

- PROXEMICS - CLOSENESS MAKES THE JURY GROW FONDER

A new publication from the National Association of Criminal Defense Lawyers, NACDL – THE BIAS BOOK – UNPACKING BIAS IN THE CRIMINAL LEGAL SYSTEM – had a curious segment on “proxemics.” Written by Texas practitioner Mimi Coffey, it had a provocative title – “Unjust Courtroom Practices: Always Seating The Prosecution Closest To The Jury.” Coffey challenges what she sees as an advantage to the party [the prosecution] sitting nearer to the jury.

So let me start with that term “proxemics.” On LEXIS I found ten (10) case citations to the term. They include:

- 2 cases involving a business – Proxemics Consulting
- One case where an expert on police practices was directed to not use that term “because he is not a social science expert, and th[is] term[] will not be helpful to the jury. Brown v. City of Chicago, 2024 U.S. Dist. LEXIS 143720, *32 (N.D. Ill. 2024)
- Several involving ensuring sufficient space between a law enforcement officer and a suspect or inmate to ensure safety.

In terms of law review and other secondary sources, much of the writing was about applying proxemics to where one should stand during direct and cross examination, or “the distance at which witnesses are questioned in the **courtroom** and the effect of such choices.” Brodsky *et al*, Attorney Invasion of Witness Space, 23 Law & Psychol. Rev. 49, 59 (Spring 1999). [There is also much written about “proxemics” in general online, albeit with limited applicability to the courtroom setting. See, e.g., <https://www.psychologytoday.com/us/basics/proxemics> ; <https://www.communicationtheory.org/proxemics-and-its-types-explained-with-examples/> ; <https://www.scienceofpeople.com/proxemics/> ; and <https://oecs.mit.edu/pub/1caf2cg/release/1> .]

One article was more concrete and potentially pertinent to Coffey’s argument and analysis. Magistrate Judge Jeffrey Wolfe authored The Effect of Location in the Courtroom on Jury Perception of Lawyer Performance, 21 Pepp. L. Rev. 731 (April 1994). Judge Wolfe identified locations [quadrants] in the courtroom as seen in the below diagram:

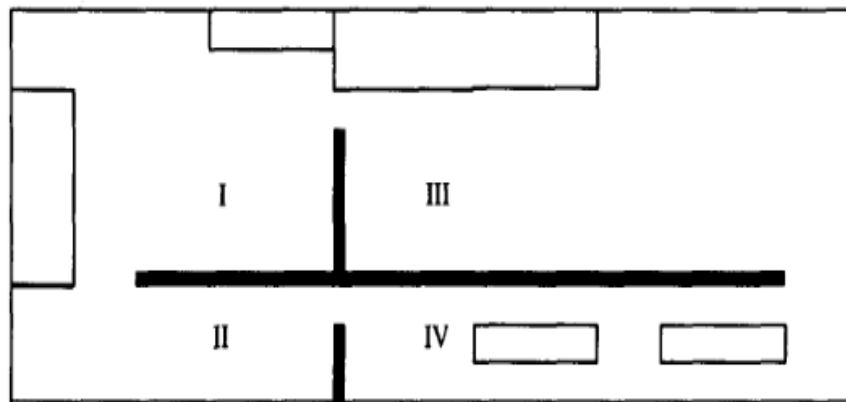


Figure Six. The Four Quadrant Locations.

Studying 21 student mock trials where advocates were randomly assigned quadrants to locate themselves and perform from, observers [the mock jurors, the student advocates themselves, and the mock trial judges] were asked to rate the student lawyers. For example, the jurors were asked

which lawyer seemed more in control, powerful, dominant, and theatrical. Jurors were also asked to choose based on their perceptions of appearances of comfort, rapport and better communication. When asked to rate individual lawyers, jurors were asked to rate performance in terms of persuasion, control and ability to relate to the witness.

21 Pepp. L. Rev. 753. The results were stark and again are quoted from the article:

Jurors rated individual lawyers in Quadrants I and II higher than those in Quadrants III and IV.' 3 Lawyers located in Quadrant I were given the highest overall scoring. When asked to choose between lawyers, jurors consistently selected lawyers in Quadrant I over lawyers located in either Quadrants II, III, or IV.' When opposing lawyers were located in quadrants other than Quadrant I, jurors selected lawyers in Quadrant II over those located in Quadrant III,' jurors selected lawyers located in Quadrant III over those in Quadrant IV, and lawyers in Quadrant IV were chosen over those located in Quadrant II.

Id., at 754. Even more significant were the ratings of individual "lawyers" across the trials. Location [here, "quadrants"] counted when jurors scored individuals on various skills.

	I	II	III	IV
Persuasion-Direct	5.2	4.6	4.7	4.4
Persuasion-Cross	4.6	4.4	4.0	4.1
Communication	4.2	4.2	3.9	3.9
Control	4.8	4.3	4.0	4.3
Ability to Relate	4.9	4.5	4.2	4.6
Mean Totals	4.7	4.4	4.1	4.2

Id., at 755. One other finding – a boomerang effect – also warrants mention. When asked to rank “lawyers” on theatrics, the highest rating went to those in Quadrant IV, the greatest distance from jurors. *Id.*, at 757-758.

Back to Attorney Coffey and her analysis and motion. Coffey writes of studies on eye contact, audibility and body [non-verbal] language and how access to each increases communication and a sense of affiliation. For Coffey, the distance from the jury also impacts juror perception of the defendant/accused because “[s]pace proximity is necessary for the decoding of emotional messages sent by body language.” THE BIAS BOOK, 113. So distance goes well beyond the simple and pernicious belief that ‘they put the defendant away from us [the jurors] for our own safety.’ The flip side is the inability to get to know/feel the accused as a person.

Coffey’s pleading – a MOTION TO SEAT DEFENDANT AT COUNSEL TABLE NEAREST TO THE JURY - focuses primarily if not exclusively on the issue of juror perception [actually, non- or mis-perception] of the accused. Remedying that impact is certainly within the power of a trial judge, either as a matter of Due Process or pursuant to Rule 611, Fed.R.Evid.

But this BRAIN LESSON article is not to voice an opinion on courtroom seating. What are the lessons we as advocacy teachers need to take from this? I suggest there are several:

- Courtroom location is generally not static and “quadrant” restricted. So the natural advantage of prosecutor/plaintiff table location can be offset, at least somewhat, by deliberate movement by defense counsel.
- If distance generates a perception of “theatrics,” then we must train our students and ourselves to understand how they are perceived when they try and make up for their location.

- Conversely, when you have the advantage of better seating [location, location, location], be aware of its power and make the most of it.
- Finally, as we prepare students for real-world lawyering, teaching the impact distance has on a jury's perception of one's client is essential.

“Proxemics” – perhaps a new/needed phrase for our advocacy training.