

ELM in the Courtroom: Application to Trial Juries

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by

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Introduction

Under the United States legal system, ordinary people are regularly charged with the task of determining the future of their peers by way of a jury trial. These jurors, “who lack legal training,” must, “make sense of conflicting facts, and apply legal rules to reach a verdict” (Bornstein and Greene 63). Due to this overall lack of legal training, the ability of jurors to make such crucial decisions, especially in criminal trials, is often questioned. Many even argue that judges, who have received a formal legal education as well as extensive training, should have the final word on court rulings. Although it is unrealistic to provide the entire American population of potential jurors with legal preparation, we can begin to ensure that decisions are being made in a fair and accurate manner by uncovering *how* jurors make decisions while participating in a jury trial.

Along with reaching a verdict, a multitude of decisions must be made by a juror throughout a trial. This setting presents an ideal situation to explore and implement the framework of the elaboration likelihood model (ELM) of persuasion. Developed primarily by Richard Petty and John Cacioppo, ELM is based on the idea that, depending on a number of factors, such as motivation and ability to evaluate the communication presented, receivers of information will differ in the degree to which they are likely to engage in elaborative thinking (Petty and Cacioppo 129). Further, “under conditions of relatively low elaboration...persuasive effects will be much more influenced by the receiver’s use of simple decision rules or heuristic principles. These heuristic principles (or heuristics, for short) represent simple decision procedures requiring little information processing” (O’Keefe 148). Examples of heuristics include deciding to side with a speaker’s advocated position simply because you like them as a person, or believing that an item is of higher quality because it is priced higher. The nature of a

jury presents a probable situation for heuristic based decision-making, as jurors often have little prior knowledge on the subject at hand, and will thus be likely to engage in low elaboration. Prior knowledge plays a key role in influencing elaboration, as the more extensive the receiver's prior knowledge on the topic, "the better able the receiver is to engage in issue-relevant thinking" (O'Keefe 144). Additionally, as more issue-relevant thinking occurs, "the influence of argument strength on persuasive effects increases, and the influence of peripheral cues decreases," allowing for a more informed and correct decision to be made (O'Keefe 144).

Petty and Cacioppo further break down this process by presenting the central and peripheral routes to persuasion, and explaining that the amount of elaboration that occurs when one is presented with a given subject will determine how the persuasion process will function. The central route of persuasion occurs when, "motivation and ability to scrutinize issue-relevant arguments are relatively high" (Petty and Cacioppo 131). Conversely, persuasion can also occur through the peripheral route. As the terminology suggests, this persuasion process occurs secondarily or indirectly, and usually when elaboration is relatively low. In this case, persuasion "occurs when motivation and/or ability are relatively low and attitudes are determined by positive or negative cues...which either become directly associated with the message position or permit a simple inference as to the validity of the message" (Petty and Cacioppo 132). Obviously in a courtroom setting, persuasion through the central route is ideal. To obtain this, however, one must determine the combinations of language and argument structure that produce the highest amount of elaboration.

Literature Review

To understand how jurors make decisions, we must first evaluate how different factors of communication cause either central or peripheral persuasion to occur. We can begin to understand this by considering two questions: (1) how do different types of language effect the receiver's ability to be persuaded and by what means, and (2) how do various argument types effect the receiver's ability to be persuaded.

How do different types and uses of language effect receiver persuasion?

Types and uses of language can be defined by a range of terms, from syntax to verbal hesitations to explicit ideas. Lawrence A. Hosman, Thomas M. Huebner, and Susan A. Siltanen investigated the use of power language and conducted a study considering the effects of such language alongside ELM, hypothesizing that power-of-speech style, need for cognition, and argument quality on participant's perceptions of a speaker would interact to affect cognitive responses and attitude toward the topic (361). The independent variables included argument strength and powerful vs. powerless speech style, as well as determining need for cognition prior to the study. As a manipulation, they inserted 15 to 16 hedges, hesitations, and tag questions into the powerless speech. The results revealed that the participants found, "low power-style [to indicate] significantly less control over others than a high-power style," and "low-strength arguments [to be] perceived as less sociable than high-strength arguments" (Hosman, Huebner, and Siltanen 371). These findings show a direct, positive relationship between argument strength and power-of-speech style with one's attitude toward the topic. However, it also became apparent that the positive thoughts about the speaker's personal attributes generated by power-of-speech style *negatively* affected one's attitude toward the topic (Hosman, Huebner, and Siltanen 374). The authors believe this could be due to listeners becoming concerned or threatened by a

speaker's high-power style, an important implication for speaker style in a courtroom setting, and the reverse effects this style could have on a jury.

Conducting a similar study prior to that of Hosman, Huebner, and Siltanen, John R. Sparks and Charles S. Areni found similar results involving this speech style. Sparks and Areni's experiment applied ELM to determine how message style influences persuasion along with message substance. Although this study does not apply directly to a courtroom setting, the consideration of language power is an important factor to consider in law-based arguments. In this study, the focus was placed on, "possible roles for language power under low and high levels of elaboration likelihood: as a peripheral cue, a biasing influence, and as an inhibiting influence" (Sparks and Areni 41). *Powerless language* was operationalized as containing nonverbal hesitations, verbal hesitations, deictic phrases, tag questions, hedges, and intensifiers, whereas *powerful language* exhibited a clear absence of such markers. Once again, data supported the idea that language power exerts a significant effect on attitude. Those exposed to powerless language expressed a more negative attitude toward the subject than those exposed to powerful language (Sparks and Areni 50). The data also strongly suggested that language power serves as a peripheral cue, and thus, "when message recipients were low in ability to cognitively respond to message arguments, powerless language negatively affected attitudes toward the advocated position" (Sparks and Areni 54). This is one of the most relevant findings in this study when considering jury persuasion, as in a situation where a jury member is unable to process an argument; the presence of powerless language may cause them to take a position against what is being advocated through the peripheral course of persuasion.

The actual words used, rather than how they are delivered, can also have a substantial effect on persuasive ability. One quality of information that determines its persuasive impact is

its vividness (“Vivid Persuasion” 659). Brad E. Bell and Elizabeth F. Loftus hypothesized that witnesses offering vivid testimony may be more persuasive than the same testimony offered in a pallid manner. They based this idea on the variables thought to mediate vividness, which they broke into, “three conceptually distinct categories: (1) inferential, (2) attentional/memorial, and (3) affective” (“Vivid Persuasion” 660). Additionally, they discovered that vividness influences inferences about the communicator’s credibility. The results of their study concluded that, “subjects determined the responsibility of the parties according to the relative credibility of the eyewitness, which in turn was determined by the relative vividness of the testimonies on each side” (“Vivid Persuasion” 660). Subjects explained that they believed an eyewitness had a better memory for what the culprit looked like if they gave a vivid testimony and offered several details. The implications of this study in determining the most persuasive testimony-related language style are explicitly stated by Bell and Loftus, in that, “vivid information presented at trials may garner more attention, recruit more additional information from memory, cause people to spend more time in thought, be more available in memory, be perceived as having a more credible source, and have a greater affective impact” (“Vivid Persuasion” 663).

A final consideration for the effect of language on persuasion impact is the use of language directed at the jury. Borrowing from ELM, Collin Richards Payne hypothesized that, “for jurors who like to think, strong plaintiff arguments will be strengthened and weak defense arguments will be weakened when both advocates include the variables of ‘personalized language’, ‘forewarning’ of an opposing advocate’s attempt to persuade, and no distractions” (310). By “jurors who like to think”, Payne is referring to those defined by Petty and Cacioppo as engaging in high-elaboration. Payne’s study found support for the idea that jurors who engage in this level of elaboration found strong plaintiff opening and closing arguments that included

‘personal language’ and a ‘forewarning’ of the weak defense’s attempt to persuade as beneficial for the plaintiff trial outcome (Payne 311). However, the results also indicated that this combination of jury interaction is beneficial *except* when the plaintiff objects to weak defense witness communication. Additionally, those participants that indicated having lower or higher education levels had a more difficult time distinguishing between strong and weak arguments than those who indicated having a moderate level of education. Payne’s study not only offers suggestions for the types of language an attorney should use when addressing the jury, but also offers insight as to the types of jurors an attorney would want to select for the highest possible amount of elaboration, and thus central route persuasion, to occur.

How do various argument structures effect receiver persuasion?

Alongside language style and use, argument structure plays a key role in how receivers hear and then process an argument, and ultimately how the persuasive impact affects them. In a study by Neil Brewer and R.M. Hupfeld, mock juror’s judgments of witness effectiveness, probability that the defendant committed the crime, and verdict were examined in relation to the interaction of testimonial consistency and witness group identity (493). Brewer and Hupfeld found a strong relationship between witness effectiveness and testimonial consistency, with, “consistent testimony perceived as more effective than inconsistent testimony. For inconsistent testimony, witness effectiveness was perceived as relatively low” (503). Moreover, a consistent prosecution testimony resulted in a higher perceived probability that the defendant committed the crime, while inconsistent prosecution witnesses were judged as low in effectiveness, with the defendant considered unlikely to have committed the crime (Brewer and Hupfeld 506).

This study also demonstrated key concepts established in the ELM framework. Heuristics come into play as a jury member who is unable to process the given information will often base

the credibility of a witness on their perceived likeness to the witness. Brewer and Hupfeld demonstrated this tendency, manipulating the witnesses so that the mock-jurors in their study rated themselves as closest to the designated in-group witness, less close to the designated neutral witness, and least close to the designated out-group witness. Further, in-group witnesses were perceived as more effective than out-group witness, with in-group witnesses with consistent testimony rating as highly effective (Brewer and Hupfeld 503).

Argument structure in terms of strong versus weak arguments can also determine the amount of elaborative thinking that takes place. H. Allen White brought together ELM and the third-person effect, which is the idea that one is expected to believe that others are more likely to be persuaded by an issue than they themselves are (558). White hypothesized that a message evaluated as being weak would be perceived by the participants as having a greater impact on others than the self, whereas a message evaluated as being strong would be perceived as having a greater impact on the self than on others (White 560). The results of the study conducted by White supported this hypothesis, which presents an interesting viewpoint when considering the makeup and role of a jury. Since a jury includes multiple people, the third-person effect would make reaching a consensus a challenging task, especially if jurors differ in their ability to distinguish strong or weak arguments.

The consideration of information surrounding the main argument presented forms a third argument structure. In another study conducted by Brad E. Bell and Elizabeth F. Loftus, they present the idea of *trivial persuasion*, in which, “the minor details that a communicator reports might be as influential as information that has genuine significant value” (670). Thus, they go on to hypothesize that jurors may, “infer that the amount of detail *reported* reflects a witness’s memory for details...[and], in turn, reason that a witness who remembers details must have a

good memory for central objects” (“Trivial Persuasion” 670). The study found that participants were more likely to see the defendant as guilty when the prosecution offered a high amount of detail, as well as rating the defendant’s guilt in the direction of being *guilty beyond doubt* (“Trivial Persuasion” 670). The degree of detail in eyewitness testimony was found to have a reliable effect on judgments of guilt, and thus shows the persuasive effect of adding additional information to pad the main argument.

Clearly, a number of studies have been conducted, many using the ELM framework, to determine various relationships between language style and use, argument structure, and social phenomena, and their persuasive impact on the general public. However, the majority of these studies solely consider witness testimonials, and have yet to fully examine opening and closing arguments presented by attorneys during trial. Thus, the aim of this experiment is to determine, in a courtroom setting, if presenting an opening argument with explicit language and a small amount of evidence is more or less effective in persuading the jury than presenting an opening argument using implicit language and a large amount of evidence. Will jurors side with a opening statement that is explicitly stated as it allows for less elaborative thinking, or will the elaborative thinking required by an implicit argument result in the juror also reaching the implied conclusion through high elaboration?

Hypothesis 1: If the participants were to centrally make decisions, the arguments with the greatest amount of evidence should trump the alternative argument presented. Any *Implicit* or *Evidential Explicit* argument should be chosen as the correct side when paired with an *Explicit* argument.

Hypothesis 2: The perceived strength of evidence for either side, both individually and in comparison to the opposing side, will have a predictive effect on the guilty or not guilty verdict. Stronger evidence in favor of the prosecution will result in a guilty verdict, while stronger evidence in favor of the defense will result in a not guilty verdict.

These aforementioned research questions and hypotheses were considered in the following pilot study.

Method

Design

This pilot study used a between-subject design, with each participant only receiving one of nine treatments. The independent variables are the type of argument presented (*explicit* or *implicit*) and the amount of evidence presented (*minimal* or *a great deal*). The dependent variables are defendant verdict (*guilty* or *not guilty*), how confident the participant feels about this verdict, and the number of subject-relevant thoughts produced by the participant.

Materials

To conduct this experiment, six versions of an opening statement of a fictitious court case were used. The opening statements were obtained from Stanford University's Mock Trial program and were altered for the purpose of this study. The opening statements aligned with one of the following six conditions: *Prosecution Explicit* – explicitly stating that the defendant is guilty with minimal evidence, *Prosecution Evidential Explicit* – explicitly stating that the defendant is guilty with a great deal of evidence, *Prosecution Implicit* – a great deal of evidence presented against the defendant's innocence but not explicitly stated, *Defense Explicit* – explicitly stating that defendant is innocent with minimal evidence, *Defense Evidential Explicit* – explicitly stating that defendant is innocent with a great deal of evidence, and *Defense Implicit* –

a great deal of evidence presented supporting the defendant's innocence but not explicitly stated (see Appendix A).

Sample

The sample was made up of approximately 113 California Polytechnic State University, San Luis Obispo students, gathered from a total of five COMS 101 and 102 classes. These are lower-division, general education classes, and thus contained students from varying majors. As college students can be selected for jury duty, they represent a true sample of potential members of a courtroom jury. The sample contained 66 females and 47 males, ranging in age from 18 to 22 years old ($M = 19.14$). The ethnic breakdown was as follows: 82.3% White ($n = 93$), 6.2% Asian ($n = 7$), 0.9% Hispanic/Latino ($n = 1$), 8% multiracial ($n = 9$) and 2.7% other ($n = 3$). The sample was also asked to provide information as to their political affiliation: 32.7% Republican ($n = 37$), 31.9% Democrat ($n = 36$), 9.7% Independent ($n = 11$), 23% not interested in politics ($n = 26$), and 2.7% other ($n = 3$). Finally, the sample was also asked to identify with one of the following traits: 9.7% very liberal ($n = 11$), 31% somewhat liberal ($n = 35$), 35.4% moderate/middle of the road ($n = 40$), 19.5% somewhat conservative ($n = 22$), and 4.4% very conservative ($n = 5$).

Procedure

Two of the six conditions, or one of nine pairings, were randomly presented to each student. The treatment combinations were *Prosecution Explicit + Defense Implicit* ($n = 19$), *Prosecution Implicit + Defense Explicit* ($n = 13$), *Prosecution Evidential Explicit + Defense Implicit* ($n = 13$), *Prosecution Implicit + Defense Evidential Explicit* ($n = 12$), *Prosecution Implicit + Defense Implicit* ($n = 11$), *Prosecution Explicit + Defense Evidential Explicit* ($n = 11$),

Prosecution Evidential Explicit + Defense Evidential Explicit (n = 11), *Prosecution Explicit + Defense Explicit* (n = 11), and *Prosecution Evidential Explicit + Defense Explicit* (n = 12).

Each student received a typed copy of the two opening statements they were randomly assigned, as well as a short survey (see Appendix B). They were instructed to read the two arguments, and then fill out the survey. The survey contained nine demographic related questions, two Likert-scale questions meant to gauge whether they believe the defendant is guilty or innocent and how confident they are in their decision, and two short-answer questions meant to determine how the student came to their decision and the quality of the evidence in each statement, as well as an area for additional comments. This survey was meant to help determine whether their decision was made centrally or peripherally, as well as which argument conditions were the most persuasive.

Results

Quantitative

Hypothesis 1 investigated whether the conditional elements would predict a guilty or not guilty verdict. If the participants were to centrally make decisions, the arguments with a great deal of evidence should trump the alternative argument presented. For example, if one was presented with *Prosecution Explicit + Defense Implicit* or *Prosecution Explicit + Defense Evidential Explicit*, the participant should choose a not guilty verdict. Conversely, if the participant was presented with *Prosecution Implicit + Defense Explicit* or *Prosecution Evidential Explicit + Defense Explicit*, they should choose a guilty verdict. Unfortunately, this hypothesis was not significantly supported by the data gathered. A chi-square test was used to determine whether there was a significant difference between the condition and a guilty or not guilty verdict. The difference was not statistically significant, $\chi^2 = 17.63(16)$, $p > .05$. However, it is

worth looking at the variations in verdicts for the *Prosecution Implicit + Defense Explicit* condition. This condition produced 9 guilty verdicts and 4 not guilty verdicts, which aligns with the initial hypothesis made in this pilot study.

Table 1. Condition x Guilty/Not Guilty Chi-Square Test

| | Value | df | Asymp. Sig. (2-sided) |
|------------------------------|---------------------|----|-----------------------|
| Pearson Chi-Square | 17.623 ^a | 16 | .346 |
| Likelihood Ratio | 14.458 | 16 | .565 |
| Linear-by-Linear Association | .001 | 1 | .979 |
| N of Valid Cases | 113 | | |

Unexpected results also came about for a number of conditions. The *Prosecution Implicit + Defense Implicit* condition produced 3 guilty verdicts and 8 not guilty verdicts. Conversely, the *Prosecution Explicit + Defense Evidential Explicit* condition produced 8 guilty verdicts and 3 not guilty verdicts. There are additional indications of this occurrence as the *Prosecution Implicit + Defense Explicit* condition produced 9 guilty and 4 not guilty verdicts. This reveals that the prosecution argument was more likely to persuade the reader in conditions where the defense explicitly stated their position, with or without the existence of concrete evidence.

Free Response

The final research question presented in this study investigated the relationship between the perceived evidence strength and guilty or not guilty verdict. Hypothesis 2 stemmed from this question, stating that the conditions with an *Implicit* or *Evidential Explicit* argument paired with an *Explicit* argument should (a) be perceived to have a greater deal of evidence presented in the aforementioned conditions, and thus (b) receive more verdicts in favor of that side. A chi-square test was used to determine whether there was a significant difference between the perceived

evidence strength and a guilty or not guilty verdict. The difference was statistically significant, $\chi^2 = 52.56(8)$, $p < .001$.

Table 2. Guilty/Not Guilty Verdict x Perceived Evidence Strength Chi-Square Test

| | Value | df | Asymp. Sig. (2-sided) |
|------------------------------|---------------------|----|-----------------------|
| Pearson Chi-Square | 52.556 ^a | 8 | .000 |
| Likelihood Ratio | 49.677 | 8 | .000 |
| Linear-by-Linear Association | 2.022 | 1 | .155 |
| N of Valid Cases | 113 | | |

Discussion

Although the expected differences between the conditions and guilty/not guilty verdicts were not significant, this pilot study offers a number of implications for argument structure and evidence use in courtroom opening arguments, as well as the types of processing that occur in such situations.

From the data gathered, the number of arguments listed for or against the defendant by the participants ranged from one to six, with varying amounts of detail. Relating to Hypothesis 1, it was apparent that many participants referred back to the documents to gather reasons and to cite evidence, or lack thereof, presented by either side. The number range of arguments somewhat depended on the condition the participant received, but seemed to vary by individual participant as well. Although jurors are not presented with physical copies of attorneys' opening statements as simulated in this study, they would hypothetically be provided with all evidence presented by both sides throughout the trial once it is time for deliberation to take place.

In relation to Hypothesis 2, Table 3 gives a breakdown of the participants' verdicts in relation to the perceived strength of the evidence presented by either side. Of the 60 participants who found the defendant to be guilty, 48 explicitly stated that the prosecution had better evidence, 36 of whom also mentioned issues with the evidence and arguments presented by the defense. Of the 52 participants who found the defendant to be not guilty, 16 found the prosecution and defense evidence and arguments to be of equal strength, and 23 explicitly stated that the defense had better evidence. The large number of participants who voted not guilty and found evidence to be equal across the board presents an interesting area for consideration. Throughout the short answer responses given to the question of why or how they came to their decision, a number of participants cited the requirement of the prosecution in a court of law to prove that the defendant is guilty beyond a reasonable doubt. For example, one participant who received the *Prosecution Explicit + Defense Implicit* condition cited the following as the reasoning for their not guilty verdict, "(1) There wasn't conclusive evidence that it was for sure [the defendant], (2) she was not proven guilty, and innocence until proven guilty should be upheld, (3) evidence must be beyond reasonable doubt, and it was not." Another participant presented similar reasoning, stating that, "the prosecution did not seem to have sufficient evidence to prove beyond reasonable doubt that the defendant was guilty." Presumably, if the evidence on both sides is perceived as equal, the prosecution has not succeeded in this requirement. This is a positive implication for trial juries, as this provides potential, yet non-conclusive, evidence that this is a concept highly elaborated on by jurors.

Table 3. Guilty/Not Guilty Verdict x Perceived Evidence Strength Crosstabulation

Count

| | Evidence Strength | | | | | Total |
|------------|---------------------------------|-----------------------------|----------------------------------------|------------------------------------------------|------------------------------------------------|-------|
| | Prosecution has better evidence | Defense has better evidence | Prosecution and Defense evidence equal | Prosecution better, mentions issues w/ Defense | Defense better, mentions issues w/ Prosecution | |
| Guilty | 12 | 1 | 10 | 36 | 1 | 60 |
| Not Guilty | 5 | 6 | 16 | 8 | 17 | 52 |
| Total | 17 | 8 | 26 | 44 | 18 | 113 |

The participants' perceptions of evidence strength are also concurrent with the results of Bell and Loftus' study on vivid persuasion. As previously discussed, Bell and Loftus found that "vivid" details were perceived as more credible, which then provided credibility for whomever was presenting the information. In the *Implicit* and *Evidential Explicit* arguments, the statements were manipulated to provide a large amount of vivid, concrete detail, and thus were often perceived as providing stronger evidence. These conditions also provided minor details, such as the plaintiff's home address, a visual account of the plaintiff's home after the police arrived, and the names of several secondary witnesses. Bell and Loftus also found evidence supporting the idea that the presence of minor details might be as influential as information with actual significant value.

However, the findings discussed above were inhibited from being fully conclusive by a number of limitations. The most prevalent limitation throughout this pilot study was the sample size. Replications of this study would need at least triple the amount of participants per condition to receive any significant support for the given hypotheses. Although some of the data suggested a potentially significant relationship, the numbers were not enough to confidently produce

generalizable conclusions. Additionally, the population of Cal Poly, San Luis Obispo students that the sample was drawn from does not present a generalizable population for the implications of this study. With over 82% of the sample being White, middle or upper class college students, this study surveyed a very specific portion of the United States population, and possible jury members. The fact that all of the participants used are in the process of receiving a college education also sets them apart from the general population of the United States. Access to this specific population was also limited, as the number of COMS 101 and 102 professors who were able to conduct this experiment during class time was very restricted due to the time constraints of the quarter system.

Additional limitations were presented by the measures used to collect the data. For example, the conditions were not checked for successful manipulation prior to administering the experiment, so the conditions could have not been distinguished enough in their specified category. The short answer questions also presented information that could have been coded in a number of different ways, and was not easily categorized. The data could be more consistent if these short answer questions were altered to require more specific quantitative and qualitative answers. Future research is necessary to revise this method of gathering subject-relevant thoughts.

Prior research on this subject also brings forth future considerations for this study. As discussed earlier, Brewer and Hupfeld found significant effects of in-group and out-group behavior amongst mock jurors. Although their study explored this concept in relation to witness testimony, the findings can be generalized to the defendant. The defendant in this fictitious case is a middle-aged woman who is married. It would be difficult for most college students, such as those used in the sample, to relate directly to the defendant, and thus, she could potentially be

likened to an out-group witness. However, if the sample had been made up of married women, ages 30-50, the ability of the sample to relate to the defendant would be entirely different. Depending on the sample, the defendant could be likened to either an in-group or out-group witness, which could greatly affect the juror's verdict.

Conclusion

The Sixth Amendment of the United States Constitution secures citizens of the United States the right, among others, to an impartial jury. The amendment reads,

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witness in his favor, and to have the Assistance of Counsel for his defense (US Const., amend. VI).

Since trial by jury is an integral part of our legal system, continuous efforts should be made to try and improve upon the way juries make decisions and maintain impartiality. Although the court cannot fully control the language and argument structures attorney's use in their statements throughout a trial, the court can work to train jury members in central decision-making and shed light on latent underhanded persuasive tactics being implemented by attorneys. This is especially important because in the most extreme cases, a jury can potentially determine whether another human being will live or die.

Although jurors may believe they have an impartial stance in a trial, this study exposed persuasive methods, such as argument structure and use of language, which can be used by

attorneys to subconsciously sway a juror's decision. Providing juries with a basic framework for how decision-making occurs in accordance with the elaboration likelihood model of persuasion, specifically the occurrence of peripheral and central decision-making, prior to the trial may allow for jurors to avoid the unintentional use of heuristics. The Constitution requires an impartial jury, and the entire judicial system would benefit greatly from an effort to produce a jury educated in the ways that their impartiality can be subconsciously impacted by statements of counsel during trial. Through the exploration of the positive and negative power that can result from the relationship between persuasion, language, and argumentation in a courtroom setting, we can continue to work towards producing the unbiased and trustworthy trial by jury system our forefathers envisioned.

Appendix A – Manipulations

Prosecution Implicit (PI) Opening Statement

It's October 20th, 2001 just after 11:00 pm at 2211 Botwin Drive, right here in Agrestic. Police cars, their lights still flashing, are parked along the street leading up to the house. Inside, police officers are securing the scene, dusting for fingerprints, searching for evidence. Standing in the corner speaking with a detective are Ryan and Sue Moore. They live at this address with their three children. And right now, in the bedroom where their thirteen-year-old daughter should be sleeping is a ransom note demanding a quarter of a million dollars for her return.

Now, the defense has already agreed that Mary Moore was taken from her home on the night of October 20th, 2001, meaning that as the prosecution we have one task: to reveal who took thirteen year-old Mary Moore from her room and left that ransom note in her place. Now, as the state, we have a responsibility to prove that to you beyond any reasonable doubt. And that is exactly what we will do.

Today you'll learn that in October of 2001, the defendant, Jane Johnson's, husband desperately needed money for a life-saving operation that cost least \$250,000. That was money Jane Johnson did not have. And so you'll discover that the defendant devised what she thought was the perfect plan: to kidnap Mary Moore and hold her for ransom. We're here today because she could not conceal the evidence of her crime.

In fact, as today's trial unfolds it will become clear that the following facts are not in dispute:

First, that Mary Moore' kidnapper drugged her, using a powerful sedative called chloroandromine. Second, that Mary Moore was kidnapped between 8:30 and 11:00PM on the night of October 20. And third, that Mary Moore was confined by her kidnapper at the Hampton Hotel in Treeport. Today we will prove to you how each of those three facts points to the defendant's guilt.

First, the drug – chlorandromine. The evidence will show that not only was that drug found on Mary Moore pillowcase and in her bloodstream; it was also found inside the defendant's car. You'll hear from the lead investigator in Mary's kidnapping, Detective Dave Dunn, who will tell you that he searched the defendant's car and found residue from the chemical chlorandromine on the defendant's steering wheel and on both drivers' side door handles.

Second, the time that Mary Moore was kidnapped. Today you'll learn that the defendant was absent from her home for at least an hour during that same period. The defendant told the police that she only left her home to run an errand to the local liquor store. But today, you'll hear today from the liquor store clerk, Rubin Rojas, who will tell you that his store is only twenty minutes from the defendant's house, and that on the night October 20th she rushed into his store, cut another customer in line, and rushed out. Today you'll learn that an errand that should only have taken 40-50 minutes took the defendant over an hour the night Mary was kidnapped.

Finally, the hotel where Mary Moore was found. You'll hear from an employee who works at that hotel – Sarah Smith, who will explain how she found Mary Moore in the bathroom of room 312. Ms. Smith will explain that room 312 was rented under a false name, and that she saw Jane Johnson at the Hampton Hotel during the same weekend that Mary Moore was confined there.

Three facts that are not in dispute. Three facts that clearly point to one conclusion and one culprit. A perfect plan – but carelessly concealed.

Prosecution Evidential Explicit (PEE) Opening Statement

It's October 20th, 2001 just after 10:00 pm at 2211 Botwin Drive, right here in Agrestic. Flashing police cars are parked along the street leading up to the house. Inside, police officers are securing the scene, dusting for fingerprints, searching for evidence. Standing in the corner speaking with a detective are Ryan and Sue Moore. They live here with their three children. And right now, in the bedroom where their thirteen-year-old daughter should be sleeping is a ransom note demanding a quarter of a million dollars for her return.

Now, the defense has already agreed that thirteen-year-old Mary Moore was taken from her home on the night of October 20th, 2001, meaning that as the prosecution we have one task: to prove that it was the defendant, Jane Johnson, who took thirteen year-old child from her room and left that ransom note in her place. Now, as the state, we have a responsibility to prove that to you beyond any reasonable doubt. And that is exactly what we will do.

Today you'll learn that in October of 2001, the defendant's husband desperately needed money for a life-saving operation that cost least \$250,000. That was money Jane Johnson did not have. And so you'll discover that the defendant devised what she thought was the perfect plan: to kidnap Mary Moore and hold her for ransom. We're here today because she could not conceal the evidence of her crime.

In fact, as today's trial unfolds it will become clear that the following facts are not in dispute:

First, that Mary Moore' kidnapper drugged her, using a powerful sedative called chloroandromine. Second, that Mary Moore was kidnapped between 8:30 and 11:00PM on the night of October 20. And third, that Mary Moore was confined by her kidnapper at the Hampton Hotel in Treeport. Today we will prove to you how each of those three facts points to the defendant's guilt.

First, the drug – chlorandromine. The evidence will show that not only was that drug found on Mary Moore's pillowcase and in her bloodstream; it was also found inside the defendant's car. You'll hear from the lead investigator in Mary's kidnapping, Detective Dave Dunn, who will tell you that he searched the defendant's car and found residue from the chemical chlorandromine on the defendant's steering wheel and on both drivers' side door handles.

Second, the time that Mary Moore was kidnapped. Today you'll learn that the defendant was absent from her home for at least an hour during that same period. The defendant told the police that she only left her home to run an errand to the local liquor store. But today, you'll hear today from the liquor store clerk, Rubin Rojas, who will tell you that his store is only twenty minutes from the defendant's house, and that on the night October 20th she rushed into his store, cut another customer in line, and rushed out. Today you'll learn that an errand that should only have taken 40-50 minutes took the defendant over an hour the night Mary was kidnapped.

Finally, the hotel where Mary Moore was found. You'll hear from an employee who works at that hotel – Sarah Smith, who will explain how she found Mary Moore in the bathroom of room 312. Ms. Smith will explain that room 312 was rented under a false name, and that she saw Jane Johnson at the Hampton Hotel during the same weekend that Mary Moore was confined there.

Three facts that are not in dispute. Three facts that will prove the defendant's guilt. A perfect plan – but carelessly concealed. And that is why, at the conclusion of today's trial we will ask you to find the defendant, Jane Johnson, guilty.

Prosecution Explicit (PE) Opening Statement

It's night time on October 20th, 2001 at a house right here in town. Flashing police cars are parked along the street leading up to the house. Inside, police officers are securing the scene, dusting for fingerprints, searching for evidence. Standing in the corner speaking with a detective are Ryan and Sue Moore. They live here with their three children. And right now, in the bedroom where their thirteen-year-old daughter should be sleeping is a ransom note demanding a large amount of money for her return.

Now, the defense has already agreed that Mary Moore was taken from her home on this night, meaning that as the prosecution we have one task: to prove that it was the defendant, Jane Johnson, who took thirteen year-old Mary Moore from her room and left that ransom note in her place.

Today you'll learn that in October of 2001, the defendant's husband desperately needed money for a life-saving operation. That was money Jane Johnson did not have. And so you'll discover that the defendant devised what she thought was the perfect plan: to kidnap Mary Moore and hold her for ransom. We're here today because she could not conceal the evidence of her crime.

In fact, as today's trial unfolds it will become clear that many facts are not in dispute:

First, that Mary Moore's kidnapper drugged her, using a powerful sedative. Second, we know the timeframe in which Mary Moore was kidnapped was between 8:30 and 11:00PM on the night of October 20. And third, that Mary Moore was confined by her kidnapper at a hotel in a nearby town. Today you will see how each of those three facts points to the defendant's guilt.

First, the drug. You will see that not only was that drug found on one of Mary Moore's belongings and in her bloodstream; it was also found inside the defendant's car. You'll hear from the lead investigator in Mary's kidnapping, who will tell you that he searched the defendant's car and found residues on several parts of the interior of the car.

Second, the time that Mary Moore was kidnapped. Today you'll learn that the defendant was absent from her home for at least an hour during that same period. The defendant told the police that she only left her home to run an errand to the local liquor store. But today, you'll hear today from the liquor store clerk, who will tell you that his store is only twenty minutes from the defendant's house, and that on the night of the kidnapping, she rushed into his store, cut another customer in line, and rushed out. Today you'll learn that an errand that should only have taken a moderate amount of time took the defendant over an hour, providing a window of time to execute Mary's kidnapping.

Finally, the hotel where Mary Moore was found. You'll hear from an employee who works at that hotel, who will explain how she found Mary Moore in the bathroom of a hotel room. She will explain that room was rented under a false name, and that she saw Jane Johnson at the hotel during the same weekend that Mary Moore was confined there.

These facts clearly point to one thing: the defendant's guilt. A perfect plan – but carelessly concealed. And that is why, at the conclusion of today's trial, we will ask you to find the defendant, Jane Johnson, guilty.

Defense Implicit (DI) Opening Statement

Someone. Someone kidnapped Mary Moore from her room. Someone held her captive for three days. That's all we have, your honor, just someone. But that someone could be anyone. The prosecution's case will leave a suspect without a motive, a crime without a witness, and a question without an answer: Someone kidnapped Mary Moore, but who?

Today, the Prosecution will have the burden of proving beyond a reasonable doubt that Jane Johnson kidnapped Mary Moore on October 20, 2001.

As the facts are presented today, we won't hear anything about a real motive. Jane Johnson will take the stand and explain that she is a caring mother, a devoted wife, and a loyal friend to the Moore's. The Prosecution will claim that she was desperate enough to risk everything she loved. Jane Johnson will testify that four days before the kidnapping, she received another job offer, one that would pay for her husband's surgery and, ladies and gentlemen, we will be left to question why Jane Johnson would have committed this crime in the first place.

But we can't just question why, we must also question how. In order to meet its burden, the prosecution must prove that Jane Johnson entered the Moore's home, dragged Mary Moore down a flight of stairs, and shoved her in her car without anyone noticing. They must prove that she carried a blindfolded, unconscious child to the third floor of a hotel without anyone seeing. And they must prove that she kept Mary Moore in that room for 3 days without leaving a trace of evidence behind.

We will also hear that someone was alone with Mary Moore, someone with access to the crime scene, someone who left prints all over room 312 where the victim was found. Who was that someone? The victim's babysitter, Peyton Parker. Today, you'll hear from Sarah Smith, the front desk manager of the Hampton Hotel. Ms. Smith will testify that Peyton Parker works at the hotel and has a key to room 312. Ms. Smith will reveal that she saw Peyton Parker at the hotel unexpectedly at the same time Mary Moore was missing.

Yet the evidence will show that the police failed to investigate Ms. Parker. Criminal Auditor Nick Nathanson, will tell us about the holes in the state's investigation. Standard procedure disregarded. Physical evidence mishandled. And alternate suspects ignored. And while the state will focus on the evidence they saw, Mr. Nathanson's testimony will beg the question: "just how much evidence did they overlook?"

Sometimes it's more important to look for what's missing than to see what is already there. And so today we will ask you to consider everything the prosecution overlooked: A suspect without a motive, a crime without a witness, and a question without an answer. Someone kidnapped Mary Moore, but who?

Defense Evidential Explicit (DEE) Opening Statement

Someone. Someone kidnapped Mary Moore from her room. Someone held her captive for three days. That's all we have, your honor, just someone. But that someone could be anyone and not Jane Johnson. The prosecution's case will leave a suspect without a motive, a crime without a witness, and a question without an answer: Someone kidnapped Mary Moore, but who?

Today, the Prosecution will have the burden of proving beyond a reasonable doubt that Jane Johnson kidnapped Mary Moore on October 20, 2001. But while the Prosecution will show that someone committed this crime, they will be unable to prove who, and it was certainly not Jane Johnson.

Because as the facts are presented today, we won't hear anything about a real motive. Jane Johnson will take the stand and explain that she is a caring mother, a devoted wife, and a loyal friend to the Moore's. And while the Prosecution will claim that she was desperate enough to risk everything she loved, the evidence will show otherwise. Jane Johnson will testify that four days before the kidnapping, she received another job offer, one that would pay for her husband's surgery. Ladies and gentlemen, we will be left to question why Jane Johnson would have committed this crime in the first place.

But we can't just question why, we must also question how. Because in order to meet its burden, the prosecution must prove that Jane Johnson entered the Moore's home, dragged Mary Moore down a flight of stairs, and shoved her in her car without anyone noticing. They must prove that she carried a blindfolded, unconscious child to the third floor of a hotel without anyone seeing. And they must prove that she kept Mary Moore in that room for 3 days without leaving a trace of evidence behind.

But we will hear that someone was alone with Mary Moore, someone with access to the crime scene, someone who left prints all over room 312 where the victim was found. Who was that someone? The victim's babysitter, Peyton Parker. Today, you'll hear from Sarah Smith, the front desk manager of the Hampton Hotel. Ms. Smith will testify that Peyton Parker works at the hotel and has a key to room 312. Ms. Smith will reveal that she saw Peyton Parker at the hotel unexpectedly at the same time Mary Moore was missing.

Yet the evidence will show that the police failed to investigate Ms. Parker. Criminal Auditor Nick Nathanson, will tell us about the holes in the state's investigation. Standard procedure disregarded. Physical evidence mishandled. And alternate suspects ignored. And while the state will focus on the evidence they saw, Mr. Nathanson's testimony will beg the question: "just how much evidence did they overlook?"

Because sometimes it's more important to look for what's missing than to see what is already there. And so today we will ask you to find Jane Johnson not guilty because of everything the prosecution overlooked: A suspect without a motive, a crime without a witness, and a question without an answer. Someone kidnapped Mary Moore, and it was not Jane Johnson.

Defense Explicit (DE) Opening Statement

Someone. Someone kidnapped Mary Moore from her room. Someone held her captive for three days. That's all we have, your honor, just someone. But that someone could be anyone and not Jane Johnson. The prosecution's case will leave a suspect without a motive, a crime without a witness, and a question without an answer: Someone kidnapped Mary Moore, but who?

Today, the Prosecution will have to prove that Jane Johnson kidnapped Mary Moore on October 20, 2001. But while the Prosecution will show that someone committed this crime, they will be unable to prove who.

Because as the facts are presented today, we won't hear anything about a real motive. Jane Johnson will take the stand and explain that she is a caring mother, a devoted wife, and a loyal friend to the Moore's. And while the Prosecution will claim that she was desperate enough to risk everything she loved, our testimonies will show otherwise. Jane Johnson will testify that four days before the kidnapping, she received another job offer, one that would pay for her husband's surgery. Ladies and gentlemen, we will be left to question why Jane Johnson would have committed this crime in the first place.

But we can't just question why, we must also question how. Because in order to meet its burden, the prosecution must prove that Jane Johnson entered the Moore's home, dragged Mary Moore down a flight of stairs, and shoved her in her car without anyone noticing. They must prove that she carried a blindfolded, unconscious child to an upper floor of a hotel without anyone seeing. And they must prove that she kept Mary Moore in that room for several days without leaving a trace of evidence behind.

But we will hear that someone was alone with Mary Moore, someone with access to the crime scene, the victim's babysitter. Today, you'll hear from the front desk manager of the hotel where Mary was found. She will testify that the victim's babysitter works at the hotel and has access to all rooms, and that she saw the victim's babysitter at the hotel around same time Mary Moore was missing.

Yet the evidence will show that the police failed to investigate her. A criminal auditor will tell us about the holes in the state's investigation. Standard procedure disregarded. Physical evidence mishandled. And alternate suspects ignored. And while the state will focus on the evidence they saw, the auditor's testimony will beg the question: "just how much evidence did they overlook?"

Because sometimes it's more important to look for what's missing than to see what is already there. And so today we will ask you to find Jane Johnson not guilty because of everything the prosecution overlooked: A suspect without a motive, a crime without a witness, and a question without an answer. Someone kidnapped Mary Moore, but who?

Appendix BSurvey

Section 1. Demographic information.

1. Are you Male or Female?

- Male
 Female

2. What is your age?

- 18
 19
 20
 21
 22+

3. What is your racial/ethnic background? (Check more than one if applicable)

- White
 Black
 Asian
 Hispanic/Latino
 Other (Please specify) _____

4. What is your yearly household income?

- Less than \$12,000
 \$12,001-\$30,000
 \$30,001-\$50,000
 \$50,001-\$100,000
 More than \$100,001

5. Which option best aligns with your political beliefs?

- I am a Republican
 I am a Democrat
 I am an Independent
 Other (Please specify) _____
 I am not interested in politics

6. In general, do you think of yourself as

- Very liberal

- Somewhat liberal
- Moderate, middle of the road
- Somewhat conservative
- Very conservative

7. Have you, or a family member, had an experience similar to the one described in the statements?
- Yes
 - No
8. Are any of your immediate family members attorneys, judges, etc.?
- Yes
 - No
9. How knowledgeable are you about the United States legal system?
- Very knowledgeable
 - Somewhat knowledgeable
 - Moderately knowledgeable on some aspects
 - Not at all knowledgeable

Section 2. Argument information.

10. Based on the two opening arguments you have just read, do you believe the defendant, Jane Johnson, is:
- Guilty
 - Not Guilty
11. How confident are you in this ruling?
- Not at all confident
 - Somewhat confident
 - Moderately confident
 - Very confident
 - Entirely confident

Section 3. Free response information.

12. Why/how did you decide that the defendant was guilty/not guilty? (List reasons)
13. How was the quality of the evidence in the prosecution argument? Compared to the defense argument?
14. If you have any additional comments about this questionnaire, please write them here:

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