

## Grime and Punishment:

### How disgust influences moral, social, and legal judgments

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We experience a wide range of emotions every day: a bad mood because we skipped breakfast, anger because we got cut off in traffic, and even nostalgia from receiving an old picture of high school friends over email. To be sure, the insight that emotions influence judgment existed long before psychologists were able to confirm it experimentally. Yet a great deal of psychological research in the last few decades demonstrates that emotions just like those described above can subtly alter a wide range of judgments, including judgments that are completely unrelated to the original source of the emotion. In his *Rhetoric*, Aristotle exhorted his pupils to learn how emotions might influence human judgment so that they might best utilize these emotions to persuade their audience (Aristotle, 350 B.C.E./1991). But the explosion of research on the topic has allowed us to document exactly *how* these emotions influence judgment, as well as what kinds of judgments are particularly prone to their influence. For instance, we know that anger over the traffic incident on your way to work may lead to an increased reliance on racial stereotypes moments later when interviewing a job candidate (anger seems to encourage the use of cognitive “shortcuts” such as stereotypes; DeSteno, Dasgupta, Bartlett, & Cajdric, 2004). Mild sadness, on the other hand, would have an opposite effect—because it tends to make people more careful, analytic thinkers, it would actually lead to less reliance on stereotypes when evaluating a candidate.



Not surprisingly, legal scholars have taken a keen interest in understanding exactly how emotions influence the kinds of judgments that are central to the legal process, such as judgments of blame and responsibility (Feigenson, 2008). Here we examine disgust, an emotion that has received little attention historically—at least relative to emotions such as fear, anger, or sympathy—but about which much more has become known in the past few years. On its face, disgust may seem less relevant to legal judgments than emotions such as sympathy or anger. Unlike those emotions, its influence on courtroom proceedings is not intuitively obvious. Nonetheless, it has become increasingly evident that disgust plays an important role in a

much wider set of social and moral judgments than was once believed. This article sheds light on what disgust is, how it influences judgments, and why legal scholars, judges, and attorneys should pay attention to it.

### *What is disgust?*

Imagine coming across a putrid piece of meat, or walking into a public bathroom stall only to find that the previous occupant did not bother to flush. Chances are that in just one sentence we made you experience, at the very least, a mild disgust response. But why do we have a disgust reaction in the first place, and why do those particular things seem so good at eliciting it? Most psychologists consider disgust to be a *basic* emotion. Basic emotions are thought to be part of our evolutionary heritage: they are present in all cultures (even though the situations evoking them and the acceptability of displaying them may vary); they are accompanied by characteristic facial expressions that are widely recognizable by other people; and they emerge predictably at around the same age in normally developing children (Ekman, 1994). Most importantly, these emotions are thought to have evolved to fulfill specific functions that aided in the survival of our ancestors. Fear, for instance, most likely evolved because those organisms that felt fear possessed a distinct survival advantage over those that did not (among other things, fear would motivate a quick escape from predators).

Disgust most likely played just as important a role in human survival. The psychologist Paul Rozin and his colleagues have argued that disgust prevented our ancestors from eating (or even approaching) things that might have made them physically ill or even killed them (Rozin, Haidt, & McCauley, 2000). As evidence for this claim one need only look at the sorts of things that tend to make us easily disgusted. Humans across all cultures find certain things—rotten meat, fecal matter, blood—especially disgusting, most likely because these are the very kinds of things that increase our risk of being exposed to harmful pathogens if consumed or even touched. Consistent with this contamination account, the facial expression characteristic of disgust—withdrawal of the upper lip, thrusting out of the tongue, and wrinkling of the nose—may have its origins in the adaptive action of expelling noxious food from the mouth and shrinking the nasal passages in order to prevent pathogens from entering (Susskind et al., 2008). And, of course, vomiting—the utmost expression of disgust as well as one of its most reliable elicitors—purges potentially harmful matter from the digestive tract. This basic disgust reaction to noxious stimuli is what researchers have come to refer to as “core” disgust—the disgust that is tied to those elicitors that signal the possibility of contamination. Importantly, as was perhaps made evident from the first sentence of this section, disgust is extremely easy to elicit. One need only show a picture of an unflushed toilet or of maggots feeding on putrid meat in order to observe a full-blown disgust reaction in the audience. This makes sense—just like seeing a predator and fleeing due to fear, the ability to make a quick determination that an object is a potential contaminant would be quite advantageous.

### *How does disgust affect judgments?*

While disgust has its origins in avoiding and expelling dangerous substances, recent research has demonstrated that it has extended its reach beyond the domain of physical contamination and made its way into our social and (especially) our moral judgments. A fair amount of research is converging on the conclusion that feeling core disgust seems to make us harsher moral judges, even when the person or action we’re judging has nothing to do with the thing that originally disgusted us. Another source of evidence that disgust has moved beyond physical contamination and into the domain of morality comes from findings that physical contaminants are no longer the only elicitors of disgust. Moral misdeeds that do not involve any literal threat of contamination seem to be reliable elicitors of the very same disgust emotion that was once probably only elicited by contaminants like feces and rotting meat. Indeed, our everyday language points to this expanded sense of “moral” disgust—many immoral behaviors are said to be “disgusting,” “revolting,” or “stomach-turning”—and calling something disgusting is a powerful way of expressing one’s moral disapproval. We now turn to evidence

of two ways in which disgust seems related to moral judgments—as a cause of moral harshness and as the result of moral infractions.

Evidence for the influence of core disgust on moral judgments comes from recent studies utilizing experimental manipulations of disgust and its influence on subsequent judgments, as well as from studies looking at individual differences in the proneness to experience core disgust in everyday life. For instance, in one recent experiment researchers investigated whether a subtle disgust manipulation would affect subsequent, unrelated moral judgments. Under hypnosis half of the participants in the study (who had been pre-selected because they were particularly prone to being hypnotized) were given a post-hypnotic suggestion to feel a “brief pang of disgust” when they read the word “often”, while the other half were given the same suggestion when they read the word “take”.



Participants were further told that they should forget these instructions upon being woken from hypnosis. All subjects then read descriptions of immoral behaviors (for example, a congressman who takes bribes from tobacco lobbyists), and were asked to indicate how morally wrong they believed the behavior to be. These descriptions contained *either* the word “often,” or the word “take.” Subjects who were hypnotized to feel a flash of disgust at the word “take” found the behavior described in the “take” stories to be more immoral—as well as more disgusting. The opposite was true for subjects hypnotized to feel disgusted by the word “often”—they found the “often” stories to be more immoral and disgusting (Wheatley & Haidt, 2005). In another study, participants seated at a dirty desk made harsher moral judgments (doling out more blame to individuals who had committed fairly minor moral infractions) than those seated at a clean desk (Schnall, Haidt, Clore, & Jordan, 2008).

This “moral harshness” effect from feeling disgust may be especially easy to induce when making moral evaluations of certain issues or groups of individuals (such as issues pertaining to sexuality which may be seen as mildly disgusting to begin with). For instance, in a recent study conducted in our lab at Cornell, we found that people reported more negative evaluations of gay men and lesbians when there was a noxious odor in the room than when there was no such odor present (Inbar, Pizarro, & Bloom, 2009). However, the presence of the foul odor did not affect a variety of other social/political judgments.

Another source of evidence that core disgust can shape moral judgment comes from correlational studies that measure individual differences in the propensity to experience disgust—so-called “disgust sensitivity” (Haidt, McCauley, & Rozin, 1994). In a series of studies conducted in our lab, we have found that individuals high in disgust sensitivity are more likely to hold the sorts of moral beliefs that are characteristic of political conservatism (e.g., these participants are more likely to be pro-life and opposed to gay marriage; Inbar, Pizarro, & Bloom, 2008). In addition, even when participants explicitly report that they are not morally opposed to homosexuality (as is true of many of the college students that attend our University), those participants higher in disgust sensitivity are more likely to display anti-gay attitudes when using implicit measures of attitudes (i.e., measures that do not rely on the explicit reports from participants, such as the Implicit Association Test; Inbar, Pizarro, Knobe, & Bloom, in press).

Yet another source of evidence implicating disgust in moral judgment comes from findings that disgust is elicited by moral infractions that have little to do with the elicitors of core disgust, such as when people claim to be disgusted by pedophiles, sociopaths, or lawyers (present readership excluded). One obvious question is whether this disgust response is actually the same emotional response as the disgust response to physical

contaminants. Recent studies suggest that it is indeed the same response; there seem to be overlapping physiological mechanisms for both moral and “core” disgust reactions. For instance, studies looking at brain activity in participants who contemplate morally disgusting acts compared to contemplating elicitors of core disgust have demonstrated substantial overlap in the brain regions activated for both (Moll et al., 2005). Similarly, in a recent study investigators demonstrated that the same facial muscles that are activated in response to the oral ingestion of bitter substances and in response to core disgust elicitors (the levator labii muscles that underlie the lip curl and nose wrinkle characteristic of the disgust facial expression) are also activated when participants feel morally slighted (in this case, when receiving unfair monetary offers from another participant in an economic game designed to have clear fair and unfair options; Chapman, Kim, Susskind, & Anderson, 2009).

But although disgust is likely involved in a wide variety of moral judgments, the psychologist Jonathan Haidt has argued that it is especially implicated in the condemnation of actions violating the moral norm of *purity*. Behaviors that are seen as degrading, defiling, or unnatural reduce purity and evoke disgust in the observer; they are thus often seen as immoral even if they do not cause harm oneself or others. This belief seems to be especially strong among social conservatives: self-described conservatives surveyed by Haidt and Graham (2007) were more likely than self-described liberals to agree that whether “someone did something disgusting” was quite relevant to deciding that an action was right or wrong, and were also more likely to view “harmless” violations of the purity norm to be immoral.

### *Disgust in the courtroom*

So what does this mean for the trial attorney or jury consultant? Aside from the obvious prescription to ensure that the jury deliberation room is not filthy, lest the jurors become harsher, there are a few key areas where disgust is likely to be of special concern.

#### **1. Disgust sensitivity in jury selection.**

For cases dealing with behaviors that might be seen as violating norms of purity, disgust might be quite important. In particular, individuals who are high in disgust sensitivity may be more likely to view these sorts of behaviors as immoral and to seek to punish the perpetrators. Consider Joanne Webb, a Texas woman who was charged under obscenity laws for selling (and explaining the use of) a vibrator to two undercover detectives posing as a couple attending a private “passion party.” A passion party is similar to a Tupperware party, except that the goods on offer are sex toys rather than storage ware (Herald, 2003). According to a moral view that places a strong emphasis on purity, selling sex toys, even to mentally competent adults, could be seen as degrading, defiling and thus immoral. A juror who is especially sensitive to disgust, and thus more likely to find purity violations offensive, would be more likely to convict in such a case (Webb was ultimately acquitted).

A potential juror’s disgust sensitivity might be assessed by a short questionnaire during voir dire. See, for example, the Disgust Sensitivity Scale (short form) developed by Jon Haidt and colleagues (Haidt, McCauley, & Rozin, 1994). (Some of the items on this scale are quite graphic and, depending on the standards of the community might be considered offensive). If the administration of a jury questionnaire is not possible, demographic variables may be used instead—as mentioned earlier, conservatives are, on average, more disgust sensitive, as are lower-income individuals. While these relationships are reliable, they are statistically small and caution should be used when inferring disgust sensitivity from these (or, indeed, any) demographic characteristics.

## **2. Tort cases involving perceptions of greed or excess.**

Recently, former Merrill Lynch CEO John Thain was revealed to have paid out billions in bonuses to employees, even as the firm floundered under a mountain of bad investments and was on the verge of a taxpayer-backed takeover by Bank of America. It also became known that while Merrill was incurring enormous losses, Thain spent several million dollars decorating his office, including \$85,000 for a rug, and \$35,000 for a “commode on legs”. These revelations were widely met with outrage and disgust by the press and public—news stories literally described Thain’s behavior as “disgusting” (“Billions of Taxpayer Dollars Flushed Down John Thain's 35K Commode”). Granted that paying out large bonuses and expensively redecorating one’s office as one’s company loses billions is morally blameworthy as opposed to simply stupid and feckless, why react with disgust and not anger? Haidt and Graham (2007) argue that the concept of moral purity involves more than physical and sexual propriety—it also entails an obligation to act in a way that is not greedy, grasping or venal. Thus, greed and (metaphorical or literal) gluttony evoke disgust and moral condemnation. The thought of Thain and his traders “gorging themselves at the trough” even as the world financial system teetered is a powerful disgust elicitor, and an equally powerful motivation to seek retribution.

This sort of reaction need not be limited to billionaire CEOs. For example, in her response to Bryan Koenig’s “Do Conservatives and Liberals Punish Differently?” in the November 2008 issue of *The Jury Expert*, Jan Spaeth recounts the story of “Jennifer,” a woman who was verbally promised \$2 million for her part in successfully growing a \$100 million company over 10 years, then was fired with nothing. Spaeth points out that mock jurors polled by her company found it offensive and immoral that the company’s owners had profited so richly while failing to pay Jennifer what they had promised.

We agree with Spaeth’s analysis, and attorneys on both sides of civil suits in which defendants could be seen to have acted greedily or gluttonously should be aware of the role that disgust can play in moral condemnations of such behavior. Plaintiffs’ attorneys should make every effort to play up greedy or excessive behavior on the part of defendants (for example, an attorney representing shareholders in a suit against Merrill Lynch would do well to emphasize Thain’s obscenely expensive commode); while defendants’ attorneys should do their utmost to emphasize the abstemious and restrained aspects of their clients’ character (perhaps Thain always flew coach?).



## **3. Parties belonging to outgroups seen as foreign, strange, or dirty.**

One extension of the view of disgust as preventing us from engaging in behaviors that could lead to contamination or contagion is that beyond applying to foodstuffs or contaminants, disgust has also played a role in motivating us to avoid people and groups who were seen as carrying a risk of contagion. This view of disgust as a “behavioral immune system” (Schaller & Duncan, 2007) implies that members of groups that are perceived as foreign, strange, or norm-violating—especially in their physical cleanliness, food preparation, and sexual behavior—should elicit feelings of disgust and a motivation to avoid contact. At some time during our evolutionary history, proponents of this view argue, avoiding unfamiliar groups (and any pathogens they may have carried) conferred a survival benefit on our ancestors, but now this once-useful avoidance mechanism overfires, causing us to shun groups and people inappropriately and unfairly.

This disgust-motivated avoidance tendency could apply to defendants or victims in criminal cases, or to plaintiffs or defendants in civil cases. Any individual seen as belonging to a group viewed as strange, foreign, or “dirty” is at risk for evoking a disgust response, and for the reduced moral sympathy that it may entail. So, for

example, a victim seen as belonging to a despised outgroup would elicit reduced sympathy (as in, for example, cases of assault against gay men and lesbians in which perpetrators are punished lightly if at all). A *perpetrator* belonging to such an outgroup would likely elicit greater moral blame and harsher punishment. The suffering of plaintiffs belonging to such an outgroup would be less consequential to jurors—and so on. Attorneys representing members of such groups should take pains to emphasize the similarities between the individual and members of the jury. In the case of individuals belonging to foreign groups, similarities between cultural practices of the group and American culture should be emphasized. In the case of stigmatized minorities, special emphasis should be placed on those universal human qualities—family, pursuit of happiness, essential rights—that the individual shares with jury members. The idea is to “de-otherise” the individual—to the extent that jury members can put themselves in the other person’s shoes, their empathy for him or her will be increased (Batson et al., 1997). There should be care to ensure that the opposing counsel are not using these factors in their favor by highlighting the exoticism, unfamiliarity, or dirtiness of outgroup members, as we suspect that this strategy would be quite effective.

*Coda: Should disgust play a role in the law?*

Infusing moral values into science is often considered one of the worst “sins” a scientist can commit. In studying moral psychology it is especially necessary to maintain an objective stance in order to arrive at an accurate descriptive account of how morality works; we are interested in how and why people make moral judgments, not how they *should* make moral judgments (that is the business of moral philosophers, after all). Nonetheless, it is difficult not to chime in to the already widely debated question of whether moral or legal judgments should be influenced by the emotion of disgust. Unlike the emotion of empathy, which is prototypically elicited by the suffering of others and is considered by many to be the cornerstone of human morality, the origins of disgust have little to do with morality and a lot to do with avoiding physical illnesses. Nonetheless, for better or worse, it has been “borrowed” by the moral domain and most likely will not disappear from its role as moral emotion anytime soon. Some ethicists have argued that disgust is an appropriate cue that something is morally wrong (most notably the ethicist Leon Kass (1997), who famously described individuals not moved by disgust at human cloning as “shallow souls” who have “forgotten how to shudder”).

Without taking a firm stance on the topic, what we can say as psychologists is this—disgust most likely evolved as a response to physical contamination, it leads to harshness in the moral domain whether or not the disgust has anything to do with the person or practice being evaluated, and it is often associated with a decrease in sympathy and a disdain for outgroups that are likely to be seen as especially dirty or different. As Martha Nussbaum has pointed out in her treatment of the topic, “... throughout history, certain disgust properties — sliminess, bad smell, stickiness, decay, foulness — have repeatedly and monotonously been associated with... Jews, women, homosexuals, untouchables, lower-class people — all of those are imagined as tainted by the dirt of the body.” (Nussbaum, 2001, pg. 347). Indeed, one need only look at wartime propaganda to see how effective disgust can be at making it easy to view the enemy as less than human. Whether or not moral disgust can be of value in keeping people from committing unethical deeds remains an open question, but given the amount of damage disgust is capable of inflicting on innocent people, at the very least it seems as if we should be careful to monitor its influence in the courtroom, in public policy decisions, and in our everyday interactions with others.

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We asked three experienced ASTC-member consultants to respond to Grime & Punishment and Charlotte (Charli) Morris, John McCabe and Holly VanLeuven swallowed hard and stepped up to the challenge.

## Response to Grime & Punishment by Charli Morris

Charlotte A. (Charli) Morris, M.A. ([cmorris35@nc.rr.com](mailto:cmorris35@nc.rr.com)) is a trial consultant in Raleigh, North Carolina. She has worked on criminal and civil cases since 1993.

Most of the time when I read an interesting article about social science research like the work done by Inbar and Pizarro I am inclined to say, “*Yeah*, that makes sense.” I like learning how things we may know intuitively or anecdotally can be measured, labeled, tested and explained. The research on disgust as an emotion with the power to punish strikes me this same way.

One memorable encounter with disgust in my work as a trial consultant came early, during my graduate school internship. I went with my fearless mentor Rebecca Lynn to visit the defendant who would face trial for statutory rape and child molestation of a woman who claimed that he’d sexually abused her when she was a child. There was no statute of limitations on rape and probably no limit on jurors’ feelings of moral disgust toward sexual abuse.

I remember driving across the middle of Florida on a dark, stormy night and going into my first maximum-security prison. The first hour or so of conversation was unremarkable. But just before we left that night, Ms. Lynn asked him the following question:

“Mr. Doe, you’re going into court tomorrow and the prosecutor is going to tell a room full of potential jurors that you molested your own daughters and one of their childhood friends. How does that make you feel, to know you’re being accused of having sex with young girls?”

He paused for a thoughtful moment then responded, “How young?”

But the article leaves me wondering how disgust operates in the variety of decision-making situations that fall outside the realm of the obviously disgusting (like maggots or child rape) and how broadly we can apply it to our casework. Take, for example, the suggested link between political conservatism and higher levels of disgust sensitivity. I have to

wonder how that squares with water-boarding, sexual humiliation and other “interrogation techniques” made famous by the unabashedly self-described politically conservative former administration?

Likewise, Hurricane Katrina’s effects on Louisiana were notably and visibly disgusting for its victims; we saw women and children wading through waist-deep water contaminated with raw sewage. Did the same conservative administration’s high sensitivity to disgust keep them away from New Orleans at first? Or was this, in fact, a classic case of the “outgroup” response, stifling what should have otherwise been an immediate outpouring of sympathy and support?

I’m curious also about the cited studies that show feelings of anger or sadness can have significant effects on judgment. How lasting are those feelings and their effects? How does it work over the course of days and weeks in a typical civil trial? If a juror experiences road rage on the way to court on the first day of trial and you can pick up on that anger during jury selection, is that different from a fellow juror who experiences road rage on the way to court on the first day of deliberations? If so, is there anything at all that lawyers or trial consultants could do about the second situation?

I also wonder if the moral disgust factor is a moving target. Is it possible to know when we’ve collectively hit “rock bottom” and disgusting conduct starts to lose its nasty luster? When Enron happened people everywhere were outraged. What about now? Is it still possible to reach the same degree of moral disgust when we hear that Madoff made off with all that cash?

The Passion Party case provokes a similar question: Is it possible that disgust can be two things at once – “in the eye of the beholder” (like beauty) AND “you know it when you see it” (like pornography)? If so, a reliable measure of disgust sensitivity would indeed be a serious asset to have in supplemental juror questionnaires as Inbar and Pizarro suggest. I have doubts about the likelihood of its approval by the courts, given the authors’ caveat that the Disgust Sensitivity Scale is “quite graphic” and may be offensive to some. It would be interesting to see, though, how such a scale could be modified and used as attorney-conducted voir dire.

I have also counseled attorneys to think about ways to desensitize jurors to facts that may elicit core or moral disgust (although I didn’t know those terms at the time). I’d like to know if there is any empirical research to support the working hypothesis that if a party embraces the terrible photos of an accident or smoking hot documents, we can actually dial down the disgust response over time.

Similarly, in a recent case involving the carbon monoxide poisoning death of two electrical sub-contractors, the defendant property owner for whom the electrical work was being performed worried about how the gruesome details of their deaths would affect jurors’ liability and damages findings. But we learned that when mock jurors were strategically focused (by us) on the men’s own foreman and his choices on the job – the two employees were instructed to seal themselves in a room with tape and plastic while they cut with a gas-powered concrete saw without the benefit of respirators – the disgust factor didn’t necessarily mean an adverse verdict for our client. Perhaps unknowingly, but convincingly, we were using disgust to our advantage by emphasizing evidence that inevitably led jurors to consider the grim way the worker’s died at the hands of their own foreman.

Despite the questions this article provokes, the idea that disgust is a powerful emotion that can affect legal judgments of responsibility still makes a lot of sense to me, particularly in the cases that seem the most obvious. I hope the research can be extended to address some of the questions that remain on an interesting topic.

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## John G. McCabe responds: How disgust influences moral, social, and legal judgments

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Some limited areas of the trial law (e.g., victim impact statements, compensation for emotional distress, etc.) allow for legal decision-makers' consideration of their emotional responses. Judges consider potential emotional reactions to evidence and testimony in weighing that information's prejudicial versus probative value. Nonetheless, information judged sufficiently probative can still be, and often is, emotionally provocative. Inbar and Pizarro rightfully point out that the influence of disgust in the jury decision-making process is understudied relative to its potential impact. How to effectively screen jurors who may be more sensitive to feelings of disgust and how to handle emotionally charged information are both difficult problems. In a recent case, jurors discounted otherwise credible eyewitnesses because they were members of a swinger's club, violating the moral norm of purity that Inbar and Pizarro identify. The defense attorney relying on those eyewitnesses apparently did not anticipate the extent of the jurors' disgust reaction, its detrimental impact on the jury's evaluation of the eyewitnesses' credibility, and resultant discounting. The attorney's client was found guilty.

Emotional responses like disgust (and anger) not only to lead to greater moral outrage and punitiveness but also to greater certainty in judgments. This greater certainty can lead jurors to use less effortful strategies in their examination and processing of trial-related information. Some even speculate that emotional responses are a heuristic: jurors recall the magnitude of their negative emotional reaction to certain evidence or testimony and use it as a *generic prejudice*, a gauge of the probability of the defendants' culpability or liability unrelated to the facts of the case. As the paradigm of the decision-maker as solely a "rational man (or woman)" quickly recedes into the past, the role of emotions such as disgust in jury decision-making is ripe for understanding.

Although Inbar and Pizarro's short primer on disgust usefully highlights areas that litigators and trial consultants may not be fully considering, it also belies the complexity involved in identifying and communicating about emotions generally. For instance, when reading Inbar and Pizarro's example about former Merrill Lynch CEO John Thain's gluttony, would you say you were more *disgusted* or *angry*? Or were you *saddened* by what the excesses of a culture of greed have wrought for our country? Did it make you *fearful* about the future, or feel *guilty*? Did you experience some *joy* knowing that this despicable character's name has become a punch line for late night comedians? It can be difficult to identify which of these *root* emotions is at play and in what proportion, particularly when gauging others' reactions. Moreover, there are inconsistencies in vocabulary even among people who study these issues. For instance, Inbar and Pizarro's use of *empathy* in the sentence beginning "Unlike the emotion of empathy, which is prototypically..." is confusing. It is unclear whether the authors are referring to empathy as an emotion or are referring to the emotional content of empathy which is often considered an emotional process and not an emotion, per se. One can empathize with any emotion.

Compounding identification and definitional problems are challenges in communicating to an attorney/client about the emotional reactions jurors are likely to have. Although many attorneys instinctively address jurors' potential emotional reactions, many others do not. Some attorneys answer questions about how they *feel* about a given case with, "It depends. Who's paying me?" Legal training generally focuses on reason-based arguments and does not include sensitivity training (meant in the least pejorative sense of the term). However,

considering the potential impact of emotions on jury decision-making, perhaps it should. Indeed, this deficit has not gone unnoticed. Jerry Spence's Trial Lawyer College offers training for attorneys to be more aware of their own emotional states so their use of emotional appeals in jury trials are more emotionally sincere and more effective. The course is called "Psychodrama" and appears to be directed toward plaintiffs' attorneys.

Less emotionally aware attorneys are more likely to become convinced of the righteousness of their cause and lose touch with their case's emotional impact on the jury. This provides an opportunity for the consultant to add significant value to the attorney/client's case. This is precisely why Inbar and Pizarro's article and similar articles are of such import. The psycho-legal literature has just begun to make a concerted effort to address/explore/investigate emotional reactions' effects on the law. Consultants would be well served not only to understand the literature but also to be trained to effectively communicate with their attorney/clients regarding jurors' potential emotional reactions to trial participants, evidence, and testimony.



## **RESPONSE: How disgust influences moral, social, and legal judgments**

**by Holly G. VanLeuven**

Holly G. VanLeuven, M.A. ([hgvanleuven@cox.net](mailto:hgvanleuven@cox.net)) is a veteran trial consultant located in Scottsdale, Arizona. She works on both civil and criminal cases nationwide.

Yoel Inbar's and David Pizarro's research could be very useful in training aspiring trial consultants and lawyers. Accepting at face value the authors' assumptions – which some may not – at the very least the paper raises issues that should lead to valuable discussion in the classroom. Most of the findings coincide with concepts familiar to experienced trial consultants and experienced trial lawyers, whether learned in the classroom, the courtroom or the community; whether

based on objective experimental findings or subjective personal conclusions. The authors also present numerous ways to use their findings to select juries and manipulate responses from jurors, all familiar to experienced trial consultants and experienced trial lawyers.

It would be extremely valuable to incorporate the concepts discussed into in-service training programs for incoming public officials, appointed or elected, at all levels: local, state and national. Particular training benefits could be developed for officials such as police, city commissioners, judges, legislators, and many others dealing regularly with the general public. Human beings charged with making decisions that directly touch the lives of other human beings need all the help they can get to understand how and why we make moral judgments. As the authors wisely conclude "given the amount of damage disgust is capable of inflicting on innocent people, at the very least it seems as if we should be careful to monitor its influence in the courtroom, in public policy decisions, and in our everyday interactions with others." The reader, taking a dim view of the effectiveness of monitoring, would prefer to see an emphasis on training.

My response is strongly influenced by being a student of Sociology. That, and having been raised from infancy on New England Town Meetings where mores traditionally became law, for better or for worse. The laws that apply to the cases we work on are products of the value systems of those with the most power and influence in the jurisdiction involved, local, state or national. Sometimes that means special interest groups win the day, sometimes it's political parties pulling rank. And sometimes, rarely, ordinary citizens organize, flex their political muscles and actually have an impact and are probably fueled by you guessed it: deep-seated, morally indignant, seething DISGUST!

Citation for this article: *The Jury Expert*, 2009, 21(2), 11-23.



## Welcome to our March issue of *The Jury Expert*!

As spring moves in and brings new life to the world around us, so this issue of *TJE* is packed with new ideas and energy. Some ideas you may find to be things of beauty, others may make you go ‘hmmmm’, and still others may make you wrinkle your face with disgust. Our hope is that every article in *The Jury Expert* elicits some response in you--agreement, disagreement, aha moments, and yes, even disgust!

This issue is filled with contributions from ASTC member trial consultants and from the academics who actually perform the research upon which much of what we, as trial consultants, do is based. Flip through the pages of this pdf file or travel about on-line at our website and view all of *TJE* on the [web](#).

Either way you choose to read our publication (on your computer via pdf, from a hard-copy print version of the pdf, or on our website) please come back to the website and comment on what you see, think, feel, sense, or wonder about as you peruse the ideas reflected in the hard work of each of our authors. Your comments and feedback help us know what you like, what you want more of, what makes you think, and how we at *The Jury Expert* and the American Society of Trial Consultants can address issues to improve your own litigation advocacy. Comment on the web or drop me an email--we welcome your feedback.

-- [Rita R. Handrich, PhD](#)  
Editor, *The Jury Expert*



*The Jury Expert* [ISSN: 1943-2208] is published  
bimonthly by the:

**American Society of Trial Consultants**

1941 Greenspring Drive  
Timonium, MD 21093  
Phone: (410) 560-7949  
Fax: (410) 560-2563  
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*The Jury Expert* logo was designed in 2008 by:  
Vince Plunkett of *Persuasium Consulting*  
<http://www.persuasium.com/>

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