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The effects of prejudicial pre-trial publicity on perceived defendant character and guilt

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THE EFFECTS OF PREJUDICIAL PRE-TRIAL PUBLICITY ON PERCEIVED DEFENDANT CHARACTER AND GUILT

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Abstract

The "Free Press v. Fair Trial" issue is one in need of research, yet few studies examining its effects have been forthcoming. Those studies that have been made have not adequately isolated the variables in pre-trial publicity to permit meaningful conclusions. The present study was directed at exploring the effects of prejudicial pre-trial publicity on a defendant's perceived character and guilt. Sixty-nine undergraduate students were assigned to one of four conditions, receiving either prejudicial or non-prejudicial pre-trial publicity either one or thirty days before they were asked to rule on a defendant's guilt. A synopsis of evidence was provided in place of a trial. Prejudicial pre-trial publicity had a negative effect on perceived character. Exposure to prejudicial pre-trial publicity one day before trial did not result in lower defendant character ratings at trial than did exposure to prejudicial publicity thirty days before trial. No relationship was found between prejudicial pre-trial publicity and perceived guilt at trial. A relationship was found between perceived character and perceived guilt.

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Introduction

A forerunner to the myriad of contemporary media role controversies is the issue of the impact of pre-trial publicity on jury behavior. While this issue has existed for over a hundred years, it has become increasingly urgent with the growth and sophistication of both print and broadcast media.

Five cases were instrumental in demonstrating the power of mass media to generate an effect that extends beyond the audience into the jury, the heart of the criminal justice system: Marshall v. United States (1959), Irvin v. Doud (1961), Rideau v. Louisiana (1963), Estes v. Texas (1965), and Sheppard v. Maxwell (1966) (see Appendix I). While the nature of the effects on jurors was largely left to speculative and doctrinaire evaluation, sensational cases did result in a consensus among lawyers and journalists that a problem existed.

The problem stems from an apparent inability in some cases to harmonize application of both the Sixth Amendment guarantee of trial by an unbiased jury and the First Amendment guarantee of free expression. Pragmatically, the issue contrasts lawyers' assertions that media coverage can bias jurors, and journalists' claims that coverage of criminal proceedings is both necessary to insure the proper administration of justice and protected by the constitution.

In federal trials the Sixth Amendment guarantees a defendant a trial by an impartial jury. The United States Supreme Court in Duncan v. Louisiana (1968) held that the due process clause of the Fourteenth Amendment extended the guarantee to any state criminal case that would be entitled to trial by jury in the federal system. Thus, all criminal defendants charged with more than a petty offense are held to have a right to a fair and impartial jury.

Numerous decisions by the Supreme Court demonstrate that it is very protective of the right to free expression and requires that any limitation on expression be justified as responding to a substantial social need. In New York Times v. United States (1971) the United States Supreme Court held that any prior restraint on free expression carries a heavy presumption of unconstitutionality and the burden rests on the government to justify the restraint. The court held that the government failed to meet the burden with regard to suppressing the Pentagon Papers. When limitations are upheld as constitutional, they are narrowly interpreted and strictly applied.

Both journalists and attorneys find support in the Constitution and in case law for the cornerstones of their positions, and neither has yet accepted the other's position as paramount. The American Newspaper Publishers Association (1967) published a study intended to demonstrate that pre-trial news coverage of criminal proceedings

is not a problem of significance. The American Bar Association (1968) then attempted to restrict access to information deemed prejudicial to a defendant by revising its code of ethics to forbid release of certain data to reporters. While each action may have been constructive, neither settled the issue.

Following both efforts, the charge of "trial by mass media" has been repeatedly heard. One example occurred in August, 1970, when President Nixon commented on the guilt of accused murderer Charles Manson prior to trial: "Here is a man who is guilty directly or indirectly of eight murders without reason." In the aftermath of his statement, the news media made headlines of the President's indictment.

At present there is no indication that criminal defendants are becoming less subjected to publicity. The status quo does not effectively prevent police and prosecutors from making information available to reporters, nor does it proscribe reporters from circulating news stories inconsistent with a defendant's interest. The only means by which publicity has been restricted is a little used power of a court to cite a publicity proliferator for contempt. However, contempt charges on such grounds are uncommon.

Coupled with the ability is a demonstrated propensity to make news of criminal proceedings. Legal scholar Harold

Sullivan (1961) observed that editors are persuaded by what sells their product. The sensational has a sales value of more certainty than a cold recital of the happenings in court. Publication of President Nixon's untimely comment condemning Charles Manson is a case in point.

Prosecutors are also prone to allow defendants to be the subjects of news stories. Sullivan (1961) asserts that young prosecuting attorneys desire publicity as an aid to their professional success and welcome press coverage of actions they prosecute.

In spite of the controversy it generates, American criminal law, unlike that of the British, has opted to tolerate most pre-trial publicity. Fear of restricting First Amendment freedoms of expression has led to reliance upon procedural safeguards to prevent pre-trial publicity from denying a defendant a fair trial. The procedures most often used to counter any adverse effects are continuances, changes of venue and voir dire examination.

A continuance or postponement of a proceeding is often used to let public furor abate. However, publicity can and sometimes does begin afresh following a continuance. In addition, a continuance long enough to overcome effects of pre-trial publicity may interfere with a defendant's right to a speedy trial. Generally, a change of venue, a removal of an action to a new location, is considered more effective. In Groppi v. Wisconsin (1971)

the United States Supreme Court held that in some circumstances only a change of venue would be constitutionally sufficient.

Most courts will not grant a change of venue unless the defendant can demonstrate that pre-trial publicity he received is damaging to the extent it prevents his being afforded a fair trial. Merely showing that prejudicial publicity has been disseminated throughout the community is not normally adequate to meet the burden. Evidence acceptable to justify a change of venue must demonstrate that ill will was "reasonably certain" or "likely" to have been generated against the defendant (State v. Woolery, 1963). While a judge has some guidance from case law, his decision to grant or deny a motion for a change of venue is based largely on his experience and intuition in applying the standards to the facts of a given case.

Voir dire is perhaps the most helpful of the procedural safeguards. Defense attorneys can dismiss jurors for cause if they can demonstrate prejudice adequate to convince the trial judge that the challenge is justified. Attorneys also have the benefit of a limited number of preemptory challenges that need no justification. Since challenges for cause are not limited in number, a defense attorney can eliminate jurors if they fail to satisfy the attorney and the judge that they can pass an inspection of impartiality.

Although voir dire is helpful to counteract pre-trial influences, it has limitations. Judge J. S. Wright (1964) has noted that:

> Generally, it is not repeated during the trial to detect later influences. It covers only those particular pretrial influences the lawyers and the judge think to ask about. And it uncovers only the influences that the prospective juror both remembers and is not too embarrassed to admit. A half-forgotten headline may seem to a juryman too trivial to mention, yet it may have planted the seed that changes a vote in the jury room.

The present standard a prospective juror must meet to be deemed impartial is that under the circumstances surrounding the trial he must be considered able to lay aside any preconceived opinion and influence from outside sources and decide the case on the evidence. The standard does not require that prospective jurors enter the courtroom free from prejudice or exposure to pre-trial publicity. In Rideau v. Louisiana (1963) the United States Supreme Court reaffirmed the rule that when jurors testify that they can discount the influence of external factors and meet the standard of the Fourteenth Amendment, that assurance is not to be lightly discounted. In Irvin v. Doud (1961) the Supreme Court of the United States held that the mere existence of any preconceived notion as to guilt or innocence of an accused without reason to believe the juror could not overcome such preconceptions was insufficient to rebut the presumption of a juror's impartiality. The court held that to require complete impartiality prior

to trial would be an impossible standard to meet.

Similar to the application of the standards for a change of venue, the final determination of a juror's impartiality is made by the trial judge. While he has guidance from case law, he must rely on his experience and intuition to decide whether a particular juror can overcome prejudice in rendering a verdict. The decision of a trial judge is not set aside by an appellate court unless it represents a clear abuse of discretion. Rarely is such an abuse said to have taken place.

Even though trial judges are knowledgeable and experienced, when consideration is given to the subtlety of attitudes and the number of forces that influence them, a question emerges whether a judge, or anyone, can accurately estimate the degree to which a juror's attitude toward a defendant will suffer from pre-trial publicity.

Behavioral research has isolated several elements that combine to form a person's attitude toward another. While an opinion that an individual is guilty of a crime certainly would influence a juror's attitude, there are other factors that would also contribute. One such factor is the individual's perceived character.

One type of injury a defendant could foreseeably suffer through pre-trial publicity is damage to the image of his character. The elements of character are subtle and since they are not specifically drawn out through

current tests for juror bias, injury to a defendant's character might escape notice. Thus, if the image of good character is important to a defendant, pre-trial publicity may generate a significant form of bias current tests and standards are not designed to discover and leave the defendant without the benefit of any procedural safeguards.

If more were known about the significance of the effects pre-trial publicity may have on a defendant's perceived character, procedural safeguards might be better oriented to provide a remedy if one is needed.

Survey of Research Literature

The general purpose of this research was to isolate and measure the impact of pre-trial publicity on the perceived character of an accused and to see if a relationship existed between the perceived character of an accused and his perceived guilt.

Numerous studies have confirmed the theory that a man's relationship with other men is affected by their perceptions of his character. Hovland and Weiss (1951) found that in most instances opinion change in the direction advocated by a speaker was much greater when the speaker was perceived to have good character than when he had bad character. Numerous studies reported by Hovland, Janis, and Kelly (1953) found that audiences are less likely to accept what they hear or read when they have decided that the source is unreliable. Anderson and Clevenger (1963),

in summarizing many studies in ethos, concluded that the credibility of the source is related to the impact of the message.

Five previous studies were conducted to determine the effects of pre-trial publicity on jury verdicts.

Simon (1966) conducted a fictional trial to determine jurors' reactions to newspaper publicity. Simon concluded that upon being instructed by the judge to disregard previous opinions jury members did so, being able to reach a verdict solely on the basis of what was heard at the trial. However, the results of the study may have been influenced by sampling bias. Potential subjects were contacted and told of the nature of the experiment and then asked if they would cooperate. This procedure would very easily produce a sample not representative of the population of actual jurors.

Tans and Chaffee (1966) conducted an experiment in which Ss were presented with a news story containing information deemed to be either unfavorable, neutral, or favorable concerning a defendant accused of either burglary, an assault-robbery, or kidnap-murder. After reading the information, Ss completed a self-administered questionnaire booklet which contained five semantic differential scales with a guilt-innocence scale as the principal measure. Results indicated that the defendant was judged guilty when the information was unfavorable and innocent

when the information was favorable.

The validity of the results is suspect since the Ss were not made to evaluate the guilt of the defendant as jurors. The Ss were asked for their description of the defendant's guilt based on the news stories alone as contrasted with a juror's obligation to rule on a defendant's guilt on the basis of evidence. The results can only be viewed as applicable to persons who form opinions of a defendant's guilt without having been exposed to the evidence presented in court, certainly not jurors.

Kline and Jess (1966) conducted an experiment utilizing "planted" prejudicial and non-prejudicial pre-trial publicity in newspaper stories and radio newscasts. In comparing mock jury deliberations, they found that all groups exposed to the prejudicial publicity made reference to it while deliberating. The researchers found, however, that in three of four mock trials the jury voted for the defense. The results did not indicate whether not-guilty verdicts were due to instructions to disregard pre-trial publicity, the age relationship between the jurors and the defendant, or the dynamics of lawyer presentation of trial messages. In the case of the group that voted guilty, three opinion leaders all referred to "evidence" found in pre-trial publicity.

Eimermann and Simon (1970) completed a study which compared verdicts of actual trials in which some jurors

were subjected to prejudicial pre-trial publicity and others were not, and concluded that no relationship existed between verdicts and publicity.

In still another study, Simon and Eimermann (1971) surveyed 130 potential jurors from a community which was to have a murder trial. The survey found that seventy-nine percent of those surveyed favored the prosecution and had largely been influenced by publicity. The actual verdict of the trial was not guilty. The researchers inferred from the verdict that the pre-trial publicity was either overcome or did not exist initially.

The studies reported above generally suggest that pre-trial publicity has little effect on jury decisions. However, these studies were not designed to isolate and correlate only the effects of pre-trial publicity with jury decisions. Other factors such as attorney ability, jury qualities, jury interaction, and elapsed time between exposure to pre-trial publicity and verdicts were not adequately controlled or measured so that the effects of pre-trial publicity could be observed.

Research concerned with the quantitative measurement of credibility was also consulted. Attention was focused on research which generated a measurement scale for a character dimension since perceived character is the dimension of credibility relevant to this study.

The character dimension has been measured with a

Likert-type scale by Walter (1948) and by McCroskey (1966). McCroskey (1966) also measured character judgments with a semantic differential. The McCroskey Likert-type scale was chosen for the research reported here because evidence established the scale as being reliable, valid, and easily adapted to measuring perceived character of a defendant in a criminal prosecution.

To establish reliability, McCroskey (1966) administered his scales in a series of seven experiments to 1106 college students. The split-half reliability estimates for the character scale ranged from .979 to .930. Hoyt Internal Consistency Reliability estimates ranged from .968 to .928.

There are two indications of validity for the McCroskey scales for measuring character. First, the content of the items and the procedure used in their selection indicate face validity. Second, Arnold (1966) developed introductions differing in degrees of ethos and attributed them to three authors. Two opinion statements were developed and combinations of introductions and opinion statements were presented to 133 college students who read the messages and completed the McCroskey scale. As predicted, significant differences were found in perceived credibility between authors introduced as highly credible sources and those introduced as less credible sources. The experiments demonstrated the ability of the scales to detect

differences in perceived credibility.

Research measuring the diminution of opinion change through time was consulted to provide a standard by which any weakening of the impact of pre-trial publicity could be compared. Cromwell (1955) found that after thirty days the impact of a persuasive speech had diminished although some influence remained. He also noted that the stronger the immediate effectiveness of the message, the greater the remaining influence after thirty days.

Whittaker and Meade (1965) also found that the impact of the communicator diminished and that after one month the effects of the credibility of the communicator were no longer measurable.

Statement of the Problem

The purpose of this study was to ascertain the effects, if any, of pre-trial media publicity on juries' decisions in determining the guilt or innocence of the defendant in a criminal prosecution.

The specific problem was to discover: (1) any effect pre-trial publicity may have on a juror's conception of the defendant's character; (2) the effect of a lapse of time on any effects following exposure to prejudicial pre-trial publicity; (3) whether or not a relationship exists between a juror's conception of a defendant's pre and post-trial character and his verdict; and (4) whether an interaction

of the message and time variables produce different degrees of perceived character and evaluations of guilt.

The design was a 2X2 analysis of variance, with four conditions: (1) prejudicial message, one-day elapsed time; (2) prejudicial message, thirty days elapsed time; (3) non-prejudicial message, one day elapsed time; and (4) non-prejudicial message, thirty days elapsed time.

Hypotheses

From these four treatment conditions five hypotheses were formulated:

Hypothesis 1. Ss exposed to prejudicial pre-trial publicity will award lower defendant character ratings than Ss exposed to non-prejudicial pre-trial publicity.

Hypothesis 2. Ss exposed to prejudicial pre-trial publicity one day before a trial will give lower defendant character ratings than Ss exposed to prejudicial pre-trial publicity thirty days earlier.

Hypothesis 3. Ss exposed to prejudicial pre-trial publicity will more often cast a vote of "guilty" for a defendant than will Ss exposed to non-prejudicial pre-trial publicity.

Hypothesis 4. Ss exposed to prejudicial pre-trial publicity immediately before a trial will more often cast a vote of "guilty" than Ss exposed to prejudicial pre-trial publicity thirty days earlier.

Hypothesis 5. Ss giving guilty verdicts will also give lower character ratings at trial to the defendant than will Ss giving not-guilty verdicts.

The level of significance for all statistical tests was $p \leq .05$.

Definitions of Variables

Items of information which usually compose pre-trial publicity have been divided into prejudicial and non-prejudicial categories by the Attorney General (1965), the Judicial Conference of the United States (1968), and the American Bar Association (1968). The guidelines promulgated by the Judicial Conference (1968) and the American Bar Association (1968) were used because they are identical and because together they represent standards applicable to federal courts and practicing attorneys. The definitions of prejudicial and non-prejudicial information common to those reports were used in constructing message conditions for this study.

Prejudicial information.

(1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that a factual statement of the accused's name, age, residence, occupation, and family status may be made and if the accused has not

been apprehended, a lawyer associated with the prosecution may release information necessary to aid in his apprehension or to warn the public of any dangers he may present;

(2) The existence or contents of any confession, admission, or statement by the accused, or the refusal or failure of the accused to make any statement;

(3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(5) The possibility of a plea of guilty to the offense charged or a lesser offense;

(6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

Non-prejudicial information.

(1) The fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and the use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation;

(2) At the time of seizure, a description of any physical evidence other than a confession, which is limited to a description of the evidence seized;

(3) The nature, substance, or text of the charge, including a brief description of the offense charged;

(4) Quoting or referring without comment to public records of the court in the case;

(5) Announcing the scheduling or result of any stage in the judicial process;

(6) Requesting assistance in obtaining evidence;

(7) Announcing without further comment that the accused denies the charges made against him.

Elapsed time.

The amount of elapsed time between a S's exposure to pre-trial publicity and the S's evaluation of the defendant's character and guilt was set at one day and thirty days. The one day period was chosen to represent media coverage of an impending trial. The thirty-day period was chosen for two reasons: first, very few trials begin less than thirty days from the time of arrest; secondly, research has demonstrated that opinion change decays over a thirty day period. The thirty days should have allowed the effects of the message and of the message source to wear off (as they normally would) if any such change in impact was to

occur.

Defendant character.

Defendant character was operationally defined as the mean score of S evaluations of defendants on the character dimension of credibility established by McCroskey (1966). The Likert-type scales developed by McCroskey were modified by replacing the term "speaker" with the term "defendant" (see Appendix II).

Guilt.

A defendant's guilt was defined as a verdict of guilty or not guilty, obtained by asking the S to mark a ballot (see Appendix III).

Method

Subjects

One hundred forty-seven students enrolled in six classes of the Fundamentals of Speech Communication course in the spring semester of 1973 at the University of Nebraska at Omaha were available as Ss. These Ss were randomly assigned to the four conditions. The students were mostly freshmen and sophomores, with a small number of upper classmen.

Although college students are often suspect as subjects because of unique educational, intelligence, and environmental factors, the collegiate population from which these subjects were drawn is more similar to the

population of Omaha than are most other student populations to the situs of their campuses. This similarity exists in Omaha since: (1) all students commute from the area, there is no campus life normally generated by dormitories and fraternity houses; (2) entrance requirements do not exclude students with below average academic records; (3) approximately seventy-five percent of the students are employed at least part-time; and (4) many students are from homes that have not before had a family member in college.

The Ss were required to participate in the pre-trial condition during class time, but were requested to appear on their own time for the post-trial evaluation. Sixty-nine Ss appeared to participate in the post-trial tests. The high attrition rate was probably due to a lack of compulsion to participate in the post-trial tests.

Instruments

Two pre-trial messages approximately equal in length were constructed. The first included only information defined as non-prejudicial. The second contained the same non-prejudicial lead used in the first message plus prejudicial information. The messages were approximately one and one-quarter minutes in length and were presented to the Ss from audio recordings. The taped messages were made to resemble an actual radio newscast and were presented as

such to the Ss (see Appendix IV-A and IV-B). The newscaster used to record the pre-trial messages was a radio broadcasting major at Northwest Missouri State University.

A written synopsis was constructed to acquaint the Ss with simulated prosecution and defense evidence. This synopsis of evidence was attributed to an actual trial involving a defendant charged with armed robbery. To insure that the evidence was not weighted in favor of the prosecution or defense, the evidence synopsis was revised until neither the prosecution nor the defense had an advantage (see Appendix V). The synopsis actually used in the experiment was pretested on a group of forty-three students in the Fundamentals of Speech course at the University of Missouri at Kansas City. When asked to ascribe a verdict for the defendant based on the synopsis, twenty-two voted guilty and twenty-three voted not-guilty.

To reduce the possibility of primacy effects, the evidence in the synopsis alternated between prosecution and defense.

Procedure

The two experimental groups which received non-prejudicial pre-trial publicity remained in their classrooms while the two groups which received prejudicial pre-trial publicity were taken to a second room which was out of the hearing of the non-prejudicial experimental

groups. The E then gave the Ss a brief introduction to the research, stating that they were contributing their time to a joint research project between the University of Nebraska at Omaha and the School of Law of the University of Missouri at Kansas City. The project was described as a research program designed to provide information on the intake and analysis of data by prospective jurors. The Ss were also told that the research had been in progress for over a year and that preliminary work had been carried out in Kansas City. It was explained that Kansas City and Omaha had been chosen for the study because of their similarities in population and criminal justice problems. In an attempt to conceal pre-test procedures, the Ss were told that the total experiment could not be carried out at one meeting due to time limitations, and that the initial meeting would be for acquainting the Ss with background information relating to a trial which would be presented in an abridged form at a later date.

Following the presentation of the pre-trial message, the Ss were given the Likert-type character scale. To conceal the emphasis on measurement of defendant character, several distracting questions concerning the effectiveness of the radio newscaster were included (see Appendix VI).

Subjects in each experimental group were given the synopsis of evidence either one day or thirty days following their initial exposure to the pre-trial publicity.

Before handing out the synopsis, the E explained that the Ss were receiving an abridged copy of evidence used in the trial of the defendant referred to in the newscast they had heard at an earlier date. The E instructed the Ss to read the evidence synopsis as if they were members of the jury.

Following the presentation of the synopsis, the Ss were once again given the character scales which included distracting questions concerning the effectiveness of the judicial system (see Appendix VI). Finally, the Ss were given a ballot for registering their verdict. The ballot requested that the Ss briefly explain why they decided the case as they did and asked the Ss to describe what they thought the study would contribute. Of sixty-nine Ss only one stated that the study would contribute to knowledge concerning pre-trial publicity.

Results

The first two hypotheses concerned the effects of prejudicial pre-trial publicity and elapsed time on character ratings. The statistical results are reported in Table 1.

The first hypothesis predicted that Ss exposed to prejudicial pre-trial publicity would award lower defendant character ratings than Ss exposed to non-prejudicial pre-trial publicity. Post-trial ratings of the defendant's

Table 1

Effect of Conditions on
Character Ratings

	Condition	Mean	Condition	Mean	t
H1	PPTP	53.59	NPPTP	57.81	2.078*
H2	PPTP 1 day	51.14	PPTP 30 days	55.50	1.332

*p.≤.05

character by Ss given the prejudicial message were compared with post-trial character ratings by Ss given the non-prejudicial message with a one-tailed "t" test of the difference between independent means (Bruning and Kintz, 1968). The "t" of 2.078 was significant ($p<.05$), supporting research hypothesis 1.

The second hypothesis predicted that Ss exposed to prejudicial pre-trial publicity one day before a trial would give lower defendant character ratings than Ss exposed to prejudicial pre-trial publicity thirty days earlier. The difference was in the direction predicted, but the "t" of 1.332 was not significant ($p<.10>.05$), so the null hypothesis was accepted.

The third and fourth hypotheses concerned the effects of pre-trial publicity and elapsed time on Ss perceptions of the defendant's guilt. Tests of significance were made the chi-square test for a 2X2 distribution corrected for

continuity (Siegel, 1956, p. 107). The findings are reported in Table 2.

Table 2

Effect of Conditions on Perceived Guilt

	Condition	Votes	Condition	Votes	χ^2
H3	PPTP	18 G 19 NG	NPPTP	17 G 15 NG	.49
H4	PPTP 1 day	5 G 11 NG	PPTP 30 days	10 G 4 NG	3.34

(χ^2 of 3.8 significant at $p \leq .05$)

Hypothesis 3 predicted that Ss exposed to non-prejudicial pre-trial publicity would cast less votes of guilty than would Ss exposed to prejudicial pre-trial publicity. No significant difference in the distribution of guilty and not-guilty votes between the two groups was found. The chi-square value of .49 was not significant ($p > .05$), so the research hypothesis was rejected.

Hypothesis 4 predicted that Ss exposed to prejudicial pre-trial publicity immediately before a trial would more often cast a vote of guilty than Ss exposed to prejudicial pre-trial publicity thirty days earlier. No significant difference in the distribution of guilty and not guilty votes between the two groups was found. The chi-square of 3.34 was not significant ($p < .10 > .05$), so the research hypo-

thesis was rejected.

Hypothesis 5 predicted that Ss casting guilty verdicts would give lower character ratings to the defendant than would Ss casting not guilty votes. To test this hypothesis, the mean character ratings for Ss voting guilty (n=35) were compared with the mean character ratings by Ss voting not guilty (n=34). The means were 52.49 and 59.47 respectively.. The resultant "t" of 3.323 was significant at $p<.01$, so the hypothesis was accepted.

Discussion

Defendant Character

The hypothesis predicting that prejudicial pre-trial publicity would lower a defendant's perceived character was supported and is theoretically consistent with the findings of source credibility research. The information in the prejudicial pre-trial message condition was not repeated in the evidence synopsis so that only the Ss given the prejudicial pre-trial message were exposed to the maximum amount of adverse information available from both the pre-trial and evidence synopsis sources. It seems reasonable that those Ss would therefore give lower defendant credibility ratings than would Ss who received less total adverse information from the evidence synopsis alone.

The hypothesis predicting that Ss who cast guilty verdicts would also give lower character ratings was also

supported. The support of both hypotheses indicates the apparent applicability of general source character research to a defendant in a trial situation.

The hypothesis predicting that Ss exposed to prejudicial pre-trial publicity thirty days before a trial would give higher character ratings at trial than Ss exposed to prejudicial pre-trial publicity one day before a trial was not supported. This appears to contrast with Cromwell's (1955) finding that after thirty days the influence of a message is weaker than right after its presentation. The persistence of the low character ratings may have been the result of Ss not having perceived the prejudicial message condition as persuasive but instead as informative and containing only factual information. Such a perspective, along with the generally credible nature of the source (a radio newscaster) was probably generated by the introduction given by the E to the Ss regarding the message. The Ss were told that the purpose of the newscast was to acquaint them with background information relevant to a trial in which they would later take part. Being told that they would later participate in a trial and participating in an experiment may have offset the usual forgetting curve, increasing the recall and impact of the message after thirty days. Such an explanation is consistent with Garber's (1955) finding that believing statements to be true increases the chance that they will be remembered.

Guilt

The hypothesis predicting that Ss given prejudicial pre-trial publicity one day before a trial would give more guilty verdicts than Ss given prejudicial pre-trial publicity thirty days before trial was not supported and seems to be consistent with and related to the significant amount of recall of the prejudicial message as discussed previously.

Contrary to the hypothesis there was no significant difference in the number of guilty verdicts given by Ss who received prejudicial and non-prejudicial pre-trial publicity. There were several factors that may have influenced the Ss and accounted for the parity between verdicts. First, the evidence was pre-tested to give neither side an advantage. To achieve such a balance, the synopsis underwent considerable revision such that the final version contained persuasive evidence for both the prosecution and defense. It may have been that for a given S specific items of evidence directed a response independent of contrasting evidence or of the S's speculations about the character of the defendant. For example, a number of Ss indicated on their ballots that they were persuaded to vote guilty because one of the witnesses to the robbery identified the defendant as the bandit notwithstanding the given fact that another witness would not verify the identification. Conversely, other Ss voted not-guilty because

the witnesses could not agree on the identity of the defendant as the bandit. Thus, Ss could have found justification for either verdict and the consideration given to the evidence may have preempted other factors such as defendant character. Ss who were exposed to prejudicial pre-trial publicity may have been moved by the evidence to vote not guilty in spite of any negative attitudes they may have had toward the defendant's character. The decision of a small number of Ss exposed to prejudicial pre-trial publicity to vote not guilty on the evidence in spite of a poor opinion of the defendant's character would explain the directional yet insignificant relationship between pre-trial publicity and guilt.

Secondly, a robbery charge does not carry the same degree of inherent violence and malice that accompanies commission of a more serious crime. Ss may be less prone to consider a defendant's character as an index of his ability to overcome social proscription of criminal conduct such as robbery than they would in a murder or rape case. In the charge of robbery and in the evidence synopsis presented to the Ss, the character of the defendant was not made a central issue.

Racial phenomena may have also influenced a number of Ss. A fair portion of the sample was composed of black students, many of whom appeared to the E to manifest through facial expressions a negative attitude toward the

prejudicial pre-trial message. Since no racial coding was included in the ballots, the possibility of a chance weighting of blacks in certain treatment conditions affecting the results could not be investigated.

Conclusions and Recommendations

With respect to perceived character as measured by the rating scale, prejudicial publicity was found to have a negative effect that did not diminish after a thirty day lapse of time. In addition, after having been exposed to the evidence synopsis, Ss who voted guilty were found to rate the defendant's character lower than Ss voting not-guilty. With respect to guilt, a one and a thirty day lapse of time was not found to make a significant difference. Finally, prejudicial pre-trial publicity was not found to have a significant relationship to a vote of guilty.

While prejudicial pre-trial publicity was not found to be related to voting, a relationship was found between lower perceived character and guilt and between the type of pre-trial publicity and perceived character ratings. A research design which sufficiently equalized the evidence and which made the character of the defendant an issue might demonstrate a relationship between the type of pre-trial publicity and voting. Moreover, such a research design might also fail to demonstrate a relationship between prejudicial pre-trial publicity and perceived

defendant character and between perceived defendant character and voting.

The hypotheses presented earlier might be better tested in a future study if certain limitations were overcome. First, care should be exercised in the construction of evidence to avoid items which may be independently decision directing such as eyewitness identifications. Hearsay evidence admissable through exceptions to the hearsay rule and circumstantial evidence of an acceptable nature might be utilized to minimize the ease with which a S could vote on the guilt of the defendant. Second, more revealing effects of perceived character on S evaluation of defendant guilt might be discovered if the defendant were charged with a crime that violated stronger social values than robbery and if the character of the defendant were an issue in the evidence synopsis. Third, some system of coding should be used to note racial typologies of Ss and the perceived racial designation of the defendant to see if a relationship between them exists. Fourth, a larger sample might disclose more valid findings.

Valuable data might also be gained if a future design were to utilize a positively oriented pre-trial message condition. This would permit comparisons to be made between the effects of positive, neutral, and negative pre-trial publicity on perceptions of a defendant's character and guilt. In addition, a positive pre-trial

publicity condition could be used to determine if positive pre-trial publicity could offset effects of negative pre-trial publicity.

Finally, pre-trial message conditions might be repeated to determine if repetition had a cumulative effect. The Ss in this research were only exposed once to prejudicial pre-trial publicity of a relatively mild tenor. In almost all cases in which pre-trial publicity is an issue, there has been either repeated dissemination of prejudicial publicity or the publicity, even though not often repeated, has been of an inflammatory nature. Thus, a more normal exposure to prejudicial publicity might generate more conclusive results.

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Appendix I

United States Supreme Court decisions concerning pre-trial publicity

A summary compiled by the American Bar Association (1969)

Marshall v. United States (1959)

Defendant was convicted of unlawfully dispensing dextro amphetamine sulfate tablets without a prescription from a licensed physician. The government proposed to prove that defendant had previously practiced medicine without a license. Such evidence was ruled inadmissible but during trial two newspapers published accounts which recited that Marshall had practiced medicine without a license and had been convicted for forgery. The seven jurors who had seen all or portions of the news articles swore that they would not be influenced by them, that they could decide the case only upon the evidence of record, and that they felt no prejudice against petitioner as a result of the articles. Despite the testimony of the jurors, which under earlier rulings would have been sufficient to show impartiality, the case was reversed and sent back for a new trial because the jurors were exposed to the inadmissible evidence through the news articles.

Irvin v. Doud (1961)

Six murders were committed in the vicinity of Evansville, Indiana, between December, 1954, and March, 1955. Defendant was arrested April 8, 1955, and shortly thereafter police officers issued press releases which were intensively publicized stating that defendant had confessed to the six murders. Defendant sought a change of venue which was granted but only to the adjoining county.

Defendant then sought a further change of venue because of widespread and inflammatory publicity which he claimed had prejudiced the inhabitants of that county. The second change of venue was denied. After the conviction was affirmed by the Indiana Supreme Court, defendant brought this habeas corpus proceeding. Although the court recited the ancient rule that: "It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. . . ." it went on to say that such a rule does not close inquiry as to whether in a given case the application of the rule deprives a defendant of due process of law. As a result of the barrage of publicity eight jurors thought the defendant guilty. The court found prejudice established despite the jurors' statements that they would be fair and impartial.

> With such an opinion permeating their minds it would be difficult to say that each could exclude this preconception of guilt from his deliberations. . . . Where so many, so many times, admitted prejudice, such a statement of impartiality can be given little weight.

The court clearly abandoned any belief that a juror exposed to prejudicial publicity is proven impartial by his declaration that he will not allow such evidence to influence him. "The influence that lurks in an opinion once formed is so persistent that it unconsciously fights detachment from the mental process of the average man."

Rideau v. Louisiana (1963)

The day following his arrest the defendant was interviewed by the Sheriff concerning a robbery and murder. Defendant was not represented by counsel nor advised of his rights. The interview which was televised on three consecutive days was characterized by the Supreme Court as a kangaroo trial presided over by a Sheriff with no attorney to advise Rideau of his right to remain mute. The court said it was not necessary to examine the transcript of the examination of the jury to hold that due process required a trial before a jury drawn from a community of people who had not seen and heard Rideau's televised interview. Denial of change of venue was held error. Justices Clark and Harlan dissented on the grounds that it was not shown that adverse publicity had fatally infected the trial two months after the televised interview. This was the first case in which it was clearly held that denial of due process may result from prejudicial publicity even in the absence of any showing of actual prejudice by particular jurors as a result of such publicity.

Estes v. Texas (1965).

Estes, a much publicized financier, was indicted for swindling. A fully televised pretrial hearing was held to consider his motion to prohibit television, the taking of motion and still pictures and radio broadcasting at the

trial. The judge's ruling that such coverage would be allowed was later modified to prevent live coverage of the interrogation of prospective jurors or of the testimony of witnesses and to limit the number of cameras. After the first day of trial, which was fully recorded by T.V., the judge again modified his ruling to allow only video coverage until all evidence had been introduced. Live coverage of the prosecutor's arguments, the return of the verdict, and its acceptance by the court were permitted. The defendant was convicted; he appealed, claiming a denial of due process. The conviction was reversed with the court holding that such procedures involved such a probability of prejudice that they were deemed to inherently lack due process.

Sheppard v. Maxwell (1966)

The defendant's wife was bludgeoned to death July 4, 1954, in the upstairs bedroom of their home. Defendant claimed that he was dozing on the couch in the living room when he heard his wife cry, rushed upstairs, grappled with a "form" and was rendered unconscious. The court recites in detail the massive buildup of publicity culminating in front page editorials demanding the arrest of the defendant which occurred promptly thereafter on July 30. The publicity then grew in intensity until indictment August 17. Clippings from three Cleveland newspapers covering the

period from the murder until conviction in December, 1954, filled five volumes. At the trial representatives of television, newspapers and radio stations completely filled the Courtroom except for a few seats in the last row. Defendant, the attorneys, witnesses and the jurors were constantly exposed to the news media. As a result of publication of names and addresses of jurors, anonymous letters, and telephone calls were received by all prospective jurors.

The Supreme Court indicated that the burden of showing essential unfairness as a demonstrative reality need not be undertaken in cases with such massive and pervasive publicity. The trial court had refused a request to interrogate the jurors as to whether they had read or heard specific prejudicial comment about the case, but the Supreme Court said that ". . . In these circumstances, we can assume that some of this material reached members of the jury. . . ."

The Sheppard case is another landmark decision because the Supreme Court there enunciated specific suggestions as to what should be done to avoid the effects of prejudicial publicity. The Supreme Court said that the trial court should have limited the number of members of the news media in the Courtroom; should have insulated the witnesses (who though barred from the courtroom during trial had available to them from the news media the full

verbatim testimony of other witnesses); should have made efforts to control the release of information by police officers, witnesses and counsel for both sides; should have warned the newspapers to check the accuracy of their accounts; should have proscribed extra judicial statements by any lawyer, party, witness or court official concerning refusal to submit to lie detector tests, any statement by the defendant, the identity and credibility of prospective witnesses, belief in guilt or innocence or like statements concerning the merits of the case; should have requested City and County officials to promulgate regulations with respect to dissemination of information about the case by their employees; and reporters should have been warned as to the impropriety of publishing material not introduced in the proceedings.

Finally, trial judges were instructed that where there is a reasonable likelihood that prejudicial news will prevent a fair trial, the judge should continue the case or transfer it to another county, consider sequestration of the jury, and grant a new trial if publicity during the proceedings threatens the fairness of the trial. Collaboration between counsel and press as to information affecting the fairness of a criminal trial was said to be not only subject to regulation but highly censorable and worthy of disciplinary measures.

Appendix II

A modified version of the McCroskey Likert-type instrument used in measuring defendant character.

Instructions: Please indicate your response to the following items on the answer blanks below. Interpret the possible responses as follows:

1. strongly agree 2. agree 3. no opinion 4. disagree 5. strongly disagree

I deplore this defendant's background.

1___ 2___ 3___ 4___ 5___

This defendant is basically honest.

1___ 2___ 3___ 4___ 5___

I would consider it desirable to be like this defendant.

1___ 2___ 3___ 4___ 5___

This defendant is not an honorable person.

1___ 2___ 3___ 4___ 5___

This defendant is a reputable person.

1___ 2___ 3___ 4___ 5___

This defendant is not concerned with the well-being of society.

1___ 2___ 3___ 4___ 5___

I trust this defendant to tell the truth about the case.

1___ 2___ 3___ 4___ 5___

This defendant is a scoundrel.

1___ 2___ 3___ 4___ 5___

I would prefer to have nothing at all to do with the defendant.

1___ 2___ 3___ 4___ 5___

Under most circumstances I would believe what this defendant says about the case.

1___ 2___ 3___ 4___ 5___

I admire the defendant's background.

1___ 2___ 3___ 4___ 5___

This defendant is basically honest.

1___ 2___ 3___ 4___ 5___

The reputation of this defendant is low.

1___ 2___ 3___ 4___ 5___

I believe that this defendant is concerned with the well being of society.

1___ 2___ 3___ 4___ 5___

The defendant is an honorable person.

1___ 2___ 3___ 4___ 5___

I would prefer not to be like this defendant.

1___ 2___ 3___ 4___ 5___

I do not trust this defendant to tell the truth about this case.

1___ 2___ 3___ 4___ 5___

Under most circumstances I would not be likely to believe what this defendant says about the case.

1___ 2___ 3___ 4___ 5___

I would like to have this defendant as a personal friend.

1___ 2___ 3___ 4___ 5___

The character of this defendant is good.

1___ 2___ 3___ 4___ 5___

Appendix III

Ballot

Directions: What follows is a synopsis of evidence used in a trial that took place in Omaha not long ago. Read the evidence and weigh it as if you had been one of the jurors who heard the case. After you have considered the agruments, render your verdict.

I would have found the defendant: guilty____not guilty____

If you like, include a short statement of your reasons for your decision.

Appendix IV .

Message A - containing non-prejudicial pre-trial material

Message B - containing a non-prejudicial lead and prejudicial pre-trial material

NON-PREJUDICIAL - A

Police have arrested an Omaha man they believe to be one of two men responsible for two gas station holdups last Thursday.

Twenty-three year old Henry Johnson of 2206 E. Howard St. was arrested outside his home at about 1:30 this morning by Omaha police on charges of armed robbery.

Police sources said that their investigation had turned up evidence that linked Johnson with the two holdups and had set up surveillance around his house. When Johnson came home he was taken into custody without giving any resistance.

Johnson, a Vietnam veteran, has been unemployed since his discharge from the Army two months ago. He is a native of Omaha, is married and has two children.

He is currently being held in the Douglas County Jail pending bail and is being represented by Douglas County public defender Frank Gibson.

PREJUDICIAL - B

Police have arrested an Omaha man they believe to be one of two men responsible for two gas station holdups last Thursday.

Twenty-three year old Henry Johnson of 2206 E. Howard St. was arrested outside his home at about 1:30 this morning on charges of armed robbery.

Police sources said that Johnson fit a description of one of the bandits given to them by gas station attendants. Police also said that Johnson's fingerprints were found on an abandoned car that might have been used in the robberies.

Records show that Johnson has been involved in a number of previous scrapes including drunk and disorderly conduct and operating a motor vehicle while intoxicated. In addition, Johnson has been a suspected drug user for some time.

When police notified Johnson of his right to remain silent, he did just that, refusing to answer questions.

Johnson has been unemployed since his dishonorable discharge from the Army two months ago.

He is currently being held in the Douglas County jail pending bond.

Appendix V

Evidence Synopsis

State v. Johnson 238 N.E.2d 638 (1972). The defendant was charged with armed robbery.

Prosecution: Two gas station attendants saw the bandits that robbed them and gave police descriptions of both. One of the descriptions was of a man in his early twenties, about 5'11" tall, weighing about 195 pounds and having dark brown hair. That description fits the defendant. In addition, one station attendant identified Johnson as one of the bandits.

Defense: While the description may fit, it is very general. In addition, one station attendant would not identify the defendant as one of the bandits even though he had as good a look at the bandits as the station attendant who did identify Johnson.

Prosecution: The getaway car used in the robberies was found two days later and had on it the finger prints of the defendant in several places. One set was on the rear view mirror, a logical place for a driver's prints to be found.

Defense: The defendant admits having been in the car after he found it abandoned near a bar he frequents. He was simply curious.

Prosecution: Johnson could not establish an alibi for the time of the robberies. He said he was driving home from car races he'd attended that evening. Several of his friends had seen him at the races but couldn't say what time he left.

It takes about thirty minutes to make the trip from the track to Johnson's house but on the night of the robberies it took Johnson well over an hour after Johnson said he left the track. He had plenty of time to take part in the robberies.

Defense: The defendant left after the races and drove home. It sometimes takes quite a while to get out of the track parking lot, fight the traffic, and drive through town. In addition, Johnson probably wasn't in any particular hurry.

Prosecution: The defense has been a series of assumptions while the facts include Johnson's fitting the description, his being identified by one of the station attendants, the presence of his fingerprints on the rear view mirror of the car used in the robberies, and his inability to establish an alibi for the time during which the robberies were committed.

Defense: The prosecution has been largely made from circumstantial evidence. As for the witness who identified Johnson as the bandit, he could have been wrong since another attendant with the same chance to see who robbed him would not positively identify Johnson. Johnson's finger prints got on the mirror of the car when he looked through it after he found the car abandoned.

Appendix VI

Distractors

Distractors for pre-trial character evaluation:

1. The announcer has a good radio voice.
2. The announcer has a good speaking voice.
3. The news story contained most essential news items.
4. The announcer has a good speaking rate.
5. The news story contained few unnecessary items of information.
6. The announcer has an appealing radio voice.

Distractors for post-trial character evaluation:

1. The present court system is adequate to today's needs.
2. I believe that most judges are free from racial prejudice.
3. I believe that most lawyers have good character.
4. American justice does not discriminate between the rich and the poor.
5. The evidence synopsis contained few unnecessary items of information.
6. Most juries represent a cross section of society.