THE IMPACT OF ATTORNEY'S SPEAKING FLUENCY WHEN DELIVERING AN OPENING STATEMENT ON JUROR DECISIONS

by

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THE IMPACT OF ATTORNEY'S SPEAKING FLUENCY WHEN DELIVERING AN OPENING STATEMENT ON JUROR DECISIONS

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ABSTRACT

A wealth of research has focused on factors that impact jurors' decisions based on the information made available to them in court. However, in no prior research has the impact of how well an attorney delivers an opening statement (speaking fluently or disfluently) been isolated to evaluate its direct impact on jurors' decisions. By contrast, in a parallel literature, the impact of an instructor's lecture fluency on students' educational experiences has been studied more extensively. Thus, I borrowed methodology from this field and applied it to a legal context by evaluating jurors' perceptions of the attorney and level of liability when presented with a fluent opening statement versus a disfluent opening statement. To explore this issue, 83 undergraduate students were randomly assigned to read a fluent or disfluent version of an opening statement. Next, they gave ratings of liability, perceptions of the attorney, and likelihood of hiring the attorney and the defendant. The fluency of the attorney's opening statement did not impact liability ratings or ratings of the likelihood of hiring the defendant. By contrast, the fluency of the attorney's opening statement significantly influenced ratings of how likely participants would be to hire the attorney and for many of the traits referring to the attorney's competency and abilities.

The Impact of Attorney's Speaking Fluency when Delivering an Opening Statement on Juror Decisions

Psychology plays a role in the courtroom in many ways, especially regarding factors that influence jurors' decisions. Researchers have investigated the effects of a variety of factors on juror's decisions including: the attorney's gender (e.g., Barge, Schlueter, & Pritchard, 1989; Hahn & Clayton, 1996), attorney's level of aggression (Hahn & Clayton, 1996), and the ethnicity of the suspect (e.g., Davison et al., 2010). However, in no prior research has the impact of an attorney's speaking fluency when delivering information in a legal context been isolated to evaluate its direct impact on jurors' decisions. By contrast, in a related literature, the impact of an instructor's lecture fluency on students' educational experiences has been studied more extensively. Thus, by borrowing methodology from this field and applying it to a legal context, I evaluated jurors' perceptions of the attorney and level of liability when presented with a fluent opening statement versus a disfluent opening statement. In this research, I considered that the fluency of speech may impact perceptions in a legal context similar to how they impact students' assessments in a classroom context.

In educational contexts, an instructor's speaking fluency impacts students' classroom experiences. In this field of research, speaking fluency during lectures is commonly referred to as lecture fluency, which is defined as how well a lecture is delivered. To illustrate, a study by Carpenter et al. (2013) had a fluent instructor standing upright, maintaining eye contact with the camera, using appropriate emphasis, and pausing in her speech. By contrast, when the same instructor gave a disfluent lecture, she hunched over a podium, and read from her notes instead of making eye contact. In this study, students watched a one-minute lecture video with an identical instructor, lecture content, and camera position. Half of the students watched a fluent

delivery of the lecture, and the other half watched a disfluent delivery of the lecture. Immediately following the lecture, all students gave a prediction of future memory performance (judgement of learning; JOL), rated the instructor, and completed a free-recall test over the information in the video. Students who watched the fluent instructor gave higher JOLs, as opposed to those who watched the disfluent instructor. However, there was no difference in memory performance between students who watched the fluent instructor and students who watched the disfluent instructor. Even so, students rated the fluent instructor higher on organization, knowledge, preparedness, and effectiveness relative to the disfluent instructor. These results were replicated in a similar study, in which students watched a longer (20-minute) lecture video delivered either fluently or disfluently (Carpenter et al., 2016) as well as in other research (Carpenter et al., 2020; Serra & Magreehan, 2016; Toftness et al., 2018). Thus, an instructor's speaking fluency when delivering a lecture influenced students' perceptions of their learning and of the instructor, but did not impact their actual learning.

In legal contexts, how information is delivered during trials has also been of interest to researchers, with a particular focus on the impact of an attorney's delivery on jurors' decisions. For instance, Hahn and Clayton (1996) examined how successful aggressive verses passive defense attorneys were in receiving a not guilty verdict. Participants were presented with a brief summary of a court case that included excerpts of witness and defendant interrogations. Specifically, they watched a summary of the night of an attack, three excerpts from testimony during the trial, and a questioning of one of the victims. The passive attorney's presentation contained verbal hedges, intensifiers, qualifiers, and interrupted words. The aggressive attorney, on the other hand, had variability in spoken volume, a good speech rate, paused appropriately, used effective hand gestures and eye contact, did not hesitate, and spoke with confidence. After

viewing one of these two summaries of the court case, participants were asked to render a verdict on a 7-point scale of definitely not guilty (1) to definitely guilty (7). They found that aggressive attorneys were more successful than were passive attorneys in receiving a not guilty verdict for their client. Additionally, participants were asked to evaluate the defense attorney and witness based on seven characteristics: aggressiveness, competence, friendliness, confidence, credibility, intelligence, and overall presentation. The aggressive attorney received higher ratings relative to the passive attorney for aggressiveness and overall presentation, whereas the passive attorney received higher ratings in friendliness. Thus, attorneys' aggressiveness can play a role in juror decision making.

As another example, Barge et al., (1989), examined how attorney gender, speaking fluency, and delivery style impacts attorney credibility and jurors' perceptions of guilt. The fluent attorney presented with no interruptions, while the nonfluent attorney had 50 interruptions based on five disfluencies. The disfluencies were characterized by unintended pauses, sentence corrections, stutters, repetitions, and tongue-slip corrections. The researchers also manipulated attorney delivery style so that one version was conversational and the other was public speaking. Jurors gave a rating on perceptions of guilt on a scale of not guilty (1) to guilty (7). Participants were brought into a practice courtroom, where the judge gave a short summary of the non-controversial case and told them that the attorneys were not able to be there in person. The participants listened to audiotapes of the plaintiff and defendant attorneys' opening statements, then they completed a questionnaire. As well, jurors rated perceptions of attorney credibility on four factors: competence, trustworthiness, dynamism, and friendliness. Fluent attorneys were more likely to receive a not guilty verdict relative to nonfluent attorneys. Fluent styles also received higher competent and dynamic ratings, whereas disfluent styles received higher

friendliness ratings. In terms of speaking style, the conversational delivery style received higher trustworthiness and friendliness ratings, whereas the public speaking style received higher dynamic ratings. Additionally, a fluent version of the public speaking style was perceived as more effective in obtaining a not guilty verdict relative to the nonfluent version of the public speaking style. In contrast, fluent conversational delivery was equally like to receive a not guilty verdict as the nonfluent conversational style.

Taken together, prior research suggests that an attorney's speaking fluency when delivering information in a legal context may influence jurors' perceptions (Barge et al., 1989; Hahn & Clayton, 1996). This is concerning because jurors' decisions should ideally be based on the facts and evidence associated with the case rather than on characteristics of the attorney. However, one major limitation of this work is that participants were provided with additional information about the case (e.g., witness interviews, trial testimony) and for the attorneys (e.g., statements from both attorneys, attorney gender). Thus, it is difficult to determine if participants' ratings of guilt were solely based on attorney's speaking fluency. My goal is to isolate attorney speaking fluency and investigate this. Specifically, the aim of my research is to examine how the fluency of an opening statement impacts the likelihood of receiving a guilty verdict, as well as perceptions of the attorney. Doing so is critical for establishing the degree to which an attorney's delivery of initial information in a court case has a direct impact on jurors' judgments. I hypothesized that students who read a fluent opening statement (relative to students who read a disfluent opening statement) from a prosecuting attorney would give higher liability ratings. Additionally, students' perceptions of the credibility and effectiveness of the attorney may be impacted by the fluency of the opening statement. Specifically, I hypothesized that an attorney who delivers a fluent opening statement would be perceived as more competent,

confident, credible, and trustworthy in comparison with an attorney who delivers a disfluent opening statement.

Method

Participants

Eighty-three undergraduate students enrolled at Texas Christian University (TCU) participated in the study and received credit in a psychology course in exchange for completing it. I considered multiple factors when cleaning data and developing exclusion criteria. The study should have taken approximately 30 minutes to complete, so 10 participants who had completion times that were longer (i.e., between 6 hours and 1 week) than 30 minutes were removed from the data. Data were also removed from 2 participants who did not complete the study. Four additional participants indicated that they were currently enrolled in a memory and cognition class during which lecture fluency was discussed, so data were removed for these 4 participants. Finally, data from 15 participants who incorrectly answered any of the question checks after reading the opening statement were removed. Only data from participants who provided a unique and actual consent name were included. None of the participants had previously been members nor were current members of a memory lab at TCU. All of the participants clicked to indicate that they read and agreed to follow instructions prior to starting the actual experiment. At the end of the experiment, all of the participants indicated that they had fully read the transcript. Finally, all participants indicated the English was their first language, or if not, that they had spoken English for a minimum of 6 years. A total number of 49 participants remained in the sample, with 25 in the disfluent group and 24 in the fluent group. The groups did not differ in age $t(46) = 0.643$, $p = 0.523$. The average age of the participants was 18.79 years ($SE = 0.23$) in the disfluent group and 19.00 years ($SE = 0.23$) in the fluent group. As well, the number of years in college

did not differ between the two groups, $t(47) = 0.01$, $p = 0.992$. Students, on average, indicated being in college for less than one year ($M = 0.92$, $SE = 0.22$) in the disfluent group and 0.92 ($SE = 0.23$) in the fluent group. Put differently, most students were in their first year of college.

Materials

The material used in this study was a transcript of an opening statement previously given in a trial that was edited to create fluent and disfluent statements (see Appendix A). The transcript was from an actual civil court trial (civil action no. 6:13-cv-01536) that took place in the western district of Louisiana, Lafayette Division in 2018. The opening statement was provided by the prosecuting attorney with his permission to use in this study. At the end of the actual case, the jury found the defendant liable and awarded the plaintiff $4,271,300. Minor changes were made to the original transcript such as shortening the text and removing information that was unnecessary for the participants. As well, identifying information was either redacted or changed to protect the privacy of all individuals associated with the case. The fluent version of the opening statement was characterized by appropriate verbal (e.g., pauses for emphasis) and behavioral cues (e.g., effective gestures, eye contact) (cf. Hahn & Clayton, 1996). The fluent transcript was 1,031 words in length and contained 7 behavioral cues and 2 verbal cues. The disfluent version of the opening statement was characterized by less suitable verbal (e.g., unintended pauses, sentence correction, stutter, repetition, and tongue slip correction) and behavioral cues (e.g., flipping through notes, hunching over the podium, looking down at notes, and shrugs) (Barge, Schlueter, & Pritchard, 1989). The disfluent transcript was 1,071 words in length and contained 6 behavioral and 25 verbal cues. Both the fluent and disfluent versions of the opening statement are included in the appendices.

Procedure

The participants completed the study individually on their personal devices, and the entire study took 30 minutes or less. The participants filled out a consent and demographic form. They were then presented with the instructions, which included important information regarding the details of the case. Specifically, the participants received instructions that they were about to read a transcript of an opening statement given by a prosecuting attorney in a civil case. They were also told who the plaintiff and defendants were, and that they would be making judgements immediately after reading the statement. Immediately following the instructions, the participants were asked three general questions about the information provided in the instructions. The participants were asked in a multiple-choice format about the type of statement they were going to read, who the plaintiff was, and who the defendant was. The order these questions was randomized, as were the response options. If participants missed any of these questions, they were sent back to the instructions to read them again. Thus, these questions served as a check to ensure that participants read the instructions carefully and understood key aspects of the case.

The participants were then randomly assigned to the fluent or disfluent opening statement and read through it. The statements were four pages long, and each page was presented one-at-a-time. Participants had an unlimited amount of time to read the transcript, but they were required to spend a minimum amount of time on each page. The participants were able to move past the first page after 15 seconds and the last three pages after 60 seconds. The participants were asked three questions about the statement in order to ensure they read and understood it. Specifically, they were asked "*Which part of his body did Mr. Doe injure?", "Who is the doctor that testified later in the trial?",* and "*What did the attorney say was Mr. Doe's gift?"* The questions and answer choices were randomized.

Next, participants responded to two questions about the court case. The participants were presented with the question, "*Pretend that you are a member of the jury in this court case. How liable (i.e., responsible) do you find the defendant (Mitchell Transportation)?"* They responded by using a scale of 1 (not at all liable) to 5 (extremely liable). The participants were then presented with the question, "*Imagine you own a company and are in need of hiring a contractor. How likely would you be to hire the Mitchell Company to do work for you?"* They responded by using a scale of 1 (not at all likely to hire) to 5 (very likely to hire).

The participants were then asked to rate their perception of the attorney who delivered the opening statement by responding to 18 questions. A five-point response scale was used for all questions, similar to the one used in Hahn and Clayton (1996). To illustrate, participants were presented with the question, "*How <u>competent</u> was the attorney from the opening statement you just read?"* and responded by using a scale from 1 (not at all competent) to 5 (extremely competent). They also rated the attorney on the following traits: precise, accurate, certain, well-trained, fair, sincere, dishonest, just, admirable, kind, warm/friendly, open, organized, prepared, knowledgeable, effective, and uncomfortable. Two of these traits were negative (dishonest and uncomfortable), whereas the rest were positive. This was intentional to reduce the likelihood that participants would habitually respond to all items without reading the question prompt. Each question was presented one-at-a-time, the order was randomized, and participants had unlimited time to respond.

Last, participants rated how likely they would be to hire the attorney, how difficult it was to read the transcript, how interested they were in the case, and how familiar they are with court proceedings on a scale from 1 to 5. They also indicated if they had ever served on a jury and whether or not they read the statement and answered the questions associated with the study.

These were presented as multiple choice, yes or no questions. No participants indicated having previously served on a jury, and all particpants indicated that they read the full transcript. After completing all questions, participants were debriefed and granted credit. Due to the COVID-19 pandemic, all participation was remote.

Results

Case and Mitchell Company Ratings

An independent-samples *t*-test indicated that there was no significant difference in liability ratings between the disfluent ($M = 2.84$, $SE = 0.18$) and fluent ($M = 3.21$, $SE = 0.22$) groups, $t(47) = 1.31$, $p = 0.196$ (see Figure 1). Additionally, there was no significant difference in ratings of how likely participants would be to hire the Mitchell Company between the disfluent ($M = 2.24$, $SE = 0.15$) and fluent ($M = 2.46$, $SE = 0.17$) groups, $t(47) = 0.98$, $p = 0.332$ (see Figure 2).

Attorney Ratings

Inferential statistics are reported in Table 1. Independent-samples *t*-tests indicated that the fluent group gave significantly higher ratings than did the disfluent group for the following traits: accurate, admirable, certain, competent, effective, fair, knowledgeable, organized, precise, prepared, sincere, and well-trained. By contrast, the uncomfortable trait received significantly higher ratings from the disfluent group than from the fluent group. No significant difference was found between the two groups in ratings of dishonest, just, kind, open, and warm.

Finally, there was a significant difference in ratings of how likely participants would be to hire the attorney (see Figure 3). The disfluent group gave significantly lower ratings ($M =$

1.24, *SE* = 0.12) relative to the fluent (*M* = 3.71, *SE* = 0.22) group, $t(47) = 9.94$, $p < .001$, $d = 2.84$.

Perceptions of Reading Difficulty, Level of Interest, and Ratings of Familiarity with the Court

There was no significant difference in ratings of how difficult it was to read the transcript between the disfluent (*M* = 2.32, *SE* = 0.28) and fluent group (*M* = 2.00, *SE* = 0.21), $t(47) = 0.92$, $p = 0.362$, and all participants indicated that they fully read the transcript. Additionally, there was no significant difference in participants' level of interest between the disfluent (*M* = 2.56, *SE* = 0.27) and fluent group (*M* = 3.25, *SE* = 0.26), $t(47) = 1.84$, $p = 0.071$, $d = 0.53$. Finally, there was no significant difference in ratings of familiarity with the court between the disfluent (*M* = 2.52, *SE* = 0.23) and fluent group (*M* = 2.83, *SE* = 1.09), $t(47) = 0.97$, $p = 0.334$, and no participants in either group reported having previously served on a jury.

General Discussion

Researchers have investigated factors that impact jurors' decisions for decades with the goal to improve understanding of the legal system. Many aspects of the courtroom can impact jurors' decisions of guilt and of sentencing including suspect ethnicity (Davison et al., 2010), attorney aggression (Hahn & Clayton, 1996), and attorney gender (Barge et al., 1989; Hahn & Clayton, 1996). Interestingly, these factors do not always impact jurors' perceptions of guilt; however, they can impact other relevant perceptions. As an example, Davison et al. (2010) found that participants' assessments of guilt were not influenced by the accused's ethnicity, but judgements of criminality were affected. Specifically, participants were more likely to believe that an individual with the last name "Franco" was more likely to have participated in criminal behavior in the past and to continue to do so in the future relative to someone with the last name

"William". In the current research, we were interested in taking the novel approach of isolating attorney speaking ability by evaluating the impact of a fluent and disfluent opening statement given by a prosecuting attorney on participants' judgments of liability, for the defendant, and about the attorney.

We found no significant difference between the fluent and disfluent groups in their liability ratings. This outcome is inconsistent with previous research. Specifically, previous research found that fluent attorneys were more likely to receive a not-guilty verdict relative to disfluent attorneys (Barge et al., 1989). One potential explanation for this disparity could be that participants in prior research were given additional information about the case such as eyewitness interviews and trial testimony. As well, participants listened to an audiotape from a defense attorney, whereas participants in our study read an opening statement from a prosecuting attorney. Thus, the modality of the statement – either auditory or in text form – may moderate the impact of attorney fluency on jurors' decisions. A final possibility is that the fluency of an attorney's delivery may be a more important skill for a defense attorney than it is for a prosecuting attorney, in terms of jury decisions. Follow-up research should focus on investigating these critical issues. Specifically, future research in this area could explore the differences in ratings of liability or guilt when participants are presented with statements that vary in fluency from a defense attorney versus a prosecuting attorney. Regarding participants' judgments about the defendant, there were no significant difference between the fluent and disfluent groups in ratings of how likely they would be to hire Mitchell Transportation. However, both groups did give low ratings in for this item. This interesting outcome could mean that, regardless of the fluency of an attorney, people do not necessarily want to hire a company involved in a lawsuit.

Whereas there was no difference in likelihood of hiring the company, there was a significant difference in ratings of how likely participants would be to hire the attorney. The fluent group gave substantially higher ratings for hiring the attorney compared to the disfluent group. Thus, regardless of success rates in court, attorneys who deliver fluent statements may be more likely to get hired and may be thus, more successful than their disfluent counterparts. This finding is consistent with the results from the research on instructor fluency in an educational context (e.g., Carpenter et al., 2016; Carpenter et al., 2013). In education research, instructor fluency typically impacts students' perceptions of learning, but not their actual learning. In the same way, participants were more likely to report wanting to hire the attorney in the fluent group, but ratings of liability were not impacted. We considered that a possible reason why the fluent group was more likely to hire the attorney could be a different level of experience with the court system relative to the disfluent group. However, the results demonstrated that this was not the case, given that there was no significant difference in self-rated familiarity with the court system or for having served on a jury between the two groups. As an alternative, another reason why attorney fluency may have impacted willingness to hire the attorney is because people had a harder time reading the disfluent transcript relative to the fluent transcript. Counter to that possibility, there was no significant difference between the groups in self-rated difficulty for reading the opening statement. Finally, another possibility is that the participants who read the disfluent version of the statement were less interested in it relative to those who read the fluent version of the statement. Counter to this possibility, there was no significant difference between the groups in self-rated level of interest. Thus, the difference is ratings for hiring the attorney based on the fluency of the opening statement are unlikely to be due to differences in: interest, reading difficulty, or courtroom knowledge.

People's ratings for hiring the attorney may have been more influenced by their perceptions of him and his characteristics. Relative to the disfluent attorney, the fluent attorney received higher ratings for the following traits: accurate, admirable, certain, competent, effective, fair, knowledgeable, organized, precise, prepared, sincere, and well-trained. This outcome is consistent with prior research in legal contexts (e.g., Barge et al., 1989), and those established in education-focused research in which ratings of an educator's effectiveness, knowledge, and preparation are typically lower following a disfluent lecture relative to a fluent lecture (for a review, see Carpenter et al., 2020). These traits are likely important factors when making the decision of whether or not one would hire an attorney to represent them because they apply directly to the attorney's abilities. By contrast, there was no significant difference between the two groups in attorney ratings of being dishonest, just, kind, open, and warm. Ratings for these traits may have not differed between the groups because they refer more to the attorney's personality than to his skills. For example, when assessing the abilities of attorneys and willingness to hire them in the future, people may weigh their competence and effectiveness more heavily than their kindness and openness. Follow-up research could investigate this to further understand the factors that impact peoples' decision-making process when choosing an attorney.

The most important takeaway from this study is that even though the attorney's fluency impacted participants' perceptions of the attorney, there was no difference in liability ratings. This is good news because it indicates that the effectiveness of an attorney's delivery is not a significant factor in deciding guilt or innocence. Thus, jurors may rely more on the evidence presented in court than they do on how well the attorney delivers that evidence. For attorneys, however, the fluency of their speech is important as it affects perceptions of their abilities as an

attorney, and in turn, their likelihood of being hired. Additionally, it is important to keep in mind that many factors contribute to jurors' decisions made in the courtroom, including, but not limited to, gender, race, ethnicity, and aggressiveness.

Table 1

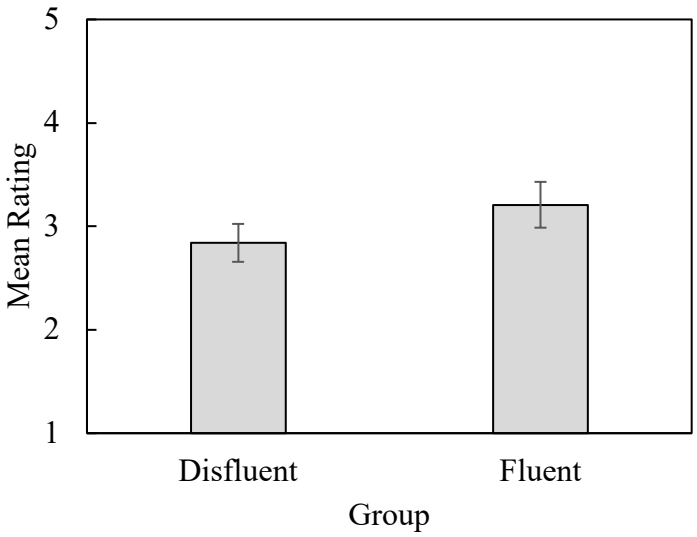
Inferential Statistics for Participants' Ratings of the Attorney

Trait	*t*	*p*	*d*
Accurate	4.80	< .001***	1.37
Admirable	5.61	< .001***	1.60
Certain	10.48	< .001***	2.99
Competent	7.42	< .001***	2.12
Dishonest	.10	.920	0.03
Effective	10.15	< .001***	2.90
Fair	2.62	.012*	0.75
Just	1.57	.123	0.45
Kind	.70	.490	0.20
Knowledgeable	7.53	< .001***	2.16
Open	.43	.668	0.13
Organized	9.24	< .001***	2.64
Precise	5.32	< .001***	1.52
Prepared	11.12	< .001***	3.17
Sincere	2.71	.009**	0.78
Uncomfortable	9.85	< .001***	2.80
Warm	1.53	.132	0.44
Well-Trained	10.28	< .001***	2.93

Note. For each independent samples *t*-test, the *t, p,* and Cohen's *d* statistics are reported. The degrees of freedom for each analysis was 47. Traits are listed in alphabetical order. All significant differences reflect higher ratings from the fluent group relative to the disfluent group with the exception of the uncomfortable trait (for which ratings were significantly higher from the disfluent group relative to the fluent group). *** $p < .001$ ** $p < .01$ * $p < .05$

Figure 1

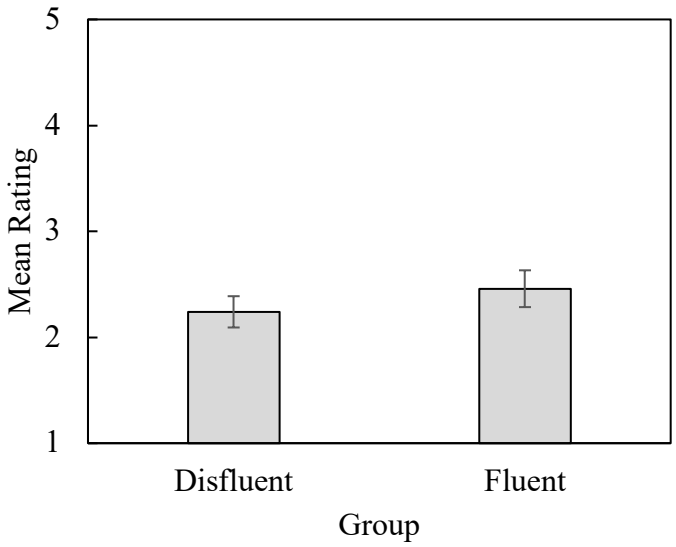
Mean Participants' Ratings for Mitchell Company Liability



Note. Ratings are on a scale of 1 (*"Not at all liable"*) to 5 (*"Very liable"*)

Figure 2

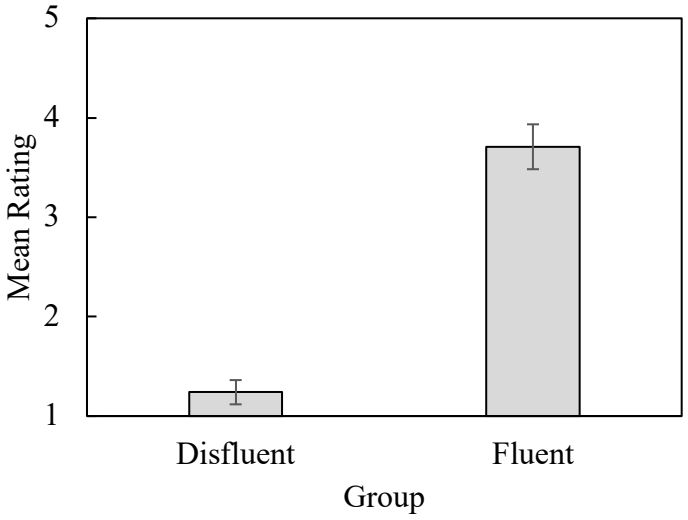
Mean Participants' Ratings for Likelihood to Hire the Mitchell Company



Note. Ratings are on a scale of 1 (*"Not at all likely"*) to 5 (*"Very likely"*)

Figure 3

Mean Participants' Ratings for Likelihood of Hiring the Attorney



Note. Ratings are on a scale of 1 (*"Not at all likely"*) to 5 (*"Very likely"*)

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Appendix A

Disfluent Opening Statement

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

JOHN DOE,	)	CIVIL ACTION NO. 6:13-cv-01536
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
MITCHELL INTERNATIONAL CORP.,	)	
	)	
Defendant.	)	MAGISTRATE JUDGE WHITEHURST

PLAINTIFF'S OPENING STATEMENT

Transcript of Proceedings before The Honorable Carol B. Whitehurst, United States Magistrate Judge, and a jury, Lafayette, Lafayette Parish, Louisiana, commencing on February 26, 2018.

Appearances of Counsel:

For the Plaintiff: JEROME [redacted]
Lafayette, LA 70502-3524

For the Defendant: HOWARD [redacted]
MARGARET [redacted]
New Orleans, LA 70130-3672

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(Lafayette, Lafayette Parish, Louisiana; February 26, 2018, in open court.)

(Plaintiff's Opening Statement)

Ahem (cough). Good afternoon. When a company and a contractor are working together on a company facility, the company must ensure that the contractor follows the company's safety rules and procedures. If the company does not and, as a result, someone is hurt, the um… company is responsible for the harm.

Now let me tell you the story about what happened in this case. (Flips through notes) On November 30, 2011, the Mitchell Company and Parker Transportation were working together to lift a giant piece of Mitchell Company equipment inside of a Mitchell Company facility, and they – the, uh workers – were going to place it on a large transporter, and then it was going to be taken away.

The plaintiff in this case is Mr. Doe. He works for Mitche-, sorry, Parker Transportation, or was working for Parker Transportation, on the day of the accident. Mr. Doe was there on the back of the transport after the giant tank had been set onto the transport. He mounted the transport about four feet off the ground, and he uh… began the process of securing this tank. As he began, he called out for a ratchet binder; a piece of equipment that was owned by Parker Transportation that is used to bind the chain tighter. At this point, a Mit-Mitchell employee picked up a ra- ratchet binder, handed it to a Parker Transportation employee who slid it to Mr. Doe. As Mr. Doe began to engage the ratchet binder while on top of the (pause) transport and crank down, the ratchet binder came apart. Mr. Doe fell four feet and tried to plant his hand and broke his wrist and was taken away by ambulance.

In this case, we are suing the Mitchell Company because the Mitchell Company on that day chose to not follow Mitchell's own rules about pre-job safety with its contractors when the contractors are on the Company's facility.

Now, responsibility is a very important thing to Mr. Doe, and it's important to us. And we will tell you, rather, not tell you that Mr. Doe had nothing to do with this accident. He made some mistakes on the day of the accident, he made some mistakes, and you will not hear us this week say that he didn't. (Flips page).

(Looks down at podium) When you look at the evidence, you'll see that the Mitchell Company had control over details before the job s-started, during the job started, and after.

Before this job started, the Mitchell Company had a rule that, when contractors come onto its site, before the job starts, they have to ensure that they perform a pre-job safety analysis, and they have a rule that they investigate the equipment so it's not on the fly because the Mitchell Company thinks safety is important.

During the job, the Mitchell Company had a pivotal role. The Mitchell Company was operating the uh… crane, lifting this quarter-of-a-million pound piece of equipment. (Pause) they also had employees working alongside Parker Transportion employees.

After this accident, you will see that Parker, or I mean, the Mitchell Company told Parker Transportation how they wanted that job done, and the evidence will show that (pause) it'll show that they instructed Parker employees not to sit in the position where Mr. Doe was on the fly when he got injured in this accident.

(Cough). Excuse me (sip of water). At the end of this trial, you're going to have an opportunity to try to balance these harms and losses that Mr. Doe has sustained. The judge told you in the preliminary examination that you, you're not allowed to use sympathy. You can feel,

but you have to have your thoughts about this case grounded in evidence and not sympathy. (Hunches over podium).

My job at this trial this week will be to show you what Mr. Doe went through after he fell. You're going to hear from Dr. Darrell Henderson tomorrow. He's a hand surgeon here in Lafayette. And Dr. Henderson will tell you about the torchus, or tortuous 8 surgeries that Mr. Doe had to undergo on his left hand and wrist. Um (looks down at notes), at the end of this case, we'll present to you evidence of what his medical bills and what he's gone through up to this time, and they have been sizable and a lot.

We mentioned a minute ago about work. Mr. Doe was doing heavy duty work. I mentioned his gift. His gift was (long pause) heavy duty work, but when you have some of the difficulties, challenges of Mr. Doe, it gets harder to get readjusted in work when that work is heavy duty work. And when you lose your ability to move your wrist in such a way to do heavy duty work, (shrugs) it becomes really, really hard about what he can do. You are going to hear Dr. Henderson suggest that he has uh… 42 percent impairment, full body impairment from that wrist, and a man who works with his hands, you'll hear, is a significant impairment. So, (pause) you're going to understand what future loss he's undergone. You're going to hear it. The evidence will be presented to you, and um… you'll decide what's fair.

(Plaintiff's Opening Statement Concluded.)

C E R T I F I C A T E

I, Cathleen E. Marquardt, RMR, CRR, Federal Official Court Reporter, do hereby certify this 3rd day of April, 2018, that the foregoing pages 1-11 constitute a true transcript of proceedings had in the above-entitled matter.

/s/ Cathleen E. Marquardt
Federal Official Court Reporter

Fluent Opening Statement

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

JOHN DOE,	)	CIVIL ACTION NO. 6:13-cv-01536
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
MITCHELL INTERNATIONAL CORP.,	)	
	)	
Defendant.	)	MAGISTRATE JUDGE WHITEHURST

PLAINTIFF'S OPENING STATEMENT

Transcript of Proceedings before The Honorable Carol B. Whitehurst, United States Magistrate Judge, and a jury, Lafayette, Lafayette Parish, Louisiana, commencing on February 26, 2018.

Appearances of Counsel:

For the Plaintiff: JEROME HAROLD [redacted]
[redacted]
Lafayette, LA 70502-3524

For the Defendant: HOWARD [redacted]
MARGARET [redacted]
[redacted]
New Orleans, LA 70130-3672

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Cathleen E. Marquardt, RMR, CRR
Federal Official Court Reporter
Post Office Box 5056
Lafayette, Louisiana 70502
Phone: (337) 593-5223

(Lafayette, Lafayette Parish, Louisiana; February 26, 2018, in open court.)

(Plaintiff's Opening Statement)

(Approaches jury). Good afternoon. When a company and a contractor are working together on a company facility, the company must ensure that the contractor follows the company's safety rules and procedures. If the company does not and, as a result, someone is hurt, the company is responsible for the harm.

Now let me tell you the story about what happened in this case. (Gestures towards defense). On November 30, 2011, the Mitchell Company and Parker Transportation were working together to lift a giant piece of Mitchell Company equipment inside of a Mitchell Company facility, and they were going to place it on a large transporter, and then it was going to be taken away.

The plaintiff in this case is Mr. Doe. He works for Parker Transportation, or was working for Parker Transportation, on the day of the accident. Mr. Doe was there on the back of the transport after the giant tank had been set onto the transport. He mounted the transport about four feet off the ground, and he began the process of securing this tank. As he began, he called out for a ratchet binder; a piece of equipment that was owned by Parker Transportation that is used to bind the chain tighter. At this point a Mitchell Company employee picked up a ratchet binder, handed it to a Parker Transportation employee who slid it to Mr. Doe. As Mr. Doe began to engage the ratchet binder while on top of the transport and crank down, the ratchet binder came apart. Mr. Doe fell four feet and tried to plant his hand and broke his wrist and was taken away by ambulance. (Pause).

In this case, we are suing the Mitchell Company because the Mitchell Company on that day chose to not follow Mitchell's own rules about pre-job safety with its contractors when the contractors are on the Company's facility.

(Gestures towards Mr. Doe). Now, responsibility is a very important thing to Mr. Doe, and it's important to us. And we will not tell you that Mr. Doe had nothing to do with this accident. He made some mistakes on the day of the accident, and you will not hear us this week say that he didn't.

(Makes eye contact with jury). When you look at the evidence, you'll see that the Mitchell Company had control over details before the job started, during the job started, and after.

Before this job started, the Mitchell Company had a rule that, when contractors come onto its site, they have to ensure that they perform a pre-job safety analysis, and that they investigate the equipment so it's not on the fly because the Mitchell Company thinks safety is important.

During the job, the Mitchell Company had a pivotal role. The Mitchell Company was operating the crane, lifting this quarter-of-a-million pound piece of equipment. They also had employees working alongside Parker Transport employees.

After this accident, you will see that the Mitchell Company told Parker Transportation how they wanted that job done, and the evidence will show that they (gestures towards defense) instructed Parker employees not to sit in the position where Mr. Doe was on the fly when he got injured in this accident.

At the end of this trial, you're going to have an opportunity to try to balance these harms and losses that Mr. Doe has sustained. (Walks towards jury) The judge told you in the

preliminary examination that you're not allowed to use sympathy. You can feel, but you have to have your thoughts about this case grounded in evidence.

My job at this trial this week will be to show you what Mr. Doe went through after he fell. You're going to hear from Dr. Darrell Henderson tomorrow. He's a hand surgeon here in Lafayette. And Dr. Henderson will tell you about the tortuous 8 surgeries that Mr. Doe had to undergo on his left hand and wrist. (Pause). At the end of this case, we'll present to you evidence of what his medical bills and what he's gone through up to this time, and they have been sizable.

We mentioned a minute ago about work. (Makes eye contact with Mr. Doe). Mr. Doe was doing heavy duty work. I mentioned his gift. His gift was heavy duty work, but when you have some of the challenges of Mr. Doe, it gets harder to get readjusted in work. And when you lose your ability to move your wrist in such a way to do heavy duty work (holds up right arm and rotates wrist back and forth), it becomes really, really hard about what he can do. (Turns to jury). You are going to hear Dr. Henderson suggest that he has 42 percent impairment, full body impairment from that wrist, and a man who works with his hands, you'll hear, is a significant impairment. So, you're going to understand what future loss he's undergone. You're going to hear it. The evidence will be presented to you, and you'll decide what's fair.

(Plaintiff's Opening Statement Concluded.)

C E R T I F I C A T E

I, Cathleen E. Marquardt, RMR, CRR, Federal Official Court Reporter, do hereby certify this 3rd day of April, 2018, that the foregoing pages 1-11 constitute a true transcript of proceedings had in the above-entitled matter.

/s/ Cathleen E. Marquardt
Federal Official Court Reporter