

Explorations of Juror Reasoning: Extending our Understanding of the Influence of Attorney Opening Statement/Closing Argument Organizational Strategy

*Shelley C. Spiecker, Ph.D., Senior Litigation Consultant
Persuasion Strategies, Denver, CO*

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Debra L. Worthington, Ph.D., Auburn University¹

Abstract

Previous research suggests that attorney opening and closing statement organizational patterns interact, affecting jurors' negligence and damage awards (Spiecker & Worthington, 2003). Drawing upon unpublished data from this previous study, results of this analysis help to explain why some combinations of organizational patterns are more advantageous than others. Participants exposed to video-taped presentations organized around legal elements of a case were more likely to report relying on applicable law when rendering a verdict, while those exposed to a narrative organizational structure relied more on narrative-based reasoning and less on the applicable law.

Over the past 30 years several different explanations of the process of predeliberation juror judgment have been proposed and examined (e.g., Bayesian probability theory, information integration, the Poisson random process, and the Story Model) (see Hastie, 1993; Pennington & Hastie, 1981). Of these explanations, the Story Model approach is the most recent and widely accepted in both the legal and social science communities (MacCoun, 1989; Rieke & Stutman, 1990). Recently published research suggests that attorney opening and closing statement organizational patterns interact, affecting jurors' negligence assignments and damage awards (Spiecker & Worthington, 2003). Drawing upon previously unpublished data from this original study, we explore differences in juror reasoning in order to shed light on why some combinations of organizational patterns are more advantageous than others.

Organizational Structures in Legal Presentation

While several organizational techniques have been identified (see Bennett & Feldman, 1981), it appears that advocates are predisposed to use narratives (Kadoch, 2000). Researchers in this area (Bennett & Feldman, 1981, Pennington & Hastie, 1981) describe narrative structure in legal argument as a chronological sequence of intra-related episodes, with each segment of the sequence constructed from a series of elements — initiating events, objectives/motives, actions, consequences, and accompanying states (see also, Spiecker & Worthington, 2003, p. 438). Research in discourse indicates that our natural predisposition to organize material narratively aids our comprehension, memory, and recall of information (Bruner, 1990; Mandler, 1984). It also appears to promote causal analysis (Graesser, 1981).

¹ Author's Note: This paper is based on previously unpublished data collected for Dr. Spiecker's doctoral dissertation, submitted to the University of Kansas. Data presented in this article was previously presented at the Southern Speech Communication Convention, 2003. Other data from this dissertation was published in *Law and Human Behavior*, 2003. We would like to thank the editor and reviewers for their helpful comments. Correspondence should be directed to Debra L. Worthington, Ph.D., Department of Communication & Journalism, Auburn University, Auburn, AL, 36849; voice: 334.844.2756; worthdl@auburn.edu.

Communication Law Review

Narrative organization may be preferred because it also reflects one of the popular conceptualizations of juror decision-making (Pennington & Hastie, 1986, 1988, 1992). The Story Model of juror decision-making proposes that jurors engage in a three stage story formation process when deliberating. In the first stage, jurors evaluate the evidence through narrative representation, constructing a sequence of events explaining what happened during the disputed incident. This narrative representation results when trial information, jurors' own knowledge, and jurors' expectations of what makes a plausible narrative are combined. This schema, not the presented evidence, is then stored in memory. Within this schema, jurors organize information hierarchically, with the most important evidence placed at the top.

In the second stage, the verdict category is established. Here, jurors gain knowledge of the verdict categories and their associated legal and evidentiary standards. Research by Feigenson (1995) suggests jurors may not just internalize the listed verdict category features presented to them by the judge, but may also combine this information with preconceived "prototypes" of what constitutes certain punishable acts, such as armed robbery or liability.

In the final stage, jurors compare their narrative representation, or story, against the different verdict categories, with the best-matching verdict category being chosen. Thus, the central hypothesis of the Story Model is that jurors construct narrative schema based on the information presented to them. These schema, or mental representations of the evidence, are predicted to consist of temporal, causal, and intentional relations between events and pieces of trial information. The process of matching a juror's story schema to the verdict criteria results in the juror's decision.

Thus, attorneys may utilize narrative formats believing that it may be more effective in influencing juror reasoning processed as outlined by this model. The opening statement becomes the means by which they can "set the stage" and introduce main characters and case themes, while closing arguments allow them to emphasize preferred verdict categories and damages. However, narratives are not the only means attorneys use to organize their courtroom presentations.

While other organizational structures have been identified (e.g., challenging, redefinition) (Bennett & Feldman, 1981), the one most pertinent to this analysis is the legal-expository approach (Feigenson, 1995).¹ When utilizing this technique, the defense attorney structures information around the judicial instructions and burden of proof, emphasizing the relationship between evidence items and specific issues under dispute. Typically, attorneys tie the legal elements and judicial instructions to the case in their opening statement as well as their closing arguments. The emphasis in both presentations is upon the relevant law and how the case evidence either supports or refutes it.

Few studies to date have specifically examined the impact of organizational format on juror decision-making. However, in our earlier analysis we found that organizational structure interactions did moderate both mock juror verdicts and damage awards (Spiecker & Worthington, 2003). For example, the use of a narrative opening and a narrative closing was the least effective format for both parties (Spiecker & Worthington, 2003). However, the most effective format was not the same for both the plaintiff and the defense. The former benefited most when a narrative opening and a legal expository closing was used; the latter had a greater advantage when using a legal expository opening. In this article, we argue that the legal expository format is more likely to be effective

because it allows advocates to connect their story explicitly to the judicial instructions and the legal elements of the case. When this occurs, jurors are provided with the guidelines and justifications needed for reaching an advocated verdict.

It is important to know that alternative organizational formats for attorneys' openings and closings may affect jurors' decisions of negligence and damages, but it is just as important to explore the underlying inferences that jurors are making. These inferences may help us understand the effect of different organizational patterns on juror reasoning and processing. It is this question that led to the following analysis of this previously unpublished data.

Experimental Methods and Procedures

While a complete review of the experimental design and procedures is available elsewhere (see Spiecker & Worthington, 2003, p. 441-447), a brief summary is presented below to orient the reader to the original study's methodology and procedures. This section also introduces the inference scales used in this analysis.

Subjects

Volunteers (149 women; 97 men) were drawn from lower level communication classes at a large Midwestern University, ranged in age from 18 to 52 ($M = 19.94$; $SD = 3.14$), and were awarded class credit for their involvement.

Experimental Design

Employing a simulated trial, a 2 (plaintiff organizational format) x 3 (defense organizational format) experimental design was developed. Two organizational strategies – narrative and legal-expository – were manipulated. The plaintiff and defense narratives incorporated the primary structural elements characterizing narrative organization. (e.g., setting, action sequences, etc.). Similarly, the legal-expository structure drew on and incorporated legal elements (e.g., applicable laws, judge's instructions, etc.), and was followed by an argument for acceptance (if presented by the plaintiff's attorney) or rejection (if presented by the defense attorney) of that element.

The most commonly occurring strategic organizational combinations were operationalized. Thus, for both the plaintiff and the defense a strict narrative strategy (i.e., narrative opening and closing) and a mixed strategy (i.e., narrative opening and legal-expository closing) were utilized. The final combination was a strict defense legal-expository strategy (i.e., legal-expository opening and closing).

Stimulus Material. Stimulus materials were developed based on a breach of contract case (Lubet, 1989). Aside from the previously described manipulation, all elements of the video-taped case (actors, issues, etc.) were held constant across all conditions.

Procedure and Instruments

Upon arrival, participants reviewed an informed consent statement, completed an introductory demographic/background questionnaire, and viewed the stimulus presentation. After the viewing, participants completed a verdict form and final questionnaire. This questionnaire included the inference measures used in this analysis. Using a 5-point Likert scale, subjects rated the overall amount of influence that story elements and legal elements had on their decision (see Table 1).

Statistical Analyses

Using the 16 inference and legal element items from the final questionnaire (see Table 1), four composite summative scores were created and used as the dependent variables (i.e., plaintiff's story score, a defense's story score, and plaintiff and defense legal scores). The plaintiff's and defendant's organizational strategies served as the independent variables. ANOVA tests were performed on each dependent variable. Significant effects would indicate that the tested organizational strategy affects the overall influence of two components of the legal decision-maker's reasoning processes: namely, reliance on inference generation or legal element-based reasoning.

Statistical analysis demonstrated the plaintiff story inference scale ($\alpha = .78$), the defense story inference scale ($\alpha = .72$), the plaintiff legal element scale ($\alpha = .84$) and the defense legal element scale ($\alpha = .80$) were all sufficiently reliable to be used in factorial ANOVA tests. Table 2 presents the mean overall influence ratings for each of the composite reasoning scales.

Results

Analysis of Variance – Inference Scale

Of interest to this analysis was whether organizational structure of opening statements/closing arguments influences juror reasoning. A factorial ANOVA test with plaintiff and defense organizational strategies as the independent variables and the plaintiff story inference scale as the dependent variable found a significant main effect for defense organizational strategy, $F(2, 240) = 6.29, p < .01, \eta^2 = .050$, but a non-significant interaction, $F(2, 240) = .21, p > .05, \eta^2 = .002$, and plaintiff's organizational strategy main effect $F(1, 240) = .04, p > .05, \eta^2 = .000$. Results of a post hoc Scheffe analysis found significant differences between the defense strict narrative ($M = 16.40, SD = 3.26$) and strict legal ($M = 14.34, SD = 4.15$) organizational strategies ($p < .01$), and between the defense strict narrative and mixed ($M = 14.80, SD = 4.10$) organizational strategies ($p < .05$). Subjects viewing the defense strict narrative organizational strategy rated the plaintiff's story inferences as significantly more influential to their decision than subjects exposed to either the defense's strict legal or to the defense's mixed organizational strategy.

Results of a second factorial ANOVA test with the defense story inference scale as the dependent variable also found a significant defense organizational strategy main effect, $F(2, 239) = 5.21, p < .01, \eta^2 = .041$, but a non-significant interaction, $F(2, 239) = 1.51, p > .05, \eta^2 = .001$, and plaintiff's organizational strategy main effect, $F(1, 239) = .09, p > .05, \eta^2 = .012$. Results of a post hoc Scheffe analysis found significant differences between the defense strict narrative ($M = 8.71, SD = 3.45$) and strict legal ($M = 11.22, SD = 4.56$) organizational strategies ($p < .05$), and between the defense strict narrative and mixed ($M = 10.79, SD = 4.19$) organizational strategies ($p < .05$). Subjects exposed either to the defense strict legal or to its mixed organizational strategy rated the defense story inferences as significantly more influential to their decision than subjects exposed to the defense strict narrative organizational strategy.

Analysis of Variance – Legal Element Scales

A third factorial ANOVA test with the plaintiff legal element scale as the dependent variable found significant main effects for both the defense organizational strategy, $F(2, 237) = 11.39, p < .001, \eta^2 = .085$, and the

plaintiff's organizational strategy, $F(1, 237) = 7.93, p < .01, \eta^2 = .030$. The interaction effect was not significant, $F(2, 237) = .22, p > .05, \eta^2 = .002$. Results of a post hoc Scheffe analysis found significant differences between the defense's strict narrative ($M = 15.08, SD = 3.44$) and strict legal ($M = 12.31, SD = 4.26$) organizational strategies ($p < .001$), and between the defense's strict narrative and mixed ($M = 12.80, SD = 4.16$) organizational strategies ($p < .01$). Subjects exposed to the defense's strict narrative organizational strategy rated the legal elements favoring the plaintiff as significantly more influential to their decision than subjects exposed either to the defense's strict legal or to its mixed organizational strategies.

Results of a fourth factorial ANOVA test with the defense legal element scale as the dependent variable also found a significant defense organizational strategy main effect, $F(2, 240) = 13.79, p < .001, \eta^2 = .101$. Results for the plaintiff's organizational strategy main effect approached but did not achieve significance, $F(1, 240) = 3.10, p < .01, \eta^2 = .011$. The interaction effect was not significant, $F(2, 240) = .97, p > .05, \eta^2 = .007$. Results of a post hoc Scheffe analysis found significant differences between the defense strict narrative ($M = 9.11, SD = 3.66$) and strict legal ($M = 12.41, SD = 4.50$) organizational strategies ($p < .001$), and between the defense strict narrative and mixed ($M = 10.84, SD = 3.93$) organizational strategies ($p < .05$). Subjects exposed either to the defense strict legal or mixed organizational strategy rated the legal elements favoring the defense as significantly more influential to their decision than subjects exposed to the defense strict narrative organizational strategy.

As seen in Table 3, results also indicate that the defendant's organizational structure of opening statements and closing arguments influences juror reasoning, as measured by subjects' self-reported ratings of inference and legal element/judicial instruction influence. Specifically, the plaintiff's organizational strategy influences subject-jurors' use of legal-element, rule-based reasoning, as subjects exposed to a plaintiff's mixed organizational strategy were more influenced by this reasoning process than subjects exposed to a plaintiff's strict narrative strategy. However, the plaintiff's organizational strategy did not influence subjects' reliance on inference-based reasoning processes, and plaintiff and defense organizational strategies did not interact to influence juror reasoning. In general, the defense's organizational strategy had more of an impact on juror reasoning than the plaintiff's organizational strategy.

Analysis of Variance – Differential Influence of Reasoning Scales

Examination of the means of the four composite reasoning items indicated that items associated with the plaintiff's story were the most influential to juror reasoning processes (see Table 3). In order to test the relative influence of the four reasoning scales, a one-way, within-subjects ANOVA was conducted to analyze the data further, with the factor being the four reasoning scales. The results for the ANOVA indicated a significant effect for the reasoning scales, Wilk's $\Lambda = .617, F(3, 239) = 49.49, p < .001, \eta^2 = .383$. Six subsequent Paired Samples T-tests were conducted to examine possible significant differences between the scales. To compensate for the family-wise error rate, the alpha criterion was adjusted per the Bonferroni technique and all six Paired Samples T-tests were evaluated at the .008 level of significance. Five of the six contrasts were significant at the adjusted alpha level ($\alpha = .008$). Table 2 displays the difference calculated for each comparison and the accompanying significance level.

Discussion

As noted earlier, this analysis focused on seeking an explanation for the differential effects reported in our earlier study (i.e., that organizational format affects juror assignment of negligence and damages) (Spiecker & Worthington, 2003). These results provide additional insight into how juror reasoning processes are affected by the organizational structure of opening statements and closing arguments. Participants exposed to a defense strict legal or mixed organizational strategy relied more on rule-based reasoning (i.e., applicable law) than subjects exposed to a defense strict narrative presentation. In addition, subject-jurors exposed to a plaintiff's mixed organizational strategy were more influenced by rule-based reasoning than subjects exposed to a plaintiff's strict narrative presentation. Thus, it appears that organizing a presentation around the legal elements and judicial instructions governing this case led jurors to rely more on legal element, rule-based reasoning. This finding is important because it demonstrates that attorneys can make strategic organizational choices, potentially benefiting their client and their case.

Pragmatically, these results suggest that when judicial instructions and governing legal elements favor a party, that party will benefit from presenting either an opening statement or closing argument in a legal-expository organizational structure. Such a structure, designed to emphasize and educate jurors concurrently about the legal principles that apply to the evidence, is more likely to influence jurors to focus on the law and judicial instructions than a strictly narrative structure.

Any conclusion regarding the influence of a narratively organized presentation on jurors' use of story-based reasoning is less clear. Interestingly, subject-jurors exposed to a defense strict narrative presentation indicated they were less influenced by defense story inferences than were subjects exposed to the other two defense organizational strategies. This may seem counter-intuitive, as one would expect jurors to be more influenced by defense story inferences when both defense presentations were organized around a story structure. However, in this investigation, the defense's strict narrative presentation was the weakest defense organizational strategy. Subjects exposed to a strict narrative defense presentation apportioned 74.29% of the responsibility to the defendant, compared with 49.52% and 54.54% for subjects exposed to a strict legal or mixed presentation, respectively. It is likely jurors exposed to the defense's strict narrative strategy were less influenced by defense inferences because they were less persuaded by the defendant's presentation overall and more inclined to agree with the plaintiff's case. Inference scale ratings support this claim (see Tables 2 & 3).

Also interesting is the lack of a significant relationship between the plaintiff's strict narrative strategy and reliance on narrative inferences favoring the plaintiff. However, looking at the overall means for the four composite reasoning items (see Tables 2 & 3), we see that items associated with the plaintiff's story were most influential to jurors' reasoning processes, followed in terms of influence by items associated with the legal elements and instructions favoring the plaintiff.

Examination of the results displayed in Table 2 demonstrates that the difference between the two defense reasoning scales was the only non-significant difference among the six comparisons (at the Bonferroni adjusted .008 level of significance). It is possible that because the plaintiff's story was more influential to subject-jurors than the other reasoning dimensions, the plaintiff's strict narrative strategy did not further enhance juror reliance on these

Communication Law Review

already disproportional items. Conversely, because reasoning items associated with the defendant's case were comparatively less significant than reasoning items favoring the plaintiff, the plaintiff's organizational strategy did not significantly influence subjects' reliance on defense-related reasoning items.

Notably, the most effective strategies incorporated and emphasized legal elements. These elements act as a framework for assessing the trial elements, thus assisting jurors in matching the evidence to the verdict categories. This explanation also best reflects the earlier discussion of the Story Model of juror decision making (Pennington & Hastie, 1986, 1988, 1992). As previously described, Pennington and Hastie argue that jurors first combine trial information, personal knowledge, and their understanding of narrative elements to develop a plausible story to explain events. Jurors use the resulting narrative schema to organize information hierarchically. Thus, an attorney's focus on legal elements early in the trial has two potential effects. First, it may fundamentally affect the type of story jurors develop – a story that begins with and better reflects the legal elements applicable to the case. Second, it may influence how jurors assess the importance of specific pieces of evidence. As noted earlier, more important evidence tends to be placed at the top of this hierarchy. Thus, jurors may focus greater attention on evidence that reflects legal elements specific to the case. In addition, this placement likely promotes memory, increasing recall. Finally, an understanding of legal elements may assist comprehension as jurors work to understand how trial information fits in with their ultimate goal of rendering a verdict.

Of course, alternative explanations exist. For example, the presentation of legal elements may motivate jurors to focus their evaluation more narrowly on each party's *legal responsibility*, placing less emphasis on the parties' *ethical responsibility*. A third explanation could be that a legal-expository organizational structure simplifies the jurors' job by clearly delineating the rules by which they must return a verdict.

Limitations

The primary limitations of this study are common to mock juror research: 1) videotaped presentations do not simulate an actual trial environment; 2) the effect of group dynamics upon juror verdicts was not assessed; and 3) the subject population was not closely representative of a typical jury. However, research indicates that the process by which mock jurors reason and make decisions is not fundamentally different than the process used by actual jurors (MacCoun, 1987; 1989).

Conclusion

This analysis suggests that how an attorney organizes his or her opening statements and closing arguments influences the information jurors rely on to make a decision. The results here help explain earlier findings that examined the differential effects of organizational format on juror assignments of responsibility and damages (McCullough, 1991; Spiecker & Worthington, 2003). Finally, this research demonstrates that non-narrative schema can influence juror reasoning; it also supports claims that a narrative organizational structure is not necessarily the best organizational format.

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Communication Law Review

Table 1

Description of Inference and Legal Element Scale Items

Plaintiff's Story Inference Scale Reasoning Items

1. The reason Vending Operations' revenues were not as large as projected was because the Idaho Department of Transportation did not properly clean the rest areas.
2. The Idaho Department of Transportation was responsible for cleaning the rest areas.
3. The Idaho Department of Transportation was not willing to work fairly with Vending Operations.
4. Vending Operations was justified in expecting the Idaho Department of Transportation to clean the rest areas since the Transportation Department would have cleaned the rest areas before the vending program began

Defense Story Inference Scale Reasoning Items

1. Vending Operations failed to fulfill its obligations under the contract and is now trying to blame the Idaho Department of Transportation for its own failings.
2. The Idaho Department of Transportation was justified in canceling the contract because Vending Operations failed to make the royalty payments it had said it would make.
3. The reason Vending Operations' revenues were not as large as projected was because Vending Operations did not properly plan and manage the vending program.
4. Vending Operations was responsible for cleaning the rest areas.

Plaintiff's Legal Element Scale Reasoning Items

1. Vending Operations has sufficiently met the burden of proof in this case.
2. The judicial instructions indicate the evidence favors a decision in favor of Vending Operations.
3. The three "legal elements" in this case favor Vending Operations.
4. The definition of the legal standard "by a preponderance of the evidence" supports a decision in favor of Vending Operations.

Defense Legal Element Scale Reasoning Items

1. The judicial instructions demonstrate the Idaho Department of Transportation had a right to cancel the contract.
2. The legal definition of "material breach" supports a decision in favor of the Idaho Department of Transportation.
3. As the defendant, the Idaho Department of Transportation does not have to prove it was not at fault because it does not have the burden of proof.
4. The law governing this case leads to a decision in favor of the Idaho Department of Transportation.

Communication Law Review

Table 2

Difference Scores and Significance Levels for Comparisons of the Four Reasoning Scales

Comparison	Mean Difference ^a	<i>SD</i>	<i>t</i>	<i>df</i>	<i>p</i>
Plaintiff's Story Inference Scale – Plaintiff's Legal Element Scale	1.75	3.04	8.94	242	.000*
Plaintiff's Story Inference Scale Defense's Story Inference Scale	4.91	8.22	9.34	244	.000*
Plaintiff's Story Inference Scale – Defense's Legal Element Scale	4.39	7.31	9.41	245	.000*
Plaintiff's Legal Element Scale – Defense's Story Inference Scale	3.10	8.38	5.75	241	.000*
Plaintiff's Legal Element Scale – Defense's Legal Element Scale	2.62	7.63	5.36	242	.000*
Defense's Story Inference Scale – Defense's Legal Element Scale	.57	4.25	2.09	244	.038

^aThe mean overall influence rating for the reasoning composite scale variables was as follows: plaintiff's story inference scale, $M = 15.17$; $SD = 3.95$; plaintiff's legal element scale, $M = 13.39$, $SD = 4.12$; defense's story inference scale, $M = 10.25$, $SD = 5.39$; defense's legal element scale, $M = 10.79$, $SD = 4.25$.

* Indicates t value was significant at the Bonferonni adjusted .008 level of significance

Table 3

Mean Influence Ratings for Reasoning Scale Variables by Organizational Strategy

Scale	Defense Organizational Strategy					
	Strict ^a Narrative		Strict ^a Legal		Mixed	
	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>
Plaintiff's Story Inference	16.40 _b	3.26	14.34 _c	4.15	14.80 _{cd}	4.10
Defense's Story Inference	8.71 _d	3.45	11.22 _e	4.56	10.79 _e	4.19
Plaintiff's Legal Element	15.08 _b	3.44	12.31 _c	4.26	12.80 _c	4.16
Defense's Legal Element	9.11 _b	3.66	12.41 _c	4.50	10.84 _{cd}	3.93

Scale	Plaintiff Organizational Strategy			
	Strict ^a Narrative		Mixed	
	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>
Plaintiff's Story Inference	15.23 _f	4.23	15.13 _f	3.66
Defense's Story Inference	10.34 _f	4.17	10.14 _f	6.36
Plaintiff's Legal Element	12.69	4.03	14.10	4.13
Defense's Legal Element	11.24 _f	4.45	10.34 _f	4.02

Note. Summing four 5-point Likert scales resulted in a composite scale score where 0 = not at all influential; 20 = extremely influential.

a The word “Strict” denotes a condition in which the attorney’s opening and closing statement utilized the same organizational format, (e.g., a narrative opening and a narrative closing).

b, c Means that do not share a common subscript differ significantly at the .01 level

d, e Means that do not share a common subscript differ significantly at the .05 level

f Means that do not share a common subscript differ significantly at the .01 level

Communication Law Review

Notes

1. Two other common organizational patterns are challenging & redefinition. Challenging occurs when the defense “challenges” the prosecution’s story, pointing out missing story elements or demonstrating inconsistencies. The defense does not offer a competing story; instead the attorney points out the problems with the prosecution’s story (e.g., my client had no motive, etc.). With redefinition, the defense “redefines” one or more particular elements in the prosecution’s story, offering a different interpretation of that story. Again, the defense does not develop a full narrative, but focuses on an element of the prosecution or plaintiff’s story (e.g., my client did not lunge at him, he tripped, etc.) See Bennett & Feldman (1981) for a fuller discussion of these two organizational patterns.