

# ADVANCED READING

## PASSAGE 1

The fairness of the judicial process depends on the objective presentation of facts to an impartial jury made up of one's peers. Present the facts, and you have a fair trial. However, fact-finding, especially for interpersonal disagreements, is not so straightforward and is often contaminated by variables that reach beyond the legal domain.

A trial is an attempt to transport jurors to the time and place of the disputed event, to recreate the disputed event, or at least to explain that event with maximum accuracy. A trial falls short of this goal, however, because it presents selected witnesses who recite selected portions of their respective memories concerning selected observations of the disputed event. These multiple selections are referred to as the abstraction process. Limitations in both perception and memory are responsible for the fact that the remembered event contains only a fraction of the detail present during the actual event, and the delay between observation and recitation causes witnesses' memories to lose even more of the original perceptions. During the course of a trial, a witness's recitation of the now-abstracted events may reflect selected disclosure based on his or her attitudes and motivations surrounding that testimony. Furthermore, the incidents reported are dependent on the lines of inquiry established by the attorneys involved. Accordingly, the recited data are a fraction of the remembered data, which are a fraction of the observed data, which are a fraction of the total data for the event.

After the event that led to the trial has been abstracted by participants in the trial, jurors are expected to resolve factual issues. Some of the jurors' conclusions are based on facts that were directly recited; others are found inferentially. Here another abstraction process takes place. Discussions during deliberations add to the collective pool of recalled evidentiary perceptions; nonetheless, the jurors' abstraction processes further reduce the number of characteristics traceable to the original event.

Complication can arise from false abstractions at each stage. Studies have shown that witnesses recall having perceived incidents that are known to be absent from a given event. Conversely, jurors can remember hearing evidence that is unaccounted for in court transcripts. Explanations for these phenomena range from bias through prior conditioning or observer expectation to faulty reportage of the event based on the constraints of language. Aberrant abstractions in perception or recollection may not be conscious or deliberate, but reliability is nevertheless diluted.

Finally, deliberate untruthfulness has always been recognized as a risk of testimonial evidence. Such intentionally false abstractions, however, are only a small part of the inaccuracies produced by the abstraction process.

## PASSAGE 2

A medical article once pointed with great alarm to an increase in cancer among milk drinkers. Cancer, it seems, was becoming increasingly frequent in New England, Minnesota, Wisconsin, and Switzerland, where a lot of milk is produced and consumed, while remaining rare in Ceylon, where milk is scarce. For further evidence it was pointed out that cancer was less frequent in some states of the southern United States where less milk was consumed. Also, it was pointed out, milk-drinking English women get some kinds of cancer eighteen times as frequently as Japanese women who seldom drink milk.

A little digging might uncover quite a number of ways to account for these figures, but one factor is enough by itself to show them up. Cancer is predominantly a disease that strikes in middle life or after. Switzerland and the states of the United States mentioned first are alike in having populations with relatively long spans of life. English women at the time the study was made were living an average of twelve years longer than Japanese women.

Professor Helen M. Walker has worked out an amusing illustration of the folly in assuming there must be cause and effect whenever two things vary together. In investigating the relationship between age and some physical characteristics of women, begin by measuring the angle of the feet in walking. You will find that the angle tends to be greater among older women. You might first consider whether this indicates that women grow older because they toe out, and you can see immediately that this is ridiculous. So it appears that age increases the angle between the feet, and most women must come to toe out more as they grow older.

Any such conclusion is probably false and certainly unwarranted. You could only reach it legitimately by studying the same women—or possibly equivalent groups—over a period of time. That would eliminate the factor responsible here, which is that the older women grew up at a time when a young lady was taught to toe out in walking, while the members of the younger group were learning posture in a day when that was discouraged.

When you find somebody—usually an interested party—making a fuss about a correlation, look first of all to see if it is not one of this type, produced by the stream of events, the trend of the times. In our time it is easy to show a positive correlation between any pair of things like these: number of students in college, number of inmates in mental institutions, consumption of cigarettes, incidence of heart disease, use of X-ray machines, production of false teeth, salaries of California school teachers, profits of Nevada gambling halls. To call some one of these the cause of some other is manifestly silly. But it is done every day.

### **PASSAGE 3**

In most developed countries, men have higher salaries, on average, than women. Much of the salary differential results from the tendency of women to be in lower-paying occupations. The question of whether this occupational employment pattern can be attributed to sex discrimination is a complex one. In fact, wage differentials among occupations are the norm rather than the exception. Successful athletes commonly earn more than Nobel Prize-winning academics; gifted artists often cannot earn enough to survive, while mediocre investment bankers prosper. Given such differences, the question naturally arises: talent and ability being equal, why does anyone—man or woman—enter a low-paying occupation? One obvious answer is personal choice. An individual may prefer, for example, to teach math at a modest salary rather than to become a more highly paid electrical engineer.

Some people argue that personal choice also explains sex-related wage differentials. According to this explanation, many women, because they place a high priority on parenting and performing household services, choose certain careers in which they are free to enter and leave the work force with minimum penalty. They may choose to acquire skills, such as typing and salesclerking, that do not depreciate rapidly with temporary absences from the work force. They may avoid occupational specialties that require extensive training periods, long and unpredictable hours, and willingness to relocate, all of which make specialization in domestic activities problematic. By choosing to invest less in developing their career potential and to expend less effort outside the home, women must, according to this explanation, pay a price in the form of lower salaries. But women cannot be considered the victims of discrimination because they prefer the lower-paying occupations to higher-paying ones.

An alternative explanation for sex-related wage differentials is that women do not voluntarily choose lower-paying occupations but are forced into them by employers and social prejudices. According to proponents of this view, employers who discriminate may refuse to hire qualified women for relatively high-paying occupations. More generally, subtle society-wide prejudices may induce women to avoid certain occupations in favor of others that are considered more suitable. Indeed, the "choice" of women to specialize in parenting and performing household services may itself result from these subtle prejudices. Whether the discrimination is by employers in a particular occupation or by society as a whole is irrelevant; the effect will be the same. Further, if such discrimination does occur, women excluded from certain occupations will flood others, and this increase in supply will have a depressing effect on wages in occupations dominated by women.

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