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Jurors' Perception of Violence: A Framework for Inquiry

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ABSTRACT: The impact that the perceived violence of a crime has on jury decision making has received much controversy lately. Violence may affect juries by how it is presented, as in the case of graphic evidence; its evidentiary purpose, as in establishing a history of violence in domestic abuse cases; and in sentencing, when the question of the heinousness of the crime is raised. Many judicial experts argue that evidence of violence may prejudice juries' verdicts. There is also concern within the legal community that what constitutes a heinous crime cannot be objectively determined. Psychological research has only just begun to explore these issues. This paper reviews the current legal state of these issues, the arguments and questions that have been raised within the legal community, and the empirical research that has been conducted thus far. The paper concludes with directions for future research that would improve our understanding of how jurors' perception of violence affects their decisions.

KEY WORDS: Violence, jurors' perception, jury decision

Although overall crime trends, including incidents of violent crime, have decreased consistently over the last few years, crime rates are still much higher than they were a decade ago (Bureau of Justice Statistics, 1996; Federal Bureau of Investigation [FBI], 1996). In fact, compared with crime figures from 1985, overall crime has seen a 5% increase and violent crime has seen a 21% increase (FBI, 1996). While only about half of all violent crime arrests result in convictions and subsequent prison sentences (Petersilia, 1994), an important question that has not been clearly addressed by psychological research is how the perceived violence of a criminal act, as presented by testimony and other forms of evidence, affects jury decision making. Evidence of violence may be introduced at both the guilt and penalty phases of a criminal trial.

The relevance of this issue is ever more apparent today. Highly publicized cases such as the O. J. Simpson and the Oklahoma City bombing trials have revealed instances where graphic evidence and emotional testimony of the violent nature of the respective crimes

were presented, presumably in order to sway the verdicts and penalty decisions of the juries. For example, the harrowing testimony of Dr. James Sullivan, who had to amputate the leg of a pinned down survivor in the ruins of the Alfred P. Murrah building, revealed the following:

I took disposal [sic] blades, [scalpels], and I had four, and they all broke. I used an amputation knife from the set . . . and it dulled because I kept hitting the concrete wall. I cut through a large vein . . . and thought initially I'd cut through the artery and that she was going to bleed to death, but it eventually stopped . . . and the big thing was making the first cut, cutting through the skin. Once I started cutting, she started kicking and screaming, so I had to more or less pin her free left leg against the wall. All of my scalpels had broken, and the amputation knife had dulled. I remembered that I had my pocketknife in my rear pocket, and I completed the amputation with a pocketknife. (*U.S. v. McVeigh*)

Many such examples of this kind of testimony were present throughout the penalty phase of the trial to illustrate the heinousness of the crime. Timothy McVeigh was subsequently sentenced to death for planning and carrying out the bombing.

Some factors that must be considered in a discussion of evidence of violence include introduction of graphic and gruesome evidence, the past history of abuse in cases of domestic violence, and the heinousness of a crime. Photographic and videotaped evidence of victims and crime scenes, as well as crime scene reenactments, have received a lot of interest recently, both because of their polemical nature and increase in use (Campbell, 1996; Curriden, 1990; Fagan, 1993; Hennes, 1994). Introduction of graphic evidence is more likely to be a factor that has its greatest impact in the guilt phase of a trial, especially when reenactments of the crime event are presented. Heinousness, on the other hand, is more likely to be considered in the penalty phase of a trial. In fact, most states provide for statutes that regard heinousness as an aggravating circumstance to be weighed in favor of a death sentence for capital crimes (Pollman, 1990; Rosen, 1986; Ward, 1988; Wiggins, 1989).

The purpose of this paper is to review the empirical research that exists on how violence affects jury decision making. The question of how violence affects the decisions reached by juries can best be studied by the direct manipulation of violence in some fashion; yet, as this paper will reveal, few studies have thus far done so. For reasons of organizational clarity, the paper will follow the order of a criminal trial. That is, topics that are most relevant to the guilt phase of a criminal trial, such as the presentation of graphic evidence, are addressed first. Both the legal guidelines and the empirical literature that exist on introduction of graphic evidence are discussed. Heinousness, which is most relevant to the penalty phase of a capital trial, follows next. As a frame of reference, the heinousness section begins with a short overview of the proceedings of a capital trial, where it is likely to have its greatest impact. Following that, we discuss the legal definitions of heinousness as imposed by most courts and the assumptions that the court system makes about how these definitions are understood and used by jurors. Furthermore, we review the empirical literature that exists on the direct manipulation of heinousness. The paper concludes with suggestions for future research that is needed to provide a fuller understanding of the impact of violence on jury decisions.

GRAPHIC EVIDENCE OF VIOLENCE

Videotaped evidence is being put to an increasing number of uses in the courtroom, such as the presentation of depositions, experimental demonstrations, and day-in-the-life videos

(Campbell, 1996). It is most relevant to jurors' perception of violence when it shows either the scene of the crime (e.g., depictions of the victim as he/she was found) or a reenactment of how the crime took place. Such visual aids constitute "demonstrative evidence," in that they are used to illustrate other testimony or real evidence (Campbell, 1996; Hennes, 1994). As such, pictorial evidence of violence must do more than merely provide a visualization of prior oral testimony (Hennes, 1994).

Because information may be retained better by jurors when it is presented visually than when it is presented orally (Campbell, 1996), there are concerns that visually graphic evidence—for example, grisly pictures of a murder victim—would exert an undue influence on the jury (Curriden, 1990). According to Rule 403 of the Federal Rules of Evidence, any evidence, though relevant, may be ruled inadmissible if the judge deems that its potentially prejudicial effect would outweigh its probative value. This rule has been cited frequently in debates over the admissibility of evidence of violence, particularly when that evidence is presented in a graphic, visual manner (e.g., Campbell, 1996; Hennes, 1994).

Photographs or videotapes of the crime scene itself, as well as victims, are being shown to juries in an increasing number of judicial districts (Curriden, 1990; Fagan, 1993). Because such depictions may be prejudicial to the defendant, they are generally inadmissible if their sole function is to inflame the jury by exposing them to gore for gore's sake (Curriden, 1990). As with demonstrative evidence in general, however, graphic pictures are typically admissible if they tend to prove or illustrate some material issue in the case (Fagan, 1993). Specifically,

... the fact that [a photograph of a victim's gory remains] may evoke an emotional reaction from the jury does not necessarily make it prejudicial. There may be nothing wrong with shocking a jury with the repulsiveness of a crime, as long as the impression made by the evidence in question is commensurate with its probative worth. (Gold, 1984, p. 82)

The courts have ruled that graphic photographs of crime victims, especially when depicting the cause of death in murder cases, may be regularly admitted for this purpose (Fagan, 1993). For example, the New York Appellate Court has ruled that "photographs of a deceased person, no matter how gruesome, were admissible if they tended to prove, disprove, illustrate, or elucidate a material issue or other evidence offered in a case" (Fagan, 1993, p. 149).

Despite the perennial concerns that visual portrayals of crime scenes will be prejudicial (e.g., Curriden, 1990), little research has been done to document their effects. A notable exception in this regard is an experiment conducted by Kassin and Garfield (1991), in which mock jurors read a transcript of a murder trial in order to reach a verdict (without deliberation). Prior to reading the transcript, one-third of the participants viewed a 1-minute videotape of the crime scene, which contained a close-up of the bloodied body of a young man lying in the street with stab wounds in his chest. The footage was from a real crime that took place in New York City. Another third of the participants viewed the same videotape but were told that while it showed the scene of a crime in New York, the trial they would read concerned a similar crime in another city. This "non-relevant" graphic evidence condition was included to assess whether there would be any general effects—that is, not specific to the case at hand—on participants' verdicts of viewing graphic evidence. Finally, another group of participants viewed no videotaped evidence.

Surprisingly, participants who viewed the crime scene—in both the relevant and nonrelevant conditions—did not perceive the crime as more violent than participants who merely read about the crime. In addition, viewing the crime scene had no effect on participants' verdicts or on their subjective probability that the defendant committed the crime. Thus,

there was no main effect on jurors' judgments of being exposed to evidence of violence. However, participants who watched the relevant videotape did set a lower threshold for conviction than participants in the other conditions; that is, they responded with lower figures to the statement, "The defendant should be found guilty if there is at least a ____% chance that he committed the crime." This finding suggests that the graphic evidence did have some effect on their judgments about the case.

The effect of graphic evidence on participants' conviction threshold was especially pronounced among participants who were classified *a priori* as favoring the prosecution. Participants who were classified as prosecution-biased were also more likely than defense-biased participants to believe the defendant committed the crime, but only if they had seen the relevant videotape. These differences between prosecution- and defense-biased participants might be one reason why death-qualified jurors, who tend to be prosecution-biased, are more likely to convict than jurors whose death penalty views preclude them from sitting on juries in capital cases (Cowan, Thompson, & Ellsworth, 1984). Finally, participants who saw the graphic evidence—whether or not it was relevant to the case they were judging—reported lower estimates of the current national homicide rate, and they were also more likely to believe that the homicide rate was increasing.

In summary, results of Kassin and Garfield's (1991) experiment are somewhat mixed. On the one hand, there was no effect of graphic videotapes on the primary dependent variable, mock jurors' verdicts. This finding suggests that fears about the prejudicial impact of such footage may be overblown. On the other hand, the evidence did affect the mock jurors in important ways, both regarding the specific case—in lowering the threshold that they relied upon for conviction—and more broadly, in affecting their perceptions about the rate of homicides in general. These findings lead Kassin and Garfield (1991) to conclude that "on the question of whether [the tapes] have a prejudicial effect, [the] data . . . offer compelling reasons for concern" (p. 1470).

If videotapes of crime scenes have been controversial, crime scene reenactments have been even more so. Such reenactments are being used increasingly when there is conflicting evidence about the circumstances of a crime; the reenactments are designed to illustrate one side or another's version of the facts (Hennes, 1994). When reenactments are admitted into evidence in the prosecution of violent crimes such as murder, the jurors are essentially witnesses to a very vivid portrayal of a violent, real-life event. Like footage of an actual crime scene, reenactments constitute demonstrative evidence and are subject to exclusion if their potential for arousing prejudice outweighs their probative value. However, they are commonly held to be even more prejudicial than mere crime scene videotapes, due to the myriad variables involved in recreating events and the large potential impact of slight variations in how the event is filmed, acted, or produced (Hennes, 1994). As such, crime scene reenactments have historically been deemed inadmissible, but the situation has recently begun to change (Hennes, 1994).

Although these arguments for how crime scene reenactments might potentially prejudice jurors are very logical, no experimental studies have been done along the lines of Kassin and Garfield's (1991) experiment to determine their actual impact. It is presently unknown, for example, whether a graphic reenactment of the prosecution's theory of how a murder was committed would sway a jury more than the prosecutor's oral explanation of the theory. It is also not clear what effect, if any, variations in how the reenactment was filmed—as in using different actors, different camera angles, etc.—would have on jurors' judgments. In the absence of such data, claims that "the jury will rely disproportionately on the vivid piece of evidence" (Hennes, 1994, p. 2172) are premature.

Of course, evidence of violence does not need to be visual in order to be graphic; ver-

bal descriptions can be graphic as well. Fishfader, Howells, Katz, and Teresi (1996) presented mock jurors with a wrongful death lawsuit in one of three formats: print transcript, videotaped testimony, or videotaped testimony plus reenactment. In the latter condition, participants were shown a videotape depicting the drowning death of a young girl, due to her hair's becoming entangled in a spa's suction cover, as well as attempts to resuscitate her. Participants in the other conditions merely saw (or read) witnesses' descriptions of the event. Participants who viewed the reenactment were more emotionally affected by the trial than were participants who read the transcript, but not compared to those who saw videotaped testimony; in addition, the trial format affected neither mock jurors' liability judgments nor their damage awards. These findings suggest that visual reenactments are not necessarily more powerful than third-party descriptions of the same event, especially when those descriptions are presented visually. Written descriptions of violent crimes, if sufficiently graphic, might also be expected to affect jurors' judgments in a comparable manner.

EVIDENCE OF PRIOR ACTS OF VIOLENCE

The previous section addressed the impact of evidence of violence pertaining to the act for which a defendant is being tried. In some cases, evidence of prior acts of violence—*not* directly related to the present offense—is also presented at trial. As with graphic evidence, such “bad acts” evidence is controversial. The issue was prominent in the O. J. Simpson criminal trial, where the prosecution sought to introduce evidence of the defendant's prior abusive behavior toward Nicole Brown Simpson (Linsky, 1995). According to Linsky (1995), judges are often hesitant to admit such testimony because of its prejudicial potential. It is usually inadmissible if its purpose is solely to discredit the defendant by showing a criminal propensity or making him out to be a bad character, but it is admissible if its potential prejudice is outweighed by its tendency to establish an element of the crime, such as intent, motive, pattern of behavior, or identity of the defendant (Linsky, 1995). For example, in the trial of a defendant for domestic violence, evidence of prior abuse or threats can help establish that the defendant had a motive to commit the present act of violence, and also that his conduct in the present instance was intentional. Thus, some commentators argue that it is critical for juries in domestic violence cases to be presented with evidence of prior bad acts, despite the testimony's potential prejudice (e.g., Linsky, 1995). Such evidence has been found to increase the degree to which the husband is perceived as responsible for the abuse (Sugarman & Cohn, 1986). It therefore seems reasonable to assume that such evidence would, because of its probative value, also increase the likelihood of conviction; however, additional research is needed to determine how various characteristics of previous violence—such as the type and frequency of the violence—would affect jurors' judgments.

A related way in which evidence of prior domestic violence can influence jury decision making is when it is not the abuser, but the victim, who is on trial. These cases of battered women who kill their husbands almost always involve a history of abuse (Follingstad, Polek, Hause, Deaton, Bulger, & Conway, 1989); in fact, such a history is one of the major criteria for invoking the “battered woman syndrome” defense (Schuller & Vidmar, 1992). As this defense is a relatively recent legal development (Schuller & Vidmar, 1992), there has not yet been a great deal of research addressing jurors' response to it. Nonetheless, the research that has been done on the battered woman syndrome offers some intriguing results.

For example, Follingstad et al. (1989) presented mock jurors with a fictitious case in which a repeatedly abused wife killed her husband and was subsequently on trial for mur-

der. They manipulated several factors, including the level of force used by the husband against the wife on the night she killed him and whether or not an expert witness presented testimony on the battered woman syndrome. Specifically, participants were told that the woman killed her husband: as he advanced on her with a weapon; as he advanced on her after beating her, but without a weapon; or after beating her, but while he was asleep. One-half of each case type included an expert witness who described the battered woman syndrome, focusing especially on the psychological impact of a long-term history of violence. Although neither the level of force nor presence of expert testimony had a direct effect on participants' verdicts, participants who rated either the severity of past beatings or the expert testimony as influential in arriving at their verdict were more likely to acquit the defendant than those who were not influenced by these evidentiary components. In addition, participants rated the history of abuse as the single most influential piece of evidence in determining their verdict. These results suggest that increasing the salience of the history of violence—either by descriptions of the abuse itself or via an expert's testimony—has a noticeable impact on mock jurors' verdicts.

Additional support for the impact of evidence of prior violence comes from a related study performed by Kasian, Spanos, Terrance, and Peebles (1993; Experiment 2), who experimentally manipulated the history of abuse suffered by a battered woman who was on trial for the second-degree murder of her husband. In the "moderate abuse" condition, over a 3-year period, she had received several black eyes, suffered a miscarriage as a result of blows to the abdomen, and been raped once; in the "severe abuse" condition, in addition to those injuries, she had also received broken bones, had teeth knocked out, and been tied to a chair and repeatedly beaten on one occasion. She was on trial for killing her husband while he slept, after threatening to kill her earlier in the evening. Importantly, the events on the night of the victim's death—which constituted the basis of the criminal charge—were identical for the two prior abuse conditions. Nonetheless, mock jurors were significantly more likely to find the defendant not guilty when the prior abuse had been relatively severe, suggesting that evidence of prior violence affects jurors' verdicts. Although the history of violence is, in one sense, completely separate from the defendant's actions during the incident for which she is on trial, it is directly relevant to her state of mind at the time of the offense and therefore at the heart of the battered woman syndrome defense (Schuller, 1992; Schuller & Vidmar, 1992).

HEINOUSNESS

The issue of how heinousness affects jury decisions is most readily applicable in the capital trial. The capital trial, like other criminal proceedings, is bifurcated, or split into two phases (Costanzo & Costanzo, 1992; Ebbesen & Konecni, 1981; White, 1987). In the first phase, jurors determine whether the defendant is guilty of a capital offense. If there is a unanimous decision of guilt, the same jury then determines whether the penalty of death or life imprisonment is appropriate (Costanzo & Costanzo, 1992; Ebbesen & Konecni, 1981; White, 1987). The prosecution and defense offer evidence and arguments at both phases, but the evidence provided at the penalty phase is qualitatively different from that of the guilt phase (White, 1987). At the penalty phase, questions concerning the background and character of the defendant become most important. The prosecution tends to argue that the nature of the crime and the defendant's future dangerousness to society warrant the death penalty, whereas the defense argues in favor of circumstances that mitigate the seriousness of the crime (Costanzo & Costanzo, 1992; White, 1987).

The United States has stated that the death penalty is a qualitatively different form of punishment from other sentences and, as such, has ruled that in order for the death penalty to be administered fairly, and to avoid decisions that are arbitrary or discriminatory in nature, jury discretion in the capital penalty phase must be guided (Costanzo & Costanzo, 1994; Pollman, 1990; Rosen, 1986; Ward, 1988; Wiggins, 1989). In most states, the procedure that has been adopted provides for the jury a list of aggravating and mitigating circumstances that should be weighed against one another in determination of the appropriate sentence (Costanzo & Costanzo, 1994; Rosen, 1986; Wiggins, 1989). If the aggravating circumstances are found to outweigh the mitigating circumstances, then the jury should vote in favor of the death penalty.

Prior to the capital proceedings, jurors are subject to death qualification. Prospective jurors are asked whether their beliefs in the death penalty, either for or against, would hinder their ability to impose the death penalty fairly (Luginbuhl & Middendorf, 1988). However, there is concern that death qualification of jurors possibly skews or biases the decision-making ability of the jury (Luginbuhl & Middendorf, 1988). For example, research has indicated that death-qualified jurors are conviction prone (Bronson, 1970; Cowan et al., 1984; Goldberg, 1970; Jurow, 1971). Questions concerning the heinousness of a crime are most relevant as an aggravating circumstance (i.e., a circumstance that weighs in favor of the death penalty). Possibly, death-qualified jurors will be biased in differentially weighing aggravating circumstances, such as the perceived heinousness of a crime, compared to those jurors who would be excluded from a capital trial (Luginbuhl & Middendorf, 1988).

Research in this area has provided some, but far from compelling, support for this contention. Luginbuhl and Middendorf (1988) divided actual jurors waiting to serve in capital trials by their death penalty beliefs along a four-point scale, from those strongly opposed to those strongly in favor of the death penalty. The jurors were given a list of aggravating and mitigating circumstances, as defined by the *North Carolina Criminal Procedures Act*, and were asked to indicate their level of agreement or disagreement using a six-point Likert scale. For example, a representative aggravating circumstance was "A murder is worse if the murderer apparently got pleasure from the victim's suffering," and a representative mitigating circumstance was "It would be appropriate to give a murderer a lighter sentence if he or she had never been in trouble with the law before" (Luginbuhl & Middendorf, 1988, p. 280). Results indicated that agreement or disagreement with aggravating circumstances did not differ significantly between those jurors opposed to the death penalty and those jurors who supported it. On the other hand, analyses of data on mitigating circumstances revealed that those jurors who were opposed to the death penalty agreed more with those factors that mitigate the seriousness of a crime than those jurors who were in favor of the death penalty.

However, to make for a more ecologically valid test of their hypothesis—that death-qualified jurors are biased in the direction of overweighing aggravating circumstances in determining the appropriate severity of penalty—Luginbuhl and Middendorf (1988) replicated their study using the death qualification criteria established by *Witherspoon v. Illinois* (1986), which is a more stringent criterion for classifying subjects than simple beliefs in the death penalty. They found marginally significant differences between death-qualified and death-scrupled jurors (i.e., those who would be excluded from the capital trial) in their agreement with two aggravating circumstances in relation to determining the severity of the appropriate penalty. Death-scrupled jurors disagreed more than death-qualified jurors with the statement that a murderer with a previous history of violence should be punished more severely. More importantly, as it bears on a direct relationship to the perceived heinousness of a crime, death-

scrupled jurors disagreed more than death-qualified jurors that a murderer who inflicts undue pain on a victim should be punished more severely. The implication of these results is that the process of death qualification may affect jurors' receptivity to consideration of aggravating circumstances in determining a sentence of life or death; however, given that only marginally significant results were found, further research is needed to determine more definitively whether concern about death-qualified jurors' ability to be fair in weighing the evidence at the penalty phase of a capital trial is warranted.

As it stands, most states provide for an aggravating circumstance that addresses the extreme nature or heinousness of the crime. However, the legal definitions provided by most courts are broad and vague, usually using terms that describe the nature of the crime as "heinous, atrocious, cruel, vile, wanton, or inhuman" and describe the defendant's actions as displaying "depravity of mind" (Pollman, 1990; Rosen, 1986; Ward, 1988; Wiggins, 1989). By the very nature of these terms, judicial scholars have argued that the "especially heinous" aggravating circumstance only broadens the discretion of the jury instead of directing it, which is the express purpose of providing jurors with a list of aggravating and mitigating circumstances (Rosen, 1986).

Rosen (1986) has argued that the loose manner in which heinousness is defined by most courts results in its arbitrary use. For example, in most courts, jurors are allowed to interpret the heinousness statute in the disjunctive; that is, jurors must only find that a murder fits any one of the descriptors that are used to define the statute, not all of them. Hence, a murder that is found to be vile but not necessarily cruel can be an aggravating circumstance, etc. Additionally, Rosen has documented, in a massive accumulation of archival research, that there is no standard for the consistent application of the especially heinous aggravated circumstance. For example, the death penalty has been given for excessive cruelty when the victim was conscious and thus aware of his impending death, and also when the victim was unconscious and therefore unaware of his impending death; in both cases, the crime was found to fit the heinous aggravated statute. Rosen found many similar cases and concluded that the statute should be eliminated because it cannot be objectively administered.

Some state supreme courts have recognized this problem; however, few have addressed it (Pollman, 1990; Rosen, 1986; Ward, 1988; Wiggins, 1989). The few that have attempted to limit the statute have done so by imposing more stringent criteria for what necessarily constitutes a heinous crime and thus can be considered an aggravating circumstance (Rosen, 1986). To varying degrees these states require proof, through physical evidence, that the murder involved serious physical abuse or torture before the death of the victim. However, Rosen (1986) has demonstrated that this change in the interpretation of the especially heinous statute has failed to rectify the problem. Once again, clear definitions of what necessarily constitutes physical abuse or torture are lacking, and most of these states have been inconsistent in their application of the newly revised statute (Pollman, 1990; Rosen, 1986; Ward, 1988; Wiggins, 1989).

Given that there are judicial scholars who suggest that jurors do not fully comprehend the instructions designed to guide their discretion or, at the very least, fail to apply them systematically, how does the empirical research bear out? In a review of the literature investigating juror comprehension of death penalty statutes, Diamond (1993) indicated that the court system implicitly assumes that jurors will understand the meaning and implications of the instructions and will be able to apply them objectively based on the evidence presented during the case. However, the research literature paints a different picture. In general, juror comprehension of judicial instructions tends to be poor (Elwork, Sales, & Alfini, 1982; Severance & Loftus, 1982). Furthermore, in the capital penalty phase both the meaning and application of aggravating and mitigating circumstances have been found

to be quite poorly understood among jurors (Diamond, 1993; Haney & Lynch, 1994; Wiener, Pritchard, & Weston, 1995).

Surprisingly, very little empirical research has been conducted on the very pressing and increasingly relevant question of how heinousness directly affects juror decision making. Hester and Smith (1973) examined how a mandatory death sentence interacted with the perceived heinousness of a crime. At the time the research was conducted, the Supreme Court was reevaluating the constitutionality of the death sentence, and the possibility of a mandatory death sentence for certain crimes was being considered. Mock jurors read a description of a murder case and rendered verdicts of guilt or innocence.

Heinousness was manipulated by the details of the respective cases. Half of the subjects read a description of a gang war murder in which a rival gang leader was killed in revenge for the torture and murder of one of the defendant's companions (less heinous condition), and half of the subjects read a description of a gang-initiation murder in which the defendant murdered a young girl to prove his loyalty to the gang (more heinous condition). In addition, the case description for the more heinous condition indicated that the defendant chose a young girl as his victim partly "for kicks." A manipulation check confirmed that the murder of the young girl was rated as more heinous according to the definition of "hateful; wicked; abominable."

Furthermore, manipulation of heinousness was combined factorially with the presence or absence of a mandatory death sentence. In the mandatory death sentence condition, subjects were told that if found guilty, the appropriate penalty for the defendant would be death by hanging (subjects were led to believe that the case was taken from court files in Mexico); and in the condition without the mandatory death sentence, subjects were told that if the defendant was found guilty the minimum penalty would be 20 years imprisonment up to a maximum of life imprisonment. Conviction rates were the dependent measure.

Hester and Smith (1973) found that for the less heinous condition, mock jurors convicted the defendant significantly more when they believed he would receive a sentence of imprisonment than when they believed he would receive a sentence of death; for the more heinous condition, however, the difference between sentence conditions was not statistically significant. The authors conclude that the data support the claim that the perceived heinousness of a crime would moderate conviction rates when a mandatory death sentence was present.

There are a number of caveats to the Hester and Smith (1973) study. First, the victims' gender and age were confounded between the heinous conditions. In the less heinous condition the victim was an adult male, whereas in the more heinous condition the victim was a young girl. The authors acknowledge this potential problem and provide as a rationale for their decision to use different victims that the perceived heinousness of a crime is often defined in terms of the characteristics of the victim, as well as the nature of the act. Granted, many states have found that particular murders warrant the especially heinous aggravating circumstance because the victim was either very young or very old (Rosen, 1986).

However, if heinousness is to be defined in part by the characteristics of the victim, the characteristics of the defendant, and the nature of the act, a more revealing manipulation would be to examine how these three aspects function to affect the perceived heinousness of a crime. It would be worthwhile to determine whether and how the factors operate, both independently and in combination. In the Hester and Smith experiment, however, characteristics of the victims and the nature of the act were not manipulated separately. The victim was either an adult male or a young female. In the case where the adult male was killed, the defendant's actions were described in part as being motivated out of revenge, whereas in the case where the young girl was killed, the defendant's actions were described as an initiation killing, with the choice of victim being partly chosen for the per-

verse joy it would bring the defendant. Nevertheless, the Hester and Smith experiment reveals that heinousness can affect jury decisions. Further research is necessary to disentangle the various factors that affect the perception of heinousness.

A more compelling manipulation of heinousness was conducted by Hendrick and Shaffer (1975). Case descriptions that were read by mock jurors indicated that the victim's body was either mutilated after death or not. In addition, for half of the participants the murder was performed by one killer; for the other half, the murder was performed by five killers. Mock jurors read transcripts of the crime in which the defendant had already been found guilty and were asked to give a sentence between 5 and 99 years. Additionally, participants answered follow-up questions designed to tap further the effects of heinousness and number of killers. Participants indicated ratings of agreement/disagreement with the possibility of parole, the possibility the defendant was insane, and the appropriateness of a death sentence for this case. Also, participants rated how horrible and morally evil the crime was, along with the perceived intentionality and motive of the defendant.

Hendrick and Shaffer (1975) found a main effect for the mutilation condition. Participants who had read the case description of the murder with mutilation gave sentences on average 50 years longer than those participants who read case descriptions that did not contain the mutilation manipulation. In addition, analyses of the follow-up questions revealed that participants who read the case description containing the mutilation of the victim detail agreed less that the defendant should be released on parole, were more strongly in favor of the death penalty for the defendant, and perceived the defendant as possessing greater intentionality than those participants who read a case description that did not include the detail of the mutilation of the victim.

Furthermore, main effects for mutilation and number of killers were found for the dependent measure of insanity. Defendants who were charged with murder and mutilation were viewed as more likely insane than those defendants charged with murder only. Also, killers who acted alone were viewed as more likely insane than in the condition that included five killers. Likewise, for the question of how morally evil the crime was, main effects for mutilation and number of killers were found. Murders that were committed by five killers were viewed as morally more evil than single killers and, not surprisingly, murder-mutilation was viewed as morally more evil than murder alone.

Hendrick and Shaffer's (1975) results provide a preliminary and rather telling example of the possible effects heinousness may have on jury decisions. Most apparent was the manner in which heinousness affected penalty decisions. Certainly there are limitations of this study. How these results are likely to generalize to the forensic setting is questionable, for the dependent measure was sentence length in years, whereas the details of the crime place it more likely as a capital offense in which the appropriate penalty would be a dichotic decision between life and death. Also, a more ecologically valid design that used capital sentencing procedures (i.e., guided juror discretion) would be more revealing; however, it must be noted that this research was conducted prior to many of the changes that have occurred in the sentencing phase of capital trials. Likewise, lack of jury selection analogous to the forensic setting (i.e., death qualification) further imposes limitations on the external validity of the results of Hendrick and Shaffer. Nonetheless, the study is a promising start in an area of research that is sorely lacking.

Attempting to provide empirical evidence for where community sentiment stands with regard to felony-murder cases, Finkel and Duff (1991; Experiment 1) manipulated the relative roles of four defendants in four separate cases. The defendants were charged with conspiracy to commit a felony (robbery) and murder. Furthermore, the four defendant's roles

were getaway driver, lookout, sidekick, and triggerman, respectively. In each case, the defendants robbed a liquor store and, in the course of the robbery, the store clerk died. For the *heart* case, the clerk died of a heart attack as a result of the robbery. In the *accident* case, the clerk grabbed for the gun held by the triggerman and was accidentally shot when the gun went off. Similarly, during the *heinous* case, the clerk grabbed for the gun but the triggerman "went wild" and pistol whipped the clerk till he was bleeding profusely and then emptied all six shots from the revolver into him. Finally, in the *premeditated* case, after the defendants finished robbing the store, the triggerman stated he had been waiting for two years to kill the clerk and was not going to leave a witness who could identify them; he subsequently shot the clerk six times.

Mock jurors were presented with one of the cases and were requested to decide verdicts for each of the defendants on the two charges, conspiracy to commit a felony (i.e., robbery) and felony-murder (first-degree murder for the premeditated case). Also, jurors determined appropriate sentences depending on whether they found the defendant(s) guilty on one or both of the charges.

Finkel and Duff (1991) found no significant overall case effects for either the charge of conspiracy to commit a felony or felony-murder. However, for the felony-murder charge, conviction rates increased significantly from the heart case (63%) to the accident case (79%) to the heinous case (88%), but for the triggerman defendant only. Furthermore, this same pattern of data was found for the death sentences given to those defendants found guilty of felony-murder. Significant increases in death sentences were found between the heart case (7.7%), the accident case (13%), and the heinous case (31%). Once again, these results were only significant for the triggerman.

In a more recent study, Finkel, Hughes, Smith, and Hurabiell (1994) sought to determine the effects of heinousness on the community sentiment for imposing the death penalty on minors. The two variables of interest were the age of the defendant and the perceived heinousness of the crime. The age of the defendant varied along a range from 15 to 25 years old. Mock jurors read one of three cases taken from actual court records and were subject to voir dire (i.e., jury selection). Afterwards, participants indicated verdicts of guilt or innocence and, if they found the defendant guilty of first-degree murder, determined the appropriate sentence (i.e., either death or life imprisonment) after reading arguments from the penalty phase by the prosecution and defense.

The first case concerned the murder of a brother-in-law of the defendant. It was suggested that the brother-in-law had been physically abusing the defendant's sister and that the murder was an act of reprisal by the defendant and three additional accomplices who were old friends of the defendant. The defendant and accomplices were charged with beating the victim, shooting him twice, slitting his throat, and stabbing him twice in the chest and abdomen.

The second case involved the robbery and murder of a convenience store clerk. The defendant, along with a single accomplice, planned to murder whomever was operating the cash register in order to protect themselves from being later identified. The clerk, described as a mother of two, was stabbed a total of eight times, two that penetrated her heart and one that opened the carotid artery in her neck. In addition, the description indicated that the defendant stabbed the clerk four times in the neck in response to the clerk's pleading for her life.

The third case also involved a robbery-murder, in addition to the repeated rape and sodomy of the victim. The victim was shot twice at point-blank range, once in the face and once in the back of the head. The case description indicated that the defendant murdered the victim because she was his neighbor and would likely be able to identify him.

As is readily apparent, no a priori conclusions about the relative heinousness of the three

cases can be assumed. No manipulation check was conducted to insure that heinousness was systematically varied across the cases. All could be found heinous according to legal definitions. Furthermore, there was no attempt to control for extraneous variables across the cases. The cases differed widely in terms of the weapons used, the accomplices involved, the victims' gender and relation to the defendant, the motivation of the defendant, and the actual acts involved (i.e., murder vs. robbery-murder vs. robbery-rape-murder). Finkel et al. (1994) found that the case that involved the robbery and murder of the convenience store clerk (i.e., the mother of two) received the most guilty verdicts and sentences of death. They conclude post-hoc that since this case had the highest conviction rate and proportion of sentences of death, it was arguably the most heinous. This conclusion cannot be made, for no manipulation check was conducted to insure that this case was found most heinous a priori.

White (1987) conducted a similar experiment. Mock jurors were presented with a simulated trial in which they were instructed that the defendant had been found guilty and that they were to participate in the penalty phase of the trial. One of three crime scenarios was presented to the jurors. The first involved a robbery-unpremeditated murder in which the defendant shot and killed a convenience store clerk after she broke free of her bonds and began yelling hysterically. The second crime scenario was identical to the first one, except that the murder was premeditated. After tying up the clerk and emptying the cash register, the defendant returned to where the clerk was bound and shot her twice in the head at point-blank range. Finally, the third crime scenario involved a case of heinous, multiple murders. The defendant was charged with abducting and killing female hitchhikers on three separate occasions.

After reading the trial descriptions, jurors read transcripts of the testimony that was presented in the penalty phase. In addition, White examined four possible defense strategies for each of the crime scenarios. As the results indicated only a marginally significant main effect of strategy, the defense strategies will not be discussed. Prior to deliberation, the jurors listened to closing arguments and were read capital sentencing instructions as given in California. Jurors indicated either a life or death decision and rated along a 10-point Likert scale how certain they were of their penalty decisions. Also, follow-up questions were given to assess jurors' perceptions of how similar to other people they viewed the defendant, their beliefs on how dangerous the defendant would likely be in the future, and how much they felt the defendant's behavior was due to his own choosing. An analysis of the penalty decisions revealed a main effect of crime type. Combining both their penalty decisions and their certainty ratings to form an interval scale with a range from 1 ("very certain for life") to 20 ("very certain for death"), results indicated that jurors were most punitive when presented with the multiple murder scenario. While these results seem to indicate how the perceived heinousness of a crime affects jurors' penalty decisions, no manipulation check was conducted to insure that the multiple murder was indeed viewed most heinous a priori.

In sum, little empirical research has been conducted as to the effects of the perceived heinousness of a crime on jury decision making. Of the five articles that have been found in an extensive literature search, two were published in the seventies and the other three only manipulate heinousness tangentially. Certainly, this area of research remains open with many questions left to be answered. While the research to date is spotty, the findings bear important scrutiny. The results of Hendrick and Shaffer (1975) indicate that heinousness can have a profound effect on the sentencing decisions of jurors. Furthermore, Hester and Smith (1973), Finkel and Duff (1991), and Finkel et al. (1994) demonstrated that heinousness may interact strongly with other legal factors of a capital trial. These results

pave the way for a line of research that more clearly examines the various factors that constitute heinousness and how they may affect the decisions reached by jurors. The legal community has expressed reservations with regard to the current status of heinousness as an aggravating circumstance (Rosen, 1986). Unfortunately, the arguments that have been raised have little support aside from archival data (Pollman, 1990; Rosen, 1986; Ward, 1988; Wiggins, 1989). Empirical studies are needed to help clarify the implications of the perceived heinousness of a crime for jurors' penalty decisions.

DIRECTIONS FOR FUTURE RESEARCH

As is evident from the research literature, the question of how violence affects jury decision making has yet to be resolved. The impact of graphic evidence, jurors' perceptions of a history of violence, and the effects of heinousness all pose research questions that are increasingly relevant to the legal community. By their nature, these topics have received a great deal of controversy because of the possible repercussions they may have on how jurors reach verdicts and determine sentences. Empirical research is necessary to help clear up some of the controversy that exists, or, at the very least, to provide evidence for some of the arguments that have been forwarded. In the following section, we outline the most important research questions that have yet to be addressed in an attempt to provide a framework within which future research could be conducted.

Introduction of graphic evidence, with its increasing use in criminal trials, offers many potential avenues for research. Specifically, the issue of whether graphic visual evidence prejudices juries has yet to be conclusively demonstrated. Results of Kassin and Garfield (1991) suggest that effects of graphic visual evidence are relatively small. These results are surprising, for it seems intuitively plausible that photographed and videotaped evidence would prove to be a salient criterion on which jurors would base their decisions. Replications of Kassin and Garfield's study are necessary to insure that these results are generalizable. In addition, comparisons between graphic verbal and graphic visual evidence may provide a more revealing illustration of the relationship between graphic evidence and jury decisions. Perhaps the visually gruesome nature of crime scene photographs and videotapes is not what is most influential. Descriptions of the crime in terms of highly graphic imagery may be sufficient to produce the desired effect, rather than the necessity of viewing disturbing photographs. Graphic visual evidence may add nothing to what the verbal accounts of prosecutors could provide.

Likewise, variations in the gory details of photographic and videotaped evidence may prove to be a possible mediating influence on the effects of graphic evidence on juries. Assuredly, differences in the quality of the visual evidence, as well as how completely the photograph captures the victim's injuries, occur naturally in the forensic setting. Perhaps the influence of graphic evidence on jury decision making varies as a linear function of how gruesome the evidence is. Also, variations in the amount of graphic evidence presented in a given trial may result in desensitizing juries to the effects that the evidence may have otherwise. Relatedly, color versus black-and-white photography may prove to be important. An intuitive assumption would hold that color photography is likely to be more detailed and thus more graphic than black-and-white photography (Whalen & Blanchard, 1982), thereby affecting juries to a greater extent. These are empirical questions that deserve further study.

Concerning crime scene reenactments, there are many variables left to be examined. The perspective from which the reenactment is filmed could affect its impact. Certain angles may make the crime scenario appear more violent, for example. Similarly, the distance

from which the action is filmed may affect its apparent violent content. Close-ups could focus on the injuries of the victim, the painful expressions of the victim, or the violent behavior of the defendant. In addition, portrayals of the victim or defendant and the graphic nature of the crime may be skewed by the party that is presenting the evidence (Hennes, 1994). None of the above variables have been systematically varied, however. The controversy that surrounds the admittance of crime scene reenactments (Hennes, 1994) would benefit greatly from research that examines these variables.

In cases of domestic violence, questions remain unresolved as to how evidence of prior acts of violence may affect a jury's likelihood to convict. Since this kind of evidence is admissible if it provides an additional indication of the defendant's intent, motive, pattern of behavior, or identity (Linsky, 1995), research is needed to assess what kind of an impact it may have on jury decision making. Specifically, the extent and severity, as well as the frequency of occurrence of the past abuse may be important mediating factors to study. Additionally, how this evidence is presented (e.g., graphic pictures, oral testimony, police reports, or expert testimony) may also affect how prior acts of violence are perceived.

Likewise, there are many questions still left unanswered regarding the effects of heinousness on jury decisions. Of the empirical articles reviewed above, none have partialled out the various factors that may impinge on how heinous a crime is perceived to be and its resultant effects. Hester and Smith (1973) defined heinousness in terms of the characteristics of the victim as well as the nature of the act. Undoubtedly, the characteristics of the defendant would also be worth including. Hester and Smith confounded the gender and age of the victim between conditions. Additionally, Finkel et al. (1994) used case descriptions that varied widely on the characteristics of the victims and defendant and the nature of the crime. For the effects of heinousness to be more clearly understood, each of these factors should be given separate consideration.

Aspects of the defendant alone could affect the perceived heinousness of a crime. For example, gender could interact with the heinousness of the case. Heightened sentences for more heinous crimes may be given differentially to men and women. Similarly, the race of the defendant may prove to be another mediating factor. Those characteristics of the defendant which may affect the perceived heinousness of a crime may also hold for the victim as well. Gender, age, social status, and whether the victim offered any provocation may be important variables to consider. Individual differences among the jurors may also provide an additional approach to how violence affects jury decisions. Death-qualified jurors may view violence differently from death-scrupled jurors, for instance (Luginbuhl & Middendorf, 1988). Moreover, characteristics of the defendant, victim, and jurors should be combined factorially, in order to determine potentially revealing interactions.

Rosen (1986) indicated that many courts have been revising their heinousness statutes to include evidence of physical abuse and torture. A worthwhile line of research would be to examine how manipulating such characteristics of the crime would affect its perceived heinousness. This is an important question in its own right and with current legal trends would offer support for contemporary concerns. Relatedly, manipulation of multiple crimes (e.g., murder plus robbery), as was done by Finkel et al. (1994) and White (1987), merits further examination. In both of those experiments, heinousness was not determined a priori and the multiple crime component was confounded with other factors (e.g., characteristics of the victim), so the effects of multiple crimes are not certain.

Finally, research shows that juror comprehension of instructions in the penalty phase of a capital trial is poor (Diamond, 1993; Haney & Lynch, 1994). A plausible hypothesis is that juror comprehension of aggravating and mitigating circumstances may affect how they render sentences. Additionally, how heinousness is defined for jurors (e.g., "vile" vs. "cruel") may affect their sentencing decisions.

SUMMARY AND CONCLUSIONS

To date, only scant empirical attention has been paid to the questions of whether and how evidence of violence affects jury decisions. What research has been done offers some intriguing findings. For example, graphic evidence of the crime scene influences mock jurors' conviction threshold, but it does not affect their verdict (Kassin & Garfield, 1991). This finding suggests that more research is clearly needed that explores the effect of different types and amounts of graphic evidence. It is also unclear what effect graphic crime scene reenactments would have on jurors. Evidence of a prior history of violence, on the other hand, does tend to influence mock jurors' verdicts, especially in the case of trials of battered women (Follingstad et al., 1989; Kasian et al., 1993).

With respect to heinousness, several experiments suggest that although jurors' understanding of aggravating circumstances is limited (Diamond, 1993; Luginbuhl & Middendorf, 1988), their sentencing decisions in capital cases are nonetheless influenced by a crime's heinousness (Hendrick & Shaffer, 1975; Hester & Smith, 1973; Finkel & Duff, 1991; Finkel et al., 1994; White, 1987). These findings indicate that jurors are responding properly to this aggravating circumstance in determining sentence; however, it is not yet clear what elements of a crime constitute heinousness. Previous research has failed to partial out factors having to do with the defendant from characteristics of the victim, as well as from properties of the criminal act itself (e.g., the manner in which a murder was conducted).

Violent crime is more common now than it was ten years ago (FBI, 1996; Petersilia, 1994). A better understanding of how jurors react to evidence of violence would contribute to a fairer and more equitable disposition of these cases at trial; yet there is much more that we do not know about this issue than we do know. By pointing out the major gaps in our current knowledge of jurors' perceptions of violence, we hope that future research will address some of these important questions.

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