

General Pre-Trial Publicity and Jury Bias

by

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Abstract

The present study examined the influence of general pre-trial publicity (PTP) on mock jurors. One hundred and forty-seven university undergraduates read either factual, fictional, or neutral general PTP prior to viewing a trial and deliberating on a verdict. Results indicated that there is no differential influence between factual vs. fictional pre-trial publicity. When these two groups were combined, results suggested that general PTP exerted a strong influence to strengthen mock jurors' feelings of the defendants guilt both before deliberations as well as after deliberations. Results also suggested that general PTP influenced mock jurors confidence after deliberating so that jurors exposed to the PTP felt much less confident in their verdict choice than jurors in the control (neutral) condition. There was no effect of general PTP on the actual verdict choice.

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The mass media do not simply reflect society, or entertain it; by their very nature the media order and alter the social realities they represents to us. As one of the major forces in the construction of our social reality, the powerful and pervasive influence of the mass media presents us with many serious concerns.

The legal system is one area in which the media could exert a particularly disruptive influence. Within this area, the criminal justice system may be especially vulnerable. There is no shortage of media depictions of crime or of the criminal justice system. Research has shown that a large proportion of print news, television programming, and film content depicts crime and the justice system (Graber, 1980), and the general public depends heavily on the media for knowledge regarding the law and the criminal justice system (Surette, 1984). Indeed, for a great many people the media constitute *the* major source of information about the criminal justice system (Surette, 1984).

One problem arising from this heavy dependence on the media as a source of information is that many of its representations of law enforcement and the criminal justice system are not accurate depictions of reality. For instance, homicide and other violent crimes constitute a substantial proportion of the media coverage of crime in general. However, homicide and other violent crimes account for only a very small percentage of the crimes actually committed (according to statistics from 1991-1994, obtained from Statistics Canada). For example, in 1994 in Canada, for example, there were 1508 offenses classified as murder, attempted murder, and manslaughter out of a total number of criminal offenses amounting to three million. Thus a very low percentage--0.05%-- of the total number of crimes were homicide-related. Nonetheless, murder accounts for over 25% of crime stories in the news

(Graber, 1980), a large misrepresentation of reality indeed. Doob (1985), in his examination of the representation of crime in the media, found that 54.5% of media stories deal with violent crimes and more than 20% of these stories are murder stories. This can again be contrasted with statistics from 1991-1994 which record that, in Canada, the number of violent crimes accounted for 10% of the total number of crimes. We may easily conclude that violent crime in general is grossly over represented in the media in relation to other forms of crime. But it must be noted that the news media are, to a large extent, expected and even encouraged by the public to report only sensational and unusual news stories.

The media's representation of social reality clearly influences the public's perception of that reality. For example, because the crimes most often represented in the media are violent in nature, people believe that violent crimes (which, again, constitute only 10% of the total number of crimes) are the most common type of crime (Roberts & Edwards, 1989). Fishman (1978) conducted a study in which he was able to show that by selectively reporting just crimes against the elderly, it was possible to generate the perception that there was a crime wave against the elderly, one that did not exist. Moreover, studies have shown that people who watch a great deal of television tend to think of the world as a much more frightening and dangerous place than those who watch only a small amount of television (Gerbner & Gross, 1976; Bryant, Corveth, & Brown, 1981). These studies strongly suggest that media coverage of crime and the criminal justice system (e.g. television) is a powerful determining factor in the formation of the public's beliefs regarding the type and frequency of crime as well as the functioning of the criminal justice system. As the statistics and studies presented here clearly show, what the media present us with is far from a mirror image of reality. Again, it

must be noted that the job of media is to report “newsworthy” events, not *all* events. These “newsworthy” events are usually those unusual, interesting, and rare stories. Therefore, the media respond to the demands of the public for “newsworthy” stories and not to some private agenda aimed at distorting social reality. Regardless of the seemingly simple intentions of the media to depict stories the public wants to see and hear, an unintentional distortion of social reality is, nevertheless, the result.

One practical problem

The jury trial is of fundamental importance to our justice system; it is one specific area in which the media could have an important influence on the public’s perception of crime, with potentially harmful consequences. To provide a fair trial, the jurors must base their decision on the evidence they hear in court and on nothing else. Theoretically, jurors must enter the courtroom with their minds a “tabula rasa” with regard to the case at hand. In practice, the idea that jurors will have no prior information about a serious criminal case, or issues surrounding it, seems unrealistic in a society saturated by the media. Whether jurors are capable of remaining unbiased despite the media's presentation of information related to issues at trial is therefore a question of fundamental importance.

Most of the previous research on this topic has focused on the possible biasing effects of media publicity which disseminates information about a *specific* trial. The expectation in this research is that pre-trial exposure to information about a particular trial will bias that trial’s jurors. For example, media publicity concerning a man’s prior criminal record of wife assault would be “specific” publicity with regard to the trial of the same man accused of killing

his wife. Research on specific pre-trial publicity has produced mixed results.

Some studies have shown that pre-trial publicity can bias jurors' verdicts (Sue, Smith, & Gilbert, 1974) and their perceptions of the defendant's guilt (Ogloff & Vidmar, 1994; Otto, Penrod, & Dexter, 1994) and can enhance mock jurors' confidence in their chosen verdict (Kramer, Kerr, & Carroll, 1990). Other biasing effects of pre-trial publicity have been suggested. For instance, pre-trial publicity can increase the believability of the victim's testimony (Ogloff & Vidmar, 1994). It has also been found that emotionally-arousing pre-trial publicity can increase the severity of sentencing that individuals are willing to impose upon the defendant (Ogloff & Vidmar, 1994; Kramer, Kerr, & Carroll, 1990).

Other research has indicated that, to the contrary, specific pre-trial publicity has little or no effect on jury verdicts (Davis, 1986) and, where there are negative effects, they pertain to the period *before* jurors have heard a trial and disappear afterwards (Otto, Penrod & Dexter, 1994). (For a more extensive review of the fairly inconclusive evidence on pre-trial publicity see Carroll, Kerr, Alfini, Weaver, MacCoun, & Feldman, 1986).

A most interesting suggestion from past research on pre-trial publicity is that people may be biased by publicity without actually being aware of it (Ogloff & Vidmar, 1994). In addition, when jurors do realize that they have been exposed to biasing information concerning a case a hand, they continue to believe that they can remain impartial and try the case fairly (Moran & Cutler, 1991). This situation presents quite a problem since some jurors believe themselves to be fair minded when in fact they are not (Sue, Smith, & Pedroza, 1975). The results of the research on specific pre-trial publicity are mixed, with no clear cut answer to the question of extralegal influence.

Although there has been a considerable amount of research on “specific” pre-trial publicity, there is a pronounced lack of research on the potential biasing effects of media coverage of issues that are thematically relevant to a case at trial but not specifically related to that trial. Publicity only *thematically* related to a trial is termed “general” pre-trial publicity to distinguish it from “specific” pre-trial publicity (Greene & Wade, 1988). General pre-trial publicity may be disseminated through electronic or print news, television programming, or films which contain information or depict events which are very similar in theme and general nature to a specific trial but which do not refer directly to that trial. For instance, the publicity surrounding a case of wife abuse would be considered “specific” if it were about that particular case, but “general” if it were about other cases of wife abuse, unrelated to the specific defendant, being reported on at the same time or afterwards. The potential problem of “general” pre-trial publicity is that a juror’s decision-making process could be influenced by publicity only thematically related to the case he or she is hearing. In other words, even though the cases are not directly related, the jury may make associations between them because they are similar.

An example of the problems surrounding “general” pre-trial publicity is the legal battle that occurred over the airing of the 1994 Canadian television drama, "The Boys of St. Vincent." The film, which depicted the sexual abuse of boys by Brothers in a fictional Catholic orphanage, was temporarily banned to protect the constitutional rights of four actual Christian Brothers awaiting trial for sexual abuse at the time of the proposed airing of the film. The rationale for the ban was that, although the movie was not a depiction of the specific case of the four Brothers awaiting trial, the similarity of the circumstances of the film and the case

could have biased the jury against the Brothers. However, the publication ban was appealed to the Supreme Court of Canada and was eventually lifted when the judge noted that there were no research data to support the claims of the Brothers that the film would bias the jury's natural decision making process. On the other hand, the judge noted that, "common sense" dictates that it would (Dagenais v. Canadian Broadcasting Corp., 1994).

Out of similar concerns, another judge scheduled the trial of an Illinois businessman, accused of the murders of his wife and three children, for unusually late night sessions in order to prevent the jurors from watching an NBC broadcast of "Fatal Vision," a dramatization which depicted a man murdering his wife and two children. The lawyers were concerned that the similarities between the two cases might prejudice the jury ("Court Reschedules Murder Trial so Jurors Can't Watch TV Drama," 1984).

Implicit in both of these cases is the assumption that jurors could be biased by the media in cases where there are merely *similarities* between the trial at hand and events being represented in the media. In an attempt to test this assumption, Polvi, Jack, Lyon, Laird, and Ogloff (1996) conducted a study using the television movie "The Boys of St. Vincent" as the publicity. They found that mock jurors who were exposed to the film were more likely to find the defendant in a sexual abuse case guilty than were those who were not thus exposed. As well, the mock jurors were more likely to find the victim's testimony believable and were likely to assign longer sentences than those exposed to other, unrelated video conditions.

There have been a few other attempts to examine the hypothesis that jurors can be biased even by media coverage only thematically related to a specific trial. Greene and Loftus (1984) noticed that subjects who were participating in an eyewitness identification study were

less likely to believe the eyewitness when the local news was running a story about an innocent man who had been falsely identified by a witness. The subjects who participated in the study at the time that the mistaken identification story was being covered in the news were less likely to convict the defendant than subjects who participated in the study at two other time periods (in which the story was not in the news). Greene and Loftus (1984) also found that subjects who had read a magazine article about a mistakenly identified man were less likely to convict a defendant on trial (a hypothetical trial) for a crime involving significant eyewitness testimony.

After finding this so called "softening" effect, whereby mock jurors were more lenient in their decision making, Greene and Wade (1988) attempted to find out if they could produce a "hardening" effect whereby some mock jurors would become *more* likely than others to convict a defendant after exposure to certain publicity. In this experiment some of the participants were exposed to news stories about a series of heinous crimes while others were exposed to a news story regarding a miscarriage of justice. When asked to give a verdict on a murder-robbery case, subjects were more likely to convict the defendant in the robbery-murder scenario when they had previously read the series of heinous crimes than those who read of the miscarriage of justice. However, their conviction rates did not differ significantly from those of a control group's. Thus, there was no strong evidence for a hardening effect, at least with the type of publicity that they used.

In a second part of the same study, Greene and Wade (1988) found that the degree of *similarity* between the publicized case and the case that mock jurors had to judge was an important factor mediating the "softening" effect of the publicity. The effect of the publicity

on the jurors was smaller when the publicity was less specifically related to the issues in the trial on which the jurors had to reach a verdict. This is important in that it indicated that a softening effect did not occur when the publicity was more general, merely reminding people that miscarriages of justice are possible. The softening effect only occurred when the publicity was specifically about a mistaken identification (the specific issue involved in the trial was eyewitness testimony). The results of this second study suggest that the publicity is more biasing the more closely it mirrors the details of the trial at hand.

Riedel (1993) found that sentencing by mock judges was more severe following exposure to publicity about a mistaken acquittal and that sentencing was less severe following the judges' exposure to publicity about a mistaken conviction. These results lend further support to the hypothesis that "general" pre-trial publicity may directly influence trial outcomes.

Several researchers have defined various types of "specific" pre-trial publicity. Ogloff and Vidmar (1994) as well as Kramer, Kerr, and Carroll (1990) refer to "factual" versus "emotional" publicity and suggest that these different types of publicity affect jurors differently. There are also different types of "general" pre-trial publicity which may affect jurors differently. For instance, there is publicity which could bias a juror against (or for) a particular class of people. Greene (1990) suggests that nationally and internationally publicized events may influence the treatment of, and attitudes towards, certain defendants. For example, in the case of the Iranian citizens on trial in the United States during a hostage crisis in which the terrorists had been Iranian, jurors may have been harsher as a result of displaced hostility towards Iranians in general. Loftus (1979) examined the effectiveness of

insurance companies' multimillion-dollar publicity campaigns designed to urge consumers to curb excessive damage awards. The advertisements were designed to convince people that if large settlements were awarded to plaintiffs, everyone's insurance premiums would increase. Loftus found that jurors in a personal injury case were not willing to give as high an award after being exposed to even one of the ads.

Another kind of "general" pre-trial publicity is one in which general media coverage would bias a juror against a particular type of evidence. For example, as previously noted, Greene and Wade (1988) found that subjects were less likely to convict a defendant in a case which relied heavily on eyewitness testimony after reading another case (otherwise unrelated) where it was found that eyewitness testimony was mistaken. It is as if, once aware of the fact that eyewitness accounts can be mistaken, the jurors were biased against eyewitness testimony in general.

There may be a more subtle type of "general" pre-trial publicity, one which shifts the criterion for "reasonable doubt." It is possible that jurors would lower their criterion for "reasonable doubt" if exposed to negative publicity regarding another case which was thematically related to the trial in which they were involved. That is, media coverage of a certain type might change the personal decision system of a juror responsible for interpreting the rules of judgments and the criterion of "reasonable doubt." There is no research to date which deals with this more subtle and more elusive possible type of general pre-trial publicity.

There is another distinction to point out with regards to general pre-trial publicity. That is the distinction between what can be referred to as "negative" pre-trial publicity which might "harden" the jurors making them more "conviction prone" and general pre-trial

publicity which may “soften” the jurors making them less likely to convict a defendant (see Greene & Loftus, 1984). In the case of “specific” pre-trial publicity, “negative” publicity may include such things as incriminating evidence, a defendant’s prior criminal record, or stories regarding the heinousness of the crime and the devastating aftereffects of the crime. In the case of “general” pre-trial publicity, it is not quite so obvious what “negative” signifies. Nevertheless, simply stated, negative publicity is publicity which would bias the jurors *against* the defendant.

Although the general idea that something gleaned from the media could bias a juror is similar for both specific and general publicity, the theoretical bases for and the practical manifestations of the biases may, in fact, be quite different.

The processes involved

As well as being of practical consequence to the constitutional guarantee of a fair trial, the issue of juror bias is also interesting from a theoretical point of view. It is necessary to explore *how*, and the reasons *why*, the general media could have a biasing effect on jurors. Such an exploration entails examining the psychological processes involved.

Social psychologists might explain these phenomena of distorted judgement by the *availability heuristic* (Tversky & Kahneman, 1973). This cognitive heuristic suggests that the ease with which one estimates the frequency of a class of events depends upon how readily instances of it can be brought to mind. For example, the stereotypical offender may be so commonly portrayed in the media that we are more likely to imagine a person who fits the stereotype as capable of committing a certain crime than someone who does not match the

stereotype. According to the *availability heuristic*, it would be easier for people to imagine that an African American inner city gang member committed a violent crime than that a white middle class suburban businessman did, simply because the former is a far more common target of media coverage. It would, for the same reason, be easier to accept that a white suburban tax broker is guilty of a white collar crime (e.g. tax fraud) than that the African American gang member is. The reason for this is that 'white collar' and 'blue collar' crimes are stereotyped images which are reinforced by the media.

The availability heuristic affects perceived *likelihoods*. For example, Sherman, Cialdini, Schwartzman and Reynolds (1985) found that when subjects were asked to imagine contracting a certain disease with easy to imagine symptoms, the subjects rated the disease as more likely to occur than did subjects who were asked to imagine another disease with difficult to imagine symptoms. This result is important in more general terms because it shows that an event is imagined to be less *likely* to occur simply because it is difficult to imagine. Events are less imaginable where there are no readily accessible cognitive constructs. Thus, it seems possible that the media's depiction of certain crimes and criminals may make it easier for people to imagine that particular crime and a particular defendant as criminally culpable than if they had not been exposed to the media's barrage of images. According to the previous research and the availability heuristic, heavy media coverage would increase peoples' belief in the *likelihood* of a particular crime being perpetrated by a particular individual. People would, theoretically, think it more likely that the crime has occurred or could occur because the media has provided a foundation of images for the public to consult.

Criminal 'scandals' usually refer to situations in which the alleged criminal activity is in

conflict with a generally accepted social construct, as in the case of sexual abuse perpetrated by members of the clergy. Another example of a sensational news event would be a case where an innocent man was convicted and jailed or a guilty man set free on the basis of a technicality. As a function of the media's supply of the public's demand, it seems that sensational events are much more commonly reported or represented. Increased media coverage of a certain class of crime (e.g. murder), according to the availability heuristic, would create the public perception that such crimes are more likely to occur. Theoretically, if a juror has images and example which they can bring to mind of a crime and a particular class of criminals, they will be more likely to believe that a defendant somehow related to that class committed a similar crime. In other words, a bias will have been created which affects accurate and objective judgements.

Another process affecting the cognitive processing of information may be involved in media generated bias. Research has suggested that a story of a mistaken identification has a greater biasing effect on a jury than a story about an accurate and just outcome (Greene & Wade, 1989). This suggests that people are more likely to remember and be influenced by exceptional or surprising information. It is possible that mistaken convictions or mistaken acquittals have more emotional impact than the just outcomes people are expecting. Discovering that an innocent person spent thirty years in prison or a guilty person no time at all, may arouse more emotion than learning that a murderer was sentenced to a long prison term or that an innocent person was acquitted. The emotions which are aroused may be the cause of a bias in judgement. For instance, reading about a criminal who perpetrated a violent crime but did not serve much time in jail may provoke retributive emotions which may then be

displaced by a juror onto another defendant.

Social cognition theory presents another explanation of how information obtained pre-trial may affect jurors during a trial. Haney and Manzolari (1984) suggest that people internalize the attitudes to crime and to the criminal justice system which television crime dramas provide. What is particularly interesting about this suggestion is that the media may be providing the structure and content of personal schemata. That is, the media may be the primary building materials in the construction of a personal reference system regarding crime and the law. Greene (1990) postulates that these schemata may allow individuals to store information in an abstract and generalized form, a form which functions as a template for subsequent processing of new information. She also suggests that schemata which have been heavily influenced by the media provide *the* primary filter through which all subsequent information presented in a trial will pass and be organized. If the filter itself is distorted then it is likely that things which are processed through this filter will also be distorted. Thus, a bias is created.

Fact versus fiction

Many studies have offered possible theoretical perspectives regarding the occurrence of and the possible processes involved in media generated bias. However, it is important to note that the media's coverage of crime includes both fictional *and* factual crime. Often, it is not obvious to the general public whether the crime and criminals portrayed in the media are representing real occurrences, pure fiction, or whether they represent an amalgamation of both. Even when the case is obvious, the question remains: are people influenced by fictional

media? To date, no research has asked to see if there is a differential biasing effect on jurors of fictional vs. factual coverage that is thematically related to a trial.

Methodological concerns

Previous research in the area of pre-trial publicity suffers from major methodological limitations. Demand characteristics present a particular problem in research on pre-trial publicity because the cues in the experiment which could indicate the behaviour that is expected are quite obvious. Often subjects are given newspaper articles to read and immediately after asked to judge a trial; with no other explanation, it is quite obvious to the subjects that there was a connection between the articles and the trial. Therefore, it is necessary to present a believable cover story to the subjects so that they are not prompted to act in accord with previous demands; however, a number of previous studies did not utilize cover stories to prevent or minimize potential demand characteristics (Polvi et. al., 1996).

There have been survey studies conducted on responses to publicity alone without a trial scenario even being introduced (Moran & Cutler, 1991). Studies such as these suffer from a whole host of methodological and validity problems, not the least of which involve the difficulty of determining the direction of causality when interpreting correlations between pre-trial publicity and punitiveness. Another problem with simply measuring a group's reaction to publicity is that, although it can tell us about the group's opinions about a certain case, it lacks a great many of the characteristics of a real trial setting. People's judgements formed on the basis of newspaper articles tell us little about their judgements based on the prosecution and defense trial arguments, judge's instructions, and jury deliberations.

In some studies subjects were presented with a short written summary of the trial in lieu of video coverage of the trial (Sue, Smith, & Gilbert, 1974), while in others, jurors were not allowed to deliberate (Sue, Smith, & Gilbert, 1974; Ogloff & Vidmar, 1994). Without a visual trial and deliberations, these experimental conditions lack realism.

More psychological research is necessary to determine if any bias is caused from general publicity, and if it is, to determine how this bias is affecting the "justness" of the judicial system. The present study addressed the following questions: Are jurors biased by media coverage which is only thematically related to a trial? And, if they are, are they affected differently by information which they believe is fictional and by information which they believe is factual? In order to avoid some of the methodological problems described earlier, it uses a believable cover story, simulated newspaper articles, a videotape of an actual trial, and subsequent mock jury deliberations.

The hypotheses

The specific hypotheses for the present study are as follows:

1. Mock jurors *will be* biased by negative thematically related media coverage. This bias will manifest itself so that jurors exposed to such coverage:
 - a) are more likely to reach a "guilty" verdict
 - b) are more confident about a "guilty" verdict or less confident about a "not guilty" verdict
 - c) have stronger feelings that the defendant is guilty
2. The same effects will occur for both fictional and factual accounts of thematically related crime.

Method

Overview

The first part of the two-hour session involved exposing subjects to the pre-trial publicity. The three experimental conditions were “fact”, “fiction,” and “neutral” publicity conditions. Both fact and fiction conditions included “general” pre-trial publicity, while the neutral condition served as the non-related publicity control condition. In the second part of the session, subjects viewed a videotape of an actual criminal trial, and then acting as mock jurors, deliberated on a verdict. We measured individual and jury verdicts, confidence in verdicts pre- and post-deliberation, and personal feelings of guilt pre- and post-deliberation. In addition, we measured the deliberation time of each jury and ascertained (at the end of the study) whether subjects felt that the material had biased them.

Participants

Participants consisted of 147 undergraduates (36% male, 64% female) at the University of Toronto, recruited by means of a sign up sheet entitled “Crime Stories” for the Introductory Psychology course. Participants were given course credit for their participation. There were 46 subjects run in the “fact” condition, 53 run in the “fiction” condition, and 48 controls. Participants ranged in age from 18 to 45 with a mean age of 22. The participants were given a consent form which explained the nature of their commitment to the study and ensured them of confidentiality. In addition, this form also reinforced that they were participating voluntarily and that they were free to discontinue the study at any point they might wish.

Materials

The Trial

In the trial segment of the study, footage from a real life (non-fictional) court trial was used. The footage was obtained from an organization in the United States known as "Court TV." The tape was edited to make it the desired length of 20 minutes and to make the defense and prosecution cases approximately equal in strength. The trial took place in Georgia in 1995. It was the trial of a policeman accused of murdering his former girlfriend and their two year old son. The occupation of the defendant in this trial is of critical importance for a few reasons. Firstly, the occupation of the defendant served as the critical variable linking the trial with the pre-trial publicity. Secondly and more specifically, there was no evidence taken at the crime scene and the fact that the defendant was a policeman prompted some suggestions raised in the trial that there was a deliberate cover-up on the part of the investigators at the crime scene (who were all his colleagues/friends).

Pre-trial publicity

The materials used for the pre-trial publicity conditions included simulated newspaper articles which were all accounts of crime. There were two articles which subjects in all conditions read. One of these articles told of a man who committed a traffic violation which resulted in a person's death, and the other detailed a conspiracy plot which resulted in a murder. The third and fourth articles were varied slightly for the three conditions. The third article described a robbery and subsequent murder of an elderly lady. While the story of the crime was identical in all conditions, the occupation of the person who committed the crime was altered depending on the condition. In the "fact" and "fiction" conditions, the occupation

of the murderer was a “policeman” (pre-trial publicity conditions) while in the control condition, the murderer was only referred to as a “man.” In addition, slight alterations were made to the presentation of the article in the “fiction” condition so that the crime story told was presented as purely fictional. This was accomplished by having the article detail the crime as a review of a fiction-based T.V. movie. The fourth article detailed a murder where the murderer receives a very light sentence for a particularly heinous crime (the murder of his wife). Again, while the story of the crime was identical in all three articles, the occupation of the person who committed the crime was altered depending on the condition. In the “fact” and “fiction” condition, the occupation of the murderer was a policeman (pre-trial publicity conditions) while in the control condition, the murderer was only referred to as a “man” or as a “car salesman.” Again, in the “fiction” condition, the article was altered to appear to be a fictional account.

The “fact” and “fiction” articles were designed to be thematically related to the content of the trial so that it would be possible to ascertain any biasing effects on the jurors of reading such content similar stories (“general” pre-trial publicity). The articles in the neutral condition were designed to serve as a control so that it would be possible, if any biasing effects of the publicity were found, to identify more precisely what was the cause of the bias. In this case, the only element missing from the articles in the control condition was the mention of the occupation of the murderer. Therefore, the crucial variable linking the publicity with the trial was the occupation of the murderers in the articles and the occupation of the defendant in the trial. In addition, the control condition was designed to control for any possible effects of reading about crime in general, and even reading about murder since all subjects read about

crimes, and all subjects read about murder. Again, only those in the “fact” and “fiction” condition read about policemen committing murder.

Procedure

The demand characteristics of the experiment presented quite a problem since the pre-trial publicity was not specifically relevant to the case but was very closely related thematically to the trial. Therefore, it could have been very obvious to the subjects, given no alternative explanation, that there was a connection between the issues in the publicity and the issues at trial. In theory, if subjects sensed the connection, they may have altered their decisions according to what they believed the experimenter would like them to do. In essence, if the purpose of the study is too obvious to the subjects they might feel a “demand” to behave a certain way either to fulfill the expectations of the experimenter or, alternatively, to behave contrary to the perceived expectations. In either case, the experiment would not be measuring authentic behaviour. Because we wanted to simulate as realistically as possible the conditions in the real world, we did not want the potential biasing effect of the publicity to be explicit. It was therefore important to present the subjects with a believable cover story which would prevent them from making their own inferences about the connection between the various parts of the experimental session. Accordingly we used the following cover story:

This is a study that looks at the way people process information with criminal content. We are interested in memory and recall of information with criminal content. More specifically, we are interested in memory and recall of this type of information as it is presented in different formats, that is, in a printed format, a visual format, and a group discussion format.

So, first, you will be asked to *read* a series of newspaper articles describing some kind of criminal activity. Second, you will *watch* a criminal trial. And third, you will participate in a jury deliberation as the group discussion format.

Participants were run in groups in the same room. Each group was randomly assigned to one of the three conditions, “fact,” “fiction,” or control. The participants were then given a series of articles according to the condition they had been assigned. They were told to read the articles carefully as they would be required to answer questions on them. After they had read the articles, the participants were given the first questionnaire. For all segments of the study, participants were told that they could take as much time as they needed to read or to fill in the questionnaires. All questionnaires were designed to authenticate the cover story by asking memory questions that the subject expect to be asked given the nature of the study in which they believed they were participating.

Following this, participants were informed that the information next presented to them would be in a different format--a videotape of a criminal trial. Participants were told that the trial was footage of an actual trial which took place in the United States and was, therefore, a non-fictional presentation of the criminal justice system. They were given a brief introduction to the substance of the trial, the defendant's name, age, as well as the nature of the crime. Participants were then instructed to watch the videotape and be prepared to answer questions regarding its content following the trial. They were also told not to talk among themselves while viewing or after the tape had finished. At this point the participants watched the videotape.

After the videotape ended, participants were administered a questionnaire. They were asked to provide an independent verdict decision, a measure of their feelings of the defendant’s guilt, a measure of their confidence in their verdict choice, as well as to answer memory (content) questions about the content of the trial. Individual verdict options were

either “guilty” or “not guilty.” The dependent variables were measured on seven point Likert scales. Confidence ratings were taken following the verdict choice by asking the question “How confident would you be about this decision?” Responses could range from 1, “not at all confident,” to 7, “extremely confident.” Likewise, feelings of guilt were ascertained with the question “Do you *feel* that Maurice Cassotta committed this crime?” Responses ranging from 1, “definitely did not,” to 7, “definitely did.”

Participants were then instructed that the next stage (the group discussion stage) of the experiment was a deliberation process using the trial presented. A foreperson was chosen by the experimenter (always the person in seat #1), and the mock jurors were told that they were to deliberate until they had come up with a unanimous verdict. At this point the experimenter left the room.

When a verdict had been reached (or the jurors determined that they were deadlocked), they notified the experimenter who then administered a final question booklet. This booklet contained memory questions which again served to validate the cover story (e.g. “did you remember enough information from the trial to participate competently in the deliberations?”). In addition, the questionnaire included the same rating scales as the pre-deliberation questionnaire to determine their feelings of guilt and their confidence in their verdict after deliberation. There were also questions designed to ascertain whether or not the subjects felt that they had been biased by any of the articles as well as if there was anything about the trial or the newspaper articles that particularly surprised them. After completing the final question booklet, the participants were debriefed, thanked for their participation, and asked not to discuss the study with anyone.

Results

Preliminary analyses

Analyses were performed to determine whether sex interacted with condition on feeling and confidence ratings, as well as on verdict. Any variance accounted for by sex did not vary by condition for pre- or post- deliberation feelings nor for confidence ratings. In addition, no significant interactions of sex by condition were found when the experimental conditions were collapsed. Chi-squared analyses were performed to determine any interactions between sex and condition on individual verdicts. No significant interactions were found. Since no interaction effects were found involving sex and condition, all further discussion will not consider sex as a variable.

Overview

Analyses were conducted on the verdict choice as well as on measures of feelings and confidence. Two sets of analyses were performed for each measure. The first set of analyses examined the data across all three conditions. The second set of analyses involved combining the two experimental conditions and comparing them with the control.

The analyses were as follows. First, analyses of verdicts were performed on individual verdicts and on jury verdicts. Second, one-way analyses of variance were performed with measures of feelings and confidence as the dependant variable and condition as the independent variable. These analyses were performed both before deliberation and after deliberation to determine any effects of pre-trial publicity. Third, in order to determine any main effects of deliberation and any interaction effects of pre-trial publicity and deliberation, analyses with feelings and confidence ratings as the dependant variables were performed using

a repeated measures design with condition as a between subjects factor and time (pre- vs. post-deliberation) as a within subject factor.

Verdicts

Individual

The two experimental conditions were collapsed as they did not differ significantly. Of the 98 jurors in the experimental conditions, 59 (60.2%) found the defendant “guilty” before deliberations and 39 (39.8%) found the defendant “not guilty.” Of the 48 jurors in the control condition, 23 (47.9%) found the defendant “guilty” before deliberations and 25 (52.1%) found the defendant “not guilty.” Although the difference was in the expected direction, it was not significant, [$\chi^2(1) = 1.98, p < .16$].

Individual Verdicts (pre-deliberation)

		guilty	not guilty	Total
Condition	experimental	59	39	98
	control	23	25	48
Total		82	64	146

Jury

Groups were organized to consist of 6 participants. However, due to a substantial number of “no shows,” the actual juries ranged in size from 2 to 8. For the purposes of jury analyses, only mock juries of 4 or more were used, with a mean jury size of 6. In addition,

the two experimental conditions were collapsed since they did not differ significantly. The only “hung” juries were in the control condition and they were combined with “not guilty” verdicts for the purpose of analyses. The observed frequencies did not depart significantly from the expected frequencies ($p > .05$, Fisher’s exact test).

Jury Verdicts

		guilty	not guilty	hung	Total
Condition	experimental	3	12	0	15
	control	2	3	2	7
Total		5	15	2	22

Feelings of Defendant’s Guilt

Pre-trial publicity effects

One-way analyses of variance were performed on the feelings of guilt for pre-deliberation feelings and post-deliberation feelings across all three conditions. The difference in feeling scores between groups approached statistical significance both pre-deliberation ($F(2, 121) = 2.69 .10 > p < .05$) and after deliberations ($F(2, 122) = 2.38 .10 > p < .05$). The subjects in the fact and fiction conditions had stronger feelings of guilt than those in the control condition both before [$M = 4.81$ (fact), $M = 4.98$ (fiction), $M = 4.34$ (control)] and after deliberations ($M = 5.49$, $M = 5.36$, $M = 4.84$, respectively).

One-way analyses of variance were performed collapsing the experimental conditions. Subjects who were exposed to pre-trial publicity had significantly higher feelings of guilt both

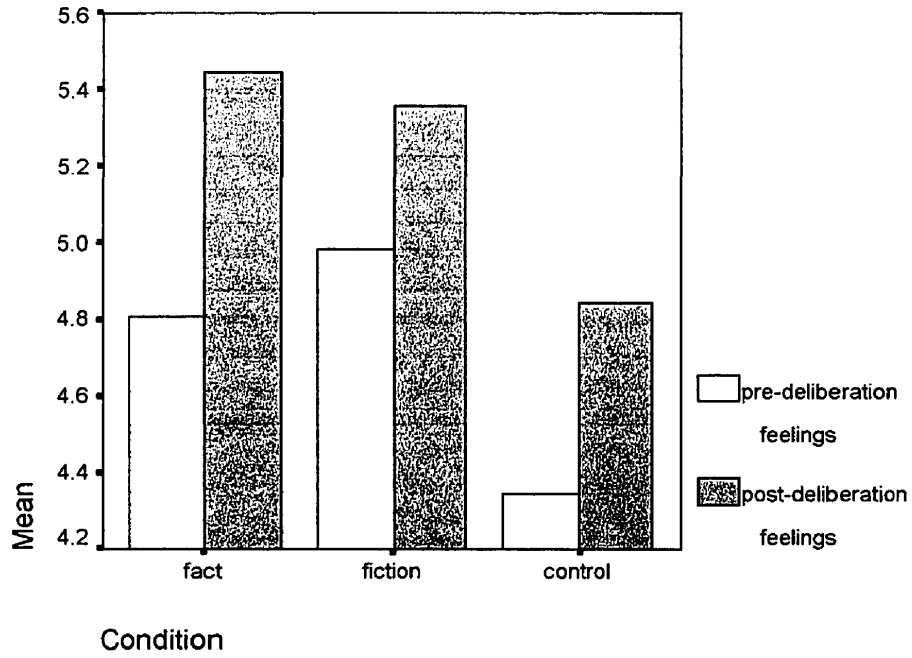
before deliberations ($M = 4.91$) than controls ($M = 4.34$) ($F(1, 122) = 8.4$ $p < .027$); and also after ($M = 5.40$ and $M = 4.84$ respectively) ($F(1, 123) = 8.64$ $p < .034$).

Deliberation effects

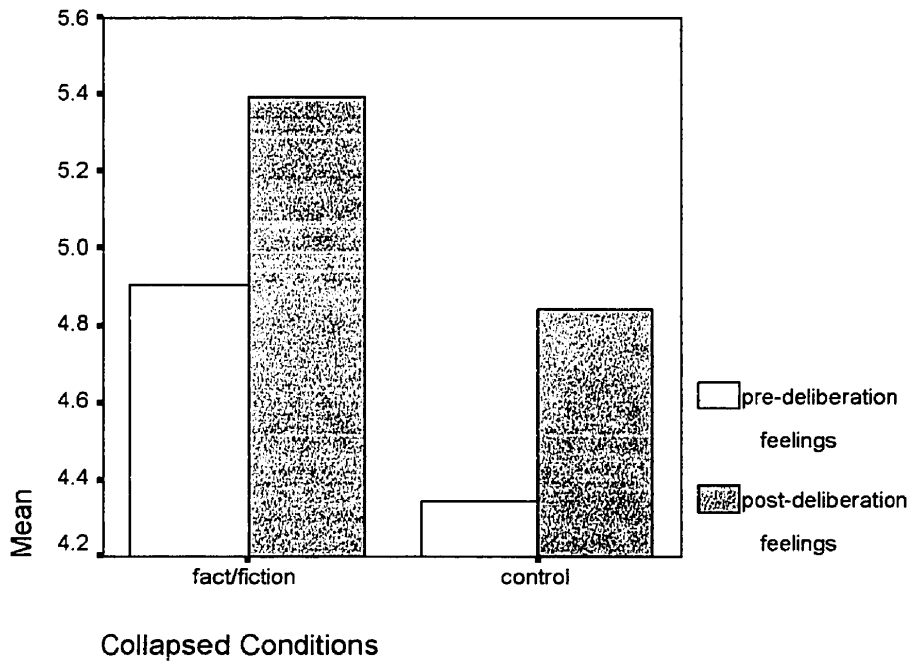
Across all three conditions, subjects rated their feelings of guilt significantly higher after deliberations ($M = 5.22$) than before ($M = 4.71$) ($F(1, 121) = 23.9$ $p < .001$). The main effect of condition also approached statistical significance ($F(2, 121) = 2.85$ $p < 0.6$). The means for the conditions are as follows: fact ($M = 5.13$), fiction ($M = 5.17$), and control ($M = 4.59$). Pairwise comparisons show that the mean difference between fact and control condition and between fiction and control condition are marginally significant at $p < .06$. There was no interaction *between* time of measure (pre- and post- deliberation) and condition ($F(2, 121) = .54$ $p > .05$). In other words, the change scores in feelings from pre-deliberation to post-deliberation did not differ significantly between the three experimental conditions.

Since there were no significant differences between the fact and fiction conditions, the two conditions were collapsed for further analyses. These analyses confirmed the three condition findings but were generally stronger. Again, all mock jurors had significantly stronger feelings of guilt after deliberating $M = 5.12$ than before $M = 4.62$ ($F(1, 122) = 19.75$ $p < .001$). In addition, the overall feelings in the combined experimental condition were significantly higher ($M = 5.15$) than in the control condition ($M = 4.59$) showing a main effect of condition on overall feelings ($F(1, 122) = 5.71$ $p < .01$). There was no interaction between change scores and condition.

Feelings of Defendant's Guilt



Feelings of Defendant's Guilt



Confidence ratings

Pre-trial publicity effects

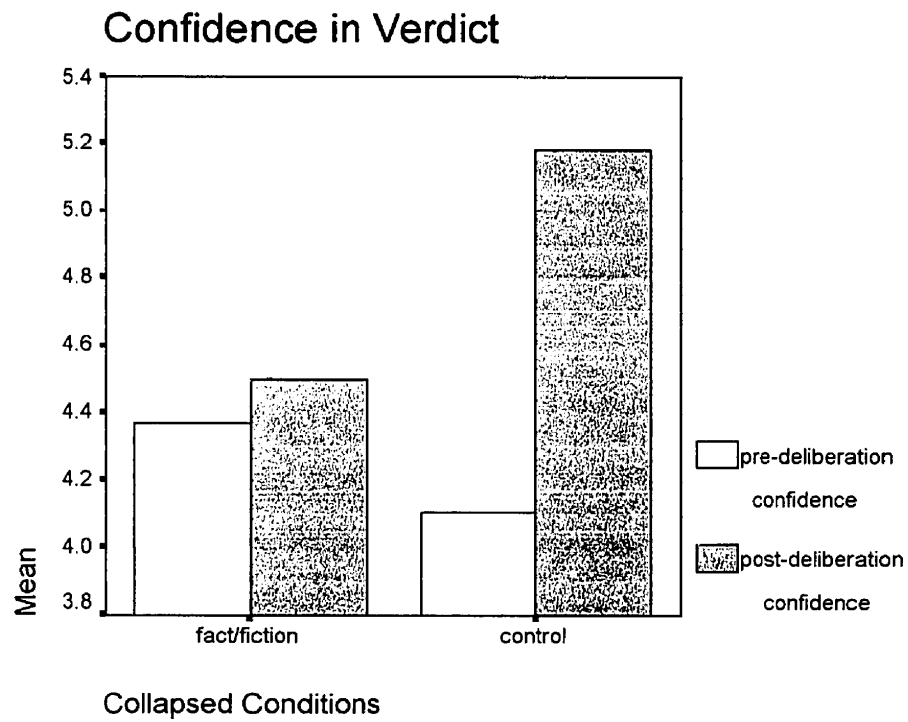
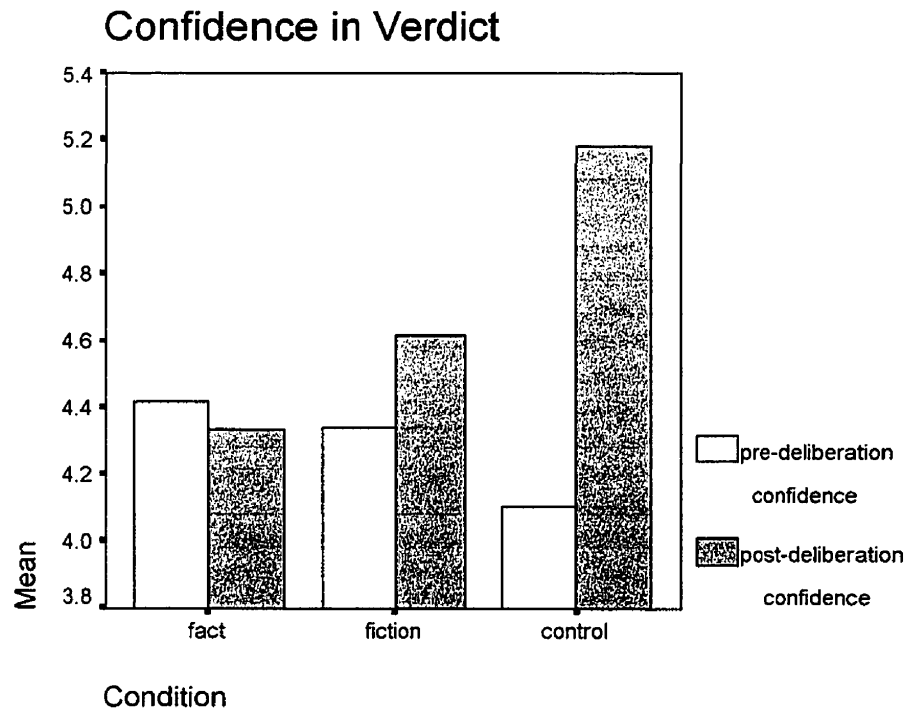
One-way anovas were performed on the confidence rating both before and after deliberations to determine effects of pre-trial publicity. There was no significant difference between the two groups before deliberations. Subjects exposed to general pre-trial publicity felt less confident about their verdict choice ($\underline{M} = 4.11$) than did the control group after deliberations ($\underline{M} = 5.18$) ($F(1, 123) = 3.96$ $p < .049$).

Deliberation effects

Over all three conditions, subjects had significantly higher confidence ratings after deliberation ($\underline{M} = 4.71$) than before deliberation ($\underline{M} = 4.29$) ($F(1, 121) = 4.76$ $p < .031$). The interaction between condition and time of rating (pre- vs. post deliberation) approached statistical significance ($F(2, 121) = 2.88$, $p < .060$). An examination of the means revealed that the control condition had the lowest confidence before deliberating but had the highest confidence in their verdict after deliberating ($\underline{M} = 4.11$, $\underline{M} = 5.18$).

When the two experimental conditions were collapsed, all subjects had greater confidence in their verdict after deliberation ($\underline{M} = 4.84$) than they had before deliberations ($\underline{M} = 4.24$) ($F(1, 122) = 8.37$ $p < .005$). A significant interaction was found between confidence and condition. Specifically, subjects in the control condition changed their confidence ratings significantly more from before deliberations to after deliberations ($\underline{M} = 4.11$ to $\underline{M} = 5.18$) than did the experimental group ($\underline{M} = 4.37$ to $\underline{M} = 4.50$) ($F(1, 122) = 5.19$, $p < .024$). In other words, subjects in the control group were less confident than the experimental group before

deliberation, but much more confident after deliberations.



Discussion

This study was designed to assess whether negative information which is related thematically, but not specifically, to a trial could bias its jurors, and whether the effects would be similar for factual and fictional information. The results suggest that this type of pre-trial publicity does influence mock jurors and that mock jurors are biased similarly by factual and fictional publicity. As expected, mock jurors who read newspaper accounts of policemen who commit murder (fact and fiction conditions) had *stronger feelings* both before and after deliberations that Maurice Cassotta (a policeman) was guilty than did mock jurors who had just read of a “man” or a “car salesman” who committed the same murder (control condition). In addition, after deliberating, mock jurors who read about the policemen who had murdered felt *less confident* about their verdict choice than mock jurors who read the same accounts of murder committed by a “man” or a “car salesman” (the control condition rendered “not guilty” verdicts for 5 of 7 juries). As predicted, factual and fictional publicity appeared to have similar effects on mock jurors.

The original hypothesis that negative general pre-trial publicity would make it more likely that mock jurors would convict the defendant was not confirmed. It could be argued that finding no verdict bias but, rather, a bias in terms of confidence and feelings may indicate that people are able to put aside their personal feelings (and biases) and make an objective legal decision. Although this argument does appear to be a possible explanation for the results of the present study, there is an alternative explanation relating to the particular trial that was used in this study. As previously mentioned, in order to make the study as realistic as possible, it was crucial to obtain video footage of a real trial. Unfortunately, the choice of

trials available was quite limited, and the trial of Maurice Cassotta, although it was the best option available, was not ideal. It was not ideal because, while in this trial the presumed guilt or innocence of Cassotta seems quite equivocal, the legal case against Cassotta contained virtually no incriminating evidence, since none was collected at the crime scene. Therefore it seemed, even at the outset of the study, implausible that anyone with even a very small knowledge of the law would convict a man for murder where so little evidence exists. For this reason, the disconfirmation of the verdict hypotheses was foreseen and the confidence and feelings ratings became a more important measure of bias. In a previous study, also using a trial where the legal case against the defendant was weak, Kassin and Garfield (1991) found that subjects who had seen a videotape which was thematically relevant to the trial set lower standards of proof for conviction. This result, they suggested, could transform “not guilty” votes into “guilty” votes in a trial that contained stronger incriminating evidence.

On the other hand, it is possible that in certain similar instances (e.g. trials with inconclusive evidence) jurors *are* able to put aside their biases and make a verdict choice regardless of their personal feelings. Even though we argue that, from an experimental perspective, this trial is special in that the case against Cassotta was not founded on much evidence, from a legal perspective it is not especially exceptional; there are a great many trials in which there is a lack of conclusive evidence. In such trials, it could be that bias created by general pre-trial publicity would not pose as much of a threat to the fairness of the trial as it would in trials where either the defence or prosecution (or both) had strong cases. From the perspective of justice, detrimental effects of pre-trial publicity on the criminal justice system may not depend so much upon the question of whether pre-trial publicity is responsible for

creating bias, but rather, they may depend upon the nature of the trial itself. Therefore, the biasing effects of general pre-trial publicity may not always disrupt the defendant's right to a fair trial.

The question could be asked whether confidence is necessarily a manifestation of bias or rather just the natural accompaniment to the "rules" of the law. More specifically, because the law is set up so that someone is "presumed innocent until proven guilty," it would seem that a juror needs to be a great deal more confident to vote "guilty beyond a reasonable doubt" than to vote "not guilty." Yet, this rationale does not seem to explain the confidence ratings in this study. 15 of the total 22 juries voted "not guilty," but, the confidence ratings of those jurors exposed to biasing publicity were lower than the ratings of those in the control condition. Put the other way around, the jurors in the control condition felt more confident about their verdict than did those in the fact and fiction conditions. Therefore, the results do deviate from the common sense reasoning that it is natural for lower confidence in a "not guilty" verdict, and argue against the possibility that the confidence ratings are merely a corollary of the "rules" of the law. Thus, confidence is clearly an important indicator of bias caused by pre-trial publicity.

Limitations

An unforeseen complication arose during data collection: subjects not showing up at the scheduled time of the experimental session. For this reason, there were groups of different sizes run through the experiment. However, because mock jury results were analysed using only juries of 4 or more, we feel that this problem was adequately addressed.

An additional problem presented itself when individual feelings and confidence ratings after deliberations were examined. Although the questions were clearly worded to ascertain an individual's *personal* feelings and confidence, it could be argued that because of the deliberations that these subjects personal feelings were no longer independent of one another. The question then remains, are jurors able to have truly *individual* feelings after having been part of a jury deliberation?

There was an attempt to make the study as realistic as possible by including a videotape of a real trial and by having the subjects deliberate in mock jury groups. As well, attempts were made to reproduce as closely as possible newspaper articles. However, the setting still lacked many characteristics of a real trial. Possibly the most important of these characteristics was the lack of real consequence to the decision of the mock jurors. In a real murder trial the jury is responsible for the future of the defendant, a weighty responsibility which would likely affect their decision making process. Generalizing results from mock juries to real juries must therefore be done very carefully.

Some more general findings

One question that the results of the present study therefore bring up is: Why did the deliberation process in this study serve to *intensify* subjects' feelings of guilt yet *heighten* their confidence in their (mostly not-guilty)verdicts? Although not originally designed to address this problem, one of the questions which we asked the mock jurors provided useful information for a possible explanation. Jurors were asked: "Did other people in the group remember information about the trial that you had forgotten?" 45% of participants answered

that others had reminded them of either 1, 2 or 3 pieces of forgotten information. These results suggest a possible reason why the deliberation process may have served to intensify whatever the jurors were already thinking and feeling. It seems that some jurors were able to provide more information to the group than the individuals would have remembered each alone. Incidentally, the information which the participants listed as forgotten information was, in all cases, related to the trial and not the publicity. Kramer, Kerr and Carroll (1990) suggest that the selection or presentation of arguments during deliberation may be biased by pre-trial publicity. It is possible that negative general publicity may cause more negative information to be brought up during the deliberation than would have otherwise been brought up thus providing jurors with a more solid bases for stronger negative feelings (or feelings of guilt). Kramer, Kerr, and Carroll (1990) also suggest that pre-trial publicity may affect the way that decisions are made and the ease with which someone is able to be persuaded. For any of these reasons, the results of the present study add weight to the hypothesis that deliberations are not as effective a remedy for pre-trial publicity as previously supposed. Interestingly, most of the research on pre-trial publicity (both specific and general) does not include a jury deliberation process (Ogloff & Vidmar, 1994; Sue et al., 1974; Polvi et al., 1996; Moran & Cutler, 1991; Greene & Loftus, 1984; Riedel, R, 1993). Even though the specific effects of the deliberation process are not clear, it *is* clear that deliberations are crucial in any simulated jury study in order to have ecological validity.

If we were to only consider verdicts, it may seem inconsistent that we argue for an intensifying effect of deliberation, since the difference between individual verdicts and jury verdicts seems to indicate (at first glance) a possible *moderating* effect. That is, after

deliberation the number of “not guilty” verdicts goes down. While 62% of jurors in the fact condition, 59% of jurors in the fiction condition, and 50% in the control condition rendered an individual verdict of “guilty,” after deliberation the percentage of guilty verdicts dropped to 28.6% of juries in the fact condition, 12.5% of juries in the fiction condition, and 28% in the control condition. The reason why this apparent increase in leniency does not pose a particular anomaly in this study is that although individual verdicts are a useful and interesting measure of bias, they do not represent an ecologically valid “verdict.” This is because a verdict rendered by a jury must conform to high legal standards of such “rules” as “presumed innocent until proven guilty” and “reasonable doubt.” More to the point, it also has to be unanimous. On the other hand, these are standards which individuals may or may not feel motivated to place upon themselves in the absence of a group. It is possible that individual “verdict” measure may be measuring something quite different from the jury verdict.

Awareness of bias

Before deliberations, a judge must instruct the jury on the law. This involves instructing the jury on the laws relevant to the case and to their deliberations, and often includes specific instructions to the jury to disregard any information they might have been exposed to outside of the courtroom. However, there are sound reasons for believing that these admonishments cannot effectively neutralize jury biases. Studies into the effectiveness of these judicial instructions suggest that they are fairly ineffectual (Kramer, Kerr, & Carroll, 1990; Sue, Smith, & Gilbert, 1974). General publicity, to reiterate, refers to all types of publicity not directly connected to a specific case but thematically related to it. General

publicity increases the difficulty of determining how exactly a judge should instruct a jury to disregard information they have gleaned from the media. There may be very strong influences on a juror's thought processes which neither the individual juror nor the judge can identify or counteract. This presents serious problems indeed for the justice system.

For instance, out of 87 mock jurors who made up the juries consisting of 4 or more participants in both the fact and fiction conditions, only 6 (7%) felt that they were influenced by the newspaper articles they had read before viewing the trial, 26 (29.9%) of the participants were “not sure” whether the newspaper articles had influenced their responses, and 55 (63.2%) of those participants felt that the newspaper articles had not influenced their responses. Therefore, in light of our discovery that those subjects in the fact and fiction conditions *were* biased, it seems that a great number of the participants were biased without knowing it. This finding lends support to a previous study which found that subjects are often unaware and mistaken about the degree of their own personal biases (Ogloff & Vidmar, 1994). This situation is potentially serious in that when jurors are instructed (by the judge) to base their decisions on what they have heard in court and on nothing else, they may not be aware that they have in fact been biased. Unaware of their biases, they will be unable to follow this important instruction. Certainly, it is less likely they will be capable of making unbiased decisions if they are not aware of their biases in the first place.

Theoretical consequence

Why has simply altering the occupation of the murderer in the pre-trial publicity created differences in feelings and confidence among the jurors?

For possible explanations, it is necessary to return to previously mentioned psychological processes and relate them to our findings. One possible explanation is that the newspaper articles, because they detailed thematically comparable and similar stories, may have made the possibility that a policeman would commit a heinous crime easier to imagine because the ideas is more *available* to the jurors for reference. Thus, the availability heuristic may be helpful in explaining this phenomenon. According to this heuristic, the availability of information that policemen do murder makes people perceive that it is more likely that another policeman murdered. Specifically, supplying subjects with readily available imagery and feelings regarding policemen who murder would make it easier for them to imagine Maurice Cassotta committing murder, and consequently, to feel that it is more likely that Cassotta did commit the murder for which he stood trial. Much of the publicity dealt with crimes committed by unusual criminals (including a policeman) and were thus closely related to the exceptional nature of Cassotta's case. Green and Wade (1989) found that people are more likely to remember and to be influenced by atypical information and that jurors are more affected by negative information. In this study, the pre-trial publicity was atypical (as most news stories usually are--see previous discussion on misrepresentation of reality by the media), and negative, and did indeed bias jurors.

But why would people be influenced by both factual and fictional publicity to the same extent? The theoretical questions that the present findings raise are extremely interesting. Again, the availability heuristic may provide the most adequate theoretical explanation for the lack of differentiation between factual and fictional media created bias. If it is the case that the perceived likelihood of an event increases when it is easier to imagine that event, then

fictional portrayals of crime would be as influential as factual crimes in that they both provide a foundation of images for people to consult when imagining a crime. In other words, since the imagination does not distinguish between factual and fictional images, the fictional images which are available may increase the perceived likelihood of a crime in a similar way as factual images would.

An informal analysis of the written responses to the question: “Was there anything about the trial or the newspaper articles that particularly surprised you? If yes, please explain?” revealed that one particular newspaper article seems to have been more biasing than the others. The story originally designed to be thematically related to the trial through the similar nature of the crime (policeman kills wife) seems to have mirrored other themes in the trial as well. The article was entitled “Convicted Killer on Verge of Full Parole.” In addition to detailing the story of a man who kills his wife, the article also outlined the legal aftermath of the murder. The murderer (who was a “policeman” or “car salesman” depending on the condition) got a very light sentence and was to receive day parole after only 4 years. The article read by those in the fact and fiction condition also included a short sentence which stated that it seemed that policemen can usually get off with very light sentences. Quite a few of the participants responded that they were “surprised,” “disturbed,” and found it “strange” that someone could get such a light sentence for such a brutal crime. A number of subjects in the fact and fiction publicity conditions commented that they were “surprised” that “policemen” in general get such special treatment while those in the control condition, for the most part, commented that they were surprised only that the “man” or the “killer” or “Mattison” (the murderer’s name) got such a light sentence. A number of participants in the

fact and fiction conditions who made reference to “policemen” *in general* rather than to the particular “policeman” in the article appear to have made the connection between the article and the trial content. On the other hand, while those in the control condition also frequently mentioned that they were surprised at the lenient sentence article, they did not generalize information from the article to the trial. This brings up an important possible finding. Greene and Loftus (1984) suggest that there may be a kind of generalizing mechanism going on here whereby mock jurors are displacing some kind of anger from a previous but thematically related case onto the present defendant. Greene and Wade (1988) found that a well publicized news event of a mistaken conviction “softens” jurors so that they are more afraid to convict a current defendant in fear that they may be wrong. The results of the present study then, suggest that a publicized case where a murderer is given a very light sentence may actually “harden” the jurors against another similar defendant. Perhaps the lack of “hardening” that Greene and Wade (1988) found was simply due to the use of the wrong type of publicity (not similar enough). In this case, it seems that publicity is more biasing the more closely it reflects the issues trial.

Pennigton and Hastie’s “story model” (1986) may further our understanding of general pre-trial publicity effects. Pennington and Hastie argue that jurors construct a narrative structure using the information that they are exposed to in the trial. This type of story structure assists jurors in organizing and understanding the events in the trial as well as in establishing causal relationships between events. Pennigton and Hastie also suggest that when the evidence does not allow for a comprehensive account of the details of the crime that jurors make inferences in order to “fill in” the testimony and complete the story. It could be that the

publicity that policemen in general receive special treatment might have provided the content for the “story” that our mock jurors were constructing. When constructing a “story” about the events detailed in the trial, jurors who read the general publicity may have had a more extensive imaginative basket containing possible reasons for the lack of material evidence in the trial than those in the control condition who did not read the material. Specifically, those who had read the article detailing a policeman receiving a short sentence because policemen are treated leniently may have been more likely to trace the cause of the poor investigation, and lack of evidence in the prosecution’s case to a police “cover-up.” Perhaps pre-trial publicity which is thematically similar, both factual and fictional, provides “story” ideas for the jury. More generally, it may also be that jurors weigh evidence within the context of their own belief systems and value system and that pre-trial publicity may alter that structure so that preconceived values and beliefs are shifted (e.g. ‘Cops serve and protect’ becomes ‘some cops murder’). In this scenario, the thematic similarity of the pre-trial publicity is biasing jurors as it causes their systems of belief to better accommodate the issues in the trial at hand.

Practical consequences

The results of the present study suggest serious legal implications. While the trial system is based on the premise that jurors will evaluate the case on what they hear in court and on nothing else, the results of the present study suggest that this assumption may be unwarranted. On the other hand, in this study, the verdict results were not biased even though other measures of bias were indicative of extralegal influence.

As noted above, the ill effects of pre-trial publicity may be of serious concern only

when the case at hand is equivocal. That is, general publicity may only enter (and bias) the ultimate verdict reached when jurors are forced (by ambiguity in the case) to look outside the courtroom for information to sway their decision one way or the other. For example, in the present study, even though jurors were biased by general pre-trial publicity, because the case was, from a legal standpoint, not especially equivocal (there was no incriminating evidence), jurors did not have to deviate from the facts at trial to arrive at their verdicts. Similarly, given a case where there is an abundance of incriminating evidence, it may again be clear cut for the jurors. Both of these scenarios would leave little room for extralegal influence to bias a verdict choice.

In the present study, although there were biasing effects of pre-trial publicity, they did not disrupt the ultimate verdict choice. We do not know what would be the effects of these pre-trial publicity effects in a trial where there was more room for extralegal influences to enter into the decision of the jurors. But since we do know now that these biases exist, the question then becomes: what can be done about the influence of pre-trial publicity on jurors? There have been many potential remedies suggested for the effects of pre-trial publicity. Often requesting a change of venue or a continuance have been proposed to ensure that potential jurors will not have been exposed to damaging publicity or that they will have had adequate time to forget any damaging evidence that they might have heard. There are at least two problems with these “remedies.” The first is that there is very little research evidence to date on their effectiveness (Carroll et al., 1986). Secondly, these remedies are in place, for the most part, to combat any harmful effects of “specific” pre-trial publicity and are not as helpful when considering more “general” publicity. In the case of general publicity it is a great deal

more difficult to identify the sources of the publicity. General publicity includes more media than specific publicity. For example, in addition to newspaper and television news, general publicity includes media such as movies and even books as well as television drama. This would make a change of venue quite a bit more problematic and potentially ineffectual. In addition, the remedies now in place only make provisions for damaging or negative pre-trial publicity. Yet, there is evidence (Greene & Wade, 1988) that certain publicity (e.g. reports of mistaken convictions) may have the effect of “softening” the jurors. There are no legal remedies in place for publicity which might soften the jurors, though it can be argued that this type of publicity is just as much of a challenge to a fair trial as is negative publicity.

This experiment raises an important question about the media’s relationship to the legal system. If people are not differentially biased by factual and fictional information, the media are afforded a high level of input into our beliefs and the decisions based on those beliefs. Practically, this would be a difficult problem to address. Both the U.S. Constitution and the Canadian Charter of Rights and Freedoms guarantee the freedom of the press and the individual’s right to a fair trial. However, as has been recognised for some time with regard to “specific” publicity, these rights and freedoms can come into conflict. This conflict is even more difficult to resolve when the disruptive publicity is classified as “general,” especially when this classification consists of both factual and fictional media. “General” pre-trial publicity could potentially include not only newspaper stories and television news stories, but also cinema, and even novels. There are a few mechanisms in place to protect the right to a fair trial including so called “gag orders” by which the media are forbidden to report certain facts, suspicions or evidence. However, the problem becomes even more complex when the

publicity that is damaging could be factual or fictional and is not related directly to the trial. It seems virtually impossible, not to mention unethical, to try to deal with this problem through manipulations of the media. Perhaps the problem could be addressed on an individual basis. For example, *voir dire* to ascertain people's beliefs and biases before the trial could be of some use where potential general publicity effects are suspected. Possibly, if the publicity is such that it biases people against a particular class of defendants or a particular type of evidence, then a potential remedy would be to bring in experts in order to instruct the jury on the realistic statistics and/or relevant facts.

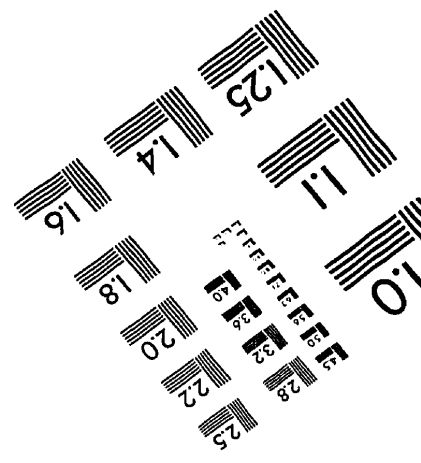
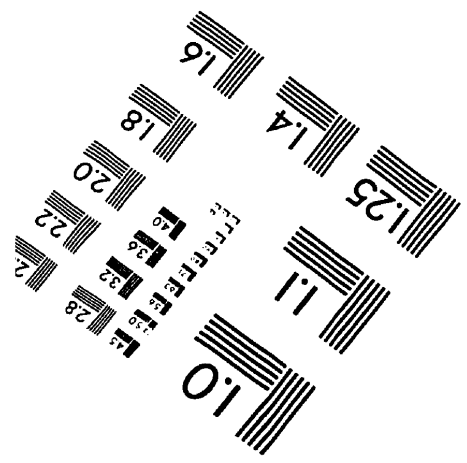
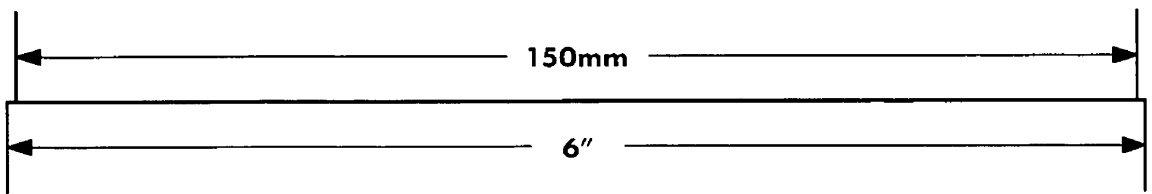
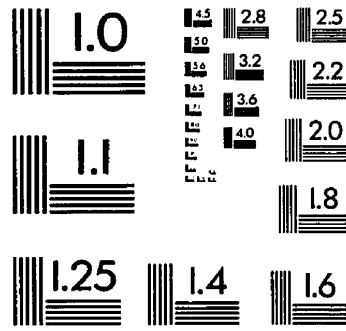
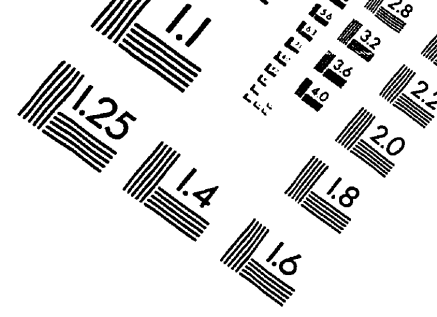
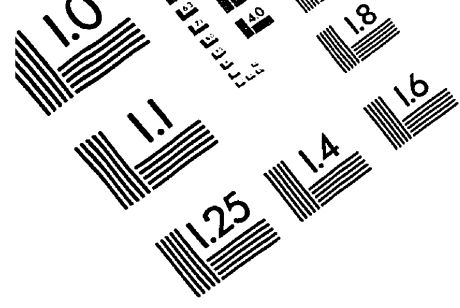
Among the legal rights spelled out in the Charter is the "right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal." Similarly, the sixth amendment to the American Constitution guarantees the right "to a speedy and public trial, by an impartial jury." How realistic are these rights? The results of the present study suggest that there *is* bias and partiality in the courtroom casting doubt on the authenticity of the Charter and Constitutional rights.

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