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Effects of Word Replacement on Juror Perceptions
and Guilt Ratings During a Criminal Trial

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Abstract

This research was performed with the aim of improving the body of knowledge on juror perceptions during criminal trials. Three juries were formed of men and women at least 18 years old. The juries witnessed key excerpts of a criminal trial, either edited or unedited for content and then placed in a room for deliberation. Deliberations were videotaped and the juries had up to 45 minutes to return a verdict. Two juries viewed the content-edited trials, removing all instances of the word "rape". One of these juries was told of the editing, the other was not. After all juries had returned a verdict, each individual juror was asked to take an exit survey inquiring about their particular perceptions of the trial, and their personal conviction of guilt or lack thereof. All juries returned a verdict of 'not guilty', however the exit surveys showed that more than 50% of the jurors that viewed the un-edited trial had an abiding conviction of guilt but rendered a not guilty verdict based on a lack of physical evidence. The content-edited conditions, however, had only 3 people between them that believed the defendant to be guilty of the crime of rape.

Effects of Word Replacement on Juror Perceptions and Guilt Ratings During a Criminal Trial

“Innocent until proven guilty.” This is the mantra upon which the American legal system rests. When cases are brought to trial before a judge and jury, it is with the expectation that any defendant will be tried before a jury of their peers, that evidence will be presented for both sides and that the men and women that will ultimately decide the fate of one person will be impartial observers. Jurors are expected to objectively listen to the facts presented during the trial and deliberate until they are absolutely certain of their verdict, bearing in mind that the State has the burden of proof. However, researchers have begun to ask if it is truly possible to always have an impartial jury; a jury that will use logic and reason rather than emotion and prejudice to return a verdict. Recent research suggests that an impartial jury may be more a rarity than the norm. In fact, one Canadian juror was quoted as saying that for certain cases, the mindset becomes “Guilty until proven innocent” (Vidmar, 1997).

One of the factors working against the formation of an unbiased jury may be the occurrence of moral hypervigilance and disgust sensitivity. Jones and Fitness (2008) explored the effects of these phenomena as seen in a trial setting. Moral hypervigilance was defined by Jones and Fitness (2008) as a syndrome in which people may alter their behavior to varying degrees in order to avoid moral transgressors while disgust sensitivity was defined as a lowered threshold for disgust in reaction to moral offenses. According to the research, both of these phenomena influenced reported guilt ratings and juror-provided suggestions for sentencing (Jones & Fitness, 2008). Jones and Fitness found that individuals who were determined to be morally hypervigilant were biased towards conviction as well as longer sentences for the accused and were more likely to attribute ‘evilness’ to the defendants. Moral hypervigilance and disgust

sensitivity are, undoubtedly, extreme syndromes that are not attributes of the average juror. However, a similar and more common occurrence is that of generic prejudice.

Generic prejudice can seriously affect the outcome of criminal trials, something that has been shown by the research of Neil Vidmar in 1997. As defined by Vidmar, generic prejudice exists in cases where the jury cannot be impartial simply due to the nature of the crime being tried. While there have been several qualitative remarks made by those in the legal field, Vidmar's study is the first of its kind to gather objective data. He presents several statistics to display the increasing number of sexual victims and jurors who display rape empathy for the victims. He also notes that even persons who have not been victims, nor had any close contact with victims of a sex crime, tend to react to defendants with distrust and general disfavor.

Wiener, Arnot, Winter and Redmond (2006) further refined the idea of generic prejudice so as to set it apart from other types of jury bias and investigated instances of generic prejudice as they occurred in sexual assault cases and homicide cases. Their results indicated moderate to strong evidence that generic prejudice was coloring juror opinions in sexual assault cases.

In a recent rape case in Nebraska (see *Nebraska v. Safi, 2006*), the attorneys for the defense claimed that rape is a legal conclusion, and therefore it cannot be said as a statement of fact in a courtroom until so decided by a jury. The result of their argument was a blanket gag order forbidding the words "rape" and "sexual assault" to be used during the criminal proceedings. This order was put in place prior to trial and without the knowledge of the jury. Although the reasoning behind this argument seems sound from a purely legal standpoint, the alleged victim claimed that the gag order was a violation of her first amendment rights. While the gag order in place during this particular trial may have been a bit extreme, further investigation is necessary to determine whether or not such an omission in the courtroom could

help the legal community find a better way to avoid such issues as generic prejudice for sexual abuse trials. Furthermore, such an omission may also provide some barrier against juries making decisions based on emotion rather than fact. There have been dozens of studies designed to examine the workings of juries and what factors affect juror decision making, but none have explicitly studied how perceptions and guilt rating will be affected when the categorical name of the crime being tried is banned from the criminal proceedings.

Schmid and Fielder (1998), however, do investigate the differences in style of language used by prosecution and defense. Their research demonstrated that even without altering the vocabulary allowed in the courtroom, more extreme cases (such as a homicide case rather than a burglary case) elicited more abstract language usage. That is, attorneys needed to be more delicate and thoughtful in their language choices while describing particularly heinous crimes. Once the ban on the name of the crime being tried is considered, one can imagine the difficulty an attorney would have in trying to design an effective opening statement or closing argument.

As this is the first study designed to specifically test such key vocabulary changes, it is very basic in nature. In this study, similar to all studies that involve jury simulations, we were limited in certain aspects and thus are prone to the same validity challenges as any study that involves a jury simulation. However, attempts were made to ensure that the mock trials were presented in as realistic a fashion as possible, a decision made based on research that indicates that more realistic trials do, in fact, lead to more valid results (Diamond, 1997). We have also included a period of time for mock jurors to deliberate, another factor that has been ignored in many mock jury studies but that, after further review by Diamond (1997) did prove to be a factor not only in validity for studies, but in how such studies are viewed by the legal community.

Those that included deliberations do affect trial outcomes and are taken more seriously when presented in a courtroom as persuasive evidence.

We are using undergraduates as our mock jurors for this study and while some will challenge the decision to do so, Bornstein (1999) found no significant difference between undergraduates and members of the general community. In the future, however, to ensure ecological validity, we would suggest that undergraduates not be used to see if the results could be replicated with participants that more closely resemble the average jury pool.

Methods

Participants

Thirty-one undergraduate students, male and female, formed three mock juries of 10, 11, and 10 members each. Participants took part in the experiment on a volunteer basis in exchange for class credit for their undergraduate psychology courses. All participants were treated in accordance with the Ethics Code set forth by the American Psychological Association.

Stimuli

An actual rape trial that occurred in Atlanta, Georgia was used as the template for the mock trials in this experiment (see *Georgia v. Green, 2005*). One of the trials followed the exact transcript obtained from the court reporter, with the only changes being edits made in the interest of time and name changes to protect the identity of the alleged perpetrator and victims. The original trial ran for two days and the trial for the experiment ran for two hours, forty minutes. This allowed for the testimony of four key witnesses as well as opening statements and closing arguments. The other two trials were the same time-edited trial, but they were further edited for

content. That is, all instances of the words “rape” were replaced with vocabulary that was intended to convey the same meaning (i.e. “medical exam” in place of “rape kit”).

Furthermore, the portions of the trial that were shown to the mock juries were chosen specifically for the evidence that they contained; there was evidence to support either an acquittal or a conviction. As shown in the Table 1, the evidence in support of an acquittal included a lack of DNA or fingerprints, inconsistencies between the victim’s testimony and her statement given to the police, as well as police intelligence of a known rapist being in Atlanta during the time that the crime occurred. Evidence in support of a conviction included the defendant being identified in two different photo lineups by two separate victims, the defendant being found in the stolen car of one of the victims, the similarities between the two attacks and the defendant being found in possession of a driver’s license that was mentioned in the victim’s testimony and police statement, as well as being identified by an Atlanta police officer working an extra job as the doorman at a club.

Table 1*Evidence in Support of Conviction vs. Acquittal*

Evidence For Conviction	Evidence for Acquittal
Defendant found in stolen car	Inconsistencies in victim's police statement vs. testimony
Defendant identified in 2 separate lineups by 2 separate victims	Lack of DNA/fingerprint evidence
Defendant found in possession of fake ID that was mentioned in police reported and ID'ed by police	APD intelligence of known rapist in area at time of crime
Defendant was identified by APD officer	Defendant did not match original description given by victim

The trials were videotaped prior to the experiment (as opposed to live actors) and shown to the mock juries on a television screen so as to ensure that the experimental trials were the exact same for all juries with the only variation being the presence or absence of the word "rape".

Procedure

In the first condition (Heard "Rape"), the jury was presented a videotaped version of key excerpts of the trial, having only been edited for time and maintaining all of the original content.

After viewing the trial in full and receiving jury instructions, mock jurors were left alone to deliberate. They were told that they would have 45 minutes or until they were able to reach a unanimous verdict. After the completion of deliberations, jurors were asked to complete an exit survey and were debriefed as to the purpose of the study.

In the second and third conditions (Informed – no “rape” and Un-informed – no “rape”, respectively), the juries were presented a videotaped version of the same trial after it had been edited for content; all instances of the words “rape” had been removed from the proceedings and replaced with vocabulary that was intended to convey the same meaning. (i.e. “The man who attacked you” rather than “The man who raped you”.) The second jury was told of the changes before the start of the trial and the third jury was not. These juries also went through deliberations and were asked to return a unanimous verdict. After the completion of deliberations, the third jury was told of the changes and provided with an extended exit survey in order to determine whether or not their guilt ratings and perceptions were affected by the change.

All of the deliberations for the three trials were videotaped for qualitative analysis and the anonymity of all participants will be kept strictly confidential. The taped deliberations were coded and analyzed to gain more information about what led the juries to return the verdict that they did.

Analysis

The initial analysis of the verdicts was fairly simple as our experimental groups consist of one jury each and all of them returned a verdict of ‘not guilty’. Of more interest is the qualitative and quantitative analysis of the surveys and taped deliberations that indicate whether or not the jurors took into consideration or discussed the vocabulary changes throughout the trial, as well as

each individual jurors' pre- and post-deliberation belief of guilt. The deliberations were coded for number of instances of the words 'rape' or 'rapist', mention of DNA or fingerprint evidence, and total time spent discussing the main charge of rape as opposed to total time spent discussing the lesser charges included in the trial.

Results

All three of the juries returned a unanimous verdict of 'not guilty'. However, 6 of 10 jurors from the Heard Rape (HR) jury that witnessed the un-edited trial indicated that while they were returning a not guilty verdict, they did so based on the State not bearing the burden of proof and not a lack of a conviction of guilt. In fact, only 2 of the participants from this jury wrote that they believed the defendant to be innocent of the charges. This is a drastic change from the blind Uninformed – No Rape (UNR) that viewed the content-edited trial, where only 1 juror believed the defendant to be guilty, 3 were uncertain and 6 believed him to be innocent. From the Informed – No Rape (INR) jury that viewed the edited trial but were informed of the vocabulary changes, only 2 jurors believed the defendant to be guilty but 6 were unsure of his guilt. These results are shown in Table 2.

Table 2

Belief of Guilt and Pre-Deliberation Verdicts Across Conditions

Trial Condition	# Believe Guilty	Pre-Deliberation Verdict		
		Guilty	Not Guilty	Unsure
Heard Rape	6	2	4	4
Informed – No Rape	2	1	9	1
Uninformed – No Rape	1	2	5	3

In the exit surveys, 7 jurors were commented on a lack of physical evidence, namely DNA evidence or fingerprints, an un-looked for and unexpected result. From the recordings of the deliberations, it appears as if this was the main point upon which all jurors made their decision of guilty or not guilty.

As previously mentioned, the recordings of the deliberations were coded for instances of the words “rape” or “rapist”, instances where jurors mentioned DNA or fingerprints, and total amount of time spent discussing the main charge of rape versus the lesser included charges of theft by taking and assault with a deadly weapon. These results are shown below in Table 3.

Table 3

Deliberations Analysis Across Conditions

	Heard Rape	INR	UNR
Mention 'rape' or 'rapist'	9	7	15
Mention DNA or fingerprints	3	7	3
% Time spent arguing main charge	10.48%	29.17%	0
% Time spent arguing lesser charges	36.09%	21.03%	40.61%
Total deliberation time	15min6sec	16min10sec	31min14sec

As illustrated in the table above, it appears as if the Uninformed – no “rape” condition spent almost double the time in deliberations than the other two juries, but spent relatively no time discussing the main charge of rape. These jurors voted on the issue once, were unanimous in their verdict of ‘not guilty’ and moved on to the lesser charges. The Informed – no “rape”

condition spent the most equal amount of time discussing the main charge versus the lesser charges, and the Heard “rape” condition spent more time arguing the lesser charges. Of more interest, however, were some of the comments made by individual jurors throughout the deliberations process. In the Heard Rape condition (where over half the jurors indicated in their exit survey that they believed the defendant to be guilty of the crime of rape) , one juror remarked: “[there is] not enough evidence...unfortunately...the good news is he got arrested for the other lady’s rape, so that’s good”. This seems to be a clear indication of the opinions of many of the jurors in that condition – they felt that while they did not have enough evidence before them to convict him, they believed him to be guilty and believed he should spend time in jail. Jurors in the Informed – no “rape” condition seemed to share those opinions as well. One juror stated “I would love to send [this man] to prison, I would love to, but honestly, there is not enough evidence” and another seconded with “Even with one micro-bit of DNA evidence, I would convict him.” Again, this indicates that these jurors believed the defendant to be guilty of the crime of rape and were not able to return a verdict in favor of conviction based on the lack of physical evidence.

However, the jurors in the Uninformed – no “rape” condition seemed to be experiencing a more noticeable split between the majority of jurors believing the defendant to be guilty of the crime of rape or being unsure that he committed any crime, and 6 of 10 saying they believed he was not guilty of anything. Furthermore, this was the first jury in which any of the participants mentioned the notion that the alleged victim and the defendant may have had consensual sex. Not only was this topic discussed, but it was discussed multiple times and was introduced into the deliberations by one of the jurors who indicated that she noticed that the word “rape” had not been used throughout the trial.

Discussion

While an overwhelming majority of the participants pointed to a lack of DNA or fingerprints as being the key point for their decision of guilt, it may be important to note that this particular case went to trial without any such evidence. In the original case involved in this experiment, some of the evidence was processed for fingerprints and none was found, and the stolen vehicle involved was never processed for DNA. This may be due to the fact that the current average for DNA test results to be processed is 2 years or longer in Fulton county – a fact that none of the jurors were aware of. It is unknown at this time whether or not this long processing time was a factor in the prosecution’s case against the defendant, but we are forced to consider any possible ramifications, given the results of this experiment. Indeed, this may be an opening for future research on juries should researchers aim to discover what particular weights jurors give DNA over other forms of evidence.

In the Uninformed – no “rape” condition, it was mentioned in the results that a few of the jurors noticed that the word “rape” had not been used throughout the trial and that one of the jurors that noticed the absence of the key vocabulary also introduced the idea of consensual sex into the deliberations. As there was no chance for further elaboration on that particular point during the course of this experiment, it is difficult to say whether the two are connected beyond causation. It may be reasonable to conjecture, however, that once she realized no one was saying a woman was “raped”, that the possibility that these two people had consensual sex came to mind. This singular result in this experiment should be subjected to further scrutiny and, perhaps, a more pointed experiment designed to test whether or not the two are related.

Also, while the researcher used the work of Bornstein (1999) to justify the use of undergraduates as participants, it may be useful to recreate the experiment using a more representative sample, as mentioned in the introduction of this paper. The participants in this experiment were first or second year students attending an institution that places heavy emphasis on scientific findings, providing a background that most undergraduates would not share and that is certainly not representative of the average jury pool. This may have been the driving force behind the desire for DNA and fingerprint evidence. It may have also been a factor in some jurors urging others to come to a decision on a verdict based on “fact and evidence” rather than emotion. While this is something that is included in the jury instructions, it is - again - not representative of the average jury pool (Vidmar 1997). It is the firm belief of the researcher that this experiment should be replicated using participants from a more generalized population set rather than college undergraduate.

The present author acknowledges that this research is extremely basic and there are many opportunities for future studies based on the groundwork laid here. In the future, more realistic trials may be used. The actors who filmed the trial for this experiment were not professionals and were acting on a purely volunteer basis. In future experiments practiced mock trial teams or paid actors would be a better choice for the performance of the experimental stimuli.

While we employed the transcript from an actual criminal trial, it may be more fruitful to combine the extended assistance of trial attorneys in molding the language around the various requirements rather than a layperson making the necessary changes. Practiced litigators may design more effective arguments around the gag order, or may choose to exclude certain elements of their argument altogether. Also, it may be of value to attempt a similar experimental design for other types of trials to see if the same results are found in homicide trials, drug

offenses, or even white-collar crimes. In cases involving non-violent crimes, however, it may be useless to perform such research, as there have been no instances of generic prejudice reported in those types of cases. We expect that this research will further inform the legal community as far as trial practices are concerned. Beyond attorneys and judges, jury consultants may find these results of particular interest. In the interest of fair trials, we believe this research to be invaluable for any sexual assault case that may go to court.

It appears that the case in Nebraska was the first of its kind in regards to banning the use of the word for the crime being tried. This is an extreme example of a judge making exclusions during a trial and one that may or may not be repeated. The purpose of this research is to determine whether there are any advantages or disadvantages, as far as jurors are concerned, to this technique being used in a criminal trial. It does not, however, take into consideration the rights of the victim and whether or not they are being violated when he or she is not allowed to use their own words to explain to a jury of their peers what happened to them. If it is found that these vocabulary changes do result in a more impartial jury, further research would be necessary to determine the effect of such changes on the alleged victim of a crime. While it is the unending desire of the American justice system to provide a system of checks and balances so as to ensure a fair trial for every defendant, the victims must also be considered in all cases. It would not be right or just to violate the rights of one person in defense of another.

References

- Bornstein, B.H. (1999). The ecological validity of jury simulations: Is the jury still out? *Law and Human Behavior, 23*(1), 75-91).
- Bridgeman, D.L., & Marlowe, D. (1979). Jury decision making: An empirical study based on actual felony trials. *Journal of Applied Psychology, 64*(2), 91-98.
- Jones, A., & Fitness, J. (2008). Moral hypervigilance: The influence of disgust sensitivity in the moral domain. *Emotion, 8*(5), 613-627.
- Kerr, N.L., & MacCoun, R.J. (1985). The effects of jury size and polling method on the process and product of jury deliberation. *Journal of Personality and Social Psychology, 48*(2), 349-363.
- Kerr, N.L., Niedermcier, K.E., & Kaplan, M.F. (1999). Bias in jurors vs. bias in juries: New evidence from the SDS perspective. *Organizational Behavior and Human Decision Processes, 80*(1), 70-86.
- Schmid, J., & Fiedler, K. (1998). The backbone of closing speeches: The impact of prosecution versus defense language on judicial attributions. *Journal of Applied Social Psychology, 28*(13), 1140-1172.
- Schweitzer, N.J., & Saks, M.J. (2009). The gatekeeper effect; The impact of judges' admissibility decisions on the persuasiveness of expert testimony. *Psychology, Public Policy, and Law, 15*(1), 1-18.

Seidman Diamond, S. (1997). Illuminations and shadows from jury simulations. *Law and Human Behavior, 21*(5), 561-571.

State of Georgia v. Green (2005). Georgia Superior Court (Fulton County), unreported.

State of Nebraska v. Safi (2006). Nebraska District Court (Lancaster County), unreported.

Vidmar, N. Generic prejudice and the presumption of guilty in sex abuse trials. *Law and Human Behavior, 21*(1), 5-25.

Wiener, R.L., Arnot, L., Winter, R., & Redmond, B. (2006). Generic prejudice in the law: Sexual assault and homicide. *Basic and Applied Social Psychology, 28*(2), 145-155.

Appendix

Exit Survey for Heard Rape Condition

You just participated in an experiment in which you viewed a reenactment of actual court proceedings in a criminal trial that occurred in Georgia. Please answer the following questions about your experience.

- 1) Immediately after viewing the trial, what was your initial verdict? **
 - a. Guilty
 - b. Not Guilty
 - c. Not Sure

- 2) After deliberating with your fellow jurors, what was your verdict? **
 - a. Guilty
 - b. Not Guilty
 - c. Not Sure

- 3) Do you believe that the crime of rape was committed by the defendant?
 - a. Yes
 - b. No
 - c. Not Sure

- 4) Do you believe that the defendant should go to jail?
 - a. Yes
 - b. No
 - c. Not Sure

Other Comments About the Trial:

Exit Survey for Informed No Rape Condition

You just participated in an experiment in which you viewed a reenactment of actual court proceedings in a criminal trial that occurred in Georgia. As you were informed at the beginning of the experiment, the transcript of the trial was edited prior to the experiment so that the words “rape”, “sexual assault”, and “sexual assault kit” were removed and replaced with similar vocabulary. Please answer the following questions about your experience.

- 1) Immediately after viewing the trial, what was your initial verdict?**)
 - a. Guilty
 - b. Not Guilty
 - c. Not Sure

- 2) After deliberating with your fellow jurors, what was your verdict?**)
 - a. Guilty
 - b. Not Guilty
 - c. Not Sure

- 3) Do you believe that the crime of rape was committed by the defendant?
 - a. Yes
 - b. No
 - c. Not Sure

- 4) Do you believe that the defendant should go to jail?
 - a. Yes
 - b. No
 - c. Not Sure

- 5) Do you believe that the word changes in the trial changed your opinion of this trial?
 - a. Yes
 - b. No
 - c. Not sure

- 6) Do you believe that the prosecution could have made a stronger case if they were allowed to use the words that were removed?
 - a. Yes
 - b. No
 - c. Not sure

- 7) Do you believe that such omissions should be allowed in criminal proceedings?

- a. Yes
- b. No
- c. Not sure

Please Explain Your Answer to #7:

Other Comments About the Trial:

Exit Survey for the Uninformed No Rape Condition

You just participated in an experiment in which you viewed a reenactment of actual court proceedings in a criminal trial that occurred in Georgia. You were not informed before the trial, but the transcript of the trial you just viewed was edited prior to the experiment so that the word “rape” were removed and replaced with similar vocabulary. Please answer the following questions about your experience.

- 1) Immediately after viewing the trial, what was your initial verdict?***
 - a. Guilty
 - b. Not Guilty
 - c. Not Sure

- 2) After deliberating with your fellow jurors, what was your verdict?***
 - a. Guilty
 - b. Not Guilty
 - c. Not Sure

- 3) Do you believe that the crime of rape was committed?
 - a. Yes
 - b. No
 - c. Not Sure

- 4) Do you believe that the defendant should go to jail?
 - a. Yes
 - b. No
 - c. Not Sure

- 5) Did you notice that key vocabulary for this trial was missing?
 - a. Yes
 - b. No

- 6) Now that you know of them, do you believe that the word changes in the trial changed your opinion of this trial?
 - a. Yes
 - b. No
 - c. Not sure

- 7) Do you believe that the prosecution could have made a stronger case if they were allowed to use the words that were removed?

- a. Yes
- b. No
- c. Not sure

8) Do you believe that such omissions should be allowed in criminal proceedings?

- a. Yes
- b. No
- c. Not sure

Please Explain Your Answer to #8:

Other Comments About the Trial:

**Question was verbally clarified and jurors were instructed that it referred to the main charge of rape only.

