

“Polar opposites: Empathy does not extend across the political aisle”

by *Ed O'Brien and Phoebe Ellsworth*

Many people can relate to the pain of being stuck outside on a winter day or caught without water after exercise. Recent psychological research, however, reveals that visceral states (e.g., cold and thirst) affect not only people's own subjective feelings in the moment but also their broader perceptions of the world (Risen & Critcher, 2011). One of the most consistent findings highlights the assimilative effect of visceral feelings on social judgment. For example, when people are dehydrated, they perceive others as thirsty (Van Boven & Loewenstein, 2003), and when frightened, they perceive others as afraid (Van Boven, Loewenstein, & Dunning, 2005).

A number of possible mechanisms could explain this bias, but it has generally been attributed to a limited appreciation for “cold” states when experiencing “hot” affect. For instance, people become overly focused on feeling thirsty (a hot state) because it is difficult to imagine a cold state – such as the sensation of having one's thirst quenched – when such a salient sensation is activated. Thus, perceptions become overwhelmed by thirst-related thoughts and judgmental cues (Loewenstein, 2005).

However, the bias may also reflect a sense of shared similarity and common humanity with other people. Because they do not have access to others' internal states, people use their own subjective experience as an immediately accessible point of reference to gauge others' private knowledge (Dunning & Hayes, 1996). As a result, people often assume that others share their traits, attitudes, and perspectives. In one classic demonstration of these egocentric projections, participants who agreed to wear a sandwich board overestimated the number of other people who would agree to wear it, whereas those who refused to wear the board underestimated the number of people who would agree to wear it (Ross, Greene, & House, 1977). In another seminal study, students who cheated on an exam overestimated the prevalence of cheating by their classmates (Katz & Allport, 1931). Thus, the projection of visceral feelings may derive from the tendency to imagine another's situation by first imagining oneself in the same situation (Van Boven & Loewenstein, 2003), reflecting a more general projection of similarity.

If this rationale is correct, it suggests that people may not project visceral states onto others who are clearly different from themselves. Previous research has demonstrated that people are less likely to generalize subjective states to others who do not share similar life experiences with them (Robinson, Keltner, Ward, & Ross, 1995). For example, in one study, college students projected their preferences (e.g., desire for body piercings, stance on capital punishment) onto students of their own university but not onto students of different universities (Ames, 2004). Although the literature has typically discussed the social projection of traits, attitudes, and values (for a review, see Robbins & Krueger, 2005), people may also fail to project strong feelings onto others if the underlying mechanism involves perceived similarity with the people in question.

To test this possibility, we recruited participants to make social judgments about a similar or dissimilar person while experiencing (or not experiencing) cold (Study 1) and thirst (Study 2). Because people should become less egocentrically biased when they perceive others as different from themselves, we predicted that judgments of dissimilar others would be unaffected by visceral states.

Study 1: Feeling Cold

In Study 1, participants were recruited either outdoors or indoors during winter. We predicted that they would project their physical feeling of coldness only onto others who shared their political values.

Method

Participants

Participants were 120 student volunteers (62.5% female, 37.5% male; 73.3% Caucasian, 26.7% other; mean age = 19.48 years) recruited from public campus areas.

Procedure

In January 2011, an experimenter approached students who were sitting either indoors in the university library or outdoors at a bus stop near the library. The students were asked to participate in a study allegedly about reading comprehension. Winter weather in Michigan can be quite cold; during this study, ambient temperatures ranged from -14° to 30° F ($M = 6^{\circ}$). Thus, we manipulated visceral experience by comparing a warm indoor condition to a cold outdoor condition ($n = 60$ for each condition).

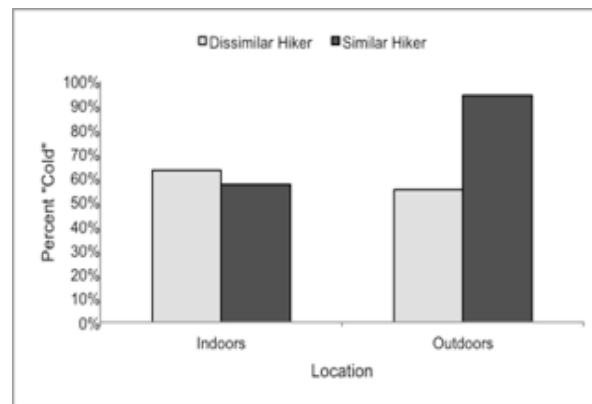
Participants were tested at the place where they were recruited. We asked participants to read a short story and answer questions about it. We adapted the story from prior research by adding a similarity / dissimilarity manipulation that has been shown in prior research to have a strong effect (Mitchell, Macrae, & Banaji, 2006): Participants were randomly assigned to read about a protagonist who was either a left-wing, pro-gay-rights Democrat or a right-wing, anti-gay-rights Republican. The protagonist goes hiking in winter to take a break from a political campaign but gets lost with no food, water, or extra clothes. After reading the story, participants answered forced-choice questions asking what was most unpleasant for the hiker (hunger, thirst, or cold) and what the hiker most regretted not packing (food, water, or extra clothes). They also rated how hungry, thirsty, and cold both they and the hiker felt using continuous scales ranging from 0, not at all, to 10, extremely. Participants then answered a forced-choice item asking whether their political affiliation was similar or dissimilar to that of the hiker.

Results and Discussion

Does being cold influence social judgment? Yes – but only when judging similar others (see Fig. 1). First, replicating previous research, our findings showed that participants in the similar condition were more likely when outdoors (94%) than when indoors (57%) to indicate that cold was more unpleasant for the hiker than hunger or thirst was. However, responses of participants in the dissimilar condition were unaffected by location (outdoors condition: 55%,

indoors condition: 63%). Second, participants in the similar condition were more likely while outdoors (81%) than while indoors (37%) to indicate that the hiker most regretted not packing extra clothes; responses of participants in the dissimilar condition were unaffected by location (outdoors condition: 41%, indoors condition: 43%). Third, participants in the similar condition rated the hiker as colder while they were outdoors ($M = 7.81$, $SD = 1.20$) than while they were indoors ($M = 5.50$, $SD = 1.93$); responses of participants in the dissimilar condition were unaffected (outdoors condition: $M = 5.76$, $SD = 1.73$; indoors condition: $M = 5.67$, $SD = 2.04$).

Figure 1. Results of Study 1: participants' descriptions of the hiker's visceral state as a function of their location and their political similarity to the hiker. Participants read a story about a hiker and were then asked, "Is hunger, thirst, or cold most unpleasant for the hiker?" This graph shows the percentage of participants who responded with "cold."



These findings support our hypothesis. Despite cold winter weather, participants did not project their feelings of coldness onto others who had opposing political views. In Study 2, we tested our hypothesis in a laboratory setting using a different visceral state.

Study 2: Feeling Thirsty

In Study 2, new participants were randomly assigned to two conditions, in which they felt thirsty or nonthirsty, before reading the hiker story. We predicted they would project their thirstiness only onto a hiker whose political views were similar to theirs.

Method

Participants

Participants were 141 university students (49.6% female, 50.4% male; 71.6% Caucasian, 28.4% other; mean age = 19.01 years) participating for course credit.

Procedure

Participants came into the laboratory for a study allegedly on nutrition and attention. First, they sampled a selection of food. We gave all participants the same salty snacks: vanilla wafers, potato chips, gummy rings, and saltines. Participants were randomly assigned to eat the snacks either with a cup of water (the nonthirsty quenched condition; $n = 68$) or without a cup of water (the thirsty parched condition; $n = 73$). They were then presented with the same story and questionnaires used in Study 1.

Results and Discussion

Results replicated those of Study 1. First, participants in the similar condition were more likely to indicate that thirst was more unpleasant for the hiker than hunger or cold when they themselves were parched (71%) than when they were quenched (20%). Responses of participants in the dissimilar condition were unaffected by the thirst manipulation (parched condition: 37%, quenched condition: 26%). Second, participants in the similar condition were also more likely to indicate that the hiker most regretted not packing “extra water” when they were parched (54%) than when their thirst was quenched (13%). Participants in the dissimilar condition were again unaffected by the thirst manipulation (parched condition: 21%, quenched condition: 18%). Finally, participants rated the hiker as thirstier when they were parched ($M = 7.46$, $SD = 1.29$) than when their thirst was quenched ($M = 5.43$, $SD = 2.10$). Participants in the dissimilar condition were unaffected by the thirst manipulation (parched condition: $M = 5.71$, $SD = 2.10$; quenched condition: $M = 5.42$, $SD = 2.19$). These findings again suggest that perceived dissimilarity overrides strong visceral feelings. Participants in the dissimilar condition were unaffected by thirst.

General Discussion

Social life is typically divided between people who share the same values and beliefs and those who do not. Prior research suggests that people often isolate their internal perspectives from those on the other side of this divide (for a review, see Robbins & Krueger, 2005). The present research extends the power of dissimilarity to visceral experiences. Despite the well-documented effect of visceral states, participants were unaffected by their cold and thirst when evaluating people with opposing political values.

Theoretical implications

These findings illustrate the operative role of perceived dissimilarity in social judgment. Previous research suggests that people are less egocentrically biased when judging dissimilar others because they rely on stereotypes (e.g., “Those students don’t share my stance on capital punishment because they are all uptight conservatives”) or on pre-stored knowledge (Ames, 2004). However, this suggestion cannot account for the failure to project visceral states. Our findings cannot be explained by any obvious stereotype about feeling cold or thirsty (e.g., “Liberals don’t share my thirst because they drink more water than I do”). All else being equal, knowledge of another person’s politics should not influence how cold or thirsty one thinks he or she is, but these findings suggest that it does.

These effects might further apply to broad social judgments. For example, people exposed to hot weather become more concerned about global warming (Li, Johnson, & Zaval, 2011). However, the same people may not care about global warming in dissimilar areas of the world

because they fail to link their own hot states with the condition of those regions; thus, Westerners may inadvertently neglect the woes of problematic areas.

Applied consequences

The inability to appreciate “cold” states while experiencing “hot” affect has occasionally been conceptualized less as a bias than as an enhanced capacity to empathize with other people (e.g., Loewenstein, 2005). For example, in one study, participants were less likely to endorse torture while experiencing various forms of pain themselves (Nordgren, McDonnell, & Loewenstein, 2011). Our research, however, suggests that people may not be influenced by their own pain when gauging pain felt by dissimilar others. Thus, if lawmakers first test interrogation practices (as suggested by Nordgren et al., 2011), they may not project the experience onto those for whom it is designed (e.g., suspected terrorists), and this could lead to an unintended acceptance of torture. Similarly, homeless populations often struggle with poor nutrition and intemperate weather; personally feeling hungry and cold may be insufficient to sensitize people who have no long-term worries about food and shelter to the plight of this highly stigmatized out-group (Harris & Fiske, 2006). These consequences suggest a surprising limitation in people’s capacity to empathize with others with whom they disagree or differ from. Perceptions of dissimilar others are uninformed by visceral feelings.

To illustrate this point, we ran a follow-up study with University of Michigan students either before ($n = 34$) or after ($n = 28$) they ate lunch. In each group, half were asked the following question: “What percentage of the University of Michigan budget should be dedicated to maintaining food quality on campus and ensuring that students have access to high-quality food?” The other half was asked the same question about Ohio State University, a rival school. As expected, hungry students said that a larger percentage of the University of Michigan budget should be allocated toward food ($M = 19.19\%$, $SD = 4.83\%$) than did students who had already eaten ($M = 11.12\%$, $SD = 5.92\%$, $p < .001$). However, hungry students ($M = 11.24\%$, $SD = 5.36\%$) did not say that Ohio State University’s food budget should be raised any higher than nonhungry students did ($M = 10.93\%$, $SD = 3.99\%$, $p > .40$). Painful first-hand experiences apparently do not translate into an appreciation of similar pain felt by dissimilar others. Thus, people may not be motivated to help out-groups, even when experiencing shared states.

Conclusion

The results of the two studies reported here suggest that the effect of visceral states on social judgment is eliminated when people judge dissimilar others. It seems counterintuitive that people outside in the freezing cold or eating salty snacks without water could be indistinguishable from those who were warm and whose thirst was quenched, yet participants whose political views were dissimilar to the individual they were judging were surprisingly unaffected by their own strong visceral-drive states. This observation has not been made by prior researchers investigating social judgment, and it reveals the need for a better understanding of when people's own internal experiences influence their perceptions of the internal worlds of others and when they do not. Perceived dissimilarity – even in an incidental domain such as political values – may expose deep constraints on people's ability to appreciate the experiences of those who may be in greatest need of their consideration.

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REFERENCES

- Ames, D. R. (2004). Strategies for social inference: A similarity contingency model of projection and stereotyping in attribute prevalence estimates. *Journal of Personality and Social Psychology*, 87, 340–353.
- Dunning, D., & Hayes, A. (1996). Evidence for egocentric comparison in social judgment. *Journal of Personality and Social Psychology*, 71, 213–229.
- Harris, L. T., & Fiske, S. T. (2006). Dehumanizing the lowest of the low: Neuroimaging responses to extreme outgroups. *Psychological Science*, 17, 847–853.
- Katz, D., & Allport, F. H. (1931). *Student attitudes*. Syracuse, NY: Craftsman Press.
- Lamm, C., Meltzoff, A. N., & Decety, J. (2010). How do we empathize with someone who is not like us? A functional magnetic resonance imaging study. *Journal of Cognitive Neuroscience*, 22, 362–376.
- Li, Y., Johnson, E. J., & Zaval, L. (2011). Local warming: Daily temperature change influences belief in global warming. *Psychological Science*, 22, 454–459.
- Loewenstein, G. (2005). Hot-cold empathy gaps and medical decision making. *Health Psychology*, 24, 49–56.
- Mitchell, J. P., Macrae, C. N., & Banaji, M. R. (2006). Dissociable medial prefrontal contributions to judgments of similar and dissimilar others. *Neuron*, 50, 655–663.
- Nordgren, L., McDonnell, M., & Loewenstein, G. (2011). What constitutes torture? Psychological impediments to an objective evaluation of interrogation tactics. *Psychological Science*, 22, 689–694.
- Risen, J. L., & Critcher, C. R. (2011). Visceral fit: While in a visceral state, associated states of the world seem more likely. *Journal of Personality and Social Psychology*, 100, 777–793.
- Robbins, J. M., & Krueger, J. I. (2005). Social projection to ingroups and outgroups: A review and meta-analysis. *Personality and Social Psychology Review*, 9, 32–47.
- Robinson, R. J., Keltner, D., Ward, A., & Ross, L. (1995). Actual versus assumed differences in construal: “Naïve realism” in intergroup perception and conflict. *Journal of Personality and Social Psychology*, 68, 404–417.
- Ross, L., Greene, D., & House, P. (1977). The “false consensus effect”: An egocentric bias in social perception and attribution processes. *Journal of Personality and Social Psychology*, 13, 279–301.
- Van Boven, L., & Loewenstein, G. (2003). Social projection of transient drive states. *Personality and Social Psychology Bulletin*, 29, 1159–1168.
- Van Boven, L., Loewenstein, G., & Dunning, D. (2005). The illusion of courage in social predictions: Underestimating the impact of fear of embarrassment on other people. *Organizational Behavior and Human Decision Processes*, 96, 130–141.

We asked three trial consultants to respond to this research by O'Brien and Ellsworth. On the following pages, Charli Morris, Judy Rothschild and Ken Broda-Bahm respond.

Charli Morris responds:

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***Attitude is a Little Thing that Makes a Big Difference:
More than Motivational Speech for Getting Jurors to Relate to Your Case***

*Charli Morris has written two articles in *The Jury Expert* on voir dire. You can see them [here](#) and [here](#).*

Maybe my title reminds you of one of those corny posters you've seen hanging on the wall at the physical therapist's office. You know the one: there's a picture of a person standing at the base of a big mountain, or perhaps a cute baby bird peering out over the edge of a nest, determined to take its first flight.

But the title really says it all about the research by O'Brien and Ellsworth, who remind us that jurors can (or cannot) relate to our cases and our clients on at least two temporal levels: in the short-term (viscerally) and in a more lasting and meaningful way (empathically). More importantly, the results highlight the significance of the latter.

In fact, their empirical study confirms our shared practical experience. It works this way on all sides of every case:

- Jurors relate to the vulnerable patient, and they relate to the over-worked staff nurses who cared for him.
- Jurors relate to the innocent victim rear-ended by a delivery truck driver, and they relate to the small business owner whose family-owned trucking company distributes locally-grown foods to neighborhood grocery stores.
- They relate to the inventor who turns his passion into a patent, and they relate to the company who turned its improvement on the idea into a life-saving medical device found in every modern-day emergency room.

The goal for all of us is to turn the power of empathy into powerful persuasion.

Most, if not all, of what we have written about jury selection in the pages of *The Jury Expert* features strategies to make the most of the capacity jurors have to relate – based on attitudes, values and beliefs because they are more stable than short-term visceral states. The questions we recommend to our attorney-clients recognize that even similar life experiences (those beyond transient feelings of hunger or thirst) are not enough to guarantee that jurors will make judgments consistent with those similarities, if they also perceive there to be significant differences between themselves and your client.

In fact, we caution attorneys against assuming that experience alone will predict jury behavior, and promote best practices for questioning to assess the extent to which a juror may (or may not) relate. We hear this play out in focus group research all the time and it goes something like this:

Similar Experience:	Dissimilar Attitudes and Beliefs:
My mother was a plaintiff in a lawsuit, but...	She didn't ask for money for pain & suffering; all we wanted was to get her bills paid.
One time my doctor prescribed the wrong medication and my son had a bad reaction, but...	Doctors are human; things turned out okay for us; all's well that ends well.
I've also been responsible for keeping company records, but...	I always kept a back-up of critical documents and only someone who had something to hide would delete or destroy them.
I've been the foreman on a manufacturing crew, but...	Safety was always my highest priority and no one ever got seriously hurt on my watch.

So the voir dire questioning goes like this:

[Experience]

Raise your hand if there's ever been a time when you or someone close to you...

- Tells us about that.

[Attitudes/Beliefs/Values]

- How did things turn out?
- Were you satisfied with the outcome? Why or why not?
- What did you learn from the experience?
- What advice would you give someone else in that situation?

But what about before trial – long before trial?

What does the research like this suggest about what you can do when you are deciding whether to take the case, how to conduct discovery, how to prepare your witnesses for depositions, and how to build the theme (or themes) within the case to maximize the likelihood that jurors will find more similarities than differences between themselves and your client?

We all work in litigation because on some level we get a kick out of solving problems. You don't necessarily have to love all of your clients, love the process, or even love your job every day to recognize that lawsuits are a legitimate way to resolve conflict, achieve balance, and maybe even satisfy our inherent need for justice once in a while. But you have chosen a specialty and your clients first choose you. That means they show up looking like the kind of person you've represented before, with problems you've solved before. Your natural tendency is to relate to your prospective client.

The problem is that you might not know if people on a jury will relate. The jury will be told that sympathy should play no role in decision-making, but we absolutely need empathy to be a factor every single time. I am often surprised at how long it takes an attorney to get around to telling me the unlikable things about a client and it will always count against them in the case.

So consider adding these questions to your initial client interview checklist to find out what attitudes, beliefs and values you will need potential jurors to share with your client:

- What have you learned so far from your experience?
- What advice do you have for someone who might be in a similar situation?
- Why is it important to you to file this lawsuit?
- What do you hope to achieve with the lawsuit if we are successful?
- What thoughts did you have about the issue of ____ before you found yourself in this situation? Are they different now? Why or why not?
- What thoughts did you have about lawsuits before you found yourself in this situation? Are they different now? Why or why not?
- How would your best friend describe you?
- What do you most want the jury to know about you and about this case?
- How would your worst enemy describe you?
- What are you most afraid the other side will find out about you?

The answers to these questions will also inform your goals for preparing your client to testify in deposition and at trial.

In terms of the narrative you develop for the opening and closing speeches and in your examination of witnesses, once you have gathered the experience, attitudes and beliefs of focus group participants in pre-trial research and again from jurors during voir dire, you will want to feature as many similarities between them and your client and the case facts as possible. You may never be able to pick a jury full of Democrats or Republicans to match your client's political affiliation, but you can stack the deck in your direction if you are mindful that a small thing like attitude can make a big difference in the outcome of your case.

Judy Rothschild responds:

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*More Than Skin Deep:
Visceral States Are Not Projected Onto Dissimilar Others*

I'm freezing, you must be freezing, too. I'm dying of thirst, you must be thirsty, too. I'm famished, you must be hungry, too! Did you know or would you expect that people are likely to project their strong personal feelings of discomfort referred to in the field of psychology as "visceral states" onto others? Do you think people will readily engage in what psychologists refer to as "egocentric projections" onto others, or will such projections vary depending on whether one feels similar or different to another? Well, the simplest answer to this question is in the title of this paper. In the three studies O'Brien and Ellsworth describe in this article, the authors found that similar to prior research on this topic when people experience strong visceral states they are likely to assume that others share similar visceral feelings. However, unlike prior research, O'Brien and Ellsworth found that these strong visceral feelings did not spill over as expected when others were perceived as different from study participants.

Ed O'Brien, a University of Michigan doctoral student, together with Phoebe Ellsworth, an esteemed contributor to the fields of psychology and law, report the findings from two studies and a short follow-up they conducted which investigated how individuals' visceral experiences are projected onto others and how these projections vary in relation to perceptions of similarity or dissimilarity with others. They explain how their research builds on research about the effects of visceral feelings on social judgment (Van Boven & Lowenstein, 2003; Van Boven, Lowenstein, & Dunning, 2005) and prior work about how visceral states influence both subjective feelings and broader views of society (Risen & Critcher, 2011; Robbins & Krueger, 2005).

In short, a key empirical finding from this research is that participants readily projected their feelings of discomfort onto others whose political views were similar, but did not project these egocentric visceral states onto those whose political views were dissimilar. The authors conclude that "the effects of visceral states on social judgment is eliminated when people judge dissimilar others." They note this is a new and surprising finding, not recognized in prior research.

In the first two studies, participants read a story about a hiker in the winter that gets lost without food, water, or additional clothing. In Study 1, O'Brien and Ellsworth creatively optimized the often freezing cold of winter in Michigan to explore if egocentric feelings of coldness were projected onto others who shared or differed in the political values of the study's participants. Participants were volunteer students recruited from one of two settings, a very chilly bus stop near the University library, or from the warm indoors of the library. Study 2 focused on the egocentric state of thirst. Subjects (students who participated in a lab setting for course credit) were fed salty foods, but only some were given water to quench their thirst. In both these studies, the dimension of similarity/dissimilarity turned on characteristics of the "other" as either a pro-gay rights, left-wing Democrat or an anti-gay rights Republican. For comparison purposes, participants were asked to identify their own political affiliation. The authors also conducted an additional, smaller follow-up study that compared how feelings of hunger were projected. In this last study, students who had just eaten lunch were compared to with those who hadn't (and were thus likely to be hungry). The subjects of this third study were asked about university budget allocations for high quality food where the identity of

the university was given as either the University of Michigan or Ohio State University. Those familiar with the rivalry between these schools will no doubt smile as they read about this study.

In their concluding discussions, O'Brien and Ellsworth extrapolate about how perceptions of dissimilarity interact with social judgment. Moving from the research setting to the social world, the authors demonstrate how intellectually inquisitive minds can make connections that may not initially appear to others as they move on to talk about how perceptions of similarity / dissimilar may be related to concern / acceptance of conditions of global warming, torture, and homelessness.

Sounding like a researcher, I venture to say that one's interest and enjoyment of this article is likely to vary by one's interest in the field of experimental psychology, research on law and psychology, and the readers' prior appreciation of Dr. Ellsworth's exceptional theoretical and applied contributions to the field of psychology, and law and society. Citations of her contributions are too numerous to list here, however readers are advised to turn to the July 2010 issue of *The Jury Expert* for an article describing one area of her many contributions, "[What We Do \(and Don't\) Know about Race and Jurors](#)" written by her colleague, Samuel R. Sommers.

The academic research design and questions of this study are very different than the research conducted by most trial and jury consultants, and all three studies relied on student subjects. We need to ask, can we extrapolate to actual jury behavior from this research and its sample of youthful undergrads? This is a question that should always be raised when evaluating this type of academic experimental research.

In the applied world of trial research and juror evaluations, as consultants we are always concerned with assessing how jurors' experiences are likely to influence their judgments about our clients' cases. A central axiom of the profession is that no single demographic is predictive. Skilled consultants know to consider how these variables, along with how jurors' life experiences and opinions influence juror reasoning and judgments.

Does similarity lead to compassion? Does ethnic, religious, or racial affinity influence empathy? Not necessarily. In reading this article, I am reminded of a wrongful death case I consulted on twenty-plus years ago. Eight girls on a high school track team were on a practice run on a two lane road in farm country. Three of the girls were struck by a car that attempted to pass a truck. Two girls, both Hispanics, died as a result of the accident. Would affinity as a high school athlete lead to empathy? Would ethnic affinity between Hispanics lead to a finding for the plaintiffs? Not so. Neither characteristic led to any empathy for the plaintiffs. In the research we conducted, I will never forget the response of a Hispanic mock juror who played football in high school and college. His response to the case continues to send chills down my spine: "The plaintiffs don't have a case. I played football; in sports you have to watch out for your safety. Fatal accidents are nature's way of thinning out the herd!"

REFERENCES

- Van Boven, L., & Loewenstein, G. (2003). Social projection of transient drive states. *Personality and Social Psychology Bulletin*, 29, 1159–1168.
- Van Boven, L., Loewenstein, G., & Dunning, D. (2005). The illusion of courage in social predictions: Underestimating the impact of fear of embarrassment on other people. *Organizational Behavior and Human Decision Processes*, 96, 130–141.
- Risen, J. L., & Critcher, C. R. (2011). Visceral fit: While in a visceral state, associated states of the world seem more likely. *Journal of Personality and Social Psychology*, 100, 777–793.
- Robbins, J. M., & Krueger, J. I. (2005). Social projection to ingroups and outgroups: A review and meta-analysis. *Personality and Social Psychology Review*, 9, 32–47.
- Sommers, S. R. (2010). What We Do (and Don't) Know about Race and Jurors. *The Jury Expert*, 22(4), 1-9.

Ken Broda-Bahm responds:***Empathy for those Devils:
Some Thoughts on the Complex Role of Similarity/Dissimilarity in Litigation***

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Differences are barriers when it comes to political orientation. If, as the study shows, we avoid applying our own visceral states to the evaluation of others who hail from the opposite end of the political spectrum, then it implies that we're less likely to extend basic empathy to those who are different, not just in demographic or observable terms, but different in beliefs as well.

What does this mean for litigators and those who advise them? For one, it reminds us of the common observation that jurors are likely to project onto similar others (e.g., "How would I feel," "What would I have done?"). For another, though, it potentially shows that those evaluations may not be as simple or as conscious as we expect. In addition, it suggests that empathy isn't a given, and when it occurs, isn't an unambiguous advantage. It is noteworthy that, in this case, the lack of empathy relates to a kind of mental mistake that comes in thinking that if we are cold or thirsty, then cold or thirst is likely to be more salient to those who are more like us. So one way of looking at it is that we are reserving the more accurate and less psychologically biased assessment for those who don't share our politics.

Looking at the results broadly, O'Brien and Ellsworth's study might fit into an evolution in the ways that litigators and litigation consultants have looked at similarity when it comes to fact finders' evaluation of parties. We could see our beliefs about the role of similarity as moving through several stages.

Stage One:**We Want Similar Fact Finders, Because We Want to Be Judged by ‘Our Own Team.’**

On the theory that similarity builds identification and identification fosters favorable treatment, the idea is that we would want our evaluators to be as similar to us as possible. For example, during jury selection for the recently concluded trial of former Senator and Presidential candidate John Edwards, this assumption could be seen in some of the media commentary on the defense strategy. They wouldn't want older women or those with serious illnesses because they would be too similar to the perceived victim of the candidate's extramarital affair that was at the heart of the case, his late wife Elizabeth Edwards. On the other hand, Edwards might be seen as wanting, "a young guy with swagger," as consultant Kenneth Pangborn told the New York Post (April 16, 2012), "a chick magnet, with hair." While some attorneys and even a few consultants still may be at the stage of believing that similarity broadly equals sympathy, most experienced trial lawyers and consultants have moved on to stage two.

Stage Two:**Wait, We Need to Be Careful About Similarity Because It May Lead to Increased Personal Responsibility.**

This stage matches the observations that many of us have on a daily basis: Peers tend to be tough on peers. A professional may evaluate another professional's actions in a harsh light, and a vulnerable investor might be the one to apply the most critical judgment to another investor's losses. Why? Because a "Just World Hypothesis," (Lerner & Miller, 1978 <http://psycnet.apa.org/journals/bul/85/5/1030/>) suggests that when bad things happen (e.g., you experience an injury or you get sued), then there is some motivation for third parties to believe that you had it coming, or at least that you could have done something to more effectively protect yourself. The tendency to reach for the psychological comfort of believing that "It couldn't or wouldn't have happened to me" applies all the more strongly when the person being evaluated is similar to yourself. Greater similarity creates a greater need to rationalize the bad outcome and that can translate into greater attributed personal responsibility.

Stage two is where I believe most thoughtful trial attorneys and litigation consultants are regarding most forms of similarity. But based on the current study, it still may not be far enough. The reliance on a more or less conscious attribution of responsibility differs from what the O'Brien and Ellsworth study suggests, indicating that we may be looking at a stage three.

Stage Three:**Maybe We Need to Be Even More Careful About Similarity If It Influences Not Just Conscious Judgment, But More Implicit Perception As Well.**

Looking more closely at the results of the study, it suggests that a different mechanism may be at work than that implied by either stage one or stage two. If, as the authors point out, individuals' "internal experiences influence their perceptions of the internal worlds of others," then we won't simply evaluate dissimilar others differently based on our beliefs about that difference, we will perceive them differently. In that sense, those with different fundamental

beliefs almost inhabit a different reality. “All else being equal,” they pointedly conclude, “knowledge of another person’s politics should not influence how cold or thirsty one thinks he or she is, but it does.” And if it influences the perception of such basic states as cold and thirst, to what extent will it also influence all of the subtle factors that matter to those who study and practice legal persuasion?

As additional research on social projection moves forward, my hope is that the same methods of manipulating similarity and dissimilarity are applied to the creation of legal scenarios. But instead of looking at the projection of visceral feelings, the researchers look at the projection of traits that bear the closest relationship to issues in litigation. That should include not just attitudes, which appear to be already well researched, but also the deeper and more implicit structures that underlie attitudes: intention, agency, responsibility, and credibility. For example, assume that there is a product user - either a left-wing, pro-gay-rights Democrat or a right-wing, anti-gay-rights Republican - who fails to read a product warning, and is then injured by a dangerous product. It is possible that Republicans will blame Democrats more and vice versa based on stereotypes (e.g., “liberals are careless” or “conservatives are ignorant”), but it is also possible that the form of empathy that gives birth to personal responsibility (“the I wouldn’t have done that” effect) will be less accessible when evaluating a dissimilar other and play less of a role. Research that teases out those possible effects would be of great interest to this field. As is, the study has already helped to frame a number of very interesting questions relating to the ways similarity and dissimilarity matter in litigation.

Response:

This research was not conducted with juries in mind, and we agree with the respondents who urge caution in the application of our findings to jury selection or communication with the jury.

First, we have studied only one kind of difference - political difference - and as we say in the article, we have no idea what other kinds of differences might or might not eliminate the usual empathy bias.

Second, as all of the commenters recognize, there is no juror characteristic that is always or automatically good or bad for the plaintiff, prosecutor or defense. If the person is seen as an innocent victim of circumstances or others’ evil intentions, similarity may help, but if the person is seen as somehow contributing to his or her misfortune, similarity may hurt, as in the Just World Hypothesis (“This couldn’t happen to me, so she must have done something to make it happen to her. She may look like me superficially, but she’s really very different.”)

Questions about attitudes can provide useful information about topics that should be followed up in voir dire, but they are no substitute for open-ended questions that get the prospective juror talking about those attitudes - where they came from, what they mean, and how they might influence the juror’s current behavior. The juror’s answers may not be truthful, but they are likely to be useful, certainly more useful than superficial information about similarity.