

Chapter 26

Trial by Social Media: How Do You Find the Jury, Guilty or Not Guilty?

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ABSTRACT

Social media makes it easier than ever to access information and opinions associated with criminal proceedings and viewing or discussing these pre-trial could reduce juror impartiality. This study explored whether viewing social media comments influenced mock juror verdicts. Seventy-two participants formed 12 six-person 'mock juries'. All participants received information regarding a murder trial. Nine groups were exposed to social media comments, manipulated to be negative, positive or neutral towards the defendant. The remaining three groups only received trial information (control condition). Results showed that prior to group discussion, exposure to negatively-biased comments significantly increased the number of guilty verdicts, however these effects disappeared after group discussion. Therefore, although jurors may be unable to remain impartial before a trial, jury discussion can remove these prejudices, supporting previous group research. Further research is suggested where participants interact actively with social media, rather than passively viewing comments.

INTRODUCTION

The rapid growth in the use of the internet and social media have made it easier to gain access to information and opinions relating to the people involved in and the circumstances of legal proceedings. The influence of pre-trial publicity via traditional mass media has been thoroughly researched (e.g. Studebaker & Penrod, 1997), however, there is less research focusing on the influence of social media. Information is now instantly accessible and on a global scale, often making it difficult to avoid; indeed Bakhshay & Haney (2018) report on the difficulty finding jurors who have not been exposed to potentially biased extra-legal information.

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The Role of the Jury

In the UK, juries are made up of twelve individuals aged between 18 and 70 selected randomly from the electoral register and their role is to arrive at a verdict on the charge facing the defendant by considering questions of fact and applying the law to these facts (Herring, 2018). This random selection is intended to ensure that the twelve members of the jury represent a wide range of individuals in society. Every individual who is charged with a criminal offence within the European Union has the right to a fair trial by an impartial jury, under the Human Rights Act (1998). An impartial juror is free from bias and prejudice and is free from the influence of knowledge acquired outside of the courtroom (Surette, 1998). Pre-trial publicity surrounding criminal investigations can potentially destroy a defendant's rights to a fair trial and if a court decides that the jury is prejudiced due to exposure to pre-trial publicity, proceedings may be adjourned or there may be a re-trial. Jurors are instructed that they are to decide the case based solely on the evidence presented within the courtroom, and that they must not conduct any independent research or discuss the case with any other person outside of the courtroom until deliberations are complete (Judicial Conference Committee, 2012). Mock jury studies involve participants acting as jurors and are used to research aspects of the judicial system where it is not possible or ethical to conduct research using jurors involved in real trials. Although mock jury studies have contributed much to the understanding of the judicial system, they have received some criticism relating to low ecological validity (O'Connell, 1988). However, a recent review argues that they can produce valid and reliable findings (Bornstein, Golding, Neuschatz, Kimbrough, Reed, Magyarics, & Luecht, 2017).

Pre-trial Publicity: Negative and Positive

Pre-trial publicity can adversely influence the juror decision making process in both positive (pro-defendant) and negative (anti-defendant) ways (Fein, McCloskey & Tomlinson, 1997). Moran & Cutler (1991) found that the greater the amount of publicity, the greater the tendency of jurors to find the defendant guilty, regardless of whether publicity was negative or positive. The majority of research explores the effects that negative pre-trial publicity can have on juror decision making and highlights ways in which information is portrayed as anti-defendant and incriminating (Fein, Morgan, Norton & Sommers, 1997). Positive pre-trial publicity generally occurs less frequently than negative, but occurs more often in high profile cases in which the defendant is wealthy and/or well known to the public (e.g., Martha Stewart as cited in Ruva & McEvoy, 2008). Ruva (2010) found that people pay more attention to negative information compared to positive information and relate this to the negativity bias identified in social psychology (Baron & Branscombe, 2016). Steblay, Besirevic, Fulero and Jimenez-Lorente (1999) conducted a meta-analytic review of 44 empirical studies and found that participants exposed to negative pre-trial publicity were significantly more likely to give guilty verdicts compared to those not exposed to this pre-trial publicity. Additionally, Ruva, McEvoy & Bryant (2007) found that exposure to negative pre-trial publicity significantly affected the number of guilty verdicts, and also the sentence length awarded and perceptions of defendant credibility. While Ruva, Guenther & Yarbrough (2011) found that mock jurors exposed to positive pre-trial publicity were significantly more likely to vote not guilty and rate the defendant as more credible.

Jacquín & Hodges (2007) conducted mock juror research using the murder investigation of Andrea Yates, who in 2001 was found guilty of the murder of her five children. Yates was suffering from severe post-partum psychosis when she systematically drowned her five children. The researchers provided

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