twenge and Campbell

As it stands, we have other replies to Twenge and her associates that are either published or in press in academic journals (Donnellan & Trzesniewski, in press; Donnellan, Trzesniewski, & Robins, 2009). We refer readers to those original papers for more detailed responses. Here we want to simply make three points.

First, we have never publicly speculated as to why Twenge and Campbell believe what they write. Unfortunately, a reader might get that impression based on their description of one of our papers: "Trzesniewski & Donnellan (in press) have also argued that we believe there are generational differences because older people's perceptions have changed over time." Our argument was actually based on an empirical article that is very much worth considering in this context (Eibach, Libby, & Gilovich, 2003). Eibach et al. noted that there is a long history whereby members of an older generation criticize and pass moralistic judgments on the younger generation that begs for explanation. Borrowing on their work, we suggested that one explanation for negative perceptions of "Generation Me" might be cognitive biases that prompt older adults to mistake changes that have occurred within themselves for changes in the outside world. We refer readers to the original Eibach et al. paper for further insight and empirical evidence about this proposed process.

Second, Twenge and Campbell assert that the U.C. Davis data regarding NPI scores support their conclusions about an epidemic of narcissism. This is not entirely accurate (see also Donnellan et al., 2009), and it is important to emphasize that this same assessment has also been reached by an outside research team. Specifically, Roberts, Edmonds, and Taylor (in press) added a new NPI mean from a recent college student study conducted at the University of Illinois (Mean = 15.69) and the U.C. Davis means into the Twenge et al. (2008) meta-analytic database. This aggregation had the effect of largely eliminating the original secular increase in narcissism reported by Twenge et al. This hardly seems like the outcome that one would expect if all of the NPI data are in agreement.

Finally, Twenge and Campbell attempt to place their effect sizes for generational change in a meaningful context by comparing their work with "benchmark" effects in medical science. However, comparisons between psychological effect sizes and medical effect sizes can be very misleading (Ferguson, in press). Ferguson even warns that "Comparisons between medical research and psychological research should simply be avoided." One of the major reasons for his recommendation is that there are potential errors in the ways that psychologists typically calculate medical effect sizes that generally depress the relevant medical coefficients. Another reason for his recommendation, particularly relevant for our perspective, is that effect sizes in medicine are based on dependent variables that have a clear meaning that take no special training to appreciate (e.g., death or morbidity). The majority of generational effect sizes referenced by Twenge and Campbell are not intuitive because they refer to the connections between year of data collection and variables that are measured on an arbitrary metric. Most people have a good sense as to what it means to

die from lung cancer whereas few people, including us, have a good grasp of the applied significance of a two point difference in NPI scores from 1982 to 2006.

We can press this point about effect size interpretation even further. The following statement is consistent with existing research: The gender difference in tendermindedness ($r = .41$; see Hyde, 2005, p. 585) is relatively close in magnitude to the newly calculated effect size for the connection between aspirin use and reduced risk of heart attacks ($r = .52$; Ferguson, in press). Although the sentence may sound impressive, the issue is whether it helps to clarify the relative importance of gender or aspirin to these very different outcomes. We doubt it. Moreover, we can add yet another benchmark effect size that further illustrates our concerns with effect size comparisons made by Twenge and Campbell. Ferguson (in press) calculated that the correlation between ESP and accuracy was about .16 (see Bem & Honorton, 1994). This is the size of the Twenge et al. (2008) individual effect size for increases in the NPI from 1982 to 2006 (see Trzesniewski, Donnellan, & Robins, 2008). Thus, it might be fair to point out that the generational change in the NPI evident in Twenge et al. (2008) was just as strong as the effects of ESP on accuracy in one experimental paradigm. The bottom line is that we are not convinced that any of these comparisons ultimately helps to clarify the practical significance of the original generational findings.

Conclusion

At this point there is probably nothing more that can be done to reconcile our views with those of Twenge and Campbell. In closing, we would simply point out that our reading of the existing literature on generational change is more or less consistent with an earlier report issued by the National Research Council in which a panel of prominent scholars considered the implications of potential generational changes in youth attitudes and behaviors for military recruiting (Sackett & Mavor, 2003). We believe that their conclusions hold equally well today:

“[C]ontrary to claims of large and dramatic differences among youth cohorts in different generations, high-quality longitudinal research documents a high degree of stability in youth attitudes and values. Change is limited, and when it does occur, it occurs gradually. In addition, the popular literature is often based on selective, not systematic, data and analysis and on nonrepresentative samples. The committee does not believe that it is appropriate to give credence to popular portrayals of “generations” as a key explanatory concept for understanding youth attitudes and behaviors” (p. 305-306).

*Both authors contributed equally.

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References

- Bem, D., & Honorton, C. (1994). Does psi exist? Replicable evidence for an anomalous process of information transfer. *Psychological Bulletin*, *115*, 4-18.
- Donnellan, M. B. & Trzesniewski, K. H. (in press). How should we study generational change – or should we? A critical examination of the evidence for “Generation Me.” *Social and Personality Compass*.
- Donnellan, M. B. & Trzesniewski, K. H., & Robins, R. W. (2009). An emerging epidemic of narcissism or much ado about nothing? *Journal of Research in Personality*, *43*, 498-501.

- Eibach, R. P., Libby, L. K., & Gilovich, T. D. (2003). When change in the self is mistaken for change in the world. *Journal of Personality and Social Psychology*, 84, 917-931.
- Ferguson, C. J. (in press). Is psychological research really as good as medical research? Effect size comparisons between psychology and medicine. *Review of General Psychology*.
- Foster, J. D., Campbell, W. K., & Twenge, J. M. (2003). Individual differences in narcissism: Inflated self-views across the life span and around the world. *Journal of Research in Personality*, 37, 469-486.
- Hyde, J. S. (2005). The gender similarities hypothesis. *American Psychologist*, 60, 581-592.
- Raskin, R., & Terry, H. (1988). A principal-components analysis of the Narcissistic Personality Inventory. *Journal of Personality and Social Psychology*, 54, 890-902.
- Robert, B. R., Edmonds, G., & Taylor, E. (in press). Every generation is Generation Me: Developmental changes are more important than generational changes in narcissism. *Perspectives in Psychological Science*.
- Sackett, P. S & Mavor, A. S. (Eds.) (2003). *Attitudes, aptitudes, and aspirations of American youth: Implications for military recruitment*. Washington, DC: National Academies Press.
- Trzesniewski, K. H., Donnellan, M. B., & Robins, R. W (2008). Is “Generation Me” really more narcissistic than previous generations? *Journal of Personality*, 76, 903-917.
- Twenge, J. M., Konrath, S., Foster, J. D., Campbell, W. K., Bushman, B. J. (2008). Egos inflating over time: a cross-temporal meta-analysis of the Narcissistic Personality Inventory. *Journal of Personality*, 76, 875-902.

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Asking the Tough Questions: How To Examine a Child Witness in Sexual Abuse Cases

By Roger Arnold and Renee Fields

If all the world's a stage, then surely the most important stage in this world is the courtroom! Lives hang in the balance, people are sent to jail or made to pay restitution, and people are vindicated. Who needs Reality TV? There is nothing more exciting than to be in a courtroom trying a case. We feel good when we are able to wrench a confession or evidence from a witness who was not forthcoming. But it is a case of a different order when faced with a case of the alleged abuse of a child.

There are several valid concerns in making sure the questioning of a child is done properly. The most obvious is to make sure no harm is done to a traumatized child. Also important is the concern for harming any investigation. No one wants an innocent person to be wrongfully charged or have a guilty child abuser to go free to continue to harm children.

A professor of human sexuality once made clear the extreme tension in this situation. He encouraged us to think about describing our most appropriate sexual experience to a room full of strangers. Not exactly the easiest or most comfortable task is it? Then he asked us to imagine being a child who is being asked to describe in detail a sexual crime to strangers. Questioning children who may have been the victim of a sexual crime causes even the most experienced professional to shudder. Parents who suspect their child has been abused do not always ask their child direct questions for fear they may hurt them further. Some report the police have advised them not to question their child, instructing them to "let a professional do it." Even child therapists will refer their patients to a specialist if there is suspected sexual abuse. Let's face it, the need is great, but it is a job no one wants.



One of the most important points to make in advising how to question or interview children is to be aware of how your questions come across to the child. Children perceive that adults' general communication with them is to dominate, lecture or interrogate. Little wonder that every child's fear is that, when questioned, they must have done something wrong. Therefore, choose your words carefully, watch your body language, and use a neutral or matter-of-fact type of vocal delivery. Put yourself on their level.

Understand the Relationship Dynamics

First, an interviewer must know the details of how the abuse came to be suspected. Look specifically at whether the child chose to report or if the "disclosure" was accidental. One eight-year-old girl was found to have Chlamydia, which obviously raised the red flag. Since she never reported the abuse, she initially denied that anyone abused her. When she did report, she named her mother's boyfriend, but continued to deny his touches were under her clothing. An opportunity presented itself to question this girl many years later when there was no longer a court case. As a teenager she reported being untruthful because she believed she would be in trouble for having her clothing off. If the child chose to disclose, under what circumstances did she do so? Did they disclose after being caught in sex play or masturbation? Did they simply tell an adult or playmate about abuse? This history becomes the foundation for the questions that need to be asked of the child.

Knowing in advance how a child feels about the defendant is also important. The child's feelings for the accused could motivate a child to falsely accuse or falsely deny abuse. Ask any non-abusing parent how their child feels about the defendant, understanding the parent may be unaware the child feels a special relationship with that person. Telling the child that, "Some children tell me they know the abuse was wrong but they really liked (the defendant)" may tease out whether or not the child has any positive feelings toward the accused. In a similar fashion, knowing how the parental figures feel about the defendant is also important. Children are likely aware of the feelings their caregiver has for the defendant and may mold their feelings to be consistent with a caregiver. When the accused is a parent to the child, you have to assume that the child has some positive attachment. Children experience incongruent emotions toward a parent who is the abuser. To get at the truth, the interviewer will be more successful if they "match" the child's view of the defendant. An interviewer should not ask questions in such a way that voice, body language or choice of words are in direct opposition to the child's feelings for the defendant, but in a way that 'matches' the child's view. Choose words like "made a mistake" and "needs help" if the child has an attachment for the defendant. If the child dislikes the defendant asking if they have been hurt by them is more acceptable.

Respect the Child's Psychology

Assure the child that telling the truth, no matter what the truth is, will not get them into trouble. If possible, meet with the child and allow them to have a parent or other secure attachment figure with them. Show them the courtroom or make a photo album with pictures. Let them know where they will sit and where the defendant will sit. Help them with strategies such as how to avoid looking directly at or past the defendant. The strategy of discussing a judge in general terms has helped children be more relaxed. Let them know the Judge is part of a family in the most general terms. Children have been put at ease to know the Judge is a parent, husband/wife, brother/sister. Explain they care very much about children.

Use self-disclosure. Research shows that to do some self-disclosure helps another person become comfortable with his or her own self-disclosure. Try to share some neutral issues that demonstrate things you have in common with the child...that you had a pet, that you have kids, what you liked to do when you were a kid, etc. At some point it is important to be able to talk to the child away from the parent if the child is comfortable with the separation. For young children say something like, "Would you like to show your mom/dad where you want them to sit while you and I talk for a few minutes?" It is wise to assume the parent does not know everything about their child's experience on the topic of suspected abuse. One thing a child may hide from their parent is that they may have enjoyed parts of the sexual experience, or some aspects of the relationship they had with that person. Interviewing the child's therapist may help understand these issues. For instance, one teenage victim being prepared for a criminal hearing has stated she does NOT want her parents to be in the courtroom. She has stated that it will be easier for her to report accurately to strangers than to report details with her loved ones listening and reacting.

Let the child know it is okay to cry and okay if they get angry. One ten year-old, who had been ambushed by a man waiting for her to enter her home, believed she should not show emotion. Her testimony was so flat with short answers, she failed to be credible. To help a young child deal with objections in the courtroom, reassure the child that the objection is about the question asked and not about them or their behavior.

Adapt to Child Communication Habits

A more complicated issue is to inform the child that if they don't know the answer it is okay to say, "I don't know" or "I don't remember," – *if* that is the truth. But be aware that these two particular phrases are the primary tools of an avoidant child. On the other hand, some children assume the adult expects them to know the answer and will guess or invent an answer if they are not given permission to say "I don't know." Children live a life of being asked

difficult questions such as, “Who wrote on the wall?” or “Who ate the last cookies?” and have discovered if they answer with “I don’t know” or “I don’t remember”, they are often met with anger and disbelief. Particularly with younger children, this thinking can lead them to a best guess or a false answer that will keep them safe.

A very useful response to an answer of, “I don’t know” or “I don’t remember,” is to follow with the question “Is it true that you don’t know/remember, or could it be that you don’t want to talk about it?” Most children are moral and if given an “out” that helps them remain truthful and keep their dignity, they will take it. If the next response is “I don’t want to talk about it,” clarify with a question such as, “You know the answer, but you don’t want to talk about it, is that right?”

Find out what a child calls certain parts of the body. Very general line drawings are available so that you can point to body parts and ask, “What does your family call this?” The examination will go more smoothly if all parties concerned use the child’s vocabulary.

Structure the Direct Examination

Build Rapport. Like adults, children do better talking about a sensitive topic if time is spent building a rapport before getting to more difficult issues. It may be possible as a prosecutor to do this in a meeting prior to the trial. Ask a child about pets or their best friend. For a teen, ask about a favorite video or computer game, who they text the most often or what they most enjoy doing when they are with their friends. If a meeting prior to trial is not possible, hopefully the Judge will grant leeway for these kinds of questions. A loud objection of relevance will change the mood of the courtroom and be counter-productive to setting the child at ease. Hopefully, helping the child feel at ease is the relevance. It is central for a child to think that if a grown-up is angry, it is their fault.

Ask Neutral, Opinion-based Questions. Begin direct examination with very general questions that potentially bring spontaneous information. A short series of questions that works well is:

- “Who is the nicest child you know?”
- “Who is the nicest grown-up you know?”
- “Who is the meanest child you know?”
- “Who is the meanest grown-up you know?”

Follow up each of these questions with, “What have they done that is nice (or mean) to you?” Another line of neutral questioning that can bring results is to request, “Tell me about a time when you remember being happy.” Follow up with, “Tell me about a time that you were scared.” Then, “Tell me about a time you were angry.”

A child’s answer to neutral questions can cause problems for either prosecution or defense. What if a child has reported abuse by a step-parent, but names a teacher as the meanest grown-up they know? Recency may be a simple explanation: by the date of the trial, the abuse has ceased for more than a year whereas the teacher was mean yesterday. It may also be that the child felt a “special” relationship with their abuser. They have been through a very emotional experience with the abuser and therefore may not feel, as we might, that the abuser should be “the meanest grown-up they know.” It will be helpful to ask the child, “Can you think of anything nice the defendant has ever done?” If the child has an answer make the remark, “Then they were nice sometimes?” The follow-up question would be “Can you think of anything mean or bad the defendant has ever done?” After all, the abuser may have bought them presents or talked mom into letting them stay up late. In addition, children have sensual feelings and can experience enjoyment of the sexual act if the abuser had a gentle approach and “groomed” the child for the abuse. A nine-year-old girl once said of her own sexual abuse, “At first it hurt, but then I got used to it and it was okay. Later, I even liked it.”

Probe For Case Specifics. A good specific question might be, “Do you know the person seated at the table?” and point to the defendant. Find out what the child calls that person. For young children, do not ask multiple questions in the same sentence. For example, don’t ask, “Do you know the defendant, and if so, how do you know them?” Once you are ready to focus on the past event, focus them on the time period being discussed. Pointing out this was a long time ago helps a child feel they are not in trouble. The question might be phrased, “I want to talk about a time, a long time ago when...” If the child shows anxiety, be sure to reassure them they are safe now. No one will hurt them and they are not in trouble. These are points that may be made repeatedly. A child who is clearly fearful could benefit from placing an officer near the defendant, and pointing out the officer to the child. Consider a sequence of questions like the following:



I want you to remember back to a time when you were with [the defendant].

When you were with him, where were you?

Was anyone else there?

Tell me about the things that happened when you were with [the defendant].

Were there things that happened that you liked?

Were there things that happened that you didn't like?

Did you play any special games with [the defendant]?"

Was there anything that happened that hurt you? (and/or scared you or made you feel you would get in trouble?)

It is permissible to respond to any of the child’s remarks with any number of follow-up questions or remarks. Consider the following follow-up questions:

Is that the real truth or a pretend story?

Did you tell anyone (e.g. Mom, Dad, a named counselor) about what happened? Can you try to remember and tell me what you told them?

How did that make you feel?

What happened next?

When this happened were the (defendant's) clothes on or off?

Can you point to the parts of [the defendant's] body that you could see?

Could you see his/her private parts?

Did [the defendant] touch any part of you?

Did you touch any part of the defendant?

Specifically for a male defendant:

Was his (child's word for penis) pointing down or sticking out? This is a question that helps establish arousal.

Did anything come out of the (penis)?

Allow the child to use their own words or point to a line drawing. An important question is “Did this happen once or more than one time?” At any time, ask the child to, “Tell me more about that.” If a child gets emotional, describe the emotion and confirm that is what they are feeling. For example, “You seem to be upset when you talk about this, how are you feeling right now? Can you tell me why you are feeling that way?”

Structure the Cross-Examination

For the purposes of this article, we assume that the defense's dilemma is that the child's testimony represents the greatest weakness in the prosecution's case. The goal becomes casting doubt on the child's reports, or leading the child to reverse previous statements without offending the child in the eyes of the jury. In psychological terms, the goal is to “match and move.” This means to question the child in a manner that the child and the jury perceives you in agreement with (matching) a portion of the child's testimony. When it is evident that the child (and Jury) feels you are in agreement with a portion of their testimony, it is time to “move,” which means to lead the child to give additional information that shows the testimony in a different light, to lead a child to recant part of their statements, or both.

Ask For Additional Information: More than once a defendant has been charged with sexual abuse after a young child has reported someone touched their genitalia and hurt them. The truth turned out to be that the physical contact was for reasons other than sexual gratification. In one such case, it was discovered the child had been experiencing vaginal discomfort and called to her dad when she experienced painful urination. He wiped her, which was painful and caused her to cry. She reported to her mother, who was divorced from her father, that her Dad touched her privates and hurt her. Investigators knew it took place in the bathroom, but never asked questions which would clarify that Dad was trying to take care of his child! The questions which brought additional information to light were, “Did your privates hurt before Daddy touched it?” and, “Did the Defendant touch you with his hand or did he touch you with something that was in his hand?” Remember to guide the child's focus by coaching them to “think back to when ...” Ask the child if a touch was on top of clothes or under clothes. Another way to clarify what happened is to ask, “Did his skin touch your skin or something else?” Children have answered that they were actually touched with toilet paper, a wash rag or cotton with medicine on it and vindicated an accused with such an answer. Admittedly, a sexual touch could be explained by a false need to apply medicine.

Make It Okay to Recant Previous Statements. The greatest chance of leading a child witness to change any portion of their testimony will be if the change is presented in a manner to help the child keep out of trouble and keep their dignity. Ray Hodge, retired Sedgwick County District Judge, once reported that as a judge he would accept questioning a child using the terms “truth vs. pretend” in place of “truth vs. lie.” This meant asking questions in a manner that allows the child to clarify a previous statement as “pretend” or a “made-up story.” The child keeps out of trouble by clarifying on cross-examination that some of their testimony was a pretend story. Once the idea of pretending is introduced, it is acceptable to ask a child if they are aware that what is being talked about today is only the truth. In a series of questions, it is possible to determine a child's understanding of truth. Either counsel might hold up a pen and ask, “If I said this pen was a dangerous snake, would that be the truth or would it be pretending?” It is recommended the test be repeated, such as asking, “If I said I was a big pink bunny, would that be pretending or would that be the truth?” Purposefully reverse the order of “truth or pretending” in the second question, so you say

“pretending or the truth?” The reason for this is children who don’t know the difference and guess are sometimes either “first sayers” or “last sayers.” Reversing the order makes it clear the child knows the difference between truth and pretend.

If a child has made a false claim and you want any chance of them correcting the false claim, offer the child words that reverse their earlier statements but are less judgmental than a lie. “Do you know that today we are talking about the real truth, no pretending or made-up stories or joking?” The idea that someone else suggested the child tell a pretend story might allow the child to recant previous statements. “Do you remember hearing about what happened when other people talked or do you remember seeing it happen with your own eyes?”

A second strategy that allows the child to safely recant is to offer them a chance to admit they made a mistake. A question which normalizes mistakes might be, “I sometimes make mistakes when I answer questions, have you ever done that?” or, “Can you think of any mistakes you made when you answered questions here today?”

If the defense finds it important to directly address the issue of a lie, it could be done following the issues of a mistake. It is advisable to also ask the general question, “Is a lie different than a mistake?” It is acceptable to ask the child witness what happens in his or her family if someone tells a lie. Once the word lie is said, a child can become defensive in a manner that will not help your client. To help avoid this, normalize the idea that people lie with questions such as, “Do you think most people have told a lie sometime in their life?” Choosing words such as, “If you have told a lie today, can you be brave and tell the truth right now?” Such a statement defines the child as brave if they admit the lie. The defense may consider asking the child if they know that if what they have told is the real truth, the defendant will get in trouble.

Consider A Bold Approach. A local psychiatrist once put a 12 year-old victim of sexual abuse into the local hospital to conduct an interview while the child was administered sodium pentothal. This unusual procedure was done because this child, who accused her father of sexual abuse years ago, then later recanted. She was a child who was often caught in lies, and meaningful therapy could not occur without some objective indicator of the truth. In the interview, the child’s brain waves were monitored to keep her very near a state of sleep. In this state it was not possible for her to utilize higher neurological processes needed for making decisions regarding when she should lie or offer up false stories. The result of the interview was that the child repeated a very odd remark she made during her initial disclosure three years prior. She reported that her abusive parent had always told her, “The Chinese did it [incest] and they were going to be Chinese today.”



This experience resulted in the development of a bold approach to questioning children who are suspected of giving false reports of abuse. The child being questioned is asked, “Do you know there is medicine and there are machines that can be used to make sure people are telling the truth?” The child is then asked, “If we place you on this machine (or use this medicine) and you could not lie, would the machine tell us you are telling the truth?” In using this technique, children have answered, “I would say yes with the medicine because I am telling the truth,” while others have given avoidant answers such as, “I don’t know.” One child even made the remark, “Oh, I forgot I made a mistake...” and recanted her accusation.

Conclusions

Revealing the truth in a case involving a child witness requires the interface of several disciplines. A working knowledge of general psychology, child psychology, and communication will add to the legal skills for either the prosecution or the defense. The suggestions above have a pattern of moving from general questions to specific questions and from open-ended questions to closed questions. When there is a need to lead a witness to dispute previous testimony, the skill of “Match and Move” provides legal counsel with their best chance at achieving that goal. Utilizing local professionals in the areas of communication, theatre and psychology can help the legal professional continue to build skills in these related disciplines.

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The Key to Voir Dire: Use Your EAR

by Susan Macpherson and Jeremy Rose

When you sit down to draft a voir dire, the first questions that come to mind are usually those that deal with experiences similar to the facts of the case and the issues to be decided. In a medical negligence case, you need to know whether any of the jurors have personal experience with the plaintiff's prior and/or current medical condition. In a fraud case, you need to identify those who suffered financial losses in business deals. What may not come to mind are the questions that will help you evaluate the impact of those experiences. Jurors make decisions based on their attitudes and cognitive schemas, both of which are strongly affected by their experiences but often in unpredictable ways.

Some attorneys (and many judges) rely on the juror to evaluate the impact of prior experiences, but in most cases, that is akin to putting the juror in the driver's seat and asking whether he or she will have any trouble reaching the destination without identifying what it is. Knowing what the case is about and what has to be decided is the only way a juror could begin to make a reasonable assessment. But most judges sharply limit what jurors can be told. Given little or no information on where the case is headed, jurors have a very limited ability to judge the influence of their past experiences. For that reason, your follow-up questions should be designed to accomplish two goals: 1) help a given juror articulate – perhaps for the first time – the impact of prior relevant experiences, and 2) allow you – and perhaps the judge – to make a more informed assessment of jurors as possible candidates for a cause or peremptory challenge.

A simple guide for structuring your questions to accomplish those goals is to follow the sequence of **E**xperience, **A**ttitude, **R**ule. Using the **EAR** approach when drafting voir dire will help you to remember to follow through by **asking**, rather than **assuming**, that you know how jurors have processed their experiences. Making assumptions about the ways in which a juror has (or has not) processed her experiences can lead to serious mistakes in jury selection. You may fail to remove a juror whom you actually could have challenged for cause, and likely would have removed with a peremptory if the challenge was denied, or you may end up removing a juror who would have been a strong advocate for your side.

The **EAR** acronym should also help you remember that your most important job in voir dire is to **listen**. Lecturing, rather than listening, is the other way that serious mistakes are made in jury selection. You won't get the information you need to challenge the right jurors if you don't hear all of what they have to say about their **E**xperiences, their **A**ttitudes, and the **R**ules they may follow in deciding your case. Jurors' rules are the conclusions or "take away" knowledge that results from the way in which they have processed their life experiences.



A basic decision (that needs to be made well in advance of the trial date) is whether you are better off asking the EAR questions in voir dire or on a questionnaire. There are certain experiences that jurors may resent being asked to discuss in open court, and some may simply refuse to divulge the information requested, even if offered the opportunity to do so at the bench.

Because going to the bench for questioning still requires a juror to indicate that he or she has experience with a

sensitive subject, the embarrassment of simply being identified as someone in that category will keep some sitting on, rather than raising, their hands. For example, those who have suffered or been accused of sexual, physical, or emotional abuse, those who have been treated for psychological problems, or those who have been accused of wrongdoing at work may never have discussed that matter with anyone else and understandably resist being asked to do so in a public setting.

Using a questionnaire increases the likelihood that jurors will report uncomfortable experiences and candidly describe how that has affected their attitudes and beliefs. It may still be necessary to follow up with some of those jurors at the bench or with a sequestered questioning, as the full set of probes into their attitudes and rules would make the questionnaire too lengthy. (To encourage continued cooperation and candor, it is important that the jurors can be summoned for follow up without the other members of the panel knowing the topic(s) being discussed.) However, even if questionnaire length were not an issue, you would want to see how the juror looks and sounds when describing the impact of any relevant experience. Written explanations are very susceptible to misinterpretation (as we have all learned in trying to discern the true tone of an email) or posturing by a juror who wants to give a socially desirable response.

While a questionnaire is always an option to consider, there are times when you would gain valuable insights by being able to use one juror's experiences, attitudes, and rules as a springboard for questioning others. Some view the potential for exposure to problematic responses as too risky, but it actually presents a better opportunity to identify those you may wish to strike or challenge for cause. Those on the panel who share the problematic perspective are more likely to identify themselves if another juror has already spoken up. After thanking the juror with a problematic answer for their candor to reinforce that honest answers are the right answers, always ask, "Who else has had the same experience or feels the same way?" Once those jurors have been identified and questioned, you can decide how far you want to go in identifying those with the opposite views. There are two considerations to weigh at this point: one is that they may be your most favorable jurors, and you don't want to help your opponent spot them. The other is that an astute opponent is going to spot them anyway, so you may as well encourage them to fully express the opposite view, particularly if they are likely to have developed a rule that is closer to the rule of law you are asking jurors to enforce.

Let's look at how this might work in practice. Prospective jurors in a medical negligence case are asked about their experiences with the same or similar medical conditions and errors that are at issue in this case. One juror has a similar experience, a very resentful attitude, and follows the rule that doctors simply can't be trusted. Another juror with a similar experience is grateful to have survived with no permanent injuries and follows the rule that doctors have to be held accountable for their mistakes just like everyone else. You need to know which rule the other jurors on the panel tend to follow, and having jurors put both perspectives on the table makes it easier to do so.

Reluctance to let other jurors hear the problematic answers is based on the assumption that attitudes are contagious. The reality is more complicated. Jurors who can be influenced by exposure to problematic responses are already predisposed to adopt that perspective. The factors that make them more receptive are also likely to make them more receptive to your opponent's arguments. Jurors who are not primed to adopt problematic responses are not going to "catch" a bad attitude or change the rules they personally choose to follow over the course of a voir dire. Remember at this point in the trial, jurors have no particular need to analyze and agree or disagree with the opinions being expressed by other jurors. Many report being somewhat inattentive as they are fairly preoccupied with the possibility of being selected and the logistical challenges that will entail at home or at work. Because prospective jurors are most interested in figuring out what the case is about, they often remember more about the attorney's **response** to a problematic answer than the answer itself. If attorneys appear anxious to cut off responses that don't appear to support their case, that impression is often retained as a clear signal about the strength of the evidence supporting the claim or the defense. Conversely, attorneys who do not flinch when adverse views are expressed send a message of confidence in their case.

The EAR structure prevents you from making a common mistake which is to jump too quickly to the bottom line of a juror's ability to be fair and impartial. Many attorneys follow up the experience question with one that asks jurors to evaluate the impact of the experience, e.g., "How will that experience affect your views of this case?" If the question is being asked by a judge, it may be even more pointed: "Is that going to affect your ability to be a fair and impartial juror in this case? Can you set that aside?" Jurors tend to hear those questions as "Are you a fair person?" It is not surprising that the answer to the judge's question is usually "Yes," and the answer to the attorney's question is often, "It won't," when earlier answers indicate a clear bias that is based on prior experiences. Once the juror says any variation of, "I can be fair," it becomes very difficult to further explore grounds for a cause or peremptory challenge. Even if you succeed in getting additional information that would warrant a cause challenge, many judges will deny it out of hand if the juror has already said the magic words: "I can be fair."



The other problem with jumping too quickly to the bottom "Can you be fair?" line is that jurors want to do what is expected of them and will say they can follow the judge's instructions without thinking through why that might be difficult or even impossible. Of course those who have been denied a legitimate hardship request or just really don't want to be there will occasionally say, "I can't be fair" as a thinly disguised exit strategy. But most will readily agree that they can set their experiences aside and judge the case based on the evidence alone because they know that's what jurors are supposed to do. We rarely hear what is often the real answer to the "set aside" question which is: "I don't know."

There are many reasons that people can't easily evaluate how their experiences will influence their judgment as jurors. Here are three of the main ones: 1) it takes a high level of self-awareness about one's own biases and decision-making processes which many jurors simply don't have; 2) as indicated above, most jurors have no idea how their experience compares to what happened in this case or touches on what they will be asked to decide; and 3) many people have never had any reason to consider how past experiences have shaped their attitudes and subsequent decisions. That is why it is important to explore both the jurors' attitudes and rules before you jump to the bottom line. The answers will help you, and will often help the juror, think through the potential impact of prior related experiences.

When asked to make sense out of competing versions of the facts, jurors often use their own experiences to sort out "what really happened" or decide which witness to believe. Think of post-verdict interviews when you have heard a juror say something along the following lines, "We were stuck on one point and couldn't agree on which witness to believe, but then one juror said she had a similar experience with . . . and that helped us decide." A juror who says, "I know how these things work" can have a strong influence on other jurors who are struggling to figure out a way to reach a decision. If you have used jury research to prepare for trial, you have most likely observed mock jurors freely injecting their own experiences and using those experiences as a springboard for decision-making, while the backroom observers may be saying with dismay, "But that has **nothing** to do with this case!" Remember that the similarities between jurors' experiences and the case facts or issues – however remote they may seem to you – are likely to be more important and potentially more influential than the differences.

This should not be read as a critique of jurors' decision-making processes, as it is the process by which we all tend to evaluate unfamiliar and confusing situations. The process of searching one's personal database for similar situations brings forth not only the facts of the past experience, but also the attitudes and the conclusions or rules produced by that situation. It is that complete package that needs to be uncovered in voir dire.

The Question Sequence: Discover Experience First

Always ask about related experiences in a way that focuses jurors' attention: "This case involves an injury caused by a doctor not paying attention to medical test results. How many have had a similar experience?" Or, "This case involves a long-term business partnership that went sour. Has anyone had a similar experience?" All jurors know the answer to any question about their past experiences, so it is easy to volunteer a response. Getting the conversation going reduces some of the anxiety many jurors feel at the outset of voir dire.

As you begin to get responses, pay attention to the juror's choice of words, speech patterns (tone, pace, hesitations), and nonverbal behavior as the juror describes the experience. These may provide important clues to the juror's underlying or unresolved feelings about the experience. Be sure you ask the juror to **describe** the experience, and not to just give you a conclusion as to whether it was or was not similar to the case at hand.

If the juror answers by describing an experience that may initially seem to you to be unrelated, that is a signal to pay even closer attention. Why does the juror draw a connection between your question about experience with ignoring medical test results and a doctor's "lucky guess" as to a rare diagnosis? Don't assume you know the answer, **ask**: "Tell me how your experience is similar to, or differs from, the situation I described?"

When jurors start to describe experiences that sound like it would make them hostile to your case, resist the urge to cut them off and instead encourage them to keep talking. Your assumptions about them being a "bad" juror may be wrong once you have heard more, and the more they talk about that experience, the easier it will be to make the case to the judge that they are biased if you ask for a cause challenge.

Follow-up probes include: "When did that happen?" "What was the outcome of that experience?" "What did you tell others about it?" "When you talk to people about that experience, what is the hardest part to convey?" "Do you think about that experience often?" If you are asking about sensitive issues and not using a questionnaire, offer privacy where appropriate in a way that makes it easy for jurors to accept. Say: "We could talk about this at the bench if you'd like to do so." Do not ask: "Do you need to come up to the bench?"

Attitudes: Evaluate Jurors' Reaction to the Experience

Use experiences as a springboard to asking about specific attitudes. Do not initially suggest the specific attitude you assume would be produced by an experience. Keep it open-ended by asking, "How did you feel?" rather than, "Did you resent that?" Describing the reactions to an experience can help jurors begin to recognize their own biases or preconceptions. If the judge does ask the "Can you be fair?" question later, it will be harder for the juror to simply say, "Yes I can set that aside" after explaining his or her emotional reaction.

Jurors whose reported attitudes are inconsistent with their reported experiences should be flagged for further assessment. When you suspect a juror may be reluctant to tell you how they really felt because it would appear adverse to your case, give the juror "permission" to express that view. For example, if you represent the plaintiff in a contract dispute and the juror has described a substantial loss due to a breach of contract, but denied any emotional reaction say: "Some people might feel pretty resentful if a former business partner accused them of breaking a contract, while others feel anything goes in the business world. Which is closer to your reaction?"



Even if a juror has not reported a relevant personal experience, listening to other jurors do so can trigger reactions that give you a better way to assess their attitudes than asking questions in the abstract. For instance, you may say, “Listening to Mr. Smith talk about this experience with a competitor hiring his employees, what’s your reaction to that business practice?”

Remember that initial attitudes may change significantly over time. For very remote experiences, it is wise to distinguish between the initial and current reactions: “What was your reaction at the time? Looking back on it now, how do you feel about what happened?”

Look for signs of unresolved anger, bitterness, or cynicism. All can be targeted in ways that are difficult to predict. People who have been injured by a defective product but received no compensation for it, for example, could just as

easily blame the plaintiff in a product liability case as the manufacturer.



Rules: Learn Jurors’ Experience-Based Conclusions

Don’t assume that you can guess the “**rule**” or the lesson the juror has drawn from an experience based on hearing his or her reactions. If you are wrong, you could be **very** wrong. Someone harmed by a doctor’s negligence may believe that more doctors should be held responsible for causing harm **or** that everyone knows doctors are careless so the plaintiff should not have relied on the diagnosis without getting a second opinion. The

rule a juror follows after a financial loss resulting from a breach of contract may be, “Always get *everything* in writing” or, “A contract is no better than a handshake.”

Some rules may be based on the experiences of others who are close to the juror or simply the juror’s observations about how the world works. As with the attitude questions, you can use one juror’s rules as a way to get other jurors talking about their own “rules of thumb.” Some commonly held rules include: “The plaintiff is automatically 10% at fault in any automobile accident”; “It’s not negligence if it’s not on purpose”; or “Investors have no legal right to rely on what the sales people say.”

Many potential cause challenges remain under-the-radar when attorneys forget to ask whether jurors have their own ideas about the relevant rules. Find out if a juror’s “rule” differs from the rule of law **before** you shift to asking for opinions about the law. Once you start talking about “the law,” jurors will be less inclined to volunteer any differences of opinion based on their own rules because jurors know (and are often repeatedly reminded) that they are supposed to say they will follow the law.

EAR in Practice

The following are brief examples of using the EAR approach in several types of cases.

Defending a criminal charge of murder with self defense:

E = What experience have you had with fist fights, bar fights, or people who might throw a punch when they get upset?

A = How did you feel about that at the time? And looking back on it now, could you tell when things were going to get out of hand? How? What do you think caused those involved to lose control?

R = What are your views about when it is ok to defend yourself? What are your views about the use of force? When do you think there is an obligation to retreat?

A medical negligence case:

E = What experience do you have with doctors not responding promptly when called?

A = How did you feel about the delay in getting a response? Did you get any explanation as to why there was a delay? How did you feel about what the doctor said?

R = How do you handle medical emergencies as a result of that experience? How do you expect medical providers to respond?

A business dispute involving a “raid” of a competitor’s employees:

E = Has a competitor ever tried to recruit current employees at your company?

A = How do you view that practice? How did your employer respond? What did you think about that response? What impact did that have on other employees who wanted to leave the company?

R = How do you see that situation – is it typical or the exception to the rule in your industry? What are your views about the right way to recruit a competitor’s employees? What types of recruiting efforts cross the line?

Using EAR To Get Cause Challenges

The key to getting cause challenges in general is to help the juror recognize why he or she would not be a suitable juror for this particular case. That is often a formidable task, not only because jurors know they are supposed to say they can be fair and impartial, but also because admitting to “a bias” can feel like confessing to being a flawed human being, and admitting to the inability to set it aside can feel like shirking a civic duty.

Using the EAR structure for voir dire can help reduce these concerns by avoiding the label of “bias” altogether. Getting jurors to talk about their experiences, their attitudes, and the rules they developed as a result emphasizes that everyone brings a unique mindset into the courtroom. Strong attitudes and beliefs become the norm rather than the exception. In that context, the notion that it is difficult, and sometimes impossible, to set one’s views aside can become easier to recognize and accept. It also becomes clear to jurors that they will have an easier time fulfilling the duty to be fair and impartial by serving on a case that doesn’t touch on prior experiences and long-held beliefs.

The EAR approach has many advantages: it is easy to remember, easy to implement, and produces useful information. But the biggest overall benefit is that it allows you to do more listening and less talking, which is the best way to strike or challenge the right jurors.

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It is absolutely and totally not too late! Like what you read in *The Jury Expert*? Go straight to the sources! The annual conference for the American Society of Trial Consultants (ASTC) is in Atlanta, Georgia the first weekend in June. Hobnob with TJE authors. Meet trial consultants from around the country. Collect CLE's!

Talk shop. Or don't! Take a look at what we have in store in Atlanta--visit our conference webpage [here](#).

Deception: “Do you swear to tell the whole truth and nothing but the truth, so help you God?”

By Andrew Sheldon

Let's take another look at a central tenet of our legal system: that people are going to tell us the truth and, if they are not, that we can catch them at it. Research has been available for a decade that belies that basic notion. The basic research finding is that deceptive behavior is actually much more pervasive than honesty - in all walks of life, not just in the legal arena. Clearly, this has many basic practical applications in any litigation practice.

As introductory and background reading, a comprehensive overview entitled *Lying* by Sissela Bok (Bok, 1978) is excellent. Somewhat philosophical yet simultaneously specific, Dr. Bok will take you through a variety of scenarios in public and private life in which deception occurs. For our purposes, we will focus just on the legal system.

In Court and On Trial

To be sure, the identification of lying is difficult and the often intense, complex dynamics of a trial may make lie detection even trickier. Opportunities for deception in law may occur in our interviews with witnesses and with clients, in negotiations with our colleagues, in witness testimony both in depositions and in court, and during voir dire with potential jurors. In many of the situations we encounter as lawyers, lying is assumed to be a probability and we have developed protocols with which to confront the lying behavior. For example, cross examination is built into our system as a search beyond and behind the veil of what appears to be the truth, a search for “the rest of the story” as Paul Harvey used to say.

A list of cues that are often used to identify lying includes the ever popular “shifty eyes.” We have often encountered comments from jurors and mock jurors alike that the witness was “obviously lying” because “he kept looking from side to side” and “he never did look you in the eye.” Yet, gaze aversion, as it called, is considered a false cue for lying. One of the reasons witness work is such a valuable tool is that the witness can be helped to relax so that, in her more relaxed state, false cues like rapidly shifting eye movement do not occur.



At the opposite end of the continuum, coaching a witness to look directly into the camera or to connect with a juror while testifying by engaging in eye contact can become a real deception cue if the witness overcompensates by extending eye contact beyond what is socially appropriate. In this uncomfortable unbroken staring state, the witness may be perceived as “working too hard to appear truthful.”

In the broadest sense, lying ranges from the harmless to the harmful, from the so-called “white lie” to the sinister betrayal. A lie may be totally unintentional as when we make a simple mistake. A lie may be well-

intentioned as when we tell a dying person how well he looks when we all know better. And, of course, a lie may be intended to avoid responsibility for illegal behavior as when a cynical CEO claims he has no knowledge of fraud. The range of possibilities is broad, but much more inclusive than one would have first thought. From this broad and inclusive definition (which can include even silence when truth demands something different), it is not difficult to consider the basic notion that lying is much more prevalent than honesty.

It is a concept that Paul Ekman first taught us in 1985 in *Telling Lies, Clues to Deceit in the Marketplace, Politics, and Marriage* (Ekman, 1992). At first, we think it's an overbroad and over-inclusive definition of lying. After all, who thinks that a partner is lying when she says "Fine," after you ask her how she is feeling when in truth she is in the middle of her worst migraine in a year.

Lawyers live in a world where spotting a lie is a necessary skill - but how good are we? According to studies of people in various walks of life, no one is very good at spotting a lie. The fact is most people are bad lie detectors. How bad? On average, the research says most of us can detect lying only 55% of the time, little better than chance. What does that mean for jury selection? If we can not tell the truthful from the deceitful answer, what should we do?

Deciphering Deception

If we dig down into the issue of spotting a lie, we find some very interesting information. In 2008 at the AMA conference in San Francisco, psychology professor Maureen O'Sullivan (O'Sullivan, 2008) reported that among 13,000 people her team had tested to discover who might be very good at spotting lies, only 31 people were good at it. That is not many. She calls these experts "wizards."

When my team first began looking at deceptive communications in 1987, we set up a pilot project to try to get some insight into the cues people *believe* they use when spotting lies and liars. One of our questions was: If you were outside yourself watching you while you were lying, how would you know you were lying? The answers ranged from "My eyes would dart back and forth" to "lots of er's and um's" to "frowning a lot" to "I'd have this tight band around my head but you wouldn't be able to see it" to "I never lie." All of the folklore around how one uncovers a lie was confirmed. But not much of the reality.

In a research project with global reach, Charles Bond of Texas Christian University (Bond, 2000) asked over 2000 people from 60 countries to tell him how they spotted liars. The most common answer was "liars won't look you in the eye." Yet, we know that gaze aversion, as it is called, is not a reliable way to spot lying behavior. In truth, liars lie and do not dart their eyes or shift their gazes or clear their throats anymore than does someone telling the truth.

Remain Flexible

So how then can we tell if someone is lying? According to Dr. O'Sullivan, we have to be flexible in applying the rules of lie detection. It will not help, for example, to always rely on non-verbal cues (body language) or to always rely on verbal cues such as pauses in sentences. Instead, the people who are very good at spotting lies apply a variety of cues and apply them differently to different people.

Watch For Micro-expressions

Micro-expressions are fleeting, ultra-brief facial expressions that betray a person's true feelings or attitudes about what they are saying or doing at that moment. An effective way to evaluate a witness' truth telling is by using the frame-by-frame operation on your video player. Review the videotape of the deposition a frame (or several frames) at a time looking for sudden shifts in facial expression. You may notice a deponent who believes he has successfully deceived you in a deposition drop his guard just long enough to broadcast his arrogance for a split second.

Developing skill in reading micro-expressions is hard-won precisely because the cues are so brief, so fleeting. Videotape helps because slow motion allows one to slow down the action, then to pause on a particular expression. Suddenly, it all becomes clear as you observe the expression of contempt, no longer veiled, on the screen.

*Identify and Ignore False Cues*

Beyond these broad approaches to detecting lying, we find it very helpful to “clean our glasses” by getting rid of the most common *false* cues people use when spotting liars. It is very common for people to tell us that a person who is not “looking us in the eye” is lying. Called “gaze aversion,” this behavior is not a reliable cue of lying behavior. (Next time your teenager looks away from you when you confront them about not telling the truth, you can relax and give him or her the benefit of the doubt.)

Deleting these useless cues before we even try to

accurately identify a liar should increase accuracy because we are no longer trying to identify behaviors that are not helpful in identifying a lie, it will interfere with our accuracy. For example, if I think that shifting in a chair is indicative of lying (it is not), I am more likely to miss real cues.

Other behaviors you can discard when trying to uncover the truth include shifting around, touching the nose and clearing the throat. Studies show that people touch their noses no more or less frequently when telling the truth as when lying.

Triangulate Your Focus

Lie detection is a process of tuning in. Without the unreliable, inaccurate cues interfering, we can begin to really pay attention in order to see through. Since most of us are not normally focused on discovering deceit, we need to take the time to focus on the person whose behavior we are evaluating. Distractions will interfere with lie detection.

The nature of the focusing, in our experience, that is necessary for in-court lie detection is very intense and often requires the assistance of several people who are all focused on the same testimony. We call this process “triangulation.”

Basically, we increase the probability of accurate detection by increasing the number of trained observers. In jury selection, for example, the process is often intense and moving so quickly that it is next to impossible for

the lawyer actually asking the open-ended questions to also focus adequately on the potential juror's behavior. In even the best voir dire, the lawyer's focus is often more on what the next question will be or on understanding the content of the juror's response than on evaluating the truthfulness of the answer. In open court, group voir dire, the assistance of several trained observers enhances lie detection.

Another way to facilitate lie detection during voir dire is through the use of individual, sequestered voir dire. (We have never found individual voir dire conducted at the bench to be conducive to the level of focus that is needed for effective juror evaluation.) Sitting in chambers gives one a better chance to more closely focus on the juror's behavioral cues. The juror is alone, not conforming to whatever socially acceptable norms that the jury panel may have offered in open court.

Spot the Over-Actor

Next, we know that the highly motivated liar is going to do everything possible to keep from being discovered. That means that he or she is actually more likely to resemble an honest person because that is the best hiding place. Thus, one set of deceptive behaviors involves liars trying to look like non-liars.

Studies (Bond & Depaulo, 2008; Vrij et al, 2004; Colwell et al, 2006) show that when they are lying, people move around less, blink less, make fewer speaking errors and do not try to backfill omitted details. In other words, the liar is trying to make us think he or she is being honest by overplaying the role. Tricky stuff.



Next, remember to stay flexible and to include a constellation of cues in your evaluation: not just verbal cues and not just body language and not just content. Look intently for micro-expressions, as Paul Ekman called them.

Listen Quietly

Finally, among all the possible cues to deceptive behavior, the one we prefer involves listening, sometimes with eyes closed. Vocal cues can be complex, but basically we are listening for content (Does what the person is saying fit into the context of the rest of the testimony?) and voice tone (Does the throat tighten up and an unusually high tone show up?). The reason we like this set of cues is due to a British study (Wiseman, 1995) that asked people to try to spot lying. The people with the highest "hit" scores were those who could not see the person and were not distracted by visual cues.

After all is said and done, the most important thing to remember is that lying is truly difficult to spot which makes daily living a field day for liars. Yet it is possible to enhance your skills through practice.

References

- Bok, S. (1978) *Lying: Moral Choice in Public and Private Life*. Pantheon Books.
- Bond, CF. (2000) International Deception. *Personality and Social Psychology Bulletin*, Vol. 26, No. 3, 385-395.
- Bond, CF & Depaulo, BM. (2008). Individual differences in judging deception: accuracy and bias. *Psychological Bulletin*. 134(4), 477-492.
- Colwell, K., Hiscock-Anisman, C., Memon, A., Woods, D. & Yaeger, H. (2006) Strategies of impression management among deceivers and truth tellers: How liars attempt to convince. *American Journal of Forensic Psychology*, 24(2), 5-30.
- Ekman, P. (1992) "Facial Clues to Deceit," *Telling Lies, Clues to Deceit in the Marketplace, Politics, and Marriage*, p. 123-161.
- O'Sullivan, M. (2008). Home runs and humbugs: Comment on Bond and DePaulo. *Psychological Bulletin* 134(4):493-497.
- Vrij A, Akehurst L, Soukara S, Bull R. (2004) Let me inform you how to tell a convincing story: CBCA and reality monitoring scores as a function of age, coaching, and deception. *Canadian Journal of Behavioral Science*, 36:2:113-126.
- Wiseman, R. (1995). The MegaLab Truth Test. *Nature*, 373, 391.

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How Jury Service Makes Us Into Better Citizens

by Perry Deess and John Gastil¹

It has been well over a century since Alexis de Tocqueville first hypothesized a relationship between the institution of jury service and civic engagement, yet this appealing claim has gone untested. In the mid-1970s, political theorist Carole Pateman restated Tocqueville's idea as a more general *participation effect*, whereby any form of civic participation can promote others². In the years that followed, there emerged no compelling investigation of the proposition. Reflecting on this dearth of evidence, both Pateman and fellow political scientist Jane Mansbridge declared that the participation effect—now an act of faith among those advocating participatory forms of democracy—might remain untested in perpetuity, as they doubted that one could design and implement a suitable test.³

Meanwhile, the proposition that the jury can change the juror has shaped law and public policy without having an established basis in fact. In 2004, Japan rewrote its laws to develop a “quasi-jury” system based partly on the belief that the jury “promotes a more democratic society.”⁴ A decade earlier, the U.S. Supreme Court affirmed the constitutional right to serve on juries by invoking Tocqueville's claim that juries are essential to democracy.⁵ The Court's source for this belief was, simply, Tocqueville himself.

Not long after the Court handed down its opinion, the authors of this article were sitting in a dusty New Mexico plaza trading stories over caffeinated beverages when the conversation turned from baseball to Tocqueville...

Tea sipper: “Why have juries?”

Coffee drinker: “They're good for you.”

Tea sipper: “How do you know? What good comes from having twelve ordinary citizens deliberating when you could have one trained judge making informed choices?”

Coffee drinker: “You tea drinking elitist, Tocqueville told us juries are schools for democracy.”

Tea sipper: “And Fourier said the sea would turn to pink lemonade after we all lived in phalansteries. How would you measure democratic citizenship, anyway?”

Coffee drinker: “We know people are being good citizens if they participate in political society,” the coffee quaffer replied, savoring another swallow of his inky drink.

Tea sipper: “So people are more likely to vote after serving on juries?”

Coffee drinker: “Why not?”

Tea sipper: “It's testable. Jury records must be public, and we know that voting records are. Care to make it a friendly wager?”

Ten years later, we are ready to tell you who won that bet.



Designing a Hard Test for the Participation Effect

Studies on juries have often relied entirely on self-reported data (surveys) or a handful of in-depth interviews. In either case, the skeptic can doubt the truth claims about the jury based on this evidence. After all, many addicted smokers assert that they can “quit tomorrow.” Are they any less reliable than others who self-report? To be fair, surveys and interviews have their place as legitimate research tools, but we did not feel they were definitive enough to decide our real money wager.

An ideal study would also test the impact of reluctant participation. Normally, when citizens choose to engage in a civic activity, they do just that—they *choose* to participate, either spontaneously and voluntarily⁶ or in exchange for honoraria and other positive incentives⁷. Public deliberation might benefit those who seek it out, but an ideal study of the participation effect would determine whether a civic activity can spark future public engagement even when some participants would rather be elsewhere.

One more common problem in social scientific research is that effects are too often measured only hours, days, or a few weeks after the researcher’s intervention. Short-term assessments of behavior change leave open the question of the how long an impact lasts, yet in the laboratory, researchers often have access to study participants only for a limited time. Even if there is a follow-up survey separate from the experimental manipulation, it usually comes promptly, lest too many of the study’s participants drift out of the study’s reach. If you bet money against an effect you don’t want to lose merely because it lasts a few hours or days.

The test we proposed to resolve our wager about the civic impact of jury deliberation avoids all of these measurement problems by linking official jury records with the actual democratic act of voting as recorded by the county’s registrar of voters. This is not the best way to understand the robust and varied nature of civic engagement, but it can demonstrate whether an effect exists under the most rigorous of testing conditions. Although subject to human error, the public records we gather do not depend on fragile human memory or anyone’s desire to impress an interviewer. Given that the researchers and recording clerks only meet long after the court and voting documents have been produced, bias in the recording of the data is implausible. In addition, this approach can yield as close to a perfect response rate as the archives will allow, with little chance that jurors’ experience at the courtroom could influence the odds of their appearing in our final dataset. Because jury service is mandatory, it also brings into our study many people who embark on their public service journey at the county courthouse only reluctantly. Finally, our approach allows us to collect data spanning a period of years, such that we can measure the impact of jury service on voting in elections held months or even years after the study participants completed their service.

Making a Hard Test Fair

Though our research design provides a hard test of the participation effect, it is just as important to ensure that the test is *fair*. The rules of statistical inference are designed to encourage modesty. When one hears of a “margin of error,” for instance, that is an acknowledgement that our estimates are not precise. If a survey finds that fifteen percent of Hawaiians would like to take a holiday in Alaska, the more careful scholar might add that the correct estimate is really “ten-to-twenty percent.” In this same way, when we make a comparison, such as whether more Hawaiians or Texans would rather travel to Alaska, we require that there be no significant overlap in the two estimates. If, in this case, we found that fifteen-to-twenty-five percent of Texans hear Anchorage beckoning them, we would conclude that there was “no statistically significant difference.” The margins of error, in these cases, overlap, and that makes a modest researcher reluctant to announce with confidence that a real difference exists in the vacation predilections of the two states’ residents.

The smaller the differences one hopes to detect, the more likely it is that these margins of error will overlap. The same is true for our pursuit of the participation effect. We expect this effect to be relatively small, given the stability in people's voting behavior, the varied ways in which people respond to the jury experience, and the multitude of random factors influencing the likelihood of voting on any given day. Even expensive and much ballyhooed Get-Out-The-Vote (GOTV) campaigns, for instance, have only minimal effects on voters (if any at all), with the most efficacious face-to-face canvassing yielding less (often far less) than a 10% increase in a citizen's voting likelihood⁸.

Fortunately, one can counterbalance the difficulty of finding small effects by shrinking the margin of error. By the laws of statistical inference, the larger the sample, the smaller the error margin. Creating a large sample can be an expensive proposition but with funding from the University of Washington and the National Science Foundation, we were able to do precisely that.



The National Jury Sample

In 2004 and 2005, a team of researchers set off to gather data in counties from diverse regions across the United States⁹. This undertaking required not only a large travel budget but also a leap of faith. What if the study produced nothing interesting or even refuted the findings of the earlier work? Then the researchers would have nothing for their troubles save a merry trip to a brightly-lit courthouse in Omaha, Nebraska or Fayetteville, North Carolina. For those whose heart races at the cool touch of manila folders and metal file cabinets, the trip would offer its own rewards, plus frequent flyer miles and a few extra cups of tea.

The principal objective of this larger study was to determine whether the jury-voting link would appear across a diverse sample of jurors and jurisdictions with varied trial rules, jury facilities, and court practices. Going out of our way to gather a disproportionate number of civil jurors, the larger National Jury Sample would also test whether this participation effect appeared equally strong for criminal and civil juries.

Collecting thousands of jurors across a broader range of trials also permitted the creation of a more precise comparison group consisting solely of "cancelled trials," in which the juror is empanelled, the trial begins, and then the trial ends prematurely—even before the jury can begin its deliberations. This includes mistrials, dismissals, withdrawn cases, settling out of court, or waiving the right to a jury after the trial began. This study works as a natural experiment where cancelled trials are the control group against which we compare four distinct jury experiences: serving as an alternate, defendant pleading guilty after the trial begins, hung jury (in part or full), and complete verdicts.

Based on the pilot study¹⁰, we expected that reaching a verdict would have a positive effect on future voting relative to the experience of merely sitting in the jury box for what would end up as a cancelled trial. In addition, we anticipated that hung juries would have a net positive effect compared to cancelled trials.

The hung jury prediction puts the focus squarely on experiencing *deliberation*, rather than the personal satisfaction of convicting a defendant or setting one free. A review of contemporary data on hung juries found they typically result from a complex case for which neither side can predict the trial outcome; juries typically

hang only after intensive, prolonged jury deliberation¹¹. Moreover, a hung jury often results in a decisive finding for the defendant (or respondent), so it serves as a final jury verdict in that sense. In any case, the hung jury constitutes an unambiguous experience of deliberation, regardless of outcome, and a core claim in this study is that participation in deliberation *itself* is the most critical component of the jury experience. To presume otherwise would require all deliberative forums to yield conclusive group decisions or fail to inspire their participants¹².

The other two outcomes—sitting in the jury box as an alternate or witnessing a guilty plea before beginning jury deliberation—were less clearly distinct from a cancelled trial. Alternates do not participate in deliberation, therefore when their jury reaches a verdict, they play no direct role, but they share the experience of sweeping oratory and numbing tedium in the trial. If the act of witnessing a trial plays a role in promoting civic engagement then it should apply to alternates as well. Similarly, a guilty plea yields a final verdict for all jurors, akin to a “conclusive” outcome, but it involves no jury deliberation. To test our expectations, these two outcomes were also compared to cancelled trials to test whether either would produce the same positive effect predicted for hung and full-verdict juries.

In addition, consistent with the aforementioned pilot study, we predicted that the number of charges against the defendant in criminal trials would provide an additional boost in post-jury voting rates. More charges are one indicator of the complexity of the decision task, with multiple counts against the defendant requiring the jury to reach multiple verdicts. Deliberative theorists and practitioners alike have stressed the importance of the *depth* of deliberation when considering its potential benefits for participants¹³. In the context of the jury, the number of charges provides one glimpse of such depth.



The National Jury Sample was further refined by distinguishing between historically frequent and infrequent voters, based on pre-jury voting behavior. A commonsense consideration of the participation effect is that it can draw into public life those citizens who are relatively less engaged, rather than merely reinvigorating those who are already regular participants. For instance, in his study on campaign participation, political scientist John Freie writes, “The popular panacea offered by some to reduce alienation is often participation itself. Political participation, it is hypothesized, will alleviate feelings of alienation and result in future political involvement¹⁴.”

To test the jury effect for less versus more electorally active citizens, we split the National Jury Sample between habitually infrequent and frequent voters, based on their pre-trial voting rates. The study still controls for variation in voting rates *within* these two groups, but we separate low- from high-turnout juror groups to determine whether the participation effect is visible across both

populations.

Our expectation is that less active citizens are more likely to experience a cognitive and behavioral shift toward greater future public engagement than those who have already caught the civic spark. For infrequent voters, jury service offers entrée to a largely unexplored world—that of citizen participation and self-

government. If jury service makes citizens, in Tocqueville's language, "feel the duties which they are bound to discharge towards society,"¹⁵ this feeling is newer for those previously less inclined to recognize and fulfill such duties. Regular voters may still experience the participation effect, but its impact should be stronger for habitually infrequent voters than their steady-voting counterparts.

Building the Sample

Collecting a large and diverse sample of jurors required identifying a variety of counties in different parts of the country that had publicly accessible court archives, legible and complete jury records, and cooperative administrative staff. The eventual merger with electoral data also required access to complete and digitally archived voter histories dating back to at least 1994. To test the generalizability of the pilot study findings, we also aimed to assemble a set of counties that were demographically and politically diverse.

It was not possible to construct a fully-representative national random sample of jurors for technical and logistical reasons. Chief among these was that only some courts make their jury records readily available for public inspection, and among those, many do not consistently record jurors' full names, which are necessary for matching jury lists with voting records. In addition, counties above a modest size (e.g., those hosting a city larger than Seattle) would produce too few unique matches between full juror names and the corresponding county list of registered voter names. With these limitations in mind, the goal was, once again, to create a broad and diverse sample—not a perfectly representative one. Following these guidelines, the final set of data collection included Boulder County (Colo.), Cumberland and Swain Counties (N.C.), Douglas County (Neb.) El Paso County (Tex.), Orleans Parish (La.), Summit County (Ohio), and Thurston County (Wash.). Figure 1 shows the geographic distribution of the counties contributing to the National Jury Sample.

For each of the eight counties studied, we employed the same general procedures. In each case, the patient court administrators obtained for us a list of trials during a two-to-three year period, then for hundreds of hours, tireless researchers and assistants pored over files by hand to record the full names of jurors from written lists enclosed in the files. Juror names were then used to laboriously merge data with electronic voter registration lists provided by the county's election office, with voter histories extending back roughly five years before and five years after the period of jury service (see Figure 2).

The final result was a dataset with 13,237 empanelled jurors, including 8,573 who were seated in the jury box for a criminal trial and 4,664 who sat for a civil trial. Of these jurors, 10,300 served on juries that reached complete verdicts, 554 were hung on some or all charges/claims, 818 were excused from the jury box after the defendant changed his/her plea to guilty, 904 were dismissed for various other reasons (mistrial, withdrawn charges, out-of-court settlement, etc.), and 576 served only as alternates, never joining in jury deliberation. Of these jurors, 65% matched voter files to produce 8,614 jury records with matching voter histories. (See the *Journal of Politics* web appendix for this article to see figures by county/parish.) A full sample of this size was necessary because we were pursuing a relatively small effect size and breaking the sample down into smaller sub-samples for comparisons.



Results

We conducted regression analyses to judge which of our predictors explained changes in jurors' voting behaviors. That meant conducting a total of four analyses: For persons with a history of infrequent voting, we ran separate analyses for criminal versus civil jurors, and we then ran the same analyses for more steady voters.

The left-hand column in Table 1 shows what group was indicated as responsible for increased election turnout among infrequent voters serving on criminal trials. Criminal jurors reaching a verdict were more likely to vote in later elections. In the National Jury Sample, the likelihood voting in a future election rose by an average of 4.3% over the span of several years.

Those previously infrequent voters who had the intense deliberative experience of a hung jury showed the largest effect. These jurors did not reach a conclusive verdict, but they did all have the opportunity to deliberate at length about the trial with their fellow jurors. On average, a participant in a hung criminal trial experienced a 6.8% increase in their voting rate in the years after completing their jury service.

Consistent with this emphasis on the intensity of the deliberative experience, the number of charges against the defendant again proved a significant contributor to post-service voting. Each additional charge added a 1.3% increase in the likelihood of voting. For a complex criminal trial with, say, four charges against the defendant, this would amount to an average increase in voting of roughly 4%.

Figure 3 puts these findings in comparative terms. For previously infrequent voters, the effect of deliberating on a criminal jury is comparable to the civic boost a high school student gets from taking a mandatory civics course for a semester, and it exceeds the impact of service on student council.

The other results in Table 1 are unremarkable. As expected, neither of the other trial outcomes—serving as an alternate or having a defendant plead guilty before deliberation began—had any significant effect on the likelihood of voting. Also, in the National Jury Sample, the effect of a better-estimated pre-jury voting history was even greater than in the pilot Project, but again, this was to be expected and simply reinforces the fact that voting is habitual behavior.

In fact, the rest of the analyses in this investigation are *all* non-findings. The results confirmed suspicions from interview data and the pilot project: Civil trials really are different. In the National Sample, the right-hand column of Table 1 shows that no significant participation effect was found for the civil jury experience among infrequent voters. The same column in Table 2.4 shows that civil jurors with a history of regular voting also experienced no civic benefit from their civil jury service. More generally, there were no participation effects for either civil *or criminal* trials among frequent voters. Aside from the obvious impact of pre-jury voting service, the likelihood of voting after jury service was not significantly related to any feature of that service experience.



Discussion

These data provide strong evidence for a pervasive and enduring effect of criminal jury deliberation on civic engagement, at least for those entering jury service with a relatively spotty voting record. The effect amounts to roughly a 4- to 7% increase in average turnout. On top of that, we find a participation effect that increases more than one percent per additional charge against the defendant. These effects were present even with the post-jury voting rate being measured

over roughly five years. The National Jury Sample also yielded these results with a diverse sampling of courthouses and jury pools.

The effect of criminal jury deliberation on voting, however, does not hold for those voters who are already active. We had expected this population to experience *less* voting change, but the data make it clear that the jury does not affect these individuals' voting behavior. This finding substantially qualifies the extent to which one should expect the participation effect to occur in juries.

The National Jury Sample made clear that the participation effect comes from *all* deliberating jurors, not just those who reach verdicts. We anticipated that hung jurors would experience the participation effect, and as it turned out, it had an effect slightly greater than that obtained for jurors who agreed on verdicts. Again, the nature of the deliberation may be a factor. Post-hoc analysis of the court records showed that hung jurors, on average, were more likely to have asked a judge for assistance during deliberation (79% of those on hung juries did so, compared to just 28% of jurors reaching verdicts). Also, hung juries deliberated for a considerably longer time—roughly nine hours—than did their verdict-reaching counterparts, who were usually done in four. For many jurors, long and challenging deliberations that end in a contested deadlock leave a stronger an impression than does reaching a comfortable verdict with one's peers.

In addition, the absence of any effect whatsoever for jurors in the alternate and guilty plea groups across the four sub-samples means that these experiences do not have the same impact as full-fledged jury deliberation. A spontaneous guilty plea in the courtroom may feel, to the juror, more like a cancelled trial than a conclusive experience. Serving as an alternate also appears to leave no strong impression on jurors, regardless of their prior voting history or the type of trial to which they were assigned.

Finally, the clear impact of the number of criminal charges reinforces the significance of jury deliberation, but in a complex way. In the pilot study, we speculated that the number of criminal charges reflected the *seriousness* of the charges, but a post-hoc coding of charge severity in these data did not bear out this interpretation. We believe the best alternative interpretation is that juries weighing more charges simply face a more complex deliberative task as they make *more* decisions often involving interlocking judgments and mixed verdicts.

Notice, however, that the number of charges has this effect *independent of whether the jury was sent away to deliberate*. As we explained before, statistical regression analyses separate out the effects of each independent variable, and the number of charges has its own heft as a predictor of future voting. This is consistent with the well-known fact that jurors begin processing a case cognitively before they sit down face-to-face to discuss it.

Conclusion

This project has walked a long road from the dusty Albuquerque café to the collection of thousands of records in a large national jury sample. For us, the lesson is that you don't get to the end without starting in the beginning. Returning to the wager that launched this escapade, we have now marshaled sufficient evidence to show that jury service can, indeed, contribute to an increase in civic engagement, at least in the form of voting. But we have learned many other lessons along the way.

The National Jury Sample wielded a geographically and ethnically diverse sample that permitted a more definitive and fine-grained investigation of the link between jury service and voting. The national study

produced three main findings. First, the main increase in voting rates results from the experience of jury *deliberation*, not merely from trials in which jurors reach a verdict. Second, cases involving multiple charges spark an additional, positive participation effect, which suggests the need to consider the complexity of a case and other features that might make jurors' deliberative task more challenging or engaging. Third, none of these effects occur for jurors who are already frequent voters or who sit in the jury box for civil cases.



The National Jury Sample also gave a more refined estimate of the participation effect. The study suggests that one can expect an increase of roughly four-to-seven percent, at least in the case of criminal jurors' post-service voting rates. Figure 3 shows that this effect, for previously infrequent voters participating as criminal jurors, is comparable to a semester-long civics course or a full stint on the student council¹⁶.

The results presented here have significance beyond the jury itself. Our findings suggest that other meaningful deliberative events may also spark a participation effect. A recent national survey found that Americans deliberate in a variety of ways in the course of their public lives, from attending public meetings to taking part in online discussions¹⁷. Our research suggests that the strength of the participation effect at such deliberative events probably depends on the quality of the deliberation and the gravity or complexity of the issue under discussion. It is important to understand that this research suggests a broader link between

citizenship and deliberation and deliberation's effect on voting may well appear in other venues beyond the courthouse.

Undoubtedly, the main finding is simply that, as the U.S. Supreme Court assumed in *Powers v. Ohio* (1991), there is wisdom in Tocqueville's claim that juries serve as a school for democratic citizenship. The objective measures in the pilot Project and the National Jury Sample demonstrate that, consistent with a broad range of theories on democracy, different forms of civic engagement are linked. Moreover, they show that the link carries a participation effect, whereby an intense—preferably deliberative—experience in one area of civic engagement can spur increases in another.

It is also striking that the complexity of a case augments the participation effect in criminal trials. In our view, this underscores the importance of personal engagement as jurors work through a deliberative process toward a complicated set of agreements among themselves. It is striking that the technical complexity of a civil case—a challenge for jurors often noted in the legal literature¹⁸—does not have this impact. Perhaps technical complexity dulls engagement, whereas deliberative complexity enhances it.

The transformative experience of jury service even on hung juries further underscores the importance of engaging citizens. The hung jury is not a case of successful citizen participation as a group; it may be the most personally frustrating and infuriating experience of failure in civic engagement. The struggle to avoid failure, however, lends intensity to the deliberative process and forces citizens to engage in a bitter conflict of individual opinions. A jury does not fail to reach consensus unless participants cling tenaciously to diametrically opposed views. Is it surprising, then, that from the ashes of a failed jury there should sometimes emerge a new

citizen? Only a vigorous exercise of one's sense of civic duty would keep twelve strangers struggling for hours, often days, only to find consensus impossible¹⁹.

The importance of deliberative complexity speaks directly to Tocqueville's conviction that "the jury teaches every man [sic] not to recoil before the responsibility of his own actions and impresses him with that manly confidence without which no political virtue can exist. It invests each citizen with a kind of magistracy..."²⁰ In deliberation on complex criminal cases and what Tocqueville might call, in the parlance of his time, the "manly conviction" of hung juries, the participation effect shines brightest. The jury administers justice on the state's behalf, while promoting deliberation and democratic citizenship along the way.

This should serve as a warning about the limits of research that focuses strictly on non-governmental civic engagement and democracy²¹. Although voluntary engagement is often the focus of research, there is more to citizenship than voluntary engagement. Jury service stands as a *mandatory*, government sponsored political institution. It is the one area where ordinary citizens are *required* to exercise state power as individuals. Some overlook the jury because it is mandatory, yet, with millions of participants each year,²² the jury may serve a more powerful role in promoting democracy and citizenship than any voluntary association.

Footnotes

¹This essay is adapted from an early draft of the forthcoming book, *The jury and democracy: How jury deliberation promotes civic engagement and political participation* (New York: Oxford University Press), co-authored by John Gastil, Perry Deess, Phil Weiser, and Cindy Simmons.

² Pateman (1970).

³ Pateman (1989) and interview of Mansbridge presented in Fung (2005).

⁴ Anderson and Nolan (2004), p. 943.

⁵ Powers v. Ohio (1991).

⁶ Mathews (1994).

⁷ Crosby and Nethercutt (2005); Fishkin and Luskin (1999).

⁸ Green and Gerber (2004).

⁹ For additional detail on the National Jury Sample, see Gastil, Deess, Weiser, and Meade (2008).

¹⁰ Gastil, Weiser, and Deess (2002).

¹¹ Hans, Hannaford-Agor, Mott, and Munsterman (2003).

¹² Such a view is contrary to the spirit of most deliberative theory, which yields ideas like Deliberation Day (Ackerman and Fishkin, 2004) that aim to stimulate discussion *without the guarantee of resolution*. See generally, Gastil and Levine (2005).

¹³ Crosby and Nethercutt (2005); Warren (1992).

¹⁴ Freie (1997), p. 134.

¹⁵ Tocqueville (1961 [1835]), p. 337.

¹⁶ Thomas and McFarland (2006).

¹⁷ Jacobs, Delli Carpini, and Cook (2004).

¹⁸ Bertelsen (1998), for example, believes only professionally trained juries are competent to handle complex civil litigation.

¹⁹ This also speaks to overemphasis placed on consensus in deliberative theory. See, for example, Karpowitz and Mansbridge (2005).

²⁰ Tocqueville (1961 [1835]), p. 337.

²¹ The touchstone for modern work in this area is Putnam (2000).

²² Based on figures from the 2006 Annenberg Public Policy Center Survey on the Judiciary, one could extrapolate that 17 million Americans have served on juries during the past five years. A 2007 survey by the National Center for State Courts estimates that a full third of U.S. citizens are likely to have served on a jury at some point in their life. The absence of a comprehensive, national jury service reporting requirements make more precise figures impossible.

References

Ackerman, Bruce, and James S. Fishkin. 2004. *Deliberation Day*. New Haven: Yale University Press.

Anderson, Kent, and Mark Nolan. 2004. Lay participation in the Japanese justice system: A few preliminary thoughts regarding the lay assessor system (saiban-in seido) from domestic and historical and international psychological perspectives. *Vanderbilt Journal of Transnational Law*, 37, 935-992.

Bertelsen, Kristy Lee. 1998. From specialized courts to specialized juries: Calling for professional juries in complex civil litigation. *Suffolk Journal of Trial & Appellate Advocacy*, 3.

Crosby, N., and Nethercutt, D. 2005. Citizens Juries: Creating a trustworthy voice of the people. In *The Deliberative Democracy Handbook: Strategies For Effective Civic Engagement in the Twenty-First Century*, ed. John Gastil and Peter Levine. San Francisco, CA: Jossey-Bass.

Fishkin, James S., and Robert C. Luskin. 1999. Bringing deliberation to the democratic dialogue: The NIC and beyond. In *The Poll With a Human Face: The National Issues Convention Experiment in Political Communication*, ed. Maxwell McCombs and Amy Reynolds. Mahwah, NJ: Lawrence Erlbaum.

Freie, John F. 1997. The effects of campaign participation on political attitudes. *Political Behavior*, 19, 133-56.

Fung, Archon. 2005. Deliberation's darker side: Six questions for Iris Marion Young and Jane Mansbridge. *National Civic Review*, 93(4), 47-54.

- Gastil, John, and Peter Levine. (Eds.) 2005. *The Deliberative Democracy Handbook: Strategies For Effective Civic Engagement in the Twenty-First Century*. San Francisco, CA: Jossey Bass.
- Gastil, John, Eugene P. Deess, and Phil Weiser. 2002. Civic awakening in the jury room: A test of the connection between jury deliberation and political participation. *Journal of Politics*, 64, 585-595.
- Gastil, John, Eugene P. Deess, Phil Weiser, and Jordan Meade. 2008. Jury service and electoral participation: A test of the participation hypothesis. *Journal of Politics*, 70, 1-16.
- Green, Donald P., and Alan S. Gerber. 2004. *Get Out the Vote: How to Increase Voter Turnout*. Washington, DC: Brookings Institution Press.
- Hans, Valerie P., Paula L. Hannaford-Agor, Nicole L. Mott, and G. Thomas Munsterman. 2003. "The Hung Jury: *The American Jury's* Insights and Contemporary Understanding." *Criminal Law Bulletin*, 39, 33-50.
- Jacobs, Lawrence R., Michael X. Delli Carpini, and Fay Lomax Cook. 2004. *How Do Americans Deliberate?* Presented at the Midwest Political Science Association, April 15-19, Chicago.
- Mathews, David. 1994. *Politics for People*. Chicago: University of Illinois Press.
- Pateman, Carole. 1970. *Participation and Democratic Theory*. Cambridge: Cambridge University Press.
- Pateman, Carole. 1989. *The Disorder of Women: Democracy, Feminism, and Political Theory*. Cambridge: Polity Press.
- Powers v. Ohio, 499 U.S. 400, 407 (1991).
- Putnam, Robert D. 2000. *Bowling Alone: The Collapse and Revival of American Community*. New York: Simon & Schuster.
- Thomas, Reuben, J., and Daniel A. McFarland. 2006. *Bowling Young II: How Youth Voluntary Associations Affect Voting in Early Adulthood*. Available at <http://www.civicyouth.org>.
- Tocqueville, Alexis de. 1961 [1835]. *Democracy in America*. New York: Schocken.
- Warren, Mark E. 1992. Democratic theory and self-transformation. *American Political Science Review*, 86, 8-23.

Perry Deess is the Director of Institutional Research and Planning at the New Jersey Institute of Technology. He was a co-primary investigator on the National Science Foundation sponsored Jury and Democracy project. He is also an author of numerous articles on juries and democracy. Deess is a notorious doomsayer, who believes the jury system will emerge stronger in the future, despite also loving the Detroit Lions for their ability to confirm the grimmest expectations.

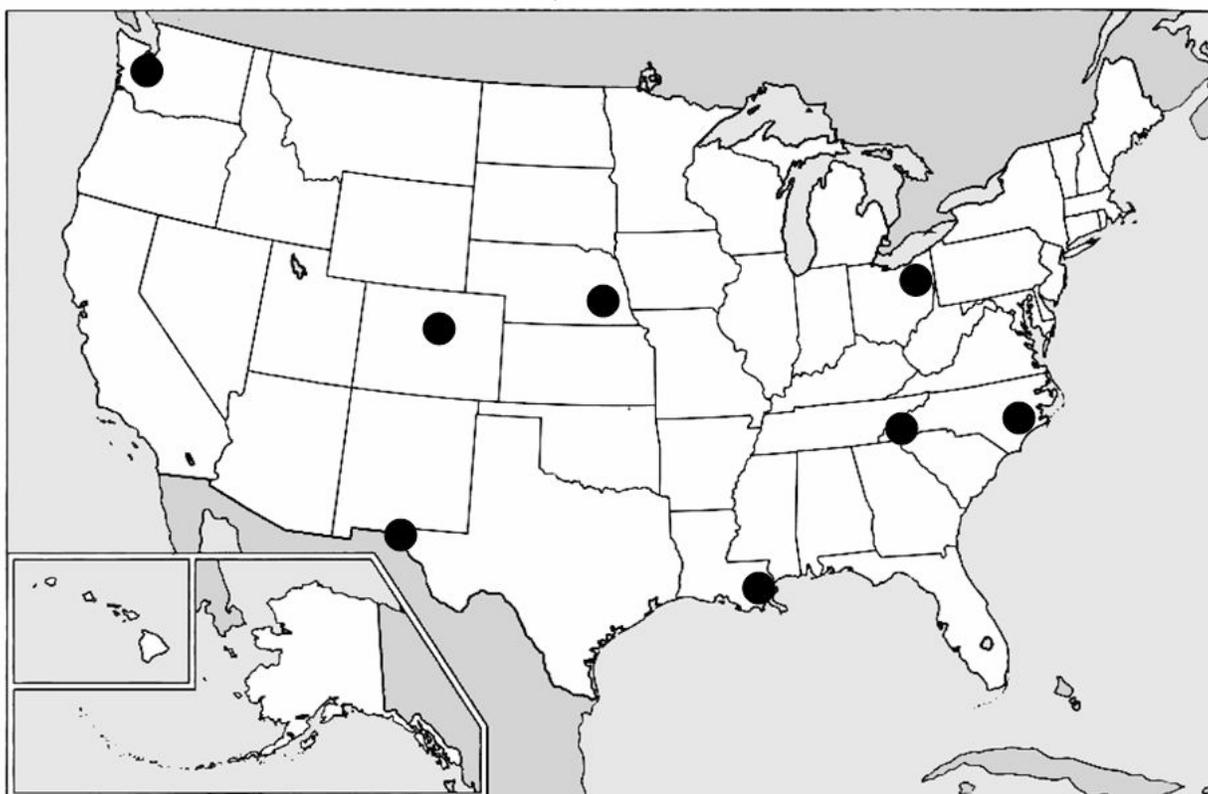
John Gastil is a professor in the Department of Communication at the University of Washington. He is author of *Political Communication and Deliberation* (Sage, 2008), co-editor of *The Deliberative Democracy Handbook* (Jossey-Bass, 2005), and the author of *By Popular Demand* (U California, 2000) and *Democracy in Small Groups* (New Society, 1993). Gastil continues to have optimism that the jury system will survive, but this is the same person who each year expects the Detroit Lions football team to win the Super Bowl. (They were 0-16 last season.)

**Table 1:
Linear regression measuring the effect of jury experience on infrequent voters in the
National Jury Sample**

	Served on a criminal trial		Served on a civil trial	
Predictor	<i>B (SE)</i>	<i>b</i>	<i>B (SE)</i>	<i>b</i>
Jury Verdict	.043 (.03)	.076*	.020 (.02)	.029
Hung Jury	.068 (.04)	.063**	-.111 (.17)	-.019
Alternate	.022 (.04)	.022	.000 (.05)	.000
Guilty Plea	.019 (.04)	.021	---	---
# of Charges	.013 (.01)	.061**	---	---
Pre-Jury Vote	.640 (.06)	.273***	.769 (.07)	.322***
<i>R</i>	.128***		.156***	
<i>N</i>	1397		997	

Note. * $p < .10$, ** $p < .05$, *** $p < .01$. The reference group for the Jury Verdict, Hung Jury, Alternate, and Guilty Plea dummy codes was Cancelled Trial (mistrials, dismissals, withdrawn cases, settling out of court, or waiving the right to a jury after the trial began). The other variables entered in the regression equations were the dummy variables representing county and oversample; they are omitted for economy of presentation. *B* denotes unstandardized regression coefficient, *SE* denotes standard error of estimate, and *b* denotes standardized coefficient.

Figure 1: Geographic distribution of counties contributing to the National Jury Sample.



Note. Dots on map are placed in the principal cities within each county, including, from left-to-right: Seattle, Wash. (Thurston County); El Paso, Tex. (El Paso County), Boulder, Colo. (Boulder County); Omaha, Neb. (Douglas County); New Orleans, La. (Orleans Parish); Bryson City, N.C. (Swain County); Akron, Ohio (Summit County); and Fayetteville, N.C. (Cumberland County).

Figure 2: Three-step process for creating a dataset of jurors with complete voting histories.

1A. Identify all jurors in county by full name

THIS MATTER CAME ON BEFORE THE COURT FOR Jury Trial
 Court was called to session at 10:10 by Sheriff Liffany. The Clerk finds 27
 jurors present, the names whom appear on the Court's records, with seating position numbers having
 previously been selected. The panel was sworn by the Court Clerk to answer truthfully all questions
 asked of them by the Court or Counsel. Court instructed the jury. Struck jury process begins at
11:5 a.m./p.m. with Mr. Graf for 20 minutes of questions. Mr. King
 for 20 minutes of questions. _____ for _____ minutes of questions. _____

1. David H. Gaston #113	7. Lorraine Hankins #98
2. Karen Angell #557	8. Karen M. Fox #752
3. Theresa M. Henry #559	9. Mary M. Hunter #912

1B. Obtain county voter histories

NAME	E971104
AASEN, DEBBIE E	
AASEN, DONNA J	1
AASEN, JERALD O	1
AASEN, KEVIN	
AASEN, PAMELA G	1
AASEN, ROBERT P	1
AASEN, RONALD P	

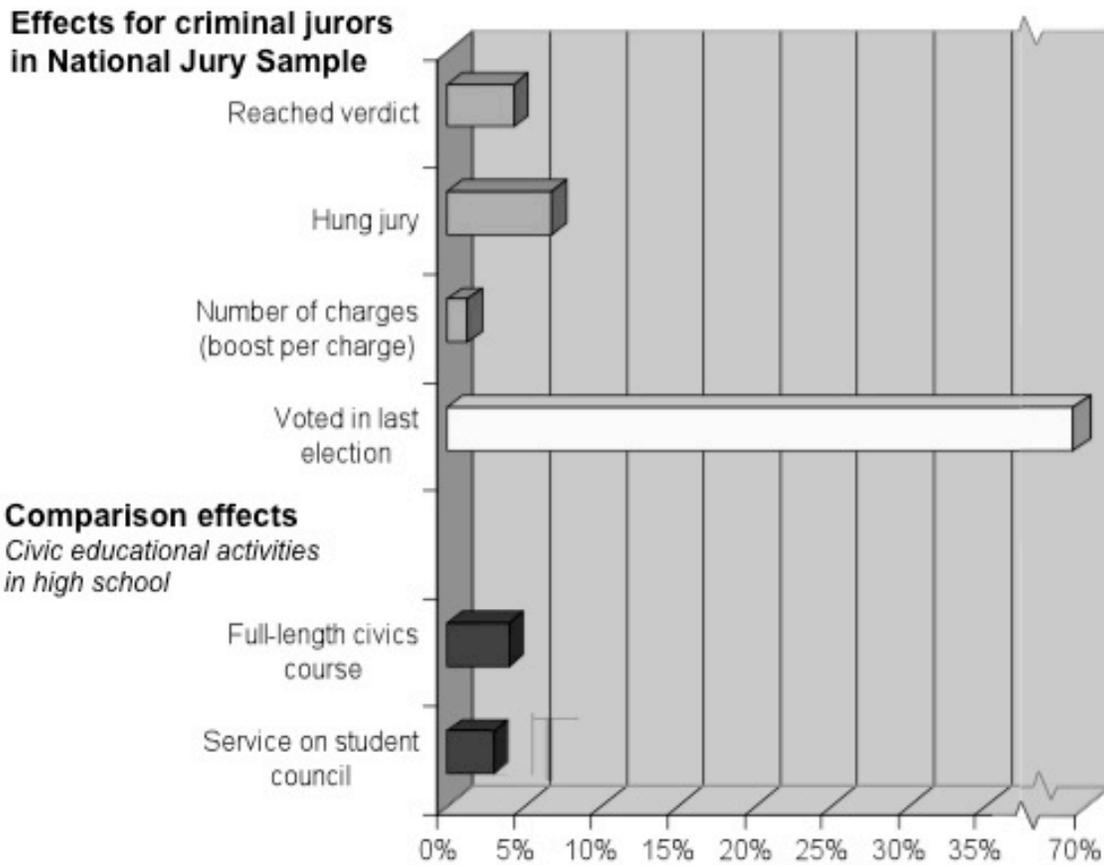
2. Use software to match juror names with voter names

```
//90% Match including middle initial
else if (strcmpi(J_Name_L, V_Name_L) == 0
    && strcmpi(J_Name_F, V_Name_F) == 0
    && J_Name_M[0] == V_Name_M[0]
    && MatchQuality < 100) {
    sprintf(OutputBuffer, "90\t%s\t%s\t%d\t%
    J1, J2, J3, J4, J5, J6, J7, J8, J9,
    V1, V2, V3, V4, V5, V6, V7, V8, V9,
    J Remainder, V Remainder);
```

3. Analyze merged juror-voter data

ID	DocketNumber	County	JurorRole	VoteAvgPre
TX2284	20010D03157	4	2	.30
TX2502	20010D6419	4	2	.29
TX2512	20010D03915	4	2	.30
TX2587	20010D04963	4	2	.27
TX3032	20010D01248	4	2	.30

Figure 3: Comparison of estimated effects from National Jury Sample and high school civic education on the likelihood of voting in future elections.



Note. Civic educational effects based on estimates in Thomas and McFarland (2007).

Chris Dominic responds to Deess & Gastil

Chris Dominic is President and Senior Consultant at Tsongas Litigation Consulting. Founded in 1978, Tsongas is a national, full-service, trial consulting firm.

When Perry Deess and John Gastil concluded in “How Jury Service Makes Us Into Better Citizens,” “The jury may serve a more powerful role in promoting democracy and citizenship than any voluntary association.” I found myself nodding my head, involuntarily. My nodding was the product of a feeling of both gratitude and satisfaction.

The gratitude comes from the authors assembling a dataset of 13,327 jurors to work with. This massive data set gives confidence to their findings that voting behavior increases after certain types of jury deliberation experience between 4 and 6.8 percent. It is good to see that there is a stronger backing for the *participation effect* than merely citing Alexis de Tocqueville who, while brilliant, died over 150 years ago.

The satisfaction portion of my reaction comes from three factors. First, because the results are generally consistent with my own experience; Second because of the accessibility of the article; and third because of how this may have a positive effect on our jury system and indeed, our society.

Consistent With Experience

As a trial consultant, I am close to the jury experience as a part of my everyday job. Trial consultants get familiar with the way juries behave from research, which in practicality means watching mock jury deliberations over and over. However, I have to admit that my appreciation for the power and importance of the jury came years ago after I was seated on a jury (and yes, I told the attorneys about my occupation).

There are far more voters in a year than there are jurors and that means that “democracy” to most people means *representative* democracy. The only time you are a part of *direct democracy* in America is when you serve as a juror and the only time you really *feel a part of direct democracy* in America is when you deliberate. The government gives you the power, you go in a room, deliberate, and when you come back with your decision (as long as there is no misconduct) it is sacrosanct. I still have a distinct memory from my jury service experience feeling that I was a part of something nearly pure and very difficult to corrupt. The decision didn’t have to go through committees and risk vetos--it’s final. Appeals, after all, are really not much more than a complaints department for one side to make about the judge in the case. The phrase I heard growing up, “government of the people, by the people, for the people,” finally made sense.

Article Accessibility

The authors do a masterful job of drawing us in with a dialogue that illustrates one of the most common and enduring debates about our justice system (p.1.):

Tea sipper: “Why have juries?”

Coffee drinker: “They’re good for you.”

Tea sipper: “How do you know? What good comes from having twelve ordinary citizens deliberating when you could have one trained judge making informed choices?”



This dialogue reminds us that this is no sterile research question, it's a question important to all of us. The style in which the article is written is as egalitarian as the point the authors ultimately make in the article.

Positive Effect on the System

If people vote more as a result in participating in jury deliberation then they may be more civically involved in many other places that we haven't thought of or haven't figured out how to measure. Clearly more research in this area will shed more light on this phenomenon. In the meantime this has implications for how we treat our courts and our jurors. Jury service is even more important to a thriving, functional, democracy than some of us thought. If we make it easier and more welcome for people to serve then it's reasonable to presume that more will serve.

The list of ways in which this study's findings can be applied is long. A few initial possibilities are:

- 1) Include some of the aforementioned concepts in the curriculum for high schools when teaching the judicial branch of the "Three Branches of Government."
- 2) Low juror pay is an issue that comes up in many jurisdictions. The findings of this study could be used as support in a legislator's impassioned speech to help the next jury pay raise bill pass.
- 3) Judges can improve their juror orientation presentation with some of the findings from the study. I've seen orientations that are sadly, almost apologetic and ones that actually draw standing ovations. Rousing applause comes when jurors are reminded that they are about to be a part of something that is their duty, that they can have pride in, and is truly greater than themselves.

We frequently use the term "access to justice" when referring to an important American right. Deess and Gastil show us that from the perspective of the juror, access to justice can also be "access to democracy."

Response of Douglas A. Green to:

How Jury Service Makes Us Into Better Citizens

Douglas Green, PhD has been a Trial Consultant for 25 years focusing on complex civil litigation. He is a past president of the ASTC and runs a national consulting practice based in Louisiana.

Deess and Gastil present us with a very brief essay giving a view inside their upcoming book, *The Jury and democracy: How jury deliberation promotes civic engagement and political participation*. I found this introduction interesting enough to keep my eye out for the full text. But, I have to say that I have mixed reactions to the general proposition of the work.

I am a firm believer in the jury system. Juries are not just essential to democracy; juries are the essence of democracy. The most direct participation in true democracy the vast majority of Americans will ever have is participating on a jury. I feel a certain frustration that there exists a need to somehow justify the jury system in America and yet I recognize, as Judge William Young so emphatically stated at the ASTC conference in Philadelphia, that the American jury is dying. So, the other reaction I have to this work is satisfaction that there exists the kind of momentum behind preservation of the jury system that this ambitious project could be completed.

Readers of *The Jury Expert* come from diverse backgrounds so I feel a strong need to comment on the true scope of this research. In "the real world" where trial consultant and lawyers live, sample size is a major consideration. A few months ago I completed a major project for a client with a very large potential exposure in a civil case. The study included about 150 mock jurors over the course of several days of research. I believe it is safe to say that this is on the

large size for most in-depth jury studies. The initial sample in the work of Deess and Gastil included 13,237 individuals. Moreover, the data was collected at eight geographically distant locations, including my home town, New Orleans. Having spent many long days in the halls of our district courts, I don't envy the researchers their experiences. It was, no doubt, very hard work – the afterhours benefits of our fair city notwithstanding. Make no mistake here – this was a massive effort that could have not have been accomplished without a great deal of dedication and major funding.

Now, I have to agree with the authors on a couple of concerns. First, as they indicate, “the democratic act of voting . . . is not the best way to understand the robust and varied nature of civic engagement.” But, I understand the use of this measure. It is an objective measure that should be highly reliable. And since the authors knew they would be looking for small effects, reliability of all of the measures in the study was very important. But, it was a hard test of the theory. Voting behavior has shown strong resistance to change, as cited by the authors. So, even a modest change in voting attributed to jury experience would be impressive. Still, I find voting behavior to be unsatisfactory as a main dependent variable in a study so massive in scope. I find myself wanting more even though I respect the thought that went into the design.

My experience is certainly that jury service changes people. But, I would have bet with the tea sipper on this one. The changes are too complex to measure in a large, statistically powerful study. These changes have to do with issues like self-esteem and empowerment that are very hard to measure. Many people who sit on juries have never participated in a decision-making process with such importance attached. They may find within themselves something that they did not know existed before. This could express itself in many different ways. Perhaps they agree to lead a discussion in their bible study group. Or maybe they serve on a committee in a club or professional organization. For other people, jury service is no different than what they do every day at the office, so no change is to be expected. So, in looking at this work, I think it was a risky venture and I am impressed with the results.



Now, what does all of this mean for the practitioner? Trial consultants and trial lawyers participate in the democratic process every day as advocates for their clients. Sometimes I think that we take our participation for granted. I think that we sometimes lose sight of the fact that the jurors sitting in the box are not regular participants in the process. Are we consciously aware, in the middle of the stress and turmoil of the trial, that at least some of the jurors are going through a life altering experience? If one stops to think about the results of this study, how would it change your behavior in court?

Here are a few suggestions. Respect the jury. Engage jurors in the case and with the witnesses. Make sure that you are communicating with the jurors not just talking at them. Do not waste jurors' time. Any time the jury is excluded from the proceedings, they feel is wasted. This includes side bars, out of the presence hearing, and even being late to the courtroom. Keep your examinations focused, organized and concise. This demonstrates not only respect for the jurors' time, but also helps improve comprehension. Finally, treat jurors as the most important people in the courtroom, not like those unfortunate souls who could not find a way out of jury service.

Response from Perry Deess

I offer my thanks to the respondents for their thoughtful comments and, more importantly, for their dedication to the jury system. Reading comments from those working in the heart of the judicial process gives hope and inspiration to the laborious process of research. This entire project would not have been possible without the dedicated assistance of many jury system advocates at all levels. They opened archives when roadblocks appeared and convinced reluctant colleagues to allow us a sometimes unprecedented level of access to jurors and jury records. We cannot adequately convey our gratitude to many of these unknown champions.

The suggestions Chris Dominic offers for promoting and supporting the jury process are well taken and we wholly agree. It is critical to the health of the democratic process that citizens, legislators, and legal practitioners understand and support the jury system and the critical role it plays in democracy. For too many years the dedicated work of jurors has been overlooked and taken for granted. Their commitment and sacrifice should not go unacknowledged and largely uncompensated.

The comments of Douglas A. Green provide an excellent opportunity to expand on the research described in the article. He correctly observes that demonstrating a link between juries and voting, although useful, is ultimately unsatisfying. The ‘Tea Sipper’ and ‘Coffee Drinker’ agreed and, with substantial support from the National Science Foundation, they conducted a multi-wave ‘panel’ survey of jurors in the Seattle area to understand how the act of jury service changed their conceptions and habits of citizenship.

The survey design included a battery of questions about volunteerism, charitable contributions, interest in political news, faith in the judicial and political system, and belief in the empowerment of citizens. The surveys were administered to the same people at three intervals: 1) prior to the jury selection process; 2) two weeks after the completion of jury service; 3) several months after the completion of jury service. An additional series of questions about the subjective experience of jury deliberation was added to the second wave of the survey. Response rates were over 70%, and our study of county and municipal courts yielded a total of 2,872 jurors who responded to all three waves, including over 1,000 who ultimately served as empanelled jurors. This is the data set we are using to address some of the more subtle questions about citizenship, democracy, and the role of juries, and interested readers can see our first published findings in *Policy Studies* and *Human Communication Research* at www.jurydemocracy.org.

The jury-voting test described in this article is, what one might call, the hard ‘proof’ of a democratic effect. By comparing jury and voting records there is no question about potential bias or error in the research design. The survey studies, in contrast, give a more comprehensive view of the impact jury service has on citizenship. We will integrate these findings and other observations next year in our book from Oxford University Press, *The Jury and Democracy: How jury deliberation promotes civic engagement and political participation*.

-Perry Deess

Citation for this article: *The Jury Expert*, 2009, 21(3), 51-69.

Juror Stress: The Hidden Influence of the Jury Experience

by Anne Reed

I am having such a Monday. I guess the weather is changing (again) because I have very achy knees. And I have a serious case of The Dreads about tomorrow, when I have jury duty. Again. . . . I really, really, really hate jury duty, every single aspect of it -- driving downtown in rush hour, trying to park in a parking garage designed by MC Escher, all that waiting around, realizing that law-abiding citizens called for jury duty have fewer rights than alleged criminals, realizing that the trials are seldom really about guilt or innocence but rather about some minutiae in a subparagraph of a subsection in the criminal code, and generally having to deal with the system. The last time wasn't quite as miserable, in spite of being stuck on an ugly trial, since my fellow jurors were all reasonable, nice people. But I still HATE, HATE, HATE it.

--Shanna, a juror blogger¹, March 2009

Lawyers are great at understanding the connection between trials and stress – their own stress, that is, and that of their clients and witnesses. But in the rush of our own stress in preparing for trial, we often fail to think about the jury -- that silent box of expressionless faces -- and the stress under which jurors operate. It's worth thinking about, and worth your time to be prepared for it.

Most of them don't let it show in the courtroom, but jurors are stressed. They have made that clear not only in blogs like Shanna's, but also in a 1998 survey by the National Center for State Courts². Even after the shortest trials, one to three days, 27% of jurors said they experienced stress as a result of their jury duty. Almost as many, 19%, said they "found it necessary to talk to others about distressing aspects of jury duty," and 12% said "something should have been done to reduce our stress levels." And those were only the ones willing to admit they were stressed. Even more said they thought that "other jurors experienced stress during jury duty" (45%), that "stress had an effect on the thinking of some jurors" (29%), and that "stress had an effect on the decisions of some jurors" (22%).

Those stress levels after short trials, striking as they are, are nothing compared to what jurors report after long trials, which the NCSC survey defined as trials longer than 21 days. A full 96% of those respondents³ said they experienced stress as a result of their jury duty, and many of those reported serious stress symptoms. Almost half said they had "disturbing memories" of their jury duty; more than a third said, "Jury duty left me feeling numb and detached"; exactly half said, "I am more tense than I was before jury duty"; 29% said, "I am likely to avoid doing things that remind me of jury duty"; and almost half said, "There are emotions resulting from jury duty that I have bottled up inside." A British study published in February 2009⁴ reports no improvement in the decade since the NCSC survey: "[J]ury service can be a significant source of anxiety and for a vulnerable minority, can engender moderate to severe clinical levels of stress and in the longer term, lead to symptoms associated with PTSD," or post-traumatic stress disorder.

Sources of stress

Juror stress has many causes, as Shanna's blog entry demonstrates. Separately and in combination, jurors are stressed by:

- 
Disturbing evidence. On any given day in many courthouses, criminal trials especially force jurors to deal with images we would all prefer to avoid, from "ordinary" murder and sex cases to horrific serial murder and torture stories. This is the easiest juror stressor for lawyers to predict, but we often underestimate its power. The 2009 British study reviews the literature, including two particularly striking findings. Jurors in Milwaukee's awful Jeffrey Dahmer trial (featuring murder of young boys, necrophilia, and cannibalism, in case you missed it) suffered "sleep disturbances, intrusive thoughts, restlessness and agitation⁵." And a 1992 study⁶ of jurors in four high-profile trials (of which two were murder cases) found that "27 [of 40] jurors reported stress-related symptoms including depression, sexual problems, headaches, eating disorders and somatic complaints: gastro-intestinal distress being the most frequently cited (ten jurors). Some seven jurors became physically ill during the course of the proceedings and at least one fulfilled DSM-IV criteria for a diagnosis of PTSD."
- 
Evidence that touches a nerve. Disturbing evidence is even more disturbing to someone who has personal experience with it – sexual assault to a rape victim, for example – and even evidence that would be fairly easy for most people to handle can be traumatic to someone whose personal history puts it in different perspective. The British researchers found that, "Women as a group appear to be more vulnerable [to juror stress] than men, especially when the trial touches upon a past traumatic event that has been personally experienced."
- 
Economic and job concerns. Missing work has always been stressful, especially for jurors who are self-employed or paid by the hour. In what we call "these economic times," that stress is magnified.
- 
Impact of the decision. Jurors often agonize over the gravity of their task, especially in death penalty cases but in all kinds of other trials as well.
- 
Conflict on the jury. It's not the norm, but there are plenty of stories of screaming and cursing in the jury room. The NCSC respondents reported this as a significant cause of stress, and the 2009 British study found it especially difficult for female jurors.
- 
Confusion and lack of information. From unexplained rules and delays to unintelligible jury instructions, jurors don't know what's going on. Think of your last visit to a foreign airport for a quick reminder of how stressful this is.
- 
Privacy, public speaking, and dealing with strangers. For many jurors, the worst stress comes before the trial even begins. Answering personal questions in front of strangers in voir dire is one of the most difficult things a shy juror might ever be asked to do. Spending long days in close quarters with those same strangers isn't much easier.



- Safety and logistical issues. It's easy to forget how many jurors are unfamiliar with the courthouse neighborhood. Blogger Shanna isn't the only one concerned about "driving downtown in rush hour, trying to park in a parking garage designed by MC Escher."
- Long trials. Several studies show long trials are among the biggest predictors of juror stress.
- Boredom. We normally think of "doing nothing" as a great vacation, but it's stressful if you didn't choose it and can't change it. Both waiting for trial and sitting through monotonous evidence, bored jurors are stressed.

Effects of stress

Juror stress is hard on jurors, obviously – but does it have consequences beyond that? There's little research on how stressed *jurors* make decisions, but because many people want to know how stressed doctors, emergency responders, and business managers make decisions, there is considerable research on the topic in general. "The literature in this area [stress and decision-making] is extremely complex and not conclusive," say the authors of a 2003 literature review for the National Institute of Occupational Safety and Health⁷, but some research findings are well worth lawyers' attention.

For a start, lawyers should stop assuming that juror stress is bad for the case. You perform better under stress sometimes, right? That's probably true for some jurors too, at least sometimes. "For some individuals, heightened stress elevates their performance. Others are vulnerable to the negative impacts of stress, which results in diminished performance," say the authors of the 2003 NIOSH study. "Contrary to popular opinion," they continue, "judgment is not always compromised under stress. Although stress may narrow the focus of attention (the data are inconclusive), this is not necessarily a negative consequence in decision making." In their 1996 book *Stress and Human Performance*⁸, authors James E. Driskell and Eduardo Salas add, "Stressors may improve performance as well as disrupt it."

Stress research also suggests specific ways that jurors' thinking may change under stress, however, and most of these changes are not improvements, at least for the kinds of tasks jurors must perform. Findings include:

- Simplified thinking and willingness to proceed with incomplete information. The NIOSH review notes, "Some studies show that the individual adopts a simpler mode of information processing that may help in focusing on critical issues. Decisions can only be made based on the information available, and studies have shown that, on many occasions, decisions are made with incomplete information." Driskell and Salas agree: "The changes induced by stressors appear fairly adaptive – to trade off accuracy for speed, as when faced with a threat, and to narrow the focus of attention when faced with capacity limitations and attentional disruptions."
- The need for speed. In a 1987 study⁹ using electric shock as a stressor (these studies are pretty basic when it comes to inducing experimental stress), respondents naturally were in a hurry to finish their tasks: "[T]hose who were exposed to either controllable or uncontrollable stress showed a significantly stronger tendency to offer solutions before all available alternatives had been considered and to scan their



alternatives in a nonsystematic fashion than did participants who were not exposed to stress." Also not surprisingly, the ones who were in a hurry tended to be the ones who got the wrong answers.

- 

Slower learning. We may want to work faster when we're under stress, but it's likely that the same stress has actually slowed down our ability to learn. Researchers in 2007¹⁰ stressed respondents by telling them they'd have to make a public speech after they finished the research exercise, which involved learning a particular task. Stressed respondents "were slower to learn the task, meaning that it took them longer to shift toward advantageous decision making."
- 

Changes in risktaking. In a Rutgers study this year¹¹, researchers wondered if our current financial stress was changing our financial decisions. Stressing their subjects by putting their hands in very cold water, they found a mixed effect on risk-taking: stressed people took *fewer* risks than others when choosing between two probably positive outcomes, but *more* risks than others when choosing between two decisions that would both result in a loss
- 

Changes in leadership structure within the group. In a 1991 study of group decision-making under stress¹², Driskell & Salas found that both leaders and followers within the group were more deferential to an assigned partner in trying to reach a decision. Prior studies they cite, though, are to the contrary; in those studies, group leaders took over when the group had to work under stressful conditions.

Approaches to juror stress

If you're a judge or a jury manager – or just an empathic person who wants to do no harm – your approach to juror stress is simple: it's bad and you should try to minimize it. The NCSC's "Through The Eyes Of The Juror: A Manual For Addressing Juror Stress" is a comprehensive resource for that effort. It's about explaining what's going on, using clear jury instructions, keeping trials short, not embarrassing jurors, making them sincerely proud of their service, and in general doing all you can to minimize the things that cause stress in the first place.

If you're a trial lawyer, though, your task is more complicated. Any responsible lawyer hopes to prevent or at least ease jurors' discomfort, but you have another responsibility: to present your case as well as you can. If you decide that stress is bad for your case – as criminal defendants and personal injury defendants often will – you'll use the NCSC manual just as a good judge would. When you know your trial is likely to be especially stressful, the research on juror stress and stressed decision-making also suggests specific decisions you might make in your presentation. How this works will vary with your case, of course, but these questions are a beginning:

- 

Stressed jurors may be trying to work fast, even if it means absorbing less than all the evidence. Can you help them? Can you give them a clear chart to work through the elements of the case, or offer them one clear fact that cuts through the rest and decides the case in your favor? Researchers in this area suggest "decision support systems" for emergency response workers; can you provide something like that for your jury?
- 

Stressed jurors may learn more slowly. There is almost always a part of your case that you can make clearer; what is it? And, since this is an adversary system, is there an obscure part of your opponent's case that you don't need to clarify?

- Leadership patterns may change on a stressed jury. Are you aware of who your leaders are, and how the group seems to be interacting? Can you "rehearse" with them, in voir dire and in closing argument, techniques they can use as a group to reach good decisions under stress?
- Stressed jurors may be less willing to risk negative choices. If that helps you, how can you make the negative risks of their decisions more clear?



Finally – and perhaps both most important and most difficult – have a clear sense of where you'll draw the line between your responsibility to your case and your responsibility to jurors as fellow humans. Not every awful picture needs to be shown; not every awful scene needs to be described. If it means you have spared a juror from what may be years of trauma, your decision not to use that picture may be one of the most important of your career.

Endnotes

¹"The Pre-Jury Dreads," Shanna's Journal, March 30, 2009, <http://shanna-s.livejournal.com/305230.html>

²Through the Eyes of the Juror: A Manual for Addressing Juror Stress, National Center for State Courts 1998, http://www.ncsconline.org/WC/Publications/Res_Juries_JurorStressPub.pdf, appendix at http://www.ncsconline.org/WC/Publications/Res_Juries_JurorStressAppendPub.pdf

³This long-trial group was naturally smaller, with only 24 respondents compared to about 220 who sat on trials of one to three days.

⁴Robertson, Davies, and Nettleingham, "Vicarious Traumatization as a Consequence of Jury Service," 48 The Howard Journal 1, February 2009, <http://www3.interscience.wiley.com/journal/121529648/abstract>

⁵Feldmann, T.B. and Bell, R.A. (1993) 'Juror stress: identification and intervention', Bulletin of the American Academy of Psychiatry and the Law, 21, 409–17.

⁶Kaplan, S. and Winget, C. (1992) 'The occupational hazards of jury duty', Bulletin of the American Academy of Psychiatry and the Law, 20, 325–33.

⁷Kowalski-Trakofler, Vaught, and Scharf, Judgment and decision making under stress: an overview for emergency managers, National Institute for Occupational Safety and Health 2003, <http://origin.cdc.gov/niosh/mining/pubs/pdfs/jadmu.pdf>

⁸Driskell & Salas, Stress and Human Performance, Published by Lawrence Erlbaum Associates, 1996, http://books.google.com/books?id=mLjTv0hSJ-QC&dq=stress+effect+decisionmaking&lr=&source=gbs_summary_s&cad=0

⁹Keinan, Decision Making Under Stress: Scanning of Alternatives Under Controllable and Uncontrollable Threats, Journal of Personality and Social Psychology 1987, http://osil.psy.ua.edu:16080/~Rosanna/Soc_Inf/week10/Keinan.pdf

¹⁰Preston, Stansfield, Buchanan, and Bechara, Effects of Anticipatory Stress on Decision Making in a Gambling Task, Behavioral Neuroscience 2007, http://www-personal.umich.edu/~preston/Downloads/Prestonetal2007_BN.pdf

¹¹Porcelli and Delgado, Acute stress modulates risk taking in financial decision making, Psychological Science 2009, article <http://www.ncbi.nlm.nih.gov/pubmed/19207694>, press release <http://www.sindhoday.net/world/81985.htm>

¹²Driskell & Salas, Group Decision Making Under Stress, Journal of Applied Psychology 1991, <http://www.floridamaxima.com/groupdm.pdf>

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May's Favorite Thing!!!

Obviously we need to change the title of this feature to Favorite Things since we can't seem to choose just one thing to be our favorite. It's not that we're fickle. We are simply blessed with a plethora of favorites.

Favorite Thing 1:

Our first favorite thing is proffered by ASTC member Laura Stanford Rochelois of By Design Legal Graphics

(<http://www.bydesignlegal.com/>).

Laura says: "I like lots of things about justia.com, especially the docket search. Free PACER meta-search with meaningful first level search results (Caption, Filing date, etc). And once you find the case you're looking for, links out to PACER for additional case information.

<http://dockets.justia.com/>

A nice time-saver if you need to research a federal case and don't already know the venue."



Favorite Thing 2:

And second a favorite thing who is really a favorite person of *TJE* Editor Rita Handrich

(<http://www.keenetrial.com/>).

Ken Pope has been well-known in psychology circles for a long time with a focus on ethics, dual roles, torture victims/torture ethics and psychologists testifying in court.

But this month he is a favorite because of two websites he painstakingly maintains and constantly updates--one on issues of interest to psychologists, expert witnesses and attorneys and a second of interest to all the same people but with a specific focus on issues related to disability.

Website 1: <http://kspope.com/> (focusing on therapy, ethics, malpractice, forensics, critical thinking and a few other things) and

Website 2: <http://kpoppe.com/> (focusing on disability, disability rights and ethics and full of resources on disability). Take a few minutes to click through some of the links on Ken's pages. He'll be your favorite too.

Citation for this article: *The Jury Expert*, 2009, 21(3), 76.

Jurors and Technology in Trial:

What Were Once Vices Are Now Habits

by Ted Brooks

Introduction

The recent legal defense of actor Robert Blake included heavy use of trial technology. While the prosecution relied upon “old-school” trial presentation techniques, including the use of posterboard blowups, printouts of documents and photographs, criminal defense attorney M. Gerald Schwartzbach chose other alternatives. For the first time ever, he used high-tech tools in his trial presentation.

Then, in the recent high-profile criminal trial of Dr. Hootan Roozrokh, Schwartzbach once again gave jurors the opportunity to “see” the evidence by visually presenting the case in much greater detail than the prosecution. Considering common clichés such as “Seeing is believing” and “A picture is worth a thousand words”, is it possible that the outcome of a trial may be influenced by the methods used to present the evidence?

Given these two cases tried by Schwartzbach, one might expect a Los Angeles jury to be accustomed to high-tech trial presentation, but the same may not be true in San Luis Obispo, a small Central California city located about an hour and a half north of Santa Barbara. Is your next trial venue accustomed to trial technology?

Consider the case of *Shropshire v. City of Walnut Creek, CA*, a precedent-setting case in which an Olympic-hopeful diver was paralyzed after an accident during training in which he landed on top of a synchronized swimmer who had been training in the same pool. It was the first time that the San Francisco plaintiff’s firm Abramson Smith Waldsmith had incorporated technology into their trial presentation. It resulted in an award for “Most Innovative Use of Technology In a Trial,” not to mention an impressive \$27.5 million dollar verdict. While Walnut Creek is less than an hour from San Francisco, this was one of the first times technology had been used to this extent in that courtroom.

In each of these three case examples, the jury has spoken. Each contains a valuable lesson on how technology may have helped jurors reach their verdict.

1) Use Technology for Visual Impeachment: *People v. Robert Blake*

Schwartzbach inherited a complex case in the murder trial of Robert Blake, and quickly realized the difficulty in managing and presenting a large collection of exhibits, photographs and recordings. His jury consultant suggested bringing in a trial technology consultant.

At the first meeting, Schwartzbach saw what could be done with trial presentation software (e.g. TrialDirector) to assist in efficiently presenting evidence. He was convinced that a tool like TrialDirector would help keep the jury focused and engaged in what would likely be a lengthy three-month trial.

Defense attorneys often face the difficult task of trying to level the playing field when many of the prosecution’s witnesses are sworn law enforcement officers. This case was also part of the focus of a book released just prior to the trial which could potentially have a significant impact on improving the image of the LAPD. Schwartzbach

needed to be prepared for any opportunity to impeach the prosecution's witnesses – especially any officers involved in the investigation.



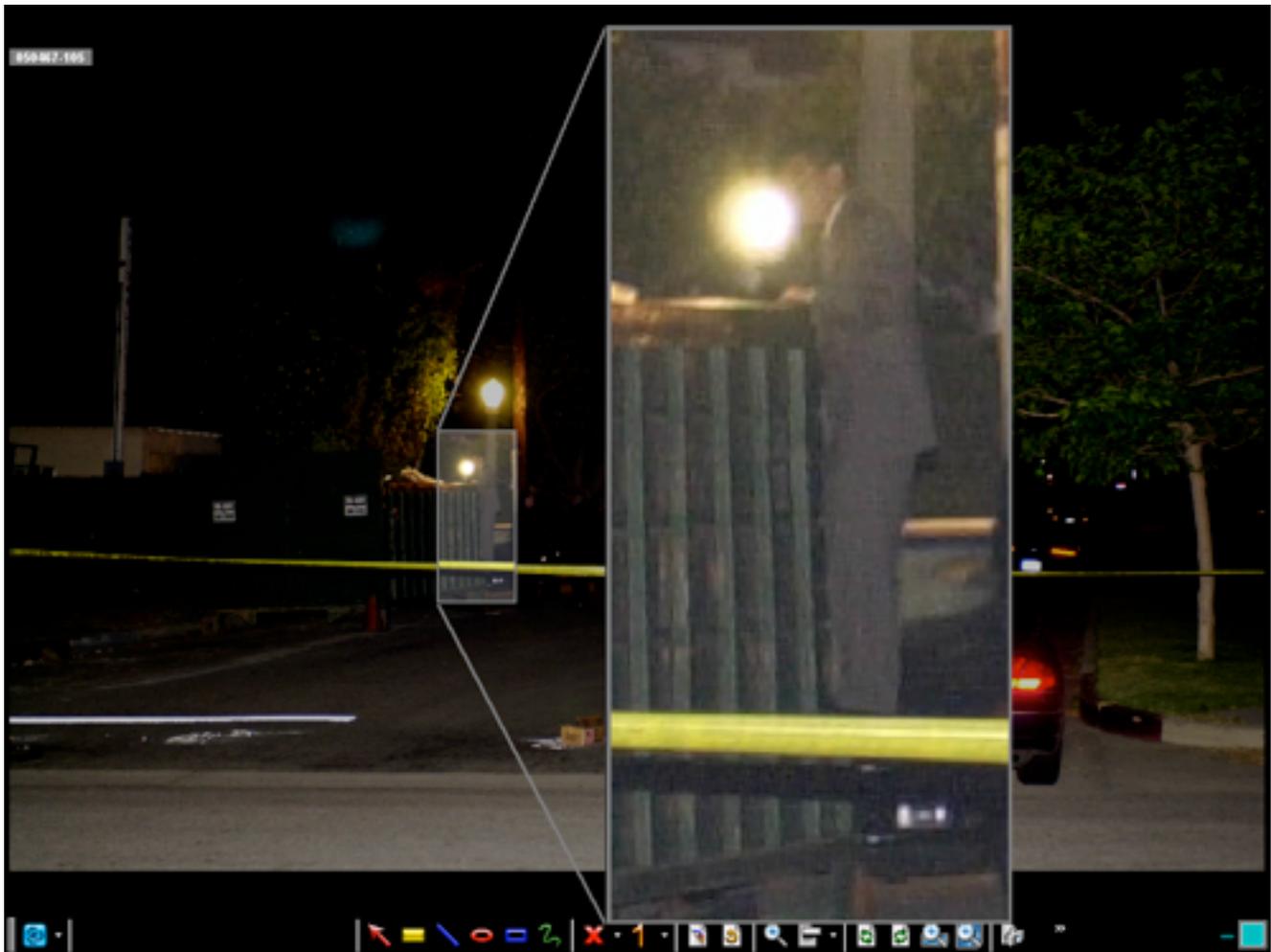
Ron Ito, Brian Tyndall, and Steve Eguchi with one of the Robert Blake murder books (*Stefano Paltera*)

This photo exhibit, taken for publication in a book shows the three detectives assigned to the Blake murder case.

At one point during the trial, Detective Steve Eguchi (above right) was being questioned about whether or not he was near or had climbed up on the dumpster in which the murder weapon was later found (after being removed from the scene, dumped and spread out for inspection at a nearby landfill). He denied having been near or on the dumpster. Schwartzbach had the photograph of the dumpster scene displayed on the big screen for the jury.



After making sure that Eguchi was sticking to his story, he zoomed in on – guess who?



Detective Eguchi quickly confessed in front of the jury, stating, “Yes, I guess I *was* there.” It seems that neither the LAPD nor the DA’s office had realized that Eguchi was in the photo, nor did they have the capability to show it in court. Needless to say, there were smiles on several jurors’ faces at this point. Passing a small photo in front of jurors certainly would not have had the same impact as the big screen zoom. Robert Blake was found not guilty on all counts.

2) Use Technology To Make Comparisons and Teach Visual Concepts: *People v. Dr. Hootan Roozrokh*

Dr. Roozrokh was charged with hastening death by over-medicating a potential organ donor in order to harvest his organs. This was an extremely important case of international interest – the first of its kind, which could have a serious impact on the future of organ donor programs.

From the opening statement, the District Attorney chose to show jurors how many bottles of morphine were allegedly used to over-medicate the donor. She placed a number of actual morphine vials on top of the witness stand – something she later repeated with a witness on the stand. It was a very slow process opening each box, placing each vial upon the table, attempting to count (and recount) each one, and occasionally knocking one over. A single 10mg morphine vial at twenty feet appears very small, and it would certainly be difficult to have a good perspective of a large number of them at a distance.

Mr. Schwartzbach wanted the jury get a clearer picture of the concept. One expert witness had testified to having knowledge of cases where as many as 5000mg were used in end-of-life situations. It certainly wasn’t an option to acquire and trot in a large case of tiny bottles to spread around the courtroom. Importantly, the case included an issue regarding 200mg of morphine.

A demonstrative exhibit was created to depict 200mg of morphine:



(20 morphine bottles)

This was a bit more helpful, allowing the jurors to see all twenty of the bottles, and getting some idea of the quantity at issue. Similar demonstratives showed different quantities of the drug. While this was helpful and far more efficient than the several episodes of bringing out the bottles, there is a better way of showing the jury how much medication was used in this case, as compared to how much had been used in other cases. A little searching on the Internet provided a compelling idea for the closing argument, comparing 200mg to 5000mg:



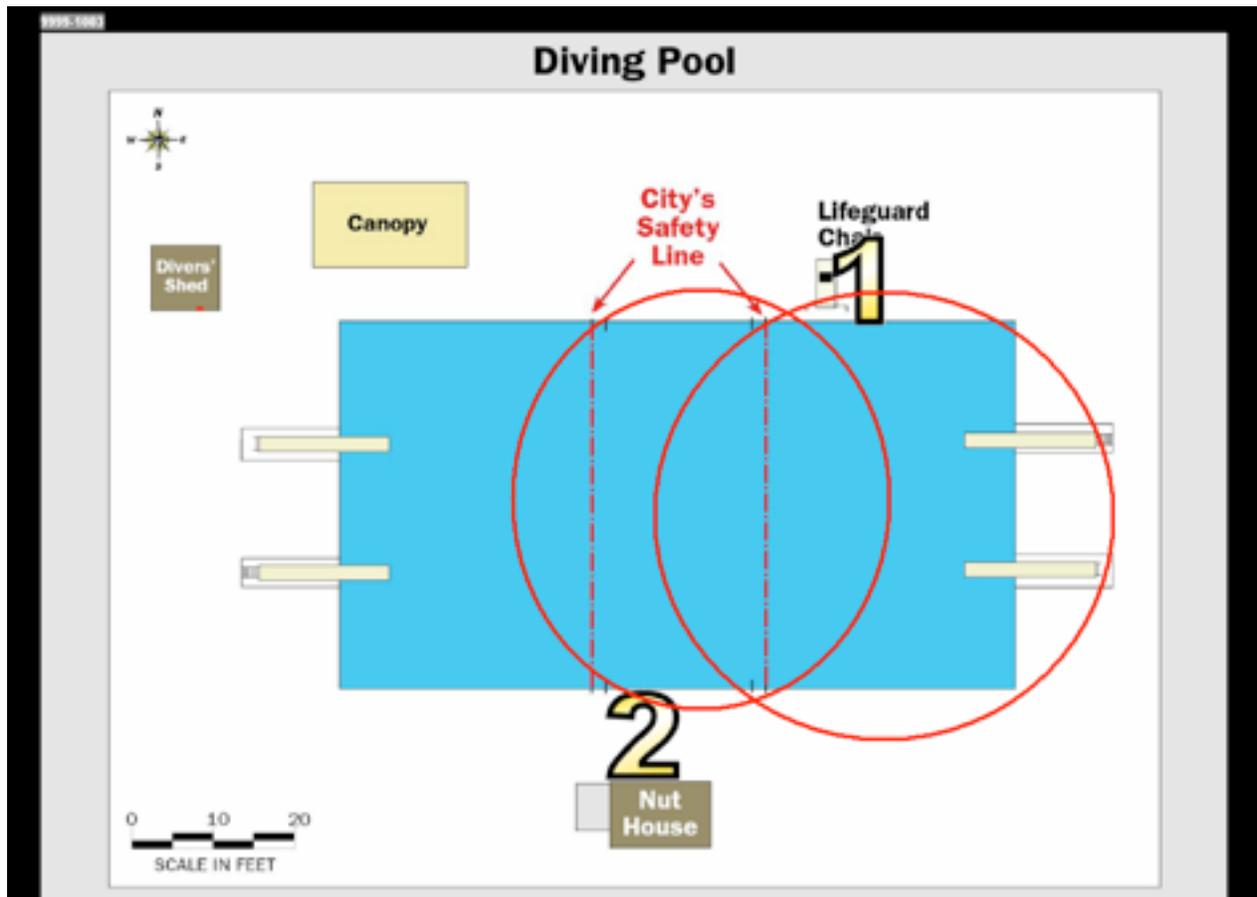
Fortunately, for the sake of organ transplantation programs and end-of-life care standards, Dr. Hootan Roozrokh was found not guilty on all counts.

3) Use Technology To Enhance Witness Testimony: *Shropshire v. City of Walnut Creek*

Olympic hopeful Scott Shropshire was practicing his diving at the Heather Farm swimming pool in Walnut Creek, California, along with his team and coach. At the same time, at the other end of the pool, the Aquanuts synchronized swimming team was rehearsing their routine, under the supervision of their coaching staff.

The Aquanuts finished and dispersed about the pool, with one member swimming underneath the diving board. Shropshire could not see her and didn't realize she was there. He dove, and as he was about to hit the water, she launched out from the side, directly in his path. Shropshire instantly became a quadriplegic.

With the Pool Supervisor on the witness stand, attorney Bill Smith of Abramson Smith Waldsmith questioned him as to why there were no lifeguards on duty at the time, why there were no dividers in place, and where the lifeguards would have been stationed had they been present. Mr. Smith prepared graphics showing various lifeguard zones, but the witness did not agree with the zones as laid out in the prepared demonstrative. As Smith continued questioning the witness, Smith put a diagram without the zones on the witness's monitor. The witness indicated where a zone might be, and with TrialDirector and a few drawn circles, a new demonstrative had been created on-the-fly – at the witness' direction. The demonstrative suddenly advanced to an admissible exhibit.



While this could have been done on a sheet of paper, it was extremely compelling when presented on the big screen. Plus, as a powerful trial exhibit, it would now make the trip into the jury room for deliberations.

Plaintiff Scott Shropshire prevailed, with the jury awarding a \$27.5 million verdict.

In addition to these examples, consider the following tips for making your visual case at trial.

Make It a Habit

Indeed, there was a day when using all of this technology stuff was thought of as being a bit risky – that it might be perceived by jurors as too flashy or expensive. Assuming most jurors now have a TV and/or Internet access, this is no longer a valid argument. In fact, jurors often expect to be shown the evidence, rather than just hearing about it – regardless of the venue. Numerous post-trial jury surveys and interviews have shown that judges and jurors alike appreciate the efficiency and enhanced learning experience that technology can bring to the trial. So, how can you get started?

Do It Yourself

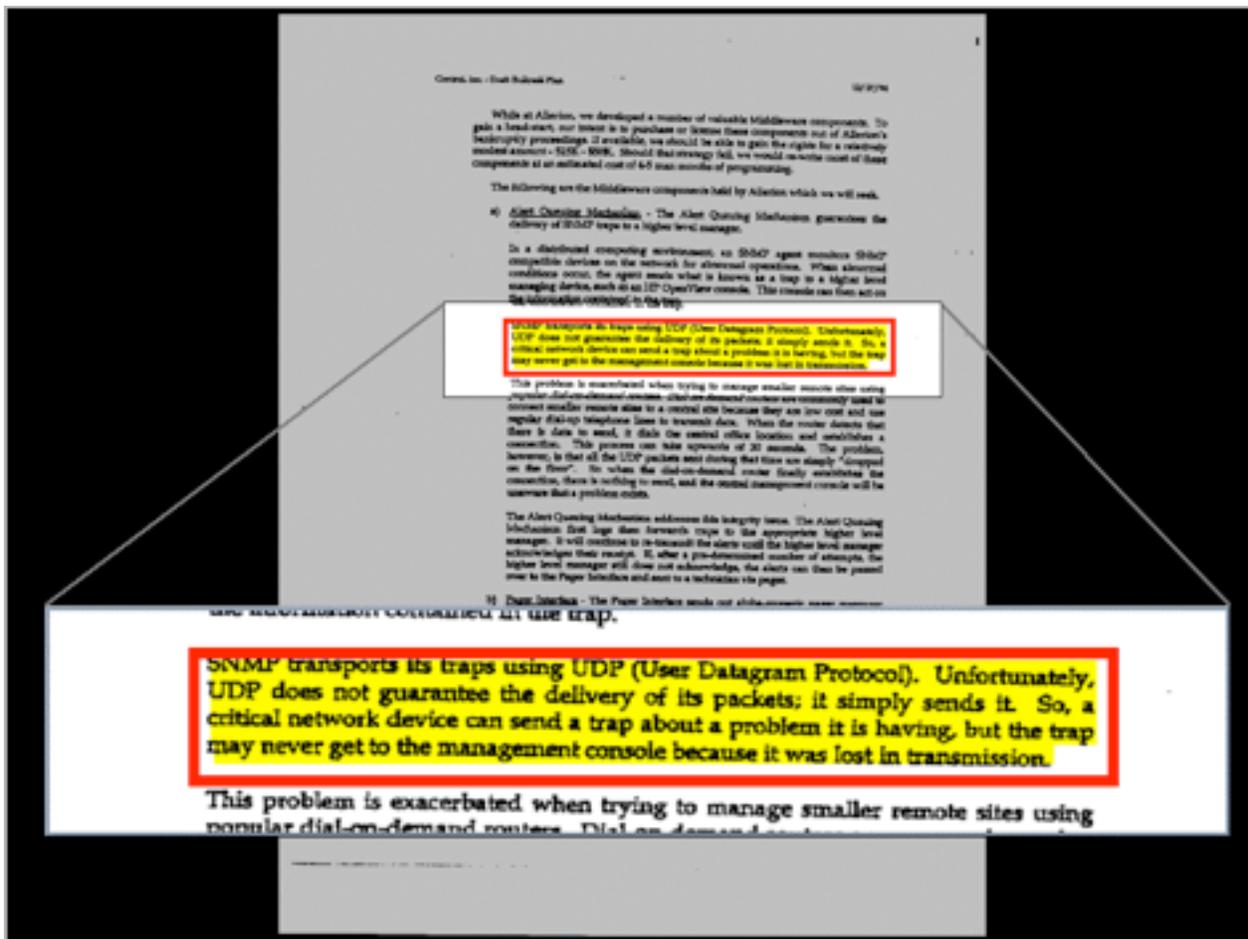
You can purchase TrialDirector or similar software for around \$600. The learning curve is not too steep – at least to master the basics (which are the functions most-often used, even by experts). There are also certified trainers available nationally to assist you in getting up to speed quickly.

While you might consider using something you already have, such as PowerPoint, you will likely find yourself at a great disadvantage during trial. The primary strength of PowerPoint is also its weakness – it is designed to present information in a pre-determined linear format. Unfortunately, trials do not always (if ever) go as planned.

Get Full Support

For less money than even the smallest of bailouts, you can try your case in much the same fashion as you always have, while someone else worries about putting a database together, cutting deposition impeachment video clips and presenting all of the evidence to the witness and jury. If you’ve ever been on the serving side of a witness getting solidly impeached via their video deposition, you know that this can be a game-changing, credibility crushing “golden moment.”

When displaying documents, as you discuss Exhibit 12, page 9, paragraph 4 with the witness, the paragraph is zoomed in, and the words “smoking gun” are highlighted for the jury.



The only real differences in working with technology, especially when someone is assisting you, are the trial preparation and the manner in which the evidence is published to the jury.

If you are interested in getting additional information on visual support options, there are a number of highly-qualified ASTC members who would be happy to assist you (see http://www.astcweb.org/public/consultants/consultant_locator.cfm).

Conclusion

While any of the examples shown might be produced and presented in some fashion without using trial technology software such as TrialDirector, there is simply not an easier, more efficient method of doing so. In both the Blake and Shropshire matters, the lead attorneys had never incorporated technology into their trial presentation. Each felt that their case merited having every available tool to help present their case efficiently and effectively, and were willing to try something new. Now, they won't attempt to represent a client without it.

Ted Brooks (tbrooks@litigationtech.com) has written and presented legal technology topics for numerous organizations, including California State Judiciary, U.C. Berkeley, NITA, ABOTA, LawNet, ADC, DRI, ILTA, SFTLA, CAOC, American Lawyer Conference, Paralegal SuperConference, plus Bar Associations, Government Agencies and law firms. He has provided trial technology consulting services in numerous civil and criminal trials. Learn more at [http:// www.litigationtech.com](http://www.litigationtech.com).

Citation for this article: *The Jury Expert*, 2009, 21(3), 77-84.

Editor Note: The following two articles are presented as a response to an overview of the literature on expert witness preparation by Tess Neal in our March [issue](#). In these articles two experienced ASTC member trial consultants present their perspectives and strategies for the preparation of expert witnesses.

REDEFINING CREDIBILITY: Turning Expert Witnesses into Teachers

By Richard Gabriel

Attorney: “Sir, what is your IQ?”

Witness: “Well, I think I can see pretty good.”

The New York Times published an article last year, decrying the American advocacy system that creates a partisan atmosphere for expert witnesses as opposed to more neutral use of experts in European and Australian courts. In the recent Phillip Spector trial, a prosecutor’s closing remarks about “pay to say” expert witnesses for the defense could serve to undercut experts that his own and other local law enforcement offices have used in the past or may use in the future. Other recent articles in national newspapers and editorials echo the general public’s skepticism about the objectivity of expert witnesses. Assuming that the expert can pass the Frye, Daubert and Kumho Tire tests, judges and juries routinely dismiss expert testimony for credibility concerns, incomprehensibility, or simply by being cancelled by another expert’s testimony. All of these issues make for difficult testifying conditions for an expert witness, to say the least.

This leads to a number of important questions for the attorney and the expert in presenting testimony in trial:

- What exactly is *credibility*?
- Is my expert an advocate for me?
- How objective do I really want my expert to be?
- How broad or narrow should be the scope of their testimony and their expertise?
- In the overall case, what is the expert being used for?
- How do we best communicate the expert’s background, their methodology, their findings and conclusions?



Normally, we spend a great deal of time discussing expert credibility in terms of how an expert’s background education, training, and accomplishments compare with opposing experts, methodological concerns of how they arrived at their opinions, their “objectivity”, how much money they were paid or their demeanor while testifying. While all of these factors play a role in juror evaluations of an expert, this article will focus on one primary area of improving expert witness credibility: improving how an expert teaches the fact finder.

IMPROVING HOW THE EXPERT TEACHES THE FACT FINDER

In speaking with jurors in post-trial interviews and participants in mock trial debriefings, some of the negative terms that I have heard jurors use to describe expert witness testimony fall into these main categories:

- The Ivory Tower: “arrogant”, “condescending”
- The Swordsman: “combative”, “defensive”, “hostile”, “nitpicky”
- The Waffler: “uncertain”, “inconsistent”
- The Automaton: “stiff”, “robotic”, “confusing”, “unintelligible”
- The Salesman: “overzealous”, “slick”

Under all of these negative terms lies one fundamental problem: the lawyer and the witness did not have the intention of truly communicating with today’s jury. Let’s face it, jurors these days are more concerned with collapsing careers and 401K’s than whether an expert went to Cornell or Dartmouth or whether their article on “Transapical Aortic Occlusion” was peer reviewed.

Jurors are their own experts these days. They Google, they Twitter, they watch the Learning Channel and CSI. They are bombarded by opinions of media pundits, bloggers and comment themselves on news stories they read on the Internet. They work long hours, have long commutes, and alternate between shuttling their kids to soccer and piano lessons and helping them with hours of homework every night. Yet we expect them to patiently absorb hours of testimony about *Securitized Credit Enhancement* with rapt attention.

The standard approach in direct examination is to take the expert through their education and professional accomplishments, thus establishing their *credibility*. After this has been established, the attorney and the expert then describe the expert’s fundamental opinions, justifying their methodology with some interspersed background on the field of expertise or standards for their practice, while criticizing the conclusions of the opposing experts.

Given our harried and demanding juror described above, they have some inherent resistance to the structure of this testimony. First, jurors have some inherent skepticism about the objectivity of paid opinions. Second, although degrees, publications, and general achievements in their field of expertise are important in the selection of experts, they are not the primary credibility characteristics for jurors. Third, jurors struggle with the density of medical, engineering and other technical information, conflicting case stories, and complex legal instructions.

In post-trial interviews and jury research projects that I have conducted across the country over the years, three main characteristics are cited most frequently by jurors in their positive reviews of expert’s testimony:

- 1) ***Relevant*** experience;
- 2) Ability to use a recognizable methodology; and most importantly,
- 3) Ability to teach that methodology and communicate the resulting conclusions.

1. Relevant Experience: Attitude is Everything

A jury has sat through a complex patent trial on telecommunications equipment and it is finally time for the damages expert to get up and tell the jury what it is all worth. But before the dissertation about royalties formulas have left his or her lips, a question jumps into the juror's thought balloon, "What makes him such an expert in this?" and then, "What are these numbers based on and what do they mean." It is in answering these basic questions that a damages expert succeeds or fails.

WHAT MAKES AN EXPERT'S EXPERIENCE RELEVANT TO JURORS?

Let's face it, math was not the favorite subject of most jurors in school. Because jurors are looking for something familiar to make sense of complicated damages testimony, any practical work experience that mirrors the damages analysis helps them to understand that the expert has *personal and practical* experience in his or her expertise, as opposed to a purely theoretical or academic expertise. For example, if an economic expert's father ran a grocery store, she can talk about watching him balance the books and keep track of inventory. If an expert worked just out of college in a manufacturing plant for awhile, jurors may feel that he has an on-the-ground appreciation for the direct issues facing a manufacturer in a case involving packaging equipment.

Additionally, if the expert has participated in any study or research project or has personal expertise in an area that amplifies their damages opinions, this can help to distinguish them from the opposing expert. For instance, if a damages expert has a business valuation background, jurors may find that this gives the expert a more global picture on the impact of contractual and business claim rather than a pure accounting perspective.

By talking to the expert about their personal background, experiences, and course of study, it allows trial counsel to help the expert amplify and create jury meaning to their testimony. In short, jurors want to know that the expert is engaged in more than a dry intellectual formulaic task. They want to know that the expert has a personal interest in the subject matter and has participated in the field in various forms over their career.

2. Recognizable Methodology: Can the Jury Really Understand?

Attorney: "Doctor, as a result of your examination of the plaintiff, is the young lady pregnant?"

Witness: "The young lady is pregnant – but not as a result of my examination."

Although jurors play a largely passive role during a trial by sitting and listening, most research suggests that we all retain information better when we interact with that information. One of the best ways to get jurors to interact with the expert's testimony is to make his or her methodology both easy to understand and easy to use. By walking the jurors through a point-by-point re-enactment of the expert's methodology, it allows the jurors to see what the expert is seeing as they are analyzing the subject matter. In essence, you are making the juror the expert. This transference is important because you need them not only to understand your expert but to actually stand in or become the expert in deliberations. As you are walking the expert through the steps of their methodology, it is also important to ask them about what they were thinking as they looked at the data or results that they were seeing. For example, by allowing them to describe their impressions and reactions as they started going through their damages calculations or as they read the opposing expert's report, it allows the jury to understand *how* the expert formed their final conclusions.

The second point in conveying a recognizable methodology to jurors is creating familiar examples and analogies for the jury. Whether invoking the often used "recipe" analogy for a patent, talking about lottery odds, or

speaking about home or car loans, jurors use analogies to understand the methods and reasoning used by experts because these anecdotes touch on an experience the jurors themselves have had. The greater the familiarity, the greater the acceptance.

3. Effective Teaching and Communicate Skills

Attorney: “Is your appearance this morning pursuant to a deposition notice which I sent to your attorney?”

Witness: “No – this is how I usually dress when I go to work.”

In all of our studies of reactions to expert witness testimony, the one quality that determines witness effectiveness is the strength of the expert’s communication’s skills. Again, we measure effectiveness by how much of the expert’s testimony is understood, retained, and persuasively used by jurors in deliberation. For our purposes, we will look at discreet behaviors to analyze what makes a good teacher and good communicator.

What Makes a Good Teacher?

First and foremost, most jurors have experienced at least one good teacher in their lives. Most good teachers have an innate curiosity about the way the world works and come to their subject matter with the spirit of inquiry. It is in this spirit that a good teacher conveys mastery over their subject matter by having a comprehensive understanding of the field they are in. This understanding allows them to anticipate opposing expert’s methods and the cross-examination they will face in explaining their own methods and conclusion. This mastery means not only that the expert knows the literature of current research, trends, and clinical practice in their field, but is also familiar with other alternative, even unorthodox, methods used in the field. Given that jurors are novices in stem cell technology, securities, manufacturing process, insurance contracts, and royalty formulas, it is important that the expert not be too dismissive of what he or she deems to be a ridiculous or even fictitious method of the opposing expert. By explaining carefully why the field has undertaken certain recognized practices, this allows the jury to understand the reasoning behind the experts methodology. Then they can show the inaccuracies or false assumptions that underlie the opposing expert’s methods.

A good teacher understands that a student needs context in order to appreciate the significance of the opinion or finding. In an antitrust case involving Hatch Waxman allegations, an expert may testify about whether a pharmaceutical company’s conduct constituted anti-competitive behavior. However, without appreciating the guiding principles and intentions behind the Hatch-Waxman legislation, jurors will easily refer to their own experience and understanding of competitive business conduct, perhaps courtesy of Donald Trump’s *The Apprentice*. Therefore, if allowed by the Court, they need to preface any conclusions about the business conduct with a basic tutorial about Hatch-Waxman.

More importantly, a good teacher knows how to set the rules. The more complex the case, the more jurors (and judges) look to the expert to give them a framework for the case. Experts who can clearly articulate and establish the industry norms gain a credibility advantage and position the case more advantageously. For example, the first expert who can set the “standard of care” in a medical negligence case gains the upper hand. By testifying to even the most elementary standards of documenting a medical file, the expert essentially become the voice of authority and establishes the stone tablet commandments by which all conduct is measured.

Good teachers also anticipate questions that a student may have about the subject matter. In this mindset, they are always stepping into their audience’s shoes and saying to themselves, “If I were listening to this for the first time, what questions would I have?” They then make sure they answer those questions, no matter how basic or obvious they seem.

Finally, a good teacher appreciates that different students have different learning styles. Some are visual learners who need a great deal of graphic or demonstrative evidence to understand the points being made. Some students are auditory learners who listen carefully to material, need a great deal of data and like to compare and contrast differing opinions. Some students are kinesthetic learners who like to use models, hold documents in their hands, and get a hands-on feel for the subjects they are learning about. An expert can appreciate these and other styles and create a mixture of tools to convey their information. Some will stand up (if allowed) and walk jurors through a white board calculation of damages, some use PowerPoint to illustrate their process, some will use models of the product in question. If the expert can use a combination of these methods, it will break up potentially hours (if not days) of static, talking-head testimony. Again, an expert as a good teacher recognizes when they have the attention of their audience. By using multiple media to convey their message, the expert creates more inherent interest in their testimony and easier access for the juror.

What Makes a Good Communicator?

Talking about good communication is like talking about good art or good music. Nobody knows exactly what it is but they know it when they see it. However, there are some behavioral and personality components that many excellent presenters employ to effectively get their message across to their audience.

First, good communicators (like good teachers) always have a passion for the subject matter they are presenting. Aside from a purely professional or academic interest, experts who resonate with jurors seem to have a personal connection that drives them to a particular level of excellence in their chosen field. Second, effective experts, like good lawyers, have the ability to tell a good story. Good storytellers have an appreciation for narration. That is, they know whether their audience has enough information to understand and appreciate their message without getting confused or distracted from the central theme and through-line of their story. Good storytellers also know that even the driest subjects can be made interesting by highlighting the conflict, the characters, the action, or the environment within the story.



Experts who have well-tuned communication skills have the ability to break down complex subjects or concepts into simple, understandable language. This can be called the Teen Test. Unconsciously, these experts do an immediate translation of complicated concepts as if they were speaking to a group of teenagers. Needless to say, this should not be done in a condescending manner. However, witnesses will always gain credibility points if the jury feels that the witness is truly trying to help them understand the subject matter.

Similarly, experts who have excellent communications skills have the ability to organize their material for optimal jury or judicial retention. As an exercise, have the expert list for you the three to five major conclusions in their report. Although they may

assure you that they have 17 main points, many of those points can be grouped under one of those three to five major topic headings. We call this the “journalism” approach and it sometimes runs counterintuitive to the way an expert organizes his or her material. First, have the expert describe what the one line headline is to their story on this major point. Then, have them describe for you the sub-headline. Then, the first paragraph on their major point should

summarize what they have to say about the point. Then, the body of the story can create increased detail, research, and history of the opinion. This journalistic approach takes advantage of that golden “primacy” time that we have spoken so much about over the years – that people listen best to what is presented first.

This method of organization is useful to the jury because it allows them to better take and organize their notes of the expert’s testimony and better use that information in deliberations. When we test this method of organizing an expert’s testimony in a mock trial, we look for jurors in deliberation saying, “Expert Y had three main points on this issue. They were...”.

Finally, this method assists the expert in organizing her thoughts for cross-examination. Because, no matter how vociferously they are attacked about their methods or conclusions, she can still come back to her three to five major points.

As described above, a good communicator is also a good teacher. As such, the expert knows the juror will always gravitate toward boredom. No matter how fascinating the expert finds regression analysis, jurors will always be pulled toward that glazed expression that says, “I wonder what I should have for dinner tonight?”

To anticipate this natural state, the good communicator uses as much media variety as possible to communicate their conclusions. This means more than just good visuals. Where allowed, an expert should try and use a visual presentation system (Sanction, Trial Pro, Trial Director etc.), use blowups or magnetic boards, draw on a white board or flip chart, and create live demonstrations to create interest in their presentation. The more variety, the more jurors will pay attention. These visuals should seek to visually recreate the verbal testimony of the expert. As a matter of fact, we sometimes go through a “storyboarding” exercise taken directly from the film industry. That is, we sit down and create a series of images that tells the expert’s story. Another exercise is to have the expert identify the three most important points in his or her testimony. We then design a graphic (not a bullet point chart) to accompany those main points.

Similarly, a good communicator uses vocal variety to convey interest in their message. Changes in pitch, intonation, emphasis, loudness, and pace of speaking all communicate nonverbally that there is something new being communicated. It nonverbally creates punctuation and accentuates the speaker’s content.

Nonverbally, most experts have learned how to make eye contact with jurors during their testimony. However, this can be overdone. Jurors have sometimes reported in post-trial interviews that the expert seemed to be pushing too hard by automatically turning to the jury after every question. It will seem more natural for the expert to respond to the attorney on shorter, simpler responses and include the jury in the longer responses. This will make the testimony seem less contrived. Finally, even if a witness is confined to the witness box in Federal Court, use of posture and gesture can also help to underscore the important points in an expert’s testimony.

Again, good communication is in the eye of the beholder. However, jurors respond positively to experts who convey, through their attitude and demeanor, a certain confidence, quiet strength of conviction, humility, eloquence, grace, and good nature.

Expert Testimony Sequence

Jurors have a short attention window during which an expert needs to establish rapport and credibility to convey their main points. Again, if we were to look at the juror’s thought balloon, it would contain questions like, “Who is this guy? What is he talking about? And what does this have to do with the rest of the trial?”. And although it is necessary

to qualify your expert, we advise the following sequence in an expert's testimony in order to optimize jurors' short attention window during an expert's testimony.

1. *Short* background of the expert. As previously described, this should not only include academic or professional accomplishments and designations but personal history that can relate to specific jurors and the individual issues in the case. This background should also include a question about why the expert likes doing the work she does and what her main focus has been in her career.
2. Briefly define the expert's role and what she was retained to do in the case.
3. Summarize the expert's conclusions.
4. Go through the methodology and approach employed by the expert to arrive at their conclusions. This can also include a critique of opposing expert's methods, conclusions, and testimony. Although the expert might not respect the opposing expert professionally, given that the jurors do not have a background in the field, it is always safer for the expert to acknowledge the opposing expert's view but still strongly critique his methodology and conclusions.
5. Periodically intersperse the methodology and approach testimony with professional experience, research, publications, and accomplishments.
6. If possible, summarize conclusions again.

Using the Dynamic Tension in Expert Testimony

"He was just open and honest. He would tell the defense attorney that he was wrong and that the plaintiff could be right in certain spots. They were just more credible than the plaintiff experts. The plaintiff experts seemed like they'd say what you want to hear and when the defense got to them, they'd fall apart."

- Mock juror comment on a defense medical expert

An attorney wants to retain a product liability expert to support her manufacturing defect case. The expert wants to be retained to testify and wants to be called back to testify in other cases. He wants to be cooperative but is feeling uncomfortable with some of the claims the attorney is asking him to support. He pushes back in a couple of preparation sessions, telling the attorney he is not willing to go that far in his testimony. While this may be difficult for the attorney in making a substantive record for her case, this tension can actually be a beneficial source of credibility for both the witness and the attorney in this case.

As we have discussed, jurors are already primed to be suspicious about the lack of objectivity of an expert witness. If jurors perceive that there is some resistance between both the attorney and the witness, they will have harder time believing that the expert is just a "paid mouthpiece" for the attorney. We can accomplish this through two very simple methods: First, the attorney and the witness can agree on areas where they disagree. Obviously, these should not be areas that are germane to the primary issues in the case. Jurors know that the lawyer is an advocate. They can safely push the envelope in a safe subject area to allow the witness to reign in the attorney and say, "No, I don't think I would go that far. Here is what I think is a more accurate scenario." The second area is for the attorney to step into opposing counsel's shoes and "cross-examine" his own witness to preempt an anticipated attack. This allows the attorney to play the skeptic (something the jurors are already doing) and to test the soundness and objectivity of the

witness. This sometimes leaves opposing counsel with very little fodder for their cross-examination. Both of these examination methods reinforce the independence of the attorney and the expert.

In planning expert testimony, careful consideration should be given to how different courts deal with experts. Some courts have started having experts testify back to back as opposed to testifying in the case for which they were retained. This requires different preparation and planning. There is even some initial discussion about the Courts using a method from Australia with the unfortunate name of “hot tubbing” where experts testify together at trial, ask each other questions, respond to questions from the judge and the lawyers, and find agreement while clarifying the issues. While procedurally unprecedented, this method may gain some support if the courts feel it will improve the clarity and objectivity of the expert testimony in a case.

Conclusion

Jurors do have an innate curiosity. They have a lot of time invested in the case and they want to learn something during a trial. It is important for the expert to understand the innate skepticism and inherent boredom of jurors in order to become their best teacher in the subject matter. By being creative in structuring and conveying the substance of the expert’s testimony, the expert becomes the translator for the jury in their journey into a foreign land. The expert allows them to learn, retain, and use the information to become your best advocates in deliberation. By doing this, they become your experts for other jurors and help to teach and communicate your best message.

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What Preparation Does Your Expert Need?

by David Cannon

Expert witnesses are, after all, “experts,” so do they really need to be prepared for trial testimony? Well, just because someone is an expert in his or her field, that person is not automatically expert at conveying information in an effective and educational manner to a jury. Think about a few of your college professors. Some were truly gifted at teaching difficult concepts in an exciting and novel way that held your attention and complemented materials you read for the class. These were the classes that you regularly attended because they were inspiring and fulfilling. You felt proud of yourself as you learned more about the topics at hand. You felt just a little bit smarter because of those professors. However, some professors did not seem to have this gift. They poorly explained difficult concepts and jargon, if they explained anything at all. Remember how quickly your mind wandered? Remember how laboriously they covered material in an uninspired manner, begging you to focus your attention on something, anything, outside of the classroom? Instead of organic chemistry, you thought about your weekend plans or where you were going to dinner.

Now, imagine that uninspired professor explaining an important or key concept that is vital to your case. How influential will he or she be to a jury? How soon will jurors be thinking about their weekend rather than paying attention to your expert? Is this a risk you really want to take?

This is just one example of what can happen when you put experts on the stand without appreciating how they may come across to a jury. Over the years, I have seen it all: the uninspired expert, the reluctant expert, the advocate at-all-costs expert, the bully expert, and, of-course, the highly effective expert. What kind of expert do you have? You really only know by conducting a dry run of his or her testimony and seeing it for yourself.

After conducting a dry run with your expert witness, you may conclude that the witness needs some assistance to bolster his or her ability to convey testimony to the jury. Following are some considerations for approaching the witness with suggestions.

Every Expert Is a Unique Challenge

Preparing expert witnesses comes with its own set of challenges. Over the years, I have found that some experts are eager to work with a consultant while others can be very resistant to the idea of witness preparation. Following are examples of two kinds of experts (one who embraces preparing for trial and another who does not), and how you can work with them to improve their performance.

The Reluctant Expert

I recently worked with an expert who had no experience in front of a jury. While he had offered many opinions in other cases, he had never before testified in front of a jury. When we met, he admitted that he had quietly hoped that the case would settle so he wouldn't have to testify at all. He was a pleasant man who presented like a lay witness because of his lack of familiarity with the trial process. Because he had no jury experience, much of the beginning of the session focused on demystifying the process. I educated him as I would a lay witness (e.g., orienting him to the courtroom and discussing tactics/tricks used in cross). My attorney-client then began a mock direct examination. The expert's responses were full of jargon and long-winded explanations. He did not seem to know where he wanted to go



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with his testimony without being prompted by very leading questions. He was going through his testimony much like an uninspired professor.

Thankfully, he was open to feedback and to the process of witness preparation. In a short period of time, the expert was able to make amazing improvements because of his openness to preparation. We asked him to document the three or four key points he was trying to make, and we worked with him to outline how he could go about getting these points across in his testimony. He now had a roadmap of what needed to be conveyed to the jury and how he would go about conveying that information. With the outline in place, we continued to practice by conducting dry runs of his testimony. He improved, but jargon continued to be a problem. I asked how he might be able to explain these concepts at a party where he was surrounded by people who wanted to know what he did for a living, but lacked his background. We discussed metaphors to help jurors understand his concepts in a manner that was more familiar to them. More practice resulted in continued improvement, but he was still having some difficulty getting his key concepts across in a manner that helped them to stand out. We decided to let him use chart paper to summarize his key points. He would briefly write out a concept and then explain it. Over the course of the preparation session, the witness went from a formal, impersonal, and boring presentation to that of a much more personable, informed, teacher. In a booster session a few days before the witness testified, he continued to show improvements in his ability to convey the information and in his self-confidence. The witness went on to perform very well in front of the jury, and he presented as being very natural and well-informed.

The “My Word is Gospel” Expert

One of the most challenging experts I have worked with had testified in many, many cases. It was clear that he considered himself an expert in his field, but he also considered himself an expert at testifying. My client had never worked with this expert before, but noticed some potential for him to come across too aggressively to a jury. She worried that he could appear unlikeable and come across as too “full of himself.” He was insulted when she told him that she liked for experts to work with her consultant, and she told me that he was very reluctant to meet. We were fortunate to be conducting a mock trial in this case, so we videotaped this witness’ expert opinion in a mock direct and mock cross exercise.

My client’s concerns proved to be well-founded; he did not come across well. Far from presenting as uninspired, he came across more like an aggressive used-car salesman. He was aggressive, defensive, and appeared to be too much of an advocate. We played his video to the mock jurors and had them evaluate the witness on a variety of dimensions (e.g., believability, likability, clarity, etc.). We also allowed mock jurors to offer open-ended opinions of the witness. Overall, the mock jurors did not like him and were very critical about much of his testimony. Mock jurors believed his opinions were unfounded and presented as “gospel.” Nevertheless, we were able to extract some positive statements and data to assist us in providing feedback to this witness.

This particular witness was very data-oriented and appreciated feedback that we provided from the mock trial. When working with witnesses such as these, it is important to be armed with data and diplomacy. Always acknowledge and reinforce the strengths first to build rapport, and build off of those strengths as you offer suggestions. First, walk through the data that shows what the expert did right. Consider pulling some quotes that describe him or her as prepared, organized, and knowledgeable (or whatever his or her strengths are). In this example, we explained how his years of experience had come across positively to the mock jurors. Then, armed with selective and constructive data, we showed where the mock jurors did not respond as positively. This helps to draw a line between being a confident and knowledgeable educator and being an aggressive “salesman” of one’s opinion. Stress the importance of outlining how the expert has had reached his/her opinions, rather than simply stating and aggressively defending them. This witness ultimately was very successful at walking through his methodology and helping the jury to understand exactly how he arrived at his opinions.

Tips That Apply To Most Experts

I recommend some closing points that will help promote clarity in an expert's opinion.

1. Don't advocate

Experts have a difficult task. Not only must they educate the jury about something about which the jurors know little, but their conclusions are often in stark contrast to those being proffered by opposing experts. Consequently, experts are met with a great degree of skepticism because jurors often view them as advocates for the party on whose behalf they appear in court. While the expert's opinions are important, the key in effective expert testimony is clearly walking the jury through the decision-making process that led to the expert's opinion. Don't be afraid to have your expert walk through opposing opinions and explain why those opinions are not supported. The clearer the expert's methodology is, and the more the jury understands what led to the expert's opinion, the greater the likelihood that the expert's opinion will hold up against an opposing view.



2. Keep it conversational

Remind experts that their role is to educate someone with little or no knowledge about their field. How might an expert handle telling someone at a party what it is that they do? Remind them that the use of jargon can be alienating. Address concepts simply and in ways that resonate with the jury. Metaphors are excellent vehicles to deliver difficult concepts in familiar ways.

3. Show and tell

Talk to your expert about graphics and models that may be used. Make sure that they are simple enough so key concepts are readily apparent the jury. Use graphics, chart paper, and models for key points of the testimony to help juror comprehension and retention. Once more, think back to some of the most effective instructors you have had, and those instructors likely used graphics and models to aide understanding.

In conclusion, jurors often interpret expert witness testimony with a grain of salt, so the way in which the expert opinion is communicated is vital. Don't make the assumption that an expert is an expert communicator in the courtroom.

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Editorial Exuberations

Spring is in full swing when it seems like the new calendars just went up on the wall. Our May issue is the biggest we've assembled yet both in size and in the range of ideas/perspectives incorporated. Thanks to your reading and suggestions we are continuing to evolve and expand. *The Jury Expert* is also on [Twitter](#) with daily links relevant to litigation and a few fun things to mull over your morning libations. Keep the feedback, ideas, and suggestions coming!

We are pleased to have a lengthy feature on the controversy about Generation Y and the prevalence of narcissism. We are publishing this issue on the heels of a heated debate in the blawgosphere on Generation Y in the legal workplace (see a summary of that controversy [here](#)). In a departure from our usual style of one author and several trial consultants reacting to the piece--in this case we have two articles (one saying narcissism is on the rise in our young people and the other begging to differ). Three experienced trial consultants with special interests in generational issues provide feedback on the articles and how this controversy relates to litigation advocacy and then both authors respond. This feature doesn't resolve the differences of opinion between the researchers but we hope it gives you a sense of how to use (or not use) generation and/or age in jury selection, case sequencing and narrative.

Our second academic feature is one of which we can all be proud. It's an exploration of just how the process of deliberating on a jury makes us better people and better citizens. How nice to hear something uplifting about the jury process for a change! Two past Presidents of the American Society of Trial Consultants respond to this article (ten years in the making) and then the authors follow-up with additional thoughts.

In addition, we have pieces on a wide range of issues from trial consultants: deception, juror stress, technology in high profile trials, questioning the child witness, using a simple mnemonic to aid you in organization in voir dire, and how to prepare expert witnesses. And of course, our favorite thing (two again this issue). It's a lot to ponder. Come back and visit the website and read to your hearts content! That's why we're here. Use us. --[Rita R. Handrich, PhD](#)



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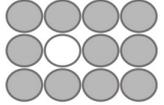
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