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ABSTRACT

The growth of mass media has complicated the relationship between the courts and the media. Free press and fair trial rights are kept in balance by the use of judicial restraints and remedies such as voir dire, change of venue, and gag orders. During the 1960s, legal codes and Supreme Court cases restricted the press to protect defendants. In the 1970s, the pendulum swung back to uphold the rights of the press and attorneys. Current case law and legal codes are inconsistent and provide insufficient guidance to judges in their use of restraints and remedies. Nor is there a body of empirical research on the impact of news coverage and juror behavior capable of informing the courts at this time. In this paper, we review the legal issues involving free press and fair trial, and then critically assess the empirical social science literature. We argue that carefully conducted empirical research could provide important information to the courts. We suggest several studies that together could provide legally-relevant and scientifically-valid information.

Free Press and Fair Trial:
The Role of Behavioral Research

A controversy has long existed between implications of the First Amendment right to a free press and the Sixth Amendment right to a "speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed" (U. S. Constitution). At issue is the point at which the nature and amount of news coverage surrounding a case begin to affect the accused's right to a fair trial.

Although the Supreme Court of the United States has struggled with the issue of news coverage for close to two centuries (United States v. Burr, 1807), it has been only in the past two decades that the scope of the potential problem has been realized. The growth of both print and electronic mass media has significantly complicated the issue and consequently placed a heavier burden on the trial judge. Recent cases such as the Big Dan's rape trial in New Bedford and the DeLorean case in Los Angeles create massive nationwide news coverage.

Beginning in the 1960's, the Supreme Court decided several major cases involving pretrial and trial publicity. The effect of these cases was to require judges to exercise discretion to prevent or remedy any biasing effects of news coverage to preserve the fairness of court proceedings while maintaining maximal access of press to the workings of the court. Judges have available a variety of remedial and preventive measures such as voir dire, judicial admonitions to the jury, continuances,

changes of venue, changes of venire, gag orders, and sequestration of the jury.

However, there are serious questions regarding whether judges have sufficient guidance to use their discretion as wisely as possible. The available case law, ethical codes, American Bar Association Standards, and other commentary are inconsistent in the proposed criteria for evaluating when free press access constitutes a threat to a fair trial. Judges do not exhibit a clear consensus on the effectiveness and appropriateness of available remedies and restraints.

Nor have the courts found a sound empirical basis for knowing whether news coverage has an adverse impact on trials and if it does, whether appropriate judicial remedies are sufficient to remove this impact. In his dissenting opinion to a case involving pre-trial publicity (Stroble v. California, 1952), Justice Felix Frankfurter wrote that:

> Science with all its advances has not given us instruments for determining when the impact of such newspaper exploitation has spent itself or whether the powerful impression bound to be made by such inflaming articles as here preceded the trial can be dissipated in the mind of the average juror by the tame and often pedestrian proceedings in court.

Over twenty years later, the legal literature generally dismisses empirical studies of judicial remedies with the comment that they provide, "inadequate understanding of the way pretrial publicity influences the thought processes of prospective jurors" (American

Bar Association, 1978, p. 20).

In this paper we focus on the question of whether judges, attorneys, journalists and others have sufficient knowledge or guidance to achieve a balance between press and bench that preserves freedom and justice. In the first section we review the legal literature to explicate how the law has set the balance in the past two decades and prescribed the actions of judges and other parties to maintain that balance. These prescriptions are based on behavioral assumptions about potential jurors and the ability of the court to minimize the impact of news coverage. In the second section we review the social science literature that addresses the assumptions underlying legal procedures. After critically summarizing what is known about judicial and juridic behavior, we suggest how systematic empirical research could provide an improved basis for striking the balance between news coverage and fair trial.

CASE LAW AND LEGAL STANDARDS

The past two decades have been critical for seeking a balance between the courts and the technologically-empowered mass media. In the 1960s, concern emerged that the mass media were so powerful that they endangered the defendant's right to a fair trial. It was an era and a Supreme Court that emphasized the rights of the defendant. However, only a few years later the attitudes of society and of the Court had shifted toward an emphasis on the rights of the press and attorneys (cf. Nebraska Press Association v. Stuart, 1976, and American Bar Association, 1978). We shall examine these events and the assumptions about

media and jurors that they reveal.

Curtailing News Coverage in the 1960s

The 1960's ushered in a series of cases in which the Supreme Court expressed concern about the impact of news coverage on jury verdicts. In Irvin v. Dowd (1961), the Court vacated a conviction and death sentence on the grounds that the jury, which included eight persons who admitted during voir dire that they thought the accused was guilty, did not meet the constitutional standards of impartiality. The accused's confessions to six murders had been highly publicized in the county to which venue had been changed. The Supreme Court argued that, although state law provided for only one change of venue, the trial court had discretion to grant a second change of venue to preserve the defendant's constitutional right to a fair trial.

In Rideau v. Louisiana (1963), the Court argued that Rideau's confession to a murder had been staged by local law enforcement officials and broadcast on television repeatedly for three days. The trial judge refused to grant a change of venue. The Court stated:

> For anyone who has ever watched television the conclusion cannot be avoided that this spectacle... was Rideau's trial--at which he peaded guilty to murder. Any subsequent court proceedings in a community so pervasively exposed to such a spectacle could be but a hollow formality. (Rideau, 1963:726)

The landmark case was Sheppard v. Maxwell (1966), in which the Court overturned the 1954 conviction of Dr. Samuel Sheppard

for the murder of his wife. The Court held that the publicity at both pretrial and trial stages was "massive, pervasive and prejudicial... and prevented (Sheppard) from receiving a fair trial" (Sheppard, 1966:334). Justice Clark, writing for the majority, emphasized that "the courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences" (Id.:363). The Sheppard court further stated that,

> the trial courts must take strong measures to ensure that the balance is never weighed against the accused... (W)here there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another court not so permeated with publicity. (emphasis added)(Id.:362-363)

The Sheppard decision is widely considered to be a mandate to trial courts regarding the problems caused by publicity (U. S. Judicial Conference, 1969, p.395) and as having imposed an "affirmative duty" on judges (Judge Tom Wicker, personal communication, August, 1983) to remedy its perceived effects. This view is supported by numerous articles written by and for judges(Erickson, 1977; Fretz, 1977; Younger, 1977).

The Sheppard decision quickly resulted in the promulgation of codes and standards to be used by those involved in court proceedings. These concern specifications of what information poses a threat to a fair trial, a set of restraints upon

proposed that pretrial proceedings be closed to the public (and the press) unless the presiding officer determines that there is no "substantial likelihood" that information adduced at the hearings will interfere with the defendant's right to a fair trial by an impartial jury. In contrast, the Committee on the Operation of the Jury System of the Judicial Conference of the United States in 1968 declined to make a recommendation about the exclusion of the media from pretrial and other hearings (Judicial Conference of the U. S., 1969).

The Sheppard decision and the 1968 Reardon Report also emphasized the use of various remedies that operate to minimize the impact of publicity on jury verdicts, thus striving to preserve a fair trial given the full and active efforts of a free press. The Reardon Report recommended that motions for change of venue or continuance be granted when there is a "reasonable likelihood" that, without the relief, a fair trial cannot be had because of the dissemination of potentially-prejudicial material. When the potentially prejudicial information has been intense and geographically concentrated, it is suggested that jurors from other areas be drawn to serve (change of venire). The report also stressed the importance of individual voir dire in cases of possible prejudice. If the prospective juror remembers highly significant information, such as a confession or other incriminating information that may be inadmissible, he or she should be subject to challenge for cause (ABA, 1968, p.137). During trial, the drafters of the ABA standards suggest that judges caution jurors not to read or listen to accounts of the

case and, when necessary, that jurors be sequestered to prevent exposure to trial publicity.

Lessened Concern Over News Coverage in the 1970s

In the decade and one-half since the Reardon Report, there has been a considerable shift in the relative concern over First and Sixth Amendment rights. There is now less desire to restrict the flow of information about cases, but there is considerable inconsistency in the codes and standards currently extant.

Attorneys were the first group to explicitly fight for their right to speak out about cases. In Chicago Council of Lawyers v. Bauer (1975), the U. S. Court of Appeals for the Seventh Circuit overturned a court proscription of extrajudicial attorney statements and substituted a less restrictive "serious and imminent threat" standard. But, in Hirschkop v. Snead (1979), the Fourth Circuit in Virginia upheld the reasonable likelihood test for criminal litigation, as did the Supreme Court of New Jersey (In re Hinds, 1982). These courts and others (Shadid v. Jackson, 1981; Ruggieri v. Johns-Manville Products Corporation, 1980) hold this standard to be an unconstitutional denial of attorney's free speech in civil litigation.

A major change occurred when, in Nebraska Press Association v. Stuart (1976), the Supreme Court ruled that the media could not be restrained from publishing potentially-prejudicial information, despite the fact that Nebraska statutes severely limited changes of venue and continuances. The court ruled that there had been no express findings that other remedies would not suffice and that there was not a "clear and present danger" that

news coverage would impinge on the defendant's right to a fair trial. Attention then shifted to keeping the press from obtaining information by restraining media sources and closing judicial proceedings.

However, professional codes and standards developed or revised in the late 1970's provide little consensus about standards regarding attorney statements. The 1978 draft of the Standards on Criminal Justice Relating to Fair Trial and Free Press substituted the less restrictive "clear and present danger" standard which they consider substantially indistinguishable from the "serious and imminent threat" wording of Chicago Council of Lawyers (ABA, 1978:Section 8-1.1). In 1983, the ABA Delegates adopted the Model Rules of Professional Conduct formulated by the ABA Commission on Evaluation of Professional Standards (Kutak Commission), which state that, "a lawyer shall not make an extrajudicial statement that the lawyer knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding" (emphasis added)(ABA, 1983:Rule 3.6). To further complicate matters, the Judicial Conference of the United States in 1980 approved the Revised Report on the Operation of the Jury System on the "Free Press-Fair Trial" issue, in which the special subcommittee concluded that the "reasonable likelihood" standard was the appropriate one for use in regulating attorney comment in criminal litigation (Judicial Conference of the U. S.,1980).

The second edition of the Fair Trial and Free Press Standards of the ABA also changed the standards relating to

judicial employees. The "clear and present danger" standard was adopted regarding prohibition of the release of information relating to investigation and trial. Only statements regarding confessions and plea bargaining were absolutely proscribed. They continued to recommend self-regulation by the police (ABA, 1978:9).

In contrast to the Reardon Committee concern that pretrial proceedings be closed to the public unless there is no "substantial likelihood" of compromising the right to a fair trial, the 1978 ABA Standards contain a strong presumption in favor of open judicial proceedings and free access to records in criminal cases. The language of the Standards parallels the ruling in Nebraska Press. To close pretrial proceedings or seal a record, the new Standards state that the moving party must establish that: (1)a "clear and present danger" to the trial would exist if the information were publicly disclosed, and (2)the prejudicial effect could not be avoided by reasonable alternative means such as a continuance or change of venue. In Gannett Co. v. DePasquale(1979), the Supreme Court rendered a 5-4 decision with 5 separate opinions that upheld an exclusion of the press and public from a pretrial suppression hearing. Although the circumstances of Gannett were of a pretrial hearing, the Court held that "members of the public have no constitutional right under the Sixth and Fourteenth Amendments to attend criminal trials"(emphasis added)(Id.:391). The Gannett decision engendered considerable legal commentary (Good, 1980; Monk, 1981; NYBA, 1980). Some state courts have ruled that the public and

the press have the right to attend pretrial hearings in criminal prosecutions, despite the Gannett holding (e.g., New Jersey v. Williams,1983). In Richmond Newspapers, Inc. v. Virginia(1980), the Supreme Court clarified some of the confusion by holding that the First Amendment implicitly guarantees the right of the public and press to attend criminal trials.

The 1978 ABA Committee on Fair Trial and Free Press made several changes in its recommendations regarding remedies. The commentators suggest that the standard to be used in granting a motion for a continuance or change of venue or in ordering sequestration of the jury should be that a "substantial likelihood" of prejudice would otherwise exist. In addition, the drafters recommend that the court delay ruling until after the voir dire examination. The commentators to the second edition appear more cautious regarding the effectivenss of voir dire than were those in 1968. Their caution is due to:

> (1)inadequate understanding of the way pretrial publicity influences the thought processes of prospective jurors; (2)the tendency among a significant number of jurors to underplay the importance of exposure to pretrial publicity and to exaggerate their ability to be impartial; and (3)persistent concern about the ability of attorneys and trial judges to discern bias, particularly at the subconscious level, even when the prospective juror is being completely candid. (ABA,1978:20)

In essence, although Sheppard created a more active role

for judges, there has not been sufficient guidance offered to judges regarding how to preserve fairness and openness simultaneously. In an era of debate over standards and remedies, the availability of empirical results regarding the impact of news coverage on jurors in the context of judicial remedies would be valuable to the court.

EMPIRICAL SOCIAL SCIENCE RESEARCH

There is a moderate-sized literature on the effects of news coverage on jury verdicts, arising from several sources: journalists interested in the impact of media stories, social psychologists and sociologists interested in courtroom functioning, and social scientists who have acted as consultants to lawyers seeking to select a jury or to argue for a change of venue. Given the breadth of attention, it is surprising that so little is known. As our review will point out, research on the effects of news coverage has either been poorly controlled or has asked the wrong questions. The courts most need to know the answers to three questions: (1)What kinds of news coverage influence potential jurors? (2)Does this influence persist in actual trials after appropriate judicial remedies? and (3)What can be done, if necessary, to better balance fair trial and free press? Our review is organized methodologically: we first describe studies of the extent and nature of news coverage, then turn to studies of the impact of news coverage in actual trials, and finally examine the impact of news coverage and judicial remedies in simulated cases.

News Coverage of Crime

Content analyses of newspaper coverage reveal that serious crime dominates the news (Antunes & Hurley, 1978; Humphries, 1981) and that papers tend to present the prosecution side of the case (Drechal et al., 1980; Millpaugh, 1949). The bulk of this coverage comes at the time of arrest (ABA, 1968; Friendly & Goldfarb, 1967; Hough, 1970). However, between arrest and trial, the potential for prejudice increases. A content analysis conducted by the Reardon Committee in 23 metropolitan areas revealed 120 reports of confessions and/or other statements by the accused and 80 instances of reports of prior criminal record during a one-month period. The primary source of the information was the police. From the commencement of trial, the source of publicity shifts to the prosecutor (ABA, 1968).

The press is not without sensitivity to the issues of fair trial. The media frequently cooperate with requests by judges that they refrain from or delay publishing potentially-prejudicial information (Barth, 1976). However, the competition in important cases makes cooperation difficult. For example, the Atlanta press underplayed the mass child murders so as not to "create a mass killer where none existed" (Shields, 1981, p.33). Unfortunately, the national news undermined the local restraint by releasing information that probably should have been withheld (Shields, 1981). Press cooperation is also evident in the use of voluntary Bar-Press guidelines in several locales. Fretz (1977) and the ABA (1974) report surveys indicating that the bar and media were happy with the agreements.

Empirical studies linking press coverage to guidelines indicate favorable results in Washington State (Glein, 1980) but lack of compliance across many other states (Tankard et al., 1979).

Studies of Actual Cases

A number of researchers have surveyed public opinion following extensive news coverage in actual cases. For example, Simon & Eimermann (1971) surveyed registered voters about a highly-publicized murder case. Seventy-nine percent had heard about the case. Of these, 75% could supply details. Those who could supply details were more likely to feel pro-prosecution about the case and less likely to feel the defendants could receive a fair trial, but were no less likely to feel they could hear the evidence with an open mind (the typical question in voir dire) than those who could not supply details. However, interpretation is made difficult by unknown differences between those who read and remember the local news, and those who do not.

Rollings and Blascovich (1977) surveyed college student opinions about the Patty Hearst case four days after her arrest and again 23 days after arrest. They found a very strong belief that Hearst would be convicted that did not differ over time. Although they conclude that publicity may not have strong effects, it seems almost certain that publicity had already had an enormous effect by the time they took their first survey.

Several studies compare attitudes in different counties, generally as preparation for a motion to change venue (McConahay, Mullen & Frederick, 1977; Nietzel & Dillehay, 1982; Pollock, 1977; Riley, 1973; Vidmar & Judson, 1981). These studies are

consistent in showing that counties in which the crime occurred were more pro-prosecution than at least some other counties, and people in those counties knew more facts thought to be prejudicial to the defense. Those knowing more about the case tend to be pro-prosecution. For example, in one case two-thirds of the venue county knew about a previous conviction of the defendant's but only 2% knew in a county preferred by the defense. However, it is difficult to know whether these differences reflect news coverage or preexisting attitudinal biases. For example, in McConahay et al's surveys for the trial of Joan Little, there were no apparent differences among counties in exposure to news coverage, but the county in which the crime occurred and a neighboring county tended to believe the self-defense claim less than a county from a more urban part of North Carolina. However, there was also more evidence of racist attitudes prejudicial to blacks (including black defendants) in the more rural counties.

By far the most ambitious and interesting survey study was performed by Constantini and King (1981) regarding three criminal cases in California. They found that respondents with greater knowledge about each case were more likely to be pro-prosecution. Further, the more different media sources to which a respondent attended, the greater his/her knowledge of the case. Pretrial knowledge was the best predictor of prejudgment and was relatively independent of other attitudinal and demographic predictors of case bias.

Attempts to relate publicity to actual verdicts are clearly

more difficult than attempts to show prejudice in the public since there is so much variability across specific trials and the particular jurors selected. It is not surprising, therefore, that such attempts are not very revealing. Hough (1970) studied all crimes publicized during six months in the Detroit Free Press. Of 32 defendants whose cases received some news coverage during the first months of his study, six were heard by a jury, and five were convicted. Reuben (1974) identified twenty trials in the Chicago area that had received "massive" pre-trial news coverage. None were convicted. Of course, one cannot tell from these studies what would happen to similar cases that received different news coverage.

Grady (1972) surveyed 205 ex-jurors who had served in 46 cases that had received pre-trial news coverage. Only 9% reported hearing anything other than the fact of a crime and arrest. Of 21 jurors admitting that they had presumed guilt, most reported learning no more from news coverage than the fact of crime and arrest. Although Grady concluded that news coverage exerted little effect, the long time interval between interview and trial, demand characteristics about not prejudging a case, and the fact that over one-half the jurors in these cases either could not be found or refused to participate in the study, lead us to doubt the clarity of this conclusion.

Thus, the available social science literature on the effects of actual news coverage on potential jurors or on actual jury verdicts is not very useful. It appears that news coverage in highly-publicized cases may influence the public, but it is

also possible that those who are pro-prosecution choose to expose themselves to more news and/or remember more of it. There is little evidence of any pervasive effect of news coverage on actual verdicts, although in the cases sampled it would be no surprise that case evidence far outweighs the effects of news coverage.

In order to gather further information regarding the potential conflicts between news coverage and fair trial, we conducted a series of interviews with 15 judges, 9 defense attorneys, 6 prosecutors, 4 media attorneys, 4 law professors, and 20 journalists, drawn as a convenience sample from Chicago, Boston, Atlanta, Milwaukee, Flint (Michigan) and Rockford (Illinois). An additional survey questionnaire was distributed to 150 judges attending classes at the National Judicial College in Reno, Nevada. 96 completed questionnaires from judges in 33 states were returned.

The majority of interviewees were able to recall at least one case (usually a case in which they were involved) where news coverage had posed a threat to the defendant's right to a fair trial. However, the majority of the interviewees felt that the concern over news coverage tends to be exaggerated. Only defense attorneys voiced the opinion that news coverage has a definite impact on jurors. In the Wayne Williams trial, one of the most publicized cases of the decade, very little remedial action was taken by the court. One of Williams' attorneys told us that some of the accepted jurors admitted having fixed opinions about guilt (Mary Welcome, personal communication, August, 1983). The

Williams case is presently being appealed, in part due to the news coverage issue.

There was general consensus that news coverage of cases is more problematic in small towns. Murders, cases involving well-known people or public officials, and sex crimes were considered to draw the most coverage. Prior record, confessions, and inadmissable evidence were considered most prejudicial.

Judges, prosecutors, and reporters were generally of the opinion that existing remedies work. Judges consider jurors to be candid and conscientious, and believe that jurors can set aside preconceived biases and remain impartial. Accordingly, judges are strong believers in voir dire. They relate instances in which hundreds of potential jurors are interviewed before obtaining a jury and treat this as a success for the system. They also find instructions to jurors, sequestration, continuance, additional peremptory challenges and gag orders on attorneys to be useful. Interestingly, over one-half indicate some success in asking for media cooperation in withholding or delaying disclosure of information. Prosecutors were essentially in agreement with judges. Journalists believe that most potential jurors do not even read or listen to the news. Only defense attorneys indicated a need for remedies. They are reluctant to use sequestration because jurors blame the defense for the inconvenience. They often mention change of venue or venire as viable remedies, but change of venue is infrequently granted by judges. They also report that gag orders on attorneys are almost never enforced.

Unfortunately, these opinions are open to a variety of interpretations because they represent the weapons of an adversary system. Judges and prosecutors express the belief that news coverage can be controlled; yet news coverage typically strengthens the state's case. Journalists say they have little impact on jurors, and by so declaring help maintain their access to news and the public. Defense attorneys attack news coverage to keep the media from further damaging their clients and to keep open the practicality of using the publicity issue to manipulate the case or the appeal.

Studies of Simulated Cases

Several studies have focused on the effects of variations in pre-trial news coverage on estimates of guiltiness when no case facts were presented beyond the news stories themselves. These studies attempt to assess a purely prejudicial attitude with no direct evidence that it would carry over into verdicts in a trial. The results are quite consistent. Reports of a confession are most frequently found to increase judgments of guilt (DeLuca, 1979; Tans & Chaffee, 1966; Wilcox & McCombs, 1967). The addition of a prior record also increases judgments of guilt (DeLuca, 1979; Hvistendahl, 1979) although Wilcox and McCombs (1967) fail to find an effect of record. DeLuca (1979) found that reports of a failed lie-detector test also increased guilt ratings. These facts are all considered highly prejudicial in the ABA Standards (ABA, 1978). Interestingly, the addition of favorable facts in a news report does not decrease guilt ratings below control conditions. This includes favorable statements by

the district attorney (Tans & Chaffee, 1966), denial of guilt by the suspect (DeLuca, 1979; Tans & Chaffee, 1966), and passing a lie-detector test (DeLuca, 1979). This is consistent with a sizeable social psychological literature on the greater strength of negative information (Carroll, 1979; Kanouse & Hanson, 1972). The most effective positive fact was a release from custody (Tans & Chaffee, 1966), which is interesting in the light of the effect of bail status on verdicts and sentences (e.g., Eisenstein & Jacob, 1977).

More interesting are the experiments that vary pre-trial news coverage and then show mock jurors transcripts or videotapes of the reenacted trial. In two decades since the first such studies, there have been fewer than a dozen of this type. Given the number of issues involved, the variations in methods, rigor, and realism, it is not surprising that our sum total of knowledge is quite small.

The early prototype of these studies was Simon (1966). She presented subjects from voter registration rolls with either a factual newspaper clippings of a murder case, or sensational clippings with gory details and references to a criminal record. Subjects were asked immediately to state verdict preferences, which were strongly related to their exposure to the news reports. Subjects then heard an audiotaped simulation of the trial, preceded by a judicial admonition to lay aside all preconceptions and to base their verdicts on the evidence, not the speculation of newspapers. Subjects' post-trial judgments of guilt were unaffected by their prior exposure to news. Simon concluded that the judicial admonition led the subjects to "reach

a verdict solely on the basis of what they heard at the trial" (p. 42).

There are several good reasons to question this conclusion. First, without any conditions lacking judicial admonitions, we cannot test the conclusion directly. The absense of an effect for news could be due to other features such as a generally weak case (under 25% voted guilty). Second, the letter inviting participation identified the study as focusing on "the problem of trial publicity." Coupled with the judge's reminder, this creates very strong demand characteristics (Orne, 1962).

Several other studies have investigated the possibly moderating effect of judicial admonitions. Sue, Smith, and Gilbert (1974) used newspaper articles about a gun found in the defendant's room. It was either not the murder weapon or was the murder weapon but the evidence was inadmissable due to an illegal search. Subjects received judicial instructions that either did or did not admonish them to disregard extra-evidential sources of information, including newspapers. After reading a one-page summary of the case, they gave verdicts and rated the defense and prosecution cases. The results are opposite to those of Simon: subjects' verdicts were influenced by news reports (43% to 23% guilty) and this occured regardless of judicial instructions. Further, this effect occurred for female jurors but not for males. Kline and Jess (1966) found an effect for news reports despite judicial admonitions in that jurors still talked about the news stories during deliberation. Sue, Smith, & Pedroza (1975) and Padawar-Singer and colleagues in two studies

(Padawar-Singer & Barton, 1975; Padawar-Singer, Singer, & Singer, 1974, 1977) also found an effect for news reports despite judicial admonitions. The only other study to fail to find such an effect (Keelen, 1979) has several serious methodological problems (e.g., reanalyses of the raw data in the thesis do not correspond with reported effects and tables, Kerr & MacCoun, 1983). In general, the data suggest that judicial admonitions do not eliminate biasing effects of pretrial publicity (cf. Lind, 1982; Sales, Elwork, & Alfini, 1977).

Several studies examine the possibility that jurors whose opinions have been prejudiced by news coverage can be removed by voir_dire, thus preserving a fair trial. Sue et_al. (1975) asked subjects whether they could judge the defendant in a fair and unbiased manner in view of the pre-trial publicity. (Similar questions are used during voir_dire to disqualify jurors.) Those who admitted bias were more likely to convict than those who did not, but, more importantly, a strong effect remained among those subjects who had indicated their impartiality. Padawar-Singer et al (1974) report that voir_dire diminished the effect of news coverage in comparison to subjects who were not selected in this manner. However, what actually happened is that instead of voir_dire reducing the conviction rate among subjects exposed to prejudicial news reports, it appears to have increased the conviction rate among those exposed to neutral news reports. What apparently happened is that all juries for each condition were run before moving on to the next condition; the last condition (No voir_dire/Neutral news) was run after some dramatic

public events that may have inflated conviction rates in that condition.

Several studies have investigated the possibility that jury deliberation may reduce the impact of news coverage. Kline and Jess (1966) found that all four juries exposed to prejudicial reports referred to the news stories during deliberation, contrary to judicial admonitions, and one based its verdict, in part, on the news reports. Davis (1979) found no effect of news reports before or after deliberation, probably because the prejudicial article was seen as biased and lacking credibility. Davis was also the only study to investigate the effects of a delay (one week) on the news impact, but null results in all conditions provide no information. Zanzola (1977) found effects of news coverage after deliberation despite the fact that pre-deliberation guilt ratings showed no effect. Although the effect was due to news reports favorable to the defendant, it illustrates the possibility that group deliberation can exacerbate rather than ameliorate the effects of news coverage. The two experiments by Padawar-Singer and colleagues suggest effects of news coverage after deliberation, but lack of power and lack of pre-deliberation guilt judgments reduce the usefulness of these studies.

Several studies have examined juror characteristics as mediators of the effects of news coverage. Sue et al (1974) found that student jurors and non-student volunteers solicited in various public places both responded to pre-trial news coverage. Sue et al (1975) found an effect of juror authoritarianism on

verdicts, but no interaction of authoritarianism with news. The most interesting results involve sex: Sue et al (1974), Hoiberg and Stires (1973) and Tans and Chaffee (1966) all find greater sensitivity to pretrial news reports among women than among men. However, this effect may be attributable to the use of crimes perceived as more serious by women than by men: the murder of a child (Sue et al, 1974) and a rape (Hoiberg & Stires, 1973). We might therefore expect women to be more concerned with avoiding falsely acquitting a guilty defendant, which in turn would shift the verdict criterion or burden of proof (Kerr, 1978) and make women more sensitive to pre-trial news. In other words, the relative sensitivity of women to news reports may be specific to certain crime types rather than a general susceptibility.

The results of these experiments are mixed-- some studies obtain effects of news coverage, others do not. In general, the studies with individual mock jurors and strong designs have found such effects; studies that failed to find effects have been plagued by methodological problems such as experimental demands, low power, weak manipulations, floor effects, and confounding. Despite claims to the contrary, there is little evidence that the effects of publicity are attenuated by judicial instructions, voir dire, or deliberation. There seems to be reasonable evidence that instructions (Sue et al., 1974) and deliberation (Zanzola, 1977) are ineffective.

In conclusion, our understanding of the effects of news coverage is still fragmentary. There are multiple demonstrations that press coverage of pending trials is strongly related to

public opinion. We have some indication of what is the most prejudicial information (confessions, and then prior record). There is evidence that these effects can carry through a trial to jury verdicts, but there is very little evidence regarding the effectiveness of various remedies applied by the court. Studies are needed that not only reach a high degree of realism in the minds of subject-jurors, but also span the domains of news, cases, and courtroom remedies so as to allow predictions of wher publicity would be a problem and when the remedies under the control of the court are effective (Wells, 1978).

DIRECTIONS FOR FUTURE RESEARCH

There remains a great need to address critical issues about news coverage, juror behavior, and the most important remedies upon which the courts rely-- judicial admonitions, voir dire, continuances and delay, and the process of deliberation. We believe that scientific research offers an appropriate means for providing the kind of information upon which legal codes and procedures can be based. Although no single social scientific study is free from criticism, we believe a body of carefully conducted studies could be assembled over time that would provide appropriate guidance to the courts and other concerned parties. In the final section of the paper, we offer some suggestions for relevant, realistic, and valid research.

Which Remedies?

We believe that initial research attention should

concentrate on voir dire, continuance, judicial instructions, and jury deliberation. These are commonly used and their presumed effectiveness is based on assumptions about juror psychology. Other remedies are of less research interest for various reasons. Recent case law and first amendment concerns have curtailed attempts to limit press freedoms (e.g., prior restraint of publication, Nebraska Press Association v. Stuart, 1976). Changes of venue and venire are expensive, may involve major inconvenience to litigants, and may be viewed as admissions of an inability to deal with news coverage. Perhaps more importantly as far as social science is concerned, the effectiveness of these remedies is less a matter of psychology than of administrative effectiveness (e.g., can an unexposed venue be found?).

Research Emphasizing Realism

An excellent starting point would be research employing realistic cases, publicity, and involved parties. (See Bray & Kerr, 1982, for a review of the debate over realism in jury research.) For example, one possible approach would be to conduct post-trial interviews with actual jurors who served in high-publicity cases (cf. Grady, 1972). They could be asked to recollect the events surrounding the trial, to recall what was said about publicity during the trial and deliberation, whether any of the jurors introduced information originating with the media and, if so, how that information was received by the jury. This method offers a high degree of naturalism, obtaining information on actual trials of interest without being inside the

jury room. However, jurors may not recall, or may systematically distort, their experiences in order to present a favorable image. Further, those who are willing to be interviewed may be unrepresentative of their juries. Attempts should be made to interview as many jurors from each trial as possible and to motivate them to be truthful.

A second realistic method would be the use of shadow juries (e.g., Zeisel & Diamond, 1974) who sit in court and observe one or more actual high-publicity trials, and then deliberate to a verdict. Shadow jurors drawn in a way similar to the actual jurors would then have been similarly exposed to trial publicity. Shadow jury deliberations can be directly observed, thereby avoiding the problems with self-report recollections mentioned above. The shadow jury procedure does have drawbacks. It can be prohibitively expensive, particularly if multiple juries are used and if the trial turns out to take longer than expected, involves continuances, or is settled unexpectedly. It is difficult to ensure comparable shadow jurors unless the court extends its subpoena powers to obtain the shadow jurors and the attorneys conduct a comparable voir dire. Shadow jurors also may behave differently because they know they are being observed and are not actually determining the defendant's fate. Finally, this method suffers from the same internal validity problem as does post-verdict interviews: reliance on juror self-reports of the extent of their exposure to publicity.

Research Emphasizing Control

Highly realistic field studies should be complemented by more carefully-controlled research, even if that research is less naturalistic. Experimental jury simulations are a powerful method (although controversial, Bray & Kerr, 1982; Weitan & Diamond, 1979). In our judgment, studies of this type should focus on the effectiveness of judicial remedies under various circumstances. The basic design would compare three groups of mock jurors: a control group never exposed to any pretrial news coverage who read case facts and deliver a verdict; a group exposed to prejudicial news coverage in a realistic way who then read case facts and deliver a verdict; and a group exposed to the publicity who are given a remedial procedure such as delay between exposure and trial, judicial instructions, or opportunity to deliberate before reaching a verdict.

This general procedure could be used to examine interesting variations in case type, type of publicity, and type of remedy. For example, it would be important to see whether some remedies were more effective for reducing the effects of the heinousness of publicity (its capacity for arousing emotion, Hoiberg & Stires, 1973) or the level of prejudgment in the publicity (its probative value). Does a continuance aid more in letting passions cool or in letting prejudicial facts be forgotten?

Other questions could be addressed within this type of study. Remedies such as judicial admonitions may vary in effectiveness with the number of jurors exposed to news coverage. By systematically studying the effects of remedies and

the composition of juries (one exposed juror vs. two vs. all), this could be expolored.

Voir Dire

Our interviews with judges and attorneys and other research (e.g., Seibert, 1970) suggest that voir dire is the most important remedy for news coverage. Past research on the effectiveness of voir dire has been equivocal (Penrod, 1979; Zeisel & Diamond, 1978) despite the confident assertions of attorneys (e.g., Bailey & Rothblatt, 1971). However, this research has focused on juror predispositions arising from general attitudes about authority, punishment, crime, defendants of a certain type, and so forth, rather than on the ability to detect a specific bias produced by exposure to news coverage. This could be investigated as an adjunct to the experimental studies described above. Mock jurors exposed to different conditions of news coverage could be questioned in a realistic voir dire that would be videotaped. These tapes could be shown to judges and attorneys who would be asked to identify those they would challenge for cause or peremptorially. This could allow an evaluation of whether those jurors exposed to prejudicial news coverage and passed through voir dire would respond in the same way as do jurors not exposed to the news coverage.

An additional assumption underlying voir dire is that subjects can report on their exposure to news coverage and attendant bias with sufficient accuracy to guide challenges. However, it is possible that persons exposed to news coverage may not be able to recall spontaneously the exposure or case details

under voir dire yet recollect this information as they are provided with more cues to memory during trial. This could be tested by constructing a trial and publicity not included at trial. Subjects' recollection for facts outside the trial could be tested before trial (ie. in voir dire) and after trial to see whether some jurors could pass voir dire yet still exhibit prejudice based on exposure to news coverage.

Some Caveats

Naturalism and control are frequently in conflict: gaining more of one may mean sacrificing some of the other. We strongly encourage the use of actual venires as subject populations, realistic publicity and trial situations designed in cooperation with court and media personnel, unlimited jury deliberation times, and realistic remedial procedures. We also stress that it is important to have both naturalism and control, but it is not necessary that each study be high on both characteristics. A series of studies with complementary strengths can provide valid and useful information.

SIGNIFICANCE OF EMPIRICAL RESEARCH

It is our belief that social scientific research has great potential for assisting the court regarding news coverage. As exemplified in the quote from Justice Frankfurter, the courts would like to know when news coverage constitutes a threat to a fair trial, and which available remedies can dissipate this threat without unduly restricting other freedoms. Empirical behavioral research could aid the courts, the press, and the

public in several ways. First, it is possible that news coverage will not affect verdicts under realistic situations. This would strengthen the position of the press that responsible news coverage is not usually a threat to a fair trial and strengthen the position of the court that it is capable of dealing with the media. A second possibility is that news coverage affects verdicts under some situations but not others. If this is the case, research could create a knowledge base capable of addressing issues about self-monitoring and educating the press, informing judges and other court personnel regarding the most effective remedies, and establishing the grounds for bar-press agreements and legislation. Finally, it is possible that research will cast doubt on the effectiveness of widely-used remedies such as voir dire, judicial instructions, and continuances. If so, researchers and policymakers must take steps to inform the press, improve the use of these remedies, or focus on more restrictive methods.

Clearly, one study or one series of studies will not establish the answers to the above concerns. However, carefully-conducted research may provide the basis for improved handling of news coverage. Further parametric studies could examine many aspects of publicity, length of delay, nature of instructions, and so forth. Studies can also address remedies and restraints that are of greater scope such as change of venue, sequestration, and gag orders. Our assumption was that these more restrictive responses could virtually always produce a fair trial, but at a possibly prohibitive cost to our freedoms and the atmosphere of justice.

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