

## JEP: APPLIED 2004

### Understanding Pretrial Publicity Predecisional Distortion of Evidence by Mock Jurors

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#### ABSTRACT

Prejudicial pretrial publicity (PTP) constitutes a serious source of juror bias. The current study examined differences in predecisional distortion for mock jurors exposed to negative PTP (N-PTP) versus nonexposed control participants. According to work by [K. A. Carlson and J. E. Russo \(2001\)](#), predecisional distortion occurs when jurors bias new evidence in favor of their current leading party (prosecution or defense) rather than evaluating this information for its actual probative properties. Jury-eligible university students ( $N = 116$ ) acted as jurors in a mock trial. Elevated rates of guilty verdicts were observed in the N-PTP condition. Predecisional distortion scores were significantly higher in the N-PTP condition and reflected a proprosecution bias. The effect of prejudicial PTP on verdict outcomes was mediated by predecisional distortion in the evaluation of testimony. Results are discussed in relation to motivated decision making and confirmation biases.

☞ Jurisdictions upholding the notion of a free reporting press in conjunction with a lay jury system face potential problems associated with pretrial publicity (PTP). Depending on the trial and legislative reins on the press within a particular jurisdiction, publicity may reach potential jurors in a combination of extended, graphic, emotional, and judgmental communications about the defendant, victims, and key witnesses ([Kramer, Kerr, & Carroll, 1990](#); [Ogloff & Vidmar, 1994](#); [Wilson & Bornstein, 1998](#)). The juror's ability to objectively and rationally consider the evidence and ultimately reach a verdict based only on the evidence presented in court may be hindered by this pretrial information. Although a small number of studies report null effects (e.g., [Bruschke & Loges, 1999](#); [Freedman & Burke, 1996](#)), over 35 years of research examining the effects of PTP has produced a considerable body of literature that demonstrates a prejudicial impact of PTP on juror decision making (see [Linz & Penrod, 1992](#); [Studebaker & Penrod, 1997](#), for reviews; see also a meta-analysis conducted by [Stebly, Besirevic, Fulero, & Jiminez-Lorente, 1999](#)). Broadly, this research identifies a negative impact of PTP on juror perceptions of the defendant's criminality and likeability, in addition to an increased frequency of guilty verdicts. Much PTP research has been driven by a focus on the practical problems of juror prejudice and the evaluation of practical solutions. Hence, theoretical inroads to explain precisely how pretrial publicity comes to influence a juror's verdict are relatively limited. Researchers have recognized this deficit in the literature (e.g., [Kovera, 2002](#); [Devenport, Studebaker, & Penrod, 1999](#)) and acknowledge that research "that investigates the cognitive processes that produce these media effects can inform a search for remedies to media bias" ([Kovera, 2002](#), p. 69; also

[Linz & Penrod, 1992](#)). In response, PTP research is now moving into what has been identified as its “second generation” with a greater focus on explaining the PTP effect within relevant cognitive frameworks ([Fulero, 2002](#)). In this vein, recent research has expanded to examine the impact of general noncase specific publicity ([Kovera, 2002](#)); the effects of emotional versus factual publicity ([Honess, Charman, & Levi, 2003](#)), midtrial publicity ([Vidmar, 2002](#)), and the impact of pretrial publicity in civil litigation ([Bornstein, Whisenhunt, Nemeth, & Dunaway, 2002](#); [Robbennolt & Studebaker, 2003](#)).

☞ More generally, the decision-making processes of both individual jurors and juries (unfettered by PTP exposure) have come under considerable theoretical scrutiny in the past thirty years, and several models of juror decision making have been proposed and tested. [Hastie \(1993\)](#) broadly identifies two main types of decision-making frameworks, namely mathematical models and explanation-based approaches. Mathematical approaches tend to characterize the task of the juror in terms of a series of mental calculations resulting in an assessment of guilt (e.g., [Kerr, 1993](#); [Schum & Martin, 1993](#); see also [Hastie, 1993](#)). However, as a number of authors have pointed out, these models have limited predictive ability given their reliance on conceptualizing trial evidence as discrete units of information ([Greene et al., 2002](#)). Explanation-based accounts focus on the way in which jurors make sense of the trial information and seek to construct or organize an explanatory coherent mental representation of the information they receive. The story model for juror decision-making ([Pennington & Hastie, 1986](#)) is the most influential approach of this type and proposes that jurors formulate a plausible story of the crime, and subsequently, arrive at a verdict consistent with that particular story. Thus, story construction constitutes a central feature of the cognitive process implemented by jurors to handle trial information in a courtroom setting. As pretrial publicity typically exerts a cognitive impact in advance of the trial and testimony evaluation, an examination of the process by which the publicity information feeds into the decision-making process is necessary. For instance, it may be the case that PTP works to make one “story” more credible than other competing explanations of the crime event or, as is examined in the current article, it may be the case that exposure to PTP promotes a proprosecution bias that determines the subsequent evaluation of each piece of evidence to produce a particular final proprosecution story.

☞ It is not an entirely novel suggestion that PTP might act as a type of filter and promote the credibility of one story over another by causing a bias in the processing of evidence. For instance, [Linz and Penrod \(1992\)](#) have suggested that PTP might influence the probative weight assigned to various pieces of evidence by jurors, or even simply bias their interpretation of how important a particular piece of evidence is. In line with predictions of the story model, PTP may alter evaluations of the credibility or plausibility of the evidence, consequently altering the explanatory stories constructed at trial ([Linz & Penrod, 1992](#)). This notion of juror decision making as a dynamic process of cyclical updating can be located within human information processing frameworks such as that proposed by [Neisser \(1976\)](#). The central assumption of such frameworks is that knowledge in the form of particular schemas or mental models leads to the expectancy of particular kinds of subsequent information, and that an activated schema will “increase receptivity to particular aspects and interpretations of the available information” ([Adams, Tenney, & Pew, 1995](#), p. 88) in a cyclical “set-reset” process. Somewhat similarly, [Montgomery \(1983\)](#) has argued that prior to choice, decision makers may structure available information such that a leading alternative emerges and dominates other options.

—Although it is well documented that people distort responses in favor of a chosen alternative after a decision has been made in order to reduce cognitive dissonance ([Elliot & Devine, 1994](#); [Fazio & Cooper, 1983](#); [Festinger, 1957](#); [Frey, 1986](#)), the distortion of information prior to reaching a final decision has received less direct attention in legal settings. However, research on confirmation bias has long acknowledged a primacy effect whereby individuals form their opinions early in the decision-making process and then evaluate new information in a way that is favorable to that initial opinion ([Anderson & Jacobson, 1965](#); [Nisbett & Ross, 1980](#)). Similarly, research relating to belief persistence has suggested that when an opinion has been formed it can be very resistant to change even when shown to be incorrect ([Rhine & Severance, 1970](#); [Ross & Lepper, 1980](#); [Ross, Lepper, & Hubbard, 1975](#)). As a result, decision-makers may be more likely to view new ambiguous information as confirming previous beliefs or opinions and are more likely to dismiss information disconfirming initial opinions ([Ross & Anderson, 1982](#)). The notion of predecisional bias or distortion allows a more precise conceptualization of these general processes within the decision-making context.

—Recent work by [Carlson and Russo \(2001\)](#) on predecisional distortion in mock jurors provides a useful platform from which to explore the impact of PTP on the evaluation of evidence in an experimental setting. *Predecisional distortion* has been defined as the “biased interpretation and evaluation of new information to support whichever alternative is currently leading during a decision process” ([Carlson & Russo, 2001](#), p. 91; see also [Russo, Medvec, & Meloy, 1996](#)). This particular bias has considerable implications for the juror's task and may have even greater implications where there has been exposure to PTP. Taking Carlson and Russo's example, assume two jurors are exposed to a new piece of evidence concerning a defendant in a trial with two possible outcomes for that defendant: a guilty verdict or a not guilty verdict. Both jurors have been presented with precisely the same evidence up to this point although Juror A currently favors the defendant's case as stronger or in the lead, whereas Juror B has been persuaded by the evidence that the prosecution has presented a superior case. Predecisional distortion proposes that when presented with a new item of evidence both jurors will evaluate that evidence in a way that is more favorable to their current leading opinion rather than evaluating it in a more objective fashion. In other words, jurors distort their evaluation of the evidence toward their own current leader and away from the actual probative value of the evidence (for further explanation see [Carlson & Russo, 2001](#)). Research indicates that this distortion may occur without the influence of prior beliefs or early choice ([Meloy, 2000](#); [Russo, Meloy, & Wilks, 2000](#)).

—In the first study of its kind examining predecisional distortion in a legal setting, [Carlson and Russo \(2001\)](#) found that mock jurors committed distortion in both civil and criminal mock trials, despite repeated instructions to avoid preemptive judgments. The authors concluded that jurors are likely to be unaware of their predecisional distortion and that the process is essentially a coherence-based mechanism. In summary, Carlson and Russo proposed that, rather than grappling with multiple stories when constructing a representation of a crime, jurors hold a single dominant story (derived from the leading verdict at that point) which accounts for the evidence already received. That story might well be radically altered by the acquisition of new information, but the predecisional bias may make it more difficult to shift to diametrically opposed alternatives (verdicts).

Thus, the key, applied problem highlighted by this research is that mock jurors (in common with participants in other, nonlegal settings) display a tendency to distort their evaluation of new information (e.g., evidence) in favor of an existing preference rather than to conduct an objective assessment of that information avoiding any premature judgment.

The current study aims to extend [Carlson and Russo's \(2001\)](#) work by using the predecisional distortion measure to examine how exposure to PTP might influence the way in which jurors evaluate testimony on the grounds that prejudicial PTP may develop a pretrial outcome or verdict bias. The PTP bias is typically manifested in an increased rate of guilty verdicts, but not a great deal of information is available about how that particular outcome is actually reached. Little research has examined the process by which jurors who have been exposed to prejudicial PTP evaluate evidence as they receive it, how these online evaluations influence subsequent evaluations, and, ultimately, verdict outcomes. Although Carlson and Russo's study found that prior beliefs concerning the legal legitimacy of a typical case did not influence case decisions or distortion scores, it is not clear how beliefs or impressions concerning a defendant generated by PTP might influence the evidence evaluation and hence, leader identification and subsequent predecisional distortion.

## Hypotheses

The main aim of the current study was to examine differences in predecisional distortion for mock jurors exposed to negative PTP versus nonexposed control participants. Initially, however, we sought to establish that, in line with previous literature, there was an elevated rate of guilty verdicts for mock jurors exposed to negative PTP (Hypothesis 1).

Using a relatively new technique to quantify predecisional distortion, we sought to replicate the finding that predecisional distortion should be observed as a feature of juror decision-making irrespective of exposure to prejudicial PTP about the defendant (Hypothesis 2a). It was also predicted that exposure to PTP would cause an increase in the magnitude of overall distortion observed as a result of increased bias in the evaluation of testimonies (Hypothesis 2b).

The **mediational role of predecisional distortion** in explicating the typically observed impact of PTP on juror verdicts (i.e., increased conviction rates following exposure to PTP) was examined. It was predicted that the increased distortion resulting from PTP exposure might be the locus of bias on verdicts (Hypothesis 3).

Finally, given the pivotal role of leader identification within predecisional distortion, we hypothesized an in-trial bias toward identifying the prosecution as leader during the trial by mock jurors exposed to PTP (Hypothesis 4).

## Method

### Design and Participants

Participants were 116 White, jury-eligible United Kingdom (U.K.) college students (36 male, 80 female), aged 18–39 years ( $M = 19.9$  years), who were tested individually in noninteracting

groups of 12–15 and were awarded course credit for participation. Participants were randomly assigned to either a negative PTP (N-PTP) or control condition. Each session lasted approximately 90 min.

## Materials

### Pretrial publicity

—Participants in the N-PTP condition read a short news article about the defendant, presented as a cutting from a local newspaper. The article reported that a man had been arrested following a shooting incident in his home. Deliberately, and to avoid biases of the type typically associated with previous convictions ([Lloyd-Bostock, 2000](#)), the article made no references to previous similar behavior by the defendant or previous convictions or criminal record associated with the defendant. Comments by neighbors interviewed for the article indicated that the defendant was an unemployed carpenter and “a bully” with “few friends round here.” The article also reported that the defendant's ex-wife and ex-colleagues refused to comment on the incident. The article was developed to portray the defendant in a negative light without providing any objective or strong stereotypic (such as past convictions) indicators of likely guilt.

—Pretesting of the article indicated that it was effective in producing a negative impression of the defendant. When presented with defendant appraisal statements, pilot N-PTP participants (U.K. college students;  $n = 26$ ) exposed to the article in association with the trial (without any in-trial assessments of evaluation or defense vs. prosecution leadership decisions) rated the defendant as significantly more likely to have been violent in the past,  $t(48) = 2.47, p < .05, d = .72$ ; to have a previous conviction,  $t(48) = 2.21, p < .05, d = .64$ ; and to have committed crimes that had not been detected,  $t(47) = 2.51, p < .01, d = .73$ , than control participants who simply read the trial ( $n = 24$ ). In the main experiment, participants in the control condition read a control article of equal length, which did not contain any reference to the defendant, crime incident, or trial. The article was a factual narrative about mining and was used for the following two reasons: (a) because it would not have been possible to construct an article about the defendant that would not have led to some pretrial impression formation and (b) to ensure equivalence of task times and demands between conditions.

### Trial

—The trial transcript was adapted from *New Jersey v. Bias* (1992; see [Pritchard & Keenan, 1999](#), for previous research using these materials). This transcript presented the testimony (T) of each of six witnesses (T1–T6) and the defendant (T7) in a murder trial. The defendant was charged with the murder of his wife following a fatal shooting at the couple's home, yet he maintains that his wife shot herself despite his attempts to avert her suicide. Both expert pathology witnesses for prosecution and defense present strong arguments as to how either a murder or a suicide may have plausibly occurred in the household. The verdict choices (guilty/not guilty) were made clear at the end of the trial. This trial was chosen because, to our knowledge, it has not been published in its entirety in a source likely to be accessed by the current participant sample, nor would details of a trial such as this have been reported in the British media.

—Pilot work indicated that mock jurors reading the trial understood the facts at issue in the case. In keeping with the experience of actual jurors in the local jurisdiction, mock jurors in the current study were only required to decide whether the defendant was guilty of causing the victim's death by acting “purposefully or knowingly” to that end (murder). Brief judge's instructions informed jurors of this definition and reminded jurors of the reasonable doubt standard to be considered before reaching a verdict. No sentencing decisions were imposed, nor was this crime presented as a capital offense.

—Verdicts returned by participants ( $n = 24$ ) in a pilot control condition who read the trial transcript without exposure to any form of pretrial information comprised slightly fewer guilty (39%) than not guilty (61%) verdicts, but this difference was not significant. Although participants were not required to indicate previous experience as jurors, it was considered highly unlikely that any significant number had acted as jurors in actual trials, given the age profile of the sample and the limited use of jury trial (< 1% of all criminal trials) within the local jurisdiction ([Duff, 1999](#)).

### **Predecisional distortion**

—Following [Carlson and Russo's \(2001\)](#) procedure, each testimony was followed by a set of three questions. Question 1 instructed participants to consider only the information contained in that single testimony and then to rate whether that information had strongly favored either the prosecution or the defense. In each instance of this question, the defendant's case was anchored to the left of the scale (1 = *strongly favors the defendant's case*) while the prosecution's case was anchored on the right (9 = *strongly favors the prosecution's case*). A midpoint at 5 on the scale flagged a “neither party” response. Question 2 required participants to consider all of the information they had received in the trial up to that point and then identify the current “leader” (i.e., the prosecution or defense). For Question 3, participants indicated how confident they were that the party currently in the lead would eventually win the case. A 5-point scale was used in which circling 50% (anchored to the left of the scale) indicated that it was even between the two parties whereas circling 100% (anchored to the right of the scale) identified the current leader as the clear likely winner. These questions appeared immediately after each testimony, with each new testimony (T1–T7) clearly indicated. Note that the distortion score for Testimony 1 was calculated from pretrial completion of the three distortion measure questions prior to reading any trial evidence.

### **Procedure**

—Details of the study prior to attendance were kept to a minimum. Participants were informed that the research concerned “individual differences in comprehension” and were instructed to work through the test materials without conferring. Participants in both conditions read either the N-PTP or control article at the outset. All participants then completed a number of unrelated filler tasks for approximately 30–40 min. When presented with the trial booklet, participants in the N-PTP condition were informed that the newspaper article they read had been included to ensure that they had the same information as the original jurors in the actual trial. This explanation was included to allay strong suspicions about the article and to provide an explanation as to its purpose. All participants were asked to imagine they were sitting in court hearing the evidence presented to them and were instructed to base their verdict only on the

evidence presented in the trial transcript. They were instructed to read the trial transcript carefully in the order presented and to answer the three questions following each testimony. On completion of the trial booklet, mock jurors were required to indicate their verdicts and degree of confidence on a 6-point scale ranging from 1 (*not at all sure*) to 6 (*absolutely certain*) that they had in fact reached the correct verdict, and to estimate the percentage likelihood that the defendant had committed the crime with which he had been charged. Participants then rated four defendant appraisal statements concerning the likelihood of previous violence, criminal activity, and convictions involving the defendant on a 7-point scale ranging from 1 (*not at all likely*) to 7 (*extremely likely*). All participants were required to indicate the degree of certainty at which they would consider themselves beyond reasonable doubt. The final task was a recall test consisting of 24 open-ended questions concerning specific details about the trial evidence (see [Pritchard & Keenan, 1999](#)). Participants in the N-PTP condition were then asked whether they had been influenced by the PTP article and, if so, the extent to which this information had helped them reach their verdict. No time limits were imposed on completion of the response booklet and all participants were fully debriefed.

### **Estimating Predecisional Distortion**

—Predecisional distortion occurs when jurors bias new testimony in the direction of their current leader rather than evaluating this new information for its probative or diagnostic properties as an independent piece of evidence. To paraphrase [Carlson and Russo's \(2001\)](#) original example, consider a witness testimony that slightly favors the prosecution's case. If a mock juror evaluates this testimony as slightly favoring the prosecution's case, then that evaluation is undistorted. If, however, the evaluation is rated as favoring neither party, then the evaluation of that testimony is distorted in favor of the defendant. If the defendant is identified as “leading” following the previous testimony, then the distortion is positive on the grounds that an undersupportive evaluation of a proprosecution testimony favors the current leader (i.e., the defendant). Using the procedure outlined in [Table 1](#), we calculated distortion scores by subtracting an estimate of the probative value of each testimony from each participant's evaluation of the testimony. In other words, removing an estimate of the actual probative value (i.e., an estimate of how diagnostic the testimony is) leaves a measure of distortion for each participant for each testimony (i.e., a measure of his or her bias when evaluating the testimony). Following [Carlson and Russo \(2001\)](#), the mean evaluations used to calculate an estimate of actual probative value were also conditioned on confidence in choice of leader. Previous findings indicate that greater confidence also yields greater distortion scores ([Carlson & Russo, 2001](#); also Carlson, personal communication, May 15, 2002). This involves estimating the distortion at each of four levels of rated confidence that the current leader would eventually “win.” As per the original procedure, confidence levels greater than 80% were omitted to avoid extreme scores. Finally, the signing procedure assigns a positively signed score when the testimony is distorted for the current leading party, and a negatively signed score when the testimony is distorted against the current leading party (i.e., the party identified as being in the lead following the previous testimony). Estimates of actual probative value demonstrated the intended direction of diagnosticity with *leaderfree<sub>j</sub>* values (with <sub>j</sub> referring to any given testimony) for the proprosecution witnesses were above the neutral midpoint of 5 (5.36) whereas the values for prodefense witnesses fell below this midpoint (4.63).

## Results

— The main aim of the current study was to examine differences in predecisional distortion for mock jurors exposed to negative PTP versus mock jurors who had not received any prior information about the defendant. All statistical tests were performed with a preset  $\alpha = .05$ . Where homoscedasticity was an assumption of a statistical test, [Levene's \(1960\)](#) test for equality of variance was assessed, and the assumption supported unless otherwise noted. Effect sizes are reported as [Cohen's \(1988\)](#)  $d$  and [Cramer's \(1946\)](#)  $\phi$  where appropriate. [Cohen \(1988, 1992\)](#) prescribed the values for small-, medium-, and large-effect sizes for different significance tests. For independent  $t$  tests, his values for small, medium, and large  $d$  were .20, .50, and .80, respectively. Cohen's conventions for Cramer's  $\phi$  ( $df = 1$ ) were .10 (small), .30 (medium), and .50 (large).

### Verdicts

— Consistent with Hypothesis 1, analyses on proportions of posttrial verdicts indicated that mock jurors in the N-PTP condition returned significantly more guilty verdicts than those in the control condition (.73 vs. .56),  $\chi^2(1, N = 116) = 3.47, p < .05, \phi = .17$ , confirming that N-PTP participants had been influenced by the pretrial information.

— Analysis of confidence ratings (irrespective of verdict) indicated that there was no difference in confidence in verdict between the N-PTP and control groups,  $t(111) = 0.24, d = .05, ns$ . Thus, to obtain a more sensitive measure of verdict preference a scalar verdict-confidence variable was created. We multiplied each verdict (guilty =  $-1$ ; not guilty =  $+1$ ) by its corresponding confidence score to create a scalar value from  $-6$  (*maximum confidence in a guilty verdict*) to  $+6$  (*maximum confidence in a not guilty verdict*). This type of verdict-confidence score has been used extensively in mock juror research (e.g., [Jones & Kaplan, 2003](#); [Kassin & Sommers, 1997](#); [Kerr, Hymes, Anderson, & Weathers, 1995](#); [Smith, 1991](#)). Analysis indicated a significant difference between conditions on this more sensitive measure such that the defendant was viewed as more certainly guilty by N-PTP participants (N-PTP,  $M = -2.00$ ; control,  $M = -.70$ ),  $t(111) = -2.23, p < .05, d = -.42$ .

### Distortion Scores

— As predicted, predecisional distortion was evident in the evaluations of experimental and control participants (Hypothesis 2a). Hypothesis 2b predicted that the magnitude of predecisional distortion observed for N-PTP participants would be greater than that produced by control participants. Mean distortion scores (across all testimonies) were 1.30 in the N-PTP condition and .58 in the control condition. Overall, total distortion differed significantly by condition,  $t(109) = 3.69, p < .01, d = .71$ , with N-PTP participants ( $M = 9.12$ ) displaying significantly more distortion in their evaluation of testimonies than control participants ( $M = 4.08$ ). Distortion scores were also significantly correlated with verdict-confidence score,  $r(108) = -.39, p < .01$ .

— The above analyses suggest a link between PTP exposure and distortion scores and also between PTP exposure and verdict-confidence outcomes. These associations might be formulated as  $X \rightarrow M$  and  $X \rightarrow Y$  respectively in terms of the mediational model  $X \rightarrow M \rightarrow Y$

(where  $X$  is the independent variable,  $Y$  is the dependent variable, and  $M$  is the mediating variable; [Baron & Kenny, 1986](#)). In line with [Baron and Kenny's \(1986\)](#) recommendations for establishing mediation, we constructed three regression equations. First, regressing total distortion score on experimental condition ( $X \rightarrow M$ ) was statistically significant,  $\beta = -.33$ ,  $t(109) = -3.69$ ,  $p < .01$ ,  $d = -.71$ . Second, regressing verdict-confidence outcome on experimental condition ( $X \rightarrow Y$ ) was statistically significant,  $\beta = .21$ ,  $t(111) = 2.21$ ,  $p < .05$ ,  $d = .42$ . Finally, regressing verdict-confidence outcome on both experimental condition and total distortion score rendered total distortion score significant,  $\beta = -.38$ ,  $t(107) = -3.95$ ,  $p < .01$ ,  $d = .76$ , but not experimental condition,  $\beta = .05$ ,  $t(107) = .49$ ,  $d = .09$ , *ns*. The indirect effect of the independent variable (exposure to N-PTP) on the dependent variable (verdict-confidence score) via the mediator was significant ([Sobel \[1982\]](#) test = 2.71,  $p < .01$ ). [Baron and Kenny](#) have contended that a variable ( $M$ ) functions as a mediator when the significant effect of  $X$  is rendered nonsignificant after controlling for  $M$ . Thus, in the current analyses, exposure to PTP was related to the amount of predecisional distortion present in the evaluation of trial testimony, and it is this predecisional distortion that affected verdict-confidence judgments. In other words, the effect of N-PTP on verdict-confidence scores was mediated by predecisional distortion in the evaluation of testimony.

#### **Direction of bias in the evaluation of testimony**

☞ Positively signed distortion scores indicated distortion for the current leader party (whereas a negatively signed score indicated a distortion against the current leader). The mean distortion was positive for 89% of participants in the N-PTP condition and 70% of participants in the control condition,  $\chi^2(1, N = 111) = 5.46$ ,  $p < .01$ ;  $\phi = -.22$ .

☞ Recall that distortion scores alone do not identify the direction of the bias but that a bias in favor of a preferred leader alters the evaluation of subsequent information. Therefore, to specifically examine whether exposure to N-PTP generates a stronger proprosecution bias in the identification of leaders during a trial than might be displayed among control participants, we recoded the distortion data to reflect the direction of the bias with respect to the previously selected leader. Thus, each distortion score was coded as reflecting either a prodefense or proprosecution bias. For each testimony, we multiplied the direction of the bias (+1 = proprosecution; -1 = prodefense) by its corresponding raw distortion score (i.e., scores which had not already been signed (+ / -) to indicate distortion for or against the existing leader). This recoding produced a scalar measure such that negatively signed scores reflect a prodefense bias and positively signed scores reflect a proprosecution bias while retaining the magnitude of the distortion score to allow comparisons by experimental condition. Therefore, the higher the numerical score on the measure, the greater the extent of the proprosecution bias.

☞ Analyses indicated significant differences in mean scores on this measure by condition for five of the seven testimonies (see [Table 2](#)) such that, for these testimonies, N-PTP participants demonstrated significantly higher proprosecution bias scores than did control participants.

#### **Juror appraisal of the defendant**

☞ Averaging the four defendant appraisal scales together ([Cronbach's \[1951\]](#)  $\alpha = .90$ ) to create a mean defendant appraisal score illustrates the impact of pretrial publicity in mock jurors' more

general impression of the defendant. Overall, participants in the N-PTP condition rated the defendant significantly more negatively than those in the control condition (N-PTP,  $M = 4.84$ ; control,  $M = 3.81$ ),  $t(110) = 5.31$ ,  $p < .01$ ,  $d = 1.01$ . Even when N-PTP participants reached a not guilty verdict, this more negative appraisal of the defendant among N-PTP participants was also in evidence (N-PTP,  $M = 4.21$ ; control,  $M = 3.09$ ),  $t(38) = 4.14$ ,  $p < .01$ ,  $d = 1.31$ .

### Postverdict measures

There were no differences by experimental condition in the number of correct,  $t(108) = -.41$ ,  $d = -.07$ , *ns*; incorrect,  $t(108) = -1.27$ ,  $d = .24$ , *ns*; or missing,  $t(108) = -1.16$ ,  $d = .22$ , *ns*, responses for the 24 trial-recall questions. Performance on the trial-recall task was not significantly correlated with verdict choice,  $r(110) = .06$ , *ns*. For the N-PTP group alone, rated recall of the negative pretrial article was not associated with verdict,  $r(55) = .13$ , *ns*. Furthermore, for N-PTP participants verdict choice was not significantly correlated with ratings of the extent to which the information in the pretrial article helped mock jurors reach their verdicts,  $r(40) = -.30$ , *ns*. With regard to the in-trial evaluation task associated with each testimony, a comparison of verdicts returned by control participants with pretest verdict data ( $n = 24$ ) did not yield any significant association,  $\chi^2(1, N = 24) = 2.52$ , *ns*. When we asked participants to what degree of certainty they would consider “beyond reasonable doubt,” there were no significant differences by condition,  $t(113) = -.13$ ,  $d = -.02$ , *ns*, nor was reasonable doubt rating correlated with verdict,  $r(115) = .02$ , *ns*. The mean response indicated that this population of mock jurors believed that they would be beyond reasonable doubt at a certainty level of 81.87% ( $SD = 10.77$ ). Thus, none of these postverdict measures indicated any systematic differences between experimental conditions which may have accounted for or contributed to the observed effects.

## Discussion

The main aim of the current study was to examine how negative pretrial information affects juror evaluations of evidence to produce the elevated rates of guilty verdicts observed both in this study and with reasonable consistency in prior research. An examination of the predecisional distortion and the direction of the bias present in that distortion identified the course of the prejudicial impact of PTP. The mean overall distortion scores differed significantly by experimental condition with participants in the N-PTP condition displaying elevated distortion, which suggests a biased overevaluation of testimonies in favor of a preferred leading party. Closer examination of the data revealed that N-PTP participants demonstrated an in-trial bias toward identifying the prosecution as leader. Thus, larger distortion scores reflected greater distortion of evidence in favor of the prosecution (preferred leader) for all but two testimonies during the trial for mock jurors exposed to negative PTP. Analyses suggested that the effect of prejudicial PTP on verdict outcomes was mediated by predecisional distortion in the evaluation of testimony.

Thus, it is possible to see how PTP-exposed participants engage in an alternative processing of the trial evidence on a testimony-by-testimony basis when compared with the baseline predecisional distortion control group. Essentially, their evaluations of the majority of individual testimonies carried a built-in proprosecution bias that ultimately resulted in an elevated conviction rate. Follow-up analyses suggest that these findings cannot be accounted for in terms

of recall of the trial details, task demands of the evaluation procedure, different interpretations of the reasonable doubt standard, or self-reported recall of the PTP article.

—In many respects, the results reported here resemble [Kovera's \(2002\)](#) finding that exposure to media stories concerning rape altered the evidentiary standards or types of evidence used to determine a defendant's guilt. Similarly, the present findings are consistent with [Otto, Penrod, and Dexter's \(1994\)](#) conclusion that pretrial publicity modifies jurors' initial judgments about a defendant's guilt, as well as with the evidence plausibility hypothesis proffered by [Linz and Penrod \(1992\)](#). What these results add to this literature, however, is a demonstration of how this process occurs on a sequential testimony-by-testimony basis. In other words, the results offer evidence of a prejudicial effect of PTP on evidence evaluation, and the predecisional distortion method allows direct observation of an antidefendant bias as the evidence unfolds. In this vein, the findings can be simply summarized: Negative PTP creates a stronger leader than would emerge naturally from the evidence had no PTP been encountered. A leader emerges in both conditions—and so distortion is present in both conditions—but the impact (strength) of that leader on the subsequent evaluation of testimony is greater for participants exposed to N-PTP where that leader, as was the case within this sample, is most often the prosecution. As a consequence, these results provide support for the notion of PTP operating as a particular form of confirmation bias at a modular and iterative level among testimonies within a trial.

—Early research identified the expectancy confirmation process as a vital link between social perception and social action ([Darley & Fazio, 1980](#); [Rosenthal & Jacobson, 1968](#)) and documented the consequent operation of a confirming strategy during information processing ([Snyder & Cantor, 1979](#); [Snyder & Swann, 1978](#)). [Darley and Gross \(1983\)](#) outlined a number of mechanisms underpinning the use of such a strategy. Most pertinent to the current discussion is the notion that expectancy consistent information affects the weighting of information such that “expectancy consistent information has inferential impact, whereas inconsistent information has insufficient influence in the social decision task” ([Darley & Gross, 1983](#), p. 22; see also [Nisbett & Ross, 1980](#)).

—An extensive literature suggests that when an individual is sufficiently motivated to reach an accurate and objective decision, information that both supports and rebuts alternative outcomes will be carefully considered. However, the literature also suggests that other motives may work concurrently with that of accuracy ([Sommer, Horowitz, & Bourgeois, 2001](#)). Information search or evaluation may become biased such that greater attention is paid to information supporting a particular outcome ([Kunda, 1987](#); [Sommer et al., 2001](#)). Similarly, research on impression formation by [Klein and Kunda \(1992\)](#) vindicated that perceivers do not generate an inert impression of others but rather form a general belief to justify their impression. [Pyszczynski and Greenberg \(1987\)](#) have suggested that decision makers in this position attempt to retain “illusion[s] of objectivity” despite a selective attention to particular information.

—Consider this selective process in light of the current findings. Jurors—even mock jurors—are typically motivated to reach an accurate and just verdict ([Bornstein, 1999](#)). However, predecisional distortion emanating from the tentative favoring of a leading party (the prosecution or defense) biases the information search and evidence evaluation. For jurors exposed to negative pretrial information about the defendant, this distortion process is exacerbated and the

prosecution is more strongly favored as the leader. In addition, evidence supporting the prosecution's case is more favorably evaluated or, alternatively, the evaluation of prodefense testimony is distorted in favor of the prosecution. However, in line with the predictions of the expectancy confirmation process, the presence of opposing evidence makes the prejudicial evidence evaluation more difficult to detect and the “illusion of objectivity” is maintained. This line of reasoning also fits with the findings of studies demonstrating that the confirmation bias is not restricted to situations in which a final judgment has been made, but it can also arise after preliminary judgments ([Schulz-Hardt, 1997](#)). To extend this argument, consider the traditional trial setting involving the sequential presentation and processing of evidence. Research has demonstrated that the confirmation bias is exacerbated by sequential information processing ([Jonas, Schulz-Hardt, Frey, & Thelen, 2001](#)). Research also shows that people use different cognitive processes when faced with sequential versus simultaneous information ([Hogarth & Einhorn, 1992](#)). Under sequential presentation, new items are immediately compared with prior or preexisting beliefs ([Edwards & Smith, 1996](#)) and assessed relative to this prior belief. [Jonas et al. \(2001\)](#) have contended that sequential presentation involves a repeated consideration of a prior belief or evaluation and a concomitant increase in confidence in the veracity and reliability of this prior evaluation. The authors concluded that this process in turn leads to increased commitment to the belief or evaluation (see also [Koehler, 1991](#); [Schulz-Hardt, Frey, Lüthgens, & Moscovici, 2000](#); [Tesser, Martin, & Mendolia, 1995](#)). The method for measuring predecisional distortion used in this study fits well within this framework, and the present findings suggest that commitment to prior evaluations can also be exacerbated by pretrial publicity. However, the relationship between confirmatory bias and sequential presentation of evidence, although worthy of future attention, was not examined systematically in this study and thus this discussion is merely speculative.

☞ [Carlson and Russo's \(2001\)](#) procedure for examining predecisional distortion has proved a useful tool with which to examine the impact of negative PTP on evidence evaluation. Notwithstanding, there are a number of limitations associated with the current study. As with many laboratory-based juror decision-making studies, it lacks the external validity associated with the actual experience of receiving pretrial publicity and being a juror (for a full discussion of this issue and associated limitations, see [Bornstein, 1999](#); [Studebaker et al., 2002](#)). However, as [Kerr \(1994\)](#) and others (e.g., [Fulero, 1987](#)) have noted, experimental studies of the pretrial publicity phenomenon must be “necessarily artificial” (p. 123) to examine the effect in a controlled setting. Clearly, future research should address a variety of different crime scenarios to track the impact of negative PTP as well as the impact of different forms of PTP.

☞ One possible applied implication of predecisional distortion is the role of order effects in the production of the distortion. Evidence (information) order has already been shown to influence verdicts (choices) ([Pennington & Hastie, 1988](#); [Russo, Carlson, & Meloy, 2001](#)). However, although not directly investigated in the current study, it may be speculated in light of the pattern of results, that order effects may be exacerbated by exposure to negative PTP such that it becomes increasingly difficult for the juror to objectively consider prodefense evidence occurring late in the trial. In other words, if the prosecution is repeatedly identified as the strong leader in the trial early in the trial—and the current results suggest this early identification is exacerbated by exposure to negative PTP—it may be very difficult for the juror to consider both sides of the evidence in a balanced manner. In adversarial systems the prosecution evidence is

typically presented prior to that of the defense, thus the current findings may have important applied implications. In light of the possibility that order effects may be enhanced by the possible incremental nature of testimonial distortion, research in which the order of pro- or antidefendant testimony is systematically manipulated is clearly needed. Additionally, in line with recommendations in the social decision-making arena (cf. [Jonas et al., 2001](#)), it may be the case that promoting a more simultaneous and less sequential mode of evidence processing serves to attenuate the confirmatory biases associated with pretrial publicity.

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✉ We thank Kurt Carlson and Martin F. Kaplan for their very helpful advice and contributions toward this article.

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Table 1. Procedure for Calculating Predecisional Distortion

Table 1

Procedure for Calculating Predecisional Distortion

Step and formula component	Calculative procedure	Worked example for Testimony 5 (T5; control)
Step 1 Estimate probative value of testimony <sub>j</sub> (Leader free diagnosticity)	<p><i>Mean of</i></p> <p>Participant<sub>x</sub>'s evaluation of testimony<sub>j</sub> when defendant (Leader 1 [L1]) identified as leader following previous testimony (Eval<sub>xj</sub> L1)</p> <p>plus</p> <p>Participant<sub>y</sub>'s evaluation of testimony<sub>j</sub> when prosecution (Leader 2 [L2]) identified as leader following previous testimony (Eval<sub>yj</sub> L2)</p>	<p>Calculation A</p> <p>M evaluation (defendant identified) = 3.78</p> <p>+</p> <p>M evaluation (prosecution identified) = 4.65</p> <p>= (3.78 + 4.65)/2</p> <p>= 4.22</p>
Step 2 Improve estimate by including confidence in current leader	<p><i>Sum of</i></p> <p>.25 (Eval<sub>j</sub> C50)</p> <p>.25 (Eval<sub>xj</sub> L1 C51-60 + Eval<sub>yj</sub> L2 C51-60)/2</p> <p>.25 (Eval<sub>xj</sub> L1 C61-70 + Eval<sub>yj</sub> L2 C61-70)/2</p> <p>.25 (Eval<sub>xj</sub> L1 C71-80 + Eval<sub>yj</sub> L2 C71-80)/2</p> <p>= Estimate of probative value of testimony, (leaderfree<sub>j</sub>)</p>	<p>At each level of confidence (C; 50%, 51-60%, 61-70%, 71-80%) conduct Calculation A and then sum to produce one score</p> <p>.25 (3.9)</p> <p>.25 (3.3 + 4.31)/2</p> <p>.25 (5.0 + 4.0)/2</p> <p>.25 (4.0 + 6.33)/2</p> <p>= 4.34</p>
Step 3 Calculate predecisional distortion		
Part 1: Calculate absolute distortion	<p>Participant<sub>i</sub>'s evaluation of testimony<sub>j</sub> (Eval<sub>ij</sub>)</p> <p>minus</p> <p>Estimate of probative value of testimony<sub>j</sub> (leaderfree<sub>j</sub>)</p> <p>= Absolute distortion (Eval<sub>ij</sub> - leaderfree<sub>j</sub>)</p>	<p>Participant<sub>i</sub>'s evaluation of T5 = 7</p> <p>(7 - 4.34)</p> <p>Absolute distortion = 2.66</p>
Part 2: Sign for direction of distortion	<p>+1 if (Eval<sub>ij</sub> - leaderfree<sub>j</sub>) favors verdict leading after previous testimony (Testimony<sub>j-i</sub>)</p> <p>-1 if (Eval<sub>ij</sub> - leaderfree<sub>j</sub>) favors verdict trailing after previous testimony (Testimony<sub>j-i</sub>)</p>	<p>Participant<sub>i</sub>'s leader after T4 = Defendant</p> <p>Evaluation of T5 biased in direction of prosecution, therefore:</p> <p>Predecisional distortion T5 for Participant = -2.66</p>

Note. T4 = Testimony 4. <sub>j</sub> refers to any given testimony. <sub>i</sub> refers to any given participant.

Table 2. Means, Standard Deviations, and t-Test Statistics for Directional (Proprosecution Vs. Prodefense) Distortion by Testimony

Table 2

*Means, Standard Deviations, and t-Test Statistics for Directional (Proprosecution Vs. Prodefense) Distortion by Testimony*

Testimony	N-PTP condition		Control condition		t-test statistics		
	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>	<i>df</i>	<i>t</i>	<i>d</i>
1. Prosecution witness	0.99	1.99	-0.18	1.93	111	3.17**	.60
2. Prosecution witness	0.77	1.78	0.85	1.63	113	-0.25	-.05
3. Prosecution witness	2.56	1.29	1.39	1.58	110	4.30**	.81
4. Prosecution witness	2.06	1.46	0.50	1.63	113	5.41**	1.01
5. Defense witness	1.18	1.41	0.59	1.86	110	1.94*	.37
6. Defense witness	2.00	1.65	1.52	1.79	114	1.49	.28
7. Defense witness	1.47	1.83	0.64	1.75	114	2.48*	.47

*Note.* N-PTP = negative pretrial publicity.

\*  $p < .05$ . \*\*  $p < .01$ .