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Emotion in the Neutral Court: Attorney Appeals to Emotion in Jury Trial Argumentation

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Emotion in the Neutral Court: Attorney Appeals to Emotion in Jury Trial Argumentation

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Abstract

In popular discourse, emotion is often considered antithetical to the supposed informed and fair decision making that characterizes law. Nonetheless, scholarship across psychology, sociology, legal studies, and political science demonstrate how emotions influence decision making, including jury decision making, as well as other forms of individual and social action. Consequently, it follows that lawyers may appeal to different types of emotion when constructing arguments and narratives for juries. Do attorneys strategically influence juries' emotions in order to receive a favorable verdict? Whether lawyers utilize emotion to trigger certain outcomes is understudied. Indeed, federal rules constrain these types of appeals during jury trials. Nevertheless, existing studies offer a methodology to interpret trial transcripts to identify, code, and evaluate emotional appeals. Some existing scholarship demonstrates how trial transcripts reveal identifiable patterns in lawyers' emotional appeals to juries. By conducting content analysis on eighteen jury trial transcripts from murder cases, while also incorporating confirmation from four interviews with practicing criminal attorneys, this thesis presents trends in how lawyers attempt to trigger angry and sympathetic emotional responses from juries. While limits to this approach are noted—including that emotions are hardly singular and thus coding can be difficult and trial transcripts are not often readily accessible—grappling with how emotions may be manipulated in the courtroom by attorneys remains important especially as the subject is relatively unexplored beyond mock-jury experiments. Findings may uncover and potentially legitimize attorney emotional appeals in the courtroom. This thesis accordingly offers a starting point for the underdeveloped study of emotion in the law.

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Introduction

"The very definition of a Republic, is "an Empire of Laws, and not of men." That, as a Republic is the best of governments, so that particular arrangement of the powers of society, or in other words that form of government, which is best contrived to secure an impartial and exact execution of the laws, is the best of Republics." -John Adams, *Thoughts on government*[1]

From the very beginning of government in the United States, law has been considered the embodiment of neutrality. Not only is law supposed to be executed impartially, it is also expected to be interpreted neutrally. The courts, which interpret the law, accordingly are expected to be completely neutral and impartial to human biases. This is why the "neutral jury," is a foundational American value.

It is no surprise, then, that the neutral jury became a contentious point in a trial related to the biggest attack on the Capitol since the war of 1812: the January 6th, 2021, Capitol riots perpetrated by right-wing extremists. The first trial stemming from the insurrection began on February 28, 2022, and from the very start called the ideal of a neutral court into question.

As the January 6 insurrection was a monumental event in 2021, it is an understatement to say that the majority of Americans have heard about the attacks by 2022, especially in Washington, D.C., where the trial was being conducted. In a story on National Public Radio, which aired on March 1, host Steve Inskeep claimed that the judge presiding over the jury trial acknowledged that "no one can come into this courtroom with a completely blank slate about the events of January 6."[2] During jury selection, unsurprisingly, there were many questions about

[1] John Adams, "Founders Online: III. Thoughts on Government, April 1776," National Archives and Records Administration (National Archives and Records Administration).
[2] Tom Dreisbach, "Jury Selection Is Underway in the First Trial Stemming from the Jan. 6 Insurrection," NPR (NPR, March 1, 2022).

how prospective jurors felt about the Capitol riot, and whether they could set those feelings aside in order to be an unbiased decision-maker. One man, in this line of attorney questioning, said that the January 6 riots felt like an attack on his home, and even got emotional as he described the military troops he witnessed in the streets of his home city.

Can a jury ever truly be "neutral?" Afterall, isn't a jury made of people, who assumedly have no training to ignore their biases? Don't these people have feelings, and aren't these feelings impossible to separate from their task ahead of them of deciding a person's guilt or innocence? This story also forces one to face the fact that juries have emotions about the facts of a case, and are expected to decide according to these feelings when they are strong enough.

Interestingly, the defense attorney wanted this emotional man off of the jury. The prosecution wanted him to stay. What does this disagreement say about these attorneys' approaches to the trial, and particularly the way they may harness the emotional state of a jury member?

This thesis explores the role of emotion in the courtroom, but it is not about the jury. A plethora of scholarship has been conducted to assess emotion and its connections to juror bias. Rather, this thesis focuses on the attorney, and how one may strategically attempt to trigger particular emotions in jury members. In this particular January 6 trial, the State attorney wanted the juror who had a negative impression of the attacks to serve on the jury. The Defense attorney argued against such an appointment to the jury. Clearly this push to appoint the biased juror shows that the State wanted someone who possessed emotional bias, as it was strategic to them. Does this suggest that attorneys, who are supposed to function within a neutral, nonemotional judicial system, actually deliberately attempt to appeal to juror decision-making biases in order to receive a desired verdict?

This thesis provides evidence of this attorney strategy and behavior. Attorneys are aware that jurors are inherently biased through their emotional responses, and accordingly attempt to appeal to these emotions in order to receive a favorable verdict.

To explore this claim, Chapter One begins by investigating existing literature on the topic of emotion in politics. Part one examines how prior thinkers have conceptualized emotions to play a part in social movements, public opinion, and voter decision making, in order to question why emotions go understudied and even removed from legal studies. Part two accordingly looks at existing structures of jury decision making, emphasizing that jurors must decide emotionally, even if previous scholars refuse to admit it. Part three applies the idea that jurors must decide in accordance with their emotions by examining how anger and sympathy impact decision-making processes. Lastly, this chapter highlights how little scholarship exists that suggests attorneys appeal to emotions in argumentation, but also draws attention to the hypotheses that do come from this scant literature.

Chapter Two explains the means by which I pursued a study of attorney appeals to emotion in argumentation. The first section introduces the methods I used throughout my thesis, which are grounded in prior work in similar areas. This section details how I conduct content analysis and interviews, how I constructed my dataset, and also discusses the limitations to the approaches I take. The second section of this chapter is a description of my data, both attorney interviews and trial transcripts. The chapter concludes with an explanation of how I combined the data collection and analysis techniques to yield examinations in Chapters Three and Four.

Chapter Three addresses attorney appeals to anger in argumentation. This chapter is separated into two parts based on the object of intended emotional appeals. Part one addresses "inside anger," which is anger directed towards individuals who were present or directly

involved in the murder in question. This part contains two subsections: the first addresses how anger is activated towards a person through use of identity framing, and the second describes how anger is engineered towards a situation through use of graphic details. The second part describes outside anger. This second part has five subsections, three of which are directed towards individuals, and two of which are directed towards situations. The sections are, accordingly, about suggestion of lying, focus on irresponsibility of state agents, use of sarcasm on the personal level; and about sarcasm and mocking tones as well as framing of intent on the situational level. I conclude the chapter by explaining the trends that emerged as a product of attorneys' goals in argumentation.

Chapter Four studies sympathetic appeals. This chapter is also divided into two parts: one on identitarian sympathy and one on situational sympathy. In the first part, I explain how attorneys appeal to sympathy by humanizing individuals through sharing small, seemingly irrelevant details about them. This section also discusses attorneys' attempts to focus on sympathetic individuals, particularly children, in whatever way they may be related to a case. The second section focuses on situational sympathy, and the three strategies that attorneys use to appeal to it: 1) telling a story from the point of view of a sympathetic person, 2) victimization, and 3) focus on victim innocence. I conclude once more by examining overarching patterns in usage of emotional appeals by prosecution and defense attorneys.

Finally, I complete this thesis with a concluding chapter. Here, I discuss my main findings, summarizing that attorneys do in fact, appeal to emotions. Prosecution and defense attorneys utilize some of the same and some different techniques to appeal to emotions, the techniques aligning with the jobs of each attorney respectively. I further find that attorneys are typically dismissive of their use of emotions, as they are either hesitant to admit their use of

emotional appeals, are unaware of their emotional appeals, or are quick to dismiss emotional appeals as a tool of the other side. I also attempt to study demographic impact on emotional appeals throughout this thesis, but being limited by a small dataset, I find that demographic trends are plausible, but not verifiable. I offer the impact of defendant race and gender on attorney usage of emotional appeals as an area of future research. Taken together, this information suggests that appeals to emotion may be a necessary job of attorneys.

While much research has shown that jury decision making involves emotion, this thesis demonstrates that the savvy attorney may accordingly harness this possibility in order to do their job to the best of their ability. While this kind of potential for emotional manipulation may be disconcerting given our normative aspiration to some form of legal neutrality, simply hiding from the truth and failing to recognize emotion when it is clearly being manipulated is hardly a way forward. Taking emotion out of decision making is impossible. Ignoring it or casting it as irrational is unwise. Rather, if it can be identified and understood, then a more comprehensive understanding of courtroom dynamics can be attained. As such, attorneys' emotional appeals should ultimately be acceptable and commonplace to recognize in the legal realm. Attorneys should not be hesitant to admit that they utilize emotional appeals when they are a natural method of decision making, and also when they are already used so freely without any repercussions.

Chapter 1: Emotions in the Court

This chapter explores the existing broad literature regarding emotion and politics to inform how emotion can be studied in the area of law and jury decision making. The first part reveals that political science research has considered the role of emotional influence primarily in three realms: 1) social movements, 2) public opinion, and 3) voter decision making. Work in these areas not only acknowledges the political power of feelings, but suggests that emotions can be manipulated to receive desired outcomes. Part one concludes by suggesting that there is one realm that normatively attempts to distance itself from emotional influence: law.

Part two addresses how scholars conceptualize jury decision making. This section examines the two proposed models in which juries decide: the story model and the filter model. It emphasizes how scholars often exclude emotions in these two existing models in which juries function and questions whether emotions are worth consideration. This section ends with the suggestion that, given both the insights from political science discussed in part one and the notion that juries are composed of feeling-thinking people, jurors do likely decide emotionally, despite the normative notion that law should, ideally, be decided without emotion.

Given the plausibility that emotion influences jury decision making, in part three, I explore two emotions that scholarship suggests influences jury decision making: anger and sympathy. Finding that these emotions inform judgment and decision making, I center my study in the later chapters on these sentiments. I discuss how each emotion has been investigated in a legal context, finding that anger leads to interpretation of evidence in a manner that favors the victim, resulting in greater blame and harsher judgments for the defendant. And, I discuss the implication of sympathy, which, depending on the factor that triggers sympathy, can be situational or identitarian. In a situational format, a juror feels sorry for the situation that an

individual is experiencing, and wants to remedy it. By contrast, sympathy can be felt towards people simply because of who they are, and the image their attorney presents of them. This third part of the chapter concludes by suggesting–now that emotions are understood to affect jurors– if and how attorneys may use this knowledge to their advantage.

The final part of this chapter addresses the brief literature that suggests that attorneys use emotions to their advantage. It considers a few techniques that attorneys may utilize, and it also speaks to the importance of appealing to emotions in opening and closing statements. At the end of the section, I conclude that, while this research is suggestive, it is by no means a comprehensive expression of techniques. There is, in other words, a large gap in the literature that I aim to fill, at least in part, with this thesis research.

I. Emotions in Politics

There is significant literature on the impact of emotion in both political science and sociology. Emotions have been studied, for example in social movements, public opinion, and voter decision making.

There is a wide literature on how emotions influence social movement action. Sociologist Deborah Gould, a pioneer in systematizing the study of how distinct emotions such as sadness and anger motivate a variety of social movement behavior, claims that "emotion is fundamental to political life and always a factor in the realm of activism, something that stirs, inhibits, intensifies, modulates, impedes, incites."[3] In the context of social protest, scholars have shown that emotions can both inhibit and facilitate collective action.[4] As far as facilitating movements, scholars have cited a range of emotions as uniting individuals and as motivating people to action.[5] These same emotions, in a different context, may also derail and disrupt cohesive social movements.[6] Particularly relevant in this arena is the work of sociologist James Jasper. Jasper highlights how the difference in types and lifespans of emotions are crucial to the impact that they have in general.[7] He differentiates moral emotions, reflexive emotions, urges, moods, and affective commitments and highlights how feelings such as anger and fear have different implications when they occur in these forms.

Take, for instance, the emotion of anger. Anger, when deep-seeded and focused on a common variable, may make itself manifest as moral indignation and can serve to unite and motivate people to demonstrate for a specific cause.[8] Such was the case in the ACT-UP

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[3] Deborah B. Gould, *Moving Politics: Emotion and ACT UP's Fight against AIDS* (Chicago: University of Chicago Press, 2009), 439.
[4] Ibid., James M Jasper, *The Emotions of Protest* (Chicago: The University of Chicago Press, 2018).
[5] Ibid.
[6] Ibid.
[7] Jasper, *The Emotions of Protest.*
[8] Gould, *Moving Politics: Emotion and ACT UP's Fight against AIDS*, 91-100; Jasper, *The Emotions of Protest*, 128-139.

movement, which utilized anger over homophobic treatment to spur protestor mobilization.[9] Reflexive anger, on the other hand, can erupt in the heat of the moment, resulting in impulsive decisions that function to dismantle movements.[10] Jasper's classification, while rooted in the study of movements, is applicable and evident throughout political studies of emotions.

While this scholarship tends to link emotion to social activity, it is important to address also how emotion may influence individual behavior or personal judgment. Emotion is often understood to frame how an individual evaluates and effectively executes decision-making processes.[11] Scholars have argued that emotions are considered in decision-making processes without the individual even being able to consciously acknowledge their impact.[12] This idea is further complicated by a discussion of affect theory, which challenges how we generally think about emotions in politics. Sociologist Deborah Gould defines the term "affect" to indicate, "unconscious and unnamed, but nevertheless registered, experiences of bodily energy and intensity that arise in response to stimuli impinging the body."[13] Many scholars suggest that where there is any sort of decision to be made, individuals will use their emotions to evaluate their options.[14]

Consequently, it is not surprising that researchers have studied emotion and the role it plays in the realm of public opinion. In this area of scholarship, emotion is considered for how it can influence how people process information and form opinions regarding a political argument and political officials in general.[15] Malhotra and Kuo, for example, conducted a study addressing

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[9] Gould, *Moving Politics: Emotion and ACT UP's Fight against AIDS*, 91-100; Jasper, *The Emotions of Protest*, 138.
[10] Jasper, *The Emotions of Protest,* 35.
[11] Jennifer S. Lerner et al., "Emotion and Decision Making," *Annual Review of Psychology* 66, no. 1 (March 2015): pp. 799-823.
[12] Neil R. Feigenson, "Sympathy and Legal Judgment: A Psychological Analysis." *Tennessee Law Review,* vol. 65, no. 1 (Fall 1997): pp. 1-78.; Lerner et al., "Emotion and Decision Making," 802.
[13] Gould, *Moving Politics: Emotion and ACT UP's Fight against AIDS*, 19.
[14] Lerner et al., "Emotion and Decision Making."
[15] Kevin Arceneaux, "Cognitive Biases and the Strength of Political Arguments." *American Journal of Political Science* 56, no. 2 (2012): pp. 271–85; George E. Marcus et al., *The Affect Effect: Dynamics of Emotion in Political*

blame for the damage of Hurricane Katrina and how emotions about the event, job title of officials leading the response to the natural disaster, and the political ideation of those officials affected how participants assigned blame.[16] These researchers found that strong negative emotions facilitate the use of heuristics in information processing, whereas weak emotional reactions result in more content-rich thinking about politics.[17] Essentially, they found that people use their feelings in assigning blame to politicians, and they showed that citizens use emotional information to make political decisions.[18] Emotion has also been studied in the realm of judgment as it applies to interpretation of the persuasiveness of political arguments.[19]

Researchers have also examined how people use their emotions in evaluating candidates during campaigns,[20] as well as in decisions on who to vote for.[21] Emotional responses serve to inform and distort judgment, impacting voter decision making when a citizen is faced with limited or incomplete information.[22] Political leaders are aware of this, and use emotions as well in their campaigns and public addresses in an attempt to connect with and appeal to their constituents.[23] Emotions are commonly studied, and socially understood in the realm of public opinion as it relates to arguments and officials.

While the fields of social movements, public opinion, and voter decision-making are arguably riddled with strong sentiment, there is a field within political science that attempts to

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Thinking and Behavior (Chicago: University of Chicago Press, 2007); D. Redlawsk, *Feeling Politics: Emotion in Political Information Processing* (New York: Palgrave Macmillan US, 2006); Neil Malhotra and Alexander G. Kuo, "Emotions as Moderators of Information Cue Use," *American Politics Research*37, no. 2 (2009): pp. 301-326.

[16] Malhotra and Kuo, "Emotions as Moderators of Information Cue Use."

[17] Ibid.

[18] Ibid.

[19] Arceneaux, "Cognitive Biases and the Strength of Political Arguments."

[20] Marcus et al., *The Affect Effect : Dynamics of Emotion in Political Thinking and Behavior*; Redlawsk, *Feeling Politics: Emotion in Political Information Processing*.

[21] Jonathan McDonald Ladd, and Gabriel S. Lenz. "Does Anxiety Improve Voters' Decision Making?" *Political Psychology* 32, no. 2 (2011): pp. 347–61.

[22] Ibid.

[23] Travis N. Ridout and Kathleen Searles, "It's My Campaign I'll Cry If I Want to: How and When Campaigns Use Emotional Appeals," *Political Psychology* 32, no. 3 (2011): pp. 439-458; Senem Aslan. "Public Tears: Populism and the Politics of Emotion in AKP's Turkey." *International Journal of Middle East Studies* 53, no. 1 (2021): pp. 1–17.

distance itself from emotion. In the study of law, emotions are often regarded as taboo, and are questioned for the role that they play in challenging reason. This is plainly obvious in discussions about juries. Consisting of ordinary people, juries in criminal trials are asked to put aside their biases as average citizens in order to determine the fate of an alleged criminal. Emotion in the jury is so suppressed in scholarship that it is barely mentioned in commonly proposed models of jury decision making.

II. Jury Decision Making and Emotion

In the film, *Legally Blonde*, main character and fashion enthusiast Elle Woods attends her first class of law school greeted by a blackboard with the words "the law is reason free from passion" written on it.[24] The professor continues to ask the class who spoke those "immortal words," and the dynamics of the class unfold. Despite the polarizing position of emotion and reason that is often exploited in popular understandings of legal decision making, there exists much scholarship discussing the rationality of emotions, and the crucial role that they play in legal decision making. As previously mentioned, scholars have emphasized that emotions cannot be isolated from any decision-making process,[25] and judicial actors are no exception to this rule.[26] In fact, there is significant research suggesting that efforts to suppress emotions in judgment and decision-making processes is actually counter intuitive.[27] For instance, Edwards and Bryan examined judgmental biases produced by instructions to disregard the emotions that evidence provokes.[28] They suggest that emotional information is not only more difficult to ignore than non-emotional information, but also that directions to ignore emotional information can actually amplify its influence on judgments.[29] Lerner et al. likewise discuss the negative impacts of attempting to suppress emotions, explaining how emotional suppression actually intensifies

[24] Movieclips, "Legally Blonde (5/11) Movie CLIP - Kicked Out of Class (2001)," YouTube video, 3:15, November 30, 2015, https://www.youtube.com/watch?v=gwY85_MC_AY.
[25] Lerner et al., "Emotion and Decision Making."; Feigenson, "Sympathy and Legal Judgment: A Psychological Analysis."
[26] Feigenson, "Sympathy and Legal Judgment: A Psychological Analysis."; Kari Edwards and Tamara S. Bryan. "Judgmental Biases Produced by Instructions to Disregard: The (Paradoxical) Case of Emotional Information." *Personality and Social Psychology Bulletin* 23, no. 8, (Aug. 1997): pp. 849–864.
[27] Feigenson, "Sympathy and Legal Judgment: A Psychological Analysis."; Kari Edwards and Tamara S. Bryan. "Judgmental Biases Produced by Instructions to Disregard: The (Paradoxical) Case of Emotional Information."; Lerner et al., "Emotion and Decision Making."; Feigenson, "Sympathy and Legal Judgment: A Psychological Analysis."
[28] Edwards and Bryan, "Judgmental Biases Produced by Instructions to Disregard: The (Paradoxical) Case of Emotional Information."
[29] Ibid., 859.

the state that one is attempting to regulate.[30] Whether it is acknowledged or not, scholarship suggests that emotions impact the body so substantially that they should be considered as factors in decision making.

In the realm of jury decision-making processes, there are two primary models utilized to explain how a jury executes its decision-making power: the story model and the filter model. The story model is the most developed and prominent theory in this field. This model offers a three-step process by which juries make decisions through evaluating evidence, learning the verdict choice set, and then creating an evidence-verdict match process.[31] This theory is explanation-based, which means a person works backwards from the outcome of their decision to create a cause and effect explanation of the circumstances in question.[32] Jurors gather evidence, choose which verdict they think makes the most sense, and then work backwards to assemble a story that explains the verdict.

The other model of jury decision making is the filter model. This model suggests that jurors operate according to their biases, selectively and independently interpret information, and make decisions based on personal experiences, beliefs, and what they know. Pettys explains that jurors filter evidence through their own experiences, which leads them to remember information according to their verdict preference and reject any information that runs contrary to it.[33] Jurors therefore make decisions based on information that makes sense to them. This idea also applies to the phenomenon known as "common sense justice." This theory is built on the idea that court is overwhelming and difficult for untrained people to understand. Jurors navigate the complex

[30] Lerner et al., "Emotion and Decision Making."; Feigenson, "Sympathy and Legal Judgment: A Psychological Analysis," 812.
[31] Reid Hastie, "Introduction," in *Inside the Juror: The Psychology of Juror Decision Making* (Cambridge: Cambridge University Press, 1993), pp. 3-41.
[32] J. Groscup and J. Tallon, "Theoretical models of jury decision-making." *Jury psychology: Social aspects of trial processes: Psychology in the courtroom* 1 (2009): pp. 41–65; Hastie, "Introduction," in *Inside the Juror: The Psychology of Juror Decision Making*
[33] Tom E. Pettys, "The Emotional Juror." *Fordham Law Review* 76, no. 3 (2007): pp. 1609-1640.

nature of law and their general unfamiliarity with it by relying on their common sense understanding about law and justice.[34] Jurors accordingly make decisions in line with their pre-existing notions about human nature, culpability, and punishment rather than the law itself.[35] To further complicate this dynamic, jurors also rely on cognitive or heuristic shortcuts to make decisions about situations that they may not completely understand.[36] There is also significant scholarship that suggests that jurors decide according to specific and general prejudices that they possess prior to entering the courtroom.[37] Specific prejudices are ideas that jurors hold about specific issues in a case, whereas generic prejudices are usually stereotypical prejudices or general negative attitudes held against a defendant solely due to the crime he or she is accused of committing.[38] The idea that jurors make decisions by reframing information into a familiar context barely acknowledges the power of emotion. Indeed, in these models, emotion is mostly viewed as a bias that interferes with proper reasoning within the realm of decision making.

There is, however, evidence that juries may emotionally render a verdict, though it is not developed as a concrete model for decision making. There is an abundance of literature that discusses how emotion can inform jury decisions, but research has not offered an explanation of how juries actually arrive at their decision. Rather, scholarship on emotion in legal decision making views emotion as another piece of information considered and as biasing a final decision. Emotion tends to be characterized as a kind of framing that limits decision-making abilities.[39] Emotions appear in this area as a factor, but not a full-fledged model for decision making. Select

[34] Groscup and Tallon. "Theoretical models of jury decision-making."; T. Daftary-Kapur, R. Dumas, and S.D. Penrod. "Jury decision-making biases and methods to counter them." *Legal and Criminological Psychology* 15, (2010): pp. 133-154
[35] Groscup and Tallon. "Theoretical models of jury decision-making."
[36] Ibid., Hastie, "Introduction," in *Inside the Juror: The Psychology of Juror Decision Making.*
[37] Groscup and Tallon. "Theoretical models of jury decision-making."
[38] Ibid.
[39] Jessica M. Salerno, "The Impact of Experienced and Expressed Emotion on Legal Fact Finding." *Annual Review of Law and Social Science* 17, no. 1 (2021): pp. 181-203.

emotions have sets of scholarship that discuss how juries consider them in their decisions, even though they may not be formally recognized. I focus first on the emotional experiences of the jurors, and how those experiences factor into individual decision-making before analyzing how these biases could be strategically promoted by attorneys.

III. Scholarship Regarding How Emotions Impact Jury Decision Making

Clearly, different emotions promote different responses from jurors. This section examines anger and sympathy, the two emotions on which this thesis will focus, and the ways that scholarship has thus far suggested they impact juror decision making.

III. a. Anger

Scholarship discusses how juries tend to manifest their anger in two ways. First, jurors use their anger to interpret evidence in a manner that favors the victim. Second, they direct their anger towards a defendant, resulting in greater blame and harsher judgments. Both models of angry decision making result in unfavorable verdicts for accused defendants. Therefore, anger is mainly a tool of the prosecution in criminal trials.

Scholarship acknowledges the role that anger plays in filtering evidence as well as how anger can contribute to biased verdicts. In a landmark study about the impact of gruesome evidence on jury decision making, Bright and Goodman-Delahunty found that presentation of gruesome evidence in trials leads to higher conviction rates than in trials where visual evidence is not shown.[40] The participants in the study who viewed the gruesome evidence reported experiencing more intense anger at the defendant than those who did not see any photos.[41] However, this study found that this effect was only evident when juries were subject to visual evidence. In contrast, the presentation of horrific verbal evidence did not have an impact on mock-juror decision making. Grady et al. furthered this research by exploring whether the results

[40] David A. Bright and Jane Goodman-Delahunty. "Gruesome Evidence and Emotion: Anger, Blame, and Jury Decision-Making." *Law and Human Behavior* 30, no. 2, (April 2006): pp. 183-202.
[41] Ibid.

of the study were due to the presentation of visual evidence in general.[42] In their work, Grady et al. added a study group of people who viewed neutral photographic evidence in order to show that gruesome evidence leads to a higher probability of conviction as opposed to trials where neutral photographs are shown to the jurors. This additional study confirms that the convictions delivered in Bright and Goodman-Delahunty's research were not simply due to the visual photographic evidence swaying the decision, but rather were due to the emotionally-charged nature of the evidence.

Research also shows that when people are angry, they place more blame on an alleged perpetrator.[43] An angry juror is more likely to find a defendant guilty and also institute a greater punishment than when in a neutral state.[44] Goldberg et al. tested this theory by activating participants' anger with a video of a crime and then posing four vignettes that described an individual's reckless behavior resulting in the harm of an innocent victim.[45] The respondents were then asked to rate how intentional the reckless actions were, the extent to which the defendant should be blamed, and the extent to which the defendant should be punished. Respondents who were induced to feel anger before making their judgments placed more blame on the defendant than those who were not induced to feel anger.[46] This finding was consistent with the work of Keltner et al., who found not only that blame increases with anger, but also that angry people are more likely to place blame on a person rather than a situation.[47]

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[42] Rebecca Hofstein Grady et al., "Impact of Gruesome Photographic Evidence on Legal Decisions: A Meta-Analysis," *Psychiatry, Psychology and Law* 25, no. 4 (2018): pp. 503-521.
[43] Julie H. Goldberg, Jennifer S. Lerner, and Philip E. Tetlock, "Rage and Reason: The Psychology of the Intuitive Prosecutor," *European Journal of Social Psychology* 29, no. 5-6 (1999): pp. 781-795.; D. Keltner., P. C. Ellsworth, & K. Edwards, "Beyond simple pessimism: Effects of sadness and anger on social perception." *Journal of Personality and Social Psychology* 64, (1993): pp. 740-752.
[44] Goldberg at al., "Rage and Reason: The Psychology of the Intuitive Prosecutor."
[45] Goldberg at al., "Rage and Reason: The Psychology of the Intuitive Prosecutor": 785
[46] Ibid., 786.
[47] Keltner et al., "Beyond simple pessimism: Effects of sadness and anger on social perception."

The increased culpability that jurors place when angry correlates to increased punishment for "guilty" defendants.[48] In Goldberg et al.'s 1999 study, the respondents who were shown the anger-inducing video assigned greater punishment to the defendants than those who remained neutral. The angrier that the participants rated themselves, the more punitive were their decisions.[49] The incense that the jurors felt took the form of moral outrage, which caused them to wish to place blame on a party and punish someone. Moral outrage makes a person want to hold someone responsible for an injustice, and therefore mediate the injustice to cope with the situation, presumably through punishment.[50] Research conducted by Nuñez et al. also supports this hypothesis. Nuñez et al. conducted research on this topic by showing jurors a video of the sentencing hearing of a capitol murder trial and then asking them to sentence the defendant. After watching the trial, jurors reported feeling heightened levels of anger than before viewing the video. Consistent with the previously cited scholarship, it is unsurprising that those who rated their anger higher were also more likely to sentence the defendant to death.[51] Those who chose a death sentence accordingly had higher anger ratings than those who chose to sentence the defendant to life in prison.

III. b. Sympathy

[48] Goldberg at al., "Rage and Reason: The Psychology of the Intuitive Prosecutor."; Jennifer S. Lerner and L.Z. Tiedens, "Portrait of the angry decision maker: How appraisal tendencies shape anger's influence on cognition." *Journal of Behavioral Decision Making* 19, (2006): pp. 115-137.; Narina Nuñez et al., "Negative Emotions Felt during Trial: The Effect of Fear, Anger, and Sadness on Juror Decision Making," *Applied Cognitive Psychology* 29, no. 2 (July 2015): pp. 200-209.
[49] Goldberg at al., "Rage and Reason: The Psychology of the Intuitive Prosecutor," 789.
[50] Ibid 788; Lerner and Tiedens, "Portrait of the angry decision maker: How appraisal tendencies shape anger's influence on cognition"; Nuñez et al., "Negative Emotions Felt during Trial: The Effect of Fear, Anger, and Sadness on Juror Decision Making."
[51] Nuñez et al., "Negative Emotions Felt during Trial: The Effect of Fear, Anger, and Sadness on Juror Decision Making," 208.

There is abundant research on the impact of sympathy in jury decisions. Sympathy in decision making is dependent on the originating factor of said emotion. In a trial, sympathy originates either from a specific situation that a perceived victim is in, or it is based on the identity or characteristics of the individual testifying before the jury. In this situational format, a juror feels sorry for the situation or a certain hardship that an individual is experiencing, and subsequently wants to remedy it. On the other hand, sympathy can be felt towards people who testify based on the image their attorney presents of them. I refer to this form of sympathy as identitarian, as it is based on a jury feeling sorry for an individual. These two types of sympathy are not completely separate, but rather overlap and interact with one another.

Many scholars have argued that sympathy impedes factual decisions because it encourages a jury to sympathize with, and therefore want to fix, an individual's hardship.[52] When presented with an individual in an unfortunate situation, jurors allegedly feel a need or a moral obligation to remedy the situation. This potential desire to help increases the chance of making a biased decision. Feigenson suggests that sympathy creates a biased weighing of evidence, leading jurors to decide which facts are salient and how thoroughly they need to be considered.[53] Scholars argue that sympathy enables jurors to make confident decisions that are inconsistent with legal doctrine in the absence of sufficient proof. Evidence is therefore interpreted to not only be in favor of a victim, but to reciprocally heighten the perceived guilt of the perpetrator.[54]

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[52] Feigenson, "Sympathy and Legal Judgment: A Psychological Analysis,"; B.H. Bornstein, "David, Goliath, and Reverend Bayes: Prior beliefs about defendants' status in personal injury cases." *Applied Cognitive Psychology* 8, (1994): pp. 233-258.; B.H.Bornstein, "From Compassion to Compensation: The Effect of Injury Severity on Mock Jurors' Liability Judgments." *Journal of Applied Social Psychology* 28, (1998): pp. 1477-1502.; Tsoudis and Smith-Lovin, "How Bad Was It? The Effects of Victim and Perpetrator Emotion on Responses to Criminal Court Vignettes." *Social Forces* 77, no. 2, (1998): 697.

[53] Feigenson, "Sympathy and Legal Judgment: A Psychological Analysis," 61.

[54] Ibid. 57; Bornstein, "David, Goliath, and Reverend Bayes: Prior beliefs about defendants' status in personal injury cases."; Bornstein, "From Compassion to Compensation: The Effect of Injury Severity on Mock Jurors' Liability Judgments."

This situation is even more evident in the study of personal injury and accident law. B.H. Bornstein tested this phenomenon by examining how injury severity affected evidence interpretation and guilty verdicts in a mock-jury personal injury suit. Bornstein conducted two studies where participants read summaries of personal injury cases that were modified from actual lawsuits.[55] The trial scenarios that participants received were the same in every aspect except for the seriousness of the plaintiff's injury.[56] In the first study, the participants were asked to read the summaries and judge the defendant's liability, award compensation, and rate their feelings toward the litigants. Bornstein found that the greater the severity of the plaintiff's injury (therefore creating a sense of urgency for resolution), the more likely she would receive a verdict in her favor, even though evidence of liability was the same in all cases. It was no coincidence that the mock jurors reviewing the severe injury case also rated their sympathy for the plaintiff higher than those who received a lower severity case.[57] Bornstein demonstrated that injury severity directly produced more juror sympathy and skewed judgments for the plaintiff.

This is not to say there could not be other triggers of sympathy when deliberating a case. In the Bornstein studies, sympathy was cultivated after reading only the facts of a case on a piece of paper. Jurors were not interacting with actual people for these studies, yet sympathy was so strong that they made a skewed decision without even seeing a victim. This limitation perhaps provides even more reason to believe that jurors would feel sympathy when in the presence of an actual person giving testimony.

The jury not only makes sympathetic decisions based on a victim's situation, but also makes decisions influenced by the identity of the person before them. This notion of identity is

[55] Bornstein, "From Compassion to Compensation: The Effect of Injury Severity on Mock Jurors' Liability Judgments."
[56] Ibid., 1481.
[57] Ibid., 1487.

not only derived from an individual's physical characteristics, background, or experiences, but is also substantially validated by a person's emotional reactions. Emotions reflect the nature of an individual. Tsoudis and Smith-Lovin assert that emotional displays of both alleged perpetrators and victims serve to impact jury perceptions of identity.[58] By observing the reactions of a person before them, jurors make interpretations, granting more credibility to people who display emotions consistent with what they would expect from a "normal" person in that circumstance.

Research shows that victims' displays of emotion, such as crying on the stand, result in more guilty verdicts.[59] Dahl et al., conducting a study on emotional displays by victims and their impact on individual and multiple jurors, discussed the impact of distraught testimonies by rape victims. In this study, mock jurors viewed one of three video recorded versions of a rape victim's testimony. Each recording revealed either congruent (despair, sobs, seemed to be fighting to stay composed), neutral (told story in a flat matter-of-fact way), or incongruent (appeared more positive and pleasant) emotions. The study showed that the jurors more frequently deemed the victim to be credible, and the perpetrator guilty, when the victim displayed congruent versus neutral or positive emotions.[60] The jurors' conclusions stem from sympathy. This sympathy not only originates from the victim describing the enormous impact of the crime and the pain inflicted on her, but also is a product of the jury's perception of the rape victim's emotions as appropriate for the situation. The victim is a normal person who endured a traumatic situation, which evokes sympathetic feelings from the jury.

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[58] Tsoudis and Lynn Smith-Lovin, "How Bad Was It? The Effects of Victim and Perpetrator Emotion on Responses to Criminal Court Vignettes."
[59] J. Dahl et al., "Displayed emotions and witness credibility: a comparison of judgements by individuals and mock juries." *Applied Cognitive Psychology* 21 (2007): pp. 1145-1155.; A. Cooper et al., "The Emotional Child Witness: Effects on Juror Decision‐making." *Behavioral Science. Law* 32, (2014):pp. 813– 828.
[60] Dahl et al., "Displayed emotions and witness credibility: a comparison of judgements by individuals and mock juries." 1150.

Similarly, Cooper et al. studied the impact of emotional displays, particularly crying, by children on jury decisions. This study introduces a particular nuance to the study of sympathy because it involves children, a group that tends to stir compassion in adults precisely because children are commonly perceived as innocent and defenseless victims. Researchers manipulated images of children and gave them to mock and real juries. They also provided a written trial scenario and testimony transcript. Researchers found that children perceived as emotional at trial rendered more guilty verdicts for the people against whom they testified.[61] Children who appeared emotional were also deemed to be more credible than those who were perceived as more reserved. Sympathy for children, with emphasis on their emotional expressions, likely creates a biased judgment. Jurors feel sorry for children because of their status as minors, and their inability to protect themselves from harm. Furthermore, following the work of Tsoudis and Smith-Lovin, emotional reactions would be expected from a child placed on the courtroom stand. These emotional displays therefore communicate to the jury that the child is rational, which enhances the jury's sympathy and perception of credibility.

Conversely, some research shows that victim sadness may not be as effective in provoking sympathy.[62] Examining the impact of sad and angry victim impact statements on juror death sentence deliberations, Nuñez et al. found that a victim's angry emotional displays resulted in an increase in death sentences, whereas sad emotional displays did not.[63] To reconcile this contradictory finding, it is important to recognize that sympathy does not only function in the presence of sadness alone. One can feel sympathy for a person who is angry, upset, or has any other emotion. Furthermore, as Tsoudis and Smith-Lovin demonstrated, emotions function as an

[61] Cooper et al., "The Emotional Child Witness: Effects on Juror Decision‐making."
[62] Ibid.; Nuñez et al., "Negative Emotions Felt during Trial: The Effect of Fear, Anger, and Sadness on Juror Decision Making."
[63] Nuñez et al., "Negative Emotions Felt during Trial: The Effect of Fear, Anger, and Sadness on Juror Decision Making."

indicator of identity.[64] Credibility and sympathetic judgments result from strong emotional displays that are appropriate for the given situation. Victim anger may have been more appropriate for these situations than sadness. Cooper et al. also addressed this idea, demonstrating that when a child was perceived as more emotional, but maintained a calm demeanor instead of crying, the jury rendered more guilty verdicts for those they testified against.[65] Jury sympathy relied on the level of emotion required in response to the situation. These studies show that specific emotions may not be influential in jury decisions, but their visibility and appropriateness have an impact on the decision-making process.

Sympathy in a criminal trial does not only apply to a victim. Nor does this phenomenon only apply to criminal law. Sympathy can assist or harm a defendant as well.[66] Tsoudis and Smith-Lovin explain that a perpetrator's emotional displays during a trial provide signals about future actions.[67] Furthermore, they found that the more contrite a perpetrator appears to be, the more "normal" identity he appears to have.[68] Conversely, if he appears calm and unconcerned, he is deemed to have an evil identity.[69] These identity perceptions influence rulings. Jurors who identify a person with a normal, expected response to a situation (being remorseful for committing a crime) are more inclined to feel sympathy and acquit. An indifferent person appears evil, and therefore is undeserving of sympathy and mercy.

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[64] Tsoudis and Lynn Smith-Lovin., "How Bad Was It? The Effects of Victim and Perpetrator Emotion on Responses to Criminal Court Vignettes."
[65] Cooper et al., "The Emotional Child Witness: Effects on Juror Decision‐making." 822.
[66] Tsoudis and Lynn Smith-Lovin., "How Bad Was It? The Effects of Victim and Perpetrator Emotion on Responses to Criminal Court Vignettes."; Bornstein, "From Compassion to Compensation: The Effect of Injury Severity on Mock Jurors' Liability Judgments."; Amy Bradfield Douglass et al., "Does It Matter How You Deny It?: The Role of Demeanor in Evaluations of Criminal Suspects," *Legal and Criminological Psychology* 21, no. 1 (2013): pp. 141-160.
[67] Tsoudis and Lynn Smith-Lovin, "How Bad Was It? The Effects of Victim and Perpetrator Emotion on Responses to Criminal Court Vignettes." 709.
[68] Ibid.
[69] Ibid.

Douglass et al. also completed research to support this thesis, finding that suspects who displayed flat, unemotional demeanor in interrogation were viewed as more guilty than those who demonstrated emotional behavior (excluding interrogations which included a confession).[70] Again, I find it crucial to highlight Tsoudis and Smith-Lovin, and emphasize that if a suspect appears emotional, and the jury views his reactions as appropriate and sane, the jury will perceive him to have a normal identity and make a decision in his favor. In the work of Douglass et al., suspects displaying a flat demeanor were found to be more guilty because jurors saw them as less deserving of their sympathy. Research clearly indicates that sympathetic emotional experiences inform, and potentially bias, jurors in their decision-making processes.

Literature regarding jury anger and sympathy suggests that juries form their decisions based on their emotional biases. The studies of emotions in the decision-making process as factors that somehow bias juries is largely worthy of consideration, as this bias suggests attorneys can utilize it to achieve desired outcomes. [71]

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[70] Douglass et al., "Does It Matter How You Deny It?: The Role of Demeanor in Evaluations of Criminal Suspects."

[71] It is worth noting that anger and sympathy are not the only emotions that the jury may use in decision making. Another prominent emotion that attorneys tend to appeal to is fear. The impact of fear on juror decision making is significantly underdeveloped, but worthy of consideration. There is some scholarship on the influence of fear in jury rulings, but there is little work that addresses exactly how juries incorporate this emotion in rendering their decisions. Nevertheless, some studies from across the social sciences can be used to address the role of fear and decision making in general, including the delivery of guilty verdicts. Psychology research shows that fear is an emotion that carries uncertain connotations (see J.S. Lerner, and D. Keltner, "Beyond valence: Toward a model of emotion-specific influences on judgment and choice." *Cognition and Emotion* 14, (2000):473–493; Nuñez et al., "Negative Emotions Felt during Trial: The Effect of Fear, Anger, and Sadness on Juror Decision Making."; L.Z. Tiedens and S. Linton, "Judgment under emotional certainty and uncertainty: The effects of specific emotions on information processing." *Journal of Personality and Social Psychology* 81, (2001): pp. 973–988.) Those who are fearful have been shown to make pessimistic, uncertain judgments of future events. The uncertainty about the future that fear elicits actually causes decision makers to rely less on heuristics than those who are not induced to feel fear. Tiedens and Linton effectively showed that fear is an uncertain emotion, which prompts deeper thinking about an event and therefore less use of stereotypes in decision making. While the works discussed above address the role that fear has in determinations of guilt, they are based on judgments unrelated to jury decision making per se. This is not to say that fear does not have a place in the courtroom. In fact, fear in the courtroom has been addressed in studies about jury rulings related to when alleged victims express their own fear as well as when defendants voice their fear as part of their rationale for action in self-defense claims, particularly involving domestic violence. (see Cynthia Lee, *Murder and the Reasonable Man: Passion and Fear in the Criminal Courtroom*. New York: New York University Press, 2003.; Emily E. Dunlap et al., "Mock Jurors' Perception of Stalking: The Impact of Gender and

IV. Existing Scholarship regarding Attorney Emotional Appeals

While there is literature that demonstrates how jurors utilize or respond to emotion, scholarship that addresses how attorneys appeal to the emotions of the jury is underdeveloped. Studies in this field are difficult to locate, as it is commonly understood that emotional appeals are unethical in the courtroom, and that attorneys are not permitted to appeal to the emotions of decision makers.[72] Emotional prejudices are commonly discussed in the realm of evidence, where scholars cite Rule 403 of the Federal Rules of Evidence as excluding any evidence that may evoke "unfair prejudice" (commonly an emotional one) which outweighs "probative value."[73] However, there are some parts of a trial where activating emotional appeals is less controversial and significantly more observable.

The opening and closing arguments are events where emotional appeals are accepted, and even promoted as strategically advantageous. Tracking these appeals is often difficult, as attorneys obviously do not announce their usage, and explicit emotional appeals can be "overkill," and possibly dissuading.[74] Emotional appeals are also difficult to measure because an observer may be able to witness these appeals, but not necessarily know what emotion the

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Expressed Fear," *Sex Roles* 66, no. 5-6 (December 2011): pp. 405-417.) Fear is especially relevant in self-defense trials, where many state laws require legal decision makers to focus on the reasonableness of the defendant's emotions in provoking violent action, rather than the reasonableness of the actions themselves. There is evidence that a victim's expression of terror during an attack leads to more guilty verdicts when the victim communicates their fear to decision makers.[#] Though this research does not speak to juror distress precisely, the expression of fear must have some emotional impact on jurors in order for them to rule in such a way. One theory is that the conveyance of fright is actually a tool to provoke fear and encourage emotionally biased decision making for the jury (see James H. Roberts Jr., "The SEC of Closing Arguments," *American Journal of Trial Advocacy* 25, no. Special Anniversary Edition (2002): pp. 271-282). According to this logic, one could assume that the jury reacts to the nuance of fear presumably because the jurors feel fear as well.

[72] Teneille R. Brown, "The Affective Blindness of Evidence Law," *Denv. U. L. Rev*. 89, (2011): pp. 47-141.

[73] Grady et al., "Impact of Gruesome Photographic Evidence on Legal Decisions: A Meta-Analysis"; Krista C. McCormack, "Ethos, Pathos, and Logos: The Benefits of Aristotelian Rhetoric in the Courtroom," *Washington University Jurisprudence Review* 7, no. 1 (2014): pp. 131-155; Jessica Salerno and Liana Peter-Hagene,"The Interactive Effect of Anger and Disgust on Moral Outrage and Judgments." *Psychological Science* 24, no. 10 (2013): pp. 2069–78.

[74] Ronald J. Matlon, "The Closing Argument: Emotional Appeals," *Jury Expert* 17, no. 11 (November 2005): pp. 7-10.

attorneys want to evoke. The context in which lawyers use triggering phrases is crucial.[75] Nonetheless, scholars have attempted to address how emotional appeals in jury trials function, particularly by looking at lawyers' opening and closing statements.

Emotional appeals are vital in opening statements as they introduce the client to a jury.[76] Attorneys need to evoke positive feelings from the jury about their client in order to provoke a strong emotional connection or encourage a relation to their client's place in society.[77] James Roberts, in his work regarding emotions in closing arguments, discusses the importance of portraying a "dominant emotion" in an opening statement in order to frame the story that the jury is going to hear in the upcoming trial.[78] The "dominant emotion" is considered to be the feeling that the client themself experienced during the incident that prompted litigation.[79] The portrayal and conveyance of this emotion might take many forms. Perhaps a lawyer attempts to evoke sentiment by explaining how the evidence will show an emotional experience that a client endured at the time of a crime.[80] Attorneys may also attempt to open their case by setting up an emotional story,[81] highlighting particular facts that could frame emotional perception,[82] and using emotionally charged words in the presentation of their case.[83] For example, Roberts gives a hypothetical example of a self-defense case where the attorney defending a client who killed a home invader could highlight how the defendant was alone in a dark house in order to provoke the jurors to feel "the same fear that the defendant experienced at the moment she pulled the

[75] Jasper, *The Emotions of Protest.*
[76] McCormack, "Ethos, Pathos, and Logos: The Benefits of Aristotelian Rhetoric in the Courtroom."
[77] Ibid., 144.
[78] Roberts Jr., "The SEC of Closing Arguments," 274.
[79] Ibid.
[80] Roberts Jr., "The SEC of Closing Arguments."
[81] M. Zaitseva, "Appeal to Emotions as a Way of Influencing in Court (Linguistic Aspect)," *Zhytomyr Ivan Franko State University Journal of Philological Sciences.* 1, no. 94 (August 2021): pp. 106-114.
[82] Ibid.; Roberts Jr., "The SEC of Closing Arguments," 275.
[83] Peter Perlman, "The Compelling Opening Statement: Two-Minute Markers," *Trial* 30, no. 5 (May 1994); Matlon, "The Closing Argument: Emotional Appeal."

trigger."[84] Introducing an event as traumatic allows an attorney to control how the jury perceives the forthcoming facts.[85]

This is a consistent theme in closing statements as well. The goal of these appeals is to make a jury feel what an alleged criminal felt when they committed a crime.[86] On the other end, the prosecution may use this strategy to encourage the jury to feel what a victim may have felt when they were wronged.[87] An attorney, in both opening and closing statements, benefits from putting the jury in the shoes of their client. Jurors should be able to picture a situation and place themselves there to feel the fear, sorrow, or helplessness that a client or victim felt before, during, or after committing or being the victim of a crime.[88] However, to do so explicitly is extremely controversial, and oftentimes strictly forbidden.[89] Asking a jury to place themselves in the shoes of a party (a strategy known as Golden Rule arguments) is a blatant appeal to juror sympathy and therefore prohibited for replacing "deliberative decision making."[90]

There are, however, ways to achieve this goal without directly asking a juror to place themselves in the shoes of the client or victim. Language choice has a substantial role in argumentation. Scholar Ronald Malton explains how attorneys may use metaphorical and vividly descriptive language to elicit emotional conclusions. Metaphor, which Malton describes as "referent that takes a term out of its habitual association and places it in another, more emotional, association," allows for a juror to "carry" words that evoke preconceived emotions into the case

[84] Roberts Jr., "The SEC of Closing Arguments," 276.
[85] Zaitseva, "Appeal to Emotions as a Way of Influencing in Court (Linguistic Aspect)."
[86] Roberts Jr., "The SEC of Closing Arguments,"; McCormack, "Ethos, Pathos, and Logos: The Benefits of Aristotelian Rhetoric in the Courtroom."
[87] Ibid.
[88] Ibid.
[89] Matlon, "The Closing Argument: Emotional Appeals," 10; Brown, "The Affective Blindness of Evidence Law," 76; H. Mitchell Caldwell and Allison Mather, "'Do to Others What You Would [Not] Have Them Do to You': California Is an Outlier in Sanctioning Emotional Appeals in Deciding between Life and Death,"*Regent University Law Review* 33, no. 1 (2020): pp.81-111.
[90] People v. Leonard, 157 P.3d 973, 1001 (Cal. 2007); Caldwell and Mather, "'Do to Others What You Would [Not] Have Them Do to You': California Is an Outlier in Sanctioning Emotional Appeals in Deciding between Life and Death," 85.

before them.[91] An example of this tactic would be referring to abortion as murder. In a similar vein, researchers also highlight the use of vivid, descriptive, and sensory-appealing language in closing statements.[92] Legal scholars explain how emotionally charged and vivid words encourage a juror to visualize and experience a situation, consequently provoking emotion.[93] The tactic of using language that appeals to the senses allows an attorney to paint a picture and experience for decision makers, without an attorney directly telling them to do so.

Another common technique that attorneys use to help jurors relate to their clients is analogy.[94] Comparing a case to something that jurors are familiar with is extremely persuasive because it not only provokes an emotion through suggestive thought-processing, but also rewards the jurors' intellects by convincing them that they reached a conclusion on their own before the speaker.[95] This technique allows for the same appeal as the "put yourself in his/her shoes" approach without risking violating the Golden Rule.

Attorneys can likewise activate emotional interpretation by focusing on the value systems of the juror.[96] Emphasizing values such as family, justice, morality, freedom, rationality, safety, comfort, patriotism, generosity, and fairness (among others) can lead to jurors internalizing and feeling emotions about an event and deciding accordingly, without directly being told to do so. Evidence of these appeals, since they are not overt, can be difficult to uncover. However, there are some clear patterns that appear in attorney statements that reveal attempts to do so.

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[91] Matlon, "The Closing Argument: Emotional Appeals," 10.
[92] Ibid.; Roberts Jr., "The SEC of Closing Arguments," 282.
[93] Caldwell and Mather, "'Do to Others What You Would [Not] Have Them Do to You': California Is an Outlier in Sanctioning Emotional Appeals in Deciding between Life and Death," 86; Matlon, "The Closing Argument: Emotional Appeals," 9; Roberts Jr., "The SEC of Closing Arguments," 276.
[94] McCormack, "Ethos, Pathos, and Logos: The Benefits of Aristotelian Rhetoric in the Courtroom," 140; Matlon, "The Closing Argument: Emotional Appeals," 10; Roberts Jr., "The SEC of Closing Arguments," 282.
[95] Matlon, "The Closing Argument: Emotional Appeals," 10.
[96] Ibid.

Zaitseva has explored these patterns and the value-system theory discussed above. Zaitseva examines a few quotations from different trials and highlights certain emotion-provoking phrases as "emotional anchors" that strategically aim to elicit emotional reactions from the jury.[97] From an outside perspective, one can see how a lot of these anchors draw their power from their challenges to value-systems, though Zaitseva does not consider it. For instance, Zaitseva discusses the power of emphasizing the identity or suffering of a party in order to activate the compassion of the jury, or shame them for prosecuting a "helpless" perpetrator.[98] This could be an attack on the values of generosity, safety, fairness, and morality. Zaitseva also explains how attorneys use logic chains to suggest that the jury has not heard the true story in order to cause indignation, which may prompt frustration with values about justice and freedom.[99] The same value systems seem to be exploited in Zaitseva's argument about suggesting and repeating court mishaps or past wrongful convictions/arrests to trigger anger.[100] Although the tactic is not exactly related to a value system, Zaitseva also notes how repetition is used as a technique of emotional emphasis, arguing that these triggers need to be repeated in order to evolve into feelings.[101]

While there is some scholarship on emotional appeals in closing and opening arguments, there is still room for expansion. The techniques offered are helpful, but this list is not comprehensive. Through more interviews with practicing criminal attorneys and systematic content analysis of trial transcripts, I aim to expand this list, and also bring it into the present, as many of the cited sources are outdated. Scholarship has yet to address the impact of emotional

[97] Zaitseva, "Appeal to Emotions as a Way of Influencing in Court (Linguistic Aspect)."
[98] Ibid., 111.
[99] Ibid., 109.
[100] Ibid., 111.
[101] Ibid., 110, 112.

appeals by attorneys, nor have emotional appeals in court been examined past a surface-level interpretation with a highly selective number of sample transcripts.

V. Conclusion

Emotion in politics has been studied before in many fields of politics. It has also been studied in the legal realm. Scholarship shows that juries use their emotions to make decisions, yet the field regarding how attorneys appeal to these emotional decision-making processes is forbidden and therefore underdeveloped. There is further evidence that attorneys technically are not supposed to employ emotional appeals in their work, but do anyway. Emotive appeals are generally understood as immoral and even illegal in facet of court, except opening and closing statements. This leads one to question just how attorneys appeal to emotions. To begin to answer this question, the next chapter addresses the methods I use in exploring this topic.

Chapter 2: Methodology

In this chapter, I explain the methods of data collection and analysis I use to evaluate emotional appeals by lawyers in jury trials. The first section describes the methods I use, which are modeled on existing work in similar areas. This section discusses content analysis, interview techniques, methods for obtaining my dataset, and the limitations of my approach. I then move to a description of my data in part two. Here, I describe general details of my data set of trial transcripts, and also provide a chart containing the details of each case. I also discuss my interview techniques, providing my intentions behind asking each question. I finish the chapter by explaining how I combined the data collection and analysis techniques that I used to yield my examination in Chapters Three and Four.

After reviewing existing literature on emotional appeals in the courtroom, a few hypotheses emerged. There are some topics I had planned to examine in transcripts and hear in attorney interviews in accordance with previously completed research. For instance, I anticipated that appeals to anger in court may include attacks to value systems, highlighting past injustices that occurred in court, or that occurred in one of the parties' lives. I anticipated that sympathetic triggers may take the form of highlighting the identity of a person or the traumatic experiences that may explain and even justify their crime from the point of view of the defense. While these hypotheses are based on prior research, I would not know exactly how to assess these specific appeals until I consulted legal professionals and asked them how they intentionally seek to influence jury emotions. Furthermore, I was unable to verify that these reported appeals actually occur in practice until I reviewed and analyzed transcripts and interpreted the words that are used through content analysis.

Studying the field of emotions inherently raises questions about the rationality and possibility of observing and quantitatively measuring emotions. James Jasper, in his work about the emotions of protest, includes an appendix in his book where he discusses how scholars can study emotions. He argues that, "we can use any of the same techniques to study anything else. Students of emotion have used every known method of research - and invented some new ones."[102] Jasper also points out the limitations of studying emotions, such as how emotions are understood to be internal experiences that may be difficult to interpret.[103] Nonetheless, as is evident by the wealth of aforementioned scholarship, researchers have successfully studied emotions in the past.

More applicable in this instance, though, is the study of emotional appeals. Within this thesis, I study how attorneys appeal to emotions, rather than how jurors experience these emotions. In other words, the unit of analysis is the emotional appeal made by the lawyer themselves, not the juror who might respond to the emotion. At issue is whether and how lawyers may attempt to trigger emotion, not necessarily whether the juror responds to the trigger. Scholarship already suggests that jurors often do so respond. So, this thesis is focused on identifying the tactics and strategies of lawyers, particularly given the broader context that such emotional appeal is banned by ethics codes or, at least, heavily frowned upon as a public professional norm. There is scholarship in this field that offers insights as to how one may conduct research regarding emotional appeals in written text.

[102] Jasper, James M, *The Emotions of Protest* (Chicago: The University of Chicago Press, 2018), 197.
[103] Ibid.

I. Methods

There are two main approaches to studying emotional appeals that I use in this thesis. This section further addresses the method through which I obtained my dataset as well as the limitations to my approach.

I. a. Content Analysis

There are numerous scholars who have completed work similar to the project I completed. Thomas Scheff developed a list of verbal markers that designated shame and anger through his analysis of letters and writings of World War II party leaders.[104] In a similar manner, the work of M.O. Zaitseva also offers insight as to how one can code statements for emotionally charged words. Zaitseva examines a few quotations from different trials and highlights certain provocative phrases as "emotional anchors" that strategically aim to elicit particular reactions from the jury.[105] Scheff's methodology is useful in that it shows that one can compile a list of markers of emotionally related words in a political context. Zaitseva adds to this by showing that this coding, and triggering phrases specifically, can apply to legal situations. I plan to combine these methodologies, as well as other methods of content analysis, to interpret opening and closing statements through analysis of commonly used emotional trigger phrases.

Previous scholarship also provided insight as to how I coded trial transcripts and conducted content analysis accordingly. Content analysis is essentially a process of examining and analyzing trends across a textual dataset. It is a multi-step process that requires careful coding and then thoughtful evaluation and categorization of data.[106] The first part of this process

[104] Thomas J. Scheff. *Bloody Revenge: Emotions, Nationalism, and War*. (Boulder: Westview Press, 1994).
[105] Zaitseva, "Appeal to Emotions as a Way of Influencing in Court (Linguistic Aspect)."
[106] Steven E. Stemler, "An overview of content analysis," *Practical Assessment, Research, and Evaluation* 7, no. 17 (2000): 1-16.

is coding. Examining the work of previous research indicates how this may be done, not just in general but also on trial transcripts. For instance, psychologists Kan et al. conducted content analysis on trial transcripts to empirically measure and analyze the types of information presented to juries about a defendant's "Mental Retardation" and adaptive functioning.[107] The researchers hired and trained coders to identify segments of the transcripts that presented information about a defendant's behavior or characteristics that suggested their intellectual or adaptive abilities. They categorized these segments as relevant when they appeared to be consistent with any of the ten "adaptive functioning skill areas" identified by a guide published in 1992 by the American Association of Mental Retardation, or with a general comment about intellectual status.[108] This idea of keeping track of terms when they apply to a category is another foundational aspect of content analysis as well. Steven Stemler explains how the basics of categorization can be defined by the works of R.P. Weber and the U.S. General Accounting Office, who together define a category as a "group of words with similar meaning or connotations" that must be "mutually exclusive and exhaustive."[109] Categorization is essentially how coding is completed.

The importance of training and the prominence of categorization in the coding process is also reflected in the work of Jeffrey Kazmierczak. In his master's dissertation, Kazmierczak examined six trial transcripts and conducted content analysis on the transcripts to examine the psychology behind insanity defenses.[110] In a similar vein to the work of Kan et al., Kazmierczak

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[107] Lisa Kan et al.,"Presenting Information about Mental Retardation in the Courtroom: A Content Analysis of Pre-Atkins Capital Trial Transcripts from Texas." *Law and Psychology Review* 33, no. 1 (2009):1-28.
[108] Ibid.
[109] Robert A. Scott, Stephen Michael Kosslyn, and Steven Stemler, "Content Analysis," in *Emerging Trends in the Social and Behavioral Sciences: An Interdisciplinary, Searchable, and Linkable Resource* (Hoboken, NJ: John Wiley & Sons, 2015): 1-14, citing: U.S. General Accounting Office, "Content Analysis: A Methodology for Structuring and Analyzing Written Material" (Washington, D.C, 1996), and R. P. Weber, Basic Content Analysis, 2nd ed. (Newbury Park, CA, 1990)
[110] Kazmierczak, "The Psychology behind Legal Sanity: A Content Analysis of Criminal Felony Trial Transcripts Involving an Insanity Defense,"18.

trained four psychology students to enable them to recognize places in transcripts where speakers referred to a client's insanity. He indicated references as being evident when attorneys made statements that fell into one of twenty-five variable categories and established a comprehensive structured diagnostic interview for determining legal insanity dubbed "R-CRAS."[111] The manner that these studies conducted content analysis is important because it shows how content analysis can be effectively completed through training and coding (which is completed according to categorization).

I follow this logic chain in my research. My categories were defined by terms related to each of the emotions of anger and sympathy. The main method that I used in my process of content analysis of the transcripts was emergent coding. While attorney interviews, which I discuss below, provided confirmation as to what I was coding for, I primarily used emergent coding to recognize emotional appeals. Steven Stemler describes emergent coding as a type of content analysis that is, "somewhere between a purely empirically derived model and a purely theoretical model."[112] Through this method, the researcher approaches analysis without a particular theory as to what exactly they are coding for in the first place. Rather, the researcher uses the data to develop a theory and then applies said theory to the subsequent data.[113] Through this process a researcher reads selected texts and then generates coding categories based on the themes she encounters.[114] Accordingly, I was able to examine terms and phrases as they related to emotional categories as I interpreted the texts of the transcripts.

I also used attorney interviews to confirm the discoveries I made through emergent coding. This enabled me to verify the linguistic techniques that I perceived to signal emotional

[111] Ibid.
[112] Scott, Kosslyn, and Stemler, "Content Analysis," 3.
[113] Ibid.
[114] Stemler, "An overview of content analysis," 2.

appeals that were relevant to my categories. These interviews served to close the gaps left open by existing scholarship on emotional triggers, and helped me solidify exactly which techniques attorneys use to influence emotions in their opening and closing statements. The interviews also addressed whether attorneys purposefully appeal to emotions, and whether they believe it is appropriate to do so. Interviews further helped to indicate which phrases attempt to activate specific feelings. This approach helped to combat one of the limitations of studying emotions (that an observer may be able to witness appeals, but not necessarily know what emotion the attorneys are attempting to evoke) by clearly defining what triggers correspond to which emotions.

I.b. Qualitative Semi-Structured Interviews

The qualitative interviews, which I used primarily as confirmation for content analysis, took the form of semi-structured interviews. Svend Brinkmann emphasized the importance of qualitative interviews, explaining how humans are conversational beings who learn through communication with others.[115] One type of qualitative interview is the semi-structured interview. Semi-structured interviews allow for an interviewer to facilitate a natural conversation while still having a say in focusing the conversation on issues that she deems important to the project.[116] In essence, the semi-structured interview consists of a set of main questions that a researcher asks with many follow up questions that emerge during conversation with the interviewee.[117]

I used a range of techniques to get into contact with the attorneys whom I interviewed. Originally, I had planned to contact the attorneys whom I worked with as an intern at the New

[115] Svend Brinkmann, "Unstructured and Semi-Structured Interviewing," in *The Oxford Handbook of Qualitative Research*, ed. Patricia Leavy (Oxford University Press, 2014), 3.
[116] Ibid
[117] Ibid.

Hampshire Public Defender's Office via email to set up interviews. After receiving only one response, I turned instead to a network of Bates alumni to solicit responses. I used LinkedIn to access the Bates College page and, under the "alumni tab" entered the search term "criminal attorney." I then googled the law firms and attorneys whom I found on LinkedIn to receive their contact information, and reached out to them asking if they would be willing to participate in a confidential interview. I received three responses from attorneys through this technique.

I conducted these interviews over Zoom. Conducting an interview in this manner allowed for more applicable follow-up questions following the semi-structured format. There are benefits and limitations to conducting interviews in this manner. Brinkmann notes how telephone interviews are helpful in how they expand the range of people that one can interview.[118] Telephonically conversing with someone allows a researcher to assess individuals who may not be in near proximity. This is crucial considering how my research questions are not applicable to only one area, but aim to address attorney practices nationwide. This is also especially important when considering time and financial constraints, as it eliminates the need for transportation. There are some unavoidable drawbacks to this method. Brinkmann expresses how in-person interviews are always preferable because the interviewer is able to observe non-verbal information that an interviewee may express, such as facial expressions and body language.[119] In-person interviews have also been shown to produce more accurate responses due to contextual naturalness, a greater likelihood of self-generated answers, more thoughtful reflection than over-the-phone interviews.[120] I therefore utilized video calling in an attempt to incorporate some of the aspects of in-person interviewing while also having the benefits of over-the-phone interviews.

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[118] Ibid., 22
[119] Ibid., 21
[120] Brinkmann, "Unstructured and Semi-Structured Interviewing," 22.

I.c. Obtaining a Data Set of Transcripts

Existing content analysis of trial transcripts offered some guidance as to how I conducted my research. The work of Kazmierczak also provided valuable insights in this area as well. To configure his data set, Kazmierczak used Lexis Nexis to search for criminal felony trials involving the insanity defense in Cook County, Illinois by entering the terms "insanity defense" in the "search terms" bar and "mental illness" in the "narrow search with additional terms" bar.[121] These searches identified cases on appeal that had passed through the lower court with which Kazmierczak was working. Kazmierczak could use the basic information that Nexis provided to locate used microfilm from the local court in order to find transcripts of the original hearings. Although I do not have access to a local court that conducts jury trials, I used a similar methodology to locate various criminal transcripts.

To locate a collection of trial transcripts without paying for hearing transcription, I followed the techniques that Kazmierczak used. I used Lexis Nexis and entered the search term "closing arguments," and then I narrowed the search by selecting criminal law and procedure, selecting a certain state, and entering the terms "jury," "transcript," and "murder" in the "search within results" box. I also added a timeline constraint to restrict cases to those occurring between January 1, 2012 to December 31, 2021. From there I retrieved information on relevant cases by taking the case number and party names and entering the data into a select state's court of appeals database to find the appellate index with the original jury trial transcript (if it was entered into evidence for the appealed case). I configured my dataset using this strategy.

I.d. Limitations

[121] Ibid.

There are, of course, limits to this manner of research. The first issues arise with studying emotions in general, particularly from a transcript. Emotions are understood to be expressed not only verbally, but performatively as well, through facial expressions and tones of voice that cannot be evaluated through a transcript. While this is less applicable when it comes to emotional triggers, it is still important to recognize that reading an attorney's words on a piece of paper may not capture an image of his or her actions, or may misconstrue the message that he or she conveyed through intonation or facial expression. Emotional triggers also function subliminally, and are not always easily discernible, so studying them takes special attention to detail. One has to have knowledge of the techniques used to trigger emotions without overtly employing them. Emotional appeals are also difficult to measure because an observer may be able to witness these appeals, but not necessarily know what emotion the attorneys are attempting to evoke. Lastly, the context in which lawyers use triggering phrases is crucial.[122]

There are also limitations with my research plan. Performing content analysis and conducting interviews to construct a list of key terms presents a number of challenges. Mainly, these techniques are time-consuming. There are many subjects involved in interviewing who may derail the project, or introduce information that challenges my proposed plan. I tried to limit these interruptions by keeping my interviews brief, and only posing pertinent questions.

The final limitation that I wish to discuss concerns obtaining a dataset. Simply put, trial transcripts are difficult to access. To obtain transcripts from courts, one usually needs to pay a steep price per page, hire a transcriber, and wait an extended period of time for the completion of the transcription. However, there are loopholes to access transcripts, as I described previously. I needed to work with cases that were appealed in order to access transcripts. Furthermore, the transcript from the jury trial must have been entered into evidence for the appeal hearing.

[122] Jasper, *The Emotions of Protest.*

Searching through cases that meet these parameters was difficult, but with time and strategy, it was possible.

In conclusion, I read through the opening and closing statements I obtained online and coded the statements by hand, interpreting and tallying words and phrases that appeared to indicate appealds to specific emotions in an effort to evaluate trends across statements. I interviewed attorneys to confirm the findings I made in emergent coding. With this data, I evaluated just how attorneys attempt to appeal to emotions, and how their jobs could explain the techniques they used.

II. Description of Data

As previously mentioned, there are two sources of data that I used in obstructing this thesis. The first subsection in this section discusses the trial transcripts I obtained, and the second discusses the interviews I conducted.

II.a. Trial Transcripts

My dataset consists of the results of attorney interviews as well as a set of eighteen jury trial transcripts from the state of Nevada. I chose to focus on Nevada because the state has a robust online documentation system for their appeals court that includes the evidence entered. Not all states do this.

The transcripts I examined are from murder-related cases between the years 2014 and 2019. Of the eighteen transcripts, twelve resulted in rulings of first-degree murder, two resulted in rulings of second-degree murder, one resulted in a charge of involuntary manslaughter, and three of the eighteen transcripts are from trials where there was no loss of life, and the most extreme crime was attempted murder.

Many of these transcripts are from cases considering multiple charges. In fact, only seven of the trials were pertaining to only charges of murder with use of a deadly weapon. The most common other charges that coincided with the murder charges were robbery related (including robbery with use of a deadly weapon and conspiracy to commit robbery), and attempted murder (excluding the three cases where attempted murder was the highest charge). At least one type of each of these charges coincided with murder charges in five cases.

The next most common charge that accompanied the murder related charges was conspiracy to commit murder, which was argued in four cases. The same number of cases

involved burglary charges and there were four cases with the charge of battery with use of a deadly weapon resulting in substantial bodily harm, one of which constituted domestic violence. Three of the cases involved kidnapping charges, and three had battery with a deadly weapon. Because the only way to access transcripts was through appeal records, all of the cases were ruled in favor of the state in some way. Some cases did elicit not guilty verdicts on some of the charges. The highest charges in each case elicited a guilty verdict.

This thesis will also address if the identities of the defendants and/or the victims is evident in the emotional appeals as well. For instance, scholarship has suggested that people tend to feel more sympathetic towards children and women.[123] This may be evident in transcripts through the ways in which attorneys will accordingly appeal to sympathy more in a case that involves a child or a female identifying individual than in a case that does not involve these actors. Perhaps appeals to fear and anger will also be present in different ways depending on the identities of the victim and defendant. One may expect, for example, for there to be more attempts to trigger juror anger towards a defendant when a case involves a sympathetic alleged victim.

Considering these merits, the transcripts are from cases involving some variation in victim and defendant identities. These identities vary by gender, age, and race but not in great numbers. The defendants of the cases in my data set were almost all males, with only one female identifying perpetrator. The majority of the defendants were between 30 and 40 years old both at the time of their crimes and at the times of their trials. There are a few defendants with ages outside that range as well, with the youngest being 18 at the time of his crime, and five others

[123] See Cooper et al., "The emotional Child Witness: Effects on Juror Decision-making." *Behavioral Science Law* 31, (2014): 813-828.

being between the ages of 20 and 30 for their crimes and trials. Two were between 40 and 50 years old during the trial.

Examining the potential for correlations between identities and emotional appeals is also important when considering racial differences. Incorporating critical race theory into this examination of emotional appeals is crucial in the current context, whereby racism in the criminal justice system is becoming increasingly evident and receiving more attention. The NAACP reports that Black people, who make up just 13.4 percent of the population, make up 22 percent of fatal police shootings, 47 percent of wrongful conviction exonerations, and 35 percent of individuals executed by the death penalty.[124] Furthermore, Ashley Nellis, a Research Analyst at The Sentencing Project, reports that African Americans are incarcerated in state prisons at five times the rate of whites.[125] Given these merits, I was interested in seeing if emotional appeals may factor into the unfair treatment of people of color in the United States criminal justice system.

Accordingly, I attempted to build a dataset representing a variety of racial identities. To determine the racial identities of the people, I conducted inmate searches by the names of the defendants. I used the Nevada Department of Corrections database of inmates to locate the races and dates of births of the defendants. I also conducted google searches of the cases and relied on news sources reporting on the event when it was available to further confirm the races and ages of the alleged perpetrators at the times of their trials. I was also able to access images of the defendants through these two methods. Accordingly, I analyzed seventeen cases where

[124] "Criminal Justice Fact Sheet," NAACP (NAACP, May 24, 2021).

[125] Ashley Nellis. *The Color of Justice: Racial and Ethnic Disparity in State Prisons*. The Sentencing Project, 2021.

defendants were people of color. Of these seventeen defendants, nine identified as black, five identified as Hispanic, one identified as Cuban, and one was Asian.

The identities of the victims are also relevant to emotional appeals. Consistent with scholarship, I hypothesized that attorneys would appeal to anger towards a defendant more when he or she has harmed an unusually vulnerable victim. In a similar vein, I expected that attorneys would attempt to appeal to sympathy more when a victim falls into an identity category that is typically regarded as more helpless (i.e. women and children). Attorneys understand that people may feel for those who are portrayed as helplessly injured or done injustice upon. There was not available data on the races of the victims, but many news articles did report on the genders and ages of those who were murdered or victimized in some way. The ages and genders of the victims were likewise expressed in the trial transcripts as well.

Regarding gender, the majority of the victims in the trials I analyzed were male. Some of these victims were related to the defendants, being brothers or friends, while some were unrelated. In total, 12 of the cases have male victims. Two of these cases involved female victims as well. One of these male victims was also a police officer, who survived his attempted murder and testified at trial.[126] Looking to the other side of the gender binary, eight cases involved females being victimized in some way. Defendants were accused of taking the lives of women in four of these cases. Three of the five cases involved husbands who allegedly killed their wives.

The second victimized group that is important to highlight are children. Four of the cases involve children victims. In one of these cases a defendant allegedly killed a child.[127] In the second case, the defendant allegedly attempted murder on a child.[128] The last of these four cases

[126] State of Nevada vs. Steven Turner (District Court of Clark County, Nevada, 2018).
[127] State of Nevada vs. Bryan Devonte Clay, Jr. (District Court of Clark County, Nevada, 2017).
[128] State of Nevada vs. David James Burns (District Court of Clark County, Nevada, 2015).

involved a defendant allegedly committing a crime in the presence of children, resulting in child endangerment charges.[129]

The table below presents the details of each case:

Case Name	Charges	Verdicts	Defendant Age and Race	Victim Identities
State v. Amadeo Sanchez, Jr. (2015)	first degree murder with use of a deadly weapon	guilty	27, Hispanic	male
State v. Bryan Devonte Clay, Jr. (2017)	first degree murder with use of a deadly weapon	guilty	27, Black	38-year-old female mother and also her 10 year-old daughter
State v. Coleman Vaoga (2017)	first degree murder with use of a deadly weapon	guilty	36, Asian	male
State v. David James Burns (and 2 others) (2015)	conspiracy to commit robbery, burglary while in possession of a firearm, robbery with use of a deadly weapon, first degree murder with use of a deadly weapon, attempt murder with ue of a deadly weapon, battery with a deadly weapon resulting in substantial bodily harm	guilty on all	25, Black	28-year-old female mother, also injured her 12-year-old daughter
State v. Dontay Thor Sevier (2018)	first degree murder with use of a deadly weapon	guilty on all	29, Black	male who beat defendant in a fight
State v. Edmundo Oliveras (2019)	conspiracy to commit murder, second degree murder with a deadly weapon, robbery with use of a deadly weapon	guilty on all	46, Hispanic	male
State v. Eduardo Estrada-Puentes (2016)	first degree murder	guilty	35, Hispanic	female, wife
State v. Emilio Arenas (2019)	conspiracy to commit murder, conspiracy to commit kidnapping, conspiracy to commit robbery, first degree kidnapping with use of a deadly weapon resulting in substantial bodily harm, first degree murder with use of a deadly weapon, robbery with use of a deadly weapon	guilty on all but last	50, Cuban	male

[129] State of Nevada vs. Rene Harris (District Court of Clark County, Nevada, 2019); State of Nevada vs. Vernon Newson, Jr. (District Court of Clark County, Nevada 2018).

State v. Emone James (2015)	conspiracy to commit robbery, robbery with use of a deadly weapon, first degree murder with use of a deadly weapon	guilty on all	21, Black	male
State v. Ivonne Cabrera (2017)	conspiracy to commit murder, burglary while in possession of a deadly weapon, 2 counts first degree murder with use of a deadly weapon, 2 counts attempted murder with use of a deadly weapon,	guilty on all	37, Hispanic woman	2 male victims (murdered), 2 women victims (survived)
State v. Jerom Boyes (2018)	murder with use of a deadly weapon, involuntary manslaughter	guilty	41, White	female, wife
State v. Leroy McCoy (2018)	invasion of the home while in possession of a deadly weapon, burglary while in possession of a deadly weapon, first degree kidnapping, attempt murder with use of a deadly weapon, battery with use of a deadly weapon resulting in substantial bodily harm constituting domestic violence	not guilty on first or second, guilty on rest	39, Black	female, girlfriend
State v. Mario John Camacho (2017)	conspiracy to commit kidnapping, first degree kidnapping with use of a deadly weapon, conspiracy to commit robbery, robbery with use of a deadly weapon, coercion with use of a deadly weapon, first degree kidnapping with use of a deadly weapon resulting in substantial bodily harm, first degree murder with use of a deadly weapon, attempted murder with use of a deadly weapon	guilty on counts one, two, four, and seven through nine; not guilty on three or five	38, Hispanic	18-year-old male
State v. Michael Jeffries (2015)	Murder with use of a deadly weapon, second degree	guilty	age unknown, White	male, friend
State v. Rene Harris (2019)	Conspiracy to commit murder, attempted murder with use of deadly weapon, battery with use of deadly weapon resulting in substantial bodily harm, child abuse, neglect, or endangerment	guilty on attempted and battery, not guilty on others	34, Black	brother, whom defendant shot in front of brother's 5-year-old daughter
State v. Steven Turner (2018)	conspiracy to commit burglary, attempt burglary while in possession of a firearm or deadly weapon, attempted murder with a deadly weapon, battery with use of deadly weapon resulting in substantial bodily harm	guilty	27, Black	male, police officer
State v. Vernon Newson, Jr. (2018)	first degree murder with use of a deadly weapon, 2 counts child abuse, neglect, or endangerment,	guilty on all	35, Black	female

State v. Walter Clark (2014)	first degree Murder with use of a deadly weapon, attempted murder with use of a deadly weapon	guilty on both	34, Black	male

II.b. Attorney Interviews

The attorneys I originally interviewed were all defense attorneys. Two practice in the state of Maine, and one practices in New Hampshire. One of these attorneys, in addition to spending 18 years as a defense attorney, also spent six years as a prosecutor prior to working defense. One attorney has about nine years of experience in criminal defense, and the last has been a criminal attorney for one year. Two attorneys work at private solo law firms, one is an associate attorney for a private firm, and one is a staff attorney at a state's public defender. By conducting a snowball sample at the end of these original interviews, I was put into contact with a prosecution attorney who practices in Maine and has 35 years of experience.

Prior to interviewing the attorneys, I sent and received their signatures on a consent form, consistent with recommended interview procedure. These interviews took approximately 20 minutes and were centered around general attorney practices. I collected data by recording the call with the consent of the interviewee, and by taking notes in my notebook. Following the format of most semi-structured interviews, I began by asking general questions, in this instance these were about the attorneys' jobs and opening and closing statements. The first question I asked was: How do you frame the facts of a case in opening and closing? By asking this question, I was looking to discover whether attorneys immediately or inherently think emotional appeals are a foundational part of opening and closing statements. I was seeking to discover whether attorneys think to emotionally frame the facts of their cases before I suggested emotions at all. In a similar manner, the second question asked: What are some strategies you use for making a "good" opening and closing statement? This question addressed whether emotions are

seen as being so useful in argumentation that attorneys mention them when talking generally about how they argue. I expected Both of these questions, by not mentioning emotions at all, to prompt a variety of answers that were unrelated to emotions. However, I believe that they were still crucial to ask because they served to provide insight as to how prominent emotional appeals are when looking at argumentation techniques as a whole.

The next set of questions I asked addressed appealing to the jury directly. The first asked: How do you involve the jury in your argument? How do you want jurors to interact with your statements after you finish? The next question was: Do you appeal to the jury in your statements, and if so, how do you draw jurors in and use your arguments to elicit the verdict you desire? These questions addressed techniques for keeping a juror's attention and manipulating their decision-making processes. These questions also helped to discover whether emotions are thought of as a useful way to appeal to and relate to jurors. Like the previous questions, I expected respondents to provide a variety of answers to these questions, perhaps not even mentioning emotions. If they did mention emotions, I anticipated that I would be able to assume that emotional appeals are considered a regular and acceptable practice when it comes to appealing to juries.

I then moved to more specific questions that directly addressed emotional appeals. To begin, I asked: In what ways do you think emotional appeals may be used in attorney arguments? Do you consider emotional appeals appropriate or inappropriate? If appropriate, why? If inappropriate, why? Can an emotional appeal be used in some situations but would be inappropriate in others? This set of questions obviously revealed attorneys' individual beliefs and personal preferences regarding emotional appeals. The questions directly addressed whether emotions are a useful tool to attorneys, or if they are even remotely considered in legal practice.

These questions were also useful in explaining why use of emotional appeals in the courtroom is usually tabooed.

I finished the interview with arguably the most important line of questions. I first focused on types of emotions in specific, and asked: What emotions may you attempt to appeal to? Answers to this question helped me to gauge if the emotions I have chosen to study are consistent with those that attorneys strategically appeal to. To finish the interviews, I turned to the most useful question in relation to my eventual content analysis: If you employ an emotional appeal in your opening and closing arguments, how do you use it in a way that you consider appropriate? In other words, what are some techniques you use to evoke emotional responses from the jury? I also noted the three emotions that I am looking to focus on in the instances in which the respondents did not discuss these emotions in their answers.

After receiving responses from the attorneys, I conducted a snowball sample and followed-up by asking if they knew of anyone else who works in criminal law who would be willing to take my survey. Snowball sampling is a common method of sampling that relies on referrals to others who may have a character of interest.[130] Johnson explains how there are some limits to this manner of research, mainly that selection size is limited by network size.[131] This was not a problem for my research given that my study was focused on a specific population of practicing criminal attorneys, and I was looking to talk to a small number of people. I did face this limitation when it came to accessing prosecution attorneys, which was more difficult considering that I began my interview with defense attorneys. Due to the limitation of my reach initially, I conducted my snowball sample by asking the attorneys with whom I began my interview processes if they were familiar with any prosecution attorneys who would be willing to

[130] Timothy P. Johnson, "Snowball Sampling: Introduction," *Wiley StatsRef: Statistics Reference Online*, 2014.
[131] Ibid.

speak to me. Lastly, Johnson notes how this method of sampling relies on subjective judgements from participants, who must attempt to guess whether others would be interested in participating.[132] This limitation is unavoidable.

I intended to sample a near-equal number of prosecution and defense attorneys, although prosecution attorneys were harder to reach. I asked the same set of main questions to both defense and prosecution attorneys, though follow up questions varied by participant.

Due to the time constraints of this project, all but one of the interviews were conducted after I had coded the trial transcripts. I had originally intended for these interviews to largely inform my coding process. This was not the case. However, interviews were still crucial for the role they played in confirming my analysis. After completing each interview, I was able to confirm the techniques that I had encountered in coding from the attorneys with whom I spoke. Lastly, I used the techniques that they confirmed they used to analyze how the emotional triggers (originating from both the prosecution and defense) appeared in practice in my dataset of criminal transcripts.

After I interviewed attorneys and conducted emergent coding, I was able to organize the techniques I had noted into categories based on the emotion they attempted to trigger, as well as the party (prosecution or defense) that utilizes the technique. I then analyzed how the appeals appeared in practice.

[132] Johnson, "Snowball Sampling: Introduction."

III. Conclusion

This thesis will accordingly evaluate the trends that emerged through content analysis of the eighteen trial transcripts. This thesis will also interpret the significance of the number of appeals. I will focus on two emotions that research has shown juries use in making decisions: anger and sympathy. Chapters Three and Four focus on each of these emotions. The chapters mainly examine how these appeals are evident in court transcripts, and the trends that emerge through my content analysis. Finally, I summarize my findings in a concluding chapter.

Chapter 3: Anger

As articulated in the opening chapters, one emotion can take many different forms. Scholars have long discussed how anger can serve different functions in distinct circumstances. For instance, scholars of social movements have recognized how anger can serve to disrupt as well as to facilitate collective action in protest movements.[133] In some circumstances, anger can be reflexive, defined by Jasper as quick to appear and quick to subside.[134] This type of anger is intense, and usually leads to heat of the moment, perhaps even irrational decision making.

Jasper identifies another type of anger, and he contends that, with the right cultural influences, anger can become long term, and turn into what he dubs "moral indignation."[135] This anger is more complex, and often stems from what humans perceive as injustice.[136] Jasper also notes how this particular type of anger can eventually motivate the seeking of remedies for injustice, which may manifest as a desire for vengeance. As a result, he claims, "Our strategic attention shifts from obtaining the rewards of an arena to punishing other players in that arena."[137] Anger over injustice may foster harsh decision making. People, simply put, get angry about things they perceive as unjust, and therefore want to punish those who act unfairly.[138] Furthermore, the work of Helen Kandmann and Ursla Hess, which examines the effect of moral violation on third-party anger, points to how moral outrage triggers anger when a person's values are upset, not just in a legal setting.[139] In their study, these scholars tested the anger that participants felt towards moral value attacks in the fields of financial investment and

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[133]Jasper, *The Emotions of Protest*; Gould, *Moving Politics: Emotion and ACT UP's Fight against AIDS*.
[134] Jasper, *The Emotions of Protest*: 34.
[135] Ibid., 42
[136] Ibid., 43
[137] Ibid.
[138] Ibid., 147.
[139] Helen Landmann and Ursula Hess, "What Elicits Third-Party Anger? The Effects of Moral Violation and Others' Outcome on Anger and Compassion," *Cognition and Emotion* 31, no. 6 (2016): pp. 1097-1111.

pharmaceutical research. They found that people felt more anger when the values that they held in these areas were violated, showing the theory of moral outrage towards injustice is not only applicable to crimes.[140] People feel angry when others are treated unfairly in any capacity.

This finding is especially applicable to this thesis because moral outrage is often the particular type of anger that attorneys attempt to trigger. Attorneys attempt to strategically upset people by appealing to their moral values, as suggested by Ronald Malton.[141] Attorneys aim to trigger anger at not only individuals who may be involved in a case, but also at the injustice of a situation. Following Jasper's logic, jurors who perceive a situation as unjust are led to punish those whom they perceive as acting unfairly. This possibility implies that jurors who are angry at injustice may bias their decisions in order to punish an individual who they perceive to be at fault, say a defendant who lied on the stand or a police officer working with the prosecution whom the defense suggests is corrupt.

In many instances, moral outrage emerges through personalized anger. Outrage in this form challenges how we believe people should act, and it is triggered when characters challenge those beliefs. This anger often manifests itself when someone challenges our ideas about fair and rational behavior, which in some cases then makes them vulnerable to a perception that they should be punished. This type of anger is a tool of both the State and the defense in criminal trials, though the State appears to use it more frequently.

In other instances, anger was more situational. Attorneys geared moral outrage towards abstract concepts. This type of anger attempted to encourage perception of injustice and unfairness regarding a situation. This chapter will address both personal and situational anger.

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[140] Ibid.
[141] Matlon, "The Closing Argument: Emotional Appeals," 10.

It is important to note that emotions are not linear, and neither do they have clear lines. Insead, they have porous boundaries. Just because one statement triggers anger, does not mean that it cannot also trigger sympathy as well. While these other emotions may be in play in the techniques I discuss, I am choosing in this chapter to focus only on discussing the appeals to anger that emerge.

This chapter is divided into two sections. The first addresses what I refer to as inside anger. Inside anger is anger directed towards people and things directly tied to the crime in question. This anger may be directed towards the witnesses, defendants, and victims who were present or involved in the murder in question. This anger may also may relate to anger about the circumstances of the alleged crime, and the injustice of the murder itself. On the other hand, there is also anger that operates on what I term as the "outside" of a crime. I call this second type of anger "outside anger." This anger pertains to the individuals and circumstances that relate to the case, but are separate from the actions and situation of the crime itself. This type of anger is triggered by the instances leading up to the crime and by the individuals who worked to get this case in court, including but not limited to investigators, police, and attorneys who are not themselves directly involved in the alleged crime that occurred.

Attorneys use unique techniques to trigger personal and situational anger within the context of inside and outside appeals. In this chapter's next section, I address inside anger. Inside anger covers anger that is activated personally through the technique of identity framing, and situationally through the technique of strategic use of graphic details. This identity framing can be done in one of three ways: through presentation of an inside actor as defined by: 1) a questionable mental status, 2)drug use; or, 3) by past treatment of the vulnerable.

This second section of this chapter turns the investigation and explanation toward what I refer to as outside anger. With regard to outside targets, attorneys may activate personal anger through three techniques: 1) suggestion of lying; 2) irresponsibility of State agents; or, 3) use of sarcasm/mocking tones. The fourth and fifth parts of this section discusses situational anger, which is achieved through: sarcasm and mocking tones and framing of a ridiculous intent.

Before moving into these two explorations of inside and outside anger, it is important to note that one appeal to anger detailed in this chapter fits into both inside and outside anger. A technique used in attempts to trigger all forms of anger by the jury was repetition. Consistent with what scholarship suggested,[142] repetition can be used to elicit emotion through emphasis on certain things. Repetition was the most common technique in my review of open and closing statements at trial. Below is a table detailing the number of appeals to anger through repetition in all of the statements that I coded.

Table 1.a Instances of Repetition throughout Attorney Argumentation

	Opening Statements (absolute #/percent)	Closing Statements (absolute #/percent)	Rebuttal Argument (absolute #/percent)
Prosecution	19 / 79.2%	27 / 71.1%	10/100%
Defense	5 / 20.8%	11 / 28.9%	n/a

[142] Zaitseva, "Appeal to Emotions as a Way of Influencing in Court (Linguistic Aspect)."

I. Inside Tactics

The first way to categorize attorney appeals to anger is to contextualize them as referencing actors or circumstances considered "inside" a crime. This occurs through identity framing on the personally directed front, as well as through use of vivid words and presentation of graphic details on the situational level.

I.a. Personal Level: Identity Framing

In an attempt to appeal to individually-motivated juror anger, attorneys worked to establish a questionable identity of a person directly involved for the duration of the crime, be it a witness, a victim, or a defendant. This type of anger was engineered towards a person for the type of people that they allegedly were and the things that they did in the moment the crime was committed. Attorneys accordingly framed people as being crazy, as drug users, and as violent people with histories of treating others poorly. Identity framing was, across the board, used most by the prosecution and used more in closing statements than in opening statements. This follows the logic that prosecutors appeal to emotions more than defense attorneys and that closing statements are more ridden with emotions than opening statements, as interviews with the attorneys confirmed.[143] For instance, one defense attorney illustrated this point with an anecdote, saying, "we have a couple prosecutors here who… especially in closing, have kind of like pointed at a client and yelled '*THIS MAN'*, which is obviously designed to make the jurors feel anger towards him, or recognize that like 'he *sucks.*'"[144] This attorney also said, "I haven't had to use [emotional appeals] yet, but I can certainly imagine trials, not in opening, because I don't know that I want to get too emotional in an opening, but in closing definitely you can let the

[143] Attorney 1, Interview by Elise Lambert, December 15, 2021; Attorney 4, Interview by Elise Lambert, January 24, 2022.
[144] Attorney 4, interview.

State know that their investigation was not only subpar but that they went after the wrong person or something."[145] The attorney who worked as a prosecutor and a defense attorney even noted that they used appeals more as a prosecutor, claiming, "you are much more emotional as a prosecutor because you're representing the State, you're representing the people of this county and it's your responsibility to make sure that people are justly punished for their crimes."[146]

Table 1.b Instances of Identity Framing in Attorney Argumentation

	Opening Statements (absolute #/percent)	Closing Statements (absolute #/percent)	Rebuttal Argument (absolute #/percent)
Prosecution	9 / 50%	43/ 74.1%	6 / 100%
Defense	9 /50%	15 / 25.9%	n/a

I.a.1. De-Humanizing the Defendant

One way that a prosecutor may mobilize anger towards a defendant is by presenting them as somehow crazy. An attorney may present facts, which may seem unrelated to the case, to upset moral values, as they tend to paint a defendant as irrational, disrespectful of human life, and effectively as more likely to act in unjust ways. In short, the attorney may attempt to de-humanize the defendant by stripping the defendant of qualities we ascribe to the rational and moral human being.

[145] Ibid.
[146] Attorney 2, interview.

When a juror perceives a defendant's actions as either outlandish, unexplainable, or disrespectful of a moral idea about life value, a pathway to anger is constructed. Painting an accused criminal as unlike, and even mentally subordinate to jurors could even suggest that they are more likely to have committed unjust, illegal actions, and also could make it easier for a juror to view them as less sympathetic or less human and easier to confine to life in prison. This is important when recognizing that attorneys do purposefully aim to present the opposing side's witnesses as unsympathetic.

This technique was apparent in a small number of arguments, but appeared in opening, closing, and rebuttal statements. This strategy emerged in five of the eighteen cases. The case that exemplifies this theory most is that of Emilio Arenas. In his the opening statement, the State's attorney mentioned that those who conspired to commit the murder in question drowned their victim while singing the song "Crazy Train" by Ozzy Osbourne. He states:

> The suitcase [that contained the body] was placed in the bathtub, and the tub was filled with water. EJ [the defendant] sat on top of the suitcase in the tub in the water to prevent it from floating while they all sang the song Crazy Train by Ozzy Osbourne. Just because something makes no sense to you or is beyond your realm of what would be irrational action doesn't mean it doesn't happen in this world…[a witness for the state] said that the defendant sat on the suitcase that contained Carl Simon, Shorty [the given name and nickname for the victim], and [the witness] is going to tell you -- that's the evidence that you'll hear -- that as this occurred they all sang Crazy Train, and it was pulled up on EJ's cell phone.[147]

The attorney directly characterizes this action as "irrational," which suggests that the defendant must be a crazed and violent person to have done something so outrageous. He effectively suggests that the defendant is crazy, encouraging the jury to believe he is a criminal and responsible for the injustice he is accused of creating. The attorney is also using this odd fact to prompt moral indignation at a lack of respect for human life, creating anger over an idea that

[147] Transcript of Proceedings Day 6 at 41, Arenas v. State, Nev. Unpub. LEXIS 659 (2021).

someone could do something so violent completely nonchalantly. State counsel, through this statement, emphasizes not only that the defendant's action was unjust, but that he did it without any regard for life, which makes him appear crazy and cruel.

Throughout the closing statement of the same case, the State attorney repeated that the defendant and his co-conspirators sang Crazy Train to pass the time while drowning someone four times. He uses repetition, which was cited as a strategy that attorneys may use to appeal to emotion in argumentation,[148] to drive this point home and emphasize that the jurors should be angry at the defendant for being so insane and disrespectful of human life, a moral value that many hold true.

There were other cases whereby this tactic was not used at all in opening arguments, but appeared as a type of final resort in closing and rebuttal statements only. This pattern might suggest how these arguments may be simply accessories to main arguments about the character of a defendant, and do not function as a strong main point that should be emphasized throughout the case. For example, in the case of David Burns, this type of argument does not appear until near the end of the rebuttal, whereby the attorney attempts to paint the accused defendant as a cold blooded killer, who is clearly a crazy and untrustworthy person. The attorney presented this argument by putting the jury in the place of the defendant by using the second person form and saying "you" to place the jury in the shoes of the defendant and point out how differently the jurors think in comparison to the defendant. The attorney first violently details the crime the defendant was accused of committing (which also cultivates anger, but will be discussed in a later section), and then claiming that "when you [do x violent actions] and then get up and whistle, that is a cold, calculated murder."[149] The fact that the defendant whistled is irrelevant to

[148] Zaitseva, "Appeal to Emotions as a Way of Influencing in Court (Linguistic Aspect)."
[149] Transcript of Proceedings day 15at 94, Burns v. State, 495 P.3d 1091 (2021).

the crime itself, but cultivates anger as it once more shows the defendant's indifference to the tragedy he just allegedly committed and also his unpredictable and irrational mental state.

The prosecution may also use anger to impact perception of a defendant as not just crazy, but also as a degenerate, making individuals on trial to be defined by their unlawful behavior. This implies that their identity is somehow intertwined with crime, and therefore committing unjust acts, making them deserving of punishment, and not sympathy. Attorneys aim to make a defendant's identity characterized by their inherent tendency to participate in unjust acts. This pattern of injustice, as Jasper suggests, would make a juror angry and more willing to punish a defendant.

I. a. 2. An Identity Defined by Drugs

Something that was mentioned over twenty times in the span of five cases was drug use. In particular, defendants and defense witnesses were described as being involved in a lifestyle characterized by addiction. In fact, five cases of the eighteen mentioned a defendant's relation to drugs. Prosecution attorneys used this type of framing in opening, closing, and rebuttal arguments. Three cases included this type of framing in opening statements, one of which was a case with a female defendant. The other cases that establish the defendant as a degenerate drug user from the start of the trial are those of Emilio Arenas and Amadeo Sanchez. In the opening statement of the Arenas case, the prosecution attorney says:

> [the defendant and those related] spend their day doing drugs…They spend their day doing drugs, not massive amounts of heroin or anything, not kilo trafficking, 20 bucks here, 10 bucks there. How do they make money? None of them have a frickin' job. How do they make money? Well, some of them are on SSI, and you'll find out that there's a lot of going to Walmart and stuff, okay. Go to Walmart, swipe some clothes, go to the other Walmart, bring the clothes in, they give you a little Walmart card because you didn't have

> a receipt. You take the card to the local Pakistani guy, okay, at the 7-Eleven, and he gives you cents on the dollar. That's the deal.[150]

This quote exemplifies how the attorney attempts to frame the defendant's identity as degenerate. Saying that they spend their day doing drugs, and suggesting that they make money only to buy drugs (by stealing nonetheless) suggests that the defendant is already guilty of other unjust actions, which should make jurors angry. Furthermore, the attorney talks about the concept of working, and being on social security, which targets moral values about taxes and American values of self-preservation, triggering even more anger at the degeneracy of the defendant. This point is also emphasized in the closing statement of this case, where the state's attorney mentions drugs eight times throughout closing statement to emphasize how the defendant's murder was motivated by a need to get drugs. The repetition of drugs as being a motivator for this crime emphasizes the importance of drugs in the defendant's life, suggesting that the defendant's identity may even be narrowed down to his habits of illicit drug use. The case of Amadeo Sanchez exemplifies this theory as well.

In fact, the first line of the prosecution attorney's statement is about this very fact. It begins:

> The picture that will be painted during this trial is not one of good people who do good things. The picture that will be painted is of people who do bad things, often criminal things. They do drugs. They sell drugs. They steal from -- well, often each other. The case will involve people who deal with drugs, guns, and all sorts of things that we normally don't see in our everyday lives, that you don't see in your everyday lives. The witnesses that you'll hear from on the stand, this is part of their life. They are part of this under belly that we don't see, that you don't see every day.[151]

From the very start the attorney differentiates the defendant and the people associated as from group that the jury cannot relate to, people who do and sell and live their lives controlled by

[150] Transcript of Proceedings Day 6 at 92, Arenas v. State, Nev. Unpub. LEXIS 659 (2021).
[151] Transcript of Proceedings day 1 at 208, Sanchez v. State, Nev. Unpub. LEXIS 913 (2016).

drugs. Drugs, of course, as illegal substances, automatically suggest illegal activity to the jury and automatically implies that the defendant lives a life of injustice. This trend continues in the closing statement of this case, whereby the prosecution attorney argues:

> When we talked about what kind of a person the Defendant is, we know that he's a felon, we know that he's a drug addict, we know he's a drug dealer and a drug supplier; that he fed methamphetamine to the individuals that you saw in this court that are addicted to meth, that it's ruined their lives; to Danny [the victim], who it's taken his life; to Kayla; Stacey; Melissa; Jarred [witnesses for the prosecution].
> That he wanted to make a buck, and he came to Reno to get a higher price for his drugs. He came to our community to sell drugs so that he could get a higher price.[152]

As this is the closing statement, these points have also been repeated and explained many times throughout the trial. This quote is significant for how being a drug addict, felon, and supplier is used to define the "kind of person" that the defendant is; in short, the attorney is characterizing the defendant in a way that is meant to trigger moral outrage. The attorney also triggers anger towards the defendant through sympathy toward the people the defendant allegedly acted upon, claiming that he has sold meth to people, and in turn ruined their lives. This is an appeal not only to moral outrage, but also to empathetic anger, as defined by Landmann and Hess as anger that one feels on behalf of someone for whom they feel compassion.[153] Finally, this quote also attempts to trigger moral outrage over a violation of community values. It is reasonable to assume that residents (the attorney included, judging by the way that he/she uses the phrase "our community") may perceive actions that work to undermine the safety and drug free nature of one's community as unfair and unjust to the residents of the place in which they live.

Something that is also worth noting while discussing this case is the prevalence of ethnic bias and othering. The prosecution's argument relies on triggering anger toward Mexicans. The

[152] Transcript of Proceedings day 6 at 34-5, Sanchez v. State, Nev. Unpub. LEXIS 913 (2016).
[153] Landmann and Hess, "What Elicits Third-Party Anger? The Effects of Moral Violation and Others' Outcome on Anger and Compassion."

prosecution attorney mentions the defendant, who identifies as a Hispanic man,[154] having ties to Mexico, particularly the "Mexican Cartel" eight times throughout his closing statement. On June 16, 2015, when Donald Trump announced his candidacy, he included in his speech a proclamation of U.S. opinion on Mexico. He said, "The U.S. has become a dumping ground for everybody else's problems… When Mexico sends its people, they're not sending their best… They're not sending you. They're not sending you. They're sending people that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime."[155] Perhaps the attorney is purposefully targeting public anger towards Mexicans by continually mentioning the defendants alleged involvement with the cartel. This could also be a play to stereotypical ideas about those of Mexican descent- implying that there is some sort of intrinsic link between being Mexican and being a drug user or dealer. The attorney could be repeating "Mexican Cartel" to continually suggest to the jury that the culture and ethnic identity of the defendant is one defined by illegal activity. Being a drug dealer implies that the defendant is a degenerate, so he becomes othered and harder to feel sympathy for. Being involved with drugs also characterizes someone as having a lifestyle characterized by illegal actions, which suggests habitual unjust behavior that qualifies said person for punishment.

I. a. 3. Identity defined by treatment of the vulnerable

Not only were defendants and witnesses painted as degenerate addicts, but attorneys also characterized them as seemingly terrible people in their daily lives. In order to establish the awful nature of the defendant, attorneys often aimed to trigger both moral outrage and empathetic anger. Specifically, they highlighted the unjust treatment that defendants had

[154] NDOC Inmate Search (State of Nevada Department of Corrections), https://ofdsearch.doc.nv.gov/.
[155] TIME Staff, "Donald Trump's Presidential Announcement Speech," Time (Time, June 16, 2015).

committed on women and children in the past, even when these vulnerable and sympathetic groups were not the murder victims in the crime in question. Sometimes these sympathetic groups were victims in other capacities or charges involved at the trial, but the arguments that I will be discussing in this instance are significant for how they establish anger regarding who the defendant is in relation to the acts they allegedly committed.

Personally charged anger in this form is relevant as it relates to a defendant's identity as a criminal and therefore his or her capacity and inherent ability to commit violent crimes. The most prime example of this comes from the case of Eduardo Estrada-Puentes. The attorney, in the closing argument, claims, "He left her [his daughter]. He took off to Mexico. Are you telling me he wouldn't kill her mother while she was in the house?" [156] Through this quote, the attorney is attempting to emphasize the link between the defendant's cruel actions towards one person, and imply that he is therefore capable and likely to have committed another morally outrageous act. The attorney is attempting to suggest that the defendant's capacity to commit one cruel act would transfer to his capacity to murder his wife. This case has nothing to do with his daughter, yet the attorney brings her up as a pawn to stimulate anger regarding moral values of how children should be valued, and also to suggest the capability of the defendant to act unjustly.

Another glaring example of an attempt to trigger moral indignation comes from the case of Amadeo Sanchez. This is particularly interesting because the alleged victim in this case was an adult male, and there were no charges placed on Sanchez relating to domestic/child abuse or neglect. On the surface, the inclusion of a discussion regarding the defendant's children in any capacity seems wholly irrelevant. It is only when recognizing the attorney's intentions of cultivating anger for the defendant's tendency towards injustice that this discussion makes sense.

[156] Transcript of Proceedings Closing Arguments at 35-6, Estrada-Puentes v. State, Nev. App. Unpub. LEXIS 193 (2018).

This argument speaks to the character of the defendant, whom the attorney wants the jury to feel anger about:

> He said that he brought his kids here so that he could show his daughter the snow and spend time with her. He was asked, "Did you see your daughter when you were here?" In the almost two weeks that he was here? A couple of times. That's not what this trip was about. This was about making money.[157]

The attorney places emphasis on the way that the defendant ignored his daughter because he preferred making money through selling drugs. The jury should feel anger at the unfairness of this action towards the daughter, and also may feel empathetic anger on behalf of the daughter, who barely got to spend time with her father. The jury may also be angry at the defendant for lying about his reasoning for traveling to Reno, where the crime occurred. This, of course, challenges the moral value of truth. This suggestion of unfair treatment of the vulnerable continues onto the next pages of the argument:

> He had a loaded gun in the bathroom of the hotel room with his children. He brought his kids to a house, to that Manzanita house where he had bought eight guns, where he knew it was a house full of methamphetamine addicts, where he got high earlier that morning. He brought them there and then he pointed a gun at his wife with his kids in the car.
>
> (An audio was played.)
>
> He was, like, really aggressive. He brought his wife and his kids to the house where he committed a murder. They were outside in the car. And the kind of man the Defendant is, is someone who shoots a victim once, listens to him beg for his life, and then shoots him four more times. [158]

There are many layers to this quote that are worth evaluating. First, note the repetition of "he brought his wife and kids." I posit that the attorney did this in order to emphasize the moral outrage that the jury should feel at the defendant for committing an act as morally heinous as

[157] Transcript of Proceedings day 6 at 34-5, Sanchez v. State, Nev. Unpub. LEXIS 913 (2016).
[158] Ibid., 35-6.

placing his wife and kids in danger. The next important part of this passage comes when the attorney defines the defendant as "the kind of man who" does terrible and violent acts. This establishes the defendant's idenitity as a murderer, making the jury angry and leading them to an urge to punish him. This passage also is significant for how it paints the defendant as disrespectful of human life, following the cold blooded murderer idea discussed above, and which will also be discussed later on in this thesis. Lastly, the attorney defines Sanchez as a drug user as well, reinforcing the degeneracy of the defendant discussed in the previous section through repetition throughout the arguments. This passage truly illustrates a large number of the techniques used to trigger anger at an individual person.

In conclusion, people get mad at those who commit unjust acts, and punish them as a result. Attorneys paint defendants as already deserving of punishment just due to their pasts unrelated to the crimes they are accused of committing in each trial in order to bias the juries through their anger. Another way that attorneys cultivate anger towards the defendant is by establishing the defendant as a terrible person, capable and willing to commit morally questionable actions. Attorneys may also lead the jury to anger on behalf of those for whom we feel compassion. We feel angry for the child who gets abandoned by her father. These strategies taken together reveal how attorneys frame a defendant as undeserving of sympathy and deserving of conviction based on who they are as a person.

Unlike the mentally unstable and insensitive defendant argument mentioned above, this degeneracy and defaming argument is not a tool that only the prosecution issues. Defense attorneys also use this strategy in their argumentation as well. While the prosecution attorneys use it towards defendants, the defense team uses it towards State witnesses and victims.

Just as a prosecution attorney may attempt to cultivate anger in order to fight sympathy and undermine credibility for a defendant, so may a defense attorney use this tactic towards a witness or alleged victim. Specifically, defense attorneys may call into question the lifestyle or past injustices committed by a witness or victim who has been crucial in the prosecution's construction of a case. Similar to how the prosecution attorneys placed their arguments, this technique mainly appeared in closing arguments.

In fact, only one of the cases included a defamation of a key witness in the opening statement. This was the case of Bryan Devonte Clay, whereby the defense attorney introduced the state's witness by suggesting that she is not trustworthy. This degenerate argument is important because now the injustice has been shifted towards the state, and being led to want to punish the unjust and illegal actions, jurors may not want to listen to the witness or convict based on their words as a punishment:

> She is a sexually active 50-year-old [this is relevant because this woman says the defendant sexually assaulted her before he committed the murder he is accused of]…approximately 1:30 in the morning she leaves a party…which also happens to be very close to a residence known for selling cocaine…She does have a prior criminal history. And why are these things going to matter? Because you are the judgers of credibility as I've told you…She does tell the police she doesn't want to go to the hospital for a sexual assault exam right away. Why? Because she is under the influence of cocaine. She tells the police, I have cocaine in my system right now. That's why she waits to go to the hospital. It will be a fact that will be relevant in this case that she waits eight hours before she goes to the hospital.[159]

In just this one page of the transcript, which occurs in the first minute of the statement, the attorney has established the identity of the key witness on which the prosecution has built their case. While the facts that the attorney has stated are applicable to the case, they also subliminally speak to her character. From the very start of this statement, the jury is led to perceive the key

[159] Transcript of Proceedings day 6 at 43-5, Clay v. State, Nev. Unpub. LEXIS 1378 (2019).

witness as sexually promiscuous, a frequent user of cocaine, and a criminal. In the defense's view, she is clearly an immoral person who frequently breaks the law and commits unjust acts, so the jury should not only not trust her but should also feel a need to punish her since, given her identity, she could be making up her part of the story.

Of course, this was not the only case whereby a defense attorney presented a witness as an untrustworthy, immoral drug user. Indeed such characterizations constituted a theme in at least two other cases, but were presented instead in the closing statements. For example, in the case of Emilio Arenas, the defense attorney referred to the state's witnesses as "tweakers,"[160] while suggesting that they are lying. The other case that exemplifies this technique is the much discussed case of Amadeo Sanchez. This attorney claimed that there were no credible witnesses in the case before the court, saying that, "They were all drug addicts and drug dealers, low lifes."[161] This distrust and anger towards the defendants, and even towards the victim, for being low life drug users continues later in the statement:

> The State wants you to believe Kristin Alarcon-Hernandez [a key witness]…She said, "Danny [the victim] is such a nice guy. He's such a nice guy." Maybe in that milieu, he was such a nice guy. But look at this nice guy. He threatened to slap her; she was afraid of that. He threatened to take her dog. For goodness sake, her dog. Who takes someone's dog?
>
> He went to prison. He wanted her to sell drugs. And here is the real icing on the cake: He might have sold her drugs when she was 14 years old. 14. He's such a nice guy. He would never go in a pool room with a gun and try to rob Rudy, would he?
>
> And she's surprisingly good at corroboration. You've heard this a bunch of times. We don't need to -- we don't need to say it again. But what Rudy said, "I'm not going to be disrespected. You know, he's got a gun on me." Counsel demonstrated here about pull it out and rack the slide. Yeah, he's such a nice guy. And, finally, she wouldn't lie in court. None of these people would lie in court. They commit major felonies. They sell drugs.

[160] Transcript of Proceedings Day 12 at 114, Arenas v. State, Nev. Unpub. LEXIS 659 (2021).
[161] Transcript of Proceedings day 6 at 57, Sanchez v. State, Nev. Unpub. LEXIS 913 (2016).

> They went through all kinds of unspeakable things. But lie in court? Oh, never, never. For goodness sakes.[162]

This excerpt is significant for a number of reasons. First, the defense attorney uses sarcasm to anger the jury at the witness for supposedly lying. Sarcasm is a common technique used in appealing to emotions. It is especially useful when pointing out how ridiculous the other side's argument is, which will be discussed later in this chapter. The attorney uses this piece to suggest that a rational person would surmise that the witness is lying, which upsets moral values, as lying to a court is already objectively morally questionable. The suggestion of lying also triggers a feeling of unfairness because this lie is at the detriment of the defendant. This part of the argument is also interesting because of the way it defames the victim by emphasizing how crazy and dangerous the victim was. The attorney claims that he sold a child drugs, which is assumedly something that the jury should be angry about, regardless of whether this person was a victim. I also wish to discuss the anger at the witnesses that this portion of the statement cultivates. The last sentences of this excerpt establishes the witnesses clearly at the end as felons, drug dealers, and perpetrators of "unspeakable" actions. The jury should be angry at the witnesses and the victim himself for their unjust behaviors.

This section has detailed a type of personally focused anger that a lawyer may attempt to trigger in order to sway a jury. The prosecution can use this anger to discredit and defame a defendant, making them seem insensitive, degenerate, immoral, or defined by their tendency to act unjustly. The defense may also use personal anger to discredit and defame State witnesses in a similar manner.

Clearly, attorneys can appeal to juror anger on a personal level, within the context of the people directly involved in the moment it occurred. This anger can also be directed towards the

[162] Ibid., 60-61.

details of the crime itself rather than the people directly involved. Inside anger also functions on a situational level.This type of anger emerges through a portrayal of an unfair death through emphasis on brutal and graphic details of a crime. Attorneys use the brutality of an attack to exacerbate the moral outrage around the injustice committed, which reflects poorly on the defendant.

I. b. Situational Level: Use of Graphic Detail

Arguments that attempt to trigger anger in regards to the untimely and unjust nature of a death are a tool of the prosecution. One way that an attorney may appeal to anger about the unfairness of a death is by emphasizing how brutal the murder was. Attorneys do this mainly through repetition of gruesome details and use of pointed and vivid words. As discussed in Chapter One, legal scholars argue that emotionally charged and vivid words encourage a juror to visualize and experience a situation, consequently provoking emotion.[163] The tactic of using language that appeals to the senses allows an attorney to paint a picture and experience for decision makers, without an attorney directly telling them to do so.

Table 1.c Instances of Graphic Details in Attorney Argumentation

	Opening Statements (absolute #/percent)	Closing Statements (absolute #/percent)	Rebuttal Argument (absolute #/percent)
Prosecution	14 / 93.3%	26 / 96.3%	3 / 100%

[163] Caldwell and Mather, "'Do to Others What You Would [Not] Have Them Do to You': California Is an Outlier in Sanctioning Emotional Appeals in Deciding between Life and Death," 86; Matlon, "The Closing Argument: Emotional Appeals," 9; Roberts Jr., "The SEC of Closing Arguments," 276.

Defense*	1 / 6.7%	1 / 3.7%	n/a

* this tactic only arose in one case in defense attorney statements because the argument related to blaming a co-conspirator

Of course, this technique was only used by the prosecution (with the exception of one case in which a defense attorney was attempting to place blame on a co-conspirator)[164] as it had a clear goal of cultivating anger about a situation in order to reflect poorly on a defendant. Following the trends set by the appeals to anger thus far mentioned, this strategy was utilized mainly in closing statements.

Looking first at the use of emotionally-pointed words, this concept is clear in the closing statement of the State's attorney in the case of Emilio Arenas. The attorney in this case used sharp and pointed words in order to present a violent image of the crime in question and elicit anger towards the defendant's alleged brutal actions. The attorney begins his statement by saying that, over the course of the trial, "it has become abundantly clear" that the defendant, "savagely kidnapped, robbed and tortured" the victim.[165] The term "savagely" suggests a brutal, animalistic image of the crime that occurred, which, when combined with pointed verbs like "kidnap,""rob," and "torture," presents an emotionally charged story of a brutal injustice. This pattern is echoed throughout the statement as the attorney continues to use provoking verbs such as "cinched," "beating," "whipping," and "choking" all in succession of one another.[166] This selective word choice functions to construct a brutal retelling of the crime, triggering moral outrage at the violent injustice that the defendant has committed.

[164] See *State v. Ivonne Cabrera.*
[165] Transcript of Proceedings Day 12 at 15 and 77, Arenas v. State, Nev. Unpub. LEXIS 659 (2021).
[166] Ibid., 33.

The emphasis on the brutality of the defendant was also evident through small details portraying the extravagance of a crime. This is clear in the case of David Burns, where, in the opening statement, the State attorney alleges that the defendant "h[e]ld a gun to her forehead, and bl[e]w off quite literally a third of her head"[167] This was also repeated in this excerpt from the State's rebuttal argument in the same case:

> When you walk in and place a .44-caliber against their head and blow half their face off, chase down their twelve-year-old daughter, shoot her in the stomach, rifle through her pockets, and then get up and whistle, that is a cold, calculated murder.[168]

This excerpt clearly attempts to trigger anger at the defendant for the extremity of his blatantly brutal actions. The goal, once more, is that this graphic retelling of the incident will prompt moral outrage over the injustice at hand, and accordingly urge the jury to punish the defendant. Notice also the fact that the attorney mentioned the age of the victim, referring to her as a daughter and diving into deep detail about what the defendant did to the child (who survived the attack) while quickly and harshly describing what happened to the other victim (the girl's mother) as having half her face blown off. This phrasing is short and to the point but brutal and graphic nonetheless. The attorney is effectively triggering anger at the defendant for harming a child, a sympathetic victim, and also encouraging moral outrage at the idea that someone could do something so graphic to a person. The last part of this statement, that after rifling through the pockets of his minor victim, he got up and whistled, is likewise exemplary of types of anger discussed in prior sections as it shows his indifference from how the jury would expect a normal person to act after a murder.

[167] Transcript of Proceedings day 6 at 11, Burns v. State, 495 P.3d 1091 (2021).
[168] Transcript of Proceedings day 15 at 94, Burns v. State, 495 P.3d 1091 (2021).

While there were a large number of cases that emphasized brutal details of a crime, the final case that I wish to discuss is that of Coleman Vaoga. In closing, at the very start of the argument, the State attorney says:

> There is only one degree of murder when a defendant chases his victim through the dead of night in a desert wash with a metal bar in his hand. There is only one degree of murder when a defendant savagely beats his victim on the ground, about his arms, about his body, about his head, as he begs him to stop. There is only one degree of murder when a defendant walks up to a group of complete strangers ands casually asks them for a knife so that he can go end that man's life. There is only one degree of murder when a defendant takes a 63-pound rock, holds it over his head as he stands over his victim, and uses it to crush his skull.[169]

This statement exemplifies the idea of painting an image of a brutal crime to prompt anger. The terms, "dead of night,"and "savagely beat," provide imagery of a brutal, clearly unjust abuse that the jury should be angry about. It is also worth mentioning the way that the attorney vividly described how the defendant dropped a rock on the head of the victim. Instead of plainly stating the facts of the case, the attorney chooses to split the action into three parts. In the first part of his sentence he emphasized the extravagance of the murder weapon by citing the weight of the rock. In the second part of his sentence he prolongs the action to paint a picture of contemplation, making the decision to drop the rock even more anger provoking, whereby the defendant held the rock over the victim's head and stood over him. Finally, the attorney concludes by using the imagery-proving word "crush" to evoke an angry emotional reaction.

I. c. Conclusion

[169] Transcript of Proceedings day 5 at 50, Vaoga v. State, Nev. Unpub. LEXIS 1078 (2019).

Both personal and situational insider anger appeared to be of substantial use to the prosecution. The chart below shows a breakdown of insider appeals to anger when directed towards both objects of anger.

Table 1.d Insider Appeals to anger in Opening and Closing Statements

	Opening Statements (absolute #/percent)	Closing Statements (absolute #/percent)	Rebuttal Argument (absolute #/percent)
Prosecution	23 / 69.7%	69 / 81.2%	9 / 100%
Defense	10 / 30.3%	16 / 18.8%	n/a

Perhaps unsurprisingly, the prosecution used insider tactics more than defense attorneys. That pattern makes sense as prosecutors focus more on the crime than defense attorneys, since their job relies on their ability to establish the reality of the crime in question. Accordingly, their argumentation directs appeals to anger towards the people and things that occurred in the heat of the moment. Defense attorneys, by contrast, do not attempt to cultivate anger towards the alleged crime, as doing so would undoubtedly legitimize accusations. Defense attorneys, unlike prosecution attorneys, also do not have a singular person to direct anger towards, and instead are left with a difficult decision of cultivating anger towards people who are not necessarily already in a position that makes them easy to be angry at. Witnesses have not been accused of anything unjust when they arrive in court. Victims even more so certainly are not automatically in a position that is easy to become angry at, especially if they are dead. Following this line of

thought, it is unsurprising that defense attorneys relied more on outsider tactics to trigger anger than prosecution attorneys, as will be discussed in the next section.

II. Outside Tactics

The second way to categorize attorney appeals to anger is to contextualize them as occurring in regards to those "outside" of a crime. This approach occurred through suggestion of lying, emphasis on the irresponsibility of State agents, and use of mocking and sarcastic tones on the personal level. On the situational level, outsiders were targeted through use of mocking and sarcastic tones in regards to intent, and also through use of framing of intent.

II. a. Personal Anger through Suggestion of Lying

Following the proposition that people become morally enraged at injustice, it is no surprise that attorneys may emphasize the importance of a functioning justice system. If we hold a common belief that the justice system should function fairly, then it is unsurprising that the suggestion that a critical part of the system on which our country was built is not functioning properly would enrage someone. When someone is presented as somehow derailing the judicial process, the jury should be morally outraged because doing so is a direct attack on foundational beliefs about justice. By painting a defendant, or a victim, or a key witness as lying, the attorney suggests that this person is messing with the legal system, which should make a juror angry.

In my interviews with attorneys, a prosecutor articulated that in some states, claiming that someone is lying is explicitly prohibited.[170] In these states, an attorney cannot outrightly suggest that a witness is lying, but can try to point out inconsistencies in the facts and statements given to implicitly suggest it.[171] Attorneys for both the prosecution and defense cultivate anger at those who are aligned with the other side for lying or misleading the court.

[170] Attorney 3, Interview by Elise Lambert, January 24, 2022
[171] Ibid.

Table 2.a Instances of Implicit Lying Suggestion throughout Attorney Argumentation

	Opening Statements (absolute #/percent)	Closing Statements (absolute #/percent)	Rebuttal Argument (absolute #/percent)
Prosecution	7 / 46.7%	12 / 33.3%	6 / 100%
Defense	8 / 53.3%	24 / 66.7%	n/a

Consistent with the other emotional triggers discussed thus far, anger at a lying defendant or witness appeared mostly in closing statements. Four cases included this argument in the opening statements, while seven included them in the closing and rebuttal arguments. Lying accusations were utilized because of the way that they cultivated moral outrage about truth in the justice system, and personal anger at the way that lying implies that an individual is putting him or herself above justice.

A common theme in this particular approach to trigger a jury's moral outrage was emphasizing how the lies that the defendant or witnesses for the defense were self-serving. The attorneys presented a narrative that suggested that, by falsifying statements, people were selfishly putting themselves or their interests above justice. Take, for instance, the case of Leroy McCoy, who was accused of attempted murder on his ex-girlfriend. When addressing how there were conflicting accounts of the incident between different defense witnesses, the State's attorney in closing argument articulated:

> Everything he [one witness] said completely conflicts what she [the other defense witness] said, completely contradicts what she said…Now, I'm not going to sit here and tell you he lied, but let's take a look at the evidence that was presented…[proceeds to discuss the evidence]...So let's take a look at the motive [to lie]. What are Ashley's [the victim] motives to lie? She was genuinely hurt. She had cuts all over her body, blood all

> over her body. She -- she wasn't someone out to get him…What are Joslyn and Kari's [defense witnesses whose statements contradict] motives? They want to protect their family member [the defendant]. That's what their motive is in telling the truth or not telling the truth, but that's for you to decide. That's for you to make that determination based on all of the evidence.[172]

The prosecution attorney does not explicitly suggest that the witnesses are lying, but instead hints at it and then discusses the applicable evidence that does not align with other facts of the case. He also legitimizes the testimony of the victim to establish how she could not be the one lying, so it must be the other witnesses. Finally, he suggests that the defense witnesses, because of their familial ties to the defendant, have motive to lie. He is suggesting that they are falsifying the evidence in order to protect their brother/uncle, placing their family's needs above tenets of justice and truth. This is morally outrageous.

This idea that witnesses are lying because of their relationship with a defendant was also present in the case of Michael Jeffries. When discussing the statements made by a witness who "loved [the defendant] like a mom loves a son,"[173] during closing statement, the attorney said:

> That's not to say that Beate [witness] is getting up here and lying to you. What it's to say is that when everyone gets on the stand, they talk about things how they perceive them and we all perceive with some bias, right?"[174]

This is also echoed when talking about two other witnesses that were present for the crime.

> She's [another witness] currently engaged to the defendant. That might affect her memory… and we can take her at her word and say she never told Brittany [her daughter, who also is a witness], Brittany I need you to get up on that stand and say you don't remember these key details. And I think that we can believe that that's true and still believe- and still she's trying to influence- intentionally or otherwise- her daughter's testimony."[175]

[172] Transcript of Proceedings day 3 at 20-21, McCoy v. State, Nev. App. Unpub. LEXIS 923 (2019).
[173] Transcript of Proceedings day 4 at 85, Jeffries v. State, 133 Nev. 331 (2017).
[174] Ibid.
[175] Ibid., 87.

Both of these cases are also significant because the attorneys claim that they are not suggesting that the witnesses are lying. They then continue to implicitly explain how the witnesses are lying through highlighting parts of evidence that contradict or may lead one to that conclusion independently. Also, just by mentioning lying at all, these attorneys are actually suggesting it as a possibility. They're planting the idea of a lying witness by saying they are doing the opposite. Likewise, in the second excerpt, the attorney also suggests that the witnesses are in kahoots with one another to paint a false image of the crime that occurred. He is also suggesting that one witness is manipulating her daughter to lie on the stand to say she doesn't remember anything to protect the defendant as well. Surely, this may cultivate anger at the witness for toying with the system like this and perpetrating lies.

Some prosecutors accused defendants themselves of lying as well. The best example of this type of argument comes from the case of Dontay Sevier. The State attorney spent his closing argument establishing that the defendant had researched how to get away with his charges before he was even interviewed by the police, and was lying to make his answer to their questions fit the requirements he discovered. The attorney suggests that he said what he needed to in order to align with what he thinks will get him off:

> And why I submit that is significant is the same reason that Detective Blas said in the interview. Because the defendant went into this interview having researched, he knew all about the intent required for murder for the difference between the murders, and I submit to you what you saw was the defendant going into this interview trying to paint the best picture for himself in a self-serving way and I submit that he was not entirely truthful about particularly his memory, his claim I don't remember. And I submit that, essentially, what he did is he wanted two things. He wanted to give a defense for himself that would, again, put him in the best possible light given what he knew at the time which, as he described, he knew that there was video of the murder. And I submit to you that that limited in his mind his options, he believed his options were limited, he came up with

> what he believed was the best defense that he could which is I was blacked out, I don't remember anything. It was a mistake. It was an accident.[176]

The attorney continues to reference this research narrative throughout the argument, later claiming that the defendant only says he was blackout drunk at the time of the crime to avoid premeditation charges,[177] and only shows remorse because it is what his research said he should do.[178] The attorney even speaks in the second person and says, "you lie because you-to cover up the worst truth. The worst truth is that he does remember what he did that night."[179] While some attorneys may implicitly argue that witnesses lied on the stand, the attorney in the case of Sevier tried to trigger moral outrage over disrupting the justice system in plain and outright terms.

Defense attorneys used similar tactics to cultivate anger at members of prosecution teams for lying, though they did so less frequently. This strategy was used in four cases by defense attorneys, in both opening and closing statements.

The strategy of highlighting a motive to lie, which appeared in the State argument of the McCoy case, also appeared in defense arguments as well. This occurred in the case of Rene Harris, who was accused of attempted murder on his half-brother. Defense attorneys in this case claimed that the State's key witness, who was also the defendant's co-conspirator, cut a deal with the State to testify (and therefore is biased) on their behalf in order to minimize her own punishment. This key witness, according to the defense attorney, accordingly "has a motive to mislead,"[180] due to personal stakes. In order to set herself up for the least amount of consequences, the defense attorney depicts this witness as falsifying her testimony in pursuit of personal interests instead of in pursuit of justice.

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[176] Transcript of Proceedings day 5 at 18, Sevier v. State, Nev. Unpub. LEXIS 283 (2019).
[177] Ibid., 23.
[178] Ibid., 24.
[179] Ibid., 42.
[180] Transcript of Proceedings day 4 at 54, Harris v. State, Nev. App. Unpub. LEXIS 237 (2021).

This case is further interesting because of the way that the defense attorney also attempted to trigger anger towards a victim. The attorney began to mobilize anger towards the victim from the beginning of argumentation, establishing in the first minutes of the opening statement that, "this case is about an unreliable and untrustworthy brother [the victim] that is taking an opportunity to blame somebody that he has a longstanding dispute with: his half-brother [the defendant]."[181] Appearing in their opening statement, this claim sets up the case to come as being born of a wrongful accusation based on a personal hatred of the defendant. This trend continues in the closing statement, where, first, the attorney repeats that "you have an unreliable and untrustworthy witness, and you have an untrustworthy and unreliable victim."[182] The attorney also points to the inconsistencies between the victim's testimony and the physical evidence of the crime scene to further the narrative that the victim is misleading the court and derailing the judicial process. He claims that, "the evidence doesn't corroborate [the victim's story] at all,"[183] and continues to explain how the story does not align with the blood found at the crime scene.

Painting a victim as choosing to blame the defendant for a crime out of revenge was a theme in the case of Leroy McCoy as well. This case was another attempted murder whereby the defense attorney argued that the victim blamed the defendant out of a want for revenge. She suggests the victim lied and accused the wrong person just to get back at him, much like the attorney in the Harris case did. She begins her closing argument by saying:

> The State wants you to brand Leroy McCoy [the defendant] a felon based on the testimony of a scorned woman, a bitter woman, an angry woman. So before you do that, let's examine the evidence. What did we hear from Ashley [the victim]? She told you herself that she was jealous, that she was angry, she felt used. She put up with ten years of Leroy McCoy cheating on her…So when all of this happened to her, she wanted to get

[181]Transcript of Proceedings day 1 at 215, Harris v. State, Nev. App. Unpub. LEXIS 237 (2021).
[182]Transcript of Proceedings day 4 at 38, Harris v. State, Nev. App. Unpub. LEXIS 237 (2021).
[183] Ibid., 47.

> back at Leroy and say -- and pin everything on him… the best lies are 90 percent truth. So we know what happened to her. 90 percent of what she said is true. She has all those injuries. But what is she lying about? Who did this to her. Why? Because Leroy hurt her and used her for ten years.[184]

This excerpt is very gendered, and also very anger inducing for a number of reasons. On the topic of gender, note the repetition of the term "woman" when saying that the victim is scorned, bitter, and angry. The attorney's goal, assumedly, is to trigger anger at this vengeful woman, who is using the justice system as a vehicle through which to get back at her ex. The argument hinges on the jury feeling angry that this woman is taking out her anger on her ex by lying to a court, claiming that he was the one who attacked her when the defendant claims he did not. The attorney wants the jury to perceive the injustice of the situation, and recognize that this case is being prosecuted because, simply put, a woman had her feelings hurt. This is further emphasized by the way that the attorney ends the argument, and leaves the court with the Shakespeare quote "hell hath no fury like a woman scorned."[185]

Noting how attorneys may point out motives that a particular witness has to lie is not to suggest that a witness needs a motive to lie for a jury to be morally outraged. Attorneys may still attempt to trigger anger toward a lying witness without suggesting that the lies are self-serving or motivated by familial responsibility. In the end, the act of lying on the stand is morally outrageous in and of itself, and it might upset the jury regardless of motive. By emphasizing the discrepancies between key witness testimony and physical evidence, an attorney can still present witnesses as liars without needing to discuss their ties to the defendant. For instance, the attorney in the case of Michael Jeffries refers to the witnesses in the case as "amnesia victims,"[186] later

[184] Transcript of Proceedings day 3 at 25, McCoy v. State, Nev. App. Unpub. LEXIS 923 (2019).
[185] Ibid., 31.
[186] Transcript of Proceedings day 4 at 109, Jeffries v. State, 133 Nev. 331 (2017).

shifting his focus to the physical evidence and establishing it as more credible than the witnesses who testified for the State:

> Now, the next thing you get to look at to decide, look, who's telling the truth? And if we can't decide who's telling the truth, what really happened here is the physical evidence. Physical evidence is useful in determining the credibility of witnesses, and it's also useful in determining the course of events. And the nice thing about physical evidence is it's not like witnesses. Physical evidence doesn't change, physical evidence doesn't lie, physical evidence doesn't equivocate. Physical evidence doesn't get amnesia before you put it on the witness stand, and not remember anything that happens.[187]

In this statement, the attorney is suggesting that the witnesses in this case has done all that physical evidence does not do. He implicitly suggests that the witnesses have changed their stories, lied, equivocated, and magically gotten amnesia. These are all morally questionable actions that stand in the way of justice.

While both the prosecution and defense attorneys accused the other side of lying, there was also a technique utilized in pursuit of personalized anger that was solely a tool of the defense.

II. b. Personal Anger Cultivated through Emphasis on the Irresponsibility of State Agents

The next way that anger is directed towards outside parties of a crime is through a focus on the flawed way in which State (or in a couple of cases, the defense) authority has handled a case. This can occur through attacks on police officers, investigators, or even the State attorneys themselves for pursuing the case.

Table 2.b Instances of Attacks on Opposing Side Agents throughout Attorney Argumentation

[187] Transcript of Proceedings day 4 at 118, Jeffries v. State, 133 Nev. 331 (2017).

	Opening Statements (absolute #/percent)	Closing Statements (absolute #/percent)	Rebuttal Argument (absolute #/percent)
Prosecution	1 / 4.2%	0	2 / 100%
Defense	23 / 95.8%	69 / 100%	n/a

The defense uses this tactic the most out of any in order to cultivate anger in a jury trial. This type of argument plays off of a distrust for government and police, emphasizing the wrongdoings of law enforcement to point to the trial being unfairly pursued. It relies on an assumption that the jury members possess a fundamental belief regarding the fairness of the government. Attorney interviews revealed that attorneys do, in fact, play to a general distrust of government in their statements.[188] Another interviewee emphasized the importance of presenting that the State has done a poor investigation into the case in question.[189] Pointing out corruption or unfairness of a governmental body should, accordingly, move jurors to moral outrage.

Defense attorneys aim at this moral outrage in a few ways. Patterns of attack included emphasis on unfair investigation tactics, suggestion of police corruption, mistakes during investigation, lack of consideration of some crucial facts, and suggestion that officers or experts led witnesses and victims to identify a certain person as the perpetrator.

The first way that defense attorneys may trigger anger at injustice is by emphasizing unfair and inaccurate investigation. Take, again, the case of Rene Harris. The main argument in this case's opening and closing arguments is that the police did a terrible job investigating the

[188] Attorney 1, interview.
[189] Attorney 2, Interview by Elise Lambert, January 21, 2022.

crime. The attorney attempts to target anger at the State for this inaccurate investigation. In the opening, the attorney claims, talking directly to the jury, that:

> Finally, you're going to hear that this case is based on a rush to judgment by the police. They heard from Mr. Harris -- Mr. Michael Harris [the victim] that it was his brother, and because there's a familiarity there, they relied on Mr. Michael Harris's statement to them, because this is not what they thought to be where it would be somebody else, so they rushed to judgment, and they cut some corners, and they did an inadequate investigation, ultimately. They did not follow all the leads, they did not properly document everything that they should have, and they did not independently test the credibility of Mr. Michael Harris.[190]

The attorney points out all of the shortcomings of the police in this statement. The attorney suggests that the police blindly listened to an alleged victim without questioning his credibility instead of following leads and documenting their work as they should have. This concern for insufficient police work is echoed in the closing argument of this case as well, where the attorney not only repeats that "there's a rush to judgment and an inadequate investigation,"[191] but uses a couple of other interesting tactics to question the morality of police actions. The attorney then continues to point out all the leads that the Sergeant in charge of the case should have, but ultimately did not, follow up on. [192] He notes how there is no DNA or forensic evidence in this case, and that the State should have examined shotgun trajectory, and footprints at the crime scene, and the blood spatter pattern at the scene.[193] The attorney also talks directly to the jury in the closing statement, when he asks the jury to put themselves in the shoes of the victim:

> If you were the victim of a case, if you were the victim of a crime, would you want your case investigated the way Sergeant Zarbe investigated this case?... after hearing the evidence in this case, I think it is fair to say that you… should have more questions than answers and more doubts than certainty.[194]

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[190] Transcript of Proceedings day 1 at 216, Harris v. State, Nev. App. Unpub. LEXIS 237 (2021).
[191] Transcript of Proceedings day 4 at 54, Harris v. State, Nev. App. Unpub. LEXIS 237 (2021).
[192] Ibid., 56.
[193] Ibid., 57.
[194] Ibid., 39-40.

In this excerpt the attorney is ultimately suggesting that the officer in charge of investigating this case must not be achieving the justice you would want if you were a victim.

The second case worth noting is that of Jerom Boyes, a white man accused of murdering his wife. This case included more attacks regarding unfair and inaccurate investigation, as well as a questioning of police corruption and behavior in general. Take, for example, this excerpt from the opening statement:

> Testimony and evidence is going to demonstrate that the North Las Vegas Police Department did an incomplete, a sloppy and biased investigation, and that's why we're really here today. The investigation you will hear and see based upon the testimony and evidence was completely incomplete and biased towards Jarom Boyes.[195]

Obviously the words "incomplete," "sloppy," and "biased" are emotionally charged, suggesting anger at the unjust nature of the investigation. The opening statement also tackles morally questionable interrogation tactics as well:

> And then Officer Krieger takes Jarom to his car, Officer Krieger's car, puts him in the backseat, closes the door with the windows up. Leaves him there for about two hours. Mind you this is right after Jarom's just seen his wife shoot herself, right after he's attempted to perform CPR, as we all heard, for two hours. He wasn't allowed to wash, wasn't allowed to change clothes. He was placed in a confined place. Testimony and evidence will show that that's what they do. That's one of the investigative techniques that you confine someone in a closed area, that you make them uncomfortable.[196]

Starting in the opening statement, which sets the stage for the entire upcoming trial, the attorney is already attempting to trigger anger at the way that police conducted the investigation. The attorney calls out the inhumane practice of confining a suspect in this excerpt. He is highlighting the trauma that the defendant has just gone through to cultivate mounting anger at the police for making the defendant sit in a presumably miserable car in a terrible state of mind. The attorney further insinuates that this type of torture is common police practice, by claiming, "that's what

[195]Transcript of Proceedings day 4 at 35, Boyes v. State, Nev. App. Unpub. LEXIS 786 (2019).
[196] Ibid., 36-37.

they do." In a similar manner, in the closing argument the attorney argues that the confession the prosecution was relying on was obtained through unjust practices, even hinting that the police turned off the recording to do something to the defendant, presumably something immoral or illegal, in order to make him confess when they turned the tape back on.[197] Taken together, in both opening and closing statements, the attorney in this case demonstrates an attempt to activate moral outrage over police injustice consistent with the other cases analyzed.

Outsider anger may be activated through this attack on State parties may also take the form of attacks on State attorneys for the lack of evidence that they have, or the lack of reason that they have for pursuing the case in general. This approach operates through a presentation of a case as baseless, and therefore being unfair for the attorneys to pursue it. Attorney interviews highlighted the tendency of defense attorneys to encourage jurors to be angry that the State has not given enough proof.[198] Accordingly, this trend emerged in the transcripts through arguments that the State was manipulating or biasing evidence, or presenting it in an unfair manner. This is mainly a tool of the defense team, but was evident in a few of the prosecution arguments as well.

This technique was mainly used in closing arguments, as it relies on generating outrage towards the opposing side's presentation of facts. On the side of the defense, this practice was seen through a focus on the way that the State had presented the evidence throughout the trial. Attorneys consistently emphasized the lack of evidence that the State had, as was seen in five cases, or the biased way in which the State attorneys had apparently twisted the evidence and misstated facts, as evident in eight defense arguments. There was an emphasis also on the objective unreasonableness of the state's manner of presentation.

[197] Transcript of proceedings day 12 at 82, Boyes v. State, Nev. App. Unpub. LEXIS 786 (2019).
[198] Attorney 2, interview.

A few of these approaches were evident in the case of Edmundo Oliveras, where the defense attorney made a number of exemplary statements. The first thing to note is an emphasis on a lack of evidence. The attorney called the jury's attention to the way that the State is prosecuting this case without preparing for this trial:

> What have they done for 18 months in preparation for this trial? Nothing? They're just going to come in here and tell you yeah, you know what, how about that clothes hamper thing?... Can they just really come in and tell you this stuff or really is this oh boy, we weren't prepared and we're getting nailed in this trial so now we're going to come up with these sort of ridiculous excuses why we haven't done stuff. Do you hear their excuses on McDonald's? Did you hear what the prosecutor just said? He demeaned that. What is that going to prove? … And instead they stand up here and tell you he's a robber, he's guilty and they didn't even do their job.[199]

This statement focuses on an idea that the State has inadequate evidence to pursue the case. The attorney uses rhetorical questions to allow the jurors to point out the injustice of the opposing attorney's actions. The defense attorney also used questioning to point to the injustice of the State's attorney in the way that he presented the evidence that they did have:

> So let's look at it. When Elba [a State witness, the defendant's sister] says things that hurt Mr. Oliveras, what does it prove, he's guilty. Why? Because why would she hurt her brother. The fact that she's saying it must be true. Now she's changing completely and what's the State going to argue? Well she's changing because she wants to help her brother, that's her brother over there. Okay, wait a second. So he's damned if she says it that way and he's damned if she then comes in and says it didn't happen? That's the way it is?… They get away with it? The State of Nevada can get away with that? Why do they get away with that? They called a witness that was absolutely incredible. The person absolutely admitted he had perjured himself…How do you believe a witness like that? What they're basically doing is red light -- the witness said red light one time, green light one time, and orange light one time and the State's like see, he said green light, there you go, that's what we need. Well he said red and orange too. Well that doesn't matter, he was lying then. Well why do they get to pick and choose that?[200]

[199] Transcript of Proceedings day 6 at 76, Oliveras v. State, Nev. App. Unpub. LEXIS 589 (2020).
[200] Ibid., 87-89.

The attorney uses this questioning technique to lead jurors to independently recognize the unfairness of the State's actions. This attorney is suggesting that the State is clearly manipulating evidence in a self-serving way in order to get a desired verdict. This challenges beliefs about fairness in the justice system regarding prosecuting those who are actually guilty of a crime. He further emphasizes the unfairness of this situation by saying that if the defense attorney tried to do such a thing, "everyone would be falling off your chairs, laughing at me, going that's the most pathetic thing I've ever seen… I bet you'd be back there guilty so fast. But they get away with it?"[201] The State is trying to prove someone guilty through unjust manners, by building a case off of lies but pursuing them anyway. The attorney wants the jury to be angry at this unfairness, and question why it is okay for the State to get away with prosecuting a man based on false testimony and a lack of proof, when they would obviously never allow a defense attorney to get away with such an atrocity.

Another case that frames the facts presented by the State as selective for their benefit is that of David Burns, where the attorney claims, "This is another effort by the State to pick and choose how they deliver material to you."[202] Further in the argument, the attorney continues to defame the State's approach to prosecuting this case, claiming that the State is deceiving the jury, calling into question the entire tenets in which the criminal justice system should function. He says:

> Now, there's another thing that's been going on in this case that should disturb all of us… and it seems to me that if we come to a point in this country- and we all talked about the criminal justice system and that it's the best in the world. We had many conversations with you all about our system…Do we not, in an ideal world, expect prosecutors to give you everything and let you all figure it out? Sadly, that's not how it goes. Sadly, even in a case this serious, there are efforts made to deceive, which is disturbing[203]

[201] Ibid., 88.
[202] Transcript of Proceedings day 15 at 16, Burns v. State, 495 P.3d 1091 (2021).
[203] Ibid., 38.

This excerpt is important for the way it plays to values about American exceptionalism and this country having the best justice system in the world, which makes violating this sacred system that much more morally repugnant. It also sets up the moral outrage that is to come, prefacing the next phrases by claiming that the State is accordingly fighting to derail this idyllic criminal justice system by deceiving the jury. Deceiving is obviously an emotionally charged word in this instance worth mentioning.

The attorney continues to talk about a vital piece of evidence on which the State has built their case: the defendant's cell phone records. The attorney continues:

> Man, that's a lie, that is a flat out lie perpetuated by law enforcement at the behest of a prosecuting agency. That's troubling, that's how innocent people go to jail and guilty people walk the streets. I don't care what happens at the end of this case, that is unforgivable.[204]

He also continues to discuss these lies related to the cell phone records later in the statement, clearly aiming to trigger anger by saying, "it is disgusting that they put that out there to the grand jury to get this charging document, and **you should be upset about that**."[205] This statement is monumental because it is clear that the attorney is attempting to elicit an emotional reaction from the jury. He tells them explicitly to be upset about the actions of the prosecutor. I posit that upset is meant to be a derivative or moral outrage regarding the lies and the barrier that the prosecution's actions are forming to fair and equal justice.

Rarely, the prosecution also mobilized a similar tactic to generate moral outrage towards defense attorneys. This occurred once in an opening statement,[206] and twice in rebuttal arguments.[207] In the opening statement, the prosecutor accused the defense attorneys of lying,

[204] Ibid., 37-38.
[205] Ibid., 41.
[206] Transcript of Proceedings, Arenas v. State, Nev. Unpub. LEXIS 659 (2021).
[207] Transcript of Proceedings day 5 , Sevier v. State, Nev. Unpub. LEXIS 283 (2019); Transcript of Proceedings day 5, Vaoga v. State, Nev. Unpub. LEXIS 1078 (2019).

and in the rebuttal statements the attorneys highlighted the mistakes that defense attorneys made that were against the rules of procedure in court, or involved misrepresentation of statutes.

The tactic of attacking State agents is not the only way that attorneys mobilize anger towards other attorneys. In fact, both sides used sarcasm and mocking tones in an attempt to direct juror anger towards the opposing counsel.

II. c, Personal Anger Cultivated through Use of Sarcasm or Mocking Tone

The main way that attorneys triggered outrage towards other attorneys was by hinting at the ridiculousness and outlandishness of their arguments. They did this primarily through the use of sarcasm and mocking. This was a tool of both the prosecution and defense, but as the prosecution has an opportunity to make two closing statements, it was mainly seen in use by the state.

Table 2.c Uses of Sarcasm/Mocking Tones throughout Attorney Argumentation

	Opening Statements (absolute #/percent)	Closing Statements (absolute #/percent)	Rebuttal Argument (absolute #/percent)
Prosecution	1 / 50%	18 / 60%	15 / 100%
Defense	1 / 50%	12 / 40%	n/a

Attorneys triggered moral outrage by highlighting the disbelief at what the opposing side was arguing, suggesting that what they were saying should sound so outlandish as to anger the jury. Frequently, this emerged through more rhetorical questioning of the jurors. For instance, in

the case of Edmundo Oliveras, the defense attorney asks the jury, "do you hear what the prosecutor just said?" to stress the disbelief that the jury should feel about the prosecution's argument.[208] Attorneys also used trigger phrases like "really" and "yeah right" to assumedly achieve the same feelings of moral outrage in regards to the opposing side's argument. Take the rebuttal argument in the case of Michael Jeffries, where the State's attorney says that the defense is trying to, "make it appear as if [the victim] is this big, bad ass aggressor. He was not. He was not…. This big, bad man. Look at this picture. Really? Really."[209] The attorney uses "really" to question the rationality of the defense's argument and cultivate anger at the outlandish statements they are making in an effort to tip the balance of justice in their favor. Another case that I wish to highlight is that of Rene Harris, in which the prosecution attorney strategically goes through the defense counsel's arguments by presenting them in a sarcastic or mocking tone and then asking questions about whether said thing is possible or saying trigger phrases like "yeah, right." The first part of this is mocking the arguments to point out how absurd they are. One way he does this is with the use of the word "oh," and then reiterating their argument but in a less reasonable way. For example:

> But defense counsel wants to say, oh, somehow that [piece of evidence] morphs into it's not Rene Harris…Oh, she -- she's really talking about her brother [a different person the defense is suggesting committed the crime]. There is no evidence from that stand that's actual -- that's not based on possibilities or speculation that suggests that or points to that.[210]

This excerpt relies on beliefs about the truth of physical evidence, as the attorney points to the lack of evidence to discredit the defense's statement. He uses the word "oh" to show that he is switching to present the defense attorney's points, but does so in a mocking and demeaning

[208] Transcript of Proceedings day 6 at 76, Oliveras v. State, Nev. App. Unpub. LEXIS 589 (2020).
[209] Transcript of Proceedings day 4 at 148, Jeffries v. State, 133 Nev. 331 (2017).
[210] Transcript of Proceedings day 4 at 68, Harris v. State, Nev. App. Unpub. LEXIS 237 (2021).

manner. He mocks the argument to suggest that it is unreasonable, and therefore something the jury should be frustrated by. The other way the attorney tries to show the unreasonableness of the defense arguments is by laying out the argument of counsel then using the rhetorical questions to confirm that the jury is hearing these ridiculous claims, and saying, "yeah, right" at the end:

> But yet, it's the police' fault, right? And it's Monica fault. The only time you really heard an inflection in defense counsel's voice up here is when he states, you know, it's possible that Michael misidentified. It's possible…. Where the victim fell. That was his next argument. Folks, this man didn't even articulate his own age. Didn't even know his own age when he called 911. So you're going to hammer him on where exactly he fell? Which, by the way, just more of him being a strong dude, right? This strong dude that apparently is able to walk around after he takes a blast to the back with a shotgun, three-time felon, able to talk back to the DA to get -- get a warrant is going to come up here and let the real shooter off the hook. Yeah, right.[211]

The attorney goes through some main arguments that he believes are unreasonable, posing the facts that defense is arguing as questions to confirm that the jury is hearing the information which he believes is outrage worthy. At the end of this excerpt, he says "yeah right" to encourage the jury to understand how ridiculous this line of thinking and argumentation is.

Attorneys also stressed the principle of common sense in these situations to encourage the jury to realize how outlandish the arguments made by the opposing side were. This was a trend evident in eight closing statements: four prosecution, three defense, and one rebuttal.

An example of this is in the case of Emone James. In the trial, the prosecution attorney argued that a doctor that the defense paid $5,000 to analyze evidence and then testify was morally corrupt and did anything for money. The attorney refutes this idea by saying:

> You heard about my $5,000 witness, does-anything-for-money witness, I guess, evidently is what you're supposed to believe or think. You heard his credentials. You heard how long he's been doing this. You heard he was with a major medical group. I don't know

[211] Transcript of Proceedings day 4 at 68, Harris v. State, Nev. App. Unpub. LEXIS 237 (2021).

> how many doctors there were, but I think you can use your common sense to figure out this guy doesn't need the money.[212]

Implicitly, the attorney seems to be telling the jury to think about the reasonableness of the prosecution's argument, and ultimately follow their common sense logic to realize how twisted this argument is. The prosecution, in the opinion of the defense attorney, is trying to make the jury believe something that makes no sense, which should anger them because it is frankly ridiculous.

Sarcasm goes much further than this as well. Attorneys may use sarcasm through comparisons to show just how ridiculous that the opposing side's argument is. For instance, in the case of Amadeo Sanchez, the defense attorney makes a shocking claim to refute the State's argument that the defendant had an intent to kill. The defense attorney argues that the locations of the bullet wounds show that the defendant could not be born of an intent to kill, and that, if he was aiming to kill the victim as the prosecution suggests, "even Ray Charles could shoot better than that. Even Ray Charles."[213] The attorney is clearly attempting to show that the prosecution is being ridiculous, as even a blind man could have better aim and accuracy than the defendant in a case where the defendant was intending to kill the victim. This elicits outrage at the attorney for suggesting something so outlandish as to sway the court in one way unfairly.

Another strategy that showed the ridiculousness of arguments was mocking thought processes or conversations that would have had to happen for the other side's argument to be true. Attorneys use these tools to show how illogical the theories that the other side is proposing would be in practice. For example, the State attorney mocks what the defendant must have been thinking in order to justify his crime:

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[212] Transcript of Proceedings day 7 at 55-6, James v. State, Nev. Unpub. LEXIS 488 (2018).
[213] Transcript of Proceedings day 6 at 64, Sanchez v. State, Nev. Unpub. LEXIS 913 (2016).

> Then, lastly, the one that three are asking for is voluntary manslaughter. This one, ladies and gentleman, State would suggest, is ridiculous. Just ridiculous for them to ask for this…He [the defendant] is the one who then calls Nelson Nunez's [the person with which the victim was cheating on the defendant] number and probably gets a phone message, "Hey, this is Nelson. Leave a message."
> "Aha. Now I'm justified. Now I can kill you."
> That's ridiculous.[214]

The State attorney is attempting to cultivate anger over the defense's argument that this thought process, in line with the laws surrounding voluntary manslaughter, would be the thought process of a reasonable person. The attorney says that this is ridiculous to show how the argument for voluntary manslaughter has no weight considering the illogical way that the defendant would need to think for it to be the case. The argument is inconsistent with law and inapplicable to the status in question.

Sarcasm, while important on the personal level in pointing to the outlandishness of attorney arguments, is also useful on a situational level for the State when pointing to the injustice of a death.

II. d. Situational Anger through Sarcasm in Discussion of Intent

Attorneys may also use sarcasm situationally as well. In this form, attorneys may cultivate moral outrage at the injustice and unfairness of a victim's death by stressing the unnecessary nature of an attack through discussion of intent or motive. This is obviously only a tool of the State. In order to prove first or second degree urder, the State must prove that the defendant had an intent to kill their victim. While intent was discussed in every trial, some cases discussed it more than others.

[214] Transcript of Proceedings Closing Arguments at 16-18, Estrada-Puentes v. State, Nev. App. Unpub. LEXIS 193 (2018).

One way that an attorney may point out this type of injustice is through the use of sarcasm or mocking. They may use this method to show the intent of a defendant's actions, and to highlight how the defendant wanted to commit an unjust act with all intent to do unfair damage. For instance, in the case of Ivonne Cabrera, the attorney argues that the defendant's co-conspirator had all intent to kill those whom died by saying, "it's not like the gun accidentally went off nine times"[215] In a similar vein, the State attorney in the case of Emone James emphasizes how the defendant must have wanted his victim to die, and even put the jury in the defendant's shoes by using the second person tense. He says, "I'll just point that out again, when you put a gun to a man's head you have the intent to kill him when you pull that trigger. He didn't shoot him in the leg. He didn't shoot him in the arm. He shot him in the back of the head."[216] This approach, seen in eleven of the cases analyzed, triggers anger at the fact that the defendants wanted to kill their victim, which is obviously morally provoking. Focusing on the defendant's intent by ruling out saying what a defendant didn't do was another broad theme.

This is extremely evident in the case of Vernon Newson, where the attorney argued that the defendant had deliberation and intent when committing the murder in two interesting ways. The first way that she did so was through ruling out any other ridiculous thing that the defendant may have intended when shooting except to kill the victim.

> Well, we have someone who was shot in the face and shot in other parts of her body. When you shoot someone in the face, or in the head, you're not trying to start a conversation with them; you're not trying to have a discussion with them; you're not trying to remind them of anything. When you shoot someone and pull a trigger and fire a bullet into the body of another human being you are trying to kill them. There is no other expectation or any kind of reasonable interpretation of that type of act.[217]

[215] Transcript of Proceedings day 8 at 30, Cabrera v. State, 454 P.3d 722 (2019).
[216] Transcript of proceedings day 7 at 37, James v. State, Nev. Unpub. LEXIS 488 (2018).
[217] Transcript of Proceedings day 4 at 13, Newson v. State, 462 P.3d 246 (2020).

Through this approach, the attorney stresses the violence and unnecessary nature of the defendant's decision to shoot his victim. This second way that she proves intent is through asking rhetorical questions in a mocking tone just a few pages later in the transcript:

> And what was the purpose of pulling over for Vernon Newson at that point? Well, it was to kill her. And then he had to get out of the car himself. And why is he getting out of the car? To kill her. He had to remember to take the gun with him as he got out of the car. And why is he taking that gun with him? To kill her.[218]

These rhetorical questions and repetition of "to kill her" establishes the defendant's intent, which is required for the prosecution to prove when arguing a murder case, but also functions to anger the jury at the injustice that occurred.

Sarcasm was not the only way that the State cultivated situational anger towards circumstances outside of the crime itself.

II. e. Situational Anger through Framing of Ridiculous Intent

In order to cultivate moral outrage about a case, an attorney must not only establish intent, but they must establish that the intent was unprovoked, and simply not warranted given the situation in question.

Attorneys must frame their arguments to portray the defendant's intent, and seemingly hellbent decision to kill, as utterly ridiculous. The attorneys in these instances are not just saying that the defendant had intent to kill, but that he or she shouldn't have had that intent in the first place. Arguments in this area point at the lack of valid intent and ridiculousness of a reason that a defendant may have given for taking a life. Attorneys aim to emphasize that it would be unfair for someone to die over something menial, which should anger a juror.

[218] Ibid., 16.

Table 2.d Instances of Framing of Intent as Unreasonable Throughout Attorney Argumentation

	Opening Statements (absolute #/ percent)	Closing Statements (absolute #/ percent)	Rebuttal Argument (absolute #/ percent)
Prosecution	6 / 100%	18 / 100%	2 / 100%
Defense	n/a	n/a	n/a

To do this, an attorney may make a death appear like a random and unprovoked crime. For instance, the State attorney in the case of David Burns, which is a case of a robbery gone wrong, calls attention throughout the closing statement to the fact that Burns chose his victims simply based off of them being easy victims. The attorney describes Burns and his conspirators as "robbers and killers,"[219] who were "willing to prey on other people, willing to victimize and willing to target what they viewed as an easy target or someone who would be less defensible."[220] This was also clear in the opening statement, when the attorney claimed that Burns, "picked this residence for the very reason that they knew children would be present and guns wouldn't be. So this was essentially an easy target of the defendants in this case." [221] This demonstrates how the attorney attempts to suggest that lives were taken baselessly, as the defendant is painted to never have had any reason to target these people purposefully, but instead took advantage of the fact that they were most likely incapable of fighting back. The attorney wants the jury to be morally outraged at the fact that a woman was killed for no good reason, simply that she was easy to kill.

Not all cases are framed as random and unprovoked to communicate injustice. Some cases are portrayed as unjust because of their motive. For instance, in the case of Mario

[219]Transcript of Proceedings day 14 at 131, Burns v. State, 495 P.3d 1091 (2021).
[220] Ibid., 157.
[221]Transcript of Proceedings day 6 at 14, Burns v. State, 495 P.3d 1091 (2021).

Camacho, the State attorney, in the opening statement, claims that the defendant killed someone over a belief that the victims *may* have stolen 50-70k and 10 pounds of pot or snitched on him about a stolen gun.[222] The attorney implicitly suggests that the people that Camacho killed probably weren't the people who wronged him, which leads the jury to believe that innocent people were killed for no good reason.

One case in my dataset, however, encapsulates the idea of an irrational motive perhaps most strikingly. This is the case of Coleman Vaoga, who allegedly murdered a homeless person who stole a store bought chicken dinner from his truck in a supermarket parking lot. The attorney sets up the crime as being motivated by nothing but irrational anger, saying, "[Vaoga] was, quite simply, just pissed off and he was going to teach this man a lesson" for going into his truck.[223] He then continues to talk about how Vaoga killed someone "over four pieces of chicken and two biscuits,"[224] which is clearly an illogical thing to be so angry as to kill a person over. The value of chicken and biscuits, in any sane person's mind, is obviously not equal to the value of a human life. Furthermore, as if the situation could not get more emotionally provoking, the attorney continues to say, "When he bludgeoned [his victim] to death and left his body in the desert, he jumped back into the truck with his sister, he drove home, and he enjoyed a Church's chicken dinner."[225] A jury must feel moral outrage at the fact that the defendant behaved normally after committing the murder, and how he continued to live life like normal while the victim's life was over.

II. f. Conclusion

[222] Transcript of Proceedings day 5 at 56, Camacho v. State, Nev. Unpub. LEXIS 314 (2019).
[223] Transcript of Proceedings day 5 at 60-61, Vaoga v. State, Nev. Unpub. LEXIS 1078 (2019).
[224] Ibid., 66.
[225] Ibid.

Both personal and situational outsider anger appeared to be of substantial use to the defense. The chart below shows a breakdown of outsider appeals to anger when directed towards both objects of anger.

Table 2.e. Outsider appeals to anger in Opening and Closing Statements

	Opening Statements (absolute #/percent)	Closing Statements (absolute #/percent)	Rebuttal Argument (absolute #/percent)
Prosecution	7 / 22.6%	32 / 27.4%	17 / 100%
Defense	24 / 77.4%	85 / 72.6%	n/a

Anger focused on those people and instances outside of the crime itself was of more use to the defense than to the prosecution. The defense attorneys tended to look outwards, which is consistent with what attorney interviews indicated. One defense attorney noted that argumentation as a defense attorney is not about disagreeing with what happened, but is about disagreeing with how the prosecution is painting the facts of the case.[226] Accordingly, it is unsurprising that the data shows that emotional appeals to anger directed towards outside actors like attorneys and investigators occur from the defense attorney more than from a State attorney. State attorneys are more focused on the specific details of a crime and the people directly involved than they are on those outside of the action. The only outsider technique that the State used more than the defense in a total tally was sarcasm, but this is due to the intent argument that the prosecution makes using sarcasm, which the defense does not need to discuss.

[226] Attorney 2, interview.

III. Conclusion

Table 3.a Total Appeals to Anger in Argumentation

	Inside Opening (absolute #/percent)	Inside Closing (absolute #/percent)	Inside Rebuttal (absolute #/percent)	Outside Opening (absolute #/percent)	Outside Closing (absolute #/percent)	Outside Rebuttal (absolute #/percent)
Prosecution	23 / 69.7%	69 / 81.2%	9 / 100%	7 / 22.6%	32 / 27.4%	17 / 100%
Defense	10 / 30.3%	16 / 18.8%	n/a	24 / 77.4%	85 / 72.6%	n/a

* not including repetition counts

Clearly, the prosecution uses more insider appeals to anger at the crime itself and the individuals directly involved while the defense uses more appeals to anger about the case and outside factors. These appeals to anger reflect the focus of each side's argumentation. The State focuses narrowly or inwards on a crime itself, while the defense focuses outwardly, bringing attention to the circumstances around the case and the trial in general. These trends were reflected in attorney interviews, particularly in the interview with the defense attorney who formerly worked as a State attorney. This lawyer explained how the prosecution tries to portray a defendant in the worst light possible in their presentation of the facts, while the defense tries to counter by arguing that something else is going on in order to derail this suggestion.[227] This information explains why the prosecution appeals more to anger engineered to inside actors while the defense targets outside actors.

This same attorney also mentioned their tendency to attempt to trigger anger over what the prosecution has done in pursuing the case.[228] The lawyer acknowledged the benefits to cultivating anger at the government and what they are doing to the defendant. One of the defense

[227] Attorney 2, interview.
[228] Ibid.

attorneys I interviewed further elaborated on their use of anger towards the State.[229] This attorney also mentioned that they do utilize anger over lying, depending on the facts of the case. They used an example of a domestic violence case whereby they may suggest that a victim is lying to cultivate anger.

Another interesting theme that arose in attorney interviews was attorneys' inability to recognize their own use of emotional appeals. The data shows that defense attorneys appeal to anger more than the prosecution does overall. Yet, all three of the defense attorneys interviewed stated that the prosecution uses more emotional appeals in argumentation than the defense attorneys do.[230] The only prosecution attorney interviewed, on the other hand, contended that they did not use appeals at all. The data shows that this is clearly not the case. This suggests that attorneys are appealing to emotions without realizing it, or are succumbing to the stigma of admitting the volume of their use. In other words, they are outwardly giving voice to the professional norm and thereby denying their use of emotional appeals.

Beyond the patterns evident both in terms of which side of a trial utilized which particular tactics to incite anger and when each side used the tactics, i.e., in the opening or in the closing statements, it is important to assess whether any patterns could be mapped onto other circumstances of the trial. For example, did the tactics differ based on the identity of the defendant? But, evaluating impact on sex was difficult to analyze given the infrequency of female-perpetrated murders. The only case in my dataset that had a female defendant was that of Ivonne Cabrera. Given that only one of the eighteen cases had a female defendant, no substantial claim can be made about the relationship between defendant gender and appeals to anger. There

[229] Attorney 4, interview.
[230]Attorney 1, interview; Attorney 2, interview; Attorney 4, interview.

were no glaring differences between the way that attorneys appeared to anger in this case than in the cases with male defendants.

Interestingly, appeals to anger seemed to not differ depending on the race of the defendant. Only three of the cases coded involved a white defendant, which severely limits analysis on the role that race plays in emotional appeals. However, all of the categories discussed were just as present in cases regarding white defendants as they were in cases of defendants of color.

In conclusion, both inside and outside appeals to anger are useful depending on the party who is executing the appeal, and the target of the appeal. Anger can be aimed at people and situations both inside and outside of a crime, and attorneys have developed different ways to execute emotional appeals strategically and in a reasonable manner according to these targets.

Chapter 4: Sympathy

James Jasper defines sympathy as "an emotion of sadness and compassion."[231] He argues, "sympathy involves having a feeling as a result of someone else's feeling, but it is not neutral: it involves a judgment that the other person is feeling bad."[232] Scholarship likewise has shown that sympathy has a multitude of impacts on juror decision making. As mentioned in Chapter One, Feigenson suggests that sympathy creates a biased weighing of evidence, leading jurors to decide which facts are salient and how thoroughly they need to be considered.[233] Unlike how anger may be experienced by jurors, sympathy is only focused on the inside of the circumstances of the alleged criminal action and subsequent trial. Sympathy is appealed to as it relates to the actors involved in the action, such that the actors who are not immediately involved in the crime, and any actions not relating to the crime in question, simply do not matter. Sympathy, as noted in Chapter One, can take either an identitarian or a situational form.

Identitarian sympathy is felt towards a person based on the image an attorney paints of them. It encourages juries to feel sorry for an individual based on who they are. This sympathy may stem from a person being a part of any group that tends to draw sympathy. For instance, sympathy for children, with emphasis on their emotional expressions, may lead to a biased judgment.[234] Jurors feel sorry for children because of their status as minors, and their inability to protect themselves from harm. People may feel sympathy for women based on their social status as well. This type of sympathy is not, however, only based on being a part of a marginalized group. The term "identitarian" instead relates to a jury feeling bad for a person for who they are, and can include judgements on that person's character. For instance, a person may feel more

[231] Jasper, *Emotions of protest* 141.
[232] Ibid.
[233] Feigenson, "Sympathy and Legal Judgment: A Psychological Analysis." 61.
[234] Dahl et al. "Displayed emotions and witness credibility: a comparison of judgements by individuals and mock juries." 1150; Cooper et al., "The Emotional Child Witness: Effects on Juror Decision‐making."

sympathy for someone who speaks a certain way or acts a certain way or even emotes a certain way based on if their actions fit with said person's expectations. For instance, Tsoudis and Smith-Lovin explain that a perpetrator's emotional displays during a trial provide signals about future actions, therefore impacting juror decision making.[235] Furthermore, they found that the more contrite a perpetrator appears to be, the more "normal" identity he appears to have.[236] Conversely, if he appears calm and unconcerned, he is deemed to have an evil identity.[237] These identity perceptions influence rulings. Jurors who identify a person with a normal, expected response to a situation (being remorseful for committing a crime) are more inclined to feel sympathy and acquit. An indifferent person appears evil, and therefore is undeserving of sympathy and mercy. Essentially, people tend to feel sympathy for those that appear to act "normal," maybe even finding it easier to rule in favor of people who act how they would in a given situation.

Sympathy may also be felt towards a person as a result of the situation they are in, rather than their personal identity. Many scholars have argued that sympathy impedes factual decisions because it encourages a jury to sympathize with, and therefore want to fix, an individual's hardship.[238] When presented with an individual in an unfortunate situation, jurors feel a need or a moral obligation to remedy the situation. Evidence is therefore interpreted to not only be in favor of a victim, but to reciprocally heighten the perceived guilt of the perpetrator.[239]

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[235] Tsoudis and Lynn Smith-Lovin, "How Bad Was It? The Effects of Victim and Perpetrator Emotion on Responses to Criminal Court Vignettes." 709.
[236] Ibid.
[237] Ibid.
[238] Feigenson, "Sympathy and Legal Judgment: A Psychological Analysis"; Bornstein, "David, Goliath, and Reverend Bayes: Prior beliefs about defendants' status in personal injury cases." 233-258.; Bornstein, "From Compassion to Compensation: The Effect of Injury Severity on Mock Jurors' Liability Judgments." 1477-1502.; Tsoudis and Smith-Lovin,"How Bad Was It? The Effects of Victim and Perpetrator Emotion on Responses to Criminal Court Vignettes." 697.
[239] Ibid. 57; Bornstein, "David, Goliath, and Reverend Bayes: Prior beliefs about defendants' status in personal injury cases."; Bornstein, "From Compassion to Compensation: The Effect of Injury Severity on Mock Jurors' Liability Judgments."

The first section of this chapter focuses on identitarian sympathy. In my review of the opening and closing arguments utilized in my dataset of eighteen cases, I identified two ways that attorneys appeared to appeal to identitarian sympathy. The first subsection in this part details how attorneys utilize sympathetic appeals by humanizing individuals. They did this mostly by sharing small, seemingly irrelevant details that pointed to witness character or personality. The second subsection addresses how lawyers focus on any sympathetic party that may be loosely involved in a case. Attracting positive sympathetic feelings for a witness, victim, or defendant would theoretically generate positive rulings in favor of the sympathetic party.

The second section of this chapter discusses situational sympathy. With regard to situational sympathy, attorneys used three strategies to trigger sympathy regarding the situation a victim was in. The first subsection in this section addresses how attorneys appealed to situational sympathy by telling a story from the point of view of a sympathetic person. The second subsection explores how attorneys also triggered sympathy by victimizing the individuals involved in a case. The prosecution did this by using graphic details to exacerbate the damages and injuries a party experienced as a result of a crime. The defense did this by presenting a defendant as a victim in order to attract sympathy. The final subsection explains how attorneys focused on the innocence of a victim in order to cultivate a sympathetic sense of injustice.

Section I. Identitarian Sympathy

The first form of sympathy that I identify is identitarian sympathy. A person may feel this emotion for an individual based on who they identify as, or how their attorney presents them to the jury. Attorneys attempt to activate this emotion by focusing on sympathetic parties, mainly children, or by humanizing a person through expression of character details.

I.a. Focus on Relation to Sympathetic Party

Arguably, the most sympathetic group of people are children. Children are widely considered the most vulnerable and therefore legally protected group of people. It is unsurprising, therefore, that attorneys used children as subjects of sympathy in their argumentation.

Table 1.a. Attorney References to Children in Argumentation

	Opening Statements (absolute #/percent)	Closing Statements (absolute #/percent)	Rebuttal Argument (absolute #/percent)
Prosecution	33 / 80.5%	22 / 66.7%	6 / 100%
Defense	8 / 19.5%	11 / 33.3%	n/a

All parties, both prosecution and defense, focused on children in any capacity however they may have been involved in a crime. Attorneys of both parties mentioned children even when the crime in question did not involve children directly. Granted, a few of the transcripts I analyzed did involve child abuse charges, and of course prosecution attorneys focused on

children in these cases, but this technique was not limited to only those cases with child-related charges. Attorneys mentioned child involvement in cases stemming from many relations, be it a child who witnessed or was present for a crime, or a child that is related to a defendant or victim. This technique was utilized in both opening and closing statements, but inconsistent with what the data has shown this far, actually appeared more in opening than closing argumentation for the prosecution, and a near equal amount for the defense.

The prosecution focused on the victimization of children primarily in one of two ways: the first focused on the direct impact on a child who was present for a crime, and the second drew attention to the indirect impact of the crime on the child in the aftermath of the crime. The first way that sympathy is triggered through child victimization usually occurs in crimes that accompany a child abuse charge in addition to the murder charge. For example, Vernon Newson was accused of murdering the mother of his 8 month old child while she was sitting in a car in the seat next to the child. Throughout his opening statement, the attorney repeats that Major, the 8 month old child, got covered in blood when his mother was shot.[240] This evokes a disturbing image to the jury of a poor, innocent child covered in the blood of his own mother, which is sure to provoke sympathy for that child from the jury. Perhaps a better example of this direct impact argument comes in the case of Rene Harris, who allegedly shot his brother in front of his brother's five-year-old daughter. In the closing argument, the attorney notes that the victim shielded his daughter from the bullet shot at him, implicitly suggesting that he may have saved her life.[241] The attorney also stresses the damage that the crime did to the child, and how the defendant was directly responsible for this suffering in the moment that the crime occurred. He says, "[on the] 911 [call], you'll hear Sariah [the daughter of the victim] crying, daddy, are you

[240] Transcript of Proceedings day 2 at 73, 76, Newson v. State, 462 P.3d 246 (2020).
[241] Transcript of Proceedings day 4 at 28, Harris v. State, Nev. App. Unpub. LEXIS 237 (2021).

okay? Daddy, are you okay? You hear her…You hear that little girl. You hear her crying. You hear the pain that she's going through."[242]The attorney stresses and directly references the pain that the child is experiencing in the moment she witnessed her dad being shot. The crime itself causes suffering for the child, which should provoke sympathy from a juror towards the child and her father, who were both victims. Accordingly, this sympathy may lead a juror to side with the State in order to remedy the suffering with a conviction of the defendant.

State attorneys also focused on the impact that a crime had on a child in the aftermath of the murder in order to trigger juror sympathy. For example, the State attorney in the case of Michael Jeffries references the thirteen-year-old girl who witnessed the crime crying on the stand in his closing argument.[243] This technique is important not only for how the attorney raises the emotional trauma that the child was put through in testifying, but also for how doing so corresponds to research that shows that displays of emotion, such as crying on the stand, result in more guilty verdicts. Indeed, jurors more frequently deem a victim to be credible, and the perpetrator guilty, when the victim displays congruent (despair, sadness) versus neutral or positive emotions.[244] In addition, researchers have also found that children who are perceived as emotional at trial render more guilty verdicts for the people they were testifying against than children who were not.[245] Children who appeared emotional were also deemed to be more credible than those who appeared more reserved.[246] This reference to the child witness's

[242] Transcript of Proceedings day 4 at 31, Harris v. State, Nev. App. Unpub. LEXIS 237 (2021).
[243] Transcript of Proceedings day 4 at 88, Jeffries v. State, 133 Nev. 331 (2017).
Other cases also mentioned witness emotion on the stand, even when the witness was not a child. See the cases of McCoy (Transcript of Proceedings day 3 at 18, 32, and 35, McCoy v. State, Nev. App. Unpub. LEXIS 923 (2019) where the attorney emphsizes the victim of the attempted murder crying on the stand) and Turner prosecution rebuttal (Transcript of Proceedings day 9 at 209, Turner v. State, 473 P.3d 438 (2020)) whereby the attorney mentions how the witness cries on the stand.
[244] Dahl et al. "Displayed emotions and witness credibility: a comparison of judgements by individuals and mock juries." 1150.
[245] Cooper et al., "The Emotional Child Witness: Effects on Juror Decision‐making."
[246] Ibid.

emotions may seem like a small part of the argument, but it holds massive weight in relation to jurors' sympathy and subsequent decision making.

The prosecution was not the only side to mention children in argumentation. Defense attorneys likewise utilize references to child involvement in order to cultivate sympathy. Defense attorneys tended to do this for two reasons: either to discredit a child witness of the State or to use children as a tool through which to cultivate sympathy for a defendant. Consistent with attorney interviews, a defense attorney is tasked with an interesting job when dealing with a sympathetic witness. One attorney interviewed noted that the way to go about addressing a sympathetic witness is not to defame them, but to undermine their credibility.[247] It is not surprising then, that in the case of David Burns, which involved another witness who was a mere twelve-year-old girl, the defense attorney looked outside of the witness herself in order to discredit her testimony. Instead, throughout his closing statement, the attorney suggests that the girl was manipulated by the police and led to a certain conclusion,[248] effectively becoming their victim. The attorney uses sympathy for the girl on account that the police have been taking advantage of her in order to trigger negative feelings for the State.

The other way that defense attorneys utilized personal sympathy in relation to children was to humanize a defendant. Attorneys may use a defendant's relation to children in order to provide an explanation for a defendant's actions. For instance, the defense attorney in the case of Ivonne Cabrera argues that she allowed herself to be controlled by her co-conspirator because she just wants to be able to survive in order to see her children again.[249] Similarly, in the case of Edmundo Oliveras, the attorney mentioned how the defendant's crime was motivated by a need to protect a threat to his family. The attorney says, "some people when they feel fear for their

[247] Attorney 1, interview.
[248]Transcript of Proceedings day 15 at 44, Burns v. State, 495 P.3d 1091 (2021).
[249] Transcript of Proceedings day 8 at 86, Cabrera v. State, 454 P.3d 722 (2019).

family, real fear -- you know, this was talking about ransom of a little child, that's a beautiful little child, right? That's a beautiful little child. And to him, to him, she meant something.[250]" He accordingly points to the innocence and beauty of the child in order to justify the defendant's actions. The attorney is aiming to cultivate sympathy and understanding for the defendant through his relation to the child.

I.b. Character Details

Attorneys aim to humanize individuals through sympathy. Research shows that people feel sympathy for those that act like themselves, meaning that when people fit jurors' expectations, the jury is more likely to rule in their favor, as noted in Chapter 1. Attorney interviews also pointed to the importance of humanizing defendants in particular. One defense attorney noted in their interview that it is important to sympathetically present a client in order to humanize them, as the prosecution tends to dehumanize them throughout argumentation.[251]

The first way that an attorney may use sympathy to humanize a defendant, witness, or victim is by providing small, seemingly irrelevant details about the person in question. For both sides, this usually takes the form of character details. The second way is for the defense to humanize the defendant by presenting them as a victim. They tended to do this by presenting details about who the defendant is as a person. The attorneys would mention the jobs that they do, the things they liked, the relationships that they had with people, and even details that point to their personalities as relatable, functional humans like me and you. Attorney interviews also pointed to the importance of relatability, as one attorney stated that a valuable way to appeal to a jury was through sending implicit messages to hint that the person in question could be the juror

[250] Transcript of Proceedings day 6 at 80, Oliveras v. State, Nev. App. Unpub. LEXIS 589 (2020).
[251] Attorney 4, interview.

themselves, or a family member for instance.[252] This was a technique used by both the prosecution and defense in both opening and closing statements.

Table 1.b References to Character Details in Attorney Arguments

	Opening Statements (absolute #/percent)	Closing Statements (absolute #/percent)	Rebuttal Argument (absolute #/percent)
Prosecution	4 / 30.8%	6/50%	0
Defense	9 / 69.2%	6/50%	n/a

The prosecution used this technique to humanize the victims in order to exacerbate the sympathy the jury may feel for the person who lost their life. These small, almost irrelevant details breathe a life into the name listed before the jurors. By describing the aspects of the person who died that made them unique, the attorneys accordingly make the characters in their story relatable, and easier to feel for as oneself. Even if they don't project relatable feelings, attorneys, through this technique, are still able to increase sadness felt for someone by emphasizing the unique characteristics of this person that are now gone forever. For instance, in the case of David Burns, the State's attorney begins the opening statement with a description of the victim. She says, "The victim in this case is a lady by the name of Derecia Newman, She was 28 years old at the time she was murdered. Her friends called her Ree. She was the mother of four children, and three of those children were under age 11 at the time she was murdered."[253] The first thing that the jury hears in this trial is a description of the woman who lost her life. Her

[252]Attorney 1, interview, December 15, 2021."
[253] Transcript of Proceedings day 6 at 10, Burns v. State, 495 P.3d 1091 (2021).

nickname and the ages of her children are obviously not important to the details of the crime, yet the attorney mentions them anyway. She is effectively attempting to humanize her to elicit sympathy from the jurors, who should feel bad that a real, living, important person died.

Following this same model, the attorney in the case of Eduardo Estrada-Puentes describes the victim in a similar way from the start of his opening statement as well.

> Her full name is Stephanie Rae Gonzales Estrada… for the most part we'll refer to her as Stephanie. She was 29 years old at the time of her death. She was married to the defendant, Mr. Eduardo Estrada. They got married around 2007. Between the two of them they had three children.[254]

Like the previous case, the attorney establishes the identity of the victim from the onset of the trial, attributing personal details to her name in order to humanize her and attract sympathetic feelings. All of these character traits make a jury more able to relate to the victim, which could potentially impact their decision making in the future.

These random characteristics were also evident in the closing statements of the prosecution as well. Not only do these characteristics humanize the victim to make him or her seem more like an everyday person like you or me, but it also amplifies the sadness of the loss of said victim. For instance, the prosecution attorney in the case of Jerom Boyes describes the victim by saying:

> We learned things about Melissa during this trial. She was enlisted in the Air Force. She met Jarom Boyes while stationed in Korea. I believe defense witness Mr. Bullock said she was a tomboy. She was fun, the life of the party, and she liked to go to the gun range. Mr. Bullock said, yeah, we went window shopping, she liked to do outdoorsy things, and she would frequent the gun range.[255]

The character traits that the attorney lists are entirely irrelevant to the details of the murder. Yet, he notes them anyway to give personality to the victim. What the victim liked to do and how she

[254]Transcript of Proceedings Volume 3 at 6, Estrada-Puentes v. State, Nev. App. Unpub. LEXIS 193 (2018)
[255]Transcript of Proceedings day 12 at 41, Boyes v. State, Nev. App. Unpub. LEXIS 786 (2019).

behaved is not relevant to her being murdered, but they are important details nonetheless for the way that they humanize the name before the jurors. This is especially important considering that the victim is unable to appear in court and show personality in any form.

The defense used random traits to humanize individuals as well. Instead of humanizing a victim, the defense attorneys tended to use random details to breathe life into their defendants. Unlike the prosecution, the defense team does not work to increase sadness of a loss, but instead attempts to humanize to promote relatability and therefore sympathy for them. This is also consistent with what attorneys claimed in their interviews. Defense attorneys noted that sympathy could be a useful tool in making the defendant seem like an everyday person, and less like a hardened criminal who should be easy to put away.[256] For instance, one defense attorney noted that, "a lot of my job is to really remind the jury that, first and foremost, my client is a human, my client is a real person, and that they need to look beyond the basic emotions they might experience based on the allegations."[257] Some attorneys, on the other hand, noted that their clients are rarely sympathetic.[258]

Either way, content analysis of the trial transcripts showed some attempts to increase relatability to clients through small character details that seemed to legitimize their humanhood; Like appeals by the prosecution, defense attorneys utilized the small detail approach in both opening and closing statements.

In opening statements, attorneys tended to use this approach to counter any notions that their defendant may be a terrible person. They included seemingly unimportant details about their client in order to make them seem like they were truly good people who either made a mistake or would never do anything as horrible as committing a murder.

[256] Attorney 1, interview; Attorney 4, interview.
[257] Attorney 4, interview.
[258] Attorney 2, interview.

Perhaps the most striking example of this strategy comes in the case of Michael Jeffries. To begin the argument, the defense attorney presents the defendant as a normal guy who lives with his girlfriend, who he's engaged to, and does "contract work for an auto body shop" to make a living.[259] The attorney also mentions that he was born in Las Vegas and lived there for his entire life.[260] Immediately, this presents the defendant as a productive member of society and a relatable man. The attorney continues to humanize Jeffries in order to attract sympathy as he begins describing the situation that prompted the crime as well. He uses his apparent good nature to justify why certain events happened:

> [the victim] starts getting out of control. He starts to scream, Why didn't you have my back? And in the back of Mike's mind, it's not just him in that house. Mandy [his fiancee] is at home… The 13-year-old, Mandy's daughter Brittany, is at home. Mandy's two-year-old niece is sleeping in the home. And so Mike needs to get Eric [the victim] out of the house.[261]

The attorney accordingly frames the defendant as a seemingly normal guy, who just wants to protect his family from an imminent threat. This focus on the sympathetic people the defendant must protect shows how caring he is and rationalizes the actions that the prosecution is going to argue were irrational. The defense attorney, near the end of his statement, continued with this line of argumentation. He discusses how, when he was talking to the police shortly after the crime, the defendant asked numerous times whether his "friend" (the victim) was okay.[262] This detail further shows that the defendant is a caring person, who deserves juror sympathy. Lastly, the attorney notes that the defendant did not lie to police about what happened when asked, he "does not try to make any lame excuses. He says, from the beginning what happened, He doesn't

[259] Transcript of Proceedings day at 10, Jeffries v. State, 133 Nev. 331 (2017).
[260] Ibid.
[261] Ibid., 14.
[262] Ibid., 17.

try to minimize it."[263] This excerpt further speaks to the honorable character of the defendant, making him more respectable and easier to see as human.

Another way that defense attorneys use character details to humanize a defendant, as was seen perhaps to a lesser extent in the Jeffries case, is through discussion about treatment of sympathetic people in order to establish an image of character. Unlike attracting sympathy for sympathetic people loosely involved in the crime, like in the argument about children above, this form of sympathy stemmed from sharing seemingly irrelevant details about a defendant's treatment of others. This was a pattern in closing statements. This technique made a defendant appear as a nice person who would never hurt a soul. The case of Mario Camacho serves as a powerful example. In the closing argument, the defense attorney paints the defendant as a type of savior in a twisted way, as he stoped a rape from happening and released a victim from a cage, both acts that were, according to Camacho's attorney, the responsibility of his co-defendant. The attorney says:

> And that is not a strange act when someone tries to stop a rape. When Mario steps between Barbara and… Robinson [the codefendant], it's not a strange thing for him to stop a rape. It's not a strange thing to assist Frankie, get him out of the cage… it was Mario Camacho that got Frankie out of that cage.[264]

He then continues to ask rhetorical questions to further emphasize the rationality and relatability of Camacho's actions while further painting him as a hero of the situation.

> Is it a strange thing to let an eyewitness to a murder leave? Is it a strange thing to make sure that she gets her phone? Is it a strange thing to try and protect her when she gets into a car with someone who's behaving kind of erratically and even putting [someone else] in there to say, make sure she doesn't get hurt. Those aren't strange things. That's a chain of evidence… to show that--that this was not a conspiracy…The--the final circumstance that is--is not a strange thing in the colloquy of the State is that … was that Mario Camacho

[263] Ibid., 17.
[264] Transcript of Proceedings day 8 at 62, Camacho v. State, Nev. Unpub. LEXIS 314 (2019).

> immediately… called 911 and brought the police and the first responders and saved another life.[265]

Discussing the apparent humanitarian and nice things that the defendant did to "save" a victim and care for other people in sympathetic positions shows that he is a rational person that the jury can relate to, assuming they would all help someone in need. This aligns with the scholarship that found that humans feel sympathetic for people who act as expected.

I.c. Conclusion

Consistent with the trends thus far, the prosecution used identitarian sympathetic appeals more frequently than defense attorneys.

Table 1.c Total Identitarian appeals in Argumentation

	Opening Statements (absolute #/percent)	Closing Statements (absolute #/percent)	Rebuttal Argument (absolute #/percent)
Prosecution	37 / 68.5%	28 / 59.6%	6/ 100%
Defense	17 / 31.5%	19 / 40.4%	n/a

This imbalance is a consequence of how the prosecution made more appeals to sympathy through referencing children than the defense. Arguably, the prosecution has more sympathetic people to draw from, as their witnesses are arguably more likely to have undergone some type of traumatic experience as a consequence of the crime than those of the defense.

[265] Ibid., 63.

Interestingly, defense attorneys appealed more to character details than prosecution attorneys did. When putting this data into conversation with attorney interviews, this begins to make sense. One defense attorney stated that the job of the defense attorney, in argumentation, is to blunt the emotional appeals of the State attorney, who attempts to demonize the client.[266] Defendants enter trial at an automatically unsympathetic status.[267] The defense attorney, therefore, is tasked with humanizing the defendant against an already negative image that has most likely been established by the State attorney in his or her argument. One way of doing this is by referencing character details. The defense attorney must need to do this more so than a State attorney as a State attorney would be using this approach to humanize their victim, who is already in a sympathetic position.

[266] Attorney 4, interview.
[267] Attorney 2, interview. Attorney 4, interview.

II. Situational Sympathy

There are three ways that attorneys attempt to trigger situational sympathy. The first appears to be primarily a tool of the prosecution, and it involves telling a story from the point of view of a sympathetic person in order to garner sympathy for the situation they were/have been placed in. The second way has two components. It involves portrayal and/or emphasis of a party as a victim, which the defense does through victim framing and the prosecution accomplishes by stressing the damage a party has experienced as a result of the defendant's actions. The last tool, also one used by the prosecution, is innocence framing, which refers to how the prosecution may present the victim as an innocent party who did not deserve the cruel actions of a defendant to trigger sympathy.

II. a.Presentation from the Point of View of a Sympathetic Person

The prosecution often tells a story through a focus on a sympathetic character involved in the crime. This narrative could be in relation to a victim or a witness with an already sympathetic identity, or anyone who is placed in a sympathetic situation. This is a tool of prosecution attorneys, who aim to tell the story of a tragic event in order to appeal to sympathy. Attorneys do this in opening and closing statements.

Table II.a Instances of Attorneys speaking from the Point of View of a Sympathetic person in Argumentation

	Opening Statements (absolute #/percent)	Closing Statements (absolute #/percent)	Rebuttal Argument (absolute #/percent)
Prosecution	6 / 100%	7 / 100%	2 / 100%
Defense	0	0	n/a

In the opening statement, the clearest example of this tactic comes from the case of Bryan Clay, whereby the attorney begins her statement from the point of view of a nine-year-old boy, who was the brother and son of the two victims in the case.

> On April the 16th of 2012, nine-year-old Christopher Martinez walked himself to school. He lived down the street from the school in a home where he lived with his mother, father, older sister and younger brother. When Christopher arrived at school, he actually got there before the starting bell and so he talked to his friends. But then the bell rang and he got in line. When he got in line his teacher noticed that he appeared to be crying. She asked him what was wrong and he reported to his teacher, his fourth grade teach, my mom and sister were murdered.[268]

The jury, hearing this sad story, would arguably feel immensely sorry for the little boy who acted like life was normal while his father was critically injured and his mom and sister lay dead at home. Later, the attorney reveals more facts about the case through the point of view of the same child witness, citing his interview with homicide detectives to do so:

> He tells them I've been living at this house with my, you know, mom and dad, my older sister and my little brother. My sister does gymnastics…My dad is an electrician, but he also is really into boxing and he owns a boxing gym. In fact, Christopher at that time was a fan of boxing. And he explains to the homicide detectives that on Saturday the 14th that he and his family, his mom, dad, sister, brother and him went over to a friend's house to watch a fight, a boxing match. …Christopher explained to the homicide detectives the next morning I woke up and I saw my dad and he had holes in his head and he was

[268] Transcript of Proceedings day 6 at 20-21, Clay v. State, Nev. Unpub. LEXIS 1378 (2019).

> bloody and he was stumbling around. I saw my mom had been murdered and I saw my sister -- I went to go tell her and I saw she had been murdered as well.[269]

The attorney goes so far as to give this story in the first person perspective, speaking in short sentences and giving random details as one may expect a nine-year-old to do. The jury is already more inclined to feel sympathy for the person who experienced this situation because he is a child. Those feelings are amplified when noting the absolutely tragic situation the child was placed in. As an outsider, hearing an already tragic story from a child's perspective becomes exponentially more emotionally provoking. The jury has no choice but to feel sympathy for the child on account of the situation he was placed in by the defendant. This obviously would create bias towards the State.

While the case above addresses a crime from the perception of a sympathetic child, this technique can still be utilized even when the person the attorney speaks from does not have an automatically sympathetic identity. Take, for instance, the example of the closing statement in the case of Rene Harris. The victim in this case is a male family member of the defendant. The victim himself is arguably not an automatically sympathetic person who the jury is more likely to feel for outside of the context of this crime. However, as he becomes the victim of a shooting, he clearly gains the potential for sympathetic treatment. Accordingly, the State attorney speaks from his point of view when describing the unbelievability of the situation, stating, "I just got shot. My brother did it. My brother just shot me, my little brother, Rene Harris."[270] Speaking from the point of view of the victim, regardless of their identity, is a useful strategy as it subtly places the jury in the shoes of the person who was wronged. It accordingly can increase sympathy by forcing the jurors to think about what it would be like to be a victim, urging decision making based off of the emotions they would feel in said situation.

[269] Ibid., 24-25.
[270] Transcript of Proceedings day 20 at pg, Harris v. State, Nev. App. Unpub. LEXIS 237 (2021).

II.b. Victimization and Damages

The prosecution and defense attorneys both emphasized victimization in an attempt to attract sympathy for their respective parties. State attorneys did this through exacerbating damage done to a victim and the injuries that he or she incurred. Defense attorneys did this through framing of the defendant as a victim to explain their actions.

*Table 2.b Attempts to Emphasize Damage or Victimization in Attorney Argumentation**

	Opening Statements (absolute #/percent)	Closing Statements (absolute #/percent)	Rebuttal Argument (absolute #/percent)
Prosecution	11 / 42.3%	20 / 43.5%	3 / 100%
Defense	15 / 57.7%	26 / 56.5%	n/a

*note that the values in this table are not the same values as in the table about graphic detail in the anger section as some graphic details differ in the emotion they are attempting to provoke depending on context

II. b. 1. Exacerbating Damages and Injuries Through Use of Graphic Details

Another way that attorneys tended to cultivate sympathy was through use of graphic imagery. While I did discuss the importance of focusing on disturbing aspects of a case in relation to appeals to anger, this technique was also used in attempts to appeal to sympathy as well. As I argued previously, emotions are porous, and appeals to one emotion may simultaneously trigger other emotions as well. Anyhow, focusing on graphic details of a crime

does not only create anger about injustice, but it also may be used to cultivate sympathy for the situation that a person experienced. This is, of course, a tool of the prosecution, as State attorneys strive to appeal to sympathy about the circumstances a victim endured prior to death. Exacerbating the damages that the defendant allegedly caused cultivates sympathy for the victims, and in turn leads jurors to feel more negatively about the defendant and more likely to right the injustice in order to alleviate the suffering and the damages endured. Conviction becomes a way for the jurors to relive the victims of some of their suffering.

Attorneys exacerbated damages through use of graphic details in both opening and closing statements. These descriptions of the injuries incurred were obviously important in both opening and closing arguments, but the clearest examples of this technique come from closing arguments. The most glaring example of this approach occurred in the closing statement in the case of Amadeo Sanchez, whereby, from early in the statement, the attorney describes the dismal state that the victim was in when first responders found him. The victim could not stand up, was slipping in his own blood, had blood on his arms, torso, clothing, and all over the floor. He couldn't breathe and clearly needed help.[271] The attorney repeats these conditions further in his statement, emphasizing where the blood was and how he was moaning and groaning and was unable to talk.[272] The most graphic part of this argument came when describing what happened when doctors tried to save the victim at the hospital. The attorney says:

> There were heroic measures taken in order to try to attempt to save Danny Lee Carter. And you could see those on the screen. You could hear that from Officer Blount who told you, "I was in the room when they had to cut him open to try to save his life and that blood poured out of him." An enormous amount of blood is what he said. That even one of the ER doctors had to jump back because he was bleeding internally. His chest had

[271] Transcript of Proceedings day 6 at 11, Sanchez v. State, Nev. Unpub. LEXIS 913 (2016).
[272] Ibid., 13.

> filled with blood. And that's where he was pronounced dead. That a doctor even tried to put his hands inside him to keep him alive and wasn't able to.[273]

This vivid description of the fatal injuries the victim sustained is enough to emotionally trigger any person. Hearing the state that the victim was in, and emotionally triggering discussion about his injuries through use of charged words like blood accordingly elicits sympathetic feelings from the jury. Jurors should feel bad that the victim endured such terrible circumstances that led to his death, and accordingly feel the need to remedy the tragedy in the only way they possibly could- condemn the person who caused this suffering.

Not only do attorneys use verbal cues to suggest images to jurors, but attorneys also may directly tell the jury to study the injuries of the victims, whether through their mindeye or through photographic evidence. For example, in the case of Leroy McCoy,

> you to really take a look at this picture when you get it, you know, look at it closely. Having your finger nearly cut off. She had two separate surgeries, and she still has no feeling in that -- in that finger. That's prolonged physical pain. So that's not just a simple battery. That's a battery with substantial bodily harm. She wasn't just slapped in the face, she wasn't just punched. She was cut to the point where she can no longer bend or feel anything in that finger. And you're going to receive the medical records. They were admitted into evidence, and I encourage you to look through those. And you can see the procedures that were done and everything that was done while she was in the hospital.[274]

In this excerpt, the State attorney encourages the jury to study all of the victim's injuries that she suffered as a result of the defendant's attacks. The attorney stresses the extent of the victims injuries in the moment and emphasizes the brutality of what the defendant did. Furthermore, the attorney also discusses how the injuries that the victim sustained still have an impact on her life in the present day. This prolonged physical pain that the attorney mentions still exists, and the jury should feel sympathetic for the suffering that the victim not only previously endured, but

[273] Ibid., 18.
[274] Transcript of Proceedings day 3 at 17, McCoy v. State, Nev. App. Unpub. LEXIS 923 (2019).

also that she continues to endure to this day. This victim is alive and still has to deal with the aftermath of the crime today, which is not the case in many of the crimes discussed. However, the damage done to people involved in the crime is not only limited to victims in attorney arguments. Attorneys may also discuss the damages done to witnesses who underwent extreme emotional trauma.

Both surviving victims and witnesses, being present in the courtroom and interacting with the jury, are highly sympathetic as the jury can hear from them how they are still suffering to this day, and implicitly need their help to alleviate some of that suffering. These damages are not just limited to physical suffering, but attorneys also may discuss damages regarding mental or emotional injuries. Take the example of a witness in the case of Amadeo Sanchez, in which the attorney says:

> Kristin [a State witness] was a mess. She was extremely distraught over what she had seen, crying, hyperventilating, shaking, couldn't make words, blurting out little pieces of the story as you heard on the 911 call, barely able to keep it together, and, as you heard frequently, vomiting with her extreme trauma as she told you that she had just seen and what she had been through.[275]

This graphic suffering that the witness experienced, as well as the implied lasting mental trauma of the event that must still impact her, is reason for the jury to feel sympathetic. The attorney mentions this unbearable situation, in which the defendant put the witness in order to cultivate positive feelings for her witness while also triggering negative emotions towards the defendant. The jury may want to compensate the witness for her suffering, and feel bad that she went through such a situation in the first place.

II. b. 2. Defendant Victimization

[275] Transcript of Proceedings day 6 at 12-13, Sanchez v. State, Nev. Unpub. LEXIS 913 (2016).

Similar to the prosecution, defense attorneys may also focus on the poor victim who was allegedly injured, but they obviously do so to achieve a distinct result. Instead of discussing the suffering of the alleged victim or a witness, a defense attorney may focus on how the defendant has been made a victim in order to appeal to jury sympathy. Attorneys accordingly may work to trigger sympathy for the defendant, and suggest that an outsider should feel sorry for them, and not just see them as a human equal.

Framing the defendant as a victim was a pattern in both opening and closing statements. In opening statements, this framing technique was especially a pattern in cases whereby the attorney was attempting to place the blame of the crime on another party, or whereby the defendant emotionally suffered because of the crime. This suggests that the accused defendant never intended for the crime to happen in the first place, while also cultivating sympathy for the defendant for the situation that they are currently in. In these instances, the jury has the ability to alleviate the defendant's suffering by acquitting him or her. The attorney can paint the defendant as a victim of multiple things: a co-defendant or outside threat, the system in general, and even the victim.

In cases which involved a co-defendant, it was not unusual for a defense attorney to argue that the defendant was, in reality, a victim of the codefendant and not the perpetrator of the crime in which they are accused. Take, for instance, the case of Ivonne Cabrera, the only case in the data set which involves a female defendant. Perhaps this approach is taken because she is a woman, and therefore more susceptible to sympathetic treatment. Regardless, the attorney frames the crime in which she is accused as being involuntary due to the force of her conspirator. The attorney argues in opening statement that:

> It [the crime] happened because this brutal man, with these violent tendencies, who had the heart to take the life of these two innocent men, was pointing that gun directly at

> Ivonne Cabrera and dictating what she did. After the shooting, they left. He took Ivonne and kidnapped her. He stole her away for over a day. For over a day, she thought that she was going to be killed, she thought that she was the next one…she knew that she was the next one that was going to go down. She was terrified. She was scared, and she didn't know how to handle it or what to do.[276]

The attorney wants the jury to feel sorry that the defendant was clearly victimized by another person who forced her to do what she did. The attorney wants the jury to realize that the crime was not the fault of the defendant, who was manipulated at gunpoint, and feel bad that that happened to her and she is being blamed and punished for something that was out of her control. Accordingly, the jury should remedy the situation and right the wrongs already committed, implicitly, by finding the defendant not guilty.

In the case of David Burns, who was only 18 at the time of the crime, the attorney likewise attempts to separate the defendant from the crime in question in the opening statement. The attorney points out how all the other alleged conspirators in this crime are older than David Burns.[277] Being only eighteen-years-old at the time of the crime, Burns was, according to this attorney, an easy person to "give up" as the fall man for the crime.[278] The defendant accordingly becomes the victim of wrongful blame from the people who truly committed the crime. The jury should feel sorry that this poor young man is in such a terrible situation, and therefore feel an urge to fix the wrongdoing out of sympathy.

Another theme that emerged in the argumentation was victimization of defendants on account of the system. This occurred through the suggestions of unfair treatment by the system, as discussed in the chapter on anger, and also sympathy for the way that defendants were treated by police. Like discussed in relation to anger, defendants may be painted and mistreated by

[276] Transcript of Proceedings day 1 at 51-2, Cabrera v. State, 454 P.3d 722 (2019).
[277] Transcript of Proceedings day 6 at 27, Burns v. State, 495 P.3d 1091 (2021).
[278] Ibid.

authorities to cultivate emotional reactions. I argue that discussions of unjust police treatment likewise aim to trigger sympathy towards an abused defendant in order to frame them as a victim of sorts. This is very evident in their closing statement in the case of David Burns. When Burns expressed to the police that he believed that he had mental deficiencies (notably another status for which people tend to feel sympathetic), the police did not respond kindly.[279] The attorney mentions that, in fact, in the course of the interview that the police conducted with Burns after he was arrested, they asked him "are you retarded? You're a mother fucker. You're a jackass. You're a twisted person. Are you autistic? Cut the shit."[280] Using the words of the police officers that clearly undermine the defendant personally have sympathetic connotations. These loaded attacks on the mental ability of the defendant are clearly problematic and may draw a juror to sympathy for the way that the defendant was mistreated.

The final person that an attorney may frame a defendant as the victim of is, surprisingly, the alleged victim in the case. This argument was mainly articulated in closing arguments, but also appeared in one opening statement. These arguments cultivate sympathy for the defendant in an attempt to justify the crime that occurred. By painting the defendant as a victim as the person they injured, the jury may feel sympathetic for the fact that they were victimized, but that they are also now involved in the legal system after doing nothing wrong.

Unsurprisingly, this argument was common in, but not exclusively limited to, cases with self-defense arguments. An example whereby the defendant was portrayed as a victim of the alleged victim in a self defense argument comes in the case of Michael Jeffries.

> The State cautions you that, you know, just because he sounds upset and sad in that-- in that conversation [the 911 call], you shouldn't extend sympathy to Mike Jeffries and not find him guilty because you feel sorry for him or you feel sympathy for him… but its relevant for a whole lot of other reasons than just exciting sympathy for Mike Jeffries. I

[279] Transcript of Proceedings day 15 at 25, Burns v. State, 495 P.3d 1091 (2021).
[280] Ibid.

> don't want you to feel sympathy for Mike Jeffries. Mike Jeffries was just protecting his home. But when you listened to that 911 call, you listened to him sobbing. You listened to him begging for medical attention for his friend. He's not faking that.[281]

First, as is consistent in many of these trials, the attorney cautions the jury NOT to feel sympathy for the defendant. However, as I discussed in relation to anger in Chapter Three, suggesting an emotion at all implicitly plants it as a possibility in the minds of the jurors. By telling jurors not to feel sympathy, the attorney is implicitly suggesting that they MAY feel sympathy for the defendant. This excerpt is also important in the way it portrays the sadness of the defendant's situation whereby he had no choice but to take the life of his best friend. Jeffries was victimized so severely he had to do the unthinkable, and is being punished for it. His remorse and sobbing is clearly evidence that he didn't want to kill his friend and felt awful for doing what he had no choice but to do. He was so severely threatened that he was drawn to the extreme measure of reluctantly killing his best friend.

Attorneys may use defendant victimization as justification for a crime outside of an explicit self defense argument as well. For example, in the case of Dontay Sevier, the defense attorney does not explicitly claim that he is making a self defense argument, yet raises the fact that the defendant was victimized by the alleged victim. The defendant in this case was involved in a fight with the victim before he murdered him. The victim knocked out the defendant in an alleyway before the defendant returned to kill the victim. The attorney argued that the defendant acted "out of passion from a highly-provoking injury" when he shot the victim.[282] Shortly after in the statement, the attorney says

> A blow sufficient to knock Mr. Sevier unconscious. He didn't manifest any of this malice aforethought in that state. He was injured, he responded rationally, impulsively.· He didn't act it out in a cool considered manner. There's no indication he did this out of hatred or

[281] Transcript of Proceedings day 4 at 130-131, Jeffries v. State, 133 Nev. 331 (2017)
[282] Transcript of Proceedings day 5 at 67, Sevier v. State, Nev. Unpub. LEXIS 283 (2019).

> revenge, okay?· He was hurt, disoriented, perhaps even a little afraid because it didn't end until it ended, all right?[283]

The attorney, in this excerpt, points out that the victim did not bring this treatment upon himself in order to emphasize the innocence of the defendant. He also uses the fact that the defendant was injured to remove any blame from him, as he was the victim in the situation. The jury, the attorney argues, should accordingly reduce the degree of murder that they charge the defendant with.

II. c. Framing of an Innocent Victim

Attorneys may also heighten sympathy for a victim through innocence framing. In this approach, an attorney frames a victim as a pure, innocent person in order to increase juror sympathy towards them and their death. Jurors are compelled to feel bad that a victim got so wronged when they did nothing wrong, leading them to want to fix the injustice of the situation. The focus on innocence amplifies the perceived unfairness and sadness of the situation.

Table 2.c Instances of Victim Innocence framing in Attorney Argumentation

	Opening Statements (absolute #/percent)	Closing Statements (absolute #/percent)	Rebuttal Argument (absolute #/percent)
Prosecution	4 / 80%	8 / 100%	2 / 100%
Defense	1* / 20%	n/a	n/a

*This case is an outlier in the way that the defense's argument is dependent on shifting blame away from the accused defendant to a conspirator. See *State v. Ivonne Cabrera*.

[283] Ibid., 72.

Obviously, this is a tool of the prosecution. This approach was mainly a tool used in closing statements. Interestingly, it was used in the opening statement in the case of Ivonne Cabrera, the lone transcript that involved a female defendant. In this case, the attorney was sure to point out the bias that the jury may have had against the victims, because they were involved in a life of drugs. He says:

> [the victims] were not living the type of life that you would want your children, your friends, your family members to live. They're all involved in use of narcotics and they're all doing things that they shouldn't be doing in our Community. But, on April 26th, 2012, at a little before 6 o'clock in the morning, they are truly the purest of victims. They are people who are home, asleep, within a locked apartment when they are executed by Jose Gonzales and Ivonne Cabrera.[284]

The attorney clearly points out the innocence of these people, going so far as to call them "pure" in his argumentation. He recognizes that they, objectively, may not be considered innocent in the eyes of most people for the lifestyle they lived, but goes on in an attempt to correct these preconceived notions by pointing out their innocence in the point in time in which they were murdered. Their purity and innocence makes the situation of their murder that much more sympathetic, and the jury should feel sorry that innocent lives were taken, and accordingly be pushed to action.

Consistent with my interviews and previous scholarship, closing statements were more emotional in this area as well. There were appeals to sympathy in this form in both closing and rebuttal arguments. In these statements, attorneys also pointed out how their victims may not have been the perfect people objectively, but nonetheless deserve juror sympathy. In the case of Emone James, the State attorney mentions that the jury has not heard much about what the victim "brought to this world," as the defense focused on the defendant's drug use and sale, but

[284] Transcript of Proceedings day 1 at 36, Cabrera v. State, 454 P.3d 722 (2019).

continues to remind them that, “this man's life meant something. He didn't deserve what happened to him… he didn't deserve to be shot down dead for absolutely no reason and without being given a chance to fight back or anything.”[285] The helplessness of the victim, who had no chance to fight back, contributes to feelings of sympathy. The jury effectively should view the victim as innocent and incapable of protecting himself, which should demonize the defendant in return.

On a similar note, an attorney may also recognize defense attorneys' attempts to victimize a defendant and respond through proclaiming the innocence of a victim. For instance, in the case of Steven Turner, the prosecution attorney clearly points to this defense tactic in his rebuttal argument. He claims:

> Make no mistake, ladies and gentlemen: There are two victims in this room. They're sure as hell not those guys [the defendants]. It's those guys. Those men went there that day to do their jobs like they're supposed to, like they're trained to do. They did their jobs like they're trained to do. And these two opened fire.[286]

Notably, this case involved police officer victims, who already are easy to sympathize with due to their position in society. The State attorney highlights the responsibility of the officers and emphasizes how they were doing as they were supposed to yet were still wrongfully victimized. This frames the crime as a tragedy as the defendants opened fire on police officers when they were simply and innocently just trying to do their jobs.

II. e. Conclusion

Once more, across the board, the prosecution appealed to situational sympathy more so than the defense.

[285] Transcript of Proceedings day 7 at 36, James v. State, Nev. Unpub. LEXIS 488 (2018).
[286] Transcript of Proceedings day 9 at 110, Turner v. State, 473 P.3d 438 (2020).

Table 2.d Total Situational Appeals in Opening and Closing Statements

	Opening Statements (absolute #/percent)	Closing Statements (absolute #/percent)	Rebuttal Argument (absolute #/percent)
Prosecution	19 / 54.3%	39 / 58.2%	7 / 100%
Defense	16 / 45.7%	28 / 41.8%	n/a

Indeed, there is no evidence that the defense engaged in two of the three techniques discussed above. In the only category that contained data for both the defense and prosecution, appeals to sympathy by the defense far outnumbered those made by the prosecution. This was in the area of victimization. This finding is unsurprising when considering how defense attorneys may have a more urgent need to frame their clients as victims than do prosecutors. Prosecutors enter court under the notion that someone has been victimized. They automatically have a victim who is sympathetic whom they are defending. It makes sense that defense attorneys attempt to victimize their clients more, as the high number of appeals may correspond to the difficult job of portraying an anti-sympathetic person as a victim.

III. Conclusion

Table 3.a Total appeals to Sympathy in Argumentation

	Identitarian Opening (absolute #/percent)	Identitarian Closing (absolute #/percent)	Identitarian Rebuttal (absolute #/percent)	Situational Opening (absolute #/percent)	Situational Closing (absolute #/percent)	Situational Rebuttal (absolute #/percent)
Prosecution	37 / 68.5%	28 / 59.6%	6/ 100%	19 / 54.3%	39 / 58.2%	7 / 100%
Defense	17 / 31.5%	19 / 40.4%	n/a	16 / 45.7%	28 / 41.8%	n/a

Overall, it is clearly evident that appeals to sympathy are used more by the prosecution than by the defense. This finding makes sense considering that the prosecution aims to often represent the side of a victim, who is, by default, already sympathetic as the alleged victim. One attorney noted, speaking from when they were a prosecutor in the past, "I was always much more emotional [as a prosecutor] and I definitely tried to play on the sympathy of the jury because we have the harm that was done, we have the ones who are the victims."[287] In other words, State attorneys already have easily accessible sympathy when entering a case. However, it is worth noting that attorneys may appeal to these emotions without even realizing it. Of the two people who worked as prosecution attorneys that I interviewed, only one explicitly noted that the prosecution appeals to emotions at all.[288] The attorney who mentioned this used to work as a prosecution attorney and now works in criminal defense.[289] The other prosecution attorney up front said bluntly that, "I do not use emotional appeals as a prosecutor,"[290] and followed up by

[287] Attorney 2, interview
[288] Attorney 2, interview; Attorney 3, interview.
[289] Attorney 2, interview.
[290] Attorney 3, interview.

saying that they do ask a jury *not* to feel sympathy or anger towards an actor in court. While it would seem such a statement would be evidence of avoiding emotion in explicit terms, as mentioned previously, merely mentioning these emotions can theoretically plant them in the jury, meaning that the attorney is appealing to emotions without realizing it. This attorney also mentioned that they save emotional appeals for the sentencing phase of trial, once more noting that they do in fact, use emotional appeals and find it acceptable to do so.[291] Ultimately prosecutors can appeal to the sadness of the situation that brought them to court. They also have a more sympathetic group of people to draw from when presenting their case. They oftentimes not only have a victim to discuss, but may have witnesses that were negatively impacted by the crime in question who testify on their side.

Defense attorneys, on the other hand, must dig deeper to reframe the image that the prosecution provides in their argumentation to cultivate sympathy, as indicated in attorney interviews.[292] The prosecution speaks first and establishes a sympathetic story of a crime that the defense attorney must respond to and effectively fight against. One defense attorney even expressly acknowledged the need to do this through humanization, suggesting that one way that they appealed to the jury in their statements was by implicitly messaging to the jury that the defendant could be a familiar person.[293] They said, "if you're working on a criminal defense side of things, you want to *paint a picture* for the jury that this person sitting next to me [the defendant] could be you, or this person sitting next to me could be your daughter or son."[294] The fact that defense attorneys may have a more difficult time cultivating sympathy for their clients may explain why the defense victimizes and uses character details more frequently than the

[291] Attorney 3, interview.
[292] Attorney 4, interview.
[293] Attorney 1, interview.
[294] Ibid.

prosecution. Defendants enter trial at an automatically unsympathetic status, according to one defense attorney interviewed.[295] This means that their attorney, therefore, is tasked with humanizing them against an already negative image presented by the State. One defense attorney stated that the job of the defense attorney, in argumentation, is to blunt the emotional appeals of the State attorney, who attempts to demonize the client in their argumentation.[296] This attorney noted, "so as the defense, more than often I think, we tend to be trying to blunt the emotional appeal of whatever the State is trying to do…. So if the State is often, like, demonizing our client, or going on and on and inviting the jurors to recognize how… terrible or awful our client's alleged actions were, part of the defense's job is to figure out how to address that."[297] The higher number of appeals in this area perhaps hints to more repetition and consistent attempts to do this since it is more difficult. Ultimately, the only technique that was used by both teams and showed more appeals from the prosecution was identitarian sympathy related to children who may have been involved.

As for demographic trends across transcripts, many of the predictions held true. For instance, attorneys did appeal to sympathy more in cases with juvenile victims than in cases with adult victims. However, for adult victims, there did not appear to be any discrepancy in appeals to sympathy dependent on race or gender. This was not the case for witnesses or defendants, however. Attorneys utilized more appeals to sympathy in cases that involved witnesses who were women or children than men. Appeals relating to defendants are likewise not uniform across demographics. Recognizing that my dataset only involved one case with a female defendant, it is difficult to establish trends in this area. Every attorney I spoke with noted that emotional appeals are very case specific, which makes it difficult to apply the trends of one case to cases with

[295] Attorney 4, interview.
[296] Attorney 4, interview.
[297] ibid.

female defendants as a whole. However, in this singular case, there were more appeals to sympathy, especially in the form of defendant victimization, than in any of the cases with male defendants. This could be only case specific but it is nonetheless worth noting. In a similar manner, sympathetic appeals were also used in regards to the race of defendants in two cases, though it is once more difficult to rule on if these patterns were due to case facts or to minority racial status. In the end, appeals are largely case and fact specific, and the dataset I have obtained, having almost entirely male defendants of color, makes it difficult to observe and definitively rule on trends.

Conclusion

"I think that [emotional appeals] are appropriate and necessary. I think if you're not appealing to your jurors' emotions as a lawyer you're probably doing something wrong."[298]

Attorneys undoubtedly appeal to emotions in criminal litigation. This thesis has made these emotional appeals evident through both content analysis and attorney interviews. Using such an appeal follows from the logic that jurors, as feeling-thinking people, use emotions in the process of making decisions. There is a plethora of evidence that suggests that attorneys strategically attempt to trigger anger and sympathy, and arguably even more emotions during their argumentation. This thesis has focused on the specific techniques that attorneys use in their attempts to cultivate emotional decision making from jurors.

These emotional appeals interestingly appear to stem from inferred feelings that jurors already possess. In interviews, defense attorneys mentioned playing off of a general distrust and fear of government during argumentation. This claim was consistent with what was shown in content analysis, as defense attorneys triggered anger in relation to police, investigators, State attorneys, and governmental powers in general. Attorneys also rely on an assumption that jurors have expectations about how the justice system should function, which is why they attempt to trigger anger by pointing out things that challenge moral values of justice. The very technique of sarcasm relies on the ability of the juror to know that the answer is not what the attorney is actually suggesting. Attorneys need to assume the jurors have the values to hear what they are saying as utterly ridiculous. While triggers towards anger are reliant on violating morals that attorneys assume jurors to possess, this is not the only place where these assumptions are

[298] Attorney 3, Interview.

relevant. In fact, attorneys make these same assumptions with regard to sympathy. The emotion of sympathy is based on an inherent value for life, and that people who see others being harmed will feel sorry for them. Techniques rely on jurors having values that reflect respect of others. Triggering emotions is ultimately all about challenging or playing into prior notions that jurors have upon entering the courtroom.

The tools that attorneys use are clearly dependent on their task at hand. Considering that prosecution and defense attorneys have opposite jobs, it follows that there are some strategies that only prosecution attorneys use, and there are some strategies that only defense attorneys use. Only State counsel attempts to appeal to anger through graphic details, and intent framing, add to sympathy through speaking from the point of view of a sympathetic person, and victim innocence framing. Only defense attorneys emphasize the irresponsibility of State agents in order to cultivate anger.

However, there are some strategies that both slides use, regardless of the fact that the two teams have opposing roles in a trial. Both the prosecution and the defense use repetition, sarcasm, and lying accusations, references to sympathetic parties and character details, and both frame identities. Some of the techniques were used the same way by both sides. Attorneys for both sides accused the other side of lying. Some of these common techniques rely on values directed towards a common enemy: the justice system as a whole.

Interestingly, attorney interviews revealed a tendency of attorneys to deny their own usage of emotional appeals, or shift the focus of their own usage to the usage of the other side. While defense attorneys often admitted that they did strategically appeal to emotions, many claimed that the prosecution used far more strategic appeals than they did. While one prosecution attorney, who now works in defense, admitted that this was true, the other prosecution attorney

denied the use of emotional attempts entirely. Yet, there are a substantial number, 293 to be exact, of examples in my data set of prosecution attorneys' attempts to appeal to anger in the eighteen trial transcripts.

Table 5.a Total number of Emotional Appeals in Attorney Argumentation

	Opening Statements (absolute #/percent)	Closing Statements (absolute #/percent)	Rebuttal Argument (absolute #/percent)	Totals
Prosecution	86 / 56.2%	168 / 53.2%	39 / 100%	293
Defense	67 / 43.8%	148 / 46.8%	n/a	153

Through content analysis of opening and closing remarks, I uncovered the possibility that defense attorneys may be wrong in their reported use of emotional appeals as well. While content analysis did reflect that the prosecution does appeal to sympathy more than the defense does, both sides use emotional appeals nearly equally when attempting to trigger anger. For some emotions, it is not the case that the prosecution uses more appeals than the defense team.

Table 5.b Total number of Appeals to Anger in Attorney Argumentation

	Opening Statements (absolute #/percent)	Closing Statements (absolute #/percent)	Rebuttal Argument (absolute #/percent)	Totals
Prosecution	30 / 46.9%	101 / 50%	26 / 100%	157

Defense	34 / 52.1%	101 / 50%	n/a	135

Table 5.c Total number of Appeals to Sympathy in Attorney Argumentation

	Opening Statements (absolute #/percent)	Closing Statements (absolute #/percent)	Rebuttal Argument (absolute #/percent)	Totals
Prosecution	56 / 62.9%	67 / 58.8%	13 / 100%	136
Defense	33 / 37.1%	47 / 41.2%	n/a	80

The prosecution is set in an already sympathetic position upon entering the court, so this aligns with the data. However, neither side, in an average trial, is automatically positioned in an anger proving situation any more than the other, which is also reflected in the data.

It is also worthy to note that the total prosecution counts are much higher than the defense in the appeals to sympathy because they use more appeals independently than what defense uses. Defense only has one strategy of emotional appeal that the prosecution does not also use, whereas the prosecution uses four techniques that defense attorneys do not use. It is also notable that the prosecution makes two closing arguments. Transcripts from the prosecution composed of the majority of the transcripts in my data set. So while there is a higher total number of appeals for the prosecution, one must take into account the entire extra statement that they get to make because they have the burden of proof.

The stigmatization of emotion in law is irrational. It is simply impossible to separate emotion from decision making, so why should this be the expectation? In Chapter One, I discussed how emotions are inseparable from the decision making process. Appealing to the

decision-maker, and the information that they use to make choices, is a legitimate strategy for achieving a desired verdict. Doing so should not be considered unethical, rather it should be viewed as a respectable strategy of effective lawyering. Rather than telling ourselves that the court should be an emotion-free, neutral, rational space, it is better to understand the role of emotion throughout judicial processes. It is clear that juries can be emotional. This thesis has also demonstrated how lawyers attempt to trigger that emotion. Rather than deny these crucial facts, we should accept them and make juries aware of them. Juries should not be educated to ignore their emotional inputs, as Chapter One noted how this may actually increase the intensity of their emotional states. Rather, juries should be left to function as they are, but may also be made aware of their emotional bias before entering the court. This may look like attorneys notifying jurors that their emotions may sway their decisions during voir dire, but not encouraging them to fight their feelings.

I further ask: why is it so taboo for attorneys to appeal to juror emotions when these appeals go majorly unnoticed and unpunished? I argue that a "good" attorney is one who uses all the tools available to sway the jury. If emotions are a natural part of decision making, I believe that attorneys should be able to play into this process of decision making in their argumentation. Those training to be criminal attorneys should accordingly learn how to appropriately appeal to emotions in a reasonable manner. This is not to say that all emotional appeals should be considered completely ethical, or that trials should be emotionally driven, or that attorneys should appeal to emotions more than they already do. Rather, I suggest a push away from the rhetoric of neutrality and denial of emotional appeal as a legitimate strategy of argumentation.

Originally, I had intended to study the impact of defendant identity on emotional appeals. However, due to the size of my dataset, I was incapable of doing so. I offer this as an area of

future research. This work could be expanded by investigating the impact of witness and victim identities on emotional appeals as well.

Furthermore, some work has been done in the area of emotional expression, which could likewise be investigated as it relates to victim and witness demeanor on the stand, and also to attorney expressions of emotion. These expressions could be studied in a similar way as they prompt jury emotional responses and decision-making.

If given more time, this thesis could also also have been expanded by investigation of other emotions. Anger and sympathy are only two of an unlimited number of emotions that could have been studied. I also had intended to study the impact of the number of emotional appeals on the verdict of the cases. This was impossible due to the fact that the only transcripts I could obtain for free to include in my dataset were those on appeal. I was unable to find transcripts for any case in which a defendant won. This thesis accordingly offers a starting point for the underdeveloped study of emotion in the law.

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