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Discredited Evidence and the Likelihood of a Conviction by a Jury Using the Juror Bias Scale

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Abstract
The present study examines whether mock jurors presented with discredited evidence will show less ability in delivering an objective verdict than mock jurors who have not been presented with discredited evidence. Undergraduate participants \((N = 27)\) were randomly presented with original mock criminal trial scenarios containing either credited or discredited evidence, and were then asked to complete the Juror Bias Scale in order to measure bias. Participants presented with discredited trial scenarios were more likely to favor the prosecution (p-biased), and those presented with credited trial scenarios were more likely to favor the defense (d-biased). The results indicated that the p-bias scores of participants who received discredited scenarios did not show a considerable difference from the p-bias scores of participants who received credited scenarios. Similarly, the d-bias scores for participants who received discredited scenarios also did not show a sizeable difference from the d-bias scores of participants who received credited scenarios. Further analysis yielded a significant interaction between probability of commission and reasonable doubt. With credited trial scenarios, probability of commission increased and reasonable doubt decreased, although with discredited trial scenarios, probability of commission decreased and reasonable doubt increased.

Key Terms: Bias, Evidence, Jury, Creditable, Discreditable

The legal system is a complex and multi-faceted entity, which is composed of several different levels and consists of various intertwining elements. Trial proceedings are an important element in that they consist of opposing parties that come together in order to dispute differences in hopes of coming to a resolution. The proficiency of all participants involved in these proceedings is vital to the adequacy of the system (e.g., Vidmar, 2005). Trials are almost always composed of jurors with various personalities. Each individual juror brings his or her own set of values, beliefs, and priorities. According to Kassin and Wrightsman (2005), lawyers often attempt to distinguish attributes, which will help them notice natural biases in their juror selection process, also known as the voir dire process. Wrightsman (1978) notes that the voir dire process is the means by which prospectively biased jurors are eliminated from participating in a trial. Vidmar (2005) suggests that a jury is comprised of a collection of unsystematically assigned individuals who are brought together in order to listen to evidence and provide an objective verdict.
Evidence presented in a trial is a key determinant of guilt or innocence when a jury is attempting to render a just and fair verdict. As more evidence is presented to the jury by either the prosecution or the defense, the impact of evidence will potentially sway the jury towards a guilty or not-guilty verdict. According to Douglas, Lyon, and Ogloff (1997), evidence helps to express the severity of the criminal act committed and also has the potential to emotionally affect jurors’ perceptions, which could ultimately affect their verdict decision. Sigler and Couch (2002) found that after evidence presented to a jury is put into question, or found irrelevant, jury verdicts tend to sway towards the other side. Their finding shows that all evidence presented in a trial proceeding is not necessarily helpful to the side from which it was initially introduced. The abundance of evidence presented in a trial is not a major factor in that its credibility can still come into question, and it can ultimately hinder the outcome of the trial.

Eyewitness testimony holds a great deal of clout in trial proceedings in that assuming that the witness is credible, jurors will be presented with an accurate firsthand account of the event in question, its participants, and whatever crimes were committed at the time. Eyewitness testimony often generates a great deal of bias in that a large amount of faith is put into what a witness claims happened in a series of events. Kebbell, Hurren, and Roberts (2006) note that eyewitness testimony is also highly valued in that an eyewitness’ testimony can provide a more thorough report of the crime in question. The soundness of eyewitness testimony is profoundly depended upon in the legal system in that it is a major component needed for assembling the particular details of the events in question (e.g., Wells, Memon, and Penrod, 2006). Eyewitness testimony may also strengthen jurors’ assessments of evidence against a defendant in a criminal trial and increase their confidence in their final verdict. According to Sigler and Couch (2002), when eyewitness testimony is initially introduced, the jury almost immediately puts it into higher regard than other evidence, but when its credibility is shaken, jurors tend to question the validity of their original decision concerning the evidence.

Expert testimony serves as guidance to members of a jury taking part in a trial. Because any evidence presented in a trial has the potential to be inaccurate, the use of expert testimony serves to support or substantiate any claims that were previously presented. Cutler, Dexter, and Penrod (1989) have identified experts as “safeguards” who are knowledgeable in their field and have the ability to uphold or repudiate any evidence presented in a trial. For example, if a witness cannot clearly recall or relay a key factor during testimony, an expert may be introduced to validate or sum up what the witness is attempting to convey to the jury. Cutler et al. (1989) also state that the function of an expert in trial is to educate those participating in the case about the various implications surrounding what they are being presented.

Questions of whether jurors naturally establish a favored side early on in a trial are often topics of great debate (e.g., Carlson & Russo, 2001). Members of a jury have the potential to exhibit natural biases before ever being presented with any type of evidence in a trial. According to Carlson and Russo (2001), this is predecisional distortion, or the partially influenced or subjective comprehension of newly presented facts to support whichever claim is favored throughout a trial proceeding. Hope, Memon, and McGeorge (2004) found that premature exposure to information regarding the case, admissible or non-admissible, will make it extremely difficult for jurors involved to make an informed and impartial decision regarding the information presented to them during the actual trial proceeding. The notion of predecisional
distortion leaves open the question of whether jurors are inherently biased toward a certain point of view prior to examining evidence, or whether that bias is established as new information is presented throughout a trial. Sommers and Kassin (2001) determined that jurors do not have the ability to discount evidence that had been discredited after its initial presentation. That is, after evidence has already been presented to a jury, those individuals are not capable of putting forth an objective final decision.

In order to determine distinct differences between individuals brought together as a jury and their modes of making rational decisions, Kassin and Wrightsman (1983) created the Juror Bias Scale (JBS). Personal traits including behavior, morals, and beliefs, as well as the backgrounds of jurors were taken into consideration during the construction of this scale. Kassin and Wrightsman (1983) note that a consistent instrument is needed in order to thoroughly assess individual bias in jury members during a trial. The researchers created a questionnaire which catered to both the prosecution and defense sides of a trial. Kassin and Wrightsman (1983) ultimately found the JBS to be a dependable means of measuring bias amongst jurors in a trial. In order to verify their claims, Kassin and Wrightsman (1983) exposed participants to stimulus trials, which were reenacted by law students, as well as a written trial adaptation. Their data indicate that jurors exposed to discredited evidence which has formerly been presented as credible show a higher probability of rendering a guilty verdict than jurors who have only received credible evidence. De La Fuente, De La Fuente, and Garcia’s (2003) use of the JBS in actual homicide cases further substantiate Kassin & Wrightsman's claims pertaining to the scale. De la Fuente et al. (2003) found that the Juror Bias Scale accurately predicts the verdicts of jurors participating in trial proceedings depending on the evidence.

The purpose of the present study is to determine whether mock jurors will show less degree of disregarding discredited evidence which has been previously deemed credible than jurors who have not been presented with discredited evidence as a result of predecisional distortion. I hypothesize that mock jurors who receive discredited evidence will show greater bias and be less able to render an objective verdict than will mock jurors who receive credited evidence.

Method

Participants

The participants in this study were 27 undergraduate students at a Southeastern university (24 women, 3 men), primarily those who took part in psychology courses. The participant classifications ranged from freshman to senior, and they were all primarily African American, ages 18-22. Professors from both the psychology and political science department were also asked to notify their students about the study. At the discretion of their professors, students were offered extra credit or a credit for the research component of the course in which they were participating as an added incentive.

Materials

For this study, participants were provided either with original random mock trial scenarios containing both eyewitness identification and expert testimony as evidence alone or with the inclusion of discredited eyewitness testimony. The scenarios containing eyewitness identification and expert testimony alone were intended to be prosecution biased, or more likely
to support the prosecution, whereas the scenarios containing discredited eyewitness testimony were intended to be defense biased, or more likely to support the defense. The first mock scenario consists of a trial proceeding in which all evidence presented is deemed admissible, therefore the jury is able to utilize all information present in coming to a verdict decision. The second scenario consists of a trial preceding in which new evidence presented is thrown out. This forces the jury to attempt to disregard the inadmissible information in making a verdict decision. See Appendices A & B. Upon presentation of the trial scenarios, participants were then asked to complete the Juror Bias Scale (e.g., Kassin & Wrightsman, 1983), which was labeled as a legal opinions survey in order to determine whether their decisions were more in favor of the prosecution or the defense. The Juror Bias Scale is comprised of items that measured probability of commission (PC) and reasonable doubt (RD). PC items from the scenarios include statements such as, “Many accident claims filed against insurance companies are phony.” RD items include statements such as, “The death penalty is cruel and inhumane.” Participants responded using a five-point Likert scale. See Appendix C.

**Design and Procedure**

Participants were directed to carefully read the informed consent statement and sign it before moving forward with the study. Subjects were informed that they did not have to stay for the duration of the study and were free to leave after they had completed the study. After signing the informed consent form, participants were instructed to read the scenario they were given and to complete the survey following it. Upon completion of the survey, participants read a debriefing statement fully explaining the true purpose of the study.

Upon arrival, participants were asked to include the information of the professor whom they would be receiving credit for on a sign-in sheet. Researchers presented them with a brief overview of the study and its general implications. Next, participants were given a packet containing an informed consent waiver, a trial scenario either with or without discredited evidence, a blank copy of the Juror Bias Scale to be completed at the end of the study, as well as a debriefing statement.

**Results**

An Independent-samples t-test measured juror bias of participants who received either prosecution (p)-biased (n=14) or defense (d)-biased (n=13) mock trial scenarios containing either credited evidence or discredited evidence was conducted. This Independent-samples t-test revealed that the p-biased scores for participants who received credited scenarios (M=32.4286, SD=6.30890), t(25) = -2.231, p > .05, did not differ significantly from those who received discredited scenarios (M = 33.0000, SD = 6.54472), t(25) = -2.231, p > .05. The analysis also revealed that the d-biased score for participants who received credited scenarios (M = 16.2143, SD = 3.11766), t(25) = -1.159, p > .05, did not differ significantly from those who received discredited scenarios (M = 16.3846, SD = 2.36426), t(25) = -1.159, p > .05.

A 2 (type of evidence: discredited vs. credited) by 2 (bias type: RD vs. PC) mixed model analysis of variance (ANOVA), with repeated measures on the second factor, was conducted, once again using jury bias as the dependent variable. Although neither main effect attained significance, the analysis yielded a significant interaction between PC and RD, F(1, 25) = 4.999, p = .035. See table 1 for means and standard deviations.
Table 1

<table>
<thead>
<tr>
<th>Evidence</th>
<th>Mean PC</th>
<th>Mean RD</th>
<th>Standard Deviation PC</th>
<th>Standard Deviation RD</th>
<th>Sample Size PC</th>
<th>Sample Size RD</th>
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<tbody>
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<td>Credited</td>
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<td>5.97062</td>
<td>3.43303</td>
<td>14</td>
<td>14</td>
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<td>23.1548</td>
<td>4.30414</td>
<td>3.46040</td>
<td>13</td>
<td>13</td>
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</tbody>
</table>

Discussion

The present results did not support the hypothesis that mock jurors are less likely to disregard discredited evidence after it has already been presented as credible than mock jurors who do not receive discredited evidence as a result of predecisional distortion. The results of the study indicate that mock jurors presented with discredited evidence which was previously deemed credible show no considerable difference in juror bias scores than those presented with admissible evidence. This does not rule out the notion that predecisional distortion does in fact exist in jurors participating in a criminal trial, but that it is not a predictive factor in measuring juror bias.

Further analysis involving a 2(ty of evidence: discredited vs. credited) by 2(bias type: RD vs. PC) mixed model analysis of variance (ANOVA) yielded a significant interaction between probability of commission (PC) and reasonable doubt (RD). This test relates back to the original hypothesis in that it gives a possible explanation to what factors could affect the final verdict decision of a jury. The results demonstrate that with credited evidence PC increases and RD decreases, although with discredited evidence PC exhibits a substantial decline, while RD rises. This finding supports the notion that during a trial the goal of the defense is to discredit any evidence presented by the prosecution in order to raise reasonable doubt in participating juror members and reduce any notion of the likelihood that a crime was committed. Results such as these would make impartial jurors question the validity of their original verdict decision and whether or not it is still supported despite the introduction of new evidence.

There were several limitations in this study which may have affected the results. This study originally called for 60 participants, but only 27 students (24 women, 3 men) actually participated. Such a small sample size may have hindered the results of the study in that it does not provide a good representation of the population as a whole. The lack of male participation in the study may have also influenced the results, leading to the assumption that the results of the study reflected the attitudes of women more favorably than men. More male participants could also provide better insight into whether gender is a factor in siding with the prosecution or defense when discredited evidence is presented.

The design of the experiment is another limitation in that it could have potentially affected the results if participants did not apply what they read in the scenarios to the legal opinions survey that they filled out upon completion of the reading. As far as design, a pretest-
posttest design may have been more adequate over the posttest-only design, which was used in that it could be used to measure whether participants are initially biased towards a certain side, or whether they possess the ability to disregard discredited evidence and objectively answer the evaluation.

Future researchers could attempt to use alternate scales in order to measure whether a significant bias exists between discredited and credited evidence. Future studies could include scales to measure confidence levels of ultimate verdict decisions which could be incorporated in addition to completion of the Juror Bias Scale (Kassin & Wrightsman, 1983) to assess the certainty of jurors. The use of multiple scales could increase variability and potentially provide significant output for the variables.

Overall this study found no significant difference in $p$-biased and $d$-biased scores for participants who received either credited or discredited mock trial scenarios. However, significant interactions were indicated between probability of commission and reasonable doubt. The interactions found through further analysis could possibly give insight into why some jurors tend to side with the defense after discredited evidence is introduced in a trial. This study allowed participants to better assess legal attitudes and factors affecting them.
References


Acknowledgements
I would like to thank every professor and student from Xavier University of Louisiana who aided me in the construction and completion of this study. Your guidance, participation, and support helped to make this study the best it could be, and for that I am truly appreciative.
Appendix A
Mock Trial Scenario #1
People v. Smith

Instructions:
You are a member of a twelve-person jury responsible for making the final verdict decision in the People v. Smith trial. Read the following trial scenario and complete the following survey to measure the impact of the evidence presented to you and your fellow jurors on your final decision.

Background:
John Smith is an 18-year old high school senior. On Saturday September 6, 2008, John and his best friend Jack attended an un-chaperoned, unauthorized party held at the home of a fellow classmate in celebration of their upcoming graduation from the local high school.

As the party gets into swing and more guests arrive, an altercation breaks out between John and Jason, a fellow party guest accompanied by his girlfriend Jane Doe. At approximately 11:30 p.m., harsh words are exchanged and soon after a fist fight breaks out between the two young men.

In the midst of the fight, a knife is pulled and there is a struggle between the two young men and Jason suffers a stab wound to the abdomen. John is left standing over Jason, and a small knife is in the middle of the floor.

An ambulance and police arrive at the scene around 11:45, where Jason is rushed to the hospital and Officer Joe Garcia arrests John for assault with a deadly weapon with intent to do bodily harm.

Forensic expert Jeff Dane has discovered identifiable fingerprints, which have been traced back to John Smith, although he has also found a partial print, which he cannot attribute to either young man involved in the brawl.

Trial Summary:
During the trial proceeding, Jane Doe, the victim’s girlfriend, is called as an eyewitness for the prosecution. She testifies to seeing John Smith pull a knife from his pocket and attacking Jason Smits, the victim. She notes that the victim attempted to defend himself, but John Smith overpowered him and ultimately forced the knife into his abdomen.

The prosecution also calls forensic expert Jeff Dane to the stand. Dane’s credentials are presented to the jury in order to establish his qualifications in making scientific observations and interpretations. The forensic expert concludes that through thorough testing, the identifiable fingerprints found on the weapon used in the assault were indeed those of John Smith.

The presiding judge deems that all evidence in this trial is credible and admissible. He then instructs the jury to carefully review the evidence and testimony presented during the trial in their consideration of the verdict.
Appendix B
Mock Trial Scenario #2
People v. Smith

Instructions:
You are a member of a twelve-person jury responsible for making the final verdict decision in the People v. Smith trial. Read the following trial scenario and complete the following survey to measure the impact of the evidence presented to you and your fellow jurors on your final decision.

Background:
John Smith is an 18-year old high school senior. On Saturday September 6, 2008, John and his best friend Jack attended an un-chaperoned, unauthorized party held at the home of a fellow classmate in celebration of their upcoming graduation from the local high school.

As the party gets into swing and more guests arrive, an altercation breaks out between John and Jason, a fellow party guest accompanied by his girlfriend Jane Doe. At approximately 11:30 p.m., harsh words are exchanged and soon after a fist fight breaks out between the two young men.

In the midst of the fight, a knife is pulled and there is a struggle between the two young men and Jason suffers a stab wound to the abdomen. John is left standing over Jason, and a small knife is in the middle of the floor.

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During the trial proceeding, Jane Doe, the victim’s girlfriend, is called as an eyewitness for the prosecution. She testifies to seeing John Smith pull a knife from his pocket and attacking Jason Smits, the victim. She notes that the victim attempted to defend himself, but John Smith overpowered him and ultimately forced the knife into his abdomen.

The prosecution also calls forensic expert Jeff Dane to the stand. Dane’s credentials are presented to the jury in order to establish his qualifications in making scientific observations and interpretations. The forensic expert concludes that through thorough testing, the identifiable fingerprints found on the weapon used in the assault were indeed those of John Smith.

In the process of the trial, a surprise witness is presented to the court. The testimony of the new witness challenges Jane Doe’s testimony in that he/she testifies that the victim’s girlfriend was
not even in the vicinity of the altercation at the time that it took place. The new witness claims that Jane Doe had already departed from the party with a friend before the dispute.

Because there is not enough evidence present to support either Jane Doe, or the surprise witness’ declarations made throughout the trial, the presiding judge deems that both are inadmissible. The judge then instructs the jury to disregard both the testimony of Jane Doe as well as that of the surprise witness, and to focus solely the evidence presented by forensic expert Jeff Dane in their consideration of the final verdict.
Appendix C
Juror Bias Scale

This questionnaire is designed to assess people’s opinions and attitudes on various legal issues. Please read each item carefully and give as true a picture as possible of your own beliefs by writing in the number 1, 2, 3, 4, or 5, as appropriate.

1. Strongly Agree
2. Somewhat Agree
3. Agree & Disagree Equally
4. Somewhat Disagree
5. Strongly Disagree

1. Appointed judges are more competent than elected judges. (Filler)
2. A suspect who runs from the police most probably committed the crime. (PC, P)
3. A defendant should be found guilty only if 11 out of 12 jurors vote guilty. (RD, P)
4. Most politicians are really as honest as humanly possible. (Filler)
5. Too often jurors hesitate to convict someone who is guilty out of pure sympathy. (RD, P)
6. In most cases where the accused presents a strong defense, it is only because of a good lawyer. (PC, P)
7. In general, children should be excused for their misbehavior. (Filler)
8. The death penalty is cruel and inhumane. (RD, D)
9. Out of every 100 people brought to trial, at least 75 are guilty of the crime with which they are charged. (PC, P)
10. For serious crimes like murder, a defendant should be found guilty if there is a 90% chance that he committed the crime. (RD, P)
11. Defense lawyers don’t really care about guilt or innocence, they are just in the business to make money. (PC, P)
12. Generally, the police make an arrest only when they are sure about who committed the crime. (PC, P)
13. Circumstantial evidence is too weak to use in court. (PC, D)
14. Many accident claims filed against insurance companies are phony. (PC, P)
15. The defendant is often a victim of his own bad reputation. (PC, D)
16. If a grand jury recommends that a person be brought to trial, then that person probably committed the crime. (PC, P)
17. Extenuating circumstances should not be considered—if a person commits a crime, then that person should be punished. (RD, P)
18. Hypocrisy is on the increase in society. (Filler)
19. Too many innocent people are wrongfully imprisoned. (RD, D)
20. If a majority of evidence—but not all of it—suggests that the defendant committed the crime, then the jury should vote not guilty. (RD, D)
21. If someone commits a victimless crime like gambling or possession of marijuana, he should not be convicted. (RD, D)
22. Some laws are made to be broken. (Filler)
Scoring Key:
Defense-biased statements are scored at face value; prosecution-biased statements are reverse scored (1\=5, 2\=4, 3\=3, 4\=2, 5\=1).

\[ \text{PC} = \text{Items 2} + \text{6} + \text{9} + \text{11} + \text{12} + \text{13} + \text{14} + \text{15} + \text{16} \]
\[ \text{RD} = \text{Items 3} + \text{5} + \text{8} + \text{10} + \text{17} + \text{19} + \text{20} + \text{21} \]
\[ \text{Total Score} = \text{PC} + \text{RD} \]