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Calls for Speculation: An Experimental Examination of Juror Perceptions of Attorney Objections

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ABSTRACT

Should attorneys object during trial? Does preserving the record outweigh the potential costs of objections, such as upsetting the jury or drawing attention to the evidence? Legal scholars have opined on the delicate balance attorneys must strike in their decisions to object, but researchers have offered little to guide attorneys making these in-the-moment decisions. I discuss results from two empirical studies that provide evidence that attorneys have less to fear from objections than legal scholars suggest. Based on these results, I provide suggestions for practicing attorneys.

INTRODUCTION

Imagine you are defending a client in a criminal trial. While examining one of the witnesses, the prosecution brings up evidence of the defendant's prior criminal record. The defendant is not on the stand, and the use of the evidence in this context clearly violates the rules of evidence in your

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jurisdiction.¹ You also believe that this evidence is unfairly prejudicial to your client. What do you do? Do you object? Do you ask the judge to instruct the jury to disregard the evidence? Or do you sit there and do nothing, fearing that objecting would have its own negative consequences and praying that the jurors were sleeping and did not hear the evidence?

The decision is likely not straightforward. Your decision probably takes into account a number of factors: the likelihood the judge will sustain the objection; how the objection will influence the jury's perception of you, your client, and the evidence; and preservation of the record and your ability to appeal the case.² In fact, some legal scholars are concerned that trial attorneys are forced to decide between objecting and losing at trial or not objecting and losing on appeal.³ To further complicate the situation, attorneys must make this decision immediately⁴ and with very little guidance beyond legal folklore.⁵

In this Article, I report the results of two studies empirically investigating the impact of objections on juror verdicts, perceptions of the attorneys, and memory for

1. Evidence of the defendant's character, including criminal history, is not admissible to prove that the defendant acted in accordance with that character in terms of the specific crime. FED. R. EVID. 404. Although the Federal Rules of Evidence (FRE) only apply in federal court, this review will focus on evidentiary rules under the FRE for the sake of simplicity since many jurisdictions have similar rules.

2. See *infra* Part I for a discussion of the costs and benefits of objecting; see also Krystia Reed & Brian H. Bornstein, *Objection! Psychological Perspectives on Jurors' Perceptions of In-Court Attorney Objections*, 63 S.D. L. REV. 1, 6–8 (2018).

3. Christine R. Davis, *Striking a Balance to Win: Balancing the Need to Win the Trial with the Need to Preserve the Record on Appeal*, 81 FLA. B.J. 18, 21–22 (2007).

4. FED. R. EVID. 103 (requiring timely objections at risk of waiver).

5. Beyond FED. R. EVID. 103(a)(1)(B) and the general guidance offered by the FRE or other statutes, attorneys are given no specific rules for objecting. Attorneys may learn objection strategy during law school or another course (e.g., Continuing Legal Education courses), but mostly they must figure out when to object based on their own experience or mentorship from other attorneys.

evidence. In Part I, I introduce the research on the influence of objections on jurors. In Part II, I briefly describe the study methodologies, and report and interpret the results. Finally, in Part III, I explore the implications of the results and discuss why attorneys should be less fearful of objecting than legal commentators may suggest.

I. OBJECTIONS

During trial, objections are the primary way in which an attorney can enforce evidentiary rules; when an evidentiary rule is violated, the opposing attorney can object and request some form of redress.⁶ Attorneys can object to procedure-based violations or content-based violations,⁷ but both types of objections must state the grounds for objection⁸ and must be timely.⁹ Thus, rules of evidence may provide attorneys with some guidance on when they *can* object, but attorneys must decide whether (and when) they *should* object instance-by-instance during trial by balancing the costs against the benefits.

A. *Legal Cost-Benefit Balancing Act*

There are many benefits to timely objections. One of the

6. CHRISTOPHER B. MUELLER & LAIRD C. KIRKPATRICK, EVIDENCE § 1.3 (5th ed. 2012).

7. See Reed & Bornstein, *supra* note 2, at 3–5 for a discussion of the types of objections.

8. The FRE require that attorneys state “the specific ground, unless it was apparent from the context.” FED. R. EVID. 103(a)(1)(B).

9. FED. R. EVID. 103. The court is only permitted to take notice of untimely objections, or claims of error not properly preserved, if there is “plain error affecting a substantial right.” FED. R. EVID. 103(e); see also Glenn E. Bradford & James R. Wyrsh, *Making the Record in the Trial Court*, 64 J. MO. B. 284, 284–85, 288 (2008) (discussing the consequences of untimely). This typically results in two opportunities for attorneys to object—during trial or before trial (i.e., through a motion in limine). See Charles W. Gamble, *The Motion in Limine: A Pretrial Procedure that Has Come of Age*, 33 ALA. L. REV. 1, 1–2 (1981) (explaining motions in limine are procedural mechanisms used before trial to prevent the opposing party and witnesses from using prejudicial evidence). See Reed & Bornstein, *supra* note 2, at 5, for a discussion of timing.

most important benefits is that a sustained objection can correct an error immediately. If the objection is sustained *before* the evidence is introduced, attorneys can block the jury from ever hearing the unfavorable inadmissible evidence.¹⁰ If the objection is sustained *after* the evidence is introduced, the attorney can request the jury be instructed to disregard or limit the evidence.¹¹ Alternatively, even if the objection is overruled, a timely objection preserves the record so the attorney can appeal the decision.¹² In addition to these well-known benefits, some scholars also argue that objections present attorneys an additional opportunity to make persuasive arguments that sway the jury.¹³

On the other hand, legal scholars also advise that objecting can have serious consequences. One major concern is that objecting can alienate the jury.¹⁴ Additionally,

10. See, e.g., FED. R. EVID. 403 (allowing the court to exclude relevant evidence if there is a risk of unfair prejudice); see also JOHN H. BLUME & EMILY C. PAAVOLA, OBJECTION HANDBOOK 2 (2008), <http://www.lawschool.cornell.edu/research/death-penalty-project/upload/objection-20handbook.pdf>; Christopher C. vanNatta & Timothy J. Cothrel, *The Object of My Objection*, 33 LITIG. 26, 28–29 (2006) (explaining when to object).

11. The typical remedy is a curative instruction or a judicial admonition to the jury to disregard the evidence. Nancy Steblay et al., *The Impact on Juror Verdicts of Judicial Instruction to Disregard Inadmissible Evidence: A Meta-Analysis*, 30 L. & HUM. BEHAV. 469, 470 (2006). This outcome is far less desirable than having the objection sustained prior to the evidence being discussed. Research demonstrates that jurors are unable to completely disregard inadmissible evidence when instructed to do so. *Id.* at 475, 486 (discussing the results from a meta-analysis summarizing 48 studies on the topic).

12. See, e.g., Davis, *supra* note 3, at 21. Again, this result is often less ideal than having the objection sustained prior to the evidence being discussed since cases are rarely overturned on appeal. Statistics from 2015 indicate that 8.3% of cases were reversed on appeal. TABLE B-5. UNITED STATES COURTS OF APPEALS—DECISIONS IN CASES TERMINATED ON THE MERITS, BY CIRCUIT AND NATURE OF PROCEEDING, DURING THE 12-MONTH PERIOD ENDING SEPTEMBER 30, 2015, <http://www.uscourts.gov/statistics/table/b-5/judicial-business/2015/09/30> (last visited Aug. 23, 2018). This is the highest rate since 2012. Reed & Bornstein, *supra* note 2, at 7 n.47.

13. Edward D. Ohlbaum, *Jacob's Voice, Esau's Hands: Evidence-Speak for Trial Lawyers*, 31 STETSON L. REV. 7, 9–10 (2001).

14. Davis, *supra* note 3, at 21–22; Steven Lubet, *Objecting*, 16 AM. J. TRIAL ADVOC. 213, 219 (1992); see also MUELLER & KIRKPATRICK, *supra* note 6, at 9; Fred

scholars opine that objecting can potentially draw *more* attention to the evidence the attorney is attempting to suppress.¹⁵ Both of these concerns are not insignificant; however, little is known about their validity.

B. *The Psychology of Objecting*

The majority of psycholegal research on objections relates to inadmissible evidence. Generally, these studies focus on one piece of critical testimony that is challenged as inadmissible.¹⁶ Researchers compare juror perceptions in three situations: critical testimony that is objected to and admitted (admit); critical testimony that is objected to and ruled inadmissible (disregard); and no critical testimony or objections (control).¹⁷ Results indicate that jurors are unable to disregard evidence completely; jurors in the disregard condition rely on the critical testimony significantly less than jurors in the admit condition, but significantly more than jurors in the control condition who never heard the testimony.¹⁸ Moreover, research indicates that in some instances, judicial instructions to disregard evidence can even backfire and result in jurors relying more on the critical testimony.¹⁹

Warren Bennett, *Preserving Issues for Appeal: How to Make a Record at Trial*, 18 AM. J. TRIAL ADVOC. 87, 87 (1994).

15. Steblay et al., *supra* note 11, at 487. *But see* Molly Juliann Walker Wilson, *Objecting to Objections: The Paradoxical Consequences of Courtroom Interruptions*, 53 (Jan. 2004) (unpublished Ph.D. dissertation, University of Virginia) (on file with author).

16. See Steblay et al., *supra* note 11, for a meta-analysis summarizing the results of 48 of these types of studies.

17. *Id.*

18. *Id.*

19. For example, mock jurors instructed to disregard evidence about a defendant's prior conviction rendered more guilty verdicts than mock jurors who heard the information without an instruction. Kerri L. Pickel, *Inducing Jurors to Disregard Inadmissible Evidence: A Legal Explanation Does Not Help*, 19 LAW & HUM. BEHAV. 407, 407 (1995). *See also* Michele Cox & Sarah Tanford, *Effects of Evidence and Instructions in Civil Trials: An Experimental Investigation of Rules of Admissibility*, 4 SOC. BEHAV. 31, 31 (1989); Geoffrey P. Kramer et al., *Pretrial*

Thus, the primary focus of these studies is the critical testimony—objections are only used as a mechanism for manipulating the admissibility of the critical testimony. Only one study by Wilson includes a fourth condition of critical testimony admitted without an objection,²⁰ and none of the studies include a fifth condition of objection without critical testimony. Findings from Wilson's study indicate that the objections *are* important—participants were significantly more likely to render a guilty verdict when critical testimony is ruled admissible following an objection than when it is ruled inadmissible at the end of the trial with no objection.²¹ Therefore, the current understanding of how objections influence jurors is virtually inseparable from our understanding of inadmissible evidence, even though they are very different conceptually.

Although there is little empirical research directly investigating objections, there is general psychological research that can aid in our predictions. Objections could

Publicity, Judicial Remedies, and Jury Bias, 14 L. & HUM. BEHAV. 409, 430 (1990); Sarah Tanford & Michele Cox, *Decision Processes in Civil Cases: The Impact of Impeachment Evidence on Liability and Credibility Judgments*, 2 SOC. BEHAV. 165, 165 (1987); Sharon Wolf & David A. Montgomery, *Effects of Inadmissible Evidence and Level of Judicial Admonishment to Disregard on the Judgments of Mock Jurors*, 7 J. APPLIED SOC. PSYCHOL. 205, 206–09 (1977).

This is concerning because the goal of limiting instructions is to cure any prejudicial impact of questionable evidence by encouraging jurors to limit the use of certain evidence to admissible purposes or to completely disregard inadmissible evidence. *See, e.g.*, *Carter v. Kentucky*, 450 U.S. 288, 299–303 (1981) (discussing that limiting instructions might not be a sufficient safeguard in practice). Some research indicates that limiting instructions can be effective. *See generally* W. R. Cornish & A. P. Sealy, L.S.E. Jury Project, *Juries and the Rules of Evidence*, CRIM. L. REV. 208 (1973); Rita James Simon, *Murder, Juries, and the Press*, 3 TRANS-ACTION 40 (1966). However, the majority of research indicates that limiting instructions are ineffective. *See* Joel D. Lieberman & Jamie Arndt, *Understanding the Limits of Limiting Instructions: Social Psychological Explanations for the Failures of Instructions to Disregard Pretrial Publicity and Other Inadmissible Evidence*, 6 PSYCHOL., PUB. POL., & L. 677 (2000) (explaining the ineffectiveness of limiting instructions).

20. Wilson, *supra* note 15, at 3.

21. *Id.*

influence jurors through many psychological routes.²² For the purpose of these studies, I will focus on how interruptions and attributions influence memory for evidence and perceptions of attorneys, both of which can influence the ultimate verdict.

1. Memory for evidence

Objections, by their nature, interrupt trial proceedings.²³ When an attorney objects, it temporarily halts the trial and disturbs the continuity of the other attorney or witness.²⁴ Interruptions change how people allocate attention and remember information;²⁵ however, the effect is complicated and depends on several factors. Some researchers have found that interruptions increase attentional demands,²⁶ resulting in information overload that increases confusion and decreases memory.²⁷ In other studies, researchers have found that interruptions draw attention to stimuli and

22. For a more complete review of psychological factors that might explain the impact of objections on jurors, see Reed & Bornstein, *supra* note 2.

23. Wilson, *supra* note 15, at 9; see also Reed & Bornstein, *supra* note 2, at 12–23. Interruption is defined as “incidents or occurrences that impede or delay . . . progress on [a task].” Quintus R. Jett & Jennifer M. George, *Work Interrupted: A Closer Look at the Role of Interruptions in Organizational Life*, 28 ACAD. MGMT. REV. 494, 494 (2003). Researchers have identified four types of interruptions: intrusions, breaks, distractions, and discrepancies. *Id.* Objections are most similar to intrusions, so that will be the focus of this section. Reed & Bornstein, *supra* note 2, at 12–13.

24. An objection is “[t]he act of a party who objects to some matter or proceeding in the course of a trial, or an argument or reason urged by him in support of his contention that the matter or proceeding objected to is improper or illegal. Used to call the court’s attention to improper evidence or procedure. Such objections in open court are important so that such will appear on the record for purposes of appeal.” *Objection*, BLACK’S LAW DICTIONARY (5th ed. 1979).

25. Timo Mäntylä & Teresa Sgaramella, *Interrupting Intentions: Zeigarnik-like Effects in Prospective Memory*, 60 PSYCHOL. RES. 192, 197 (1997).

26. Chris Eccleston & Geert Crombez, *Pain Demands Attention: A Cognitive-Affective Model of the Interruptive Function of Pain*, 125 PSYCHOL. BULL. 356, 356 (1999); Seth Geiger & Byron Reeves, *We Interrupt This Program . . . Attention for Television Sequences*, 19 HUM. COMM. RES. 368, 368 (1993).

27. James T. Milord & Raymond P. Perry, *A Methodological Study of Overload*, 97 J. GEN. PSYCHOL. 131, 131 (1977).

improve memory.²⁸ Other researchers suggest that attention and memory only increase when the interruption is similar in content to the interrupted material.²⁹ Yet, other researchers find that interruptions are most memorable when they are distinct, unusual, or stand out in some way.³⁰

Objections in a trial may also influence memory for evidence beyond these basic effects of interruptions by disrupting jurors' story construction. Pennington and Hastie

28. See JAMES G. MARCH, A PRIMER ON DECISION MAKING: HOW DECISIONS HAPPEN 5 (2009) (discussing task processing); Robert S. Baron, *Distraction-Conflict Theory: Progress and Problems*, 19 ADVANCES EXPERIMENTAL SOC. PSYCHOL. 1, 3–10 (1986) (discussing distraction-conflict theory); Jean-Marie Cellier & Hélène Eyrolle, *Interference Between Switched Tasks*, 35 ERGONOMICS 25, 33–34 (1992) (discussing results of study assessing interruptions and task accuracy); Noah Schiffman & Suzanne Greist-Bousquet, *The Effect of Task Interruption and Closure on Perceived Duration*, 30 BULL. PSYCHONOMIC SOC. 9, 9–10 (1992) (studying the effect of interruptions on problem-solving time).

29. See Mäntylä & Sgaramella, *supra* note 25, at 192–93 (explaining the study in which researchers manipulated whether they interrupted a task with an anagram activity, and when the task was interrupted, participants displayed enhanced prospective memory performance). For example, distractors are less likely to decrease memory for word pairs when the words are meaningfully linked. James J. Jenkins, *Remember that Old Theory of Memory? Well, Forget It!*, 29 AM. PSYCHOLOGIST 785, 792 (1974); Norman J. Slamecka, *Differentiation Versus Unlearning of Verbal Associations*, 71 J. EXPERIMENTAL PSYCHOL. 822, 822 (1966).

30. Research on memory indicates that people have better memory for unusual information than for common information, which is known as the distinctiveness effect. See generally Alan D. Baddeley & Graham Hitch, *The Recency Effect: Implicit Learning with Explicit Retrieval?*, 21 MEMORY & COGNITION 146 (1993); R. Reed Hunt, *The Concept of Distinctiveness in Memory Research*, in DISTINCTIVENESS AND MEMORY 3, 3 (R. Reed Hunt & James B. Worthen eds., 2006); Larry L. Jacoby & Fergus I. M. Craik, *Effects of Elaboration of Processing at Encoding and Retrieval: Trace Distinctiveness and Recovery of Initial Context*, in LEVELS OF PROCESSING IN HUMAN MEMORY 1 (Laird S. Cermak & Fergus I. M. Craik eds., 1979); Anjali Thapar & Robert L. Greene, *Evidence Against a Short-Term-Store Account of Long-Term Recency Effects*, 21 MEMORY & COGNITION 329 (1993); Paula J. Waddill & Mark A. McDaniel, *Distinctiveness Effects in Recall: Differential Processing or Privileged Retrieval?*, 26 MEMORY & COGNITION 108 (1998). But, distinctiveness is context-dependent. For example, seeing a giraffe on a school campus might be very distinct and memorable, while seeing the same giraffe in a zoo would be ordinary. Kathleen B. McDermott & Henry L. Roediger III, *Memory (Encoding, Storage, Retrieval)*, in NOBA TEXTBOOK SERIES: PSYCHOLOGY (R. Biswas-Diener & E. Diener eds., 2019), <http://nobaproject.com/modules/memory-encoding-storage-retrieval>.

developed the story model of jury decision-making that explains jury decisions based on certain existing mental concepts.³¹ The story model hypothesizes that “jurors impose a narrative story organization on trial information, in which causal and intentional relations between events are central.”³² Attorneys and witnesses present evidence at trial in pieces, which jurors, like mystery novel readers, must then put together like a puzzle.³³ Objections halt the testimony and narrative, and can therefore alter the story jurors construct.³⁴

Thus, it is possible that objections do influence jurors’ memories of the evidence, but could do so in many ways. Objections might overload jurors and decrease their memory or direct jurors’ attention to the evidence like a spotlight and increase their memory. Moreover, other factors might drive the effect. If similarity is important, objections that are similar in content to the testimony might increase memory, while unrelated interruptions might decrease memory. If distinctiveness is important, infrequent objections or objections that are strange in content might be more memorable than frequent or ordinary objections. Wilson’s study on objections indirectly supports this distinctiveness

31. In psychology these existing mental concepts are known as schemas. See Nancy Pennington & Reid Hastie, *Evidence Evaluation in Complex Decision Making*, 51 J. PERSONALITY & SOC. PSYCHOL. 242, 243 (1986) [hereinafter Pennington & Hastie I]; Nancy Pennington & Reid Hastie, *Explaining the Evidence: Tests of the Story Model for Juror Decision Making*, 62 J. PERSONALITY & SOC. PSYCHOL. 189, 192 (1992) [hereinafter Pennington & Hastie II].

32. Pennington & Hastie I, *supra* note 31, at 243.

33. *Id.*

34. There is currently no research investigating how interruptions influence story construction, but it is possible that objections can result in less complete and less powerful stories. Story model research indicates that jurors are less influenced by less complete stories. Pennington & Hastie II, *supra* note 31, at 202. On the other hand, research on story construction indicates that jurors will fill-in-the-blanks following interruptions, suggesting that objections might not have much impact on story construction, particularly if the testimony is not completely barred. See *id.* at 197 (suggesting that if the testimony is barred and the objection prevents delivery of some information, it could impact the completeness of the narratives jurors develop).

theory,³⁵ but research has not empirically tested these theories directly. The two studies I present in this paper represent the first attempt at empirically testing these theories directly.

2. Perceptions of attorneys

Although evidence tends to be the most influential factor on verdicts,³⁶ jurors' perceptions of the people involved in the case can also have an influence. For example, an attorney's gender,³⁷ attractiveness,³⁸ race,³⁹ and personality⁴⁰ all influence verdicts beyond the evidence. Objections, therefore, could influence verdicts by altering jurors' perceptions of the objecting attorney.

35. Wilson, *supra* note 15, at 3–4. The study focused on only one piece of inadmissible testimony. In both conditions, jurors heard the same evidence and were told to disregard it, but the instruction to disregard was either immediate and preceded by an objection, or was delayed until the end of trial with no objection during trial. Mock jurors were less able to disregard the evidence if there was an immediate objection and instruction than if there was no objection and a delayed instruction.

36. EDIE GREENE ET AL., *WRIGHTSMAN'S PSYCHOLOGY AND THE LEGAL SYSTEM* 289 (6th ed. 2007).

37. Peter W. Hahn & Susan D. Clayton, *The Effects of Attorney Presentation Style, Attorney Gender, and Juror Gender on Juror Decisions*, 20 L. & HUM. BEHAV. 533, 533 (1996); Mary Stewart Nelson, *The Effect of Attorney Gender on Jury Perception and Decision-Making*, 28 L. & PSYCHOL. REV. 177, 177 (2004); Krystia Reed & Jennifer Groscup, *Hot or Not? The Influence of Attorney Attractiveness and Gender on Juror Decision Making 2* (2010) (unpublished manuscript) (on file with author).

38. Jansen Voss, *The Science of Persuasion: An Exploration of Advocacy and the Science Behind the Art of Persuasion in the Courtroom*, 29 L. & PSYCHOL. REV. 301, 317 (2005); Reed & Groscup, *supra* note 37, at 2.

39. David S. Abrams & Albert H. Yoon, *The Luck of the Draw: Using Random Case Assignment to Investigate Attorney Ability*, 74 U. CHI. L. REV. 1145, 1145 (2007); Russ K. E. Espinoza & Cynthia Willis-Esqueda, *Defendant and Defense Attorney Characteristics and Their Effects on Juror Decision Making and Prejudice Against Mexican Americans*, 14 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOL. 364, 364 (2008).

40. Pamela Hobbs, *'Is That What We're Here About?': A Lawyer's Use of Impression Management in a Closing Argument at Trial*, 14 DISCOURSE & SOC'Y 273, 276–77 (2003).

Every day, people make judgments, or attributions, about whether another person's behavior is based upon their personality or the situation.⁴¹ These attributions are often automatic and biased.⁴² Although these attributions can be helpful, in the courtroom, jurors' attributions can be prejudicial, and procedural evidentiary safeguards are typically insufficient protections.⁴³

Objections have the potential to influence several attributions that will negatively influence perceptions of the objecting attorney.⁴⁴ For example, it is possible that objections will make it appear as if the attorney is trying to hide or distort information, which could result in jurors making attributions about the attorney's personality and could potentially trigger existing stereotypes about attorneys being corrupt, greedy tricksters.⁴⁵ Alternatively, it is possible that by objecting, jurors will determine that the objecting

41. There are several theoretical models describing how attributions are made. See Reed & Bornstein, *supra* note 2, at 24–28 for a review of attributions and their relation to objections.

42. Humans typically are not rational actors and often rely on a single, quick explanation rather than searching all evidence to find the best possible explanation for a behavior. SUSAN T. FISKE & SHELLEY E. TAYLOR, *SOCIAL COGNITION: FROM BRAINS TO CULTURE* 219 (Luke Block ed., Sage Publications 3d ed. 2017) (2008).

43. Attributions about different trial participants, such as victims and defendants, influence verdicts. There is a strong negative correlation between victim blame and verdict. See generally Gloria J. Fischer, *Effects of Drinking by the Victim or Offender on Verdicts in a Simulated Trial of an Acquaintance Rape*, 77 *PSYCHOL. REP.* 579 (1995); Yael Idisis et al., *Attribution of Blame to Rape Victims among Therapists and Non-Therapists*, 25 *BEHAV. SCI. & L.* 103 (2007); B. J. Rye et al., *The Case of the Guilty Victim: The Effects of Gender of Victim and Gender of Perpetrator on Attributions of Blame and Responsibility*, 54 *SEX ROLES* 639 (2006).

44. See Reed & Bornstein, *supra* note 2, at 26–28 for a more complete discussion of attributions about attorneys.

45. LEO J. SHAPIRO, *A.B.A. SEC. LITIG., PUBLIC PERCEPTIONS OF LAWYERS CONSUMER RESEARCH FINDINGS* (2002), https://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/public_perception_of_lawyers_2002.authcheckdam.pdf; Valerie P. Hans & Krista Sweigart, *Jurors' Views of Civil Lawyers: Implications for Courtroom Communication*, 68 *IND. L. J.* 1297, 1327 (1993).

attorney is verbally aggressive,⁴⁶ triggering negative general perceptions.⁴⁷

Jurors' attributions about objecting attorneys might vary based on the attorneys' gender. Society tends to have different expectations for men than women;⁴⁸ men are expected to be more agentic, controlling, and independent, while women are expected to be more communal, emotionally expressive, and interpersonally sensitive.⁴⁹ People who violate these gender expectations typically suffer negative backlash from others,⁵⁰ including women who are perceived as too masculine professionally.⁵¹ Furthermore, female jurors who express the masculine characteristic of anger lose credibility, while angry male jurors gain credibility.⁵² If objections are perceived as an assertive, masculine characteristic,⁵³ jurors might have more negative perceptions of objecting female attorneys than objecting male attorneys; if objections are perceived as a method of

46. Reed & Bornstein, *supra* note 2, at 21–22.

47. Valerie Cryer Downs et al., *The Impact of Argumentativeness and Verbal Aggression on Communicator Image: The Exchange between George Bush and Dan Rather*, 54 W.J. SPEECH COMM. 99, 102 (1990); Dominic A. Infante & Charles J. Wigley, *Verbal Aggressiveness: An Interpersonal Model and Measure*, 53 COMM. MONOGRAPHS 61, 61 (1986).

48. This is known as social role theory. ALICE H. EAGLY, *SEX DIFFERENCES IN SOCIAL BEHAVIOR: A SOCIAL-ROLE INTERPRETATION* 7 (1987).

49. *Id.* at 9–10. See generally Amy J. C. Cuddy et al., *When Professionals Become Mothers, Warmth Doesn't Cut the Ice*, 60 J. SOC. ISSUES 701 (2004); Rosanna E. Guadagno & Robert B. Cialdini, *Gender Differences in Impression Management in Organizations: A Qualitative Review*, 56 SEX ROLES 483 (2007).

50. Laurie A. Rudman, *Self-Promotion as a Risk Factor for Women: The Costs and Benefits of Counterstereotypical Impression Management*, 74 J. PERSONALITY & SOC. PSYCHOL. 629, 629 (1998).

51. At work, women who are too agentic, dominant, self-promotional, or take on a leadership role might suffer workplace discrimination. See, e.g., Susan T. Fiske et al., *Social Science Research on Trial: Use of Sex Stereotyping Research in Price Waterhouse v. Hopkins*, 46 AM. PSYCHOLOGIST 1049, 1050–51 (1991).

52. See generally Jessica M. Salenro & Liana C. Peter-Hagene, *One Angry Woman: Anger Expressions Increases Influence for Men but Decreases Influence for Women, During Group Deliberation*, 39 L. & HUM. BEHAV. 581 (2015).

53. See Reed & Bornstein, *supra* note 2, at 23–24.

advocating for one's client, jurors might have less negative perceptions of objecting female attorneys than objecting male attorneys.⁵⁴ Thus, I designed the two studies presented below specifically to assess whether objecting negatively influences jurors' perceptions of the attorneys, and whether the effect varies based on attorney gender.

II. THE CURRENT STUDIES: THE EFFECT OF OBJECTIONS ON MOCK JURORS

I conducted two studies that empirically test the validity of concerns about objections negatively influencing jurors. In both studies, mock jurors listened to an audio trial of an armed robbery case. Some jurors heard the trial without interruptions, while others heard it with interruptions or objections. After listening to the trial, jurors rendered a verdict, rated the attorneys, and answered questions about their memory for the evidence. Given attorney concerns and psychological research, I predicted that objections would negatively influence mock juror verdicts, perceptions of the attorneys, and memory for evidence.⁵⁵

A. *Study 1: Objections and Interruptions*

The first study investigated whether objections are psychologically similar to other interruptions during trial. Two-hundred and sixty-two mock jurors (132

54. See, e.g., Emily T. Amanatullah & Catherine H. Tinsley, *Punishing Female Negotiators for Asserting Too Much . . . or Not Enough: Exploring Why Advocacy Moderates Backlash Against Assertive Female Negotiators*, 120 *ORG. BEHAV. & HUM. DECISION PROCESSES* 110, 110 (2013) (finding no backlash against women engaging in negotiation for others).

55. These studies only included defense attorney objections, so directional hypotheses are based on the perspective of the defense attorney (i.e., negatively influence = fewer not guilty verdicts, higher prosecuting attorney ratings, lower defense attorney ratings, and better memory for evidence). For specific hypotheses, see Krystia Reed, *Trial, Interrupted: Juror Perceptions of Attorney Objections* (Dec. 2017) (unpublished Ph.D. dissertation, University of Nebraska-Lincoln) (on file with author).

undergraduates and 130 community members)⁵⁶ listened to the audio trial which varied the *presence, type, and frequency* of the interruptions⁵⁷ or objections.⁵⁸

1. Presence of interruption/objection

Initially, I tested whether the mere presence of an interruption mattered. Interruption presence influenced verdicts; however, contrary to concerns, interruptions resulted in more not guilty verdicts, which benefits the defense attorney.⁵⁹ The presence of an interruption had no

56. Undergraduate students ($M_{\text{age}} = 19.5$, 74.2% female, 78% white) were recruited from the psychology department participant pool at a large Midwestern university and were compensated with course credit. Community members ($M_{\text{age}} = 35.5$, 35% female, 72% white) were recruited using TurkPrime and were compensated with \$6. TurkPrime is a research platform integrating Amazon's Mechanical Turk (MTurk) with social science research methods. See Leeb Litman et al., *TurkPrime.com: A Versatile Crowdsourcing Data Acquisition Platform for the Behavioral Sciences*, 49 BEHAV. RES. METHODS 433, 433 (2017) (reviewing TurkPrime); see also Michael Buhrmester et al., *Amazon's Mechanical Turk: A New Source of Inexpensive, Yet High-Quality Data*, 6 PERSP. ON PSYCHOL. SCI. 3 (2011) (reviewing MTurk); Kristin Firth et al., *Law and Psychology Grows Up, Goes Online, and Replicates*, 15 J. EMPIRICAL LEGAL STUD. 320, 333–55 (2018) (for a comparison of MTurk data to other community samples in psychology-law research).

57. Legally-irrelevant interruptions included ringing cell phones (infrequent: 1; frequent: 2), church bells (infrequent & frequent: 1), construction noises (infrequent: 0; frequent: 10), sneezing (infrequent & frequent: 1), and coughing (infrequent: 0; frequent: 1). Each legally-irrelevant interruption was followed by a judicial comment to parallel judicial comments following objections.

58. Objections included hearsay (infrequent: 2; frequent: 5), narrative (infrequent: 0; frequent: 3), relevance (infrequent & frequent: 1), speculation (infrequent: 0; frequent: 2), leading (infrequent: 0; frequent: 1), asked and answered (infrequent: 0; frequent: 1), and argumentative (infrequent: 0; frequent: 2). Each objection was followed by a judicial ruling (66% overruled, 33% sustained), but because this was not a study of inadmissible evidence, the evidence did not change based on judicial ruling, and the jury was never instructed to disregard any evidence.

59. See *infra* Figure 1. See *infra* Table 1 for results of the hierarchical logistic regression. Note, however, that there was an interaction between interruption and sample. Overall, interruptions resulted in more not guilty verdicts, but the pattern was different for students than community members. In the interruption condition, students and community members voted not guilty at similar rates; in the no interruption condition students voted not guilty less than in the interruption condition while community members voted not guilty more than in

effect on the ratings of either attorney.⁶⁰ Mock jurors who heard the interrupted trial also had better memory for evidence presented after the interruption (“after evidence”);⁶¹ there was no difference in memory for evidence presented before the interruption (“before evidence”).⁶²

Thus, the presence of the interruption did not influence jurors overall. It made no difference in attorney ratings or memory of after evidence. However, interruptions inconsistently influenced verdicts based on the audience, with interruptions resulting in better verdicts for the defense attorney with student mock jurors, but worse with community member mock jurors.

the interruption condition.

60. See *infra* Figure 2. The fourteen questions about each attorney were combined into composite scores based on a factor analysis (consistent with Reed & Groscup, *supra* note 37) to create 4 ratings with high reliability: prosecuting attorney favorability ($\alpha = 0.88$), prosecuting attorney aggressiveness ($\alpha = 0.75$), defense attorney favorability ($\alpha = 0.91$), and defense attorney aggressiveness ($\alpha = 0.77$). There were no differences in any of the ratings based on interruption presence: prosecuting attorney favorability, $F(1, 214) = 0.17$, $M_{Se} = 0.89$, $p = 0.68$; prosecuting attorney aggressiveness, $F(1, 214) = 2.31$, $M_{Se} = 1.99$, $p = 0.13$; defense attorney favorability, $F(1, 214) = 0.03$, $M_{Se} = 0.92$, $p = 0.87$; defense attorney aggressiveness, $F(1, 214)$, $M_{Se} = 1.98$, $p = 0.37$. Scores were measured on 7-points scales with 7 being higher in the trait.

61. See *infra* Figure 3. Created by averaging the scores on five questions about evidence presented after the interruption (“after evidence”). $F(1, 213) = 11.40$, $M_{Se} = 0.62$, $p = 0.001$ (interruptions: $M = 3.58$, $SD = 0.78$; control: $M = 3.13$, $SD = 0.80$).

62. See *infra* Figure 3. Created by averaging the scores on five questions about evidence presented before the interruption ($M = 3.95$, $SD = 0.91$). There was no difference based on interruption presence, $F(1, 213) = 0.50$, $M_{Se} = 0.82$, $p = 0.48$, $R^2 < 0.01$.

FIGURE 1. Percent not guilty verdicts by interruption presence in Study 1.

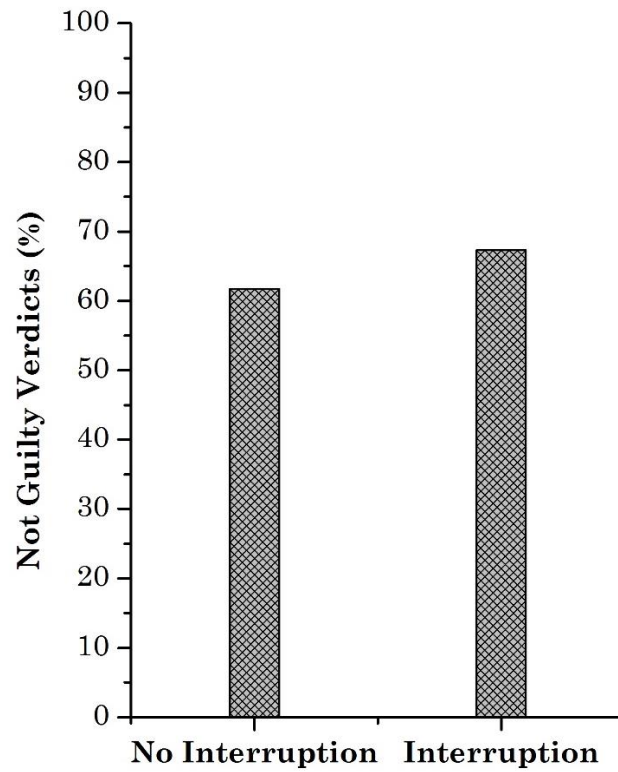


FIGURE 2. Attorney ratings based on interruption presence in Study 1.

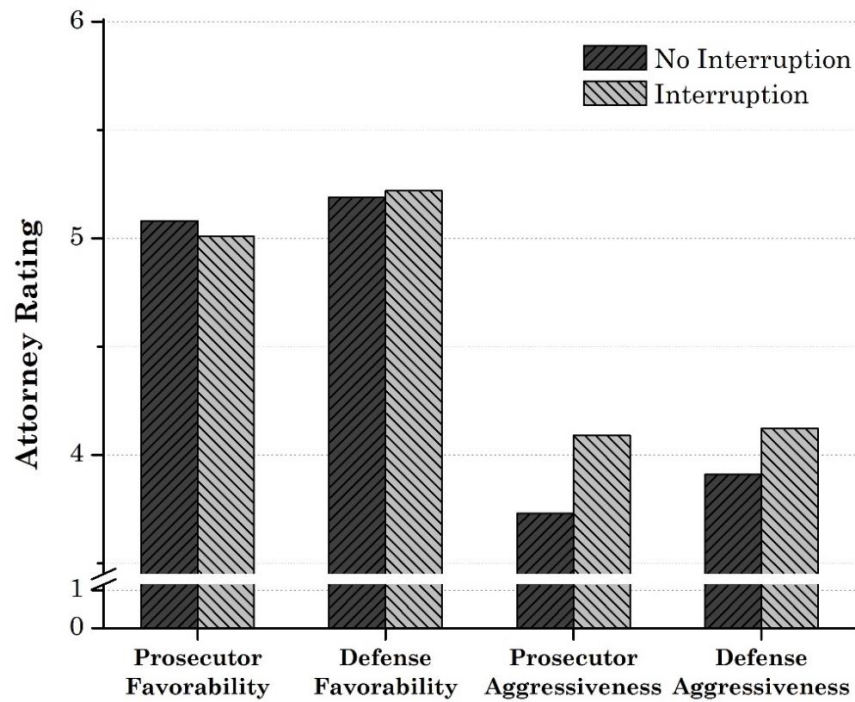
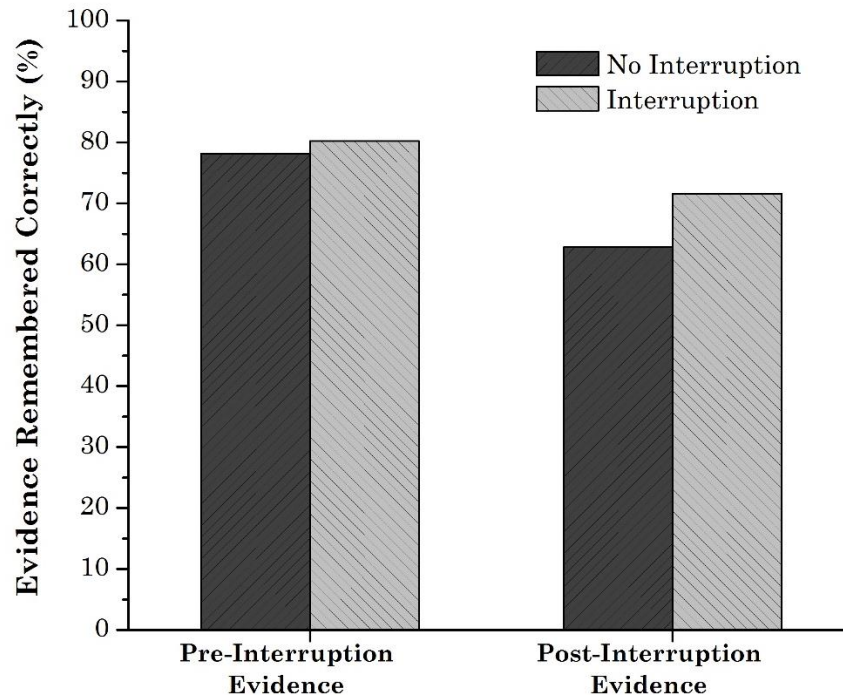


FIGURE 3. Memory for evidence based on interruption presence in Study 1.



2. Type of interruption or objection

After identifying that the *presence* of an interruption influenced jurors, next I tested whether the *type* of interruption mattered—do objections influence jurors in the same way as interruptions? Contrary to attorney concerns, objections did not influence verdicts,⁶³ attorney favorability,⁶⁴ or memory for evidence⁶⁵ any differently than legally-irrelevant interruptions. Interestingly, the

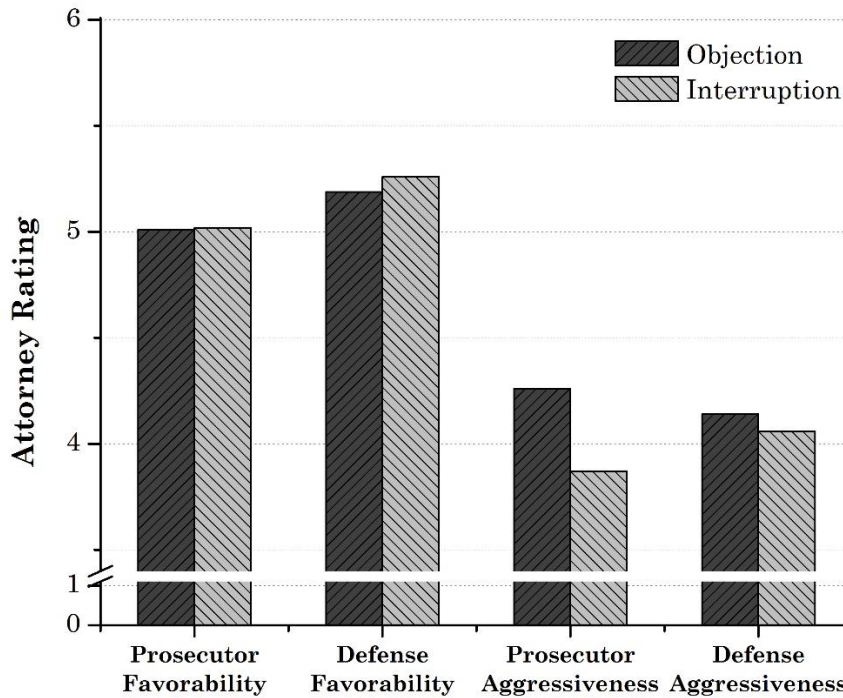
63. See *infra* Table 2 for results of the hierarchical logistic regression (not guilty verdicts—objection: 68.6%; interruption: 65.9%).

64. Prosecuting attorney favorability, $F(1, 150) = 0.00$, $M_{Se} = 0.85$, $p = 0.99$; defense attorney favorability, $F(1, 150) = 0.02$, $M_{Se} = 1.97$, $p = 0.89$.

65. Before evidence, $F(1, 150) = 0.02$, $M_{Se} = 0.79$, $p = 0.90$ (percentage correct—objection: 80.2%; interruption: 80.2%); after evidence, $F(1, 150) = 1.98$, $M_{Se} = 0.63$, $p = 0.16$ (percentage correct—objection: 70.0%; interruption: 73.4%).

prosecuting attorney (who did not object) was rated as marginally more aggressive in the condition where the defense attorney objected;⁶⁶ however, ratings of the defense attorney (who objected) aggressiveness were not different.⁶⁷

FIGURE 4. Attorney ratings based on interruption type in Study 1.



Thus, objections are not operating substantially differently from other interruptions. Mock juror verdicts, ratings of the objecting attorney, and memory for the evidence were not worse when the trial was interrupted with an objection compared to a legally-irrelevant interruption. In fact, when the defense attorney objected, the *prosecuting*

66. $F(1, 150) = 3.44$, $M_{Se} = 1.99$, $p = 0.07$.

67. See *infra* Figure 4. $F(1, 150) = 0.47$, $M_{Se} = 2.01$, $p = 0.50$.

attorney was viewed as more aggressive.⁶⁸ Objections did not harm the objecting defense attorney, and even helped the defense attorney by making the prosecutor appear more argumentative.

3. Frequency of interruption or objection

In order to determine if the distinctiveness of the interruption or objection mattered, I manipulated and analyzed the effect of interruption and objection *frequency*. Jurors rated the high frequency conditions as having more interruptions or objections⁶⁹ and being more annoying⁷⁰ than the low frequency conditions. Frequency did not influence verdicts,⁷¹ attorney favorability,⁷² or memory for evidence.⁷³ Again, the defense's interruptions of the trial influenced perceptions of the prosecutor, who was rated as more aggressive in the high frequency conditions;⁷⁴ however,

68. See *supra* Figure 4.

69. For defense attorneys: high frequency objections ($M = 3.64$, $SD = 0.11$) were rated as more frequent than low frequency objections ($M = 2.46$, $SD = 0.10$), $F(1, 84) = 66.12$, $M_{Se} = 0.46$, $p < 0.001$, $R^2 = 0.44$; high frequency interruptions ($M = 4.05$, $SD = 0.11$) were rated as more frequent than low frequency interruptions ($M = 2.83$, $SD = 0.11$), $F(1, 83) = 65.31$, $M_{Se} = 0.48$, $p < 0.001$, $R^2 = 0.44$. Interestingly, the prosecuting attorney who never objected was also rated as objecting significantly more in the high frequency defense objection condition ($M = 3.64$, $SD = 0.11$) than the low frequency ($M = 2.46$, $SD = 0.10$), $F(1, 84) = 66.11$, $M_{Se} = 0.46$, $p < 0.001$, $R^2 = 0.44$. This pattern did not occur in the control or interruption conditions, suggesting jurors might have source confusion and believe both attorneys are objecting.

70. Objections: $F(1, 84) = 7.23$, $M_{Se} = 3.16$, $p < 0.01$, $R^2 = 0.08$ (high frequency: $M = 4.17$, $SD = 0.27$; low frequency: $M = 3.14$, $SD = 0.27$); interruptions: $F(1, 82) = 42.24$, $M_{Se} = 2.71$, $p < 0.001$, $R^2 = 0.34$ (high frequency: $M = 6.02$, $SD = 0.25$; low frequency: $M = 3.69$, $SD = 0.25$).

71. See *infra* Table 2 for logistic regression results (not guilty verdicts—low frequency: 66.3%; high frequency: 68.2%).

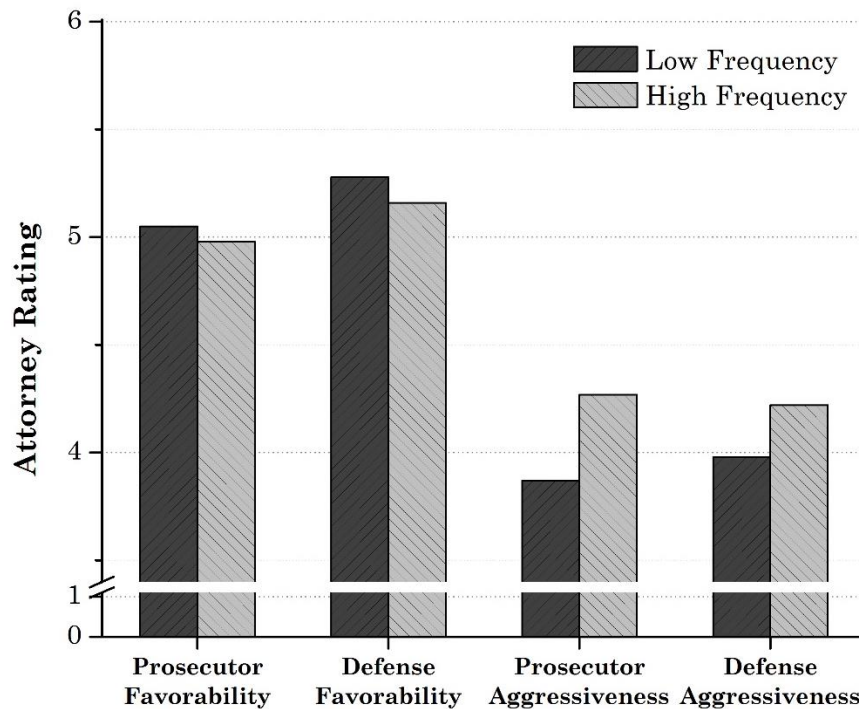
72. Prosecutor favorability: $F(1, 150) = 0.08$, $M_{Se} = 0.85$, $p = 0.78$; defense favorability: $F(1, 150) = 0.16$, $M_{Se} = 1.97$, $p = 0.69$. See *infra* Figure 5.

73. Before evidence: $F(1, 150) = 1.73$, $M_{Se} = 0.79$, $p = 0.19$ (percentage correct—objection: 81.4%; interruption: 79.0%); after evidence: $F(1, 150) = 1.30$, $M_{Se} = 0.63$, $p = 0.26$ (percentage correct—objection: 73.0%; interruption: 70.2%).

74. $F(1, 150) = 4.38$, $M_{Se} = 1.99$, $p = 0.04$.

ratings of defense attorney (who did the interrupting) aggressiveness were not different.⁷⁵

FIGURE 5. Attorney ratings based on interruption frequency in Study 1.



Consequently, the hypothesis that more distinct objections would be more influential was not supported—the frequency of the interruptions or objections did not make a difference. Jurors did find more interruptions to be more annoying, but only the prosecuting attorney was rated as more aggressive when he was interrupted more. There were no differences in ratings of defense attorney aggressiveness. It also should be noted that in the high frequency conditions, there were fifteen interruptions or objections in the 45-

75. See *infra* Figure 5. $F(1, 150) = 1.21$, $M_{Se} = 2.01$, $p = 0.27$.

minute audio trial. Although this was rated as high on the frequency scale for interruptions, for objections it was only in the middle of the frequency scale. Therefore, it is possible that jurors *expect* objections in the trial. Moreover, in the high frequency objection condition both the defense attorney and the prosecuting attorney (who never objected) were rated as objecting more frequently than in the low frequency objection condition, indicating there is some degree of juror confusion about which party is objecting. Consequently, it is possible that any negative effects of objecting could apply to both sides, and not just the party objecting.

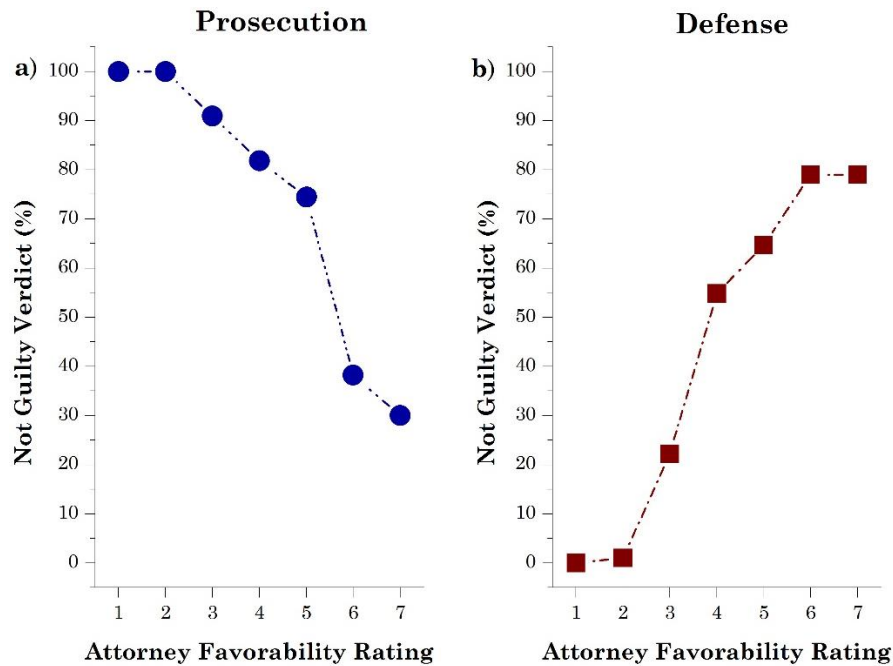
4. Attorney favorability

Although Study 1 did not support attorney concerns that objections negatively impact jurors, results do emphasize that perceptions of the attorney are an important factor. For example, although interruption type and frequency had no effect, attorney favorability⁷⁶ was one of the primary factors predicting differences in verdicts.⁷⁷ Jurors who liked the prosecutor were more likely to vote guilty, while jurors who liked the defense attorney were more likely to vote not guilty.⁷⁸

76. Attorney favorability included jurors' ratings of attorney competence, trustworthiness, qualifications, professionalism, likeability, sincerity, confidence, and confidence in having the attorney represent the juror. *See supra* note 60 for a discussion of the specifics of calculating this variable and the reliability.

77. *See infra* Table 2 for logistic regression (with interruption type and frequency). Similar results occurred for interruption presence. *See infra* Table 1.

78. *See infra* Figure 6. For every one point increase in ratings of prosecuting attorney favorability, jurors were 88% less likely to vote not guilty (Figure 6a); for every one point increase in ratings of defense attorney favorability, jurors were 6.77 times more likely to vote not guilty (Figure 6b). Note this was a marginal main effect trending toward significant. *See infra* Table 2.

FIGURE 6. Verdict based on attorney rating in Study 1.

B. Study 2: Objections and Attributions

The second study further investigated whether objection frequency would influence mock jurors and whether the effect would differ based on attorney gender. One-hundred and fifty-two mock jurors⁷⁹ listened to an audio trial that varied in objection frequency and defense attorney gender.⁸⁰

79. Mock jurors ($M_{age} = 38$, 48% female, 82% white) were recruited via TurkPrime, randomly assigned to condition, and compensated with \$6. See *supra* note 56 for a review of TurkPrime. Participants who did not correctly identify the gender of the attorneys or the defendant's name ($n = 32$) were eliminated from analyses.

80. Study 2 focused only on objections (not legally irrelevant interruptions) and included high frequency, low frequency, and no objection conditions. Therefore, the resulting study design was a 3 (objection frequency: none v. frequent v. infrequent) x 2 (defense attorney gender: male v. female) between-subjects experimental design, for 6 conditions.

1. Objection frequency

As in Study 1, I manipulated the effect of objection frequency. Jurors again rated the high frequency condition as having more objections⁸¹ and being more annoying.⁸² Frequency again did not influence verdict,⁸³ perceptions of the attorneys (either favorability or aggressiveness),⁸⁴ or memory for evidence.⁸⁵ Consequently, attorney fears about objections were again unsupported in Study 2.

2. Attorney gender

In order to test the competing hypotheses about expectations of objecting female attorneys,⁸⁶ half of the participants heard the trial with a male defense attorney and half heard the trial with a female defense attorney in Study 2. Neither hypothesis was supported—attorney gender did not interact with objection frequency to influence verdict,⁸⁷

81. For defense attorneys: high frequency objections ($M = 3.55$, $SD = 0.75$) were rated as most frequent followed by low frequent objections ($M = 2.32$, $SD = 0.67$) then no objections ($M = 1.21$, $SD = 0.56$) ($ps < 0.001$), $F(2, 117) = 53.13$, $M_{Se} = 0.44$, $p < 0.001$, $R^2 = 0.70$. As in Study 1, the prosecuting attorney who never objected was also rated as objecting significantly more in the high frequency ($M = 2.20$, $SD = 0.85$) and low frequency ($M = 2.03$, $SD = 0.69$) conditions than the no objection control ($M = 1.21$, $SD = 0.56$), $F(2, 114) = 9.15$, $M_{Se} = 0.51$, $p < 0.01$. Thus, even when only one attorney objects, jurors seem to be remembering both attorneys objecting.

82. $F(1, 73) = 12.16$, $p < 0.01$ (high frequency: $M = 4.63$, $SD = 0.31$; low frequency: $M = 3.08$, $SD = 0.32$).

83. See *infra* Table 3 for logistic regression results (not guilty verdicts—none: 65.1%; low frequency: 75.7%; high frequency: 60.0%).

84. Prosecutor favorability: $F(1, 150) = 0.08$, $M_{Se} = 0.85$, $p = 0.78$ (none: $M = 5.26$; low frequency: $M = 5.08$; high frequency: $M = 5.11$); defense favorability: $F(1, 150) = 0.16$, $M_{Se} = 1.97$, $p = 0.69$ (none: $M = 5.34$; low frequency $M = 5.20$; high frequency $M = 5.26$).

85. Before evidence: $F(2, 101) = 1.41$, $M_{Se} = 0.77$, $p = 0.25$; after evidence: $F(2, 101) = 0.00$, $M_{Se} = 0.99$, $p = 0.99$.

86. I.e., female attorneys will be punished if objections are perceived as an aggressive, masculine behavior, or rewarded if objections are perceived as a client-focused, feminine behavior. See EAGLY, *supra* note 48, for a discussion of gender role theory.

87. See *infra* Table 3 for logistic regression results.

perceptions of the attorneys,⁸⁸ or memory for evidence⁸⁹ at all. Therefore, objections by either male or female defense attorneys did not negatively influence jurors. Moreover, female attorneys were not penalized in general compared to male attorneys, contrary to prior research.⁹⁰

3. Attorney favorability

Study 2 also did not support attorney concerns that objections negatively impact jurors, but the results further emphasize the importance of jurors' perceptions of the attorney. Objection frequency and attorney gender did not influence verdicts, but attorney favorability was again a significant predictor of verdict.⁹¹ Jurors who liked the prosecutor were significantly more likely to vote guilty, while jurors who liked the defense attorney were significantly more likely to vote not guilty.⁹²

88. Prosecuting attorney favorability: $F(2, 101) = 1.01$, $M_{Se} = 1.19$, $p = 0.37$; defense attorney favorability: $F(2, 101) = 1.40$, $M_{Se} = 1.04$, $p = 0.25$; prosecuting attorney aggressiveness: $F(2, 101) = 0.16$, $M_{Se} = 1.70$, $p = 0.85$; defense attorney aggressiveness: $F(2, 101) = 0.18$, $M_{Se} = 2.42$, $p = 0.84$.

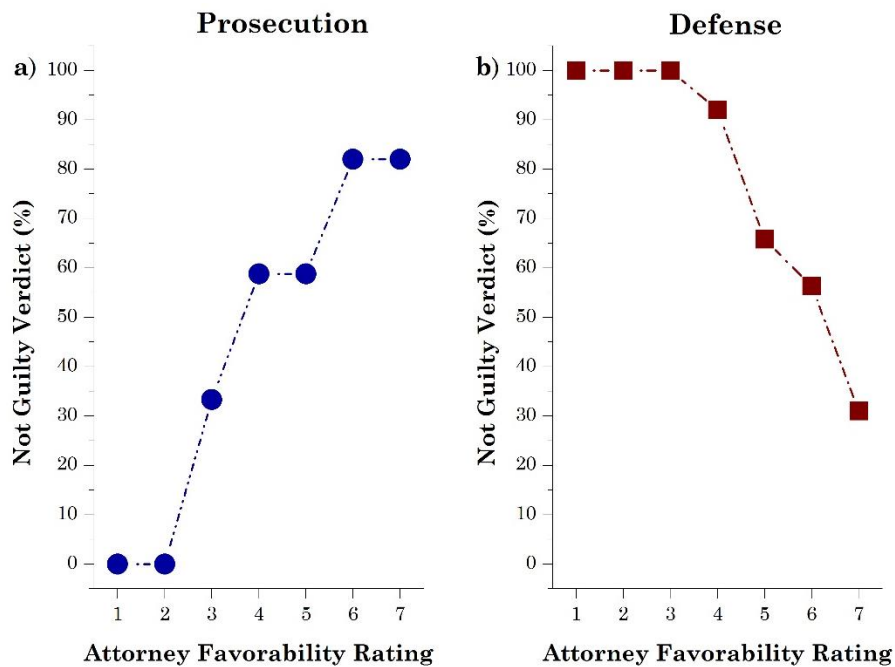
89. Before evidence: $F(2, 101) = 0.09$, $M_{Se} = 0.77$, $p = 0.92$; after evidence: $F(2, 101) = 1.44$, $M_{Se} = 0.99$, $p = 0.24$.

90. See, e.g., Hahn & Clayton, *supra* note 37, at 533; Nelson, *supra* note 37, at 177; Reed & Groscup, *supra* note 37.

91. See *infra* Table 3 for logistic regression.

92. See *infra* Figure 7. For every one-point increase in ratings of prosecuting attorney favorability, jurors were 90% less likely to vote not guilty (Figure 7a); for every one point increase in ratings of defense attorney favorability, jurors were 6.74 times more likely to vote not guilty (Figure 7b). See *infra* Table 3.

FIGURE 7. Verdict based on attorney rating in Study 2.



III. DISCUSSION

A. Summary and Caveats

The results of these two empirical studies demonstrate that attorneys may have less to fear from objections than scholars caution. General psychological research indicates that objections might influence memory for evidence⁹³ and perceptions of attorneys,⁹⁴ which are major components in verdicts; however, psycholegal research had yet to test these hypotheses.

The present studies represent the first attempt to determine whether and how objections during trial influence jurors similarly to interruptions in the real world. Neither

93. See *supra* Section I.B.1.

94. See *supra* Section I.B.2.

Study 1 nor Study 2 supported the notion that objections affect jurors' memory for evidence or favorability ratings of the attorneys. In fact, the only difference in perceptions of the attorneys was that objections made the *non-objecting prosecutor* appear more aggressive.⁹⁵ Thus, objections did not negatively influence jurors, and if anything, had positive effects for the objecting attorney.

Moreover, the present studies did not support the gender differences found in previous research.⁹⁶ Although this finding is promising, it might be due to the way gender was manipulated. Previous research has used either written materials with pictures or video materials; the present studies used audio trials without pictures.⁹⁷ Moreover, both the male and female defense attorneys read the same script, even though in real life speaking patterns of men and women frequently differ. Therefore, it is possible that any gender differences in judgments of the attorneys is not due directly to the gender, but to other associated characteristics that were held constant in this study, such as attractiveness, gender conformity, speech style, or mannerisms.

Despite these findings, several caveats and limitations of this research must be mentioned. First, I designed this study to separate our understanding of the influence of objections from the influence of inadmissible evidence, but in reality, this is likely an artificial separation. In order to isolate objections, this study held all evidence constant without manipulating what was admitted. More research should be

95. The importance of this is twofold. First, the prosecutor was not the one objecting and there were no differences in ratings of the objecting attorney. Second, aggressiveness is a negative behavior generally (but might not be perceived as negatively in a legal context). Nevertheless, attorney aggressiveness did *not* predict verdict in any of the models. See *infra* Tables 1–3. Only attorney favorability mattered, which was unaffected by objections.

96. See EAGLY, *supra* note 48.

97. This was done intentionally so as not to create a confound with attorney characteristics, such as attractiveness, professionalism, or hand gestures. Jurors were able to make gender determinations based off audio alone, and only jurors who correctly identified attorney gender were included in the analyses.

done to parse out how objections and inadmissible evidence jointly and separately influence jurors.⁹⁸ It would be particularly interesting to determine if the type of evidence objected to influences jurors, with the expectation that objections could draw more attention to particularly distinct (e.g., interesting, relevant, damaging) evidence.

Second, future research should further investigate the influence of objection frequency in relation to juror expectations. In these studies, jurors did rate the high frequency conditions as higher in frequency than the low frequency conditions (indicating a successful manipulation); however, the high frequency objections were only rated at roughly the midpoint of the scale. High frequency interruptions were rated as occurring more frequently, despite occurring at the same rate. Therefore, it is possible jurors are *expecting* objections during trial, so it will take more objections to be considered high frequency. It is possible that extremely high frequency objections (e.g., objections after nearly every question) could be more annoying or result in more negative attributions and have the negative consequences attorneys fear.

Third, this study isolated defense attorney objections, but jurors believed that both sides objected. Moreover, the non-objecting attorney was rated as more aggressive. In a real trial, both sides can object. Therefore, future research should assess what happens when both sides object. Does it balance perceptions out, or do jurors have variable expectations based on the side the attorney is representing?

Finally, research needs to assess the influence of judicial rulings. Here, the balance of judicial rulings was held constant (66% overruled); however, it is possible to have rulings completely in support of one side. In actual trials, jurors are usually instructed that the judge's rulings should

98. For example, Wilson, *supra* note 15, at 3–4 found that including an objection drew more attention to inadmissible evidence than when the evidence was excluded at the end of the trial without an objection.

not be interpreted as support for one side over the other, but as with limiting instructions, jurors might not be able to follow this instruction. Is the jury more likely to agree with a side if the judicial rulings appear to completely support it (particularly if the judge's tone or actual words indicate frustration with the other either for continually objecting or attempting to present evidence that is being objected to)?

B. *Should Attorneys Object?*

Imagine again that you are a criminal defense attorney and the prosecuting attorney brings up evidence of your client's prior criminal record in violation of the jurisdiction's rules of evidence—do you object? In making this immediate decision, you probably quickly weigh the costs and benefits. On the one hand, there are a number of benefits to timely objections, including preventing the jury from hearing the evidence, preserving the record, and getting another opportunity to persuade the jury.⁹⁹ On the other hand, there are several feared consequences of legal folklore; however, these fears are not empirically supported. In fact, the results of the two studies presented in this Article demonstrate either no effect or a somewhat positive effect of objecting. More research is necessary to investigate more nuanced situations, but in general, the objection alone is not negatively influencing jurors. Therefore, your decision probably should weigh in favor of objecting.

Another consideration in favor of objecting is that in some instances, objections might actually be *required*. Attorneys have certain duties to their clients, including zealous representation¹⁰⁰ and competency,¹⁰¹ which might

99. See *supra* Section I.A for a discussion of the benefits.

100. Rules may vary by jurisdiction, but most have adopted a version of the Model Rules of Professional Conduct which imposes a duty for attorneys to act zealously in representation of their clients. MODEL RULES OF PROF'L CONDUCT Preamble ¶ 2 (AM. BAR ASS'N 2017).

101. "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation

include objecting at trial. Although objections are not specified as required in most instances,¹⁰² under tort law, a lawyer may be sued for malpractice if they *breach* one of the *duties* and it *causes damage* to his or her client. In terms of professional conduct, attorneys might breach the duty of competency if they do not object when a reasonable attorney would have.¹⁰³

It must also be noted that although concerns about objections *have not* been empirically supported, concerns about jurors being unable to disregard inadmissible evidence *have* been supported. Thus, objections should be made early, not just in order to be considered timely, but also to preemptively stop the jury from hearing the evidence if possible. Courts¹⁰⁴ and researchers¹⁰⁵ alike have found that the use of limiting instructions to cure the prejudicial impact of inadmissible evidence is often ineffective. Some researchers have even found that strong limiting instructions can backfire and *increase* the prejudicial impact of the evidence.¹⁰⁶ Therefore, attorneys should do everything possible, including early objections, to prevent the jury from hearing the questionable evidence.

reasonably necessary for the representation.” *See id.* at r. 1.1. Objecting at the proper time could be considered to be part of the required knowledge and skill.

102. One exception, in some jurisdictions, is that attorneys might explicitly be required to raise reasonable objections to prevent another party from obtaining confidential information. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 63 cmt. b (AM. LAW INST. 2000).

103. Although these cases might be difficult because of challenges proving either cause and/or damage (i.e., a client might have to demonstrate they would have been successful but-for the attorney’s failure to object), the Seventh Circuit has found ineffective counsel for an attorney’s failure to object to unduly suggestive identifications. *Cossel v. Miller*, 229 F.3d 649, 654 (7th Cir. 2000).

104. *Krulewitch v. United States*, 336 U.S. 440, 453 (1949).

105. *See, e.g.*, Lieberman & Arndt, *supra* note 19.

106. *See, e.g.*, Cox & Tanford, *supra* note 19, at 31; Kramer et al., *supra* note 19, at 430; Wolf & Montgomery, *supra* note 19, at 206–09.

IV. CONCLUSION

The results of these studies indicate that, when in doubt, in most instances attorneys should favor objecting over sitting quietly. It is better to err on the side of preventing evidence from being admitted or preserving the record than to fear jury alienation. But legal lore is difficult to overcome even with empirical evidence. Therefore, if you still fear that objecting will alienate the jury (despite lack of empirical support), you should, at least, attempt to object pre-trial. Although juror perceptions of the attorneys are important, evidence is the driving factor behind verdict. It is important to prevent juries from hearing prejudicial, inadmissible evidence, particularly because they struggle with disregarding such evidence after they have heard it. Therefore, if you do not want to object during trial and you predict that the other side might attempt to admit inadmissible, prejudicial evidence, file a motion *in limine* to attempt to block such evidence ahead of trial; and if that does not work (or you cannot predict what will be brought up)—object!

APPENDIX: REGRESSION TABLES

TABLE 1. Summary of Logistic Regression Analysis for Verdict based on Interruption and Sample.

Variable	Summary of Results (N = 208)					
	B	S.E.	Wald	df	Sig	exp(B)
Step 1						
Interruption	0.27	0.37	0.56	1	0.46	1.31
Audience	0.49	0.30	2.79	1	0.10	1.64
Constant	-0.29					
Step 2						
Interruption	3.20	1.19	7.29	1	0.07	24.62
Audience	2.18	0.76	8.24	1	0.04	8.82
Interruption x Audience	-2.09	0.83	6.36	1	0.01	0.12
Constant	-2.62					

Note: Step 1: Goodness of Fit $X^2(2) = 3.50$, $p = 0.12$; -2 Log likelihood = 263.54; Cox & Snell $R^2 = 0.02$; Nagelkerke $R^2 = 0.02$.
Step 2: Goodness of Fit $X^2(3) = 10.78$, $p = 0.01$; -2 Log likelihood = 256.26; Cox & Snell $R^2 = 0.05$; Nagelkerke $R^2 = 0.07$.

TABLE 2. Summary of Logistic Regression Analysis for Verdict based on Interruption Type, Frequency, and Audience.

Variable	Summary of Results ($N = 166$)					
	B	S.E.	Wald	df	Sig	exp(B)
Step 1						
Interruption Type	-0.13	0.33	0.15	1	0.70	0.88
Interruption Frequency	0.09	0.33	0.08	1	0.78	1.10
Audience	0.02	0.33	0.00	1	0.96	1.02
Constant	0.75					
Step 2						
Interruption Type	0.16	1.49	0.01	1	0.92	1.17
Interruption Frequency	0.69	1.50	0.21	1	0.64	2.00
Audience	-1.26	1.39	0.82	1	0.37	0.29
Type \times Frequency	-0.72	.66	1.18	1	0.28	0.49
Type \times Audience	0.51	0.66	0.60	1	0.44	1.67
Frequency \times Audience	0.32	0.66	0.23	1	0.63	1.38
Constant	1.08					
Step 3						
Interruption Type	3.35	3.44	0.95	1	0.33	28.50
Interruption Frequency	3.95	3.52	1.26	1	0.26	51.87
Audience	1.82	3.28	0.31	1	0.58	6.15
Type \times Frequency	-2.86	2.19	1.71	1	0.19	0.06
Type \times Audience	-1.54	2.09	0.54	1	0.46	0.22
Frequency \times Audience	-1.77	2.14	0.69	1	0.41	0.17
Type \times Frequency \times Audience	1.38	1.34	1.06	1	0.30	3.99
Constant	-3.71					
Step 4						
Interruption Type	3.92	4.30	.83	1	0.36	50.17
Interruption Frequency	5.46	4.59	1.42	1	0.23	234.07
Audience	2.24	4.20	0.28	1	0.59	9.37
Type \times Frequency	-3.50	2.80	1.56	1	0.21	0.03
Type \times Audience	-1.51	2.64	0.33	1	0.57	0.22
Frequency \times Audience	-2.12	2.81	0.57	1	0.45	0.12
Type \times Frequency \times Audience	1.39	1.73	0.65	1	0.42	4.03
Prosecutor Favorability	-2.16	0.38	31.49	1	0.00	0.17
Defense Favorability	1.89	0.35	29.61	1	0.00	6.60
Constant	-3.86					

TABLE 2. (Continued) Summary of Logistic Regression Analysis for Verdict based on Interruption Type, Frequency, and Audience.

Variable	Summary of Results (N = 166)					
	B	S.E.	Wald	df	Sig	exp(B)
<i>Step 5</i>						
Interruption Type	3.81	4.35	0.77	1	0.38	45.15
Interruption Frequency	5.21	4.2	1.27	1	0.26	183.02
Audience	1.86	4.27	0.19	1	0.66	6.44
Type x Frequency	-3.45	2.82	1.50	1	0.22	0.03
Type x Audience	-1.45	2.68	0.29	1	0.59	0.23
Frequency x Audience	-1.97	2.83	0.48	1	0.49	0.14
Type x Frequency x Audience	1.39	1.75	0.63	1	0.43	4.00
Prosecutor Favorability	-2.14	0.39	30.46	1	0.00	0.12
Defense Favorability	1.91	0.35	29.75	1	0.00	6.77
Prosecutor Aggressiveness	0.17	0.21	0.67	1	0.41	1.18
Defense Aggressiveness	-0.20	0.22	0.85	1	0.36	0.82
Constant	-3.39					

Note: *Step 1:* Goodness of Fit $X^2(3) = 0.23$, $p = 0.97$; -2 Log likelihood = 216.05; Cox & Snell $R^2 = 0.00$; Nagelkerke $R^2 = 0.00$. *Step 2:* Goodness of Fit $X^2(6) = 2.46$, $p = 0.87$; -2 Log likelihood = 213.82; Cox & Snell $R^2 = 0.02$; Nagelkerke $R^2 = 0.02$. *Step 3:* Goodness of Fit $X^2(7) = 3.53$, $p = 0.83$; -2 Log likelihood = 212.74; Cox & Snell $R^2 = 0.02$; Nagelkerke $R^2 = 0.03$. *Step 4:* Goodness of Fit $X^2(9) = 75.96$, $p < 0.001$; -2 Log likelihood = 140.32; Cox & Snell $R^2 = 0.36$; Nagelkerke $R^2 = 0.50$. *Step 5:* Goodness of Fit $X^2(11) = 79.91$, $p < 0.001$; -2 Log likelihood = 212.74; Cox & Snell $R^2 = 0.02$; Nagelkerke $R^2 = 0.03$

TABLE 3. Summary of Logistic Regression Analysis for Verdict based on Objection Frequency and Defense Attorney Gender.

Variable	Summary of Results ($N = 166$)					
	B	S.E.	Wald	df	Sig	exp(B)
Step 1						
Objection Frequency	-0.12	0.23	0.26	1	0.61	0.89
Defense Gender	0.36	0.39	0.86	1	0.35	1.44
Constant	0.64					
Step 2						
Objection Frequency	-0.05	0.31	0.02	1	0.88	0.95
Defense Gender	0.53	0.62	0.73	1	0.39	1.70
Frequency x Defense Gender	-0.17	0.47	0.12	1	0.73	0.85
Constant	0.57					
Step 3						
Objection Frequency	-0.02	0.40	0.00	1	0.96	0.98
Defense Gender	1.07	0.81	1.75	1	0.19	2.92
Frequency x Defense Gender	-0.75	0.67	1.30	1	0.26	0.47
Prosecutor Favorability	-2.31	0.48	23.24	1	0.00	0.10
Defense Favorability	1.88	0.45	17.90	1	0.00	6.57
Constant	3.06					
Step 4						
Objection Frequency	0.04	0.42	0.01	1	.93	1.04
Defense Gender	0.98	0.81	1.47	1	.23	2.66
Frequency x Defense Gender	-0.69	0.67	1.07	1	.30	0.50
Prosecutor Favorability	-2.33	0.50	22.15	1	0.00	0.10
Defense Favorability	1.91	0.45	18.18	1	0.00	6.74
Prosecutor Aggressiveness	-0.25	0.28	0.84	1	0.36	0.78
Defense Aggressiveness	0.08	0.23	0.11	1	0.74	1.08
Constant	3.59					

Note: Step 1: Goodness of Fit $X^2(2) = 1.08$, $p = 0.58$; -2 Log likelihood = 151.68; Cox & Snell $R^2 = 0.01$; Nagelkerke $R^2 = 0.01$. Step 2: Goodness of Fit $X^2(3) = 1.21$, $p = 0.75$; -2 Log likelihood = 151.56; Cox & Snell $R^2 = 0.01$; Nagelkerke $R^2 = 0.01$. Step 3: Goodness of Fit $X^2(5) = 60.07$, $p < 0.001$; -2 Log likelihood = 92.70; Cox & Snell $R^2 = 0.39$; Nagelkerke $R^2 = 0.55$. Step 4: Goodness of Fit $X^2(7) = 61.00$, $p < 0.001$; -2 Log likelihood = 91.76; Cox & Snell $R^2 = 0.40$; Nagelkerke $R^2 = 0.55$.