

A Few Words from the Bench: An Exploratory Study of Judges' Communication "To" and "About" the Jury

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A judge occupies an important position during a jury trial. In a context that is typically unfamiliar to jurors, the judge is looked at as just, fair, and wise; what a judge says, matters. The judge speaks to the jury, as well as about the jury while presiding, and both types of communication give the jury cues and information about the events occurring. This exploratory study looked specifically at the communication of judges in civil and criminal trials with two points of focus: communication to and about the jury. A typology was created, inclusive of all forms of communication witnessed, and two ceremonial acts a judge engaged in regarding a jury were examined: allowing jurors to ask questions after witness testimony, or having the entire room stand when the jury entered or exited; both unrequired and at the discretion of the judge in the county in which the study took place. This study found that female and racial minority judges were more likely to advocate for the jury, to allow the jury to ask questions of witnesses in civil trials, and to have the room stand for the jury when it entered or exited than did judges who were white and male.

The right to a trial before a jury is fundamental to the United States judicial system. In 1776, Thomas Jefferson wrote, 'I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution.'¹ In 1979, then-Supreme Court Associate Justice William Rehnquist put it in these terms: '[T]he founders of our nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption, a "safeguard too precious to be left to the whim of the sovereign."'² Given the centrality of the legal system in the United States, and the importance of juries within that environment, factors that impact trial outcomes are an essential piece of American democracy.

¹ Neil Vidmar & Valerie Hans, *American Juries: The Verdict* at 16 (2007).

² Stephan Adler, *The Jury: Disorder in the Courts* at 146 (1995).

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In the specific communicative context of a trial, judges occupy a special position. Many of the actors in a courtroom are bound to particular viewpoints, but judges are constitutionally upheld to remain impartial and free of bias.³ Still, a judge cannot avoid having an impact of some kind, particularly on juries. Rosenthal⁴ has shown that individuals who enter an unfamiliar situation and are unsure how to behave or interpret certain stimuli seek out the most experienced or powerful person, watch how he or she acts, and then calibrate their behaviors. In a courtroom setting, this role model is the judge, who jurors typically view as being ‘just, fair, and wise.’⁵ The result is that judges are potential guides and cue-givers for jurors, and in these roles, their communication is crucial. What judges say, how they say it, and to whom they direct their communications are important matters.

Much research on judges is focused on verdicts and whether they are related to the judges’ experience, age, sex, demographic location, race, and so forth.⁶ Research on judge’s communication in the courtroom has typically focused on their nonverbal communication.⁷ However, the verbal communication of judges has been relatively unexamined, in part because judges’ communicative behaviors are assumed to be constrained by courtroom rules and norms, so that they do not affect the trial outcome.

³ Peter Blanck et al., *The Appearance of Justice: Judges’ Verbal and Nonverbal Behaviour in Criminal Jury Trials*, 38 Stanford L. Rev. 89, (1985). See also Andrea Halverson et al., *Reducing the Biasing Effects of Judges’ Nonverbal Behavior with Simplified Jury Instruction*, 82 J. of Applied Psychology 590, (1997).

⁴ Robert Rosenthal, *Experimenter Effects in Behavioral Research* (1966).

⁵ Elizabeth LeVan, *Nonverbal Communication in the Courtroom: Attorney Beware*, 8 L. & Psychology Rev. 83, 84 (1984).

⁶ For more see Jennifer Peresie, *Female Judges Matter: Gender and Collegial Decision-Making in the Federal Appellate Courts*, 114 Yale L. J. 1759, (2005); Darrell Steffensmeier & Chester Britt, *Judges’ Race and Judicial Decision Making: Do Black Judges Sentence Differently?* 82 Social Science Quarterly 749, (2001); Darrell Steffensmeier & Stephen Demuth, *Ethnicity and Judges’ Sentencing Decisions: Hispanic-Black-White Comparisons*, 39 Criminology 145, (2001); Susan Welch et al., *Do Black Judges Make a Difference?* 32 American J. of Political Science 126, (1988).

⁷ E.g. Peter Blanck et al., *Measure of the Judge: An Empirically-Based Framework for Exploring Trial Judges’ Behavior*, 75 Iowa L. Rev. 653, (1989); Blanck et al., *supra* note 3; Paul Ekman & Erika Rosenberg, *What the Face Reveals: Basic and Applied Studies of Spontaneous Expression Using the Facial Action Coding System (FACS)* (1997); Halverson et al., *supra* note 3.

We know that what a judge says is incredibly important to how a jury takes the case to deliberation, hence the development of rules and norms. Yet rules and norms cannot dictate each and every interaction a judge has with a jury, and these interactions can matter greatly. This study looks at the verbal communications of judges to see if judges differ in how they communicate *to* and *about* juries and whether these patterns were connected to judge characteristics. Such communication includes how and how often judges speak directly to the jury as well as how and how often judges invoke the jury as an entity during trial. To address these points of focus, civil and criminal trials at a Superior Court in the Northwest were observed live using an observational content analysis approach. This research contributes to scholarly understanding of courtroom communication, judicial roles, and thus the trial process as a whole.

Communication by Judges

The communication environment inside a courtroom is unique. In the words of scholars Searcy, Duck, and Blanck, '[t]he courtroom is a strongly defined context' with distinct, noteworthy rules of interaction and where greater scrutiny is placed on individuals and their statements than in typical communicative environments.⁸ For example, communication in a courtroom often occurs in question-and-answer styles that are uncommon in daily conversations, there are limitations on what each person is allowed to say, and only specific people are permitted to interrupt or ask questions. For those who do not spend much time in this environment—which is true of most jurors—there is a need to make sense of a space that in 'physical setup and routine, represents a violation of daily interactive expectations.'⁹ Searcy et al. argue that the court context can have disabling effects on people's ability to attribute meaning to interactions because they aren't familiar or confident in their understanding of the procedures occurring, and

⁸ Michael Searcy et al., *Communication in the Courtroom and the "Appearance" of Justice*, in *Applications of Nonverbal Communication* 42, 41-61 (2005).

⁹ *Id.* at 48-49.

because the risk of a misunderstanding can be highly consequential.¹⁰ Jurors, in particular, may be uncertain how to interpret exchanges such as one attorney interrupting another and what it means when a judge overrules or sustains an objection made by one party.

In such uncertain circumstances, people look toward key others to help their sense-making. As a result, how a judge communicates can be crucial to the trial process and to jurors' understandings. Research shows that even when given the same hypothetical case information, different judges commonly produce distinct verdict outcomes—some determine guilt, while others determine innocence.¹¹ Further, when a judge is predisposed to think a defendant is guilty then reads instructions to a jury, those jurors are more likely to replicate the judge's predisposed conceptions and determine the defendant guilty. When a judge is predisposed to think the defendant is innocent and reads those same instructions to a new jury, jurors are more likely to determine the defendant is innocent.¹² In short, judges' beliefs and behaviors exhibited intentionally or not through their mechanisms of communication, matter.

At the same time, there are no strictly defined rules governing how interactive and communicative a judge can or should be with a jury. Some judges take a highly communicative approach and interact with a jury on a consistent basis, whether to explain or clarify something or to provide additional instructions.¹³ Other judges let the evidence and the witnesses 'speak for themselves' and do not offer much clarification, because they deem such communication unnecessary or outside their purview.¹⁴ One potential reason for this latter approach may be the belief that clarifications can be harmful, because they could provide opportunity for a judge's biases to seep through. So

¹⁰ *Id.*

¹¹ Halverson et al., *supra* note 3.

¹² *Id.*

¹³ Thomas Unga & Larry Baas, *Judicial Role Perceptions: A Q-Technique Study of Ohio Judges*, 6 L. & Society Rev. 343, (1972).

¹⁴ See Nigel Fielding, *Judges and Their Work*, 20 Social & Legal Studies 97, (2011); Marc Galanter et al., *The Crusading Judge: Judicial Activism in Trial Courts*, 52 S. Cali. L. Rev. 699, (1978).

long as judges do not act with detectable bias, the extent of interaction with the jury is at the discretion of each individual judge. With this in mind, I am interested in two kinds of judge communication during a trial: first, how a judge speaks *to* the jury, and second, how a judge speaks *about* the jury.

Conceptual Judicial Communication Types

Determining how a judge speaks to and about a jury took a tremendous amount of observation and research. Because there is no research to date that categorizes judge communication to and about a jury, I relied on previous scholarship discussing judicial roles,¹⁵ judicial activism,¹⁶ as well as techniques for trial lawyers¹⁷ and applied them to the role and responsibility of the judge. Because I needed to use indirect research to develop a typology, I vetted it thoroughly with pilot tests to determine I had covered all types of communication a judge may make to and about the jury. I will now discuss these types of communication in greater detail and explain my research questions related to each.

Speaking to a jury. Judges often speak directly to the jury in the courtroom. That is, judges can pause proceedings to communicate something to the jury, such as to provide more information or clarification or to provide specific instructions. As noted, some judges may adopt a more interactive role with jurors, allowing them to ask questions and providing them with answers; other judges may prefer a more hands-off approach, in which they provide the jury more sovereignty to decide matters on their own.¹⁸ The manner in which a judge speaks to a jury is important to the dissemination of knowledge in the courtroom as well as in setting the general tone and mood. In these situations, I am interested in both the frequency of communication by judges to the jury as well as the purpose of such communications. For this reason, I have created four sub

¹⁵ Unga & Baas, *supra* note 13.

¹⁶ Galanter et al., *supra* note 14.

¹⁷ Searcy et al., *supra* note 8.

¹⁸ Blanck et al., *supra* note 7; Fred Cate & Newton Minow, *Communicating with Juries*, 68 Indiana L. J. 1101, (1993).

categorical types of messages to the jury, based on scholarship and pilot observations: instructional, explanatory, informal, and praise.

Instructional comments by judges tell jurors how to perform their responsibilities. The role of a juror can often be vague, and jurors rely on their working knowledge of what a jury is, which can be incorrectly based largely on what they see in television shows and movies.¹⁹ If the jury does not understand its role, it can harm the process in many ways. Judges have the position to instruct them as best they can, so instructions judges provide to the jury are central interests of this research. An example of an instruction by a judge to a jury might be in the case of an attorney mentioning information not admissible at trial and the judge could say, “Members of the jury, please disregard that information.” Or a judge could make an instructional communication to the jury by saying “Jurors, please take a brief recess and return in fifteen minutes.”

Explanational messages are ones in which judges clarify and define potentially difficult or confusing information. Because information and proceedings in a trial can be complex and are typically infused with legal jargon, such explanational communication is common by judges.²⁰ An example of an explanational statement to a jury could be “Attention jurors, counsel and I are about to partake in a sidebar conversation, but that does not mean someone is in trouble. It just means that we need to discuss a matter that we wish not to present on the record,” or “You will now hear from an expert witness, she did not observe the events in question and is only here to offer her expertise on matters regarding forensic evidence.”

To explore the overall quantity of statements by a judge to a jury, I am also interested in a third category of judge communication: *informal*. Informal statements to a jury by a judge are ones that are simple pleasantries or unofficial declarations about tasks, timelines, or other logistics that are unrelated to the content of the trial. An example of an information communication could be “Did anyone catch the ball game last

¹⁹ Adler, *supra* note 2.

²⁰ Blanck et al. *supra* note 7; Cate & Minow, *supra* note 18.

night?” or “I hope everyone gets home safe in the snow tonight.” Lastly, a final type of notable communication to the jury is *praise*. Judges might use praising communication to instill confidence among jurors to decide the case. A judge may also want to promote good juror behavior by verbally rewarding them when applicable. An example of a praising communication could be “Great job listening today everyone, you are taking your civic duty seriously and we appreciate that.” By including praising communication as a fourth discursive category, I captured four meaningful types of judges’ verbal communication to juries.

Speaking about a jury. In their courtroom communications, judges also often speak to other actors about the jury. The way that a judge speaks *about* a jury can set the tone for how the jury conceives of its role and responsibilities, as well as how others in a courtroom treat and feel about the jury. Each of these communications is said about a jury, in front of the jury (either directly or indirectly), and may affect how a jury perceives a judge as well as how they feel perceived and may affect their concept of the process as a whole. This can carry through their deliberations and affect verdict outcomes.²¹ As such, this study assessed how judges communicate *about* juries, and again I found five conceptually meaningful types: *instructional*, positive or negative *characterizations* of a jury, *advocation* for the jury, and finally *informal* communication about the jury.

Instructional communication about the jury invokes the jury as an entity and reminds attorneys of the jury’s role as well as how their actions may affect the jury. Often, judges need to instruct attorneys to correct for potential issues such as overzealous advocacy, argumentative language, determinations of the scope of litigation, as well as imbalanced attorney skills and attorney domination that could unfairly impact jury decision making.²² In these instructions, a judge may remind an attorney that they should not phrase certain remarks in such ways to the jury, or talk about certain facts to the jury. An example of an instructional communication about the jury would be “that evidence

²¹ John Ryan et al., *American Trial Judges: Their Work Styles and Performance* (1980).

²² Franklin Strier, *The Road to Reform: Judges on Juries and Attorneys*, 30 *Loyola of Los Angeles Rev.* 1249, (1996).

will not go back to the jury,” or “if you would like to follow up with the jury, now would be the time to do so.” The second and third sub-type of speaking about a jury include whether a judge offers positive or negative *characterizations* of a jury when addressing other actors in the courtroom. For example, judges might say, “The jury is smart and can make their own decisions” or “I trust the jury,” which would reflect positive characterizations. Alternatively, judges might say, “The jury cannot understand this matter” or “The jury is not capable of assessing this claim,” both of which would be negative characterizations. In these kinds of characterizations, judges either encourage or discourage respect for or the abilities of the jury. A fourth way a judge might speak about a jury is to *advocate* on its behalf, by speaking out for the members’ needs or concerns. To be an advocate for the jury, a judge would communicate about things that are being done explicitly to aid a jury. For instance, the judge might ask a lawyer or witness to explain something to the jury; judges might ask trial participants to speak up or slow down; or the judge might make statements reminding the attorneys to respect the time and commitment of jurors. An example of advocating for the jury could be, “The jury has been listening to testimony for over 3 weeks, counsel. I will not allow another recess that could cause them to be here longer than they need to be.” How often a judge advocates for a jury rather than largely ignoring them or treating them like quiet spectators, may be critical to a jury’s experience and can be a very important form of communication by a judge. Finally, to capture a larger range of communication about a jury, I included the fifth sub-type of communication: *informal* communication about the jury, which mirrors the informal communication to the jury discussed earlier. Informal statements about a jury by a judge might offer simple pleasantries, jokes, small talk, or statements to other actors of the trial that are unrelated to the content of the trial but invoke the jury. For example, a judge might say “Tomorrow we’ll have some fresh coffee for the jury,” or “Let’s recess for the day and let the jury get a head start on traffic.” These statements could encourage members of the courtroom to keep alive the sociable, human

aspect of the trial by taking a small break from the hefty and substantial formal dialogue,²³ and do not target trial content or case-related information.

Procedural treatment of the jury. Finally, I am interested in two *procedural* ways a judge might communicate about a jury. These treatments are solely at the discretion of the judge, and may communicate a level of respect and trust in the jury. The first procedural treatment is instructing members of the court to stand when the jury enters or exits. This behavior is traditionally done for judges, but some judges may distinctly pay such respect to the jury as well. The second procedural treatment is allowing jurors to ask questions of a witness at the end of their testimony in a civil trial. This is not traditionally done in jury trials throughout history, and is only relatively recently being allowable during civil trials and only in certain states, such as the state where this research occurred. I am interested in whether judges engage in either of these procedural treatments of the jury.

Characteristics of Judges and Communication Behaviors

How judges engage in these communications might be related to their personal characteristics. For example, considerable research suggests that individuals' demographic characteristics and experiences are related to how they communicate. Some people are more interpersonal, social, and warm in their communication—for example, being responsive, friendly, and showing empathy for others—whereas others can be more disconnected from the relational interactions and be less empathic and more task-driven.²⁴ There are many ways in which people differ in communication style, and

²³ For more see Pamela Hobbs, *Judges' Use of Humor as a Social Corrective*, 39 J. of Pragmatics 50, (2007); Rodger Hochman, "Good humor" on the Bench: Just Desserts in a Judicial Diet, 17 Nova L. Rev. 965, (1994); Marshall Rudolph, *Judicial Humor: A Laughing Matter?* 41 Hastings L. J. 175 (1989); Peter Frecknall, *Humor in the Courtroom: A Process Analysis*, 17 J. of the Legal Profession 181, (1992).

²⁴ Christopher Karpowitz & Tali Mendelberg, *The Silent Sex: Gender, Deliberation, and Institutions* (2014); Jeffrey Kern, *Predicting the Impact of Assertive, Empathic-Assertive, and Nonassertive Behavior: The Assertiveness of the Assertee*, 13 Behavior Therapy 486, (1982); James McCroskey et al., *Nonverbal Communication in Instructional Contexts* In Valerie Manusov & Miles Patterson

these distinctions are often related to their characteristics and socio-cultural experiences.²⁵ I am interested in communication styles of judges, and specifically whether their communication to and about the jury are related to their sex or ethnicity.

Sex of judge. In the legal system, men have long predominated in positions of power. Historically as well as at present, men have a much greater presence in the field of law, especially in the more prestigious positions in the field. For example, women outnumbered men entering law school in 2006, but women represented only 17% of law firm partners and 21% of state judges that same year.²⁶ Five years later, women represented 84% of paralegals and only 32% of lawyers.²⁷ As a sign of our cultural acceptance of this difference, in entertainment media judges are traditionally portrayed as white males.²⁸ Notably, this male dominance of judge roles in media has decreased with the introduction of reality court television; in those shows, women are overrepresented. In 2009, women made up 6 of 10 daytime TV judges.²⁹ These shows, however, decide cases that are often viewed as ridiculous and lowbrow, so whether they will impact conflated conceptions of judges and white men is unclear.

As a result, females in the legal field, and especially those in the position of a judge, do not fit the commonly portrayed, official prototype in U.S. culture. Their limited representation may negatively affect a female's experience of being a judge and may even create hardships for them.³⁰ In support of this, females in legal professions commonly report in surveys and interviews that they receive less credibility for their arguments

(Eds.) *The Sage Handbook of Nonverbal Communication*, 421-436 (2006).; Melissa Wanzer & James McCroskey, *Teacher Socio-Communicative Style as a Correlate of Student Affect Toward Teacher and Course Material*, 47 *Communication Education* 43, (1998).

²⁵ Michael Roloff, ed. *Communication Yearbook* 23, (2012).

²⁶ Susan Miller & Shana Maier, *Moving Beyond Numbers: What Female Judges Say About Different Judicial Voices*, 29 *J. of Women, Politics & Policy* 527, (2008).

²⁷ U.S. Department of Labor. *Employed Persons by Detailed Occupation, Sex, Race, and Hispanic or Latino Ethnicity*. Washington, DC: US Department of Labor, (2011).

²⁸ Todd Hodson, *Judge: Justice in Prime Time*, 6 *Media Studies J.* 87, (1992).

²⁹ Taunya Banks, *Judging the Judges – Daytime Television's Integrated Reality Court Bench*. In Michael Asimow (Ed.) *Lawyers in your Living Room! Law on Television*, 309-320 (2009).

³⁰ Fiona Kay & Elizabeth Gorman, *Women in the Legal Profession*, 4 *Annual Rev. of L. and Social Science* 299, (2008).

than male counterparts, they are the targets of more sexist jokes, and they are more commonly addressed by first names.³¹ In short, females do not appear to hold a status equivalent to males in the legal field, both in sheer numbers and in how they are treated and valued.

It is important to note, though, research concludes that male and female judges *are* equivalent in the quality or credibility of their decisions,³² but that does not mean they reach their decisions in identical ways. Male and female judges often arrive at the same verdict, but legal theorists find measurable differences between men and women in their approach to moral reasoning, as well as their responses to conflict.³³ For example, Coontz³⁴ found that female judges tended to resolve moral problems by emphasizing connection and community, whereas male judges resolved moral problems more typically by emphasizing individual rights and abstract rules.³⁵ These routes to decision making may be connected to distinct ways of communicating by female and male judges.

The divergent experiences of men and women may carry through in judges' communication with juries. From a strictly behavioral sense, men and women tend to exhibit some different habits when conversing, although there are more similarities than

³¹ Robert Christensen et al., *Race and Gender Bias in Three Administrative Contexts: Impact on Work Assignments in State Supreme Courts*, 22 J. of Public Administration Research & Theory 625, (2012); Patricia MacCorquodale & Gary Jensen, *Women in the Law: Partners or Tokens?* 7 Gender & Society 582, (1993).

³² Todd Collins & Laura Moyer, *Gender, Race, and Intersectionality on the Federal Appellate Bench*, 61 Political Research Quarterly 219, (2008); Sue Davis, *Do Women Judges Speak in a Different Voice? Carol Gilligan, Feminist Legal Theory, and the Ninth Circuit*, 8 Wisconsin Women's L. J. 143, (1993); Jennifer Segal, *Representative Decision Making on the Federal Bench: Clinton's District Court Appointees*, 53 Political Research Quarterly 137, (2000); Donald Songer et al., *Reappraisal of Diversification in the Federal Courts: Gender Effects in the Courts of Appeals*, 56 J. of Politics 425, (1994).

³³ Marta Elliott, *Gender Differences in Causes of Depression*, 33 Women & Health 183, (2001).

³⁴ Phyllis Coontz, *Gender and Judicial Decisions: Do Female Judges Decide Cases Differently than Male Judges?* 18 Gender Issues 59, (2000).

³⁵ Kay & Gorman, *supra* note 30; Miller & Maier, *supra* note 26; Cynthia Bowman, *Bibliographical Essay: Women and the Legal Profession*, 7 American University J. of Gender, Social Policy & the Law 149, (1998); Elaine Martin, *Men and Women on the Bench: Vive la Difference?* 73 Judicature 204, (1990); Patricia Martin et al., *Gender Bias and Feminist Consciousness among Judges and Attorneys: A Standpoint Theory Analysis*, 27 Signs 665, (2002); Sarah Westergren, *Gender Effects in the Courts of Appeals Revisited: The Data Since 1994*, 92 Georgetown L. J. 689, (2004).

differences overall. For instance, men in general are found to interrupt more often than women.³⁶ Men also tend to speak more than women when in positions of power.³⁷ As a judge, this could mean that males may be more likely to take and hold the discursive floor in the courtroom or interrupt attorneys to assert a direct statement to the jury or other members of the counsel more often than females. At the same time, McQuiston and Morris³⁸ state that women tend to ask questions more and speak more politely and indirectly than men. For judges, this could indicate that males will speak directly *to* and *about* the jury more often than females, yet females might still speak *to* or *about* the jury in ways that are distinct from males. I offer, then, my first research question:

RQ1: Do male and female judges speak *to* and *about* the jury in distinctly different ways?

In a related manner, I am also interested in the two distinct procedural behaviors that point to judicial treatment of jurors: asking the courtroom to stand when jurors enter or leave, and allowing jurors to ask questions after each witness' testimony. First, asking the courtroom to stand is done traditionally for judges only. It is not necessary for people to rise for the jury, but, out of respect for the jurors and the importance of their job, some judges request this ritual be repeated for their jurors as well. It is possible that the norms of politeness or respect that women more commonly exhibit³⁹ might prompt female judges to be more likely to require such behavior. Thus, I offer my next research question:

³⁶ Mary Banwart & Mitchell McKinney, *A Gendered Influence in Campaign Debates? Analysis of Mixed-Gender United States Senate and Gubernatorial Debates*, 56 *Communication Studies* 353, (2005); Kathrin Hutter, *Men Interrupt and Women are Cooperative*. (Doctoral dissertation) University of Vienna, Vienna, Austria, (2010). Retrieved from http://othes.univie.ac.at/10969/1/2010-08-19_0425701.pdf; Daniel McQuiston & Kathryn Morris, *Gender Differences in Communication: Implications for Salespeople*, 9 *J. of Selling & Major Account Management* 54, (2009).

³⁷ *Id.* McQuiston & Morris; *Id.* Banwart & McKinney; Karpowitz & Mendelberg, *supra* note 24.

³⁸ *Id.*

³⁹ Kay & Gorman, *supra* note 30; Dianne Bystrom, *Gender and Campaign Communication: TV Ads, Web Sites, and Media Coverage*, eScholarship, Institute of Governmental Studies, UC Berkeley, (2006).

RQ2: Do male and female judges differ in whether they have the courtroom stand for the jury when entering or exiting?

Next, allowing jurors to ask questions during the trial is historically and traditionally not allowed. In fact, jurors have not been permitted to speak at all during courtroom proceedings, but this is beginning to change. Juror questions are still prohibited in criminal trials, but certain states allow judges in civil trials to admit juror questions to witnesses, so long as the questions are approved by the judge and counsel. Some jurisdictions allow jurors to submit questions on the basis that it can improve jurors' comprehension and encourage deeper involvement in the trial.⁴⁰ This view maps onto a more community-based approach to judging, which research shows is more likely to come from a female.⁴¹ In the same light, the opposition to juror questions maps onto a more rule-based, autonomous approach, which scholarship shows is indicative of male communicative tendencies in the courtroom.⁴² Therefore, I offer my third research question:

RQ3: Do male and female judges differ in whether they allow jurors to submit questions during the trial?

Race of Judge. Since 2000, racial and ethnic minorities—defined by the National Association for Law Placement as people self-identifying as Black, Hispanic, Native American, Asian, Native Hawaiian/Pacific Islander, and multi-racial—have constituted slightly more than 20% of law school graduates.⁴³ As of the early 2010s, however, racial

⁴⁰ Larry Heuer & Steven Penrod, *Juror Notetaking and Question Asking During Trials: A National Field Experiment*, 18 *Law & Human Behavior* 121, (1994); Sarah West, *Blindfold on Justice is Not a Gag: The Case for Allowing Controlled Questioning of Witnesses by Jurors*, 38 *The Tulsa L. Rev.* 529, (2002); Jeffrey Berkowitz, *Breaking the silence: Should Jurors be Allowed to Question Witnesses During Trial*, 44 *Vanderbilt L. Rev.* 117, (1991); Michael Wolff, *Juror Questions a Survey of Theory and Use*, 55 *Missouri Law Review* 817, (1990); Shari Diamond et al., *Juror Questions During Trial: A Window into Juror Thinking*, 59 *Vanderbilt L. Rev.* 1927, (2006).

⁴¹ Bystrom, *supra* note 39; Karpowitz & Mendelberg, *supra* note 24; Martin, *supra* note 35; Martin et al., *supra* note 35; Miller & Maier, *supra* note 26.

⁴² Davis, *supra* note 32; *Id.* Martin et al.

⁴³ National Association for Law Placement. *Minorities and Women*, (2012). Retrieved from <http://www.nalp.org/minoritieswomen>

minorities made up only about 13% of all lawyers in the country and about 6% of law firm partners.⁴⁴ Some scholars have suggested that minority-based experiences can shape how judges behave; for example, Hettinger, Lindquist, and Martinek⁴⁵ declare that “race and gender . . . shape a judge’s policy goals and objectives.” Scholars have found that racial minority judges generally exhibit a more humanitarian position on civil rights issues and social issues such as gun control, military drafts, and capital punishment than do white judges⁴⁶. Walker and Barrow⁴⁷ have suggested that the differences in decision-making may be because the route to the bench for minorities tends to be less conventional than that of white men. Many minorities come from underprivileged and underrepresented situations in society and had to work additionally hard to get to where they are. I am interested in whether minority-race judge communications are different than majority-race judges. Because they may understand such positions, minority judges may be more likely to listen than to speak, and to speak *to* and *about* the jury differently, since the jury may be devalued, or otherwise victims of a lack of representation and power imbalances.⁴⁸ This leads me to my fourth research question:

RQ4: Do white and racial minority judges speak *to* and *about* the jury in distinctly different ways?

⁴⁴ *Id.*

⁴⁵ Virginia Hettinger et al., *Separate Opinion Writing on the United States Courts of Appeals*, 31 American Politics Research 215, 223, (2003).

⁴⁶ See the 2013 Supreme Court deliberations on the Voting Rights Act as an example, also Dana Milbank, *Sotomayor, Kagan Ready for Battles*, *Washington Post Opinions*, (February 27, 2013), Retrieved March 6, 2013, from http://m.washingtonpost.com/opinions/dana-milbank-sotomayor-kagan-ready-for-battles/2013/02/27/ee1fa09e-812f-11e2-a350-49866afab584_story.html; see also Theresa Beiner, *The Elusive (but Worthwhile) Quest for a Diverse Bench in the New Millennium*, 36 U. of Cali. Davis L. Rev. 597, (2002); Pat Chew & Robert Kelley, *Myth of the Color-Blind Judge: An Empirical Analysis of Racial Harassment Cases*, 86 Washington University L. Rev. 1117, (2008); Sean Farhang & Gregory Wawro, *Institutional Dynamics on the US Court of Appeals: Minority Representation Under Panel Decision Making*, 20 J. of L., Economics, & Organization 299, (2004).

⁴⁷ Thomas Walker & Deborah Barrow, *The Diversification of the Federal Bench: Policy and Process Ramifications*, 47 The J. of Politics 596, (1985).

⁴⁸ For more, see Beiner, *supra* note 46; Chew & Kelly, *supra* note 46; Harry Edwards, *Race and the Judiciary*, 20 Yale L. & Policy Rev. 325, (2002).

I am also interested in whether judges who are racial minorities are more likely to ask the courtroom to stand for the jury when entering and exiting, or permit jurors to submit questions of witnesses after testimony. There are widely held criticisms by legal critics that jurors are not qualified to make complex decisions regarding the law, that they render judgments based on sympathy or prejudice, that they do not understand judicial instructions, and that they simply cannot comprehend much of what goes on in a trial.⁴⁹ Because minority judges might plausibly be more likely to understand and relate to the detriment of a lack of fair representation of a jury, I explored whether they would be more likely to treat jurors with the same respect that the judges themselves receive by asking the courtroom to stand for the jury when they are entering or exiting, or allow for jurors to take an active role in asking important questions during the trial. Thus, I offer my final two research questions:

RQ₅: Do white and racial minority judges differ in whether they have the courtroom stand for the jury when entering or exiting?

RQ₆: Do white and racial minority judges differ in whether they allow jurors to submit questions during the trial?

Method

To examine how and how often judges speak to and about the jury, I conducted an observational content analysis of communication by judges in courtroom trials.⁵⁰ Content analysis is commonly employed to assess the frequency and types of certain occurrences within a mode of communication in order to examine trends.⁵¹ Unlike most content analysis research, I examined *live* communicative content and observed them for

⁴⁹ For more on the debate, see William Dwyer, *In the Hands of the People: The Trial Jury's Origins, Triumphs, Troubles, and Future in American Democracy* (2002); John Gastil, *Political Communication and Deliberation* (2008); Valerie Hans & Neil Vidmar, *Judging the Jury* (1986); Harry Kalven & Hans Zeisel, *The American Jury* (1966); Robert Litan, *Verdict: Assessing the Civil Jury System* (1993); Lynn Sanders, *Against Deliberation*, 25 *Political Theory* 347, (1997).

⁵⁰ Paul Rosenbaum, *Observational Studies* (1995).

⁵¹ Kimberly Neuendorf, *The Content Analysis Guidebook* (2002).

trends: I coded real-time, in-person communication by judges during trials at a Superior Courthouse in the Northwest. I did so for several reasons, with one over-riding rationale: I had much greater confidence determining whether a judge was speaking *to* or *about* the jury when I was in the presence of the communication.

Unit of Analysis

The unit of analysis is one uninterrupted speaking turn made by a judge. Because of this, one speaking turn can include multiple types of communications spelled out in the conceptual argument. These nominal variables are coded as either present or absent for each of the speaking turns made by a judge. For the analysis, these communications were examined based on who made them to draw inferences about judges' communication to and about the jury.

Selection of Trials

Because this study is relatively exploratory, I wanted to maximize the data collected by randomly selecting trials to observe from a list of judges who were conducting jury trials at the time of data collection. Selection of trials to observe occurred in a multi-step process. By law, all trials are open to the public, and the Superior Courthouse releases a docket each morning listing the trials occurring in every courtroom that day. Over a three-month period, I used the docket to identify cases with a jury and observed as many trials as possible over 29 trial days, which amounted to 31 trials. Every observation day I assigned each trial with a jury a sequential number correlating with the alphabetical order of the judge's last name and then used a random number generator to determine which case I attended. If that trial was in a pre-trial period (without a jury yet) or ended while I was present, I replicated the process to randomly select the next trial. In using this approach, I was able to gain a good sense of the communication styles of a range of judges while making sure that I did not unintentionally bias my selection of judges or trials.

Codebook

A codebook was developed for this study including conceptual and operational definitions of each variable measured. The codebook began with some basic identifying data about the judge for that trial, specifically their race and sex, and then included variables for the different types of each spoken communication, as outlined in the literature review and conceptual argument above. An initial filter variable captured whether the communication was to the jury, about the jury, or neither—at the nominal level. A judge was coded as ‘speaking to the jury’ when the judge turned his or her head toward the jury or otherwise made it clear that s/he was directing a message to them—either as a whole or to individual jurors—and issued a verbal communication. A judge was coded as ‘speaking about the jury’ when he or she spoke to another trial actor (e.g., attorney, bailiff, witness, plaintiff, defendant) or to the courtroom as a whole and referred to the jury in third person. In coding communication to the jury, I identified the communication as *instructional*, *explanational*, *informal*, and/or *praise*, all at the nominal level. When coding for communication about the jury, I coded for *instructional* comments, *positive or negative characterizations*, *advocation*, *informal* communication, and/or finally *procedural treatment of the jury* communication, whether a judge had the courtroom *stand* for the jury’s entrance or exit, and whether the judge allowed jurors to *ask questions*, again at the nominal levels. I also included a “comments” component in the coding. This section provided a space for an additional bottom-up approach by which I could capture any other interesting dynamics that I did not expect in advance.⁵² These findings are discussed throughout the results where applicable. After the codebook was created, I engaged in several pilot tests to fine-tune the coding definitions. This took multiple sessions of about five or more hours each over the course of several weeks.

Intercoder Reliability

Intercoder reliability was assessed using one other coder who also attended 11.5% of the total trial portions used in this study. I compiled inter-coder assessments

⁵² Rosenbaum, *supra* note 50.

employing Scott's π_i ⁵³ which corrects for agreement by chance. Reliability between coders was strong. For the filter variable regarding type of communication (*to* the jury, *about* the jury, or *neither*), the two coders achieved an inter-coder Scott's π_i reliability of .90. For the rest of the *to the jury* nominal variables, reliability ranged from .86 (explanational and informal variables) to 1.0 (for instructional and praise). For the *about the jury* nominal variables, as well as *procedural treatment of the jury* variables, reliability was 1.0 for all categories.

Results

In my observational content analysis, I identified 1,335 statements made by 17 judges during the course of 31 trials over 29 days. Nine of the judges I observed were female and eight were male. In terms of race, of the 17 judges I observed three were Asian American, one was African American, and 13 were white. The 31 trials were split relatively evenly between civil (14) and criminal (17), which means slightly less than half of the juries in my data were in a position to be potentially allowed by judges to ask questions. To account for a level of familiarity with a jury over the course of a trial lasting many weeks, the majority of my observations—26 of the 36—took place in the first few days of trial: days 1, 2, and 3. I now turn to the findings of my research questions and an examination of additional results.

Sex of Judge

The data indicate that sex of the judges was unrelated to how often they spoke *to* or *about* the jury. Specifically, to test whether male and female judges speak *to* and *about* the jury in distinctly different ways (RQ_1), I conducted a cross-tabulation test of gender and instances of speaking to the jury that produced non-significant results. In all the statements each judge made, male judges spoke to the jury 13.0% of the time, compared to female judges who did so 12.7% of the time. A Chi-square test indicated that references to the jury did not significantly differ by the judge's sex $X^2(1, N = 1335) = .022, n.s.$ Male

⁵³ Gerianne Merrigan & Carole Huston, Communication Research Methods 2 (2009).

judges spoke about the jury in 4.1% of their communications whereas female judges did so in 4.0% of their communications. A Chi-square test indicated that reference about the jury did not significantly differ by the judge's sex, $X^2(1, N = 1335) = .012, n.s$. The results of these tests show that male and female judges did not speak *to* or *about* the jury at different rates on the aggregate level.

The next phase of analysis, however, showed an interesting pattern. To further explore whether female and male judges spoke to or about the jury in distinct ways (*RQ₁*), I conducted cross-tabulation and Chi-square tests for each of the sub-types, and found that female judges (73.5%) were more than two times as likely as male judges (30.0%) to advocate for the jury, $X^2(1, N = 54) = 9.758, p < .01$. All other sub-types rendered insignificant differences, and can be seen in Table 1. A finding of female judges being significantly more likely to advocate for the jury than male judges means that female judges might better equip their jurors to understand and perceive all the information given in a trial.

The advocating statements made about the jury were directed at attorneys or witnesses and generally focused on issues of logistics during the trial to ensure that the jury could see and hear everything. Commonly, a judge would say, "Please move that exhibit so all of the jurors can see it," or "Speak up so that the jury can hear you." These statements were looking out for the jury to ensure that they could access information. I also observed statements where the judge would ask a witness to slow down their words or to wait until each juror had received a copy of the exhibit before proceeding. By making statements like this, a judge reminded the witness or the attorney that the jury was their focus, and that they should make them a priority. Additionally, these statements showed the judges' focus on making sure all the information in a trial could be heard, seen, understood, and perceived by the jury adequately for them to make the best decision possible. These data suggest that female judges were more proactive in communicating on this matter than male judges.

Next, to examine RQ_2 I ran cross-tabs to look at which judges had the room stand for the jury when entering or exiting, and found that males (88.9%) were modestly, but statistically significantly, less likely than females (92.1%) to engage in this behavior, as seen again in Table 1. A Chi-square test established the significance $X^2(1, N = 1335) = 3.961, p < .05$. As a side note, most judges regardless of sex had their clerk ask for the room to stand for the jury rather than the judge asking the room themselves, but I still counted this behavior as reflective of the judge because they were the ones to direct their clerk to do so. There were four instances where a judge specifically asked the courtroom to ‘please rise for the jury,’ and three of these comments were made by different female judges, one was by a male judge.

Finally, for RQ_3 I analyzed whether judges allowed jurors to ask questions of witnesses after their testimony and before jury deliberation. Because the federal government prohibits jurors from asking questions during the courtroom proceedings in criminal trials, I focused only on the 14 civil trials in this analysis. A cross-tabulation and Chi-square test indicated that female judges (93.6%) were significantly more likely than male judges (70.8%) to allow jurors to ask questions during civil trials, $X^2(2, N = 616) = 53.085, p < .001$, as seen in Table 1. When a judge allowed jurors to ask questions during the proceedings in a civil trial, it always came at the end of a witness’s testimony. The questions were submitted in writing and then the judge and the attorneys discussed in a side bar whether the questions were appropriate and allowable; the wording of questions was changed if necessary. The judge would say something like “I would like now to take a moment and allow any jurors to finish writing down any questions they may have for the witness.” I also heard some judges ask, “By show of hand, does any juror have a question they would like to submit to this witness?” Once the questions were submitted and discussed by judge and attorneys, the judge returned to his or her seat on the bench and asked the question of the witness.

Race of Judge

I now turn to the analysis focusing on race of judges and their communications. I computed cross tabulation tests to see if judges of differing racial groups contrasted in the amount of communications to and about the jury. In my sample, 6.3% of the communications were made by judges who were Black or African American, and 25.5% of the communications were made by judges who were Asian American; for analysis I combined these judges' communications (31.8%) to provide a point of comparison with the 68.2% of my sample of communications made by judges who were white. My interest in this distinction was triggered by scholarship on cultural experiences of racial minorities relative to majority populations⁵⁴ so this approach was not ideal but was conceptually grounded. When looking at whether white and racial minority judges speak *to* and *about* the jury in distinctly different ways (RQ_4), cross tabulation tests as well as Chi-square test showed no significant differences between judges' communications based on race. Similar to the sex analysis, I found no significant differences with how white and minority judges communicated to and about the jury on the aggregate level.

I then followed the same analysis among the sub-types of *to* and *about* the jury communication for race of judge as I had utilized for sex of judge (to further address RQ_4) and I found some substantial differences between racial minority and white judges, as seen in Table 2. Specifically, communications advocating for the jury were made by white judges 48.6% of the time, while they were made by minority judges 73.7% of the time, $X^2(1, N = 54) = 3.176, p < .10$. As before with sex of the judges, no other sub-type yielded significant differences. However, advocating for the jury is a very important communication a judge could make because they look out for the general wellbeing of the jury, and invoked their importance. These statements were important to making sure that each juror had an opportunity to hear and see the information circulated during

⁵⁴ Beiner, *supra* note 46; Edwards, *supra* note 48; Gail Fairhurst & Kay Snaveley, *Majority and Token Minority Group Relationships: Power Acquisition and Communication*, 8 *Academy of Management Rev.* 292, (1983).

trials, and the data indicate racial minority judges offered more of these messages than white judges.

For *RQ₅*, whether white and racial minority judges differ in whether they have the courtroom stand for the jury when entering or exiting, I found there to be a significant difference. Racial minority judges (96.0%) were significantly more likely than white judges (88.6%) to have the room stand for the jury when they entered or exited, $\chi^2(1, N = 1335) = 19.257, p < .001$, see Table 2. These data show that most judges had the courtroom stand when the jury entered or exited, but overall, this behavior, which might be a symbol of respect by the judge toward the jury, was significantly more common among racial minority judges than white judges.

Lastly, for *RQ₆*, I analyzed whether white and racial minority judges differed in whether they allowed jurors to submit questions during the trial. I found that racial minority judges nearly always allowed jurors to ask questions (99.4%), significantly more than white judges (77.3%), $\chi^2(1, N = 593) = 44.250, p < .001$, as seen again in Table 2.

It appeared that on the aggregate level, there were no differences in judicial communication to and about the jury, but this changed when I looked at some of the types of communication. Specifically, female and racial minority judges communicated advocacy for the jury more; they reminded other trial actors to do and say things so that the jury could hear, see, and understand things better. Also, female and racial minority judges had the room stand for the jury when entering and exiting; this is a sign of respect for the jury that judges do not need to do, but some did. And finally, female and racial minority judges were more likely to allow jurors to ask questions after witness testimony during civil trials. Thus, although personal differences between judges are not meant to protrude into trial proceedings, these results show they might be related in patterned ways that could potentially impact the courtroom.

Additional Analysis

In the analysis of my research questions, I found that the sex and race of judges was related in some meaningful ways to how the judges communicated to and about a jury. However, in addition to examining individual judges on a single characteristic, such as sex or race alone, this research argues that the nexus of individual characteristics may provide an alternative approach for thinking about judge communication. With this in mind, I combined the sex and race variables to see whether these characteristics were compounded when joined, or were related to primarily either sex or race differences. To do this, I created 4 groups in the data: communications made by white males (33.3% of the data), white females (35.0% of the data), minority males (3.0% of the data), and minority females (28.7% of the data).

I found the interaction between race and sex yielded suggestive results, which are shown in Table 3. A cross tabulation and Chi-square test showed racial minority females advocated for the jury the most, at 73.7% of *about the jury* communication. White females were nearly identical at 73.3%. White males, in marked contrast, offered jury advocacy the least, at a far lower 30.0% of about the jury communication, $X^2(2, N=1335) = 9.759, p < .01$. These results show sex to be the strongest tie to advocacy for the jury in these data. Next, a cross tabulation and Chi-square test indicated that minority males had the room stand for the jury 100% of the time, followed by minority females at 95.6% of the time. Following was white females at 89.3%, and then white males at 87.8%, $X^2(3, N = 1335) = 20.728, p < .001$. Here minority race status appeared to be the strongest indicator of having the room stand for the jury. Lastly, I found that racial minority females were the most likely to allow jurors to ask questions of a witness after testimony; they did this 100% of the time. Minority males were the second most likely to allow juror questions at 97.6%. White females allowed juror questions 87.3% of the time, and again white males were the least likely, doing so only 72.6% of the time. A Chi-square test revealed these differences to be significant, $X^2(3, N = 1335) = 58.867, p < .001$, thus race of the judge was the strongest indicator of allowing juror questions during trial.

In two of these analyses, race of the judge was a stronger indicator, and in one analysis, sex of the judge was. But most notable is that white males were the least likely to engage in these communicative behaviors in every instance. These results further suggest that characteristics such as race and sex are related to how these judges interact with a jury. Specifically, judges who were a racial minority or female were more likely to engage in both (a) communicative behavior that facilitated the dissemination of information to the jury via seeing, hearing, and understanding (asking questions), and (b) communicative behavior that is commonly seen as an act of respect for the jury: having the room stand when they enter and exit. This study illustrated that not holding an underprivileged status in either of the two ways measured here (sex and race) was tied to a judge being less likely to privilege the jury in one or more of these customs.

Discussion

The judiciary is an indispensable component in the United States government. A trial by jury will always be principal to the fairness and impartiality of a court system that is essential to a national democracy. It is the case, therefore, that a deep understanding of the communication in such environments is crucial. To revisit the words of Searcy, Duck, and Blanck,⁵⁵ the courtroom is a unique and “strongly defined context” in which great scrutiny is placed on individuals and their words. Jurors struggle to assign meaning to the communication in a trial and may look to actors in positions of power to make sense of messages and interactions. Judges in particular are important because jurors understand them to be highly educated in the law and impartial.⁵⁶ Although the law requires them to keep their biases out of the trial proceedings, and to let the jury decide on its own, studies have shown that judicial communication during a trial can have consequences.⁵⁷ In a nutshell, in an attempt to make sense of an unfamiliar situation, jurors might place great meaning on communicative behaviors of judges, with

⁵⁵ Searcy et al., *supra* note 8 at 42.

⁵⁶ Blanck et al., *supra* note 7; Halverson et al., *supra* note 3; LeVan, *supra* note 5.

⁵⁷ *Id.* Halverson et al.

or without the judges' awareness. Because the judge plays such a pivotal role in any courtroom context, how he or she communicates to and about the jury can be critical to the trial process and to jury understanding of the case.

Research on judges shows that they act in ways that are distinct rather than identical. For example, judges do not always decide the same cases in the same way,⁵⁸ and they engage in differing nonverbal communication styles.⁵⁹ The present study looked at the verbal communication of judges and indicated that a judge's sex and race may be related to how he or she communicates to and about the jury, in particular ways. Being a member of one or more groups often in the margin in the judiciary, whether it be due to one's race or sex, was correlated with a greater tendency to engage in behavior that advocated for the needs of the jury, conveyed respect for the jury, as well as provided a space for jurors to play a more active role by asking questions.

One interpretation of these results might be that being a female and/or racial minority prompts judges to exhibit a stronger sense of responsibility for the jury. Although they ultimately decide a case, in terms of a courtroom, the jury could be considered a minority entity, in that they are the group with the least amount of influence or control over the proceedings. A juror may seem like the bottom of the intellectual ladder: For example, they are referred to as 'lay' people, a term that some could read as demeaning, and usually in civil trials and always in criminal trials they are not allowed to speak or influence the ongoing trial in any way. In fact, the judge must take on the responsibility to allow the jury certain opportunities or privileges because the jury does not and may not assert these themselves. According to this research, a judge is more likely to speak to or about the jury in ways that advocate for the needs of the jury, and engage in traditions that indicate respect for the jury, if they are a female or a member of a racial minority themselves.

⁵⁸ For more see Peresie, *supra* note 6; Steffensmeier & Britt, *supra* note 6; Steffensmeier & Demuth, *supra* note 6; Welch et al., *supra* note 6.

⁵⁹ Blanck et al., *supra* note 3; Blanck et al., *supra* note 7; Ekman & Rosenberg, *supra* note 7; Halverson et al., *supra* note 3.

These communicative differences tied to the sex and race of judges could have meaningful implications for the U.S. legal system. For example, increased advocacy for the jury could result in particular juries hearing, seeing, and understanding more in a trial, because the judge is prioritizing and ensuring those ends. This could mean that juries would be better informed when a female and/or racial minority judge is presiding. Specifically, the Condorcet Jury Theory states greater information accessible to jurors will contribute to a higher quality decision outcome.⁶⁰ Because judges play a significant role in the dissemination of information to jurors, the communicative practices of judges that contribute to jurors hearing, seeing, and understanding more information might plausibly impact the outcome of a trial. Communication matters, and when judges from different backgrounds do it differently during trials, it can have effects on those trials.

Furthermore, because females and racial minorities have been found to lead and communicate in ways that are more collaborative, cooperative, accepting, respectful, empathetic and democratic,⁶¹ these differences are likely to carry through to jury deliberations. This conception maps onto the findings of this research and suggests that a judge who is generally more empathic, respectful, and accommodating to the jury may create a more positive atmosphere for the deliberations that is more conducive to the sharing of minority opinions and may value the voices of all members more equally. Some judge communication styles can foster a shared deliberation that is more open to discussing minority opinions better than others. In short, a jury can imitate the communication styles that are reinforced by a judge, so if judges differ in these approaches, it is not unlikely that the jury will as well.

⁶⁰ David Austen-Smith & Jeffrey Banks, *Information Aggregation, Rationality, and the Condorcet Jury Theorem*, 90 *American Political Science Rev.* 34, (1996); John Duggan & César Martinelli, *A Bayesian Model of Voting in Juries*, 37 *Games & Economic Behavior* 259, (2001).

⁶¹ Mary Arnold & Mary Nesbitt, *Women in Media 2006: Finding the Leader in You*. Media Management Center at Northwestern University, (2006); Anne Koenig et al., *Are Leadership Styles Masculine? A Meta-Analysis of Three Research Paradigms*, 137 *American Psychological Association* 616, (2011); Ann Harriman, *Women/Men/Management* (1996); Sarah Burke & Karen Collins, *Gender Differences in Leadership Styles and Management Skills* 16 *Women in Management Rev.* 244, (2001).

Finally, there are considerable ways in which research could build upon the findings in this study. For example, additional characteristics of judges and how judges communicate could be analyzed, such as levels of appointment (e.g., municipal court, or federal court), or their amount of years on the bench. The social economic status of the judge while growing up could be considered; researchers could compare the prestige of the law school they attended or even look at their grades in law school to see if those experiences and factors change how judges communicate. Furthermore, because this is not an effects study, future research should examine the results of differing judge communication on jurors' perceptions of the trial and deliberative process. All of the communications that occur within a trial, not only the judges', may impact the jury, and are important avenues to discover in the interest of our legal system.

Table 1

Sex of Judge by Subtypes of "To" and "About" Jury Communication

	Male	Female	χ^2	<i>p</i>
Explanational to Jury	31.7%	32.4%	.008	.929
Praise to Jury	4.8%	4.6%	.002	.968
Praise about Jury	0.0%	0.0%	n/a	n/a
Advocate for Jury	30.0%	73.5%	9.758	.002**
Room Stand for Jury	88.9%	92.1%	3.961	.047*
Jury Ask Questions	70.8%	93.6%	53.085	<.001**

*=statistically significant at the .05 level, **=statistically significant at the .01 level

Table 2

Race of Judge by Subtypes of "To" and "About" Jury Communication

	White	Minority	χ^2	<i>p</i>
Explanational to Jury	29.2%	39.2%	1.656	.198
Praise to Jury	5.0%	3.9%	.093	.760
Praise about Jury	0.0%	0.0%	n/a	n/a
Advocate for Jury	48.6%	73.7%	3.176	.075†
Room Stand for Jury	88.6%	96.0%	19.257	<.001**
Jury Ask Questions	77.3%	99.4%	44.250	<.001**

†=statistically significant at the .1 level, **=statistically significant at the .01 level

Table 3

Communication Behavior by Judge Related to Race and Sex

	White Male	Minority Male	White Female	Minority Female
Advocate for Jury	30.0%	0.0%	73.3%	73.7%
Room Stand for Jury	87.8%	100%	89.3%	95.6%
Jury Ask Questions	72.6%	97.6%	87.3%	100%