

THE POWER OF THE PEN: THE IMPACT OF KNOWLEDGE OF DEFENDANT'S CHARACTER PRESENT IN PRETRIAL PUBLICITY VARIES BY DEFENDANT RACE

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Pre-trial publicity may interfere with a defendant's Sixth Amendment right by producing bias in jury decisions. As such, it has been the focus of a plethora of experimental studies. The present research investigated the role of positive and negative pre-trial publicity containing information about the defendant's character. Participants viewed a photograph of a white businessman and read one of three sets of fictitious newspaper articles accusing him of murdering his wife. They then rated the defendant's guilt and recalled what they could about the trial. In the first study, negative pre-trial publicity about the defendant's character (e.g., greedy) was shown to increase ratings of guilt and to be associated with increased perceived guilt for an unrelated crime. Positive pre-trial publicity (e.g., generous) did not decrease ratings of guilt when compared to a neutral, crime-irrelevant condition. Negative factual information was recalled more often than positive information, and recall was greater in the negative pre-trial publicity condition. In a second study, the photograph of the defendant was of an African American businessman. In that study, positive pre-trial publicity was shown to decrease ratings of guilt beyond that of the control condition. Negative facts were no more likely to be recalled than positive facts, and recall in the negative pre-trial condition was only marginally greater than in the positive pre-trial publicity condition. Differences in findings for the two races are interpreted with respect to aversive racism, stereotypes, and disfluency.

Keywords: pre-trial publicity, defendant character, race, disfluency

Over the past several decades a tremendous amount of research has focused on examining the role of pre-trial publicity (PTP) in jury decisions. Pre-trial publicity has been defined as occurring "when local media, online postings, blogs, and press releases disseminate information about a crime or the parties involved that is inflammatory, biased, emotion-laden, or factually erroneous" (Greene & Heilbrun, 2014, p. 286). It is well known that PTP can have a devastating influence on the fairness of a defendant's trial (e.g., Kramer, Kerr, & Carroll, 1990; Otto, Penrod, & Dexter, 1994; Daftary-Kapur, Penrod, O'Connor, & Wallace, 2014). In addition, the defendant's Sixth Amendment right to a fair trial comes in

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A portion of this research was presented at the 2015 American Psychology and Law Society Conference, San Diego, CA on March 21, 2015.

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conflict with the First Amendment right to freedom of speech, which includes freedom of the press. This conflict was perhaps best exemplified during the murder case of *Sheppard v. Maxwell* (1966) during which the PTP was extensive and quite negative. Sam Sheppard was convicted of murdering his pregnant wife after his attorneys' failed requests for both a change of venue and a trial delay. Sheppard later appealed this decision, and the Supreme Court overturned his conviction agreeing that the publicity may have biased the jury. Sam was retried and eventually found not guilty. This case brought to light the serious and negative effects PTP may have.

The conflict between the First and Sixth Amendments now presents an even greater threat to a defendant's right due to the speed with which information travels the globe via social media. In most instances, the PTP is negative and pro-prosecution and thus a majority of the research studies conducted on PTP also have an anti-defendant slant (Daftary-Kapur et al., 2014). Past research that investigated possible judicial means for mitigating the effects of PTP found them to be largely ineffective (Lieberman & Arndt, 2000).

Otto et al. (1994) conducted a study to investigate the effect of a number of types of negative PTP on guilty verdicts. A second goal of their study was to evaluate whether the effect of PTP persisted even after trial evidence was presented. Participants in their study read two "newspaper articles" and then watched an edited video of an actual disorderly conduct trial. The newspaper articles that participants read included a description of the disorderly conduct event and one of five different types of pretrial publicity: information about the defendant's character, a neighbor's weak inadmissible statement, a neighbor's strong inadmissible statement, a report of a prior police record, or the fact that the defendant had a low-status job. Some participants simply watched the trial, some got newspaper articles that just described the event, and others got newspaper articles with both a description of the event and one of the types of pretrial publicity. One of their results showed that negative character PTP played a strong role in pre-trial ratings of guilt. In addition, the effects of this type of PTP were somewhat reduced, but not eliminated, by the presentation of trial evidence; whereas, the effects of the other types of PTP were eliminated by the trial evidence. Their path analysis showed that the effect of character evidence on final verdict was indirect and moderated by the large impact it had on pre-trial decisions. Hope, Memon, and McGeorge (2004) attribute much of the negative PTP effect to predecisional distortion, a cognitive effect by which the PTP influences the way in which trial evidence is interpreted as either being pro-prosecution or pro-defense. When PTP is negative, a pro-prosecution bias is created whereby the evidence that is presented is interpreted to be consistent with the prosecution case.

Kramer et al. (1990) examined the relative effects of factual and emotional PTP in producing bias in mock jurors. They also investigated the degree to which judicial remedies, such as judges' instructions to ignore, jury deliberation, and a delay, could reduce these biases. Their results showed better, longer-lasting memory for the emotional than the factual PTP. There was more comment on the emotional publicity during deliberation and post-deliberation than factual PTP. In addition, those exposed to emotional PTP were more likely to convict the defendant. Instructions from the judge to ignore the PTP were

ineffective, deliberation made the jury more guilt prone, and the delay was only effective in reducing the biasing effects of the factual, but not emotional, publicity.

These results are consistent with the findings of Honess, Charman, and Levi (2003) regarding the role of real-life PTP in verdict decisions. They questioned how memory for specific types of PTP would affect jurors' reasoning during the presentation of trial evidence and thus mediate the PTP and verdict relationship. Jury eligible participants were questioned first about their knowledge of, and memory for, PTP from an actual fraud case from the UK. Then, as they watched a simulation of the case, they were questioned about how they were interpreting the evidence being presented and their likely verdict. The researchers found that memory for affective, but not factual, PTP was associated with anti-defendant sentiments and increased confidence regarding the defendant's guilt.

One type of affective knowledge might concern a defendant's character. Despite the fact that attempts have been made to limit the admissibility of negative character evidence in court, if a defendant chooses to present positive testimony about his character this is subject to serious cross-examination. When mock jurors were presented with positive character evidence, it did not positively impact ratings of guilt, but when this testimony was subject to "impeachment" cross-examination, jurors were harsher towards the defendant than when no character evidence was presented (Hunt & Budesheim, 2004).

There is much evidence to suggest that negative information will be attended to and remembered better (e.g., Pratto & John, 1991) than positive information. Baumeister, Bratslavsky, Finkenauer, and Vohs (2001) provide an excellent review of the various areas in which "bad is stronger than good" to support the ubiquity of this positive-negative asymmetry. This asymmetry is not surprising if interpreted through an evolutionary lens. One is much more likely to survive and pass on their genes if they pay attention to the approaching saber-toothed tiger rather than the beautiful butterfly. Baumeister et al. (2001) show this asymmetry to be present in how we react to events -- we react more strongly to negative events (e.g., losing money), and they have a longer lasting effect on us than positive events (e.g., finding an equal amount of money); how we manage close relationships, lots of positive communication does not outweigh some negative communication; and how we deal with emotion, the English language has more negative than positive descriptive words. Additionally, people tend to process information more deeply when they are in a bad mood. Related research has shown that negative traits have a greater impact on impression formation, likeability, and the likelihood that someone will be viewed as truthful. The authors conclude, "We found bad was stronger than good in a remarkably broad and diverse set of phenomena...it appears to be a basic, pervasive fact of psychology" (p. 360).

Smith et al. (2006) questioned the pervasiveness and immalleability of this negativity advantage and showed that this bias towards attending to negative information can be attenuated by making positive constructs in memory more easily accessible. In their study, participants were exposed to a series of blocks of five pictures. The blocks contained either predominantly positive or negatively normed pictures. Their task was to respond, by pressing a button, whether each word was positive or negative. The experimenters selected one

picture in each block to serve as a target. Event-related potentials (brain activity that represents attention to a stimulus) were measured to the target items, which were sometimes consistent with the rest of the block and sometimes different in valence. When participants were exposed to a large number of negative pictures (i.e. the primes), they showed greater attention as measured by both the P1 event-related potential (Experiment 1) and reaction time (Experiment 2) to negative than positive target items. However, when the set of prime pictures they viewed was positive, positive and negative targets received equal amounts of attention. Still, this attenuation did not reverse the traditional pattern. Although the attention to the negative targets was reduced, positive targets did not receive a *greater* amount of attention.

The work of Ruva and her colleagues (Ruva & McEvoy, 2008; Ruva, Guenther, & Yarbrough, 2011) compared the effects of positive and negative PTP and found lower ratings of defendant guilt when participants were exposed to positive vs. negative or irrelevant PTP. In their studies, however, the PTP presented was case-specific and factual in nature (e.g. where the victim's body was found and the fact that she did not like guns), rather than sensationalistic and personal, as is often the case.

Based on some of the PTP research that has been conducted thus far, the present study was designed to evaluate the role of positive PTP (in the form of commendable data) about the defendant's character (e.g., the defendant routinely made donations to the Boys' and Girls' Club) in juror decisions of guilt. A second goal was to determine whether this positive PTP would have a pro-defense biasing effect on decisions. In this study, it was hypothesized that positive PTP would make participants more lenient toward a defendant accused of murder (H1). If this were true, then the damaging effects of the more common negative PTP might be mitigated by positive PTP. It also was hypothesized that, when it was presented, negative information about the defendant's demeanor would factor into mock jurors' decisions (H2).

Greene and Loftus (1984) showed that having participants read about unrelated crimes led mock jurors to treat a defendant more harshly, so it was expected that reading PTP about a defendant's role in one crime might influence their perception of his character and affect how mock jurors perceived his involvement in an unrelated crime (H3). Additionally, it was hypothesized that negative facts would be recalled more than positive facts (H4), and emotional information would be recalled better than factual information (H5).

STUDY 1

METHOD

Participants

Participants were 60 undergraduate students from a small metropolitan university, randomly assigned to one of three experimental groups ($N = 20$ each): positive PTP, negative PTP, and an unrelated control group. They signed up to participate by placing their names on sign-up sheets placed in the Social Science office. In exchange for their participa-

tion, they received course credit for their Introduction to Psychology course. Participants were all at least 18 years of age and predominantly female and white. They were run in groups ranging from one to six, depending on how many participants showed up, but they completed the study individually. One participant in the control condition did not answer any of the questions and could not be used in the analyses.

Materials

Three sets of materials, each containing three “newspaper” articles, were constructed: a positive, negative, and control set. These were intended to serve as a form of pre-trial publicity for the participants. Each article consisted of a brief “daily” update on the case as well as a picture of a Caucasian defendant dressed in a business suit. The positive and negative sets differed in the type of crime-irrelevant, character information they presented. The positive set contained six positive characteristics of the defendant, which described local businessman Michael Shardel as having a history of charitable behavior. He had raised money for the Boys and Girls Club through Beef and Beer events, and he is loving and generous. He and his wife were on vacation in Spain to celebrate their anniversary. The negative set contained six negative characteristics, which described a local businessman as also having run Beef and Beer events for the Boys and Girls Club, but there being question about the amount of money the club actually received. He is friendless, greedy, and angry. He and his wife were on vacation in Spain to try to mend their marriage, which had been broken by his numerous affairs. Both sets of materials contained the same six, crime-relevant facts, including information about his wife tripping on the way to a restaurant and that he returned to the hotel room to change his shirt, which had her blood on it. When he returned to the restaurant, she was not there and was found dead in an alley with a hunting knife by her side. In both sets of materials, Mr. Shardel claimed to have not known what happened to his wife. A third set of articles, used as a control, described an unrelated crime. Rather than allow the participants to use stereotypes to construct an image of what the defendant “must” look like, each article was accompanied by a photo of Mr. Shardel dressed neatly in a business suit. All of the articles were formatted to look like real newspaper articles, and they were printed on Sax 30 pound stock plain white newsprint paper to give them a realistic, newspaper feel.

In addition to the newspaper articles, a response sheet was constructed. The first part of this sheet contained six unambiguous facts about the case (e.g., Mr. Shardel has run Beef and Beers, and his wife was found murdered in an alley while they were on vacation). Participants were then asked how likely they thought it was that Mr. Shardel was responsible for his wife’s murder, how confident they were in their ratings, what factors led to their decision, and if they would be able to vote for the death penalty if he were found guilty of the murder. They also supplied recommended penalties, including prison term, life in prison, or death. They were then asked how likely they thought it was that Mr. Shardel had kept money that was raised for the Boys and Girls Club, how confident they were in their decision, and what factors led them to their decision. They also rendered a decision about the penalty for this crime, assuming he was found guilty, which included parole, restitution,

or a prison term. Lastly, they provided a free recall for any of the information they could remember from the articles they had read.

Design and Procedure

Participants arrived at the laboratory, were seated at individual tables, and were given two copies of the informed consent form, one for the researcher and one to keep to show to their instructor for credit. They were told that they were going to read three articles about a recent crime and that the researcher was then going to ask them questions about them. They were given five minutes to read through the articles. These were then removed, and each participant was given the question sheet. They were told to answer the questions and that the last question which asked them to recall what they could about the case referred to the articles they had just read. They were allotted up to 10 minutes to complete this task. They were thanked and released.

RESULTS

Murder Results

To test the hypothesis that positive PTP would make participants more lenient toward a defendant accused of murder (H1), each participant was given a score corresponding to their response to the question asking how likely it was that Mr. Shardel was responsible for his wife's murder (MURDER). Scores ranged from 1 as extremely likely to 6 as extremely unlikely. A one-way ANOVA on the MURDER scores with type of PTP (positive, negative, or control) as the factor yielded a significant difference, $F(2, 56) = 3.87, p = .027, \eta^2 = .12$, as did a one-way ANOVA on the confidence scores, $F(2, 56) = 6.05, p = .004, \eta^2 = .18$. Tukey *post hoc* tests showed that participants who received positive PTP were significantly less likely to find the defendant guilty of murder than those with negative PTP, but they did not differ from control subjects. Those who received negative PTP were significantly more confident than either the positive PTP or control participants in their decisions regarding his guilt. Table 1 contains the means and standard deviations for the murder and confidence scores.

Table 1

Means and Standard Deviations for the Murder and Theft Questions and Confidence in Each as a Function of PTP Condition

Item	Positive	Negative	Neutral
Murder	3.35 (1.14)	2.45 (.89)	3.00 (1.05)
Confidence in Murder	0.65 (1.31)	1.75 (1.02)	0.53 (1.31)
Theft	3.50 (.95)	1.90 (1.37)	2.84 (1.26)
Confidence in Theft	1.05 (.60)	2.30 (.73)	1.11 (1.59)

Factors in the Decision

There were two primary factors that participants provided as forming the basis for their murder decision. These were the defendant's demeanor (describing the defendant's character, which could have been either positive or negative, depending on the condition)

and the fact that he had blood on his sleeve (a crime relevant fact which was the same for all participants). To test the hypothesis that negative PTP would factor into the respondents' decisions (H2), each participant was scored as having or not having mentioned each reason as important to their decision (MENTION). Then, two Chi-square analyses (one for each factor) were run with MENTION (yes or no) and PTP (positive or negative) as the variables. A significantly greater percentage (76.5) of respondents in the negative PTP condition mentioned the defendant's demeanor as a factor in their decision than would be expected by chance, $\chi^2(1) = 8.29, p = .004, r = .37$. However, this was not the case for the factor of blood on the defendant's sleeve, $\chi^2(1) = 2.56, p = .11$, suggesting that the PTP rather than facts guided the decisions for the negative PTP participants.

Unrelated, Theft, Results

To test the hypothesis that exposure to negative PTP would increase the likelihood of the defendant being found guilty of an unrelated crime (H3), each participant was given a score corresponding to their response to the question asking how likely it was that Mr. Shardel kept the money that was raised for the Boys and Girls Club (THEFT). Scores ranged from 1 as extremely likely to 6 as extremely unlikely. A one-way ANOVA on the THEFT scores with type of PTP (positive, negative, or control) as the factor yielded a significant difference, $F(2, 56) = 8.90, p < .001, \eta^2 = .24$, as did a one-way ANOVA on the confidence scores, $F(2, 56) = 8.81, p < .001, \eta^2 = .24$. Tukey *post hoc* tests showed that participants who received negative PTP were more likely to find the defendant guilty of a second, unrelated crime than were participants in the other two conditions, and they were more confident in their decisions regarding his guilt. Thus, the results for the unrelated crime mirror those for the murder. Table 1 contains the means and standard deviations for participant responses to the murder and theft questions as a function of PTP condition.

Surprisingly, the Pearson correlation between the ratings for guilt for murder and theft was only marginally significant, $r(57) = .25, p = .06$.

Recall Results

Recall results from the neutral, control group were not included in these analyses as they only were exposed to the factual information contained on the response sheet. To test the hypothesis that negative facts would be more salient and thus recalled better than positive facts (H4), a mixed-model ANOVA was conducted on the number of items recalled with type of fact (positive versus negative) as a within-subject factor and type of PTP (positive versus negative) as a between-subjects factor. A larger number of negative than positive facts were recalled, $F(1, 38) = 5.69, p = .02, \eta^2 = .15$, and more facts were recalled in the negative than positive PTP condition, $F(1, 38) = 10.44, p = .003, \eta^2 = .22$, but these factors did not interact, $F(1, 38) = .47, p = .50$. The results from this analysis are shown in Figure 1.

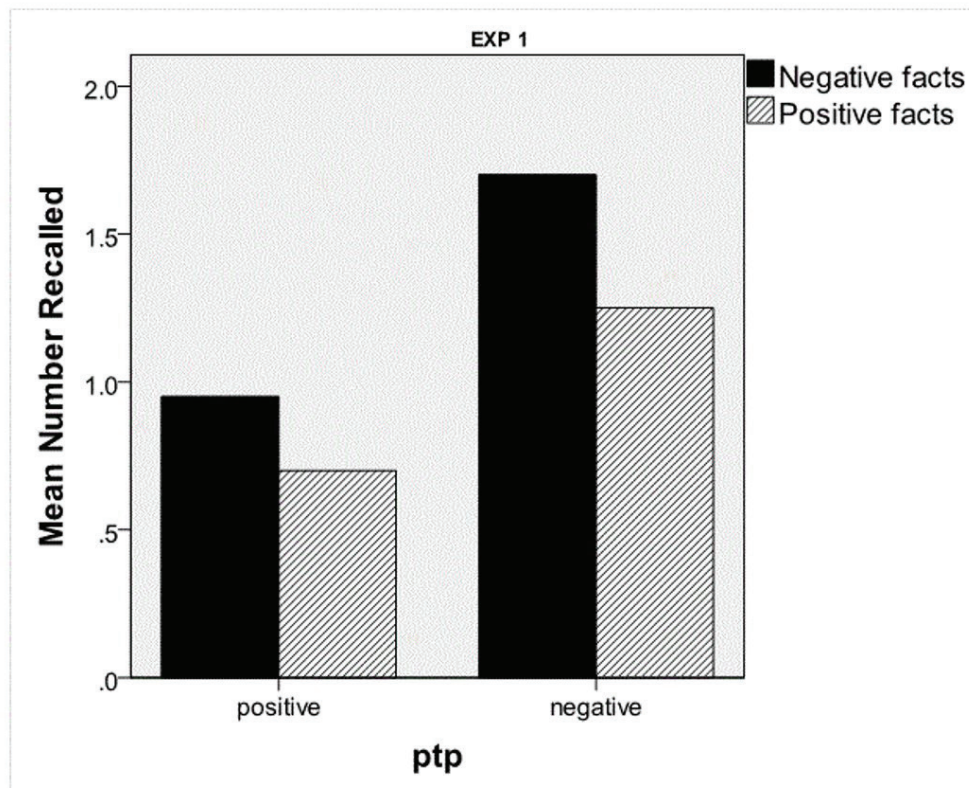


Figure 1. Mean number of negative and positive facts recalled as a function of PTP condition.

To test the hypothesis that emotional information would be recalled better than factual information (H5), a second mixed-model ANOVA was conducted on the proportion of items recalled with type of information (emotional versus factual) as a within-subject factor and type of PTP (positive versus negative) as a between-subjects factor. The proportion of factual information recalled was higher than the proportion of emotional information recalled, $F(1, 38) = 25.87, p < .01, \eta^2 = .40$; the proportion of information recalled was higher in the negative than in the positive PTP condition, $F(1, 38) = 11.98, p = .001, \eta^2 = .32$; but there was no PTP by type of information interaction, $F(1, 38) = 1.34, p = .26$. The results from this analysis are shown in Figure 2. Interestingly, the correlation between the amount of factual crime relevant material recalled and ratings of guilt failed to reach statistical significance, $r(38) = -.06, p = .703$, again suggesting that this decision was based on the PTP rather than the crime relevant facts.

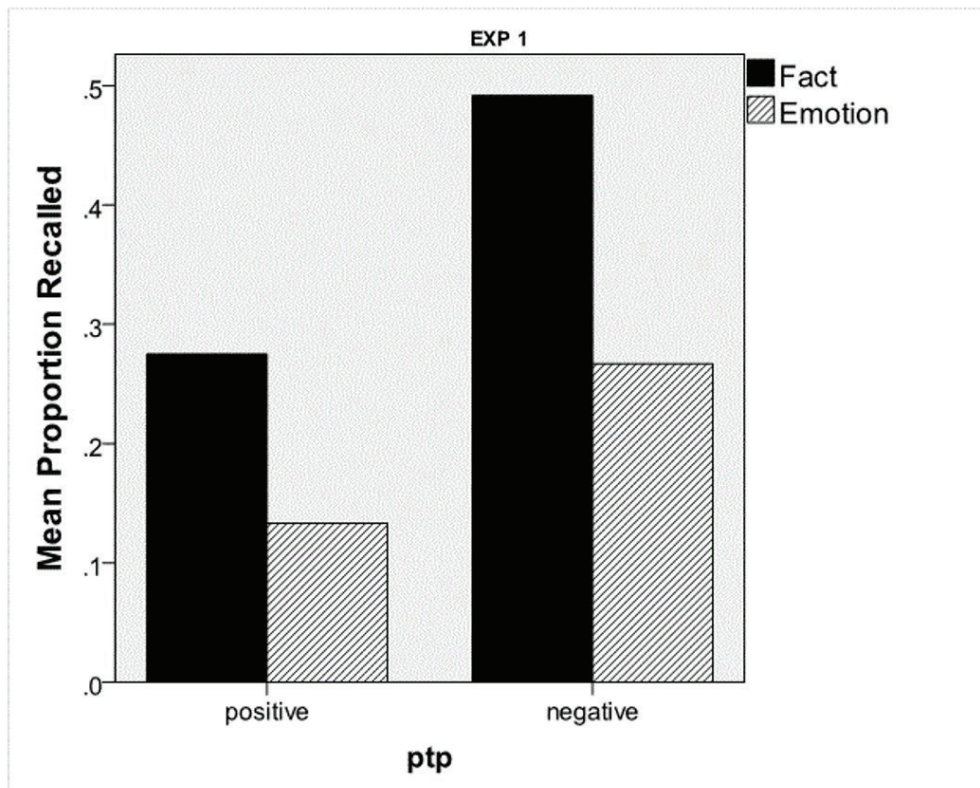


Figure 2. Mean proportion of emotional and factual information recalled as a function of PTP condition.

DISCUSSION

Positive PTP was ineffective in reducing evaluations of guilt beyond a control set of newspaper clippings that were unrelated to the case at hand and, based on respondents' own reports, they used PTP as a factor in making their decisions of guilt when that PTP was negative. Additionally, negative PTP also led to the view that the suspect was guilty of the unrelated theft crime, seemingly suggesting that the gentleman's character was less than honorable. As expected, there was a larger number of negative facts recalled than positive facts, and more facts were recalled in the negative PTP condition. The number of negative facts recalled for the positive and negative PTP conditions did not differ however, leading to the conclusion that the higher levels of guilt in the negative condition were really a result of the PTP as the respondents claimed. Unexpectedly, more factual information was recalled than emotional. Because the factual information appeared in both the newspaper articles and on the front side of the response sheet (recall was done on the reverse side) respondents viewed this information twice and this, rather than its factual nature, may have been responsible for its enhanced recall.

Surprisingly, the type of PTP did not affect the participants' recommended sentence for either the murder or the unrelated crime, and those who agreed that they could vote for the death penalty were no more or less likely to find the defendant guilty of murder.

Although the participants in this study were not truly death-qualified, this outcome appears contrary to the findings of Butler (2007) whose death-qualified jurors showed an increase in guilty verdicts. Despite the fact that the positive PTP portrayed Mr. Shardel as a loving, kind, generous man, his guilt ratings were no lower than when no PTP about him was read at all. So the question remained about why the positive PTP did not reduce evaluations of guilt beyond the control, crime-irrelevant, PTP. One possible explanation is that this positive PTP was consistent with the stereotype of the upstanding Caucasian businessman, so it was not particularly salient and received little attention.

STUDY 2

Prior research on aversive racism (Gaertner & Dovidio, 1986), the desire to not appear racist, has been shown to lead to greater leniency toward African American defendants when race is made salient. Fein, Morgan, Norton, and Sommers (1997) showed that negative PTP led to increased guilty verdicts except when the defendant was identified in the publicity as African American. In their study, some of their participants read incriminating pretrial publicity in the form of five or six “newspaper” articles. Then they read a trial transcript about a criminal assault a few days later. Some of the pretrial publicity newspaper articles mentioned that the defendant’s race was “black,” and others did not. Additional information was intended to raise suspicion about the white columnist’s, perhaps racist, purpose for releasing this incriminating information. Participants were explicitly told explicitly that they were to make their decision about the defendant’s guilt based solely on the information presented in the trial transcript. Interestingly they found that when neither race nor suspicion was a part of the pretrial publicity, conviction rates were highest, and when the pretrial publicity contained both race and suspicion, the conviction rates were no different from a control group that received no pretrial publicity at all. They interpret this as suggesting that perhaps participants sensed that there were racist motives to the publicity. This interpretation is bolstered by the finding that those participants who received publicity in which race was mentioned rated the media coverage as less fair than those who did not.

In another study (Cohn, Bucolo, Pride, & Sommers, 2009), the race of an African American defendant was made salient by the mention of racial slurs against him during testimony. Participants were shown a video regarding the trial of a black man charged with attempted vehicular homicide. After leaving a sporting event, the defendant noticed some damage to his car. He was accosted by an individual who denied that anyone had touched his automobile. The defendant then got in his car and hit three white people as he left the area. In one condition, the defendant’s wife testified that the group surrounding the car yelled racial slurs at the couple; in the other condition, this material was missing. Those participants who heard the testimony about racial slurs were more likely to find the defendant not guilty than the participants who did not hear such testimony. They also rated the defendant as less guilty and the defense argument as stronger when race was mentioned in the testimony. Thus, making the defendant’s race a salient issue was beneficial to his outcome (Cohn et. al., 2009). Interestingly, those jurors who scored high on a racism scale were more likely to find the defendant guilty than those scoring low on such a scale, but

only when race was not made salient. When racist jurors were alerted to the fact (by race being made salient) that their verdicts may be construed as racist, they were less likely to engage in this behavior, hence the reduction in guilty verdicts for racist individuals in the race salient condition. These findings were replicated in a study where race was made salient through the defense attorney's opening and closing statements without specific reference to racial slurs. Again, when race was made salient, racist jurors took control of their mental processing, rather than depending on pre-existing stereotypes, so that black defendants were found guilty less frequently than white defendants (Bucolo & Cohn, 2010).

To test the hypothesis that positive and negative PTP would produce different effects for a professional African American male as opposed to a similar Caucasian male, a second study was conducted. It was identical to the first, except for the race of the defendant. All of the same hypotheses were tested, and the procedure and materials were identical with the exception of the defendant's picture, which now showed an African American dressed in a business suit.

METHOD

Participants

Participants were 60 undergraduate students from a small metropolitan university, randomly assigned to one of three experimental groups ($N = 20$ each): positive PTP, negative PTP, and an unrelated control group. They signed up to participate by placing their names on sign-up sheets placed in the Social Science office. In exchange for their participation, they received course credit for their Introduction to Psychology course. Participants were all at least 18 years of age and predominantly female and white. Although statistical analyses were not conducted to compare demographics of the participants in Study 1 to those in Study 2, there is no reason to believe they would differ as they were drawn from the same participant pool during the same semester. They were run in groups ranging from one to six, depending on how many participants showed up, but they completed the study individually.

Materials

All of the materials for Study 2 were identical to those from Study 1 with the exception of the photograph of the defendant, who was African American.

Design and Procedure

The design and procedure for Study 2 were identical to those from Study 1.

RESULTS

Murder Results

Each participant was given a MURDER score corresponding to their response to the question asking how likely it was that Mr. Shardel was responsible for his wife's murder. Scores ranged from 1 as extremely likely to 6 as extremely unlikely. A one-way ANOVA on the MURDER scores with type of PTP (positive, negative, or control) as the

factor yielded a significant difference, $F(2, 56) = 8.81, p < .001, \eta^2 = .24$, as did a one-way ANOVA on the confidence scores, $F(2, 56) = 5.80, p = .005, \eta^2 = .17$. Tukey *post hoc* tests showed that participants who received positive PTP were significantly less likely to find the defendant guilty of murder than those with negative PTP and the control condition, supporting H1. Participants in the positive PTP condition were more confident than those in the other conditions.

Factors in the Decision

Each participant was scored as having or not having mentioned the defendant's demeanor and blood on his sleeve as important to their decision. Then, two Chi-square analyses were run with MENTION (yes or no) and PTP (positive or negative) as variables. For this African American defendant, there was no PTP-related difference in how often participants mentioned demeanor, $\chi^2(1) = 1.03, p = .31$. However, they were more likely to mention the defendant's bloody sleeve (70.6%) in the negative PTP condition than would be expected by chance, $\chi^2(1) = 5.01, p = .025, r = .29$.

Unrelated, Theft Results

Each participant was given a THEFT score corresponding to their response to the question asking how likely it was that Mr. Shardel kept the money that was raised for the Boys and Girls Club. Scores ranged from 1 as extremely likely to 6 as extremely unlikely. A one-way ANOVA on the THEFT scores with type of PTP (positive, negative, or control) as the factor yielded a significant difference, $F(2, 56) = 20.89, p < .001, \eta^2 = .43$, as did a one-way ANOVA on the confidence scores, $F(2, 56) = 8.00, p < .001, \eta^2 = .24$. Tukey *post hoc* tests showed that participants who received negative PTP were more likely to find the defendant guilty of a second, unrelated crime than were participants in the other two conditions. Participants in the control condition were more likely to find the defendant guilty than those in the positive condition, and the participants who received positive information were more confident than those who received negative information. Table 2 contains the means and standard deviations for participant responses to the murder and theft questions as a function of PTP condition.

Table 2

Means and Standard Deviations for the Murder and Theft Questions and Confidence in Each as a Function of PTP Condition

Item	Positive	Negative	Neutral
Murder	3.50 (.95)	2.45 (.83)	2.35 (1.09)
Confidence in Murder	2.90 (.97)	2.40 (1.19)	1.55 (1.57)
Theft	3.90 (.85)	1.80 (1.01)	2.80 (1.20)
Confidence in Theft	1.05 (.83)	2.20 (.77)	1.65 (.99)

For the African American defendant, the Pearson correlation between the ratings for guilt for murder and theft reached statistical significance, $r(58) = .45, p < .001$.

Recall Results

A mixed-model ANOVA was conducted on the number of items recalled with type of fact (positive versus negative) as a within-subject factor and type of PTP (positive versus negative) as a between-subjects factor. There was no difference in the number of negative and positive facts recalled, $F(1, 38) = 1.48, p = .23$; the number of facts recalled in the negative PTP condition was marginally more than that recalled in the positive PTP condition, $F(1, 38) = 3.61, p = .06, \eta^2 = .09$; and there was a significant PTP condition by type of fact interaction, $F(1, 38) = 5.09, p = .03, \eta^2 = .12$. The results from this analysis are shown in Figure 3.

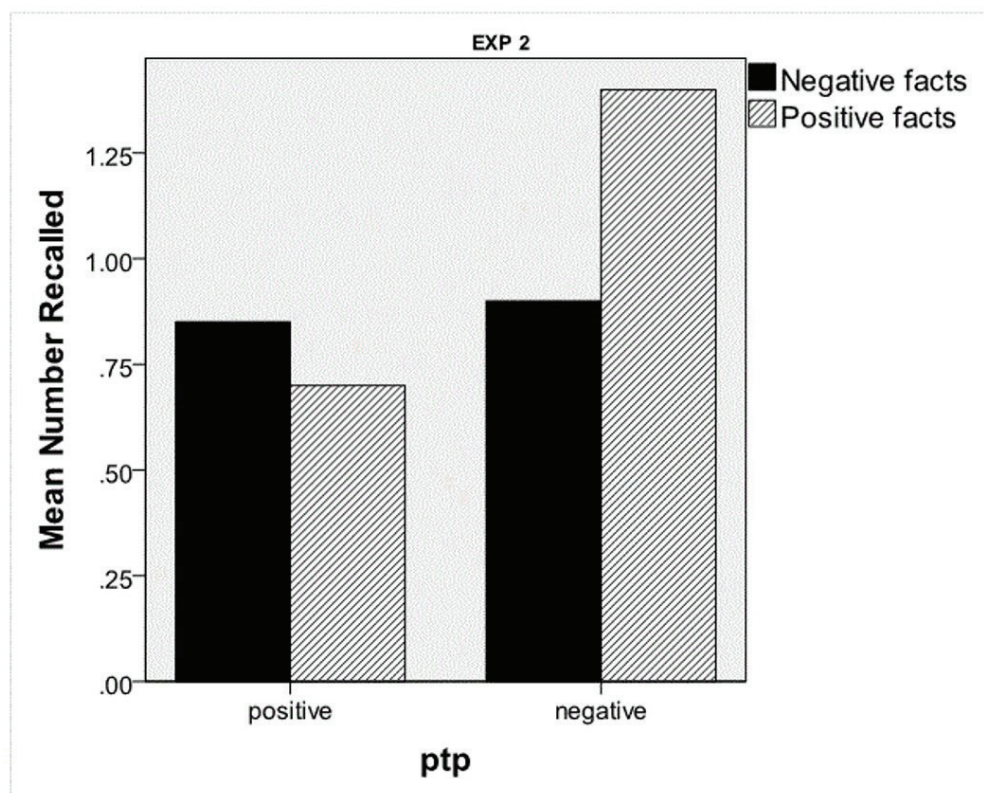


Figure 3. Mean number of negative and positive facts recalled as a function of PTP condition.

A second mixed-model ANOVA was conducted on the proportion of items recalled with type of information (emotional versus factual) as a within-subject factor and type of PTP (positive versus negative) as a between-subjects factor. The proportion of factual information recalled was no different from the proportion of emotional information recalled, $F(1, 38) = .01, p = .93$; the proportion of information recalled was higher in the negative than in the positive PTP condition, $F(1, 38) = 10.71, p = .002, \eta^2 = .28$; but there was no PTP by type of information interaction, $F(1, 38) = .19, p = .67$. The results from this analy-

sis are shown in Figure 4. Contrary to the results from the Caucasian defendant, the correlation between the amount of factual, crime-relevant material recalled was highly correlated with ratings of guilt for murder, $r(38) = -.60, p < .01$. The more material recalled, the more likely Mr. Shardel was to be rated as guilty of the murder.

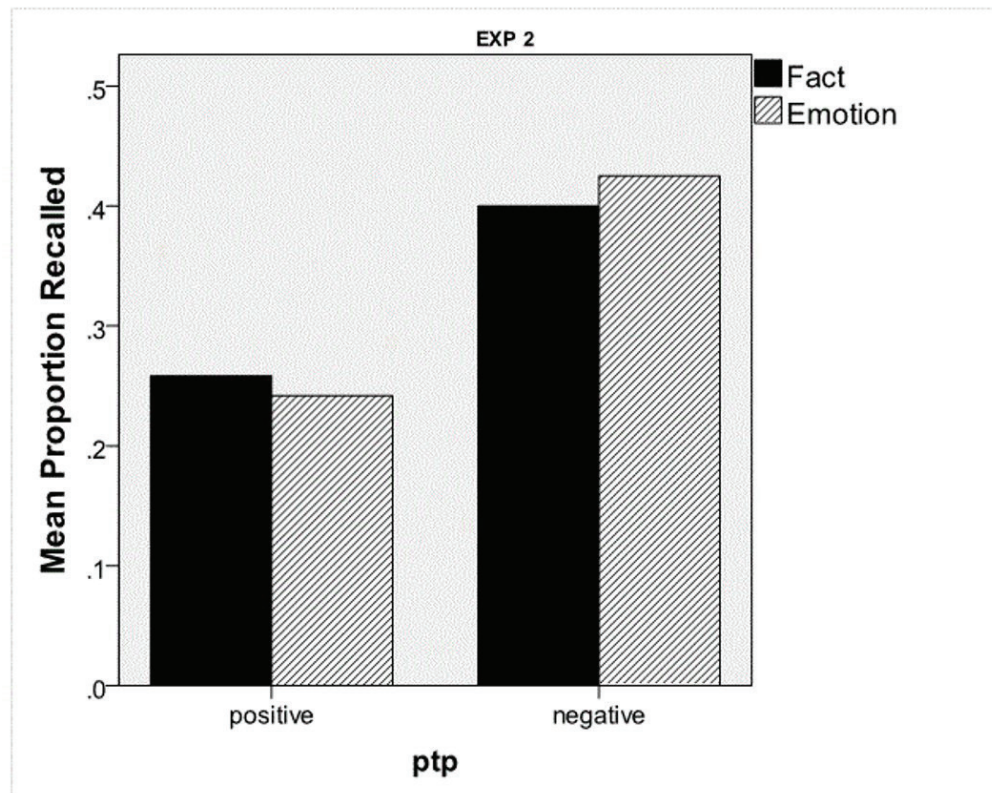


Figure 4. Mean proportion of emotional and factual information recalled as a function of PTP condition.

DISCUSSION

Overall negative and positive facts were recalled equally, and factual and emotional information were recalled equally. In summary, it appears that, contrary to expectations, positive PTP did not diminish participants' judgments of guilty or their level of confidence when the defendant was white, but was effective in diminishing ratings of guilt when the defendant was African American. So for white defendants, it appears that negative PTP hurts, relative to either positive or unrelated publicity, but when the defendant is African American, the positive PTP helps relative to those other conditions. Maeder and Hunt (2011) conducted a similar study and found that when the character evidence, for example that a defendant was responsible, honest, and helpful that was presented conflicted with traditional racial stereotypes, jurors' ratings of guilt were reduced for African American, but not for white defendants.

Additionally, these different types of PTP affect memory for both the PTP and the facts of the case differently for the white and African American defendant. Holt (2013) claims that the media are responsible for priming negative stereotypes about blacks, and that once these stereotypes have been activated they guide the way in which subsequent information is interpreted, thus shaping the way blacks are viewed. Because people attempt to function by using as little cognitive energy as possible, when stereotypes are available they are likely to be used. Oliver (2003) found that when participants were asked to pick a suspect from a target-absent photo array that contained half white and half black photos, they mistakenly chose a black suspect significantly more often when the crime was violent (rape or murder) rather than non-violent (embezzlement or mail fraud). Holt (2003) believes that rather than perpetuating negative stereotypes of blacks, the media can work to ameliorate them by presenting them in a positive light. In fact, when participants' implicit racial attitudes were measured using the implicit association test (IAT), they showed significantly reduced bias after having been exposed to a film showing a black family at a barbeque compared to a film showing a gang-related confrontation including a firearm (Wittenbrink, Judd, & Park, 2001). It is generally accepted that when judgments are quick or speeded, racial stereotypes have a substantial effect as the respondents rely on this heuristic (Correll, Urland & Ito, 2006).

These results are consistent with those of Sommers (2007) in that race may mitigate some negative effects when it is made salient. Interestingly, not a single subject out of 120 mentioned the defendant's race in the factors that led to their decisions or in their free recall.

The theory of aversive racism may provide a framework for interpreting the present results. In this two stage theory, automatic stereotyping and intentional response, moderated by control, together produce the person's reaction. When processing is slow, deliberate, and controlled, the automatic stereotyping is held at bay. In the present study, the material printed on true newspaper was harder to read than material printed on regular paper. This may have caused disfluency and forced readers to slow down and use more controlled than automatic processing (Kahneman, 2011). As a result, for the African American defendant they appeared to have based their decisions more on fact than negative PTP. This was shown by their reference to blood on the African American's sleeve rather than to his demeanor in their guilt decisions.

Limitations and Future Directions

The interpretation of the current results must take into consideration that all of the participants were students at a small metropolitan college and likely had much exposure to African American men. In addition, only one set of materials was used for each race and crime, and there may be something particular about the specific photos that were used that attenuated the negative stereotype that is pervasive for African American men. This is unlikely given that pilot subjects rated the two pictures, either African American or White, on being trustworthy, smart, kind, greedy, family-oriented, psychotic, hard-working, angry,

violent, and broke, and independent sample *t*-tests yielded no significant differences between the two defendants for any of these characteristics.

Additionally, all of the character pretrial publicity that each participant received was either positive or negative. While research has shown that the majority of pretrial publicity to which citizens are exposed is negative, there is likely a mix of a small amount of positive with the negative for a case, especially if it is highly publicized. Future research should investigate the degree to which negative and positive pretrial publicity balance or moderate each other. If the preponderance of publicity is negative, can some positive pretrial publicity counter this? If the majority of pretrial publicity is positive, does a single negative factor about a defendant's character wipe this out?

This study was unusual in that the articles used were presented on real newspaper. It was noted anecdotally that this made the article more difficult to read, and the quality of the print deteriorated more quickly than if they had been presented on white bond paper or, as our students are now so accustomed, on a computer screen. Some research (Alter, 2013) has shown that when the cognitive task one is asked to complete is made disfluent (more difficult), additional cognitive processing and, presumably, control are required. In Alter's study, questions requiring cognitive processes (e.g., tricky math problems) were printed in either black 12 point font, or 10 point, grey, italicized font, the disfluent condition. He found an almost 20% improvement in correct answers in the disfluent condition and attributed this to the disfluent materials requiring deeper, slower, more thoughtful processing, and he has shown that this may have the ability to reduce dependence on stereotypes (Alter, Oppenheimer, Epley, & Eyre, 2007).

Although it was not described as disfluency, Mannes and Kintsch (1987) found superior problem solving in participants who received a pre-organizer for a scientific text about influenza and how it is spread that did not match the organization of the text. They interpret this effect as reflecting students engaging in more reflective processes to discern how the topics in the pre-organizer related to the structure of the text. Making the task harder yielded superior results. A follow-up study in which the same materials, printed on white stock paper, were used could help to evaluate whether the disfluency of using newspaper is responsible for the effects of positive information about the defendant's character, perhaps through a reduced dependence on stereotypes, for the African American defendant. Clearly, the effect of PTP on mock juror decisions is more complex than may have been thought. In light of this, it is especially important to attempt to limit the amount of biasing negative PTP in the media to insure a fair trial for all defendants.

REFERENCES

- Alter, A. L. (2013). The benefits of cognitive disfluency. *Current Directions in Psychological Science*, 22, 437-442.
- Alter, A. L., Oppenheimer, D. M., Epley, N., & Eyre, R. N. (2007). Overcoming intuition: Metacognitive difficulty activates analytic reasoning. *Journal of Experimental Psychology: General*, 136, 569-576.
- Baumeister, R. F., Bratslavsky, E., Finkenauer, C., & Vohs, K. D. (2001). Bad is stronger than good. *Review of General Psychology*, 5(4), 323-370.

- Bucolo, D. O., & Cohn, E. S. (2010). Playing the race card: Making race salient in defense opening and closing statements. *Legal and Criminological Psychology, 15*, 293-303.
- Butler, B. (2007). The role of death qualification in jurors' susceptibility to pretrial publicity. *Journal of Applied Social Psychology, 37*(1), 115-123.
- Cohn, E. S., Bucolo, D., Pride, M., & Sommers, S. R. (2009). Reducing white juror bias: The role of race salience and racial attitudes. *Journal of Applied Social Psychology, 39*(8), 1953-1973.
- Correll, J., Urland, G. R., & Ito, T. A. (2006). Event-related potentials and the decision to shoot: The role of threat perception and cognitive control. *Journal of Experimental Social Psychology, 42*(1), 120-128.
- Daftary-Kapur, T., Penrod, S. D., O'Connor, M., & Wallace, B. (2014). Examining pretrial publicity in a shadow jury paradigm: Issues of slant, quantity, persistence, and generalizability. *Law and Human Behavior, 38*(5), 462-477.
- Fein, S., Morgan, S. J., Norton, M. I., & Sommers, S. R. (1997). Hype and suspicion: The effects of pretrial publicity, race and suspicion on jurors' verdicts. *Journal of Social Issues, 53*(3), 487-502.
- Gaertner, S. L., & Dovidio, J. F. (1986). The aversive form of racism. In J. F. Dovidio & S. L. Gaertner (Eds.), *Prejudice, discrimination, and racism*. Orlando, FL: Academic Press.
- Greene, E., & Heilbrun, K. (2014). *Wrightsmen's psychology and the legal system*. Belmont, CA: Wadsworth.
- Greene, E., & Loftus, E. F. (1984). What's new in the news? The influence of well publicized news events on psychological research and courtroom trials. *Basic and Applied Social Psychology, 5*, 211-221.
- Holt, L. F. (2013). Writing the wrong: Can counter-stereotypes offset negative media messages about African Americans? *Journalism & Mass Communication Quarterly, 90*(1), 108-125.
- Honest, T. M., Charman, E. A., & Levi, M. (2003). Factual and affective/evaluative recall of pretrial publicity: Their relative influence on juror reasoning and verdict in a simulated fraud trial. *Journal of Applied Social Psychology, 33*(7), 1404-1416.
- Hope, L., Memon, A., & McGeorge, P. (2004). Understanding pretrial publicity: Predecisional distortion of evidence by mock jurors. *Journal of Experimental Psychology: Applied, 10*, 111-119.
- Hunt, J. S., & Budesheim, T. L. (2004). How jurors use and misuse character evidence. *Journal of Applied Psychology, 89*(2), 347-361.
- Kahneman, D. (2011). *Thinking, fast and slow*. NY, NY: Farrar, Straus and Giroux.
- Kramer, G. P., Kerr, N. L., & Carroll, J. S. (1990). Pretrial publicity, judicial remedies, and jury bias. *Law and Human Behavior, 14*, 409-438.
- Lieberman, J. D., & Arndt, J. (2000). Understanding the limits of limiting instructions: Social psychological explanations for the failures of instructions to disregard pretrial publicity and other inadmissible evidence. *Psychology, Public Policy, and Law, 6*, 677-711.
- Maeder, E. M., & Hunt, J. S. (2011). Talking about a black man: The influence of defendant and character witness race on jurors' use of character evidence. *Behavioral Sciences and the Law, 29*(4), 608-620.
- Mannes, S., & Kintsch, W. (1987). Knowledge organization and text organization. *Cognition and Instruction, 4*, 91-115.
- Oliver, M. (2003). African American men as "criminal and dangerous": Implications of media portrayals of crime on the "criminalization" of African American men. *Journal of African American Studies, 7*(2), 3-18.
- Otto, A. L., Penrod, S. D., & Dexter, H. R. (1994). The biasing impact of pretrial publicity on juror judgments. *Law and Human Behavior, 18*, 453-469.
- Pratto, F., & John, O. P. (1991). Automatic vigilance: The attention-grabbing power of negative social information. *Journal of Personality and Social Psychology, 61*, 380-391.
- Ruva, C. L., Guenther, C. C., & Yarbrough, A. (2011). Positive and negative pretrial publicity: The roles of impression formation, emotion, and predecisional distortion. *Criminal Justice and Behavior, 38*(5), 511-534.
- Ruva, C. L., & McEvoy, C. (2008). Negative and positive pretrial publicity affect juror memory and decision making. *Journal of Experimental Psychology: Applied, 14*, 226-235.
- Sheppard v. Maxwell*, 384 U. S. 383 (1966).

- Smith, N. K., Larsen, J. T., Chartrand, T. L., Cacioppo, J. T., Katafiasz, H. A., & Moran, K. E. (2006). Being bad isn't always good: Affective context moderates the attention bias toward negative information. *Journal of Personality and Social Psychology, 90*(2), 210-220.
- Sommers, S. R. (2007). Race and the decision making of juries. *Legal and Criminological Psychology, 12*, 171-187.
- Wittenbrink, B., Judd, C. M., & Park, B. (2001). Spontaneous prejudice in contexts: Variability in automatically activated attitudes. *Journal of Personality and Social Psychology, 81*(5), 815-827.

Received: 7/2015

Accepted: 3/2016

Suggested Citation: Mannes, S. (2016). The power of the pen: The impact of knowledge of defendant's character present in pretrial publicity varies by defendant race. [Electronic Version]. *Applied Psychology in Criminal Justice, 12*(1), 36-53.