

*Encyclopedia of*  
**Psychology**  
**& Law**

Volume 1

**Brian L. Cutler** ■ Editor

*University of North Carolina at Charlotte*

**A SAGE Reference Publication**



**SAGE Publications**  
Los Angeles | London | New Delhi | Singapore

Copyright ©2008 by SAGE Publications, Inc.

All rights reserved. No part of this book may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing from the publisher.

---

For information:

SAGE Publications, Inc.  
2455 Teller Road  
Thousand Oaks, California 91320  
E-mail: order @sagepub.com

SAGE Publications Ltd.  
1 Oliver's Yard  
55 City Road  
London EC1Y 1SP  
United Kingdom

SAGE Publications India Pvt. Ltd.  
B 1/I 1 Mohan Cooperative Industrial Area  
Mathura Road, New Delhi 110 044  
India

SAGE Publications Asia-Pacific Pte. Ltd.  
33 Pekin Street #02-01  
Far East Square  
Singapore 048763

Printed in the United States of America.

Library of Congress Cataloging-in-Publication Data

Encyclopedia of psychology and law/editor, Brian L. Cutler.

p. cm.

Includes bibliographical references and index.

ISBN 978-1-4129-5189-0 (cloth)

1. Law—Psychological aspects—Encyclopedias. 2. Law—United States—Psychological aspects-Encyclopedias.

3. Forensic psychology—Encyclopedias. 4. Forensic psychology—United States—Encyclopedias. I. Cutler, Brian L.

K346.E53 2008

340'.19—dc22 2007029845

This book is printed on acid-free paper.

07 08 09 10 11 10 9 8 7 6 5 4 3 2 1

Publisher:	Rolf A. Janke
Acquisitions Editor:	Jim Brace-Thompson
Developmental Editor:	Diana E. Axelsen
Reference Systems Manager:	Leticia Gutierrez
Production Editor:	Kate Schroeder
Copy Editor:	QuADS Prepress (P) Ltd.
Typesetter:	C&M Digitals (P) Ltd.
Proofreaders:	Penny Sippel, Dennis Webb
Indexer:	Janet Perlman
Cover Designer:	Janet Foulger
Marketing Manager:	Amberlyn Erzinger

---

## JUDGES' NONVERBAL BEHAVIOR

---

Early studies by Martin Orne on demand effects and Robert Rosenthal on experimenter expectancy effects established the impact of a sender's nonverbal communication and the way in which it might alter the behavior of others. In the courtroom, judges' nonverbal behavior (e.g., tone of voice, demeanor) often communicates their expectations (sometimes termed leakage) about the case at hand. Jurors, for instance, may interpret a judge's nonverbal cues as evaluations of evidence, attorneys, and parties. In some circumstances, these inferences may become information that affects jurors' decisions, in ways not recorded in the trial record. One meta-analysis of studies examining the impact of trial judges' nonverbal behavior on juror verdicts found a significant and nontrivial relationship ( $r = .14$ ). Therefore, depending on the nature and extent of the nonverbal cues, the due process rights of defendants (that is trial fairness) may be impacted. Research examining judges' nonverbal behavior has found four distinct "global" styles (general behavior that governs interactions that may be verbal or nonverbal): judicial, directive, confident, and warm. These global styles were found in content-present and content absent channels. Judges high in the "judicial" style are viewed as concerned with the fairness and propriety; conversely, the "directive" style is seen as managerial and task oriented. Judges high in the "confidence" style are seen as comfortable and patient, and judges themselves have noted that patience is an important quality that helps avoid tyranny in the courtroom. Finally, judges high in "warmth" are seen as supportive and accepting of other trial participants.

The impact of these global styles reaches beyond the abstract perceptions that jurors may have of trial judges. They also predict the “micro”-level, nonverbal behaviors (e.g., eye contact and body posture) that jurors perceive and use as information regarding judges' perceptions of the trial, trial participants, and evidence and thereby influence their decision making.

Studies using field-based, quasi-experimental, and experimental methodologies have demonstrated that trial judges form expectations about likely jury verdicts that are related to characteristics of the case, the parties, and the jury. Judges are more likely to expect jury verdicts of guilt when the defendant has a more serious criminal history or is of lower socioeconomic status. Jury characteristics also influence judicial expectations. Judges are more likely to expect that the jury will return a guilty verdict on the first count of indictment (a higher charge) when jurors are more educated and a guilty verdict on the second count of indictment when jurors are younger. Moreover, the nonverbal behavior of judges (as rated by study participants viewing tapes of judges during actual trials) is related to these expectations; more specifically, judges expecting a guilty verdict are rated as less warm, less competent, less wise, and more anxious when they deliver jury instructions. When these studies investigated the impact of judges' nonverbal behaviors, they found them to be related to jury verdicts but not consistently so.

Concerns that judges' nonverbal behavior influences juror decisions, thereby compromising trial fairness, have led to research investigating ways to mitigate such an impact. One study examined the complexity of jury instructions and judges' expectations for trial outcomes. Mock jurors were more likely to vote in accordance with judicial expectations when standard instructions were given. However,

when simplified jury instructions were presented, participants were more likely to decide in opposition to the judges' expectations.

As is evident, then, existing literature suggests that the effect of judges' nonverbal behavior on jury verdicts is a complex issue. Part of the impact relates to the context in which jurors make their judgments; while interpretations of behavior may be predictive in everyday social situations, they often are less predictable in novel contexts, such as in trial settings. Generally, people are adept at interpreting explicit and implicit nonverbal messages in a variety of social contexts. For the nonlegal professional though, a courtroom is a novel context. The formality of the situation in which jurors find themselves and the novel instructions governing behavior make usual judgments of behavior often inapplicable. Maintaining stoic behavior when one is faced with accusation is not usually seen in social contexts; in a courtroom, such behavior on the part of a defendant may be governed by circumstances or even explicit directions from one's attorney or the judge. Importantly, jurors may infer such behavior to reflect “cold” or “calculating” characteristics, and these inferences may influence their interpretations of other behavior and testimony—and ultimately their decisions.

Other studies show that the courtroom context matters. In one study, participants were exposed to mock trials that simulated British or American trial procedures. British procedures are generally less adversarial, with attorneys more constrained in their participation. British judges (rather than attorneys) issue objections and summarize the evidence at the end of a trial. Though it was hypothesized that the less adversarial environment would provide fewer distractions and thus diminish the influence of judges' nonverbal behavior, the opposite was found to be the case. Perhaps in British trials, the

trial judges are more involved in the trial proceeding, which places them even more under the watchful eye of the jury.

In sum, assessing the determinants of juror decision making and judges' nonverbal behavior is complex. Trial judges' interpretations of evidence, parties, and expectations of the verdict appear to relate to their behavior during the trial. In turn, judges' behavior is apparent to observers (e.g., jurors). Jurors' decisions are not strongly predicted from judges' nonverbal behavior alone (as should be the case), and it is possible that this mitigated effect is because jurors are not always accurate at interpreting nonverbal

behaviors in the courtroom. This view is consistent with demonstrations showing that changing trial contexts relates to jurors' reliance on judges' nonverbal behaviors and increased reliance occurring when judges have more active roles.

*Meera Adya and Peter Blanck*

**See also** Detection of Deception: Nonverbal Cues; Scientific Jury Selection

**Further Readings**

- Blanck, P.D. (1991). What empirical research tells us: Studying judges' and juries' behavior. *American University Law Review*, 40(2), 775-804.
- Collett, M.E., & Kovera, M.B., (2003). The effects of British and American trial procedures on the quality of juror decision making. *Law and Human Behavior*, 27(4), 403-422.
- Halverson, A.M., Hallahan, M., Hart, A.J., & Rosenthal, R. (1997). Reducing the biasing effects of judges' nonverbal behavior with simplified jury instructions. *Journal of Applied Psychology*, 82(4), 590-598.
- Searcy, M., Duck, S., & Blanck, P.(2005). Nonverbal behavior in the courtroom and the "Appearance of Justice." In R. Riggio & R. Feldman (Eds.), *Applications of nonverbal communication* (pp.41-61). New York: Lawrence Erlbaum.