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## Pretrial Publicity and Civil Cases: A Two-Way Street?

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*Published pretrial publicity (PTP) research has been conducted almost exclusively with criminal cases and has focused on PTP that is detrimental to the defense. The current research examined the effects of PTP in a civil case to determine if PTP can have a biasing effect against either the defendant or the plaintiff in civil litigation. In Experiment 1, participants exposed to PTP biased against the defendant were more likely to reach a liable verdict than participants who read a control article or PTP biased against the plaintiff. Experiment 2 demonstrated that a judicial admonition did not reduce the biasing effect of PTP about a civil defendant. However, participants given the admonition both before and after the trial evidence viewed the defendant as less culpable than participants given the admonition after the trial only or not at all. The implications for the legal system are discussed.*

The fundamental conflict between the right to a fair trial and freedom of the press has been emphasized in studies concerning pretrial publicity (PTP) and its potentially prejudicial impact on juror decision making (Carroll et al., 1986; Fulero, 1987; Linz & Penrod, 1992). In recent years, researchers have begun to examine the effects of PTP as well as judicial remedies for cases in which jurors have been exposed to PTP. Published PTP research has been conducted almost exclusively with criminal cases and has focused only on PTP that is considered to be detrimental to the defense (Carroll et al., 1986; Linz & Penrod, 1992; Steblay, Besirevic, Fulero, & Jimenez-Lorente, 1999; Studebaker & Penrod, 1997).

Media attention to civil cases has increased recently (e.g., class action lawsuits concerning tobacco companies, breast implants, etc.), warranting concern about PTP in the civil arena as well. In justification of this concern, the sole previous study of PTP in civil trials (Kline & Jess, 1966) found that PTP was discussed often in mock civil jury deliberations. Civil cases afford the opportunity to explore the potentially

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biasing effects of PTP concerning both parties. Although prosecutorial behavior may provide fodder for media reports about criminal trials (e.g., coercion, fabricated evidence, police misconduct), the criminal justice system's paramount concern with defendants' rights understandably leads to an emphasis on PTP regarding the defendant. In a civil trial, on the other hand, either the plaintiff's or the defendant's right to a fair trial could be compromised by prejudicial PTP. The present research was designed to examine the effects of PTP in a civil case.

How much prejudicial PTP in civil cases is actually released? Imrich, Mullin, and Linz (1995) conducted a content analysis of 14 popular U.S. newspapers over a period of 8 weeks. Overall, Imrich et al. found that 27% of the suspects in crime stories during the period were described in a prejudicial manner. Although a comparable analysis of PTP in civil cases has not been performed, Bailis and MacCoun (1996) sampled a number of national newsmagazines (e.g., *Time*, *Newsweek*) and found that they gave steady coverage to tort litigation. Moreover, they found that most of the coverage distorted actual court statistics. For example, the media considerably overrepresented plaintiffs' victory rate at trial.

These studies suggest that a nontrivial percentage of participants in both the criminal and civil justice systems are subjected to media coverage containing information prejudicial to their case. More important for the legal system is the question of whether exposure to PTP influences jurors' verdicts. Although researchers disagree about whether there is enough empirical support to help the courts in establishing guidelines for PTP (Carroll et al., 1986; Fulero, 1987), in general, research has shown that exposure to PTP can serve to prejudice the jury against criminal defendants (Fain, McCloskey, & Tomlinson, 1997; Linz & Penrod, 1992; Moran & Cutler, 1991; Mullin, Imrich, & Linz, 1996; Otto, Penrod, & Dexter, 1994; Steblay et al., 1999).

Recently, various aspects of PTP have been examined, including the effects of emotional versus factual PTP (Kramer & Kerr, 1989; Kramer, Kerr, & Carroll, 1990; Wilson & Bornstein, 1998), the source of the PTP (Ogloff & Vidmar, 1994; Wilson & Bornstein, 1998), and case-specific versus general PTP (Greene & Wade, 1987; Mullin et al., 1996). The prejudicial impact of PTP on participants' conviction rates in mock criminal cases has remained quite robust across these many variations. Research has yet to address the question of whether PTP can have similar effects in civil litigation. However, civil cases may be increasingly vulnerable to the prejudicial effects of PTP with the recent surge of high-profile, class-action lawsuits. In addition, the lower standard of proof in civil cases suggests that extraneous factors such as PTP might have a greater impact than in criminal cases.

Landsman and Rakos (1994) studied the effect of potentially biasing information on both judges and jurors in a product liability case. Although this study addressed the impact of prejudicial information presented during rather than prior to trial, it is still instructive about individuals' ability to disregard certain information in reaching a verdict. They presented judges and potential jurors with a vignette describing a product liability case and exposed them to (1) no biasing information, (2) biasing information against the defendant with instructions to exclude/disregard the material, or (3) biasing information with instructions to admit the material. Landsman and Rakos found that both judges and mock jurors found the defendant liable more often after being exposed

to biasing information, regardless of instructions to exclude/disregard the information.

In a similar study, Tanford and Cox (1988) investigated the impact of impeachment evidence on jurors' decisions in a civil trial. Generally, impeachment evidence is admissible if its sole purpose is to discredit testimony; inferences about the character of the witness, other than honesty, are not allowed. In such cases, jurors are usually given limiting instructions by the judge, instructing them that they may use the impeachment evidence to determine the defendant's credibility but not liability. Two kinds of impeachment evidence against the defendant were manipulated: evidence of a prior conviction for perjury (with or without limiting instructions) and character evidence of honesty. Tanford and Cox found little effect of impeachment evidence on liability judgments. However, although impeachment evidence failed to affect liability verdicts directly, mock jurors' ratings of the defendant's character traits revealed that they often made impermissible inferences regarding traits other than honesty. Thus, just as in criminal cases (e.g., Greene & Dodge, 1995; Kassin & Sommers, 1997; Thompson, Fong, & Rosenhan, 1981), jurors in civil cases appear to be unable to disregard damaging information after it has been presented at trial.

## EXPERIMENT 1

This study was designed to determine whether the detrimental effects of PTP generalize to civil trials. In addition, the effects of negative PTP about both litigants were examined. Based on the robust nature of PTP effects in criminal cases (e.g., Steblay et al., 1999; Studebaker & Penrod, 1997), as well as the effects of inadmissible evidence in civil cases (Landsman & Rakos, 1994; Tanford & Cox, 1988), we hypothesized that exposure to negative PTP about either party would reduce mock jurors' verdicts for that party, relative to a control condition with no prejudicial PTP.

## Method

### *Participants*

Participants were 81 students enrolled in undergraduate psychology classes who received extra course credit. Two participants were dropped for failing to follow instructions, and an additional 7 participants were randomly excluded in order to have equal numbers of participants in each condition. The final sample contained 72 participants (24 per condition); it was composed of 59% females, and the age range of participants was 18-25 (*Mdn* = 19.5).

### *Design*

Participants were randomly assigned to one of the three conditions, in which they read an article containing basic information about the case (*control* condition), an article containing additional negative information about the plaintiff (*plaintiff-PTP* condition), or an article containing additional negative information about the defendant (*defendant-PTP* condition).

**Table 1.** Excerpts From Case Summary and PTP Articles

<b>Case summary</b>	“Kathy is suing a large chemical manufacturing company. She claims that some of the chemicals that the company has stored at a dump one mile from her house have seeped into the neighborhood’s water supply, and that regularly drinking the contaminated water caused her cancer. . . A major issue at trial is whether or not a particular chemical, called Ketamine, causes cancer. If so, then the chemical company is liable for damages, since both parties accept that high levels of Ketamine leaked from the dump into the neighborhood’s water supply; if not, then the chemical company is not liable.”
<b>PTP articles</b>	
<b>Control</b>	“Since moving to her neighborhood, Mrs. Summers has been diagnosed with ovarian cancer which she alleges was caused by the Ketamine in the water supply. The company does not dispute the fact that high levels of Ketamine leaked from the chemical dump site into the water supply, but Chemco officials argue that there is no proof that Ketamine is a cancer-causing agent.”
<b>Defendant</b>	“Chemco has been sued several times in the past 5 years by other women suffering from ovarian cancer. The chemical company has also been named in numerous lawsuits concerning environmental hazards. Greenpeace, an environmental watchdog organization, reported that the chemical company was polluting the environment and trying to cover up these allegations.”
<b>Plaintiff</b>	“Mrs. Summers reportedly had several ovarian problems before coming to live near the dump site. She also reportedly told a friend that she rarely even drinks tap water. Mrs. Summers has a prior criminal history of money laundering and fraud.”

### Materials

*The case.* A hypothetical lawsuit modified from actual cases (Bornstein & Rajki, 1994; Chapman & Bornstein, 1996) described a woman diagnosed with ovarian cancer who filed suit against a chemical company. Participants read a one-page, single-spaced summary of the case (excerpted in Table 1). The text included the following information: a description of the plaintiff and her injury, a description of the defendant and alleged cause, expert scientific testimony supporting each side concerning the product’s capability of causing ovarian cancer, and the amount of compensatory damages requested. The case materials were identical for participants in all conditions.

*PTP.* The control article (111 words) contained general information about the case, largely reiterating information contained in the trial summary. A pilot study was conducted to determine which items would be used as the PTP. Participants ( $N = 16$ ) read the trial summary, gave a dichotomous rating of liability, and then rated 30 fabricated pieces of evidence. Participants were asked to determine what effect each individual piece of evidence would have had on their verdict if they had received this information as part of the original trial summary (1-*not liable*, 5-*no effect*, 9-*liable*). Five items that were rated significantly higher than 5 ( $p < .05$ ) were selected to be the defendant-PTP items, whereas 5 items that were rated significantly lower than 5 ( $p < .05$ ) were selected to be the plaintiff-PTP items. These items were added to the control article for their respective conditions (see Table 1).

A second pilot study was then conducted to insure that both the defendant and plaintiff PTP articles produced significant bias compared to the control article. This was accomplished by randomly assigning participants to read one of the three arti-

cles (without reading the trial summary) and provide a liability rating. Planned comparisons were used to analyze the data. Participants who read the defendant-PTP article were more likely to find the defendant liable than those who read the control article,  $t(78) = 3.15, p < .01$ . Correspondingly, participants who read the plaintiff-PTP article were less likely to find the defendant liable than those who read the control article,  $t(78) = 4.20, p < .001$ .

*Trial Instructions.* Participants also read a two-page handout containing general instructions about the trial. Definitions of plaintiff, defendant, and compensatory damages were provided. In addition, the guidelines included specific instructions regarding civil cases such as instructing the participants to determine the facts solely from the evidence presented in the case, and explaining that the defendant is legally liable only if the defendant is more likely than not to have caused the plaintiff’s injury (i.e., the preponderance of the evidence standard).

### Procedure

Participants completed the study in groups of up to 15 people. The experiment was conducted in three phases. First, participants read one of the three articles. Participants were told that the information was an article about a civil case but were given no further information. Next, participants read the trial instructions and summary. Finally, participants completed several dependent measures:

1. A dichotomous liability judgment, applying the preponderance of the evidence standard.
2. An estimate of the likelihood that the defendant caused the plaintiff’s injury (0-100). Participants were instructed that any rating above 50 indicated a belief that the defendant was more likely than not to have caused the harm.
3. Participants who indicated that the defendant was liable for the plaintiff’s injuries assigned compensation for the plaintiff.
4. Finally, participants rated their overall perceptions of the plaintiff and the defendant on a 7-point scale (1-very unsympathetic, 7-very sympathetic).

### Results

The dichotomous liability ratings were scored as 0 (*not liable*) or 1 (*liable*), and separate one-way ANOVAs were conducted for the remaining dependent measures.<sup>1</sup>

### Liability Judgments

The percentage of participants in each condition who found the defendant liable can be seen in Table 2. As predicted, there was a significant effect of PTP on jurors’ liability judgments,  $F(2, 69) = 6.98$ . Participants who read the plaintiff-PTP were less likely to reach a liable verdict (25%) than participants who read the control article (46%), whereas participants who read the defendant-PTP were most likely to reach

<sup>1</sup> For results with directional hypotheses, the planned comparisons use one-tailed p-values. Otherwise, p-values are two-tailed. In both experiments, an alpha level of  $p < .05$  was chosen for the interpretation of significant results. Specific  $p$ -values are therefore reported only for marginally significant results of theoretical interest.

**Table 2.** Percentage of Liable Verdicts and Causality Ratings, Experiment 1

	Type of PTP		
	Plaintiff	Control	Defendant
Liable	25%	46%	75%
Causality			
<i>M</i>	31.04	42.17	60.21
<i>SD</i>	21.37	26.56	22.86

Note. Causality refers to participants' estimates that the defendant caused the plaintiff's injury and was rated on a 0–100 scale.

a liable verdict (75%). Planned comparisons contrasting each biasing PTP condition with the control condition showed that participants were significantly more likely to find the defendant liable when they read PTP that was biased against the defendant,  $t(46) = 2.12$ , but only marginally less likely to find the defendant liable when they read PTP that was biased against the plaintiff,  $t(46) = 1.51$ ,  $p < .07$ .

PTP exerted a comparable effect on participants' causality judgments,  $F(2, 69) = 9.25$ . Participants judged the defendant as most likely to have caused the plaintiff's injury in the defendant-PTP condition, and least likely in the plaintiff-PTP condition, with the mean for the control condition intermediate between these two extremes (see Table 2). Planned comparisons showed that the mean causality rating in the defendant-PTP condition was significantly greater than in the control condition,  $t(46) = 2.52$ , whereas the mean causality rating in the plaintiff-PTP condition was marginally lower than in the control condition,  $t(46) = 1.60$ ,  $p < .06$ .

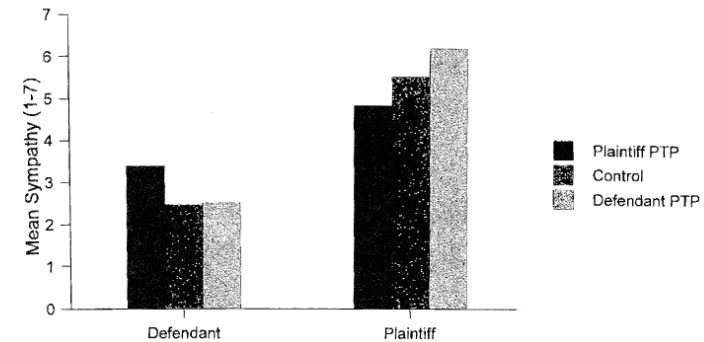
### Compensation

Thirty-five participants found the defendant liable (6–18 per condition) and therefore awarded compensation. As compensation awards were positively skewed, analysis was based on a logarithmic transformation of the data. The amount of money awarded to the plaintiff was not significantly different for the three conditions,  $F(2, 32) = 1.17$ . Thus, PTP did not appear to affect the amount of money participants awarded to the plaintiff.

### Perceptions

Participants' perceptions of the litigants are shown in Fig. 1. PTP condition significantly affected perceptions of the plaintiff,  $F(2, 69) = 7.94$ , and had a marginally significant effect on perceptions of the defendant,  $F(2, 69) = 3.01$ ,  $p < .06$ . Planned comparisons revealed that participants in the defendant-PTP condition perceived the plaintiff as significantly more sympathetic ( $M = 6.17$ ,  $SD = 0.87$ ) than did participants in the control condition ( $M = 5.50$ ,  $SD = 1.02$ ),  $t(46) = 2.44$ , and participants in the plaintiff-PTP condition perceived the plaintiff as significantly less sympathetic ( $M = 4.83$ ,  $SD = 1.49$ ) than did participants in the control condition,  $t(46) = 1.80$ .

The effect of PTP on participants' perception of the defendant was less robust. Participants in the plaintiff-PTP condition rated the defendant as significantly more sympathetic ( $M = 3.38$ ,  $SD = 1.74$ ) than did participants in the control condition ( $M = 2.46$ ,

**Fig. 1.** Perceptions of the plaintiff and defendant by PTP condition, Experiment 1.

$SD = 1.32$ ),  $t = 2.06$ , but there was no significant difference in perceptions of the defendant between participants in the defendant-PTP and control conditions,  $t(46) = 0.11$ .

### Discussion

Consistent with the general findings of PTP research in criminal trials (Fain et al., 1997; Linz & Penrod, 1992; Moran & Cutler, 1991; Mullin et al., 1996; Otto et al., 1994; Steblay et al., 1999; Studebaker & Penrod, 1997), the present experiment demonstrated that PTP can have a prejudicial impact on jurors' judgments of liability in a civil trial as well. Mock jurors who read an article containing negative information about the defendant prior to the trial were significantly more likely to find the defendant liable than mock jurors who read an article containing only neutral information. This result is also consistent with the findings of Landsman and Rakos (1994); however, mock jurors in the present experiment were presented with negative information as a newspaper article prior to the presentation of the facts of the case, whereas in the Landsman and Rakos study, participants were presented with inadmissible evidence at trial.

Additionally, Landsman and Rakos (1994) demonstrated that exposure to biasing information about a civil defendant can affect mock jurors' judgments, whereas the present experiment demonstrated that biasing information about either the plaintiff or the defendant can affect mock jurors' judgments. Previous research examining PTP has tended to focus on information that is detrimental to the defendant; however, information that may be detrimental to the plaintiff in a civil trial, or to the prosecution in a criminal trial, is also plausible, especially in high-profile cases. In the present study, mock jurors who read PTP that contained unfavorable information about the plaintiff were less likely to find the defendant liable than were mock jurors who read negative PTP about the defendant. However, the effect of negative PTP directed toward the plaintiff was less robust than the effect of PTP directed toward the defendant, as there was only a marginally significant difference in liability judgments between participants who read neutral PTP and those who read the plaintiff PTP.



These results suggest that PTP may have more widespread effects than simply biasing jurors against criminal defendants. The reason that mock jurors' liability judgments were swayed by PTP is partly reflected in their subjective ratings of how they felt toward the defendant and plaintiff. Although the plaintiff was viewed as more sympathetic than the defendant overall, feelings toward both the plaintiff and the defendant were affected by the type of PTP.

Interestingly, although PTP had a significant effect on mock jurors' liability judgments, it had no effect on their subsequent compensation awards. This result is somewhat surprising, as much more subtle information, such as the amount of money the plaintiff requests for compensation, has been found to affect mock jurors' damage awards (e.g., Chapman & Bornstein, 1996). It should be noted that although compensation did not differ significantly across conditions, the median awards paralleled participants' liability decisions: \$175,000 in the plaintiff-PTP condition, \$300,000 in the control condition, and \$500,000 in the defendant-PTP condition. Thus, it is likely that the failure to attain statistical significance was due to the relatively low power in the compensation analysis; for example, only 6 participants awarded compensation in the plaintiff-PTP condition. This limitation is addressed by including a larger sample in Experiment 2.

## EXPERIMENT 2

The results of Experiment 1 suggest the need for further study regarding possible remedies for the impact of PTP on jurors' judgments. Some of the more common remedies include changing the trial venue, gagging the press, using voir dire to select jurors with no exposure to PTP or to neutralize its effects, continuance, and judicial admonitions (Kramer et al., 1990; Studebaker & Penrod, 1997). Most of these remedies are either impractical—such as continuance, changing the venue, or selecting jurors with no exposure—or carry other adverse effects, such as restricting media rights.

The least objectionable methods attempt to neutralize PTP's effects through voir dire or judicial admonitions. These strategies consist of specific guidance to the jurors from the judge or one of the attorneys, directing them to base their verdict on the evidence presented at trial and to disregard any PTP about the case. However, evidence from studies utilizing criminal cases has demonstrated the relative ineffectiveness of both voir dire (Dexter, Cutler, & Moran, 1992; Kerr, Kramer, Carroll, & Alfini, 1991) and judicial instructions (Kramer et al., 1990; Sue, Smith, & Gilbert, 1974) at minimizing PTP's effects. Instructions to ignore biasing pretrial information are no more effective than cautionary instructions to ignore information to which jurors are exposed during trial, which have been found to be unsuccessful in both criminal (e.g., Greene & Dodge, 1995; Kassir & Sommers, 1997) and civil litigation (Landsman & Rakos, 1994; Tanford & Cox, 1988).

A possible reason for the failure of judicial admonitions to mitigate the effect of either PTP or inadmissible evidence is the timing of the instructions. Both Sue et al. (1974) and Kramer et al. (1990) provided judicial instructions to ignore PTP at the completion of trial. However, Kaplan and Wrightsman (1979) found that judicial in-

structions were more effective when they came at both the outset and the conclusion of trial than when they were given only at the end. Furthermore, Smith (1991) found that mock jurors who received judicial instructions both before and after the trial were better able to apply the law and were able to defer verdict decisions until after the trial, compared to mock jurors who received instructions before the trial only, after the trial only, or not at all. ForsterLee, Horowitz, and Bourgeois (1993) extended Smith's findings to a civil case, demonstrating that mock jurors who received judicial instructions prior to the presentation of evidence were more likely to decide the case based on the merit of the evidence than were mock jurors who received the judicial instructions afterwards.

However, the effectiveness of using a judicial admonition as a remedy for the effects of PTP in a civil trial has not yet been examined. Experiment 2 examined whether receiving specific instructions from the judge to ignore any PTP would decrease its impact on mock jurors' judgments. In addition, the timing of those instructions was varied, so that they came either before and after the trial or only at the trial's conclusion. Based on previous research conducted on criminal cases, it was predicted that judicial instructions at the end of trial would have little or no effect at eliminating the effect of PTP (Kramer et al., 1990), but that instructions given to jurors both before and after the trial would mitigate the effect of PTP (Kaplan & Wrightsman, 1979).

## Method

### *Participants*

Two hundred and two undergraduate students participated in exchange for extra credit. The sample was 87% female, and the age range was 18–53 (*Mdn* = 20).

### *Design*

A  $2 \times 3$  between-subjects design was used. Participants were assigned to one of two PTP conditions in which they read either a control or a PTP article. Because the effect of PTP that was prejudiced against the defendant was stronger in Experiment 1 than the effect of PTP prejudiced against the plaintiff, the PTP in the present experiment concerned the defendant. Participants were further assigned to one of the three judicial instruction conditions: no additional judicial instructions (Control), additional instructions relevant to the PTP after reading the trial summary (After), and additional instructions both before and after reading the trial summary (Before/After).

### *Materials*

The case materials, PTP articles (from the control and defendant-PTP conditions), and general instructions were identical to those used in Experiment 1, except that the instructions were presented orally rather than in written format. Participants in the After and Before/After instruction conditions received the following additional judicial

instructions specifically directing them to disregard any pretrial publicity to which they may have been exposed concerning the trial:

You are to determine the facts solely from the evidence presented in the case. Do not use information in pretrial publicity or your reaction to it as a basis for judgment in the case. Pretrial publicity is information you received before the actual evidence was presented and would include things like any newspaper articles you read or TV news you saw that dealt with this case.

### Procedure

The procedure was the same as in Experiment 1, except for the additional instructions that were read aloud to participants in the After and Before/After instruction conditions.

### Results

The dichotomous liability ratings were scored as 0 (*not liable*) or 1 (*liable*), and separate two-way ANOVAs were conducted for the remaining dependent measures.

#### Liability Judgments

The percentage of liable verdicts in each condition is shown in Table 3. There was a significant main effect of PTP condition,  $F(1, 196) = 16.94$ , such that participants in the defendant-PTP condition were more likely to find the defendant liable (79.0%) than participants in the control condition (52.6%). The effect of instructions fell just short of conventional levels of statistical significance,  $F(2, 196) = 2.94$ ,  $p = .055$ . Participants in the Before/After condition were somewhat less likely to find the defendant liable (55.4%) than participants in the After (69.0%) or Control (74.2%) condition. The interaction between PTP and instructions was not significant,  $F(2, 196) = 1.46$ .

The results for causality judgments were very similar to those for verdicts (see Table 4). Participants exposed to PTP judged the defendant as significantly more likely to have caused the plaintiff's injury ( $M = 63.90$ ,  $SD = 21.94$ ) than participants in the control condition ( $M = 46.58$ ,  $SD = 24.70$ ),  $F(1, 194) = 27.66$ . There was also a significant effect of instructions,  $F(2, 194) = 3.03$ , with participants in the Before/After condition giving lower causality estimates ( $M = 49.47$ ,  $SD = 25.49$ ) than participants in the After and Control conditions ( $M_s = 58.19$  and  $58.77$ ,  $SD_s = 22.78$  and  $25.48$ , respectively). The interaction between PTP and instructions was not significant,  $F(2, 194) < 1$ .

**Table 3.** Percentage of Liable Verdicts, Experiment 2

Instructions	Type of PTP		
	Control	Defendant	Total
Control	65.5	81.1	74.2
After	58.3	80.0	69.0
Before/After	34.4	75.8	55.4
Total	52.6	79.0	66.3

**Table 4.** Mean Causality Ratings, Experiment 2

Instructions	Type of PTP		
	Control	Defendant	Total
Control	51.38 (25.59)	64.57 (24.17)	58.77 (25.48)
After	50.83 (24.51)	65.54 (18.47)	58.19 (22.78)
Before/After	37.59 (22.21)	61.34 (23.15)	49.47 (25.49)
Total	46.58 (24.70)	63.90 (21.94)	55.59 (24.81)

Note. Standard deviations are in parentheses.

#### Compensation

One hundred thirty-four participants found the defendant liable (11–30 per condition) and therefore awarded compensation. Unlike in Experiment 1, PTP had a significant effect on participants' log compensation awards,  $F(1, 127) = 6.86$ , with participants exposed to PTP about the defendant awarding more money ( $M = \$591,768$ ,  $SD = \$812,727$ ,  $Mdn = \$500,000$ ) than participants in the control condition ( $M = \$381,373$ ,  $SD = \$299,408$ ,  $Mdn = \$350,000$ ). There was no effect of instructions,  $F(2, 127) < 1$ , nor was the interaction significant,  $F(2, 127) = 1.23$ .

#### Perceptions

As in Experiment 1, PTP that contained negative information about the defendant produced a more negative overall impression of the defendant ( $M = 2.39$ ,  $SD = 1.35$ ) than did the control article ( $M = 3.09$ ,  $SD = 1.39$ ),  $F(1, 194) = 13.54$ . It also produced a more positive impression of the plaintiff than did the control article ( $M_s = 6.00$  vs.  $5.70$ ),  $F(1, 192) = 3.32$ . There was no effect of instructions, nor a significant interaction, on perceptions of either the plaintiff or the defendant,  $F_s < 1$ .

### Discussion

The results support previous research indicating that judicial admonitions do not reduce the biasing effect of PTP (Kramer et al., 1990; Sue et al., 1974); that is, the main effect of PTP was not qualified by an interaction with judicial instructions. These results do not bode well for the American justice system, which bears the constitutional responsibility for a fair and impartial trial (Carroll et al., 1986), as they suggest that judicial admonitions do not have their intended effect.

Although judicial instructions to disregard PTP did not interact with the presence or absence of PTP, they did have an overall effect on juror verdicts. This finding is consistent with research by Kaplan and Wrightsman (1979), who found that the timing of judicial instructions can have a significant impact on juror verdicts in a criminal case. In their study, participants were given judicial instructions about presumption of innocence, burden of proof, and reasonable doubt before the trial evidence, after the trial evidence, or not at all. Kaplan and Wrightsman found that mock jurors who were given judicial instructions before the trial evidence were less likely to find the defendant guilty than mock jurors who were instructed after receiving the trial evidence or not at all. Furthermore, participants who were given instructions before

the trial evidence gave lower probability estimates that the defendant had committed the crime than participants in the other two conditions. Although probability of commission estimates were affected, standard of proof estimates were unaffected by the instruction manipulation.

According to Kaplan and Wrightsman (1979), a primacy effect occurred, whereby judicial instructions before trial had their intended effect of emphasizing the presumption of innocence and the burden of proof and, thus, of affecting mock jurors' perceived likelihood that the defendant had committed the crime. The present experiment revealed a similar trend. Participants who were given the judicial admonition to focus on the evidence presented at trial and not to use the PTP gave lower likelihood of causation estimates (which are analogous to the probability of commission estimates in a criminal case) than participants in the other two conditions. In other words, participants given the instructions both before and after the trial evidence viewed the defendant as less culpable than participants given the instructions after the trial or not at all, and these lowered perceptions of culpability resulted directly in fewer verdicts of liability.<sup>2</sup> The consistency between the findings of the present experiment and those of Kaplan and Wrightsman suggests that differential perceptions of culpability underlie the effect of the timing of the judicial instructions.

### GENERAL DISCUSSION

The two experiments taken as a whole present a picture consistent with previous research examining the prejudicial effects of PTP in criminal cases (Fain et al., 1997; Linz & Penrod, 1992; Moran & Cutler, 1991; Mullin et al., 1996; Otto et al., 1994; Steblay et al., 1999; Studebaker & Penrod, 1997). In particular, we observed two notable extensions to the PTP effect. First, the PTP effect was found to generalize to a civil trial. Thus, the concern espoused by the legal community over the potentially biasing effects of PTP (e.g., Bailis & MacCoun, 1996; Carroll et al., 1986) was further strengthened by demonstrating that civil trials are just as susceptible as criminal trials. Second, the negative impact of PTP was found to exert its impact on civil plaintiffs as well as civil defendants. Presumably, this would hold true for criminal trials as well. Although the prosecution in criminal trials is a much more amorphous entity, questions of prosecutorial misconduct (e.g., questions over the methods used to obtain evidence, planting of evidence, etc.) may be broadcast as PTP. Further research is necessary to determine if this suspicion holds true.

Experiment 2 demonstrated that judicial admonitions to disregard PTP did not have their intended effect of reducing the PTP's bias. This finding is in line with research that has indicated that judicial admonitions do little to remedy the effects of inadmissible evidence (e.g., Greene & Dodge, 1995; Kassin & Sommers, 1997; Thompson et al., 1981). The practical implications of this finding for the justice system are

<sup>2</sup> Unfortunately, liability threshold estimates were not obtained in the present experiment, and an alternative explanation—that judicial instructions given before and after trial raised participants' preponderance of the evidence thresholds—cannot be dismissed. However, the relatively explicit nature of the preponderance standard in terms of its probability threshold—at least compared to the reasonable doubt standard (Kagehiro, 1990)—makes this possibility unlikely.

considerable, as other remedies for PTP have added costs, from violations of the First Amendment guarantee of free speech (e.g., gag orders) to the enormous expense and impracticality of changing venue (Carroll et al., 1986; Studebaker & Penrod, 1997). The potential efficiency and ease of implementation of judicial instructions as a remedy for PTP therefore requires a more thorough investigation to determine whether some other manipulation of judicial instructions would be more effective. Nonetheless, the picture drawn by the results of Experiment 2 and previous research is not an optimistic one.

Although Kaplan and Wrightsman (1979) found that judicial instructions informing jurors of the standard of proof, burden of proof, and presumption of innocence presented before the presentation of trial evidence had their intended effect, the results of Experiment 2 suggest that even more subtle instructions may have the same effect—that is, of lowering initial perceptions of culpability or liability. The instructions given in Experiment 2 told participants to use only the evidence presented at trial and specifically not to use any PTP. Although these instructions did not have their intended effect of reducing or eliminating the effects of PTP, they did have the unexpected effect of reducing the overall number of verdicts against the defendant when they were presented before and after the trial evidence. As the burden of proof is upon the plaintiff, this unexpected result may be construed as an advantage of preinstruction (ForsterLee et al., 1993; Smith, 1991).

There are a few methodological limitations to the present research. Like many other studies that have examined the effects of PTP (Steblay et al., 1999), the trial materials used in the present study have relatively low ecological validity. Mock jurors, who were college undergraduates, simply read a one-page summary of the facts of the case. Although such practical limitations are common in preliminary nature or "Stage One" research (Diamond, 1997), an actual trial would present a more diverse sample of jurors with much more extensive proceedings, involving considerably more evidence and witness testimony. However, in a review of the literature, Bornstein (1999) found few differences between jury simulations using simple stimuli such as transcripts and those using more realistic stimuli such as live trial presentations. Specifically regarding the effects of PTP, Kramer and Kerr (1989) found that longer, more complex trials did not mitigate PTP's effects. With regard to the identity of the mock jurors, jury simulations as a whole have uncovered few differences between student and community mock jurors (Bornstein, 1999), and Steblay et al. (1999) found that PTP effects were actually greater with community-drawn adult samples than with student mock jurors.

Longer, more realistic trials are likely to have greater amounts of both PTP and trial evidence, as well as a longer interval between exposure to the PTP and trial. Steblay et al. (1999) found that longer intervals between PTP and trial actually produce larger PTP effects than the very short intervals used in the present study. This finding suggests that the PTP effects found in the present study may, if anything, underestimate what would occur in a real civil trial.

The final limitation of the current study concerns the lack of a deliberation phase, wherein the mock jurors could deliberate about their liability judgments. Although Kerr et al. (1990) and Steblay et al. (1999) both found that deliberation did not lessen PTP's effects in a criminal trial simulation, it is possible that deliberation would yield



different effects in a civil case, given the lower standard of proof and the different judgments required of jurors (i.e., the awarding of damages in addition to determining liability). Despite these limitations, the present research offers a meaningful extension of the empirical findings regarding PTP to the civil arena.

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