TONE ON TRIAL: ASSESSING JUROR REACTIONS TO EXPERT WITNESS SPEECH IN AUDITOR NEGLIGENCE CASES

by

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Submitted in partial fulfillment of the requirements for Departmental Honors in the Department of Accounting, Texas Christian University, Fort Worth, Texas

May 2, 2016
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EXPERT WITNESS SPEECH IN AUDITOR NEGLIGENCE
CASES

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ABSTRACT

An attorney may hire an expert witness to present testimony in a jury trial in order to provide a technical opinion about information in the case. This paper addresses the research question, “does an expert’s speech in an auditor negligence trial influence the jurors’ evaluation of that testimony, and ultimately the auditor’s liability?” In the following sections, I address this question by presenting current research on the role of an expert witness in the courtroom, as well as the extent to which an expert’s speech may influence jurors and their decision-making. Furthermore, I argue that this line of research has an important application to the audit field given the increase in auditor negligence litigation since the 2008-2009 financial crisis. The present study tested the level of perceived credibility, likability, and persuasiveness of an expert witness in a mock jury trial by manipulating technical versus conversational speech. This study found that technical versus conversational language in an expert witness’ testimony did not influence the mock jurors’ perceptions of the expert’s credibility, likability, or persuasiveness within statistical significance.
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INTRODUCTION

Legal precedence for audit failure made history in 2010 when the New York Attorney General filed a civil lawsuit against Ernst and Young for its failure to detect fraud in Lehman Brothers financial statements. The lawsuit sought over $150 million in reparations to investors for negligence in the audit of Lehman Brothers (Freifeld, 2015). While this case, and others like this, settled out of court, Ernst and Young ultimately agreed to pay $10 million to the State of New York, in addition to a $99 million agreement paid out to investors in a class action lawsuit. This was the first lawsuit brought against an auditor by the Attorney General since the passing of the Martin Act, which allows both civil and criminal charges in the case of fraud (Alert Accountants’ Liability Newsletter, 2013). While few cases match its magnitude, Ernst and Young’s case serves as a powerful reminder of the legal and financial consequences associated with auditor liability.

One crucial component of an auditor liability trial is the testimony presented by accounting professionals serving as expert witnesses. This paper examines how jurors respond to expert testimony. Specifically, the research question addressed is, “does an expert’s speech in an auditor negligence trial influence the jurors’ evaluation of that testimony, and ultimately the auditor’s liability?”

In order to protect investors, both auditors and issuers of financial statements are regulated by professional standards. Companies should issue financial statements according to Generally Accepted Accounting Principles (GAAP), published by the Financial Accounting Standards Board (FASB)(FASB, ASC 105-10-05-1). Similarly, auditing professionals should conduct audits according to Generally Accepted Auditing Standards (GAAS), issued by the American Institute of Certified Public Accountants (AICPA) for the audit of private entities.
(AICPA 2015) and issued by the Public Company Accounting Oversight Board (PCAOB) for the audit of publically traded companies (PCAOB 2003). However, in their task of determining whether a client has produced fair financial statements, auditors are required to make professional judgments about the application of GAAP. This need for professional judgment is caused by the complex nature of accounting issues and the impossibility of a set of rules that are both understandable and clearly applied in every situation that may arise in a company’s transactions. If an audit failure occurs, these judgments, as well as any errors or misinterpretations during the audit, could be the basis for an auditor to be found negligent. If found negligent, an auditor may be held liable for the misinformation communicated to investors about a company’s financial condition (Feinman, 2003).

The consolidation of GAAP by the FASB has caused an increase in potential litigation against auditors, therefore increasing the importance of understanding how auditor negligence trials operate (Pearson, 2011). In response to increasing complexity of accounting standards and the sources that provided them, in 2009 the FASB codified GAAP into a single website with simplified standards (FASB, 2014). Standards are now much more accessible and easier to research in their application. This increases audit litigation by giving litigators access to accounting authority and allowing them to assign blame when considering the auditor’s involvement in an audit failure (Pearson, 2011). Due to increased potential litigation, this paper recognizes the importance of understanding auditor liability trials and the factors that may influence their outcome.

In order to better understand factors that contribute to jurors’ judgments in auditor liability trials, this paper examines the influence of an expert witness’ speech during oral testimony in court on a jury’s decision-making processes and judgments. Specifically, I conduct
an experimental study where I manipulate the tone of the expert witness (technical versus conversational) and collect mock juror responses measuring the credibility, likability, and ultimate opinion of liability. These responses provide evidence of the influence of an expert’s speech on a jury during trial.

This research fills a gap in current literature by applying research on the influence of expert witnesses in the courtroom to the case of an auditor being tried by jury for negligence. Researchers in the field have explored the influence of expert witnesses in the context of factors like gender (Lind, Erickson, Conley & O’Barr, 1978), credentials (Cooper & Neuhaus, 2000), and written versus oral presentation (FosterLee, Horowitz & Athaide-Victor, 2000). Others have challenged a jury’s ability to comprehend and appropriately evaluate expert testimony (Morgulis, 2009). However, these studies have focused on expert testimony in the general context of a jury trial. This paper seeks to fill the knowledge gap in the area of accounting expert testimony presented in the context of an auditor liability trial.

The rest of the paper is organized as follows; Section II discusses the review of literature and the hypotheses development, Section III presents the experiment design, Section IV provides experiment results, and Section V concludes on results and implications that follow.
Definition of an Expert Witness

Expert witnesses can be helpful to both attorneys and members of the court throughout a legal case. The court defines an expert witness as someone who is, “qualified as an expert by knowledge, skill, experience, training, or education [and] may testify in the form of an opinion or otherwise if: a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact or issue, b) the testimony is based on sufficient facts or data, c) the testimony is the product of reliable principles and methods, and d) the expert has reliably applied the principles and methods to the facts of the case” (“Rule 702. Testimony by Expert Witnesses”). In this role, expert witnesses can provide testimony either by providing factual knowledge or by giving an opinion (“Rule 702. Testimony by Expert Witnesses”). If the expert presents facts, they are simply providing the court with scientific or technical knowledge about a topic involved in the case. For example, in a medical malpractice case, an expert could provide the court with specialized knowledge about the condition or surgery involved, therefore allowing the court to apply that knowledge to the case at hand. If the expert gives an opinion, she applies specialized knowledge to the circumstances of a case and provides a recommendation on how it should be viewed. In the medical malpractice case example, the expert gives an opinion and an overall recommendation based on her knowledge of the condition or surgery as to whether or not the practitioner should be held liable.

Expert witnesses are utilized in different capacities throughout a case. For example, an attorney may hire an expert in a consultant role in which the expert provides the attorney with specialized knowledge that helps the attorney defend or analyze her client’s case. As an extension, experts may help attorneys find and contact other experts to support their case. The
expert may also have more direct involvement in the trial by providing written statements to support pieces of a case in the pre-trial phase. An attorney may hire an expert to experiment or test pieces of evidence to provide support for a point in the case. Finally, an expert could serve as a witness by testifying in court during the trial phase (“General Information About Expert Witnesses and Consultants”). The present study focuses on examining the expert witness’ role as a provider of written expert testimony to a jury trial.

**Roles of Expert Witnesses**

When litigation against an auditor is brought to jury trial, the attorneys representing the defendant (the auditor) work to convince jurors that their client should not be held liable for the undetected fraud. In order to defend their case, attorneys work with third party accountants to examine how the audit was performed. As an extension of this role, accountants may serve as expert witnesses who testify on behalf of the client (Sanchez & Zhang, 2012). Expert witnesses provide testimony including a professional opinion on the conduct of the audit. In the instance of an auditor liability case, this role ideally translates what may be a complicated or technical accounting issue into terms that the jury and the judge can understand and use to evaluate the case (Pearson, 2011).

Current literature identifies issues that may arise when an expert witness testifies in the courtroom. Vidmar and Diamond’s research investigates the role of a juror and the potential problems that a juror may encounter when evaluating expert testimony. This research presents several cases that provide information regarding the psychology of the jury when hearing and processing evidence during a trial.

One area Vidmar and Diamond consider is the instructions commonly given by judges to jurors outlining their roles as triers of fact. These instructions make it clear that jurors are to
evaluate testimony presented during the trial and ultimately decide how to weigh each piece of evidence. Given their role of judges of fact, jurors are responsible for “consider[ing] what testimony to accept, and what to reject” (Vidmar & Diamond, 2011, 5). This research provides key systematic factors of the court that may affect jurors, including the recitation of an expert’s accomplishments and resume before the testimony is given. According to the authors, this essentially communicates to the jury that an expert’s credentials are relevant to their evaluation of the testimony (Vidmar & Diamond, 2011). The research also points out the adversarial nature of testimony, in which experts from both sides of the trial present conflicting interpretations of evidence, communicating that jurors must decide which expert has the better interpretation (Vidmar & Diamond, 2011).

Along this same line of research, some argue that jurors rely on external or secondary factors, rather than content, when evaluating evidence. In their analysis of this issue, Memon and Shuman (1998) distinguish between central and peripheral processing. If a juror uses central processing to evaluate information, she is carefully examining the quality of the information presented by focusing on content. If the juror is using peripheral processing, she is taking mental “shortcuts” to evaluate the information (Memon & Shuman, 1998). Peripheral processing as a juror can include the use of stereotypes, or generalizations about people or groups, to form an assumption about the testimony presented (Memon & Shuman, 1998). Some studies support the idea that these shortcuts can be helpful to a juror faced with a complex case, for example, a juror who uses an expert’s educational or professional background to evaluate the legitimacy of the expert’s claims (Cooper & Neuhaus, 2000). Other research explores the idea that these shortcuts might distract jurors from important information provided in the testimony. For example, a juror who discounts an expert’s testimony entirely based on an expert’s race or gender (Memon &
For the purposes of the courtroom, the Memon and Shuman (1998) assume that the more jurors employ central processing, the better the outcome of the trial. If jurors are not able to completely rely on central processing due to a lack of understanding of the topic, they might instead employ peripheral processing in their evaluation of evidence. Given this possibility of peripheral processing, the presentation style of an expert witnesses’ testimony may affect the outcome of the case.

Types of Expert Testimony

For the purpose of the present study, it is important to note the difference between accounting testimony and the scientific testimony. When determining what type of evidence is admissible in a case, judges act as gatekeepers that must determine whether testimony is reliable (Imwinkelried, 2000). US courts distinguish between scientific and non-scientific testimony. Supreme Court Justice Blackmun established modern standards for evaluating the admissibility of scientific testimony in the landmark case *Daubert v. Merrell Dow Pharmaceuticals*. Blackmun put forth a set of factors that judges should consider, including: “whether the hypothesis is testable; whether it has been tested; how large is the known or potential error rate; whether there are standards controlling the technique's operation; whether the theory or technique has gained general acceptance; and whether the theory or technique has been subjected to peer review and publication” (Imwinkelried, 2000). These factors are collectively referred to as the Daubert Test, and are intended to provide judges a method for evaluating the quality of empirical scientific claims before allowing testimony into the courtroom. Previous research concerning juror reactions to expert testimony largely focuses on the presentation of scientific testimony. For example, the trial simulated in Cooper & Neuhaus (2000) required mock jurors to evaluate whether the expert’s scientific testimony provided enough evidence to support the claim
that the plaintiff’s newly diagnosed cancer was the result of exposure to a certain chemical.

US courts also recognize non-scientific testimony as specialized knowledge such as opinions from mechanics or accountants. *Kumho Tire Co. v. Carmichael* offers clarification on the difference in evaluation procedures for this type of evidence. Justice Breyer ruled that if non-scientific opinion is to be entered into the court as reliable knowledge, it should be subject to “Daubert style scrutiny,” meaning that the discipline itself should be objectively and independently reliable (Imwinkelried, 2000). This criteria is clearly less specific than the factors listed for scientific evidence, leaving much more to a judge’s discretion.

While the guidelines for non-scientific evidence are vague, Adrogue and Ratliff (2000) provide guidance on how to apply “Daubert style scrutiny” to financial evidence. Their research is summarized in the following six principles (Adrogue and Ratliff, 2000).

1. The accounting profession applies a concept of "general acceptance" to its "principles" consistent with the Daubert concept of acceptance
2. The sources of accepted accounting authority are the SEC, FASB, and AICPA
3. There is a recognized hierarchy of GAAP
4. When the underlying subject to which the CPA's testimony relates is based upon a substantive accounting issue…the standards reflected in GAAP may apply, thus, making knowledge of GAAP relevant
5. In other cases, GAAP is not strictly applicable to the services provided by the CPA; instead, GAAP provides guidance as to accepted accounting practices and procedures, and various AICPA technical guides suggest accepted methodologies
6. When the CPA is applying methodologies from other disciplines, both the
standards of the other discipline as well as the accounting standards may apply.

In conclusion, while accounting testimony may differ from the scientific evidence tested in the studies examined through the review of literature, it 1) faces similar scrutiny by the court in order to be considered admissible and 2) has the potential to introduce complexity similar to scientific issues. The current study presents non-scientific accounting testimony to a group of mock jurors.

**Hypotheses Development**

This paper seeks to defend three main hypotheses. First, the amount of technical language in an expert’s testimony in an auditor liability case affects jurors’ perception of the expert’s credibility. Second, the tone used by the expert in her testimony influences jurors’ perception of the expert’s likability. Specifically, when experts use a conversational tone, jurors indicate the expert is more likeable than when experts use a technical tone. Third, jurors are more likely to find an expert witness to be more persuasive when considering their decision on the defendant’s liability when presented with conversational language rather than technical jargon. The following review of recent studies sets the foundational knowledge needed to evaluate these claims. The study introduced in Section III will test these hypotheses.

**Speech and Credibility**

Research conducted on expert testimony presented to a jury indicates that jurors evaluate the credibility of a witness in order to weigh the significance of the testimony presented. Neal’s (2009) research summarizes data collected in the late 90’s and early 2000’s on the most effective and common ways to prepare expert witnesses for trial. The methods detailed in the article stem from the idea that when considering expert testimony, credibility is directly linked to effective
persuasion of the jury. In order to appear credible, experts must be prepared for trial. While the expert is responsible for preparing the actual opinion to be expressed in court, the attorney usually takes on the role of preparing the expert for the actual delivery of the testimony (Neal 2009).

Research on the type of speech used during testimony supports the idea that language influences the perceived credibility of an expert. Seidman Diamond (2007) used videotapes of an actual trial and jury deliberation within the Arizona Supreme Court system to collect data on juror responses to expert testimony. The study argues that jurors do not resort to evaluating evidence using exclusively peripheral (or secondary) cues. Instead, jurors are able to reasonably interpret secondary factors, particularly language, in addition to their evaluation of the content of the testimony itself (Seidman Diamond 2007). In this view, a juror is “filling in the gaps” of what he or she may not understand about the content of the testimony by using secondary factors as signals indicating the legitimacy of an expert’s claims. This conclusion supports the idea that jurors are able to reasonably use varying types of language in order to interpret the quality of the evidence presented, meaning that the level of conversational or technical language can affect the persuasiveness of expert testimony.

One way to measure perceived credibility is through an expert’s credentials and the jury’s knowledge of them. Cooper, Bennett, and Sukel (1996) measured the impact of technical complexity in an expert’s testimony by manipulating a mock expert’s credentials with high and low complexity cases. The high complexity testimony included technical medical jargon, while the low complexity testimony used laymen’s terms. This study concluded that in the case of highly technical testimony, an expert’s credentials were important to a mock jury’s
considerations of the case. In contrast, if the testimony was fairly simple, credentials were not important to juror evaluations (Cooper, Bennett, & Sukel, 1996).

The above discussion suggests that jurors’ perception of an expert witness depends on the nature of the expert’s testimony. If an expert’s testimony contains technical language jurors are more likely to rate the expert as credible whereas if the expert witness’ testimony contains conversational language, the jurors are less likely to rate the expert as credible. Formally stated:

Hypothesis 1: During an auditor negligence trial, jurors rate an expert witness as more credible if the expert witness’ testimony contains technical language than if the expert witness’ testimony contains conversational language.

Speech and Likeability

Prior literature provides evidence that jurors evaluate the likeability of an expert when weighing the significance of the testimony presented. Supreme Court Justice Scalia emphasized that one of a lawyer’s main objectives in any argument is “to demonstrate to the court, mostly by the manner of your presentation, that you are likable and not mean-spirited” (Scalia 2008, 45). Perkel (2010) supports this conclusion and extends it to expert witnesses by outlining likability in the courtroom using the Ethos Logos Pathos, or ELP, Model. In this model, Ethos refers to the authenticity of the expert or lawyer, Logos the veracity of the argument, and Pathos the emotions of the jurors. Together, these three factors convey overall likability. The Ethos construct warns that complex or confusing language may alienate the jury, and advises speakers to focus on word choice in order to maximize likability (Perkel 2010).

Mock jury research experiments have been used to evaluate the relationship between expert testimony and jurors’ evaluations of witness likability. Brodsky (2009) manipulated the likability of testimony in a mock capital murder trial in order to measure juror perceptions of
credibility and overall agreement. The definition of likability included factors like the, "use of informal speech, such as referring to an individual by name and use of less technical jargon" (Brodsky 2009). Testimony with high likability minimized technical jargon and stated modest conclusions using “we” statements that referred to the scientific community as a whole. Low likability testimony was formal, highly technical, and claimed several absolute conclusions. The study concluded that highly likable experts were rated as more trustworthy. This study indicates that the perceived likability of an expert witness may impact the jurors’ characterization of the expert. Applying this information to the relationship between jurors’ perceptions of an expert to their evaluation of the expert’s testimony, it follows that the level of perceived likability of an expert may impact the outcome of the case.

Given the relationship between speech and likability, Hypothesis II seeks to defend the idea that when testifying as an expert witness in an auditor liability case, an expert can appear more likable if he or she uses a conversational tone when presenting to a jury. Stated formally:

Hypothesis 2: When testifying as an expert witness in an auditor liability case, an expert can appear more likable if he or she uses a conversational tone when presenting to a jury.

Speech and Liability

In addition to considerations of credibility and likeability, prior literature provides evidence that an expert’s speech can influence the level of persuasion that testimony has on a jury. Neal (2009) provides a basis for understanding how different types of speech may impact the jurors’ analysis of expert testimony. This research supports the idea that juror impressions, and consequently their decisions on the case, may vary depending on the conversational or technical nature of an expert’s speech. For example, an expert whose testimony is filled with technical terms native to the industry may influence a jury differently than an expert who avoids
formal language and focuses on common, layperson descriptions. In addition to the technicality of language, the level of assertion or confidence that an expert speaks with may influence the persuasiveness of the testimony. This is referred to as “powerful” or “powerless” speech. In the former, an expert avoids uncertain language like “I think” or “kind of” (Neal, 2009).

There is also significant evidence supporting a relationship between the perceived credibility of an expert and the ultimate liability of a defendant. As stated previously, peripheral processing may occur when testimony becomes complex or highly technical (Memon & Shuman, 1998). Research conducted by Petty and Wegener (1999) claims that the perceived credibility of any type of witness influences the persuasion of the jury, and therefore their decision on the culpability of the defendant, when jurors rely on peripheral processing to evaluate the case. Cooper and Neuhaus (2000) further back that claim by applying it to the context of expert witnesses testifying in complex, scientific trials. This series of studies focused on the effects of an expert’s credentials and pay rate on a mock jury’s evaluation of complex scientific testimony. The research is particularly helpful because it discusses the results of the study in the context of central and peripheral processing. The study concluded that when presented with technically complex testimony, jurors rely on peripheral processing cues, such as an expert’s perceived credibility, to evaluate a defendant’s culpability (Cooper and Neuhaus, 2000). These studies provide evidence of a connection between the technical complexity of an expert’s testimony, a juror’s evaluation of that testimony through peripheral processing, and the ultimate liability of a defendant.

The importance of this type of research can be extrapolated beyond how jurors make decisions to the actual quality of juror decision-making in the context of expert testimony. Horowitz, FosterLee, and Brolly (1996) examined the ability of a mock jury to appropriately
award compensation to plaintiffs given high/low information load and varying complexity of the testimony. High complexity testimony was composed of legal jargon, whereas low complexity testimony contained concrete, common language. The study concluded that high complexity testimony inhibited jurors’ ability to appropriately compensate differentially worthy plaintiffs (Horowitz, Brolly & FosterLee, 1996). By providing evidence that jurors might make lower quality decisions when faced with complex testimony, this study supports the issues that peripheral processing among jurors pose to the validity of legal decisions.

Research shows that jurors may use peripheral processing techniques like an evaluation of an expert’s credibility in order to determine a defendant’s culpability, particularly in the context of complex scientific cases. Hypothesis III seeks to defend the idea that when determining an auditor’s liability in an audit failure case, a jury is more likely to be persuaded by expert testimony that was presented using conversational language rather than technical jargon. Stated formally:

Hypothesis 3: Jurors are more likely to find an expert witness to be more persuasive when considering their decision on the defendant’s liability when presented with conversational language rather than technical jargon.

RESEARCH METHOD

Experimental Design and Procedure

In order to better understand factors that contribute to jurors’ judgments in auditor liability trials, this paper examines the influence of an expert witness’ speech during oral testimony in court on a jury’s decision-making processes and judgments. Specifically, an experimental study is conducted where the tone of the expert witness is manipulated (technical versus conversational) and mock juror responses measuring the credibility, likability, and
ultimate opinion of liability are collected. These responses provide evidence for the influence of an expert’s speech on a jury during trial.

This is a three-phase study. In the first phase participants are provided background information of fictitious civil litigation between the plaintiff, the Investors of Smith Computer Corporation and the defendant, the auditors of Pearson Wright. Participants are also provided with a background on the purpose of an audit and the definition of negligent auditing.

In the second phase, participants are provided with the transcript of expert testimony from the plaintiff’s expert witness, Dr. Taylor Simmons. Participants are asked to read the testimony and proceed to phase three of the study. The Technical Language condition provides the expert’s testimony and is written using highly technical accounting and legal jargon, whereas the Conversational Language condition provides expert witness testimony using conversational language and laymen’s terms. The experimental instrument included in Appendix A illustrates the different language used to manipulate the expert witness’ tone.

In phase three of the study, participants respond to manipulation check questions and questions regarding their perceptions of the expert witness including measures of credibility and likability. Participants also indicate whether they find in favor of the plaintiff (Smith Computer Corporation Investors) or the defendant (auditors of Pearson Wright). The scales measuring perceived credibility, likability, and overall persuasiveness of the expert were developed based on those used in the Lind, Erickson, Conley, and O’Barr (1978) study. The perceived credibility\(^1\) of the expert was measured by questions indicating the competency and intelligence of the

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\(^{1}\) Credibility questions included: How credible is the expert witness; How competent is the expert witness; How intelligent is the expert witness
expert, perceived likability\(^2\) was measured by questions indicating how relatable and approachable the expert was, and the overall persuasiveness\(^3\) of the expert was measured by questions indicating the effectiveness and trustworthiness of the expert. Each question was measured 7-Point Likert Scale where 1 = being not related at all to the prescribed characteristic (i.e. not intelligent), and 7 being exactly related to the prescribed characteristic (intelligent). In order to record the final decision of the mock juror, two final questions asked the participant to rate the degree to which he or she agreed with the expert witness and the degree to which he or she believed the defendant to be guilty. Finally, participants responded to demographic and other questions.

RESULTS

Participants

The experimental participants included in the study are undergraduate students at Texas Christian University, primarily senior accounting majors. The study collected data from 50 students, 21 female and 29 male, recruited from two sections of a Risk and Controls course at Texas Christian University. Forty-nine of the students were seniors. Each student had completed an average of five accounting classes. Participation was anonymous, and no personally identifying information was collected. The study focused on auditor negligence, a topic that students had not received instruction on through their degree curriculum.

\(^2\) Likability questions included: How likeable is the expert witness; How relatable is the expert witness; How approachable is the expert witness

\(^3\) Persuasiveness questions included: How persuasive is the expert witness; How effective is the expert witness; How trustworthy is the expert witness
Manipulation Check

I first addressed whether the manipulation of the independent variable (Technical versus Conversational testimony) was effective. Participants were asked to rank the technical nature of the expert’s testimony, the conversational nature of the expert’s testimony, and the overall tone of the expert witness on 7-point Likert scales using three questions, “to what extent was the expert witness’ language technical in nature,” “to what extent was the expert witness’ language conversational in nature,” and “rate the overall tone of the expert witness.” Participants responded on a 7-point Likert scale in which a response of 1 indicated to no extent, and conversational, and a response of 7 indicated to a great extent and technical. The reliability score of the three questions using Cronbach’s Alpha is 0.826; thus the test is reliable.

The results of the manipulation check indicate that the participants who received the Technical testimony condition averaged a response of 4.72 and the participants who received the Conversational testimony condition averaged a response of 3.86. This indicates that the participants that received the Technical condition perceived a higher level of technical speech in the testimony and the participants that received the Conversational condition perceived a higher level of conversational speech in the testimony. Significance is tested at \( p < 0.05 \) (\( t = 0.02 \), two-tailed); thus the difference is statistically different. Exhibit 1 presents a bar graph comparing the mean responses between the Technical condition and the Conversational condition and indicates that the manipulation of the independent variable is effective.
Hypothesis 1
The first hypothesis states that during an auditor negligence trial, jurors rate an expert witness as more credible if the expert witness’ testimony contains technical language than if the expert witness’ testimony contains conversational language. I used three questions to elicit participants’ rating of the credibility of the expert witness, “how credible is the expert witness,” “how competent is the expert witness,” and “how intelligent is the expert witness.” Reliability score testing resulted in a Cronbach’s Alpha of .854; thus the three questions measure the participant’s evaluation of credibility. Participants responded to the questions using 7-point Likert Scales in which a response of 1 indicated not credible, incompetent, and not intelligent, and a response of 7 indicated credible, competent, and intelligent. The results indicate that the participants in the Technical testimony condition averaged a response of 4.97 and the participants who received the Conversational testimony condition averaged a response of 4.49. This indicates that the participants that received the Technical condition perceived a slightly higher level of credibility than the participants who received the Conversational condition. To
test the significant difference between the two groups, I performed a t-test noting that there is not a significant difference between the two groups (F = .047, t=1.866, p=0.068, two-tailed); thus the difference is not statistically different at p <0.05. Exhibit 2 presents a bar graph comparing the mean responses to perceived credibility between the Technical condition and the Conversational conditions.

**Exhibit 2: Dependent Variable - Credibility**

Hypothesis 2

Hypothesis two states that when testifying as an expert witness in an auditor liability case, an expert can appear more likable if the expert uses a conversational tone when presenting to a jury. I used three questions to elicit the participant’s likability rating toward the expert witness. Participants responded to the questions “how likeable is the expert witness,” “how relatable is the expert witness,” and “how approachable is the expert witness” using 7-point Likert scales where 1 indicated not likable, not relatable, and not approachable, and 7 indicated very likable, relatable, and approachable. Reliability testing resulted in a Cronbach’s Alpha of 0.643.
The results indicate that the participants who received the Technical testimony condition averaged a response of 3.96 and the participants who received the Conversational testimony condition averaged a response of 4.13. This indicates that the participants that received the Conversational condition perceived a slightly higher level of likeability than the participants who received the Technical condition. Significance is tested at $p < 0.05$ ($t = -0.775, p = .442$, two-tailed); thus the difference is not statistically different. Exhibit 3 presents a bar graph comparing the mean responses to perceived likeability between the Technical condition and the Conversational condition on the Likert Scale.

*Exhibit 3: Dependent Variable – Likeability*

![Bar chart showing average likability ratings for Technical and Conversational conditions.]

**Hypothesis 3**

Hypothesis 3 states that jurors are more likely to find an expert witness to be more persuasive when considering their decision on the defendant’s liability when presented with conversational language rather than technical jargon. I tested this hypothesis using two sets of 3 questions that measured persuasiveness and the ultimate liability of the defendant. The first set of questions included, “how persuasive is the expert witness,” “how effective is the expert witness,” and “how trustworthy is the expert witness.” Participants responded on a 7-point Likert scale in
where a response of 1 indicated not persuasive, not effective, and not trustworthy and a response of 7 indicated persuasive, effective, and trustworthy. The results for this set of questions indicate that the participants who received the Technical testimony condition averaged a response of 5.08 and the participants who received the Conversational testimony condition averaged a response of 4.76. This indicates that the participants that received the Technical condition perceived a slightly higher level of persuasiveness than the participants who received the Conversational condition. Significance is tested at p < 0.05 (t=1.364 p=0.179, two-tailed); thus the difference is not statistically different. Reliability testing resulted in a Cronbach’s Alpha of .649; thus the test is reliable. Exhibit 4 presents a bar graph comparing the mean responses to perceived persuasiveness between the Technical condition and the Conversational condition on the Likert Scale.

The second set of questions asked participants to rate the extent to which they, “agree with the expert testimony,” “believe the defendant to be guilty of negligence,” and “find in favor of the plaintiff,” using a 7 point Likert scale. A response of 1 indicated disagree, not guilty, and to no extent, whereas a response of 7 indicated agree, guilty, and to a great extent. The results indicate that the participants who received the Technical testimony condition averaged a response of 4.35 and the participants who received the Conversational testimony condition averaged a response of 4.24. This indicates that the participants that received the Technical condition believed the defendant to be guilty to a slightly greater extent than the participants who received the Conversational condition. Significance is tested at p < 0.05 (t=0.761p=0.451, two-tailed); thus the difference is not statistically different. Reliability testing resulted in a Cronbach’s Alpha of .649; thus the test is reliable. Exhibit 5 presents a bar graph comparing the
mean responses to perceived liability between the Technical condition and the Conversational condition on the Likert Scale.

**Exhibit 4: Dependent Variable – Persuasiveness**

**Questions 10-12: Average Persuasiveness Rating**

<table>
<thead>
<tr>
<th>Participant Response: Persuasiveness</th>
<th>Technical</th>
<th>Conversational</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5.083</td>
<td>4.756</td>
</tr>
</tbody>
</table>

**Exhibit 5: Dependent Variable – Liability**

**Questions 13-15: Average Liability Rating**

<table>
<thead>
<tr>
<th>Participant Response: Liability</th>
<th>Technical</th>
<th>Conversational</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4.347</td>
<td>4.244</td>
</tr>
</tbody>
</table>
CONCLUSIONS

The present study adds to current research on the effects of juror perceptions in the courtroom specifically in the context of an auditor liability case. This study sought to answer the question, “does an expert’s speech in an auditor negligence trial influence the jurors’ evaluation of that testimony, and ultimately the auditor’s liability?”

In the US financial market, auditors provide investors with reasonable assurance that an entity’s financial statements fairly represent its financial positioning according to GAAP (FASB, ASC 105-10-05-1). Auditors conduct their review of an entity’s financial statements under the guidance of GAAS, however, this review is based specifically on the idea of providing “reasonable assurance,” rather than absolute certainty as to the accuracy of the statements (Feinman, 2003). Because of this discrepancy, auditors risk issuing an opinion that is misleading to investors and are therefore open to litigation for auditor negligence. This litigation risk has increased in recent years with the consolidation of GAAP by the FASB, which provides attorneys with access to standards that could be used to hold auditors liable for a misleading opinion (Pearson, 2011). Accounting based litigation typically requires the assistance of expert witnesses who have the technical skill and knowledge to provide attorneys and jurors with evidence about the case. Given the increasing risk of litigation and the corresponding expanding role of expert witnesses, it is increasingly important for accounting professionals to understand factors that may influence a jury’s decision on an auditor’s liability in a negligence case.

The present study seeks to add to current research by applying ideas about juror reactions in the case of scientific testimony to the case of auditor negligence, which is considered a non-scientific area. Researchers have presented a number of theories on the factors that affect a jury’s decision in court. One of these factors is how jurors react to expert testimony. Several
researchers have studied juror reactions to scientific testimony by manipulating factors such as the gender (Lind, Erickson, Conley & O’Barr, 1978), credentials (Cooper & Neuhaus, 2000), and written versus oral presentation (FosterLee, Horowitz & Athaide-Victor, 2000). The present study manipulated the technical versus conversational nature of written expert testimony and measured mock juror reactions to the perceived credibility, likability, and persuasiveness of the expert in order to conclude on the role that expert testimony and juror’s reactions to it play in an auditor liability case.

The null hypothesis in this study stated that the technical versus conversational tone of the expert witness testimony would not affect the jurors’ perception of credibility, likeability, persuasiveness of the expert, and the ultimate liability of the defendant. While the averaged Likert scale results shown on Exhibits 1-5 support each hypothesis, the results of this study do not conclusively link tone to each dependent variable within statistical significance. This may be a result of a problem with the participant group, as all participants were senior accounting students. Armed with a basic understanding of accounting, these participants did not face the same potential for peripheral processing when presented with technical testimony that a randomly selected population may have faced. Because the participants were more likely to understand technical accounting testimony, they were therefore able to evaluate the testimony with less reliance on peripheral factors such as likeability, credibility, and persuasiveness than a true random selection of jurors. This study was also limited by written, rather than oral testimony. The technical versus conversational tone of the expert witness may have been more influential if the testimony was heard, rather than read. In future studies, I suggest applying the same principles of juror perception to a random participant selection using expert testimony presented either in person or with a video recording. I believe these studies might produce results
in support of these hypotheses with a statistically significant degree of correlation between tone and likeability, credibility, and persuasiveness.

From this study, I offer several implications for accounting and legal professionals. First, accounting professionals wishing to serve as expert witnesses should pursue a basic understanding of the current research behind juror perceptions of expert testimony in their case preparation. While the present study was not able to support a statistically significant correlation, research reviewed in Section II of this paper supports the idea that there is some correlation between tone and juror perception. Given the increase in accounting litigation, this will be an increasingly important relationship for experts, attorneys, and members of the court to understand as it may impact court proceedings and decisions. I also suggest that audit professionals maintain a current understanding of the liability they may face when conducting their audit work in the context of GAAP and GAAS, and review any procedures that may produce undue risk. Overall, I believe understanding both the legal risk of misstatement or error in an audit and the effects of juror perception of expert testimony in court are important concerns for both the accounting and legal sectors.
REFERENCES


Phase 1: Your Instructions
Assume you are a member of a 12 person jury. You have been asked to listen to both the defendants and plaintiff’s attorney’s arguments regarding the guilt or innocence of the external auditors.
Investors in Smith Computer Corporation are suing in civil court and in a class action lawsuit, the Smith Computer Corporation’s external auditors who issued an opinion on the company’s financial statements for the years ended 2004 and 2005. Investors claim that the external auditors were negligent in their performance of the audit.
Plaintiffs testified that their investments were made in reliance on Pearson Wright's unqualified audit opinion on the company's 2005 financial statements. As the warrant transaction closed on April 8, 2006, the company's financial performance began to falter. Sales declined sharply and the public offering never materialized. The company filed for bankruptcy on September 13, 2006. Plaintiffs ultimately lost their investments.

Next, you are provided with background information and instructions. Use the following instructions to evaluate the plaintiff’s case.

Purpose of an Audit:
An audit is the verification of an entity's financial statements through an examination of its underlying accounting records and supporting evidence. In an audit engagement, an accountant examines financial statements prepared by a client and issues an opinion stating whether such statements fairly represent the financial status of the audited entity.

Negligent Auditing:
Negligence is conduct that falls below the standard established by law for the protection of others. The auditor of a company's financial statements can be held liable for professional negligence, meaning the court can hold an auditor responsible for damages if they issue an inaccurate audit report. The auditor can be held liable only to the person or entity contracting for the auditing services, and cannot be held liable on a pure negligence (the failure to take proper care) to investors who use the audit report. However, the auditor may be held liable for negligent misrepresentation (careless representation) to investors who, although not clients, are known to the auditor and for whose benefit the auditor renders the audit report. Allowing such persons to recover avoids freeing the auditor from blame where he or she intends to influence a particular business transaction involving third persons. In other words, if an auditor intends to influence investors’ actions using their audit report, the auditor can be held liable for negligent misrepresentation. In this case, with respect to liability to third parties, negligence instructions to the jury were in accordance with International Mortgage Co. v. John P. Butler Accountancy Corp. (1986) 177 Cal.App.3d 806 [223 Cal.Rptr. 218] to the effect that: "An accountant owes a further duty of care to those third parties who reasonably and foreseeably rely on an audited financial statement prepared by the accountant. A failure to fulfill any such duty is negligence." In the next phase of the study, you will read the transcript of testimony presented by the plaintiff’s (accusing party – Smith Computer Corporation’s investors) expert witness.
Phase 2: Testimony of Dr. Taylor Simmons, expert witness for the plaintiff

“This litigation emanates from the bankruptcy of Smith Computer Corporation (hereafter the company), a rapidly successful personal computer manufacturing company. In fall 2005, sales of the company's sole product, the Smith I computer, had reached $10 million per month, making the company one of the fastest growing enterprises in the history of American business. In late 2005, the company began planning for an early 2006 initial public offering of its stock, engaging three investment banking firms as underwriters. At the suggestion of the underwriters, the offering was postponed for several months, in part because of uncertainties caused by the company's plans to introduce a new computer to replace the Smith I. In order to obtain "bridge" financing needed to meet the company's capital requirements until the offering, the company issued warrants to investors in exchange for direct loans or letters of credit to secure bank loans to the company (the warrant transaction).


As the plaintiffs' principal expert witness, I have reviewed the 2005 audit offer a critique identifying more than 40 deficiencies in Pearson Wright's performance amounting to gross professional negligence.

- Pearson Wright did not perform its examination in accordance with GAAS. I find the liabilities on the company's financial statements to have been understated by approximately $3 million. As a result, the company's supposed $69,000 operating profit was a loss of more than $3 million.
- Pearson Wright had discovered material weaknesses in the company's accounting controls, but failed to report its discovery to management.
- Pearson Wright discovered deviations from GAAP, but failed to disclose them as qualifications or corrections to its audit report. For example, by January 2006, a senior auditor with Pearson Wright identified $1.3 million in unrecorded liabilities including failures to account for customer rebates, returns of products, etc. Although the auditor recommended that a letter be sent to the company's board of directors disclosing material weaknesses in the company's internal accounting controls, his superiors at Pearson Wright did not adopt the recommendation; no weaknesses were disclosed. Pearson Wright rendered its unqualified opinion on the 2005 statements a month later.

From these claims, I find Pearson Wright to be guilty of negligent auditing. Pearson Wright’s issue of unqualified audit reports misled investors, giving them the right to sue for compensatory damages.”
**Phase 3: Your Response**
Please respond to the following questions related to the case you read.

1. To what extent was the expert witness’ language technical in nature?

   1. To no extent
   2. 3
   3. 4
   4. 5
   5. 6
   6. 7
   7. To a great extent

2. To what extent was the expert witness’ language conversational in nature?

   1. To no extent
   2. 3
   3. 4
   4. 5
   5. 6
   6. 7
   7. To a great extent

3. Rate the overall tone of the expert witness:

   Conversational
   1
   2
   3
   4
   5
   6
   7
   Technical

4. How credible is the expert witness?

   1. Not Credible
   2. 3
   3. 4
   4. 5
   5. 6
   6. 7
   7. Credible

5. How competent is the expert witness?
6. How intelligent is the expert witness?

7. How likeable is the expert witness?

8. How relatable is the expert witness?

9. How approachable is the expert witness?

10. How persuasive is the expert witness?
11. How effective is the expert witness?

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<tbody>
<tr>
<td>Ineffective</td>
<td>Effective</td>
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12. How trustworthy is the expert witness?

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<tr>
<td>Not Trustworthy</td>
<td>Trustworthy</td>
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13. To what extent do you agree with the expert testimony?

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<tbody>
<tr>
<td>Disagree</td>
<td>Agree</td>
<td></td>
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14. To what extent do you believe the defendant, the auditors of Smith Computer Corporation - Pearson Wright & Company - to be guilty of negligence?

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<tbody>
<tr>
<td>Not Guilty</td>
<td>Guilty</td>
<td></td>
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15. To what extent do you find in favor of the plaintiff, the accusing party – Smith Computer Corporation’s investors?

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<tbody>
<tr>
<td>To no extent</td>
<td>To a great extent</td>
<td></td>
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</table>
Questions about you

Your gender is? (check one)
Male _____ Female _____ prefer not to respond _____

What is your year in school? (check one)
Freshman _____ Sophomore _____ Junior _____
Senior _____ Other _____

How many accounting classes have you completed? ______

Which accounting classes have you completed?

__________________________________________________________

Have you ever been summoned for jury duty? (check one)
Yes _______ No _______

Have you ever served on a jury?
Yes _______ No _______

If yes, did you serve on a civil jury? Yes_______ No_______
In general, to what extent do you believe the U.S. legal system to be fair?

1  2  3  4  5  6  7
Not Fair  Fair

In general, to what extent do you believe the U.S. legal system to be effective?

1  2  3  4  5  6  7
Not Effective  Effective

To what extent are you aware of basic U.S. judicial court procedures?

1  2  3  4  5  6  7
Not Aware  Aware

To what extent are you aware of the role of expert witness in U.S. judicial courts?

1  2  3  4  5  6  7
Not Aware  Aware
Phase 1: Your Instructions
Assume you are a member of a 12 person jury. You have been asked to listen to both the
defendants and plaintiff’s attorney’s arguments regarding the guilt or innocence of the external
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Plaintiffs testified that their investments were made in reliance on Pearson Wright's unqualified
audit opinion on the company's 2005 financial statements. As the warrant transaction closed on
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others. The auditor of a company's financial statements can be held liable for professional
negligence, meaning the court can hold an auditor responsible for damages if they issue an
inaccurate audit report. The auditor can be held liable only to the person or entity contracting for
the auditing services, and cannot be held liable on a pure negligence (the failure to take proper
care) to investors who use the audit report. However, the auditor may be held liable for negligent
misrepresentation (careless representation) to investors who, although not clients, are known to
the auditor and for whose benefit the auditor renders the audit report. Allowing such persons to
recover avoids freeing the auditor from blame where he or she intends to influence a particular
business transaction involving third persons. In other words, if an auditor intends to influence
investors’ actions using their audit report, the auditor can be held liable for negligent
misrepresentation. In this case, with respect to liability to third parties, negligence instructions to
the jury were in accordance with International Mortgage Co. v. John P. Butler Accountancy
Corp. (1986) 177 Cal.App.3d 806 [223 Cal.Rptr. 218] to the effect that: "An accountant owes a
further duty of care to those third parties who reasonably and foreseeably rely on an audited
financial statement prepared by the accountant. A failure to fulfill any such duty is negligence."
In the next phase of the study, you will read the transcript from the plaintiff’s (accusing party –
Smith Computer Corporation’s investors) expert witness’ testimony in this case.
Phase 2: Testimony of Dr. Taylor Simmons, expert witness for the plaintiff

Good afternoon, jurors. We are here today to discuss the bankruptcy of Smith Computer Corporation (I’ll call them “the company”), a once successful personal computer manufacturing company. In fall of 2005, rapid sales of the company's product, the Smith I computer, made the company one of the fastest growing businesses in history. In late 2005, the company began planning to “go public” by allowing investors to buy company stock, or ownership in the company. The company’s financial advisors suggested that the public offering date should be put off for several months, because the company planned to introduce a newer computer to replace the Smith I. This delay forced the company to collect temporary loans from investors in that would keep the company running until the stock could be sold publicly.

The company hired accounting firm Pearson Wright to perform audits and issue audit reports on its 2004 and 2005 financial statements. After going through the company’s financial statements and records, Pearson Wright issued clean audit opinions, for both years, which told investors that the financial statements accurately represented the company’s performance.

As the plaintiffs' principal expert witness, I have reviewed the 2005 audit and offer a critique identifying more than 40 deficiencies in Pearson Wright's performance amounting to auditor negligence. Pearson Wright did not perform its audit correctly according to accepted standards for auditors.

- I find the liabilities on the company's financial statements were lower than they should have been by about $3 million. As a result, the company's supposed $69,000 operating profit was actually a loss of more than $3 million. This information mislead investors by making the company seem more successful than it really was.
- Pearson Wright had come across significant weaknesses in the company's financial procedures, but didn’t report this to management.
- Pearson Wright discovered that some of the company’s accounting practices didn’t meet accepted standards, but didn’t note this on the audit report. For example, by January 2006, a senior auditor with Pearson Wright identified $1.3 million in liabilities that were not properly recorded in the company’s financial statements. Although the auditor suggested that a letter should be sent to the company's board of directors admitting the weaknesses in the company’s accounting practices, his bosses at Pearson Wright did not agree. They didn’t publish any weaknesses, and Pearson Wright gave the company a clean opinion on the 2005 statements a month later.

This is the inaccurate information that led the plaintiffs to believe that the company was a safe investment. Because of this, I think Pearson Wright is guilty of negligent auditing. We should hold Pearson Wright responsible for compensating investors for their losses.
Phase 3: Your Response
Please respond to the following questions related to the case you read.

1. To what extent was the expert witness’ language technical in nature?

   1  2  3  4  5  6  7
   To no extent          To a great extent

2. To what extent was the expert witness’ language conversational in nature?

   1  2  3  4  5  6  7
   To no extent          To a great extent

3. Rate the overall tone of the expert witness:

   1  2  3  4  5  6  7
   Conversational        Technical

4. How credible is the expert witness?

   1  2  3  4  5  6  7
   Not Credible          Credible

5. How competent is the expert witness?
6. How intelligent is the expert witness?

7. How likeable is the expert witness?

8. How relatable is the expert witness?

9. How approachable is the expert witness?

10. How persuasive is the expert witness?
11. How effective is the expert witness?

12. How trustworthy is the expert witness?

13. To what extent do you agree with the expert testimony?

14. To what extent do you believe the defendant, the auditors of Smith Computer Corporation - Pearson Wright & Company - to be guilty of negligence?

15. To what extent do you find in favor of the plaintiff, the accusing party – Smith Computer Corporation’s investors?
Questions about you

Your gender is? (check one)
Male _____ Female _____ prefer not to respond _____

What is your year in school? (check one)
Freshman _____ Sophomore _____ Junior ______
Senior _____ Other _____

How many accounting classes have you completed? ______

Which accounting classes have you completed?

Have you ever been summoned for jury duty? (check one)
Yes _______ No ________

Have you ever served on a jury?
Yes _______ No ________
If yes, did you serve on a civil jury? Yes_______ No_______
In general, to what extent do you believe the U.S. legal system to be fair?

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<tr>
<td>Not Fair</td>
<td>Fair</td>
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In general, to what extent do you believe the U.S. legal system to be effective?

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<tr>
<td>Not Effective</td>
<td>Effective</td>
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To what extent are you aware of basic U.S. judicial court procedures?

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<tr>
<td>Not Aware</td>
<td>Aware</td>
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To what extent are you aware of the role of expert witness in U.S. judicial courts?

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