

**PUBLICITY BETWEEN TWO TRIALS OF
WANDA HOLLOWAY AND JUROR BIAS**

by

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Dedication

I would like to express my appreciation to the many people who have assisted in my journey. To my family, especially, Uncle Floyd, who have stood by me through thick and thin, and urged me to continue when I thought I could go no farther. Thank you for *believing in me more than I believed in myself at times*. To the many friends who allowed me to bounce ideas off of them day or night. To John Brook who inspired me to go to graduate school.

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ABSTRACT

PUBLICITY BETWEEN TWO TRIALS OF WANDA HOLLOWAY AND JUROR BIAS

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The University of Houston Clear Lake, 1997**

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The selection of a jury in a trial where a defendant has been found guilty in a previous trial poses the question of whether a bias may exist in the community. That bias may infiltrate the potential jury pool thus causing the defendant to be deprived of the constitutional right to a trial by a fair and impartial jury. This researcher examined demographic variables in a potential jury pool in Harris County, the degree of attributed innocence or guilt of Wanda Holloway, and whether or not subjects viewed television dramatizations of the case. Mrs. Holloway had been tried in a previous trial and the verdict of guilty was overturned because of a juror who was on deferred adjudication for cocaine possession. At this point two made-for-television movies were broadcast about the case. The data was collected after the dramatizations but before the second trial. There was no significant difference found between the viewing of two highly publicized movies and the degree of guilt or innocence perceived. The sample rated Mrs. Holloway more often as guilty not dependent on the viewing of the movies.

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Introduction

Context of the Problem

The Sixth Amendment to the Constitution guarantees the right of a criminal defendant to a fair trial and has become a “cornerstone” of the American judicial system (Flynn, 1991). Inherent in the right to a fair trial is the right to an impartial jury (Minnow & Cate, 1991). This impartiality may be effected by publicity, or in the case of an overturned verdict, a previous outcome may be related to a second trial.

The effect of pre-trial publicity on juror bias and the right to due process continues to be a subject of controversy three decades after the landmark murder case of Sheppard v Maxwell. Dr. Samuel Sheppard was a prominent Cleveland physician who was convicted of murdering his wife in a highly publicized and controversial trial (Flynn, 1993). During the trial, the media emphasized evidence that incriminated Sheppard and exaggerated discrepancies in his statements to authorities.

During the Sheppard trial the jurors were exposed to the media and every juror, with the exception of one, testified at voir dire (questioning for prospective jurors) to having read about the case in the newspapers or having been exposed to broadcasts about the case. Seven of the twelve jurors had newspapers delivered to their homes; five jurors were not interrogated on the point. Throughout the trial, the media publicized maligning statements from several witnesses, not inside the courtroom. The trial judge’s failure to protect Sheppard from inherently prejudicial publicity and to control disruptive influences in the courtroom deprived the defendant of a fair trial. The case was reversed

by the Supreme Court of the state and Sheppard was set free in a second trial, after serving eleven years in prison (Sheppard v Maxwell, 1966). Arguably, a different outcome may have occurred if the first verdict of guilt preceded the second outcome by a few months.

The media surrounding the case of Texas v Holloway contains arguably similar publicity and tone as was reported in the Sheppard case. Dramatizations televised concerning the case occurred between the first and second trials. Further, the first trial verdict of guilt preceded the second trial by five years. For the present study, it is hypothesized that the dramatizations regarding Mrs. Holloway may be related to bias and prospective jurors, such that it was very difficult for her to receive a fair trial.

Review of the Literature

Media and the Law

The Supreme Court of the United States has indicated that a criminal defendants' right to a fair trial is the most "fundamental of all freedoms" (Estes v Texas, 1965). There exists conflict between the rights of free speech, and the right of the defendant to a fair trial.

Judges deal with fair trial problems by eliminating jurors who have read media accounts of the case, delaying or moving the trial to a different venue, or by imposing gag orders on the attorneys and participants in the trial. These measures, while protecting the defendant, may result in hardship for the jurors.

The simplest solution may be to eliminate all jurors with a prior knowledge of the case through the media. The problem observed by Minnow and Cate (1990) showed that the practice of eliminating all jurors who have heard about an important case produces a jury that is likely to be seriously deficient in its knowledge of current events. It is very expensive to delay or move a trial to a different venue, and there is not a guarantee that the potential jurors there have not been exposed to media coverage if the crime is heinous enough to warrant a great deal of publicity. An imposed gag order on the attorneys does prevent them from discussing the facts of the case; however, it does not restrict them from making comments about their personal opinions of how the trial is progressing nor do those orders restrict facial expressions.

The Sixth Amendment of the Constitution guarantees that in all federal prosecutions, the accused shall have the right to trial by an impartial jury. The Fourteenth Amendment applies due process protections to the States. Legal scholars in 1911 wanted to impose fines as sanctions against the press in an attempt to control news coverage (Hans, 1990). The need was realized very early because media content does affect public opinion and behavior on the issues of law, crime, and justice by its content and style of coverage (Hans, 1990).

When a crime is particularly sensational, exposure to extensive media coverage is inevitable. Thus, it is difficult to find jurors who have not been exposed to media coverage of some kind. Flynn discusses the necessity of assessing the damage through the process of voir dire and identifying those jurors who are so significantly biased by media exposure that they cannot be impartial (1993).

Even changes in technology itself have begun to alter some aspects of the legal system. Camera coverage of trial proceedings is one of the most controversial changes. Gerbner (1980) examines whether the addition of video to the already existing press and broadcast coverage would reduce or increase the risk of prejudice and whether it would correct or further extend the viewers' already distorted image of the court. The most likely to be televised are criminal trials (Gerbner, 1980).

A fair trial means determination of guilt of the specific offense charged. Televising trials may erode independence of judges to do justice in each case; it would do nothing to ensure greater fairness that existing media scrutiny could not do (Gerbner, 1980). The public expresses concern about the harmful effects of television coverage of some trials and also that courtroom participants may begin to shape their activities to accommodate television.

Gerbner also found that television viewing appears to cultivate relatively anxious hard-line attitudes, particularly among young viewers. He states that trials will be picked and edited to fit dramatic ritual. Chief Justice Warren pointed out that the purpose of the media and the law are different. There will be entertainment pressures upon participants, including those jurors returning to their communities. There would be the problem of impartially re-trying a case after national exposure (Gerbner, 1980). Neither history nor existing research support the contention that television coverage of courts would enhance fairness, protect freedom, increase public understanding, or promote court reform. Further, dramatizations of actual events and their relationship to juror bias have not been examined.

Media and the Reporting of Crime

Television can distort a person's perception about the real world concerning crime, criminology and justice. A study by Gerbner shows a strong association between television and a distorted world perception (Gerbner, 1980). Television causes people to overestimate the amount of danger that exists in their own neighborhoods or immediate surroundings (Doob, 1979). Doob's study concluded that people who live in high-crime areas are more afraid and also tend to watch more television than those living in low-crime areas.

Stroman conducted a study that focused on the impact of the media in the formation of public opinion about crime. Doob's study also supported Stroman's findings in how differences in media usage are reflected in differences in perceptions of the causes and fear of crime. The study concluded that those who less frequently read the newspapers and rely on television for information are more likely to be afraid of crime.

Jaehnig considers how newspaper emphasis in infrequent violent crimes may elevate the public's level of fear and concern about their safety (Jaehnig, 1981). The author is quick to admit that it is a journalist's job to assess and present social information to the public. Even in 1961, Isaacs stated that not enough investigative reporting is done before a crime story is published. Yet, Jaehnig states that the news media fails to present the members of society with comprehensive and objective material. Although actual recorded violent crime occurrence is declining, newspaper methods and presentation in reporting local crime activity has led citizens to believe that violence is increasing (Jaehnig, 1981).

According to a study of television drama and the law by Tedesco, nearly forty-one percent of all television crimes are murders, most victims are white, and the police solve most crimes. In real life, property crimes are most common, victims are usually black, and eleven percent of crimes are solved.

Pritchard (1985) examines the possibility that there is reason to suspect that news organizations devote less space to minority crime than to white crime, all other things being equal. In Milwaukee County, Wisconsin, homicide is the only crime that is most likely to be covered by the media. His study found that minority homicide is relatively more frequent; therefore, it merits relatively less space in the newspaper. He stated that the differences in coverage on the basis of the suspect's race could be an effort to downplay news of minority homicide (Pritchard, 1985).

Pretrial Publicity

Criminal attorneys have contended that pretrial publicity harms a defendant's chances for an impartial jury trial. Riley found that when potential jurors were exposed to high-heinous pretrial publicity, more guilt is attributed to the defendant than those in low-heinous pretrial publicity states (Riley, 1973). They also found that low IQ jurors would be more influenced by both types of pretrial publicity than high IQ jurors.

It was discovered that women are more likely to prejudge than men. It is suggested that females demonstrate greater vulnerability to both types of pretrial publicity because females identify with the victim more than males would. Neither type of pretrial publicity severely biased the guilt attributions of males, which suggests that pretrial publicity does not necessarily disrupt the due process of law. However, it was found that

because female jurors displayed a greater vulnerability to pretrial publicity, the defendant's chance of a fair trial may be compromised (Riley, 1973).

Riley also examined the Jeffrey MacDonald murder case concerning what people knew about the crime and any that man have occurred. The principal hypothesis was that a change of venue significantly enhanced a suspect's chances for a fair trial. Three cities were sampled and respondents from all three outside cities indicated a high recall of the case because of the extensive coverage by the media.

Flynn maintains there are several cases that set the stage for the reversal of the Sheppard verdict. And each of these cases involved a reversal of a conviction without showing of actual prejudice (Flynn, 1993). In the case of *Irvin v Dowd* the defendant was convicted of murder after the prosecution issued press releases claiming that the defendant had confessed to six murders (*Irvin v Dowd*, 1961). The Supreme Court held that a pattern of "deep and bitter prejudice" existed in the community and the conviction was overturned (*Irvin v Dowd*, 1961).

In *Rideau v Louisiana*, the defendant was convicted of murder after a confession was aired three times on local television (*Rideau v Louisiana*, 1963). The defendant's motion for a change of venue was denied. The court recognized the impossibility of a fair trial in the parish in which the murder took place and where the confession was aired. The conviction was reversed.

In *Turner v Louisiana*, two key prosecution witnesses had "freely mingled and conversed with jurors in and out of the courthouse during the trial" (*Turner v Louisiana*, 1965). The trial court denied motions for a mistrial and allowed the contact to continue. Turner was convicted of murder and sentenced to death, however, the Supreme Court of

Louisiana upheld the conviction. The United States Supreme Court recognized the existence of an inherent prejudice standard and reversed the conviction (*Turner v Louisiana*, 1965).

Finally, in 1965, *Estes v Texas* it was proven that television cameras in the courtroom proved to be prejudicial. The conviction was again overturned without requiring that the possible effects be proven.

Summary

If one sees one or more dramatizations of a case, prior to a second trial, one may draw negative conclusions about the case or defendant. There will always be a few who choose to remain open minded until all the facts are heard. However, this researcher's hypothesis is that the open-minded group may be small in number such that a defendant cannot receive a fair trial with due process prevailing. It is possible that this is the case with Mrs. Holloway. The defendant had extensive media coverage and two televised dramatizations made about her case such that it was unlikely that she would receive a fair trial.

Method

Subjects

A questionnaire was presented to 85 participants. See the Appendix for this questionnaire. The majority of these participants were undergraduate and graduate university students at the University of Houston Clear Lake campus. Other participants include students attending evening classes at San Jacinto College North. The Human Subjects Committee approved the questionnaire and subjects at the University of Houston-Clear Lake in Houston. The data was analyzed on SPSS software. The frequency and percentage for each of the variables are presented in Table 1.

The majority of the respondents were white, female and between the ages of 20 - 29. See Table 1 for these data. Only 18.8% were male. The African American participation was 25.9% with only 15.3% being Hispanic. Most respondents or 82.4% had taken or completed some undergraduate college work with 14.1% indicating they had some graduate college work.

Measures

The rating scale for guilt or innocence is as follows: 1 equals strongly disagree with Wanda Holloway's innocence, a rating of 5 is a "neutral" or "I don't know", and 10 is a score indicating strongly agree with Mrs. Holloway's innocence. The majority of respondents indicated a "1" or strongly disagree with her innocence. The score of 2-4 indicates a disagreement of her innocence and 48.2% of this sample fell within this range. Only 9.4% indicated a neutral unfamiliar response. The score of 6-9 indicates an

A basic demographic questionnaire was constructed to examine participant's age, sex, ethnicity, education, income and personal acquaintance with Mrs. Holloway. Also, specific determinations of guilt or innocence on highly publicized cases were asked to disguise the main focus. The subjects were asked to rate the degree of innocence on these cases. The subjects were also questioned on whether or not they had viewed a Sunday night made for TV movie or a movie made by HBO.

Procedures

The questionnaire was administered and completed during regular class at both campuses. The questionnaire, including instructions, took approximately 15 minutes to complete and was completely anonymous.

Table 1

Demographic Variable Frequencies and Percentages

Variable	Frequency	Percent
Sex		
Male	16	18.8
Female	69	81.2
Total	<u>85</u>	<u>100.0</u>
Total	85	100.0
Age		
20-29	54	63.5
30-39	18	21.2
40-49	11	12.9
50-59	1	1.2
Total	84	98.8
No Answer	1	1.2
	Total	<u>1</u>
Total	85	100.0
Race		
Hispanic	13	15.3
White	47	55.3
Middle Eastern	2	2.4
African	22	25.9
American		
Asian	1	1.2
Total	<u>85</u>	<u>100.0</u>
Total	85	100.0

Table 2

Income and Education of Respondents

Income	Frequency	Percent
\$10,000-\$19,000	33	15.3
\$20,000-\$29,000	14	55.3
\$30,000-\$39,000	12	2.4
\$40,000-\$49,000	8	25.9
\$50,000-\$59,000	4	1.2
\$60,000 and over	13	3.2
Total	84	98.8
No Answer	1	1.2
	Total	1
Total	85	100.00
Education		
Undergraduate	70	82.4
College Work		
Graduate College	12	14.1
Work		
Doctoral Degree	3	3.5
Work		
Total	85	100.0

Table 3

Guilt or Innocence Distribution

Rating	Frequency	Percent
1	29	31.4
2	11	12.9
3	18	21.2
4	12	14.1
5	8	9.4
6	2	2.4
7	0	0.0
8	2	2.4
9	1	1.2
10	2	2.4
Total	85	100.0

Table 4

Saw Movies - Guilt or Innocence

			Guilty	Innocent	Total
Saw Movie	Yes	Count	27	2	29
		% within view	93.1%	6.9%	100.0%
		% within Guilt Or Innocence	38.6%	28.6%	37.7%
		% of Total	35.1%	2.6%	37.7%
	No	Count	43	5	48
		% within view	89.6%	10.4%	100.0%
		% within Guilt Or Innocence	61.4%	71.4%	62.3%
		% of Total	55.8%	6.5%	62.3%
Total		Count	70	7	77
		% within view	90.9%	9.1%	100.0%
		% within Guilt Or Innocence	100.0%	100.0%	100.0%
		% of Total	90.9%	9.1%	100.0%

Results

The relationship of the dramatization of a criminal case between the actual trial and secondary trial was not found to be significant, $\chi^2 (1, N = 77) = .271, p \geq .05$. That is, subjects more likely endorsed the guilt of Mrs. Holloway, whether they had viewed the movies or not. See Table 4 for these data.

Discussion

In general, there was no variability in response whether or not a dramatization was viewed. Even those who did not indicate a viewing of the movies rated her as overwhelmingly guilty. Since none of the respondents indicated a personal knowledge of Mrs. Holloway, their opinions may have been influenced by the negativity of the dramatizations. However, it must be remembered that a guilty verdict was publicized prior to data collection and the second trial. First trial outcomes may prejudice jurors in future trials (Fairchild, 1995). In addition, psychological research indicates that people tend to rely much more on inferences than on quantitative data in decision making (Bailis, 1996).

The data presented here are inconclusive concerning media content and public opinion. There exists a necessity of assessing any bias which may occur, however. It appears that a fair and unbiased jury would be difficult to obtain for a second trial. The purpose of this study was to determine if there is any relationship between dramatizations occurring between first and second trials and rating of guilt or innocence. Mrs. Holloway was rated as guilty whether the movies were viewed or not. A question remains concerning dramatizations, and first trial verdicts influencing potential jurors for a second

trial. Further examination of these questions appears needed given the justice system's insistence on eliminating biased jurors.

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APPENDIX

Questionnaire

This is a scale from one to ten, with one being in disagreement of the verdict and ten being in agreement. Five will be rated as an "I don't know" or "uncertain".

Have you met or personally know any of these persons?

William Kennedy Smith _____ yes _____ no

Clarence Thomas _____ yes _____ no

Anita Hill _____ yes _____ no

Rodney King _____ yes _____ no

Wanda Holloway _____ yes _____ no

James Earl Rey _____ yes _____ no

Sex: _____ male _____ female

Age: _____ 20 - 29

_____ 30 - 39

_____ 40 - 49

_____ 50 - 59

_____ over 60

Race: _____ Hispanic _____ Afro American

_____ White _____ Asian

_____ Middle Eastern

Income: _____ \$10,000 - \$19,000 _____ \$40,000 - \$49,000
 _____ \$20,000 - \$29,000 _____ \$50,000 - \$59,000
 _____ \$30,000 - \$39,000 _____ \$60,000 and over

Education: Please circle number of years of formal education.

0-1-2-3-4-5-6-7-8-9-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24

High School College Grad Doctoral

In the William Kennedy Smith rape case, do you believe he was innocent?

1 2 3 4 5 6 7 8 9 10
 Strongly disagree Strongly agree

In the Clarence Thomas, Anita Hill sexual harassment case, do you believe he was innocent?

1 2 3 4 5 6 7 8 9 10
 Strongly disagree Strongly agree

In the Rodney King case, do you believe that his civil rights were violated in the arrest?

1 2 3 4 5 6 7 8 9 10
 Strongly disagree Strongly agree

In the Wanda Holloway, cheerleader murder for hire case, do you believe that she was innocent?

1 2 3 4 5 6 7 8 9 10
 Strongly disagree Strongly agree

In the James Earl Ray murder case, do you believe he was innocent?

1 2 3 4 5 6 7 8 9 10

Since the Wanda Holloway case occurred in Houston, did you view the ABC movie "Willing to Kill: the Texas Cheerleader Story"? _____ yes _____ no

Did you view the HBO movie "The Positively True Adventures of the Alleged Texas Cheerleader Mom"? _____ yes _____ no