The elaboration likelihood model of persuasion: Implications for trial advocacy

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The elaboration likelihood model (ELM) of persuasion includes two possible routes of persuasion or attitude change: the central and peripheral. The central route of persuasion entails careful evaluations of the merits of an advocated message. Thus, people who have a ‘need for cognition’ are more likely to be in the ‘central route’ and will evaluate a message based solely upon its merits. Conversely, the peripheral route of persuasion entails evaluation of an advocated message based not on its merits, but tangential information surrounding the message. For example, a person evaluating an advocated message based solely on the attractiveness of the person giving the message is more likely to be in the ‘peripheral route’ (Petty and Cacioppo 1986). A few theoretical and research articles have assessed the utility of using variables
included within the ELM in parts of a trial process (see Krauss and Sales 2001, Williams and Dolnik 2001, Wegener et al. 2000, Saks 1997, Kassin et al. 1990). Most notably, Petty and Wegener (1998) mention the potential usefulness of the ELM for understanding the process in the O. J. Simpson criminal trial, yet they do not go into detail regarding how they thought the ELM unfolded in this particular trial. Nothing yet has been explicitly written regarding the use of the ELM as a general trial advocacy paradigm. This work attempts to both create a general theoretical model of trial advocacy based on the ELM and test parts of this model through the use of an online voice mock trial.

Trial advocates can strengthen their particular cases through the structuring of voir dire, opening statements, direct and cross examinations, and closing arguments. A research model is proposed that uses an ELM framework to predict trial outcome. Specifically, it was hypothesized that for jurors who like to think, strong plaintiff arguments will be strengthened and weak defense arguments will be weakened when both advocates include the variables of ‘personalized language’, ‘forewarning’ of an opposing advocate’s attempt to persuade, and no distractions (in the form of raising objections). For example, addressing the jury with personalized language with personal pronouns such as ‘you’, ‘him’, ‘her’, ‘he’, ‘she’ versus impersonal pronouns such as ‘one’, ‘it’, ‘this’, and ‘those’ was suggested to help jurors who like to think to recognize strong and weak arguments as such. In addition, by stipulating to jurors—who like to think—that the opposing advocates (who have weak arguments) will attempt to persuade them, strong and week arguments will be recognized as such. Lastly, advocates who have stronger arguments should not raise objections during opposing advocates’ weak arguments. In doing so, jurors who like to think will not be able to recognize the weak arguments.

The stimulus trial used in this work is based upon a fictional civil trial produced by Lubet (1989) and then modified by Spiecker (1998). Further changes were made to suit the purposes of this work. The stimulus trial contains a fictional dispute between a vending machine company (Plaintiff) and a governmental organization (Defendant).

Participants were randomly assigned to 1 of 16 different versions of the same online mock trial. Each version was manipulated to contain combinations of ‘induced personal relevance’, ‘forewarning to persuade’, and ‘distraction’. As part of voir dire procedure, participants were asked questions that were appropriate for this procedure including their ‘need for cognition’. Next, participants heard 1 of 16 different versions of the same trial. Following the presentation of the trial, subjects then received a verdict form that asked them to apportion responsibility to the Plaintiff and Defendant. Of the 4,783 people who participated in the online mock trial simulation, 1,366 had a recorded participation time that suggested the participant actually listened to the complete trial. These 1,366 people were used in subsequent analyses.
Results indicate that, for jurors who like to think ('need for cognition'), strong plaintiff jury communication (opening statements and closing arguments) that includes 'personal language' and a 'forewarning' of the weak defense's attempt to persuade is beneficial for plaintiff trial outcome, $F(1, 287) = 4.1, p = .044$. However, an interaction was found with 'objecting to the weak defense witness communication', $F(3, 334) = 3.1, p = .027$. This interaction stipulates that plaintiff jury communication which includes 'personal language' and a 'forewarning' of the weak defense's attempt to persuade is beneficial for plaintiff trial outcome except when the plaintiff objects to weak defense witness communication. Lastly, the variables of 'need for cognition' (whether jurors enjoy the challenge of thinking) and 'education' (the highest level of education received by the participants) were found to have different relationships with the ability to discriminate between strong and weak arguments. Specifically, 'need for cognition' was found to have a linear relationship with discrimination ability, $F(1, 1364) = 4.03, p = .045$. This linear relationship stipulates that as 'need for cognition' increases so does the ability to discriminate between strong and weak arguments. In contrast, 'education' was found to have a curvilinear relationship, $F(1, 1348) = 7.334, p = .007$. This curvilinear relationship stipulates that the ability to discriminate between strong and weak arguments is better at moderate levels of education and worse at both lower and higher levels of education. Thus, for attorneys with a strong case, they would want to 'deselect' potential jurors who were low in 'need for cognition' and had lower and higher, but not moderate levels of education.

Interestingly, by only using personal language coupled with forewarning of the weak opposing counsel’s attempt to persuade, the plaintiff’s strong jury communication was strengthened even more. This strength is in terms of the ability of already strong discriminators to be able to discriminate even more as a function of the aforementioned variables. Discrimination, in this work, meant the simultaneous strengthening of the strong case and weakening of the weak case. If this result is indeed robust in terms of replicability and validity (and not just a function of this trial alone), trial attorneys who feel they have a strong case may simply advocate personally relevant language and forewarn jurors of the weak opposing attorney’s attempt to persuade.

In addition, an interaction between plaintiff jury communication and defense witness communication may be of interest to trial attorneys. That is, if this post-hoc interaction is both reliable and valid, plaintiff attorneys who feel that they have a strong case should first use personal language and forewarning in their jury communication, but not object during subsequent defense counsel's witness communication. This suggestion, of course, is valid if the attorney, which has stronger arguments, has an empanelled jury that is already centrally processing the case (as in this work).
References


