

The FORVM

FORENSICS PROFESSIONAL GROUP The HUMAN FACTORS and ERGONOMICS SOCIETY

Volume 21

September 15, 2004

NUMBER 2

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FORVM Editor: Erik Olsen**Chair's Page**

This will be my last report as chairman to the TG at large. I think that we are in good shape financially and in terms of membership. Our new officers who will be taking over at the meeting in September will have the opportunity to improve on this state. I hope that those of you who attend the meeting will come to our business meeting to lend your support to them. I want to thank the other retiring officers for their efforts, especially Dan Johnson for his work as the program chair. Also the newsletter editor, Erik Olsen, has spent a lot of time working spreading the word about what is going on.

If possible, I hope you will attend the meeting, because it will provide some excellent papers and an opportunity to fraternize with our colleagues who may help us in various ways. Among other things we will be presenting a workshop for those who are either incipient expert witnesses or who are just now getting their feet wet. This is response to some items that came up at the previous annual meeting. If you are beginning to serve as an expert or contemplating doing so, this should help. The presenters have many years of experience and have served the society and the FPG in many capacities.

A periodic question that arises at the Council of TG Chairs is that of how well the society is serving its members. What more should we be doing? What have we done wrong? If you have any thoughts about these questions send them to me or to Alison Vredenburg, our incoming chair, and we will try to pass them along.

It has been a pleasure serving as chair, and I hope beneficial to the TG.

S. David Leonard, 2002-2004 FPG Chair

Congratulations to our new officers for 2004-2005!

- Alison Vredenburg: Technical Group Chair
- Jay Pollack: Program Chair
- Secretary Treasurer: Michael Maddox

From the New FPG Chair, Alison Vredenburg

I would like to thank you for your support in electing me the new Chair. I look forward to working with Jay Pollack, our Program Chair, and Michael Maddox, our secretary/treasurer. I plan to increase the visibility of the Forensics Professional Group by developing more multi-technical group sessions such as the mock trial we conducted jointly with the Surface Transportation TG concerning a new automotive technology.

If you have ideas for FPG, I welcome your input. I would like to see involvement by more people. If you are new to forensics and are interested in getting to know some of the "senior" FPG members (some people tell me I now fit in that category - that's depressing) there are opportunities available for you to volunteer. Feel free to send us articles, announcements, and book reviews for the FPG newsletter.

I look forward to working with all of you in the coming year.

Alison Vredenburg, 2004-2005 FPG Chair

YOUR NEW OFFICERS**Technical Group Chair: Alison Vredenburg**

Alison Vredenburg is the principal of Vredenburg & Associates, Inc., a research and consulting firm specializing in human factors and safety. She holds a Ph.D. in industrial-organizational psychology and a CPE certification. She is a member of the San Diego Center for Patient Safety.

The forensic issues she investigates include product design and warnings, workplace safety, healthcare and medical products safety, age-related factors, Americans with Disabilities Act, and driver behavior.

Secretary Treasurer: Michael Maddox

Dr. Michael Maddox received a Bachelor of Science degree in Physics in 1972 from Virginia Tech. He worked as an Instrumentation Engineer in the nuclear industry for several years before returning to Virginia Tech to earn his Master of Science and PhD degrees in Industrial Engineering/Human Factors. His graduate research centered on information transfer from computer-generated displays. Mike received his PhD in 1979.

Mike recently joined HumanCentric Technologies as a Senior Scientist. His background includes work with the Institute of Nuclear Power Operations (INPO) as a human factors expert and as a Senior Scientist and Director of Consulting services for Search Technology, a small R&D firm in Atlanta. In 1987, Mike formed his independent consultancy, Sisyphus Associates, where he worked for a number of clients performing a variety of analysis, design, evaluation, and training services. He has served as an expert witness in various legal cases.

Mike has published many technical articles related to various human factors topics. He is a member of the Human Factors and Ergonomics Society and a number of other professional organizations. He is certified by the Board of Certification in Professional Ergonomics (BCPE), being among the first 50 human factors professionals in the world to hold a BCPE certificate. His human factors career now spans over 20 years.

Program Chair: Jay Pollack

Jay has been the Senior Human Factors Design Engineer for Crown Equipment Corporation for the past 3 years. His responsibilities include interface design, heavy equipment ergonomics and safety, and forensic human factors.

Prior to joining Crown, he spent 7 years as principal scientist at Joshua Technology Group specializing in HF related litigation and product design and 8 years at the University of Dayton Research Institute. His applied research interests include consumer and industrial product design, aviation human factors, virtual reality and safety.

Call for Nominations

Nominations are now open for:

- TG Chair-Elect
- Secretary-Treasurer-Elect
- Program Chair-Elect
- Newsletter Editor*

* Editors Note: *Any clarifications or corrections about this process or the other positions can be made at the Annual Meeting from 4:30-5:30 on Wednesday, 9/22/04 or by contacting the FPG Chair. Newsletter Editor is usually an appointed position. *This will be my last newsletter.* The position entails creating and sending out*

a newsletter on a biannual (ideally). I will assist the next Editor and will continue to update the webpage as needed for the time-being.

Erik Olsen, FORVM Editor

Input from FPG members from the 2004 Election

The following input was received from 3 FPG members

- 1) Place ethical principles on web page
- 2) Revise "white paper" on HFE as science and place that on web page
- 3) Have a one day midyear meeting with workshops
- 4) How do I know that my vote was received and properly counted?
 - **EDITOR'S RESPONSE:** All votes were collected using <http://survey.vt.edu/>, an on-line tool to run simple surveys and more. Votes were counted manually (and re-counted) only for votes in which a unique email address was included. Two ballots were received by U.S. mail as well.
- 5) Where in my multitude of information for the FPG can I find the requirements to write an article? I am working on "Why Work Zones Don't Work".
 - **EDITOR'S RESPONSE:** Not sure, but a recent article was included in the TRB E NEWSLETTER (http://trb.org/news/blurb_detail.asp?id=4134).

2004 HFES Annual Meeting

The 48th HFES Annual Meeting will be held at the Sheraton New Orleans Hotel, New Orleans, Louisiana, September 20-24, 2004. See info at <http://hfes.org/>. Our **FPG Business meeting** will be held on **Wednesday, 9/22 at 4:30 PM**, following the Safety TG's meeting.

In 2002 the FPG was allotted only one paper session; in 2003 it was allotted two. For 2004, there will be 3 sessions, as well as a half-day workshop.

Summary of 2004 FPG Sessions

Compiled by Dan Johnson and S. David Leonard

The Forensics Workshop is scheduled from 8:30 to 12 on Monday, 9/20/04. It will be oriented to those individuals who are new to the forensics game. The presenters are Ed Karnes, Ken Laughery, Dave Leonard, Ric Olsen, and Dick Pearson. It will consist of three sessions of about one hour with two ten minute breaks. The topics discussed will be: General information about lawsuits, the place of human factors experts in the process, the usefulness of the human factors discipline in legal matters, and some lessons learned by experts in their work. Among the lessons learned will be relationships with attorneys, the Daubert Requirement, fees and contracts, and some information about types of cases HF experts might work on.

The first FPG conference session (FP-1, 9/22/04, 0830 – 1000) starts off with a paper, Time Perception, Shooting Performance, And Perceived Workload In A Police

Night-Training Shooting Exercise by S.C. Stafford, T. Oron-Gilad, J.L. Szalma and P.A. Hancock. The study investigated the estimated time vs. the actual time it took for police officers to fire their weapon. Issues of time perception and accuracy of performance under stress are addressed.

The next paper in this session, Judgements Of Risk Associated With Riding With A Reclined Seat In An Automobile, by Timothy P. Rhoades and Elaine C. Wisniewski, looks at passenger's perceived risk of riding with their seat reclined.

The third paper, Defendant Wealth and Civil Litigation: The Effects of Profit Levels on Compensatory and Punitive Damages, by Danielle Paige-Smith, Ken Laughery, and Richard Bean looks at the relationship between a company's profits and the amount awarded for punitive damages vs. pain and suffering.

The next FPG session (FPG-2, 9/23/04, 1030 – 1200) is a panel entitled A Two-Way Street – With Hazard Expert/Attorney Communications. Richard J. Hornick (chair), Alison G. Vredenburg, Hal Hendrick, and attorneys J. R. Spangler and Gregg L. Spyridon will participate. The important issue of what information should pass between attorney and expert from the initial telephone call to case resolution will be discussed. What is each participant (attorney and expert) listening for during the initial phone contact? What kinds of questions should be asked by both experts and attorneys? What are early "warning signs" to both parties that the relationship may be tenuous?

During the discovery process, how much and what type of information and discovery materials need to be provided to experts? How do attorneys and experts identify what materials to formally request through discovery motions? What information is "privileged" and how, if at all, is the "attorney/expert work product" protected? At a site inspection what is the proper communication protocol between experts on opposing sides?

How much discussion should there be about opposing counsel's expert? What should or should not be asked/answered/offered? If there is trouble along the way, how does an expert express a desire to be excused from a case, or an attorney convey that the services of the expert are no longer desired?

If a report is required prior to deposition what does an attorney expect? How does a report affect communications between attorneys and experts? What is the proper level of discourse during report preparation? How does an expert contend with an attorney who essentially wants to author the report? What does an attorney do with an expert who wants to express information or opinions potentially detrimental to the attorney's interests?

What kind of professional versus personal communications can or should occur prior to deposition, post-deposition, pre-trial and during trial? Are there particular communication factors that need to be mutually understood during trial?

The third and last FPG session (FP3, 9/24/04, 1030 – 1200) is also a panel. The Forensics Human Factors Consultant will address a number of important areas each HFES professional who performs any forensic work, or who is interested in doing so, should consider.

Ken Nemire will start off by describing the results of a survey in which over 55 members (28%) of the FPG responded. The issues included continuing education; networking; speaker bureau; fee structures; managing a forensics business; advertising tips; update on trends in forensics human factors; impact of *Daubert*; professional liability insurance; and, professional ethics. The survey results provide interesting information on academic degrees and background of forensic specialists; number of cases they handle each year; the breakdown of their work for plaintiffs and defendants; type and amount of advertising; fees, retainers and *pro bono* work; and type of communication tools, e.g., computer simulations, used in testifying.

One set of issues raised by respondents concerned the "nuts-and-bolts" issues of how to manage a consulting practice, including information management. Dan Johnson will present a method he has developed for the efficient storage and retrieval of information relevant to a forensic practice. Efficient ways of storing and then retrieving information relevant to a particular type of case will be described.

Ric Olsen will follow with a presentation of the survey results concerned with using contracts and advertising, and follow with a discussion of management issues based on his 30 years of experience as a consultant.

Mike Wogalter will end the panel discussion with presentation of the survey results that have ethical ramifications, such as advertising and accepting cases, and follow with a discussion of wide-ranging ethical considerations that impact the practice of forensics human factors. An open discussion period will follow.

A.R. Lauer Safety Award of the HFES

According to a recent STTG listserv message, Gene Farber has been selected as the winner of the 2004 Lauer Safety Award. This award recognizes outstanding contributions to human factors aspects in the broad area of safety. This includes human factors work that has led to reduced accidents and injuries in industry, aviation, surface transportation, and consumer products, among others. The Lauer award will be presented at the opening Plenary Session of the HFES 48th Annual Meeting, Tuesday, September 21, 2004.

The FPG Member Survey: A Sampling of Results

Earlier this year, over 55 members of the Forensics Professional Group (FPG) completed a survey about their forensics human factors work. This survey expanded upon the last survey of FPG members conducted over 10 years ago, and provides an interesting snapshot of current FPG membership and their work practices. The survey included items about experience, degrees and certifications, areas of specialty, and rates, as well as aspects of forensics practice such as advertising and ethics. Part of the survey results provided information about issues that interest and concern FPG members, including continuing education, networking, speaker bureau, fee structures, managing a forensics business, advertising tips, update on trends in forensics human factors, impact of Daubert, professional liability insurance and professional ethics. This panel will summarize the results of the survey, and present additional information about selected issues such as qualifying as an expert and ethics for the forensics practitioner. We will follow with an open discussion period of at least 30 minutes. Results will be described in session FP3 at the Annual Meeting on 9/24/03 from 10:30-12 noon.

-Reported by Kenneth Nemire

Human Factors Forensics Resources

- Check out Human Factors as a Field an on-line article written by Dr. Richard Hornick (a long-time member of HFES and the FPG) available at <http://expertpages.com/news/humanfac.htm>. The article includes identification of issues relevant to lawyers and potential forensics professionals.
- Find a copy of the Handbook of Human Factors in Litigation edited by Ian Noy and Waldemar Karwowski. It is to include "A Guide to Forensic Human Factors Terminology." The Handbook is to be published by Taylor & Francis, Ltd. For more details, contact Waldemar Karwowski, at (502) 852-7173 or karwowski@louisville.edu.
- Buy or rent the two-video set, "Mock Trial: Human Factors of Adaptive Cruise Control, Parts I & II." by contacting HFES at 310/394-1811, fax 310/394-2410, info@hfes.org.
- Visit the FPG Website at <http://fpg.hfes.org/>. Soon, we will be looking for someone who is interested and willing to take over as web master.
- Use and post on the FPG *listserv* at hfes-forensics@hfes.org (traffic is usually very light). All FPG members are automatic *listserv* members unless they opt out. To switch to the DIGEST mode, email hfes-forensics-digest@hfes.org; to switch to the INDEX mode, email hfes-forensics-index@hfes.org. Send administrative queries to hfes-forensics-request@hfes.org
- Read the "Forensics 'Traps'" (see next section).

Forensics "Traps": A Listserv Query Summary

Based on an FPG session from the 2003 HFES conference, last year I sent the following query out to the FPG *listserv*: "I would like to know what are the 'traps' that you've encountered during forensics work, ranging from receiving the initial contact to addressing a judge or jury while on trial." Here is a compilation of responses in no particular order:

Top trial pitfalls of depositions/trials

- 1) Being misquoted after a phone conversation (lesson: always conduct heavy questioning during a phone appointment with your lawyer present and tape record the conversation).
- 2) Knowing how to respond to a written request to "bring everything you have ever read that may be relevant to this case."
- 3) Responding to the statement, "so you are an expert in everything, are you?"
- 4) How to deal with the question of what is human factors and what to say in response to defining "human factors engineering," especially if you are not an engineer.
- 5) The judge wanting to limit the scope of my testimony to specific areas or aspects such as safety or design but not both
- 6) The opposition (when the defense) making a "big case" out the fact that I was not an eye witness to the incident (and therefore am not a trier of fact).
 - My way "around" this pitfall has been (when for the plaintiff): I ask that the attorney query my opinion about the "situation" as it pertains to a design defect or a poor design, etc. After I explain all that, I ask that I be asked if I have an opinion on whether or not this "defect" is safe. I then state yea/nay and when prompted "why," I explain that some defects are benign and others such as stairs can have significant health and welfare impact. Making this a two-step (or more aptly a two-punch) process seems to have a powerful impact on juries.
- 7) The opposition wanting to get me to admit under oath that I do not know (for a fact) what caused the incident
- 8) Dealing with the awkwardness of testimony progression: Step 1: Do you have an opinion (Yes/No); Step 2: What is it? (concise declaration); and Step 3: What is the basis of your opinion? (cite theory, references, etc.)
- 9) Being severely restricted in providing testimony on common practice, industry standards, etc.
- 10) Becoming entrapped in the references provided (a Daubert requirement) where there are sections of the citations that either do not relate to the case or possibly conflict with the opinion being rendered (i.e., stating specific page numbers in a several hundred page book do not preclude the opposition

looking for ways to discredit you with your own reference). A Daubert website is located at: <http://www.daubertexpert.com/>)

- 11) Getting into a trial and discovering that the opposing counsel knows much more about me, my work, and the hazard in question, than the attorney who hired me. To avoid this it is necessary to make sure the hiring attorney is given relevant articles so that I will be asked clarifying questions on redirect, and the attorney will also be able to question other experts in depth.
- 12) Making sure that in deposition one does not give out incomplete answers that can be used as "sound bites" in trial. If a question is asked that requires a multipart answer, rather than just a Yes or No, it is important that each time the question is asked (and re-asked) in deposition that the same answer, with appropriate qualifications, be given. This, even over the objection of the opposing attorney who just wants a quick, incomplete, answer for use in trial.

Depositions/trial mistakes to avoid:

Worst mistake: Lying or embellishing your background. This rarely is the deciding factor in a case, but some experts find the need to embellish their backgrounds. There is really no need to do so if your analysis is better justified than the others. Opposing counsel will attack at a perceived lie like a shark to blood and take the attention of the main point of the case.

2nd worst - Relying upon "measurements" of the scene that are taken from "as built" diagrams or from lighting charts rather than visiting the scene. Opposing Experts have done this about 4 times and each time there was something at the scene that was different than what they ASSUMED. The Cross examination in each case was slow and painful.

3rd Worst (and most common) - Basing your opinion upon your "experience" or "common sense". Experience is not published and peer reviewed and "common sense" is something the jury possesses. If you do not have specialized knowledge in an area, don't take the case! If you have to resort to saying either of these statements, then you are NOT an expert on that topic and should not be allowed to testify. Back your opinions up with research.

4th worst - Failing to get paid up front in a criminal trial. If your client loses, he or she goes to jail and you do not get paid.

5th worst - Letting a client refer to you as their "ace in the hole", "Stud" or letting them say that the case rides on your shoulders. If the lawyer is ignorant enough to believe this, you are going to be on the losing end of the case. An expert is like a 3-point shooter in basketball. If we do not have the ball passed to us, if we are double-teamed, if we are not near the basket and there is no time on the clock, then we are not going to win the game with

our shot. Nothing is more frustrating than getting up on the stand and having the jury shun you before you have said a word. Let your client know that if he doesn't do his job and make an attempt to learn your job, then you cannot do your job.

6th Worst - Failing to understand that when the stimulus changes, so will the response.

7th Worst - Fighting the lay view that things occur instantaneously. Cars do not decelerate when the brake is applied, nor do they start forward when the accelerator is 1st applied. EVERYTHING takes time.

8th worst - the conception that human factors is a "soft science", this is most likely do to experts who base their opinions on their "experience" rather than upon empirical research.

Areas that All Forensic Professionals Should Consider Ethical need to present HF&E information to triars of fact

- To ensure judges/juries are given adequate information on how injuries / accidents / crimes occur
- To reduce chance defendants are not unfairly penalized or plaintiffs given short shrift
- To educate and encourage defendants to consider the user in the design/production of potentially dangerous products

Evidence Collection and Storage

- How evidence is gathered, recorded and maintained
- When to discard

Type and Quality of Sources of Information Relied Upon

- Other experts and sources relied upon
- Auto accidents (police reports, etc.)
- Falls (codes, specialists)
- Product Liability (engineers, standards)
- Personal Injury (reports, records, notes, experts)
- Crimes (statements, scene analysis, reports)

Communications between Expert and Attorney

- Your file: what should or should not be recorded
- What is Work Product and is it discoverable

Written Reports

- When required, What to include, What to discuss

Conclusions and Opinions

- Presentation of results (to attorneys, insurance companies, in deposition, to triars of fact)
- Editorializing
- Presenting information to jury vs. to judge
- Responding to verbal attacks

Financial

- Gaining and Keeping Clients
- Who is the Client?
- Contracts & Rates

Distribution of articles/case results to other professionals

- EID, HFES Proceedings and HF Journal, etc.

Participation in standards-setting groups

- e.g., SAE, ASTM, ANSI

Notes from the 10/15/03 FPG Business Meeting

Status: 1) 15 attendees. 2) Currently 263 members in FPG. 3) Current balance \$3,039. 4) Mock trial income \$4,500

Concerns: 1) Decreasing membership; Decreasing services such as # of technical sessions.

Membership: Decreasing membership: 1) Suggested recruiting from non-HFES members. 2) Suggested contacting CPEs. 3) Non-HF members would get newsletter. 4) Need to consider why we would want FPG members if they don't go to meetings. 5) (Improved) website can increase membership. 6) Our TG tends to have older people, need younger people to keep up membership. 7) Need to show FPG as more value than just to expert witnesses – also to help clients prevent litigation. 8) May want to have more experienced members mentor less experienced ones. 9) We need to have the FPG brochure reviewed and edited. Jay Pollack and Laurie Brykman volunteered to look at it. 10) Co-sponsorship of meetings: Can increase the number of forensic papers. 11) Bulletin article from FPG: can highlight that our TG is not only for people involved in litigation, but covers broad forensic topics; May increase membership. 12) Member survey: out in newsletter: chance for \$50 rebate.

Spending plans: The COTG says TGs are spending less. TGs can drop fee, but does not seem to be obstacle to joining.

Website: 1) Include list of members and specialties. 2) Our site is: <http://fpg.hfes.org/> can link from other TG sites and include short bios of members. 3) Can compile PowerPoint presentations on site or download video as Quicktime files. 4) Can also link to newsletters, announcements, nominations, and survey. 5) Group agreed to update website and allocate up to \$1000 to build and up to \$200/year to maintain.

Workshops: 1) 1/2 day nuts and bolts of practice, ethics. Sessions last year had good attendance. Monday workshops have a fee. 2) Young people not sponsored. Therefore, may not be high attendance. 3) May want a career development track with a different topic each year. 4) Can make video to be used in future workshop/videos.

Mock Trial: 1) Want to make a mock trial at regular intervals. Each year can put money aside.

Invited speaker: 1) Can bring someone in such as SEAK group from Cape Cod.

Book Review: Human Factors in Traffic Safety

by R. E. Dewar and P. L. Olson (from

<http://www.lawyersandjudges.com/>)

This book will help you examine the behavior of the road user from a variety of perspectives, ranging from the design of roads and vehicles to emotional and motivational determinants of behavior. Several experts in the field of traffic safety have made contributions to this book in order to introduce you to the basics of human factors as relevant to driving and traffic safety. You will gain an understanding of this very important component of the roadway transportation: the human. This book examines the behavior of the road user from a variety of perspectives.

In this book, the focus is limited to the interaction of people and motor vehicles. The editors bring together all of the major human factors topics of concern to driving and traffic safety to show how the science of human factors contributes to traffic safety and how it is helpful to investigating motor vehicle collisions.

This book breaks new ground by incorporating some nontraditional disciplines such as neuropsychology, fatigue studies and eyewitness testimony. Much of this material is not well-known by people outside of psychology, and, even inside the field, many are not familiar with it. To our knowledge, no other book has presented such a wide variety of relevant topics applied to traffic safety.

People such as reconstructionists and attorneys often have a very real need for information such as the authors of this book have produced, but it is typically buried in technical reports and journals to which they do not have ready access. This book is an attempt to bridge that gap.

FORENSICS PROFESSIONAL GROUP

The *FORVM* is a publication of the Forensics Professional Group (FPG) of the **Human Factors and Ergonomics Society**. Membership in the FPG is open to all people interested in the application of human factors and ergonomics to a professional forensics practice.

The FPG is concerned with the application of human factors knowledge and techniques to “standards of care” and accountability established within the legislative, regulatory, and judicial systems. The emphasis is on providing a scientific basis to human factors/ergonomics issues raised within these systems.

Membership in the Human Factors and Ergonomics Society is not required for membership in the FPG. For further information, contact the Central Office of the HFES: P.O. Box 1369, Santa Monica, CA 90406-1369, Phone: (310) 394-1811.

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The FORVM, Newsletter for the HFES Forensics Professional Group
Volume 21, #2, September 15, 2004

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Forms enclosed

-Application for Membership

Application for Membership
Forensics Professional Group, Human Factors and Ergonomics Society

Membership in the FPG does not require membership in the Human Factors and Ergonomics Society. Members of the HFES may pay FPG dues with their HFES dues. Please print.

Name: _____

Title: _____

Organization: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Are you a full-time student? () yes () no

Are you a member of the HFES? () yes () no

Please mail this application and a check for \$5.00 to:

Human Factors and Ergonomics Society
PO Box 1369
Santa Monica, CA 90406-1369 USA

