Objection: Psychological Perspectives on Jurors' Perceptions of In-Court Attorney Objections

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Trial attorneys have the difficult task of deciding when to object at trial. On the one hand, objections can correct an error immediately or preserve the record for review; on the other hand, many attorneys and legal scholars are concerned that objections can harm attorney credibility with the jury. Although trial attorneys are therefore forced to conduct an immediate balancing test weighing the costs and benefits of objecting versus not objecting, social scientists have not yet provided guidance to help attorneys with this decision. This article examines the legal basis and understanding of objections and then discusses psychological theories that may explain how objections influence juror perceptions. This article concludes with a summary of the empirical research and a discussion of the implications and recommendations for trial attorneys.

I. INTRODUCTION

Attorneys are responsible for the important task of objecting to evidence during trial; objections can correct an error immediately, or at least preserve the record for review. However, the decision to object can be a Catch-22 according to many lawyers, with “disastrous consequences” if an important objection is missed or if an objection is made improperly. Many legal professionals fear that objections can harm credibility with the jury—if the objection is sustained, the jury may believe the attorney is trying to hide something; if the objection is overruled, the jury may believe that the attorney is wrong or wasting time. The objection may even lead the jury to pay more attention to the evidence and give it more weight. Thus, trial attorneys are forced to conduct an immediate balancing test weighing the costs and benefits of objecting with those of not objecting.

Although trial attorneys are frequently required to make speedy decisions about objecting that could potentially make or break their case, social scientists have not provided much guidance to aid lawyers in this difficult choice. However,
more general psychological research can be applied to objections to help attorneys make the decision to object (or not). For example, research on inadmissible evidence indicates that objections may draw attention to the subsequent evidence.\(^3\) Moreover, objections may influence attention processes and alter jurors' memory formation.\(^4\)

Part I of this Article examines the legal basis and understanding of objections.\(^5\) Part II discusses several relevant psychological theories that may explain how objections influence juror perceptions.\(^6\) Specifically, Part II focuses on theories of attention that are relevant to jurors' reactions to objections as well as theories related to attributions jurors may make regarding attorneys (or the parties which they represent) when an objection is made.\(^7\) Part III will conclude with a summary of the research and a discussion of the implications and recommendations for trial attorneys.\(^8\)

**II. LEGAL BACKGROUND**

This Part briefly explains the legal background of objections in the trial. Section A briefly examines the role of objections under the Federal Rules of Evidence.\(^9\) Section B describes the process of objecting.\(^10\) Section C discusses the balancing test attorneys must apply instantaneously when deciding whether to object and highlights both the benefits of and costs to objecting.\(^11\)

**A. FEDERAL RULES OF EVIDENCE**

Legally, objections serve the important purpose of enforcing the evidentiary rules and protecting the right of a fair trial. The Federal Rules of Evidence ("FRE"), which guide evidentiary admissibility in federal court, state that their primary purpose is "to administer every proceeding fairly, eliminate unjustifiable


\(^4\) Timo Mäntylä & Teresa Sgaramella, *Interrupting Intentions: Zeigarnik-like Effects in Prospective Memory*, 60 PSYCHOL. RES. 192, 197 (1997); Wilson, supra note 3, at 8.

\(^5\) Because reviewing all types of objections would be far too extensive, I have selected a few examples that are most relevant for this area of social scientific research to discuss more in-depth.

\(^6\) See infra Part II (discussing psychological theories explaining how objections influence juror perceptions).

\(^7\) See infra Part II (focusing on theories of attention to objections and attributions regarding attorneys).

\(^8\) See infra Part III (summarizing research and discussing the implications and recommendations for attorneys).

\(^9\) See infra Part I.A (examining the role of objections under the Federal Rules of Evidence).

\(^10\) See infra Part I.B (describing the process of objecting).

\(^11\) See infra Part I.C (discussing the balancing test for deciding whether to object and highlighting the benefits and costs of objecting).
expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.\textsuperscript{12}

Objections are the primary way in which an attorney can enforce the evidentiary rules against the other party; when an opposing party violates one of the evidentiary rules, the other attorney can object to the violation.\textsuperscript{13} In fact, under the FRE, timely objections are required if the party wants to preserve a challenge to an error in admissibility of evidence in the future—if an attorney does not object when a rule is violated, the party cannot later claim there was an error.\textsuperscript{14} Therefore, objections play an important role in enforcing the rules of evidence.

Although the FRE or state evidentiary laws provide attorneys with rules on when and how they are allowed to object, objections are not automatic. Attorneys decide throughout a trial whether or not to object. In order to understand the factors involved in an attorney’s decision to object (or not), it is important to understand the objection process as well as the balancing test attorneys must apply in their decision.

B. PROCESS OF OBJECTING

The FRE require timely objections or movements to strike and the attorney must state “the specific ground, unless it was apparent from the context . . . .”\textsuperscript{15} However, there are two other important considerations beyond individual differences that drive the process of objecting: the type of objection being made and the timing of the objection.

1. Type of Objection

There are a litany of objections permitted under the FRE. For the purposes of this review, the discussion focuses on two primary categories of objections: procedure-based objections and content-based objections.

Procedural objections revolve around the basic idea that attorney questions should be clear and direct.\textsuperscript{16} When questions are not clear or direct the opposing attorney may object. One of the primary rules of the FRE is that “[i]relevant evidence is not admissible,” thus if a question is aimed at eliciting or if an answer provides irrelevant evidence, an attorney may object.\textsuperscript{17} Attorneys may also object

\textsuperscript{12} FED. R. EVID. 102. Although the FRE only apply in federal court, this review will focus on evidentiary rules under the FRE for the sake of simplicity.

\textsuperscript{13} CHRISTOPHER B. MUELLER & LAIRDB. KIRKPATRICK, EVIDENCE § 1.3 (5th ed. 2012).

\textsuperscript{14} FED. R. EVID. 103(a).

\textsuperscript{15} FED. R. EVID. 103(a)(1)(B). Other than this rule and the general guidance of the FRE or other statutes, there are no specific rules for objecting. Attorneys must learn how to object in a class, such as Evidence, Trial Advocacy, or another litigation skills course or they must figure it out on their own in practice. The relative lack of specific rules or training regarding objections is surprising considering how prominently objections feature in actual trials (at least as portrayed in the media).


\textsuperscript{17} FED. R. EVID. 402. “Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the
to questions that are "confusing," "misleading," or that "wast[e] time."\textsuperscript{18} In most instances, attorneys are not permitted to ask their own witnesses leading (yes/no) questions, so if the question is not open-ended, the opposing party may object.\textsuperscript{19}

Additionally, it is possible for an attorney to object to a question or answer for a combination of reasons. For example, asking a multi-part question can create confusion, especially if it is not clear which part of the question the witness is answering. Therefore, the opposing attorney may object to a multi-part question because it is ambiguous, confusing, misleading, or a waste of time.\textsuperscript{20}

Perhaps more concerning for attorneys are objections based on the content meant to be elicited by the questioning. There are many types of inadmissible evidence, primarily driven by the goal of excluding evidence which is more prejudicial than probative.\textsuperscript{21} Thus, an attorney may object to evidence, even if it is relevant, if it is potentially more prejudicial than probative. There are several specific types of prejudicial evidence that have been specifically identified as either inadmissible or mostly inadmissible under the FRE.

One example of mostly inadmissible evidence is hearsay.\textsuperscript{22} Hearsay is a statement that was not made "while testifying at the current trial" and is being used to "prove the truth of the matter asserted in the statement."\textsuperscript{23} The concern with hearsay is that the probative value is not as high because there is a greater potential for lying when the statement is not made under oath and the jury does not have the opportunity to observe the demeanor of the witness. There are several exceptions to the hearsay rule; however, unless one of the exceptions applies, hearsay evidence should not be allowed.\textsuperscript{24}

Another type of evidence that is not allowed unless an exception applies is character evidence regarding defendants in criminal cases.\textsuperscript{25} For example, criminal history is not permitted to prove that a criminal defendant "acted in accordance with the character or trait."\textsuperscript{26} Thus, if a prosecutor attempts to bring in criminal history or other character evidence without some exception, such as

\textsuperscript{18} FED. R. EVID. 403.
\textsuperscript{19} FED. R. EVID. 611. As opposed to leading questions, a yes/no answer is not appropriate for an open-ended question, which usually begins with words such as who, what, where, when, or why.
\textsuperscript{20} FED. R. EVID. 403.
\textsuperscript{21} Id.
\textsuperscript{22} FED. R. EVID. 802.
\textsuperscript{23} FED. R. EVID. 801(c). Hearsay is defined as a "statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." Id. Section 801(d) of the FRE also defines statements that are not considered hearsay. FED. R. EVID. 801(d).
\textsuperscript{24} For example, Rule 803 lists exceptions to the hearsay rule that apply regardless of whether the declarant is available as a witness, such as the present sense impression or the excited utterance. FED. R. EVID. 803. Rule 804 discusses hearsay exceptions when the declarant is unavailable. FED. R. EVID. 804. Rule 805 discusses hearsay within hearsay; Rule 806 applies to statements attacking and supporting credibility; and Rule 807 is the residual exception that may allow hearsay into evidence even if otherwise prohibited. FED. R. EVID. 805-07.
\textsuperscript{25} FED. R. EVID. 404(a).
\textsuperscript{26} Id.
using the evidence for impeachment, the evidence should not be permitted if the opposing party objects.

2. Objection Timing

In addition to the type of objection being made, another important consideration for attorneys is how to time the objection. Specifically, objections must be timely in order to preserve a claim of error for future proceedings. This results in two primary opportunities for attorneys to object to evidence being admitted—before trial or during trial. Objections made after trial usually will be unsuccessful because they are untimely unless there is "plain error affecting a substantial right" which the court is allowed to take notice of "even if the claim of error was not properly preserved." Therefore, objections are often verbal and made instantaneously at trial as soon as a potential evidentiary violation arises. At a minimum, the objection must include a clear statement of the grounds for objecting.

Alternatively, attorneys may object prior to trial by using a motion in limine, which allow attorneys to block certain prejudicial evidence of which the attorney is aware. However, because motions in limine occur prior to trial, they cannot be used for most procedural objections (e.g., ambiguous, leading, or unclear questions) or for surprise evidence, all of which are in response to specific trial behavior. Nevertheless, motions in limine are extremely useful for some content-based objections. Since motions in limine do not involve the jury, there is less potential to prejudice the decision maker by virtue of making the objection; the rest of this review will therefore focus on objections made during trial. However,

27. FED. R. EVID. 609.
28. See Amy Kleynhans & Brian H. Bornstein, Psychology and the Federal Rules of Evidence, in 2 ADVANCES IN PSYCHOLOGY AND LAW 179 (Brian H. Bornstein & Monica K. Miller eds., 2016) (reviewing the relationship between psychology and the FRE). There are several psychological assumptions embodied in the FRE, and often these assumptions are erroneous.
29. FED. R. EVID. 103.
30. FED. R. EVID. 103(e).
31. See Walter P. Armstrong, Objections to Evidence in Jury Trials: A Multiple Review, 23 TENN. L. REV. 943, 946 (1955) (explaining that depending upon the court, the method for objecting may vary). For example, objections can be either oral or written and can include a variety of information and take many different formats. However, due to the nature of trial, most objections that arise during testimony are verbal.
32. See FED. R. EVID. 103(a)(1)(B) (stating usually, the attorney is required to state the basis for the objection under the evidentiary rules). See Ray Moses, Professor Moses’ 31 Commandments of Courtroom Etiquette and Demeanor for Trial Advocates, http://www.hba.org/wp-content/uploads/2013/05/Courtroom-Decorum-Handout.pdf (last visited Jan. 4, 2018) (explaining rules vary by the judge, with some judges wanting just a basic objection, and others wanting more detailed objections, some out of the presence of the jury).
34. For example, if an attorney fears the opposing party will attempt to admit potentially inadmissible evidence, such as criminal history or privileged information, the attorney may file a motion in limine. If granted, the other party will not be allowed to use the evidence at trial and witnesses will not be allowed to discuss it. See generally Gamble, supra note 33.
it should be noted that objecting to the admissibility of unwanted evidence prior to trial, out of the presence of the jury, might be the best option for attorneys attempting to balance the need to object with the desire not to frustrate the jury, as long as the method does not upset the judge.

a. Balancing Test

Considering objections made during trial must be made nearly instantaneously to be considered timely, attorneys need to be aware of the potential costs and benefits of objecting and quickly balance them before reaching their decision. Attorneys are encouraged to balance the benefits of objecting against the costs to objecting; therefore it is important to understand exactly what the benefits and costs are. In fact, some commentators argue that trial attorneys must strike a delicate balance between objecting and losing at trial or not objecting and losing on appeal.

b. Benefits of Objecting

There are several benefits to objecting, the most obvious being the immediate alteration of what evidence is admitted. If the judge sustains an objection, particularly when the objection is in relation to damaging evidence, the party will benefit from successfully blocking admission of the negative evidence, or at least in securing a jury admonition. For example, if the prosecution is attempting to bring out the defendant’s criminal history for non-impeachment purposes, which is typically not permitted, the defense attorney will likely object and in most instances, the judge should uphold the objection. If the objection is made prior to the information actually being presented to the jury, an upheld objection will reduce the opportunity for unfair prejudice because the evidence would be blocked. On the other hand, if some of the evidence regarding criminal history was already presented to the jury, the judge will likely admonish the jury to ignore the evidence.

Alternatively, even if the objection is overruled, and therefore does not alter what information is presented immediately, objecting still preserves the record.

35. See vanNatta & Cothrel, supra note 2, at 28-29 (explaining when to object).
36. 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).
37. Id. at 20.
38. FED. R. EVID. 404.
39. See, e.g., FED. R. EVID. 403 (allowing the court to exclude relevant evidence if there is a risk of unfair prejudice).
40. 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. 402. The court is meant to conduct a jury trial so that the jury does not hear inadmissible evidence. FED. R. EVID. 103(d). If the evidence is admitted, the typical remedy is a curative instruction or a judicial admonition to the jury to disregard the evidence. Steblay et al., supra note 3, at 470.
41. Davis, supra note 36, at 22.
If an attorney does not raise an objection and ensure that the objection is recorded into the transcript, the party will likely be precluded from bringing up the issue during appeal. Even when a verdict is reached, a case still may be appealed. Although an appeal will be unsuccessful unless there was a fundamental error, if the error is not preserved, the appeal is even less likely to succeed.

Some attorneys also argue that objections provide attorneys the opportunity to interact with the jury. These scholars suggest that objections allow attorneys to make a short, persuasive speech to the jury. Making a successful argument at trial can be particularly beneficial because cases are generally unlikely to win on appeal, with statistics indicating that only 6.8%-8.3% of cases are reversed upon appeal so any opportunity to connect with the jury during the trial is helpful, particularly if objecting makes a favorable impression on the legal decision maker (i.e., jury or judge), such as by making an attorney appear more competent.

An additional benefit to an attorney is upholding the duty to the client. The ABA Model Rules of Professional Conduct state that attorneys have a duty to act "zealously" in the interest of their client. Although there is no specific reference to objections, attorneys do have a duty to their client to act with competence and diligence. If an attorney fails to object when a reasonable attorney would, it is possible that the attorney will be subject to claims of malpractice.

43. Davis, supra note 36, at 21.
44. Sanford v. Rubin, 237 So. 2d 134, 137 (Fla. 1970); Davis, supra note 36, at 22.
46. Id.
50. RESTATMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 63 cmt. b (AM. LAW INST. 2000).
for blocking evidence or preserving the record, but also a legal duty attorneys owe their clients, particularly when it comes to discovery of privileged information.

c. Costs to Objecting

Despite the benefits of objecting, there are potential costs. Advice given to attorneys states that "[t]here is one thing that is normal to all jurors. It is the fact that they hate objections to testimony." 51 Although it is important to preserve the record for errors, doing so "may interfere with the strategic advocacy necessary to win the trial." 52 Many scholars raise the concern that objections during trial may make the jury more unfavorable toward their case. 53 These scholars warn that jurors may develop negative opinions of the attorney or think that the attorney is attempting to hide important information from the jury. 54

Advice to attorneys varies greatly; however, many scholars recommend using objections sparingly. 55 Some go as far as suggesting that trial lawyers are in a Catch-22 situation: they can limit their objections and win at trial but risk losing on appeal, or they can preserve the record but risk upsetting the decision maker (jury or judge), thus losing at trial. 56 In fact, attorneys are warned that they must be selective in when to object because objecting makes the jury believe that the attorney is attempting to hide important information from them. 57 However, despite the fears, there is little empirical support indicating these fears are warranted. In fact, it is not clear that objections actually hurt an attorney’s credibility with the jury, nor is there evidence that excessive objections can result in losing the case at trial. Therefore, this is an area where social scientists can use experimental studies to help provide attorneys with actual recommendations based on empirical evidence.

III. PSYCHOLOGICAL THEORY AND RESEARCH

This Part discusses several psychological theories and empirical research that can help attorneys understand how jurors may be influenced by objections. Section A focuses on the psycholegal research on inadmissible evidence, which is what objections are often targeting. 58 However, this research does not specifically isolate the underlying mechanisms that influence juror perceptions of objections.

51. LEWIS W. LAKE, HOW TO WIN LAWSUITS BEFORE JURIES 42 (1954).
52. Davis, supra note 36, at 22.
53. E.g., Fred Warren Bennett, Preserving Issues for Appeal: How to Make a Record at Trial, 18 AM. J. TRIAL ADVOC. 87, 87 (1994); Davis, supra note 36, at 21; Steven Lubet, Objecting, 16 AM. J. TRIAL ADVOC. 213, 219 (1992); MUELLER & KIRKPATRICK, supra note 13, at 9.
54. E.g., Bennett, supra note 53, at 87; Lubet, supra note 53, at 219.
55. Bennett, supra note 53, at 87.
56. Davis, supra note 36, at 21.
57. See, e.g., MICHAEL J. SAKS & BARBARA A. SPELLMAN, THE PSYCHOLOGICAL FOUNDATIONS OF EVIDENCE LAW 95 (2016) (stating that an attorney’s objection can indicate to the jury that the attorney is trying to keep a secret or hide information, which might make the information seem more valuable).
58. See infra Part II.A (focusing on psycholegal research).
Thus, the remaining sections discuss more general psychological research that could help explain the influence of objections. Section B discusses the objection as an interruption, linking the research on interruptions, memory, and attention to what goes on in the courtroom. Section C reviews research on argumentativeness and verbal aggression in relation to the verbal objection. Section D provides an overview of how objections might result in various attributions in the courtroom. Section E considers how research on persuasion may relate to objections. Finally, Section F reviews the Stereotype Content Model and how it connects to juror perceptions of objections.

A. INADMISSIBLE EVIDENCE

The majority of psycholegal research on objections has used the objection as a means of manipulating inadmissible evidence. In these studies, researchers are focused on critical testimony, or the testimony that includes evidence that is being challenged as inadmissible. Generally these manipulations compare three conditions: critical testimony that is objected to and admitted, critical testimony that is objected to and ruled inadmissible, and a control condition with no critical testimony and no objections. However, only one of these studies includes the fourth condition of critical testimony being admitted without an objection, and none of the studies includes objections without the critical testimony. Therefore, the current understanding of the importance of objections in a trial is inseparable from the understanding of inadmissible evidence.

Most of the research involving inadmissible evidence refers to an underlying similarity with cognitive psychological research on directed forgetting. Cognitive psychologists have found that participants remember information they are instructed to remember better than information that they are instructed to forget (directed forgetting). However, the forgetting does not seem to be complete, and it is much easier to willfully forget basic, meaningless information than it is to willfully forget meaningful information that is critical to problem-solving. It is especially difficult to ignore information when it is potentially relevant to an

59. See infra Part II.B (focusing on objection as an interruption).
60. See infra Part II.C (focusing on reviewing research on argumentativeness and verbal aggression).
61. See infra Part II.D (focusing on how objections might result in various attributions in the courtroom).
62. See infra Part II.E (focusing on how research on persuasion may relate to objections).
63. See infra Part II.F (focusing on the Stereotype Content Model).
64. Steblay et al., supra note 3, at 469; Wilson, supra note 3, at 3.
65. Wilson, supra note 3, at 3.
outcome or judgment. Inadmissible evidence is likely information that jurors would perceive as relevant to their verdict (even if ruled irrelevant in the legal sense), and therefore jurors may be even less able to forget it when instructed. It is possible, however, that directed forgetting is different from what jurors are actually instructed to do: disregard information. Rather than forgetting information, jurors are actually instructed not to let it influence their decisions. However, a meta-analysis of forty-eight studies investigating inadmissible evidence indicates that jurors are unable to disregard the inadmissible evidence completely. On the one hand, verdicts are significantly different when the evidence is admissible as opposed to when it is ruled inadmissible, suggesting that jurors are disregarding the evidence to some extent and not allowing the inadmissible evidence to influence their verdicts as much as it does when it is admissible. On the other hand, verdicts from participants who were told to disregard the evidence were also significantly different from control groups who never heard the evidence. Thus, jurors appear to be relying on inadmissible evidence, at least to some extent, even when instructed to disregard it.

Perhaps even more concerning is that in some instances, judicial instructions to ignore inadmissible evidence may backfire. For example, jurors who were instructed to disregard evidence about a defendant’s prior conviction rendered more guilty verdicts than jurors who heard the information without an instruction. Thus, the instruction to disregard evidence for a particular purpose


69. Stebly et al., supra note 3, at 475, 486.

70. David Mallard & Denise P. Perkins, Disentangling the Evidence: Mock Jurors, Inadmissible Testimony and Integrative Encoding, 12 PSYCHIATRY, PSYCHOL. & LAW 289, 296 (2005); Stebly et al., supra note 3, at 486-87.


73. Pickel, supra note 72, at 407. 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, 289 (1981) (holding that limiting instructions might not be a sufficient safeguard in practice). Some research indicates that limiting instructions can be effective. See generally A.P. Sealy & W.R. Cornish, Juries and the Rules of Evidence, CRM. L. REV. 208 (1973); Rita James Simon, Murder, Juries, and the Press, 3 TRANSACTION 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
can enhance the prejudicial impact.\textsuperscript{74} Moreover, research on belief perseverance suggests that it is difficult to change a formed belief.\textsuperscript{75} Thus, even if jurors attempt to disregard the evidence consciously, they may not be able to ignore (or even identify) the belief and perceptions that they have formed based on that information.\textsuperscript{76} Although the Supreme Court has emphasized that using jury instructions to disregard inadmissible evidence is a sufficient safeguard, psychological research indicates that even with instructions, jurors cannot completely ignore inadmissible evidence.\textsuperscript{77}

There are other factors that influence jurors' ability to disregard inadmissible evidence. The way the judge instructs the jury to disregard evidence may matter. Reactance theory suggests that when people feel as if their choices are being taken away, they react and do the opposite of what they are told.\textsuperscript{78} Consistent with reactance theory, research has shown that when mock jurors are given a stern admonishment to disregard testimony, they are less likely to disregard it than if they are given a mild instruction.\textsuperscript{79} Furthermore, the reason the judge provides for why jurors must ignore the evidence can be important.\textsuperscript{80} Kassin and Sommers found that jurors are more likely to disregard the evidence when they are given a substantive reason, such as the testimony being unreliable, than when they are given a procedural reason, such as testimony violating due process.\textsuperscript{81} Other research has also suggested that jurors are less likely to consider inadmissible testimony when the crime is especially serious or when the evidence presented is pro-conviction rather than pro-acquittal.\textsuperscript{82}

While most of these studies use objections only as a mechanism for studying inadmissible evidence, some research has manipulated objections directly.


\textsuperscript{74} Tanford & Cox, Decision Processes in Civil Cases, supra note 72, at 165; Wolf & Montgomery, supra note 72, at 206-09.

\textsuperscript{75} Craig A. Anderson et al., Perseverance of Social Theories: The Role of Explanation in the Persistence of Discredited Information, 39 J. PERSONALITY & SOC. PSYCHOL. 1037, 1037 (1980).

\textsuperscript{76} Mauricio J. Alvarez et al., "It Will Be Your Duty..." The Psychology of Criminal Jury Instructions, in ADVANCES IN PSYCHOLOGY AND LAW 119, 137 (Monica K. Miller & Brian H. Bornstein eds., 2016).

\textsuperscript{77} Cruz v. New York, 481 U.S. 186, 187 (1987); Steblay et al., supra note 3, at 486. There are several possible explanations for the ineffectiveness of limiting instructions. Many of the factors are discussed in this section. One alternative explanation is that jurors might not be able to engage in effective thought suppression. Daniel M. Wegner & Ralph Erber, The Hyperaccessibility of Suppressed Thoughts, 63 J. PERSONALITY & SOC. PSYCHOL. 903, 903 (1992). Or, the instruction itself (like an objection) might draw more attention to inadmissible evidence and make it more salient. See generally Dale W. Broeder, The University of Chicago Jury Project, 38 NEB. L. REV. 744 (1959).


\textsuperscript{79} Wolf & Montgomery, supra note 72, at 216-18.

\textsuperscript{80} Saul M. Kassin & Samuel R. Sommers, Inadmissible Testimony, Instructions to Disregard, and the Jury: Substantive Versus Procedural Considerations, 23 PERSONALITY & SOC. PSYCHOL. BULLETIN 1046, 1046 (1997); Steblay et al., supra note 3, at 473-74.

\textsuperscript{81} Kassin & Sommers, supra note 80, at 1046.

Wilson expanded upon the traditional research by adding another baseline condition that presents critical testimony without an objection. If the objection itself is not important, verdicts should remain the same when testimony is objected to and ruled admissible as when the testimony is presented with no objection. However, Wilson found that participants were significantly more likely to render a guilty verdict when there was an objection and the testimony was ruled admissible than when the evidence was presented without an objection. Thus, there appears to be something about the objection itself that may influence juror decisions that requires further attention.

B. INTERRUPTIONS

One explanation for the influence of objections is that objections, by their nature, are interruptions to the standard proceedings in the trial. Interruptions generally are defined as “incidents or occurrences that impede or delay . . . progress on [a task].” Research has identified four types of interruptions: intrusions, breaks, distractions, and discrepancies. Intrusions are “temporary halt[s]” due to “unexpected encounter[s] initiated by another person that interrupts the flow and continuity” of the communication or task. Similarly, breaks interrupt “flow and continuity” of the communication or tasks but are due to “planned or spontaneous recesses from work.” Distractions occur when “psychological reactions triggered by external stimuli . . . interrupt focused concentration.” And discrepancies are when “perceived inconsistencies between one’s knowledge and expectations and one’s immediate observations” interrupt performance.

In the courtroom, there are several types of interruptions. Breaks happen frequently when the court recesses to consider a motion or the jury is released for lunch or at the end of the day without having rendered a decision. There may be several distractions in the form of attorneys, the judge, other jurors, or even observers in the courtroom. Discrepancies occur if the evidence presented does not match the jurors’ pre-existing knowledge or schemas. Objections are intrusions on the trial—temporary halts due to an unexpected interruption initiated by one attorney that interrupts the continuity of the other attorney or witness.
When an attorney objects, the testimony in progress stops until the judge makes a ruling. In some instances, the attorney may spend extra time explaining the reasoning behind the objection, or the judge may even call a sidebar where the judge and attorneys converse out of earshot of the jury. Interruptions may be important to trial because they influence attention and memory, task performance, persuasion, and perceptions of the interrupter. 94

1. Attention and Memory

Research indicates that interruptions change how attention is allocated. 95 On the one hand, certain types of stimuli (e.g., pain or television commercials) have been found to increase attentional demands. 96 Thus, the interruption can lead to information overload that increases confusion and decreases decision quality. 97 Rationing of attentional resources can influence task processing, use of information, task accuracy, and problem solving time. 98 However, interruptions have also been found to increase memory for stimuli immediately preceding the interruption. 99

a. Spotlight Attention

"Spotlight attention" is a term that was developed to describe visual attention being focused on a particular element, like a spotlight. 100 Consistent with the
theory of spotlight attention, it is possible that an interruption can harness attention. For example, participants have enhanced memory for information presented immediately prior to an interruption and remember tasks better when they are interrupted and prevented from completing them.\textsuperscript{101}

Thus, when an attorney interrupts a trial by objecting, jurors’ attention and memory for the testimony might change. One study manipulated whether inadmissible evidence was objected to and immediately excluded or not objected to and excluded later during judicial instructions.\textsuperscript{102} Therefore, in both conditions, mock jurors were instructed to disregard evidence that they had heard, but the evidence either was followed by an objection interrupting the testimony or not.\textsuperscript{103} Mock jurors were better able to ignore inadmissible evidence when the instruction to disregard came at the end of the trial and there was no objection during trial.\textsuperscript{104} In fact, mock jurors focused on evidence ruled inadmissible immediately following an objection more so than when there was no objection and the evidence was admitted with no judicial instructions to disregard.\textsuperscript{105} This research suggests that the objection itself may draw attention to the information and make it more influential on juror verdicts.

b. Similarity

The similarity of the interruption to the interrupted material might be important. The attention-allocation theory hypothesizes that interruptions can increase attention for the interrupted task when the interruptive stimulus is similar in content.\textsuperscript{106} Cognitive research has shown that when word pairs are meaningfully tied in a person’s mind (similar), distractor tasks are less likely to interfere with the memory of the word-pair while other, unrelated word-pair associations are affected.\textsuperscript{107}

Objections by their nature are usually intrusions on the trial with a similar subject matter to the testimony being interrupted. Consequently, objections may increase the likelihood that jurors remember the objected-to information rather than if there were another interruption, such as an unrelated distraction. Research on interruptions in the trial suggests that the relationship between the content of

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\textsuperscript{101} Mäntylä & Sgaramella, supra note 4, at 193. See also Bluma Zeigarnik, On the Retention of Completed and Uncompleted Activities, 9 PSYCHOLOGISCHE FORSCHUNG 1, 1-3 (1927) (explaining that the Zeigarnik effect suggests that uncompleted tasks leave an unresolved tension and need for completion).

\textsuperscript{102} Wilson, supra note 3, at 3-4.

\textsuperscript{103} Id.

\textsuperscript{104} Id.

\textsuperscript{105} Id.

\textsuperscript{106} See Mäntylä & Sgaramella, supra note 4, 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).

the interruption and the testimony might be important.\textsuperscript{108} Mock jurors focus less on evidence proceeding an unrelated interruption than evidence proceeding an objection.\textsuperscript{109} In fact, there was no difference between mock-jurors who had an unrelated interruption prior to the evidence and mock-jurors who never heard the evidence at all, suggesting that an unrelated interruption (i.e., a distraction) might reduce attention to the evidence while a related interruption (i.e., an objection) might increase attention to the evidence.\textsuperscript{110} Thus, it is likely that an objection draws attention to evidence and highlights juror memory, not just because it interrupts the trial, but also because it is similar in subject-matter to the testimony it is interrupting.

\subsection*{c. Distinctiveness}

Interruptions may also influence memory if they are unusual.\textsuperscript{111} The distinctiveness effect is based on the notion that unusual events attract more attention than common events.\textsuperscript{112} Therefore, any characteristic that makes a target distinctive will make it more memorable.\textsuperscript{113} However, researchers acknowledge

\begin{itemize}
\item \textsuperscript{108} Wilson, supra note 3, at 9-10. Researchers examined mock jurors who watched a trial where testimony was either interrupted by an objection linked to the trial testimony or an unrelated interruption in which the video temporarily stopped (simple-interruption). \textit{Id.}
\item \textsuperscript{109} \textit{Id.} The objection served as an interruption similar to the information (testimony) being interrupted. \textit{Id.}
\item \textsuperscript{110} \textit{Id.}
\item \textsuperscript{111} Research on memory indicates that people have better memory for unusual information than for common information, which is known as the distinctiveness effect. \textit{See generally} Alan D. Baddeley & Graham Hitch, \textit{The Recency Effect: Implicit Learning with Explicit Retrieval?}, 21 MEM. \& COGNITION 146 (1993); R. Reed Hunt, \textit{The Concept of Distinctiveness in Memory Research}, in \textit{DISTINCTIVENESS AND MEMORY} 3 (R. Reed Hunt \& James B. Worthen eds., 2012) [hereinafter Hunt I]; Larry L. Jacoby \& Fergus I.M. Craik, \textit{Effects of Elaboration of Processing at Encoding and Retrieval: Trace Distinctiveness and Recovery of Initial Context}, \textit{LEVELS OF PROCESSING IN HUMAN MEMORY} 1 (Laird S. Cermak \& Fergus I.M. Craik eds., 1979); Anjali Thapar \& Robert L. Greene, \textit{Evidence against a Short-Term-Store Account of Long-Term Recency Effects}, 21 MEM. \& COGNITION 329 (1993); Paula J. Waddill \& Mark A. McDaniel, \textit{Distinctiveness Effects in Recall: Differential Processing or Privileged Retrieval?}, 26 MEM. \& COGNITION 108 (1998).
\item \textsuperscript{112} Hunt I, supra note 111, at 3. One example of the effect of distinctiveness on memory is the recency effect which suggests that people have a better memory for information presented most recently than information presented earlier. \textit{See generally} James Deese \& Roger A. Kaufman, \textit{Serial Effects in Recall of Unorganized and Sequentially Organized Verbal Material}, 54 J. EXPERIMENTAL PSYCHOL. 180 (1957); Murray Glanzer \& Anita R. Cunitz, \textit{Two Storage Mechanisms in Free Recall}, 5 J. VERBAL LEARNING \& VERBAL BEHAV. 351 (1966). Often researchers attribute this effect to recent items being more distinctive in memory. Arthur M. Glenberg \& Naomi G. Swanson, \textit{A Temporal Distinctiveness Theory of Recency and Modality Effects}, 12 J. EXPERIMENTAL PSYCHOL.: LEARNING, MEM., \& COGNITION 3, 3 (1986).
\item \textsuperscript{113} Waddill \& McDaniel, supra note 111, at 116-19. The distinctiveness effect is consistent with the isolation effect which describes the tendency for people to better remember something that stands out from a group and afford it more weight in decision making. W. Kohler \& H. von Restorff, \textit{On the Effect of Field Formations in the Trace Field: Analysis of Processes in the Trace Field}, 18 PSYCHOLOGISCHE FORSCHUNG 299, 319 (1933). For example, participants who say words in an unusual way (e.g., spelling the word aloud) remembered words better than participants who read the list. Michael W. Eysenck \& M. Christine Eysenck, \textit{Effects of Monetary Incentives on Rehearsal and on Cued Recall}, 15 BULL. OF THE PSYCHONOMIC SOC. 245, 245-46 (1980). Participants are less likely to exhibit false memory for distinct words on the Deese-Roediger-McDermott (DRM) memory task than common words. \textit{See, e.g.}, Simona
that distinctiveness is context-dependent.\textsuperscript{114} In the trial setting, this might mean that infrequent objections stand out more because they are unique and distinct; if objections are made frequently, any individual objection might not stand out as much and therefore be less distinct in memory.\textsuperscript{115}

Although it is generally believed that unusual or bizarre information is remembered better than non-distinct information, if an objection is actually distinct, it could have varying implications for memory of the information presented before and after the objection.\textsuperscript{116} Presumably, the information that is being objected to will be more memorable because of its relationship to the objection. The information presented immediately after might also be linked and therefore remembered better; however, it may take additional processing time (i.e., a resumption lag) for the juror to begin paying attention again following the interruption, which would result in a decrease in memory for information presented following the objection.\textsuperscript{117} This effect may depend upon the similarity between the objection and the information presented immediately afterwards. In other words, if a witness answers a question that was objected to and overruled, memory for the answer might stand out as distinct because it is all part of the material of the objection. Alternatively, if the objection is sustained and the witness answers a new question, memory for the answer following the interruption might be hindered due to a resumption lag.

\section*{2. Task Performance}

Research on interruptions demonstrates that interruptions can influence task performance in two ways: the time it takes to complete a task and task accuracy.
a. Task Duration and the Resumption Lag

Beyond the time spent dealing with the interruption, interruptions tend to increase the amount of time people spend on tasks. One explanation is that there is a resumption lag for people to reengage with the primary task.\footnote{See, e.g., David M. Cades et al., *Mitigating Disruptive Effects of Interruptions Through Training: What Needs to be Practiced?*, 17 J. EXPERIMENTAL PSYCHOL.: APPLIED 97, 101 (2011); Christopher A. Monk et al., *The Effect of Interruption Duration and Demand on Resuming Suspended Goals*, 14 J. EXPERIMENTAL PSYCHOL.: APPLIED 299, 311-12 (2008). A goal is "a mental representation of an intention to accomplish a task, achieve some specific state of the world, or take some mental or physical action." Pearl G. Solomon, *The Curriculum Bridge: From Standards to Actual Classroom Practice* 125 (3d ed. 2009).} Several factors influence the disruptiveness of an interruption, including the interference level (the residual memory for old goals), strengthening constraints (proactive interference), priming constraints (cues in environment), the timing of the interruption or resumption, and frequency of the interruption.\footnote{Monk, supra note 118, at 311-12. Earlier interruptions appear to require more mental processing to return to a task. Lan Xia & D. Sudharshan, *Effects of Interruptions on Consumer Online Decision Processes*, 12 J. CONSUMER PSYCHOL. 265, 279 (2002). Researchers gave participants mock online shopping tasks and manipulated the participant's goals, the timing of the interruption, and the frequency of interruptions. Id. at 270-78. Participants who were interrupted earlier in the task spent more time on the website, suggesting that these earlier interruptions require more mental processing to return to the task. Id. at 278.} Juries arguably have a concrete goal to render a verdict. Research on the factors that influence the goal activation model suggests that earlier objections and/or more frequent interruptions might result in less time being spent on their task.

Another factor that has been found to influence resumption lag duration is working memory capacity ("WMC").\footnote{Michael J. Kane & Randall W. Engle, *Working-Memory Capacity and the Control of Attention: The Contributions of Goal Neglect, Response Competition, and Task Set to Stroop Interference*, 132 J. EXPERIMENTAL PSYCHOL.: GEN. 47, 47 (2003). Working memory refers to the process of transferring information from short-term memory to long-term memory. Alan D. Baddeley & Graham Hitch, *Working Memory*, 8 PSYCHOL. LEARNING & MOTIVATION 47, 72 (1974).} People with higher WMC take less time to resume a complex task.\footnote{Cyrus K. Foroughi et al., *Individual Differences in Working-Memory Capacity and Task Resumption Following Interruptions*, 42 J. EXPERIMENTAL PSYCHOL.: LEARNING, MEMORY, & COGNITION 1480, 1485 (2016). Higher WMC is correlated with lower resumption lag. Id. People with higher WMC show less resumption lag effects on standard, computer-based procedural tasks. Id. Foroughi and colleagues hypothesized that WMC moderates resumption lag effects because people with higher WMC are "better able to rehearse primary-task information and/or suppress interference from the interruption task." Id. at 1481. Research on Stroop tests shows that WMC is only related to errors for complex tasks. Kane & Engle, supra note 120, at 47.} This is potentially related to the fact that WMC is related to how well a person manages information through interference.\footnote{Kane & Engle, supra note 120, at 47-48.} For a trial, this could mean that jurors require time to process information before resumption of testimony following an objection. This resumption lag likely varies based on the individual juror and may be influenced by their WMC, especially for complex trials. Thus, it is important for attorneys to consider the effect that the resumption lag has on attention or memory for information presented after the objection, and whether attention and memory vary based on the individual juror's WMC.
b. Accuracy

The other element of task performance that is influenced by interruptions is accuracy. One important factor for accuracy is the similarity between the task and the interruption; the more similar the interruption is to the intended task, the worse the effect on task performance. The interruption-similarity effect occurs even when the interruptions only partially overlap the primary task. Since objections are often related to the trial testimony in content, attorneys should be aware that jurors might be less accurate in their recall of information tied to the objection.

The influence of interruptions on performance accuracy also depends on task complexity. The Distraction-Conflict Theory posits that distractions are beneficial to performance on simple tasks but are detrimental to performance on complex tasks. One explanation is that interruptions increase stress and arousal, narrowing attention and focusing a decision maker on a limited number of cues. For simple tasks that require little cognitive capacity, the distraction therefore can focus the decision maker on the task without reducing accuracy. However, for complex tasks, there is little to no excess cognitive capacity; a narrowing of attention reduces attention paid to cues that may be relevant to the task. Thus, interruptions (particularly frequent interruptions) can improve performance on simple tasks but hinder performance on complex tasks. Jurors are expected to

123. Accuracy is a different element than resumption lag, but they may be negatively correlated since longer resumption lags have been found to reduce errors in certain situations. See Duncan P. Brumby et al., Recovering from an Interruption: Investigating Speed-Accuracy Trade-Offs in Task Resumption Behavior, 19 J. EXPERIMENTAL PSYCHOL.: APPLIED 95, 104 (2013) (finding that if errors resulted in a high time-cost penalty, participants resumed the primary task more slowly and made fewer errors than when errors resulted in a low time-cost penalty).

124. Mark B. Edwards & Scott D. Gronlund, Task Interruption and its Effects on Memory, 6 MEMORY 665, 666 (1998) (citing M.P. Czerwinski et al., Interruptions in Multitasking Situations: The Effect of Similarity and Warning, NAT'L AERONAUTICS & SPACE ADMIN. (Technical Report JSC-24757, 1991)). Participants' performance was measured following an interruption in monitoring spacecraft data. Id. Performance was significantly worse following similar interruptions (display of the previous day's data) than dissimilar interruptions (crew activities' time line). Id.

125. Edwards & Gronlund, supra note 124, at 682-83. Participants completed an item retrieval task in a hypothetical town and either interrupted them with a similar (but not identical) item retrieval task or a dissimilar addition task. Id. Results suggested that interruption similarity did reduce the number of questions participants correctly answered. Id. This effect may be weaker than the complete overlap. Id.


127. Baron, supra note 98, at 35-36; Sanders & Baron, supra note 126, at 956.

128. Id.

129. Speier et al., supra note 94, at 340. Researchers manipulated task complexity and interruption frequency during a computer activity. Id. at 342. For simple tasks, participants scheduled workloads by looking up specified data, performed simple calculations, and identified trends in the data. Id. at 344. For complex tasks, participants completed a facility location task and an aggregate planning task. Id. Consistent with the Distraction-Conflict Theory, interruptions improved performance on the simple tasks
render verdicts in trials, which generally would be considered a complex task. Thus, objections could decrease jurors’ decision accuracy, particularly if the objections occur frequently.

3. Interruptions and Persuasion

There is a concern that interruptions can reduce persuasion by reducing processing activity and taking attention away from the message. In fact, marketers are instructed to gain consumers’ undivided attention and minimize disruptions during sales pitches. Although research shows that more attention to a message can increase its persuasiveness, the effect of interruptions on message persuasiveness is complicated and seems to depend on the type of interruption.

In a trial, jurors are most likely to be interrupted by an external interruption which competes with the juror’s attention. Research on cognitive load and interruptions demonstrates that interruptions that compete with attention reduce message processing. Distraction may be beneficial in some situations, such as when the attorney is making a negative argument or the jurors are unaware they are listening to a persuasive message. If objections operate like interruptions,
objections may influence jurors by increasing cognitive load, decreasing message processing, increasing susceptibility to persuasion, and altering perceptions of trial participants compared to a trial without objections.\textsuperscript{137} However, this may be dependent upon whether the juror is experiencing cognitive dissonance or whether the juror believes they will be able to hear the interrupted testimony.\textsuperscript{138}

A potential reason for the increase in persuasiveness is that interruptions increase curiosity. Curiosity is an important element in learning and has been found to increase student participation in the classroom when instructors are non-threatening.\textsuperscript{139} Researchers have found that interruptions increase curiosity such that they are going to hear a persuasive message, they are more likely to mentally counter-argue the message, reducing the message’s persuasiveness and effectiveness. \textit{id.} at 40.

\textsuperscript{137} Festinger & Maccoby, \textit{supra} note 134, at 359. It is important to note, however, that objections usually do not occur concurrently with the testimony (message) as most of the interruptions in the mentioned research do. When an attorney objects, it may momentarily overlap the other attorney’s question or a witness’s testimony; however, in most instances, the original speaker will stop until the objection is resolved. Following the judge’s decision regarding the objection, it is possible that the original message will resume, or it might be stopped permanently. It is possible that because the objection halts the trial until it is resolved, message processing is not quite the same as studies of information processing occurring concurrently with the interruption.

Research on spending behavior indicates that interruptions that temporarily pause a message can increase message persuasiveness as reflected in an increased willingness to pay. See Barbara Price Davis \& Erik S. Knowles, \textit{A Disrupt-then-Reframe Technique of Social Influence}, 76 J. PERSONALITY & SOC. PSYCHOL. 192, 198 (1999) (finding that people are more likely to donate to charity when a charitable message is disrupted and then reframed). See also Kupor & Tormala, \textit{supra} note 94, at 300 (finding that people also indicate greater willingness to pay for products when the message advertising the product is interrupted). Follow-up studies indicated that people were more willing to pay when the interruption was early in the message rather than later. \textit{id.} at 304. This effect was partially mediated by thought favorability; interruptions increased favorable thoughts, which influenced purchasing intentions. \textit{id.} at 302.

Objections might influence favorable perceptions of the trial participants, such as the questioning attorney, the testifying witness, and/or the objecting attorney. These perceptions may then mediate message persuasiveness.

\textsuperscript{138} Stephen Worchel & Susan E. Arnold, \textit{The Effect of Combined Arousal States on Attitude Change}, 10 J. EXPERIMENTAL SOC. PSYCHOL. 549, 549-53 (1974). In this study, participants were interrupted while listening to a tape of a counter-attitudinal message, and following the interruption, were either able to hear the end of the message or not. \textit{id.} at 553-54. Participants who were prevented from hearing the conclusion of the message changed their attitudes more frequently than the control group who heard the whole message, but only if the participant was experiencing cognitive dissonance. \textit{id.} at 556-59. The researchers hypothesized that the interruption intensified the arousal from cognitive dissonance and increased the need for attitude change. \textit{id.} at 552-53. Researchers Mischel and Masters have found that favorability ratings of films are greater when the film is interrupted at the climax, particularly when viewers are told there is a low probability of the film resuming. Walter Mischel \& John C. Masters, \textit{Effects of Probability of Reward Attainment on Responses to Frustration}, 3 J. PERSONALITY & SOC. PSYCHOL. 390, 395-96 (1966). This effect existed even if the viewer ultimately saw the rest of the film. \textit{id.} at 393. These findings were counterintuitive since researchers initially believed that the interruption would cause frustration and decrease favorability ratings. \textit{id.} at 395-96. One explanation the authors offered for the opposite effect was that nonavailability or unattainability of a reward makes it more attractive, leading participants to ascribe it a higher value. \textit{id.} Therefore, it is possible that when there is an objection and jurors do not expect to hear the remainder of testimony, jurors may perceive the objected-to testimony more favorably. Moreover, this effect might occur regardless of whether the objected-to information is later they would have had of the information without an objection. This favorable opinion could continue even if the testimony is later given (e.g., if it was originally stopped not because it was inadmissible evidence, but rather because the formatting of the questioning violated the rules of evidence).

\textsuperscript{139} Ruth A. Peters, \textit{Effects of Anxiety, Curiosity, and Perceived Instructor Threat on Student Verbal Behavior in the College Classroom}, 70 J. EDUC. PSYCHOL. 388, 394 (1978). See also George
that when the interruption is over, curious participants process the message more deeply.\textsuperscript{140} Similarly, interruptions in trial can increase juror curiosity in the information being presented, which can result in jurors processing the information being presented surrounding the objection more deeply than the rest of trial testimony.

Objections in the courtroom can either permanently or temporarily halt the information delivery. If objections act like the more traditionally studied interruptions, it is possible that objections could increase juror curiosity and increase persuasiveness of information. Jurors might value stopped testimony more than testimony that was not objected to. Even if the objection is followed by the attorney rephrasing the question, it is possible that jurors still will believe the evidence/testimony is more valuable than if there had not been an objection.

\textbf{4. Perception of Interrupters}

There has also been some research into how people perceive an interrupter. This literature identifies two types of interruptions—intrusive interruptions (which are made with the purpose of dominating the other) and cooperative overlaps (which are made with the purpose of encouragement or support).\textsuperscript{141} Objections would be considered an intrusive interruption, and thus are the focus of this review. Intrusive interruptions violate the norms of conversation and interrupters are perceived as higher in interpersonal dominance, which is generally seen as a negative trait.\textsuperscript{142} Thus, it is possible that objecting attorneys will be perceived as high in interpersonal dominance and be rated more negatively.\textsuperscript{143}

\begin{thebibliography}{9}
\bibitem{Loewenstein} Loewenstein, \textit{The Psychology of Curiosity: A Review and Reinterpretation}, 116 PSYCHOL. BULL. 75 (1994) (reviewing research on curiosity from the 1960s through the 1980s).
\bibitem{Kupor} Kupor & Tormala, \textit{supra} note 94, at 306-07. Consistent with their hypothesis, Kupor and Tormala found that participants self-reported higher levels of curiosity following interrupted videos. \textit{Id.}
\bibitem{Youngquist2} Youngquist, \textit{supra} note 94, at 147; Carol W. Kennedy & Carl T. Camden, \textit{A New Look at Interruptions}, 47 W. J. SPEECH COMM. 45, 46 (1983).
\bibitem{Youngquist3} However, it is possible that objections within a trial might be perceived quite differently than interruptions within a conversation because the norms are different. Social context is an extremely important factor in interpretation of behavior. Steve Duck, \textit{Human Relationships} 2-3 (3d ed. 1998); Michael Searcy et al., \textit{Communication in the Courtroom and the “Appearance” of Justice}, in \textit{APPLICATIONS OF NONVERBAL BEHAVIOR} 41, 42 (Ron Riggio & Richard Feldman eds., 2005). Behavior that is “appropriate” in one social context may be “inappropriate” in another social context. See Steve Duck & Lise VanderVoort, \textit{Scarlet Letters and Whited Sepulchers: The Social Marking of Relationships as “Inappropriate”}, in \textit{Inappropriate Relationships: The Unconventional, The Disapproved, and The Forbidden} 3, 3-5 (Robin Goodwin & Duncan Cramer eds., 2002) (explaining what constitutes an inappropriate relationship). The courtroom is designed to be an adversarial setting with guilt or liability determinations being the primary focus. Searcy et al., \textit{supra} note 143, at 43. However, standard conversations do not typically occur in an adversarial context. Thus, while interpersonal dominance might be perceived negatively in conversation that is not characterized by competition, it could be a prized characteristic in the courtroom that is rife with conflict or opposition. Moreover, objections in the courtroom follow a formal structure that is pre-determined by rule of law, while interruptions in
This pattern might be more severe for women since female interrupters are perceived even more negatively than male interrupters. Researchers hypothesize that the gender difference is due to interpersonal dominance being perceived as a masculine characteristic rather than a feminine characteristic. When people violate gender norms by demonstrating characteristics typical of the other gender, they are often perceived negatively.

5. Interruptions and Story Construction

It is possible one reason that objections would influence the trial is because they interrupt the jurors’ story construction. Although perceptions of attorneys and other extra-legal factors can influence verdicts, evidence is the primary factor driving verdicts. The evidence is presented at trial in pieces, brought out one witness or exhibit at a time. Most jurors take each piece of evidence and compare it to other evidence and evaluate the significance in the overall puzzle, much like a reader of a mystery novel. The way that each piece of evidence is evaluated can be influenced by a juror’s schema, or mental structure that aids in processing and interpreting information. Heuristics, such as the confirmation bias, can result in jurors paying undue attention to facts that support their schema or theory of the case and ignore other evidence.

Pennington and Hastie developed the story model of jury decision-making that explains jury decisions based on schemas. The story model hypothesizes that “jurors impose a narrative story organization on trial information, in which causal and intentional relations between events are central.” Pennington and Hastie interviewed participants after they watched a mock murder trial. Most jurors created a narrative of the evidence and differences in narratives between mock jurors were related to differences in verdicts. Furthermore, Pennington conversation are typically more indirect and polite. Thus, research on how interrupters are perceived in everyday situations may not apply to the courtroom, which involves a very different social context.

147. Id. at 246.
148. Id. at 253.
and Hastie found that jurors were more likely to recognize evidence that was consistent with their verdict than evidence that was associated with other verdicts. Objections can interrupt the testimony and halt the narrative, resulting in an alteration during the creation of the story or schema and changes in jury decisions, particularly if objections are frequent.

C. ARGUMENTATIVENESS AND VERBAL AGGRESSION

In addition to influencing perceptions of evidence, objections may influence perceptions of the attorneys. Two factors that have been found to influence perceptions of communicators are argumentativeness and verbal aggression.

Argumentativeness is when at least two people advocate opposite positions on a controversial issue. It is characterized as a debate that provides arguments and counter-arguments. Studies of communication indicate that argumentativeness is perceived positively. Argumentative communicators are rated as more interesting, dynamic, and expert. This may be particularly true for trial attorneys who are perceived as dominant and are supposed to be argumentative.

Verbal aggressiveness, on the other hand, is characterized by a lack of argumentative skills resulting in the communicator making verbal attacks on the other individual personally. Verbally aggressive communicators are typically perceived negatively.

Both the content and the tone of the objection have the potential to influence perceptions of argumentativeness and verbal aggressiveness. If either the content

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155. Although research has not investigated how interruptions influence jurors’ story construction, it is possible that halted stories could be less powerful than stories without interruptions. 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 Pennington & Hastie II, supra note 154, at 521 (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). Research on the Story Model indicates that narrative completeness impacts juror decisions. Id. at 531. The less complete the story, the less the juror relies on it in the decision. Id. Thus, objections can alter the narrative jurors develop and influence juror decisions.


157. Infante, supra note 156, at 265; Andrew S. Rancer et al., Relations between Argumentativeness and Belief Structures about Arguing, 34 COMM. ED. 37, 37 (1985).


161. Downs et al., supra note 158, at 102.
or tone of the objections results in the attorney being perceived as argumentative, the jury may rate the attorney more positively. If the content or the tone of the objections results in the attorney being perceived as verbally aggressive, the jury may rate the attorney more negatively.\textsuperscript{162} These perceptions may vary based on the individual communicator, so factors such as the speaker’s role or other speaker characteristics may result in different perceptions of argumentativeness and verbal aggression for individual attorneys giving the same objection.\textsuperscript{163}

D. ATTRIBUTION THEORY

One theory that could explain how jurors perceive attorney objections in court is attribution theory. Attribution theory assumes that laypeople, or “naïve psychologists” make attributions about the behaviors of others, either explicitly or implicitly, because of the need to predict the future or control outcomes.\textsuperscript{164} There are several foundational theories for attribution theory.

I. Attribution Theories

Heider’s function suggests that when individuals perceive events, they search the environment for factors that may account for changes in the environment; dispositional elements are attributed to the actor; situational elements are attributed to the environment.\textsuperscript{165} Kelley’s Covariation Model purports that perceivers rely on three dimensions to infer causality when causality is not clear:

\begin{itemize}
  \item Further research is necessary to determine whether content or tone drives these perceptions when they do not match (e.g., content is argumentative but tone is verbally aggressive), or if having either one fit the category is sufficient to drive perceptions (e.g., being verbally aggressive in either category could result in negative perceptions).
  \item Downs et al., supra note 161, at 99-100. Researchers studied college students’ perceptions of a televised exchange between George H.W. Bush and Dan Rather. \textit{Id.} at 100. Results indicated that argumentativeness was associated with positive perceptions of Bush, while it was associated with negative perceptions of Rather. \textit{Id.} at 106. Verbal aggressiveness, on the other hand, was related to negative perceptions of Bush and positive perceptions of Rather. \textit{Id.} at 107. Differences between Bush and Rather may be due to Bush being a politician and Rather being a journalist, and may be the driving factor in these differences in perceptions. \textit{Id.} at 111. For attorneys, this could mean that plaintiff/prosecution attorneys would be perceived differently on argumentativeness and verbal aggression than defense attorneys. However, it is also possible that another speaker characteristic is driving the effect, which could also lead to different perceptions of individual attorneys given the same objection.
  \item HEIDER, supra note 164, at 164. Heider’s function suggests that there is an inverse relationship between dispositional and environmental attributions; as an individual attributes more of the change to dispositional elements, the less the individual attributes to situational elements. HEIDER, \textit{supra} note 164, at 164. See also Glenn D. Reeder, \textit{Attribution as a Gateway to Social Cognition}, in THE OXFORD HANDBOOK OF SOCIAL COGNITION 95, 98 (Donal E. Carlston ed., 2016) (“Heider’s (1958) rather simplistic distinction between dispositional and situational causality became the bedrock assumption of early attribution theories. If behavior was seen as due to the actor, perceivers could feel free to attribute corresponding traits and dispositions to the target person, whereas if the behavior was seen as caused by situational forces, little could be learned about the target person . . . . In other words, dispositional and situational causality were placed at odds with one another—in a hydraulic relationship—where the strength in one implied weakness in the other.”)
\end{itemize}
consensus (whether others experience the effect similarly), distinctiveness (whether the effect is unique to the situation/person), and consistency (whether the effect is reliable over time).\textsuperscript{166} Similarly, Weiner's Attribution Theory posits that there are three dimensions perceivers use when determining causality: locus of control (whether behavior is attributed to external or internal factors), stability (whether cause of effect changes over time), and controllability (whether actor can control the outcome).\textsuperscript{167}

These initial theories are prescriptive because perceivers were expected to rationally consider criteria at each stage of the attribution process prior to making a final judgment. However, these models ignore motivational biases and cognitive shortcomings that humans often display, particularly during less controlled processing. Therefore, these models might describe how decisions ought to be made in an ideal situation, but they do not adequately account for human shortcomings or situations lacking complete information on each dimension. Thus, modern attribution theories have focused on dual-processing models of cognition to describe how attributions are made in light of these complexities.

Dual-process models identify two tracks of cognition: automatic and controlled.\textsuperscript{168} According to the dual-process theory, humans do engage in controlled processing where they make decisions slowly, intentionally, and with awareness, such as described in the theories above.\textsuperscript{169} However, some decisions

\textsuperscript{166} Kelley, supra note 164, at 194. Kelley proposed that perceivers systematically process each dimension individually while holding the other dimensions constant. \textit{Susan T. Fiske & Shelley E. Taylor, Social Cognition: From Brains to Culture} 144 (2008). When a person or an event is high on consensus, distinctiveness, and consistency, the perceiver can confidently make a dispositional attribution; when a person or event is low on consensus, distinctiveness, and consistency, the perceiver can confidently make a situational attribution. Harold H. Kelley, \textit{The Processes of Causal Attribution}, 28 \textit{Am. Psychol.} 107, 112 (1973).


Under this theory, the process of making attributions begins with observation of behavior followed by a determination that the behavior is deliberate, and, finally, attributing the behavior to internal or external causes. \textit{Fiske & Taylor, supra note 166}, at 151. Weiner’s theory also suggests that affect is tied to causal attributions. \textit{Id.} Once a causal judgment is made, the perceiver responds affectively which influences expectation and behavior. \textit{Id.} For example, if an individual fails an exam and attributes the failure to an internal, stable, and uncontrollable cause (such as lack of aptitude), the individual will likely experience negative affect (e.g., hopelessness) that may result in the individual deciding to drop out of school. Bernard Weiner, \textit{The Development of an Attribution-Based Theory of Motivation: A History of Ideas}, 45 \textit{Ed. Psychol.} 28, 33 (2010). Alternatively, if the individual fails an exam but attributes the failure to an internal, unstable, and controllable cause (e.g., insufficient effort), the individual also will likely experience negative affect (such as regret) that may result in the individual studying harder in the future. \textit{Id.}

\textsuperscript{168} \textit{Fiske & Taylor, supra note 166}, at 135. The dual process distinction recognizes that “much causal reasoning occurs very quickly and virtually automatically.” \textit{Id.} at 135. However, there are certain “circumstances under which we do interrupt our automatic information processing, shift to controlled processing, and focus our attention explicitly on asking and answering the question ‘Why did that happen?’” \textit{Id} at 135.

\textsuperscript{169} Daniel Kahneman, \textit{A Perspective on Judgement and Choice}, 58 \textit{American Psychologist} 697 (2003). This is also known as the Two-System view, with the slow, control process being known as System 2 processing. System 2 processes are “slower, serial, effortful, more likely to be consciously monitored and deliberately controlled; they are also relatively flexible and potentially rule governed.” \textit{Id.} at 698.
are made using automatic processing, meaning the cognition occurs rapidly, unintentionally, and without awareness.\textsuperscript{170} Research indicates that most attributions are made using automatic processing because people tend to rely on a single explanation for a situation rather than searching and weighing all the evidence to find the best possible causal explanation.\textsuperscript{171}

2. Attributions in the Courtroom

The legal system has some built-in safeguards in recognition that jurors sometimes make improper attributions.\textsuperscript{172} For example, attorneys may not use prior criminal behavior to prove a criminal disposition; in most criminal cases, a defendant’s criminal history is excluded so the jury cannot determine that the defendant is a criminal based solely on a pattern of previous behavior.\textsuperscript{173} When the evidence is admitted for another reason, such as to impeach a defendant who lied on the stand about his criminal history, the judge will often provide a limiting instruction which instructs the jury that evidence of criminal history can only be used for the limited purpose and not to make attributions about character.\textsuperscript{174} Psycholegal research suggests that jurors frequently engage in making attributions that influence their perceptions and verdicts, despite the procedural evidentiary safeguards.\textsuperscript{175}

\textsuperscript{170.} Id. These quick processes are also known as System 1 processes, which “are typically fast, automatic, effortless, associative, implicit (not available to introspection), and often emotionally charged; they are also governed by habit and are therefore difficult to control or modify.” Id. at 698.

\textsuperscript{171.} FISKE & TAYLOR, supra note 166, at 135.

\textsuperscript{172.} Joseph M. Livermore, Contributions of Attribution Theory to the Law, 2 LAW & HUM. BEHAV. 389, 391 (1978).

\textsuperscript{173.} FED. R. EVID. 404. See also Kleynhans & Bornstein, supra note 28 (discussing the psychological assumptions of the FRE).

\textsuperscript{174.} FED. R. EVID. 609(a). These instructions, however, may not be effective. Research on criminal history suggests that jurors are more likely to convict a defendant when evidence is presented about the defendant’s criminal record, even when limiting instructions are provided. See Sealy & Cornish, supra note 73, at 217 (analyzing the effect of previous convictions on juror verdicts); A.N. Doob & H.M. Kirshenbaum, Some Empirical Evidence on the Effect of s. 12 of the Canada Evidence Act Upon an Accused, 15 CRIM. L.Q. 88, 88 (1972) (describing the use of prior criminal record in jury trials); Valerie P. Hans & Anthony N. Doob, Section 12 of the Canada Evidence Act and the Deliberations of Simulated Juries, 18 CRIM. L.Q. 235, 237 (1976) (stating that presence of criminal record influences group verdicts); Roselle L. Wissler & Michael J. Saks, On the Inefficacy of Limiting Instructions: When Jurors Use Prior Conviction Evidence to Decide on Guilt, 9 LAW & HUM. BEHAV. 37, 37 (1985) (analyzing the effect a prior record has on mock jurors’ assessments of guilt). See also supra note 73 (discussing limiting instructions).

\textsuperscript{175.} 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 PSYCHOLOGICAL REP. 579 (1995); Yael Idissi et al., Attribution of Blame to Rape Victims among Therapists and Non-Therapists, 25 BEHAVIORAL SCIENCE LAW 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). See also D. J. Angelone et al., Club Drug Use and Intentionality in Perceptions of Rape Victims, 57 SEX ROLES 283, 283 (2007) (explaining that rape victims who are voluntarily intoxicated are perceived to be less credible and the accused is less likely to be convicted); Ashley A. Wenger & Brian H. Bornstein, The Effects of Victim’s Substance Use and Relationship Closeness on Mock Jurors’ Judgments in an Acquaintance Rape Case, 54 SEX ROLES 547, 547 (2006) (explaining negative perceptions of drunk women who are sexually assaulted). When jurors attribute a defendant’s behavior to
Attributions jurors make about attorneys can also be important. Research indicates that jurors evaluate the dress, demeanor, and personality of the attorney in addition to case evidence. Attorneys' courtroom expertise, speech patterns, gender, attractiveness, and race have all been found to influence juror perceptions and verdicts beyond the evidence presented in the case. Attorneys recognize that jurors' perceptions and attributions are important. When a criminal defense attorney is losing a case, the attorney might attack the victim or opposing counsel. Because attributions often influence decisions, if a jury can decide that the prosecuting attorney is being unfair, attorneys believe it is possible for the defense to win a case even when the objective evidence favors the prosecution.

However, there is concern in the general population about attorney ethics, which might influence what attributions jurors make regarding attorney behavior. For example, attorneys are perceived as tricksters who are corrupt and greedy. Jurors believe that attorneys try to hide or distort information, or opposing counsel.

an internal cause, they are more likely to hold the defendant liable; when jurors attribute the defendant's behavior to an external cause, they are less likely to hold the defendant liable. Jeffery R. Boyll, Psychological, Cognitive, Personality and Interpersonal Factors in Jury Verdicts, 15 LAW & PSYCHOL. REV. 163, 167 (1991); Sandra Graham et al., An Attributional Analysis of Punishment Goals and Public Reactions to O.J. Simpson, 23 PERSONALITY & SOC. PSYCHOL. BULL. 331, 332-33 (1997).

176. 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, 277 (2003).


182. Livermore, supra note 172, at 391.

183. Id. Some theorists believe that this occurred in the O.J. Simpson criminal trial—jurors liked O.J. Simpson and his attorneys, and they did not like the prosecuting attorneys (Marcia Clark and Chris Darden), who were described as arrogant and condescending, or the prosecution's key witness (Detective Mark Fuhrman), who was portrayed as extremely racist. Todd Boyd, Evaluating the Prosecution's Case, PBS FRONTLINE (Oct. 4, 2005), http://www.pbs.org/wgbh/pages/frontline/oj/themes/prosecution.html; Scott Turow, Interview of Scott Turow, PBS FRONTLINE (Oct. 4, 2005), http://www.pbs.org/wgbh/pages/frontline/oj/interviews/turow.html.


particularly if the attorney engages in hostile tactics or leading questions. attorneys who ask more questions are perceived to be more manipulative. it is possible that objections may influence perceptions of attorneys in a similar way. jurors might attribute the objection to the attorney being a manipulative, unethical person who is trying to hide something from the jury.

jurors might make different attributions about the objection depending upon which side is raising it. defense attorneys in general are perceived less favorably than prosecuting attorneys. prosecuting attorneys are rated as more convincing, articulate, enthusiastic, likable, and credible. particularly relevant to objections, the prosecution is perceived to be more honest than the defense; thus it is possible that a defense attorney who objects will be more likely to be perceived as hiding something than a prosecuting attorney. furthermore, defense attorneys who quote the bible in favor of their case are rated as less credible and sincere than prosecuting attorneys quoting the bible, suggesting that defense attorneys may lose their credibility if jurors feel like they are being manipulated.

E. PERSUASION

Persuasion is the "act of influencing the minds of others by arguments or reasons, by appeals to both feeling and intellect; it is the art of leading another man's will to a particular choice, or course of conduct." persuading the legal decision maker is the main goal of trial attorneys, so it is important to understand what factors influence persuasion. objections might influence persuasiveness of the attorney's message merely because they serve as an interruption; however, it is possible that objections will influence persuasion for other reasons as well.


190. Cohen & Peterson, supra note 188, at 85.


193. See supra Part II.B (assessing objections and interruptions).
Research on persuasion indicates that persuasiveness of the message depends on several factors, including the route of persuasion (Elaboration Likelihood Model), the source of the message, the content of the message, and the audience.

1. Elaboration Likelihood Model

The Elaboration Likelihood Model ("ELM") is a dual-processing theory of persuasion.\textsuperscript{194} Similar to the dual-process models of cognition, the ELM suggests that persuasion can take one of two routes: central or peripheral.\textsuperscript{195} Motivation and ability to think deeply about the message are the primary factors influencing which route of persuasion will be successful.\textsuperscript{196} The central route of persuasion works when the listener has the ability and motivation to think carefully about the incoming information.\textsuperscript{197} The peripheral route is successful when the listener is unwilling or unable to put effort into thinking about the argument and therefore relies on peripheral cues or heuristics.\textsuperscript{198}

Motivation usually refers to the degree to which the message is relevant to the listener's goals and interests. The more relevant the message, the more effort the listener will likely devote to thinking about the message.\textsuperscript{199} For example, researchers have manipulated relevance of an advertisement that varied in argument strength (strong or weak) and celebrity endorsement (present or absent).\textsuperscript{200} When the advertisement was relevant (i.e., participants expected to pick the product later), participants were influenced most by the argument strength (central route) and less influenced by the spokesperson (peripheral cue).\textsuperscript{201} However, participants who were not motivated (i.e., were not expecting to pick the product later) were highly influenced by the spokesperson (peripheral) and not influenced by message strength (central).\textsuperscript{202}

Ability to think thoughtfully about a message is also important. Even if listeners are motivated, if they are unable to listen to the message, the peripheral route will likely be more important.\textsuperscript{203} Researchers had students listen to messages about cutting tuition at their university that varied in argument strength and manipulated distraction (recording the location of a moving X on the screen...
every 5 or every 15 seconds). Mildly distracted participants relied on the strength of the argument when agreeing with the message; however, participants who were extremely distracted did not discriminate based on strength of argument.

Although both routes of persuasion can be effective in different situations, attitudes formed through the central route are more durable, resistant, and predictive of behavior than attitudes formed through the peripheral route. The elements that influence which route is more persuasive can be grouped into three categories represented in the question: Who says what to whom?, referring to the source (who), content (what), and audience (whom) of a message.

a. Source

Importantly for attorneys, the source of a message (or who is delivering the message) influences the persuasiveness of the message. There are several factors about the source that can influence persuasiveness of a message. For example, relatively attractive communicators are often more persuasive than unattractive communicators. The similarity between the source and the audience can be important. Although the communicator’s status and expertise are extremely important factors, in general, similar communicators are more successful when the message involves subjective preferences, and dissimilar communicators are more influential when the message involves objective facts. Two other source factors that influence persuasion which attorneys should be aware of when deciding to object are source credibility and use of linguistics.

i. Source Credibility

Source credibility is a multidimensional “attitude toward a source of communication held at a given time by a receiver.” Over time, there have been many conceptualizations of credibility. Different researchers have identified various dimensions of credibility: expertness, trustworthiness, reputation, competence, authoritativeness, and dynamism. This research has led

204. Id. at 875, 880-81.
205. Id. at 883.
207. GREENBERG ET AL., supra note 198, at 277.
211. See Kenneth Andersen & Theodore Clevenger, A Summary of Experimental Research in Ethos, 30 COMM. MONOGRAPHS 59, 70 (1963) (discussing authoritativeness and dynamism); David K. Berlo et
researchers to conclude that dimensions of source credibility can be reduced to two overarching domains: competence and character.\textsuperscript{212}

Courtroom credibility may be more specific given the dynamics of the court environment. There has been a breadth of research on expert witness credibility that has identified four primary factors involved in ratings of credibility of expert witnesses: confidence, trustworthiness, knowledge, and likeability.\textsuperscript{213} Expert witness gender is also important for ratings of credibility, with male experts typically being rated as more credible than female experts.\textsuperscript{214}

al., \textit{Dimensions for Evaluating the Acceptability of Message Sources}, 33 \textit{PUB. OPINION. Q.}, 563, 574-76 (1969) (discussing trustworthiness and dynamism); Franklyn S. Haiman, \textit{An Experimental Study of the Effects of Ethos in Public Speaking}, 16 \textit{COMM. MONOGRAPH.} 190, 201-02 (1949) (discussing general competence); Carl J. Howland et al., \textit{COMMUNICATION AND PERSUASION: PSYCHOLOGICAL STUDIES OF OPINION CHANGE} 21-23 (1953) (discussing expertness and trustworthiness).

212. McCroskey & Young, \textit{supra} note 210, at 25. In response to the disagreement over which dimensions are included in credibility, McCroskey and Young surveyed communication students using forty-one bipolar adjectives derived primarily from previous source credibility theory and research. \textit{Id.} at 31. A factor analysis of this scale identified eight source credibility dimensions: sociability, competence, extraversion, composure, character, size, weight, and time. \textit{Id.} The authors emphasize that size is related to how we perceive other people but that time and weight are theoretically unrelated to source credibility, and therefore reduced the construct further into two domains. \textit{Id.} at 34.


Similarly, ratings of an attorney's professional skills and credibility influence perceptions of the attorney and verdicts.\textsuperscript{215} Attorneys who gesture and make frequent eye contact with jurors are perceived to be more credible.\textsuperscript{216} Jurors' ratings of attorney competence are linked to the attorney's ability to prepare and organize a case, clearly communicate, present evidence, and make arguments at trial.\textsuperscript{217} Ratings of attorney credibility are driven by beliefs regarding the attorney's believability and trustworthiness; for example, if success or winning a case is perceived to be more important to an attorney than the truth, the attorney will lack credibility.\textsuperscript{218}

If an attorney is concerned about juror perceptions of objections, the attorney should consider how the objection influences attributions about credibility, particularly in terms of competence and character.\textsuperscript{219} On the one hand, objecting might make an attorney appear competent, especially if the judge upholds the objection or jurors expect attorneys to object.\textsuperscript{220} Alternatively, objections might make the attorney appear less trustworthy if the jury thinks the attorney is trying to hide evidence or that by objecting the attorney is more interested in winning the case than finding the truth.\textsuperscript{221} However, attorneys should be aware that it is possible that the impact of the objection will differ based on certain characteristics of the objection,\textsuperscript{222} characteristics of the attorney,\textsuperscript{223} and the characteristics of the jurors.\textsuperscript{224}

ii. Linguistic Characteristics

One source characteristic that can influence persuasion is the source's linguistic style.\textsuperscript{225} Sociolinguistic research suggests that linguistic characteristics

\textit{Decisions}, 25 LAW & PSYCHOL. REV. 59, 66 (2001). Female expert witnesses are less disadvantaged, and sometimes even have an advantage, when the subject is a traditionally female domain, such as clothing or children. Schuller et al., supra, at 74. Perceptions of female experts tend to vary based on ratings of likeability more than male experts. Brodsky I, supra note 213, at 525.

\textsuperscript{215} See generally Boyll, supra note 175; H. Mitchell Caldwell et al., The Art and Architecture of Closing Argument, 76 TUL. L. REV. 961, 973-74 (2002); Trahan, supra note 188. However, research on factors influencing perceptions of attorneys is not as robust as factors influencing the perceptions of experts. Thus, the factors that influence perceptions of attorney skill and credibility are not well understood.

\textsuperscript{216} Elizabeth A. LeVan, Nonverbal Communication in the Courtroom: Attorney Beware, 8 LAW & PSYCHOL. REV. 83, 94 (1984).

\textsuperscript{217} See generally Hengstler, supra note 184.

\textsuperscript{218} Shapiro, supra note 185, at 7-9; Trahan, supra note 188, at 97.

\textsuperscript{219} McCroskey & Young, supra note 210, at 25. Competence and character are two primary elements of credibility. Id.

\textsuperscript{220} See Michael Pfau et al., Television Viewing and Public Perceptions of Attorneys, 21 HUM. COMM. RES. 307, 307 (1995) (indicating that behavior witnessed during television viewing might impact these expectations).

\textsuperscript{221} Trustworthiness is a key component of character. Shapiro, supra note 185, at 7-9.

\textsuperscript{222} For example, characteristics my include content, reasoning, or tone.

\textsuperscript{223} For example, characteristics my include gender or attractiveness.

\textsuperscript{224} For example, characteristics my include gender, extraversion, or television viewing behavior.

of speech are important factors for persuasiveness. In the trial setting specifically, the speaker’s powerfulness has been found to influence persuasion. Some scholars even believe that an attorney’s linguistic style can make the difference between winning and losing a case. Linguistic research applied to the courtroom has investigated the linguistic characteristics of witness testimony. Witnesses who use relatively powerless speech, for example using hedge words (e.g., sort of, kind of) or filler words (e.g., you know, umm), are less persuasive than witnesses who speak more powerfully and do not use powerless phrases, such as hedge or filler words. Powerful witnesses, on the other hand, are perceived as more credible, competent, attractive, trustworthy, dynamic and convincing; when plaintiffs have powerful witnesses, juries award higher damages. Child witnesses are perceived as more credible when they are answering short, less confusing yes/no questions. Expert witnesses are the most persuasive and memorable when they use powerful, vivid, narrative testimony that is high in emotion, specificity, or strong words. Other

226. Id. at 1377-78.
229. Powerless speech includes using hedge words (e.g., sort of, kind of, maybe, around, I think, it seems like), filler words (e.g., you know, and all, umm), intensifiers (e.g., very, really, lots, surely, definitely), and terms of personal reference (e.g., my old pal, my buddy). Conley et al., supra note 225, at 1380; Jeffery L. Kestler, QUESTIONING TECHNIQUES AND TACTICS § 9.56 (3d ed. 1999).
231. Karen J. Saywitz et al., Credibility of Child Witnesses: The Role of Communicative Competence, 13 TOPICS IN LANGUAGE DISORDERS 59, 62 (1993). Attorneys need to be aware of this since attorneys tend to use complex language. See generally Mark Brennan & Roslin E. Brennan, Strange Language: Child Victims Under Cross Examination (1988); Nancy W. Perry et al., When Lawyers Question Children: Is Justice Served?, 19 LAW & HUM. BEHAV. 609 (1995). Complex language can result in inaccurate responses by young children attempting to answer a misunderstood question and lead to diminished credibility of the testimony. Perry et al., supra, at 609. Moreover, the degree to which the child understands the legal system can influence responses to questions and credibility, potentially because understanding of the legal system is related to understanding of the language used in the questions as well as the purpose of responding to the question and the content provided. Karen J. Saywitz, Children’s Conceptions of the Legal System: “Court is a Place to Play Basketball”, in PERSPECTIVES ON CHILDREN’S TESTIMONY 131, 148-49 (Stephen J. Ceci, David F. Ross, & Michael P. Toglia eds., 1989); Saywitz et al., supra, at 62-63.
research has found that the use of passive voice also increases expert witness credibility.\textsuperscript{233}

The linguistic characteristics of attorneys interacting with witnesses is also important. Some research indicates that attorneys who verbally clash with witnesses by speaking at the same time are perceived as relatively powerless.\textsuperscript{234} More notably in terms of objections, attorneys who interrupt witnesses are perceived to be powerless and unfair.\textsuperscript{235} Consequently, the delivery of the objection is important. An objection which uses powerless language (e.g., hedge words) might be less persuasive to the judge and jury. Moreover, the timing of the objection might be important. If the objection interrupts the witness or the other attorney, the objecting attorney may be perceived as powerless and unfair, which can negatively affect the attorney's case.

iii. Message Characteristics

The content and style of a message also influence attitudes.\textsuperscript{236} As mentioned earlier, argument strength is important, especially when the listener is engaging in central processing.\textsuperscript{237} Beyond argument strength, the structure and length of a message can be important. Logical, comprehensible arguments are more persuasive than jumbled arguments.\textsuperscript{238} Longer messages tend to be more persuasive, particularly when using the peripheral route of persuasion.\textsuperscript{239} However, due to limits in cognitive resources, memory for the message often decreases as the number of arguments increases, since the audience has less opportunity to think about and rehearse each one.\textsuperscript{240} Additionally, the listener's thoughts about the message can influence its persuasiveness such that the more confident that a listener is that his or her thoughts about a message are correct, the more persuasive the message will be.\textsuperscript{241}
Objections often alter the message being delivered by the opposing attorney or adversarial witness. This might be beneficial if the jury is engaging in peripheral processing or the attorney is able to cut off additional strong arguments. However, objecting might backfire if it makes the opposing side’s argument shorter and more succinct, particularly if the opponent has already delivered a few strong arguments.

iv. Audience

There are several characteristics of the audience that might play a role in how persuasive a message is. Older, smarter, self-confident people tend to be less persuadable. People who think about things critically and analytically tend to be more persuadable, particularly by strong messages. People tend to be

1968). A listener’s attitude about a message is influenced by the listener’s thoughts about the message and confidence in those thoughts. *Id.* at 167-69. The process of stepping back and thinking about one’s thoughts is called metacognition. *Id.* at 148. But, something as simple as being instructed to nod or shake one’s head when receiving a message can influence confidence about one’s thoughts about the message. Pablo Brifiol & Richard E. Petty, *Overt Head Movements and Persuasion: A Self-Validation Analysis*, 84 J. PERSONALITY & SOC. PSYCHOL. 1123, 1123 (2003).

242. For example, objections may change the length and content of the message.

243. By objecting, the attorney is also often delivering his or her own message that the judge or jury should disregard the information that has just been presented. Thus, considering the content of the objection can be important in persuading the judge and the jury. Although attorneys must also be aware of legal requirements for contents of objections, which can vary from court to court, if there is flexibility, attorneys might also want to consider how much of a justification they should provide regarding the reasoning for the objection. Providing a few clear, succinct arguments for why the information should be ignored (or whatever the objection is attempting to accomplish) may result in more successful advocacy.

244. Variation in susceptibility to persuasion is known as persuasibility. See generally Wendy Wood & Brian Stagner, *Why are Some People Easier to Influence than Others?*, in PERSUASION: PSYCHOLOGICAL INSIGHTS AND PERSPECTIVES 149-51 (Sharon Shavitt & Timothy C. Brock eds., 1st ed. 1994). Persuasibility includes both audience trait factors (e.g., self-esteem and intelligence) and state factors (e.g., mood and emotion). *Id.*

245. For purposes of this article, older people are defined as twenty-six-years-old or older as compared to younger people (eighteen to twenty-five years old). Laura B. Koenig et al., *Stability and Change in Religiousness during Emerging Adulthood*, 44 DEV. PSYCHOL. 532, 532 (2008); Jon A. Krosnick & Duane F. Alwin, *Aging and Susceptibility to Attitude Change*, 57 J. PERSONALITY & SOC. PSYCHOL. 416, 416 (1989).

246. For purposes of this article, smarter people are those with high intelligence and education as compared to people with low intelligence and little education. See generally William J. McGuire, *Personality and Attitude Change: An Information-Processing Theory*, in PSYCHOLOGICAL FOUNDATIONS OF ATTITUDES 171 (Timothy C. Brock et al., eds., 1968).


248. The need to think about things critically and analytically is known as the need for cognition. GREENBERG ET AL., *supra* note 198, at 294. This is particularly important when using the central route of persuasion. *Id.* For example, researchers studied college students who read an editorial proposing students should be required to pass a rigorous exam before graduation and results varied based on strength of the argument. John T. Cacioppo et al., *Effects of Need for Cognition on Message Evaluation, Recall, and Persuasion*, 45 J. PERSONALITY & SOC. PSYCHOL. 805, 805 (1983). Students were more persuaded by the strong argument, especially if they scored high in need for cognition. *Id.*
more persuadable when they are in a good mood or experiencing low levels of negative emotions, such as fear.249

Since audience factors influence persuasion, attorneys must be conscious of their audience, including the jury and the judge. Not only should attorneys be cautious when conducting voir dire (i.e., jury selection) by considering the persuasibility of each juror, they should also be aware of these elements when presenting their case. In terms of objections, attorneys should consider the audience’s (judge and jury) need for cognition levels and frame the objection in a way that will be most persuasive, including avoiding eliciting fear and other negative emotions in most instances.

v. Reactance Theory

Attorneys must also be aware of an audience’s motivation to resist being persuaded. Psychological reactance theory proposes that people value freedom of thought and action, and situations that threaten that freedom arouse discomfort and result in behavior to reassert independence.250

Reactance theory is important for objections in the courtroom because, in many instances, when an objection is upheld, the judge admonishes the jury to disregard evidence. To the extent that the admonishment is perceived by jurors as restricting their freedom in deliberations, they might react with strong motivation to resist judicial control and reestablish freedom.251 In fact, researchers have found that strong judicial admonishments can trigger reactance, resulting in jurors

249. This is true even when the good mood is unrelated to the message. See generally Norbert Schwarz et al., Mood and Persuasion: Affective States Influence the Processing of Persuasive Communications, 24 ADVANCES IN EXPERIMENTAL SOC. PSYCHOL. 161 (1991). For example, participants who are given snacks while reading a persuasive message are more persuadable than participants who are not given snacks. Irving L. Janis et al., Facilitating Effects of “Eating-While-Reading” on Responsiveness to Persuasive Communications, 1 J. PERSONALITY & SOC. PSYCHOL. 181, 181 (1965). See also Sara M. Banks et al., The Effects of Message Framing on Mammography Utilization, 14 HEALTH PSYCHOL. 178 (1995) (gauging the effectiveness of gain versus loss-framed messages to persuade women to obtain mammography screening); Alexander J. Rothman & Peter Salovey, Shaping Perceptions to Motivate Healthy Behavior: The Role of Message Framing, 121 PSYCHOL. BULL. 3 (1997) (analyzing the role of message framing in health-relevant communications). However, if fear is too overwhelming, it can backfire and reduce persuasiveness of a message. Irving L. Janis & Seymour Feshbach, Effects of Fear-Arousing Communications, 48 J. ABNORMAL & SOC. PSYCHOL. 78, 92 (1953).

250. Brehm, supra note 78, at 4; GREENBERG ET AL., supra note 198, at 298.

251. Steblay et al., supra note 3, at 488.
disregarding the instructions.252 Thus, judicial instructions and objections should be made in a manner cognizant of the potential for triggering reactance.253

F. STEREOTYPE CONTENT MODEL

The stereotype content model ("SCM") is another potential explanation for how jurors will perceive objections. The SCM posits that beliefs about group members develop on two dimensions: warmth and competence.254 Warmth generally refers to cooperation and likability, whereas competence typically relates to prestige, power, and status.255 There are two primary ways in which activated stereotypes about a group can impact judgment and behavior toward an

252. Wolf & Montgomery, supra note 72, at 216-18; Steblay et al., supra note 3, at 488. A mock-juror experiment manipulated whether testimony was ruled admissible, inadmissible with a weak admonishment, or inadmissible with a strong admonishment. Wolf & Montgomery, supra note 72, at 209-11. In the weak admonishment condition, the judge instructed the jurors not to consider the testimony; in the strong admonishment condition, jurors were told that they must not consider the evidence, and they had no choice but to disregard it. Id. at 211. Results indicated that jurors were less likely to ignore the evidence when given the strong admonishment, suggesting that forceful judicial instructions might arouse reactance from jurors. Id. at 212-16.

253. As Steblay and colleagues suggest, judicial instructions should be cognizant of the potential of juror opposition. Steblay et al., supra note 3, at 488. When instructing jurors to disregard inadmissible evidence, the judge has to be aware of whether the instructions will result in the jurors feeling as if their behavioral freedom is restricted. Reactance is also an important consideration for attorneys who are objecting in trial. If the jury perceives an attorney objection as a restriction on the jury’s freedom, the jury may resist the attorney’s objection to reestablish their freedom. The effect may be particularly strong if the objection is sustained since a sustained objection may potentially result in the jury feeling as if the objecting attorney and the judge sustaining the objection are intruding on their freedom, increasing the potential for jury reactance. However, even when the objection is unsuccessful, there may be a general reactance to the attorney’s attempt to restrict the jury’s freedom. Therefore, attorneys should be cautious in objecting in light of the potential of reactance; whether or not the judge sustains the objection, the jury may end up doing the opposite of what the attorney is requesting in an effort to resist control and reestablish freedom.

254. Susan T. Fiske et al., A Model of (Often Mixed) Stereotype Content: Competence and Warmth Respectively Follow from Perceived Status and Competition, 82 J. PERSONALITY & SOC. PSYCHOL. 878, 878 (2002) [hereinafter Fiske I]; Susan T. Fiske et al., Universal Dimensions of Social Cognition: Warmth and Competence, 11 TRENDS IN COGNITIVE SCI. 77, 77 (2007) [hereinafter Fiske II]. The SCM has been validated across cultures. See Amy J. C. Cuddy et al., Stereotype Content Model across Cultures: Towards Universal Similarities and Some Differences, 48 BRIT. J. SOC. PSYCHOL. 1, 1 (2009) (stating that the SCM proposes universal principles of societal stereotypes in relation to social structure). Under the SCM, groups are perceived as high or low on each dimension separately, resulting in four different patterns of stereotypes. Fiske I, supra note 256, at 878. People who are perceived as high on both warmth and competence (e.g., students, Americans by other Americans) are regarded positively, eliciting emotions such as pride. Id. at 881. People who are perceived as low on both (e.g., homeless, drug addicts) are regarded negatively, eliciting emotions such as disgust. Id. When people are perceived as high on one dimension and low on the other, they tend to be regarded with ambivalence. Id. People who are high on warmth but low on competence (e.g., elderly, disabled) elicit emotions such as pity and sympathy. Id. People who are high on competence but low on warmth (e.g., rich people, Asians, Jews) elicit envy and jealousy. Id.

255. Id. at 878.
individual: the assimilation effect\textsuperscript{256} and the contrast effect\textsuperscript{257} The assimilation effect, or judging people consistently with the group stereotype, occurs more frequently than the contrast effect.\textsuperscript{258} Perceptions of warmth and competence are not just related to emotions and attitudes, but also can influence behavior and decisions.\textsuperscript{259}

1. **Stereotype Content Model in Psychology and Law**

Psycholegal research that has applied SCM has found that perceptions of warmth and competence can influence legal decisions in a multitude of ways. The

\textsuperscript{256} The assimilation effect occurs when people make judgments that are consistent with an activated stereotype. S. Christian Wheeler & Richard E. Petty, *The Effects of Stereotype Activation on Behavior: A Review of Possible Mechanisms*, 127 PSYCHOL. BULL. 797, 797 (2001); Paul M. Herr et al., *On the Consequences of Priming: Assimilation and Contrast Effects*, 19 J. EXPERIMENTAL SOC. PSYCHOL. 323, 323-25 (1983). Assimilation effects usually occur when the perceiver has conscious control of the activated stereotype, the activated stereotype is moderate, and the person being judged is ambiguous. Wheeler & Petty, supra note 256, at 797. For example, a perceiver who classifies Christians as moderately competent and moderately warm might make a positive judgment about someone whom they observe leaving church on Sunday morning, consistent with the activated stereotype.

\textsuperscript{257} The contrast effect occurs when stereotypes are activated sub-consciously or when the stereotype is extreme. Wheeler & Petty, supra note 256, at 816; Herr et al., supra note 256, at 330. Contrast effects result in the perceiver viewing the person being judged as farther away from the stereotype. Wheeler & Petty, supra note 256, at 816. For example, a perceiver who classifies homeless people as extremely low in both competence and warmth might make more positive judgments about an individual homeless person encountered in a big city. See generally Fiske I, supra note 254, at 881. The assimilation effect, or judging people consistently with the group stereotype, occurs more frequently than the contrast effect. Wheeler & Petty, supra note 256, at 797.

\textsuperscript{258} Wheeler & Petty, supra note 256, at 797. Contrast effects only occur in 20% of cases. Id.

\textsuperscript{259} Amy J. C. Cuddy et al., *The BIAS Map: Behaviors From Intergroup Affect and Stereotypes*, 92 J. PERSONALITY & SOC. PSYCHOL. 631, 631 (2006) [hereinafter Cuddy et al., *The BIAS Map*]; Fiske II, supra note 254, at 77. The Behaviors and Intergroup Affects and Stereotypes (“BIAS”) Map is one structural framework that has linked stereotypes to behavioral tendencies. Cuddy et al., supra, at 631. In validating the BIAS Map, findings indicated that perceptions of warmth are linked to active behavior while perceptions of competence are linked to passive behavior. Id. Thus, perceivers tend to facilitate admired groups (high in both warmth and competence) by helping (active behavior) and associating with (passive behavior) them; perceivers tend to harm hated groups (low in both warmth and competence) by harassing (active behavior) and neglecting (passive behavior) them. Id. Alternatively, envied groups (low in warmth, high in competence) tend to be harassed (active behavior) but associated with (passive behavior), while pitied groups (high in warmth, low in competence) tend to be helped (active behavior) but neglected (passive behavior). Id.
SCM is linked to perceptions of obesity policies, workplace discrimination decisions, and perceptions of expert witness credibility. Attorneys should therefore be cognizant of how they are perceived by jurors on warmth and competence. Objections are one factor that can influence perceptions of attorney warmth and competence. Attorney objections will likely result in lower ratings for warmth but higher ratings of competence. The tone and frequency of the objection or characteristics of the objecting attorney would likely mediate the effect of objections on ratings of warmth and competence.


261. Warmth and competence is related to legal judgments in age discrimination cases. Katlyn S. Farnum & Richard L. Wiener, Stereotype Content Model, Causal Models, and Allegations of Age Discrimination: Should the Law Change?, 16 ANALYSES OF SOC. ISSUES & PUB. POL. 100, 100 (2016); Richard L. Weiner & Katlyn S. Farnum, How Old is Old in Allegations of Age Discrimination? The Limitations of Existing Law, 40 LAW & HUM. BEHAV. 536, 536 (2016). Researchers measured ratings of warmth and competence of elderly workers and found that when jurors rated the specific plaintiff higher in warmth and competence, they were more likely to find the defendant liable; ratings of envy and contempt toward the plaintiff were unrelated to verdict. Farnum & Weiner, supra, at 100. Higher warmth and competence ratings of elderly people as a group in general also increased the likelihood of a verdict of liable; however, this pattern only occurred when jury instructions required jurors to focus on the illegitimate factors involved in the decision (but-for instructions), not when jurors considered the illegitimate and legitimate factors (mixed motive instructions). Id. at 102.

262. Tess M. S. Neal et al., Warmth and Competence on the Witness Stand: Implications for the Credibility of Male and Female Expert Witnesses, 40 J. AM. ACAD. PSYCHIATRY L. 488, 488 (2012) [hereinafter Neal et al., Warmth and Competence on the Witness Stand]. Researchers manipulated likeability (high or low; similar to warmth) and knowledge (high or low; similar to competence) of expert witnesses who were testifying in a mock trial and measured ratings of credibility of the expert. Id. Consistent with the SCM, experts who were high in both domains were rated as the most credible while experts who were low in both domains were the least credible. Id.

263. Research has not specifically examined how the SCM relates to perceptions of attorneys, however, findings regarding other groups can be extended. It is likely that attorneys will be perceived similarly to expert witnesses since both are professional figures in trial, particularly compared to the parties involved and other witnesses (for example, an eyewitness), and attorneys and experts are likely considered advocates for the side they are representing. Therefore, attorneys high in warmth and competence would likely be considered more credible than attorneys low in warmth and/or competence. See Neal et al., Warmth and Competence on the Witness Stand, supra note 262, at 488 (studying jurors' considerations of expert witness credibility). However, it is also possible that attorneys and experts will be perceived differently since they fill very different roles, with attorneys supposed to be advocates while experts might be expected to be more neutral.

264. Again, research has not specifically examined the influence of objections on perceptions of warmth and competence, but there are several possible hypotheses based on existing research.

265. Objections are likely to be considered an assertive behavior that would decrease ratings of warmth. However, this perception may be dependent upon how the objection is made (i.e., tone) or gender of the attorney. See infra Part III.F(2). It is likely that objections will make an attorney appear more competent, especially if jurors are expecting a certain amount of objecting behavior based on their direct or indirect (e.g., media portrayals) experience with attorneys. Pfau et al., supra note 220, at 307. It is also possible that too many objections might make an attorney appear less competent or out of control.
2. Stereotype Content Model and Gender Role Theory

There is research indicating that SCM operates differently for men and women. Social role theory posits that society has different normative expectations for male and female behavior. Women are expected to be more communal, emotionally expressive, and interpersonally sensitive; men are expected to be more agentic, controlling, and independent. In regard to SCM, women are often perceived as warmer whereas men are perceived as more competent.

People who violate gender norms typically suffer a negative reaction from others, such as social and economic reprisals, known as backlash. Professionally, women who engage in behaviors that are perceived as too masculine, such as being agentic, dominant, self-promotional, or taking on a leadership role, tend to experience severe backlash. These perceptions can result in workplace discrimination since agentic female employees are often not hired or promoted, despite being perceived as highly qualified, because they are rated as cold and socially unlikable. This situation leads some to conclude that women have to choose between being perceived as either warm and incompetent or as cold and competent, but that women often do not have the option of being perceived as both warm and competent.


267. Id. at 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).

268. Rudman, supra note 146, at 629.


270. Susan T. Fiske et al., Social Science Research on Trial: Use of Sex Stereotyping Research in Price Waterhouse v. Hopkins, 46 AM. PSYCHOL. 1049, 1050-51 (1991); Madeline E. Heilman, Deception and Prescription: How Gender Stereotypes Prevent Women’s Ascent Up the Organizational Ladder, 57 J. SOC. ISSUES 657, 657 (2001); Karen S. Lyness & Michael K. Judiesch, Are Women More Likely to be Hired or Promoted into Management Positions, 54 J. VOCATIONAL BEHAV. 158, 158 (1999); Rudman, supra note 146, at 629; Rudman & Glick I, supra note 269, at 1005; Rudman & Glick II, supra note 269, at 743. See also Gerhard Sonnert & Gerald Holton, Career Patterns of Women and Men in the Sciences, 84 AM. SCI. 63, 63 (1996) (studying career advancement of women versus men).

271. See generally Judith S. Bridges et al., Trait Judgments of Stay-At-Home and Employed Parents: A Function of Social Role and/or Shifting Standards?, 26 PSYCHOL. WOMEN Q. 140 (2002); Cuddy et al., The BIAS Map, supra note 259; Alice H. Eagly & Maureen Crowley, Gender and Helping Behavior: A
women must act in masculine ways to be perceived as competent but risk backlash when they do.

Female attorneys are likely at a disadvantage compared to male attorneys.\textsuperscript{272} It is possible that perceptions of warmth and competence are more important for female attorneys.\textsuperscript{273} Thus, female attorneys in particular should be aware that jurors may perceive their objections differently than male attorneys. Objections are assertive,\textsuperscript{274} which is a typically masculine characteristic that is viewed negatively for women.\textsuperscript{275} Thus, objections may result in male attorneys being rewarded for being more competent whereas female attorneys are punished for being less warm.\textsuperscript{276} However, female attorneys may not be punished, particularly

Meta-Analytic Review of the Social Psychological Literature, 100 PSYCHOL. BULL. 283 (1986); Thomas Eckes, Paternalistic and Envious Gender Stereotypes: Testing Predictions from the Stereotype Content Model, 47 SEX ROLES 99 (2002); Claire Etaugh & Patricia Poertner, Perceptions of Women: Influence of Performance, Marital and Parental Variables, 26 SEX ROLES 311 (1992); Claire Etaugh & Gina Gilomen Study, Perceptions of Mothers: Effects of Employment Status, Marital Status, and Age of Child, 20 SEX ROLES 59 (1989); Fiske II, supra note 254; Neal et al., Warmth and Competence on the Witness Stand, supra note 262. In fact, one of the few instances in which women have been found to be perceived as both warm and competent is a nurturing mother involved in politics (e.g., Sarah Palin's hockey mom persona). Neal et al., Warmth and Competence on the Witness Stand, supra note 262, at 489.

272. Research on attorney gender indicates that female attorneys are perceived as less competent and are rated more negatively than male attorneys, particularly by female jurors. Hahn & Clayton, supra note 179, at 533; Shari Hodgson & Bert Pryor, Sex Discrimination in the Courtroom: Attorney's Gender and Credibility, 55 PSYCHOL. REP. 483, 483 (1984); Nelson, supra note 179, at 177; Reed & Groscup, supra note 179, at 4. Similarly, female expert witnesses are generally perceived as less credible than male experts. Neal et al., supra note 262, at 493. However, when female experts are rated high in both warmth and competence, they are perceived as equally credible to male experts. Id. at 495. However, other studies have not found differences in ratings of male and female attorneys. Cohen & Peterson, supra note 188, at 85; Nelson, supra note 179, at 177; Janet Sigal et al., The Effect of Presentation Style and Sex of Lawyer on Jury Decision-Making Behavior, 22 PSYCHOL. Q.J. HUM. BEHAV. 13, 18 (1985). In practice, women are less likely to engage in assertive negotiations due to fear that they will be perceived as unlikeable. Emily T. Amanatullah & Michael W. Morris, Negotiating Gender Roles: Gender Differences in Assertive Negotiating are Mediated by Women's Fear of Backlash and Attenuated when Negotiating on Behalf of Others, 98 J. PERSONALITY & SOC. PSYCHOL. 256, 256 (2010); Hannah Riley Bowles et al., Social Incentives for Gender Differences in the Propensity to Initiate Negotiations: Sometimes it Does Hurt to Ask, 103 ORG. BEHAV. & HUM. DECISION PROCESSES 84, 84 (2007). Women are often less successful in negotiations. Alice F. Stuhlmacher & Amy E. Walters, Gender Differences in Negotiation Outcome: A Meta-Analysis, 52 PERSONNEL PSYCHOL. 653, 653 (1999); Amy E. Walters et al., Gender and Negotiator Competitiveness: A Meta-Analysis, 76 ORG. BEHAV. & HUM. DECISION PROCESSES 1, 1 (1998).

273. See Neal et al., supra note 262, at 489.

274. See supra Part II(C).


276. Since objecting is assertive, men will likely be rewarded (in terms of juror perceptions and/or verdicts) for engaging in masculine behavior; females will likely be punished for engaging in masculine behavior. Research on attorneys found that males were more successful than females, and aggressive attorneys were more successful than passive attorneys. Hahn & Clayton, supra note 179, at 533. Gender and aggressiveness interacted such that aggression was beneficial for male attorneys, but female attorneys were punished for displaying masculine traits (e.g., aggressiveness or anger). Id. Another study manipulated attorney gender and emotion (angry vs. neutral) of the closing statement. Christian B. May, Anger in the Courtroom: The Effects of Attorney Gender and Emotion on Juror Perceptions (2014) (unpublished B.A. Honors Thesis, Georgia Southern University) (on file with Georgia Southern University). Angry male attorneys were rated as the most competent while angry female attorneys were
if they are perceived as advocating for another party (the defendant, state, or plaintiff). Conversely, female attorneys who do not object may be punished for not advocating for their clients. In either situation, male attorneys will likely be less subject to backlash effects for objecting (or not objecting) than female attorneys.

IV. CONCLUSIONS AND RECOMMENDATIONS

Although objections are an integral element of the adversarial legal system in terms of presenting/preventing evidence and preserving the record, there is little understanding of how objections influence the jury. Trial attorneys must balance fear of antagonizing the jury by objecting with the fiduciary duty to preserve the record for appeal. Psychological research can help attorneys better understand if this fear is valid.

Attorneys should absolutely object in order to prevent exceptionally damaging evidence from being presented or to preserve the record for an appealable issue. However, if the issue or testimony is not critical, psychological research suggests that attorneys should be more hesitant when objecting, particularly because the negative effects of objecting can occur regardless of whether the objection is successful. Jurors can be influenced by successful and unsuccessful objections alike. Moreover, if the objection is successful, attorneys should be aware that the objection could backfire and draw more attention to the evidence which jurors will not be able to disregard completely.

In practice, trial attorneys can apply the research to help them determine whether or not to object, especially in borderline situations. First, the attorney should consider how an objection at that point in the trial will influence jurors’ attention and memory. Research suggests that the objection will increase the jury’s focus on the testimony immediately preceding the objection, especially if their curiosity is piqued. However, the details the jury remembers may not be accurate. Due to the resumption lag, jurors might not pay as much attention to the

\[ \text{Ratings of competence of neutral attorneys fell in between and did not differ by gender, suggesting that female attorneys are punished for acting in a typically masculine manner. Id. at 15.} \]

\[ \text{A study that manipulated presentation style and attorney gender suggested that juror perceptions of assertive or aggressive presentation do not vary based on gender. Sigal et al., supra note 272, at 18. Since there are no perceived gender differences, female attorneys may not be punished in perceptions or verdicts in practice. Negotiation research indicates that women can act assertively in negotiations without backlash when they are acting for another person, presumably because the communal approach is seen as a feminine quality that overrides the masculine quality of the assertiveness. Emily T. Amanatullah & Catherine H. Tinsley, Punishing Female Negotiators for Asserting Too Much... Or Not Enough: Exploring Why Advocacy Moderates Backlash Against Assertive Female Negotiators, 120 ORG. BEHAV. & HUM. DEC. PROCESSES 110, 110 (2013). In fact, women who did not act assertively when advocating for others actually experienced backlash while men did not experience backlash in any condition. Id. at 111. Therefore, researchers propose that if women frame their assertiveness in terms of benefiting others there will be fewer negative consequences. Amanatullah & Morris, supra note 272, at 256; Amanatullah & Tinsley, supra note 277, at 111; Hannah Riley Bowles et al., Constraints and Triggers: Situational Mechanics of Gender in Negotiation, 89 J. PERSONALITY & SOC. PSYCHOL. 951, 956 (2005).} \]

\[ \text{Amanatullah & Tinsley, supra note 277, at 113.} \]
information immediately following the objection. Furthermore, the jury will likely be using all of the evidence presented at trial to construct a story. An attorney’s objection can alter the story construction, which may be positive (especially if it prevents damaging evidence from being presented). Alternatively, it could result in overreliance on the objected-to evidence.

Second, the attorney should consider how the objection will influence jurors’ perceptions of the attorney. It is likely that objecting attorneys will be perceived negatively by the jury since they are interrupting the trial testimony, but this perception may be dependent upon whether the attorney is perceived as verbally aggressive or argumentative. Verbally aggressive attorneys are more likely to be perceived negatively; argumentative attorneys may be perceived positively. If the jury is expecting objections, perhaps due to media exposure, then objecting may make the attorney appear more competent, even if ratings of warmth decrease. These perceptions can vary depending on extraneous characteristics of the objecting attorney, such as gender. Female attorneys may need to be more cautious in objecting than male attorneys.

Consequently, attorneys should balance the legal considerations (presenting evidence and preserving the record) against these psychological considerations (influence on attention, memory, and perceptions of the attorney). The goal of much psycholegal research is to improve the legal system and aid attorneys in making difficult decisions. In this instance, psycholegal research will hopefully help attorneys eliminate the potentially “disastrous consequences” of the Catch-22 situation attorneys are concerned with when objecting during trial.\textsuperscript{279}

\textsuperscript{279} vanNatta & Cothrel, \textit{supra} note 2, at 26.