

1: Issue | Journal of Applied Juvenile Justice Services

(A Practical Approach to Evidence first appeared in , and its success in providing a readable and practical guide to the subject has been widely acknowledged not only by law teachers and students, but also by the profession.

Please contact mpub-help umich. Abstract We can make new progress on stalled debates in epistemology if we adopt a new practical approach, an approach concerned with the function served by epistemic evaluations. This paper illustrates how. I apply the practical approach to an important, unsolved problem: Section 1 describes the problem and why it is so challenging. Section 2 outlines and defends a general view about the function of epistemic evaluations. Section 3 then applies that view to solve the problem of forgotten evidence. The Problem of Forgotten Evidence If someone forms a belief in an irrational way, say by purely wishful thinking, but then he completely forgets how he formed this belief, is the belief still irrational? For a concrete example, take Joe, who is a severe coffee addict, and who at one point formed the belief that drinking coffee is beneficial to your health. Is the surviving belief still irrational, or is it now rational? The case poses a problem, which we can present as a dilemma. If his belief becomes rational after he forgets how he formed it, then Joe has laundered the epistemic status of his belief—like the mafia launders money. Can you really do this? Can you turn an irrational belief into a rational belief just by forgetting things? To make the problem even more vivid, think of the most appalling belief you can. It feels wrong to forgive the forgetful reasoner. After all, it appears as though he never acquired, and certainly does not now retain, any positive reasons in favor of his view, and that looks bad. Some epistemologists who favor taking this first horn of the dilemma have ventured to suggest that you can possess positive reasons to trust a surviving belief even after forgetting its origins in virtue of a background belief you have that most of your beliefs have happily turned out, upon facing the test of time, to have been accurate. The problem is that it turns out that the background belief itself cannot be supported by any positive reasons, and thus anything that is based upon it cannot be said to ultimately enjoy the support of positive reasons. Why is it that the background belief has no positive reasons in its support? Well, if you were to possess some positive reasons that support this belief that your memory has been generally reliable, then those reasons would have to make some claim about the general accuracy of your past beliefs. But, what sort of reason have you to think your past beliefs were generally accurate? Any considerations you reach for here will make your reasoning circular. To be clear, the background belief might well qualify as justified—perhaps it is justified by default, without the aid of any positive reasons in its favor. The point here is just that the worry about Joe not having any positive reasons to support his belief that coffee is healthy will not be satisfactorily addressed by claiming Joe should support that belief by basing it on a background belief that his memory has generally been reliable. If his current belief is irrational, but he has no reasons to revise his belief, then he is in a rut: To make the problem here more vivid, just consider that even the best of us form a good number of irrational beliefs. And most of your beliefs, whether rational or irrational, outlive your memory of their original bases. You cannot be rationally required to keep track of much at all from the daily flood of evidence you take in and on the basis of which you first formed your beliefs; as Harman Chapter 4 famously argued, it would introduce a hugely wasteful amount of clutter into your mind if you stored all the evidence that would be needed to put every belief you now hold on any kind of firm foundation. You just keep the belief and forget the evidence. Joe now possesses no evidence opposing his belief that coffee is good for you, nor does he possess any evidence that his current view was unreliably formed. It seems you may not be able to turn these irrational views into rational ones, even if you acquire and take account of new evidence to form a new view. This is because you cannot just disregard the old view; new views, in particular new credences, are always based, in part, on your prior views, and the rational status of the old view threatens to infect the new view. And if that prior credence was irrational, it seems the posterior credence will be too. Suppose Joe acquires new evidence that coffee is in fact not healthy. However, his resultant credence in this will have been anchored down to some extent by his prior credence that coffee is healthy. Because of his irrationally high prior credence that coffee is healthy, it seems he will be left with a posterior credence that is still, to some extent, irrationally high. It seems such anchoring effects could only be

fully undone if we could make Joe completely certain that his prior coffee views were formed unreliably. Rational certainty in anything is hard enough to attain. And it may be especially hard here, for, if we try to confront Joe with evidence that his view that coffee is healthy was based on wishful thinking, there might be anchoring that makes him rationally mistrust our evidence: So, any epistemic predicament like the one Joe got himself into will leave the believer in a real rut, one that is at least very hard, and maybe even impossible, to completely get out of, and one that is very common in all of us. The problem of forgotten evidence is thus a dilemma. And, whatever we say, we will have to say it about a phenomenon that is very common. Section V , Huemer Others say the belief is now rational, including Harman Chapter 4 , Pollock and Cruz Interestingly, the division does not track externalist or internalist sympathies note, for example, that Goldman and Huemer, arch-externalist and arch-internalist, are on the same team. Perhaps even more interestingly, many of these authors choose their side without relying on any argument. I join the second group, the nice guys: I will present a new line of argument for this conclusion, one that I hope will offer new hope for resolving a debate that looked to be hopelessly deadlocked. Plan for My Argument My argument has an unusual character. I will be arguing for this conclusion, a conclusion that says certain beliefs are rational, not on the basis of initial premises that themselves directly say what is or is not rational, but rather on the basis of certain considerations concerning the practical function, or practical purpose, that we serve by making epistemic evaluations. It starts from some plausible considerations about why we make epistemic evaluations, ostensibly a separate subject matter. It is not a deduction, an enumerative induction, an inference to the best explanation, or any sort of statistical inference. How will the argument be any good then? One step in the middle of the argument will make use of semantic descent. Why should this pragmatics-to-semantics inference be reliable? It is plausible that this inference is reliable because it is plausible that we adopted words and concepts of epistemic evaluation with extensions such that their correct application is the application that serves their function. We could have adopted a different concept from our actual one, one whose extension differs slightly so as to make the alternative verdicts about cases of forgotten evidence correct. We could have used words that express slightly different concepts, words that have slightly different meanings. But, since we adopted linguistic and conceptual tools that serve their function by being applied to forgive Joe, it is a much simpler and thus more plausible hypothesis that we adopted a concept, and we use a word, whose extension makes this function-serving application the correct application. That is how my overall argument is supposed to work, and why it is supposed to be a convincing form of argument. So, although solving the problem of forgotten evidence is certainly of sufficient intrinsic interest to write about, my hope is that this paper will also serve a second, ulterior aim. I hope to show a new way we might make progress on stalemated debates within first-order epistemology. I believe that reflecting on the function of epistemic evaluation can benefit epistemology in many ways. This paper illustrates how it sheds light on the problem of forgotten evidence. Reflection on the function of philosophically important words and concepts has a few important precedents. Chapter 1 and Craig made important proposals about the functions of attributions of truth and knowledge. The trend of reflecting on functions has caught on in recent years: A number of papers explicitly feature the form of argument of this paper: Boris Kment argues for a view of the function of modal discourse and thought, and then he takes this view to support the first-order metaphysical thesis that necessities and possibilities all reduce to counterfactual conditionals Kment b: Chapter 5, Section 1 argues for that same metaphysical conclusion from the premise that evolution would only pressure us to develop modal cognitive capacities for thoughts about counterfactuals. The caricature you might easily find fault with. The real argument takes up the rest of the paper. The Function of Normative Evaluation 2. Having a Function Is Having a Teleological Explanation I claim that our epistemically evaluative practice has a function. In fact, I think regular people most commonly make epistemic evaluations by calling a person smart, clever, dumb, or stupid, even though those words have many different meanings, and even though a philosopher would never use those words in a paper to mean rational or irrational probably because they are more vague and ambiguous. By claiming our epistemically evaluative practice has a function, I mean there exists a teleological explanation of why we engage in that practice. In other words, I mean this: My intention is to uncover the function of words and concepts we already employ, the ones we already use in ordinary epistemic evaluation. We could, of course, revise our

practice and switch over to alternative concepts of epistemic praise and criticism that correctly apply to different extensions. So, we should be happy to go on employing our old language, expressing our old concepts, to assert whatever verdict about our coffee addict, Joe, turns out to serve the proposed function. I think this suggestion is ultimately correct, but the story is more complicated than it first seems. The substantive claim contained in this suggestion is that we make epistemic evaluations because it efficiently promotes our having true beliefs on subject matters of practical importance. By and large, then, the subject matters we care about are ones of practical importance. So, what can be said in support of the suggestion that our epistemically evaluative practice efficiently promotes our interest in having true beliefs on practically important subject matters? Well, from one broad perspective, it may seem obvious enough, for it may seem obvious that most linguistic communication has this function. Let me explain why. So, for a really easy example, a true belief about how to get food concerns a means to fulfilling a desire for an outcome, an outcome that is in our interest. But a true belief about how to be rational does not concern a means to an outcome that is in our interest. I know that claim—my last sentence—will initially strike many people as wrong, but I think it sounds wrong only so long as we unreflectively associate being rational with being reliable. Being reliable certainly is in our interest, since being reliable just is having a tendency to form true beliefs. But, I do not see how being rational is at all in our interest independently of our interest in being reliable. It normally is in our interest to have rational beliefs, but not ultimately for any reason aside from our interest in reliability and, more fundamentally, truth. So, there is actually quite a puzzle: The answer is that the teleological explanation of why we make epistemic evaluations is a separate explanation from the more common and obvious teleological explanation of why we engage in most linguistic communication. Most, or at least much, ordinary communication on a subject matter is teleologically explained by our interest in true beliefs on that subject matter; a true belief on that subject matter helps us act in ways that fulfill our desires, and thus, normally, serve our interests. Epistemic evaluations, however, are not explained in this way.

2: Criminal Law Courses CPD Courses | A Practical Approach to Evidence Legal CPD Course

"This article presents a practical approach that JJ [juvenile justice] systems can take in achieving evidence-based programming that reduces recidivism. Most JJ system programs produce relatively small reductions in recidivism, on average, thus there is much room for improvement.

Finally, make the doctor explain complicated medical terms. All good lawyers do that. The best way to avoid having to do that, more often than not, is to make that doctor understand during your preparation that it is important that he use simple language to the extent possible. Tell him that you are going to stop him and make him explain complicated terms. Avoid questions calling for long narrative responses, because if you have to interrupt the doctor frequently during a narrative response, it is going to chop up the answer of the Witness and make it difficult for the jury to comprehend and understand the testimony of the witness. The exception to this is when you put a model in the hands of the witness and place him in front of the jury so that he can demonstrate what he is talking about. There is less need to interrupt the doctor and ask for explanations. Figures 1 and 2 demonstrate that when you combine those principles of clarity and simplicity in the presentation of medical evidence, the proofs begin to unfold persuasively. Why not talk to the jury in a case like that about a shatter-break of the largest bone of the leg? In a case where you have a subdural hematoma, why not tell the jury that you are dealing with a bleeding brain? Specific, corporeal, difficult to misunderstand that kind of concrete phraseology is essential. The rules of simplicity. Use plain, simple words. Ask short, uncomplicated questions. Ask one question at a time. Make the expert explain medical or technical terms. Proper use of charts, diagrams, drawings and models enhances persuasion dramatically. The more tangible, concrete and specific we make our medical and technical evidence, the more real and believable it is going to be to the jury. The first has to do with the language we use in describing injuries to a jury. Bring the injury down the ladder of abstraction as in our examples from a cervical neck sprain to torn ligaments and muscles of the neck. In the heart injury case, explain what had happened to Bob Jenkins— not in terms of a myocardial infarction, or even contusion of the heart muscle, but in terms of dead heart tissue. Therefore, in the most specific, concrete terms, you lay the basis for explaining to the jury why it is that your client now finds it impossible, difficult and painful to engage in those activities the deprivation of which was the basis for his claim. Control and preparation are the benchmarks of the great trial lawyer. Effective direct examination should be formulated in a fashion that clearly establishes in the minds of the jurors the purpose for which the witness was called as well as the credibility of the witness. You must be able to control each witness. When you have your witness on the stand, it must be like a pitcher and a catcher. There must be an even and rapid flow of information in dynamic but succinct and simple language. The jurors are accustomed to the TV format. They are used to receiving information as quickly and provocatively as is done on the 7: You and your witness, through thorough preparation, must know the objective to be satisfied and understand how each objective will be reached. You and the witness must understand the cues, i. If the attorney falters, pauses too long, stammers or uses the audible pause, the jury will be distracted. The flow and rhythm will be lost as will your audience. The same rule applies with notes and exhibits. Be ready; avoid paper shuffling. Have all exhibits and demonstrative aids set up and ready as needed. Make sure you have reviewed each thoroughly with your witness, and that your witness knows it is accurate or a fair representation and that they understand how they will use it during their direct. Particularly with regard to exhibits, there is no substitute for a dress rehearsal. Remember, if your witness understands where you want to go, even if your question is objected to and the objection is sustained, the witness nevertheless will know to try to get out subtly the information at the first opportunity. This, of course, should not be done with wholly objectionable matters. You do not want a mistrial or to try an otherwise good case twice. In preparation, you should anticipate any objections, be prepared to argue them and have ready, in the event you lose the objection, an alternative question or line of questions. When I say we must control the direct, I do not mean that we should blatantly ask leading questions. What I mean is that we are directing the direct. It is poor practice to let the witness carry the ball. Long narratives are not always persuasive. The information should come in orderly pieces, systematically

developing the mosaic of proofs. You must also control the witness so she does not jump ahead of the line, as you have plotted it out in your game plan. The true art of direct examination is to ask the questions differently but have the witness repeat the testimony. You must creatively use this approach for emphasis and persuasion. Communication specialists tell us that at any given time in the courtroom, we have the full attention of only one third of the jury. Thus, creative redundancy is helpful during direct to pick up any daydreamers that we may have missed the first time around. What I am suggesting is that once you have brought out the facts—for example, of the accident scene—then ask your witness to draw a diagram. A third way of again bringing out your important points is through photographs of the accident scene and of the vehicles involved, and photos depicting the injuries. If you have had an investigating police officer who lays out the scene favorably to your client, you may very well want to call him before calling the plaintiff. Another excellent tool for getting evidence again before the jury is the medical summary, which is also admissible into evidence along with photographs and diagrams. This is a calendar chart showing all dates of treatment, hospitalizations and periods of disability. As an aside, we should note that we have been talking about techniques but not strategy. Strategy encompasses your overall game plan. This you do in your office long before the day of trial. Preparation of the direct examination of each witness is part of your greater plan of preparation for trial. It is only when we have outlined the purpose of our case, set forth our objective and the approach to each witness or line of questioning, that we begin to fully appreciate the importance of each witness and how their testimony interweaves and relates to that of others. This is the mosaic of trial advocacy. The trial lawyer is a blend of the evidential mechanic and the artful persuader. We must take into account the legal elements of proof to establish our claim, the testimonial and real evidence available, the impact of the rules of evidence on what is available to us, the ways in which the evidence can be made both Understandable and interesting to the jurors, and the strengths and weaknesses of each witness. Thus, as the evidential mechanic, we must plot out our evidentiary foundations. First, all master advocates are not just lions in the courtroom—they have done their homework. They are indeed drudges in the office. They know the law of their case and they know the evidentiary model upon which their case will be built in the courtroom. And so in your trial notebook there will be a master outline or an elements of proof checklist. Under each major heading is an outline of the facts and circumstances which will tend to establish that particular element of the cause of action and the manner in which each winning fact will be established at trial. Separately, prepare a rough outline of all potential witnesses. Then prepare another outline for the testimony of each witness or a witness profile. In the witness profile, give a background on the witness and the purpose for which he is being called. You then will outline, all the positive information that can be elicited from the witness on one side of the profile and outline all the negative aspects in calling the witness. Once you have set up this balance sheet, try to determine how any negative impact can be turned around and made positive. After you have prepared a witness profile for every possible witness, then determine which witnesses you should actually call, which witnesses you should have on standby in case a more favorable witness is unavailable, and which potential witnesses should not be called at all. Now you have reached the point of determining the order of witnesses. In doing so, you must remember the rule of primacy and recency, the basic philosophy of opening and closing strong on your direct. Studies show that jurors remember best, or rather, receive the strongest impressions, from that which they have heard and seen first and last. The rule of primacy, basically stated, is that what we hear first is the most persuasive. The rule of recency states that what we hear last is generally remembered best. Only through a total witness analysis can we most effectively set up an order of witnesses that will present the testimony in the most favorable manner. Once we have set up our outline of the elements of proof and have determined how we are going to satisfy those elements via our outline of witnesses, documents and exhibits, and we have placed those outlines in our trial notebook, we then have to plan how we are going to present the evidence persuasively. The Testimony Plan A good direct examination of each witness has a beginning, a middle and an end. The primary question is: Who is this witness and can he be trusted? Therefore, we must begin by introducing the witness to the jury, explaining why the witness is here, and accrediting that witness. At the very outset, we must put a halo on the witness so that as evidence comes in through him, it tends to be more believable. In introducing the witness to the jurors, you may want to ask some preliminary accrediting questions, such as:

A PRACTICAL APPROACH TO EVIDENCE pdf

The purpose is to humanize your witness. The heart of the testimony. Our preliminary or foundational questions should be designed to introduce the witness to the jury as a person. In doing so, we must be sensitive to the human experience. We must give certain background information about the witness that will give him and indirectly, our client a halo effect. We must introduce the Witness and show who he is, what he does, where he fits into society, and how he fits into this case. Once the jury becomes comfortable with the witness, we must get to the heart of the matter. This is usually approached either chronologically or logically. Obviously chronological presentations of fact are what we are most accustomed to and are the easiest to digest. The topical approach, however, may at times be the most effective because you go right to the heart of the matter up front, and within that topic you can proceed chronologically.

3: Evidence With Impact: A Practical Approach to Witness Examination | New Jersey Trial Lawyers

Background and Overview. Knowing how to search for evidence that can inform clinical decisions is a fundamental skill for the practice of evidence-based dentistry.

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5: Rules of Evidence: A Practical Approach, 2nd Edition

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