ABSTRACT

The Biased Jury: A Look at the Effects of Pretrial Publicity, Anger, and Remorse on the Decisions of the Jury

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The Sixth Amendment of the United States Constitution grants the accused individual the right to a fair and speedy public trial by jury. To insure that this standard is upheld and exercised, the court system has deemed that it is the judge's duty to remind the jury through instruction of the defendant's rights. Jurors are informed by the judge that they should exercise impartial decision making based upon the evidence and facts presented by the parties trying the case when deciding upon a verdict. While in theory this would indeed constitute the fair trial by jury, one thing that cannot be overlooked is the fact that individuals are subject to their own biases and stereotypes with the potential to influence their decisions. The purpose of this thesis is to inform the reader of the history and systems employed in the selection of jurors, as well as evaluate the biases that those jurors may encounter. This paper will specifically look at studies in which the effects of pretrial publicity, anger, and remorse has been shown to bias the jury.

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THE BIASED JURY: A LOOK AT THE EFFECTS OF PRETRIAL PUBLICITY, ANGER, AND REMORSE ON THE DECISIONS OF THE JURY

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CHAPTER ONE

Biases in Juror Selection

Jury decision making can be influenced in at least two ways. The first is that of biases created through the selection of certain jurors and exposure to negative publicity prior to trial. The second involves emotional manipulation in the trial itself through specific factors such as anger on the part of the juror, and remorse depicted by the defendant. While the selection of jurors has been scrutinized amended by the courts over time, pretrial publicity and emotional manipulation are still prevalent today.

According to Schmalleger (2013) the ideal jury is a microcosm of society that reflects the rationale, values, and common sense of the average individual. The Sixth Amendment of the U.S. Constitution guarantees individuals the right to a fair and speedy trial by jury. However this right has not always been upheld. Before the courts felt the need to make any reforms the outcome of trials were decided by what are known as blue-ribbon juries. These juries consisted of white males selected based upon their intelligence and standing within the community. In Smith v. Texas (1940), a black man was tried in a case in which the pool of potential candidates to serve on the grand jury consisted of only five blacks, despite the availability of numerous who were legally eligible to be potential jurors. Upon appeal, the Supreme Court not only for the first time acknowledged that the defendant's right was violated due to the racial discrimination in the selection of the grand jury, but that there was a need to go a step further and evaluate the method in which juries were selected. Congress passed the Jury Selection and Service Act in 1968,

which stating that those tried in federal courts had the right to a jury selected from the community randomly and proportional to the demographics of the community. The Supreme Court then extended this right to the state level in 1975.

The Current Process of Jury Selection.

The most crucial part of the trial process is jury selection. Jury selection allows courts the chance to evaluate the pool of prospective jurors and remove those individuals who may hold any prior beliefs that would interfere with their ability to exercise impartiality. However, this process can prove difficult as the courts have no choice but to contend with a pool of candidates who all contain views and biases manifested through their race, religion, age, and gender (Abramson, 1994).

In order to sort through the pool of jurors the courts have implemented a questioning process referred to as voir dire. Voir dire involves an examination of potential prospective jurors in order to determine whether they are qualified or suitable to serve as fair and impartial jurors (Schmalleger, 2013). Voir dire has three goals. First, it enables communication between the attorneys and the potential jurors. Second, it provides the court a way in which to gather information on pre-existing biases that might affect one's ability to remain fair, as well as remove those who may know any of the counsel, defendant, or witnesses involved in the case. Third, it allows both the defense and prosecution a chance to exert some influence on who the final jurors are and thus potentially the assessment of the evidence (Fried, Kaplan, & Klein, 1975).

Depending upon the level of the court, the judge, the attorneys, or both may conduct voir dire. While voir dire is mainly conducted in a group setting, it can be conducted, when needed, on an individual basis. This applies primarily in instances where attorneys and judges feel the need to screen for possible pretrial effects. It is also seen in Capital murder cases as most jurisdictions require that all jurors be "death qualified," meaning that they consider themselves capable of assigning the death penalty if appropriate.

Attorneys can directly influence the group of candidates chosen as final jurors through what are known as challenges. In criminal courts there are three types of challenges: challenges to the array, challenges for cause and peremptory challenges. Challenges to the array occur before jury selection has started and are used most often when the defense attorney feels that the list of potential jurors does not adequately represent the community. A challenge for cause is employed when an attorney feels that an individual does not have the ability to be impartial in the case at hand. For example, jury members who show opposition to the death penalty would therefore be excluded from a capital murder case. The third type of challenge is known as a peremptory challenge. These allow attorneys to eliminate any potential juror without the need to specify any particular reason to the judge. This practice has the potential to be used to preclude the idea of a fair jury. Therefore, the court has limited the number of such challenges. In capital cases the federal court allows up to 20 peremptory challenges from both sides. In state level courts it can be as few as three but varies depending upon the state. Challenges of array and challenges of cause, unlike peremptory challenges, are however unlimited as long as the attorney can demonstrate to the judge that an individual

exhibits certain biases that would affect impartiality of the case. If a peremptory challenge is used or a challenge for cause is approved by the judge, the prospective juror is excused and replaced randomly by another individual in the remaining group.

The Scientifically Selected Jury.

While there are no single individuals who possess the traits of an ideal juror, it is well known that lawyers tend to rely primarily on intuitions, stereotypes, and theories when selecting for jurors. They tend to believe that they can identify those jurors who may be pro-prosecution and those who may be pro-defense. However, research shows that this notion of the lawyer's intuitive hunch is actually no better than chance (MacCoun, 1987). If the intuitions upon which lawyers base their decisions show no scientific validity, can social scientists do better at identifying the tendencies of jury decision making?

Trial consultants are sometimes employed by lawyers to evaluate the pool of jurors through a process known as scientific jury selection. This concept was first used in 1972 as an attempt to substitute the less formal process of voir dire for that of the social science of surveys and statistical analysis. Trial consultants gather their data through surveys given to the public. These surveys may consist of questions that assess an individual's view on authority, racial issues, police, and government (Abramson, 1994). Questions related to a particular case may also be investigated through these surveys. For example, there may be specific questions that ask whether individuals have knowledge of the case, or even if they have already formed any opinion. Upon collection, the data are then entered and assessed for any significant correlations between that of the individual's

background and his or her reported attitude about the particular case. The data is compiled into individual profiles and each are rated as either desirable or undesirable.

Attorneys who first used these techniques in the 1970s reported a rise in acquittals (Abramson, 1994). Lieberman (2011) analyzed the success reported by jury consultants and found a variety of factors that could potentially complicate the studies of the effectiveness of trial consultants. Since trial consultants are expensive, they tend to be hired in cases where the defendant has the means to hire quality legal representation and distinguished expert witnesses, all of which could play a factor into the increase seen in acquittals. Thus the success of scientific jury selections has been hard to isolate from the interplay of trial consultants and that of the quality of litigation.

While may not be entirely successful, those in favor of its use argue that the predictability can be increased when the consultant's attention to and application of the data are tailored to the specific factors of each case individually. It usefulness has also been argued for in cases in which the issue of a change of venue needs to be assessed, and those that involve strong controversial issues in which knowing the populations attitude would prove relevant. Those who have argued against the use of scientific jury selection do so on the basis that it focuses on an individual's demographics such as sex, ethnicity, and age to predict a verdict, all of which introduces the issue of potential biases for those involved in the selection of the jury. This method has also been criticized for failing to take into account the fact that people belong to more than one demographic group and so there is no reliable way to predict which group the juror may place more emphasis on when making a decision. For example, will an individual place more emphasis in making decisions on the basis of their sex, their ethnicity, or some

combination of the two? Scientific jury selection also fails to account for the group effects found through the interaction in the deliberation process of the jurors.

In general, accounting for the demographic characteristics and personality traits of jurors, produce small, unreliable, and weak effects when compared with actual jury verdicts. (MacCoun, 1994). Despite this conclusion, trial consultants may be still be used in place of reliance on lawyers' intuition, but should be used with caution as it cannot accurately determine the way in which a juror will vote.

Jury Deliberation.

The advantage of group over individual performance is the increased chance for error checking and correction (Kerr, Ellsworth, & Carroll, 1990). Jury deliberation begins upon the conclusion of the prosecution's and defense's closing statements to the jury. Before leaving the courtroom to deliberate judges instruct the jurors of their need to evaluate the evidence objectively, highlights the elements involved in the particular offense, and reminds jurors that before producing a final verdict guilt, the prosecution must have proven his or her case beyond a reasonable doubt. In instances in which the evidence is relatively clear deliberation can be very fast and take only hours. In cases in which the evidence is relatively weak or the circumstances are complex, juries can take days or weeks to reach a verdict (Schmalleger, 2013).

Methods in Which Jury Behavior has been Assessed.

Researchers have relied on five prominent methods to study jury behavior. These methods include: archival analysis, post-trial interviews, shadow juries, field

experiments, and mock juries, with the last method being the most common. (MacCoun, 1987). The method of archival analysis, first established by Peterson & Lee (1997), involves comparing the characteristics of multiple cases with the verdicts of the jury and statistically analyzing the data to identify patterns and longitudinal trends. This method is relatively simple and allows comparison between data retrieved from actual trials. However, archival data was recorded for purposes other than research and so may not contain attributes that researchers are interested in. As a result, most scientists do not consider this an adequate method due to the limited capacity of information that can be derived. Furthermore, while this data does provide correlations, it lacks the ability to determine cause and effect. In other words, these analyses cannot explain how and why juries reach their decisions.

The second method used by investigators is that of post-trial interviews. This method in which the jurors are interviewed after the verdict has been rendered, allows a first-hand account of what goes on during jury deliberation. However, this type of account is vulnerable to error and distortion due to the potential for jurors to alter their accounts to justify their decision or to show their behavior in a more favorable way. This method can at best give insight into deliberations of a particular jury but is limited in its application to that of jury deliberations in general.

The third method discussed is that of shadow juries. These juries consist of people from the same community and chosen to mimic the demographics of the actual jurors. They are paid to sit in the courtroom and observe a trial. At the conclusion of trial, they are then interviewed for their reactions to the facts and evidence presented. In some cases they are even asked to deliberate as if they were the actual jury deciding the verdict. This

type of method is most commonly used by attorneys to assess the verdict of the potential of the jury and so help them in preparing and conducting trial. Shadow juries have the bonus of allowing researchers to find out how varying groups of individuals might decide the same case. Though promising, this type of method is rarely used for several reasons. First, it is expensive to pay the individuals participating in this type of study. Second, the shadow jurors are aware that the outcome of their deliberation will have no legal implications. Third, in civil cases the litigants are more likely to settle before the end of the trial, making assessment impossible and wasting the time and money that has been invested.

The fourth method is that of field experiments. These involve instances in which researchers conduct studies in an actual trial setting. This type of method is mostly used when courts have needed to evaluate the effects of any proposed legal changes that relate to jury behavior. For example, researchers have used this method to investigate the effects of allowing jurors to take notes and the effectiveness of using supplemental written jury instructions.

The fifth and most commonly used technique is mock juries. This method involves participants who hear and deliberate on cases that are manipulated and assessed from an entirely research based perspective. MacCoun (1987) gives three reasons as to why the use of mock juries is superior to that of the other methods. First, it allows experimentation while avoiding the obstacles faced by field experiments. Second, mock juries allow researchers to get a better understanding of what goes on in jury deliberations. Third, they can be employed in the study of a wide variety of differing legal procedures, rules, testimony, and participant characteristics. However, critics of this

method have characterized it as being artificial, and like that of field surveys, the participants are aware that their decisions have no legal consequences. Due to these drawbacks, some critics have raised concern in the confidence of the generalization of the results found to those of actual jury verdicts. However studies have found that though mock jurors are aware that their decisions will have no impact, they report that they take their task seriously. Participants often deliberate for hours, with some mock jurors even becoming emotional while defending their positions.

Summary of Legal Remedies to Juror Biases.

This initial chapter has focused generally on the process and legal aspects involved in jury selection, as well as the ways in which social scientists have studied the behavior and attitude of jurors. Throughout the history of the courts, there have been attempts to correct the notion of juror biases and selection through processes such as voir dire and challenges of array and for cause. In the subsequent chapters I will review other factors that have the capacity to impact jurors. These issues are not legal, per se, but deal with individual differences and emotional factors affecting jurors.

CHAPTER TWO

Pretrial Publicity

With the recent growth and increase in technology, ease of access to the media has placed an even heavier burden on the trial judge (Kramer, Kerr, & Carroll, 1990). Research on mediating processes has revealed that the effects of pretrial publicity can operate through jurors altered assessments of the evidence as well as through the ascriptions they make about the defendant. Researchers have also found that pretrial publicity has undesirable influences specifically on juror's evaluations of the defendant's likability, the juror's sympathy for the accused, perceptions of the defendant as a criminal, pretrial decisions of the defendant's guilt, and the final verdict. (Studebaker, et al, 2000).

Pretrial Publicity and the Court.

Although jurors are instructed to rely solely upon evidence submitted to the court, jurors have a tendency to rely on other components such as pretrial publicity when deciding on a verdict. In the case of Irvin v. Dowd (1959), Irvin was charged with the murder of an individual in Evansville, Indiana. He was found guilty and sentenced to death. However, in this case there was a press release issued by police officials that was highly publicized prior to the trial. The report contained statements that Irvin had been connected and confessed to five other murders that had occurred in the same area. The press later released information that included crimes in which Irvin had been involved as

a juvenile, as well as his convictions for burglary and arson 20 years prior. Irvin's attorney asked for a change of venue due to the nature and amount of publicity prior to the trial. The courts found that the evidence provided did violate the standards of impartiality, and that the defendant had been denied his right to due process. The trial was then moved but only to a neighboring county in which evidence of prejudicial biases persisted. After having been surveyed, it was found that most of the individuals in this county had formed some kind of opinion on the guilt of the defendant. Of the 430 possible jurors, 268 of them were excused on the basis that they believed the defendant to be guilty. Despite the removal of more than half of the potential pool of jurors, 8 of the 12 individuals who were selected, reported not only being familiar with the facts and circumstances of the case, but believed the defendant to be guilty before the trial had even begun. They were allowed to decide the case because the insisted, despite their opinions and knowledge of the case, that they could be impartial. Irvin appealed his case to the Supreme Court but was unsuccessful.

Another instance in which the courts did not acknowledge the effects of pretrial publicity occurred in the 1991 case of Mu'Min v. Virginia. Dawud Majud Mu'Min, while serving time for first degree murder committed another murder while working outside the prison. Due to the extensive publicity of his case, Mu'Min filed a motion seeking individual voir dire in which the content of the news heard by the potential jurors would be assessed. The trial judge denied this motion and questioned the prospective jurors in small groups. They were asked whether they had been exposed to certain information and if they believed that they could remain impartial. 8 of the 12 jurors who served had been exposed to some of the details of the case through pretrial news broadcasts. Mu'min was

found guilty of first degree murder and was sentenced to death. Mu'Min appealed to the Supreme Court of Virginia who decided that the right of the defendant had not been violated by the judge's denial of the motion. The Supreme Court stated that the questions proposed by the judge to the jury were sufficient enough to guarantee that the rights of the defendant were upheld.

In the 1976 case of Nebraska Press Association v. Stuart, the U.S. Supreme Court found that as long as a defendant's right to a fair trial and impartial jury are established, trial court judges cannot issue gag orders to prevent pretrial publication. The burden is placed upon the defendant to prove to the court that the community in which the trial is to take place, is prejudice to the extent that the circumstances would cause potential jurors to have fixed feelings about the guilt of the defendant and would preclude a fair trial.

Methods of Studying Pretrial Publicity.

Researchers have used experiments, field surveys and content analyses to assess the effects of pretrial publicity. The use of content analysis along with experimental and survey methods can help provide a more complete and convincing picture of the influence of pretrial publicity (Studebaker et al, 2000). Public opinion surveys provide information such as the amount and nature of the information individuals have retained about the case, as well as their views of the case and the suspects involved. Studies using content analyses, in which the content of the media is assessed for negative portrayals of the defendants or the circumstances surrounding the case, have shown that there is a prevalence of crimes reported in the news. Eimermann and Simon (1970) following the reports of crimes over a two month period in the local newspapers, found that the more

serious the crime was, the more likely that the newspaper would cover it. The content of the coverage was likely to include information such as the defendant's prior criminal record, a confession, and any witness identification, all of which may cause potential influence on the reader. Tankard, Middleton, and Rimmer (1979) found that two-thirds of the newspaper stories they examined contained at least one statement that was prohibited by the American Bar Associations guidelines for pretrial publicity. Imrich, Mulin and Linz (1995) followed 14 U.S. newspapers in order to assess how much prejudicial pretrial information was reported about criminal happenings. They found that 27 percent of the newspapers in which criminal suspects were identified, showed some form of negative bias. This prejudicial coverage was more likely to appear in articles that did follow up reports on previous stories, in reports that covered national cases, in cases in which the crime committed was serious, and when reporting details of the victim's life.

Studebaker et al. (2000) did an in depth content analysis study of the news coverage of the Oklahoma City bombings and the defendants Timothy McVeigh and Terry Nichols for a change of venue hearing. The researchers examined content from four different newspapers in which all were potential venues for the trial. These included: *The Daily Oklahoma* located in Oklahoma City. The *Lawton Constitution* located in Lawton, Oklahoma, 90 miles from Oklahoma City. *Tulsa World* located in Tulsa, Oklahoma, about 107 miles from Oklahoma, and *The Denver Post*, located in Denver, Colorado. They investigated the presence of the following types of pretrial information in the articles: the number of people that were injured or killed in the bombing, possible motives for committing the crime, eye witness reports, and whether it was reported that the death penalty was a possibility if the defendants were found guilty. In addition to the

text itself, the researchers investigated the pictures used to capture the attention of readers, and the way in which the article was physically presented (front page, size of the font of the headline). The researchers randomly chose 264 of the 1,056 articles collected. They coded information about the amount of space and text given to the article, the amount of information about the case that was presented in the article, the length of the headline, and the location of the article. The varying content of the articles was coded with specific attention to any negative characterizations of the defendants, any reports of confessions, and emotional publicity (statements about the suffering of the victims, friends and family of the victims, statements describing the gore of the site, the economic impact of the bombing, etc.). Studebaker et al. found that the Oklahoma papers had significantly higher amounts of information reported about the bombing, they contained more negative statements concerning the defendants, as well as more emotional content in comparison to that of the other papers. The analysis of the space allotted to the information presented found that Oklahoma papers featured the information in the front pages of the newspaper and produced more photos than that of the Denver paper. Across the four papers the amount of information and content declined according to how far away in distance the papers were. A survey was also conducted in which it was found that for those cities closer to the bombing site, people reported to know more about the bombing, were more emotionally impacted, and held more negative opinions about the defendants than those who lived in the cities further away. In light of the findings, on February 20, 1996, Judge Richard Matsch agreed that the news coverage surrounding the bombing, as well as the media suggestions about the defendant's possible participation in the right-wing militia groups, deemed it necessary to move the trial to Denver, Colorado.

Steblay, Besirevic, Fulero, & Jimenez-Lorente1 (1999) performed a meta-analysis of 44 studies dealing with pretrial publicity. Of the 44 studies done, only 23 of them supported the hypothesis of the effect of negative pretrial publicity, 20 of them found no significant difference and 1 study demonstrated an effect in the opposite direction. Previous lab studies conducted on pretrial publicity have been criticized for having no external validity and those in which involved actual cases and jury verdicts, were unable to successfully demonstrate a relationship between pretrial publicity and jury verdicts. Thus the researchers recommended based upon the differing conclusions of the studies, that they needed to be looked at in the context of moderator variables. They were compared on the following variables: survey vs. simulation, subjects, time sequence, content, medium, type of crime, control information and remedies for these effects. Jurors were more likely to find the defendant guilty after having been exposed to considerable negative publicity, compared to those exposed to a small amount of publicity or those not exposed to negative publicity. Both the survey and simulation outcomes produced significance in defendant guilt, but surveys produced a greater effects size. In the subject's category, studies that used potential jurors rather than mock jurors produced a greater effect size.

To study time sequence effects they distinguished between the point at which the verdict was requested and length of the delay between having been exposed to pretrial publicity and the time the verdict of the defendant's guilt was given. Three points in the natural sequence of the trial were examined: pretrial, after trial but before deliberation, and after deliberation. The greatest effects were exhibited at the pretrial. After the trial but before deliberation, it was shown that an effect for pretrial publicity though smaller,

still existed. Publicity effects following jury deliberation was further reduced but still remained significant. The element of the length of delay found that the longer the delay between exposure and the jury verdict, the larger the effect size.

Pretrial publicity content exerted a greater influence when the content discussed multiple points of information about the crime and defendant (such as details of the crime, information on the defendants arrest, a confession, the defendant having a prior record, or incriminating evidence). Effect sizes were larger in those studies that involved real incidents of pretrial publicity rather than content fabricated by the researcher. These effects increased as the specificity of the reports towards the defendant and crime increased, and were greater when the alleged crime was murder or sexual abuse. The researchers concluded that remedies used by the courts such brief continuance of the case, expanded voir dire, judicial instruction, trial evidence, and jury deliberation did not overcome the effects of pretrial publicity. Rather, the researchers suggest that the best option to combat these effects would be change of venue.

Summary of the Effects of Pretrial Publicity.

The assessment of the jury's ability to ignore prejudice is often based upon judicial common sense. This can lead to a misunderstanding of the abilities and faults of human inference and decision making (Studebaker et al, 2000). Having to combat with the effects of the media the courts have come up with several ways to try and mitigate this issue. The most common methods include that of trial postponement in which the goal is to and allow for emotions to lessen and memory salience to fade, jury selection and screening to pinpoint potential biased individuals from the pool of potential jurors,

and change of venue (Daftary-Kapur, Dumas, & Penrod, 2010). As seen by Steblay et. al (1999), change of venue in which the trial is relocated to another jurisdiction in which it is not as publicly known, seems to be the only successful method. The problem with this method is that judges are often reluctant to agree to a change of venue in a criminal trial due to the inconvenience and financial costs it causes to those participating in the trial. Despite these precautions it is never guaranteed that the jury chosen will not have some knowledge of the case.

CHAPTER THREE

Emotional Influence of Anger on the Jury

The ideal legal system can be described as a rational based concept, in which there are established rules and punishments for those who are deemed to have violated them. However, this rational system can be clouded through the interference of human interaction and emotional factors from lawyers, judges, the defendant, and the jury. It falls upon the jury, whose role is to evaluate the evidence and circumstances that surround the case, to interpret the information, and render a verdict. But can this rational, objective process be expected to work in cases such as murder and rape, in which there is a high emotional attachment? Baumeister, Vohs, DeWall and Zhang (2007) argued that emotions act as feedback serving as a continually changing record of evaluation of responsibility and deservedness. Jurors do not have the capacity to attend solely to the evidence without considering the emotions they cause and other outside influences.

Description of the Angry Juror.

Emotional states can influence what people think as well as how they think. The most prevalent emotion in cases in which harm has occurred is anger (Lerner & Tiedman, 2006). Anger is associated with a sense that the self or someone the self cares about has been wronged or injured in some way (Lazarus, 1991). Anger causes people to look for someone to hold responsible, and in doing so increases the blame attributed to others, including those outside of what caused the individual to become angry. Bodenhausen

(1993) reported that angry individuals when compared with sad individuals tend to use more heuristic cues when processing certain types of information such as social information. Heuristic cues are cues that are used aid and shorten the process of decision making through reliance upon past experiences and common sense. While these cues are useful in everyday life, they can lead to biases and stereotypes.

Lerner and Tiedman (2006) highlighting the importance in studying anger, wrote a paper describing the "portrait of the angry decision maker." The supplied three reasons as to why anger is such an important aspect of decision making. First, anger is one of the most regularly experienced emotions. Second, anger has the ability to capture attention both for the person experiencing it and the person perceiving it. Third, anger has an infusive potential, meaning that it has the ability to be experienced in past situations carried over into future unconnected situations and influence decisions. Lerner and Tiedman described the angry decision maker as having experienced negative affect in the past while still having optimistic expectations of success in the future. They are eager to make decisions due to the sense of certainty and optimism associated with anger, but have the tendency to not think thoroughly about those decisions before making them. The angry decision maker tends to approach situations with the feeling of confidence, aggressiveness, being in control and thinking the worse of others rather than approaching a situation with objectivity and rationality. Though the angry decision maker has negative tendencies, there are also some positive attributes such as the ability to deal with problems of indecision, risk aversion and over analysis.

Anger in the Courtroom.

Jurors sometime come into the court room with moods and emotions related to things other than the facts presented in the case. Feigneson and Park (2009) found that emotions that are directly caused by the case itself are likely to influence the way in which the juror interprets the evidence that follows. Keltner, Ellsworth, and Edwards (1993) found that when participants were induced to feel anger, they were more likely to blame the defendant than those who had not been induced to feel anger. In instances of the verdict of the jury, Goldberg et al (1999) found that when participants were induced to feel anger they were more likely to make punitive attributions to the defendant and consequently allocate greater punishment than those participants kept in a neutral state.

In cases in which violence has been done to another individual, the jury is expected to deliberate and come to a verdict without any prejudice against the defendant. This can prove difficult in cases involving murder or rape, as there is the tendency to want to assign blame and look for retribution. Bright and Goodman-Delahunty (2006) reported that the discrete emotions anger, disgust, sadness, fear, and anxiety play a role in lend to attributing blame.

What about the evidence?

While jurors may begin emotionally neutral, studies have shown that the introduction of certain types of evidence can play a role in emotional biases. Anger can be introduced to the jury through evidence in several ways. They may come from eyewitness testimony, victim's statements, or even the physical evidence linked to the case. Evidence that appeal to the jury's sympathies or that has the potential to cause fear

in the jury, can create a situation in which the jurors base their decision more so on emotional factors than the factors of the case. A study conducted specifically on the gruesome evidence of photographs introduced by prosecution attorneys was conducted by Douglas, Lyon, & Ogloff (1997). Mock jurors who were exposed to gruesome photographs were not only more emotionally effected, but were also more likely to decide upon a verdict of guilty than those who had not been exposed to the photographs. Interestingly, when asked the participants in the study believed that the photos had not effected their overall decision of guilt and assured the researchers that they had remained neutral and fair throughout the entire process. Despite these claims the participant's emotional distress was found to be positively correlated with the extent to which they believed the defendant was guilty of the crime. It was concluded that participants' were either genuinely unaware of the effects of the photographs or were unwilling to admit that it persuaded their verdicts.

Bright and Goodman-Delahunty (2006) found that exposure to gruesome evidence not only caused jurors to rely on emotion inducing evidence in making decisions, but to also assign greater weight to that evidence. It was also found that jurors may lower their threshold for evidence in accordance with the instructions of guilty beyond a reasonable. Participants were asked to read a summary of a trial in which the defendant had been accused of murdering his wife. They were then given the judge's instructions to the jury which discussed the definition of reasonable doubt, the role of the jurors, and the elements involved in the crime of murder. To form a baseline, before participating in the study they were asked to fill out a survey to measure how they felt before reviewing the case. The participants were assigned to one of six conditions. They

were first assigned either to the gruesome or non-gruesome verbal evidence group, and then further assigned to one of the three visual evidence conditions which included no photos, neutral photos or gruesome photos. After having read the case and reviewing the evidence, the participants again completed the survey assessing how they felt at that moment. Participants were then asked to indicate whether the defendant was guilty or innocent, their confidence in their verdict, the degree to which they felt it was likely that the defendant killed the victim, the degree in which the prosecution's evidence supported conviction, and the amount of doubt they had of the defendant's guilt.

Mock jurors who had been assigned to the gruesome photos condition were more likely to convict and hold feelings of anger and disgust towards the defendant. Those who found the defendant guilty were generally more confident in the perceived guilt of the defendant as well as their verdicts. Gruesome photos were found to affect the ratings of anger toward the defendant, and alter the threshold of evidence. Anger at the defendant and the competence of the prosecution's evidence, increased the likelihood that the jurors were more likely to rate the evidence sufficient enough to decide the verdict of guilt.

Summary of the Effects of Anger.

Essentially the legal system is something that was designed and is carried out by humans with the emotional capacities to influence decisions. Jurors who can be induced to feel anger can be dangerous as they are more likely to decrease their standards of the evidence and the way in which the process its validity. However, despite studies that show the negative emotional impact evidence and testimony can present to jurors, the U.S. court system still allows their presence. Seeing as these factors are valuable to the

case presented and overshadow the risk of the effects of potentially influencing the jury, it seems necessary that jurors are educated in the effects that emotion, specifically anger, can pose to a verdict.

CHAPTER FOUR

Jury Decision Making and Defendant's Remorse

"Remorse is…often best understood as the painful combination of guilt and shame that arises in a person when that person accepts that he has been responsible for seriously wronging another human being" (Murphy, 2011, p. 438). Niedermeier et al. (2001) found that jurors are more likely to find a defendant guilty when showing remorse than when a defendant chose not display remorse. Those defendants who display remorse are seen to be in accordance with societal values concerning individuals who have committed a crime, while the lack of remorse indicates the opposite (Lazare, 2004). In the case of jury decisions, Devine (2012) describes the presence of remorse for a defendant as a double-edge sword in reference to findings that remorse while it does tend to lead to a lesser sentence for the defendant, the defendant is also more likely to be perceived as guilty in the eyes of jury.

Remorse and Facial Expressions.

One of the aspects in which jurors may weigh into the evidence presented in a trial is that of the defendant's facial expression. Maclin, Downs, and Otto (2009) presented a study in which the judgments that mock jurors made about the facial expression of the defendant were assessed. Participants in this study were presented with a modified transcript from the trial of State of Colorado v. Robert Sandoval (2011), along

with a photo taken of a male that conveyed different facial expressions. One group was presented the photo depicting a remorseful face. A second group received a photo of the same individual but with an angry face. A third group was given a photo that was considered to be neutral (the researchers determined it as neutral if it fell below any significant aspects of emotional categorization). The group given the transcript and the photo of the remorseful, face consisted of 60 percent of individuals who in favor of manslaughter, and 40 percent voting in favor of innocence. The group with the angry photo decided upon a unanimous verdict of second degree murder and the group presented with the neutral photo voted for manslaughter. Those who viewed the remorseful photo associated higher ratings of truthfulness and likeability to the defendant, lower ratings in the belief that the defendant would have a repeat offense in the future, and rated higher on how sorry they believed the defendant to be. The critical aspect in this study is that only in the group in which the remorseful photo was paired with the case did the defendant receive a non-guilty verdict.

Remorse and Deception.

Remorse can alter sentencing in cases where the evidence is overwhelmingly stacked against the defendant. In such an instance would it be beneficial for the defendant to fabricate remorse in an attempt to receive a lighter sentence? Jury members judge the sincerity of any emotion, including remorse, through nonverbal behaviors such as facial expressions. According to DePaulo (1992) nonverbal behaviors can be described as irrepressible, occurring quite rapidly, less accessible to those portraying it than those perceiving it, linked to emotion and representing a unique meaning. This leads one to ask

could a defendant or lawyer, knowing that remorse can lead to a more lenient punishment in certain circumstances, successfully deceive the jury into believing that they are remorseful when indeed they are not.

Ten Brinke, L., MacDonald, S. P., O'Connor, B. S. (2012) investigated the difference between genuine and fabricated remorse. Participants were asked to re-count two true noncriminal incidents that had occurred within the past six months. For the first event they were asked to describe in as much detail as possible, an event in which they felt strong and genuine remorse for. After completing a filler-task they were then asked to describe a similar event to the first but in an instance for which they felt little or no remorse for their actions. They were told to try and convince the researchers that they were remorseful. The researchers wanted to know if deception could be picked up when measuring for facial, verbal, and body language cues. They expected there would be differences in duration and presence of emotional expressions between genuine and fabricated descriptions.

The researches hypothesized that in the descriptions of real remorse the presence of sadness would be more dominant, while the description involving deception and feigned remorse would have elements of happiness or anger. The genuine accounts of remorse would have longer durations of sadness and the falsely remorseful account would have longer durations of happiness and anger. Negative expressions followed by positive expressions would occur more often in false descriptions of remorse. A slowed more hesitant speech and decreased self and other references would also accompany false accounts of remorse. The researchers also examined body language cues such as

increased blink rate, decreased gaze aversion, higher use of self-manipulators and lower use of illustrators.

The researchers were trained in facial musculature recognition, recognition of universal emotions (defined as: happiness, sadness, disgust, surprise, fear, anger, and contempt), and the facial units that are associated with universal emotions. They went through all 149,331 frames and noted the occurrence, duration and sequence of universal emotions in the upper and lower portion of the face separately. Body language cues were measured by the amount of time the subject averted their gaze, the rate blinked, the rate of self-manipulations, and the rate of illustrators. Self-manipulations were defined as any touching or scratching of the body and illustrators were defined as gestures with the arms or hands to help the participant convey meaning. Verbal variables included rate of speech and hesitations, the proportion of self-reference, and the proportion of reference of others.

The number of universal emotions present was higher when the subject was falsifying remorse. There was no significance found for the duration of the emotions conveyed by the participants. In the deception condition they found more frequent direct transitions between positive and negative emotions with very few indirect transitions of neutral emotions. In the genuine accounts the subjects did not have fast transitions between positive and negative emotions, and when transitions did occur it was through neutral emotions. There was a significant finding in increased rate of speech hesitations in individuals portraying false remorse. While not significant, it is interesting to note that falsified remorse was often associated with the presence of happiness and surprise.

Remorse and Apologies.

"We are interested in apologies only to the degree that we believe that they are sincere external signs of repentance and remorse and reliable external signs of future atonement" (Murphy, 2011). Apologies are meant to show that an individual knows that there is a social requirement to apologize, while serving as a means of conveying information about the individual's psychological state (Scher & Darley, 1996). Newman and Kraynak (2013) best summarized research on apologies in that they are seen as admissions of responsibility, bring forth empathy for the offender when offered with explanations of thoughts and feelings of the wrong committed, and can help others to perceive that the behavior will not happen in the future. While it may seem that remorse and apologies are close in relationship with one another, when it comes to sentencing in a majority of the states, apologizing is not upheld as a legitimate mitigation factor when it is present by itself. In order to be allowed into mitigating factors, it is has to be demonstrated along with remorse by the defendant. Robinson, Jackowitz, & Bartel (2011) make note of examples of such circumstances taking place in that of the Rhode Island Supreme Court and the Pennsylvania Superior Court. In the Rhode Island Supreme Court case the court agreed with the trial court's denied use of apology in mitigation, saying that if the judge detected no remorse in the defendant then they did not acknowledge it either. In the Pennsylvania Superior Court case referenced, the court upheld the trials court's decision of an unmitigated sentence due to the fact that though the defendant did apologize, the remorse shown wasn't deemed credible by the jury. The only exception to this rule is in that of capital cases, in which any aspects of the defendants characteristics and background are allowed to be counted in the mitigating factors.

What about when remorse is paired with other forms of accounts? When an individual commits a crime they are often perceived negatively by those whom have been offended. In order to counter this negativity, they are likely to offer an account for why they committed the act in an effort to restore their damaged reputation and image (Benoit, 1995). Jehle, Miller, and Kenmelmeier (2009) examined the interplay of remorse and differing accounts offered by defendants to explain their behavior. The researchers compared those instances in which individuals offered apologies, excuses, justifications, or denial, and contrasted them with situations in which no explanation was offered. Apologies were defined as accepting responsibility and expressing regret in the hopes of being forgiven. Excuses involve acknowledging that the behavior was inappropriate but that the individual does not accept any responsibility. The justification condition accepts the responsibility for the act, but disputes the negativity attributed to it by asserting that while the act was intentional, the situation called for the behavior (for example, soldiers who kill people while at war). The final condition of denial rejects that the offense occurred, as well as any involvement in the situation and may even include the blame of another for the negative outcome. The different accounts were then each paired with and or without remorse. The researchers hired actors and presented a mock trial to the participants who were assigned to watch one of the different videos. The mock trial involved a man accused of shooting a neighbor after having had a dispute. The gun was introduced into the situation by the neighbor not the defendant. In the no explanation condition, the defense attorney only used the strategy that the prosecution did not show burden of proof beyond a reasonable doubt. In the excuse condition, the defendant and neighbor wrestled over the gun and during the altercation it was discharged by accident.

In the justification condition, the defendant was able to get the gun away from the neighbor but shot him in self-defense after the neighbor started choking him. In the denial condition, the defendant said that the neighbor fired into the air but that the bullet hit the wall, ricocheted back and hit the neighbor. Across the four different conditions the defendant displayed either remorse, which the researchers defined by downcast eyes and a trembling voice, or remorselessness which was defined as strict eye contact and a monotone voice. After seeing the video, the participants then completed a questionnaire in which they had to give a verdict and rate the severity of the punishment. It was found that for the no explanation, excuse, and justification conditions, remorseful defendants were more than likely to be found guilty. The denial account while rated the least believable among participants, was the most likely to be perceived as not guilty regardless of whether remorse was present or not. The researchers suggested that when defendants give accounts to the jury about their involvement in the act, the positive effects of remorse are overshadowed so much that it actually has negative outcomes. It was also reported that defendants are perceived more positively when an excuse is given compared to the no explanation condition. The researchers noted that when the jurors lacked an explanation for the death of the neighbor, they relied more on contextual factors such as the presence or lack of remorse. As for the type of punishment the researchers saw no main effect for remorse.

Absence of Remorse.

In serious cases in which there is a victim hurt or killed and the evidence of guilt is overwhelming, the absence of remorse on the defendants part can be very detrimental.

A defendant who shows no expression is likely to be over interpreted and come off to the jury as not only unconcerned but uncaring (Constanzo & Costanzo, 1992). Jehle et al. (2009) suggest that jurors tend to believe the emotions of a defendant more than their words as they associate the showing of emotions as unintentional, while words can be rehearsed and are associated with a defensive strategy.

As demonstrated earlier, apologies without remorse are not typically upheld in court nor are they perceived as believable by the jury. In a paper written by Murphy (2007) he speaks about societies *growing culture of apology* and the benefits and costs of such a phenomenon. He asserts that while apologies without evident remorse are accepted for small wrongs it is considered unacceptable in the case of more harmful wrongs. Murphy goes on further to suggest that an apology alone "gives no weight at all to such values as truth or justice or genuine character reformation (2007, p. 435). The lack of remorse in an apology not only diminishes the effectiveness of the statement, but it also can lead to individuals perceiving that the apology is forced and insincere (Scher & Darley, 1996). The remorse expected with an apology can help to take away these negative personality attributes of the wrongdoer.

Summary of the Effects of Remorse.

Remorse can be a tool used by defense attorneys when the evidence produced by in the trial is weighted in the prosecutions favor. The positive outcome of remorse is seen mostly in the leniency of the sentencing phase of the trial. The absence of remorse is the best option however when the defendant wants to maintain the position of innocence because of the strong association between remorse and guilt. The same conclusion can be

drawn when remorseful behavior is paired with an actual apology. In the case of feigning remorse, while it may be possible to pull off, it is only valuable in the sentencing phase.

Conclusion.

Having seen the numerous factors that can contribute to the production of biased jury decision making, it is vital that the courts are made aware of such circumstances. We have seen through history how the courts have made efforts to prevent biases in instances of selection of jurors and that of pretrial publicity. However, the courts would have difficulty producing truly effective solutions cases in which there is the presence of emotions such as anger or remorse. In response to this dilemma, the only thing the courts could do would be to introduce and educate the jurors on the effects these emotions can have on decision making. While this will probably not be a truly effective solution, it may have the potential of adding a filter in which jurors evaluate these emotions. Despite the research presented, any system in which there is human interaction, will always have the potential to introduce some sort of bias.

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