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Claremont McKenna College

Pressing the Verdict:

The Social Influence of Pretrial Publicity on Juror Biases

Submitted to  
Professor Piercarlo Valdesolo

by  
Kara Cato

for  
Senior Thesis  
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## Abstract

Past psychological research has indicated that pretrial publicity has a significant impact on jury decision-making (Shniderman, 2013). This current review aims to expand on past research by investigating the social influence of pretrial publicity on juror biases. The effects of pretrial publicity on juror biases are examined through three mechanisms of social influence: *story model*, *predecisional distortion*, and *conformity prejudice*. This research inspects the relationship between media and the law by reviewing the pervasiveness of the media's depiction of criminal cases, the changing nature of media, and the biasing effects of media exposure. In addition, it explores the different forms of pretrial publicity, including negative (anti-defendant) and positive (pro-defendant) pretrial publicity, that impact juror biases and potentially influence verdict decisions. This research identifies the psychological reasoning behind the social influences of pretrial publicity in hopes of providing a basis for future research to address and prevent these prejudicial effects.

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## **Pressing the Verdict: The Social Influence of Pretrial Publicity on Juror Biases**

The right to a fair trial is a constitutional right that is often belittled by the presence of pretrial publicity. Pretrial publicity (PTP) includes any media coverage of a criminal or civil case that makes its way into the courtroom (Ruva & Coy, 2020). PTP violates the Sixth Amendment's right to a fair trial and an impartial jury through its ability to bias jurors' verdict decisions, the memory of trial evidence, and the interpretation of trial evidence (Ruva & Coy, 2020). The involvement of the press within the legal system has drastically changed due to the rise of digital media and serves as an even greater threat to the right to a fair trial. The dangers of pretrial publicity and the influence of the media within the legal system were notably recognized during the nationally covered 1995 criminal trial of O. J. Simpson. The famous football star, O.J Simpson, was on trial for the double murder of his ex-wife, Nicole Brown Simpson, and Ronald Goldman (Zorthian, 2015). On the day of his sentence, October 3, 1995, more than 150 million viewers (57% of the country) watched the live broadcast trial to hear the verdict. These record-breaking statistics illustrate the impacting relationship between media and the law. During this trial, the press was given access to almost every aspect of the case, including the coverage of the pretrial hearing (Freedman & Burke, 1996). The legacy of this trial still lives on today, capturing the lasting effect of pretrial publicity.

*The People of the State of California v. Orenthal James Simpson* acts as a prime example of the tension between the First Amendment's protection of a free press and the Sixth Amendment's protection of a public trial by an impartial jury. This nationally televised case brings to question how media coverage can influence the conduct and outcome of a trial (Brown et al., 1997). Before the trial, attorneys struggled to select a

jury that had not been previously exposed to pervasive news reports regarding the case (Sager & Leish, 2003). Past research revealed that individuals previously exposed to Simpson's football career were more likely to be influenced by his celebrity status than by actual evidence presented in the trial (Brown et al., 1997).

In the courtroom, celebrities have the capability to persuade jurors of their innocence through their possession of referent power: a form of social power that is obtained when an individual is admired by others (Chamberlain et al., 2005). Referent power was specifically seen in the "pro-Simpson bias." During the trial, 75% of the jurors claimed Simpson was "unlikely to murder because he excelled at football" (Brown et al., 1997). This form of social power, the ability to influence others, is similar to that of social influence, the change in behavior as a result of an individual or group (Chamberlain et al., 2005). The Simpson trial shows the impacting nature of social influence on the American public. In addition, the Simpson trial acts as a reference point regarding the changing nature of pretrial publicity due to the growing presence of the media in the public's everyday life.

The purpose of the media is to inform the public about the current events of the world. The media engages in PTP through the coverage of both criminal and civil trials of well-known defendants or outstanding crimes (Hoetger et al., 2022). Public opinion surveys have revealed the more pretrial knowledge people have about a case, the more likely they will render the defendant guilty (Kassin et al., 2016). The biasing effect of pretrial publicity is based on the psychological phenomenon of social influence. Social influence includes either the intentional or unintentional effort to change an individual's beliefs, attitude, or behavior (Gass, 2015). There is a relative continuum of social

influence, and the degree of influence may vary based on the person. Individuals may conform to the social norms of the group or maintain their personal views depending on the degree of pressure (Kassin et al., 2016). The social influence of pretrial publicity is presented through the *Story Model*, *predecisional distortion*, and *conformity prejudice*.

These three influences work independently or collectively in the form of pretrial publicity. The Story Model asserts jurors use pretrial publicity and trial evidence to develop a cognitive framework in which to interpret information (Ruva & Coy, 2020). This framework combines to build a coherent story, integrating different pieces of evidence from both previously known information and current trial evidence. Based on this model, trial evidence that does not fit within the Story Model is devalued and disregarded (Ruva & Coy). The second theory of social influence is the predecisional distortion theory. This theory claims jurors distort trial evidence to support a favored side (prosecution or defense) rather than evaluate information based on its foundation (Ruva & Guenther, 2017). The third form of social influence is seen through conformity prejudice, the internal pressure to do what others do or support. This is an imagined pressure, in which jurors believe the community supports a specific verdict. In order to maintain social norms, the juror will render the community's favored verdict decision (Vidmar, 2002).

This current research examines the formation of juror biases through the analysis of the Story Model, predecisional distortion, and conformity prejudice. This research is important for understanding the biasing effects of pretrial publicity, and potentially identifying questions about pretrial publicity that have not been adequately addressed by

past research. By identifying the social influence of PTP's biasing effects, further analysis can be conducted to prevent the prejudicial effects of pretrial publicity.

### **Media and Law**

Media is the medium in which social influence operates. The law has had a long-standing relationship with the media, however, this relationship has not always been cordial. The media utilizes the law as a source of entertainment rather than a ruling sense of justice. The two laws in contention with pretrial publicity include the First and Sixth Amendments. Specifically, in high-profile trials containing extensive anti-defendant pretrial publicity (PTP), these constitutional amendments are likely to clash (Ruva, 2018).

The First Amendment establishes the protection and right to a free press. The press clause allows the media to report news and circulate opinions without government censorship (History.com, 2017). Due to the public's reliance on the media as their principal news source on crime, the media has abused the right to freedom of the press (Bakhshay & Haney, 2018). Empirical research has further revealed that media coverage of crime is often skewed and one-sided (Bakhshay & Haney). However, people remain largely unaware of the media's biased portrayals. Spinde et al. (2022) claim individuals often exhibit a lack of media bias awareness despite their day-to-day interactions with distorted media coverage. This absence of media bias awareness emphasizes the threat of pretrial publicity, and the need to change the rules regulating pretrial publicity.

The media has the potential to influence the outcome of criminal cases through the presentation of pretrial publicity. In a meta-analytic review, Steblay et al. (1999) found pretrial publicity has a "significant impact on juror decision-making." Steblay et al.



conducted 44 empirical tests representing 5,755 participants. Results found that subjects exposed to negative PTP (anti-defendant publicity) were more likely to find the defendant guilty compared to subjects exposed to less or no negative PTP ( Steblay et al.). Further research by Daftary-Kapur et al. (2014) examined the influence of both the quantity and slant of PTP, the preservation of PTP over time, and the generalizability of PTP. Results found the greater the quantity of exposure to pretrial publicity, the more biased the effects were on juror verdicts. This skewed perception of media coverage has the potential to influence perceived greater culpability and lessened credibility of the defendant, producing more guilty verdicts and harsher sentences (Bakhshay & Haney, 2018).

The second law in contention with the influence of pretrial publicity is the Sixth Amendment guaranteeing the right of a "speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed" (U.S. Constitution). Due to the biased nature of pretrial publicity, the right to an impartial jury has become difficult to achieve. Pretrial publicity that is prejudicial and anti-defendant in nature can bias jurors' opinions of the defendant's character, increasing the likelihood of a guilty verdict, and belittling the Sixth Amendment's right to an impartial jury (Ruva, 2018). The Sixth Amendment requires the courts to grant a defendant's change of venue motion if media-generated pretrial publicity overwhelms the unbiased nature of the jury (Tenzer, 2019). However, motions preventing PTP effects rarely help and are seldom granted. Since 2012, there has been 200 change of venue motions filed in federal district criminal court, and only 60 motions were granted, with only one due to potential jury prejudice (*Biased Jury Claims Rarely Convince Judges to Change Venue | Legal Current*, n.d.).

If certain cases receive too much media attention, trial courts can limit the amount of pretrial publicity by imposing gag orders, restricting media reporting, or closing courtrooms entirely (*Pretrial Publicity Limited Effect on the Right to a Fair Trial*, 2019). The Federal Rules of Criminal Procedure offer defendants seven methods to combat pretrial publicity's effects on their jury: change of venue, continuance, severance, waiver of jury trial, specific voir dire questions, sequestration, and judicial instructions (Loquercio, 2022). These proposed solutions attempt to identify and eliminate biased jurors through the voir dire process or through a continuance to delay the start of the trial (Lieberman & Arndt, 2000). However, these methods often remain futile and allow pretrial publicity to taint jurors impartially (Loquercio). This current research illustrates the importance of updating pretrial publicity prevention standards to withstand the modern age of media.

In an attempt to challenge the new nature of the media, the American Bar Association updated the 1968 Model Rules of Professional Conduct in 1983. This alteration issued that a lawyer must not disclose to the press any statement he or she knows will "have a substantial likelihood of prejudicing an adjudicative proceeding." The ABA (1983) Model Rules have maintained certain standards of the 1968 *Standards*, including the categorization of the following information as highly prejudicial: (a) the prior criminal record of the accused, (b) the character or reputation of the accused, (c) the existence of any confession, admission, or statement given by the accused, (d) the performance of any examinations or tests (or the refusal to submit to an examination or test), (e) the possibility of a guilty plea, and (f) any opinion as to the accused's guilt or innocence or to the merits of the evidence in the case (Imrich et al., 1995). However,

research has suggested that these restrictions are rarely enforced and oftentimes violated (Imrich et al., 1995). Due to the inefficiency of these preventative tactics, it is essential to understand the causes of pretrial publicity in order to effectively eliminate PTP's negative influence.

Another way in which the legal system addresses the potentially harmful effects of pretrial publicity includes the American Bar Association's ethical rules for the dissemination of pretrial information by litigation attorneys (ABA, 2016). These proposed ethical rules present categories of information considered prejudicial, and should therefore not be published by the press. These categories include: (1) the character, credibility, reputation, or criminal record of the accused; (2) the possibility of guilty pleas, the existence of a confession, admission, or statement or refusal to make a statement; (3) results on or refusal of any tests (e.g., DNA, polygraph); (4) opinions of guilt or innocence of defendant; (5) information that is likely inadmissible as evidence in courts; and (6) statements that the defendant is accused of a crime unless accompanied by claims that this was merely an accusation and the defendant is innocent until proven guilty (Ruva, 2018). Furthermore, courts have installed practices to dismiss pretrial publicity ranging from barring statements that are "reasonably likely to interfere with a fair trial" to claims that act as "a serious and imminent threat to the administration of justice" (Linz & Penrod, 1992). However, these ethical rules have not proven sufficient in preventing PTP from influencing jury decision-making. Despite both the Supreme Court and the American Bar Association's actions to subdue and prevent the biasing effects of PTP, pretrial publicity remains a significant problem throughout the history of the United States court system.

### **First Cases of Pretrial Publicity**

The law and media have a long-standing history of collision. The biasing effects of pretrial publicity first gained acknowledgment during the 1960s and 1970s. The first significant Supreme Court case regarding pretrial publicity was *Irvin v. Dowd* (1961). The case involved defendant Leslie Irvin, who was convicted of murder and sentenced to death. Before Irvin's arrest, local media heavily publicized six murders within Evansville, Indiana, and Vanderburg County. After Irvin was arrested, both the prosecutor of Vanderburgh County and Evansville police officials issued press releases claiming Irvin had confessed to the six murders (*Irvin V. Dowd, 366 U.S. 717 (1961)*, n.d.). This information was heavily covered by the media and overwhelmed press coverage throughout Vanderburgh County. Due to the prejudicial nature of the publicity, the defendant was granted a change of venue. Despite the change of venue, the jury still fell within the reach of negative publicity. The defense claimed the widespread inflammatory PTP had adversely impacted the jury pool in the new venue and requested a second venue change. This motion was denied and the case ultimately moved to the Supreme Court. The Court stated a "huge wave of public passion" could override the previously unchallenged assumption that jurors' assertions of impartiality are reliable" (Zimmerman et al, 2016). Furthermore, the Court ruled that if a defendant's right to a fair trial is threatened as a result of the effects of PTP, then a defendant's motion for a change of venue should be granted (Ruva, 2018). The case of *Irvin v. Dowd* established a trial by jury is not fair unless the jury members are impartial. The Supreme Court's acknowledgment of the media's influence in an age where media was less accessible highlights the seriousness of pretrial publicity effects.

The second major Supreme Court ruling regarding pretrial publicity was *Rideau v. Louisiana* (1963). The petitioner, Wilbert Rideau, was arrested on the charge of robbing a bank in Lake Charles, Louisiana, kidnapping three of the bank's employees, and killing one of them. A day after Rideau's arrest, a film was made of a so-called "interview" in the jail between Rideau and the sheriff of the jail. The film was broadcasted, with an audience of 53,000 people (FindLaw, n.d.). Rideau's lawyers filed for a change of venue; the motion was decided and the petitioner was convicted and sentenced to death for a murder charge (*Rideau V. Louisiana, 373 U.S. 723 (1963)*, n.d.). The Court held the refusal of a change of venue motion is a denial of the Due Process Clause, especially after the majority of the community had been repeatedly exposed to a video of the petitioner personally confessing in detail to the charged crimes (*Rideau V. Louisiana, 373 U.S. 723 (1963)*). *Rideau v. Louisiana* illustrates how pretrial publicity violates a defendant's due process rights (Ruva, 2018). Furthermore, these initial cases of pretrial publicity reveal the nature of media bias and its impact on the law.

### **Media Bias**

Media bias occurs when the media covers the news with favoritism to certain verdict decisions (Loquercio, 2022). While media bias can be created through altering word choice or the omission of certain information, these biases are also created by the viewer's personal background. A majority of Americans recognize the biases that emerge in media coverage, however, this does not subdue the media's biasing techniques. Media availability directly correlates with the prevalence of media-created bias (Loquercio). In 2020, research revealed that over 70% of American news channels began their programs

with stories related to crime (Loquercio). The pervasiveness of crime in the media creates a greater chance that jury members are exposed to crimes upon which they will deliberate.

Media biases involve trust within the media. Individuals seek out news to stay informed on relevant and important information. In recent years there has been a transition in the consumption of news from traditional mainstream media to more internet-based news. In the United States, the rapid growth and change in the media landscape may be a result of the public's concern for biasing media and their growing distrust toward media outlets (Ardèvol-Abreu & Gil de Zúñiga, 2017). In the United States, confidence in the press fell from 28.3% in 1976 to 8.8% in 2012 (Smith & Son, 2013). The negative perception of media has ultimately reduced overall media consumption as the public turns to news outlets they trust and avoid those they distrust.

Within the current media environment, there are hundreds of different sources of information on different platforms. Further research has indicated individuals who trust conventional media consume mainstream sources, whereas media skeptics consume more non-mainstream media (Ardèvol-Abreu & Gil de Zúñiga). This distrust in the media and reliance on certain news sources has to do with the overwhelmingly biased nature of the media. In 2012, 37% of Americans claimed there is a “great deal” of bias in the news, while 30% believed there was “a fair amount” of bias (Pew Research, 2012). The acknowledgment of media biases illustrates both the presence and denial of the effects of social influence.

The social influence of pretrial publicity is conveyed through the slant of the media. Media slant portrays the defendant either negatively or positively, creating a bias

that can potentially sway jurors' decision-making. The bias the media portrays leads to potential juror biases through the story model, predecisional distortion, and conformity prejudice. The media's slant emphasizes certain pieces of trial evidence that distort the narrative of the juror's coherent story. This influences predecisional distortion by instilling preliminary biases in jurors, causing all future evidence to be interpreted in accordance with the media's bias. Furthermore, media bias often represents a community's favored outcome; this could potentially lead jurors to render a verdict to appease community expectations. In recent years, the influence of media bias has magnified due to the transition from traditional news sources to digital platforms.

### **Media Types**

In today's digital age, media can be categorized into two separate distinctions: traditional vs. new-age digital media (Owen, 2022). Traditional media includes news outlets that existed before the internet, whereas digital media includes different online platforms. Traditional media includes newspapers, radio broadcasts, and television broadcasting. New age media includes digital media including online news sources, blogs, video streaming services, podcasts, and social media platforms such as Facebook, Instagram, Twitter, and Tik Tok. Mitchell et al. (2016) report that in the last twenty years, newspaper readership has declined in favor of TV news. The changes in technology have transformed how media and news are consumed, leading to a shift of online media as the primary source of news.

In addition to the growing amount of media sources, the increase in media exposure has expanded to all age groups. The accessibility of media on smartphones has

allowed society to have news access 24 hours a day seven days a week. Research reveals older adults are more likely to rely on newspapers as a source of news, while younger adults are more likely to turn to social media platforms (Bachmann et al., 2010). Furthermore, 86% of individuals 18 to 29 years old primarily rely on social media platforms (e.g., Twitter and Facebook) to obtain news information (Bullard, 2015). By contrast, 71% of individuals 65 or older prefer print, claiming print is easier to read than digital news sources (Williams, 2022). The cultural shift from traditional media consumption to new-age digital media greatly impacts the influence of pretrial publicity.

### ***Traditional Media.***

Before the age of technology, pretrial publicity influenced jurors' perceptions solely through television broadcasting, newspaper, and print. The Supreme Court considered the issue of pretrial publicity within traditional media a total of four times between 1975 through 2010, including *Murphy v. Florida*, *Patton v. Yount*, *Mu'Min v. Virginia*, and *United States v. Skilling* (Tenzer, 2019). In each of these cases, the Court rejected the media's biasing effect, holding "it was impossible to find potential jurors who had not been exposed to a barrage of publicity regarding a sensational trial" (Tenzer, 2019).

Despite the serious negative effects of pretrial publicity, there are relatively few studies regarding the prejudicial impact of traditional media on pretrial publicity. The 1995 study, conducted by psychologist Dorothy Imrich et al., measures the extent of prejudicial pretrial publicity in major American newspapers. The study includes a content analysis of 14 American newspapers over 8 weeks, measuring the prejudicial statements



identified in news stories about crime and criminal defendants within the context of the ABA's 1983 Model Rules (Imrich et al., 1995). The results of the study concluded that 27% of the suspects described in crime stories were associated with at least one of the ABA categories of potentially prejudicial publicity. The results reveal the biasing impact of traditional media. Despite the decline of reliance on traditional news sources, the impact of pretrial publicity has grown substantially due to the rise in digital media.

### *New Age Media.*

The digital age of media has given the public access to the news every second of every day. Besides the increased exposure to news, the number of media outlets has increased. In 2016, research reports 62% of American adults received their news through social media (Tenzer, 2019). News via social media allows anyone to be a journalist. Individual posts are not subject to the editorial analysis or verification standards of traditional news sources, allowing posts to be based on the opinion and observation of the individual (Tenzer). This lack of credibility does not undermine the social influence of social media. Where social media lacks credibility, it gains social influence (Tenzer). The wider variety of media sources and increased consumption rate add to the influencing nature of social media, particularly in the form of pretrial publicity. However, due to social media's new relevance and lack of credibility, courts often dismiss social media as a relevant threat to an impartial jury.

The dismissal of social media's bias stems from three justifications: social media is too recent a medium to fully understand and analyze, social media is not a legitimate news source, and social media is opinion-based (Tenzer, 2019). This collective refusal of

courts to consider social media as biased as traditional news sources are “an erroneous assumption on the part of lower courts that social media is somehow different” (Tenzer). The failure of courts to recognize the impact of media bias through social media adds to the influence of PTP.

In an attempt to diminish the influential nature of social media, the Judicial Conference Committee proposed an updated model for technology use for jurors. The updated model states jurors “must not communicate with anyone about this case, whether in person, in writing, or through email, text messaging, blogs, or social media websites and apps such as Twitter, Facebook, Instagram, LinkedIn, YouTube, WhatsApp, and Snapchat” (United States Courts, 2022). In order to identify potential biases during the voir dire process, the model states “you must ignore any information about the case you might see, even accidentally, while browsing the internet or on your social media feeds” (United States Courts). While this model works in theory, these propositions often fail to prevent the biased effects of pretrial publicity communicated through social media. This model asks jurors to ignore any prejudicial information about the trial; however, jurors do the opposite, using biased information in the formation of the Story Model, predecisional distortion theory, and conformity prejudice. The nature of digital media poses an equal constitutional threat to that of traditional media in violating a defendant's Sixth Amendment right to an impartial jury (Tenzer, 2019).

### **Cases of Pretrial Publicity**

The contention between pretrial publicity and the First and Sixth Amendments is apparent in both civil and criminal cases. Examining cases of pretrial publicity helps

identify the psychological process that occurs when individual jury members' are exposed to pretrial publicity information. Oftentimes, pretrial publicity is only examined in cases of national notoriety. While certain cases are not held to the legal standard of pretrial publicity effects, the media can still influence juror decision-making at any case level.

A case that gripped the United States by a media storm was the case of the Boston Bomber in *United States v. Tsarnaev*. On April 15, 2013, three people were killed and 264 others were injured due to the explosion of two pressure cooker bombs detonated near the finish line of the Boston Marathon (Thompson, 2020). The brothers Dzhokhar and Tamerlan Tsarnaev were the culprits of this terrorist attack. Tamerlan was killed during the efforts to arrest the two brothers, while Dzhokhar was captured and indicted on 30 terrorism-related charges. On April 8, 2015, Dzhokhar Tamerlan was found guilty on all accounts, and on May 15, 2015, he was sentenced to death by lethal injection (Thompson). The terrorist attack and Tsarnaev's trial captured the media's attention, labeling the brothers as the "Boston Bombers."

Thompson (2020) conducted a study to assess the national opinion on the death penalty punishment for the Boston Marathon bomber before versus after the sentencing. The study analyzed the individuals' personal views on Tsarnaev's sentencing, and whether or not he should or should not receive the death penalty. Out of 3,341 participants, 81.77% of the sample population completed the survey before Tsarnaev's sentencing and 18.23% completed the survey after his sentencing (Thompson). Results revealed those who finished the survey after Tsarnaev's sentence were more inclined to support the death penalty sentence compared to those who finished the survey before the sentencing. These results fall in accordance with the social influence theory of

conformity prejudice. More specifically, when the public and legal authorities make a favored decision on trial outcomes, individuals are more likely to accept and align their personal decisions to remain consistent with favored society outcomes.

The 2015 verdict decision was not the final sentence for Dzhokhar Tsarnaev. After this decision, the case went through numerous appeals until July 31, 2020, when the United States Court of Appeals for the First Circuit vacated the death sentence for Dzhokhar Tsarnaev (Thompson, 2022). The court of appeals maintained that the voir dire process was inadequate given the prejudicial pretrial publicity surrounding the case (McCoy, 2021). During the voir dire process, the district judge questioned over 1,000 potential jurors with a 100-item questionnaire examining juror backgrounds, social media habits, views on the death penalty, and exposure to pretrial publicity (McCoy). Despite this extensive process, the court held the voir dire did not suffice to identify juror prejudice. This case contributes to the notion that the current system fails to prevent the biasing effects of pretrial publicity.

### **Pretrial Publicity**

Pretrial publicity serves at the forefront of the media's biasing nature and ability to influence juror biases. The American Psychological Association identifies pretrial publicity as “media coverage of a case that occurs prior to the trial and can lead prospective jurors to form opinions about the case before hearing evidence in court” (APA Dictionary of Psychology). A large sum of research regarding PTP has examined PTP’s biasing effects on juror decisions and interpretation of trial evidence (Ruva & Coy, 2020). This current research elaborates on past PTP research by examining the social

influence of the Story Model, predecisional distortion theory, and conformity prejudice on juror biases.

The impact of pretrial publicity on jurors can be seen in various forms. Several studies regarding pretrial publicity have noted PTP's biasing effects on defendants in trial proceedings. Research has shown exposure to biased media influenced jurors' attitudes toward criminal defendants regarding their perceived culpability and weakened credibility (Bakhshay & Haney, 2018). In recent years, the defendant's right to a fair trial has been obstructed due to the "additional media attention and coverage of courtroom activities" (Otto et al., 1994). Similarly, other studies have discovered subsection to pretrial publicity may result in guilty verdicts and harsher sentences (Bakhshay & Haney).

The ramifications of pretrial publicity are examined through both field and experimental studies. Field studies regarding PTP are conducted by surveying community members from the trial venue measuring the "extent of their exposure to media regarding the case, the information they know or remember about the case, and their perceptions of the defendant's guilt" (*Pretrial Publicity Impact on Juriest*, 2015). Field studies permit researchers to examine PTP in naturally occurring environments, allowing researchers to examine the exposure of PTP and the perceived pretrial judgments of the defendant's guilt within the community (*Pretrial Publicity Impact on Juriest*). Results of these studies have found there are significantly more biased attitudes against the defendant in communities in which the trial is held as compared to remote venues (*Pretrial Publicity Impact on Juriest*).

Pretrial publicity is also examined through experimental studies, conducted in controlled settings where pretrial publicity components are manipulated while holding other factors constant. A majority of experimental research indicates that PTP negatively influences jurors' perceptions of defendants (Stebly et al., 1999). Psychological research on pretrial publicity has been instrumental in determining PTP's influence on verdict outcomes. Ruva et al., (2011) found an individual's exposure to both negative (anti-defendant) PTP or positive (pro-defendant) PTP impacts jurors' verdict decisions by influencing jurors' perceptions of defendant credibility, emotional responses (positive and negative), and predecisional distortion. This research further found jurors exposed to PTP biased the witness testimony in favor of the PTP slant. More specifically, negative PTP resulted in a pro-prosecution bias, and positive PTP resulted in a pro-defense bias (Ruva et al.). These results indicate that exposure to the various forms of pretrial publicity impact jurors' biases and verdict decisions in different ways.

### **Types of Pretrial Publicity**

There are three different types of pretrial publicity, including positive defendant PTP, negative defendant PTP, and negative victim PTP (Ruva, 2018). There is some debate regarding the weight of biasing effects between the different types of pretrial publicity. Ruva and Coy (2020) found that negative defendant PTP had larger effects on guilt measures compared to positive defendant PTP. These findings support the theory of negativity bias, stating that negative information holds a greater prevalence in perceptions and impression formation than positive or neutral information (Ruva, 2018). However, these results are refuted by Daftary-Kapur et al. (2014) finding that "pro-defense PTP had

a greater impact on guilt decisions than anti-defendant PTP.” Bornstein et al. (2002) found anti-defendant PTP had a “stronger effect on liability judgments and perceptions of plaintiff sympathy.” These results indicate a further examination of the various slants of PTP is needed to properly identify the influential nature of media biases.

### ***Positive Defendant Pretrial Publicity.***

Positive defendant pretrial publicity (P-PTP) portrays the defendant in a positive light from a pro-defense standpoint. Positive PTP mostly exists in cases of rape or murder, or when the defendant is a celebrity or police officer. Daftary-Kapur et al. (2014) indicates this form of PTP maintains the capacity to influence jurors’ verdict decisions, impression formation, and interpretation of trial evidence. Ruva, Dickman, and Mayes (2014) exposed mock jurors to eight PTP stories, including both negative and positive PTP, over a 10 to 12-day period. Results found jurors exposed to pro-defendant PTP were more likely to produce a not-guilty verdict and perceive the defendant as more credible compared to those not exposed to PTP ( Ruva et al., 2014). In contrast, jurors exposed to negative PTP had a higher rate of guilty verdicts and higher guilt ratings than positive PTP. Ruva (2018) reports exposure to pro-defense increases the likelihood of the juror to “misattribute the source of PTP information to the trial and interpret trial evidence in favor of the defendant.” Further research, asserts jurors exposed to positive PTP perceived the defendant as more credible than jurors exposed to negative PTP (Ruva & McEvoy, 2008). Results from the various studies indicate positive PTP influences jurors’ impressions of the defendant in a beneficial way. While some defendants may benefit

from positive defendant pretrial publicity, negative defendant pretrial publicity is a damaging factor in the creation of juror biases.

***Negative Defendant Pretrial Publicity.***

Negative defendant pretrial publicity is anti-defendant or publicity that negatively portrays the defendant (Ruva et al., 2011). A large majority of research on pretrial publicity is centered around negative defendant PTP due to its prevalence and risk to the Sixth Amendment's claim of the right to a fair trial. Steblay et al., (1999) tested the relevance of negative PTP influence on the perception of the defendant's guilt. Results found negative pretrial publicity significantly affects jurors' decisions regarding the culpability of the defendant (Steblay et al.). Furthermore, jury members exposed to negative PTP were more inclined to render a guilty verdict compared to those limited to PTP exposure. Ruva (2018) discovered negative defendant pretrial publicity also has the ability to bias jurors' memory of trial evidence, affecting jurors' abilities to distinguish information obtained before and during the trial. When jurors are unable to differentiate between pretrial and current trial information, they violate the Sixth Amendment's right to an impartial jury. These findings reveal that anti-defendant publicity can bias juror decisions by prohibiting jurors from determining trial verdicts based entirely on trial evidence.

***Negative Victim Pretrial Publicity.***

The third form of pretrial publicity slant is negative victim PTP. Negative victim PTP (anti-victim PTP) employs negative language to describe victims and characterizes their actions as contributing to their victimization (Ruva, 2018). This alludes to the



phenomenon of victim blame where the media negatively presents victims indicating they have some fault in the crime (Ruva) This form of publicity is seen in criminal cases of rape, sexual assault, and domestic violence. In the study of mock jurors exposed to anti-victim stories, the research found participants were more likely to believe the victim was lying about the crime and rendered the defendant not guilty (Ruva). Similar studies concluded that jurors exposed to anti-victim PTP found the defendant more credible compared to the plaintiff and perceived trial evidence to be in favor of the defendant, as compared to jurors exposed to no pretrial publicity (Ruva & Guenther, 2017). Despite the limited amount of research, the study of negative victim PTP has been beneficial in understanding the biasing effects of pretrial publicity. Negative victim research indicates individuals exposed to anti-victim PTP experienced biasing effects on jurors' guilt ratings due to perceived defendant credibility and pro-defense trial evidence (Ruva). The ability of various PTP slants to impact jury verdicts highlight pretrial publicity's scope of social influence.

### **Social Influence**

Social influence is an indication of how society impacts individuals (Lim, 2022). Social influence involves unintentional and intentional efforts to change other people's beliefs, attitudes, or behavior (Gass, 2015). This theory stems from classic research on conformity and obedience from psychologists Asch (1951, 1955, 1956) and Milgram (1963, 1974) (Weatherly et al.,1999). Asch (1951) examined the effects of group pressure on the modification and distortion of judgments. Within this study, individuals were placed in controlled groups where their judgments were consistently contradicted by

other members of the group. Results indicated that 74% of participants conformed at least once, and 26% of participants never conformed (*Conformity - Asch (1951)*, n.d.). Asch discovered people were willing to ignore the answers they believed, and give an incorrect answer in order to conform to the group consensus. This research serves as the basis for social influence. The theory of social influence has grown to include many different forms of influence, such as obedience, conformity, persuasion, observer effect, and peer influence (Izuma, 2017).

Social influence differs from other forms of internal pressures due to its inadvertent and coincidental functionality, resulting in the target audience being unaware of the biasing effects of the information (Gass, 2015). Social influence operates through peripheral processing, the processing in which an individual is influenced by superficial cues and does not carefully examine the influential information being presented (Kassin et al., 2016). Social influence impacts all members of the courtroom in various ways. In addition to trial evidence, juror members are influenced by personal and outside effects such as life experiences, personality characteristics, values, and attitudes. However, social influence specifically impacts jury decision-making through the formation of the Story Model, predecisional distortion theory, and conformity prejudice.

### **Story Model**

Pretrial publicity can sway jurors' decision-making during trial verdicts by instilling a negative perception of the defendant. Before or during the trial, jurors may establish a personal opinion of the parties in the lawsuit. Pennington and Hastie's (1992) Story Model suggests juror decision-making consists of three parts. First, jurors evaluate

court evidence through story consumption. Second, the trial judge establishes verdict categories. Lastly, jurors use a “goodness of fit” of the constructed story and established verdict categories (Smith, 2008).

The Story Model theorizes jurors interpret presented evidence through story construction: the organization and application of knowledge to build a coherent story (Smith, 2008). Pennington and Hastie (1992) found jurors use case-specific information acquired during the trial, pre-existing knowledge of similar events regarding the content of the case, and general expectations about what makes a complete story to create a functional storyline. Research suggests that jurors' evaluations of testimony are “separate exhibits of evidence rather than as pieces which supplement one another” (Smith).

The second component of the Story Model is verdict representation. During trial proceedings, the judge explains the law along with the verdict categories at hand. Within jury deliberation, jurors decide the verdict in the terms outlined by the judge. The third aspect of the Story Model is story classification. Within this component, jurors search for the “goodness-of-fit” of the assembled story and the verdict categories (Smith, 2008). Jurors use the evidence presented to formulate a story to match the verdict categories best suited for the favored party. Trial information that does not fit this Story Model will be either ignored or devalued (Ruva, 2020). Furthermore, there can be several stories constructed during the trial period. However, only one will be deemed correct according to a story's coverage, coherence, and uniqueness (Smith).

The Story Model is an aspect of social influence embedded in pretrial publicity. In line with the Story Model, pretrial publicity may recast the evaluation of the credibility and plausibility of evidence, altering the explanatory stories constructed at trial (Linz &

Penrod, 1992). Jurors use the media's representation of the trial information to form the initial basis for their Story Model (Smith, 2008). Pretrial publicity influences the narrative of the juror's constructed story by emphasizing specific story aspects and highlighting certain sources and evidence as more credible than others. Jurors then base aspects of their Story Model on the evidence supported by pretrial publicity.

The impact of pretrial publicity through the Story Model is further understood through the study *Effects of pretrial publicity (PTP) on mock jurors' predecisional distortion (PDD), story construction, and judgments* (Smith, 2008). The purpose of this study was to identify the influence of pretrial publicity on jurors' perception of trial evidence and its biasing effects. This study uses the Story Model as a source of explanation for the connection between PTP and judicial decisions. This examination is conducted through manipulation of "story components (i.e., goals, actions, or consequences) and character components (i.e., prior record or good character) embedded in pre-trial articles" (Smith).

The study consisted of 166 participants, with 65% female, 35% male, and one participant who declined to indicate their gender. The participants were selected from jury-eligible community members in New York, with the age range consisting of 18 - 72-year-olds. The study was an "a 2 (goals: pro-defense vs. pro-prosecution) x 2 (actions: pro-defense vs. pro-prosecution) x 2 (consequences: pro-defense vs. pro-prosecution) x 3 (character component: prior record, good character, or no additional information) factorial design" (Smith, 2008).

The procedures included the completion of a survey regarding pretrial publicity articles, attitude questionnaires, demographic information, and personal opinions

regarding the case at hand (Smith, 2008). After finishing the survey, participants were randomly assigned a PTP condition, consisting of ten PTP articles on a rape case held in Orange County. Participants were also tasked to watch a mock trial video, while intermittently completing witness evaluations and predecisional distortion questionnaires. At the end of the experiment, participants completed questions evaluating their predecisional distortion, the final story, judgment decisions and confidence level, and overall PTP awareness (Smith).

The results of Smith (2008) proved significant. The effects of pretrial publicity were determined to be persuasive on jurors' perceptions of the case in the initial aspects of the trial. Furthermore, participants' exposure to pretrial publicity influenced jurors' story construction. Based on the pretrial publicity of the rape case presented, participants who were exposed to pro-defense PTP were more inclined to believe Jane Doe intentionally had sex with the defendant as compared to those who were exposed to pro-prosecution PTP (Smith, 2008). While the initial story aspect of the Story Model theory proved significant, the final story component did not. Results discovered only the consequence component of the final story was influenced by pretrial publicity. The findings of this study highlight the biasing effects of the Story Model. During the initial stage of the research process, 92%-100% of participants claimed they could be fair and impartial (Smith). These findings support the theory that "jurors do not believe that their knowledge or beliefs about the case, pretrial, would make them an unfair or partial juror" (Smith). The results of this study refute the participants' claim of impartiality, highlighting the fact that the jurors are unaware of their initial biases.

Smith (2008) supports the concept that “the story jurors adopt determines the verdict they will render.” Results found the goals, actions, and consequences of the juror's initial story were influenced by different aspects of pretrial publicity. Those exposed to pro-defense goals and actions favored the perspective that Jane Doe had the intention of having sex the night of the alleged rape as compared to those exposed to pro-prosecution. Those exposed to pro-defense actions and/ or consequences believed Jane Doe consented to sex the night of the rape. In contrast, participants presented with pro-prosecution goals and/ or consequences perceived Jane Doe was raped compared to those presented with pro-defense goals and/ or consequences (Smith, 2008). The results of this study reveal the inclination of humans to create a coherent story. The formation of coherent stories facilitates the reliance on PTP for information and the creation of biases that influence jury decisions.

### **Predecisional Distortion Theory**

The second component of pretrial publicity's social influence stems from the predecisional distortion theory. This theory proposes that during the pre-trial stage, jurors form an opinion of the favored trial outcome and further interpret future trial evidence following this opinion (Russo, Medvec, & Melvoy, 1996). Carlson and Russo (2001) discovered mock jurors exhibited distortion in both civil and criminal trials. Researchers theorized that predecisional distortion is prompted by the juror's intent to form a coherent story of the evidence presented (Carlson & Russo, 2001). This directly connects with the discussed Story Model. Jurors' confidence in their favored side increases as a result of predecisional distortion (Smith, 2008), adding to the juror's story construction. Carlson

and Russo continue this theory by reporting evidence distortion is devised through a combination of jurors' preexisting beliefs, the attorney's opening statement, and early judicial instruction (Smith, 2008).

Predecisional distortion reveals the dangers of biasing trial evidence in favor of pretrial publicity biases. A 2004 study conducted at the University of Aberdeen examined the predecisional distortion of evidence by mock jurors. The study aimed to identify how PTP influences jurors' evaluation of testimony by exposing mock jurors to negative PTP, producing a negative impression of the defendant (Hope et al., 2004). Findings indicate that predecisional distortion favoring the prosecution or defense biases the evidence evaluation in the trial. For jurors subjected to negative pretrial information regarding the defendant, the distortion magnified the individuals advocating for the prosecution (Hope et al.). These results display the impact of predecisional distortion on verdict outcomes. Therefore, the media's portrayal of both trial participants and trial evidence influences juror biases in accordance with the media's preferred story.

Ruva, Christina, and Arbrough (2011) conducted a pivotal study in the field of pretrial publicity. The study investigated pretrial publicity's impact on impression formation, juror emotion, and predecisional distortion theory through research on the effects of both positive and negative pretrial publicity. The research contained four hypotheses: (1A) Jurors presented with negative pretrial publicity will be more inclined to render guilty verdicts, provide higher guilt ratings, and rate the defendant as less credible than those in the positive pretrial publicity, or non-exposed condition; (1B) Jurors in the positive pretrial publicity condition will be more inclined to render not-guilty verdicts, provide lower guilt ratings, and view the defendant as more credible

than those in the N-PTP or non-exposed condition. The second hypothesis predicts: (2A) Pretrial publicity will have a significant impact on jurors' emotions (ie. jurors exposed to negative PTP elicit a greater anger response and jurors exposed to positive PTP will elicit more positive emotions); (2B) Jurors with anger responses will render higher guilt ratings, and jurors with positive emotions will have lower guilt ratings. The third hypothesis predicts jurors exposed to either negative or positive PTP will be subject to predecisional distortion compared to non-exposed jurors (i.e. jurors exposed to positive PTP will favor the defendant, and those exposed to negative PTP will favor the prosecution). Lastly, the fourth hypothesis predicts pretrial publicity effects on guilt ratings will be determined by the influence of anger and positive emotions, predecisional distortion scores, and defendant credibility scores (Ruva et al., 2011). The participants of this study were 201 university students, including 53 men and 148 women, ranging from 18 to 41 years old. There were 69 participants in the negative PTP condition, 68 in the positive PTP condition, and 64 in the non-exposed condition (Ruva et al., 2011).

The study consisted of two phases. During the first phase, participants were placed into groups of 12 and were randomly assigned to pretrial publicity conditions (Ruva et al., 2011). The participants were given news articles and then were asked to write down as much information they could recall from the articles. After, participants were asked to identify their emotional responses regarding the previous information. The second phase was conducted one week after the initial exposure to the articles.

Participants were shown a videotaped murder trial, consisting of opening arguments, testimony from six witnesses and defendants, and closing statements. After viewing this videotape, participants were asked three predecisional distortion questions derived from



Carlson and Russo's (2001) method. The first question asked participants to decide which side they favored and how strong their preference was based solely on the witness testimony. The second question asked participants to identify who they believed was the leading party in the trial. The third question asked participants to determine how confident they were that their current leader would eventually win the trial; this likelihood ranged from the 50% chance both parties had an equal chance of winning to the 100% chance the current leader would win (Ruva et al., 2011).

Results of this study reveal exposure to pretrial publicity had a notable impact on jurors' verdict, guilt rating, and defendant credibility. Jurors exposed to positive pretrial publicity were more inclined to render a not-guilty verdict, find lower guilt ratings, and deem the defendant more credible. In addition, jurors exposed to negative pretrial publicity had an angry emotional response compared to those exposed to positive pretrial publicity. Lastly, exposure to pretrial publicity had a significant impact on predecisional distortion (Ruva et al., 2011). Specifically, jurors subjected to negative pretrial publicity presented a consistent pro-prosecution bias, whereas those exposed to positive pretrial publicity presented a pro-defense bias solely for the defense witness. These findings reveal positive and negative pretrial publicity hold different effects of predecisional distortion. Results further show jurors typically "distort witness testimony in the direction consistent with the PTP bias (i.e., N-PTP resulted in a pro-prosecution bias and P-PTP in a pro-defense bias)" (Ruva et al., 2011). Furthermore, this study reveals the influence of pretrial publicity on juror biases as a result of the predecisional distortion theory.

## Conformity Prejudice

Conformity is a form of social influence which includes observing social norms and adopting the perceived “normal” set of beliefs and behaviors of society (*Why Do We Try so Hard to Be Like Other People?*, 2022). Before and during the time of trial, juror prejudice can develop into a form of conformity prejudice. Conformity prejudice occurs when a jury renders a verdict consistent with the community views rather than remaining impartial to trial evidence (Vidmar, 2002). The psychological reasoning behind conformity is distinguished between two forms: informational and normative conformity. Informational conformity transpires when an individual adopts the views of others because the individual believes others' views possess more knowledge of the situation. Normative conformity occurs when an individual wants to satisfy the expectation of others in order to be liked and accepted by them (Sanfey & Stalin, 2015). These two concepts establish the basis for social conformity, the change in belief to fit in with a particular group.

There has been relatively little research on the concept of conformity prejudice in light of pretrial publicity. This is interesting due to the Supreme Court’s public concern regarding the effects of public opinion on highly publicized cases. The Court’s central concern of pretrial publicity is its influence on community sentiment. More specifically, the Court fears that due to the rise in media popularity and attention, community sentiment will persuade jurors to render a verdict in favor of the community’s opinion (Zimmerman et al., 2016). The Court identifies the likelihood of jurors fearing a displeased community, one that would hold a negative reaction if the juror were to render a verdict conflicting with the community’s favored sentiment (Zimmerman et al., 2016).

This concept stems from social identity theory. This psychological theory is applicable to this research due to the selection of jurors as representative members of the community. This role emphasizes jurors' social identity as members of the community, eliciting the likelihood that jurors' decisions will be governed by community behaviors. More specifically, if jurors perceive pretrial publicity to favor a specific party, the jurors may then feel pressured to render a verdict in line with the direction of the biased publicity (Vidmar, 2002). Furthermore, the jurors may fear social exclusion or rejection if they were to render a verdict contradicting the community's sentiment (Zimmerman et al., 2016).

A study conducted by Zimmerman, Rodriguez, Bergold, and Penrod (2016) addresses the nature of conformity prejudice influenced by community outrage. Specifically, this study examines the degree to which jurors' exposure to community outrage affects their determination of guilt. Researchers manipulated the component of community outrage within pretrial publicity by exacerbating the community's anger and negativity toward the defendant based on the impact on the victim's family (Zimmerman et al., 2016). Within this study, pretrial publicity did not contain any information regarding the defendant, and solely emphasized the community's outrage. The first hypothesis predicted that jurors exposed to either community outrage or negative defendant PTP would lead to higher conviction rates. The second hypothesis predicted the influence of "community outrage PTP on guilty verdicts and the likelihood of guilty verdicts would be higher when participants anticipated interacting with community members after making guilty judgments" (Zimmerman et al., 2016).

Two days before the study, participants read four articles containing factual and exaggerated pretrial publicity. Within the negative defendant facts condition, the articles claimed the police discovered the murder weapon in the defendant's home, that neighbors had negative emotions toward the defendant and were fighting with the defendant, and that the defendant was an ex-convict (Zimmerman et al., 2016). After reading these articles, participants were shown a videotaped trial and told they would be participating in a trial simulation. Half of the participants were told after the video they would discuss their verdict with community members, and the other half were told the trial was based on a real case (Zimmerman et al., 2016).

Results of this study reveal that there was no significant impact on verdicts regarding negative defendant facts or anticipated social interaction. However, the results did reveal jurors were more likely to find the defendant guilty when they were exposed to pretrial publicity regarding community outrage and victim impact. The results of this study indicate that pretrial publicity highlighting jurors' knowledge of incriminating evidence and the criminal record did not impact guilt ratings. Furthermore, the defendant's perceived guilt was based on the jurors' knowledge of community outrage and victim impact information (Zimmerman et al., 2016). The findings of this study indicate the influence of community outrage on conformity prejudice. Conformity prejudice, therefore, can influence jurors' perception of defendant culpability and lead to higher conviction rates.

## Conclusion

Media culture has transformed from a neutral bystander to a biasing informant. Due to the increasing nature of media bias, the threat of pretrial publicity on the right to a fair trial is only likely to increase (Ruva, 2018). The threat of pretrial publicity's influence on verdict decisions increases as media biases flourish. This research further reveals the impact of the Story Model, predecisional distortion theory, and conformity prejudice on juror biases. As a result, social influence directly impacts verdict decisions and jurors' perception of a defendant's culpability and credibility. Through an in-depth analysis of the interaction between media and the law, this research serves as a call to action for the establishment of new methods to combat the prejudicial effects of pretrial publicity.

This current research has demonstrated the present tactics preventing PTP biasing effects have proven inefficient. Due to the increasing bias and presence of the media, it is highly unlikely potential jurors will not be exposed to any form of pretrial publicity. Courts can reduce the prejudicial impact of pretrial publicity on jury verdicts through debiasing the current voir dire process. In addition, exposure to *both* positive and negative pretrial publicity could potentially reduce the biasing effects of pretrial publicity. Schinerman (2013) indicates that individuals exposed to both positive and negative PTP make decisions similar to those who have not been exposed to any form of PTP. As a result, jurors' decision-making abilities would be "based more in careful, reasoned judgment than automatic processing" (Schinerman).

Based on Schinerman (2013), proposed future research would simulate the voir dire process. Before engaging in the voir dire questionnaire, mock jurors would be

exposed to both positive and negative pretrial publicity articles. The subjects would be randomly assigned to which slant of publicity (positive or negative) they would first be exposed. This research would be beneficial in identifying the impartiality of potential jurors, reducing the negative effects of pretrial publicity. Furthermore, this proposed research identifies the need for social psychologists and the court system to work together to find effective ways to limit the biasing impact of pretrial publicity.

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