

VICTIM NARRATIVES:
A CONTENT ANALYSIS OF METROPOLITAN
NEWSPAPER COVERAGE OF HIGH-PROFILE
OKLAHOMA CRIMINAL CASES WITH POLICE
DEFENDANTS

By

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Bachelor of Science in Multimedia Journalism

Oklahoma State University

Stillwater, Oklahoma

2014

Submitted to the Faculty of the
Graduate College of the
Oklahoma State University
in partial fulfillment of
the requirements for
the Degree of
MASTER OF SCIENCE
December, 2018

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ACKNOWLEDGEMENTS

It is impossible to list everyone here who has made this thesis possible. I have been blessed by the most amazing support system, who have all been relentless in their encouragement, dedication and assistance. Without these people, this paper would not exist and I would not be the person I am today.

First, to my parents, thank you for not only helping support me financially while I pursued higher education, but for always being there when I fall. Throughout my life, you both have always been there to pick me up and encourage me to keep trying. I could never express to you how grateful I am. Thank you for giving me the idea for this thesis and a thank you to Luke, for always being a phone call away for motivation.

To my adviser, Dr. Joey Senat, thank you is not enough. Your undergraduate law class inspired and challenged me. It helped lay the foundation for this project and for my future. Thank you for never accepting mediocre work but encouraging me to write better, researcher more and edit more clearly. It is the dedication you have for your students, for law and for truth, which makes you such a wonderful professor and mentor.

Third, to my better half, partner and best friend, thank you, Anthony. Every day throughout this process you have pushed me to be better and have never stopped believing in me, even when I have stopped believing in myself. Without a doubt, you are the greatest thing I could have found at Oklahoma State University. I am grateful for every day with you and I cannot wait to see what else life has in store for us. I love you.

Finally, to my cohort and fellow teaching assistants, two years with all of you will never be enough. Without you, I could never have accomplished this.

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Date of Degree: DECEMBER, 2018

Title of Study: VICTIM NARRATIVES AND JUROR BIAS: A CONTENT ANALYSIS
OF MEDIA IN HIGH-PROFILE OKLAHOMA CRIMINAL CASES

Major Field: MASS COMMUNICATIONS

Abstract: The rights of the accused and the rights of the free press have often stood at odds. Even when news was simple neighborhood gossip, it posed risk to the rights guaranteed under the Sixth Amendment. As media has evolved, the judicial remedies in place have not. A lack of social science research in this area and complacency in the courts have developed into a lack of preparedness for criminal cases with intensive media coverage. This study examines the concept of victim portrayal as emotionally prejudicial media which may, influence potential jurors. This thesis performed a content analysis of two high-profile criminal cases in Oklahoma with similar victims and defendants but different outcomes. The study found victim narrative is positively and significantly correlated to connections with a larger national theme (i.e. police brutality, violence against African-Americans, etc.). These findings suggest the more victim support or victim voice is included in articles, the more often these will be combined with conversations about crime at a national level. Specific to these cases, victim narrative was most often connected to the national theme of police brutality against African-Americans. Surprisingly, the study showed identification of the victim was positively and significantly correlated to criminal history. One possible explanation for this phenomenon is the issue of cognitive dissonance created when a police officer commits a crime, as happened in both case studies. It is likely blame is shifted from the accused to the victim, especially in cases where the victims have criminal histories or a history of drug abuse, to reconcile and resolve that cognitive dissonance.

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CHAPTER I

INTRODUCTION

The subject of crime has influenced every form of media; from legends and lore to modern-day reality television. Thus, it is no surprise media outlets and audiences alike obsess over even the minutiae of cases. One estimate suggests at least 12,000 criminal defendants each year “face potentially damaging pretrial publicity” (Brushke, Gonis, Hill, Fiber-Ostrow, & Loges., 2016; Kerr, 1994; see also Daftary-Kapur, Dumas, & Penrod, 2010). In these cases, the blind scales of justice are forced to balance the rights of the defendant and the press where the First and Sixth Amendments intersect (Brushke et al., 2016; Kerr, 1994; Kramer, Kerr, & Carroll, 1990; Jones, 1991). As news mediums have evolved, the necessity for this balance of rights has increased, leading to debates on establishing new procedures and standards within the courtroom (Kramer et al., 1990). In a world where everyone with a smartphone can reach a global audience, is it possible for these rights to be balanced fairly for any party? This is one of the questions social science has attempted (and is continuing to attempt) to find realistic answers to.

Legally speaking, a stark difference exists between publicity and prejudicial publicity (Breheny & Kelly, 1995). However, social science research suggests all types of publicity can affect the defendant. Potentially, even publicity about crimes not connected to the defendant could create bias with the jurors and judges assigned to the case (Bruschke & Loges, 1999; Greene & Loftus, 1984; Greene & Wade, 1998). To better define prejudicial publicity, the American Bar Association has twice developed standards to manage both the bar and press (Bruschke & Loges, 1999; Downey, 2012; Imrich, Mullin, & Linz 1990). Some of the areas the American Bar Association thinks could hinder a defendant's right to a fair trial include publicity about prior criminal record, character statements about the defendant, reports of a confession and eyewitness statements (Otto, Penrod, & Dexter, 1994). In effect, any statement not likely to be admissible in court is considered prejudicial. However, studies have shown little evidence these guidelines have not significantly deterred prejudicial pretrial publicity (Bruschke & Loges, 1999; Kramer et al., 1990; Tankard, Middleton, & Rimmer, 1979). One reason for this might be these "prejudicial" statements are the basis for most news stories. While articles using this prejudicial language or statements might not be used in court, it's unlikely they will not be published.¹ Consequently, it is impossible to ensure all potential jurors are not exposed to these inadmissible statements.

While the American Bar Association does not have authority over the press, the American court system does to an extent. It is here where the First Amendment and the Sixth Amendment collide, leaving both federal and state courts to evaluate on a case-by-case basis. The First Amendment of the United States Constitution ensures "Congress

¹ In some rare cases a complete or partial gag order may be ordered by the judge.

shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances” (U.S. Const. amend. I). The Sixth Amendment is directed at ensuring the defendant’s rights in a civil or criminal trial, “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an *impartial jury* of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense” (U.S. Const. amend. VI). It is the assurance of an impartial jury where the two amendments intersect and must be weighed.²³

Several landmark cases have tested the Supreme Court’s judgment in this balancing act. One early case is *Sheppard v. Maxwell (1966)*. This Cleveland case has been described as the precursor to the O.J. Simpson trial in terms of national notoriety and media attention (Alderman, 1997). It was so sensational that it served as the inspiration for the hit television show “The Fugitive” decades after the case and subsequent appeal were decided (Butterfield, 1998). Sheppard appealed his conviction, contesting lack of an impartial trial by jury. The Court agreed and overturned his conviction, surprising many who felt Sheppard was guilty and received a fair trial

² It should be noted many state constitutions also guarantee certain rights to defendants, including the right to an impartial jury, though these rights vary by state.

³ Defendants also receive protection under the U.S. Constitution in other amendments, such as the Fourth which prohibits unlawful search and seizure and the Fourteenth, which ensures due process. However, the majority of research in this field has been focused on the intersection between the First and the Sixth amendments. Therefore, this paper will also focus on the conflicts these two amendments create.

(Simon, 1966). The Supreme Court sided with Sheppard on the basis that he was not protected from the “massive, pervasive, and prejudicial publicity”, which surrounded his trial (*Sheppard v. Maxwell, 1966*). Since the Sheppard conviction and acquittal on appeal, many other defendants have sought to use this case to bolster their own defense with few results.

One defendant was Timothy McVeigh, better known as the leader behind the bombing of the Murrah Federal Building in Oklahoma City. Ultimately, McVeigh’s appeal to the Supreme Court was denied. The denial was partially based on the Court’s belief he received a fair trial because the lower court did grant a change of venue motion (as allowed through the Federal Rules of Criminal Procedure) based on prejudicial pretrial publicity. This motion moved the trial out of Oklahoma City and into Denver (Fed. R. Crim. P. 21(a); *United States v. McVeigh, 1997*).⁴ As part of this change of venue request, his defense hired a team of social scientists to conduct a public opinion poll evaluating the pretrial publicity surrounding the bombing, McVeigh and his co-conspirator, Terry Lynn Nichols. This study used content analysis to determine the extent of pretrial publicity in Oklahoma City, the surrounding areas and Denver. The study also evaluated if the communities, both in Oklahoma and Denver had developed a permeating anti-defendant viewpoint (Studebaker et al., 2000). Although courts have been hesitant to put stock into social science research, one area in which the two have merged is the area of content analysis for venue change motions (ABA, 1978; Kramer, Kerr & Carroll,

⁴ Federal Rules of Criminal Procedure gives the court the ability to change the trial venue only “if the court is satisfied that there exists in the district where the prosecution is pending so great a prejudice against the defendant that the defendant cannot obtain a fair and impartial trial at any place fixed by law for holding court in that district” (Fed. R. Crim. P. 21(a), Studebaker et al., 2000).

1990; Studebaker, Robbennolt, Penrod, Pathak-Sharma, Groscup, & Davenport, 2000). After the study concluded every area examined (excluding Denver) had an overwhelming belief of guilt due to direct involvement in the bombing or from exposure to the pretrial publicity (the majority of which was considered prejudicial by ABA guidelines). The trial was moved to Denver to ensure there would be no violation of the rights guaranteed by the Sixth Amendment (Studebaker et al., 2000).

Besides a change of venue, the American court system has developed several tactics to combat rising anti-defendant attitudes from prejudicial pretrial publicity. These are judicial instructions, voir dire, jury deliberation and continuance. In rare cases, both lower and higher courts also have permitted prior restraint of the press. These practices have continued to decline but occasionally cases have come up where the courts attempt to limit the press. Most often these orders have failed when media groups band together and appeal to a higher court (Goodale 1977; *Nebraska Press Association v. Stuart*, 1976). Even as recent as the publication of this thesis, a cluster of news groups were appealing to the Supreme Court of Georgia after a gag order was put in place by a lower court judge in the case surrounding the murder of former beauty queen, Tara Grinstead⁵ (Beimfohr, 2017).

While there is no shortage of research into the field of juror bias, only two studies directly compared how different mediums affect jurors' overall bias toward a defendant (Ogloff & Vidmar, 1994; Wilson & Bornstein, 1998). Technology is quickly changing

⁵ This small-town murder became a worldwide sensation after becoming the subject of podcast, *Up and Vanished*, and the subsequent media storm led the presiding judge to issue a stringent gag order to ensure an impartial jury pool (Helm, 2017). Multiple media groups converged to appeal this decision and are awaiting the results from the appeal hearing.

the way people communicate and process information. As these technologies evolve, it is imperative the American legal system understands how these mediums will affect jurors. Without an accurate and comprehensive evaluation of these mediums, it is impossible for courts to truly evaluate the impartiality of jurors in the voir dire process and consequently ensure the rights of every defendant. The goal of this paper is to explore how the victims in two high-profile Oklahoma criminal cases with police defendants are portrayed.

CHAPTER II

REVIEW OF LITERATURE

Juries and Publicity: A History

Even before America's independence, juror bias due to pretrial publicity was an issue. Despite a lack of traditional media in colonial America, it was still necessary for judges to ensure their jury pool was untainted from rumors surrounding the case at trial (Minow & Cate, 1991). However, these trials lacked the sensationalism and notoriety of later cases and thus it suggests jurors were able to put aside any previous notions of guilt.

The first trial subject to pervasive pretrial publicity in America was former Vice President Aaron Burr's treason trial. Because of the public's fascination with the trial of the well-known political figure, both gossip among Americans and pretrial publicity from the early nation's papers caused concern that an impartial jury could not be found (Gross, 2013; Hardaway & Tumminello, 1996). The presiding circuit judge, Supreme Court Chief Justice John Marshall, ruled a potential juror could be dismissed only if he had a strong belief about the guilt or innocence of the defendant that could not be set aside (Gross, 2013; Hardaway & Tumminello, 1996).

However, it was not until the 1935 trial of the infamous Lindbergh baby kidnapping and murder that the issue became prominent enough to warrant the American Bar Association to establish Canon 35 of the Code of Judicial Conduct. This code was created to help control press coverage in extremely high-profile criminal trials but was only a suggestion to the Court and only affected attorney behavior. The Canon read: “Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the courtroom, during sessions of the court or recesses between sessions, and the broadcasting of court proceedings are calculated to detract from the essential dignity of the proceedings, degrade the court and create misconceptions with respect thereto in the mind of the public and should not be permitted.” (Hardaway & Tumminello, 1996, p. 49). This Canon would not have true effect until the *Estes v. Texas* (1965) decision when Rule 53 of the Federal Rules of Criminal Procedure was developed and prohibited taking photographs of or broadcasting a federal trial (Hardaway & Tumminello, 1996).

While the Court was now aware how the “media circus”, a term coined during the Lindbergh case, could affect the outcome of a criminal trial, it would be decades before defendants would be able to use this defense in securing a new trial. Leading up to *Sheppard v. Maxwell* (1966), the decades between the Lindbergh case in 1935 and the mid-sixties spawned several other cases where the U.S. Supreme Court was forced to consider the ramifications of pretrial publicity. These included *Marshall v. United States* (1959), *Irvin v. Dowd* (1959), *Rideau v. Louisiana* (1963) and *Estes v. Texas* (1965). In *Marshall v. United States* (1959), the Court first recognized “a trial might be unfair when a juror is exposed merely to possibly prejudicial pretrial publicity” (Hardaway &

Tumminello, 1996). Change of venue and the discussion of how much prior information a juror can have on a case and remain impartial came up two years later in *Irvin v. Dowd* (1959). Here the U.S. Supreme Court attempted to answer the question of juror knowledge, “a juror need not be totally ignorant of the facts and issues involved, but that a juror is sufficiently impartial if he can ‘lay aside his impression or opinion and render a verdict based on the evidence presented in court’”⁶ (Hardaway & Tumminello, 1996).

However, it was *Sheppard v. Maxwell* (1966), which gave rise to the modern approach to pretrial publicity. During the *Sheppard v. Maxwell* (1966) trial, much of the courtroom was reserved for media. Not only did reporters continuously photograph witnesses, the defendant and jurors, they also listened in on private conversations between Sheppard and his attorney and published them in newspapers, which jurors had access to. Additionally, they created such noise moving in and out of the courtroom jurors often could not hear the testimonies at all (Hardaway & Tumminello, 1996).

On Sheppard’s appeal to the Supreme Court, he was granted a new trial. The Supreme Court, using the totality of circumstances test developed in *Riddeau v. Louisiana* (1963) and *Estes v. Texas* (1965), ruled a reasonable likelihood of prejudice from extensive publicity could be presumed without requiring the defense prove the prejudice existed. In the Sheppard case, the Court believed this prejudice could have been prevented if the trial court had taken measures to protect the sanctity of the court. Because the trial court failed to do so, Sheppard was granted a new trial (Hardaway & Tumminello, 1996).

⁶ Citing *Holt v. United States*, 218 U.S. 245, 248 (1910); *Spies v. Illinois*, 123 U.S. 131, 133 (1887); *Reynolds v. United States*, 98 U.S. 145, 157 (1878).

Most recently, the Supreme Court has used a new two-part test modeled after the totality of circumstances test to determine if a defendant has faced unfair prejudice in trial because of pervasive media exposure.⁷ In the first part, the Court will presume prejudice exists when uncontrolled media access to the trial has occurred⁸, resulting in a “media circus.” The second part examines the circumstances of the trial itself to identify any instances of impartiality, which could have created juror prejudice (Hardaway & Tumminello, 1996).⁹

As the Supreme Court noted in the Sheppard case, the best solution is to eliminate as much prejudice as possible before the trial. Four remedies are used within the American court system to help ensure the impartiality of trials. These are voir dire, change of venue, continuance and judicial instructions (Minow & Cate, 1991). However, social science has shown these countermeasures do little to help ameliorate the damage done by pretrial publicity (Studebaker, et al., 2000; Fulero & Penrod, 1990; Kerr, Kramer, Carroll, & Alfini, 1991; Kramer, Kerr, & Carroll, 1990; Olczak, Kaplan, & Penrod, 1991; Otto, et al., 1994; Sue, Smith, & Gilbert, 1974, 1975; Zeisel & Diamon, 1978).

⁷ One modern example is *U.S. v. McVeigh* (1998). McVeigh appealed to the Supreme Court but his conviction was upheld because the lower court had taken great measures to ensure an unbiased jury, specifically moving the trial to Denver.

⁸ See *Sheppard v. Maxwell* (1966). “In particular, the Court: (1) examined the voir dire record, searching for juror hostility; (2) considered the atmosphere of the community at the time of the trial; and (3) considered the length to which the court had to go to select impartial jurors” (Hardaway & Tumminello, 1996, p. 61)

⁹ The Sheppard trial, which established the totality of circumstances test, listed five reasons Sheppard’s right to a fair trial might have been violated. They are “when (1) defendant is not granted change of venue away from heated publicity; (2) judge has not sequestered jury; (3) anonymous letters are sent to jurors; (4) charges and countercharges are aired in media; and (5) three-day inquest examination of defendant without counsel was aired live on television before trial” (Hardaway & Tumminello, 1996, p. 55). After the Sheppard case, the Court began to look at the entire circumstances surrounding the trial to determine if the defendant’s rights were violated.

The overarching opinion in the academic world is pretrial publicity does influence the conclusion for criminal trials; however, the strength and extent of bias is still in debate (Bruschke & Loges, 1999; Constantini & King, 1980-1981; Dexter, Cutler & Moran, 1992; Kerr et al., 1991; Kramer, Kerr, & Carroll, 1990; Moran & Cutler, 1991; Ogloff & Vidmar, 1994; Otto et al., 1994; Padawer-Singer & Barton, 1975; Sue, Smith, & Pedroza, 1975).

Emotional and Factual Prejudice

Four studies, Hoiberg and Stires (1973), Kramer and Kerr (1989), Kramer et al. (1990) and Wilson and Bornstein (1998) have attempted to better understand the differences between emotional prejudice and factual prejudice and the effect on jurors. Simply put, factual prejudice is any prejudice which stems from factual knowledge of the case or defendant that might be relevant to the jurors' decisions but might not be admissible in court. This information "raises potential jurors' subjective certainty in the defendant's guilt (e.g. hearing the defendant confessed to the crime)" (Wilson & Bornstein, 1998, p. 586). This form of prejudice is easier to recognize than emotional prejudice or bias (Ogloff & Vidmar, 1994).

Emotional prejudice stems not from facts but from how a case or situation makes the potential juror feel. Emotional pretrial publicity is usually "sensationalized and lurid details about the case that may or may not be informative in an evidentiary sense, but that emotionally arouses potential jurors, thereby prejudicing them against the defendant" (e.g., describing in detail the brutal rape of a young woman, like Hoiberg and Stires (1973) study, or the inclusion of details a reasonable person would find emotionally

disturbing) (Ogloff & Vidmar, 1994; Wilson & Bornstein, 1998, p. 586). This form of bias is much harder to identify because often a juror might not be aware, he possesses such a bias at the time of the trial.

The studies produced mixed results which can most likely be attributed to the difference in methodology approaches. Of the four studies associated with factual and emotional pretrial publicity, none are replications, and all used a diverse set of stimuli materials and procedures, which helps explain the discrepancies (Hoiberg & Stires, 1973; Kramer & Kerr, 1989; Kramer et al., 1990; Wilson & Bornstein, 1998). Additionally, the latest study by Wilson and Bornstein (1998) is the only one to compare factual pretrial publicity and emotional pretrial publicity to determine if either created a stronger bias within a jury pool.

Hoiberg and Stires were the first research team to examine the two kinds of pretrial publicity. They found men were not affected by either the factual pretrial publicity or the emotional pretrial publicity. However, women were affected by the exposure to the emotional pretrial publicity. It is important to note though this experiment used a female rape case for testing stimuli. Partma (2009) and Wilson and Bornstein (1998) believe it is likely this affected the female participants more than the actual emotional pretrial publicity.

The studies which followed Hoiberg and Stires (1973) are also laboratory studies but with significant improvements to account for real-world trial settings. In the Kramer and Kerr (1989) study, the researchers attempted to correct the design flaw in Hoiberg and Stires design by using a robbery case instead of an emotionally charged case such as

the rape-murder in the Hoiberg study. Wilson and Bornstein (1998) also attempted to create more reliable publicity stimuli materials through the detailed creation of both newspaper accounts and television stories with actors portraying the citizens, reporters and suspects. This study developed two simplified versions of an actual trial to help recreate a true courtroom experience, including the presentation of case evidence and arguments from both sides. Before the trial tape was viewed, the participants were randomly exposed to a mix of high or low emotional pretrial publicity and a mix of high or low factual pretrial publicity. It is vital to note the factual biasing information was not used in the trial video and thus, the only exposure participants had was through the media stimuli. Additionally, the emotionally biasing information had no evidentiary value in the case and was also not presented in the trial tape. This measure was designed to help test if jurors would ignore the media stimuli information after being exposed to the trial facts. Study participants were more likely to find the defendant guilty after being exposed to either form of pretrial publicity. When asked to give sentencing suggestions, the exposure to a high level of either publicity tended to create harsher sentences for the defendant as well (Kramer & Kerr, 1989).

A year after this pilot study was published, Kramer examined juror bias within the context of emotional and factual pretrial publicity again. This study also examined how different judicial remedies might ensure the defendant's right to a fair and impartial trial is protected.¹⁰ Researchers examined three key remedies, judicial instructions, jury deliberation and continuance, and the effectiveness of each after exposure to either

¹⁰ The 1990 study by Kramer was a replication of the 1989 study, with the addition of testing how judicial remedies might be affected by the two forms of pretrial publicity.

factual pretrial publicity or emotional pretrial publicity. For this study, the factual publicity contained incriminating information about the defendant which might not be of evidentiary value to the trial. Emotional publicity did not contain any “explicitly incriminating information” like the factual publicity did, but instead, contained information “likely to arouse negative emotions” (Kramer et al., 1990).

An additional caveat to emotionally prejudicial publicity is the concept of victim narrative. Relying on the traditional protagonist and antagonist storylines, Jennifer Petersen suggests these narratives, which society feels comfortable with and can easily understand, also dictate the narrative presented in media.

“Taken together, newspaper, magazine and TV texts circulated invitations to feel pity for the victim, disgust for the killers...” (Petersen, 2011, p. 93).

These media narratives tell audiences who they should feel for, usually resulting in sympathy for the victim and anger toward the defendant (Petersen, 2011).

Not only do these narratives tell audiences who to pity, but they also teach society how to feel and what to believe about crime itself.

“Media images help shape our view of the world and our deepest values; what we consider good or bad, positive or negative, moral or evil” (Kellner, 1995, p. 24).

Few people have direct experience with crime and even fewer have direct experiences with violent crime. Therefore, the public creates inferences and develops a knowledge base about crime through narratives found in media (Peelo, 2006). This is commonly attributed to fear of crime and to the idea that crime has substantially

increased in the world, when in actuality, crime rates are lower (Reiner, 2002: 399-402; Ditton et al., 2004). Media narratives can help reduce the “randomness” of victims and help the audience develop a connection making them believe they are likely to be a victim of a similar crime (Pollak & Kubrin, 2007). The phenomenon of ‘mediated witness’ can also be traced to these public narratives about crime.

“‘Mediated witness’ is the paradoxical phenomenon of *virtual* experience in which detail about a homicide is communicated in a way which engages us personally and emotionally on the side of those who are hurt. As witnesses to the drama, we are invited to focus our attention on and emotionally align ourselves with victims, co-victims and survivors of homicide” (Peelo, 2006).

These victim narratives would fall under the emotional prejudice category as these narratives include little factual detail necessary to the case, but instead provide subjective context to understanding the characters and plot of the melodrama presented (Petersen, 2011).

Judicial Remedies

Of the judicial remedies, only continuance was an effective remedy to factual publicity, but it did not prevent bias from emotional publicity. The authors suggested several reasons for the discrepancy between types of publicity and the elicited reaction among the participants. The first is that the emotionally biasing publicity was simply more biasing than the factual publicity. The emotional publicity stimuli were shown to the participants for a longer duration, which might have contributed to the strength of the emotionally biasing publicity stimuli. However, the pilot study performed the previous

year by Kramer and Kerr (1989) doesn't show the same results. Reyes, Thompson and Bower (1980) think perhaps the most reasonable explanation is the emotionally biasing publicity is more memorable than the factually biasing publicity. Because the emotional information may have created a better story, which was more interesting for the participants to review, it is likely to be better remembered after a continuance (Kramer et al., 1990; Reyes, Thompson & Bower, 1980). Finally, participants exposed to emotionally biasing publicity "were sadder, angrier, more shocked and more upset" than those exposed to factual publicity. This might have contributed to the retained memory after continuance (Kramer et al., 1990).

Judicial instructions and deliberation did not reduce the impact of either form of publicity. Jury deliberation strengthened the bias from the pretrial publicity exposure. While during deliberation, participants would often speak out when pretrial publicity was brought up. "It is clear that deliberation acted much like a photographic developer, making visible a latent (predeliberation) image" (Kalven & Zeisel, 1966; Kramer et al., 1990, p. 431). The study indicates exposure to either form of publicity creates an impact on jurors' verdicts and the current judicial remedies in store do little if anything to help curb the effects of publicity, especially when exposed to emotional publicity (Kramer et al., 1990).

The latest study, Wilson and Bornstein (1998), was modeled after the two Kramer studies to address a gap in literature through examination of how exposure to factual or emotional publicity might affect intercommunication within the jury and the verdict. This study examined how the medium of publicity might affect the overall strength of the created bias. Using the 1994 study by Ogloff and Vidmar, Wilson and Bornstein differed

the medium of exposure to address how factual and emotional pretrial publicity might differ through video and print formats. One important diversion from the previous Kramer studies is the participants were asked not to evaluate guilt or innocence. Instead, study participants were asked to determine if the defendant was guilty of murder or manslaughter (Wilson & Bornstein, 1998).

The results of this study are consistent with the Kramer studies to the extent that exposure to pretrial publicity did affect jurors' guilt judgments. However, the study could find no significant difference in strength between those exposed to emotional versus factual or a significant difference between the two mediums (Wilson & Bornstein, 1998).

Of the remedies, the most frequently used are the voir dire process and judicial instructions. These countermeasures are used in every trial to help discourage bias within the jurors.

Over the last 50 years, four studies have explored if judicial admonitions to ignore information obtained outside the courtroom make a difference in helping abate pretrial publicity and antidefendant biases. Many of these studies found that despite judicial admonitions, prior exposure to prejudicial media, such as prior convictions, still played a major part in jurors' decisions (Hoiberg & Stires, (1973); Kline & Jess, 1966; Kramer et al., 1990; Tans and Chaffee, 1966). Tans and Chaffee (1966) and Hoiberg and Stires (1973) found biasing effects of pretrial publicity, but also found these effects differ between genders. In the study, women were more likely to be influenced by pretrial publicity (Sue et al., 1974). Broeder (1958), Wolf and Montgomery (1977), Tanford and Cox (1987) and Kramer (1990) found these judicial instructions strengthen jurors' biases.

One explanation is that as jurors are directed not to look at pretrial media, it arouses their interest more than if no instructions were given (Brehm, 1966; Kramer et al., 1990).

Though a few studies show findings giving credence to jurors' ability to abide by the instructions¹¹ (Simon, 1966; Sue et al., 1974).

Voir dire is likely the most commonly used deterrent to pretrial publicity prejudice (Kramer et al., 1990; Siebert, 1970). However, this method of remedy has multiple weaknesses and has produced mixed results as a remedy in empirical research (Bruschke & Loges, 1999).

Padawer-Singer and Barton (1975) believe jury selection is the best way to ensure a fair trial. More recently though, scholars have suggested this "remedy" does nothing to help eliminate juror bias (Dexter et al., 1992; Kerr et al., 1991).

The chief weakness plaguing voir dire is the difficulty for attorneys on both sides to discover if a potential juror is biased from pretrial publicity. This partially stems from jurors' inability to judge themselves as impartial (Sue et al., 1974). Several psychological explanations for this exist. One is that jurors are uncomfortable giving the "incorrect" answer. While the voir dire process is meant to be an honest conversation about a potential juror's abilities, often potential jurors will deny they hold a bias out of fear of reprisal from authority (in this case the attorneys or presiding judge) (Vidmar, 2003). Another explanation for the variance in voir dire effectiveness uses the Spiral of Silence theory. The theory indicates small groups or individuals who have ideas contrary to those ideas which dominate media or society might stay silent on their true feelings out of fear

¹¹ See Simon (1966) for more results from the lab experiment.

of rejection (Baran & Davis, 2010). One study, which followed the entire voir dire process of one trial, suggested this fear of rejection might create an unknowingly biased jury. In the study, transcripts of the first four potential jurors' answers took sixty-one pages. The remaining 49 potential jurors answered the voir dire questions so succinctly it only took 161 pages of transcript to record their answers. While the spiral of silence theory might explain this phenomenon, it is also possible the potential jurors learned the "correct" answers from the first four jurors and were able to mold their own answers to fit the desired narrative (Minow & Cate, 1991).

Another critique of voir dire is it encourages selection of jurors with no previous knowledge of the case at trial. While on the surface it might seem that jurors without previous knowledge would be the most impartial, it becomes more complex as cases become larger and more heavily covered in the news media. Some critics say this keeps educated and competent citizens from serving in a jury because it "punishes" potential jurors who regularly follow both local and national news (Gross, 2013). As noted by Supreme Court Chief Justice John Marshall, a juror does not need to be completely ignorant of a case to be a good juror. Instead, a juror simply needs to be impartial and without any strongly held beliefs on guilt or innocence of the defendant and willing to evaluate a case on the presented facts (Gross, 2013; Hardaway & Tumminello, 1996). Conversely, Constantini and King found the more information jurors possessed about a case, the more likely they were to be pro-prosecution. This lends credence to defense concerns that prior knowledge equals bias (Constantini & King, 1980-1981; Otto et al., 1994).

Additionally, attorneys are limited in what they can ask potential jurors during the voir dire process.

Change of venue and continuance are other remedies the courts employ to help alleviate the symptoms of pretrial publicity. Because these methods are more extreme in nature and create additional conflict with the Sixth Amendment, they are considered a last resort to be used only when a fair trial cannot be found otherwise (Studebaker et al., 2000). One major reason these methods might be employed is the introduction of emotional prejudice among the potential juror pool, (i.e McVeigh trial being moved to Denver because of how many Oklahomans were affected by the bombing) (Studebaker et al., 2000).

Change of Venue and Continuance

The rise of television, (and later the Internet), has made trial information more prevalent within the district for the jury pool, making it more difficult to locate unbiased jurors (Gross, 2013). However, as the potential for a larger pool of biased jurors has increased, the rate for granted change of venue motions reduced (Gross, 2013).

“This is the result not of a reasoned and transparent judgment by the Supreme Court¹² that, after all, pretrial publicity does not threaten the constitutional impartial jury right. Rather, within a short time of establishing the constitutional pretrial publicity

¹² See *Irvin v. Dowd* (1959), *Rideau v. Louisiana* (1963) and *Sheppard v. Maxwell* (1966). Looking at these cases as a set, “as a matter of due process, trial courts may be constitutionally required to change venue where prejudice in the charging venue threatens a defendant’s right to an impartial jury” (Gross, 2013, p. 6).

standard, the Court began backpedaling from its potentially broad implications¹³” (Gross, 2013, p. 3).

What exactly does the Sixth Amendment guarantee criminal defendants? The Sixth Amendment guarantees, “accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense” (U.S. Const. amend. Amendment VI).

Both change of venue and continuance remedies technically violate the due process clause in the Sixth Amendment, which is one reason these options are seldom used except in the most extreme of circumstances. Additionally, change of venue creates an added burden on the courts, both financially and logistically (Gross, 2013).

“...the realities of conducting criminal trials in a media-saturated society have outstripped the Court's willingness to require trial courts to incur the expense and inconvenience that more frequent changes in venue would require” (Gross, 2013, p. 3).

¹³ See *Murphy v. Florida* (1975). The case “presented the question of whether jurors who have been exposed to extensive information about a defendant’s prior criminal record are impartial for constitutional purposes” (Gross, 2013, p. 9). Murphy was convicted and appealed to the Supreme Court. The Court found his constitutional rights had not been violated and his conviction was upheld. In the dissent, penned by Justice Marshall Brennan, a “a voir dire record that established jurors’ knowledge of Murphy and his prior crimes” and showed actual bias against Murphy (Gross, 2013, p. 10).

The most prominent change of venue case, *United States v. McVeigh* (2000), also resulted in one of the most comprehensive content analysis studies to date (Studebaker et al., 2000).

Such studies are often requested by the defense team as evidence for the necessity of a change of venue. These studies (usually developed by social scientists) identify if and to what extent the jury pool has a pervasive and unrelenting bias toward the defendant. This includes determining what prejudicial information the pool might have been exposed to. Evaluating different news mediums and surveying public knowledge and opinion is crucial to diagnosing whether a defendant can have an impartial jury (Nietzel & Dillehay, 1983; Studebaker et al., 2000). These public opinion surveys are one of the best ways to demonstrate a ubiquitous bias exists because it allows the defense team to quickly contact a vast number of potential jurors in that community to establish parameters of current knowledge and judgment of the defendant (Nietzel & Dillehay, 1983, p. 312; Studebaker et al., 2000).

For the McVeigh case content analysis, the researchers examined three newspapers across the state of Oklahoma in areas likely to be used to hold the trial (Lawton, Oklahoma City and Tulsa). Additionally, the group examined a newspaper in Denver (as Denver was being considered as an alternate trial location at the time).¹⁴ Without scrutinizing other news mediums, television, magazines and digital media, it is impossible to gather a complete picture of attitudes toward a defendant. However, due to

¹⁴ Even from the beginning, it was highly unlikely the trial would be held in Oklahoma as the impact of the event affected nearly every potential juror in the state. Denver was eventually chosen to hold the trial (Studebaker et al., 2000).

time and financial constraints, it is more than likely impossible to look at every potential news source (Studebaker et al., 2000).

Inspecting the four newspapers, this study found, as expected, that both the number of articles and length of articles published differed drastically between the Oklahoma papers and the Denver paper. Additionally, the researchers discovered the coverage in Oklahoma was much more negative of the defendants and much more emotionally stirring than the Denver coverage (Studebaker et al., 2000). To fill in the gaps from the content analysis, a public opinion survey was distributed to better understand the attitudes of Oklahomans and Denverites. The survey found residents of counties closer to the bombing site were much more likely to have more knowledge of the event, the defendants, and the events leading up to the trial. Additionally, many Oklahomans expressed a “significant amount of prejudgment about the guilt of Timothy McVeigh” compared to a minority of Denverites (Studebaker et al., 2000, p. 331).

In conclusion, most scholars agree that pretrial publicity does create an unfair environment for criminal defendants. However, the extent, strength, and best remedies for elimination of bias are a constant source of debate within the legal and social science communities. It is clear more research is necessary to determine how the changing landscape of digital news and introduction of both Millennials and Generation Z as potential jurors will affect criminal defendants today and in the future.

CHAPTER III

METHODOLOGY

Overview

It is vital a combination of experimental laboratory studies and field studies using real cases are reviewed together to draw general conclusions about juror behavior as a whole. However, field studies, specifically content analysis studies, play an important role in high profile criminal trials. Through content analysis and public opinion surveys, defense and prosecution teams can validate their claims of preconceived judgment due to prejudicial pretrial publicity. Judicial remedies can then be enacted (such as a continuance or a change of venue) to protect the rights of the defendant (Studebaker et al., 2000).

Case Studies

As previously noted, emotional prejudice is much harder to identify in potential jurors and is the hardest type of prejudice to overcome. The issue of emotional prejudice is concerning because subjective and extraneous details about the case or victim, which are likely to be emotionally prejudicing, are what make stories interesting. The inclusion of details about the victim and facts not necessarily critical to the case are what create the

melodrama and intrigue, which helps sell newspapers. Often these details will never be discussed during trial because they are not germane to the case or even admissible in court. While multiple studies have focused on factual bias in media coverage of defendants, only a few studies have examined emotional prejudice. To date, no studies have explored the portrayal of victims in media and any subsequent biases which may arise from these narratives. For these reasons, this study explores narratives presented of victims in two high-profile Oklahoma cases. While the criminal action in these cases are different, the defendant and victims share many significant similarities. The defendants were both police officers in large Oklahoma cities at the time of the incident(s) and identify as Caucasian (Daniel Holtzclaw identifies as Caucasian and Pacific Islander). The victims of the crimes are all African-American, from lower income communities and the majority have a criminal history. These cases were chosen because they received both local and national attention due to their relation to several national themes: police brutality, violence against women and violence against African-Americans.

Betty Shelby

Betty Shelby, a Tulsa police officer at the time of the incident, was charged with felony manslaughter after a police video from a helicopter was released showing her fatally shoot an unarmed African-American man. Shelby testified she feared for her life when she shot and killed Terence Crutcher (Karimi, Levenson, & Gamble, 2017). This incident was one of many police shootings of unarmed black men in the past five years, which led to the rise of the Black Lives Matter movement in 2013. Because of the movement and the group's active social media usage, this incident gained a wide audience nationally. Betty Shelby was acquitted.

Daniel Holtzclaw

Daniel Holtzclaw, a former Oklahoma City police officer was convicted of rape and forced oral sodomy in 2016. Over six months, Holtzclaw targeted African-American women in poor Oklahoma City areas and forced them to perform various sexual acts. Prosecution said Holtzclaw chose these women out of a belief they would be too scared to come forward or would have criminal records, which would hurt the credibility of their testimonies. Like the Shelby case, race also was a factor in the Holtzclaw case, increasing the publicity of the trial and the defendant. Many of the same groups who spoke out about the Betty Shelby trial and verdict also spoke about the Holtzclaw case leading up to the verdict (McLaughlin, Sidner & Martinez, 2016). Daniel Holtzclaw was convicted and sentenced to 263 years in prison.

Coding Categories and Measures

For content analysis purposes, this study only used traditional articles which could be found on the websites of *The Oklahoman* and *Tulsa World*. Several categories considering victim portrayal were selected and coded for. The first category examined mention of victim's criminal history or references to current criminal activities (i.e. the victim was using drugs at the time of the incident or has a history with drugs). The second category identified victim narratives. Included in the category for victim narrative were direct quotes of victims, quotes supporting victims and mention of protests against the defendants. The third category examined biographical information about the victim. To further define the biographical information, mention of name, age or other details about the victims were counted individually. The final category explored connections

between local stories and larger national themes. Specifically, connections which were made to police brutality, violence against women and violence against African-Americans were recorded.

Because this is a master's thesis project, the author acted as the primary coder for the research project. An additional coder was asked to code a randomized number of articles adding up to 10 percent of the total sample analyzed. A test to ensure intercoder reliability was performed to ensure accuracy. In the intercoder sample set, each coder measured the number of mentions for a specific category (coding a single sentence as a mention). To calculate the percentage of "correct" answers, the primary researcher counted only the times when the primary and secondary coder had the same number of mentions. Almost all times that the coders did not have a matching number of mentions, the numbers were off by one mention.

In the criminal history category, the coders responded with the same number of mentions every time, leading to a 100 percent agreeance rate. The coders also had a 100 percent agreeance rate of mentions in the other details about victim category. In the victim narrative category, the coders had the same number of mentions with an agreeance rate of 57.1 percent. The coders did not have the same number of mentions for three articles in this category. The largest variance, a difference of three mentions, was recorded in this category. Because of the subjective nature of the victim narrative category, it is not surprising the largest number of variances for one article was recorded in this category. The agreeance rate for mention of victim name was 71.4 percent. The coders did not record the same number of mentions on two articles. Both of these variances were a difference of one mention. This is likely due to one coder simply

overlooking a name mention. Within the category for victim identification via age, the coders had an agreeance rate of 85.7 percent. The variance came from a single article where one less mention was recorded. Again, it is likely one coder overlooked the single mention of age. Lastly, in the category involving connection of the case study crime to a larger national theme, the agreeance rate was 57.1 percent. Of the seven articles coded, the coders did not have the same number of mentions recorded for three articles in this category. Of these articles, two articles had a single less mention of national theme and one article had two fewer mentions of national theme. Similar to victim narrative, this category was more subjective in that it required the coders to make a judgment about whether the connection to a larger national theme existed within that article.

A codebook developed by the author and primary coder was used for training of the secondary coder. With the secondary coder, the primary coder reviewed the categories and the two coders discussed different examples of each category. Additionally, the two coders reviewed the first two articles together after being coded individually and identified any variances. After identifying any variances and discussing the thought process behind these variances, the coders updated the codebook to reflect ideas that came up during this initial code training and established better guidelines. The remainder of the articles were coded individually, and the primary coder calculated the intercoder reliability percentages.

Content Sources

To best evaluate media coverage, the researcher chose to use content from *The Oklahoman* and *Tulsa World*. These newspapers were chosen because they are the major

newspapers from the two largest cities in Oklahoma. Additionally, during an exploratory look at potential content sources, the researcher determined there was not enough coverage in any other newspapers to obtain a useable sample. Unfortunately, the two newspapers chosen have a sharing policy with each other. Therefore, *Tulsa World* exclusively covered the Betty Shelby case with *The Oklahoman* using this coverage for their own website and vice versa. Due to this, a comparison of how the defendants were treated in different geographical areas is impossible with this data set.

To locate articles pertaining to the two cases, a simple search of the defendant's first and last name was performed on the website of each content provider. All articles published before or on the verdict date were included in the population. A random sample set of 60 was selected from an overall population of 176 allowing for a 10 percent margin of error with a 90 percent confidence interval.

Research Questions

1. Does coverage vary between the two cases concerning voice given to victim through victim narrative and biographical information?
- 1b. Does coverage vary between cases on the amount of biographical information reported?
2. Does mention of criminal history vary between the two cases?
3. Is there a difference between the amount of national theme connections between the two cases?

CHAPTER IV

FINDINGS

Research Questions

From the sample of 60 articles, the articles broke down to Betty Shelby case ($n = 37$) and Daniel Holtzclaw case ($n = 23$). The data collected was organized into SPSS where the data was analyzed for frequency, mean and standard deviation. Additionally, an independent samples t -test was performed, and a correlation matrix developed.

RQ1: Does coverage vary between the two cases concerning voice given to victim through victim narrative and biographical information?

Coverage did not vary significantly between the two cases concerning victim voice and narrative $t(57.55) = .91, p = .36$. The mean for victim narrative mention in the Betty Shelby case ($M = 2.30, SD = 3.92$) and the Daniel Holtzclaw case ($M = 1.52, SD = 2.64$). When examining both cases together, the mean was ($M = 2.0$) with a standard deviation of ($SD = 3.48$).

RQ1b: Does coverage vary between cases on the amount of biographical information reported?

When examining biographical indicators, there was a significant difference between the two cases on name identification, $t(37.05) = 5.42, p = .01$. In the Betty Shelby case, the mean and standard deviation for name identification was ($M = 8.03, SD = 8.75$) but a much lower mean was found in the Daniel Holtzclaw case ($M = .17, SD = .83$). With both cases, the mean for mention of victim name was ($M = 5.02$) with a standard deviation of ($SD = 7.86$). There were no significant differences in age or other biographical details mentioned in the two cases $t(58) = .28, p = .78$. For age, Betty Shelby ($M = .62, SD = .79$) and Daniel Holtzclaw ($M = .57, SD = .73$). For other details, Betty Shelby ($M = .05, SD = .33$) and Daniel Holtzclaw ($M = .17, p = .49$). With the cases combined, the mean for age was ($M = .60, SD = .76$) and the mean for other biographical details was ($M = .10, SD = .40$).

Table 1 Group Statistics

	Betty Shelby		Daniel Holtzclaw	
	<i>n</i>	<i>M (SD)</i>	<i>n</i>	<i>M (SD)</i>
<i>Criminal History</i>	37	1.11 (2.07)	23	0.91 (1.93)
<i>Victim Narrative</i>	37	2.30 (3.92)	23	1.52 (2.64)
<i>Victim Name</i>	37	8.03 (8.75)	23	0.17 (0.83)
<i>Victim Age</i>	37	0.62 (0.79)	23	0.57 (0.73)
<i>Other Details</i>	37	0.05 (0.33)	23	0.17 (0.49)
<i>National Theme</i>	37	1.86 (3.00)	23	0.70 (1.33)

RQ2: Does mention of criminal history vary between the two cases?

No significant variance of criminal history was found between the two cases

$t(58) = .37, p = .72$. In the Betty Shelby case, ($M = 1.11, SD = 2.07$) was found and in the Daniel Holtzclaw case, a slightly lower mean for mentions was found ($M = .91, SD = 1.93$). Thus, there is no significant difference between the cases on the mention of the victim's criminal history. The mean when the cases were combined for mention of victim's criminal history was ($M = 1.03, SD = 1.10$).

RQ3: Is there a difference between the amount of national theme connections between the two cases?

A significant difference was found in the amount of national theme connections between the two cases $t(53.57) = 2.07, p = .04$. In the Betty Shelby case, the mean was slightly higher ($M = 1.87, SD = 3.00$) with the Daniel Holtzclaw case just slightly lower ($M = 0.70, SD = 1.33$). The mean for the combined cases was ($M = 1.42, SD = 2.55$) for mention of national themes within the article.

Correlations

In addition to the independent sample t -tests, a Pearson Correlation test was performed to determine if any correlations exist between the variables tested. The correlation matrix showed mention of criminal history is positively correlated to biographical identifiers of name and other details (not age), (name: $r = 0.53, p = 0.01$) and (other details: $r = 0.34, p = 0.009$). The variable victim narrative is also positively and significantly correlated with the national theme variable ($r = 0.60, p = 0.01$). While not significant, both victim narrative and national theme are negatively correlated to victim age (victim narrative: $r = -0.10, p = 0.47$; national theme: $r = 0.05, p = 0.69$), victim name (victim narrative: $r = -0.004, p = 0.97$; national theme: $r = 0.13, p = 0.33$) and victim's criminal history (victim narrative: $r = -0.07, p = 0.58$; national theme: $r = -$

0.04, $p = 0.75$). No other variables were found to be correlated either positively or negatively.

Table 2 Correlations

	Criminal History	Victim Narrative	Victim Name	Victim Age	Other Details	National Theme
<i>Criminal History</i>						
<i>Victim Narrative</i>	.07					
<i>Victim Name</i>	.53**	-.04				
<i>Victim Age</i>	.17	-.10	.36**			
<i>Other Details</i>	.34**	.11	.19	.25		
<i>National Theme</i>	-.04	.60**	.13	.05	.11	

** . Correlation is significant at the 0.01 level (2-tailed).

CHAPTER V

CONCLUSION

Summary

As technology evolves, so must our legal system to ensure the Sixth Amendment is respected regarding a fair and impartial trial by a jury of peers. Previous research shows potential jurors can become tainted through exposure to prejudicial media. While issues with factual prejudice are well documented, there is a lack of research in the area of emotional prejudice. It is clear emotional prejudice can have a more significant impact to a potential juror but unlike factual prejudice, it is nearly impossible to detect in voir dire because potential jurors often don't realize they have a bias.

The two cases selected received a high amount of publicity at both the local and national level. These cases had similar defendants and similar victims; however, the crimes themselves were very different and the outcomes were different.

Articles were gathered from two newspapers for a total population of 176. Of this population, a random sample of 60 was gathered with a 10 percent margin of error and a 90 percent confidence interval. Of the sample, another random sample was gathered accounting for approximately 10 percent of the total sample. A secondary coder, using the codebook created by the author, coded these and this sample was compared to the same sample from the author. The intercoder numbers were well within the acceptable range.

Significant differences in mean were found in the use of biographical identifiers between cases. Independent sample *t*-tests were performed and found the variance for the identification of a victim through their name was significant. There were additionally several positive and significant correlations. Mention of criminal history was positively and significantly correlated with identification of the victim via name and through other details. Victim narrative was positively and significantly correlated to the connection with a larger national theme.

Discussion

Of the two cases, only one category among the variables has a significant difference between the two cases. In the Betty Shelby case, the victim's name was mentioned a significant number of times more than in the Daniel Holtzclaw case. One logical explanation is that victims in the Daniel Holtzclaw case were not named frequently because of the sexual nature of the crimes. Traditionally, most newspapers have not identified victims of sex crimes unless they have spoken publicly about the crime. *The Oklahoman* identified one of the victims in the Holtzclaw case by name but

noted that her name was used only after she had spoken publicly about her experience. The age of victims in the Holtzclaw case was frequently used. Specifically, the youngest victim in the case was always identified by her age of 17. This is likely due to newspaper policies not to use the names of sexual assault victims who are minors. Another factor which could deter naming victims in the Holtzclaw case is the graphic details released both during and before the trial about the crimes.

“The 17-year-old female told police she and some friends were walking near Park Place and Blackwelder Avenue on June 17 when they were approached by Holtzclaw. He told her there was a warrant for her arrest, but that he was letting her go, according to the affidavit. He later stopped her when she was alone and took her to her house. On the front porch, he reportedly reached underneath her shirt and inside her shorts and underwear. Then he forced her to perform oral sex and have intercourse with him, according to the affidavit” (Dinger, 2014).

Because of graphic details from the crime like above, reporters might have felt publishing the names of the victims would be overly harmful to the victims despite most of them testifying in public court.

Another area of significance was criminal history. The mention of a victim’s criminal history was positively and significantly correlated to both the identification through the victim’s name and other details. There were few instances where the victim was given additional details. The only examples are one victim (who was later named in most articles) in the Holtzclaw case being initially identified as a “grandmother,” as opposed to using her exact age like the one underage victim in that case. Later, she was

identified by her name after speaking publicly about the case. In the Betty Shelby case, the victim was always identified by name after the name was released by the police. As previously mentioned, an explanation for the victim in the Betty Shelby case being identified by name could be that this was not a sex crime. It is interesting that the mention of criminal history is positively and significantly correlated to these two other variables. Previous research of victim narratives in the media has shown victims are rarely given characteristics that would make them more than a nameless face unless the nature of the crime is violent or of specific interest to the public. These crimes are violent and present a specific interest to the public, so it is not surprising that additional details of the victims are presented. However, the inclusion of criminal history and criminal behavior of the victims is unusual.

Regarding the criminal history of the victim, the author believes the correlation is seen because it shows a more complete picture of the victim. Because both crimes involved police officers, it was expected that criminal history would play a role in how the victims were portrayed, specifically in the Betty Shelby case where the video did not provide clear evidence Betty Shelby did or did not act according to police protocol. Some literature believes this tactic is a way to alleviate guilt of the officer involved. When reviewing other instances of police shootings and subsequent media coverage, it does seem to play a role. One early article covering the Betty Shelby case led with, “Investigators found the drug PCP in the vehicle of an unarmed black man fatally shot by a white officer, according to Oklahoma police, but attorneys for the slain man’s family say a discussion of drugs distracts from questions about the use of deadly force” (Bleed,

2016). This same article discusses the victim's previous criminal history and has multiple mentions suggesting the victim was committing a crime at the time of the shooting.

“Tulsa Sgt. Dave Walker told the Tulsa World on Tuesday that investigators recovered one vial of PCP in Terrence Crutcher's SUV...” Later in the article, “Oklahoma prison officials confirmed Tuesday that Crutcher served four years in prison on a drug conviction...” (Bleed, 2016).

The Daniel Holtzclaw case saw very similar themes with criminal history of victims; however, most articles that discussed the criminal history of the victims appeared during trial, as these issues were brought up through his defense. The article with the most mention of criminal history in the Holtzclaw case was titled, “Sex crimes testimony against former police officer in Oklahoma City trial was delayed until accuser sobered up” (Schwab, 2015). This article discussed only the current criminal behaviors and history of one victim in relation to her testimony for the prosecution.

“An accuser in the sex crimes case against a fired Oklahoma City police officer was not allowed to continue testifying Friday for several hours because she tested positive for the illegal drugs PCP and marijuana.”

Later in the article, the assistant district attorney leading questioning asked the woman about her history of drug problems. “The woman said if she is around drugs, she will do them. She said she has ‘mind-altering’ drugs prescribed to her by a psychiatrist.”

In both cases, drugs have played a critical sticking point for the defense and prosecution. In the Holtzclaw case, the criminal histories and drug use of the accusers was used to suggest the unreliability of their testimonies against him. The victim's drug

use in the Shelby case also played an important role in determining if he was a risk to the officer when she shot and killed him.

Traditionally, literature has suggested defense attorneys should fear the victim will be represented in an overly positive light with many supporters speaking out and giving the victim a narrative with which potential jurors will identify. This research seems to show the opposite. The correlation between identification of victims through their name or additional details with mention of their criminal history seems to suggest that in these two cases, victims were often portrayed in a negative light that focused on their either current alleged criminal activities or their previous criminal histories.

An explanation for this phenomenon might simply be who the defendants were within the community. While not wealthy or famous, they were public servants performing these functions at the time of the crimes. One possibility is the inclusion of criminal history might help alleviate guilt of the officer, thereby resolving the cognitive dissonance created through an officer's criminal actions.

Unsurprisingly, victim narrative was positively and significantly correlated with the connection to a larger national theme about police brutality, violence against African-Americans and violence against women. These cases both developed national attention and were skyrocketed to front pages as activist groups such as Black Lives Matter and individual activists such as the Reverend Jesse Jackson became involved in support of the victims. In addition to activists, celebrities also became involved in sharing the victims' stories and demanding justice.

“San Francisco’s Colin Kaepernick says the fatal shooting of an unarmed black man in Tulsa is the ‘perfect example’ of what he’s protesting when he refuses to stand for the national anthem at 49ers’ games. Kaepernick said Tuesday that ‘everybody’s eyes’ will be on Tulsa as authorities investigate the fatal shooting of Terence Crutcher” (*Associated Press*, 2016).

Other local influencers also spoke out about the Shelby shooting. For example, when Steven Parker, Tulsa native and University of Oklahoma football player, was asked during a press conference about the shooting, he said: “It’s something that is very hurtful for me, being from there and this situation is happening so close. I’m at a loss for words on what to say. I’ve seen the video thousands of times. It has me angry to the point that it’s like, what do we do as a society? This is something that has been a problem for a long time, and it keeps on happening” (*The Oklahoman*, 2016). Players with the Oklahoma City Thunder NBA team also threw their support behind the victim and his family at a pre-season game in Tulsa. The victim’s family watched in attendance as multiple players wearing “Justice4Crutch” shirts spoke about the victim and the larger problems with unwarranted deadly use of force on African-Americans. The article quoted basketball star Russell Westbrook several times in connection with the Betty Shelby case. “Me being an African-American athlete and having a voice, I think it’s important that I make a stand and know that something has to change.”

“I think once you’re here in Tulsa, I think you have to show respect to the family, and show your regards and send your love,” Westbrook said. “I think especially for me personally I thought it was very, very important to be able to do that, to show that we

support them and we're behind his family and we support anything that they need from as an organization that can help them out" (Horne, 2016).

The victims in the Daniel Holtzclaw case had far less national support, but local Black Lives Matter groups and other local activist groups were extremely vocal in media and through protests in front of the courthouse showing the victims' voices mattered and justice should be served to Holtzclaw. When speaking about Holtzclaw's bail violations, Grace Franklin, leader of OKC Artists for Justice (formed during the case to advocate for the victims), said: "It's unacceptable. It's unacceptable for the east side of Oklahoma City. It's unacceptable for the victims of this crime." Later in the same article, she speaks to the national themes Black Lives Matter and other groups are protesting on. "It is not unheard of that if you violate your bail conditions that bail is revoked. That is not unheard of. It happens every day for black, brown and poor people. For him to be out is to say that black women are not valued, that we are not important" (Dinger, 2016).

Also, unsurprising, both the victim narrative or victim voice and connection to a national theme are negatively correlated to victim identification details and mention of criminal history, though not significantly. When discussing the victim's voice and the connections to larger national themes, it is unlikely this would be paired with mention of the criminal history of the victim. However, the explanation for the negative correlation between the identification of the victim through name and age is less obvious. It is possible that when focusing on the larger discussion of national theme and support for the victim, these identifiers are not as important as the message of support for the specific victim and many similar victims across the nation.

Implications

It is very likely the narrative of the victim presented and the connections to these larger issues at a national level, might impact potential jurors as a form of emotional bias. Through the victim narrative, victims become human beings with real lives, names and families. As more about the victim's life is revealed through media, it provides the audience more opportunities to find connections to the victim from their own experiences. This could develop an unconscious bias against the defendant, especially in cases where the crimes are more heinous.

Likewise, the more audiences can view an isolated incident as a larger issue impacting their own lives and the lives of people they care for, it is likely they will develop a larger interest in the victim's narrative and the issue overall. Thereby leading to perhaps another subconscious bias against the defendant.

Limitations and Future Research

This study was extremely limited in its population and cases. While comparing two cases with similar defendants and victims was convenient, it lacked the depth a larger study would have. Additionally, the cases were very different in the nature of the crimes. Previous studies have noted that violent crimes, specifically sex crimes, are not representative of crime coverage. With violent crimes, there is substantially more coverage a potential juror may be exposed to and it is much more likely to contain prejudicial information (including graphic details about the crime, which act as emotional prejudice materials). Because the nature of the two crimes was so different, it is hard to rule out that difference as a major cause of variance between the two cases. Another

significant difference is the defendants' gender. Holtzclaw (the male defendant) was a former college football player and stood over six-foot tall. Shelby (the female defendant) was small in stature and nearing middle age. The narratives of the two defendants affected narratives of the victims and as gender is likely to have affected that portrayal, it is important further research is conducted to explore this area.

As noted in the methodology, it is impossible to understand how media may affect potential jurors without experiments and surveys in that area. While content analysis can provide context for this research, it cannot indicate how media was consumed by the audience. The most thorough study would combine content analysis with a large diverse survey sample or a controlled experiment to determine how prejudicial media might affect the bias of potential jurors and if this bias is something a potential juror could overcome with facts presented in trial, jury instructions or other remedies discussed in the literature review.

Finally, the way media is consumed is changing. Most studies in this area occurred before news was a constant source. Now, potential jurors have access to information about cases all the time through 24-hour cable news networks, the internet and social media. The introduction of social media also adds an additional layer to consumption. Does it matter who shares, likes or discusses the case? How do opinions from community and individual opinion leaders influence our thoughts on a case? Like in the two cases analyzed, opinion leaders, activists, victim advocates and even the victims in the Holtzclaw case were able to have their voices heard through traditional media. This is most likely amplified on social media channels where Black Lives Matter and other

groups have significant reach. To fully understand how media affects juror bias, continued research must be performed to look at new avenues of media consumption.

Conclusion

The effects of media exposure on juror bias are complex and not completely understood. Literature says media exposure has been a concern since the beginning of jury trials. It has evolved over the years from neighborhood gossip to the ubiquitous media of today, but the fears of juror bias because of exposure to media have remained the same. Many judicial remedies are in place to help combat this. From voir dire to the more intensive change of venue, the courts have consistently tried to alleviate the effects of exposure without infringing on media's First Amendment rights with inconsistent results.

The two types of biasing media are emotionally prejudicial and factually prejudicial. Factual prejudice is the most common form of prejudice found in media. It is easy for both potential jurors and attorneys to identify bias stemming from factually prejudicial information. However, emotionally prejudicial material is much harder to identify, both in media and as a bias in jurors. Studies have shown this form of media can be more impactful than factual prejudice because it often contains details which create an emotional response on behalf of the victim in audiences.

How victims are presented in media matters. Using stories and narratives, we learn to shape our views of the world, politics, society and even crime. The average person does not have much, if any, personal experience with crime and even less have

experience with violent crime. Thus, narratives, both in the media and given via personal interaction, help shape views of crime, defendants and victims.

“Melodramas teach us not only to see social and moral tensions but also to recognize and feel for victims, to desire justice for wronged virtue” (Petersen, 2011).

Victim narrative and the connection to a larger national theme may play a significant role in how we view crime in general and specific victims and defendants. Giving a voice to victims through their own words or those of advocates, activists, family, supporters, etc. creates an identity beyond a faceless victim of a crime. Through this identity, connections are developed between victims and audiences, often to the detriment of criminal defendants. However, this identity can also shift in favor of the defendant. As shown in this study, criminal history of victims can play a large role in determining the narratives of individual victims.

More research is necessary to more fully explore how media exposure can affect juror bias. Specifically, more comprehensive research should be done that combines content analysis, opinion surveys and controlled experiments to gain the most depth and complete picture of media effects on juror bias. Additionally, further research should explore new mediums and the changing base of eligible jurors. Understanding generational shifts and how different generations both consume and interpret media as jurors is important as Baby Boomers, who were the focus of previous studies, gives way to Millennials and Generation Z as the eligible pool of jurors.

With media constantly evolving, it is vital research continues in this area and courts work in tandem with social science to identify areas of concerns and potential

solutions, thus ensuring the rights of the accused and the rights of the media are respected.

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APPENDICES

Table 3. Descriptive Statistics

	<i>M (SD)</i>	<i>n</i>
<i>Criminal History</i>	1.03 (2.00)	60
<i>Victim Narrative</i>	2.00 (3.48)	60
<i>Victim Name</i>	5.02 (7.86)	60
<i>Victim Age</i>	0.60 (0.76)	60
<i>Other Details</i>	0.10 (0.40)	60
<i>National Theme</i>	1.41 (2.55)	60

Table 4. Independent Samples *t*-test

	Levene's Test for Equality of Variances		<i>t</i> -test for Equality of Means				
	F	Sig.	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference
<i>Criminal History</i>							
Equal Variances Assumed	.73	.40	.37	58	.72	.20	.53
Equal Variances Not Assumed			.37	49.25	.71	.20	.53
<i>Victim Narrative</i>							
Equal Variances Assumed	4.82	.03	.84	58	.41	.78	.93
Equal Variances Not Assumed			.91	57.55	.36	.78	.85
<i>Victim Name</i>							
Equal Variances Assumed	33.67	.00	4.28	58	.00	7.85	1.84
Equal Variances Not Assumed			5.42	37.05	.00	7.85	1.45
<i>Victim Age</i>							
Equal Variances Assumed	.08	.77	.28	58	.78	.06	.20
Equal Variances Not Assumed			.28	49.91	.78	.06	.20
<i>Other Details</i>							
Equal Variances Assumed	4.79	.03	-1.13	58	.26	-.12	.11
Equal Variances Not Assumed			-1.04	34.34	.31	-.12	.12
<i>National Theme</i>							
Equal Variances Assumed	9.98	.00	1.76	58	.08	1.17	.66
Equal Variances Not Assumed			2.07	53.57	.04	1.17	.57

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