

Advances in Psychology and Law 3

Monica K. Miller · Brian H. Bornstein
Editors

Advances in Psychology and Law

Volume 3

 Springer

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Series editors

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To Matt, for enriching my life every day.
—MM

*To Christie, for embarking with me on new
adventures.*
—BB

Preface

With much excitement, we offer the third volume in the *Advances in Psychology and Law* book series. The initial vision for the series was to contribute to the legal psychology field by providing a book series that publishes thorough reviews of existing research with legal and policy implications. The two previous volumes have done just that—and the current volume continues this theme by providing nine chapters on some of the most current legal issues. We would like to thank Springer, and especially Sharon Panulla and Sylvana Ruggirello, for helping make this book series a reality.

This volume contains nine chapters, each focusing on a different topic within psychology and law. Each chapter provides a thorough but focused review of the legal issue, including a discussion of relevant laws, case law, and legal procedures. Then, the chapters provide a synthesized review of the psychology research and apply it to the relevant legal issues, leading to suggested reforms to the legal system. Authors for each chapter conclude by identifying gaps in the literature that are ripe for further investigation.

This volume's first two chapters address topics related to juries. Ruva reviews the research on the effects of pretrial publicity (PTP), with a focus on how the media landscape has changed due to social media and the Internet. Based on a review of the mechanisms that underlie the PTP effects, Ruva offers some remedies that could prevent PTP from improperly influencing jurors' verdicts.

Myers, Johnson, and Nuñez review the three U.S. Supreme Court decisions concerning the permissibility of victim impact statements, which are testimony that jurors hear regarding the effects the crime has had on the victim and family. They then discuss the legal and psychological controversies: (1) whether impact statements are relevant to the defendant's blameworthiness and capacity, (2) whether they distract jurors from their principal role as decision makers, and (3) whether their inflammatory nature promotes arbitrariness in jurors' decisions.

The next four chapters address issues related to justice for defendants, suspects, and trial litigants. Kelly and colleagues review the law and psychology surrounding *Miranda* warnings. The tension between suspects' rights (e.g., to remain silent and request a lawyer) and the mission of law enforcement (e.g., to obtain a confession

or evidence to help solve crime) has created a body of law fraught with inconsistencies and requirements that are difficult to translate into psychological terms and principles. The body of work reviewed here highlights the implications of these court rulings for suspects.

In the fourth chapter, Brank and Groscup provide an overview of the law and the psychology related to the U.S. Constitution's Fourth Amendment protection from unlawful "search and seizure." The case law in this area makes psychological assumptions about behavior that are not always supported by research. Current issues in this area include the use of canines to search a person and his possessions and the validity of a suspect's consent to be searched.

The next chapter investigates the possibility that litigants (including defendants, but civil litigants as well) might be disadvantaged by biased mental health assessments. Neal and colleagues challenge the assumption that mental health experts who testify in court are "objective" and untainted by bias. They review relevant research from cognitive neuroscience, cognitive psychology, and social psychology to support their contention that forensic experts are likely affected by a variety of cognitive biases that affect their judgments.

The final chapter in this grouping discusses the increasing use of restorative justice principles in legal systems worldwide. Saulnier and Sivasubramaniam provide an overview of the academic literature associated with restorative justice, with a focus on the discrepancy between legal and lay notions of justice and how this discrepancy can hinder the advancement of restorative justice procedures.

The next two chapters address issues related to juveniles who are involved in the legal system. In chapter "Examining the Presenting Characteristics, Short-Term Effects, and Long-Term Outcomes Associated with System-Involved Youths," Taylor and colleagues discuss the variety of ways in which the juvenile justice system can be detrimental to juveniles' short-term and long-term life outcomes. Short-term outcomes include mental health issues, substance abuse, and suicidal tendencies. Long-term outcomes include persistent offending, challenges in obtaining employment, and difficulties establishing relationships.

Pfeifer and colleagues next provide an overview of the research and programs related to Indigenous youth crime across four jurisdictions that have substantial Indigenous populations (Australia, Canada, New Zealand, and the United States). Authors provide a conceptual framework that identifies the various factors that contribute to youth crime and categorizes these factors as systemic or individual. The analysis highlights the role of culture in providing for the needs of youth in each country.

Finally, Reed and colleagues provide a thorough assessment of publication patterns in legal psychology-themed scholarly journals. Their analysis identifies the substantive topics and types of articles published, as well as author characteristics. This analysis helps readers, as well as researchers working in the area, gauge the current state of the law-psychology field.

As this preview of the chapters included in Volume 3 illustrates, the field of psychology and law encompasses a wide variety of diverse topics, which involve the actions of suspects, offenders, witnesses, litigants, factfinders (e.g., juries and

judges), and others. These topics invoke a number of different psychological theories and processes and legal issues. It is our hope that this series will continue to be useful to academics, students, and those in legal occupations.

As with the others in the series, this third volume of *Advances in Psychology and Law* will interest researchers in legal psychology and related disciplines (e.g., criminal justice) as well as practicing attorneys, trial consultants, and clinical psychologists

Reno, NV, USA
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From the Headlines to the Jury Room: An Examination of the Impact of Pretrial Publicity on Jurors and Juries



Christine L. Ruva

Pretrial publicity (PTP) encompasses all media coverage of a case occurring prior to trial (Greene & Wade, 1988; Studebaker & Penrod, 1997). There is great variance in the amount and type of pretrial coverage that cases receive (Bruschke & Loges, 1999). More serious crimes are likely to receive greater amounts of PTP, and this PTP is likely to be anti-defendant (Lieberman & Sales, 2007; Simon & Eimermann, 1971) and contain information that the American Bar Association (ABA, 2016; see ABA Standards, Rule 3.6) regards as potentially prejudicial (Imrich, Mullin, & Linz, 1995; Tankard, Middleton, & Rimmer, 1978). Importantly, substantial PTP that is prejudicial and anti-defendant in nature can bias jurors' opinions of the defendant's character and increase the likelihood of a guilty verdict (see Steblay, Besirevic, Fulero, & Jimenez-Lorente, 1999 for review).

Over the past decade there have been dramatic changes in how the media covers, and the public follows, criminal and civil cases. Coverage of cases by nontraditional media sources (e.g., blogs, Facebook, Twitter, Netflix, YouTube, and Internet news sources) has increased the public's access to case information and removed geographical boundaries. The public's interest in, and the media coverage of, some high-profile cases have resulted in these cases being treated similar to popular TV dramas—with both traditional and social media following them from time of arrest, through the trial process, and beyond (e.g., *Arizona v. Arias*, 2013; *Florida v. Anthony*, 2011; *Florida v. Zimmerman*, 2013; and *Wisconsin v. Avery*, 2007). In such high-profile cases, the clash between citizens' First Amendment right of freedom of speech/press and a defendant's constitutional Sixth Amendment right to a fair trial is highlighted. All of these factors present new challenges for the courts that might not be resolved by traditional court remedies (Brickman, Blackman, Futterman, & Dinnerstein, 2008; Mastromauro, 2010).

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In consideration of the above, this chapter begins by providing a summary of important court decisions involving PTP, as well as the American Bar Association's ethical rules for the dissemination of pretrial information by litigating attorneys (see ABA Standards, Rule 3.6). The second section of this chapter explores the amount and type/slant of PTP (negative-defendant, positive-defendant, and negative-victim) found in various media sources. This section also covers the changing media landscape resulting from the birth of Internet and social media coverage of cases.

The chapter then turns to reviewing the social science research. The third section of the chapter examines methods used by social scientists to explore PTP's effects on juror and jury decisions, summarizing their benefits, limitations, and general findings. The chapter's fourth section explores mechanisms through which PTP influences jurors' decisions, given that in order to make educated decisions regarding how to address PTP bias, researchers must understand the mechanisms that underlie it. In the fifth section of the chapter, the current remedies available to address PTP bias are examined. These remedies are examined in regard to the following: past research, mechanisms responsible for PTP's biasing effects on juror/jury decisions, and the increasing accessibility of pretrial information. Finally, the chapter concludes with future directions for PTP research and policy implications.

The Courts and Pretrial Publicity

This section of the chapter begins by reviewing important Supreme Court decisions involving PTP. It then examines the American Bar Association's ethical rules for the dissemination of pretrial information (see ABA Standards, Rule 3.6). The Supreme Court's decisions, and the ABA's ethical rules, focus on the prejudicial influence PTP can have on a defendant's right to a fair trial.

Important Court Decisions Involving Pretrial Publicity

In criminal cases, a defendant's right to a fair trial is guaranteed under the Sixth Amendment of the US Constitution, and the Fifth Amendment's Due Process Clause. The First Amendment of the US Constitution guarantees freedom of press/speech and the public's right to be informed of criminal proceedings. In high-profile trials containing large amounts of anti-defendant pretrial publicity (PTP), these constitutional amendments are likely to clash. The courts in such cases must decide how to balance these conflicting rights. These attempts to balance defendants' right to a fair trial with the public's right to free speech have, at times, made it to the Supreme Court, which during the 1960s and 1970s made several significant decisions regarding PTP. These decisions spoke to the problems arising from pervasive prejudicial PTP, guidelines for applying remedies for PTP bias, and who has the burden of demonstrating harm from pretrial information.

The first significant Supreme Court decision in the 1960s that dealt with PTP was *Irvin v. Dowd* (1961). The defendant, Leslie Irvin, was granted a change of venue, but then claimed that the widespread inflammatory PTP had also adversely impacted the jury pool in the new venue. The defense requested a second change of venue, which was denied. The Court in *Irvin v. Dowd* (1961) ruled that if a defendant's right to a fair trial would be threatened as a result of adverse effects of PTP, then a defendant's motion for a change of venue should be granted. In addition, the Court ruled that a trial by jury is not fair unless the jury members are impartial. The Court voided the conviction of Leslie Irvin and remanded the case back to District Court for further proceedings. The second major Court ruling in the 1960s was in *Rideau v. Louisiana* (1963), which concluded that when highly prejudicial PTP, as determined by its content and pervasiveness, creates a prejudicial environment, then a change of venue is required to protect a defendant's due process rights.

Following the *Rideau v. Louisiana* (1963) ruling, the Court reversed two lower court convictions due to substantial, pervasive, and prejudicial publicity surrounding the trials. In the first of these cases, *Estes v. Texas* (1965), the Court reversed the swindling conviction of Billy Sol Estes, stating that Mr. Estes' right to a fair trial was violated—mostly due to the large amount of publicity surrounding a televised two-day pretrial hearing. In this decision the Court expressed that “[T]he freedom granted to the press under the First Amendment must be subject to the maintenance of absolute fairness in the judicial process, and, in the present state of television techniques such freedom does not confer the right to use equipment in the courtroom which might jeopardize a fair trial, the atmosphere for which must be preserved at all costs” (U.S. 539-540, p. 381). Then, in *Shepard v. Maxwell* (1966), the Court reversed the murder conviction of Dr. Samuel Shepard, stating that it was impossible for Dr. Shepard to receive a fair trial given the pervasive and massive amount of prejudicial publicity surrounding his trial.

In *Murphy v. Florida* (1975) the court found that defendants could challenge a court's denial of change of venue, but to be successful this challenge must pass the “totality of the circumstances” test. Specifically, the defense has the obligation at voir dire of proving that potential jurors hold “actual” or “inherent prejudice” that makes the granting of a fair trial impossible.

Since the 1970s, there has been only one significant Supreme Court decision in reference to prejudicial PTP, and it was in *Mu'Min v. Virginia* (1991). Mu'Min had been convicted of murder and sentenced to death for killing a woman while out of prison on work detail. Extensive pretrial publicity surrounded the case, and eight of the 12 jurors on his jury admitted, during voir dire, to having seen or heard something about the case. Mu'Min asserted that his right to a fair trial had been violated because the trial judge refused to question prospective jurors as to the specific pre-trial information they had been exposed to. The Supreme Court held that the Fourteenth Amendment's due process clause does not mandate that prospective jurors be queried about specific case information they have seen or heard. Further, the Sixth Amendment's impartial jury requirement is satisfied when prospective jurors refrain from stating that they have been prejudiced by pretrial publicity. This

ruling clarified the extent to which the voir dire need delve into specific PTP information and juror bias.

American Bar Association and Pretrial Information

Along with the Supreme Court's decisions in regard to PTP's potential to impede a defendant's right to a fair trial, the American Bar Association has formulated ethical rules for the dissemination of pretrial information by litigating attorneys (ABA, 2016; see ABA Standards, Rule 3.6). These ethical rules indicate categories of information considered prejudicial, and that should therefore not be disseminated to the press (Rule 3.6—Comment). These categories include: (1) character, credibility, reputation, or criminal record of the accused; (2) possibility of guilty pleas, existence of a confession, admission, or statement or refusal to make statement; (3) performance/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) statement that the defendant is accused of crime, unless accompanied by statements that this is merely an accusation and defendant is innocent until proven guilty. Under Rule 3.8 (ABA, 2016), prosecutors have the additional obligation to refrain from making statements that are likely to increase condemnation of the defendant.

The ABA Standards (2016) also include a "Right to Reply" (Rule 3.6)—a lawyer may "make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client." This right of reply, however, is limited only to "such information as is necessary to mitigate the recent adverse publicity." This right has come into question in recent high-profile cases (e.g., see Mosteller, 2007 for a review of the 2006 Duke Lacrosse Case; *FL v. Zimmerman*, 2013), and will be discussed further below.

Amount and Types of Pretrial Publicity in High-profile Cases

Cases making their way towards trial vary widely in the amount and type of pretrial media coverage they receive (Bruschke & Loges, 1999). This section of the chapter explores how the amount and type/slant of PTP (negative-defendant, positive-defendant, and negative-victim) affects juror bias. It also examines how the changing media landscape is influencing the amount and type of pretrial information disseminated to the public (Mastromauro, 2010).

Although the Supreme Court and the ABA have provided strong statements as to the threats that prejudicial publicity imposes on a defendant's right to a fair trial, there are ample examples of recent cases in which the pervasiveness of highly prejudicial PTP call into question the violation of this fundamental right (e.g., Scott

Peterson's 2004 first-degree murder conviction and subsequent death sentence, Phil Spector's 2009 conviction for second-degree murder at his second trial, Rod Blagojevich's 2011 convictions on 17 corruption charges, and Jodi Arias' 2013 first-degree murder conviction and subsequent life sentence without possibility of parole). Also of concern, content analyses of media sources have found that more serious crimes are likely to receive greater media coverage than less serious crimes, and news stories about crime are likely to contain information that the ABA (2016) has indicated impedes a defendant's right to a fair trial (i.e., negative statements about the defendant's character, reference to the defendant's guilt, reports of confessions, and prior criminal record of the accused; Imrich et al., 1995; Simon & Eimermann, 1971; Tankard, Middleton, & Rimmer 1978).

How the Amount of Publicity Affects Juror Bias

Shaffer (1986) suggests there might be a cumulative effect of PTP on jurors' attitudes and decisions, which is supported by the small amount of research exploring the influence of PTP quantity on juror bias. For example, DeLuca (1979) found that mock-jurors exposed to three pieces of anti-defendant information were more likely to render guilty verdicts than jurors exposed to only one or two pieces of this information. In a more recent study, Daftary-Kapur, Penrod, O'Connor, and Wallace (2014) exposed jurors to either five (low amount condition) or ten (high amount condition) pretrial news stories that were either anti-defendant, pro-defendant, or unrelated to the case. They found that, for jurors exposed to anti-defendant articles, those receiving high amounts of PTP were more likely to vote guilty than those receiving low amounts of PTP. For the pro-defendant PTP, jurors exposed to high amounts were less likely to vote guilty than those exposed to low amounts of PTP.

Surveys of potential jurors also indicate that as the amount of PTP exposure increases, so does potential juror bias. For example, surveys of jury eligible adults conducted by Costantini and King (1980/1981; three murder cases) and Moran and Cutler (1991; two drug cases) found that, as potential jurors' reported knowledge of a case increased, so did bias against the defendant. Importantly, Moran and Cutler found that potential jurors' knowledge about a case was not related to their self-reported ability to be impartial. Finally, Shaffer (1986) found that, for the five murder cases explored, the number of PTP articles appearing in a newspaper, as well as respondents' estimates of their amount of PTP exposure, were predictors of attributions of guilt.

The research above suggests that, as the quantity of PTP increases, so does its biasing effect on jurors' decisions, supporting both the Supreme Court's decisions and the ABA's ethical rules regarding the biasing influence of pervasive anti-defendant PTP. Importantly, the pervasiveness of PTP in high-profile cases is likely to increase in the future. This is due to changes in how high-profile cases are covered, especially the implementation of both Internet and social media, which the chapter now turns.

The Changing Media Landscape

The Supreme Court's decisions regarding PTP, in the 1960s and 1970s, came at a time of dramatic change in the manner in which trials were covered by the press. The emergence of broadcast journalism—radio in the 1930s followed by television in the 1950s and 1960s (New York Film Academy, 2015)—not only allowed journalists to reach a much larger audience but also allowed for the broadcasting of pretrial hearings and entire trials. In recent history, the media landscape has once again dramatically changed—mostly resulting from the birth of the Internet and social media—allowing for new forms of communication and ways of broadcasting information surrounding trials (e.g., Facebook, Twitter, personal websites and blogs, YouTube, iTunes podcasts, and Netflix).

These new forms of pretrial coverage have increased the reach of prejudicial pretrial information, and in recent years have outpaced traditional news sources (Mastromauro, 2010). The Pew Research Center for Internet, Science, and Technology (2017a) found that today nearly 70% of Americans use some type of social media “to connect with one another, engage with news content, share information and entertain themselves,” which is up from just 5% in 2005 when they began tracking social media use (see also, Greenwood, Perrin, & Duggan, 2016). Americans' Internet use has also increased dramatically over the past 16 years, from approximately 50% of all American adults being online in 2000 to 90% in 2016 (Pew Research Center, 2017b).

Not only do these nontraditional news sources have the potential of reaching greater numbers of people, experiencing no geographical bounds, but they also allow for the dissemination of pretrial information that is more prejudicial, gruesome, erroneous, and that makes direct accusations of the defendant (Mastromauro, 2010). Nontraditional Internet news sources do not have the same standards as traditional media sites and are often unchecked or uncensored (Mastromauro, 2010). In addition, online media sources often contain comment sections, which encourage viewers/readers to provide their opinions of the case and defendant. Therefore, these online sources contain opinions and information not found in traditional media sources (Ward, 2008). High-profile trials also provide the perfect fodder for bloggers, who can work for newspapers, be ordinary citizens, or legal professionals/attorneys (Duncan, 2009). The *American Bar Journal* coined the term “blawggers” to refer to law bloggers (McDonough, 2015) and has published articles informing attorneys on how to develop and promote legal blogging (Lear, 2015). The end result of these commentary pages and blogs is that ordinary citizens (potential jurors) and attorneys are not only consumers of the news but also reporters of it and commenters on it (Rainie, 2005; Ward, 2008).

Finally, neither traditional nor nontraditional media websites are confined to a specific moment in time. Instead, the Internet allows access to pretrial information days, weeks, or even years after the original posting, and allows for an individual to access the material over and over again. This makes it more complicated for the

courts, in high-profile cases, to seat a jury that has not been exposed to prejudicial media coverage.

In some high-profile cases, the social media coverage began in force prior to arrest, and might have played a role in securing an arrest. For example, on March 8th of 2012, the parents of 17-year-old Trayvon Martin, who was shot and killed in Sanford, Florida on February 26th 2012, created a petition on Change.org. This petition called for a full investigation of their son's death and the arrest of George Zimmerman, who was the acknowledged shooter. On March 17th 2012, after the release of the 911 call, the Zimmerman case became the first story of the year to have more traditional media coverage (19% of available newspaper and broadcast space) than the presidential race (14% of available newspaper and broadcast space; Pew Research Center, 2012). Also during this time, 21% of Twitter conversation expressed outrage at Zimmerman/calls for justice (Pew Research Center, 2012). By March 22, 2012 the Change.org petition had more than 2.2 million signatures that were presented to the Sanford City Commission by civil rights leader Jesse Jackson. Subsequently, a special prosecutor appointed by Florida Governor Rick Scott charged George Zimmerman with murder. Hence, this pre-arrest/pre-indictment publicity might have been influential in securing a murder charge in this case.

The anti-defendant media coverage of George Zimmerman followed the defendant throughout his trial and beyond. To counter the "avalanche of misinformation," George Zimmerman's attorney, Mark O'Mara, used the Internet and social media, setting up a Legal Defense website (<http://gzlegalcase.com/>), Twitter page, and Facebook account (Brook, 2012; Weis, 2012). The judge in the Zimmerman case refused the prosecution's request for a gag order that would prevent Mr. O'Mara from blogging. As mentioned above, the ABA Standards do provide litigating attorneys with the "Right to Reply" (Rule 3.6) to substantial prejudicial PTP in order to mitigate adverse effects caused by such PTP.

As the Zimmerman case demonstrates, the increasing use of the Internet and social media by the public and attorneys is likely to result in significant changes in the amount and types of pretrial information surrounding cases. How these new forms of pretrial coverage will affect juror bias, and the courts' ability to successfully protect defendants' right to a fair trial, are questions that the chapter will delve into below.

Types of Slants of PTP

The prosecution typically has the advantage regarding media coverage in high-profile cases (Dexter, Cutler, & Moran, 1992), with most PTP being pro-prosecution or anti-defendant (Imrich et al., 1995; Lieberman & Sales, 2007). As the media coverage surrounding *FL v. Zimmerman* (2013) demonstrates, some media savvy defense attorneys and defendants are taking the initiative to counter the anti-defendant coverage, getting their version of the story out. For example, some defendants and/or defense attorneys have set up websites, used Facebook, Twitter, blogs,

YouTube or radio, and TV interviews (e.g., George Zimmerman, Casey Anthony, and Steven Avery) in an attempt to present themselves in a positive light, or portray the victim in a negative one. In their article on PTP's influence on the courtroom, Lofink and Mullaney (2013) suggest that defense attorneys deal with PTP by "framing the media narrative early in the process" through the use of blogs, social media, and the Internet. They also suggest that defense attorneys "challenge the prosecution's narrative and the public's presumption about facts" by using these forms of media, and in essence pushing the limits of the ABA's guidelines for contact with the media and right to reply. Therefore, these new forms of media, and attorneys' increasing knowledge and use of them, has resulted in multiple types or slants of prejudicial PTP (e.g., anti-defendant, anti-victim, or pro-defendant) in some high-profile cases. The chapter now examines the research exploring how these various types or slants of PTP can influence jurors' decisions and impressions.

Negativity Bias

Research on the negativity bias has found that negative information has a greater effect than positive or neutral information on people's perceptions of others and impression formation (Kisley, Wood, & Burrows, 2007; Rozin & Royzman, 2001; Vaish, Grossmann, & Woodward, 2008). Ruva and McEvoy (2008) found some evidence for negativity bias, with negative-defendant PTP having a larger effect on guilt measures than positive-defendant PTP. In contrast, Daftary-Kapur et al. (2014) found that pro-defense PTP had a greater impact on guilt decisions than anti-defendant PTP. Also of interest, Bornstein, Whisenhunt, Nemeth, and Dunaway (2002) examined whether PTP could bias jurors against defendants or plaintiffs in a civil trial. They found that anti-defendant PTP had a stronger effect on liability judgments and perceptions of plaintiff sympathy, as compared to anti-plaintiff PTP. Therefore, the relative influence of different PTP slants might be case- or defendant-specific. Some defendants might benefit greatly from positive-defendant PTP or anti-plaintiff PTP, while others will not. The research discussed below suggests that all types or slants of PTP can significantly influence jurors' impressions of defendants and guilt decisions.

Negative-defendant PTP: Given that negative-defendant PTP is most prevalent and can threaten a defendant's right to a fair trial, especially in high-profile cases, it is not surprising that PTP researchers have focused most of their attention on negative-defendant PTP. Extensive research supports the contention that negative-defendant PTP can bias juror decision making by rendering a juror incapable of determining a verdict based solely on trial evidence (see Steblay et al., 1999 for review). Specifically, research has found that jurors who are exposed to negative-defendant PTP are more likely to find the defendant guilty and view the defendant as less credible than jurors who are not exposed to PTP (Kerr, Niedermeier, & Kaplan, 1999; Kramer, Kerr, & Carroll, 1990; Otto, Penrod, & Dexter, 1994; Ruva, McEvoy, & Bryant, 2007). Negative-defendant PTP also influences jurors'

interpretation of trial evidence (Hope, Memon, & McGeorge, 2004; Otto et al., 1994; Ruva, Guenther, & Yarbrough, 2011; Ruva, Mayes, Dickman, & McEvoy, 2012) and the way jurors discuss ambiguous trial evidence during jury deliberations (Ruva & Guenther, 2015; Ruva & LeVasseur, 2012), pushing both toward an anti-defendant slant. In addition, negative-defendant PTP elicits negative emotional responses in jurors (Kramer et al., 1990; Ruva et al., 2011). Finally, exposure to negative-defendant PTP can influence jurors' memory for trial evidence by making it difficult for jurors to distinguish information obtained prior to trial (PTP) from information obtained during trial (source memory errors; Ruva & Guenther, 2015; Ruva & McEvoy, 2008; Ruva et al., 2007).

Positive-defendant PTP: As compared to negative-defendant PTP, far less research has focused on the biasing effects of positive-defendant or pro-defendant PTP. Positive-defendant PTP paints the defendant in a positive light, and is most likely to exist in trials involving rape or murder, as well as those in which the defendant is a celebrity or police officer (Daftary-Kapur et al., 2014). Some of the research examining how positive-defendant PTP influences jurors' decisions and impressions has used general PTP (not case-specific; Greene & Wade, 1988; Kovera, 2002; Woody & Viney, 2007). Research using case-specific positive-defendant PTP has found that it too influences jurors' decisions, impressions, interpretation of trial evidence, and memories. Specifically, jurors exposed to pro-defendant PTP are more likely to vote *not* guilty and perceive the defendant as *more* credible when compared with no-PTP controls, thus resulting in a pro-defense bias (Daftary-Kapur et al., 2014; Ruva, Dickman, & Mayes, 2014; Ruva et al., 2011; Ruva & McEvoy, 2008). In addition, jurors exposed to pro-defendant PTP are more likely, compared to jurors exposed to negative-defendant PTP or no-PTP controls, to misattribute the source of this PTP information to the trial (Ruva & McEvoy, 2008) and interpret trial evidence in favor of the defendant (Ruva et al., 2011; Ruva et al., 2012).

Negative-victim PTP: Negative-victim PTP involves using negative language to describe victims and/or portraying their actions as contributing to their victimization. While it is common for the media to focus on the accused, in certain cases the media has focused on blaming the victim by portraying the victim, at some level, to be at fault for the alleged crime (Taylor, 2009). Negative-victim PTP is prevalent for certain types of crime (e.g., rape, sexual assault, and domestic violence), and has been found to have an effect on jurors' decisions (Franiuk, Seefeldt, Cephess, & Vandello, 2008; Taylor, 2009). For example, Franiuk et al. (2008) found that when mock-jurors were presented with anti-victim stories, as opposed to pro-victim stories, they were more likely to believe that the defendant was *not* guilty and that the victim was lying. In addition, Daftary-Kapur et al. (2014) found that jurors in the pro-defense PTP condition (consisting of a mixture of pro-defendant and anti-victim PTP) were less likely to find the defendant guilty than the no-PTP controls. Similarly, Ruva and Guenther (2017) found that jurors exposed to anti-victim PTP were more likely to find the defendant *not* guilty, rate the defendant as more credible, and the trial evidence as being more supportive of the defendant than jurors not exposed to PTP. They also found that the effect of PTP on guilt ratings was mediated by jurors' ratings of trial evidence and defendant credibility. Specifically, PTP

imparted its biasing effects on jurors' guilt ratings by pushing their ratings of defendant credibility and trial evidence in the direction of the PTP bias (toward favoring the defendant if jurors were exposed to anti-victim PTP). Caution should be taken in interpreting the effect of negative-victim PTP on juror bias, given the small amount of research examining its influence on jurors' decisions.

Mixed PTP exposure: In their review of naturally occurring PTP, Daftary-Kapur et al. (2014) and Franiuk et al. (2008) discovered that, for some high-profile cases, multiple types of PTP (e.g., anti-defendant and anti-victim) are present. The prevalence of multiple types of PTP in high-profile case is only likely to increase as the accessibility to, and use of, nontraditional media outlets increases (e.g., Facebook, Twitter, and YouTube), as well as their implementation into the litigation process. Therefore, along with understanding how each type of PTP independently influences jurors' decisions and impressions, it is also important to understand how exposure to multiple PTP slants influences them.

Only two studies (Ruva et al., 2012, 2014) have explored how PTP effects on guilt decisions differ for jurors exposed to pure-PTP (e.g., exposure to only negative-defendant PTP) as opposed to jurors exposed to mixed-PTP (e.g., exposure to both negative-defendant and positive-defendant PTP). Ruva et al. (2012, 2014) exposed participants to either pure PTP or a mixture of pro-defendant and anti-defendant PTP over a period of 10–12 days. The mixed PTP exposure occurred either in an *alternating* (exposure episodes alternated between pro-defendant and anti-defendant) or *blocked* (jurors were exposed to all of the PTP articles of one slant before being exposed to the articles of the other slant) fashion. Both studies found that pure negative-defendant PTP jurors were more likely to vote guilty than pure positive-defendant PTP jurors. These studies also found that mixed PTP exposure presented in an alternating fashion resulted in a reduction of PTP bias (resembling no-PTP controls). However, Ruva et al. (2012) found that mock jurors who received a blocked mixture of negative-defendant PTP followed by positive-defendant PTP showed a primacy effect (i.e., negative-defendant PTP had the greatest impact), and their verdicts did not differ from pure negative-defendant PTP jurors. Interestingly, jurors in the blocked condition who received pro-defendant PTP first were most similar to jurors in the no-PTP control, suggesting a leveling of PTP bias. Ruva et al.'s (2014) findings differ from Ruva et al.'s (2012) in that the former found a reduction of PTP bias on verdicts for both the blocked and alternating groups. However, Ruva et al.'s (2014) guilt rating analyses (combination of guilt and confidence) suggested a recency effect, with those receiving negative-defendant PTP last closely resembling those in the pure negative-defendant PTP condition.

Although the results of these mixed PTP studies suggest that juror exposure to certain combinations of differing PTP slants might result in a reduction of bias, it should be noted that it is unlikely that equal amounts of negative-defendant and positive-defendant PTP would surround an actual case. Even more unlikely would be for traditional or social media to present these two types of PTP in an alternating fashion, and then for jurors to be exposed to this information in an alternating fashion. Therefore, much more research is needed before conclusions can be made on how various slants of PTP work in combination to bias jurors' decisions.

The research above suggests that all types or slants of PTP can influence jurors' guilt decisions, with negative-defendant PTP being especially problematic given its ability to bias the jury pool against the defendant—hence denying the defendant his/her right to a fair trial by an impartial jury. That being said, both positive-defendant and negative-victim PTP challenge the associated burden of proving guilt, which is placed on the prosecution. Therefore, understanding the influence of all PTP types/slants on juror bias is important. Social scientists have various methods they can employ to study these influences, with each having its benefits and limitations. These methods are the focus of the next section of this chapter.

Research Methodologies Used to Explore Pretrial Publicity's Biasing Effects

The effect of PTP on juror bias has been examined using three main methods: (1) surveys of actual or potential jurors, (2) jury simulation research/experiments, and (3) meta-analysis. Given that most of the research using these various methods is presented elsewhere in this chapter, only a brief discussion of the methodology will be presented here.

Survey Research

Survey studies exploring PTP's effects on prospective juror bias can be conducted solely for research purposes, but many have been conducted to assess the level of anti-defendant bias held by potential jurors in actual criminal cases (Studebaker & Penrod, 1997). Several of these survey studies have shown a strong relationship between the amounts of case information prospective jurors can report and their perceptions of defendant guilt (Costantini & King, 1980/1981; Moran & Cutler, 1991; Nietzel & Dillehay, 1983). For example, Moran and Cutler (1991) conducted surveys of prospective jurors in two high-profile cases and found a significant correlation between knowledge of case specifics and perceived culpability of the suspects. However, knowledge of case specifics was not correlated with prospective jurors' self-reported ability to be impartial. The authors concluded that negative-defendant PTP could prejudice potential jurors against a defendant and that self-reports of impartiality should not be taken at face value.

Surveys of prospective jurors benefit from high verisimilitude or realism, in that they query actual potential jurors about case relevant information. Realism is important given that judges might highly value it and some have dismissed scientific research due to a lack of it (e.g., *Ballew v. Georgia*, 1978; *Lockhart v. McCree*, 1986). Survey research also has several limitations. First, survey research does not clearly link exposure to PTP with biased jury decision making. The impact of PTP

could be attenuated by the presentation of evidence at trial and jury deliberations. Therefore, the relationship between exposure to negative-defendant PTP and jury decision making might not be as strong as would be expected from survey research (Otto et al., 1994). Second, survey research does not allow for exact measurement of types and amounts of PTP that prospective jurors are exposed to. Instead, survey research relies on self-reports or indirect measures (e.g., memory reports) of PTP exposure. Finally, surveys suffer from a lack of control over extraneous variables, and without this control, researchers cannot make causal inferences (e.g., that exposure to PTP causes bias). Properly conducted jury simulation research does not suffer from these limitations, and has consistently shown that trial evidence presentation alone cannot eliminate the biasing effects of PTP (see Steblay et al., 1999 for review). That being said, no research method is perfect and below we review both the benefits and limitations of jury simulations.

Jury Simulation Research

Much of the research cited in this chapter consists of jury simulations or controlled experiments, which involve manipulations of variables under controlled conditions, resulting in increased internal validity over survey research. This control allows researchers to determine causal relationships between exposure to PTP and juror bias. One major advantage of jury simulations is that they allow researchers to systematically vary the amount and type of pretrial publicity that participants are exposed to, obviously something that is not possible with actual jurors. This systematic manipulation of amount and type of pretrial publicity makes it possible to determine their effects on juror decisions and impressions.

Another major advantage of jury simulation research is that it allows for the examination of the processes that influence jurors' and juries' decisions. As Bornstein et al. (2017) point out, it is important to explore not only the types of decisions jurors and juries make but also how they arrive at these decisions. At the juror-level these processes include, but are not limited to, how individual jurors' impressions, attitudes, memories, perceptions, and emotions influence their decisions. At the jury level the focus is on the deliberation process and how both individual and group-level mechanisms (e.g., group polarization, leniency shift, collaborative memory, and social decision schemes) influence jury decisions. As the review of mechanisms responsible for PTP's influence on guilt decisions will reveal, much has been learned about these processes through jury simulation research.

Experimental simulations do come with some costs. First, the systematic control over variables, which is the hallmark of experiments, results in lowered ecological validity and realism than field research (e.g., research on actual juries in a courtroom setting). That being said, most jury simulations attempt to create a realistic trial experience in a controlled experimental setting. These jury simulations differ

widely in the degree of ecological validity or realism. It is a balancing act in which researchers need to maintain control over variables studied (internal validity), in order to infer causation, while at the same time attempting to make their stimuli and procedures as close to the real world as possible (ecological validity). PTP researchers can increase the ecological validity of their jury simulations by using actual news stories surrounding an actual trial. Additionally, they can have jurors deliberate to attempt to come to a unanimous verdict. The ecological validity of the trial stimuli can vary from trial transcripts (e.g., Daftary-Kapur et al. 2014; Hope et al., 2004) to videotape footage of actual trials (e.g., Otto et al., 1994; Ruva et al., 2007) to simulated reenactments with the roles of judges and attorneys being played by actual judges and attorneys (e.g., Kramer et al., 1990). The modality of PTP presentations can also vary from several written news articles (e.g., Daftary-Kapur et al., 2014; Ruva & McEvoy, 2008) to audiotaped presentations (e.g., Kramer et al., 1990) to videotaped television broadcasts (e.g., Ogloff & Vidmar, 1994; Wilson & Bornstein, 1998).

A second limitation of simulation research is that much of it uses college students as mock-jurors, which brings up questions regarding the representativeness of these samples, and hence their generalizability to the population of interest (i.e., actual jurors). In a recent meta-analysis of 53 jury simulation studies (40 criminal and 13 civil: $N = 17,716$), Bornstein et al. (2017) examined whether type of sample (student vs. nonstudent) had an effect on various outcome measures for criminal (i.e., guilty verdicts, continuous guilt/culpability, and sentencing) and civil (i.e., liability verdicts, continuous liability, and damages) cases. Bornstein and colleagues found no significant differences between samples for guilty verdicts, culpability ratings, and damage awards. That is, students were not more likely to find the defendant guilty, rate the defendant as more culpable, or award more in damages than nonstudents. The only statistically significant differences found between sample types were for liability judgments (both dichotomous and continuous measures), which had contradictory effects and therefore make the results difficult to interpret. Specifically, when compared to nonstudents, students were more likely to find defendants liable (liability verdict $d = 0.19$), but rated defendants lower in liability ($d = -0.11$). As for moderator effects, the authors note that “with the exception of trial presentation medium, moderator effects were small and inconsistent” (Bornstein et al., 2017, p. 13). Trial presentation medium (written summaries vs. others) moderated the effect of sample type on both guilty verdicts and culpability ratings. Specifically, student samples were more likely to render guilty verdicts and rate the defendant as more culpable when written summaries were used; however, no differences between sample types were found when other types of trial stimuli were used. This finding suggests that trial stimuli having greater ecological validity (e.g., videotaped trials or live trial simulations) might eliminate sample differences in regard to verdicts and culpability ratings. Bornstein et al. suggest that their findings could help to lessen the concern associated with the use of student samples in jury simulation research.

Meta-Analysis

Meta-analysis is a statistical procedure for combining the results from multiple studies in order to determine the overall effect of a variable (PTP) on a number of outcome variables (verdicts and impressions). To date, only one published meta-analysis on PTP effects has been conducted (Stebly et al., 1999). This meta-analysis included both jury simulation and survey research from 23 studies. These studies consisted of 44 empirical tests representing 5755 participants. Consistent with the research reviewed above, Steblay et al. found that mock-jurors exposed to negative-defendant PTP were significantly more likely to find that defendant guilty than those not exposed to PTP. Additionally, Steblay et al. found larger PTP effects in studies that included the following: nonstudents as opposed to students, actual PTP, multiple PTP components (e.g., crime details, arrest information, confession, prior record, and incriminating evidence), exposure to PTP at multiple points in time, a more serious charge (e.g., murder or sexual abuse), a greater delay between PTP exposure and decision, and surveys as opposed to jury simulations. They also observed that while PTP's effect was greatest prior to trial presentation, it persisted throughout pre- and post-deliberation verdict decisions.

In summary, all of the methods discussed above converge on a single conclusion—exposure to negative-defendant PTP biases jurors against the defendant. The chapter will now explore the important question of how PTP influences jurors' decision.

Mechanisms Responsible for PTP's Influence on Jurors' Decisions

It has been well established that PTP can have powerful effects on jurors' decisions regarding a defendant's guilt. To inform the courts on the types of remedies that will be most effective in reducing PTP bias, social scientists must understand the mechanisms that are responsible for this bias. Research has found that PTP imparts its biasing effects on jurors' decisions by influencing jurors': interpretation of trial evidence (Carlson & Russo, 2001; Hope et al., 2004; Ruva et al., 2011), impressions of defendants and attorneys (Kramer et al., 1990, Otto et al., 1994; Ruva & Guenther, 2015), emotional responses (Kramer et al., 1990; Ruva et al., 2011), and ability to discriminate the source of case information (PTP vs. trial; Ruva et al., 2007; Ruva & McEvoy, 2008). Therefore, research suggests that multiple mechanisms are responsible for PTP's biasing effects. Each of these mechanisms is reviewed in the subsections below.

Evidence Interpretation

It is a common assumption that people can be unbiased if they set their mind to it. Unfortunately, there is a wealth of social science research and theory that suggests otherwise (Kramer et al., 1990; Nisbett and Wilson 1977). Exposure to PTP biases jurors' processing of subsequent case information. Specifically, exposure to PTP influences what trial evidence jurors pay attention to, how much weight they give to this evidence, and whether they interpret this evidence as supporting the defense's or prosecution's case.

Primacy effects: Primacy effects have been found in a variety of situations and simply refer to early information being better remembered, or having greater influence on decisions and impressions, than later information (see Hurlstone, Hitch, & Baddeley, 2014 for review). Recency effects refer to situations in which information presented last has a greater influence on decisions and impressions than information presented earlier (Hurlstone et al., 2014 for review). Importantly for the discussion of PTP bias, research suggests that recency effects disappear with the institution of a delay, but primacy effects remain (Craik, 1970; Greene, 1986; Luchins & Luchins, 1970; Mayo & Crockett, 1964; Tan & Ward, 2000). The attention decrement hypothesis has been employed to explain how primacy effects occur. Specifically, when only a single judgment is required at the end of information presentation (e.g., verdict), primacy effects result from the reduced attention to information presented later, after an impression or decision is formed (Anderson, 1971). These primacy effects have also been explained via belief perseverance. Once an idea/belief is formed, it is resistant to change even after the basis for the belief has been refuted (Anderson, Lepper, & Ross, 1980; Anderson & Lindsay, 1998; Ross, Lepper, & Hubbard, 1975). All of this suggests that case information presented first (PTP) will have a greater influence on jurors' impressions and decisions than case information presented later at trial.

There is evidence of early case information having an influence on jurors' evaluation of later case information. For example, Schum (1993) found that 48% of his participants either ignored testimony that conflicted with prior evidence or interpreted it as agreeing with the earlier testimony. Schum attributed these findings to a type of primacy effect in which early information biases the interpretation and weight given to subsequent information. PTP is not trial evidence and therefore its effect on the jurors' interpretation of later case evidence might operate differently. That being said, Davis, Spitzer, Nagao, and Stassen (1978) found that jurors' pre-trial biases (pro-prosecution or pro-defense) influenced the evaluation and weight given to the trial evidence. The results from both of these studies are consistent with Anderson's (1971) discounting explanation discussed above. Also consistent with the discounting explanation, Devine and Ostrom (1985) found that mock-jurors discounted inconsistent testimony in order to create a story that explained the trial events. This desire of jurors to create a coherent and complete trial story is explained by the story model, which the chapter now discusses.

The story model: The story model provides an explanation of how PTP influences jurors' decisions (Pennington & Hastie, 1986, 1993), which incorporates processes related to primacy effects discussed above. The story model posits that jurors use both information presented at trial and information that they come to trial with (e.g., PTP and knowledge about crime categories) to create cognitive frameworks through which all subsequent trial information is filtered and interpreted. Jurors have a desire to create a complete and coherent trial story. If jurors can create a complete story from early PTP information, later PTP or trial information that does not fit this story might be ignored or devalued, resulting in a primacy effect in which early information (PTP) has a greater effect on jurors' judgments than later information (Trial). Predecisional distortion theory also posits that early case information can bias jurors' interpretation of later case information.

Predecisional distortion theory: Predecisional distortion theory (Carlson & Russo, 2001) proposes that rather than weighing trial evidence according to its actual probative value, jurors will distort evidence to support their favored side (prosecution or defense). Research has shown that this distortion increases throughout the trial, as jurors' confidence that the favored side will win increases, and ultimately influences verdicts (Carlson & Russo, 2001; Russo, Meloy, & Medvec, 1998; Russo, Meloy, & Wilks, 2000). Jurors who are exposed to PTP are likely to come to trial with a favored side (e.g., negative-defendant PTP = prosecution favored), and might begin distorting trial evidence to support their favored side early during trial evidence presentation.

In order to examine whether PTP does result in predecisional distortion in the direction of the PTP bias, Hope et al. (2004) and Ruva et al. (2011) exposed mock-jurors to either negative-defendant PTP or unrelated news stories. Results from both studies found significantly higher levels of predecisional distortion (biased toward the prosecution) for jurors exposed to negative-defendant PTP, as well as an increase in the percentage of guilty verdicts. Both researchers suggested that primacy effects played a role. Specifically, when jurors are exposed to negative-defendant PTP and then early at trial favor the prosecution's case, it will be very difficult for mitigating evidence to be accurately weighed due to predecisional distortion. Additionally, Ruva et al. (2011) found that jurors exposed to positive-defendant PTP had significantly lower predecisional distortion scores (biased toward the defense), and were less likely to vote guilty than jurors in the no-PTP and negative-defendant PTP conditions. Importantly, both sets of researchers found that predecisional distortion of trial evidence mediated the effect of PTP on juror decisions. Therefore, exposure to PTP resulted in jurors interpreting trial evidence to favor the side that was favored in the PTP (prosecution or defense), and these biased interpretations influenced their guilt decisions. It should be noted that Ruva et al.'s findings suggest that both negative-defendant and positive-defendant PTP influence jurors' decisions through predecisional distortion.

The research above focuses on juror-level decisions, but there is also jury-level research that suggests predecisional distortion (or similar primacy effects) can affect how jurors discuss trial evidence during deliberations. As part of their analyses for two large jury studies, Ruva and associates (Ruva & Guenther, 2015; Ruva &