PREJUDICE IN PRE-TRIAL NEWS: A Q STUDY OF HOW JUDGES RATE THREE DIMENSIONS OF CONTENT

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PREJUDICE IN PRE-TRIAL NEWS: A Q STUDY OF HOW JUDGES RATE THREE DIMENSIONS OF CONTENT

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PREFACE

This study is concerned with the definition of prejudicial publicity by federal, state and local judges in the state of Oklahoma. The primary objective is to determine which of the three news dimensions utilized as variables contributes the most to predisposing a juror to find a defendant guilty in the minds of presiding judges.

I wish to express my deeply felt appreciation to my major adviser, Dr. Walter J. Ward, for his guidance and constructive criticism offered not only throughout this study, but throughout my time in the Master's program. Appreciation is also expressed to my committee chairman, Dr. William R. Steng, who first planted the seed for this study in my mind. Without the invaluable assistance of these men, this study would not have been possible.

An anonymous note of thanks is offered to the thirty judges who freely gave of their time to participate in this study. Their openness and candor not only made the experiment go smoothly, but offered an invaluable time of learning for me.

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CHAPTER I

INTRODUCTION

Fair trial versus free press. Whenever the author hears that question posed, he is reminded of the lifeboat example frequently used in discussing fine points of law or ethics. If you have room for only one more person in the lifeboat and two are drowning, how do you decide which one to save? The issue of prejudicial publicity is often framed in a similar manner with the implication clearly being that we must choose between a free press as guaranteed under the First Amendment or a fair trial as insured by the Sixth Amendment. The author does not agree with such an assessment. Our society can offer fair trials to the accused, as well as keeping the press free from shackles. To restate the analogy, it is possible for the boatsman to save both people, if he swims bravely and well.

However, to look back in history is to find the pages of trial law scattered with incidents that now outrage us by the conduct of the press--the mob atmosphere in the trial of Bruno Richard Hauptmann, the "Roman carnival" in the trial of Samuel Sheppard. In retrospect, it is easy to dismiss these examples of press misconduct; why be concerned about trials that took place years ago? The author's concern stems from his belief in the foundations of our Constitutional system, that when injustice is done to one, injustice is done to all. Whether or not Hauptmann or Sheppard were innocent is not germane to the question

of injustice. Although the author believes there is substantial evidence that they were, the question is did the press act in such an irresponsible manner that they overstepped the bounds of the First Amendment and entered the territory of the Sixth Amendment? The author's conclusion is that they did, and these defendants' Constitutional rights were infringed.

After many hours of study, it is the author's contention that the injustice occurred because the press tried to assume the role of the judiciary. Such role switching occurs when the matter of pre-trial publicity is analyzed in terms of "either-or-ishness," that somehow the public must choose between a free press or a fair trial for the accused.

Thus, it is the goal of this study to find ways for both the press and the judiciary to live within their Constitutionally protected spheres, and in peace with one another, to allow both to be inside the lifeboat of freedom. Justice Stanley Reed put it well when he stated in Pennekamp vs. Florida: "A free press is not to be preferred to an independent judiciary, nor an independent judiciary to a free press. Neither has primacy over the other."[1]

To be able to find ways to live together, we must be able to define clearly and precisely what is prejudicial publicity. Are there definite news dimensions that when disseminated produce prejudice against the defendant? Our search begins in Chapter II with a review of the relevant Supreme Court decisions on prejudicial publicity. Does the case law that has built up on the topic yield clues to the problem? We will see that it does. Chapter III is concerned with a review of the research literature on the topic. From these past studies, we will be able to get a better scientific grasp of the

problem. Chapter IV presents the methodology we will use in our experiments. Chapter V presents the findings made after a complete scientific analysis of the data. It suggests some rather specific answers to the question of what is prejudicial publicity. Chapter VI presents recommendations to the press and the judiciary as a result of the findings presented.

A final word of caution. As we analyze this problem, we must be careful to remember that in reality, we are not dealing with hypothetical people. We can effect, for better or worse, real people like ourselves, who can be severely hurt if we fail in our mission to bring about a more responsible press. It's not just the Hauptmann's or the Sheppard's either; it is the people who are involved in minor skirmishes with the law who can be most deeply affected by an irresponsible press.

FOOTNOTES

[1]Walter Wyatt, Reporter of Decisions, United States Reports, Cases Adjudged in the Supreme Court, Vol. 328, October Term 1946 (Washington, 1947), p. 332.

CHAPTER II

THE EVOLUTION OF THE FREE PRESS-FAIR TRIAL DOCTRINE

Introduction

There is no single law that defines the relationship between the press and the courts over the matter of fair trial. Instead we have a body of common law that has evolved through the process of judicial review.

Common law is "judge made" rather than codified. As such, it insures continuity in the administration of justice. It binds the present with the past through the application of the principle of "stare decisis et non quieta movere," which means "stand by past decisions and do not disturb things at rest."[1] Therefore, our common law system operates on the basis of precedent, in arbitrating controversies at hand.

Judicial review is the essence of "stare decisis." It seeks to assess actions of lower courts in relation to what is specified in the Constitution, and how the courts have interpreted it in the past. Henry Abraham describes it as "the careful, painstaking reflection of an issue in terms of its conflict with the basic law--the Constitution, and its past history."[2] Thus in a very real sense the Constitution is what the Supreme Court says it is, for without its review, the Constitution becomes an outdated and stagnant document.

Historically the relationship between the American press and the courts has been a hostile one. We should expect this, for the press is to view itself as the public's watchdog against governmental intrusion. Thus it is inevitable that they are drawn into conflict which can only be settled in the nation's highest court through an interpretation of the Constitution.

The First Amendment states:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people to peaceably assemble, and to petition the government for a redress of grievances.[3]

The intent of the founding fathers was to eliminate the tyranny that had developed in Great Britain over the exercise of free expression. They wanted to seal forever the ability of a legislative body to dictate to its citizenry what could and could not be published.

In their opinion America had to give individuals the fullest amount of freedom possible, to eliminate this abuse. Benjamin Franklin in commenting on this wrote: "By the liberty of the press I mean an unreserved, discretionary power for every man to publish his thoughts on any subject, in any manner."[4]

But did this mean an absolute restriction against government intrusion? No single answer can be given to that question, but as we shall see in our review of the cases, the courts have held that only the most serious of situations can give ground for restrictions on the press. Justice Hugo Black wrote concerning the First Amendment: "It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society will allow."[5]

Yet often this "absolutist view" of free expression clashes with

the Sixth Amendment guarantee of fair trial. It states:

> 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 . . . and be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.[6]

Its historical basis is found in the abuses of the English judicial system that began with the formation of the Star Chamber in 1487. The founding fathers did not want defendants to be allowed to rot in prison for years while awaiting trial. Such trials would not be done in secret but rather in the open where the light of public scrutiny could review them. Trials were not to be inquisitions but rather rational events conducted in an impartial atmosphere.

But the greatest significance concerning the Sixth Amendment was that it was a jury of an individual's peers and not a judge who ultimately decided the guilt or innocence of the defendant. Justice Byron White has written: "Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased or eccentric judge."[7]

Thus the essential conflict between free press and fair trial is over the interpretation of these two amendments, which in their original form are written as absolutes. "Congress shall make no law," no fetters to a free and independent press. "In all criminal prosecutions . . . a speedy and fair trial by an impartial jury," the accused is given a pledge that he is innocent in all cases until proven guilty beyond a reasonable doubt by an impartial jury. The balancing of these two absolutes is the basis for the rest of the discussion in this thesis.

However, we must state that the conflicts between these two rights has not always been on the basis of a discussion of lofty Constitutional principles. Much of the hostility between the press and the courts in the free press-fair trial debate has not been because the press has been vigilant in seeing that the defendant has his day in court. Rather, it has been because the press has acted irresponsibly: being inaccurate and loose with the facts, acting as an unofficial prosecutor and seeking to profit from the grief of others.

This summation should not be looked upon as exhaustive. These cases are simply the landmark ones; there have been many more. But this will offer a review of the developing trends in judicial thought and provide a framework for discussion of specific free press-fair trial issues.

A Review of Cases

Patterson vs. Colorado (205 U. S. 454 - 1907)

Thomas Patterson had published a number of cartoons criticizing the justices of the Colorado Supreme Court during a case brought against the governor of the state. In actuality, the case was a Republican scheme to unseat the Democratic governor, so a Republican governor could be seated.[8]

The Colorado court enjoined Patterson from further publication on the basis that it was not only impeding the trial, but that such criticism of members of the judiciary was improper. Patterson ignored the injunction and continued to publish. He was therefore cited for contempt.

His appeal to the U. S. Supreme Court was based on the First

Amendment claim against prior restraints, and further that the Fourteenth Amendment extended such protection to state citizens.

In overturning the lower court contempt citation, Associate Justice Oliver Wendell Holmes stated that while one could not claim protection under the Fourteenth Amendment in state proceedings, the First Amendment clearly denied restraints by state courts. The implications of this were that contempt proceedings against the press were deemed as local matters. Justice Holmes wrote: "What constitutes contempt, as well as the time during which it is committed, is a matter of local law."[9] This would become a crucial issue in future contempt cases.

Bridges vs. California

Times Mirror et al vs. Superior Court

(314 U. S. 252 - 1941)

In 1937 and 1938 the Los Angeles Times had published a number of editorials concerning a landmark labor case that was in progress. The case concerned assaults on non-union truck drivers by union "goons." In each case the editorials attacked what they considered to be the "weak" sentences that were to be given to those convicted.

The most scathing of the editorials was printed on May 5, 1938, entitled "Probation for Gorillas." It stated in part:

> Two members of Dave Beck's wrecking crew, entertainment committee, goon squad or gorillas having been convicted in Superior Court of assaulting non-union truck drivers have asked for probation. Sluggers for pay, like murderers for profit, are in a slightly different category from ordinary criminals. It will teach no lesson to other thugs to put these men on good behavior. If Beck's thugs, however, are made to realize that they face San Quentin when they are caught, it will tend to make their disreputable occupation unpopular.[10]

The Superior Court of the State of California enjoined it from

further publication until the trial was over, despite the fact that no jury was involved in this case. The Times refused to be bound by the order, and was cited for contempt.

Upon appeal to the United States Supreme Court, the injunctions were declared unconstitutional in a five to four decision. The majority opinion utilized the "clear and present danger" test established in Schenck vs. United States (249 U. S. 47 - 1919). The test enunciated by Justice Holmes stated:

> The question in every case is whether the words used are used in such circumstances, and are of such a nature as to create a clear and present danger that they will bring about substantive evils that Congress has a right to prevent. It is a question of proximity and degree.[11]

Schenck had been convicted in a federal court of violating the Espionage Act of 1917 in attempting to convince men to evade the draft. He had been distributing literature to young men outside conscription centers. The court affirmed his conviction, citing the fact that distribution of such literature at such a close proximity to draft centers did constitute a clear and present danger.[12]

Several points should be noted about the "clear and present danger" test. First is the usage of words. Are they used in a manner to incite the public or malign individuals? In the case of the Los Angeles Times, did its editorials incite public opinion against the trial judge to decide the case on the basis of the printed word, rather than on courtroom testimony? Did it prejudice the case of the defendants by forcing the judge to take action that he did not believe would be prudent?

Second, the "clear and present danger" test asks if the words bring about a substantial evil, and in particular, abridge the action

of Congress. Once again in this case, the substantial evil that would need to be proved was, did the editorials force the judge to take a position contrary to the Constitution and the actions of Congress in the area of civil liberties?

Finally, the matter of proximity. In Schenck, proximity was the key issue. The court believed that someone passing out anti-draft material outside a conscription center was too close to allow the receiver of that information to make an intelligent judgment as to whether or not he wished to evade the draft.[13] Here the court had to determine whether the Times's editorials were of close enough proximity to the case as to represent a "clear and present danger" to the defendant's right to a fair trial.

Justice Black believed the Constitutional intent was for an unfettered press. He used these points as an outline in the majority opinion.[14] However, he felt that the use of the term "clear and present danger" was too broad and substituted for it the term "reasonable tendency." Therefore, it was a matter of determining whether or not the editorials had a "reasonable tendency" to interfere with the conduct of a defendant's trial under the guarantees laid down by the Sixth Amendment.[15]

First, as to the tendency of the words to abridge the defendant's rights, he chided the California Superior Court for trying to establish a standard when the legislature had not considered the matter. He wrote: "The legislature of California has not appraised a particular kind of situation and found a specific danger sufficiently imminent to justify a restriction on a particular utterance."[16] Thus, if the legislature had not decided what was a reasonable tendency, or danger,

the courts had no right to make such a decision.

The key to this decision, though, was what the court went on to say concerning the use of words. Referring to the First Amendment, Justice Black wrote: "The only conclusion supported by history is that the unqualified prohibitions laid down by the framers were intended to give liberty of the press the broadest scope that could be countenanced in an orderly society."[17] Therefore, only the most dangerous use of words could cause the courts to even consider restraint. To this Justice Felix Frankfurter in his dissent replied that the court was setting up an "absolutist view" of the First Amendment.[18] That phrase would be used for many years to come.

As to any substantial tendency for evil that the editorials may have created, the court stated that such evil had not been proven sufficiently to justify restraint. Black quoted Justice Louis Brandeis in a previous decision where he stated that the court had never determined "how remote the danger may be, and yet be deemed present."[19] The court determined that these editorials were not of sufficient danger to justify establishing such a standard in this case.

In fact the court went on to state that in controversies of this nature the silencing of the press could create an even more substantial danger. Press freedom was needed to clear the air. "It is therefore the controversies that command most interest that the decisions below (state) would remove from the arena of public discussion."[20]

Finally as to proximity, the court set the tone for future decisions when it stated that the idea of shielding jurors from all public expression is impossible. Such exposure when balanced against the implications of restraint cannot justify such a view. Justice Black

concluded: "An endless series of moratoria on public discussion, even if each were very short, could hardly be dismissed as an insignificant abridgement of freedom and expression."[21] However, he left the door open a "crack." Black contended that a restraint could be justified when the bulk of the press criticism was aimed toward jurors who are inexperienced and vulnerable for such criticism could result in altering their judicial actions to avoid further attacks from the media.[22] But judges, as in this case, could not resort to contempt proceedings to protect themselves from such criticism.

The importance of this decision was three-fold. First, it set down the premise that prior restraints for any reason are inherently detrimental. Such restraints can only be justified under the most serious of circumstances.

Second, it began the concept that jurors cannot be put into a vacuum. While they may be exposed to some publicity that would tend to prejudice their views, such prejudice is short-lived, and its overall effects on them are overstated.

Third, it revised the balancing test used to determine the constitutionality of expression. The prior test of "clear and present danger" became a matter of a "reasonable tendency." This change fostered a more rational approach to the problem of First vs. Sixth Amendment rights.

Pennekamp vs. Florida (328 U. S. 331 - 1946)

The Miami Herald had published a series of editorials and cartoons having to do with a gambling case that was in the process of trial. It criticized local judges in general for going out of their way to

favor criminal defendants by allowing technicalities to delay swift conviction.[23]

One of these editorials stated:

> If technicalities are to be the order and a way for the criminally charged either to avoid justice altogether or serve to delay prosecution, then it behooves our courts and the legal profession to cut away the dead wood and the entanglements.[24]

Once again as in Times Mirror, the judge ordered the paper to cease publication of such matter until the trial was completed. The Herald refused to abide by the order and was cited for contempt for creating a "clear and present danger." It appealed the order to the Supreme Court on the defense that the editorials could not present a "clear and present danger," for they were broad in their application, and that there was no jury involved in the deliberation of the case.[25]

The Supreme Court by an eight to zero opinion overturned the contempt citation. Justice Stanley Reed wrote the majority opinion in which he outlined the role that a socially responsible press can play in society. First, the press and the courts had to see their proper function in society, that both have equally important interests.

> Freedom of the press is not an end in itself, but a means to an end in a free society. . . . The independence of the judiciary is no less a means to the end of a free society, and the proper functioning of the judiciary puts the freedom of the press in its proper perspective.[26]

Thus their roles are such that one cannot overstep the bounds of another. To have a trial by newspaper is just as much an evil as having a hanging judge presiding over the case. This was a new and fresh approach to press and court relations.

Reed stated that the independence of the judiciary is assured only when it can function without pressure from outside forces. These forces may be the press, or special interest groups. Nevertheless, such out-

side influence destroys our accusatorial system of justice.

But it should not be looked upon as an either-or proposition, as some justices had done in the past. "A free press is not to be preferred to an independent judiciary, nor an independent judiciary to a free press. . . . Neither has primacy over the other."[27] This is so much in line with libertarian and social responsibility thought, the tender balance that the press and government are engaged in maintaining.

In summing up his opinion, he stated that while the press often uses the intense public interest in a trial to justify its involvement, such involvement without responsibility can turn the press into a weapon of injustice. "Without such a lively sense of responsibility, a free press may readily become a powerful instrument of injustice."[28]

Such responsibility involves getting the facts of a case right, added Justice Wiley Rutledge in a concurring opinion. "One can have no respect for a newspaper which is careless with the facts and with insinuation founded in its carelessness."[29]

Thus the evolving doctrine of free press-fair trial began to take shape. Restraining the press from trial coverage constituted a gross abridgement of freedom, but such coverage needed to be accurate and responsible. The press had to see itself in its proper role, not as prosecutor, nor defender, but as an observer, to see that the accused received a fair and impartial trial by his peers.

Craig vs. Harney (331 U. S. 367 - 1948)

Should the press speak out when injustice has been done? In this Texas case the newspaper was reporting on improprieties involving a judge who had forced a verdict from a jury. The case concerned owner-

ship of a business building in Corpus Christi. Three times the jury ignored the judge's direction in this civil suit, but finally capitulated, and stated on the record that it had acted under coercion and against its conscience.

The newspaper in reporting this used such terms as "gross miscarriage of justice."[30] In its zealousness it launched a severe personal attack on the judge himself. One such editorial stated in part:

> Browning's (trial judge) behavior and attitude has brought down the wrath of public opinion on his head, properly so. Emotions have been aggravated. American people simply don't like the idea of such goings on. . . . That was the travesty of justice.[31]

For this they were cited for contempt, once again based on the "clear and present danger" test.

The Supreme Court by a six to three decision reversed the order of the Texas court, and added to the free press-fair trial doctrine a new element: a trial is a public event. Justice William O. Douglas in the majority opinion stated: "A trial is a public event. . . . What transpires in the courtroom is public property."[32]

Thus judges could no longer treat their courtrooms as a private feifdom. What went on within those august chambers belonged to all the people, including the press.

Therefore, such things as restraining orders and contempt citations could not be used as weapons of censorship. "There is no special prerequisite of the judiciary which enables it . . . to suppress, edit or censor events which transpire in proceedings before it."[33] The impact of this part of the opinion was enormous. It would be cited as the basis for a renewed media presence in the courtroom, including television.

But what of the press's reporting, and in particular, its errors in reporting a controversial case? Once again, the court's response represented a new approach:

> Inaccuracies in reporting are commonplace. . . . A plan of reporting on a case could be so designed and executed as to poison the public mind. . . . But it takes more imagination than we possess to find in this rather sketchy and one-sided case any imminent or serious threat to a judge of reasonable fortitude.[34]

Thus the responsibility theory of Pennekamp was modified. While the press should make every effort to report the facts of a trial in an accurate fashion, occasional errors of a non-malignant nature cannot be used against the press in an effort to censure its efforts.

Thus the implications of Craig still are being felt today. It struck a new chord for the free press and insured that the events of the court could never be shrouded behind the veil of judicial secrecy.

Baltimore Radio Show vs. State (193 MD 300 - 1949; 338 U. S. 912 - 1950 - Certiorari Denied)

This case is important, not on the basis of what the high court said, but rather what it refused to say. The Superior Court of the State of Maryland in 1939 issued an order prohibiting the photographing of prisoners without their consent, prior to the conclusion of their trials. The motivation was to protect the accused from undue publicity before or during the course of his trial.[35]

In 1948 a Baltimore radio station WITH carried numerous stories concerning the brutal Brill murder case. This coverage had included several interviews with the accused Eugene H. James. The trial judge cited the Baltimore Radio Show Inc., the Baltimore Broadcasting Corporation, and James P. Connelly, a broadcaster for WITH, for contempt, using

as his basis the 1939 prohibition against photographing the defendant. Thus this became one of the first contempt cases having to do with murder.

Upon appeal to the Maryland Court of Appeals, the citation was overruled. The Maryland court reinforced the already growing doctrine of fair trial, stating once again that trials cannot be conducted in a vacuum. "Trials cannot be held in a vacuum, hermetically sealed against rumor and report. If a mere disclosure of the general nature of the evidence relied on would vitiate a subsequent trial, few verdicts could stand."[36]

Thus what Justice Black began in Times Mirror was expanded. Jurors cannot be protected from every single report and rumor concerning an aspect of the trial they are deciding. The critical importance of this principle will be seen in the later decisions where so-called "prejudicial publicity" became a factor in overturning convictions, and granting new trials.

The Attorney General of the State of Maryland sought to appeal the Maryland high court's ruling. The Supreme Court refused to grant an appeal, even on the basis of certiorari (the judicial formula that states when a disappointed litigant has exhausted all appeals, he may ask the court's hearing simply because he considers it a matter of high importance and substance).[37] Thus the Maryland Court of Appeals ruling was allowed to stand.

Irvin vs. Dowd (366 U. S. 717 - 1961)

Irvin vs. Dowd became the first case in which the Supreme Court reversed an individual's conviction because of "prejudicial publicity"

that made a fair trial impossible. It addressed itself in particular to the responsibility of the trial judge in presiding over a case.

Irvin was accused of committing six brutal murders in the Evansville, Indiana, area. Naturally, it received extensive coverage by the press. Unfortunately, much of the coverage was inaccurate, and in a very real sense, constituted a trial by newspaper. Before the case came to trial, Irvin had been depicted by the media as an arsonist, an AWOL soldier, a parole violator, and a self-confessed burglar. What made all of this publicity even more damaging was that the prosecutor worked directly with the news media in publicizing the case. The police had issued press releases identifying him as "Mad Dog Irvin."[38]

At the initial hearing a change of venue was granted to the next county, yet the publicity followed. Further motions for change of venue were denied, despite defense attorney's substantial arguments that a fair trial was still impossible due to Indiana's state law.[39] In the course of jury selection, 430 persons were called to be jurors; 208 were excused for a variety of reasons. Of the twelve finally chosen, eight freely admitted that they thought Irvin was guilty.[40] One juror said: "You can't forget what you see and hear."[41] He was convicted and sentenced to death.

The Supreme Court granted certiorari to the case, considering it to be of great importance. Irvin's appeal was based on the due process clause of the Fourteenth Amendment. That clause held that an individual could not be denied his Constitutional rights, as a citizen of the United States, no matter what state he resided in, and what the laws of that state said. This had been the contention of the court in Gitlow vs. New York (268 U. S. 652 - 1924) when Justice Edward Sanford, writing

for the majority, upheld the Constitutionality of a state statute that forbid publication or broadcast of material designed to incite people to overthrow the government, but that state law could not set aside an individual's Constitutional rights. The weight of the Constitution overshadowed the legislative action of the State of New York.[42]

In Irvin's case, due process had been violated by a state statute that provided for only one change of venue. As such, the court was not permitted to use the full extent of its authority to guarantee him a fair trial by an impartial jury. Justice Tom Clark wrote the majority opinion in remanding the case back to lower courts for retrial.

In it he first affirmed the growing principle that trials cannot be held in a vacuum. Potential jurors, if for no other reason than practicality, are exposed to some publicity which might be prejudicial. He wrote:

> To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused is sufficient to rebut the prescription of a prospective juror's impartiality would be to establish an impossible standard.[43]

Yet that should not keep the court from at least trying to maintain a sense of equilibrium in the matter. Devices did exist to see that a defendant could receive a fair trial without restricting the press's freedom to publish. Clark went on to elaborate concerning measures such as further change of venue, sequestering the jury and granting of continuances, as being tools that could be used to dampen the effects of hostile publicity.[44]

His justification for such measures was once again based on practicality. While one could not shield jurors completely, the other side of the coin was that once the prejudicial publicity had invaded the jurors' mind, it was extremely difficult to remove. He wrote: "The

influence that lurks in an opinion once formed is so persistent that it unconsciously fights detachment from the mental processes of the average man."[45]

But of most importance he set down the principle that should guide the press in covering controversial cases. When a man is on trial for his life, the press owes him responsible coverage. Clark wrote:

> With his life at stake, it is not requiring too much that petitioner be tried in an atmosphere undisturbed by so huge a wave of public passion and by a jury other than one in which two-thirds of the members admit, before hearing any testimony, to possessing a belief in his guilt.[46]

Justice Frankfurter in a concurring opinion attacked the press as he had done often in the past. His theme was that until the press began to act responsibly in such matters, it was up to the court to hold them in line, even to the point of restricting the press's freedom. He wrote: "How can fallible men and women reach a disinterested verdict based exclusively on what they heard in court, when, before they entered the jury box, their minds were saturated by persistent rumors and accusations."[47]

The importance of Irvin cannot be denied. It would become the basis for future decisions reversing convictions, including the Sam Sheppard murder case. It set down the principle that the burden of proof was upon the court to insure a fair trial. Further, that while the press may act irresponsibly, it is the court's responsibility to see that every legal weapon is exhausted to insure the defendant a right to a fair and speedy trial.

Rideau vs. Louisiana (373 U. S. 723 - 1963)

Rideau became another landmark case having to do with prejudicial

publicity. For the first time the high court spoke to the new media: television, and its effects on insuring a fair trial, or the lack of it.

The petitioner Rideau had been convicted in a Louisiana court of kidnapping and bank robbery. The trial received intense publicity. The police and the local district attorney allowed the filming of Rideau's interrogation. Later that day, and for two days afterward, the film was shown on a local television station. The estimated audience for the three broadcasts were 24,000, 29,000, and 53,000 respectively in a parish of 150,000 persons.[48]

The defendant's attorney sought a change of venue. It was denied and Rideau was convicted and sentenced to death. Later three of the jurors, two of whom were inactive deputy sheriffs, freely admitted that they had made up their minds concerning his guilt or innocence after viewing the film of his interrogation.[49]

Rideau's appeal to the Supreme Court was once again based on the due process clause of the Fourteenth Amendment, that it had been denied by the prosecutors releasing the film to the television station, and further by the fact that the trial judge had not allowed a change of venue.

Justice Potter Stewart wrote the majority opinion which remanded Rideau's case back to the lower courts for retrial. In it he enunciated the rule that the new media required new rules. The impact of television required the courts to take special care in prosecuting cases that engendered extreme publicity. He wrote: "For anyone who has ever watched television, the conclusion cannot be avoided that this spectacle was Rideau's trial."[50]

Estes vs. Texas (381 U. S. 532 - 1965)

What the court began under Rideau, it expanded in this case. In fact, Justice Clark in his majority opinion handed down a substantial doctrine concerning television and the courts. In particular, the court addressed itself to the fact that television can take an ordinary case and turn it into a "cause celebre."[51]

Estes had been indicted by a grand jury on charges of swindling. The case received extensive national publicity, largely due to the size of the operation involved. During the pre-trial hearing, with potential jurors seated in the courtroom, a motion was brought by the defendant's attorney to prevent television and radio coverage. For over two days, the debate on this motion went on in front of those potential jurors. Meanwhile the television cameras filmed these proceedings and aired them extensively. Finally, the judge refused to grant a blanket order, but instead allowed live coverage of the opening and closing statements by the state. The balance of the trial would be filmed for later rebroadcast. Further, the judge ordered that a special enclosed booth be constructed to hide the cameras and thus deny any future charge of distraction. He cited as his basis the following:

> This case is not being tried under the Federal Court. This defendant has been brought into this court under state laws, under the State Court. I took an oath to uphold this court. . . If it is distasteful, . . . it will just have to be distasteful.[52]

Estes was convicted, and used all available appeals in an attempt to have it reversed. In his appeal for certiorari to the Supreme Court, he cited once again the due process clause of the Fourteenth Amendment. And as Rideau had done, he charged that the broadcasting of the proceedings interfered with his right of fair trial.

Justice Clark wrote the majority opinion. He stated the same assumption that Stewart had in the Rideau case, that the initial televised hearings had constituted Estes' trial by television. He stated: "The initial hearings on tape did not show a picture of judicial serenity."[53]

But the press's right to cover the trial, along with the public's "right to know" had to be balanced. Once again the court walked a tightrope. "While maximum freedom must be allowed the press in carrying on this important function in a democratic society, its exercise must be subject to the maintenance of absolute fairness in the judicial process."[54]

But then whose interest is more compelling? For the first time during the entire prejudicial publicity debate, the court said that the right of a fair trial was to be favored over an unrestricted press. "The use of television (in ascertaining the truth) cannot be said to contribute materially to this objective."[55]

In actuality Clark and the majority wanted to ban television from the courtrooms forever. He wrote: "I believe that it violates the Sixth Amendment for federal courts and the Fourteenth Amendment for state courts to allow criminal trials to be televised to the public at large."[56] Justice John Harlan, however, preserved the right of television in the courtroom by forming a compromise among the members of the majority. It was his opinion that while Estes' rights had been violated, and he was entitled to a new trial, the court might regret having banned television forever. With certain guidelines, it might be possible to utilize this new mass media instrument.[57]

Nevertheless, Clark's opinion outlined five major reasons why

television should be banned. First, it is necessary because television can take any case and turn it into a "cause celebre," or in more common terms, "a media event."[58] Such a media event with its intensive coverage can cause potential jurors to make their decision even before the first shreds of evidence are presented. In the Estes case the television coverage had been so extensive across the state, it is doubtful that a fair trial could have been gained in any county. Thus television's great ability to project in a visual manner the daily events in a society can become a pervasive weapon, when used irresponsibly, could deny an individual of one of his basic Constitutional rights.

But there was a second reason for limiting television coverage, and that was that television can distort the facts, even unintentionally. This distortion was in particular a burden on the jurors who were selected. It could distort their view of the case, first, by making them think of all those who would be watching them. Would they vote on the basis of the evidence? Or, on what people viewing, and their friends in particular, would think of them?[59] But it also would tend to distort their perception of the case by making them actors on a stage. Clark wrote: "Human nature being what it is, not only will a juror's eyes be fixed on the camera, but also his mind will be preoccupied with the telecasting, rather than with testimony."[60]

Thirdly, the impact of television on the defendant. Here once again the court broke new ground establishing that such a powerful medium can effect the psychological well being of the person on trial. "Its (television) presence is a form of mental--if not physical--harassment, resembling a police line-up or the third degree."[61]

It prevented the defendant from having his widely believed in "day

in court." Because of television's ability to create an event, it could make the trial of a defendant appear to be held in a sports arena, or as Clark called it in a number of cases "a circus."[62]

Thus the court concluded that with the power of television, restrictions had to be placed on its use in trial proceedings. "The television camera is a powerful weapon, intentionally or inadvertently, it can destroy an accused and his case in the eyes of the public."[63]

But additional distortion can result because the televising of trials would cause the public at large to equate the trial with the other forms of entertainment seen on television.

> In the present case, tapes of the September 24 hearing were run in place of the Tonight Show by one station. . . . Commercials for soft drinks, soups, eyedrops and seatcovers were inserted when there was a pause in the proceedings.[64]

Fourthly, television places an awesome responsibility on the judge. The judge can be placed in a bind, caught between doing his proper job, and using the television for his own political purposes. When a judge is up for reelection, it can't help but affect his judgment, and in particular, trying to impress the public sufficiently.[65]

Chief Justice Earl Warren added a pessimistic footnote to the court's decision in a concurring opinion. It was his belief that television's impact on the judicial system was so subtle that the judicial system could be destroyed before we realized it. He wrote: "The prejudice of television may be so subtle that it escapes ordinary methods of proof, but it would gradually erode our fundamental conception of trial."[66] Coming from Warren, a champion of civil liberties, including an unrestricted press, it is indeed pessimistic.

Warren was primarily concerned with the fact that television was so new a medium and wasn't yet mature. Thus the question was do we

entrust an item as important as an individual's trial to such an immature medium?[67] He certainly had justification for such a feeling. Only several years prior to this, television had been embroiled in the quiz show scandal. Can we entrust a person's civil liberties to a media that rigged quiz shows? He concluded that we most likely could not, at least for now. He wrote: "Can we be sure that the public would not inherently distrust our system of justice because of its intimate association with a commercial enterprise?"[68]

Justice John Harlan in his concurring opinion saved the day for television. He held that trials are public events, but this does not mean they have to become sources of entertainment. Trials in reality belong to the defendant. It is he who is on trial; it is he who in certain cases must forfeit his life as a result of such a trial. Therefore, Harlan believed that fair trial had nothing to do with the First Amendment. Television's right to be in the courtroom had to be based on something more substantial than simple freedom of the press.[69]

Instead, the public trial section of the Sixth Amendment had to be considered. It could be fulfilled simply in having the courtroom open to the public. However, this did not mean that the press could invade the courtroom with their television apparatus if it would cause distraction and therefore deprive the accused of a fair trial. Harlan wrote: "The line is drawn at the courthouse door. . . . Within the courthouse, the only relevant Constitutional consideration is that the accused be accorded a fair trial."[70]

But without a historical footnote, the depth of this case can be overlooked. One of the major elements that went into the court's thinking was a trial that had truly been a cause celebre: the Bruno

Hauptmann case. If ever there was a case where the courtroom had been turned into a veritable "three ring circus," it was this one. Thus as the justices reviewed the Estes case, they saw an almost identical picture, only now through the use of television it could be turned into a three dimensioned circus.

Bruno Richard Hauptmann, a German immigrant, was accused and convicted of kidnapping and murdering the child of Charles and Anne Lindbergh in what H. L. Mencken described as the "biggest story since the resurrection."[71] His trial generated enormous publicity, primarily for two reasons: the family involved had become a veritable American institution. Lindbergh was revered for his historic crossing of the Atlantic less than eight years before. But an even greater factor was the wave of anti-German sentiment that was sweeping the world with the rise to power of Adolph Hitler.

The trial was turned into a radio spectacle. For almost a month workmen laid cables and installed telephone lines in the Flemington, New Jersey, courtroom. All the major American papers, as well as many foreign ones, would be represented. The pre-trial publicity had labeled the defendant as "the baby killer" and "a Nazi monster."[72]

But one of the most obnoxious incidents of pre-trial publicity originated with the Hearst Newspapers. Eddie Mahar, Hearst bureau chief at the trial, commented to his fellow reporters:

> Bruno Richard Hauptmann looks like this new guy they have got over in Germany. The one they call "Der Fuehrer." . . . You got to remember Hitler and Hauptmann had exactly the same experience in the war, they both were corporals in the German army. They must have learned the same kind of brutality. Same type you look and you'll see it.[73]

Into this shocking environment Bruno Richard Hauptmann went on trial for his life. The decorum of the courtroom was shocking. Amid

the testimony, telegraph keys clicked, reporters whispered into their microphones. Those present said that at times one could not hear himself think, let alone concentrate on the testimony.[74] In that atmosphere, in that menagerie that often had the look of a sophisticated lynch mob, Hauptmann was convicted and sentenced to death.

Editor and Publisher would later write:

> No trial in this century has so degraded the administration of justice. If the life of one man and the unhappiness of hundreds are to be commercialized for the benefit of entertainment, of radio broadcasters, newspaper publishers, newsreel producers; if a public trial means protection from star-chamber tyranny but not from the indignities of a mob, then the ancient institution of trial by jury of peers is without meaning.[75]

It was the possibility of this being repeated that the justices saw in desiring to ban television from the courtroom. If radio could have been so pervasive in inflaming public opinion, could not television multiply such hatred and prejudice?

But an attempt to mediate a solution to this dilemma emerged as a result of the Hauptmann trial. On September 30, 1937, the American Bar Association added a new canon to its Code of Ethics. Canon 35 held that:

> Proceedings in the courtroom should be conducted with fitting dignity and decorum. . . . (Any actions that) 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 should not be permitted.[76]

This was revised in 1952 to include television.[77] The importance, though, of Canon 35 was that it forced the media and the courts to sit down in informal committees and work out ways to allow the press its freedom and the defendant his fair trial. As a result, there are today guidelines in all fifty states that attempt to maintain the dignity and the decorum of criminal proceedings.

Times Picayune Publishing vs. Schulingkamp

(419 U. S. 1301 - 1974)

From the pessimism of the Estes case, the courts moved back to the use of restrictive orders, or more commonly gag orders. In this case which aroused tremendous publicity, two factors were at work. One was that the defendants were juveniles and the other was that the press was woefully irresponsible.

The suspects in the case were two Negro juveniles age 17. The victim was a white public health nurse who was in the process of visiting an elderly woman in a public housing project. One must admit that it had all the elements of a William Faulkner novel concerning southern justice.

The Times Picayune, one of the largest papers in Louisiana, published numerous stories concerning the murder and the trial to come. Unfortunately, most of what it printed was woefully inaccurate. One story in particular stated that one of the defendants had 43 prior arrests. Logic would tell you that for a seventeen year old, that's a lot of arrests. But the paper also failed to point out that the several arrests he did have were thrown out of court for lack of evidence.[78]

After eleven months of this type of journalism, the trial judge decided to impose a gag order until a jury had been seated. The judge made this on the basis of Louisiana Revised Statute 13:1586.3, which prohibited the release of a juvenile's criminal record. At best this was like closing the barn door after the horse was out.

The Times Picayune appealed this order to the Louisiana Supreme Court which upheld it. From there the paper appealed to Justice Stewart,

who acted as Circuit Justice for the Louisiana area, who issued an opinion in chambers.

Stewart in his decision stated that he was on the horns of a dilemma. If he granted a stay of the order, would the press act responsibly? On the other hand, if he did not grant the stay, a further prior restraint would take place. As such he was compelled to grant a stay. He wrote: "The restraints imposed are both pervasive and of uncertain duration and therefore constitute an abridgement of freedom of the press."[79]

The significance of this decision was that freedom of the press won out, not because it acted responsibly, but instead on the basis of a legal technicality. If this added anything to the free press-fair trial concept, it added the fact that the press could act irresponsibly and get away with it!

Sheppard vs. Maxwell (384 U. S. 333 - 1966)

In probably the most famous case having to do with prejudicial publicity, the high court set down the premise that a responsible press can be the "handmaiden of justice."[80]

Dr. Sam Sheppard had been accused of murdering his wife so he could marry a former lover. The case attracted nationwide interest. The media in Cleveland, Ohio, and in particular the Cleveland Press, carried on a virtual crusade against the accused, through the use of front page editorials, sensationalized headlines and the printing of innuendo.

Into this kind of atmosphere Sheppard went on trial for his life. It was called by many, including members of the high court, a "Roman

Holiday," a time when the press and people in general escaped from their mundane existence by playing on the tragedies of others.[81]

The Supreme Court finally agreed to review Sheppard's case after he had served almost ten years in prison. The basis for which the court agreed to review the case was not primarily the prejudicial publicity, but instead because Sheppard was denied counsel at the time of his arraignment. Under the Gideon vs. Wainwright decision of four years previous, that constituted violation of the due process clause of the Fourteenth Amendment.[82]

In an eight to one decision the Supreme Court reversed Sheppard's conviction and remanded the case back to the Ohio courts for retrial. Justice Clark wrote the majority opinion. He reviewed extensively the press accounts that had preceded Sheppard's original trial, and summarized the court's belief as to how the judicial system and the press can best function.

The first and most important premise the court cited was that justice cannot survive when conducted in secret.[83] This was an affirmation of the growing principle that jurors and trials must be conducted in a public atmosphere. As such it falls to the trial judge to balance outside influences with the right of the accused to receive a fair trial.

But now the court went further. It stated that what kept judicial proceedings out in the open and above board was a responsible press. "A responsible press has always been regarded as the handmaiden of effective judicial administration."[84] The best deterrent to judicial misconduct is a free and responsible press. Had the press functioned in such a manner during the Sheppard trial, justice truly would have

been done.

How does it function responsibly? The court added: "By subjecting the police, prosecutors and judicial processes to extensive public scrutiny and criticism."[85] This is reflected in the court's seventy year record of dealing with contempt citations issued by judges for disobeying their orders. Remember Justice William O. Douglas wrote in Craig vs. Harney that press criticism was not "a serious threat to a judge of reasonable fortitude."[86] In the Sheppard case if the press had turned its attention to scrutinizing the law enforcement officials and judges, it could have unearthed numerous examples of misconduct and offered Dr. Sheppard the true guarantee of a public watchdog.

But the press must not take the attitude that they can win the case outside the courtroom. This was the fundamental error in the Sheppard case. The press believed they could be judge, jury and executioner. "Legal trials are not like elections, to be won through the use of the meeting hall, the radio and the newspapers."[87] Thus there is the balancing act between compelling interests, mentioned so frequently in the court's doctrine.

The thing which ultimately balances the two is the jury. An impartial jury can see through the defects of the court, as well as the unwholesome provocations of the press. Yet in the Sheppard case, this was impossible for the jury's mind had been so poisoned by the time it was selected, it could not tell the truth from the falsehood.

The court then went on to consider the content of the material printed during the trial. "Much of the material printed or broadcast during the trial was never heard from the witness stand."[88] Thus a responsible press during the actual conduct of the trial will be certain

to make sure that their facts are accurate and placed in their proper context. This was impossible in the Sheppard trial for reporters were constantly going in and out to file their stories, and therefore, only partially heard the testimony, and often on a second, third, and fourth hand basis.

The Supreme Court reaffirmed that ultimately, the responsibility falls upon the judge to make certain the proceedings are conducted fairly.[89] Obviously, if the press is acting responsibly, the judge has an easy time maintaining high standards in his courtroom. The court alleged that Judge Edwin Blythin's (original trial judge) constant refusal to grant remedies to the prejudicial publicity on the basis that he had no right to do so was wrong.

The court then went on to cite a number of measures that judges can take to dampen publicity without restricting press freedom. First, the judge can limit the number of reporters in the courtroom.[90] As was seen throughout the trial, Judge Blythin not only courted extensive press coverage, but then proceeded to give the press almost free rein of the courthouse.

If the press is acting responsibly, it doesn't need fifty newsmen in the same courtroom. In fact if the press is acting responsibly, papers couldn't afford to send a reporter to every trial. In a sense this reduces competition among newspapers across the nation, but at the same time, it was that competition which caused the newspapers to try to outdo one another in the stories they printed.

Second, the court can insulate witnesses before they testify.[91] Once again one of the fundamental errors in the original trial was that the witnesses were interviewed before hand, and often people knew what

they would say even before they testified. As such, this does not add substantially to the press's ability to scrutinize the proceedings. It is the conduct of the witness on the stand that is important.

Third, the court could have made some effort to control leaks of information by members of the police and prosecution team.[92] This is not a gag order, but rather a measure to prevent the publication of rumor, innuendo and half truths. As was seen in this case, stories were printed without complete substantiation and as such became one man's opinion. A responsible press does not bring scrutiny to judicial proceedings by printing such material.

Finally the judge should have sequestered the jury.[93] As such, it represents the only effective method of shielding the jurors from prejudicial publicity. "Due process requires that the accused receive a trial by an impartial jury free from outside influences."[94] Sequestering the jury only during its deliberation is like closing the barn door after the horse is gone.

Nebraska Press Association vs. Stuart
(427 U. S. 539 - 1975)

In probably the most controversial case of the seventies, the court took up the issue of comprehensive gag orders. Comprehensive because in the past such orders have only been issued after extensive publicity had already taken place. In this case the judge decided to restrain the press from the start.

On October 19, 1975, Erwin Simants was arrested for the murder of six persons in the small Nebraska community of Sutherland. Widespread publicity began on the day of his arrest. Thus three days after his

arrest, both the prosecution and defense attorneys sought a comprehensive restraining order, citing the Nebraska Bar-Press guidelines as their bases. Those guidelines, worked out in an effort to fulfill Canon 35, forbade the disclosure or reporting of statements of confession, opinions concerning the guilt or innocence of the accused, statements predicting the outcome of the trial, results of tests, etc.[95] Thus under these guidelines little or nothing could be printed anyway, so the gag order was a logical extension.

The Nebraska Press Association appealed to the Nebraska Supreme Court asking for a stay of the order. Simultaneously, it appealed to Justice Henry Blackmun as Circuit Judge to stay the order. Included in its appeal to him were forty amicus curiae briefs given by the networks and major newspapers across the country.[96] He initially refused consideration deferring to the Nebraska high court. Several days later, the Nebraska court not only upheld the order, but strengthened it.[97] The U. S. Supreme Court granted certiorari to consider the issue. Ironically, by the time the court heard the case, it was moot, for the original restraining order had expired, with the jury empaneled.

Obviously, the crucial issue was once again which interest is more compelling? Does the First Amendment carry more weight than the Sixth? In the majority opinion, overturning the order, Chief Justice Warren T. Burger wrote:

> The authors of the Bill of Rights did not undertake to assign priorities as between First Amendment and Sixth Amendment rights, ranking one as superior to the other. In this case, the petitioners would have us declare the right of an accused subordinate to their right to publish in all circumstances. But if the authors of these guarantees, fully aware of the potential conflicts between them, were unwilling or unable to resolve the issue by assigning one priority over the other, it is not for us to rewrite the Constitution by undertaking what they declined.[98]

Based on this interpretation of the First and Sixth Amendments, and the court's interpretation in Irvin, Rideau and Estes, Burger stated: "Pre-trial publicity--even perverse, adverse publicity--does not inevitably lead to an unfair trial."[99] In addition he went on to state that the actions of attorneys, police and public officials could be just as influential in creating prejudicial publicity.[100]

Burger then went on to consider the court's view of any prior restraints. He cited the Pentagon Papers decision (New York times vs. United States--403 U. S. 713 - 1971) in which the court viewed that any limitation on freedom of the press bears a heavy presumption against its validity. Thus any prior restraint creates results that are "immediate and irreversible" even if for only a brief period of time.[101] This appeared to be a reversal of the pessimism in Estes.

Burger proceeded to cite specific reasons for the court maintaining that the order was unconstitutional. First, the trial judge could not effectively measure the effects of publicity. The fact that the order was issued in such a rapid manner prohibited the court from really determining whether such a restraint was just.[102] This was the point that the court had made in Times Mirror.

Further, the trial court did not consider the use of alternative measures such as change of venue, continuance, etc.[103] This would have balanced the competing constitutional interests. Once again this reflected the court's thinking in Irvin, Rideau and Estes. Thus the high court placed the burden of proof on the trial judge rather than on the press.

Finally, the court concluded that gag orders are essentially unenforceable. Since the courts could not determine what constituted

prejudicial publicity, as was concluded under the first point, a blanket restraining order became an arbitrary tool. "The First Amendment cannot be restricted on speculation that publicity might make a fair trial difficult."[104] However, Burger believed that judges could close the courtroom to avoid publicity.[105] Thus in essence, a new kind of gag order was created.

There were four concurring opinions which stressed almost identical points. In the opinion of Justices William Brennan, Stewart, and Thurgood Marshall, the strongest case against gag orders was presented. In a word they stated that no restrictive order can ever meet First Amendment requirements.[106] They went on to state five reasons why this was so. First, gag orders can lead the general public to believe that the defendant is guilty.[107] Thus gag orders do the thing that they are supposed to counteract. They create prejudicial publicity on their own. The court speculated that in a town of 850, rumors can travel very fast.

Second, such a power could be abused by the courts.[108] No judge wishes to have a reversal in a case heard in his court. Thus to prevent even the remote possibility of this, judges would be issuing such rulings all the time. The laziness of judges could also not be counted out. It is time consuming to grant continuances, changes of venue, etc.

Third, it would create in the minds of the public prejudice against the judicial process itself.[109] Americans in the seventies became skeptical of any kind of government functioning in private. The spector of the "star chamber" is still an influential factor in our Constitutional system.

Fourth, it creates a tremendous drain of resources, financial and otherwise, to be constantly appealing such orders.[110] The facts of life are simple: to fight a case to the Supreme Court costs dearly. Often principle is lost due to the price of justice.

Finally, following logically from this, gag orders would become a tool for repressing anyone without the resources to appeal.[111] Brennan concluded that a choice between the First and Sixth Amendments is unnecessary. Instead a judge with any amount of wisdom can find the means to give both their Constitutionally protected spheres.

The significance of this decision is found in the length of the opinion, consuming some 40 pages. For the first time the court directed its thinking, not just against a single gag order, but instead against all of them. Brennan's conclusion that no gag order can be supported Constitutionally, effectively prohibited its use in the future. For the free press-fair trial doctrine, this meant that a major chunk of the debate was gone. Restraining orders had been the issue in Times Mirror, Pennekamp, Craig and Baltimore Radio. Thus what we are left with are the judicial tools (change of venue, etc.) that can be used to balance these Constitutional interests. However, the use of closing the courtroom as a tool suggests that a new kind of restraint would have to be combatted.

Murphy vs. Florida (421 U. S. 794 - 1976)

This was one of the first court cases to deal with the effect of publication of a defendant's prior criminal record in predisposing jurors' evaluation of his guilt or innocence. The petitioner had been convicted in Dade County, Florida, Criminal Court of breaking and

entering with intent to commit robbery. If it hadn't been for his prior criminal record, the story of the trial would probably have been buried.

Murphy had been involved in the famous "Star of India" sapphire robbery, which had been taken in a daring burglary of New York's Museum of Natural History. That case had generated enormous publicity, and had significantly labeled "Murph the Surf" as something of a "robber extraordinaire." However, he continued to accumulate a massive criminal record.

In 1965 he was indicted on two counts of murder in Broward County, Florida. At the time of his arraignment he was declared mentally incompetent to stand trial, and was committed to a mental institution. Four years later he was convicted on the charge. One year later, December of 1969, he was convicted of the robbery charge.

During the course of pre-trial hearings, numerous articles were published, in which his "Star of India" robbery was highlighted. The defense attempted motions of mistrial and venue, but all of these were denied.

Murphy did not testify in his own behalf as a protest of the "prejudicial conditions." Neither did his attorney cross-examine state's witnesses.[112] He was convicted. The Supreme Court granted certiorari on appeal.

Justice Marshall in his majority opinion reiterated a common theme: the mere presence of information about the defendant is not inherently prejudicial.[113] He reviewed the key cases: Irvin, Rideau, Estes and Sheppard, and concluded that these were different from Murphy's in that the published and broadcast material turned the outcome

of the trial into "the verdict of a mob."[114] Thus there must be emotional hostility in the material to make it prejudicial.

Therefore, the court went on record concerning the publication of a defendant's prior record. In all but exceptional cases, it cannot be regarded as prejudicial. Marshall wrote: "The proposition that juror exposure to information about a defendant's prior record or to news accounts concerning the crime with which he is charged cannot alone presumptively deprive the defendant of due process."[115]

Thus it must be prior record in tandem with other elements to make such information prejudicial enough to interfere with a defendant's Sixth Amendment rights. This is of particular interest in that judges on all levels seem to feel that a person's prior record should actually be suppressed until the end of the trial. Therefore, this decision clouded the waters of the free press-fair trial debate and left us wondering again what is prejudicial publicity?

Gannett vs. De Pasquale (443 U. S. 368 - 1979)

In Nebraska Press Association vs. Stuart, the court took a definitive stand against prior restraints. However, it gave to lower courts a new tool in the battle against prejudicial publicity: closing the courtroom.[116] It did not take long for this tool to become the subject of judicial review. In Gannett the justices would decide if courtroom closings were constitutional.

Messers Greathouse and Jones were accused of committing murder, robbery and grand larceny in and around Seneca County, New York. They were later arrested in Michigan and extradited to stand trial.

The case received extensive publicity, and in particular, by two

newspapers owned by the Gannett chain, The Rochester Democrat and Chronicle and The Rochester Times Union. Most of the stories covered usual aspects of any murder case, but there were two areas where the newspapers deviated from this substantially. In the first instance, several stories were written that contained speculation and hypotheses as to the nature and motivations of the crime. These included the personal theories of the Seneca County Chief of Police.[117] The other group concerned themselves with the details of the extradition process from the State of Michigan. In particular they included all the legal ramifications of Greathouse's extradition, since he was a juvenile.

At a pre-trial evidentiary hearing, motions were filed by defense attorneys to suppress the defendants' confessions which they declared were given involuntarily, and physical evidence which had been seized as a result of those confessions.[118] Another motion was also filed to close the courtroom to the public while arguments were being heard on these defense claims. The prosecution agreed and a reporter for the Gannett chain who was present did not comment. The judge then granted the motion saying in part: "An open suppression hearing would pose a reasonable probability of prejudice to these defendants."[119]

The next day attorneys for Gannett filed petitions to have the closure order set aside. The trial judge denied petitioner's request. An appeal was placed before the Appellate Division of the New York State Supreme Court, who vacated the order stating that such an order "transgressed the public's vital interests in open judicial proceedings and further constituted an unlawful prior restraint."[120]

It was further appealed by defense attorneys to the New York Court of Appeals. Although by the time it handed down its decision, the case

had become moot. It overturned the Appellate Division's ruling, and therefore affirmed the trial judge's (De Pasquale) original action. They wrote: "Criminal trials are presumptorily open to the public, including the press. . . . However, the presumption was overcome in this case because of the danger posed to the defendant's ability to receive a fair trial."[121] Gannett then appealed to the Supreme Court who granted certiorari.

The Supreme Court in affirming the actions of the New York Court of Appeals, went on record that the Constitution does not give the press an affirmative right of access to all judicial proceedings.[122]

The justices believed that their actions in Sheppard, Irvin, Marshall, and Estes had established the principle that the burden of proof for a fair trial is on the trial judge who presides over the case. It is his responsibility to use the necessary judicial tools to insure a defendant an impartial hearing by a jury of his peers. In Nebraska Press Association the high court stated that one of these tools was the right to close the courtroom to the press and public.[123] Justice Stewart in the majority opinion wrote: "To safeguard the due process rights of the accused, a trial judge has an affirmative Constitutional right to minimize the effects of prejudicial publicity."[124]

To balance this against the First Amendment rights of the press, the court went on to discuss the reasons for a pre-trial hearing. Such a hearing is to screen out unreliable and illegally seized evidence and insure that such material does not become known to the jury. Therefore, the public through its agent the press has no Constitutional "need to know" what is contained in such inadmissable evidence.[125]

It further asserted that the Sixth Amendment guarantees of public

trial does not give the press or the public an unlimited right of access. Stewart wrote: "The Constitution nowhere mentions any right of access to criminal trials on the part of the public. It is the defendant's right that is dealt with."[126] Thus trial judges can place almost any kind of restrictions on who is permitted in the courtroom if he is seeking to insure a fair trial for a person on trial.

Blackmun in a dissenting opinion cited the opinion of the New York Court of Appeals, which held that the public desires access to court proceedings for the sake of curiosity rather than to see that justice is done. Therefore, right of access can be denied to them. He wrote:

> Widespread public awareness kindled by media saturation does not legitimize public curiosity. Here the public concern was not focused on prosecuratorial or judicial accountability. . . . It was chiefly one of active curiosity.[127]

A second major argument in supporting such closings was that the public's interest was best served by closed proceedings. The logic being that justice can be swiftly and fairly administered in such a format. Therefore, when one member of society's rights are upheld, society as a whole benefits.[128]

Building upon this the justices stated that courtroom closings could be additionally justified by the fact that many states by statute close courtrooms. Alabama closes its courtrooms for cases having to do with rape; Georgia whenever evidence involved is considered vulgar; Massachusetts for any kind of criminal trial the judge deems appropriate; West Virginia can close its courtrooms for any trial; Minnesota denies access to anyone under 17 in criminal trials; Virginia can deny access to anyone who might interfere with the course of a trial.[129] In addition eight states have statutes that automatically close the courtroom for pre-trial hearings. They are Arizona, California, Idaho,

Iowa, Montana, Nevada, North Dakota and Utah. Thus in light of the actions of so many states that are held Constitutional, the position of the New York court was supported.[130]

Finally, the court believed that the historic term "public trial" as contained in the Sixth Amendment is not denied when a courtroom is closed for a pre-trial hearing. It was the four-man majority's contention that the framers wanted trials that were open to public scrutiny, and that such scrutiny does not require the public or press to physically be in the courtroom. In this case transcripts were made available at the end of the hearing for the public's review.[131] But one must wonder if such conduct does not on its own create some form of prejudicial publicity. A transcript does not take into account all the nuances and non-verbal behaviors that are often significant in an impersonal atmosphere such as a transcript where words can easily be distorted. Further, if the public has no need to know, a transcript given after such a hearing seems to deny this.

Thus Gannett contributed legitimacy to courtroom closure as a tool to fight prejudicial publicity. In a very real sense it took on the form of a command: When Sixth Amendment rights may be jeopardized, close the courtroom. It also reinforced the notion that the press's First Amendment rights are not absolute, rather they are balanced against other Constitutional guarantees. Mr. Justice Lewis Powell put this best when he stated: "The right of access to courtroom proceedings is not absolute, it is limited both by the Constitutional right of defendants to a fair trial and by the needs of the government to obtain just convictions."[132]

Richmond Newspapers et al vs. Virginia et al

(79-243 1980)

If the courts could close preliminary hearings to the press, could it also close complete trials to the press? The Supreme Court took this issue up in Richmond Newspapers.

A defendant was on trial for murder for the fourth time. The first trial which convicted him was reversed on appeal. The second and third trials ended in mistrial because of publicity which had been discussed among jurors. Therefore, at the start of his current trial, defense attorneys asked the judge to close the entire trial proceedings from the public. After asking the prosecution if it had objections, the trial judge, citing Virginia Code 19.2-266, ordered the courtroom to be cleared except for those who would testify in the trial.[133]

A consortium of Richmond Newspapers petitioned the judge to reverse the order. It was denied. That same day after the state had presented its evidence at the trial, the defense asked the court to strike prosecution evidence, dismiss the jury, and find the defendant innocent by a directed verdict. The motion was granted.

Believing that possible misconduct had been done because of closed proceedings, the newspapers appealed to the Virginia Supreme Court for a writ of mandamus. It was denied after finding no reasonable error in the conduct of the judge. The Supreme Court reversed the order concluding that the right of the public and the press to attend criminal trials is guaranteed by the First and Fourteenth Amendments. Chief Justice Warren Burger wrote the majority opinion.[134]

The court examined the historical evidence first. The history of common law attests to the fact that only open trials are permissable

in our society. Our Constitution indicates that the framers wished for that common law tradition to continue.

Sir Thomas Smith writing in 1565 stated: "All is done openly in the presence of judges, the enquired, the prisoner, and so many as will or can come near may hear it . . . so that all may hear from the mouth of the witnesses."[135]

Francis Pollock wrote of the open trial system: "One of the most conspicuous features of English justice is that all judicial trials are held in open court, to insure the public has free access."[136]

In addition there is every indication that this tradition carried over to America. In 1677 in a document entitled Consensus and Agreements of West New Jersey, the assertion was: "That in all public courts of justice for trials of causes, civil or criminal, any person or persons may freely come into said courts . . . that justice may not be done in a corner or in any covert manner."[137] Therefore, the court concluded that a bulk of common law history and tradition undergirds the Constitution's assertion of an open and public trial.

But the historical evidence also indicates that such open trials have a therapeutic effect on society. Burger cited Jeremy Bentham who wrote: "Without publicity, all other checks are insufficient; in comparison of publicity, all other checks are of small account."[138] Thus a public trial helps to defuse public hostility towards not only the defendant, but against the judicial system as a whole. It eliminates the vigilante element from our society, and allows the public to see that the "system" works.[139]

A second argument raised to support the concept of open trials is that the press's First Amendment rights allow everyone to attend the

trial whether in person or not. The press's role in trial reporting is to disseminate to the public necessary information so that they may be able to determine whether justice is being done.[140]

But Burger went on to indicate that such information also keeps the government from giving a one-sided message concerning its case. "The First Amendment goes beyond protection of the press and self-expression to prohibit the government from limiting the stock of information from which members of the public may deserve."[141]

In conclusion the court stated that while certain guarantees to the public may not be written into the Constitution, such guarantees are at least implied. If the Sixth Amendment's definition of a public trial as interpreted by the courts is not written in specific language, the spirit of the document can only lead to the contention that unlimited access is Constitutionally protected.[142] To justify such a contention Burger went on to cite that such an item as "guilty beyond a reasonable doubt" is not written into the Constitution. It is implied by common law tradition and by a broad definition of "fair trial."[143]

A question must be raised: did this decision overturn De Pasquale? The answer is no! Burger and the rest of the court were definite in indicating that the First Amendment guarantees upheld here do not apply to pre-trial hearings. As pointed out in De Pasquale, the historical and common law traditions uphold the closed conduct supported by the court.

However, in the opinion of the author, the court is standing on an extremely thin line. For one can easily contend that a pre-trial hearing is often as important, if not more important, than the trial itself. If as the court has held, that the press has a responsibility

to disseminate information concerning judicial proceedings so that the public can ascertain whether justice is being done, shouldn't this responsibility also apply to something as important as the pre-trial hearing?

In the opinion of the author, this is simply another case of the "flip-flop" nature of the Burger Court. It leaves the public at large wondering if the court really knows what the Constitution says? Only time and future judicial review will allow us to know if the "open trial" provision of this decision is an absolute or a limited right.

Conclusions

After reviewing more than fifty years of judicial history, can we say with some certainty what is prejudicial publicity? It is the author's contention that we can. The courts have indicated that all of the following contribute to prejudicing a defendant's case and therefore deny him a fair trial:

1. Anytime the media's use of words or pictures creates such a biased opinion in the minds of potential jurors as to the defendant's guilt, this could indeed be labeled "a clear and present danger," if the use of words brings about substantial evil, that evil being the deprivation of an individual's Sixth Amendment rights. In nearly every case considered, it was not that the media published per se, it was that they were irresponsible with the words. This is of most importance for some in the legal community feel that anything that is published is automatically bad. The courts have consistently said no to this proposition. Instead, they have held that if the press is responsible, its use of words will be that of making certain the defendant is

accorded a fair trial.

2. Anytime the press attempts to switch its role for that of the courts, prejudicial publicity is the result. In Pennekamp vs. Florida the court clearly stated that neither the press or the judiciary had supremacy.[144] They both had clearly defined roles to play. When the press attempts to become judge and jury, it creates publicity of such a nature as to deprive the accused of his "day in court."

3. Anytime the media gives such extensive coverage of a criminal act that it essentially becomes the accused's trial, it produces prejudicial publicity. A responsible press will keep the coverage of any event in its proper perspective. The problem is that all too often stories concerning an individual's criminal act become good "fodder" for selling newspapers and therefore the story is repeated and repeated even though there is nothing new to report. This is done even unconsciously at times. Following the arrest of an individual, the lead of every story includes "the accused slayer" or "the accused robber."

4. Anytime the media, in particular television, uses criminal material in such a way that it is impossible for the average viewer to distinguish between statements of fact and common entertainment, prejudicial publicity is the result. One instance in particular where this became the case was the televising of tapes of the Estes trial in place of the Tonight Show.[145] Could the average viewer distinguish between the trial and mere entertainment?

5. Anytime the judiciary takes certain actions, it tends to inflame public opinion by seeming to make the judiciary look "soft" on

crime. Indeed the courts realized that things such as gag orders, continuances, and changes of venue can in and of themselves generate prejudicial publicity.

FOOTNOTES

[1]Henry J. Abraham, The Judicial Process, 3rd ed. (New York, 1975), p. 11.

[2]Ibid., p. 281.

[3]Robert F. Cushman, Cases in Civil Liberties, 2nd ed. (Englewood Cliffs, 1976), p. 455.

[4]Irving Brant, The Bill of Rights: Its Original Meaning (New York, 1965), p. 185.

[5]Walter Wyatt, Reporter of Decisions, United States Reports, Cases Adjudged in the Supreme Court, Vol. 314, October Term 1941 (Washington, 1942), p. 253.

[6]Cushman, p. 455.

[7]Henry Putzel, Reporter of Decisions, United States Reports, Cases Adjudged in the Supreme Court, Vol. 399, October Term 1970 (Washington, 1971), p. 83.

[8]United States Supreme Court Reports, Cases Adjudged in the Supreme Court, Vol. 51 (Rochester, 1907), p. 879.

[9]Ibid., p. 881.

[10]Albert Friendly and Ronald Goldfarb, Crime and Publicity (New York, 1967), p. 283.

[11]Cushman, p. 221.

[12]Ibid., p. 220.

[13]Ibid., p. 219.

[14]Friendly, p. 28.

[15]Wyatt, Vol. 314, P. 252.

[16]Ibid., p. 253.

[17]Ibid., p. 265.

[18]Ibid., p. 256.

[19]Ibid., p. 252.

[20]Ibid., p. 269.

[21]Ibid., p. 255.

[22]Ibid., p. 269

[23]Friendly, p. 288.

[24]Walter Wyatt, Reporter of Decisions, United States Reports, Cases Adjudged in the Supreme Court, Vol. 328, October Term 1946 (Washington, 1947), p. 332.

[25]Friendly, p. 288.

[26]Wyatt, Vol. 328, p. 332.

[27]Ibid., p. 333.

[28]Ibid., p. 334.

[29]Ibid., p. 335.

[30]Walter Wyatt, Reporter of Decisions, United States Reports, Cases Adjudged in the Supreme Court, Vol. 331, October Term 1948 (Washington, 1949), p. 367.

[31]Friendly, p. 291.

[32]Wyatt, Vol. 331, p. 367.

[33]Ibid.

[34]Ibid., p. 368.

[35]William Swindler, Problems of Law in Journalism (New York, 1955), p. 296.

[36]Ibid., p. 297.

[37]Abraham, p. 174.

[38]Walter Wyatt, Reporter of Decisions, United States Reports, Cases Adjudged in the Supreme Court, Vol. 366, October Term 1960 (Washington, 1961), p. 719.

[39]Ibid.

[40]Ibid., p. 720.

[41]Friendly, p. 309.

[42]United States Reports, Cases Adjudged in the Supreme Court, Vol. 268 (Rochester, 1924), p. 655.

[43]Wyatt, Vol. 366, p. 723.

[44]Ibid., pp. 724-6.

[45]Ibid., p. 727.

[46]Ibid., p. 728.

[47]Ibid., p. 729.

[48]Friendly, p. 303.

[49]Walter Wyatt, Reporter of Decisions, United States Reports, Cases Adjudged in the Supreme Court, Vol. 373, October Term 1962 (Washington, 1963), p. 725.

[50]Ibid., p. 726.

[51]Henry Putzel, Reporter of Decisions, United States Reports, Cases Adjudged in the Supreme Court, Vol. 381, October Term 1964 (Washington, 1965), p. 544.

[52]Ibid., p. 534.

[53]Ibid., p. 536.

[54]Ibid., p. 539.

[55]Ibid., p. 544.

[56]Ibid.

[57]Ibid., p. 578.

[58]Ibid., p. 545.

[59]Ibid.

[60]Ibid., p. 546.

[61]Ibid., p. 549.

[62]Ibid.

[63]Ibid.

[64]Ibid., p. 547.

[65]Ibid., p. 548.

[66]Ibid., p. 578.

[67]Friendly, p. 221.

[68]Putzel, Vol. 381, p. 578.

[69]Friendly, p. 219.

[70]Putzel, Vol. 381, p. 562.

[71]Anthony Scaduto, Scapegoat, The Lonesome Death of Bruno Richard Hauptmann (New York, 1976), p. 15.

[72]Ibid., p. 118.

[73]Ibid., p. 119.

[74]Ibid., p. 135.

[75]Ibid., p. 117.

[76]Judge Harold Medina, Chairman, Radio, Television and the Administration of Justice, A Documented Survey of Materials by the Special Committee on Radio and Television of the Association of the Bar of the City of New York (New York, 1965), p. 145.

[77]Ibid.

[78]Henry Putzel, Reporter of Decisions, United States Reports, Cases Adjudged in the Supreme Court, Vol. 419, October Term 1974 (Washington, 1976), p. 1302.

[79]Ibid., p. 1307.

[80]Henry Putzel, Reporter of Decisions, United States Reports, Cases Adjudged in the Supreme Court, Vol. 384, October Term 1966 (Washington, 1967), p. 360.

[81]Ibid., p. 325.

[82]Dr. Sam Sheppard, Endure and Conquer (Cleveland, 1966), p. 24.

[83]Putzel, Vol. 384, p. 360.

[84]Ibid.

[85]Ibid., p. 361.

[86]Wyatt, Vol. 331, p. 368.

[87]Putzel, Vol. 384, p. 362.

[88]Ibid., p. 366.

[89]Ibid., p. 364.

[90]Ibid., p. 366.

[91]Ibid., p. 367.

[92]Ibid., p. 368.

[93]Ibid., p. 369.

[94]Ibid.

[95]Ernest Knaebel, Reporter of Decisions, United States Reports, Cases Adjudged in the Supreme Court, Vol. 427, October Term 1975 (Washington, 1976), p. 540.

[96]Ibid.

[97]Ibid., p. 541.

[98]Ibid., p. 540.

[99]Ibid., p. 544.

[100]Ibid.

[101]Ibid., p. 546.

[102]Ibid., p. 548.

[103]Ibid., pp. 549-550.

[104]Ibid., p. 544.

[105]Ibid.

[106]Ibid., p. 569.

[107]Ibid., p. 570.

[108]Ibid., p. 571.

[109]Ibid.

[110]Ibid., p. 572.

[111]Ibid., p. 573.

[112]Knaebel, Vol. 421, p. 796.

[113]Ibid., p. 797

[114]Ibid.

[115]Ibid., p. 799.

[116]Ibid., p. 544.

[117]Henry C. Lind, Reporter of Decisions, United States Reports, Cases Adjudged in the Supreme Court, Vol. 443, October Term 1979 (Washington, 1980), p. 376.

[118]Ibid., p. 369.

[119]Ibid., p. 376.

[120]Ibid.

[121]Ibid., p. 377.

[122]Ibid., p. 369.

[123]Knaebel, p. 544.

[124]Lind, p. 379.

[125]Ibid., p. 379.

[126]Ibid.

[127]Ibid., p. 410.

[128]Ibid., p. 383.

[129]Ibid., p. 388.

[130]Ibid., p. 390.

[131]Ibid., p. 393.

[132]Ibid., p. 402.

[133]Henry C. Lind, Reporter of Decisions, United States Reports, Cases Adjudged in the Supreme Court, 79-243, October Term 1979 (Washington, 1980), p. 2.

[134]Ibid., p. 3.

[135]Ibid., p. 9.

[136]Ibid., p. 11.

[137]Ibid.

[138]Ibid., p. 12.

[139]Ibid.

[140]Ibid., p. 15.

[141]Ibid., p. 19.

[142]Ibid., p. 23.

[143]Ibid.

[144]Wyatt, Vol. 328, p. 333.

[145]Putzel, Vol. 381, p. 578.

CHAPTER III

A REVIEW OF THE LITERATURE

Introduction

The courts have stated unequivocally that intensive publicity preceding a case does tend to prejudice a defendant's case, and thereby abridge his right of fair trial. But is there direct evidence? Does the research literature indicate that this has been established scientifically? Indeed it does.

The importance of establishing such a claim scientifically is that judges tend to base their opinions on fine points of law rather than empirical evidence. It is for this particular reason that this study is being done. As one reviews the literature, it is found that no study has ever been done among judges to see if they can determine elements that tend to prejudice a case over which they are presiding.

Bernard S. Meyer, Chief Justice of the New York Supreme Court, has written: "One of the vexing problems for a judge handling a criminal trial . . . is the effect of news reporting upon the fairness of the trial."[1] The trial judge must then determine whether there is a strong probability "that prejudice will result and the trial therefore be deemed inherently lacking in due process."[2]

We can establish, however, significant elements that are inherently prejudicial based on studies done with actual and mock juries. The verdict from these is that the press must be careful in its accounting

of criminal news, for it takes very little publicity to develop and entrench a predisposition of guilt against a defendant in an individual's mind.

Rita James Simon established that extensive publication of a defendant's prior record resulted in a high degree of convictions among mock jurors. The rate of conviction was substantially increased when stories were "sensationalized."[3]

Kline and Jess found that jurors during deliberations tended to use material not adduced in court, and in particular "prejudicial" information obtained from the media prior to the trial.[4]

Tans and Chafee found that the amount of information concerning a defendant's case tended to create a proportionate predisposition of guilt in the minds of mock jurors.[5]

Wilcox and McCombs established that publication of a defendant's prior record, as well as the type of crime, produced significant amounts of prejudice. But the highest amount occurred when it was reported that the accused had confessed to the crime.[6]

Sohn found that types of crimes produced significant predispositions among mock jurors. Such a disposition tended to rate those accused of felonies as more guilty than those accused of misdemeanors.[7]

Finally, Padawer-Singer and Barton established also that publication of a defendant's record produced high rates of convictions among actual jurors.[8]

Thus there is clear empirical evidence which we will now examine in detail.

The Major Studies

Rita James Simon

Simon wished to find out if publication of a defendant's prior criminal record tended to prejudice jurors in their deliberations of his guilt. She hypothesized that publication of a defendant's prior record in the context of a "sensational news account" would significantly prejudice his case.[9]

She used mock jurors and randomly assigned them to two groups. One group was given news stories written in a conservative format. The other group was given news stories concerning the case written in a "sensational" style. In the context of both types, the defendant's prior criminal record was placed.

Both groups were then exposed to an experimental trial.

In pre-tests before the trial, the group which had been exposed to the sensational accounts brought in guilty verdicts twice as often as those who read the conservative accounts.[10]

At the conclusion of the mock trial, the judge admonished both juries to forget the adverse publicity and base their deliberations solely on the evidence adduced in court. This resulted in lowering the number of guilty verdicts significantly.[11]

However, the judge also in his charge to the respective juries told them that if convicted, the defendant could be executed. The effect this may have had on the lower number of guilty verdicts was not determined.[12]

Two major weaknesses of this study were, first, it was conducted

with mock jurors in a mock court setting. How much this reduces the reality of the experiment cannot be determined, but certainly it does tend to influence the respondents.

Second, the sensational news accounts used tended to be so far from current journalistic style as to introduce an element that does not correspond to reality.

F. Gerald Kline and Paul H. Jess

Kline and Jess wished to establish the effect of prejudicial or non-prejudicial treatments on potential jurors. They hypothesized that it was possible to select an unbiased jury in spite of the type of treatment through the voir dire proceedings.[13]

They randomly selected 48 sophomore students from a subject pool matched against American College Testing scores and age. They were then assigned to two treatment groups. The control group was exposed to "non-prejudicial" news stories, the experimental group to prejudicial accounts.

From these two groups, four six-man juries were selected through the voir dire proceeding. They then sat through the mock trial which had to do with a civil case.

Upon deliberation they found that at least one member on each of the "prejudiced" juries made reference to the material they had read previous to the trial. No such references were found among control groups.[14]

Further in three of the four cases, peer pressure from within the group significantly neutralized the effects of the prejudicial accounts.[15]

They also found that a juror who ranks high on the Rokeach Dogmatism scale tends to be less open to the pressure of his peers during deliberations.

Mary Dee Tans and Steve H. Chaffee

Tans and Chaffee wished to establish what effect the report of a confession had in terms of prejudicing potential jurors, and if the amount of information published concerning a case tends to effect the potential juror in forming a preconceived opinion.

They hypothesized that: "The probability that a potential juror will prejudge a suspect's guilt or innocence is a function of the amount of his prior information about the case."[16]

Six adult groups were chosen ranging from a university psychology class to a conference on home heating. They were all potential jurors in the sense that they met age and literacy requirements. However, they were not drawn from jury pools.

Each group was given a booklet containing three news stories, each about a different crime: burglary, assault-robbery, kidnap-murder. They were asked to rate these stories from "very favorable" to "very unfavorable." This was then followed by a semantic differential scale in which they were asked to describe the defendant.

They found that the greater the amount of information given, the more likely respondents were to judge them as guilty.[17] When it is reported that a confession had been obtained, the guilty verdicts among respondents went up to over 80%.[18]

Once again the major weakness of this study was that it did not simulate reality. The jurors were not drawn from a county juror pool,

and demographically, the respondents tested clearly differed from the "norm" of jurors in this country.[19] However, they did prove that in any type of person, preconceived notions concerning the guilt or innocence of someone are often made on the scantest type of information.

Walter Wilcox and Maxwell McCombs

Wilcox and McCombs believed there were three key elements in news stories that tended to prejudice a defendant's case: prior record, type of crime and a statement of confession or the lack of it.[20]

In addition, they contended that stories concerning crime have a high emotional component which often causes the reader to go beyond the information given in forming an opinion.[21]

They gave their test subjects eight versions of a crime story which contained differing amounts of information concerning the above-mentioned elements. Respondents were then brought into a courtroom setting to hear evidence concerning the crime. They attempted to simulate reality as closely as possible through the use of actual attorneys and judges.

They found that the more the juror was exposed to past criminal record and type of crime, the higher the number of guilty verdicts. These verdicts even exceeded the norms for the state of California where the tests were conducted.[22]

But the most prejudicial element was the reporting of a confession. When it was reported that the defendant had confessed to the crime, potential jurors voted overwhelmingly to convict him.[23]

H. P. Weld and E. R. Danzig

Weld and Danzig did a pioneering study in the area of jury decision making in 1940. They believed that by dividing the process of trial into small segments, it was possible to trace how the jury ultimately reached its verdict.[24]

They used three juries: one of twelve men, another of twelve women, and a third composed of seventeen men and women. They were then taken through a complete trial having to do with a civil case. At each of eighteen stages, the juries stopped and rated that section of the trial on a 9-point scale from 1: conviction that the defendant is innocent to 9: conviction that the defendant is guilty.[25]

Their results indicated that while in the initial stages of the trial, the jury was very ready to convict. That tendency went down during the last two-thirds of the trial.[26] In particular the defendant's counsel through his closing statement brought the greatest reduction in tendency to convict.[27]

In terms of the final verdict Weld and Danzig established that when a juror had a slight belief in the defendant's guilt, he was usually pushed into voting for conviction by his peers. However, if a juror left the courtroom with a slight doubt as to the defendant's innocence, he usually was able to resist such pressure.[28] This would seem to affirm our judicial concept of guilty beyond "a reasonable doubt."

They concluded: "We found that early in the trial, many jurors reached a fairly definite decision, and that thereafter, the effect of the testimony was merely to change their certainty."[29] Thus it would once again appear that even though prejudicial publicity may taint

jurors at the beginning of the trial, it is usually reduced during the course of the trial as jurors interact with the evidence.

Ardyth Broadrick Sohn

Sohn also was interested in finding what kinds of elements in news stories tended to prejudice a defendant's case the most. The three elements she tested were: kind of crime, the name of the defendant, and the penalty likely to be imposed if convicted. She hypothesized that the element of the nature of the criminal act would be most likely to arouse conceptions of guilt in the individual's mind.[30]

She used the Q-sort technique among 12 male and 12 female subjects in the Carbondale, Illinois, area. In selecting the participants, the quota sampling technique was used to make the demographics of the sample conform to the socio-economic status of those used in other jury tests.[31] They then sorted 48 stories along a nine-point continuum from most guilty (1) to most innocent (9).

From this, through factor analysis, she isolated four types of jurors. Type I (n = 5) found those accused of committing felonies that resulted in bodily harm as most guilty. At the same time, they tended to rate those who committed misdemeanors involving property as most innocent.[32]

Type II (n = 2) found those accused of committing felonies involving personal injury as well as damage or theft to property as most guilty, while society related crimes such as drunken driving as most innocent.[33]

Type III (n = 7) found those accused of "self-harming" crimes such as prostitution as most guilty, while those involved with petty

theft as most innocent.[34]

Type IV (n = 10) found those accused of crimes against property by use of a deadly weapon as most guilty, while those involved with crimes involving aggravated battery as most innocent.[35]

Thus she concluded that type of crime does tend to establish prejudice in the minds of people. "It does appear there is a tendency for some people to assume the accused in a pre-trial news story is more guilty than innocent if she or he is charged with committing a felony rather than a misdemeanor."[36]

Of significance then is the fact that none of the major commissions assigned to study the problem of prejudicial publicity have addressed the issue of reporting the type of crime for which the defendant is accused.

The major weakness of this study though is once again these were simply individuals, not even potential jurors, giving their opinion in a non-judicial setting. Further the participants demographically do not represent the typical juror in our judicial system.[37]

Alice Padawer Singer and Allen Barton

Singer and Barton present without a doubt the most impressive study found during the author's research of the literature. This study was part of the Free Press-Fair Trial Project of Columbia University's Bureau of Applied Social Research. Their hypothesis was that jurors who have been exposed to the defendant's prior criminal record as well as a confession that has been retracted will express the most prejudicial feelings against the defendant.[38]

The first phase of the study involved actual jurors picked at random

from the Nassau County, New York, jury pool. They were seated without a voir dire, and were not exposed to any "pre-trial publicity." Then in an actual courtroom they listened to the tape of an actual murder trial that had taken place in Washington, D. C. The jurors then deliberated and after six hours found themselves hopelessly deadlocked.[39]

Five other juries listened to the same tape, but they had been exposed to various amounts of prejudicial publicity before entering the courtroom. Seventy-eight percent of these voted to convict the defendant.[40]

In the second phase of the study, 23 juries were selected from jury pools in Kings County (Brooklyn), New York. Thirteen of these juries were selected after a vigorous voir dire proceedings, and were exposed to little pre-trial publicity. The other ten juries were selected without a voir dire proceeding and had been subjected to pre-trial publicity.

Upon deliberation, of the 13 juries not exposed to the prejudicial treatment, two returned verdicts of guilty, five verdicts of acquittal, and six declared themselves hung.[41] Among the prejudiced juries, six rendered guilty verdicts, three voted for acquittal, and one declared itself hung.[42]

In commenting on the Singer-Barton study Maurice Rosenberg, a pioneer in jury experiments, stated:

> In the absence of anything else, we're bound to say that it looks as if jurors, when exposed to stuff of this kind about retracted confessions or prior criminal record are more prone to find guilt than the jurors who are not.[43]

The reason this study has impressed so many individuals both within the legal community, as well as among the press, is the conviction that this kind of simulation is as close as researchers will be able to

get to the real thing. Unless the judicial community becomes more open to permitting experiments on "live" trials, this type of experiment becomes the next best thing. In addition, the evidence seems overwhelming. The number of juries that voted to convict after they had been exposed to pre-trial publicity in comparison with those who had not represents a clear indication of the danger of printing a defendant's prior record.

University of Chicago Jury Project

This study was conducted by Harry Kalven, Hans Zeisel and Fred Strodtbeck under the auspices of the University of Chicago Law School. For the study there were five major purposes:

1) To find out if the jury perceives the law in the same way that the law perceives it,

2) To find out if jurors understand judges' instructions,

3) To find out if a jury's criteria for conviction or acquittal is inconsistent with the law,

4) To find out if a jury can comprehend rules of evidence, and

5) To find out if juries are motivated by emotion or by reason.[44]

All of these are important from the standpoint of prejudicial publicity, but the last one is essentially critical. If jurors weight their verdict on largely emotional evidence and fabrications, it leaves open the possibility for serious injustice to be done.

Fifteen hundred jurors who had previously served in 213 criminal cases were given intensive interviews. Since their findings could serve as a thesis all in itself, it is our purpose to simply hit the highlights of their findings.

The way in which the jury reaches a verdict was a major finding of

the study. Only thirty percent of the time do juries, among those interviewed, reach a verdict on the first ballot.[45] Thus this tends to confirm the findings of Weld and Danzig in that unanimity is rare upon reaching the deliberation room. The implications of this where pre-trial publicity has been a problem is: Does that lack of unanimity represent a lack of evidence or a predisposition not based on evidence?

What is more important to our case was their second finding. Ninety percent of the cases, involving those interviewed, indicated that whoever was on the majority in the first ballot prevailed in the ultimate verdict.[46] Thus if jurors are exposed to prejudicial publicity and manage to carry that over to the deliberation room, their influence following the first ballot can be enormous.

Another finding was that men tend to dominate in the deliberations.[47] A chauvinistic interpretation of these findings would be that men, who tend to operate on more rational grounds than women, might not be quite as influenced by the prejudicial publicity as women. Therefore, as leaders in the deliberation room, they could tend to neutralize its effect.

Related Studies

Warren and Abill hypothesized that a progression of events in the course of a trial tends to compound the effects of prejudicial publicity.[48]

Their research indicated that once jurors received information from outside the courtroom, it fostered a hidden bias which could be concealed through the voir dire proceedings and withstand judges' instructions to not consider such extraneous material in the reaching

of a verdict.[49]

Lumsdaine and Janis in experimentation with "one sided" vs. "two sided" messages found that those exposed to "one sided" messages, which included prejudicial publicity, were more likely to shift to the opposite view when presented with both sides of the case, than those originally subjected to "two sided" messages.[50]

Lund conducted a similar experiment and found the same results. Subjects tended to embrace the initial argument but shifted to a different argument after its presentation.[51] Juries indeed may be more "fickle" than we often presume.

Conclusions

Does the research literature establish what constitutes prejudicial publicity? Indeed it would seem that certain types of information disclosed to the public by the media tends to produce preconceived opinions in the minds of potential jurors that are difficult to eliminate. The following items in particular produce such opinions:

1) Any statement concerning a confession to a crime by the defendant,

2) Any statement regarding the defendant's prior criminal record,

3) Any statement made by those conducting the investigation as to the probable guilt or innocence of the defendant,

4) Any statements by attorneys as to the psychological stability of the defendant, and

5) Any statements that contain gory or emotional details of the crime for which the defendant is accused, or the motivations behind

such a crime. (There is also evidence that indicates that by just labeling someone as a murderer or a rapist, etc., produces severe prejudice.)

FOOTNOTES

[1]Bernard S. Meyer, "The Trial Judge's Guide to News Reporting and Fair Trial," Journal of Criminal Law, Criminology and Police Science, Vol. 60, 3 (September, 1969), p. 287.

[2]Ibid.

[3]Rita James Simon, "Murder, Juries and the Press," Trans-Action, III (May/June, 1966), p. 41.

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[10]Ibid., p. 41.

[11]Ibid.

[12]Ibid.

[13]Kline, p. 113.

[14]Ibid., p. 114.

[15]Ibid.

[16]Ibid., p. 115.

[17]Tans, p. 648.

[18]Ibid., p. 651.

[19]Ibid.

[20]Ibid., p. 649.

[21]Wilcox, p. 4.

[22]Connors, p. 15.

[23]Ibid., p. 20.

[24]Ibid.

[25]H. P. Weld and E. R. Danzig, "A Study of the Way in Which a Verdict is Reached by a Jury," American Journal of Psychology, Vol. LIII (October, 1940), p. 519.

[26]Ibid.

[27]Ibid., p. 529.

[28]Ibid., p. 531.

[29]Ibid., p. 532.

[30]Ibid., p. 535.

[31]Sohn, p. 101.

[32]Ibid.

[33]Ibid., p. 103.

[34]Ibid., p. 104.

[35]Ibid.

[36]Ibid., p. 105.

[37]Ibid.

[38]Ibid., p. 101.

[39]Connors, p. 22.

[40]Ibid.

[41]Ibid.

[42]Ibid., p. 23.

[43]Ibid.

[44]Dan Rottenberg, "Do News Reports Bias Juries?" Columbia Journalism Review, Vol. 15 (May, 1976), p. 16.

[45]Donald M. Gillmor, Free Press and Fair Trial (Washington, 1966), p. 152.

[46]Ibid., p. 156.

[47]Ibid., p. 157.

[48]Ibid., p. 158.

[49]Connors, p. 15.

[50]Ibid.

[51]Ibid., p. 16.

[52]Ibid., p. 17.

CHAPTER IV

METHODOLOGY, DESIGN AND ANALYSIS

Introduction

Milton Cohen in his work, A Preface to Logic, stated:

> There is no genuine progress in scientific insight . . . without hypotheses or anticipation of nature. Without some guiding ideas, we do not know what facts to gather, . . . We cannot determine what is relevant and what is irrelevant.[1]

We must therefore approach the problem of prejudicial publicity with some preconceived ideas. These ideas are translated into problems and hypotheses.

The scientist demands precision in everything he does. Each experiment is to be carefully thought out and structured. The means of gathering the data is checked and rechecked to insure accurate information is obtained. Finally, the means of analyzing that data is decided upon prior to the start of the experiment.

The scientist builds upon the principle of timebinding, which allows others to repeat this experiment and build upon the results. Therefore, this chapter gives the essential ingredients in a step-by-step format.

Statement of Problems

Building on the research done with juries that is described in the previous chapter, the author sought to assess the views of judges

as to what constitutes prejudicial publicity. In particular, three aspects of that problem are dealt with:

1) Is there a relationship, in the opinion of judges, between the news elements of criminal magnitude, prior record, and ethnic background and possible prejudice to the defendant's case?

2) Does this relationship change when jurisdiction varies from local to state to federal levels?

3) Do judges tend to cluster together on the basis of their opinions, concerning the relationship of the news elements to possible prejudice, apart from their jurisdictional levels?

The importance of these problems are indispensable to an understanding of the nature of prejudicial publicity. With the current use of gag orders, courtroom closings, and jailing of reporters, it is important to try to establish scientifically what items, either in print or broadcast form, tend to unduly influence the course of a trial over which a judge presides. Without some documentation, such judicial restrictions become arbitrary tools.

Judge Bernard S. Meyer, Chief Justice of the New York Supreme Court, has commented on the need for scientific certainty. "A trial may involve such a probability that prejudice will result from the publicity that it is deemed inherently lacking in due process. Our responsibility is to learn how to narrow such a probability."[2]

Yet until this experiment, no research has tried specifically to isolate news elements that in judges' minds create such a probability of prejudice.

Statement of Hypotheses

With the problems clearly stated, it is incumbent upon the researcher to state his hypotheses in such a way as to allow them to be tested. A number of hypotheses emerge from these three research problems. However, the author wishes to limit these to the following:

1) All judges as a group will give stories with the elements of criminal magnitude the highest prejudicial ranking.

2) All judges as a group will give stories with the element of prior record the second highest prejudicial ranking.

3) All judges as a group will give stories with the element of ethnic background the lowest prejudicial ranking.

4) Judges of local jurisdiction will give stories with the element of criminal magnitude the highest prejudicial ranking.

5) Judges of state jurisdiction will give stories with the element of prior record the highest prejudicial ranking.

6) Among judges of federal jurisdiction, there will be no significant differences between stories having the elements of criminal magnitude and prior record. However, these elements will be ranked higher than stories having the element of ethnic background.

7) Among all judges, when stories with the element of criminal magnitude interact with stories with the element of ethnic background and when stories with the element of prior record interact with stories with the element of ethnic background, no significant differences will be produced.

8) Among all judges, stories with the element of criminal magnitude and prior record will interact to account for the most variation among prejudicial ranking.

9) Between all subjects, we would expect to find two types of judges: Type I--judges who give stories with the element of criminal magnitude the highest prejudicial ranking; and Type II--judges who give stories with the element of prior record the highest prejudicial ranking.

Variables and Operational Definitions

As the hypotheses indicate, there are four major variables involved in this experiment. They are the news elements of criminal magnitude, prior record and ethnic background, and the judge who is assessing the amount of prejudice directed at a defendant by each of these news elements.

We can be more specific and state that the news elements are the independent variables, or the presumed cause, while the prejudicial rankings given by judges in the Q-sort constitute the dependent variable or the presumed effect. Thus the scientific basis of our experiment is that given independent variable X, how does Judge Y respond in terms of rating the effect of a story on a potential defendant?

Yet our experiment is made more complicated by the fact that each variable has three sublevels. Criminal magnitude has sublevels of morbidity, inducement, and little or no morbidity or inducement. Prior record has sublevels of non-criminal deviance, criminal interaction, and normality. Ethnic background has sublevels of minority status, customs, and little or no minority status or customs. The type of judge has three sublevels: federal, state, and local.

Thus to insure accuracy, we must assign to each of these variables and their sublevels operational definitions. Kerlinger defines these as

"assigning meaning to a construct or variable by specifying the activities necessary to measure it."[3] Such descriptions then must be written for each and every experiment and apply only to that experiment. It is this element that creates the uniqueness of operational definitions, for they become mutually exclusive categories that guide us in our understanding of the problem.

The variables for this experiment are defined as follows:

Criminal Magnitude

The total depiction in words or pictures of the criminal act as reported by the media for which a suspect is sought, or for which a defendant is accused.

Morbidity. The depiction in words and pictures of the gruesome details involved in the commission of the crime as reported by the media. Details concerning the physical and mental suffering inflicted on the victim by the suspect or defendant, and its subsequent effect on those surrounding the victim and the suspect or defendant.

Inducement. The depiction in words and pictures of the motivations and reasons for the clash between the suspect or defendant and the victim as reported by the media. Explanations as offered by those involved in the investigation and subsequent trial: law enforcement officials, lawyers, etc. Any alibis given by suspect or defendant, any evidence of pre-meditation as reported by those connected with the investigation.

Little or No Morbidity or Inducement. The depiction in words and pictures concerning the magnitude of the criminal act as reported by the media, that do not have morbidity or inducement and yet still concern

itself with some aspect of the magnitude of the crime.

Prior Record

The total depiction in words and pictures of the suspect or defendant's background (other than ethnic), prior to the criminal act for which he is accused as reported by the media. Aspects of such a record would include, but not be limited to, the number of years of formal education, the number of jobs he has held and the duration of each, specific criminal acts of which he has been accused, convicted and served time.

Non-Criminal Deviance. The depiction in words and pictures of events or actions in the suspect's or defendant's life as reported by the media, that are unique to him and that deviate from the societal norms in which he lives. Aspects of such deviance would include but not be limited to: occupational and educational record, marital status (divorced), any record of psychological dysfunction, use of alcohol or drugs.

Criminal Interaction. The depiction in words and pictures of any previous confrontations between the suspect or defendant and the state as reported by the media. Aspects of such interaction would include, but not be limited to, crimes for which he has been accused, convicted, or served time for, the type of prison in which he served time, and his behavioral record while serving, previous probation reports.

Normality. The depiction in words and pictures of events and actions in the suspect's or defendant's life as reported by the media, which neither deviate significantly from the norms of society, nor reflect

any interaction with the state in terms of criminal acts.

Ethnic Background

The total depiction in words and pictures of the suspect's or defendant's ethnic heritage as reported by the media. Aspects of such a background would include, but not be limited to, skin color, name, customs, and practices unique to such a group.

Minority Status. The depiction in words and pictures of the suspect's or defendant's ethnic background in terms of being a member of a minority group as reported by the media. Such status would be limited to what are considered to be common minority groups in today's society: Blacks, Chicanos, Puerto Ricans, Indians, Cubans or Vietnamese.

Customs. The depiction in words and pictures of customs and practices which are unique to the suspect's or defendant's ethnic heritage as reported by the media. Aspects of such customs would include, but not be limited to, family traditions, ethnic celebrations, religious and philosophical beliefs unique to the ethnic group.

Little or None. The depiction in words and pictures of the defendant's ethnic background as reported by the media, which do not include references to minority status or customs and practices.

Type of Judge

Those who preside at every level of our society in arbitrating controversies brought before them, relating the facts to the relevant law and making new law through the process of decision-making.

Federal. Those who preside by appointment of the President of the United States over cases affecting aspects of the Constitution or crimes against the several states on both an original and appellate jurisdictional level.

State. Those who preside either by appointment of the Governor of the State of Oklahoma, or by direct election of its citizens and arbitrate controversies between citizen and the state, or citizen against citizen, on both an original and appellate jurisdictional level.

Local. Those who preside either by appointment of the Mayor or manager of a municipality, or by direct election of its citizens and arbitrate controversies between citizen and the municipality, or citizen against citizen, on an original jurisdictional level only.

Original Jurisdiction. Those who preside over tribunals that consider the facts of a controversy between the citizen and the state, or citizen against citizen.

Appellate Jurisdiction. Those who preside over tribunals that review the controversy between the citizen and the state, or citizen against citizen, as it has been handled in courts of original jurisdiction to insure that the laws of the government have been applied in a just fashion.

The Sample

Since the Q-sort technique utilizes a representative sample of items, rather than individuals, no special considerations had to be given to the selection of respondents, except that approximately the

same number of federal, state and local judges participated.

Judges' names were selected from the Third Edition of The American Bench, a national directory of federal, state, and local judges. All of the federal judges in the state were invited to participate. State judges were selected from the State Supreme Court, Court of Criminal Appeals, and District Court Judges from Tulsa, Stillwater, Oklahoma City, and Claremore. Local judges were selected from the Tulsa municipal area. Thus there was a balance in the participants' backgrounds, as well as the areas they serve within the State of Oklahoma.

The final number of judges and their distribution is as follows: 8 federal judges, 13 state judges, and 9 local judges. This distribution reflects a desire to keep the groups as evenly matched as possible in terms of size.

Their demographics were as follows: the average age was 47; the average years on the bench was 6; more than 95% were male; all had law school educations, with more than 70% being educated at the University of Oklahoma Law School. When compared with the other forty-nine states, the demographics are similar, except for the place of law school education.[4]

Design and Study Description

Now that the variables have been described and defined, it is possible to give a step-by-step guide as to how the experiment is performed. Once again this allows the principle of timebinding to be utilized by those in the future who desire to build upon this work.

Methodology

Q-methodology was developed by William Stephenson as a means of testing various philosophical and psychological ideas without resorting to complex survey techniques. In actuality, Q-methodology is a simple rank-ordering of concepts over a fixed continuum.

As previously indicated, this eliminates the need for a carefully selected sample of participants. Instead, the stories are distributed along a normal curve gradient. In the case of this experiment, 54 stories are used. These are sorted along an 11-point continuum from least prejudicial to most prejudicial. The distribution follows (Figure 1).

	Story Value	11	10	9	8	7	6	5	4	3	2	1
Most Prejudicial	----------											Least Prejudicial
	N-Scores	2	3	4	6	7	10	7	6	4	3	2

Figure 1. Distribution of Story Values and Stories

The advantages of using Q-methodology in this experiment are numerous. First, it offers the opportunity to bring the theoretical down to a level of participation. The author could have structured a questionnaire to ascertain what judges thought concerning the publication of certain items. Instead, they participate; they pass judgment on each story, and therefore produce a rank-order scale that can then be statistically analyzed.

Second, it carefully simulates reality. The Q-sort technique

allows the author to carefully structure a realistic case, and have the judge role play concerning his deliberations in that case. Experimenters who have worked with actual or potential jurors have emphasized that the closer one can simulate the judicial process, the more accurate the responses.[5]

Finally, it offers a springboard to further discussions concerning the research problem. The author hopes that by using this technique, it will relax the participants and prompt them to relate personal experiences with the problem of prejudicial publicity.

Selection of Stories

The research problem utilizes three independent variables, each with three sublevels. Therefore, there are 27 possible combinations of these. Two stories were selected for each combination, thus accounting for the figure of 54.

To insure continuity and to simulate reality, all stories were structured to relate to one hypothetical case. The basis for the case was the Richard Speck murders of eight student nurses in Chicago in 1966. Accounts of the murders were drawn from the New York Times, and rewritten to conform to the variables. Some examples of these changes are: changing the number of victims from eight to six, making Speck a Mexican migrant worker, moving the location of the crime to a hypothetical location: Middleton.

Since newspaper stories did not include all the variables called for in the experiment, additional original stories were written by the author. Most of these stories related to the ethnic background dimension.

All 54 stories were then carefully reviewed by the author's Graduate Adviser, Dr. Walter J. Ward, to be certain that they conformed to the operational definitions set forth for the experiment. They were edited to conform to newspaper form and set in nine-point type with an 11.5 pica column. This format is used by both Tulsa newspapers. (See Appendix A for the complete set of stories.)

Pre-Test

The completed deck was then given to three lawyers from the Tulsa area, along with a statement of the operational definitions. They then checked to see that each story accurately reflected the operational definitions, by sorting the deck repeatedly on one element at a time. All stories were first sorted as to whether or not they conformed to the morbidity dimension. Those stories which consistently failed to differentiate themselves on the basis of the operational definitions were rewritten to assure greater accuracy. The other dimensions were sorted likewise.

Contacting of Judges

Each judge selected from The American Bench was sent an initial letter inviting his participation. (A copy of this letter is in Appendix B.) The letter described the experiment, and informed him that this was for the author's Master's thesis.

The letters were followed up with phone calls. These were geared towards setting up appointments, as well as answering any further questions they might have had about the experiment. An hour's time is allotted for each respondent's interview.

Conduct of the Interview

Each interview was started with a restatement of the research problem to insure that each judge clearly understood what he was being asked to do. The Q-sort was then elevated to reality by telling the respondent that these represented stories concerned a hypothetical murder case that he had been assigned to try.

The technique was followed until all the stories are distributed along the continuum. Upon completion, the judge was asked to share his reactions concerning the case, especially how he believed the press could have handled this case in a more responsible manner.

Measurement Instruments

A Type VI Anova was used to analyze the differences among the respondents. This is a three-factor Analysis of Variance where there are repeated measures on two factors. Since this experiment had repeated measures on three factors, three Type VI Anovas were run, rotating the news element variables two at a time. Thus the following combinations were utilized: Criminal Magnitude X Prior Record, Criminal Magnitude X Ethnic Background, and Prior Record X Ethnic Background. The sample paradigm (Figure 2) demonstrates how each rotation was set up.

Since we were dealing with differences in opinion among several types of judges, we had to see if those differences were statistically significant. We compared our hypotheses against the so-called "null hypothesis," which simply stated says that no significant differences will be found.[6] If after analysis we found that the differences not only exceed the null hypothesis but also those which could be brought

	MORBIDITY						INDUCEMENT					
	NON-CRIM DEVIATION		CRIMINAL INTERACTION		NORMALITY		NON-CRIM DEVIATION		CRIMINAL INTERACTION		NORMALITY	
JUDGE	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED
1												
2												
3												
28												
29												
30												
TTL												
MEAN												

	LITTLE MORBIDITY OR INDUCEMENT							
	NON-CRIM DEVIATION		CRIMINAL INTERACTION		NORMALITY			
JUDGE	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	TOTAL	TOTAL SQUARED
1								
2								
3								
28								
29								
30								
TTL								
MEAN								

Figure 2. Sample Paradigm

about by chance, we could conclude that the respondents truly differentiated between the news elements as to their possible prejudicial value.

For purposes of this experiment the author analyzed such variance at the 0.05 level, which asked if we repeated this experiment 100 times, would we get the same results at least 95% of the time? This assured a high degree of confidence in the inferences that were made as a result of the experiment.

The Type VI Anova Table permitted us to obtain various f-ratios, as shown in Table I using the first rotation of the variables.

TABLE I

SAMPLE SUMMARY OF ANALYSIS OF VARIANCE

Source	df	s. s.	m. s.	F	p
Total					
Between Subjects					
Between Judicial Type					
Between Subject Error					
Within Subjects					
1 Between Criminal Magnitude					
2 Between Prior Record					
1 Interaction Judge X Criminal Magnitude					
2 Interaction Judge X Prior Record					
3 Interaction Criminal Magnitude X Prior Record					
3 Interaction Judge X Criminal Magnitude X Prior Record					
Error 1					
Error 2					
Error 3					

Following the Type VI Anova, judges' responses were intercorrelated to develop an agreement index. Using McQuitty's Linkage and Factor Analysis, we were able to determine typal representatives, or what kinds of judges, regardless of level, were most alike.

These clusters were then substituted back into the Type III Anovas in place of federal, state and local categories and reanalyzed in terms of the differences within the typal representatives.

Upon conclusion of the analysis, each hypothesis was analyzed against our findings to determine if they were affirmed.

FOOTNOTES

[1]Fred Kerlinger, Foundations of Behavioral Research, 2nd ed. (New York, 1973), p. 16.

[2]Bernard S. Meyer, "The Trial Judge's Guide to News Reporting and Fair Trial," The Journal of Criminal Law, Criminology and Police Science (September, 1969), p. 287.

[3]Kerlinger, p. 31.

[4]Henry J. Abraham, The Judicial Process, 3rd ed. (New York, 1977), p. 381-382.

[5]Connors, p. 21.

[6]Kerlinger, p. 19.

CHAPTER V

ANALYSIS OF THE DATA

Introduction

> Man observes a phenomenon. He speculates on the possible causes. Naturally, his culture has a stock of answers to account for most phenomena, many correct, many incorrect, many a mixture of fact and superstition, many pure superstition and mythology. It is the scientist's business to doubt most explanations of phenomena in his field.[1]

Once the experiment is carried out, it is incumbent upon the researcher to apply the same painstaking care in his analysis and interpretation of the data which he has obtained. Anyone can look at table after table of numbers and make inferences concerning what they mean. But because of the methods of science, the range of possible inferences has been narrowed by the application of the hypotheses stated for the experiment.

Sir Peter Medawar, the Nobel Prize winning biologist, has captured the essence of this:

> Scientists are building explanatory structures, telling stories which are scrupulously tested to see if they are stories about real life. . . . Scientific reasoning is a kind of dialogue between the possible and the actual, between what might be and what is in fact the case.[2]

Therefore, each of the judges involved in this experiment has been in essence testing those hypotheses to see if they were "stories about real life." The testing has been carried out by judgments they have passed on each of the fifty-four stories that comprised our

hypothetical case. They did this in a "role play" situation which placed them as the presiding judge in the execution of the trial. Such simulation of reality gave limited assurance that the interpretations made as to "what might be and what is in fact the case" can be readily applied to everyday judicial situations.

But more than that, it offers limited assurance that one can statistically establish what is inherently prejudicial in news stories. Granted this has been an exploratory operation into the dimensions of meaning as they are structured in the individual judge's mind. But if studies of this nature continue, the researcher's case is strengthened when he goes before his brethren in the newsroom, and says that to publish or broadcast certain types of information will deprive another individual of his Constitutional rights.

Results of the judgments made by the respondents to the news stories were analyzed using the procedures outlined previously. In this chapter, judges' overall assessments of each story are reviewed, as well as how they differed from each other in terms of the news elements used as variables, and their statistical significance. How they clustered together apart from jurisdiction, and how those clusters interact with the variables, were analyzed.

The Semantic Environment And Prejudicial Publicity

Since we are dealing with how individuals structure meaning in what they read, it is important to consider some aspects of the semantic environment as contained in the hypothetical case used in this experiment, for there are numerous factors which go into taking words on paper

and defining them in one's mind.

The concept of meaning is central to the job of the communicator. All of the other steps within the communication model may be fulfilled, but if the source and the receiver are unable to agree on the dimensions of the code which they use, no effective communication is possible. However, one cannot simplify this by running to the dictionary, for meanings are in people.

Words mean nothing by themselves. It is only when an individual uses them that they come to have meaning, and such meanings apply only to that situation. Out of this theory of meaning comes the indispensable tool of the scientist: the operational definition. At the beginning of this experiment, the variables to be utilized were operationally defined. They provide the dimensions of meaning for the research to be conducted. Yet one cannot take these to be emphatically exclusive; they hold true only for this case. The next experiment will require new meanings.

Two words not operationally defined at the beginning need to be now. Prejudice may be defined as "a relationship between two or more individuals, wherein one has a preconceived judgment or opinion of the other without just or sufficient grounds or knowledge."[3]

There are two key items to note in this definition. First the basis of prejudice lies in a preconceived opinion. Before one ever meets another person, or before a defendant is given a chance to prove his innocence, he is already characterized. This normally is accomplished through stereotyping. Labels such as "ex-convict," "ex-felon," and "rapist" provide examples germane to the nature of this experiment.

Secondly, this basis is reinforced by a lack of knowledge.

Prejudice festers and grows in an atmosphere of ignorance. Tamotsu Shibutani has written: "Belief in an attitude or statement does not wait to be established by the facts. Men believe implicitly that everything they hear is true."[4]

Blending the two elements above, prejudicial publicity can be operationally defined as the relationship between a potential juror and a defendant, whereby the juror has developed a preconceived opinion concerning the guilt of the defendant on the basis of one-sided, inaccurate and incomplete statements offered to him by the media. The key to understanding the nature of the problem is indeed simple. As stated above, in defining prejudice, the potential juror reads the newspaper or hears a broadcast concerning the crime, and on the basis of that alone, characterizes the defendant and finds him guilty.

The dimensions of this problem become even more sinister when one considers the basic fickleness of twelve human beings who sit in the box. Robert Traver in Anatomy of a Murder states satirically:

> Gambling on what a jury will do is like playing the horses. The notorious undependability of juries, the chance involved, is one of the absorbing features of the law. That's what makes the practice of law like prostitution, one of the last of the unpredictable professions--both employ the seductive arts, both try to display their wares to the best advantage, and both must pretend enthusiastically to woo total strangers.[3]

But why do people label others on the basis of such flimsy evidence? It is this aspect which is often overlooked. There are few bigots by choice in our society. Yet prejudice abounds because of the fact that man as the "higher animal" cannot live with tension and uncertainty in his semantic environment. Therefore, he must take all the steps necessary to organize the information he has at his disposal into a coherent whole.

When a criminal act is committed, particularly a gruesome one, people everywhere, including those in the media, strive to bring meaning out of such brutality. In reality such integration is done to reduce personal and corporate tension and uncertainty. Out of such a need to structure meaning comes the labeling, the inaccuracies, and highly emotional reporting.

The public, in looking to the media, receives such interpretation without question. If the press says the defendant is an "ex-convict," the public can then easily draw the damning conclusion that the defendant must be guilty, because the public operates on the law of identity that "a must equal a,"[6] that once a convict always a convict.

Psychologists Goggin and Hanover, in their studies of prejudicial publicity as it relates to structuring meaning in the individual juror's mind, have concluded that man will organize whatever material he has, no matter how sparse or incomplete into a coherent whole, and then interpret it according to his needs. Once formed, his beliefs will tend to be absorbed into the existing belief structure and be resistant to change.[7]

As a result of their work, several conclusions may be drawn concerning the semantic environment's effect in predisposing jurors' opinions towards a defendant. Once again man must organize the data around him to maintain his semantic equilibrium. Facts cannot exist in isolation. If the individual is to hold down semantic tension, the facts must be integrated.

But such data is not organized haphazardly. Man will organize whatever information he obtains, whether it is fact, innuendo, hearsay and so forth, according to his value system. If a person believes

that an "ex-convict" continues in crime, he will tend to pick and choose the information available to reinforce that belief, and will ignore the balance. This suggests that if the media are to help the individual receive a fair trial, it must work not only to "clean up what it prints," but also to break down the simplistic value system held by such a potential juror and substitute a new one that is more tolerant of the rights of others.

Other researchers building on Goggin and Hanover have added to our knowledge of the semantic environment and prejudicial publicity. Dow found that individuals integrated data from news stories concerning crime through emphatic identification with the victim. They literally interpreted the information through the victim's eyes.[8] As a result of this, it was found that many jurors had difficulty distinguishing between an accusation of a crime and guilt beyond a reasonable doubt.

Wilcox found that jurors go beyond data presented within the courtroom in an attempt to organize meaning.[9] In other words, they take certain facts and draw inferences that go beyond what can be supported by those facts. The individual often finds himself doing this when he uses denotative meanings. He can point to an object and say, "That appears to be . . ." But then he proceeds to fill in the blank with a word that does not represent the object itself. A clear example of this was found in the Richard Speck case. When Speck was isolated as the suspect, Police Superintendant Orlando Wilson went on television and told the residents of Chicago that "Speck is the killer."[10] He defined the defendant with an inference that went beyond the facts available. Granted the police had substantial evidence to arrest Speck, but only a jury of his peers could place the label of killer

upon him, and then only if the evidence presented convinced them beyond a reasonable doubt.

Finally, Asch found that juries organize meaning on the basis of one particular trait, and in particular, a defendant's prior record. Thus as evidence is presented, the jury uses it as reinforcement for their predisposition that the defendant must be guilty.[11]

In this regard, a defendant's prior record would appear to be an excellent tool around which to structure meaning, and therefore produce prejudice. The chain of inferences can seemingly be laid out as follows.

Statement of Defendant's Prior Record

Inference
"Once a convict, always a convict."

Inference
"If he is wanted by others for crimes, he must be guilty. . . . Innocent people are not wanted."

Inference
"If there is a warrant for his arrest, he probably did it. The police don't arrest innocent people."

Conclusion
"He's guilty, the evidence is overwhelming."

Figure 3. Process of Structuring Meaning Through Improper Inferences

An initial examination of his record produces a simplistic inference based on the law of identity. This is then reinforced by other inferences not supported by the facts. The result is a predisposition of guilt. The reasoning pattern laid out here, and confirmed by empirical testing, is reminiscent of a scene in Franz Kafka's novel, The Trial. In it a young bank employee by the name of Joseph K. is arrested, but is never told why. When he confronts the police with this, one of them responds as follows:

> We're quite capable of grasping the fact that the high authorities we serve, before they would order such an arrest as this, must be quite well-informed about the reasons for the arrest and the person of the prisoner. . . . Our officials . . . never go hunting for crime in the populace.[12]

Once again the implication is that police don't arrest innocent people.

Thus, in summation, as the stories and their variable elements are considered empirically, one must not forget the perspective of the reader or listener, and what goes on in their semantic environment as a result of those messages. It is a principle of communication theory that man must organize events and facts into coherent modes of meaning, no matter what it takes, for man cannot cope with the disunity of no meaning.

Prejudicial Rankings

Utilizing the Q-technique, the thirty participants sorted the stories over an 11-point continuum, using the frequency distribution set down in Chapter IV. The criteria for the sorting was that stories be ranked from the least prejudicial (1) to most prejudicial (11). Therefore, each story could be assigned a numerical value as to where it was placed along the continuum.

Building upon the hypotheses set out, one can initially construct a theoretical table in which the stories are rank ordered according to the experimenter's belief. Such a framework will allow story-by-story comparisons, which begin to offer some conclusions as to the validity of the hypotheses.

The theoretical expectations therefore are contained in Table II. As this theoretical distrubution indicates, stories which discussed the morbid details of the crime and which somewhat bordered on sensationalism were thought to be most prejudicial. This was based upon the evidence of numerous criminal cases in which sensational accounts have been adduced as prejudicial to the defendant.

By establishing the validity of this hypothesis, the researcher could determine if judges' thought patterns operated in a similar fashion as potential jurors. The review of the literature clearly establishes that jurors are swayed by such morbid details which force the jurors to organize a "few" highly emotional concepts into a coherent whole, and therefore, establish meaning. If judges operated in a similar fashion, it would have far-reaching consequences for our judicial process.

In addition, this theoretical distribution reflected the belief that a defendant's prior record, when published, would have some impact on creating prejudice, but not be the sole factor. This assumed that judges, in structuring their own meanings, would avoid the influential leaps of the common man as demonstrated previously.

Table II also gives the actual prejudicial rankings for all thirty judges involved in the experiment. The mean score represents the sum of each judge's assessment for that story divided by the number of

TABLE II

THEORETICAL AND ACTUAL PREJUDICIAL MEAN SCORES FOR FIFTY-FOUR STORIES

Story Number	News Tag	Elements	Anticipated Score	Actual Score
1	Lust for Blood	Morbidity/Non-Criminal Deviance/Little Ethnic	11.000	8.066
2	Horrific Scream	Morbidity/Normality/Minority Status	11.000	7.566
3	Litter of Crime	Morbidity/Normality/Little Ethnic	9.000	7.200
4	Tatooed Ex-Con	Inducement/Criminal Interaction/Minority Status	8.000	8.033
5	Mass Murders	Morbidity/Criminal Interaction/Little Ethnic	7.000	4.800
6	Tortured by Fantasy	Morbidity/Non-Criminal Deviance/Little Ethnic	10.000	8.066
7	No Reason	Inducement/Non-Criminal Deviance/Little Ethnic	6.000	6.033
8	Description	Morbidity/Normality/Minority Status	9.000	5.667
9	Violence	Inducement/Non-Criminal Deviance/Little Ethnic	7.000	5.800
10	Interrogation Procedures	Little/Non-Criminal Deviance/Little Ethnic	5.000	4.733
11	Nude Body	Morbidity/Criminal Interaction/Little Ethnic	10.000	6.200
12	Reward	Morbidity/Normality/Little Ethnic	8.000	5.566
13	Coroner's Report	Morbidity/Non-Criminal Deviance/Minority Status	10.000	6.600
14	Young Doctor	Little/Non-Criminal Deviance/Custom	6.000	5.133
15	Suicide	Inducement/Non-Criminal Deviance/Minority Status	6.000	5.866
16	Heart Attack	Little/Normality/Minority Status	4.000	4.633
17	Confrontation	Morbidity/Non-Criminal Deviance/Minority Status	7.000	6.166
18	Serious Setback	Little/Normality/Little Ethnic	3.000	4.766
19	Methodical Planning	Inducement/Non-Criminal Deviance/Custom	6.000	8.266

TABLE II (Continued)

Story Number	News Tag	Elements	Anticipated Score	Actual Score
20	"That is the man."	Inducement/Normality/Minority Status	8.000	10.033
21	Pop Bottles	Morbidity/Non-Criminal Deviance/Custom	2.000	4.900
22	Deviant Sexuality	Morbidity/Non-Criminal Deviance/Custom	9.000	8.500
23	Murmur	Little/Non-Criminal Deviance/Little Ethnic	4.000	4.633
24	Insanity Defense	Inducement/Non-Criminal Deviance/Minority Status	5.000	8.366
25	Relationship with God	Inducement/Normality/Custom	6.000	7.000
26	Air-Tight Case	Inducement/Criminal Interaction/Little Ethnic	7.000	5.866
27	Formal Charge	Morbidity/Criminal Interaction/Minority Status	8.000	7.366
28	Wanted for Other Crimes	Little/Criminal Interaction/Custom	8.000	7.466
29	Migrant Workers	Morbidity/Criminal Interaction/Custom	6.000	6.833
30	Defendant's Brother	Morbidity/Normality/Custom	6.000	4.666
31	Farce	Morbidity/Criminal Interaction/Custom	7.000	7.100
32	Bragging	Inducement/Criminal Interaction/Custom	8.000	10.200
33	Priest	Morbidity/Normality/Custom	6.000	6.866
34	Grand Jury	Little/Non-Criminal Deviance/Little Ethnic	5.000	6.266
35	Psychological Revenge	Inducement/Non-Criminal Deviance/Custom	7.000	9.566
36	Indictment	Morbidity/Criminal Interaction/Minority Status	7.000	6.466
37	Psychiatric Panel	Little/Non-Criminal Deviance/Minority Status	5.000	5.200
38	Expert	Little/Non-Criminal Deviance/Minority Status	5.000	6.966
39	Flaw	Little/Criminal Interaction/Minority Status	5.000	4.266
40	Trial by Newspaper	Inducement/Normality/Custom	6.000	6.066
41	Restrictions	Inducement/Normality/Little Ethnic	2.000	3.966

TABLE II (Continued)

Story Number	News Tag	Elements	Anticipated Score	Actual Score
42	Two Wives	Little/Non-Criminal Deviance/Custom	9.000	7.600
43	ACLU	Little/Criminal Interaction/Custom	4.000	5.600
44	Irrefutable Evidence	Inducement/Criminal Interaction/Custom	5.000	6.633
45	Cards	Little/Normality/Custom	1.000	2.233
46	Guidelines	Inducement/Normality/Little Ethnic	3.000	4.266
47	Tailor	Little/Normality/Custom	1.000	1.833
48	Change of Venue	Inducement/Criminal Interaction/Minority Status	6.000	6.500
49	Guards	Little/Normality/Little Ethnic	2.000	3.933
50	Suit	Inducement/Criminal Interaction/Little Ethnic	3.000	3.666
51	Withdraw	Little/Criminal Interaction/Little Ethnic	4.000	4.033
52	Modify	Little/Normality/Minority Status	3.000	3.500
53	Trial	Inducement/Normality/Minority Status	4.000	3.233
54	Jury Selection	Little/Criminal Interaction/Little Ethnic	4.000	3.333
			324.000	324.000

respondents.

In comparing the actual rankings to the theoretical distribution, several deviations were noted. Overall, judges did not assess the morbidity dimension as highly as was originally hypothesized. In its place the motivational and criminal interaction aspects appear to be more prejudicial in the minds of the judges.

In correlating the two sets of scores, a correlation of r equal to 0.7766 is obtained, indicating a moderately strong relationship between the theoretical and the actual. Such a correlation coefficient would at least affirm the proper prediction of a number of other hypotheses. These are examined throughout the balance of the chapter.

Of utmost importance was what the judges actually considered to be most prejudicial. What items within each story, when structured into a coherent whole, created a substantial predisposition of guilt in the individual's mind? To this extent a number of observations may be made concerning these scores.

The story rated most prejudicial was number 20 with a mean score of 10.033. It contained the elements of inducement, normality, and minority status. The second most prejudicial story was number 32 with a mean score of 10.200. It contained the elements of inducement, criminal interaction and custom.

The former concerned itself with the record of the confrontation between the sole survivor of the criminal act and the defendant. The victim states clearly that the accused is the murderer. The attempt to explain the reasons for the clash between the defendant and the victim conforms to the operational definition of inducement.

However, this does not take place within the confines of the courtroom where the accused has an opportunity to confront eyewitnesses. This is why it has been consistently held by judges, as well as others in the legal community, as being something the media should not print until after the trial has reached that stage. No judge interviewed saw anything wrong with the press using the victim's words of identification as they were given in court and subjected to the rules of evidence.

Yet even when subject to such rules, eyewitness identifications can lead juries to the wrong conclusions. Edwin Montefiore Bouchard, a former professor of law at Yale University, did a major case study of trials where eyewitness testimony seemingly provided the conclusive evidence. He concluded:

> Perhaps the major source of these tragic errors (mistaken identity) is an identification of the accused by the victim of a crime of violence. Juries seem disposed more readily to credit the veracity and reliability of the victims of an outrage than any amount of contrary evidence by or on behalf of the accused.[13]

Therefore, the media must handle such reports of eyewitness identification, particularly when it occurs outside of the courtroom, with the utmost care. People, in an attempt to organize meaning, will take such data and reach a conclusion without hearing all the evidence. The psychological studies cited earlier provide documentation for such caution.

But story number 20 not only included a statement that identified the accused as the killer, it also contained a statement by the police chief to the effect that the police have all the evidence necessary to back up the claim of the victim. The chief is quoted as saying, "We have fingerprints at the scene, eyewitness identification, and the

murder weapon." Judges concluded that all of this contained in one story could create in the minds of potential jurors the idea of an open and shut case. Such a notion is extremely difficult to dispell.

A number of judges also criticized the police chief for making such statements to the press. Several indicated that if they were actually trying the case, such conduct would result in a contempt citation. This raises a significant point concerning the prejudicial publicity problem. Often it is not entirely the press who is to blame. As related in the review of Supreme Court cases in Chapter One, such prejudicial material originates with the law-enforcement community.

Story number 32 concerned itself with an interview conducted with a former cell mate of the accused. While the defendant's criminal record is not precisely recited as in a number of the other stories, it does clearly identify him as an ex-convict, which conforms to the operational definition of criminal interaction. The inducement dimension is represented by the statement that the defendant was capable of carrying out the crime for which he is charged. As such, this is an explanation for the clash between the defendant and the victim. In addition, the dimension of custom figures heavily. The former cell mate indicates that most migrant workers have poor self-images and must commit acts like this to prove his manhood. Therefore, he was not only capable of committing the crime, but had a clear motivation for it.

Such a series of inferences is well documented by social researchers. Charles Silberman in his excellent work, Criminal Violence, Criminal Justice, concludes that most criminal acts are largely symbolic, a means for the underprivileged to equalize the differences between them and the remainder of society, to reach that American dream

of success. He writes:

> Violence offers more than just an occasional high; it provides a sense of being 'somebody' to people who feel they are nobody, whose experience of poverty and discrimination conveys a sense of rejection, even ostracism, by the larger society.[14]

Even more to the point is the comment of an inmate as reported by the Fortune Society: "If you feel like nothing, a gun can make you feel like a king. It's like playing God, knowing you have the power of life and death at your fingertip."[15]

If this is all true, then why do judges take such strong objection to these kinds of reports? Clearly it is once again a matter of how the potential juror integrates such data and forms meaning. While judges hold the jury system in high regard, there is a strong belief that many know so little about the judicial system that there are no built-in safeguards to keep such people from making the kind of "knee jerk" inferences that have been continually cited throughout this chapter.

But the question of press responsibility is also raised. Is the public's right and need to know enhanced by the publication of such statements as found in story 32? The story adds no information to the public's mind which is necessary to the proper prosecution of the charge for which the defendant is accused. In fact it adds information which is detrimental to such prosecution. Instead of providing clear and concise details on the criminal act which is being tried, the judicial waters are muddied by trying him on his entire prior criminal record. The juror cannot integrate the data necessary to reach an objective verdict, and therefore, justice cannot be served.

Story numbers 45 and 47 were ranked at the bottom of the continuum as least prejudicial. Story number 45 with a mean score of 2.233

contained the elements of little morbidity or inducement, normality, and custom. Story number 47 contained the same elements. Since the first two dimensions focus on rather normal concerns, the element of custom deserves exploration.

In story number 45 the emphasis is on what the defendant is doing while awaiting trial. The story reports that he is following the usual custom for migrant workers when they have spare time--playing cards. In story number 47 the defendant's desire to look well-dressed for his trial once again relates to a migrant custom. Judges as a whole saw little in these reported customs that would prejudice the defendant's trial.

Having considered the high and low ends of the continuum, there are several other highly ranked stories that merit attention. Story number 35 ranked third highest with a mean score of 9.566 and contained the elements of inducement, non-criminal deviance, and custom. It concerned itself with a "psychological" theory of revenge as a motivation for the crime.

Judges, in commenting on this story, again questioned the propriety of law enforcement officials making such statements to the press. The story is basically the result of a leak among a group of court-appointed psychiatrists who are trying to assess the defendant's competency to stand trial. The judges interviewed indicated the inference that can be made from the story is that he is competent and therefore had a motive.

The custom dimension clearly indicates what the motivation is. It is to get even with women in general for past treatment. The chain which it sets up in the juror's mind is easily discerned. Since it is

the custom of migrant workers to take the law into their own hands, the defendant sought to take the initiative in revenging past hurts inflicted on him by women. When such inferences are internalized, it creates substantial predisposition in the minds of jurors which is difficult for them to ignore in their deliberations.

The other story which deserves comment is number 22. It was the fourth highest in terms of overall rankings, with a mean score of 8.500. It contained the elements of morbidity, non-criminal deviance, and custom. The story reports on an interview with a "leading sociologist," who is an "expert" on migrant workers. He asserts that such a sex crime as the one committed by the defendant is not unusual for migrant workers because they have developed modes of deviant sexuality. Most of the judges questioned believed that the testimony of such experts is best left for the courtroom. There is no assurance that this "expert" will be called to testify under oath or be subject to cross-examination by the defendant's counsel.

Such "expert" comments are usually based on second or third-hand knowledge of the facts in a specific case. Therefore, the probability of the inferences they draw from such limited data being accurate are significantly diminished. Once again then the question must be raised as to what has the public gained from such a story. Nothing, except emotionally charged facts that may be inaccurate, that, when internalized, will result in severe prejudice.

A final word must be said about the respondents' criticisms. Some may raise the question that these were hypothetical cases in a hypothetical case, and that the criticisms made by judges might not be supported in reality. In the research and legal literature, members

of the bench have been consistent in their criticism of law enforcement "public relations," news writing that portends an open and shut case, publication of a defendant's prior record, and the comments of "experts" outside the courtroom.

Judge Bernard S. Meyer of the New York Supreme Court has been particularly critical of the law enforcement community and its pre-trial comments to the press.

> In the Sheppard decision the Supreme Court was emphatic concerning this. 'The court should have made some effort to control the release of leads, information, and gossip by police officers.' . . . Judges at every level must be just as emphatic to stem the tide of publicity by the police and prosecutor's office.[16]

The Reardon Committee of the American Bar Association sought to deal with this problem. Its field research indicated that "the overwhelming bulk of potentially prejudicial information and opinion comes from law enforcement officials."[17] However, in its final report, the recommendations indicated that self-regulation by the law enforcement community, rather than more stringent standards, was the best way to accomplish this.

It still continues to be a serious problem. Justice Brennan in Nebraska Press Association vs. Stuart stated: "Judges may stem much of the flow of prejudicial publicity at its source (lawyer, police, or court official) before it is obtained by representatives of the press."[18]

Finally in 1979, in the state of Oklahoma, during the Gene Leroy Hart trial, there were repeated statements made by prosecuting attorneys and the county sheriff which would match many of the comments raised in this thesis by the "hypothetical case."[19]

As to publication of a defendant's prior record, no significant

progress has been made in bar-press relations in terms of eliminating such reports from news stories. The irony of the whole debate over this issue is that one's prior record is inadmissable within the court system. It has absolutely nothing to do with the proceedings at hand. The Supreme Court in Michelson vs. United States, said:

> The state may not show defendant's prior trouble with the law or specific criminal acts. . . . The inquiry is not rejected because character is irrelevant; on the contrary it is said to weigh too much with the jury and to so overpersuade them as to prejudice one with a bad general record and deny him a fair opportunity to defend himself against a particular charge.[20]

Therefore, when a newspaper or broadcast medium reports a defendant's prior record, the public's interest is not served, for severe injustice has been proven to be the result.

Yet many in the press justify such publication on the grounds that it is part of the public's right to know. Telford Taylor in scolding the press has written: "The right to know what? . . . There certainly is no authorized interpretation of the First Amendment that I know of that guarantees the people's right to know everything at any time and every place."[21]

James C. Goodale, executive vice-president of the New York Times, has expressed the frustration of those who have attempted to restrain themselves from such publication.

> If indeed you had a million studies which showed conclusively that when you ran a prior record, it jeopardized a defendant's rights, the press ought to damn well know that and be damned sensitive to publication of that prior record.[22]

Then what of the testimony of experts outside the courtroom? In almost every case where there is controversy and high emotion, the press seems to be compelled to seek out anyone who can shed some light on the "big why?" In the Speck case, upon which our "hypothetical

case" is based, one repeatedly saw "experts" being quoted by the press. Granted, the events of July 14, 1966, stunned the world. The thought of eight young student nurses being ruthlessly cut down appalled an American nation which prided itself on law and order. Therefore, any explanation offered by anyone with some authority was sought after.

The day after the murders, before Richard Speck was even announced as being the prime suspect, the New York Times prominently featured a UPI interview with an eminent psychiatrist who explained that such violence was a result of American's complacency.[23] This story was incorporated into the Q-sort as story number 9.

Newsweek in its August 1, 1966, edition used as part of its story on the murders an interview with three noted Harvard Law School professors who criticized the conduct of Chicago Police Superintendent Orlando Wilson.[24]

On July 28, 1966, UPI ran the results of another interview with an "expert on Illinois criminal law." In this story the nation was told that "Speck could go free--on an insanity plea--even if he admitted he committed an act of murder."[25] This was also included in this experiment and is listed as story number 38.

Historically, judges and the courts have looked with disdain upon such conduct by the media. In the case of Patterson vs. Colorado, Justice Holmes stated: "The theory of our system is that the conclusions be reached in a case will be induced only by evidence and argument in open court, and not by any outside inference, whether private talk or public print.[26]

Carolyn Jaffe in an extensive study concerning prejudicial publicity from a legal viewpoint concluded:

> Since every criminal defendant has a federal Constitutional right to be confronted by and to cross-examine his accusers, a defendant may be prejudiced for inability to exercise this right if the news media publish an extra-judicial statement made by a person not subsequently called as a witness against him.[27]

Therefore, as previously stated, the problem with expert interviews is that they are not conducted under oath, and are not subject to cross-examination by the defendant's attorney. Most judges questioned in this study believed that such interviews would be better left till after the trial, if they are used at all.

At this point, then, we can draw a preliminary conclusion. In the minds of the respondents in this study, at least three areas of news reporting contribute to prejudicing a defendant's case. They are certain kinds of leading statements by law enforcement officials, publication of any prior criminal record, and statements by experts which will not be subject to adversary proceedings during the course of the trial.

Now that the stories have been considered in the total context, they need to be examined at each level of jurisdiction. How did federal judges differ from state and local judges in their assessments of the stories contained in the Q-sort? Table III contains the mean prejudicial scores of the fifty-four stories for each level of jurisdiction.

Federal and state judges appear to be in rather close agreement in their assessments of the degree of prejudice found in the fifty-four stories of the Q-sort. Local judges tended to differ significantly.

Both federal and state judges concurred on the two highest rated stories, overall, with number 20 getting mean scores of 10.625 and

TABLE III

PREJUDICIAL MEAN SCORES OF FIFTY-FOUR STORIES BY JURISDICTIONAL LEVEL

STORY	FEDERAL	STATE	LOCAL
1	7.625	7.231	9.667
2	6.375	6.923	9.556
3	6.000	7.077	8.444
4	8.125	8.231	7.667
5	5.375	5.308	3.556
6	7.250	7.077	10.222
7	6.375	5.308	6.778
8	5.625	4.769	6.667
9	6.000	6.000	5.333
10	4.000	4.385	5.889
11	5.250	5.923	7.444
12	3.875	5.846	6.667
13	7.000	6.308	6.667
14	5.500	5.000	5.000
15	5.625	5.385	6.778
16	5.625	4.231	4.333
17	7.375	6.000	5.333
18	4.625	4.538	5.222
19	10.125	7.538	7.667
20	10.625	10.154	9.333
21	5.500	5.615	3.333
22	8.750	7.538	9.667
23	4.875	5.000	3.889
24	7.875	8.385	8.778
25	7.500	6.615	7.111
26	5.750	6.538	5.000
27	8.625	7.692	5.778
28	7.625	7.077	7.889
29	7.500	7.462	5.333
30	4.250	4.769	4.889
31	7.625	7.000	6.778
32	10.625	10.077	10.000
33	5.875	6.538	8.222
34	6.250	6.692	5.667
35	9.750	9.769	9.111
36	6.750	7.308	5.000
37	5.250	5.000	5.444
38	7.500	7.385	5.889
39	3.250	3.846	5.778
40	7.125	6.538	4.444
41	3.500	4.615	3.444
42	7.500	7.000	8.556
43	4.625	6.462	5.222
44	5.750	7.385	6.333
45	1.500	2.846	2.000
46	4.125	4.154	4.556
47	1.875	2.077	1.444
48	6.000	6.846	6.444
49	4.250	3.692	4.000
50	3.375	3.231	4.556
51	4.125	4.538	3.222
52	2.875	3.615	3.889
53	3.750	3.692	2.111
54	4.125	3.769	2.000

10.154 respectively, while number 32 obtained means of 10.625 and 10.077. Local judges also concurred on story number 32 with a mean of 10.000.

Therefore, it would appear that all judges, regardless of the level of jurisdiction, view extra-judicial statements concerning the motivation for a crime and publication of a defendant's prior record as inherently prejudicial to the accused's right to a fair trial. The matter of extra-judicial statements was singled out in particular. Judges seem to be in agreement that until an individual testifies under oath and is subject to cross-examination, nothing he says about the crime should be made public.

Local judges differed with their federal and state counterparts over story number 6. They gave it a mean score of 10.222, while federal and state judges ranked it at 7.250 and 7.077 respectively. This story is once again concerned with the views of an "expert." In this case it is a psychiatrist who has no legal relationship to the defendant. He paints him as a man "tortured by fantasy...and his macabre imagination."

These judges believed that such claims cannot be understood by the public at large, and therefore, lead them to make unjust inferences based on the Aristotilean concept of the "law of identity." Wendell Johnson describes the law this way: People "talk and act as if a thing is what it is. It is possible to put it in the general form: A is A."[28] Therefore, people who read this story and operate on this law make the damning inference: "once a rapist, always a rapist." Such inference is given extra weight since it comes from the mouth of an "expert."

As in the previous analysis, the question of whether such a story would actually appear in print is raised. This story appeared in the Tulsa World of September 26, 1975, in connection with a series of rape-murders. The wording of the story is exactly as it appeared on page one, with the exception of changing the names of the individuals involved.[29] Richard Speck's case generated a similar treatment as already demonstrated.

When pressed for particulars on their disagreement with their federal and state counterparts over the ramifications of such a story, they indicated that such a story when confined within a municipality tends to incite the public opinion out of fear of being the "next victim." Such a fear makes seating a jury exceedingly difficult, in particular, seating female jurors because of possible reprisals.

Such thinking also apparently influenced local judges' ranking of story number 22, which obtained a mean score of 9.667. Federal judges rated it with a mean of 8.750, while state judges had a mean of 7.538. This story dealt with the comments of an expert on deviant sexuality among migrant workers. Judges believed that while this may have been a significant factor in the motivation for the crime, such opinions once again should be made in the witness stand and not in the press. Local judges also indicated once again the difficulty such a story would create in seating women as unbiased jurors.

When the three sets of mean scores are intercorrelated, the following correlations (r) are obtained, as contained in Table IV.

Such relationships tend further to establish that federal and state judges are more in agreement in the matter of certain prejudicial factors than when either jurisdictional level is compared to local

judges' assessments. Further, when state and local judges' mean scores are evaluated in terms of agreement, there exists only a moderately strong relationship. It is even lower when the federal and local judges' scores are compared.

TABLE IV

INTERCORRELATION VALUES OF MEAN SCORES TO FIFTY-FOUR STORIES BY JUDICIAL TYPE

	Federal	State	Local
Federal	--	0.9138	0.7388
State	0.9138	--	0.7772
Local	0.7388	0.7772	--

Summary of Prejudicial Rankings

When evaluating stories, as to whether they are prejudicial, two key values appear, regardless of jurisdictional level. Federal, state and local judges tend to agree strongly on the matter of extra-judicial statements and their prejudicial implications. All seem to be in agreement that the public gains very little in terms of making the criminal justice system better. If anything, such statements are not in the public interest, because of the continuous controversy they generate which forces continuances, changes of venue, and other judicial

tools which lengthen the time and the cost of meting out justice.

There was seemingly less agreement at all levels over the prejudicial value of publicizing a defendant's prior record. Federal and state judges regarded stories containing such information as more inherently prejudicial than did local judges. To some degree this may be accounted for by the fact that local judges tend to try first-time offenders, while the state and federal judges try endless numbers of cases involving repeat offenders.

Therefore, initially we must conclude that the primary element for which a strong case may be made across the board is that of the extra-judicial statement.

Analysis of Variance Among Judges

To analyze the differences among judges, each set of news elements was analyzed so as to eliminate chance variations, and therefore allow the researcher to know if the judgments on each news story reflect a statistically significant trend of thought. The Type VI analysis of variance permits the researcher to examine the variable sets two at a time. Therefore, criminal magnitude and prior record were examined first, followed by criminal magnitude and ethnic background, and then prior record and ethnic background.

In essence the Type VI is a combination of two research tools: factorial analysis of variance and treatment by subjects design. When they are combined, it permits the researcher to see the effects of three factors working in concert and how that affects the repeated measures on the two factors being measured.[29]

Such examination is important when one realizes that in the

physical world, there is constant interaction. No phenomenon simply happens in isolation. But rather it is akin to a pool table where the cue ball is shot towards the group of balls in the center. All of them move, some further than others, but all as a result of that single shot.

The three-dimensional structure set up in this experiment to assess prejudicial publicity is built on the assumption that each variable by itself might create significant amounts of prejudice. However, one needs to measure their effects when they work together for that is how physical reality operates. Only then can one be sure that his results can be taken to an editor or broadcaster and used as evidence to indicate what can or cannot be disseminated without deprivation of another's rights.

Criminal Magnitude-Prior Record

As structured, the experiment utilized three major variables. Each of these had three sublevels. For criminal magnitude they were morbidity, inducement and little or no morbidity or inducement. For prior record they were non-criminal deviance, criminal interaction and normality. Ethnic background's sublevels are minority status, custom and little ethnic. Therefore, there were 27 combinations of these when utilized three to a story. Thus, two stories for each combination resulted in the figure of fifty-four stories for the Q-sort.

Each matrix contains a mean score from each judge for his assessment of six stories containing the combination of two elements being considered. The analysis matrix for the first combination is found

in Table V.

A review of the table shows that once again the total score for each judge is fixed due to the fixed nature of the continuum. Mean scores are shown by judicial levels in each element pair. This analysis answered the following: Are significant differences found between elements? Does one element by itself produce a higher probable prejudiced score than another? Does criminal magnitude with its sublevels create a higher degree of prejudice when it interacts with prior record or judicial type? Do judges differ significantly between levels on their assessments of the variables?

The analysis of these two combinations is summarized in Table VI.

There were significant differences in the thought pattern of respondents in distinguishing between the constituent elements of criminal magnitude and prior record. The probability of obtaining F-ratios as high as 202.096 and 90.100 for these respective variables by chance would occur less than one time in 100 similar experiments.

Such significant differences suggest that judges in viewing actual news stories can distinguish between the prejudicial value of morbidity, inducement, non-criminal deviance, criminal interaction and normality, although significant disagreement exists between them. This tends to confirm the findings of other researchers in dealing with potential jurors that when such items as a defendant's prior record and the "gory" details of the crime are disseminated to the public, the result is predisposition of guilt and therefore denial of that individual's Sixth Amendment rights.

However, when the type of judge, based on jurisdictional level, interacts with each of these variables on a separate basis, no signifi-

TABLE V

TYPE VI ANALYSIS FOR CRIMINAL MAGNITUDE AND PRIOR RECORD

FEDERAL JUDGES

	MORBIDITY						INDUCEMENT					
	NON-CRIM DEVIATION		CRIMINAL INTERACTION		NORMALITY		NON-CRIM DEVIATION		CRIMINAL INTERACTION		NORMALITY	
JUDGE	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED
1	7.167	51.361	7.333	53.778	5.333	28.444	7.833	61.361	7.000	49.000	5.333	28.444
2	6.333	40.111	7.833	61.361	5.167	26.694	7.000	49.000	7.167	51.361	6.333	40.111
3	7.667	58.778	6.500	42.250	5.000	25.000	8.000	64.000	6.333	40.111	6.167	38.028
4	6.833	46.694	5.833	34.028	5.500	30.250	7.333	53.778	7.333	53.778	6.167	38.028
5	7.333	53.778	7.333	53.778	4.667	21.778	7.833	61.361	7.000	49.000	6.500	42.250
6	7.833	61.361	7.000	49.000	5.333	28.444	7.500	56.250	6.167	38.028	5.833	34.028
7	7.667	58.778	6.500	42.250	5.667	32.111	8.000	64.000	5.833	34.028	6.167	38.028
8	7.167	51.361	6.500	42.250	6.000	36.000	7.500	56.250	6.000	36.000	6.333	40.111
9	5.500	30.250	6.500	42.250	5.167	26.694	7.667	58.778	7.667	58.778	5.167	26.694
TTL	63.500	452.472	61.333	420.944	47.833	255.417	68.667	524.777	60.500	410.083	54.000	325.722
MEAN	7.250		6.854		5.333		7.625		6.604		6.104	

LITTLE MORBIDITY OR INDUCEMENT

	NON-CRIM DEVIATION		CRIMINAL INTERACTION		NORMALITY			
JUDGE	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	TOTAL	TOTAL SQUARED
1	5.667	32.111	4.667	21.778	3.667	13.444	54.000	2916.000
2	5.167	26.694	4.333	18.778	4.667	21.778	54.000	2916.000
3	6.500	42.250	4.333	18.778	3.500	12.250	54.000	2916.000
4	6.167	38.028	6.167	38.028	2.667	7.111	54.000	2916.000
5	6.333	40.111	4.000	16.000	3.000	9.000	54.000	2916.000
6	6.667	44.444	3.833	14.694	3.833	14.694	54.000	2916.000
7	6.667	44.444	4.333	18.778	3.167	10.028	54.000	2916.000
8	6.000	36.000	5.333	28.444	3.167	10.028	54.000	2916.000
9	5.500	30.250	4.500	20.250	6.333	40.111	54.000	2916.000
TTL	54.667	334.333	41.500	195.528	34.000	138.444	486.000	26244.000
MEAN	6.146		4.625		3.458			

TABLE V (Continued)

STATE JUDGES

JUDGE	MORBIDITY NON-CRIM DEVIATION SCORE	MORBIDITY NON-CRIM DEVIATION SCORE SQUARED	MORBIDITY CRIMINAL INTERACTION SCORE	MORBIDITY CRIMINAL INTERACTION SCORE SQUARED	MORBIDITY NORMALITY SCORE	MORBIDITY NORMALITY SCORE SQUARED	INDUCEMENT NON-CRIM DEVIATION SCORE	INDUCEMENT NON-CRIM DEVIATION SCORE SQUARED	INDUCEMENT CRIMINAL INTERACTION SCORE	INDUCEMENT CRIMINAL INTERACTION SCORE SQUARED	INDUCEMENT NORMALITY SCORE	INDUCEMENT NORMALITY SCORE SQUARED
10	6.167	38.028	8.000	64.000	7.333	53.778	5.000	25.000	6.833	46.694	6.833	46.694
11	4.667	21.778	7.333	53.778	5.000	25.000	6.167	38.028	6.333	40.111	6.333	40.111
12	7.333	53.778	6.500	42.250	7.000	49.000	7.333	53.778	6.667	44.444	5.833	34.028
13	7.667	58.778	6.500	42.250	5.000	25.000	8.000	64.000	6.333	40.111	6.167	38.028
14	6.667	44.444	7.167	51.361	5.333	28.444	7.167	51.361	8.000	64.000	5.000	25.000
15	7.000	49.000	7.833	61.361	5.667	32.111	7.167	51.361	7.833	61.361	4.833	23.361
16	6.500	42.250	5.333	28.444	6.500	42.250	7.167	51.361	6.500	42.250	6.667	44.444
17	6.833	46.694	5.833	34.028	5.500	30.250	7.333	53.778	7.333	53.778	6.167	38.028
18	6.500	42.250	6.833	46.694	6.667	44.444	6.667	44.444	7.167	51.361	6.167	38.028
19	6.000	36.000	7.000	49.000	5.500	30.250	7.500	56.250	8.000	64.000	5.833	34.028
20	8.333	69.444	6.667	44.444	7.000	49.000	7.000	49.000	6.000	36.000	6.167	38.028
21	7.000	49.000	6.667	44.444	6.167	38.028	7.667	58.778	7.000	49.000	6.333	40.111
22	8.167	66.694	6.667	44.444	7.833	61.361	7.167	51.361	6.167	38.028	5.000	25.000
TTL	88.833	618.138	88.333	606.499	80.500	508.916	91.333	648.499	90.167	631.138	77.333	464.888
MEAN	6.628		6.782		5.987		7.064		7.051		5.962	

LITTLE MORBIDITY OR INDUCEMENT

JUDGE	NON-CRIM DEVIATION SCORE	NON-CRIM DEVIATION SCORE SQUARED	CRIMINAL INTERACTION SCORE	CRIMINAL INTERACTION SCORE SQUARED	NORMALITY SCORE	NORMALITY SCORE SQUARED	TOTAL	TOTAL SQUARED
10	5.500	30.250	4.667	21.778	3.667	13.444	54.000	2916.000
11	7.000	49.000	7.500	56.250	3.667	13.444	54.000	2916.000
12	6.000	36.000	4.833	23.361	2.500	6.250	54.000	2916.000
13	6.500	42.250	4.333	18.778	3.500	12.250	54.000	2916.000
14	4.833	23.361	4.500	20.250	5.333	28.444	54.000	2916.000
15	6.167	38.028	4.833	23.361	2.667	7.111	54.000	2916.000
16	7.000	49.000	5.000	25.000	3.333	11.111	54.000	2916.000
17	6.167	38.028	6.167	38.028	2.667	7.111	54.000	2916.000
18	5.500	30.250	5.000	25.000	3.500	12.250	54.000	2916.000
19	6.500	42.250	4.333	18.778	3.333	11.111	54.000	2916.000
20	5.167	26.694	5.167	26.694	2.500	6.250	54.000	2916.000
21	6.333	40.111	4.333	18.778	2.500	6.250	54.000	2916.000
22	5.833	34.028	4.833	23.361	2.333	5.444	54.000	2916.000
TTL	78.500	479.249	65.500	339.416	41.500	140.472	702.000	37908.000
MEAN	6.013		5.013		3.500			

TABLE V (Continued)

LOCAL JUDGES

JUDGE	MORBIDITY NON-CRIM DEVIATION SCORE	MORBIDITY NON-CRIM DEVIATION SCORE SQUARED	MORBIDITY CRIMINAL INTERACTION SCORE	MORBIDITY CRIMINAL INTERACTION SCORE SQUARED	MORBIDITY NORMALITY SCORE	MORBIDITY NORMALITY SCORE SQUARED	INDUCEMENT NON-CRIM DEVIATION SCORE	INDUCEMENT NON-CRIM DEVIATION SCORE SQUARED	INDUCEMENT CRIMINAL INTERACTION SCORE	INDUCEMENT CRIMINAL INTERACTION SCORE SQUARED	INDUCEMENT NORMALITY SCORE	INDUCEMENT NORMALITY SCORE SQUARED
23	7.500	56.250	5.500	30.250	8.000	64.000	7.500	56.250	6.167	38.028	4.167	17.361
24	7.000	49.000	5.333	28.444	7.167	51.361	7.333	53.778	7.167	51.361	4.500	20.250
25	7.333	53.778	6.000	36.000	6.833	46.694	7.000	49.000	7.333	53.778	5.000	25.000
26	7.333	53.778	5.667	32.111	7.000	49.000	7.333	53.778	6.500	42.250	5.500	30.250
27	7.333	53.778	5.000	25.000	7.333	53.778	8.167	66.694	6.333	40.111	5.833	34.028
28	7.000	49.000	5.667	32.111	7.500	56.250	7.500	56.250	6.833	46.694	5.000	25.000
29	8.167	66.694	5.500	30.250	7.667	58.778	7.167	51.361	6.667	44.444	5.500	30.250
30	7.500	56.250	5.500	30.250	7.333	53.778	7.500	56.250	6.833	46.694	6.000	36.000
TTL	59.167	438.528	44.167	244.417	58.833	433.638	59.500	443.361	53.833	363.361	41.500	218.139
MEAN	7.481		5.648		7.407		7.407		6.667		5.167	
TTL	211.500	1509.137	193.833	1271.860	187.167	1197.971	219.500	1616.637	204.500	1404.581	172.833	1008.748

LITTLE MORBIDITY OR INDUCEMENT

JUDGE	NON-CRIM DEVIATION SCORE	NON-CRIM DEVIATION SCORE SQUARED	CRIMINAL INTERACTION SCORE	CRIMINAL INTERACTION SCORE SQUARED	NORMALITY SCORE	NORMALITY SCORE SQUARED	TOTAL	TOTAL SQUARED
23	6.000	36.000	5.333	28.444	3.833	14.694	54.000	2916.000
24	5.833	34.028	5.667	32.111	4.000	16.000	54.000	2916.000
25	5.833	34.028	5.333	28.444	3.333	11.111	54.000	2916.000
26	6.000	36.000	5.000	25.000	3.667	13.444	54.000	2916.000
27	5.167	26.694	5.333	28.444	3.500	12.250	54.000	2916.000
28	6.500	42.250	5.000	25.000	3.000	9.000	54.000	2916.000
29	5.167	26.694	4.500	20.250	3.667	13.444	54.000	2916.000
30	5.333	28.444	4.000	16.000	4.000	16.000	54.000	2916.000
TTL	45.833	264.139	40.167	203.694	29.000	105.944	432.000	23328.000
MEAN	5.741		5.000		3.481			
TTL	179.000	1077.720	147.167	738.637	104.500	384.860	1620.000	87480.000

cant differences are found. From this, one can infer that all judges, regardless of jurisdictional level, view the prejudicial value of these elements about the same. On a limited scale, such a finding would indicate that the concept of prejudicial publicity is defined uniformly among judges in the state of Oklahoma, whether they sit in local, state or federal courts.

TABLE VI

SUMMARY OF ANALYSIS OF VARIANCE BETWEEN DIMENSIONS OF CRIMINAL MAGNITUDE AND PRIOR RECORD

Source	df	s. s.	m. s.	F	p
Total	269	490.1510	1.8220	(not needed)	
Between Subjects	29	*	*	*	*
Between Judicial Type	2	*	*	*	*
Between Subject Error	27	*	*	*	*
Within Subjects	240	490.1510	2.0422	(not needed)	
1 Between Criminal Magnitude	2	198.6612	99.3300	202.096	0.01
2 Between Prior Record	2	118.1059	59.0520	90.100	0.01
1 Interaction Judge X Criminal Magnitude	4	3.8359	0.9580	1.949	n.s.
2 Interaction Judge X Prior Record	4	7.0189	1.7547	2.677	n.s.
3 Interaction Criminal Magnitude X Prior Record	8	24.0889	6.0224	13.365	0.01
3 Interaction Judge X Criminal Magnitude X Prior Record	8	27.8332	3.4791	7.721	0.01
Error 1	54	26.5456	0.4915		
Error 2	54	35.3942	0.6554		
Error 3	108	48.6672	0.4506		

* There are no differences between subjects because of the fixed nature of the continuum in Q-methodology.

When the constituent elements of criminal magnitude and prior record interact apart from jurisdictional level, significant differences are found in the perception of their prejudicial value. The probability of obtaining an F-ratio as high as 13.365 by chance is less than one time in 100 similar experiments. To the reporter, editor and broadcaster, such a finding should raise a flag of caution in their minds, because the statistical data suggests that publication of the morbid details of a crime may not be prejudicial in and of themselves, but when disseminated with details of the defendant's prior criminal record, significant prejudice may result.

When the aspect of judicial type is added to this interaction, significant differences are still found in the perception of what is inherently prejudicial. Therefore, judges do differ in terms of the level upon which they rule, in determining whether the morbid details of the crime, or the background of the defendant when disseminated, provokes substantial predisposition on the part of potential jurors. Therefore, the uniformity of meaning as previously suggested may not be quite accurate.

Federal and state judges tended to be similar in their assessments, rating stories that mentioned the defendant's prior record as prejudicial. Local judges were more concerned with stories that presented the emotional and sensational aspects of the crime.

When viewed in light of the semantic environment, these results once again affirm the fact that prejudicial publicity cannot be examined from a single dimension. It invokes interaction: interaction between news elements, and between the type of individual examining them.

To more carefully study these interactions, the significant elements that have been isolated can be placed in analysis paradigms. Using the statistical tool of critical difference between mean prejudicial scores, accurate assessments may be made, and therefore, accurate recommendations to the press and judicial communities.

When the criminal magnitude dimension is broken into its constituent elements, no significant differences are found between the mean prejudicial scores of morbidity and inducement as shown in Table VII. This suggests that all judges viewed these two facets as being equal in the amount of prejudice produced.

TABLE VII

MEAN SCORES FOR CONSTITUENT ELEMENTS OF THE CRIMINAL MAGNITUDE DIMENSION AS ASSESSED BY THIRTY JUDGES

Morbidity	Inducement	Little Morbidity or Inducement
6.5833	6.6314	4.7903
Critical Difference = 0.6298		

However, both morbidity and inducement were ranked significantly higher than the element of little morbidity or inducement. Therefore, judges perceived that the common details concerning the perpetration of a crime had little probability of predisposing jurors to find the

defendant guilty.

An example of this can be found in story number 45 where it is reported that the defendant is passing time before his trial playing cards in his jail cell. Or story number 47 where the visit of a local tailor to the defendant's jail cell is reported. The reason for the visit was to get him decently clothed for his trial. The majority of judges interviewed saw little or no prejudicial value in these.

The reasoning behind these differences, however, goes back to how individuals structure meaning. Judges believed that when the morbid details of the crime (how it was committed, how it affected the victim and those surrounding him) were published, it forced the potential juror to find a motivation for it, to answer why. Therefore, when speculation was added to such stories as to why the crime was committed, whether it came from the police, prosecutor, defense attorney, or "experts," potential jurors internalized it to reduce tension and uncertainty. As a result, their perception of the incident becomes one of an open and shut case that only a person with "X" motive could commit such a crime and, therefore, is guilty.

The sensationalism of the press in the past provides adequate confirmation of this. In the Sheppard murder case, the media of the city of Cleveland, and in particular the Cleveland Press, unleashed a barrage of publicity, most of which allowed the general public to utilize the reasoning suggested above. In its now infamous front page editorial, "Why Don't the Police Quiz the No. 1 Suspect?", the Cleveland Press asserted:

> Now proved under oath (Sam Sheppard) to be a liar, still free to go about his business, shielded by his family, protected by a smart lawyer who has made monkeys of the police, . . . carrying

> a gun part of the time, left free to do whatever he pleases, Sam Sheppard still hasn't been taken to headquarters.[31]

To a potential juror trying to find meaning in a gruesome crime, little has been left to chance here. He's a liar; he's free to do what he pleases; he carries a gun. The conclusion: a person who acts in this fashion must be guilty, because innocent people do not lie, do not carry a gun, and do not hide from police. Granted, to the educated, such a line of inferences seems ridiculous, but to the average individual, reading day-in, day-out concerning the crime, such conclusions are easy to reach.

Is the public interest and the cause of justice served by such publication? On the basis of this and other studies, the author is forced to conclude that the public interest is only served when such items, particularly those related to a defendant's prior record, are published at least after a jury is seated, if not after the trial is completed.

The defendant must have an opportunity to confront those who would accuse him, including the media. Dredging up his prior record denies him of the most fundamental right: standing trial only for the crimes for which he is accused.

When the prior record dimension is broken into its constituent elements, as illustrated in Table VIII, one finds no significant differences between mean scores for non-criminal deviance and criminal interaction. This once again suggests that judges as a whole viewed these as equal in terms of the degree of prejudice produced. However, normality, or stories concerning the defendant's background that do not discuss either socially deviant practices or past interaction with the law, produces significantly less prejudice than the other two.

TABLE VIII

MEAN SCORES FOR CONSTITUENT ELEMENTS OF PRIOR RECORD DIMENSION AS ASSESSED BY THIRTY JUDGES

Non-Criminal Deviance	Criminal Interaction	Normality
6.775	6.066	4.161
Critical Difference = 0.7273		

Judges once again strongly affirmed the belief that the admission or dissemination of information concerning the defendant's previous interaction with the law strongly predisposes jurors to use the law of identity: Once a criminal, always a criminal.

However, when the constituent elements of criminal magnitude and prior record interact across jurisdictional levels, the inducement and non-criminal deviation combination emerges as that which is highest in prejudicial value. This is illustrated in Table IX.

Therefore, judges held that stories containing alleged motivations for the crime and details of previous deviant behavior by the defendant produced significant amounts of prejudice. In analyzing this, one must again view it in terms of structuring meaning. If a defendant has engaged in some bizarre practice that society as a whole views as deviant, that alone is enough to predispose a potential juror to find him guilty simply because he is "not like me." Add to this, comments by officials, experts, and others, as to the possible motive for the crime, and that

predisposition is reinforced.

TABLE IX

MEAN SCORES FOR INTERACTION OF CONSTITUENT ELEMENTS OF THE CRIMINAL MAGNITUDE AND PRIOR RECORD DIMENSIONS AS ASSESSED BY THIRTY JUDGES

	Non-Criminal Deviance	Criminal Interaction	Normality	Non-Criminal Deviance	Mean
Morbidity	7.0500	6.4611	6.2389	7.0500	6.7000
Inducement	7.3166	6.8166	5.7611	7.3166	6.8027
Little Morbidity or Inducement	5.9666	4.9055	3.4833	5.9666	5.0803
Morbidity	7.0500	6.4611	6.2389	7.0500	6.7000
Mean Total	6.8456	6.1610	5.4305	6.8456	7.3207

Critical Difference = 0.7673

Judges as a whole also viewed the combination of morbidity and non-criminal deviance as being significantly high in prejudice, although the magnitude of its ranking is not as great as inducement and non-criminal deviance. Here again the morbidity element would appear to function as a reinforcement factor for a predisposition that is already present by virtue of the non-criminal deviance element.

This interaction also demonstrates a possible inconsistency in judges' thought patterns. Many of the respondents constantly talked about publication of a defendant's past criminal record. However, it

would appear that when the facet of the prior record dimension interacts with criminal magnitude dimension, such publication is downgraded significantly in terms of possible prejudicial value. This might suggest that publication of prior record is a "hobby horse" issue for judges in general, and doesn't enter into their deliberations as much as they believe.

Significant differences were also found when these two dimensions interacted with judicial type based on jurisdictional level. That interaction is illustrated in Table X.

Federal judges, when interacting with the constituent elements of criminal magnitude and prior record, ranked the combination of inducement and non-criminal deviance as being significantly highest in terms of creating adverse prejudice. In other words they viewed statements concerning the reasons or motivations for the crime, as well as details concerning the defendant's deviant behavior as most likely to predispose potential jurors to find him guilty. The only combination which did not exceed the critical difference was that of morbidity and non-criminal deviance. Thus it would seem that either aspect of the criminal magnitude dimension when linked with information concerning deviant behavior of the defendant will produce significant prejudice in the opinion of federal judges.

When compared with their state and local counterparts, no significant differences are found in their perceptions of the prejudicial value of morbidity and non-criminal deviance. Judges at all levels viewed this combination as being equal in terms of producing prejudice. The magnitude of local judges' assessments is greater than federal, although not enough to be statistically significant.

TABLE X

MEAN SCORES FOR COMBINATIONS OF ELEMENTS
OF CRIMINAL MAGNITUDE DIMENSION AND
PRIOR RECORD DIMENSION WHEN
ASSESSMENTS ARE DIVIDED
BY JURISDICTIONAL LEVEL

Jurisdictional Level	Morbidity			Inducement			Little Morbidity or Inducement			Mean Total
	Non-Criminal Deviance	Criminal Interaction	Normality	Non-Criminal Deviance	Criminal Interaction	Normality	Non-Criminal Deviance	Criminal Interaction	Normality	
Federal	7.250	6.854	5.333	7.625	6.604	6.104	6.146	4.625	3.458	6.000
State	6.628	6.782	5.987	7.064	7.051	5.962	6.013	5.013	3.500	6.000
Local	7.481	5.648	7.407	7.407	6.667	5.167	5.741	5.000	3.481	6.000
Federal	7.250	6.854	5.333	7.625	6.604	6.104	6.146	4.625	3.458	6.000
Mean Total	7.150	6.534	6.014	7.430	6.731	5.834	6.011	4.815	3.474	6.000

Critical Difference = 0.7673

Judges also concurred in their ranking the inducement and non-criminal deviance combination the highest in terms of statistical significance. Therefore, all judges view statements concerning the reasons for the crime, when they interact with statements concerning the defendant's deviant behavior, as being inherently prejudicial.

State judges disagreed with their federal counterparts in the assessment of the inducement and criminal interaction combination, ranking it almost equal with the inducement and non-criminal deviance combination. Therefore, state judges may be best characterized by their concern over statements that deal with the motivations or reasons for the commission of a crime when they are backed up with information concerning the defendant's past history.

Apart from these considerations, state judges appear to be in substantial agreement with federal judges over what news elements contribute to prejudice.

Local judges differed clearly in their assessments of the criminal magnitude and prior record dimension. As a group, they rated the combination of morbidity and non-criminal deviance the highest. This confirms what has been said of them previously, that they are primarily concerned with the highly emotional aspects of criminal reporting and, in particular, the morbid details and statements concerning deviant behavior on the part of the defendant. While there was no statistical difference between local judges and their federal counterparts on this combination, local judges did rate it significantly higher than did state judges.

These judges also ranked morbidity and normality significantly high, with no difference between their assessment of morbidity and

non-criminal deviance and it. Therefore, they reaffirm their view that substantial prejudice results from dissemination of the sensational aspects of the crime, even when linked with the ordinary aspects of the defendant's background.

Local judges also differ significantly from federal and state judges in their assessment of the prejudicial value of publishing a defendant's prior criminal record. They rank it significantly low in comparison to the others when it is linked with morbidity, and about equal when it is linked with inducement and little morbidity or inducement. Since local judges tend to handle first-time offenders, such a finding should be expected.

Therefore, we may summarize these results as follows:

1) Federal judges may be characterized as non-criminal deviance oriented. They view any story combination containing this element as significantly prejudicial, especially when it is linked with inducement.

2) State judges may be characterized as inducement oriented. They view any story dealing with the motivations for the crime as strongly prejudicial, particularly when linked with either non-criminal deviance or criminal interaction.

3) Local judges may be characterized as morbidity oriented, viewing any story that deals with the morbid and sensational aspects of the crime as inherently prejudicial, particularly when it is linked with non-criminal deviance or normality.

Criminal Magnitude-Ethnic Background

The analysis matrix for this combination of dimensions is given in Table XI. These represent the mean scores for each judge's assessment

TABLE XI

TYPE VI ANALYSIS FOR CRIMINAL MAGNITUDE
AND ETHNIC BACKGROUND

FEDERAL JUDGES

JUDGE	MINORITY SCORE	MINORITY SCORE SQUARED	MORBIDITY CUSTOM SCORE	MORBIDITY CUSTOM SCORE SQUARED	LITTLE ETHNIC SCORE	LITTLE ETHNIC SCORE SQUARED	MINORITY SCORE	MINORITY SCORE SQUARED	INDUCEMENT CUSTOM SCORE	INDUCEMENT CUSTOM SCORE SQUARED	LITTLE ETHNIC SCORE	LITTLE ETHNIC SCORE SQUARED
1	6.667	44.444	7.167	51.361	6.000	36.000	7.167	51.361	7.333	53.778	5.667	32.111
2	7.667	58.778	6.000	36.000	5.667	32.111	7.333	53.778	8.500	72.250	4.667	21.778
3	6.333	40.111	6.833	46.694	6.000	36.000	7.500	56.250	8.167	66.694	4.833	23.361
4	6.000	36.000	6.167	38.028	6.000	36.000	7.167	51.361	9.000	81.000	4.667	21.778
5	7.000	49.000	6.500	42.250	5.833	34.028	7.167	51.361	8.833	78.028	5.333	28.444
6	8.167	66.694	6.333	40.111	5.667	32.111	6.500	42.250	8.667	75.111	4.333	18.778
7	7.000	49.000	6.833	46.694	6.000	36.000	6.667	44.444	8.500	72.250	4.833	23.361
8	6.833	46.694	6.833	46.694	6.000	36.000	6.500	42.250	8.833	78.028	4.500	20.250
9	6.667	44.444	4.000	16.000	6.500	42.250	7.333	53.778	7.500	56.250	5.667	32.111
TTL	62.333	435.166	56.667	363.833	53.667	320.500	63.333	446.833	75.333	633.388	44.500	221.972
MEAN	6.958		6.583		5.896		7.000		8.479		4.854	

LITTLE MORBIDITY OR INDUCEMENT

JUDGE	MINORITY SCORE	MINORITY SCORE SQUARED	CUSTOM SCORE	CUSTOM SCORE SQUARED	LITTLE ETHNIC SCORE	LITTLE ETHNIC SCORE SQUARED	TOTAL	TOTAL SQUARED
1	4.000	16.000	5.167	26.694	4.833	23.361	54.000	2916.000
2	4.333	18.778	5.333	28.444	4.500	20.250	54.000	2916.000
3	5.000	25.000	4.667	21.778	4.667	21.778	54.000	2916.000
4	5.167	26.694	4.833	23.361	5.000	25.000	54.000	2916.000
5	4.667	21.778	4.000	16.000	4.667	21.778	54.000	2916.000
6	4.833	23.361	4.667	21.778	4.833	23.361	54.000	2916.000
7	5.000	25.000	4.667	21.778	4.500	20.250	54.000	2916.000
8	5.000	25.000	4.833	23.361	4.667	21.778	54.000	2916.000
9	5.167	26.694	7.167	51.361	4.000	16.000	54.000	2916.000
TTL	43.167	208.305	45.333	234.555	41.667	193.556	486.000	26244.000
MEAN	4.750		4.771		4.708			

TABLE XI (Continued)

STATE JUDGES

JUDGE	MINORITY SCORE	MINORITY SCORE SQUARED	MORBIDITY CUSTOM SCORE	MORBIDITY CUSTOM SCORE SQUARED	LITTLE ETHNIC SCORE	LITTLE ETHNIC SCORE SQUARED	MINORITY SCORE	MINORITY SCORE SQUARED	INDUCEMENT CUSTOM SCORE	INDUCEMENT CUSTOM SCORE SQUARED	LITTLE ETHNIC SCORE	LITTLE ETHNIC SCORE SQUARED
10	7.167	51.361	7.000	49.000	7.333	53.778	7.167	51.361	6.667	44.444	4.833	23.361
11	5.167	26.694	7.000	49.000	4.833	23.361	7.833	61.361	6.667	44.444	4.333	18.778
12	7.667	58.778	5.000	25.000	8.167	66.694	7.500	56.250	7.833	61.361	4.500	20.250
13	6.333	40.111	6.833	46.694	6.000	36.000	7.500	56.250	8.167	66.694	4.833	23.361
14	6.167	38.028	7.667	58.778	5.333	28.444	7.667	58.778	8.000	64.000	4.500	20.250
15	6.667	44.444	7.167	51.361	6.667	44.444	6.500	42.250	8.500	72.250	4.833	23.361
16	6.333	40.111	5.667	32.111	6.333	40.111	6.000	36.000	8.333	69.444	6.000	36.000
17	6.000	36.000	6.167	38.028	6.000	36.000	7.167	51.361	9.000	81.000	4.667	21.778
18	7.167	51.361	5.667	32.111	7.167	51.361	7.667	58.778	8.167	66.694	4.167	17.361
19	5.667	32.111	7.500	56.250	5.333	28.444	7.167	51.361	9.000	81.000	5.167	26.694
20	7.167	51.361	7.167	51.361	7.667	58.778	6.333	40.111	7.500	56.250	5.333	28.444
21	6.333	40.111	7.500	56.250	6.000	36.000	6.667	44.444	8.500	72.250	5.833	34.028
22	7.500	56.250	6.500	42.250	8.667	75.111	7.167	51.361	7.000	49.000	4.167	17.361
TTL	85.333	566.722	86.833	588.194	85.500	578.527	92.333	659.666	103.333	828.833	63.167	311.027
MEAN	6.500		6.487		6.410		7.115		7.987		4.974	

LITTLE MORBIDITY OR INDUCEMENT

JUDGE	MINORITY SCORE	MINORITY SCORE SQUARED	CUSTOM SCORE	CUSTOM SCORE SQUARED	LITTLE ETHNIC SCORE	LITTLE ETHNIC SCORE SQUARED	TOTAL	TOTAL SQUARED
10	4.000	16.000	5.500	30.250	4.333	18.778	54.000	2916.000
11	7.000	49.000	4.500	20.250	6.667	44.444	54.000	2916.000
12	4.167	17.361	5.167	26.694	4.000	16.000	54.000	2916.000
13	5.000	25.000	4.667	21.778	4.667	21.778	54.000	2916.000
14	4.333	18.778	6.333	40.111	4.000	16.000	54.000	2916.000
15	4.333	18.778	4.000	16.000	5.333	28.444	54.000	2916.000
16	5.333	28.444	4.833	23.361	5.167	26.694	54.000	2916.000
17	5.167	26.694	4.833	23.361	5.000	25.000	54.000	2916.000
18	4.000	16.000	5.333	28.444	4.667	21.778	54.000	2916.000
19	4.833	23.361	4.167	17.361	5.167	26.694	54.000	2916.000
20	4.167	17.361	4.833	23.361	3.833	14.694	54.000	2916.000
21	4.167	17.361	4.667	21.778	4.333	18.778	54.000	2916.000
22	4.833	23.361	4.333	18.778	3.833	14.694	54.000	2916.000
TTL	61.333	297.500	63.167	311.527	61.000	293.777	702.000	37908.000
MEAN	4.744		5.077		4.705			

TABLE XI (Continued)

LOCAL JUDGES

JUDGE	MINORITY SCORE	MINORITY SCORE SQUARED	MORBIDITY CUSTOM SCORE	MORBIDITY CUSTOM SCORE SQUARED	LITTLE ETHNIC SCORE	LITTLE ETHNIC SCORE SQUARED	MINORITY SCORE	MINORITY SCORE SQUARED	INDUCEMENT CUSTOM SCORE	INDUCEMENT CUSTOM SCORE SQUARED	LITTLE ETHNIC SCORE	LITTLE ETHNIC SCORE SQUARED
23	6.833	46.694	6.333	40.111	7.833	61.361	6.333	40.111	7.333	53.778	4.167	17.361
24	5.667	32.111	6.333	40.111	7.500	56.250	6.833	46.694	7.500	56.250	4.667	21.778
25	6.667	44.444	6.333	40.111	7.167	51.361	7.000	49.000	7.833	61.361	4.500	20.250
26	6.500	42.250	5.500	30.250	8.000	64.000	7.333	53.778	7.167	51.361	4.833	23.361
27	6.667	44.444	5.833	34.028	7.167	51.361	6.833	46.694	7.167	51.361	6.333	40.111
28	5.833	34.028	7.000	49.000	7.333	53.778	6.500	42.250	7.500	56.250	5.333	28.444
29	6.667	44.444	6.667	44.444	8.000	64.000	6.667	44.444	7.667	58.778	5.000	25.000
30	6.167	38.028	6.833	46.694	7.333	53.778	7.000	49.000	7.833	61.361	5.500	30.250
TTL	51.000	326.444	50.833	324.750	60.333	455.888	54.500	371.972	60.000	450.500	40.333	206.555
MEAN	6.500		6.370		7.667		6.852		7.444		4.944	
TTL	198.666	1328.331	194.333	1276.776	199.500	1354.915	210.167	1478.470	238.667	1912.721	148.000	739.554

LITTLE MORBIDITY OR INDUCEMENT

JUDGE	MINORITY SCORE	MINORITY SCORE SQUARED	CUSTOM SCORE	CUSTOM SCORE SQUARED	LITTLE ETHNIC SCORE	LITTLE ETHNIC SCORE SQUARED	TOTAL	TOTAL SQUARED
23	6.167	38.028	5.167	26.694	3.833	14.694	54.000	2916.000
24	5.667	32.111	5.333	28.444	4.500	20.250	54.000	2916.000
25	5.333	28.444	4.833	23.361	4.333	18.778	54.000	2916.000
26	5.167	26.694	5.333	28.444	4.167	17.361	54.000	2916.000
27	4.833	23.361	5.167	26.694	4.000	16.000	54.000	2916.000
28	5.000	25.000	5.500	30.250	4.000	16.000	54.000	2916.000
29	5.000	25.000	5.167	26.694	3.167	10.028	54.000	2916.000
30	4.833	23.361	4.333	18.778	4.167	17.361	54.000	2916.000
TTL	42.000	222.000	40.833	209.361	32.167	130.472	432.000	23328.000
MEAN	5.204		5.019		4.000			
TTL	146.500	727.804	149.333	755.443	134.833	617.804	1620.000	87480.000

of the six stories for the nine combinations. Criminal magnitude once again is statements in news stories which describe the morbid details of the crime and the motivations for it, while ethnic background are statements in news stories which label the defendant as a member of a minority group, or refer to the customs of that group. The ethnic background dimension is broken into three constituent elements: minority status, custom, and little ethnic.

The results of this analysis of variance among the scores for these combinations of news elements are summarized in Table XII.

Significant differences were found in the perception of the constituent elements of criminal magnitude and ethnic background in terms of their prejudicial value. The probability of obtaining just by chance F-ratios as high as 202.096 and 70.821 for the respective dimensions is less than one time in 100 similar experiments. Thus, as previously stated, this indicates that judges can adequately differentiate between concepts that they view as being prejudicial and those that are not.

Just as with the dimensions of criminal magnitude and prior record, when each interacts separately with judicial type, no significant differences are found. This would indicate that the jurisdictional level of the judge has little to do with his assessment of what kinds of items are prejudicial. However, when two major dimensions interact with the type of judge, significant differences are found. Therefore, one must again conclude that there is substantial disagreement between jurisdictional levels over the potential prejudice of these elements.

When the ethnic background dimension is broken into its constituent elements, no significant differences are found between minority status and custom. However, both are rated significantly higher than the

element of little ethnic. One can therefore conclude that judges at all levels view minority status and custom about equal in terms of creating prejudice. This is illustrated in Table XIII.

TABLE XII

SUMMARY OF ANALYSIS OF VARIANCE BETWEEN DIMENSIONS OF CRIMINAL MAGNITUDE AND ETHNIC BACKGROUND

Source	df	s. s.	m. s.	F	p
Total	269	470.6040	1.7490	(not needed)	
Between Subjects	29	*	*	*	*
Between Judicial Type	2	*	*	*	*
Between Subject Error	27	*	*	*	*
Within Subjects	240	470.6040	1.9608	(not needed)	
1 Between Criminal Magnitude	2	198.6612	99.3306	202.096	0.01
2 Between Ethnic Background	2	59.4620	29.7310	70.281	0.01
1 Interaction Judge X Criminal Magnitude	4	3.8359	0.9580	1.949	n.s.
2 Interaction Judge X Ethnic Background	4	2.7079	0.6760	1.610	n.s.
3 Interaction Criminal Magnitude X Ethnic Background	4	88.9568	22.2392	50.687	0.01
3 Interaction Judge X Criminal Magnitude X Ethnic Background	8	20.5432	2.5667	5.870	0.01
Error 1	54	26.5456	0.4915		
Error 2	54	22.6721	0.4198		
Error 3	108	47.2283	0.4372		

* There are no significant differences between subjects due to the fixed nature of the continuum in Q-methodology.

While little research has been done in attempting to determine the

effect of a defendant's ethnic background on potential jurors, one can still infer that, with the use of labels in American society, significant prejudice must result. If it is an ethnic label or calling someone an "ex-convict," it stereotypes and, in the end, it must produce prejudice.

TABLE XIII

MEAN SCORES FOR CONSTITUENT ELEMENTS OF THE ETHNIC BACKGROUND DIMENSION AS ASSESSED BY THIRTY JUDGES

Minority Status	Custom	Little Ethnic
6.1700	6.4703	5.3592
Critical Difference = 0.5821		

When the criminal magnitude and ethnic background dimensions interact apart from jurisdictional level, the combination of inducement and custom emerges as singularly highest in terms of statistical significance. This is illustrated in Table XIV. Thus, judges as a group viewed stories containing explanations for the commission of a crime and details of custom contiguous to the defendant's ethnic background as highly prejudicial.

The minority and inducement combination is ranked second highest in terms of possible prejudice. Thus it would appear that either major

aspect of the ethnic background dimension links with the inducement element to produce significant prejudice. Such a conclusion suggests that even the simplest label such as "Mexican-American," "Black" or "Hispanic," when used innocently can produce prejudice if it is utilized in the same story as one concerning the motivation for the crime.

TABLE XIV

MEAN SCORES FOR INTERACTION OF CONSTITUENT ELEMENTS OF THE CRIMINAL MAGNITUDE AND ETHNIC BACKGROUND DIMENSIONS AS ASSESSED BY THIRTY JUDGES

	Minority	Custom	Little Ethnic	Minority	Mean Total
Morbidity	6.622	6.477	6.650	6.622	6.592
Inducement	7.005	7.955	4.933	7.005	6.724
Little Morbidity or Inducement	4.883	4.977	4.494	4.883	4.796
Morbidity	6.622	6.477	6.650	6.622	6.592
Mean Total	6.283	6.471	5.681	6.283	6.176

Critical Difference = 0.7520

To demonstrate the effect of labeling, one can look to Charles Silberman's lengthy study of "Race, Culture and Crime." Using the label "Black" as an example, he concludes:

> Negative symbolism about blackness is built into our language: 'Black connotes death, mourning, evil, corruption, and sin,' while 'white' implies 'purity, goodness, and rebirth.' The

> black sheep is one who goes astray; and when he does, he receives a 'black mark' on his record.[32]

Realizing that this is the case, it behooves the professional journalist to avoid using such labels completely. They contribute nothing themselves, and as seen here, when mixed with other factors, become a volatile quantity that eventually bursts into outright prejudice and hostility. Therefore, the Task Force on the Administration of Justice concluded in 1967: "Justice is most seriously threatened when prejudice distorts its capacity to operate fairly and equally, whether the prejudice that blinds justice operates purposefully or unintentionally."[33]

Such prejudice is also fueled by ignorance of customs and practices unique to that group's ethnic heritage. By not providing adequate news coverage of such practices in a consistent fashion, severe distortion takes place in the mind of the reader when they are reported in connection with a negative event such as a crime. The reader then assumes that such practices deviate from society's norms and are therefore evil.

From Table XV we see that federal judges rated the combination of inducement and custom highest in terms of prejudice, although the magnitude is statistically high only when compared with local judges. Thus the tendency to link the inducement element into their structure of prejudice is seen again.

This suggests that federal judges are most concerned when statements concerning the reasons for a crime are directly linked to a custom or practice of a minority group. Story number 32 which received the highest ranking among that group tied the reason for the murders to a lack of self-esteem which is a custom or norm for migrant workers. Story number 19 which received the second highest ranking from federal

TABLE XV

MEAN SCORES FOR COMBINATIONS OF ELEMENTS
OF THE CRIMINAL MAGNITUDE DIMENSION
AND ETHNIC BACKGROUND WHEN
ASSESSMENTS ARE DIVIDED
BY JUDICIAL LEVEL

Jurisdictional Level	Morbidity			Inducement			Little Morbidity or Inducement			Mean Total
	Minority	Custom	Little Ethnic	Minority	Custom	Little Ethnic	Minority	Custom	Little Ethnic	
Federal	6.958	6.583	5.896	7.000	8.479	4.854	4.750	4.771	4.708	6.000
State	6.500	6.487	6.410	7.115	7.987	4.974	4.744	5.077	4.705	6.000
Local	6.500	6.370	7.667	6.852	7.444	4.944	5.204	5.019	4.000	6.000
Federal	6.958	6.583	5.896	7.000	8.479	4.854	4.750	4.771	4.708	6.000
Mean Total	6.729	6.505	6.467	6.991	8.164	4.906	4.862	4.909	4.530	6.000

Critical Difference = 0.7520

judges suggested that marital difficulties in the life of a defendant was a reason for the commission of the crime, and that such marital difficulties were part of the migrant workers' social customs. Thus, such combinations generate the notion of an open and shut case and therefore predispose potential jurors to find the defendant guilty on the basis of information received outside the courtroom.

This once again raises the question of media coverage given to minorities. If such groups are only talked about in light of negative connotations, such as criminal acts, poverty, and so forth, then any time a minority is mentioned, non-minority members will attach a negative meaning to it, in essence the open and shut case fallacy.

Also we see extra judicial statements. Several of the other stories containing the elements of inducement and custom are the results of interviews with experts, trying to give meaning to the crime through interpolation of the defendant's ethnic heritage. Such stories, as already indicated, are looked upon with distaste by the judges in this state, but now empirical evidence would seem to say to the reporter or broadcaster not to speculate, not even to look for speculation, for doing so will result in denial of another individual's Constitutional rights.

Federal judges also rated the combination of inducement and minority status significantly higher than most of the other combinations. Thus the concern again is over dissemination of statements concerning motivation for the crime, when linked to any facet of the defendant's ethnic background. This reinforces the suggestion made earlier that even stating that a defendant is a member of a certain minority group can trigger a response which will lead to significant prejudice.

An overstated example of this is found in Raymond Fosdick's conclusion on his study of American police methods prior to World War I. In commenting on southern police methods, he stated:

> There are three classes of homicide. If a nigger kills a white man, that's murder. If a white man kills a nigger, that's justifiable homicide. If a nigger kills another nigger, that's one less nigger.[34]

Granted this exaggerates the problem, but it makes its point: one's definition of a criminal act is tainted by the racial labels involved.

Compared to state and local judges, federal judges' assessment of the inducement and custom dimensions was similar to state judges, but significantly higher than that of local judges. All three groups rated the inducement and minority combination equally, thus elevating the importance attributed to racial labeling in stories containing reasons for the crime, be they concrete or speculative.

Local judges concluded their trend towards a high morbidity orientation, by ranking the combination of morbidity and little ethnic significantly higher than most of the other combinations, and higher than federal and state judges viewed them. However, the magnitude of the morbidity ranking overall goes down as aspects of minority status, and customs are linked to them. This would seem to suggest that local judges perceive aspects of a defendant's ethnic background as less prejudicial than the morbid details of the crime itself. However, such a trend does not follow when ethnic background is linked with the reasons for the crime.

In summation:

1) Judges at all levels view the interaction of inducement and custom news elements as being significantly high in prejudicial value.

2) Federal and state judges may be characterized as inducement

oriented when linked with any aspect of a defendant's ethnic background.

3) Local judges retain a strong morbidity orientation; however, morbidity's linkage with ethnic background reduces it. Local judges also seem to be inconsistent in viewing the ethnic background dimension overall.

Prior Record-Ethnic Background

The analysis matrix for the final combination of dimensions is given in Table XVI. Both of these have been previously examined in relation to the criminal magnitude dimension.

The results of this analysis of variance between the scores for these combinations of news elements are summarized in Table XVII.

As would be expected, significant differences were found between constituent elements of the prior record and ethnic background dimension. The major finding, however, is in the significant difference when the type of judge interacts with the prior record dimension. The probability of obtaining such significance by chance is less than give times in 100 similar experiments. This suggests that when federal, state and local judges examine the prejudicial value of publication of a defendant's prior criminal record or prior evidence of social deviance, there is substantial disagreement. However, this does not carry over into interaction of type of judge with ethnic background. There are neither significant differences when examined singularly or when combined with the prior record dimension.

When prior record and ethnic background interact apart from jurisdictional level, significant differences are found. The probability of obtaining an F-ratio as high as 42.3141 by chance is less than one time

TABLE XVI

TYPE VI ANALYSIS FOR PRIOR RECORD AND ETHNIC BACKGROUND

FEDERAL JUDGES

	NON-CRIMINAL DEVIANCE						CRIMINAL INTERACTION					
	MINORITY		CUSTOM		LITTLE ETHNIC		MINORITY		CUSTOM		LITTLE ETHNIC	
JUDGE	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED
1	6.833	46.694	8.167	66.694	5.667	32.111	6.000	36.000	7.000	49.000	6.000	36.000
2	6.500	42.250	7.833	61.361	4.167	17.361	6.500	42.250	6.500	42.250	6.333	40.111
3	7.167	51.361	7.833	61.361	7.167	51.361	6.000	36.000	7.167	51.361	4.000	16.000
4	6.167	38.028	7.333	53.778	6.833	46.694	7.000	49.000	8.333	69.444	4.000	16.000
5	6.833	46.694	7.667	58.778	7.000	49.000	6.333	40.111	7.167	51.361	4.833	23.361
6	7.500	56.250	8.167	66.694	6.333	40.111	5.667	32.111	6.667	44.444	4.667	21.778
7	7.167	51.361	8.000	64.000	7.167	51.361	5.333	28.444	7.333	53.778	4.000	16.000
8	6.000	36.000	7.833	61.361	6.833	46.694	6.167	38.028	8.167	66.694	3.500	12.250
9	6.500	42.250	6.667	44.444	5.500	30.250	6.667	44.444	6.500	42.250	5.500	30.250
TTL	60.667	410.889	69.500	538.472	56.667	364.944	55.667	346.388	64.833	470.583	42.833	211.750
MEAN	6.771		7.854		6.396		6.125		7.292		4.667	

	NORMALITY							
	MINORITY		CUSTOM		LITTLE ETHNIC			
JUDGE	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	TOTAL	TOTAL SQUARED
1	5.000	25.000	4.500	20.250	4.833	23.361	54.000	2916.000
2	6.333	40.111	5.500	30.250	4.333	18.778	54.000	2916.000
3	5.667	32.111	4.667	21.778	4.333	18.778	54.000	2916.000
4	5.167	26.694	4.333	18.778	4.833	23.361	54.000	2916.000
5	5.667	32.111	4.500	20.250	4.000	16.000	54.000	2916.000
6	6.333	40.111	4.833	23.361	3.833	14.694	54.000	2916.000
7	6.167	38.028	4.667	21.778	4.167	17.361	54.000	2916.000
8	6.167	38.028	4.500	20.250	4.833	23.361	54.000	2916.000
9	6.000	36.000	5.500	30.250	5.167	26.694	54.000	2916.000
TTL	52.500	308.194	43.000	206.944	40.333	182.389	486.000	26244.000
MEAN	5.813		4.688		4.396			

TABLE XVI (Continued)

STATE JUDGES

	NON-CRIMINAL DEVIANCE						CRIMINAL INTERACTION					
	MINORITY		CUSTOM		LITTLE ETHNIC		MINORITY		CUSTOM		LITTLE ETHNIC	
JUDGE	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED
10	5.167	26.694	6.000	36.000	5.500	30.250	6.833	46.694	7.833	61.361	4.833	23.361
11	6.833	46.694	6.333	40.111	4.667	21.778	8.500	72.250	6.667	44.444	6.000	36.000
12	6.667	44.444	6.500	42.250	7.500	56.250	6.167	38.028	7.000	49.000	4.833	23.361
13	7.167	51.361	7.833	61.361	7.167	51.361	6.000	36.000	7.167	51.361	4.000	16.000
14	6.667	44.444	8.500	72.250	3.500	12.250	5.667	32.111	8.333	69.444	5.667	32.111
15	5.833	34.028	7.833	61.361	6.667	44.444	6.500	42.250	8.500	72.250	5.500	30.250
16	6.500	42.250	6.333	40.111	7.833	61.361	6.000	36.000	7.167	51.361	3.667	13.444
17	6.167	38.028	7.333	53.778	6.833	46.694	7.000	49.000	8.333	69.444	4.000	16.000
18	5.833	34.028	7.000	49.000	5.833	34.028	6.667	44.444	7.500	56.250	4.833	23.361
19	6.667	44.444	7.667	58.778	5.667	32.111	5.833	34.028	8.167	66.694	5.333	28.444
20	6.333	40.111	6.500	42.250	7.667	58.778	5.667	32.111	7.500	56.250	4.667	21.778
21	7.000	49.000	7.500	56.250	6.500	42.250	5.500	30.250	7.833	61.361	4.667	21.778
22	6.500	42.250	7.167	51.361	7.500	56.250	6.667	44.444	6.667	44.444	4.333	18.778
TTL	83.333	537.777	92.500	664.861	82.833	547.805	83.000	537.611	98.667	753.666	62.333	304.666
MEAN	6.410		7.077		6.218		6.385		7.577		4.885	

	NORMALITY							
	MINORITY		CUSTOM		LITTLE ETHNIC			
JUDGE	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	SCORE	SCORE SQUARED	TOTAL	TOTAL SQUARED
10	6.333	40.111	5.333	28.444	6.167	38.028	54.000	2916.000
11	4.667	21.778	5.167	26.694	5.167	26.694	54.000	2916.000
12	6.500	42.250	4.500	20.250	4.333	18.778	54.000	2916.000
13	5.667	32.111	4.667	21.778	4.333	18.778	54.000	2916.000
14	5.833	34.028	5.167	26.694	4.667	21.778	54.000	2916.000
15	5.167	26.694	3.333	11.111	4.667	21.778	54.000	2916.000
16	5.167	26.694	5.333	28.444	6.000	36.000	54.000	2916.000
17	5.167	26.694	4.333	18.778	4.833	23.361	54.000	2916.000
18	6.333	40.111	4.667	21.778	5.333	28.444	54.000	2916.000
19	5.167	26.694	4.833	23.361	4.667	21.778	54.000	2916.000
20	5.667	32.111	5.500	30.250	4.500	20.250	54.000	2916.000
21	4.667	21.778	5.333	28.444	5.000	25.000	54.000	2916.000
22	6.333	40.111	4.000	16.000	4.833	23.361	54.000	2916.000
TTL	72.667	411.166	62.167	302.027	64.500	324.028	702.000	37908.000
MEAN	5.564		4.897		4.987			

TABLE XVI (Continued)

LOCAL JUDGES

JUDGE	NON-CRIMINAL DEVIANCE MINORITY SCORE	MINORITY SCORE SQUARED	CUSTOM SCORE	CUSTOM SCORE SQUARED	LITTLE ETHNIC SCORE	LITTLE ETHNIC SCORE SQUARED	CRIMINAL INTERACTION MINORITY SCORE	MINORITY SCORE SQUARED	CUSTOM SCORE	CUSTOM SCORE SQUARED	LITTLE ETHNIC SCORE	LITTLE ETHNIC SCORE SQUARED
23	6.667	44.444	6.833	46.694	7.500	56.250	6.167	38.028	6.667	44.444	4.167	17.361
24	5.833	34.028	7.000	49.000	7.333	53.778	6.333	40.111	7.333	53.778	4.500	20.250
25	6.167	38.028	7.000	49.000	7.000	49.000	7.000	49.000	7.500	56.250	4.167	17.361
26	6.667	44.444	7.333	53.778	6.667	44.444	6.333	40.111	6.667	44.444	4.167	17.361
27	6.667	44.444	7.333	53.778	6.667	44.444	5.833	34.028	6.167	38.028	4.667	21.778
28	6.167	38.028	7.667	58.778	7.167	51.361	5.667	32.111	7.167	51.361	4.667	21.778
29	6.833	46.694	7.500	56.250	6.167	38.028	5.833	34.028	7.000	49.000	3.833	14.694
30	6.833	46.694	7.167	51.361	6.333	40.111	5.000	25.000	7.167	51.361	4.167	17.361
TTL	51.833	336.805	57.833	418.639	54.833	377.416	48.167	292.417	55.667	388.667	34.333	147.944
MEAN	6.481		7.222		6.926		6.093		6.926		4.296	
TTL	195.833	1285.470	219.833	1621.970	194.333	1290.165	186.833	1176.415	219.166	1612.915	139.500	664.359

JUDGE	NORMALITY MINORITY SCORE	MINORITY SCORE SQUARED	CUSTOM SCORE	CUSTOM SCORE SQUARED	LITTLE ETHNIC SCORE	LITTLE ETHNIC SCORE SQUARED	TOTAL	TOTAL SQUARED
23	6.500	42.250	5.333	28.444	4.167	17.361	54.000	2916.000
24	6.000	36.000	4.833	23.361	4.833	23.361	54.000	2916.000
25	5.833	34.028	4.500	20.250	4.833	23.361	54.000	2916.000
26	6.000	36.000	4.000	16.000	6.167	38.028	54.000	2916.000
27	5.833	34.028	4.667	21.778	6.167	38.028	54.000	2916.000
28	5.500	30.250	5.167	26.694	4.833	23.361	54.000	2916.000
29	5.667	32.111	5.000	25.000	6.167	38.028	54.000	2916.000
30	6.167	38.028	4.667	21.778	6.500	42.250	54.000	2916.000
TTL	47.500	282.694	38.167	183.305	43.667	243.778	432.000	23328.000
MEAN	5.981		4.685		5.389			
TTL	172.666	1002.054	143.333	692.276	148.500	750.193	1620.000	87480.000

in 100 similar experiments. This suggests that when aspects of a defendant's background are disseminated and linked with some parts of his ethnic heritage, substantial prejudice is formed.

TABLE XVII

SUMMARY OF ANALYSIS OF VARIANCE BETWEEN DIMENSIONS OF PRIOR RECORD AND ETHNIC BACKGROUND

Source	df	s. s.	m. s.	F	p
Total	269	375.8520	1.3972	(not needed)	
Between Subjects	29	*	*	*	*
Between Judicial Type	2	*	*	*	*
Between Subject Error	27	*	*	*	*
Within Subjects	240	375.8520	1.5660	(not needed)	
1 Between Prior Record	2	118.1059	59.0529	90.102	0.01
2 Between Ethnic Background	2	59.4620	29.7310	70.821	0.01
1 Interaction Judge X Prior Record	4	7.0189	1.7547	2.677	0.05
2 Interaction Judge X Ethnic Background	4	2.7079	0.6769	1.612	n.s.
3 Interaction Prior Record X Ethnic Background	4	77.5366	19.3841	42.314	0.01
3 Interaction Judge X Prior Record X Ethnic Background	8	3.4736	0.4342	0.948	n.s.
Error 1	54	35.3942	0.6554		
Error 2	54	22.6721	0.4198		
Error 3	108	49.4800	0.4581		

* There are no differences between subjects because of the fixed nature of the continuum in Q-methodology.

When the interaction of prior record dimension and judicial type as

defined by jurisdictional level takes place, one finds substantial agreement among all respondents. This is illustrated in Table XVIII.

TABLE XVIII

MEAN SCORES FOR CONSTITUENT ELEMENTS OF PRIOR RECORD DIMENSION WHEN ASSESSMENTS ARE DIVIDED BY JURISDICTIONAL LEVEL

Jurisdictional Level	Non-Criminal Deviance	Criminal Interaction	Normality	Non-Criminal Deviance	Mean Total
Federal	6.9197	6.0493	5.0308	6.9197	6.2298
State	6.6324	6.2564	5.1110	6.6324	6.1580
Local	6.8541	5.7569	5.3889	6.8541	6.2135
Federal	6.9197	6.0493	5.0308	6.9197	6.2298
Mean Total	6.8314	6.0279	5.1403	6.8314	6.2077

Critical Difference = 0.9394

Federal judges, when interacting with the constituent elements of the prior record dimension, rate the element of non-criminal deviance significantly higher than criminal interaction or normality, although the relationship between non-criminal deviance and criminal interaction is borderline in terms of critical difference. This tends to reinforce the trend seen in the examination of the other analyses of variance. These judges, as a group, are most concerned about the dissemination of any details concerning the defendant's past deviant behavior.

State judges, when interacting with the same elements, view the prejudicial value of non-criminal deviance and criminal interaction about the same. However, both are deemed as being more prejudicial than normality. This would suggest that state judges view dissemination of any aspect of the defendant's background, except for routine matters, as inherently prejudicial. Such a comprehensive view tends to make state judges seemingly more susceptible to placing severe restrictions on the media.

Local judges, when interacting with these elements, concur with federal judges on the high prejudicial value of dissemination of details concerning the defendant's past deviant behavior. However, they rate details concerning criminal interaction and normality about the same. Therefore, the trend of downplaying the importance of publication of a defendant's prior record continues.

From Table XIX, judges as a whole ranked the element of non-criminal deviance and criminal interaction equal in significance when linked with the element of custom. Therefore, any story having any combination of these three would be viewed as highly prejudicial to the defendant. Therefore, judges may view either for themselves or for the people who form juries that certain facets of ethnic background are in and of themselves deviant from the norms of society.

Silberman, in his study previously cited, asserts that this may be true for at least one minority group. In studying black crime, he states: "A propensity to violence was not part of the cultural baggage black Americans brought with them from Africa. . . . Violence is something black Americans learned in this country."[35] He bases this conclusion on the fact that all other major ethnic groups have been able

largely to assimilate themselves into the mainstream of American culture, but for the black who was brought to America in chains, and possesses skin color which cannot fade into the great American melting pot, complete acculturation has not been possible. Therefore, the black must find a way to circumvent the system which closes him out. Violence has become that way. In the words of a black American folk song:

> White man goes to college,
> Nigger to the field;
> White man learns to read and write;
> Poor nigger learns to steal.[36]

TABLE XIX

MEAN SCORES FOR INTERACTION OF CONSTITUENT ELEMENTS OF PRIOR RECORD AND ETHNIC BACKGROUND DIMENSIONS AS ASSESSED BY THIRTY JUDGES

	Non-Criminal Deviance	Criminal Interaction	Normality	Non-Criminal Deviance	Mean Total
Minority	6.527	6.227	5.755	6.527	6.259
Custom	7.327	7.305	4.777	7.327	6.684
Little Ethnic	6.477	4.650	4.950	6.477	5.638
Minority	6.527	6.227	5.755	6.527	6.259
Mean Total	6.707	6.102	5.309	6.707	6.210

Critical Difference = 0.7737

In summation:

1) Judges as a whole view the interaction of non-criminal deviance with either minority status or custom as significantly prejudicial. However, the extent of such interaction varies with jurisdictional level.

2) Federal judges continue to view non-criminal deviance, no matter what it is linked with, as significantly prejudicial.

3) State judges take a more comprehensive view on dissemination of any material concerning the defendant's background. It seemingly is all prejudicial.

4) Local judges rate non-criminal deviance significantly high, particularly when linked with ethnic background. However, they seemingly downplay the effect of dissemination of prior criminal record.

Summary of Variance Among Judges

Based upon the analysis of the differences in the respondents' assessments of what news elements create the most prejudice, some clear conclusions may be drawn. These can take the form of guidelines for the media as a whole. They are empirically tested observations that can be applied to news situations.

Overall, judges view the elements of inducement and non-criminal deviance as most prejudicial, particularly when they interact with any aspect of a defendant's ethnic background. It would seem that if a defendant is a member of a minority group, he already has one strike against him in terms of the prejudice created among potential jurors, even with the most rational kind of news reporting. Because of this, it would seem prudent that the media avoid using any kind of racial

labels. It doesn't matter whether a man is an Indian, a Mexican or a Black, when he stands before the bar of justice. All that does count is that he is a human being entitled to fair treatment by his peers, and that he is an American who is entitled to certain inalienable rights, including that of being tried by a fair and impartial jury of his peers.

Inducement and non-criminal deviance, as a combination, also contribute to substantial prejudice. Judges view dissemination of any details concerning the defendant's deviant behavior as a motive in and of itself. When valid or speculative reasons for the crime are contained in the same story, the probability of predisposition on the part of potential jurors is highly increased.

Federal judges can best be characterized as non-criminal deviance oriented. Whatever is linked with it in terms of interaction is viewed as being strongly prejudicial. Therefore, these respondents would recommend that the press withhold or downplay the more bizarre aspects of a defendant's past behavior. The only behavior that must be reported, for the media to fulfill its First Amendment responsibilities, is the actual behavior of the defendant in the commission of the crime as it is established by the rules of evidence in the courtroom.

State judges can best be characterized as inducement oriented. Here again the other elements that link up with it to produce significant differences may vary, but the inducement dimension is consistently rated high. Therefore, these respondents would recommend that the press avoid speculation as to a motive for the crime until it is established in a court of law. Such speculative reporting is made more prejudicial when the information comes from the mouth of an "expert."

The rule of thumb should be no expert interviews until they have testified in court. Over and over, the press has gotten itself into trouble by printing the testimony of those who will never be called to the witness stand.

Finally, local judges can best be characterized as morbidity oriented. Their concern is that such sensational details as how the crime was committed, does not serve the public interest, because it not only taints the opinion of the public as a whole, but makes it difficult to seat a representative jury that is also impartial.

Intercorrelation and Linkage Analysis

Now that the differences in the assessments of the thirty judges had been analyzed, it was necessary to determine where they were in agreement. More correctly, one needs to know what judges are most alike in their perceptions apart from the jurisdictional levels which separate them. Each judge's scores was compared with the other twenty-nine with the amount of agreement being given in terms of an r-value, or Pearson Product-Moment correlation.

This measurement tool does not attempt to measure cause and effect, rather it serves as an index of the magnitude and direction of the relationship between two sets of measures. R-values, therefore, range from -1.00 to +1.00. The statistical significance of this measure may be analyzed as follows:

0.00 - 0.20 negligible relationship;

0.20 - 0.40 definite, but small relationship;

0.40 - 0.70 moderate, but substantial relationship;

0.70 - 0.90 high, marked relationship; and

0.90 - 1.00 very dependable relationship.[37]

Table XX represents the r-values that were found when each of the judge's fifty-four scores were compared. Using the scale above, one could then examine the magnitude of the relationship between each judge and his counterparts as to what constitutes prejudicial publicity.

From this matrix, analysis can be done which will allow one to break down the thirty judges into types, or groups of judges who are in basic agreement with one another in their assessments of which elements are most prejudicial. That tool is McQuitty's Linkage and Factor Analysis.[38]

Linkage Analysis

McQuitty's Linkage and Factor Analysis is a simplified means of examining the intercorrelation data. The matrix given in Table XX tells one the amount of agreement between respondents, but does not break them down into clusters which is ultimately what the researcher is looking for. The methodology is rather easy.

One first looks across the matrix and underlines the highest score in each column. This indicates that these two individuals are most alike in their perception of prejudicial publicity. Additional respondents are added to this reciprocal pair until all underlined entries along the rows of the reciprocal pairs are exhausted. The process then continues with the next highest pair until all the respondents have been assimilated into clusters.

An analysis of the intercorrelation data for this experiment found that nine types of judges emerge out of the thirty respondents. The linkage of these clusters is graphically portrayed in Figure 4.

TABLE XX

INTERCORRELATIONS OF THIRTY JUDGES' ASSESSMENTS OF PREJUDICIAL VALUE OF NEWS STORIES

	JUDGES									
JUDGE	1	2	3	4	5	6	7	8	9	10
1	0.0	0.612	0.542	0.348	0.648	0.664	0.542	0.485	0.436	0.306
2	0.612	0.0	0.530	0.224	0.652	0.773	0.552	0.406	0.542	0.339
3	0.542	0.530	0.0	0.573	0.824	0.748	0.952	0.673	0.230	0.433
4	0.348	0.224	0.573	0.0	0.673	0.397	0.579	0.867	0.179	0.442
5	0.648	0.652	0.824	0.673	0.0	0.788	0.858	0.821	0.318	0.412
6	0.664	0.773	0.748	0.397	0.788	0.0	0.809	0.600	0.394	0.321
7	0.542	0.552	0.952	0.579	0.858	0.809	0.0	0.727	0.248	0.433
8	0.485	0.406	0.673	0.867	0.821	0.600	0.727	0.0	0.233	0.482
9	0.436	0.542	0.230	0.179	0.318	0.394	0.248	0.233	0.0	0.252
10	0.306	0.339	0.433	0.442	0.412	0.321	0.433	0.482	0.252	0.0
11	0.306	0.342	0.367	0.452	0.427	0.245	0.324	0.400	0.085	0.324
12	0.521	0.452	0.667	0.555	0.639	0.624	0.694	0.603	0.309	0.482
13	0.542	0.530	1.000	0.573	0.824	0.748	0.952	0.673	0.230	0.433
14	0.664	0.600	0.470	0.309	0.509	0.533	0.442	0.382	0.367	0.376
15	0.585	0.512	0.673	0.676	0.779	0.624	0.694	0.706	0.227	0.485
16	0.197	0.148	0.497	0.730	0.621	0.327	0.518	0.700	0.124	0.273
17	0.348	0.224	0.573	1.000	0.673	0.397	0.579	0.867	0.179	0.442
18	0.445	0.479	0.506	0.606	0.570	0.464	0.536	0.615	0.415	0.830
19	0.497	0.585	0.718	0.600	0.752	0.627	0.718	0.609	0.273	0.336
20	0.464	0.339	0.618	0.573	0.630	0.548	0.661	0.664	0.276	0.445
21	0.588	0.530	0.642	0.642	0.739	0.648	0.676	0.736	0.461	0.452
22	0.506	0.388	0.655	0.621	0.658	0.591	0.694	0.670	0.252	0.455
23	0.406	0.306	0.612	0.479	0.494	0.509	0.627	0.515	0.300	0.303
24	0.503	0.291	0.506	0.515	0.500	0.455	0.524	0.527	0.421	0.318
25	0.506	0.385	0.606	0.636	0.636	0.597	0.624	0.639	0.388	0.309
26	0.415	0.400	0.606	0.633	0.609	0.533	0.636	0.694	0.373	0.439
27	0.461	0.330	0.521	0.509	0.567	0.452	0.548	0.564	0.364	0.252
28	0.521	0.382	0.645	0.570	0.645	0.552	0.673	0.645	0.253	0.324
29	0.458	0.361	0.579	0.621	0.603	0.491	0.600	0.667	0.297	0.412
30	0.482	0.385	0.621	0.564	0.618	0.515	0.630	0.606	0.227	0.391

TABLE XX (Continued)

JUDGE	JUDGES 11	12	13	14	15	16	17	18	19	20
1	0.306	0.521	0.542	0.664	0.585	0.197	0.348	0.445	0.497	0.464
2	0.342	0.452	0.530	0.600	0.512	0.148	0.224	0.479	0.585	0.339
3	0.367	0.667	1.000	0.470	0.673	0.497	0.573	0.506	0.718	0.618
4	0.452	0.555	0.573	0.309	0.676	0.730	1.000	0.606	0.600	0.573
5	0.427	0.639	0.824	0.509	0.779	0.621	0.673	0.570	0.752	0.630
6	0.245	0.624	0.748	0.533	0.624	0.327	0.397	0.464	0.627	0.548
7	0.324	0.694	0.952	0.442	0.694	0.518	0.579	0.536	0.718	0.661
8	0.400	0.603	0.673	0.382	0.706	0.700	0.867	0.615	0.609	0.664
9	0.085	0.309	0.230	0.367	0.227	0.124	0.179	0.415	0.273	0.276
10	0.324	0.482	0.433	0.376	0.485	0.273	0.442	0.830	0.336	0.445
11	0.0	0.209	0.367	0.261	0.318	0.294	0.452	0.330	0.418	0.188
12	0.209	0.0	0.667	0.373	0.652	0.467	0.555	0.630	0.548	0.652
13	0.367	0.667	0.0	0.470	0.673	0.497	0.573	0.506	0.718	0.618
14	0.261	0.373	0.470	0.0	0.515	0.109	0.309	0.436	0.509	0.179
15	0.318	0.652	0.673	0.515	0.0	0.500	0.676	0.624	0.764	0.652
16	0.294	0.467	0.497	0.109	0.500	0.0	0.730	0.352	0.500	0.470
17	0.452	0.555	0.573	0.309	0.676	0.730	0.0	0.606	0.600	0.573
18	0.330	0.630	0.506	0.436	0.624	0.352	0.606	0.0	0.521	0.545
19	0.418	0.548	0.718	0.509	0.764	0.500	0.600	0.521	0.0	0.482
20	0.188	0.652	0.618	0.179	0.652	0.470	0.573	0.545	0.482	0.0
21	0.370	0.576	0.642	0.391	0.685	0.558	0.642	0.591	0.794	0.715
22	0.233	0.791	0.655	0.318	0.718	0.497	0.621	0.591	0.509	0.794
23	0.188	0.700	0.612	0.300	0.533	0.352	0.479	0.436	0.445	0.685
24	0.230	0.603	0.506	0.421	0.570	0.364	0.515	0.470	0.464	0.579
25	0.285	0.636	0.606	0.342	0.645	0.452	0.636	0.491	0.570	0.667
26	0.300	0.658	0.606	0.321	0.609	0.464	0.633	0.582	0.524	0.673
27	0.173	0.539	0.521	0.324	0.524	0.494	0.509	0.424	0.415	0.609
28	0.264	0.594	0.645	0.430	0.621	0.412	0.570	0.403	0.536	0.594
29	0.215	0.582	0.579	0.439	0.585	0.476	0.621	0.494	0.421	0.655
30	0.285	0.597	0.621	0.524	0.567	0.418	0.564	0.491	0.591	0.524

TABLE XX (Continued)

JUDGE	JUDGES 21	22	23	24	25	26	27	28	29	30
1	0.588	0.506	0.406	0.503	0.506	0.415	0.461	0.521	0.458	0.482
2	0.530	0.388	0.306	0.291	0.385	0.400	0.330	0.382	0.361	0.385
3	0.642	0.655	0.612	0.506	0.606	0.606	0.521	0.645	0.579	0.621
4	0.642	0.621	0.479	0.515	0.636	0.633	0.509	0.570	0.621	0.564
5	0.739	0.658	0.494	0.500	0.636	0.609	0.567	0.645	0.603	0.618
6	0.648	0.591	0.509	0.455	0.597	0.533	0.452	0.552	0.491	0.515
7	0.676	0.694	0.627	0.524	0.624	0.636	0.548	0.673	0.600	0.630
8	0.736	0.670	0.515	0.527	0.639	0.694	0.564	0.645	0.667	0.606
9	0.461	0.252	0.300	0.421	0.388	0.373	0.364	0.258	0.297	0.227
10	0.452	0.455	0.303	0.318	0.309	0.439	0.252	0.324	0.412	0.391
11	0.370	0.233	0.188	0.230	0.285	0.300	0.173	0.264	0.215	0.285
12	0.576	0.791	0.700	0.603	0.636	0.658	0.539	0.594	0.582	0.597
13	0.642	0.655	0.612	0.506	0.606	0.606	0.521	0.645	0.579	0.621
14	0.391	0.318	0.300	0.421	0.342	0.321	0.324	0.430	0.439	0.524
15	0.685	0.718	0.533	0.570	0.645	0.609	0.524	0.621	0.585	0.567
16	0.558	0.497	0.352	0.364	0.452	0.464	0.494	0.412	0.476	0.418
17	0.642	0.621	0.479	0.515	0.636	0.633	0.509	0.570	0.621	0.564
18	0.591	0.591	0.436	0.470	0.491	0.582	0.424	0.403	0.494	0.491
19	0.794	0.509	0.445	0.464	0.570	0.524	0.415	0.536	0.421	0.591
20	0.715	0.794	0.685	0.579	0.667	0.673	0.609	0.594	0.655	0.524
21	0.0	0.600	0.518	0.582	0.670	0.655	0.600	0.645	0.591	0.642
22	0.600	0.0	0.830	0.752	0.809	0.830	0.645	0.727	0.776	0.682
23	0.518	0.830	0.0	0.836	0.809	0.709	0.633	0.742	0.721	0.676
24	0.582	0.752	0.836	0.0	0.876	0.724	0.645	0.779	0.715	0.718
25	0.670	0.809	0.809	0.876	0.0	0.803	0.758	0.824	0.791	0.745
26	0.655	0.830	0.709	0.724	0.803	0.0	0.736	0.764	0.842	0.770
27	0.600	0.645	0.633	0.645	0.758	0.736	0.0	0.752	0.779	0.739
28	0.645	0.727	0.742	0.779	0.824	0.764	0.752	0.0	0.858	0.800
29	0.591	0.776	0.721	0.715	0.791	0.842	0.779	0.858	0.0	0.815
30	0.642	0.682	0.676	0.718	0.745	0.770	0.739	0.800	0.815	0.0

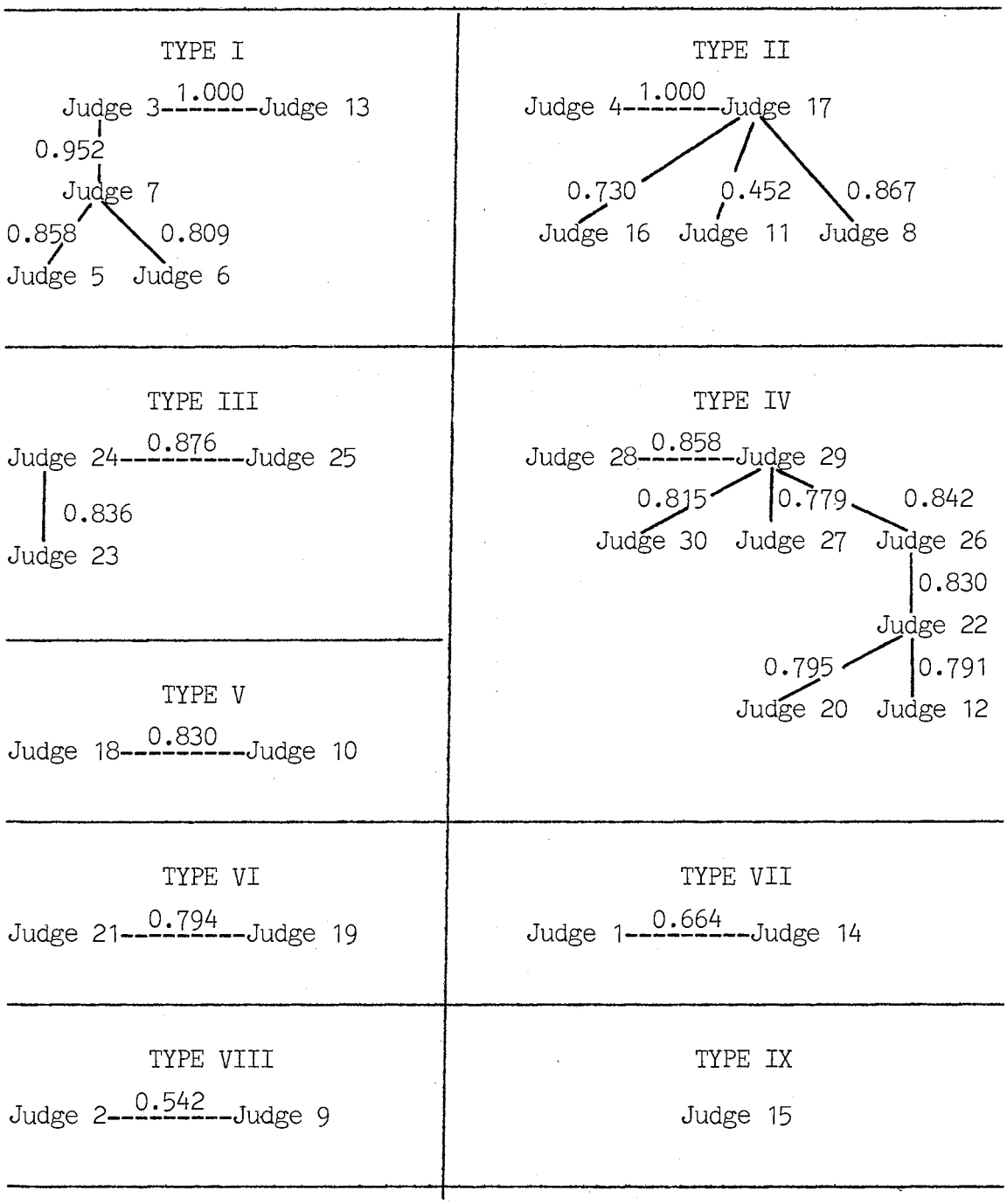

Figure 4. Linkage Analysis of Nine Clusters Produced from Intercorrelations among Thirty Respondents

The clusters form along rather unusual lines. Type I consists of four federal judges linked together with one state judge. Judges 3 and 13 were perfectly correlated with assessments of the fifty-four stories being exactly the same. The strength of the relationship among the federal judges is very strong.

Type II judges again found a federal and state judge to be perfectly correlated. The balance of the cluster consists of two more state judges and a federal judge whose thought patterns are in fairly strong agreement with the state judge in the reciprocal pair. The weakest link in this cluster is that between judge 11 and judge 17. Their relationship in terms of agreement can only be characterized as moderate.

Type III judges are all local by jurisdiction. Their relationship is quite strong.

Type IV represents the largest cluster. It is formed around a reciprocal pair of local judges, into which the balance of that judicial group link together. This strongly suggests that local judges are in closest agreement with one another over the issue of what news elements are inherently prejudicial. The consistent morbidity orientation seen by them in the Type VI analyses tend to confirm this strong relationship. Two state judges also link into this cluster; however, the magnitude of their relationship to the local judges can only be characterized as slightly stronger than moderate.

Types V and VI are single reciprocal pairs of state judges. The consistent fragmentation of federal and state judges in terms of agreement suggests a tending to be more independent in their judgments and, therefore, the uniformity of justice may not be quite as strong on their levels as it appears to be on a local scale.

Types VII and VIII are single reciprocal pairs that also link a federal and state judge together. The magnitude of their relationship, however, is only moderate, indicating that they are in less agreement than some of the other federal-state clusters seen previously.

Type IX is made up of a single state judge. This means that he agreed significantly with no one in terms of what is prejudicial. His assessments were so different as not to permit him to link into a cluster.

To establish typal representatives and, therefore, factor loadings for each type, the intercorrelation matrix has to be subdivided in terms of each cluster and its constituent judges. These new matrices are given in Tables XXI through XXVIII.

The individual having the highest sum of the intercorrelation ratios becomes the typal representative, or is most like all the other judges in that cluster. Therefore, an examination of his story assessments alone will allow one to formulate a profile for that group in terms of what they view in news stories as being most prejudicial to a defendant's case. Judge 7 becomes the typal representative for Type I judges, as seen in Table XXI.

As shown in Table XXII, judges 4 and 17 each have the highest sum of ratios. Therefore, judge 4 was selected as the typal representative by the flip of a coin.

From Table XXIII, judge 24 is the typal representative for Type II judges.

Judge 29 is the typal representative for Type IV judges, as seen in Table XXIV.

TABLE XXI

INTERCORRELATION MATRIX FOR TYPE I JUDGES

Judge	3	5	6	7	13
3	*	0.824	0.748	0.952	1.000
5	0.824	*	0.788	0.858	0.824
6	0.748	0.788	*	0.809	0.748
7	0.952	0.858	0.809	*	0.952
13	1.000	0.824	0.748	0.952	*
Total	3.524	3.294	3.093	3.571	3.524

TABLE XXII

INTERCORRELATION MATRIX FOR TYPE II JUDGES

Judge	4	8	11	16	17
4	*	0.867	0.452	0.730	1.000
8	0.867	*	0.400	0.700	0.867
11	0.452	0.400	*	0.294	0.452
16	0.730	0.700	0.294	*	0.730
17	1.000	0.867	0.452	0.730	*
Total	3.049	2.834	1.598	2.454	3.049

TABLE XXIII

INTERCORRELATION MATRIX FOR TYPE III JUDGES

Judge	23	24	25
23	*	0.836	0.809
24	0.836	*	0.876
25	0.809	0.876	*
Total	1.645	1.712	1.685

TABLE XXIV

INTERCORRELATION MATRIX FOR TYPE IV JUDGES

Judge	12	20	22	26	27	28	29	30
12	*	0.652	0.791	0.658	0.539	0.594	0.582	0.597
20	0.652	*	0.794	0.673	0.609	0.594	0.655	0.524
22	0.791	0.794	*	0.830	0.645	0.727	0.776	0.682
26	0.658	0.673	0.830	*	0.736	0.764	0.842	0.770
27	0.539	0.609	0.645	0.736	*	0.752	0.779	0.739
28	0.594	0.594	0.727	0.764	0.752	*	0.858	0.800
29	0.582	0.655	0.776	0.842	0.779	0.858	*	0.815
30	0.597	0.524	0.682	0.770	0.739	0.800	0.815	*
Total	4.413	4.501	5.245	5.273	4.799	5.089	5.307	4.927

Judge 10 is the typal representative for Type V judges by the flip of a coin. This is illustrated in Table XXV.

TABLE XXV

INTERCORRELATION MATRIX FOR
TYPE V JUDGES

Judge	10	18
10	*	0.830
18	0.830	*
Total	0.830	0.830

From Table XXVI, judge 21 becomes the typal representative for Type VI judges by the flip of a coin.

TABLE XXVI

INTERCORRELATION MATRIX FOR
TYPE VI JUDGES

Judge	19	21
19	*	0.794
21	0.794	*
Total	0.794	0.794

As seen in Table XXVII, judge 1 is the typal representative for

Type VII judges by the flip of a coin.

TABLE XXVII

INTERCORRELATION MATRIX FOR TYPE VII JUDGES

Judge	1	14
1	*	0.664
14	0.664	*
Total	0.664	0.664

Judge 9 is the typal representative for Type VIII judges as the result of a flip of a coin, as shown in Table XXVIII.

TABLE XXVIII

INTERCORRELATION MATRIX FOR FOR TYPE VIII JUDGES

Judge	2	9
2	*	0.542
9	0.542	*
Total	0.542	0.542

With the typal representatives isolated, a series of factor loadings may be set up. A factor loading represents the magnitude of the relationship between the concept tested and the factors involved.[39] In other words, each type may be characterized in terms of their predominant orientation. The thirty correlations to that type therefore represent the magnitude of each judge's relationship to that orientation. These are given in Table XXIX.

Summary of Factor Loadings

Local judges demonstrate the most consistent relationship in terms of agreement with the Type I factors of inducement and custom, although the strength of the relationship can only be classified as moderate.

Meanwhile, federal and state judges continue to exhibit great differences in terms of agreement. This is particularly so among state judges where the index of agreement with the Type I factors ranges from 0.248 to 0.952. Therefore, we would expect highly individualized opinions, and possibly even internal inconsistencies on the part of these judges.

Federal and state judges also demonstrate a similar relationship to Type II factors of inducement and custom. On the whole, federal judges tend to show a smaller magnitude of agreement than their state counterparts.

In the Type III category of morbidity and normality, local judges once again exhibit the strongest relationship to it in their assessments of its importance as a prejudicial factor. Local judges also demonstrate a similar relationship to Type IV factors of morbidity and little ethnic. Therefore, local judges seem to establish a significant

TABLE XXIX

FACTOR LOADINGS FOR TYPAL REPRESENTATIVES

	TYPE I	TYPE II	TYPE III	TYPE IV	TYPE V	TYPE VI	TYPE VII	TYPE VIII	TYPE IX
	Judge 7	Judge 4	Judge 24	Judge 29	Judge 10	Judge 21	Judge 1	Judge 9	Judge 15
Judge	Inducement /Custom	Inducement /Custom	Morbidity/ Normality	Morbidity /Little Ethnic	Criminal Interaction /Custom	Inducement /Custom	Non-Criminal Deviance /Custom	Inducement /Criminal Interaction	Criminal Interaction /Custom
1	0.542	0.348	0.503	0.458	0.306	0.588	1.000	0.436	0.585
2	0.552	0.224	0.291	0.361	0.339	0.530	0.612	0.542	0.512
3	0.952	0.573	0.506	0.579	0.433	0.642	0.542	0.230	0.673
4	0.579	1.000	0.515	0.621	0.442	0.642	0.348	0.179	0.676
5	0.858	0.673	0.500	0.603	0.412	0.739	0.648	0.318	0.779
6	0.809	0.397	0.455	0.491	0.321	0.648	0.664	0.394	0.624
7	1.000	0.579	0.524	0.600	0.433	0.676	0.542	0.248	0.694
8	0.727	0.867	0.527	0.667	0.482	0.736	0.485	0.233	0.706
9	0.248	0.179	0.421	0.297	0.252	0.461	0.436	1.000	0.227
10	0.433	0.442	0.318	0.412	1.000	0.452	0.306	0.252	0.485
11	0.324	0.452	0.230	0.215	0.324	0.370	0.306	0.085	0.318
12	0.694	0.555	0.603	0.582	0.482	0.576	0.521	0.309	0.652
13	0.952	0.573	0.506	0.579	0.433	0.642	0.542	0.230	0.673

TABLE XXIX (Continued)

Judge	TYPE I	TYPE II	TYPE III	TYPE IV	TYPE V	TYPE VI	TYPE VII	TYPE VIII	TYPE IX
14	0.442	0.309	0.421	0.439	0.376	0.391	0.664	0.367	0.515
15	0.694	0.676	0.570	0.585	0.485	0.685	0.585	0.227	1.000
16	0.518	0.730	0.364	0.476	0.273	0.558	0.197	0.124	0.500
17	0.579	1.000	0.515	0.621	0.442	0.642	0.348	0.179	0.676
18	0.536	0.606	0.470	0.494	0.830	0.591	0.445	0.415	0.624
19	0.718	0.600	0.464	0.421	0.336	0.794	0.497	0.273	0.764
20	0.661	0.573	0.579	0.655	0.445	0.715	0.464	0.276	0.652
21	0.676	0.642	0.582	0.591	0.452	1.000	0.588	0.461	0.685
22	0.694	0.621	0.752	0.776	0.455	0.600	0.506	0.252	0.718
23	0.627	0.479	0.836	0.721	0.303	0.518	0.406	0.300	0.533
24	0.524	0.515	1.000	0.715	0.318	0.582	0.503	0.421	0.570
25	0.624	0.636	0.876	0.791	0.309	0.670	0.506	0.388	0.645
26	0.636	0.633	0.724	0.842	0.439	0.655	0.415	0.373	0.609
27	0.548	0.509	0.645	0.779	0.252	0.600	0.461	0.364	0.524
28	0.673	0.570	0.779	0.858	0.324	0.645	0.521	0.258	0.621
29	0.600	0.621	0.715	1.000	0.412	0.591	0.458	0.297	0.585
30	0.630	0.564	0.718	0.815	0.391	0.642	0.482	0.227	0.567

trend in terms of perceptions of the prejudicial value of morbidity. Such consistency of thought is not exhibited by federal and state judges.

All judges, regardless of jurisdictional level, demonstrate a moderate relationship to Type V factors of criminal interaction and custom. A similar quantitative phenomenon is also seen in judges' relationships to Type VI factors of inducement and custom, Type VIII factors of non-criminal deviance and custom, and Type IX factors of criminal interaction and custom. This once again tends to confirm that portions of a defendant's ethnic background serve as a reinforcing factor.

To see more clearly the interaction of these types with overall assessments, one can break down mean scores for each combination of elements and compare it with the mean scores assessed by each type. This is illustrated in Table XXX.

Type III Analyses

With the thirty judges participating in the experiment broken down into nine clusters or types, it was possible to reanalyze the data to determine the extent of the differences among them as they interact with the three dimensions. A Type III analysis was utilized for this process. It can best be described as a combination of factorial analysis and treatments by subjects. In this case nine types of judges were involved. Their responses to the stories were analyzed as if they were the subjects.

As with the Type VI, the analysis is done in rotations of two factors at a time. Since many of the differences have already been elaborated upon in the Type VI interpretations, this section will simply highlight the major findings.

TABLE XXX

MEAN SCORES FOR ELEMENTS OF CRIMINAL MAGNITUDE, PRIOR RECORD AND ETHNIC BACKGROUND DIMENSIONS AS ASSESSED BY TYPES OF JUDGES

Element Combination	Overall Prejudicial Score	Type I	Type II	Type III	Type IV	Type V	Type VI	Type VII	Type VIII	Type IX
Morbidity/Non-Criminal Deviance	7.0500	7.6328	6.3994	7.2770	7.5414	6.3350	6.5000	6.9165	5.9165	7.0000
Morbidity/Criminal Interaction	6.4611	6.7660	6.1664	5.6110	5.8960	7.4165	6.8335	7.2500	7.1665	7.8300
Morbidity/Normality	6.2389	5.1332	5.7000	7.3320	7.3320	7.0000	5.8335	5.3330	5.1667	5.6667
Inducement/Non-Criminal Deviance	7.3166	7.9332	7.0998	7.2770	7.3957	5.8335	7.5833	7.5000	7.3300	7.1667
Inducement/Criminal Interaction	6.8166	6.1580	6.6998	7.0550	6.4999	6.9998	7.5000	7.5000	7.4168	7.8300
Inducement/Normality	5.7611	5.0000	6.3333	4.5550	5.6040	6.4998	6.0830	5.1650	5.7500	4.8300
Little Morbidity or Inducement/Non-Criminal Deviance	5.9677	6.4210	6.4464	5.8880	5.6457	5.5000	6.4165	5.2500	5.3330	6.1667
Little Morbidity or Inducement/Criminal Interact'n	4.9055	4.2860	6.0333	5.4440	4.8332	4.8335	4.3333	4.5835	4.4165	4.8300
Little Morbidity or Inducement/Normality	3.4833	3.4000	3.1002	3.7220	3.1458	3.5835	2.9165	4.4498	5.4998	2.6770
Morbidity/Minority	6.6220	6.9660	6.0667	6.3890	6.7708	7.1667	6.0000	6.4168	7.1663	6.6777
Morbidity/Custom	6.4770	6.6640	6.3660	6.3333	6.3124	6.3335	7.5000	7.4168	5.0000	7.1667
Morbidity/Little Ethnic	6.6500	5.9000	5.8332	7.4990	7.7916	7.2498	5.6667	5.6650	6.0835	6.6777

TABLE XXX (Continued)

Element Combination	Overall Prejudicial Score	Type I	Type II	Type III	Type IV	Type V	Type VI	Type VII	Type VIII	Type IX
Inducement/Minority	7.0050	7.0667	6.9334	6.7220	6.9165	7.4168	7.4166	7.4168	7.3333	6.5000
Inducement/Custom	7.9550	8.4660	8.3667	7.5550	7.4582	7.4168	8.7500	7.6665	8.0000	8.5000
Inducement/Little Ethnic	4.9333	4.7990	4.8334	4.4779	5.1247	4.5000	5.5000	5.0833	5.1663	4.8333
Little Morbidity or Inducement/Minority	4.8833	4.9000	5.5334	5.7222	4.7498	4.0000	4.4999	4.1667	4.7498	6.3333
Little Morbidity or Inducement/Custom	4.9776	4.6002	4.7664	5.1109	4.9790	5.4165	4.4166	5.2500	6.2498	4.0000
Little Morbidity or Inducement/Little Ethnic	4.4944	4.6668	5.3002	4.2553	3.8957	4.5000	4.7500	4.4166	4.2500	5.3333
Non-Criminal Deviance/ Minority	6.2277	7.1668	6.3328	6.2222	6.5833	5.4998	6.8335	6.7500	6.5000	5.8333
Non-Criminal Deviance/ Custom	7.3277	7.9000	7.0333	6.9443	6.9061	6.5000	7.5833	8.3335	7.2449	7.8333
Non-Criminal Deviance/ Little Ethnic	6.4776	6.9666	6.5998	7.2776	6.7187	5.6650	6.0835	4.5835	4.8335	6.6667
Criminal Interaction/ Minority	6.2277	5.9000	6.9333	6.4999	5.8958	6.7500	5.6650	5.8333	6.5833	6.5000
Criminal Interaction/ Custom	7.3055	7.1002	7.7332	7.1667	6.9167	7.6667	8.0000	7.6667	6.5000	8.5000
Criminal Interaction/ Little Ethnic	4.6500	4.3000	4.2334	4.2778	4.4163	4.8333	5.0000	5.8335	5.9160	5.5000
Normality/Minority	5.7553	5.9002	5.2267	6.1110	5.9583	6.3333	4.9168	5.4166	6.1665	5.6667

TABLE XXX (Continued)

Element Combination	Overall Prejudicial Score	Type I	Type II	Type III	Type IV	Type V	Type VI	Type VII	Type VIII	Type IX
Normality/Custom	4.7777	4.6680	4.7431	4.8880	4.6875	5.0000	5.0831	4.8333	5.5000	3.3000
Normality/Little Ethnic	4.9500	4.1326	5.1331	4.6109	5.4370	5.7498	4.8335	4.7499	4.7498	4.6667

Criminal Magnitude-Prior Record

In comparing the differences among types on their assessments of the constituent elements of criminal magnitude and prior record, significant differences were found. These are summarized in Table XXXI.

TABLE XXXI

SUMMARY OF ANALYSIS OF VARIANCE BETWEEN DIMENSIONS OF CRIMINAL MAGNITUDE AND PRIOR RECORD WHEN EXAMINED BY TYPES

Source	df	s. s.	m. s.	F	p
Total	485	2618.530	5.3990	(not needed)	
Between Subjects	53	1618.080	30.5290	(not needed)	
Between Criminal Magnitude	2	415.624	207.8120	10.393	0.01
Between Prior Record	2	255.765	127.8820	6.396	0.01
Interaction Criminal Magnitude X Prior Record	4	46.952	11.7380	0.587	n.s.
Between Subject Error	45	899.741	19.9940		
Within Subjects	440	1000.448	2.2730	(not needed)	
Between Types	8	*	*		
Interaction Type X Criminal Magnitude	16	27.717	1.7320	0.921	n.s.
Interaction Type X Prior Record	16	138.013	8.6258	4.587	0.01
Interaction Type X Criminal Magnitude X Prior Record	32	142.772	4.4616	2.372	0.01
Within Subject Error	368	691.996	1.8804		

* There are no differences between subject types because of the fixed nature of the continuum in Q-methodology.

As with the findings of the Type VI analysis, significant differences

exist between types in their perception and assessment of the dimensions of criminal magnitude and prior record. This confirms that not only do judges generate significant differences in perception within jurisdictional levels, but also when they are regrouped according to agreement among subjects. Therefore, we should anticipate finding wide areas of disagreement in their opinions among the various types when they are profiled.

Unlike the Type VI analysis, when criminal magnitude and prior record interact, apart from type, no significant differences are produced. This tends to indicate that both actions in concert are viewed differently by all individuals.

However, when examining the criminal magnitude dimension, as it interacts with the judicial type, no significant differences are found. This indicates that while there may be widespread differences within the constituent elements as assessed by each individual, within the types themselves, there is little disagreement.

The opposite effect is seen in the prior record dimension. When interacting with judicial type, it does produce significant differences. This would tend to indicate that there is some disagreement over the relative prejudicial value of this dimension. Consistency within each type then becomes a crucial factor in ascertaining how strongly each type responds to that orientation.

Finally, both dimensions when interacting with judicial type produce significant differences. This confirms the findings of the Type VI analysis which strongly suggested that prejudicial publicity may not be able to be reduced to one simple dimension as opposed to others, but rather is a series of factors when working in concert to produce strong

influences within a potential juror's mind.

Criminal Magnitude-Ethnic Background

The results of the analysis of variance for these combinations is summarized in Table XXXII.

TABLE XXXII

SUMMARY OF ANALYSIS OF VARIANCE BETWEEN DIMENSIONS OF CRIMINAL MAGNITUDE AND ETHNIC BACKGROUND WHEN EXAMINED BY TYPES

Source	df	s. s.	m. s.	F	p
Total	485	2438.038	5.0268	(not needed)	
Between Subjects	53	1703.920	32.1356	(not needed)	
Between Criminal Magnitude	2	359.210	179.6050	7.409	0.01
Between Ethnic Background	2	120.246	60.1230	2.480	n.s.
Interaction Criminal Magnitude X Ethnic Background	4	132.914	33.2285	1.370	n.s.
Between Subject Error	45	1090.872	24.2400		
Within Subjects	440	734.846	1.6700	(not needed)	
Between Types	8	*	*		
Interaction Type X Criminal Magnitude	16	27.717	1.7320	1.396	n.s.
Interaction Type X Ethnic Background	16	138.013	8.6250	6.955	0.01
Interaction Type X Criminal Magnitude X Ethnic Background	32	112.534	3.5160	2.835	0.01
Within Subject Error	368	456.582	1.2400		

* There are no differences between subject types because of the fixed nature of the continuum in Q-methodology.

When types are analyzed on their assessments of the prejudicial value of these two combinations, significant differences are found which deviate from those seen in the Type VI analyses.

When ethnic background was analyzed previously along both individual and jurisdictional levels, significant differences were found between the elements. Here, when analyzed in terms of individuals, no significant differences are found between elements. This would indicate that there was widespread agreement among all judges as to its prejudicial value. One can therefore expect that when each type is profiled, the various elements of the ethnic background dimension will be found to be a critical factor in the generation of adverse public opinion against the defendant.

When criminal magnitude and ethnic background interact among each of the nine respective types, non-significant differences are also found. Once again this strongly suggests that judges across the board viewed equally that the prejudicial value of these when they act in concert is of value. When each type is analyzed in detail, one should find that the elements of criminal magnitude will be assessed differently with the ethnic background elements being applied equally. Ethnic background continues to act as a reinforcing factor.

Such reinforcement is utilized by the general public to strengthen an already preconceived opinion. If people react to stories describing the morbid details of the crime, or the motivations for it, with only moderate prejudice, linking that to some aspect of the defendant's ethnic background will turn such predisposition into hard-core prejudice which is hard to dispell.

When within-subjects effects are considered, significant deviations

from the Type VI results are also found. When each of the separate types are analyzed in terms of their individual interactions with each dimension, no significant differences are found between type of judge and criminal magnitude. However, significant differences are found between type of judge and ethnic background. Both interactions were found to be significant in the Type VI analysis.

This suggests that all types rate the single aspect of criminal magnitude about the same, in terms of potential prejudice. Some element of criminal magnitude will therefore be found as part of each type's general orientation.

Meanwhile, when each type interacts with ethnic background, significant differences do occur. Therefore, while individuals across the board may have widespread agreement about its prejudicial value, within each type there is widespread disagreement.

Each type also viewed their action in concernt differently, for significant differences were generated.

Prior Record-Ethnic Background

The results of the analysis of variance for these combinations is summarized in Table XXXIII.

When these final combinations are analyzed in terms of types, significant deviations from the Type VI results are also found. Here the prior record dimension, when viewed apart from the types, is significant only at the 0.05 level, indicating a statistically lower level of confidence in the differences generated. Therefore, we may expect to find extensive disagreement as to its prejudicial value within each type.

However, at the same time, no significant differences are found

among the ethnic background dimension when viewed apart from the type. This suggests a continued consensus among all judges as to its prejudicial value.

TABLE XXXIII

SUMMARY OF ANALYSIS OF VARIANCE BETWEEN DIMENSIONS OF PRIOR RECORD AND ETHNIC BACKGROUND WHEN EXAMINED BY TYPES

Source	df	s. s.	m. s.	F	p
Total	485	2566.088	5.2909	(not needed)	
Between Subjects	53	1591.179	30.0222	(not needed)	
Between Prior Record	2	207.001	103.5005	4.0895	0.05
Between Ethnic Background	2	121.317	60.6585	2.4020	n.s.
Interaction Prior Record X Ethnic Background	4	126.463	63.2315	2.5038	0.05
Between Subject Error	45	1136.398	25.2532		
Within Subjects	440	974.909	2.2157	(not needed)	
Between Types	8	*	*		
Interaction Type X Prior Record	16	137.155	8.5721	5.1804	0.01
Interaction Type X Ethnic Background	16	138.013	8.6250	5.2124	0.01
Interaction Type X Prior Record X Ethnic Background	32	90.780	2.8360	1.7139	0.05
Within Subject Error	368	608.961	1.6547		

* There are no differences between subject types because of the fixed nature of the continuum in Q-methodology.

When differences are analyzed within types, all are found to be significant in terms of the interaction of each of the factors. Both prior record and ethnic background generate strong degrees of variance

in assessment as to their prejudicial value. This suggests that each of the nine types, when these two dimensions are considered, truly delineate from each other in their respective judgments. However, when type interacts with both dimensions, it is significant only at the 0.05 confidence level.

Summary of Type III Analyses

To summarize the results of the Type III analyses, the following significant developments are found:

1) There appears to be widespread disagreement between types in their assessment of the prior record dimension. This suggests that items such as a defendant's prior record may not be viewed as strongly in terms of prejudicial value as other studies have found it to be. It may also indicate some internal inconsistencies within types over each story's assessments. In other words, a type of judge may have a significant criminal interaction orientation, yet not manifest it consistently in judging each story containing that element. Thus, the matter of judicial uniformity is once again called into question.

2) Ethnic background emerges as a strong dimension in terms of its prejudicial value. In studying interaction, it seems to act as a reinforcing factor. If there is the potential prejudice within the mind of a potential juror, the association of the defendant with an ethnic group or custom will turn that potential prejudice into a significant influence.

3) There is also substantial disagreement over the criminal magnitude dimension among the types. An analysis of the types will determine the magnitude of the differences.

Profiles of Judicial Types

With the various clusters of judges segregated, and their differences analyzed, the task of examining each group microscopically offers opportunity to study in detail the thought processes of each of these judicial types. In actuality this represents the apex of this research, for now with confidence one can say that given "X" information, "Y" prejudice will result in the opinion of each judicial type.

It also offers an opportunity once again to lay down some guidelines for the working press. To simply go through the process of examining all the data without coming up with concrete applications leaves one with no sense of accomplishment.

Type I Judges

Type I judges can best be characterized as inducement and custom oriented. They view statements concerning a defendant's motivation, particularly when linked with some custom or practice in his ethnic background, as highly prejudicial. Their mean score of 8.466 was significantly above the mean for all judges. However, three other judicial types rated this combination with a similar degree of severity.

The combination of inducement and custom is perceived as leaving little to chance for the potential juror to make the inferential leap from an accusation of guilt to guilt beyond a reasonable doubt. As stated previously, it is the subtle racial nuances that seemingly reinforce any motivations stated for the crime. But why? Again it would seem that much of the responsibility must lie at the foot of the media. The white press and its readership has had little exposure to minorities except in a negative manner. Therefore, to hear or read of a member of

a minority group being involved in some kind of criminal act, immediately reinforces the attitude that all minorities are criminals. Therefore, why should this individual be different?

One researcher has concluded:

> The most compelling single finding is that press coverage of blacks has been so slight throughout the entire twentieth century, that the Kerner Commission's observation that our nation is 'moving towards two societies' perhaps somewhat overdramatizes the more sobering truth that black and white Americans have always been separate and that nothing is really changing at all.[40]

But it is more than simply poor coverage by the media. Ultimately the problem reverts back to the individual's semantic environment and how he structures meaning. Stereotypes, racial labels, and negative attitudes towards ethnic practices suggest an inability to cope with uncertainty, with ignorance, and therefore, the necessity to resort to such damning practices.

One judge involved in this study said that a member of a minority group in this state has one strike against him when he comes into court, for no matter how much you try to eliminate that subtle prejudice, you simply can't change people's minds.

In terms of specific story ratings for the combination of inducement and custom, the overall means and Type I means are summarized in Table XXXIV.

Except for story 44, Type I judges rated these six stories equal to or above the mean for all judges. Since story 32 was rated by all judges as being significantly prejudicial, no comment is necessary. However, story 19 should be examined closer, since it has all the makings of leading the jurors to feel the defendant is guilty. It discusses the fact that the defendant was having marital problems. That, by itself, is a potent motive for a sex slaying. However, the

story goes on to state that most migrant workers have marital problems. Since the average individual cannot readily distinguish between this migrant worker and all migrant workers, he makes the damning inferential leap that the defendant must be guilty. Since all migrant workers have marital problems, and since this was a sex slaying, he must have done it.

TABLE XXXIV

MEAN SCORES FOR STORIES CONTAINING ELEMENTS OF INDUCEMENT AND CUSTOM AS RATED BY JUDGES OVERALL AND TYPE I JUDGES

Story Number	Description	Judges Overall	Type I Judges
19	"Marital Difficulties"	8.266	10.200
25	"Naturally Remorseful"	7.000	7.800
32	"Brag About Exploits"	10.200	10.600
35	"Revenge--a Migrant Custom"	9.566	9.600
40	"No one would Hire a Migrant"	6.066	7.400
44	"No Time to get into Trouble"	6.633	5.200

Wendell Johnson was indeed correct when he stated: "One can never say all about anything, just as one can never observe all of anything."[41] Yet the public tries! So the press must help to educate them. In the case of the findings here, two recommendations are in order. First, the press should again stop using labels. It matters not whether someone is a Mexican, American, or a white Anglo-Saxon Protestant. But then the

press must also feature ethnic groups in a more favorable light. Their various customs and practices must be made known to forbid the curse of ignorance from working within the mind of men.

Type I judges also rate the combination of non-criminal deviance and custom as highly prejudicial. Here again many ethnic customs and practices seem strange, but when combined with reports of the defendant's bizarre behavior, it can once more become a volatile mixture for the generation of prejudice.

Type II Judges

These can also be characterized as being inducement and custom oriented. However, the magnitude of their rating is much stronger than that of Type I judges, when compared to the other news elements. To do this comparison with Type I, the mean scores for the above stories are added in Table XXXV.

As can be seen, Type II judges tend to be stronger in their ratings of these six stories. They are particularly higher than either the overall mean or Type I when considering stories 40 and 44. Story 40 had to do with claims by the defense attorney that the defendant was being tried by newspaper and this trial carried over to migrant workers as a group. While the story tries to condemn the allness of its readers, in the minds of these judges, it backfires, making the defense attorney out to be a "bleeding heart liberal," and therefore representing an individual who must be guilty.

Story 44 is comparable with the defense attorney, invoking the migrant custom of work performed with long hours. The inference the story is attempting to make is that migrants have no time to get into

trouble. Once again, in the minds of these judges, it triggers the opposite response when read by potential jurors.

TABLE XXXV

MEAN SCORES FOR STORIES CONTAINING THE ELEMENTS OF INDUCEMENT AND CUSTOM AS RATED BY JUDGES OVERALL AND TYPE I AND II JUDGES

Story Number	Description	Judges Overall	Type I Judges	Type II Judges
19	"Marital Difficulties"	8.266	10.200	10.000
25	"Naturally Remorseful"	7.000	7.800	7.000
32	"Brag About Exploits"	10.200	10.600	10.400
35	"Revenge--a Migrant Custom"	9.566	9.600	9.800
40	"No one would Hire a Migrant"	6.066	7.400	8.400
44	"No Time to get into Trouble"	6.633	5.200	7.200

Like Type I judges, this group tends to rate any other element which interacts with custom as capable of producing substantial prejudice. They are stronger than Type I judges in their assessment of non-criminal deviance and custom; little morbidity or inducement and custom; and criminal interaction and custom.

Both groups also tend to downplay the publication of a defendant's prior record. Their mean scores for stories having criminal interaction element are in most cases lower than the overall means.

Type II judges differ from the norm and Type I in their assessment

of morbidity as a prejudicial factor. Whenever it is combined with any of the other elements, it is rated significantly lower than the mean for judges as a whole.

Type III Judges

These three local judges that cluster into Type III can best be characterized as morbidity and normality oriented. For them, stories containing the sensational details of the crime tend to provoke significant prejudice in the minds of potential jurors. As previously stated, much of the local judges' assessment of morbidity as related to prejudice comes from the difficulty of seating a representative jury. In particular, it is often difficult, if not impossible, for them to seat some females in juries to hear a case involved with a sex crime.

In terms of specific story ratings, their assessments are given in Table XXXVI.

TABLE XXXVI

MEAN SCORES FOR STORIES CONTAINING ELEMENTS OF MORBIDITY AND NORMALITY AS ASSESSED BY JUDGES OVERALL AND TYPE III JUDGES

Story Number	Description	Judges Overall	Type III Judges
2	"Night of Macabre and Horror"	7.566	10.000
3	"Litter of Crime"	7.200	8.667
8	"Methodically Slaughtered"	5.667	6.333
12	"Meet his own Brutal End"	5.566	5.000
30	"Brother of Accused Slayer"	4.666	6.000
33	"Asked for a Priest"	6.866	8.000

The Type III judges reacted most strongly to the initial reports of the crime, taking strong exception to the use of terminology such as "night of macabre and horror," "horrific scream," and "blood everywhere" as used in story 2, or "methodically slaughtered" as used in story 8. Such terms are deemed overly descriptive, and add nothing but potential prejudice. Most judges felt that the use of these kinds of highly emotional phrases were to incite and satiate the public's appetite for violence and not for information that is in the public interest.

Carolyn Jaffe has written:

> This type of material tends to be inflammatory--that is to cause the jury to want to convict--and thus to be prejudicial to whomever happens to be the defendant, not because he is any particular person about whom the publicity has been disseminated, but merely because he is the defendant.[42]

Such a conclusion demonstrates the often irrational approach that members of the public take in assessing crime. Inflammatory reporting merely feeds that kind of "semantic insanity."

Type III judges also tend to rank all the other combinations containing morbidity significantly above the mean: morbidity and non-criminal deviance at 7.277, morbidity and little ethnic at 7.499. This suggests again the concept that morbidity in and of itself is sufficient to generate prejudice, but when it is combined with another element such as non-criminal deviance, it reinforces the conclusion already reached.

These judges also do not see the publication of a defendant's prior record as significantly prejudicial.

Type IV Judges

Type IV judges can be characterized as morbidity and little ethnic oriented. They view stories that are predominantly concerned with the morbid details of the crime as significantly prejudicial. Such stories may contain non-specific or no details concerning the defendant's ethnic background. Therefore, like Type III judges, it is primarily a concern with the sensational. Another similarity to Type III is that once again this cluster primarily comprises local judges.

As to how they ranked specific stories, these are summarized in Table XXXVII.

TABLE XXXVII

MEAN SCORES FOR STORIES CONTAINING ELEMENTS OF MORBIDITY AND LITTLE ETHNIC AS ASSESSED BY JUDGES OVERALL AND TYPE IV JUDGES

Story Number	Description	Judges Overall	Type IV Judges
1	"Insatiable Lust for Blood"	8.066	8.500
3	"Litter of Crime"	7.200	6.750
5	"Long History of Mass Murder"	4.800	4.500
6	"Tortured by Fantasy"	8.066	8.250
11	"Nude Body"	6.200	6.500
12	"His own Brutal End"	5.566	6.125

While they tend to rate these stories significantly above the

overall mean, the magnitude of the differences is not as great as with Type III judges.

They are strongest on stories 1 and 6. Story 1 describes the defendant as a "sub-animal" and proceeds to describe the condition of the bodies as police found them. In terms of structuring meaning, the label "sub-animal" leads the reader to make serious, if unsubstantiated, inferences.

Story 6 relates the testimony of a psychiatrist, an "expert," not under oath, who presents a personality sketch of the defendant who is still unidentified. As previously related, judges overall, and local judges in particular, viewed this story as highly inflammatory. This kind of journalism creates hysteria.

Story 11 presents the defendant's name with no other ethnic information. While it was rated by both, judges as a whole and Type IV judges in particular, as moderate in terms of prejudice, the comments of several judges must be mentioned.

Previously it was stated that the element of little ethnic can be described as non-specific details concerning the defendant's cultural background. Several judges indicated that they felt the simple act of mentioning the defendant's name, if it is an ethnic one, in connection with the crime was sufficient to provoke prejudice in some potential jurors' minds. The name Martinez automatically links him to a minority group with all the stereotypes that are associated with it.

This is not the first time such an accusation has been made. Ardyth Broadrick Sohn, in her 1976 study, found that persons with uncommon names were consistently rated as more guilty than those with common ones. The common-uncommon continuum was operationally defined

as follows: "common" - names which do not carry references to ethnic, racial, or religious background; "uncommon" - those which carried an ethnic or racial connotation.[43] Thus, this opens an entirely new area that demands research. If the simple mention of someone's name in connection with a crime is indeed prejudicial, our system of justice has a significant problem to deal with.

Type IV judges, like Type III judges, also tend to rate the element of criminal interaction below the means of judges as a whole. In contrast, they rate the non-criminal deviance element higher than Type III and in some cases higher than the overall mean. Overall, they are more consistent in their judgments than Type III.

Type V Judges

Type V judges may best be characterized as criminal interaction and custom oriented, viewing stories that describe the defendant's prior criminal record and ethnic customs as being significantly prejudicial. As with other combinations, the custom element would seem to act as a source for reinforcement of inferences made on the basis of criminal interaction information. It is epitomized by the ethnic stereotyping that says "once a criminal, always a criminal," and if he's a minority, he's guilty for sure.

Their rankings of stories containing these elements are found in Table XXXVIII.

These judges are not totally consistent in ranking criminal interaction and custom elements as most prejudicial. They are most strong in their assessment on stories 29 and 44. Story 29 clearly lays out his prior record, where he has served time and for what charge. The ethnic

custom asserts that migrants are peace-loving. In these judges' minds, people would use such an assertion as a backlash reinforcement. They would react apart from what is reported. Their line of thinking would run as follows. He's an ex-convict. He's a migrant. Even though this official says they are non-violent, we know that migrants are trouble-makers. Therefore, he's guilty.

TABLE XXXVIII

MEAN SCORES FOR STORIES CONTAINING ELEMENTS OF CRIMINAL INTERACTION AND CUSTOM AS ASSESSED BY JUDGES OVERALL AND TYPE V JUDGES

Story Number	Description	Judges Overall	Type V Judges
28	"Strong Connection"	7.466	6.000
29	"Migrants . . . Non-violent"	6.833	8.500
31	"Peace Lovers . . . Farce"	7.100	6.000
32	"Rape as . . . a Status Symbol"	10.200	10.000
43	"Resigned to Accept"	5.600	7.000
44	"Once in Trouble . . . Always"	6.633	8.500

Story 44 clearly uses the A = A law of identity. Here the defense attorney chides the people for thinking that "once a man's in trouble, he's always in trouble." Here again it would seem that, rather than defusing potential prejudice, such statements generate more.

Type V judges are consistent in rating the criminal interaction element high, no matter what is linked with it. They are also

consistent in rating any combination that contains an ethnic background element. Thus, it continues to appear that who the defendant is in terms of ethnic background, is as important, if not more important, than what he's accused of in terms of generating prejudice.

Type VI Judges

Type VI judges may be characterized as inducement and custom oriented. Like Types I and II, they tend to view stories relating to motivations for the crime with the defendant's ethnic heritage as significantly prejudicial. To compare them more accurately, Table XXXIX shows the story ratings of the three types of judges on the inducement and custom combination.

TABLE XXXIX

MEAN SCORES FOR STORIES CONTAINING ELEMENTS OF INDUCEMENT AND CUSTOM AS ASSESSED BY JUDGES OVERALL AND TYPE I, II, AND VI JUDGES

Story Number	Description	Judges Overall	Type I Judges	Type II Judges	Type VI Judges
19	"Marital Difficulty"	8.266	10.200	10.000	8.500
25	"Remorseful"	7.000	7.800	7.000	8.000
32	"Rape . . . Status Symbol"	10.200	10.600	10.400	10.000
35	"Revenge"	9.566	9.600	9.800	10.000
40	"Migrant"	6.066	7.400	8.400	7.000
44	"Trouble"	6.633	5.200	7.200	9.000

In comparison with the other two inducement and custom types, Type VI judges seem more emphatic in their appraisal of the prejudicial value of these elements, although not consistently. They are particularly strong on stories 25 and 44. They viewed the comment of a minister stating that the defendant was naturally remorseful as substantially prejudicial. Once again the custom element reinforces it. If the defendant is remorseful, he must have done it. Also if a migrant seeks a minister's counsel, something seemingly alien from his culture, he had to do it. Story 44, previously mentioned, once again semantically backfires.

However, Type VI differs from I and II significantly in the way they handle some of the other elements. It rates criminal interaction element much stronger than the others do, particularly when it interacts with morbidity or inducement. It rates morbidity higher when it interacts with custom, than do Types I or II. Type VI judges continue to rate inducement consistently stronger, regardless of what it interacts with. Thus, Type VI appears to have a better overall grasp of the problem than do Types I or II.

Type VII Judges

Type VII judges can best be characterized as non-criminal deviance and custom oriented, rating stories that describe the defendant's past deviant behavior, when linked to ethnic customs, as strongest in terms of producing prejudice. Thus custom continues to emerge as a dominant element in the making of substantial prejudice.

The deviant action of a defendant can range from the rather mundane to the bizarre, and in some cases, the customs associated with his

culture could be classified as such. But the two variables acting upon one another to form a social stigma is not new. Consider this statement from the Managers of the Society for the Prevention of Pauperism in the City of New York written in 1819:

> We lament to say that they are too often led by want, by vice, and by habit to form a phalanx of plunder and depredation, rendering our city more liable to the increase of crimes, and our houses of correction more crowded.[44]

If the physical environment can affect the individual in terms of making him more deviant in his behavior, certainly it is not difficult to believe that the semantic environment can affect the reactions and behavior of a potential juror, who reads of those who are led by want and by habit, and then makes radical inferences.

The story ratings are summarized in Table XL. Once again as seen in other types, these judges are not overly consistent in their assessments of the non-criminal deviance and custom combination. They do express strong opinions, however, on several key stories, which in a real case would have to be dealt with by the presiding judge. For example, story number 19, which has already been discussed in connection with another combination of elements, involves marital difficulties. The admission of marital difficulties in traditional American society is still considered evidence of social deviance, even though many believe we shed our Puritanism a long time ago. Add to this the statement that most migrant workers, as part of their social milieu, have constant marital problems. The ordinary man in the street can make numerous inferences as to the defendant's possible guilt.

The inconsistency of these judges, then, is seen in their low ranking of story 42 which discussed the fact that the defendant had two wives, one at home, and one he traveled with. Once again this

deviant behavior is attributed to migrant customs. One would expect these judges to rate this more strongly than they did.

TABLE XL

MEAN SCORES FOR STORIES CONTAINING ELEMENT OF NON-CRIMINAL DEVIANCE AND CUSTOM AS ASSESSED BY JUDGES OVERALL AND BY TYPE VII JUDGES

Story Number	Description	Judges Overall	Type VII Judges
14	"Tattoo--Common Symbol"	5.133	6.000
19	"Marital Difficulties"	8.266	10.500
21	"Soda Pop Diet"	4.900	7.500
22	"Deviant Sexuality"	8.500	8.000
35	"Psychological Revenge"	9.566	10.000
42	"Two Wives"	7.600	8.000

In addition, the rating on story 22, which discusses deviant sexuality as part of the migrant culture, is rated much lower than we would expect of these judges, based on rankings given to stories 14, 19 and 21.

Their inconsistency can also be seen in their assessments of other elements where non-criminal deviance is a factor. Morbidity and non-criminal deviance are ranked slightly below the mean; inducement and non-criminal deviance, slightly above; and non-criminal deviance and minority status, slightly below. However, they are much more consistent in ranking combinations with the element of custom as significantly

high in prejudice. Therefore, it might be more accurate to simply characterize Type VII as custom oriented.

Type VIII Judges

Type VIII judges may be characterized as inducement and criminal interaction oriented. They view stories that link motivations for the crime, and the fact that the defendant has a prior criminal record, as prejudicial. In terms of the semantic environment, these types of stories provoke the reaction that, since he's been a criminal, he'll act like a criminal always; therefore, he had a motive for doing whatever he did. These kinds of reactions can best be characterized as the "human nature fallacy," which says the defendant couldn't help himself because that's his nature. Of all the prejudicial combinations studied in this experiment, this one leaves us most in despair. If it is true, the defendant is never capable of rising above the environment in which he finds himself, then we indeed have one of the most rigid caste systems in the world.

An examination of their story ratings will reveal more about this fallacy. They are summarized in Table XLI.

Their assessments can only be characterized as marginal. Like Type VII, they lack consistency in their judgments of stories in this area. The only story they strongly rate as prejudicial is number 26. It concerns itself with the authorities' concern to build a firm case against the defendant, while at the same time providing the Constitutional safeguards to him to avoid a later dismissal on appeal.

The basis of prejudice in this story is once again the backlash effect. When the law enforcement authorities take great pains to

insure a defendant's rights, it is often interpreted as a sign of weakness, of coddling someone who doesn't deserve such treatment; that since he's been a criminal in the past, he will only continue to be one. Therefore, sufficient hostility is built against the defendant, creating significant probability that prejudice will result.

TABLE XLI

MEAN SCORES FOR STORIES CONTAINING THE ELEMENTS OF INDUCEMENT AND CRIMINAL INTERACTION AS ASSESSED BY JUDGES OVERALL AND BY TYPE VIII JUDGES

Story Number	Description	Judges Overall	Type VIII Judges
4	"Tattoo"	8.033	8.000
26	"Air Tight Case"	5.856	8.000
32	"Rape . . . Status Symbol"	10.200	9.500
44	"No Time for Trouble"	6.533	6.500
48	"Change of Venue"	6.500	6.000
50	"Right to a Fair Trial"	3.666	2.500

Once again the Sheppard case provides a graphic example. In another of its editorials, the Cleveland Press stated:

> If ever a murder case was studded with fumbling, halting, stupid uncooperative bungling--politeness to people whose place in this situation completely justified vigorous searching, prompt and effective police work--the Sheppard case has them all.[45]

What people fail to realize is that, if all authorities were let loose to fully enforce the law, the result would be chaos. Restraint

is necessary for freedom to continue. Consider the comment of Judge Charles Breitel:

> If every policeman, every prosecutor, every court, and every post-sentence agency performed his or her responsibility in strict accordance with the rules of law, precisely and narrowly laid down, the criminal law would be ordered, but intolerable.[46]

The balance of the stories in this combination are rated at about the norm for judges as a whole, if not below the norm. This would suggest that this cluster tends to be uncertain about the mattter as a whole and may tend to rule on the basis of narrow observations rather than on broad principles of law.

Comparing them on other assessments, when non-criminal deviance is connected with other combinations, judges in this type tend to flip-flop. There is not the trend of consistency throughout, as exhibited by other types. The criminal interaction element is handled similarly.

Type IX Judge

This is the most significant type, for this single judge does not correlate with any of the others. His judgments therefore would be expected to be extremely different. In terms of characterization, the best label is criminal interaction and custom, the same one as given to Type V judges. To begin to assess the apparent radical differences, an examination of the manner in which each type rated stories in the criminal interaction and custom element is summarized in Table XLII.

The differences between these two types on stories 28 and 32 are minimal. Story 28 dealt with the comments of a Texas law enforcement official who believed that the defendant may have committed crimes in his state. Considering the operational definition of the criminal interaction element, such a law rating is significant. Judges strongly

oriented toward that element would be expected to score this story higher. The minimal differences on story 32 are consistent in that all rate this significantly high.

TABLE XLII

MEAN SCORES FOR THE ELEMENTS OF CRIMINAL INTERACTION AND CUSTOM AS ASSESSED BY JUDGES OVERALL AND BY TYPE V AND TYPE IX JUDGES

Story Number	Description	Judges Overall	Type V Judges	Type IX Judge
28	"Strong Connection"	7.466	6.000	7.000
29	"Migrants . . . Non-Violent"	6.833	8.500	10.000
31	"Peace Lovers . . . Farce"	7.100	6.000	10.000
32	"Rape . . . Status Symbol"	10.200	10.000	11.000
43	"Resigned to Accept"	5.600	7.000	3.000
44	"Once in Trouble . . . Always"	6.633	8.500	10.000

The major differences in assessments of stories 29, 31 and 44 are significant. Story 29 dealt with the comments of a United Farm Workers official, stating that migrants were by custom peace-loving. It also included a clear statement of the defendant's prior record. The Type IX judge assessed this a 10 in the continuum, therefore, considering this one of the top five prejudicial stories in the deck. Overall, judges assessed this as only minimal, at the middle of the continuum. This might suggest a strong orientation among Type IX to view clear statements of time served for certain crimes as highly prejudicial.

Story 31 tends to confirm this. It dealt with a rebuttal of the United Farm Workers official's comments and went on to picture migrants as violent and therefore more likely to interact with the law. Here again Type IX rated it a 10, placing it once again in the top five stories.

He downgraded story 43. It did not specifically mention the defendant's prior record. Rather, it simply dealt with the fact that migrants often do not interact very successfully with the criminal justice system. If a judicial type was extremely oriented towards viewing publication of a defendant's prior record as highly prejudicial, such a low score would be expected.

Finally, story 44, which dealt with the "once-in-trouble-always-in-trouble" fallacy, was also rated a 10 by the Type IX judge, much higher than judges overall and even higher than Type V. Since the defense attorney attacked publication of the defendant's past record, such a high score is once again consistent.

Therefore, it would appear that one can conclude that what separates Type IX from the others involved is his consistency in assessment. This is confirmed when his scores on elements containing criminal interaction are compared with the overall, as well as with other types. In each case he scores significantly higher than the balance of other types. When comparisons are made on the custom element, the same holds true.

Summary of Judicial Type Profiles

After carefully examining each judicial type, one can conclude the following:

1) Nine types of judges emerge out of the thirty involved in the experiment. Such diversity indicates rather substantial disagreement between federal, state and local judges in Oklahoma over the nature or causes of prejudicial publicity. Further examination yields the conclusion that for many judges such decisions are based on personal experience, rather than broad principles of law.

2) Federal and state judges tend to cluster together in several groups, while local judges remain largely intact as a single cluster. Such broad disagreement among federal and state judges, when contrasted with the rather consistent assessments of local judges, suggests that the uniformity of justice at the higher levels of the judiciary may be somewhat lacking.

3) Such uniformity is further called into question when one examines the lack of consistency within types over major areas that emerge within the prejudicial publicity debate. Even among the primary orientations for each type, there is substantial disagreement over interpretation of stories.

4) Among the nine types, the ethnic background dimension emerges as a significant reinforcing element. If some prejudice is aroused through dissemination of such items as a defendant's deviant behavior or past criminal record, when it is linked with an aspect of ethnic background, it is rated significantly higher in terms of prejudicial value. There appears to be some suggestion among judges that even something as innocent as an ethnic name, on the part of the defendant, is sufficient to reinforce prejudice aroused by one of the other elements.

5) Local judges appear most consistent in terms of their morbidity

orientation. Stories containing any kind of information which could be considered sensational are rated significantly high.

6) There is substantial disagreement among types as to the prejudicial value of publishing a defendant's prior criminal record. Most researchers have found this to be significant in generating predisposition among jurors, yet it does not appear to carry over consistently among the various types, and when it does, the stories within that element are not consistently rated.

7) The single judge, who fell into Type IX by his extreme disagreement with the balance of judges, appears to be most consistent overall in rating the various prejudicial categories.

Conclusions

At the beginning of this chapter, the thoughts of Sir Peter Medawar were stated. He defined scientific reasoning as a "kind of dialogue between the possible and the actual, between what might be and what is in fact the case."[47] After this extensive analysis of the data, it is necessary to summarize what is actual and what is in fact the case.

In structuring the experiment, three research problems and nine hypotheses were set down to narrow the range of the subject matter to be considered. At this time the author quoted Judge Bernard S. Meyer who stated: "Our responsibility is to learn how to narrow such a probability (of prejudice)."[48] Have we isolated the parameters as to what is prejudicial publicity?

It is the author's belief that this experiment, while exploratory in nature, has significantly defined some parameters. To summarize those parameters, the specific problems and hypotheses will be utilized.

Conclusions of Research Problems

The three problems dealt with were:

1) Is there a relationship, in the opinion of the judges, between the news elements of criminal magnitude, prior record, and ethnic background, and possible prejudice to a defendant's case?

2) Does this relationship change when jurisdiction varies from local to state to federal levels?

3) Do judges tend to cluster together on the basis of their opinions, concerning the relationship of the news elements to possible prejudice, apart from their jurisdictional level?

There is a significant relationship in the judges' opinions of the prejudicial value of the news elements. Judges, regardless of jurisdictional level, viewed the major aspects of the prior record dimension, especially non-criminal deviance, as being a critical factor in the development of significant prejudice towards a defendant.

The ethnic background dimension, in particular custom, was seen as a reinforcing factor. If potential prejudice was initiated by certain aspects of the defendant's background, and in particular his socially deviant ones, the aspect of ethnic background turned such potential prejudice into an influence which could substantially predispose jurors to find the defendant guilty even before one piece of evidence was adduced into court. There is even some evidence that the mere use of an ethnic name in a news story concerning a crime is sufficient to initiate the chain of inferences in a potential juror's mind that will result in assessing him as guilty.

The relationship of judges' opinions on the prejudicial value of news elements does indeed change with jurisdictional level. Federal

judges express strong opinions as to the prejudicial value of the non-criminal deviance element. Such deviance from the trivial to the bizarre is viewed equally by this group. When such deviance is linked to a custom or practice in the defendant's ethnic heritage, it strengthens the prejudicial value of the non-criminal deviance element.

State judges express strong opinions on the prejudicial value of the inducement element. Any recitation of the motivations or reasons for the crime is deemed significantly prejudicial by this group. These judges as a group are particularly adamant when such statements come from "experts" whose opinions are not given under oath, and who will never be subject to cross-examination by the defense.

Local judges exhibit consistently strong opinions on the prejudicial value of the morbidity element. Any stories which review the gory and often sensational details are deemed as prejudicial.

The assessments of all judges when compared finds nine different types emerging. Among each type, local judges cluster together most consistently. Significant fragmentation of opinions is exhibited by the way federal and state judges group together in terms of agreement.

Conclusions of Hypotheses

Hypothesis 1. All judges as a group will give stories with the elements of criminal magnitude the highest prejudicial ranking.

This hypothesis is not confirmed. As a group judges exhibit inconsistencies as to the prejudicial value of this dimension. Only local judges exhibit a high ranking and then only on the single element of the dimension of morbidity.

Hypothesis 2. All judges as a group will give stories with the

elements of prior record the second highest prejudicial ranking.

This hypothesis is not confirmed. Judges as a group exhibit a strong tendency to rate elements of this dimension as significantly highest in prejudice.

Hypothesis 3. All judges as a group will give stories with the elements of ethnic background the lowest prejudicial ranking.

This hypothesis is not confirmed. Elements of ethnic background are rated equally with those of prior record in terms of prejudice involved.

Hypothesis 4. Judges of local jurisdiction will give stories with the elements of criminal magnitude the highest prejudicial ranking.

This hypothesis is confirmed. Local judges, both individually and as a group, exhibit a strong morbidity orientation.

Hypothesis 5. Judges of state jurisdiction will give stories with the elements of prior record the highest prejudicial ranking.

This hypothesis is confirmed. State judges, both individually and as a group, exhibit a strong inducement orientation.

Hypothesis 6. Among judges of federal jurisdiction, there will be no significant differences between stories containing the elements of criminal magnitude and prior record.

This hypothesis not confirmed. Federal judges, both individually and as a group, exhibit a strong non-criminal deviance orientation.

Hypothesis 7. Among all judges, when stories with the elements of criminal magnitude interact with elements of ethnic background, and when stories with the element of prior record interact with ethnic

background, no significant differences will be produced.

This hypothesis is not confirmed. Ethnic background interacts with both criminal magnitude and prior record to produce significant differences.

Hypothesis 8. Among all judges, stories with the element of criminal magnitude and prior record will interact to account for the most variation among prejudicial rankings.

This hypothesis is not confirmed. Prior record and ethnic background account for the most variation in scores.

Hypothesis 9. Between all judges, we would expect to find two types of judges.

This hypothesis is not confirmed. Nine types of judges emerge.

FOOTNOTES

[1]Kerlinger, p. 25.

[2]Horace Freeland Judson, Search for Solutions (New York, 1980), pp. 3, 11.

[3]Alfred J. Marrow, Changing Patterns of Prejudice (Philadelphia, 1964), p. 31.

[4]Tamotsu Shibutani, Improvised News (New York, 1966), p. 7.

[5]Robert Traver, Anatomy of a Murder (New York, 1947), pp. 39-40.

[6]Wendell Johnson, People in Quandaries (New York, 1946), p. 177.

[7]Connors, p. 14.

[8]Ibid., p. 15.

[9]Ibid., p. 16.

[10]"Confrontation," Newsweek (August 1, 1966), p. 26.

[11]Connors, p. 17.

[12]Franz Kafka, The Trial, tr. Willa and Edwin Muir (New York, 1956), p. 10.

[13]Johnson, p. 165.

[14]Charles Silberman, Criminal Violence, Criminal Justice (New York, 1978), p. 79.

[15]Fortune News (December, 1975), p. 4.

[16]"News Reporting and Fair Trial," Oklahoma Law Review, Vol. 22 (Fall, 1969), p. 137.

[17]Ibid.

[18]Knaebel, Vol. 427, p. 569.

[19]"Ex-Con Arrested in Girl Scout Slayings," Tulsa World (June 24, 1977), p. 1.

[20]Walter Wyatt, Reporter of Decisions, United States Reports,

Cases Adjudged in the Supreme Court, Vol. 335, October Term 1948 (Washington, 1949), p. 476.

[21]Telford Taylor, "Press and Prejudice: The Impact of News on Justice," American Philosophical Society Proceedings, Vol. 112 (1968), p. 124.

[22]Rottenberg, p. 17.

[23]"Chicago Killings Linked to American Complacency," New York Times (July 15, 1966), p. 4.

[24]"Confrontation," p. 26.

[25]"Lawyer Sees Possibility of Speck's Full Freedom," New York Times (July 28, 1966), p. 28.

[26]United States Supreme Court Reports, Vol. 51, p. 462.

[27]Carolyn Jaffe, "The Press and the Oppressed--A Study of Prejudicial News Reporting in Criminal Cases," Journal of Criminal Law, Criminology and Police Science, Vol. 56 (March, 1965), p. 7.

[28]Johnson, p. 7.

[29]Jack Wimer, "Tulsa's Jekyll-and-Hyde: If not stopped, he will kill again," Tulsa Daily World (September 16, 1975), p. 1.

[30]Walter J. Ward, "Type VI Design," Unpublished Handouts (1980), p. 1.

[31]Stephen Sheppard, My Brother's Keeper (New York, 1964), p. 145.

[32]Silberman, p. 170.

[33]Nicholas B. Katzenbach, Chairman, The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts (Washington, 1967), p. 50.

[34]Silberman, p. 168.

[35]Ibid., p. 167.

[36]Ibid., p. 159.

[37]Walter J. Ward, "Product-Moment Correlation for Interval Measures," Unpublished Handouts (1980), p. 1.

[38]Ibid.

[39]Kerlinger, p. 661.

[40]Paula Johnson and David Sears, "Black Invisibility, the Press and the Los Angeles Riot," American Journal of Sociology, Vol. 76

(January, 1971), p. 14.

[41]Ibid., p. 180.

[42]Jaffe, p. 7.

[43]Sohn, p. 103.

[44]Silberman, p. 29.

[45]Stephen Sheppard, pp. 102-3.

[46]"Controls in Law Enforcement," University of Chicago Law Review, Vol. 27 (1960), p. 427.

[47]Judson, pp. 3, 11.

[48]Meyer, p. 287.

CHAPTER VI

IMPLICATIONS AND RECOMMENDATIONS

Introduction

Can one now say with some certainty what is prejudicial publicity? Indeed this study has been able to reach some definite conclusions as to what kind of news elements do tend to prejudice potential jurors in the minds of federal, state and local judges.

Prejudicial publicity can thus be summarized as follows:

1) Statements identifying the defendant as a member of a minority group, or describing the customs and practices of a minority group, are prejudicial. Such statements seem to reinforce prejudice placed by other news elements.

2) Statements describing the defendant's past history in terms of the deviant practices he has been involved in are prejudicial.

3) Statements made by "experts" not under oath, attempting to explain a reason or motivation for a crime are prejudicial.

4) Statements reciting a defendant's past criminal record, crimes for which he has been convicted of and time served are prejudicial.

With these in mind, it is the author's desire to apply the power of knowledge principle. Sir Francis Bacon, the father of the scientific method, once wrote that "knowledge is power."[1] The promise of science is that as man examines the phenomenon that surrounds him, he has within his power the ability to improve his state in life, if he can make the

leap from the theoretical to the practical. One knows theoretically that the items mentioned above are prejudicial. However, if these cannot be transferred into salient recommendations of such, knowledge is powerless.

The leap, however, from the theoretical to the practical is often difficult. Many things that look good on paper are hard to transform into reality, primarily because they require people to change, changing their thought patterns, lifestyles and conduct. Thus it is not just knowledge of subject matter that can be transformed into power, but knowledge of how people react and behave. In fact, often the knowledge of behavior is more important than the subject matter.

Thus the recommendations made must be based not only upon the empirical knowledge level, but the behavioral characteristics of journalists, lawyers and judges. The desired goal is change, a distinct change in the behavior of each group.

Therefore, we will commence by briefly discussing the practical implications of the four news elements found to be prejudicial on the lives of each of these groups. From there some areas for further study will be cited.

Finally, detailed recommendations will be offered to both the press and judicial communities, with the hope that in the future, the course of individual trials can be improved.

Implications

Earlier in the review of Supreme Court cases, the words of Justice Stanley Reed in Pennekamp vs. Florida clearly described the cutting edge of the entire issue under study. He stated: "A free press is not

to be preferred to an independent judiciary, nor an independent judiciary to a free press. Neither has primacy over the other."[2] Thus as we conclude, it is not a matter of whether research has established a more compelling right for one camp over the other, but rather the goal of this study has been to find ways for both camps to live in "responsible peace."

The phrase "responsible peace" is the key. Both the press and the judiciary must clearly see the roles they are called upon to carry out if society is to remain rational. When a conflict arises over these roles, they must be settled in a responsible fashion, often meaning apart from the courts. The law has a way of doing funny things with the lives of individuals and institutions. Norman Mailer has written:

> The law is built on the assumption that life is mad, and law offers the same stability society brings to restless humankind. Look you fools, says society, the way we do it makes no one happy, but somehow, most of the time, you get through life in one piece.[3]

Based on such assumptions, it is easy to see that if the momentous decisions that the press and the judiciary must make are left to the law to resolve, ultimately someone's freedom will be lost.

Therefore, the press in particular must develop its clear sense of social responsibility. The Hutchins Commission in 1947 stressed what the alternative would be if the press did not develop such a sense of responsibility. They stated:

> Everyone concerned with freedom of the press and with the future of democracy should put forth every effort to make the press accountable, for if it does not become so of its own motion, the power of government will be used as a last resort, to force it to be so.[4]

But what does it mean for the press to act responsibly. Can such conflict be operationally defined? Indeed it can. It is the author's belief that the basis of social responsibility for the press can be

simply stated: freedom carries obligations and responsibilities, and since the press enjoys a privileged position in society, it is obligated to act in a responsible way. In the matter of pre-trial publicity, the obligations involved are many. What about publication of a defendant's prior record? What about ethnic and racial labels? Do the people have an instanteous need to know? Only a responsible journalist can weigh all the effects of such dissemination and arrive at a just conclusion which not only protects his own freedom, but also the freedom of the defendant.

Invariably there is the temptation to say, "Why should my paper or television station act in such a way, when everybody else is going about it the same old way?" Indeed it is difficult, in particular where the responsible journalist tends to lose at the box office. Such a problem has always confronted men and women of conscience, and the answer has always been the same. It is what Atticus Finch told his children in To Kill a Mockingbird: "The one thing that doesn't abide by majority rule is a person's conscience."[5]

Therefore, the stronger members of the press must take the lead for their weaker brethren, and show them the path they must trod towards maturity. Otherwise, one must face the consequences. The British jurist Lord Chancellor Hardwicke stated in 1742:

> Nothing is more encumbent upon the courts of justice, than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequence than to prejudice the minds of the public against persons concerned as parties before the case is finally heard.[6]

The question then must be will the press solve its own problems, or will it allow an often hostile judiciary to solve the problems for them?

Let us examine some of the pernicious consequences of what this study has established empirically, consequences that effect the press and the judiciary. Of initial importance was the lack of uniformity in news judgments. As the data was analyzed, it became apparent that there is substantial disagreement between judges as individuals and as a group over what is inherently prejudicial. While one believes that "equal justice under the law," as it is inscribed on many courthouse exteriors, is a working principle, our findings indicate that that quality of justice may vary significantly from courtroom to courtroom.

Such lack of uniformity in areas of sentencing, and admissability of evidence has been common knowledge for some time. Former Attorney General Robert Jackson has stated:

> It is obviously repugnant to one's sense of justice that the judgment meted out to an offender should be dependent in large part on a purely fortuitous circumstance; namely the personality of the particular judge before whom the case happens to come for disposition.[7]

Now it appears that prejudicial publicity assessments may be added to this growing list.

Nowhere is such a lack of agreement more critical than in the area of voir-dire proceedings. The selection of twelve jurors to hear a case is often complex and time consuming, but a careful examination is necessary to produce individuals who will judge a case strictly on the evidence adduced in court. As part of that sorting out process, the judge is required to question potential jurors on the publicity surrounding the case. It is rare in a controversial case to find individuals who have not read or heard about it. Therefore, it becomes a question of discerning whether such publicity has created a predisposition. If a judge is unclear as to what aspects can predispose, such a careful

voir-dire examination can be impaired. If it is impaired enough, the ability to offer the defendant his clear Sixth Amendment rights is in jeopardy. According to Judge Bernard S. Meyer, the presiding officer of the court can never be too careful in questioning jurors. He writes:

> A juror who states that he has formed an opinion but that he will be able to decide impartially should nonetheless be excused if the publicity is of a highly inflammatory nature, or concerns incriminatory matter of significance that may be inadmissable as evidence.[8]

Once again it is clear that a judge cannot grapple with the issue, as Meyer has explained it, unless on his own he has come to a decisive conclusion as to which news values are prejudicial and which are not. But this conclusion must be reached on the basis of broad principles of law rather than personal experience. In interviews with the participating judges, the author was impressed by the differences in reasoning. Many judges based prejudicial publicity decisions on simple "gut feelings," which in the conflict of interest can result in infringement of rights.

It is for this reason that Justices Brennan, Stewart, and Marshall, in their concurring opinion in Nebraska Press Association, pointed out that the power of restraint when given to judges in a broad context can become a tool of repression. They stated:

> A judge importuned to issue a prior restraint will be unable to predict the manner in which the potentially prejudicial information would be published . . . or the impact, evaluated in terms of current standards.[9]

Thus the court believed that leaving blanket gag orders at the disposal of judges did two things: first, it allowed them to avoid coming to a decision on the basic issue of what is prejudicial publicity, but also it abused the power of the court.

Therefore, it would seem apparent that judges overall in this

state need to do more "homework" on the prejudicial publicity issue, to take their "gut reactions" and measure them against the volumes of case law that have been developed on the subject. However, in deference to many of the judges, the overwhelming case load that they are expected to bear does not permit them the time to do such work.

Another area where the implications are enormous is the findings made in the area of ethnic labels and background. While such racism may be subtle, it has the effect of reinforcing a predisposition in a juror's mind. The fact that a judge in this study believed that a minority group member had "one strike" against him in the courts of this state opens up a pandora's box in terms of infringement of rights and due process.

The responsible media must drop the use of racial labels or the quality of justice in the United States will continue with a cloud of racial inequality over it. In essence, it is the author's belief that such labels are utilized to fulfill a basic American train of thought. When a serious crime is committed, Americans in their search for meaning, must have a scapegoat immediately, upon whom they can pour out their wrath and often irrational wrath at that.

John Lofton in commenting on this classic American phenomenon writes:

> There is relief when the murderer is finally spotted. He is not after all a person like you and me; he is a villain and he has been caught by an infallible power; the supercilious and omniscient detective knows exactly where to fix the guilt.[10]

What better scapegoat than the member of a minority group?

History tends to confirm this. Bruno Richard Hauptmann, a German immigrant, the accused kidnapper and murderer of the Lindbergh baby, became the victim of some of the most intense racial scapegoating ever.

The Hearst chain continuously contrasted him with Adolf Hitler, who was then coming to power as head of the Nazi movement.[11]

Therefore, it cannot be emphasized too much that a person's ethnic background has no correlation to the fair trial to which he is entitled. If we truly affirm, as a nation, the premise of "equal justice under the law," all that matters is that this is a human being who is entitled to a rational and fair hearing of his case without all the subtle racial nuances that often occur.

But such indications also imply that the quality of reporting on minority groups is far from what it should be, in spite of all the "blue-ribbon" recommendations made over the past forty years. The Hutchin's Commission in its 1947 report stated: "The press itself should assume the responsibility of providing the variety, quantity, and quality of information and discussion which the country needs."[12] But what does the country need? The commission went on to state as one of its "Five Ideals:" "The projection of a representative picture of the constituent groups in society."[13] Unfortunately, the press has not in the past painted such a picture of our diverse society.

Because of this the Kerner Commission, in its report on racial and civil unrest in 1968, concluded: "We believe the media have thus far failed to report adequately on the causes and consequences of civil disorders and the underlying problems of race relations."[14] The Commission went on to add that what coverage was given over to race relations "sensationalized the disturbances consistently overplaying violence."[15]

But in spite of the Kerner Commission's findings, the press has still largely dragged its feet. A recent UNESCO study of the world press and minorities concluded:

> To get coverage, blacks have had to stage demonstrations. However, when demonstration is covered, too often the event itself becomes the news, overshadowing the causes, problems, and grievances behind it.[16]

Finally a study done by a leading television news magazine concluded that coverage of the Liberty City riots in 1980 was once again inadequate. "There was no effort to connect the violence in Miami to black problems elsewhere in the country or to place it in the context of persistent racism throughout the seventies."[17]

Thus this study implies heavily that the responsible press, particularly in this part of the country, needs to see itself as an agent of education, making the largely white populace more aware of the positive aspects of minority cultures. Otherwise, we face a continued battle with the forces of ignorance who are determined to make "equal justice under the law" a white-man-only rule.

Another area of broad implication is the manner in which extra-judicial statements are handled. While the press cannot be held totally responsible for the actions initiated by those within the law enforcement community, the maturing media must deal with great restraint in this area.

The responsible press must come to grips with the fact that unless such statements are made under oath and subject to cross-examination, they have it within their power to deny an individual a fair trial by assemination of such material. The fact that the individual making such statements may be an "expert" in his field, does not oblige him to circumvent another's Sixth Amendment rights. In People vs. Roof, the California Appellatte Court made this clear: "It is the effect of the statement, and not the motive behind it, which is determinative of the question whether the case of the defendant was substantially impaired."[18]

But it is not just the motive of the individual who makes such statements that is in question, it is also the press's motivation. In its immaturity the media has consistently displayed a tendency to grasp at straws to arrive at a meaning for a crime. Such conduct is inconsistent with the First Amendment, as well as the profession's Code of Ethics.

The unsworn comments of individuals in such celebrated trials as the Hauptmann, Sheppard, and Speck cases do not necessarily fall under the broad umbrella of the First Amendment and the "right to know." The public has a right to be kept informed with the details as they are stated during the course of the trial, so that they can fulfill their role of scrutinizing the proceedings, to make certain they are consistent with the Sixth Amendment. However, speculative statements given on the basis of second or third hand knowledge cannot be said to fit into this category of information.

It is also inconsistent with the profession's Code of Ethics. The 1975 Canon under the area of responsibility states: "The primary purpose of gathering and distributing news and opinion is to serve the general welfare by informing the people and enabling them to make judgments on the issues of the time."[19]

The authors of this document seemed to believe that if the American people were given sufficient information, they could structure accurate meaning in proportion to the accuracy of the data. While this may be overly optomistic, the principle laid down is clear: the masses must make up their own mind! In relating this to the discussion at hand, the speculative testimony of experts does not aid this process.

Rather, the kind of reporting being talked about as that which

characterizes a mature press, is the decisive scrutiny of courtroom proceedings, the bringing to light of judicial misconduct, the abuse of police power, and the infringement of a defendant's rights. If the press in the past had spent the same amount of energy scrutinizing the proceedings in the courtroom, rather than racing helter-skelter to this expert and that one, substantial strides could be made in assuring a defendant of his Sixth Amendment rights. ✓

A final implication is the need to reassess how the media, as well as the law enforcement community, will handle not only a defendant's prior criminal record, but also any past history of social deviancy. To the surprise of the author, the publication of a defendant's prior criminal record does not emerge as high in prejudicial value as was expected, nevertheless, it does contribute to prejudice when linked with another news element.

It is apparent that more research needs to be done in this area. However, there are several cogent arguments for suppression of a prior record until after the trial is over. First, such material is not admissable as evidence, therefore, it is not matter which is necessary for the potential juror to decide the defendant's guilt or innocence. A defendant is ultimately tried only on the crime he is currently charged with and not his past. The decision of Michelson vs. United States cited earlier made this law on the basis that a defendant cannot be "type cast" in the format of "once a criminal, always a criminal," and still receive a fair trial.

Second, if a defendant cannot escape his past, if he is constantly being hounded by it, he can never move ahead. Rather his life becomes a self-fulfilling prophecy that once a criminal, he can never be

anything more than a criminal. It is for this reason that the President's Commission on Law Enforcement and Administration of Justice, in its Task Force Report on Corrections, endorsed the idea of expunging a defendant's prior record after five years from date of release from incarceration. Their model for legislation held that under such a system, a defendant's prior record would be expunged. "In every aspect of his activities and interests of a non-criminal nature, he shall have the absolute right to affirm that he has never been arrested or convicted of an offense in the past."[20]

Finally, just as with ethnic labels, the title of ex-offender stereotypes and demeans the individual. Such labels do not aid society in passing judgment on the guilt or innocence of the individual. Rather, they simply appeal to our petty passions and prejudices.

Areas for Future Research

With these implications in mind, at least four key areas can be cited for future research.

The Effects of Ethnic Labeling

This study has hinted at the fact that a member of a minority group can be substantially prejudiced, simply by the use of his ethnic name or label. To better clarify this phenomenon, research needs to be done to establish what facets of an ethnic person's background do indeed prejudice a juror. Both judges and potential jurors need to be tested to get better insight into this subtle aspect of racism in our society. A Q-sort similar to the one used in this experiment with non-ethnic and ethnic stories would certainly help to define the parameters

of such prejudice.

The Effects of Prior Record Labeling

As with the ethnic label, research is desperately needed to determine the effect of labels, such as "ex-felon," "ex-convict," and "former inmate," have on the public's perception of the defendant.

The aspect of a defendant's prior deviant behavior is more of a difficult issue. Often that bizarre behavior has led to the commission of the crime and is part of the overall record. It is here that the maturity and responsibility of the press is needed. A responsible journalist will carefully weigh the effects of dissemination against the possible Sixth Amendment infringement.

The issue is further complicated by the comments raised by several judges who believed that some members of the public associate social deviancy with being a member of a minority group. This kind of racism seems so entrenched that there is little or nothing that can be done, except to keep chipping away at it gradually, in hopes that further education will destroy it.

Ultimately, editors and news directors must decide if some aspect of social deviancy is vital to the public's welfare and safety. If it is not, it probably has little or no relevant use and is therefore best left unsaid. The exception to such a rule would be if this social deviancy was introduced as evidence during the course of the trial. Then it becomes part of the public record and should be disseminated.

The Cumulative Effect of Prejudicial Publicity

A number of the judges participating in this study commented that many of the stories in the Q deck by themselves would not be prejudicial, but when taken in the context of all 54 they might indeed be prejudicial. It has long been thought that the saturation effect, especially in a controversial case, tends to prejudice simply by the amount of information laid upon the potential juror. A study with the group of potential jurors during a sixty-day period (normal trial lag time) would greatly help to ascertain some of the cumulative effects.

Jury Decision Making

More work needs to be done in the area of how a jury reaches a verdict. In particular, how do they structure the data adduced in court into a coherent whole, and then ultimately into a verdict? It is the author's belief that such studies would demonstrate that very subtle communication factors, both within the courtroom and out, have a definite effect on the verdict rendered.

Recommendations to the Press

Believing that the media cannot hide behind the skirts of the First Amendment for all of its transgressions, the following recommendations are offered. If translated into reality, the media will take a great stride forward in terms of maturity.

Trained Specialists for Crime Reporting

Usually it is the "cub" reporter who is fresh out of journalism

school who is assigned to the police and/or courthouse beat. But with the lives of people at stake, such a trend must be stopped. As with most other areas, the media must develop specialists in the area of crime reporting, journalists who are familiar with the judicial process, sensitive to the areas where substantial injustice may be done. Such a mature press corps will not be developed short of radical changes in journalism school programs, and in the attitudes of those who head media organizations.

Upgraded Standards Overall for Journalism Schools

Believing that greater education is the only way to improve the profession, the overall curriculum and structure of journalism education needs to be examined. It is the author's belief that journalism schools must adopt the concept of "professional" education. For the effect that they can have on potential lives, journalists are required to have only a basic education, or none at all. It is important to ask oneself, would I want a surgeon to operate on me who only had a Bachelor's degree? Or a lawyer defend me in court with only a pre-law education? Obviously not! Then why do we think journalists, who can have an equally important effect on the lives of people, can get by with just four years of schooling. It is the author's hope to someday see journalism schools adopt a five-year degree program where young people could be groomed and polished for their life's work. Such a restructuring would avail the students of an opportunity to develop greater specialization within the profession, as well as developing a more responsible sense of ethics.

Greater Policing Power by Professional Organizations

Here again it seems like journalism is the only profession which makes no attempt to bring their wayward members back into line. Teeth must be put into codes of ethics and professional creeds. The media as a whole needs to censure its members who consistently fuel the flames of prejudice. The argument is often heard that such policing power would require licensing, and will we permit the state to license journalists? It is the author's contention that this is a smoke screen to hide the real issue, which is that the media tend to adopt a "good old boy" attitude, that while they are competitors, no one wants to rock the boat.

Joint Bar-Press Councils

While these have been used on a national level, they must be developed in every city. These councils could unite for the purpose of monitoring crime reporting coverage in their area, as well as spurring a spirit of greater cooperation. Too long journalists and lawyers and judges have seen themselves as enemies. This must be replaced with a spirit of cooperation even on the lowest levels. Only when that cooperation begins will each profession see its proper role in the operation of the criminal justice system.

Greater Commitment by the Press to Public Education

Over and over, areas have been cited where the press could make a substantial contribution in educating the public, if it will change its

priorities. Rather than running after the bizarre details, the press should take it upon itself to make the public more aware of how the judicial system operates, how minorities properly fit into society, and how those who have committed crimes in the past can be effectively reintegrated into society.

Agreement to Drop Labels of all Kinds

We have become a label-oriented society. We desire to place everyone in the right cubbyhole. The press must take the lead in dropping the use of such labels. Otherwise, we will continue to make what a person is more important than who the person is.

Willingness to Suppress Certain Facts

The people do not have an instantaneous right to know. Holding back the details of a defendant's prior record or aspects of his past bizarre behavior not directly linked to public safety, until the trial is over or at least until a jury is seated, does not infringe the First Amendment, provided it is done on a voluntary basis. If anything, such an arrangement strengthens the First Amendment by demonstrating the maturity of the press in handling the broad powers given to it.

Recommendations to the Judicial Community

Believing that the judicial community also needs to make changes to help insure fair trials, the following recommendations are offered.

A Clear Understanding of Prejudicial Publicity

Judges need to examine more thoroughly the issue of prejudicial publicity in terms of what causes prejudice in the minds of jurors, and then relate it to the broad spectrum of case law on the subject.

Greater Policing Power over Law Enforcement Officials

As stated several times in the analysis of data, judges believed that extra-judicial statements made by law enforcement officials were wrong, and the basis for possible contempt proceedings. If that is the case, then judges need to take such actions consistently. No matter how much the media matures, the off-the-cuff statements by police or prosecutor will continue to be a factor. The Supreme Court has made it abundantly clear that the burden of insuring a fair trial is on the judge. Given such responsibility, judges need to exercise it.

A Re-Examination of the Jury System

Trial by jury has been a fundamental American right for the past two centuries. However, it is also one of the most criticized American institutions. F. Lee Bailey stated after Sam Sheppard was acquitted of murder in his second trial:

> The jury system is good only because there is no other system, in every other respect it is bad. There is a far greater likelihood of an innocent man being convicted because of a mistake by a jury than because of an error of law by the judge.[21]

Yet much of the blame lies with defense attorneys like F. Lee Bailey, who desire to seat jurors who can be easily swayed by the

theatrics they employ. Consider the quality of jurors in some famous cases in history. The jury that convicted Bruno Richard Hauptmann was made up of largely blue collar workers and housewives.[22] The jury which convicted Dr. Sam Sheppard had only one college graduate.[23] In the case of Wayne Dresbach, a fifteen-year-old who was charged with killing his adopted parents, the jury foremen turned out to be totally illiterate. This was learned only after the jury deliberated and he was unable to read the verdict.[24] The irony of this case was that the jury was subjected to hours of complex testimony on the sanity of the defendant. How could an illiterate individual wade through all of that to reach a verdict?

Dean Erwin Griswold has therefore concluded:

> Jury trial, at best, is an apothesis of the amateur. Why should anyone think that twelve persons brought in from the street, selected in various ways, for their lack of general ability, should have any special capacity to decide controversies between persons?[25]

Therefore, the greatest stride one could make towards significant reform of the jury system is to see that more well-educated people become jurors. This will not be easy though, for there is an unseen bias against professionals such as doctors, lawyers and ministers, and even against white collar individuals.[26] In many states, specific exemptions exist to keep such people from ever being called.

However, if these types of people are going to be willing to serve, it must be made economically feasible. Once again the words of the President's Task Force are still relevant today:

> The juror who comes to court to hear evidence and reach a verdict, and then spends most of his time being shuffled about, has good reason to feel manipulated, used, and otherwise treated as a pawn in a game, particularly if adequate compensation is not offered.[27]

Another suggestion to strengthen the jury system is to utilize

specialized juries. With the growing complexity of litigation, justice can best be served by empaneling jurors familiar with the area in dispute. In other words, if a personal injury case is being tried, utilize a panel of doctors, nurses and other medical specialists. If it concerns the sanity of an individual, utilize psychiatrists and psychologists. The Constitutional term "jury of his peers" is certainly still upheld. Such a suggestion would certainly provoke the ire of defense attorneys, as Gleisser states:

> Loud opposition to this could be expected among some lawyers, who would argue that these people do not come with an open mind; that they are prejudiced by their own training. What they really mean is that these jurors cannot be influenced by emotional arguments which may have no bearing on the case and, since they cannot be pressured, are of no value in helping the lawyer win this case, however meager its merit.[28]

There is also strong merit for some kind of pre-trial education for jurors. Where this has been implemented, it has taken the form of jury handbooks, seminars with judges, and in one of the most highly praised efforts, a very well-produced film. The film, The True and the Just, was underwritten by the Ford Foundation and is now regularly used in the New York City court system.[29] Once again, this may provoke the wrath of lawyers, but is in keeping with the principle that the more informed the juror is, the better the quality of justice.

Finally, jurors should be required to set down in the form of an opinion the reasons for reaching their verdict. If judges at all levels are required to set down their decisions in writing, why shouldn't the same be required of jurors? Why can the reasoning behind a judge's opinion be appealed to a higher court, yet the reasoning of jurors be veiled in secrecy? To the author, the merit of this concept is great.

Greater Use of Scientific Inquiry in the Criminal Justice System

While some breakthroughs have been made, the legal community disdains the use of scientific techniques. It would appear that many would like to leave this area of life behind the blindfold of justice. Sharon Collins has concluded: "The single most important barrier to the use of social science evidence is ignorance."[30] Such ignorance takes the form of fear, of what might be learned. Thus it is tantamount to playing an ostrich, sticking one's head in the ground and hoping the problem will go away.

An Afterword

After an extensive study of this type, and the severe changes that it indicates are needed, there is a tendency to despair, something akin to sitting at the base of a high mountain, looking up and wondering if it can ever be climbed. But this should not be the case. Our Constitutional system possesses a resiliency, an ability to make changes. These may not come immediately, but with persistence, progress can be made. The press has changed, not as much as the author would like, but nevertheless, improvements have been made since the Hauptmann trial which brought this whole issue into focus.

The key ingredient to continued improvement is to always remember that the system embodied in the Constitution is a continuous experiment in the ability of free men to struggle with injustice. We may never reach utopia, but on the other hand to give up is not an option.

The press and judicial communities must move forth with more experimentation, more openness to try new ideas and a greater sense of

cooperation. The words of Justice Oliver Holmes in his dissent of Abrams vs. the United States seem a fitting conclusion:

> But when men have realized that time has upset many fighting faiths, they may come to believe more than they believe the very foundation of their own conduct that the ultimate good desired is better reached by free trade in ideas--that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system, I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.[31]

FOOTNOTES

[1]Judson, p. 10.

[2]Wyatt, Vol. 328, p. 331.

[3]Norman Mailer, "Until Dead: Thoughts on Capital Punishment," Parade Magazine (February 8, 1981), p. 8.

[4]Robert Hutchins et al, Commission on the Freedom of the Press, A Free and Responsible Press (Chicago, 1947), p. 80.

[5]Harper Lee, To Kill a Mockingbird (Garden City, 1960), p. 114.

[6]"Free Press--Fair Trial: Rights in Collision," New York University Law Review, Vol. 34 (New York, 1959), p. 78.

[7]Katzenbach, Task Force Report: The Courts, p. 23.

[8]Meyer, p. 294.

[9]Henry C. Lind, Reporter of Decisions, United States Reports, Cases Adjudged in the Supreme Court, Vol. 425, October Term 1976 (Washington, 1977), p. 597.

[10]John Lofton, Justice and the Press (Boston, 1966), p. 178.

[11]Scaduto, p. 119.

[12]Hutchins, p. 92.

[13]Ibid., p. 102.

[14]Otto Kerner, Chairman, Report of the National Advisory Commission on Civil Disorders (New York, 1968), p. 363.

[15]Ibid.

[16]United Nations Reports, Race As News (Paris, 1974), p. 29.

[17]Edward Tivnar, "Covering Racial Tensions: Has TV Learned Anything from the 1960's?" Panorama (February, 1981), p. 48.

[18]"People vs. Roof," California Court of Appeals, Vol. 216 (Sacramento, 1963), p. 227.

[19]American Society of Newspaper Editors, Canons of Journalism

(New York, 1975), p. 1.

[20]Nicholas B. Katzenbach, Chairman, The President's Commission on Law Enforcement and Administration of Justice, Task Force Report on Corrections (Washington, 1967), p. 92.

[21]Marcus Gleisser, Juries and Justice (New York, 1968), p. 151.

[22]George Waller, Kidnap: The Story of the Lindbergh Case (New York, 1961), p. 279.

[23]"Of his Peers," Newsweek (January 3, 1955), p. 18.

[24]Michael Mewshaw, Life for Death (Garden City, 1980), p. 229.

[25]Roscoe Pound American Trial Lawyers Foundation, The American Jury System, The Proceedings of the Annual Chief Justice Earl Warren Conference on Advocacy in the United States (Cambridge, 1977), p. 57.

[26]Gleisser, p. 298.

[27]Katzenbach, Task Force Report: The Courts, p. 91.

[28]Gleisser, p. 312.

[29]Katzenbach, Task Force Report: The Courts, p. 91.

[30]Sharon M. Collins, "Use of Social Research in the Courts," Sociology of the Law: A Social-Cultural Perspective (New York, 1980), p. 310.

[31]U. S. Supreme Court Reports, Cases Adjudged in the Supreme Court, Vol. 250, October Term 1919 (Rochester, 1919), p. 26.

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APPENDIX A

STORIES USED IN Q-SORT

Story Number 1

Morbidity/Non-Criminal Deviance/

Little Ethnic

A killer with an insatiable lust for blood invaded Bidwell Dormitory and strangled or fatally stabbed six coeds at Middleton University. A seventh coed was found frozen in terror in a closet where she managed to escape the massacre.

The FBI, with its full investigational and laboratory resources, "has had an agent here all day long to assist in any way," a spokesman said.

Police Chief Gerald Smith, when asked to comment on the crimes, stated: "I've seen more people killed, but I've never seen anything more horrible than this." As to the possible killer, he replied: "We have a sub-animal here who took people one at a time and killed them."

Coroner Edward Drake called it the "crime of the century." He reported that three girls were clothed, one was mude, the others had on at least their underpants. Preliminary indication is that at least one victim was sexually molested.

Story Number 2

Morbidity/Normality/Minority

A knock on their dormitory door at Middleton University disturbed Nancy Wilson and Phyllis Duvall as they prepared for the following day's final examinations. It began a night of macabre and horror, which ended when Ms. Wilson hung out the window of the room and screamed: "They are all dead! My friends are all dead! Oh, God, I'm the only one alive."

To this horrific scream police could add little. Inside the west

wing of Bidwell Hall on the second floor lay six young female students, some bound, some gagged, some strangled, some stabbed--all dead. "It is the crime of the century," pronounced Middleton Police Chief Gerald Smith.

The grisly dimensions were plain to see. In a lounge area lay one of the victims with a strip of bedsheet around her neck. In a bathroom in the west wing two more bodies and in room #202 where it all began, three others. Officer Vincent Simmons, first at the scene, said: "They were strewn all over the place, and blood everywhere. I've never seen anything like it."

Police stated that Nancy Wilson escaped being the seventh victim by hiding in a hallway broom closet of the dorm while the murderer had taken one of the girls away to kill her. She described the killer as being approximately six feet tall, of Hispanic origin, with shortly cropped hair and wearing a blue sport coat.

Story Number 3

Morbidity/Normality/Little Ethnic

Much is buried in the litter of crime. The murderer, the setting, the act itself and especially the character of the killer, take precedence over everything else in the horrified public mind.

Yet let us not forget the victims, who, until yesterday, were happy and intelligent college students.

Phyllis Duvall, 22, would have graduated at semester's end. An honor student, active in student government, she was considered a leader in her class. She was strangled to death.

Patricia Fisher, 20, a perfectionist known for her desire to always look her best, would take buttons off her clothes periodically and replace them with new ones. She was stabbed; her throat was slashed.

et al

Story Number 4

Inducement/Criminal Interaction/Minority

A nationwide manhunt began Saturday for a tatooed ex-convict named in a murder warrant as the slayer of six coeds in Middleton University's Bidwell Dorm.

Police Chief Gerald Smith said fingerprints lifted from the blood spattered dorm rooms matched those of Jose Martinez, a migrant worker and ex-convict.

The fugitive was described as Mexican American, 24 years old, 6' 1" tall, weighing 160 pounds, with blue eyes, and dark black hair.

Martinez has a long police record in Texas where he served two terms in the penitentiary. While on parole after his first term, Martinez was found guilty of threatening a 26-year-old woman with a butcher knife.

Santa Fe, New Mexico, authorities said Martinez also is wanted for questioning in the murder of a barmaid last April. Martinez's older brother also has been convicted on a number of burglary charges and is serving time in California prison.

Story Number 5

Morbidity/Criminal Interaction/

Little Ethnic

The slaying of six young coeds at Middleton University by a mysterious intruder was another chapter in the long history of mass murders stretching back to Greek legend. Some crimes were so horrible that they created new legends through books, film and even ballet.

One of the worst in American history occured September 6, 1949, when Howard Unruh, a World War II veteran, went beserk in Camden, New Jersey, killing the first 13 persons he encountered on the street.

Boston's phantom strangler managed to garrot 11 women, and perhaps 13, between 1962 and 1964. A 33-year-old handyman who confessed the killings is confined to a state mental hospital. Authorities said he told stories of attacking 600 other women.

Story Number 6

Morbidity/Non-Criminal Deviance/

Little Ethnic

Somewhere in Middleton may lurk a man--tortured by fantasy and driven to act out the most gruesome details of his macabre imagination--who brutally murders young women and doesn't know it.

Such is the opinion of Dr. Barton Framm, professor of psychology

at Middleton University, in commenting on the Bidwell Dorm killings. On the basis of what he has found out, he has constructed a personality sketch of the killer.

"Everything he did to those women, he did in his mind before he ever saw them," Dr. Framm stated. This type of person will go over everything in his fantasy world before he acts. For a while this fantasy killing will satisfy a need to express hatred for women. But after this builds up, he is compelled to act.

Dr. Framm's conclusion? The man, if not stopped, will murder again.

Story Number 7

Inducement/Non-Criminal Deviance/

Little Ethnic

Police officials expressed today they have no solid reason why six young coeds were brutally murdered in their dormitory suite at Middleton University. There was no evidence anything had been taken.

"There just is no reason for violence of this kind," one investigator said. Police seem to agree the murders were the work of a "sick and mentally deranged person," said Coroner's Assistant Richard LaCosta.

Story Number 8

Morbidity/Normality/Minority

Acting on the description of a girl who sat in a closet frightened while six of her classmates were methodically slaughtered, police issued a sketch of the killer.

Dark curly hair with narrow set eyes, thin lips, and dark complexion characterize the wanted man. His height is believed about six feet and weight about 170 pounds. He is believed to be of Mexican origin.

Meanwhile Coroner Edward Drake's findings revealed that four coeds had been sexually assaulted. In addition, all six had numerous wounds.

Drake characterized the killer "ruthless and brutal." He also indicated that this was the hardest case emotionally he's ever had to investigate. "I have a daughter the same age as these girls, and

the prospect of this kind of man on the loose frightens me."

Story Number 9

Inducement/Non-Criminal Deviance/

Little Ethnic

To Dr. Frederick Wertham, regarded by American psychiatry as an authority on criminal violence, said today that a key aspect of the slaughter of six coeds at Middleton University is the "very complacent attitude in our society toward violence of all kinds."

"We're not really appalled by it. Our sympathy for the victims is short-lived and may last for a week to ten days," he said.

"In the end, we usually wind up sympathizing with the perpetrators of violence. Victims are forgotten. Our children learn to dote on violence; we're brought up on violence; violence is nothing."

Story Number 10

Little Morbidity or Inducement/Criminal

Interaction/Minority

Carefully delineated procedures set out only three days ago were followed to the letter today, and will be followed, police said, in questioning anyone in connection with the murder of six coeds at Middleton University.

The suspect is described as 6 feet tall, 170 pounds, about 25 years old and of Hispanic or Mexican origin.

Under the new rules, a suspect must be advised of his right to refuse to answer, his right to consult an attorney of his choosing or a court-appointed one, and to have such an attorney present during questioning.

Many law enforcement officials believe such rules impede their investigations.

Story Number 11

Morbidity/Criminal Interaction/

Little Ethnic

The nude body of a 16-year-old girl missing more than a month was found floating in Wilborn Lake today. She had been bludgeoned to death and possibly raped. Police believe that the same person responsible for the Bidwell murders four days ago is the prime suspect.

The pattern is exactly the same, Coroner Edward Drake stated. He also indicated that although the body was badly decomposed, chemical tests would be able to establish conclusively any possible connection.

Meanwhile the prime suspect, Jose Martinez, is the subject of a nationwide manhunt. Authorities in several other states are cooperating with Middleton officials because they believe him to be the prime suspect in several brutal sex murders in their states.

Story Number 12

Morbidity/Normality/Little Ethnic

Despite the fact that Middleton University has offered a $10,000 reward for information leading to the arrest of the brutal slayer of six coeds in Bidwell Hall two days ago, the father of Phyllis Duvall has decided to offer his own reward.

George Duvall is offering $5,000 to anyone who provides police with a lead to the murderer. "He's hurt my family and me so bad, I'll pay just about anything to see him brought in," he said.

He added that if this had been the Old West, he would have paid the $5,000 to a bounty hunter. "It would be worth it to see him meet his own brutal end," he said.

Miss Duvall, who would have graduated at semester's end, answered the knock at the door that allowed the killer into the dormitory room.

Story Number 13

Morbidity/Non-Criminal Deviance/Minority

A preliminary report by Washington County Coroner Edward Drake revealed that at least three of the students in the Bidwell Dormitory murders were sexually assaulted before being killed. However, he declined to name which ones were involved.

Three of the girls were stabbed or had their throats slashed, while the other three were strangled. Commenting on findings, he stated: "This is without a doubt the most grisly murder case I have ever investigated. It had to be the work of a psychopath."

Meanwhile, a nationwide manhunt continues for a man 6 feet tall, weighing 170 pounds and of Hispanic or Mexican origin. The description is based on the testimony of Nancy Wilson, the sole survivor, who hid in a hall closet.

Story Number 14

Little Morbidity or Inducement/Non-

Criminal Deviance/Custom

"I moistened my finger and began to rub the blood off his elbow and the tattoo appeared." This confirmed a young doctor's hunch that his patient was Jose Martinez, accused killer of six coeds.

The lettering "huelga" became visible as the doctor dabbed away blood that covered Martinez's upper left arm. Police said Martinez had slashed veins in his arm in an apparent suicide try.

The tattoo is a common symbol among migrant workers, indicating solidarity with Caesar Chavez's migrant workers union. The word itself means "strike."

Story Number 15

Inducement/Non-Criminal Deviance/Minority

Jose Martinez, recognized on an operating table by a young surgeon as the man sought in the massacre of six young coeds, lay under heavy sedation behind a guarded door at Middleton Hospital.

Martinez, a 24-year-old Mexican migrant worker, apparently

attempted to commit suicide in a flophouse motel on the city's west side, was rushed to the hospital by police who didn't realize that the man coated with blood was the suspect.

A young doctor subsequently recognized him by the prominent tatoo on his left arm.

Dr. Smith, a spokesman for the hospital, said Martinez had a deep gash in the crook of his left arm where an artery was severed, and a superficial cut on his right wrist. He required two pints of blood.

Story Number 16

Little Morbidity or Inducement/Normality/

Minority

Jose Martinez, Mexican-American migrant worker, arrested in the murders of six young coeds, may have suffered a heart attack during the night. He was to have been confronted today by the only eye-witness to the tragedy.

"There is an 80% chance that Martinez suffered a coronary thrombosis," a hospital spokesman reported. Complete rest has been ordered for the next 48 hours.

Story Number 17

Morbidity/Non-Criminal Deviance/Minority

The girl who lived through the bloody horror of the Bidwell Dorm massacre was brought to Middleton Hospital to confront the man accused. But their face-to-face meeting did not come off.

The survivor, Nancy Wilson, who listened as each of her six friends were taken into other rooms and brutally murdered, had a "setback" as a result of the experience of waiting 2½ hours for the confrontation. "Just bringing her out was a great ordeal," a hospital source said.

Jose Martinez, the dark complexioned migrant worker, is in Middleton Hospital under a 24-hour guard after attempting to commit suicide prior to his arrest. Doctors described him as "somewhat anemic" and indicated further blood transfusions might be necessary. Martinez was administered two pints of blood upon admission.

A hospital spokesman said Martinez "is not in full possession of

his mental faculties because he is in a state of extreme physical and emotional fatigue."

Story Number 18

Little Morbidity or Inducement/Normality/

Little Ethnic

The President of Middleton University, James Howard, said today that the mass killings of six students may become a serious setback to University recruitment efforts.

"I do not think that this crime will cause many of our present students to leave, but I feel it will have a serious deterring effect on recruitment of new students. Parents will think twice before they allow their children, particularly their girls, to come here."

Howard indicated that the university will shortly mount an intensive public relations effort to play down the role of the crimes. One spokesman said: "We want to make it clear that this was simply a one-in-a-million kind of thing and will probably never happen again."

Story Number 19

Inducement/Non-Criminal Deviance/Custom

New evidence found in the flophouse room of accused mass slayer Jose Martinez indicates that he had carefully and methodically planned the Bidwell murders, police reported today.

While police spokesman refused to give specific details, they did indicate that floor plans, names of the women who were slain, had been found, as well as notes to his wife. These notes apparently indicated marital difficulties.

Migrant workers have a high incidence of divorce because of the extended time away from home.

Story Number 20

Inducement/Normality/Minority

The slim, dark girl slipped wordlessly past the door of the tiny room in Middleton Hospital's criminal ward. For five minutes she

stood silently behind the doctor examining the pale, gaunt patient in the bed and then told police, "That is the man."

Nany Wilson, the sole survivor of the Bidwell Dormitory massacre, had positively identified Jose Martinez as the man who brutally murdered six of her fellow classmates on the sixth floor of the dorm at Middleton University.

Martinez, a Mexican migrant worker, was tracked down by fingerprints found in the death room. He has been in prison at least two previous times, serving time for rape and armed robbery.

Police Chief Gerald Smith said after the identification by Miss Wilson, that the state has a conclusive case against Martinez. "We have fingerprints at the scene, eyewitness identification, and the murder weapon."

Story Number 21

Morbidity/Non-Criminal Deviance/Custom

Police allowed reporters into the one room flophouse apartment of Jose Martinez for the first time today. There were no big surprises except the enormous number of pop bottles strewn throughout the room.

One reporter estimated there were between 250 and 300 bottles in the 8' by 12' room. "There are enough bottles here to open a recycling center," one policeman commented.

One source said soda pop is considered a staple in the migrant worker's diet, adding that they can afford only cheap wine or soda pop.

Meanwhile, the accused sex slayer of six coeds remains under heavy guard in Middleton hospital. He is charged with stabbing three of the girls, strangling the other three, and sexually assaulting all of them.

Story Number 22

Morbidity/Non-Criminal Deviance/Custom

A leading sociologist, considered an expert on migrant workers' problems, said today the brutal sex murders are a manifestation of a deep need for sexual expression among the nomads of America. Dr. Milton Dunbar, in commenting on the Middleton murders, indicated that migrant workers tend to have highly charged sexual feelings, but because of the lack of fixed relationships, often expresses itself in

bizarre ways such as the recent murders.

"This lack of fixed relationships is compensated for by toleration of deviant sexuality," he said. He indicated that there are very few taboos among the migrants. In fact, he said in many cases, homosexuality is considered the norm.

Story Number 23

Little Morbidity or Inducement/Non-Criminal Deviance/Little Ethnic

The court baliff called, "Jose Martinez," and the lean looking man accused of murdering six coeds stood motionless and heard his counsel enter pleas of innocent today at the Washington County Courthouse.

Judge Harold Roberts set preliminary hearing for August 18.

In his first appearance since being arrested, Martinez stood with his head bowed, his hands limp, spoke "yes" and "no" in barefly audible murmurs and had his gaze on the asphalt tile floors of the county courtroom.

Then he appeared before Judge Warren Alexander, Chief Judge of the Criminal Courts Division. Martinez stuffed both hands in his pockets and had to be prompted to speak louder during questioning regarding financial status.

After brief questioning, Judge Alexander ruled Martinez indigent. Gerald Franklin was appointed to be his counsel.

Story Number 24

Inducement/Non-Criminal Deviance/Minority

Jose Martinez's lawyer said today that "the defense will definitely be insanity," if the 24-year-old migrant worker is brought to trial for the slaughter of six young coeds at Middleton University. Public Defender Gerald Franklin also said he would enter a plea of innocent and demand a jury trial. "We can't plead guilty to anything as I project the strategy," Franklin said.

Franklin raised the possibility that Martinez, ill in Middleton Hospital, might not live to go to trial. "We might lose him," he said.

However, hospital spokesmen discounted this. "I do not believe there is any danger to Jose Martinez," a doctor stated. District Attorney William Simpson also discounted such claims. "His condition is fair--nothing alarming." He went on to add that this "is a ploy by the defense to gain sympathy for him."

Story Number 25

Inducement/Normality/Custom

Jose Martinez, 24-year-old migrant worker accused of the murder of six university coeds, is "concerned about his relationship with God," a minister said today.

The Rev. Donald Peterson spent a half-hour with Martinez, but was reluctant to talk with reporters. "It was a very personal conversation," he stated.

Peterson said he and Martinez didn't talk about the murders themselves, but did indicate he was concerned about what this would do to his family. "The migrant worker has no one else but his family, and he's upset about what will happen to them." He also indicated his family is very close knit.

When questioned about motive, Peterson refused to comment, stating this might prejudice the case. Instead he stated that Martinez is "naturally remorseful about what has happened." He later retracted that statement.

Story Number 26

Inducement/Criminal Interaction/

Little Ethnic

Authorities moved with extreme caution today in their efforts to construct an air-tight case against Jose Martinez, accused killer of six Middleton University coeds.

Mindful of the recent broad ruling of the U. S. Supreme Court concerning in-custody questioning of suspects, police and prosecutors tread carefully to avoid a later reversal in the event they obtain conviction of the accused mass slayer.

It has been learned, however, that at a strategy session in the Washington County Courthouse building, a firm case is being built. Prosecutors feel the fingerprint evidence and eyewitness testimony will insure conviction.

When asked about a possible motive for the slayings, one prosecution source who asked not to be identified stated: "The motive is plain and simple, one man wished to vent his personal frustrations through cold blooded murder."

Story Number 27

Morbidity/Criminal Interaction/Minority

District Attorney William Simpson formally charged Jose Martinez with the murder of Karen Shields, a 16-year-old whose body was found four days after the Bidwell Dormitory massacre. Simpson said the evidence was "once again overwhelming."

Shields' body was found in Wilborn Lake last week. She had been bludgeoned to death and raped. Her clothing was found buried in a shallow mound near the body. She had been missing from home about a month.

Martinez, a Mexican-American drifter and migrant worker, already has been charged with the murder of six coeds at Middleton University's Bidwell Dormitory.

Story Number 28

Little Morbidity or Inducement/Criminal

Interaction/Custom

A Texas law enforcement official interrogated Jose Martinez today in connection with several crimes that have occurred in the past four months. The official stated that there "seemed to be a strong connection between the crimes here in Middleton and several unsolved murders in the Brownsville, Texas, area."

When asked if migrant workers tend to get into more trouble than other kinds of workers, he stated: "Only when they have time on their hands, when we get bad weather, and they can't work for a day. It's nothing to have six or seven of them locked up by evening."

He added that these cases are just the ones where the police are called. In many more cases the police are never called because the owners don't want to get involved.

Story Number 29

Morbidity/Criminal Interaction/Custom

An official of Caesar Chavez's United Farm Workers said today that people "should not be afraid of the migrant farm worker. We are not all crazed murderers," Ventustiano Olquin, an organizer for the union, stated. He decried the bad wave of publicity resulting from the Middleton murders.

When Olquin was asked concerning Jose Martinez's extensive criminal record, he commented: "Poor working conditions and pay have driven many migrant workers to acts of crime." However, he emphasized that non-violence is the foundation of the UFW's effort to improve conditions in migrant camps.

Martinez has served two jail terms in Texas for rape and armed robbery and is also being questioned by New Mexico and California officials concerning a string of brutal sex crimes in their states.

The Bidwell dormitory murders have been labeled as the "most vicious killings" in the state's history, by law enforcement officials. Martinez has been charged with stabbing and strangling six coeds and sexually molesting all of them.

Story Number 30

Morbidity/Normality/Custom

Victor Martinez, the 31-year-old brother of accused mass slayer Jose Martinez, arrived in Middleton today, but was denied permission to see his brother in the hospital recuperating from an apparent heart attack. City officials declined comment.

The elder Martinez said he would try again with an attorney. "No matter what they say he did, he's my brother and he's sick and I want to see him," he commented. Jose Martinez has been charged with the brutal slayings and sexual assaults on six coeds at Middleton University.

When asked why it took a week for him to arrive, he responded, "We are always traveling, and don't have access to newspapers or TV."

Story Number 31

Morbidity/Criminal Interaction/Custom

William H. Friedland, an outstanding sociologist and author of several books on migrant workers, said today that claims that workers are "peace loving" are a "farce." Ventustiano Olquin, an official of the United Farm Workers, had stated yesterday that accused mass slayer Jose Martinez does not represent the majority of such workers.

Friedland contends he has documented numerous claims of migrant violence. "Most fights start spontaneously, like brief explosions often sparked by intense competition for women," he said. Deviant sexual behavior also accounts for much of the violence, he stated.

When asked why so few incidents are reported, he said: "The workers choose to settle disputes among themselves."

Martinez, charged with seven brutal murders and sexual assaults in two separate incidents, was moved today from Middleton Hospital to the county jail. Meanwhile authorities from New Mexico said they have plans to file charges against him in a macabre murder case involving a barmaid who was bludgeoned to death and sexually mutilated.

Story Number 32

Inducement/Criminal Interaction/Custom

A former cell mate of Jose Martinez, interviewed in his Texas prison cell, said today that Martinez was capable of committing the brutal Bidwell Dorm murders.

Jim Waldecker, who is still serving time for armed robbery, indicated that Martinez would brag about what he could do to people. "He treated rape and robbery as a boy scout would treat getting a badge. They were status symbols to him."

Waldecker also indicated that some migrant workers he's known have to brag about their exploits to build themselves up. "Most migrants I've known have poor self-images, so they often stretch the truth to elevate that image."

Story Number 33

Morbidity/Normality/Custom

Less than two weeks since his arrest, Jose Martinez, charged with the brutal stabbing and strangulation of six young coeds, asked for a visit by a local priest. Martinez is Catholic.

Police said they probably would grant the request, despite the fact that just yesterday they denied Martinez's older brother a visit. Police also believe that Martinez is the slayer of a 16-year-old whose bludgeoned body was found at Wilborn Lake.

When reached for comment, Victor Martinez said it's only natural for his brother to want a visit from the priest. "My brother, my whole family is deeply spiritual, very much involved in the church."

Meanwhile the last of the six murdered coeds was buried today in Canton.

Story Number 34

Little Morbidity or Inducement/Non-Criminal Deviance/Little Ethnic

District Attorney William Simpson says he will present evidence to a Washington County Grand Jury tomorrow in the case of Jose Martinez, the accused slayer of six coeds who were strangled and stabbed in their Middleton University dormitory rooms.

Meanwhile Martinez's condition was reported satisfactory by Middleton hospital. "His temperature and pulse remain stable and sutures from the self-inflicted wounds have been removed," they said. Martinez had attempted to commit suicide prior to his arrest.

Doctors reported he is suffering from pericarditis, an inflammation of the membranous sac that encases the heart. He remains heavily sedated.

Story Number 35

Inducement/Non-Criminal Deviance/Custom

Middleton police officials said today that "psychological revenge" was apparently the motive in the brutal sex slaying of six coeds at

Middleton University. This announcement came at a press conference called to discuss the initial findings of a panel of psychiatrists who examined accused slayer Jose Martinez.

"He wanted to get even for bad treatment from women in the past," Police Chief Gerald Smith said. "However, tests indicate he was fully competent and acted with premeditation," he added.

Smith said such "revenge type" violence is common among migrant workers. "There are no police out in the fields, so they settle things for themselves in their own peculiar way."

Story Number 36

Morbidity/Criminal Interaction/Minority

A Washington County Grand Jury, which convened only yesterday, returned six indictments today against accused slayer Jose Martinez for the sex-related Bidwell murders.

The indictment reads as follows: "Jose Martinez intentionally and knowingly strangled and killed Phyllis Duvall, Patricia Fisher, and Gloria Wilkinson, and intentionally and knowingly stabbed and killed Nina Williams, Mary Ann Philipps, and Pam Hinkle, and sexually molested all of them."

The 25-year-old ex-convict, and Mexican migrant worker, is still in Middleton Hospital recovering from a probable heart attack and self-inflicted wounds. Police from New Mexico, Texas, and California are waiting to question him concerning similar murders in their respective states.

Martinez has served time in Texas on charges of rape and armed robbery.

Story Number 37

Little Morbidity or Inducement/Non-

Criminal Deviance/Minority

A defense attorney today asked that an impartial panel of psychiatrists representing both sides be named to examine accused mass slayer Jose Martinez "to avoid a spectacle of psychiatrists battling psychiatrists."

The request from Public Defender Gerald Franklin was among six motions filed before Judge Harold Roberts. It was Martinez's second

court appearance since his arrest. Martinez, a migrant farm worker, has been hospitalized for heart inflammation after an apparent suicide attempt. He sat during the hearing, looking glum and thin.

Story Number 38

Little Morbidity or Inducement/Non-Criminal Deviance/Minority

An expert on criminal law said today Jose Martinez, indicted for the murder of six coeds, could go free on an insanity plea even if he confessed an "act" of murder.

There is even a possibility that Martinez, a 24-year-old Mexican migrant farm worker, could avoid trial entirely, Professor Richard Witmer of Middleton University said.

Witmer said if Martinez fits the definition of legal insanity, he would be freed of criminal responsibility for the dormitory killings of six young women. Even if Martinez admitted the "acts" of murder, Witmer said, he would not under law be admitting guilt.

Story Number 39

Little Morbidity or Inducement/Criminal Interaction/Minority

A possible flaw--a wrong middle name--was uncovered today in the indictment charging Mexican migrant worker Jose Martinez with the murder of six coeds.

The indictments returned by a Washington County grand jury listed the 24-year-old accused killer as "Jose Philip Martinez." However, records in his home town of Williamsville, California, list his name as "Jose Felipe Martinez."

The District Attorney's office said it wasn't worried about the discrepancy. Martinez's lawyer, Public Defender Gerald Franklin, told newsmen the name discrepancy would be made part of the defense record.

Story Number 40

Inducement/Normality/Custom

Gerald Franklin, defense attorney for Jose Martinez accused of committing the murder of six coeds, said today that his client is being "tried by newspaper" and will therefore seek a lengthy continuance.

"The press has been allowing anyone to comment on the case, whether they are directly involved or not," he said. Franklin went on to say that the media had done everything but execute Martinez.

In addition he said that migrant workers in general have been tried. "No one in this area of the county will hire a migrant worker for a long time. They've forgotten to indicate that 99% of the traveling nomads are good employees."

Story Number 41

Inducement/Normality/Little Ethnic

There will be restrictions on newsmen and photographers covering the trial of Jose Martinez according to Judge Harold Roberts, who will try the case. The judge indicated that this is to make later pleas of "prejudicial publicity" by the defense a "moot point."

Specific guidelines will not be formulated until it is known how many newsmen will cover the trial.

Defense Counsel Gerald Franklin was granted a change of venue for the trial which will begin next month. Such a change in location is to insure a fair trial in an area that has not been saturated with prejudicial publicity.

Story Number 42

Little Morbidity or Inducement/Non-

Criminal Deviance/Custom

Accused slayer Jose Martinez apparently had two "wives," one whom he was officially married to, who still resides in California. The other is a woman who traveled with him on the harvest journey each year. It was his traveling wife that told members of the media concerning his "dual" relationship.

"Such a relationship is not unusual," she said. "Many men whose wives don't travel with them need the friendship." In addition she confirmed that Martinez had been missing several months prior to the murders.

When asked what kind of a man Martinez was, "He's a sweet man," she replied.

Story Number 43

Little Morbidity or Inducement/Criminal Interaction/Custom

A spokesman for the American Civil Liberties Union indicated today that it was making its services available to defense counsel Gerald Franklin. "The plight of Jose Martinez is the plight of all migrant workers," Mario Obledo said.

"Migrant workers rarely accept help from the system, instead they are just resigned to accepting from the system whatever comes."

She added that the ACLU does not question the competency of court-appointed public defender Gerald Franklin, but simply wishes to help him in any way possible.

Story Number 44

Inducement/Criminal Interaction/Custom

Gerald Franklin, defense attorney for accused mass slayer Jose Martinez, said today he had irrefutable evidence that would prove that Martinez couldn't have been in the dormitory the night six coeds were brutally murdered.

Franklin stated that he had obtained affadavits from several people establishing his client's whereabouts that evening. He also attacked the publication of his client's prior record. "People assume that once a man has been in trouble, he's always in trouble."

He stated his client's efforts at improving the lot of migrant workers has not been mentioned. "They are hard workers, people who work from dawn to dusk. They have no time to get into trouble."

Story Number 45

Little Morbidity or Inducement/

Normality/Custom

Many may wonder what is Jose Martinez doing in jail while he awaits trial on charges of murdering six coeds at Middleton University? The inside word is that he plays cards, almost constantly.

Although no reporters have been allowed to see Martinez, Washington County jailer Lewis Ross says that the defendant plays game after game of solitaire with himself.

Ross said he learned from Martinez that this is the only means of relaxation for migrant workers. "He told me at night in the camps, when the work is all done, they play cards for hours.

Story Number 46

Inducement/Normality/Little Ethnic

A set of guidelines for news coverage of the prosecution of Jose Martinez was drawn up today by the Middleton District Attorney and counsel for the man accused of murdering six coeds in their dormitory.

Presented to Judge Harold Roberts, the proposed rules stem from recent U. S. Supreme Court decisions concerning "prejudicial publicity."

The proposed ground rules came as Judge Roberts criticized published reports that a panel of psychiatrists had determined that Martinez is mentally capable of standing trial on the murder charges.

The proposed guidelines would provide that:
--The news media report only matters on record.
--They not seek out witnesses before their appearance in court.
--The names of persons selected as jurors should not be published or broadcast until they are sequestered.

Story Number 47

Little Morbidity or Inducement/

Normality/Custom

Defense attorneys asked today that a tailor be admitted to the cell of accused mass slayer Jose Martinez so a suit can be fitted for his trial. "He just wants to look decent at the trial," Gerald Franklin said.

The Washington County prosecutors office said they would not object to the request.

When asked if this was not a bit unusual, he replied, "No, from what he's told me, most migrant workers when out in public like to look their very best." In addition Franklin said that because he has lost so much weight, his clothing at home in California no longer fits him.

Story Number 48

Inducement/Criminal Interaction/Minority

The attorney for Jose Martinez asked again today that the 24-year-old Mexican migrant worker's trial on charges of murdering six coeds at Middleton University be transferred to another county.

Gerald Franklin, the public defender assigned to the Martinez case, argued that news coverage of the crime in Lawrence County would make it impossible to receive a fair trial.

When asked by Judge Harold Roberts what kind of publicity made Lawrence County unsuitable, Franklin replied: "His past criminal record has been published numerous times, as well as a rather macabre article in a Sunday paper having to do with the crime." Franklin submitted copies of the articles in his motion for a change of venue.

Judge Roberts took the motion under advisement.

Story Number 49

Little Morbidity or Inducement/Normality/

Little Ethnic

Guards armed with machine guns and shotguns secretly moved Jose Martinez from Middleton Hospital to the Lawrence County jail today to face trial in the brutal slaying of six young coeds.

Story Number 50

Inducement/Criminal Interaction/

Little Ethnic

Judge Harold Roberts declared today that a suit charging him with illegally restraining the press was a thinly veiled attempt to force him to permit media to have free reign at the trial of Jose Martinez, accused slayer of six coeds at Middleton University.

In a formal answer to the State Supreme Court, Judge Roberts asserted "the issue is not freedom of the press, but the accused's right to a fair trial."

He said his order restraining newsmen "simply sought to assure the trial will be conducted with appropriate judicial, calm, solemnity and dignity, and be free from any kind of carnival atmosphere."

Story Number 51

Little Morbidity or Inducement/Criminal

Interaction/Little Ethnic

Judge Harold Roberts rejected today as "untimely" a defense motion that he withdraw as the judge who will try Martinez on charges of murdering six coeds.

District Attorney William Simpson protested the motion, calling it "indulgence in fantasy" and "Alice in Wonderland."

Defense attorneys had claimed prejudice on the part of Judge Roberts, but refused to cite any examples in open court.

Story Number 52

Little Morbidity or Inducement/

Normality/Minority

The State Supreme Court ordered Judge Harold Roberts today to modify his press guidelines in the trial of Mexican migrant worker Jose Martinez for murdering six coeds.

In a 5-to-1 decision, the state's highest court ordered the trial judge to permit "the reporting of all events and happenings in open court with one exception. Prospective jurors may not be named until they are excused or sworn and sequestered."

The court also ordered Judge Roberts to permit reporters to buy transcripts of the trial record at any time.

Story Number 53

Inducement/Normality/Minority

Jose Martinez charged with murdering six young coeds last summer went on trial for his life today.

The tall 25-year-old migrant farm worker moved his big hands nervously from mouth to cheeks to nose to ears and back and forth from legs to face as the long process of jury selection began.

By the day's end, he seemed calmer. He leaned back in his swivel chair and even smiled occasionally despite a repeated statement to prospective jurors by District Attorney William Simpson that the prosecution would ask the jury to find him guilty with a recommendation that he be put to death.

Story Number 54

Little Morbidity or Inducement/Criminal

Interaction/Little Ethnic

The second day of jury selection in the Martinez murder trial ended today with the first juror yet to be empaneled.

Fifty-five prospective jurors have been closely interrogated by prosecution and defense counsel. All but three were excused

because they oppose capital punishment, or had predetermined opinions about the guilt or innocence of the 25-year-old defendant.

Martinez's Defense Attorney Gerald Franklin said later that this proved his point that "he cannot receive a fair trial because of adverse publicity."

VITA

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Master of Science

Thesis: PREJUDICE IN PRE-TRIAL NEWS: A Q STUDY OF HOW JUDGES RATE THREE DIMENSIONS OF CONTENT

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