

The Influence of Jurors' Perceptions of Attorneys and Their Performance on Verdict

by Steve M. Wood, Lorie L. Sicafuse, Monica K. Miller, and Julianna C. Chomos

Abstract

The purpose of the present research is to examine whether jurors' perceptions of attorneys and their performance influences verdicts. Five hundred seventy-two jurors (365 criminal, 205 civil, and 2 unidentified trial types) completed surveys rating Prosecution/Plaintiff and Defense attorneys on seven aspects of the attorneys and their performance—opening statements, evidence presentation, closing statements, courtroom demeanor, sincerity, competence, and preparedness—that may influence verdicts. In general, jurors' perceptions were related to their verdicts. First, positive perceptions of the attorneys' evidence presentation and preparedness predicted favorable outcomes for both attorneys; though these relationships were stronger for the Prosecution/Plaintiff than the Defense attorneys. Second, while the Prosecution/Plaintiff's opening statements did not influence verdicts, Defense attorneys whose opening statements were perceived more favorably were less likely to win their case. Conversely, Defense attorneys' closing statements did not influence verdicts, but Prosecution/Plaintiff attorneys whose closing statements were perceived more favorably were more likely to win their case. Finally, perceptions of Prosecution/Plaintiff attorneys' sincerity were negatively related to a favorable verdict. These findings have implications for attorneys. Those who are attuned to the way they are being perceived by jurors can make changes to improve their chances of receiving a verdict in their (or their client's) favor.

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Many factors influence jurors' verdicts. Law-Psychology researchers have produced countless articles about how jurors' decisions and perceptions can be influenced by the group process (Miller, Maskaly, Green, & Peoples, in press), jurors' biases (Miller et al.), characteristics of the juror (Miller & Hayward, 2008), characteristics of the defendant (Abwender, & Hough, 2001), characteristics of the victim (Newcombe & Bransgrove, 2007), and other similar factors. One relatively neglected area of study is the influence attorneys have on verdicts. The purpose of this study is to investigate how jurors' perceptions of attorneys (i.e., courtroom demeanor, sincerity, competence, and preparedness) and attorneys' performance (e.g., in opening and closing arguments, evidence presentation) are related to verdicts. Using data from 572 jurors from a Federal Court in Iowa, this research will reveal whether these aspects influence trial outcomes. What

is interesting about this area of research, as will be seen, is that the findings suggest that aspects of attorneys and their performances do indeed influence verdicts, but sometimes in unexpected ways. However, prior to examining the previous and current findings, it is important to discuss why attorneys must understand juror perceptions.

Importance of Understanding Juror Perceptions

According to Linz, Penrod, and McDonald (1986), prosecutors and defense attorneys differ from one another with regard to their self-perceptions of their courtroom performance. These authors found that, while the self-perceptions of the prosecuting attorneys' performance did not differ from jurors' perceptions, defense attorneys often rated their own performance more favorably than jurors. Linz et al. suggest that such an outcome may occur because prosecutors receive more frequent, accurate feedback from credible sources, while defense attorneys may receive more inaccurate, ambiguous feedback. Attorneys who are unaware of how jurors perceive them or receive inaccurate feedback about jurors' perceptions of their behavior may be placing themselves at a strategic disadvantage in the courtroom; specifically, they may be giving jurors negative perceptions, which will negatively influence verdict. If jurors' perceptions of attorneys and their performance actually do affect verdicts, it would be imperative that attorneys seek out feedback and make changes accordingly. A small body of research, discussed next, suggests that attorneys can influence verdicts.



Influence of Attorney on Verdicts

When attorneys appear in court, jurors are evaluating their dress, demeanor, and personality, along with the case evidence (Hobbs, 2003). Several researchers have examined uncontrollable characteristics of an attorney such as courtroom expertise (e.g., Abrams & Yoon, 2007; Haire, Lindquist, & Hartley, 1999; Szmer, Johnson, & Sarver, 2007) and uncontrollable aspects of attorneys' performance such as speech patterns (Silverman & Paynter, 1990), gender (Hahn & Clayton, 1996; Nelson, 2004), and race (Abrams & Yoon, 2007; Espinoza & Willis-Esqueda, 2008) that influence verdicts. However, the current discussion is more interested in those aspects of attorneys' performance they can control.

According to social influence theory, it is not only the message, but also the presentation of the message and the messenger that affects the decision-making process (Petty & Wegener, 1998). A small number of past studies (e.g., Linz, Penrod, & McDonald, 1986; Silverman & Paynter, 1990) have indicated that attorneys' communication (e.g., stuttering, aggressiveness), trial presentation (e.g., persuasive tactics), and delivery (e.g., location in the courtroom) may influence jurors. In addition, researchers have examined opening (e.g., Hobbs, 2003; Linz et al., 1986; Weld & Danzig, 1940) and closing statements (e.g., Hobbs; Linz et al.; Spiecker & Worthington, 2003), persuasion tactics (Dolnik, Case, & Williams, 2003; Hobbs), impression formation (Hobbs), attorney presentation style (i.e., passive, aggressive, or assertive) (Hahn & Clayton; Sigal, Braden-Maquire, Mosley, & Hayden, 1985), and language strategies (Schmid & Fiedler, 1998; Smith, Siltanen, & Hosman, 1998).

In their seminal work on the influence of opening statements on civil verdicts, Weld and Danzig (1940) found that plaintiff attorneys' opening statements created a framework for the belief that the defendant was liable in the same way a witness for the plaintiff would have done. In addition, jurors reached a definitive decision early in the trial and the remaining testimony merely served to change the degree of

certainty of their decision. Similarly, a later study by Pyszczynski and Wrightsman (1981) found that extensive opening statements from a criminal prosecutor caused participants to give a relatively strong guilty verdict early in the trial. Moreover, jurors maintained this initial belief throughout the duration of the proceedings.

Other research examining the influence of an attorney's presentation on verdict has focused on presentation style. In a study by Hahn and Clayton (1996), participants read a brief summary of an assault-and-robbery trial (including transcripts of defendant and witness interrogations) and watched a videotaped interrogation involving the defense attorney and a witness. The aggressiveness of the defense attorney during the interrogation was varied by condition between "aggressive" and "passive." Aggressive defense attorneys were more successful than passive defense attorneys at receiving verdicts in their favor. Overall, while these studies may have found that an attorney's performance can affect verdicts, others (e.g., Hobbs; Smith et al.) fail to provide direct, empirical evaluations of factors relating to an attorney's performance and courtroom outcome.

Overview of Study

Several past studies have investigated the role of jurors' perceptions on trial outcomes (e.g., Spiecker & Worthington, 2003), however, little data exists that can help attorneys promote their own interests through changing their behavior and performance. In addition, many studies are limited in a number of ways. For instance, some past studies have used real jurors (e.g., Linz et al., 1986), but many others have only used students acting as mock jurors (e.g., Hahn & Clayton, 1996; Schmid & Fiedler, 1998). Some have focused only on certain types of trials (e.g., Linz et al.), and others have focused only on a few attorney characteristics (e.g., Hahn & Clayton). In order to address some of these limitations, the current study surveyed real jurors, from both criminal and civil trials, and measured a variety of perceptions about the attorney and the attorney's performance. The general research question to be answered in this study is, "Do jurors' perceptions of attorneys (e.g., sincerity) and attorneys' performance (e.g., opening arguments) influence verdicts?"

Method

Federal court jurors from the U.S. District Court for the Southern District of Iowa who served between the years of 1997 and 2009 were recruited to participate in the current study. The total sample consisted of information from 572 jurors. Upon conclusion of their service, jurors received a paper and pencil questionnaire asking them to rate the Prosecution/Plaintiff and Defense attorneys' on their opening statements, evidence presentation, closing arguments, courtroom demeanor, sincerity, competence, and preparedness on a 5-point Likert scale ranging from 1 = very poor to 5 = excellent. In addition, court staff consulted the court records and noted whether the final trial verdict was in favor of the Defense or Prosecution/Plaintiff.

Results and Discussion

Using jurors' perceptions of the Prosecution/Plaintiff and Defense attorneys and their performance as predictor variables, analyses focused on 492 (404 pro-Prosecution/Plaintiff and 88 pro-Defense) participant responses rating the Prosecution/Plaintiff attorneys and 435 (332 pro-Prosecution/Plaintiff and 103 pro-Defense) participant responses rating the Defense attorneys¹. Separate analyses were performed for ratings of Prosecution/Plaintiff attorneys and for ratings of Defense attorneys. Verdicts were obtained from criminal and civil trials held from 1997 to 2009. See Table 1 for a yearly breakdown of the number of each trial type and Table 2 for the mean (and standard deviation) perception scores for each predictor variable. Overall, verdicts from 336 criminal and 155 civil jurors were recorded for the Prosecution/Plaintiff attorneys and 292

criminal and 141 civil jurors for the Defense attorneys. There were three surveys (one Prosecution/Plaintiff and two Defense) that were omitted because the jurors' status (i.e., criminal or civil) was unknown.

Two logistic regression analyses—one for the Defense and one for the Prosecution/Plaintiff—were conducted in order to determine whether jurors' perceptions of attorneys and their performance influence verdict. Separate analyses were conducted based upon prior research (viz., Linz et al., 1986) using a similar technique. Court-recorded verdicts were coded 0 = Defense and 1 = Prosecution/Plaintiff. That is, if the verdict came back with Defense (pro-Defense), a "0" was coded. If the verdict came back as Prosecution/Plaintiff (pro-Prosecution/Plaintiff), a "1" was coded. Participants' perceptions of the Prosecution/Plaintiff and Defense attorneys' opening statements, evidence presentation, closing arguments, courtroom demeanor, sincerity, competence, and preparedness were used as predictor variables for both analyses.



Prosecution/Plaintiff

The complete model containing the perceptions of the Prosecution/Plaintiff attorneys' opening statements, evidence presentation, closing arguments, courtroom demeanor, sincerity, competence, and preparedness provided a significant improvement over the null model, Nagelkerke $R^2 = .54$, Hosmer and Lemeshow = .06, $p < .001$. However, the contributions of each individual predictor to the model varied considerably. Results regarding these individual predictors of trial success and their implications are discussed below in further detail. See Table 3 for a summary of all regression coefficients.

Opening statements. Surprisingly, jurors' ratings of the Prosecution/Plaintiff attorneys' opening statements failed to significantly predict verdicts. This contradicts earlier findings that suggest prosecution/plaintiff attorneys' opening statements heighten initial impressions of defendants' guilt and that these impressions persist throughout the trial (Weld & Danzig, 1940; Pyszczynski & Wrightsman, 1981). Further, trial practice experts have long contended that well-organized and informative opening statements provide jurors with a cognitive framework to help them interpret case evidence and testimony, and thus are a crucial component of attorney success (Haddad, 1979, Mauet, 1980).

The influence (or lack thereof) of prosecution/plaintiffs' attorneys opening statements on case verdicts may depend on a variety of factors, such as juror characteristics, strength of case evidence, or whether attorneys "follow through" on initial promises to present crucial facts and evidence to prove their case (Pyszczynski, Greenberg, Mack, & Wrightsman, 1981). Importantly, early legal scholars may have overestimated the potential for jurors to arrive at a quick decision (see Kalven & Zeisel, 1967). The lack of relationship between perceptions of the Prosecution/Plaintiff attorneys' opening statements and verdicts in the current study may be explained by jurors' efforts to consider subsequent evidence and testimony prior to forming judgments about the case. Indeed, a survey of over 3,500 jurors revealed that only 6% began favoring a side following the prosecutors' opening statement, and judgments were most affected following testimony from both sides and during deliberations (Hannaford-Agor, Hans, Mott, & Munsterman, 2002). In addition, Linz and colleagues (1986) found no effects of the quality of prosecuting attorneys' opening statements on verdicts, even though jurors judged prosecutors' opening statements as more organized and legally informative than defense attorneys' opening statements. Thus, jurors in the current study may have simply refrained from making judgments about the Prosecution/Plaintiff's case until later in the trial. The fact that the burden of proof rests with the prosecution/plaintiff may have compounded this inclination, making

jurors especially likely to consider subsequent aspects of the Prosecution/Plaintiff's case before forming stronger opinions. The present findings should not undermine the recommendation that prosecution/plaintiff attorneys construct well-organized and powerful opening statements, but they do suggest that the influence of opening statements on jurors' final case judgments may be weaker than often assumed.

Evidence presentation and preparedness. Perceptions of the Prosecution/Plaintiff attorneys' evidence presentation was a significant predictor of verdict, $B = .72$, $SE = .26$, $Wald = 7.39$, $p < .01$. As the perceived quality of the evidence presentation increased by 1 unit (in reference to the 5-point Likert scale), the odds an individual sided with the Prosecution/Plaintiff increased by a factor of 2.05. Importantly, juror ratings may not only have reflected the manner of evidence presentation (e.g., organization, clarity), but also the amount or credibility of evidence. Thus, this expected finding is encouraging considering that jurors are instructed to base their decision on case facts and evidence presented at trial, as opposed to extraneous factors such as pre-existing beliefs and intuition (Feigenson, 2000).

Similarly, the perceived amount of preparedness of the Prosecution/Plaintiff attorneys was a significant predictor of verdict, $B = 1.17$, $SE = .26$, $Wald = 20.22$, $p < .001$. As the perceptions of the Prosecution/Plaintiff attorneys' preparedness increased by 1 unit, the odds an individual sided with the Prosecution/Plaintiff increased by a factor of 3.23. Again, this finding is not surprising considering that well-prepared cases are often characterized by the presentation of well-organized, clear, and convincing evidence. However, it should be noted that prosecutors and plaintiff attorneys are more likely to pursue strong cases, which may partially account for the positive relationship observed in the current study between jurors' perceptions of the Prosecution/Plaintiff attorneys' evidence presentation and trial success.

Closing arguments. Perceptions of the Prosecution/Plaintiff attorneys' closing arguments was a significant predictor of verdict, $B = 1.66$, $SE = .30$, $Wald = 29.94$, $p < .001$. As the perceived quality of the closing arguments increased by 1 unit, the odds an individual sided with the Prosecution/Plaintiff increased by a factor of 5.27. Though expected, the contrast between this finding and the lack of effects of perceptions of Prosecution/Plaintiff attorneys' opening statements on verdicts is intriguing. As previously discussed, jurors may have been reluctant to incorporate the Prosecution/Plaintiff attorney's opening statements into their final judgments prior to hearing case evidence and testimony. Toward the end of trial, it is conceivable that jurors were more susceptible to closing arguments, particularly if the attorneys presented cohesive summaries of well-prepared, strongly supported cases.

The relatively strong influence of jurors' perceptions of closing arguments on verdicts also may be attributable to a recency effect, or the tendency for individuals to be persuaded by a message presented last in a series (Miller & Campbell, 1959). There is some disagreement in the persuasion literature regarding the circumstances under which a primacy (i.e., greater influence of the first message presented in a series) or recency effect prevails (see Eagly & Chaiken, 1993; Gass & Seiter, 2007). However, evidence suggests that individuals may be more susceptible to recency effects when they must make a decision shortly after the presentation of the last message (Miller & Campbell). This corresponds closely to instances where jurors cast an initial ballot following closing arguments. More generally, jurors may have had better recall of the Prosecution/Plaintiff's closing statements and were able to report their perceptions more accurately; thereby accounting for the strong relationship between this criterion and trial outcomes. Regardless of their explanations, the current findings suggest that prosecution/plaintiff's attorneys who deliver high-quality closing arguments may maximize their chances of success at trial.

Sincerity and demeanor. Jurors' perceptions of the Prosecution/Plaintiff attorneys' overall demeanor did not significantly influence verdicts. However, the perceived sincerity of the Prosecution/Plaintiff attorneys was a significant predictor of verdict, $B = -1.37$, $SE = .35$, $Wald = 15.27$, $p < .001$, but in the unexpected direction. As the perceptions of Prosecution/Plaintiff attorneys' sincerity decreased by 1 unit, the odds an individual sided with the Prosecution/Plaintiff increased by a factor of .25. Though this effect is small, Prosecution/Plaintiff attorneys who were rated as more sincere were less likely to prevail.

An extrapolation from Hahn and Clayton's (1996) research may help partially explain this puzzling finding regarding attorney sincerity. Specifically, Hahn and Clayton found that mock jurors are more likely to acquit a defendant with an aggressive, rather than passive, attorney. Mock jurors also perceived aggressive attorneys as more competent, but less friendly than their counterparts (Hahn & Clayton). Though the Hahn and Clayton study only investigated perceptions of defense attorneys, their findings may apply to prosecution/plaintiff attorneys as well. Perhaps the Prosecution/Plaintiff attorneys in the current study who were perceived as sincere may have exhibited low aggression or confidence, which negatively influenced trial outcomes. Though some trial experts may place undue emphasis on attorney personality and overall demeanor, prosecution/plaintiff attorneys may benefit from striking a balance between honesty and confidence in the courtroom.



Defense

The overall model containing the perceptions of the Defense's opening statements, evidence presentation, closing arguments, courtroom demeanor, sincerity, competence, and preparedness provided a significant improvement over the null model, Nagelkerke $R^2 = .38$, Hosmer and Lemeshow = .15, $p < .001$. An examination of the individual predictors in the model revealed some unexpected findings, and there were important differences between the predictors of trial success for Defense and Prosecution/Plaintiff attorneys.

Opening statements. Unlike jurors' perceptions of the Prosecution/Plaintiff attorneys' opening statements, perceptions of the Defense attorneys' opening statements was a significant predictor of verdict, $B = 1.95$, $SE = .35$, $Wald = 31.90$, $p < .001$. However, this result is in the opposite direction of what one might expect: Defense attorneys whose opening statements were evaluated more positively were less likely to win their case. As the perceived quality of the Defense attorneys' opening statements increased by 1 unit, the odds an individual sided with the Defense decreased by a factor of 7.05.

There are several potential explanations for this surprising effect. Some legal experts have questioned the overall utility of opening statements for the defense, noting that such statements nearly always favor the prosecution (see Greenberg & Ruback, 1982). As prosecuting attorneys must prove their cases beyond a reasonable doubt, they may come to trial better equipped with case-related information. Rather than presenting an elaborate alternative account of a crime, defense attorneys should concentrate on refuting prosecutors' arguments and undermining their credibility (Greenberg & Ruback).

Though present results showed no effects of perceptions of the Prosecution/Plaintiff attorneys' opening statements on verdicts, tactics commonly utilized by defense attorneys during opening statements may have caused jurors to form impressions more rapidly. In the current study, defense attorneys may have been particularly disadvantaged by focusing their energy on opening statements if they advanced new or extreme theories. Defense attorneys also may have undermined their trial strategies during opening statements by inadvertently expressing a strong intent to persuade their audience or by promising, but failing to deliver, evidence that would exonerate their client. Attitude change and persuasion research indicates that either of these missteps may undermine attorneys' credibility and decrease acceptance of a message (see Eagly & Chaiken, 1993). Although data that would confirm these notions are unavailable, these current findings suggest that well-received opening arguments may not always translate into favorable outcomes and could in fact have the opposite effect.

Evidence presentation and preparedness. Perceptions of Defense attorneys' evidence presentation was a significant predictor of verdict, $B = -1.60$, $SE = .28$, $Wald = 32.61$, $p < .001$. As the perceived quality of the Defense attorneys' evidence presentation decreased by 1 unit, the odds an individual sided with the Defense decreased by a factor of .20. In addition, the Defense attorney's perceived level of preparedness was a significant predictor of verdict, $B = -1.23$, $SE = .33$, $Wald = 14.06$, $p < .001$. As the perceptions of the Defense attorneys' preparedness decreased by 1 unit, the odds that an individual sided with the Defense decreased by a factor of .29.

As with similar results regarding the Prosecution/Plaintiff attorneys, these findings are intuitive in the sense that case facts and evidence are the strongest predictors of jury verdicts (Feigenson, 2000). Jurors' ratings of "preparedness" may considerably overlap with ratings of evidence presentation, as an attorney who presents a strong and logical case is typically perceived as well-prepared. However, the influence of juror perceptions of evidence presentation and preparedness on verdicts was noticeably stronger for the Prosecution/Plaintiff than the Defense attorney. As previously noted, jurors may have assigned more weight to the Plaintiff/Prosecution attorneys' evidence presentation because the burden of proof rests with this side. Similarly, jurors may have been more likely to consider how well prepared the Prosecution/Plaintiff attorneys were in presenting their case. Conversely, because the Defense is not required to present any evidence, Defense attorneys' evidence presentation and preparedness may have been less important factors in jurors' decisions.

Sincerity and demeanor. Jurors' perceptions of the Defense attorneys' sincerity failed to significantly predict verdicts, as did jurors' perceptions of the Defense attorneys' demeanor. This is seemingly inconsistent with Hahn and Clayton's (1996) finding that aggressive defense attorneys were more likely to win their case. Further, the present findings revealed that Prosecution/Plaintiff attorneys rated as more sincere were less likely to prevail, possibly because they were correspondingly perceived as less confident and assertive. This discrepancy may be attributable to methodology: Hahn and Clayton manipulated the characteristics of defense attorneys in their study so that they were either perceived as highly passive or aggressive. In real-world settings, however, defense attorneys may sometimes be characterized as highly aggressive and less sincere than prosecution/plaintiff attorneys. In the current study, jurors may have been less influenced by perceptions that confirmed their expectations of prototypical defense attorney behavior. On the other hand, jurors may have been particularly impressed with a confident or aggressive Prosecution/Plaintiff attorney and subsequently allowed these characteristics to influence their decisions.

Conclusion

Taken together, these findings have implications for attorneys. Attorneys should generally focus on improving specific elements of their performance during trial and overall preparation, which predicted positive outcomes for both sides. General behavior and demeanor (with the potential exception of sincerity for the Prosecution/Plaintiff attorneys) are likely less important than performance in determining trial outcomes. However, attorneys also should recognize that certain elements of their performance (e.g., opening statements, closing arguments) may be more critical to their case than others, depending on which side they represent. The influence of attorney performance and behavior on trial outcomes may also be contingent on several other factors, such as case type, jury composition, and individual differences among jurors. Unfortunately, the current sample does not allow for intricate comparisons due to the low number of certain types of trials and limited juror information.

Ultimately, attorneys must be aware of how they are perceived by jurors in order to modify their behaviors and performance to promote success at trial. As previously discussed, Linz et al. (1986) found that mock jurors' evaluations of prosecuting attorneys tended to cohere with these attorneys' own self-evaluations, but that defense attorneys rated several aspects of their performance significantly higher than

did jurors. This discrepancy may be attributable to the solidarity of defense lawyering; defense attorneys may receive less feedback than prosecutors, leading to overestimations of the quality of their performance (Linz et al., 1986). All attorneys, but perhaps defense attorneys in particular, should consider more proactive means of soliciting feedback that will help them make favorable impressions on jurors. In addition to seeking the opinions of partners and trial participants, attorneys could also use “shadow jurors” to increase the accuracy of their self-perceptions. Shadow jurors may be community members or excused members of the venire who attend the trial and are instructed to consider all aspects of the case as if they were actual jurors (Zeisel & Diamond, 1978). Not only may shadow jurors provide feedback that is likely similar to the perceptions of the actual jurors, but they can also point out unfavorable aspects of attorneys’ behaviors and performance during trial so that they may be addressed early on. Though attorneys may lack the resources to employ shadow jurors in many cases, doing so periodically may significantly increase their current and future litigation success.

In sum, though case facts and evidence are the strongest predictors of trial verdicts (Feigenson, 2000), attorneys should not discount the influence of their behaviors and performance on jurors’ decisions. As described above, there are numerous ways in which attorneys can increase their awareness of how they are perceived by jurors, which may help maximize the likelihood of success at trial.

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Table 1

Trial Type by Year

Year	Trial Type	
	Criminal	Civil
1997	3	2
1998	2	1
1999	3	1
2000	3	10
2001	3	4
2002	5	5
2003	5	2
2004	4	4
2005	5	3
2006	7	2
2007	6	3
2008	7	0
2009	6	2

Note: N = 576. The number of criminal and civil trials was calculated prior to eliminating multivariate outliers or jurors that did not answer the survey.

Table 2

Mean and Standard Deviation Scores for Opening Statements, Evidence Presentation, Closing Statements, Courtroom Demeanor, Sincerity, Competence, and Preparedness by Attorney

	Prosecution/Plaintiff		Defense	
	M	SD	M	SD
Opening Statements	4.08	.68	4.07	.73
Evidence Presentation	3.94	.87	3.62	1.00
Closing Statements	4.15	.78	3.99	.89
Courtroom Demeanor	4.28	.76	4.11	.83
Sincerity	4.31	.70	4.04	.85
Competence	4.22	.80	4.15	.85
Preparedness	4.08	.92	4.00	.99

Table 3

Logistic Regression of Jurors’ Perceptions of Prosecution/Plaintiff and Defense Opening Statements, Evidence Presentation, Closing Statements, Courtroom Demeanor, Sincerity, Competence, and Preparedness on Verdict

	Prosecution/Plaintiff			Defense		
	B	SE	p	B	SE	p
Opening Statements	-.09	.29		1.95	.35	**
Evidence Presentation	.72	.26	*	-1.60	.28	**
Closing Statements	1.66	.30	**	-.14	.27	
Courtroom Demeanor	.10	.28		.06	.28	
Sincerity	-1.37	.35	**	-.07	.29	
Competence	.12	.33		-.21	.36	
Preparedness	1.17	.26	**	-1.23	.33	**

* p < .01; ** p < .001

Endnote

¹ 53 (9% of total sample) multivariate outliers from the Prosecution/Plaintiff model and 18 (4% of total sample) multivariate outliers from the Defense model were removed using a conventional process of removing cases with studentized residuals of ± 2 standard deviations above or below the mean (Cohen, Cohen, West, & Aiken, 2003). By removing these outliers, the Nagelkerke R² (a pseudo indication of how much variance in the dependent variable is accounted for by the independent variable) in the Prosecution/Plaintiff model increased from 21% in the original model (Model 1) to 54% in the adjusted model (Model 2). Similarly, removal of outliers in the Defense model increased the Nagelkerke R² from 25% in Model 1 to 38% in Model 2. Researchers believed that such increases in the Nagelkerke R² warranted the adoption of Model 2. Overall, the significance levels between Model 1 and 2 for both analyses did not significantly differ on any of the predictor variables, nor did any insignificant predictor variables become significant.

We asked three people to respond. Two are trial consultants (Leslie Ellis and Ellen Finlay). And for the first time in the pages of *The Jury Expert*--we asked a trial lawyer to respond as well. Mark Bennett shows us how it’s done.

Leslie Ellis responds to “The influence of jurors’ perceptions of attorneys and their performance on verdict” by Wood, Sicafuse, Miller and Chomos.

Leslie Ellis is a Jury Consultant at TrialGraphix. She has been studying jury and judge decision making for over 15 years, and consults on complex civil and white collar criminal matters.

The article by Wood, et al. addresses an issue that concerns many of our clients – that jurors will be overly influenced by their or opposing counsel’s personality, presentation style, etc. They are mostly concerned that whether the jurors like them or opposing counsel will have a significant impact on the verdict. In order to suss out the extent of that impact, attorney and/or corporate clients occasionally want us to ask jurors (real and mock) about their impressions of the lawyers. However, asking jurors which attorney or presentation style they liked better is almost a trick question, for the reasons outlined in the article. We often find that it’s not that they like an attorney and therefore they like that attorney’s case. Rather, jurors tend to prefer the attorney who presented the case they thought was more credible. It’s almost a halo effect. Further, jurors will find for an attorney they don’t like, if she has the better case. Alternatively, they may want to go get a beer with you, but it doesn’t mean they’ll find for you.

The exception to this general rule is when there is something about the attorney’s demeanor or personality that undermines the credibility of the case. If jurors decide an attorney isn’t trustworthy, that will bleed into their perceptions of the case. The motives and veracity of the whole case will be called into question. In one extreme example, we once worked on a case where the judge had to repeatedly remind jurors that the opposing counsel’s questions to witnesses were not evidence, because they often referred to information or events that just didn’t exist. Jurors quickly figured out that the attorney was misrepresenting events, and if they couldn’t believe everything he said, they couldn’t believe anything he said.

Another way in which an attorney’s demeanor can undermine his or her case is to show disrespect to the trial participants. We ask jurors to make an important decision, and they take that responsibility very seriously. They also know that the parties are adversaries. However, they also expect everyone to treat everyone else with respect, including opposing counsel and the other party. They also expect the litigants and counsel to take each other’s case just as seriously as we want the jurors to take them.

I don’t mean to undermine concerns about presentation style – the researchers did find that preparedness had a significant impact on verdict, and we’ve seen that over and over again. A more prepared attorney appears more competent and will present a more organized case. And a more organized case is usually the more understandable and persuasive case. Occam’s Razor (the law of economy) applies – jurors will lean toward the simpler explanation, until the simple explanation is deemed insufficient. I’m often asked questions like, “Should we have Attorney A or Attorney B handle this witness?” or “Should we have Expert X or Expert Z testify?” My response is always, “Who knows the material better, and is going to be more prepared and organized in how they present it?” The top three criteria in court are to be prepared, prepared and prepared.



As the authors noted, their study, and numerous others, show that evidence (and jurors' perceptions of the evidence) is the largest predictor of verdict, which is what we want to see. Their finding that the Plaintiff/Prosecution's closing argument was predictive of verdict is connected to the importance of the evidence needed to meet the burden of proof, and highlights the importance of the closing argument. While the plaintiff/prosecution's opening statement is merely a promise of what the evidence will show, the closing argument is when the party with the burden of proof gets to tell the jurors what the evidence did show, and what that evidence means for their verdict. Effective summations not only summarize the evidence, but tell jurors how to apply the evidence to their verdict forms. Remember, they don't know the rules of the game until the game is over. The closing argument is when you get to tell them how to keep score.

Ellen Finlay responds:

Ellen Finlay, JD, [juryfocus@yahoo.com] a recovering trial attorney, has practiced as a trial consultant throughout the U.S. since 1998. Her company, Jury Focus, is based in Houston, Texas. (info@juryfocus.com).

As someone who spent the first twelve years of my career trying cases in state and federal court in Texas and the last twelve plus years working as a trial consultant, I was keen to read the results of the research presented in this article. Frankly, I knew before reading it that I would have strong opinions about the topic based on my personal experiences. My initial reaction to the publication was to simply discount the findings based on concerns I had with the structure of the research. But, as someone wiser pointed out, criticism unaccompanied by constructive advice accomplishes nothing. So here goes.

I believe it would be helpful if someone with actual, real world experience in the courtroom helped design this type of research in the future. I say this because I believe many of my concerns over the design of this research project and the resulting analysis would have been anticipated by lawyers who have tried cases to a verdict or trial consultants who have suffered through those trials with them. Preferably more than a few cases.

First, I am skeptical of the results of any research on attorney performance that combines both criminal and civil jurors and verdicts in one study. Anyone who has spent any time dealing with these two areas of the law knows that everything about the two systems is different. This is especially true in cases involving allegations of violent crimes. I also question the results of any study based solely on federal court cases and federal court jurors. While I cannot speak for every jurisdiction, I can tell you that most federal court cases differ dramatically from state court cases in Texas. I cannot think of two worlds less alike when it comes to the practice of law. It would take hours to identify all of the ways these two worlds differ. And these differences impact not only the way the attorneys act (including their choice of language and style) but also what they are allowed to do and say. Most attorneys practice in state court where they are often afforded more latitude to, shall we say, "express themselves" and present their case as they see fit. Federal judges are far more likely to keep a tight rein on their courtroom and the attorneys' openings, closings and presentation of evidence.

It would also be helpful if the research were designed to tease out the possible differences and motivations of those jurors who agreed with the verdict rendered in their cases versus those who disagreed with the verdict. If someone is pro-prosecution before walking into the courtroom, are they more likely to approve of the prosecutor's opening argument? I suspect they are. I am not sure that a paper questionnaire filled out after a verdict is rendered is up to the task of digging deeply enough into the minds and motivations of the jurors. While trial attorneys are always looking for helpful ideas and strategies to increase their effectiveness at trial, I suspect the finding on page 12 that a defense attorney may be better off if he or she

presents a less than stellar opening will strike most practicing attorneys as a red flag and indication that there may be subtleties that are being missed as a result of the limitations of the questionnaires utilized for this research.

Let me address a few of the findings and comments that I know will not sit well with my colleagues. First, the researchers suggest that defense attorneys may overrate their own performance. Maybe this is true. We are trial lawyers after all and we have notoriously big egos. But, maybe the attorneys accurately assessed the quality of their overall performance but the jurors had a mind set to disagree with their case and this bled over to their retrospective assessment of the defense attorney's performance. A great attorney who gives a fine opening will not be able to convince the average juror that insurance companies are the good guys or that Bin Laden is just misunderstood. And the jurors' preexisting views of the defendants may well affect how the juror rates the attorney's performance. It is obvious that teasing out these factors in a controlled fashion may be impractical if not impossible. But, if the research cannot be designed to factor in this reality, then it is doubtful most attorneys will find the results terribly helpful or credible.

Second, the suggestion that jurors are more susceptible to closing arguments at the conclusion of trial and that their retrospective opinions about the quality of the closing arguments are significant predictors of the actual verdict will likely cause most attorneys to roll their eyes. The researchers attempt to explain this finding through considerations of recency and primacy effects. While such effects may play some role in the dynamics observed, it will be hard for most attorneys to ignore the obvious notion that a juror is more likely to applaud the closing of the attorney who voices their views about the case. As in "I totally agree with you Mr. Prosecutor. The defendant is a scumbag. And by the way, you rock." Again, which came first? The juror's opinion about the facts of the case or the juror's opinion about the attorney's performance? And how can you know this if you question someone about their views after the trial is over?

But the statements that will probably raise the most eyebrows of experienced attorneys are the multiple references to the possibility that a specific finding may be attributable in some way to a juror's application of the burden of proof. I want to meet those jurors. I want the opportunity to keep those jurors on one of my panels! I don't mean to be flip, but someone with years in the trenches will know that most jurors pay minimal attention to burden of proof.

Here's my bottom line. Jurors are complicated beings and all trials are not created equal. Therefore, this type of questionnaire administered to this combination of jurors AFTER they've reached a verdict is not calculated to provide data that will be meaningful to most attorneys.

Response to

The Influence of Jurors' Perceptions of Attorneys and Their Performance on Verdict

By Mark Bennett

Mark Bennett is a criminal defense lawyer in Houston, Texas, where he practices with his wife Jennifer, two brilliant beautiful children and two loyal Rhodesian Ridgebacks. Mark also writes the [Defending People blog](#), in which he explores, among other things, the incorporation of other technologies into trial practice.

As a criminal-defense trial lawyer, I have long said that talking to a jury after a verdict is a great way to be lied to. Go back in the jury room and listen to a jury, and one of two things happens: if your client was convicted, you did a terrific job ("I'd hire you myself!"), but the State just had too much evidence; if your client

was acquitted, your carefully crafted defense was something that the jurors thought of themselves, but it really wasn't important because the State just didn't have enough evidence.

Jurors' verdict motivations are elusive. "Lied to" is probably neither fair nor accurate. Jurors are untruthful not because they are dishonest, but because they aren't very self-aware—which is just fine with me. The best trial lawyering is transparent: jurors don't realize they've been persuaded, played, entranced, or otherwise hoodooed, and I prefer it that way (unless it's my adversary trying to do the hoodooing).



Here's my practical explanation of post-verdict feedback: jurors are given a rigid and sometimes complex set of rules for how they should make up their minds—the jury instructions—after they have made up their minds but before they are asked how they made up their minds. So when they are debriefed after reaching a verdict, they give an explanation that fits those rules, even if their decision-making process did not.

So we have *The Influence of Jurors' Perceptions of Attorneys and Their Performance on Verdict*; might it be vice versa? Do juror perceptions affect their verdicts, or do jurors' verdicts affect their reported perceptions? Chickens, eggs, and social-desirability responding.

If, instead of the article's unspoken premise that jurors are truthful when rating their perceptions of lawyers, we start with the premise that they are not; if, instead of asking how jurors' perceptions affect their verdicts, we ask how jurors' verdicts affect the stories they tell about their perceptions, the research still provides some interesting data.

After verdict, jurors tell a story in which the plaintiff's opening statement did not predict the verdict because they know that they're not supposed to have decided the case based on the opening statement. In this story, the plaintiff's evidence presentation and preparedness (measures reflecting the quality of the proof) correlate somewhat with the verdict because jurors know that they're supposed to have based their verdict on the evidence. The strength of the plaintiff's closing argument strongly predicted the verdict because the jurors know that they were supposed to have waited until after closing arguments to make up their minds. And so forth.

Jurors' recognition of their duties is not the only factor that might lead them to skew their story. Jurors might rate the defense attorney's opening statement better after a defense loss just to do something nice for her—as a sort of condolence prize. (A jury once told me after a guilty verdict that I had told my client's story so well in opening that they didn't believe him when he told the same story.)

It's not hard to explain jurors' responses as post-verdict satisficing. Are jurors actually telling a socially desirable story with their survey responses? If the research excludes the possibility of satisficing, the article doesn't tell us.

Assuming that the article's cause-and-effect assumption is correct, though, what is the lesson for the practitioner? I think the authors say it best: "Taken together, these findings have implications for attorneys." What implications? Well ... er ... um. Work on preparation and closing argument? I doubt that anyone needs this article to tell them that; beyond that, I hope that defense lawyers won't, based on the research, try to make worse opening statements and plaintiff's lawyers won't, after reading the article, try to be less sincere.

Aside from the cause-and-effect assumption, I have one quibble with the article. Wood and his colleagues lump personal-injury lawyers with prosecutors. I had to ask a Professional Jury Consultant, after reading it, whether the conventional wisdom is that criminal-defense lawyers are more like insurance-defense lawyers

than they are like personal-injury lawyers. Maybe the grouping makes sense (because, for example, both have the burden of proof), and maybe it is supported by the research in a way that is not revealed in the article.

But the tone of criminal-defense practice—representing the little guy against the institution—is more like that of plaintiffs’ PI practice than anything else. I would like to see the numbers reworked, with “lawyers for people” (criminal-defense and plaintiffs’ PI) grouped together, and “lawyers for institutions” (prosecutors and insurance-defense lawyers) grouped together, and see if any different or other interesting patterns emerge.

a reply from the authors...

The Influence of Jurors’ Perceptions of Attorneys and Their Performance on Verdict **Steve M. Wood, Lorie L. Sicafuse, Monica K. Miller, and Julianna C. Chomos**

The following discussion is our response to the comments and concerns of Mark Bennett, Leslie Ellis, and Ellen Finlay. We have four goals for this response. First, we aim to address some of the major concerns offered by the experts. Second, we look to clarify some of the results and implications in the manuscript. Third, we will elaborate on some of the discussion points raised by the experts. Finally, we offer areas and suggestions for future research studies examining the relationship between attorney performance and verdicts.

Concerns

The main concern of two of the experts was that we analyzed the criminal and civil trials together. Bennett suggests, “...I have one quibble with the article. Wood and his colleagues lump personal-injury lawyers with prosecutors... Maybe the grouping makes sense (because, for example, both have the burden of proof), and maybe it is supported by the research in a way that is not revealed in the article.” Additionally, Finlay states, “First, I am skeptical of the results of any research on attorney performance that combines both criminal and civil jurors and verdicts in one study. Anyone who has spent any time dealing with these two areas of the law knows that everything about the two systems is different.” These are astute observations and we agree that differences do exist between all aspects (e.g., attorneys, cases, judges) of criminal and civil proceedings.

However, we based our analysis on the procedures of prior research (e.g., Johnson, Wahlbeck, & Spriggs, 2006; Szmer, Johnson, & Sarver, 2007) containing information for both criminal and civil verdicts. We would be open to the possibility of re-analyzing the data with this suggestion in a future article in *The Jury Expert*.

Associated with the concern of combining criminal and civil trials, Bennett suggests, “I would like to see the numbers reworked, with “lawyers for people” (criminal-defense and plaintiffs’ PI) grouped together, and “lawyers for institutions” (prosecutors and insurance-defense lawyers) grouped together, and see if any different or other interesting patterns emerge.” Once again, this is a great suggestion and, if invited to do so, we will use this suggestion for a future article in *The Jury Expert*.

Another concern raised by the experts was that “jurors might rate the defense attorney’s opening statement better after a defense loss just to do something nice for her—as a sort of condolence prize.” While we agree that this may be an issue in post-trial interviews conducted by attorneys and trial consultants, the current study attempted to avoid satisfaction by giving the jurors the questionnaires away from the attorneys, not collecting personal juror information, and allowing only the courts and researchers access to the responses. However, as Bennett points out, the possibility of socially desirable responses is always present.

A final concern of the experts was that we collected the responses after the trial ended. Unfortunately for us (or fortunately because it added to the realism), we were not afforded the opportunity to gather these

responses at any other time. In a controlled environment, such as a university campus, we could have varied when we gave the jurors the questionnaires. Some jurors could have gotten them before deliberation and some after deliberation. However, the only way to achieve this manipulation would be for us to use *mock jurors* in a *mock jury* setting. As an aside, Mr. Wood has conducted a prior study in which he was able to vary when mock jurors rated the attorneys and gave their verdicts. In this mock trial, it did not matter (i.e., was not statistically significant) if participants filled out the questionnaires before or after they rendered their verdicts—the verdicts and attorney ratings were the same.

Clarifications

In addition to alleviating statistical and design concerns, there are two implications of our manuscript that we would like to clarify. First, there was a concern that our article was suggesting that defense attorneys make worse opening statements. We apologize if this is how the results came across, as this was not our intended message. This was an unexpected finding and we were attempting to explain why this might have occurred. A more general conclusion may be for defense attorneys to be cognizant of the fact that aspects of their opening statements may be related to final verdicts—a concept that researchers have been debating for some time. As Finlay correctly points out, “I suspect the finding on page 12 that a defense attorney may be better off if he or she presents a less than stellar opening will strike most practicing attorneys as a red flag and indication that there may be subtleties that are being missed as a result of the limitations of the questionnaires utilized for this research.” We agree that there are probably subtleties at work that we were unable to evaluate due to the secondary nature of the data set. Future research would benefit from attempting to parse out these subtleties.

There was also a concern that our article was suggesting plaintiff’s lawyers try to be less sincere. Once again, this was not our intended message. Rather, we would suggest that an attorney strike a balance between being sincere and assertive in the courtroom. As Ellis aptly puts it, “they may want to go get a beer with you, but it doesn’t mean they’ll find for you.”

Elaboration of Discussion Points

In their responses to our manuscript, the experts took the opportunity to expand on our discussion and offer their own commentary. These were very astute observations and we would like to expand on their points further.

Toward the beginning of his response, Bennett points out, “So we have *The Influence of Jurors’ Perceptions of Attorneys and Their Performance on Verdict*; might it be vice versa? Do juror perceptions affect their verdicts, or do jurors’ verdicts affect their reported perceptions? Chickens, eggs, and social-desirability responding.” Finlay supports this contention by stating, “Again, which came first? The juror’s opinion about the facts of the case or the juror’s opinion about the attorney’s performance? And how can you know this if you question someone about their views after the trial is over?” These are both very good points. The possibility exists that it could be a situation in which jurors change their stories in order for it to fit within a preferred cognitive framework. Past social cognition research has found that individuals will often make biased searches through their memories in order to find information that fits with their preferred outcome. For example, a juror that has voted in favor of the defense may search their memory for instances to support the contention that the defense attorney was strong, while omitting contradictory information.

Ellis makes several points that are supported by our research. For example, she states, “We often find that it’s not that they like an attorney and therefore they like that attorney’s case. Rather, jurors tend to prefer the attorney who presented the case they thought was more credible... The exception to this general rule is when there is something about the attorney’s demeanor or personality that undermines the credibility of the case...Jurors quickly figured out that the attorney was misrepresenting events, and if they couldn’t believe everything he said, they couldn’t believe anything he said.” We could not agree more with these statements

and believe that they represent the crux of the current research. That is, when attorneys present themselves in front of a jury, the jurors are paying attention to more than the case evidence. They are evaluating the attorney also. Do I like his or her demeanor? Do I believe he or she is well prepared? Ultimately, do I believe that he or she is credible as an attorney? These questions are being asked and answered in the minds of the jurors as they simultaneously attempt to process the case information. As our research and past research has shown, the answers to these questions may lead jurors to process the case information differently.

Future Research

To further address some of the concerns of the experts, we propose future research directions. First, to address Finlay's assertion that significant differences exist between federal and state courts, future research should examine verdicts from state courts as a comparison sample. Second, Finlay suggests that, "If someone is pro-prosecution before walking into the courtroom, are they more likely to approve of the prosecutor's opening argument?" This is a great suggestion and future studies should administer pre-trial questionnaires to assess pre-existing biases and how they may influence verdicts. There is some literature to attest to pre-existing beliefs and verdicts, but more research is needed regarding how these beliefs may influence perceptions of attorney performance. Finally, we previously discussed that there was a concern that we collected responses after the trial had concluded. This creates a situation of "the chicken or the egg." Future studies should vary the administering of questionnaires by requiring some jurors to rate the attorneys' performance before deliberation and some jurors to rate the attorneys' performance after deliberation.

As Finlay properly sums up, "Jurors are complicated beings and all trials are not created equal." Absolutely, the field of psychology has tried for decades to explain decision-making, and thousands of studies pieced together have not even come close to explaining it fully, because of the complicated nature of humans.

Therefore, as researchers, we face the same challenge when we study jurors. Several studies are needed to create a bigger picture and explain all the caveats. Thus, this study (as with all studies) has some limitations, and future studies and analyses can fill in the gaps to help us really tell what is going on.

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Editor's Note

2011. That happened fast! But we're ready (more or less). We're doing new things here at *The Jury Expert* in 2011. And we are excited about them. In our next issue, we'll have professional layout so you won't have to put up with my amateurish efforts any longer. (You are no more relieved than I!) And. Also in our next issue, we expect to have a new web design that will just amaze you. It will be beautiful. Trust me.

Also in 2011--we are introducing a new sort of respondent to the articles we publish from academics. So far, we have always had trial consultants respond to those pieces with thoughts on how they would (or would not) use the research findings in court. Now--we are adding in trial lawyers. Have you wished you could have your [tactful] say? Now you can. Just send me an email (rhandrich@keenetrial.com) and let me know you would like to respond to a *Jury Expert* article. You can see a how-to from Mark Bennett (a Houston criminal defense lawyer) in this issue. We thought it would be interesting to see how the thoughts of trial lawyers diverged and/or converged with the thoughts of trial consultants. So line up, oh gentle readers. Show us what you've got.

So in this issue of *The Jury Expert* you will find ways to do what you do better, smarter, and more efficiently. You will find ways to keep up with what's new, pack your bag (lightly), craft a SJQ for white collar crime cases, do better voir dire, consider how bifurcation interacts with hindsight bias, and get practical and useful tips for cheap DIY trial graphics. Just our effort to help you maintain your resolutions to do what you do better, smarter, and more efficiently.

Welcome to 2011. Welcome to another year of terrific content and thought-provoking commentary from *TJE*.

[Rita R. Handrich, Ph.D., Editor](#)

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