

# IDENTIFYING FACTORS THAT SHAPE CAPITAL JURORS' IMPRESSIONS OF ATTORNEYS\*

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*Research has explored how jurors perceive a wide range of stimuli in capital cases. Studies have measured capital jurors' perceptions of evidence, arguments, witnesses, defendants, punishments, and aggravating and mitigating factors. There is, however, relatively little empirical evidence regarding how capital jurors perceive attorneys in these cases. This research attempts to fill this gap by describing capital jurors' impressions of trial attorneys. The data derive from transcripts of interviews conducted by the Capital Jury Project with 1,198 former capital jurors. Thematic analysis was used to identify the factors that form the basis of capital jurors' impressions of attorneys. Findings show that eleven factors exert a powerful influence on how jurors in capital cases come to perceive defense and prosecuting attorneys.*

Jurors in capital cases are tasked with making uniquely complex and emotive decisions. They must determine not only the guilt or innocence of the defendant, but also, upon conviction, whether to impose the death penalty. Recognizing the prominent role that jurors' cognition plays in capital cases, research has explored how jurors take account of a wide range of stimuli common to capital trials. There is, however, relatively little empirical evidence regarding how capital jurors perceive attorneys (Devine et al., 2001). Studies have measured capital jurors' perceptions of evidence, arguments, witnesses, defendants, punishments, and aggravating and mitigating factors. How they perceive the attorneys that introduce all these factors to them at trial has been relatively ignored. This absence is particularly conspicuous considering that practitioners and scholars alike generally assume that jurors form pervasive impressions of the attorneys they encounter at trial (Diamond et al., 1996). The research presented here attempts to fill this gap in the empirical record by analyzing capital jurors' impressions of the attorneys they came in contact with at trial. These impressions were tapped by the Capital Jury Project during three-to-four-hour interviews with 1,198 former capital jurors.

## LITERATURE

Despite the lack of research on capital jurors' impressions of attorneys, some studies have measured how the general public and jurors in civil and noncapital criminal cases perceive attorneys. These studies have measured subjects' perceptions of attorneys' professional skills and ethics. Findings indicate that attorneys' professional skills typi-

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cally garner praise and positive impressions. Perceptions of attorneys' ethics, however, are markedly more negative (Hengstler, 1993; Shapiro and Associates, 2002).

**Perceptions of Professional Skills.** There are certain general tasks that are required of virtually all trial attorneys, regardless of whether they practice civil or criminal law and what type of cases they specialize in. These tasks include, for example, communicating effectively with the jury, presenting evidence and arguments that support their version of events, and preparing and organizing their case. Studies suggest that perceptions of attorneys' professional skills are generally positive (Shapiro and Associates, 2002). Subjects have reported high levels of confidence in lawyers' ability to aid their clients effectively in court and with solving complex legal problems (Molvig, 2002). Commonly held perceptions portray lawyers as well educated, intelligent, and knowledgeable about the law and legal procedures (Hengstler, 1993). Attorneys' communicative abilities also often garner favorable impressions. Research indicates that observers often perceive attorneys' orations as effective, well-organized conveyances of relevant information (Linz, Penrod, and McDonald, 1986).

**Perceptions of Ethics.** Research on impressions of attorneys' ethics has typically measured whether subjects perceive the attorneys as being believable and trustworthy. One of the more common ways ethics has been operationalized is by asking whether attorneys' desire for success overrides their commitment to justice and the truth. Findings suggest that the public perceives that attorneys lack credibility because their goal is to win their case, not to convey the truth (see, e.g., Shapiro and Associates, 2002). These studies have also measured subjects' perceptions of the integrity of attorneys' trial tactics, such as their hostility toward opposing witnesses and counsel and the level of aggression with which they fight their cases (see O'Barr and Conley, 1981; McGaughey and Stiles, 1983; Gibbs et al., 1989).

Although research suggests that attorneys enjoy quite favorable impressions of their professional skills, perceptions of their ethics are markedly more negative. Hengstler found that the public believes lawyers possess necessary skills, but harbor "strongly rooted dissatisfactions with some aspects of . . . how they *practice* their skills" (Hengstler, 1993:60, emphasis added). Hans and Swiegart (1993) analyzed interview transcripts where 99 jurors who served on 14 civil cases discussed their perceptions of and reactions to the attorneys they encountered at trial. They found that these former civil jurors were wary of the attorneys' credibility and often described them as "tricksters." Strier's (1997) survey of 3,800 former jurors in Los Angeles found that jurors, particularly college-educated jurors, often believe that one or both attorneys they encounter at trial tried to distort relevant facts or hide them from the jury.

One of the most commonly cited methods lawyers use for distorting facts and information is employing hostile tactics and leading questions during cross-examination (McGaughey and Stiles, 1983). Gibbs et al. (1989) investigated the effects of such tactics on mock jurors' perceptions of attorneys by showing a videotape of a simulated trial to 91 introduction-to-psychology students. The subjects were asked to rate the perceived effectiveness of the attorneys to analyze the effects of hostile and manipula-

tive tactics by attorneys during cross-examination. Findings showed that attorneys who were hostile toward witnesses and asked leading questions were perceived by the mock jurors to be ineffective. O'Barr and Conley (1981) also studied jurors' reactions to attorneys who use hostile tactics. They found a positive correlation between the frequency of questions asked of witnesses and jurors' perceptions of manipulation on the part of attorneys. That is, attorneys who asked more questions of witnesses during cross-examination (a sign of mild hostility) were perceived to be more manipulative. Asking more questions gave the impression that the attorneys were trying to limit witnesses' presentation of evidence.

Although this research has yielded some important information, the findings fall short of providing a comprehensive and accurate profile of jurors' (particularly capital jurors') impressions of attorneys for two reasons. First, these studies have focused on a limited number of perceptual constructs. By measuring impressions of professional skills and ethics alone, these studies leave a host of potentially important influences uncovered. Jurors' impressions may be based on an array of factors that go far beyond the attorneys' professional skills and ethics.

Second, much of the extant research has relied on mock juries. Some scholars have argued that mock-jury research may lack external validity, i.e., that the experience of serving on a capital jury may not be able to be adequately replicated in an experimental setting (see, e.g., Lieberman and Sales, 1997). Despite the practical benefits of mock-jury research, it is possible that the results might differ for actual jurors (Diamond et al., 1996). In fact, the Supreme Court has expressed "serious doubt about the value of these studies in predicting the behavior of actual jurors" (*Lockhart v. McCree*, 1986:171). Furthermore, the research that has analyzed the impressions of actual jurors has gathered data from jurors in civil and noncapital criminal cases. These findings may not lend particularly well to understanding capital jurors' perceptions of attorneys. Capital jurors are selected according to very different criteria and perform substantively and procedurally different tasks than jurors in other cases (Sandys and McClelland, 2003). Given potential disparities between capital and noncapital trials with respect to the type of people that comprise the jury,<sup>1</sup> their experiences,<sup>2</sup> and the gravity of their task,<sup>3</sup> generalizing any findings is arguably precarious.

The research presented was designed to address these shortcomings and provide a comprehensive and generalizable account of capital jurors' impressions of attorneys.

<sup>1</sup> Research has shown that capital jurors are systematically different than noncapital jurors because different eligibility criteria govern who is deemed qualified to serve (Haney, 1984; Fitzgerald and Ellsworth, 1984; Thompson et al., 1984; Cowan, Thompson, and Ellsworth, 1984)

<sup>2</sup> The experience of serving as a juror in a capital trial may be quite different than serving on a civil or noncapital criminal trial. Typically, capital jurors must listen to descriptions of very brutal, violent crimes and view graphic crime-scene photographs.

<sup>3</sup> Some scholars have likened civil jurors' decisions on awarding damages to capital jurors' punishment decisions (see, e.g., Costanzo and Costanzo, 1992). However, having to decide whether to sentence a defendant to death may affect jurors in different ways than deciding whether and how to award monetary damages.

The data that were analyzed in the current study are the result of in-depth interviews with former capital jurors. These jurors were asked a variety of close-ended and open-ended questions designed to identify the full range of factors that influence their impressions of the attorneys they encountered at trial. Thus, these data represent jurors' impressions as they themselves expressed them in an open forum. The results suggest that capital jurors form pervasive impressions of attorneys based on a wide range of factors. Jurors were not merely concerned with the attorneys' ethics and professional skills as past research implies. Their impressions of were also influenced by wholly extralegal, even personal, characteristics of the attorneys. This study identified eleven separate factors that form the basis of capital jurors' impressions of attorneys.

## DATA AND METHODOLOGICAL FRAMEWORK

This study analyzed data collected by the Capital Jury Project (CJP). The CJP is a National Science Foundation-funded study that has collected data from 1,198 former capital jurors who served on 353 capital trials in fourteen states. Researchers selected approximately an equal number of life and death cases from each state.<sup>4</sup> The CJP was designed to understand the ways in which capital jurors use discretion, identify the sources and extent of arbitrariness in jurors' sentencing decisions, and evaluate the effectiveness of capital statutes in controlling juror bias (Bowers, 1995). The data were gathered during in-depth interviews, which lasted approximately three to four hours each. During these interviews, jurors were asked questions designed to detail their "experiences and thinking over the course of the trial, to identify points at which various influences (including aspects of arbitrariness) may have come into play, and to reveal the ways in which jurors reached their sentencing decision" (Bowers, 1995:1082).

This study analyzed the transcripts of the CJP interviews using thematic analysis techniques. Thematic analysis, as defined by Braun and Clarke (2006:79), is a "method for identifying, analyzing, and reporting patterns (themes) within data." At its most generic level, this exercise involved analyzing jurors' talk about their experiences at trial to discern shared opinions of the attorneys and their meaning. Thematic analysis is particularly well suited to data gathered from interviews and narrative accounts of personal experiences (Taylor and Bogdan, 1984; Leininger, 1985).<sup>5</sup> It is also a relatively flexible, yet uncomplicated form of qualitative analysis (Braun and Clarke, 2006). What follows is an outline of the specific analytic procedures that were followed and the results of each step.

<sup>4</sup> Life cases resulted in a sentence of less than death (i.e., life in prison or a term of years). Death cases resulted in a death sentence.

<sup>5</sup> As opposed to techniques better suited toward, for instance, analysis of texts and artifacts.

## ANALYSIS AND INITIAL RESULTS

The model of thematic analysis employed here consists of five phases. In the first phase, all 916 interview transcripts were read carefully to identify any and all references to the attorneys.<sup>6</sup> Each time a juror mentioned one of the attorneys, their narrative and the question they were responding to were extracted and collated into a separate database.<sup>7</sup> All told, 1,864 separate references to the attorneys were extracted from the transcripts.<sup>8</sup>

The second phase of the analysis involved the production of preliminary codes. Each extract was coded according to whether it cited the prosecutor, defense attorney, or both. Of the 1,864 total extracts, 990 made reference to the defense attorneys, 599 cited the prosecutor, and 275 directly compared both attorneys. The next phase of the analysis is designed to identify the themes that cut across the jurors' talk of the attorneys.

Phase three involved identifying the most common factors cited by the jurors in their discussion of the attorneys. First, the extracts that referred to the defense attorneys were carefully read multiple times. During each reading, the most conspicuous features of the data were recorded. These features reoccurred frequently throughout the subsample of extracts that cited the defense attorneys. Once all the preliminary themes were identified, each extract was classified according to which, if any, of the themes it referenced.<sup>9</sup> All told, eight themes emerged from the 990 extracts that referenced the defense attorney: 1) talk of the defense attorneys' aggressiveness, 2) his/her competence, 3) the attorney's personal characteristics, 4) the arguments employed by the defense attorney at trial, 5) theatrics, 6) how the defense attorney treated his/her client, 7) whether the defendant testified at trial and how this reflected on the defense attorney, and 8) whether defense attorneys forfeited the guilt stage of the trial and opted instead to focus on saving their clients from the death penalty.

Next, the 599 extracts that referenced the prosecutors were carefully read multiple times. The most prevalent features of these data were recorded and reviewed during each reading, and a list of preliminary themes was constructed. The extracts that cited the prosecutors centered around five themes. Four of these were also themes identified in the jurors' talk of the defense attorneys: the prosecutors' aggressiveness, competence, personal characteristics, and theatrics. One additional theme emerged that was unique to the jurors' talk of the prosecutors: presentation style.

<sup>6</sup> Roughly 23 percent of the sample of 1,198 jurors elected not to have their interviews recorded.

<sup>7</sup> Including the question, or prompt, is critical because it illustrates the context of the jurors' remarks.

<sup>8</sup> These extracts came from the interview transcripts of 623 jurors. The remaining 293 jurors did not discuss the attorneys during their interview.

<sup>9</sup> A category of "other" was created for extracts that did not fit into one of the thematic domains. A total of 439 extracts were classified into this category for one of two reasons. First, as detailed earlier, some extracts cited aspects of the attorneys (e.g., the defense attorney's efficiency) that were not a common feature of the data. Second, some extracts conveyed a generic impression. For example, a juror from Florida, when asked to describe the defense attorney (VI7L), stated "very good."

**Table 1**  
**Names and Definitions of Themes**

<b>Theme*</b>	<b>Definition</b>
1. Theatrics	Exhibitions of and appeals to emotion and dramatization of evidence and other case-related factors.
2. Personal Characteristics	Individual attributes of the attorneys, primarily physical characteristics and conceit.
3. Aggressiveness	The forcefulness and hostility with which the attorneys promoted their cases.
4. Competence	Attorneys' aptitude as a function of intelligence and experience.
5. Defendants' Testimony	Whether the defendant testified during trial and how it reflected upon the attorney.
6. Defense Arguments	Arguments presented by defense attorneys during trial.
7. Forfeiting Guilt?	Whether the defense attorneys essentially forfeited the guiltstage of the trial to focus on avoiding a death sentence.
8. Relationship with Defendant	How the attorneys treated their clients in court.
9. Presentation Style	The manner with which the prosecuting attorney presented evidence.
10. Jury Selection	Which attorney garnered a more favorable impression during jury selection.
11. Effort	Which attorney worked harder in preparing and/or presenting their case.

\* Themes one through four emerged from the jurors' talk of both the defense and prosecuting attorneys. Themes five through eight refer only to the defense attorneys. Theme nine refers only to the prosecutors. Themes ten and eleven emerged from the extracts that directly compared the two attorneys.

The same process of carefully reading the extracts and recording the most conspicuous features of the data was followed for those that directly compared both attorneys. The extracts centered around two themes. First, jurors often compared the level of effort the attorneys devoted to their case. Second, the extracts frequently discussed the impressions the attorneys made during the jury selection process. The next step in the analysis required assessing the accuracy and reliability of these themes.

Phase four required assessing the accuracy and reliability of the themes identified in phase three. There are two criteria used in thematic analysis to establish that

patterns are accurate and reliable themes—internal homogeneity and external heterogeneity (Patton, 1990). The former refers to the fact that the data collated within each theme should cohere together in a meaningful way. External heterogeneity refers to the relationship between themes. There should be clear and identifiable differences across individual themes. The data in each theme were read and re-read until it was clear that they formed a coherent pattern. Inter-rater reliability tests were also conducted to further measure the reliability of the results. These tests yielded a Kappa score of .737, which indicates statistically significant reliability ( $p < .01$ ).

The fifth phase of the analysis involved constructing names and definitions of each theme. It is essential that the names and definitions capture the fundamental content of the themes and communicate their relevance. To generate names and definitions of the themes, the data that compose each were once again read several times until a working definition and name became clear (see Table 1).

The following section provides a detailed description of these themes and what they tell us about capital jurors' perceptions of attorneys.

## FINDINGS AND INDICATIONS

Some of these themes emerged more frequently from the data than others. For instance, theatrics was the least frequent theme in both the defense and prosecution categories. Aggressiveness was the most common in both. It would be precarious, however, to draw conclusions based on the proportion of one theme to another, particularly in the current study. Some of the more frequent themes, such as aggressiveness, were largely driven by the specific questions posed to the jurors during their interviews. Theatrics, on the other hand, was often raised by the jurors in response to open-ended items. What is important about the findings presented here is not which themes are more prevalent than others, but that the themes in combination constitute the basis of the jurors' perceptions of the attorneys (see Table 2).

To date, studies have primarily analyzed perceptions of attorneys' hostility, effectiveness at presenting evidence, and organization of their case. Five of the eleven themes identified in this analysis are related to the perceptual constructs tapped by previous studies. The findings of this research, however, provide much needed detail into these general domains and explain how they operate in the unique context of capital trials. The theme "aggressiveness" includes 204 separate references to the forcefulness with which the defense and prosecuting attorneys fought their cases. These comments indicate that jurors formed the impression that some attorneys were not aggressive enough. These attorneys were described as flippant and lacking a certain level of zeal that is required to try capital cases properly. Other attorneys were described as forceful and aggressive. The jurors' comments suggest that they formed the impression that forceful and aggressive attorneys took the case and their role in it seriously. However, some attorneys' forcefulness crossed over into hostility in the minds of the jurors. Attorneys that were described as hostile garnered this reputation primarily dur-

**Table 2**  
**Jurors and Extracts Within Themes**

<b>Theme</b>	<b>Jurors</b>	<b>Extracts</b>	
<b>Defense</b>	<b>(#)</b>	<b>(#)</b>	<b>(%)</b>
1. Theatrics	50	54	9.7
2. Personal Characteristics	69	74	13.2
3. Aggressiveness	92	105	18.8
4. Competence	62	67	11.9
5. Defendants' Testimony	56	63	11.3
6. Defense Arguments	60	72	12.9
7. Forfeiting Guilt?	57	66	11.8
8. Relationship with Defendant	55	58	10.4
Total	501	559	100
<b>Prosecution</b>			
1. Theatrics	29	29	9.2
2. Personal Characteristics	72	80	25.2
3. Aggressiveness	86	99	31.2
4. Competence	48	48	15.1
5. Presentation Style	53	61	19.2
Total	288	317	99.9
<b>Direct Comparison</b>			
1. Effort	35	46	50
2. Jury Selection	40	46	50
Total	75	92	100

ing cross-examination of lay witnesses. The findings suggest that the primary factor that distinguishes forcefulness from hostility, and thus positive and negative impressions, is whether the attorneys' attacks became personal. That is, jurors expect attorneys to assail the testimony of opposing witnesses aggressively, but not the witnesses themselves.

The themes "competence," "defense arguments," "presentation style," and "effort" also resemble some measures of professional skills and ethics in past studies. The extracts that reference the attorneys' competence suggest that jurors form impressions of the attorneys' aptitude based on whether they seem intelligent and experienced. The jurors seldom identified the factors that led them to believe that the attorneys were or were not intelligent and experienced. However, attorneys who were able to model intelligence and experience in trying capital cases were able to effectively convince the jurors that they were talented attorneys. The extracts that compose the theme "effort" cite the jurors' perceptions of how hard the attorneys worked in

preparing and organizing their case for trial. Much like their discussion of the attorneys' apparent competence, the jurors rarely indicated exactly what made them believe that the attorneys had or had not worked hard in preparation. Nonetheless, appearing to be well organized and prepared for trial exerts a powerful influence on the jurors' impressions of the attorneys' overall quality.

The extracts that make up the theme "defense arguments" conveyed the jurors' impressions of the defense attorneys as a function of three specific mitigation strategies they followed at trial. First, the data indicate that many of the defense attorneys claimed that their clients were plagued by a diminished mental capacity. The most often cited diminished-capacity arguments were that the defendant was mentally retarded,<sup>10</sup> mentally ill, or under the influence of drugs and/or alcohol. Second, jurors frequently discussed their impressions of the attorneys who argued that their clients came from a poor or deprived background. The jurors' comments suggest that these defense attorneys posited that, if it were not for their clients' history of abuse, poverty, or neglect, they would have been significantly less likely to commit murder. Third, jurors' formed pervasive impressions of defense attorneys who attempted to lessen the gravity of their clients' actions by arguing that the crime could have been worse. Some of these attorneys contended in court that the defendants were not "in the same league" as infamous serial murderers. Others argued that their clients could have killed more people or tortured their victim and, because they did not, they were not deserving of the death penalty.

It is plausible that the defense attorneys leveled a host of different mitigation arguments and evidence at trial, but these three strategies exerted a singular effect on jurors' impressions. Jurors often formed the impression that defense attorneys who employed these strategies were ineffectual and trying to excuse the defendants' actions. The findings indicate that defense attorneys would be well advised to explain clearly that the defendants' diminished capacity and background are not intended to excuse their clients' actions, but rather to help the jurors understand their precipitating factors. Moreover, the data suggest that defense attorneys should entirely avoid arguing that their clients' crimes could have been worse. This particular argument incensed the jurors.

Finally, the extracts that make up the theme "presentation style" referenced the effectiveness with which the prosecuting attorney presented evidence to the jury. The findings indicate that presenting evidence in a chronological sequence that tells a story over the course of the trial leads to positive impressions among the jurors. Prosecutors who built their case using coherent timelines that clearly articulated exactly what happened and when and where it happened were perceived to be skilled and effective attorneys. The jurors explained that these prosecutors' cases were easy to follow and understand because they followed a logical progression of events. Conversely, jurors

<sup>10</sup> Many of the cases included in the Capital Jury Project occurred before the Supreme Court's ruling in *Atkins v. Virginia* (2002) that rendered mentally retarded defendants ineligible for the death penalty. During this time, mental retardation was used as a standard mitigating factor in capital cases (Baroff, 1991).

formed the impression that prosecutors who presented evidence in a more indiscriminate manner were poor lawyers.

The most important contribution this study makes to the research literature is that capital jurors seem to focus on factors that go beyond traditional measures. The results of this analysis suggest that past research has captured only a few of the variables that influence capital jurors' impressions of attorneys. The jurors in this sample formed pervasive impressions based on a wide array of previously undiscovered factors, some of which are wholly extralegal. Six of the eleven perceptual constructs identified in this study fall outside previously conceived perceptual domains: "theatrics," "personal characteristics," "defendants' testimony," "relationship with defendant," "jury selection," and "forfeiting guilt."

Theatrics was defined here as any exhibition of emotion or dramatization of evidence or other case-related factors. This theme includes eighty-three separate extracts that describe prosecuting and defense attorneys engaged in dramatic displays of emotion. Jurors frequently stated that the defense attorneys cried or begged for mercy during their closing arguments. For instance, one defense attorney apparently "got down on his knees and begged" the jury not to sentence his client to death. Many of these data reference appeals to religious principles that prohibit taking life and passing judgment. Some of the jurors' comments state that the defense attorneys read directly from the Bible during closing arguments. Prosecutors who were described as theatrical often performed high-octane reenactments of the crime in court. The findings suggest that reenactments that had a particularly powerful influence on jurors' impressions involved the actual murder weapon. For example, one of these extracts stated that the prosecutor repeatedly racked the shotgun used in the crime. Others claim that prosecutors swung knives widely and slapped ropes on the floor and desk that were used to tie up victims. Some of the jurors' comments indicate that prosecutors launched into monologues during their closing arguments in which they pretended to be the victim. One juror stated that the prosecutor acted as the ghost of the deceased victim and asked the defendant why he killed her. The results indicate that attorneys should use caution in exhibiting dramatic behavior. Some of the jurors praised theatrical display. They stated that the attorneys' theatrics were entertaining and held their interest in the case. Other jurors formed negative impressions of the attorneys based on their theatrical behavior. These jurors believed that the attorneys were attempting to distract them from the facts of the case. It appears that theatrical behavior reaches a point of diminished return. That is, more extreme exhibitions of emotion, lofty rhetoric, and high drama lead to more negative impressions.

In the theme personal characteristics, jurors described their impressions of the attorneys' physical appearance and conceit. The jurors' discussion of the attorneys' physical characteristics included references to their clothing, weight, facial features, hygiene, and attractiveness. The findings suggest that physical attributes that deviate from a "normal" or standard appearance garner the attention of the jurors. That is, particularly well dressed and poorly dressed attorneys were cited in the data. Jurors

discussed attorneys whose weight, hygiene, and aesthetic stood out as either above-average or subpar. Jurors who found the attorneys' physical appearance to be distasteful were often unabashedly malicious in their criticism. Conversely, the findings suggest that jurors were unduly impressed by attorneys whose physical characteristics were pleasant. Some jurors even stated that they developed romantic feelings for attractive attorneys. The extracts that cited the attorneys' conceit universally described them as arrogant, egomaniacal individuals.

The findings also show that the jurors formed impressions of the defense attorneys based on the defendants' testimony or lack thereof. These data suggest that the jurors believed that whether the defendant testified at trial was a decision that rested solely in the hands of the defense attorney. For instance, a juror from Virginia, when asked about the defendant's testimony, stated, "I just thought it was his attorney's decision, it wasn't really his." As such, the jurors frequently held the defense attorneys responsible for the success or failure of the defendants' testimony. These findings suggest that defense attorneys should make clear to the jury that the right against self-incrimination articulated in the Fifth Amendment to the U.S. Constitution forbids judges, prosecutors, and defense attorneys from compelling defendants to testify at their own trial. Furthermore, attorneys should consider explicitly, and perhaps repeatedly, explaining to the jury that they cannot make any presumption about defendants based on their failure to testify (*Wilson v. United States*, 1893).

One other theme emerged that suggests defendants play a role in the impressions jurors form of their attorneys. Fifty-eight extracts described the defense attorneys' relationship with their clients. These data indicate that jurors pay close attention to the interactions that occur between the defense attorneys and defendants. Jurors often praised defense attorneys who modeled a close relationship with their clients. Conversely, attorneys who appeared to ignore or dismiss their clients garnered negative impressions among the jurors.

The jurors also discussed the impressions they formed of the attorneys during the jury-selection phase of the trial. This theme suggests that the jurors begin forming impressions of the attorneys very early based on relatively limited interaction. Although the jurors provided little detail into exactly what during jury selection had an impact on their perceptions of the attorneys, one factor did emerge. Many of the jurors became frustrated with attorneys who asked them "difficult" questions during voir dire. The jurors' comments described difficult questions as those that asked about their punishment predilections. The central purpose of voir dire in capital cases is to determine whether prospective jurors meet the qualification criteria outlined by the Supreme Court. Among these criteria is the requirement that jurors be willing and able to give meaningful consideration to the merits of all sentencing alternatives.<sup>11</sup> Questions posed by defense attorneys during voir dire that tapped their ability to follow the law in this regard often frustrated jurors. These jurors explained that they did

<sup>11</sup> See *Witherspoon v. Illinois*, 1968; *Wainwright v. Witt*, 1985; *Morgan v. Illinois*, 1992.

not know whether they would be able to consider punishment alternatives and became irritated by repeated attempts by the attorneys to get specific answers.

The theme “forfeiting guilt” refers to whether the defense attorneys forfeited the guilt stage of the trial to focus on avoiding a death sentence. It is not entirely uncommon in capital trials for there to be little question as to the defendants’ guilt (Hou, 2003). In such cases, some defense attorneys will choose to essentially forfeit the guilt stage of the trial to front-load mitigation in hopes of avoiding a death sentence. This strategy involves using the entire trial to try and mitigate the defendants’ actions. The findings suggest that many jurors became aware that this was occurring. The jurors’ comments conveyed a mixed impression of the attorneys who employed this strategy. Some felt that by failing to present exculpatory evidence, the defense attorneys were not properly advocating for their clients’ interests. Others explained that the defense attorney was wise for not attempting to prove something that, according to the jurors’ statements, was obviously untrue.

## CONCLUSION

The findings of this study suggest that capital jurors’ impressions of attorneys are far more diffuse than anecdotal accounts and research has assumed. Even within the general perceptual constructs of professional skills and ethics there exist various multifaceted influences. Moreover, these factors account for only part of the impressions jurors in capital cases form of the attorneys. The findings suggest that the scope of past studies likely represents the interests of scholars and legal practitioners more than the interests of actual jurors. That is, legal scholars may well believe that skills and ethics are the most salient measures of good lawyering. The laypersons that predominately make up capital juries often look to other characteristics when evaluating attorneys. The findings presented here indicate that jurors watch attorneys closely throughout the entire trial and form pervasive impressions based on their physical appearance, emotionality and theatrics, and relationship with the defendant, among other factors. Future research should determine whether there are any significant differences between capital jurors’ impressions of defense and prosecuting attorneys. Studies have shown that capital jurors are predisposed to evaluate favorably inculpatory evidence and vote to convict and sentence the defendant to death (Butler and Moran, 2007). It stands to reason then that they may also be predisposed to evaluate favorably the prosecutors themselves. Research should also analyze potential relationships between capital jurors’ impressions of attorneys and their decision-making processes at guilt and sentencing. **jsj**

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