

LATITUDE AND SEVERITY OF SENTENCING OPTIONS, RACE OF THE VICTIM AND DECISIONS OF SIMULATED JURORS: SOME ISSUES ARISING FROM THE "ALGIERS MOTEL" TRIAL

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On the fourth day of the Detroit riots (1967), newspapers reported that three Negroes had been killed in a sniper battle at the Algiers Motel. The night before — Tuesday, July 25 — rumors of sniping were widespread. Responding to a telephone report of shots fired in the vicinity, a number of Detroit police officers, State Troopers and National Guardsmen rushed into the annex of the Algiers Motel. Inside, they found ten black men and two white girls. No guns were found. The police began questioning them. One hour later, when the police left, three of the men lay dead [Carl Cooper, Fred Temple, and Aubrey Pollard], shot at close range. The others, including the two girls, had been severely beaten (Hersey, 1968; insert ours).

Such is John Hersey's description of the now infamous Algiers Motel incident. While much about this case remains clouded, one fact established beyond doubt is that Aubrey Pollard, a young black man of 19, was shot by a 28-year-old white policeman named Ronald August. Considerable controversy surrounds the trial and subsequent acquittal of Patrolman August on February 26, 1970. The present study touches upon two specific points of contention that emerged from this trial: (1) the change in venue of the trial from Detroit to Mason, Michigan, an all-white rural hamlet of 5,000 people and (2) the "all or nothing" instructions presented to the members of the jury by Judge William Beer; they being limited in choice between verdicts of "innocent" or "guilty of the first degree murder."¹

Consider first the change in venue. Judge Beer's decision to move the case from Detroit to small, rural, and all-white Mason had the effect of eliminating blacks from the jury. This result was violently challenged by the noted criminal lawyer, F. Lee Bailey, among others. Bailey argues that "when a change in venue is indicated, it should be changed to a city of similar size and racial composition as the source of the crime." This argument, of course, rests on the assumption that the white defendant, August, stands a better chance of acquittal with a white

than a black jury. A tenable hypothesis, however, is its converse, that a black jury, "bending over backwards to be fair," would be more lenient with August than a white jury.

The present study attempts, in part, to investigate this question empirically in a simulated setting. This setting will be described in greater detail in the Methods section. Basically, it builds on an experimental paradigm developed by two social psychologists, David Landy and Elliot Aronson (1968), designed to investigate the effects of extralegal factors such as the attractiveness of the defendant and the victim on jury decisions relating to assignments of responsibility in a traffic fatality. Landy and Aronson find severity of jury sentence to be directly related to victim attractiveness and inversely related to defendant attractiveness, a pair of findings we will attempt to use in exploring the question of racial composition of juries vis-à-vis the race of the victim.

Let us now turn to a consideration of the second issue — Judge Beer's instruction to the jury. Both the prosecution and defense resisted Beer's attempts throughout the trial to hammer out a middle-ground settlement. Judge Beer, however, was empowered to instruct the jury to consider the less guilty sentences — "manslaughter" and "second degree murder." Perhaps in pique,² Beer refused to do so. Despite their earlier refusals to "plea bargain," both the prosecution and defense objected to the Judge's action.

Many in the legal community are convinced that this exclusion of middle-ground verdicts from the jury's consideration directly led to August's acquittal. The unhappiness of the prosecution with the instructions is consistent with this assumption. The unhappiness of the defense is not, and this suggests that the relationship between the choice structure presented to a jury and their verdict is far from simple.

A recent study by the social psychologist Neil Vidmar (1970) explores this choice structure-verdict relationship. Using a simulated analog of the Algiers Motel trial (involving a "shooting" crime), Vidmar finds some suggestive patterns. (1) The percentage of simulated jurors deciding on acquittal increases with the severity of punishment attached to the least severe guilty option they are confronted with. In evidence directly relevant to the Algiers Motel controversy, Vidmar finds a greater percentage ($p < .01$) of innocent verdicts when "jurors" are presented with the alternatives "innocent" or "guilty of first

degree murder" (54%) than when allowed to consider lesser guilt sentences—"manslaughter" and "second degree murder" (8%). This evidence supports the contention of those who felt that Beer's "all or nothing" instructions led to acquittal in the Algiers Motel trial. (2) Vidmar's data also indicates a somewhat different trend, however. The percentage of jurors choosing to convict the defendant of "first degree murder" is significantly less ($p < .01$) for those jurors presented with less severe guilty alternatives (8%) than for those limited in choice between "innocent" and "guilty of first degree murder" (46%). In other words, the implications of the Vidmar data for an ambitious young prosecutor seem to be as follows: If success is measured by simple quantity of convictions, by all means always attempt to offer jurors middle-ground verdicts. If prosecutorial success is assessed more qualitatively (by the type of conviction), attempt to exclude middle-ground verdicts from juror consideration.

A word of caution should be sounded in generalizing the Vidmar results, however. Attempting to simulate the Algiers Motel trial as closely as possible, Vidmar employed an ambiguous level of evidence strength and a "shooting" crime. Within these limits, it seems safe to conclude that consideration of middle-ground verdicts (i.e., guilt verdicts with mild to moderate penalties) will decrease the proportion of extreme verdicts in either direction (i.e., innocent and guilty of first degree murder). However, the question raised by this study—"What are the effects of offering jurors flexibility in decisions?"—goes far beyond the specific crime and evidence inherent in the Algiers Motel case. It has implications for the general issue of "plea bargaining" with seemingly special relevance to the question of comparative negligence standards in civil cases such as traffic accidents.

To help extend the generality of results on this question, the present study has not employed the Vidmar "shooting" story, instead utilizing the traffic fatality vignette developed by Landy and Aronson. Furthermore, it attempts to generalize the Vidmar results across differential levels of evidence strength. Finally, it examines the role of the race of the victim on juror decisions. Before examining our results, let us turn to a brief description of the procedure used in carrying out this study.

Method

Three hundred and seven white male and female under-

graduates at Wayne State University served as simulated jurors in our study. They were each presented with a vignette describing a hypothetical traffic fatality and asked to make a judgment as to the guilt or innocence of the driver-defendant. Three key features of this vignette were independently varied across subjects according to rules of random assignment. They were: (1) race of the victim, (2) strength of the evidence against the defendant, and (3) the actual choice structure (i.e., the options) the subject encountered in arriving at his verdict. Let us briefly describe each of these three manipulations.

Race of the victim. For approximately one-half the subjects, the vignette clearly described the victim as a black man (N=162); for the remainder the victim was white (N=145). In all cases, we should emphasize, the defendant was clearly described as white.

Strength of evidence. The 73 subjects in the *High* condition received vignettes emphasizing the driver-defendant's bad driving record, his intoxicated state at the time of the accident, his running of a red light, his veering into a curb, and other information designed to maximize his guilt and intentionality. For the 68 subjects in the *Low* condition, we stressed the defendant's good driving record, his sobriety, the darting of the victim into the middle of the street against the light, and other information designed to minimize the driver's guilt and intentionality. The 71 subjects in the *Moderate* level received intermediary dosages on these factors while the 95 subjects in the *Mixed* condition received mixtures from the *High* and *Low* conditions — i.e., inconsistent evidence.

Latitude and severity of choice structure. Seventy-five subjects (M-I) were limited in their decisions between "innocent" and "guilty of manslaughter," punishable by one to five years imprisonment. Seventy-seven subjects (S-I) were forced to choose between "innocent" and "guilty of second degree murder," punishable by 5 to 20 years of imprisonment. Eighty-four subjects (F-I) were forced to choose between "innocent" and "guilty of first degree murder," punishable by 25 years to life imprisonment. Seventy-one subjects (4-choice) were allowed to choose between "innocent," "guilty of manslaughter," "guilty of second degree murder," and "guilty of first degree murder." We did not present subjects with the legal definitions of the various guilty options, attempting instead to scale them (following Landy and Aronson) on the severity of their respective sen-

tences. Questions of parole were never brought up. Thus our 307 subjects were randomly assigned to cells in a 2 (race of victim) x 4 (evidence strength) x 4 (choice structure) factorial design. The dependent variables, once again, were their chosen verdicts.

Eighty-eight additional white subjects were run as a control. These were not instructed to arrive at a verdict, instead being asked to estimate their attitudes toward the victim and defendant. These subjects were randomly assigned across the eight race of victim x evidence strength cells.

Results and Discussion

Let us now examine the effects of varying the race of the victim, the strength of the evidence against the defendant, and the latitude and severity of the subject-encountered choice structure on the latter's subsequent decision.

The effect of race of victim at differential levels of evidence strength is shown in Table 1. At only the Mixed level of evidence are our white jurors affected by the race of the victim. Here, contrary to expectations, they seem to show more leniency when the victim is white than when he is black, a reverse racist bias. This tendency, however, is only marginally significant ($p < .10$). This resounding noneffect of race of victim on verdict behavior is paralleled by the finding deriving from the 88 subjects comprising our control group. Race of victim has no effect on perceived attractiveness of either the victim or the defendant. From the Landy and Aronson data previously discussed, race of victim should thus not be expected to influence verdict behavior either. This noneffect can be further illus-

TABLE 1: PERCENT INNOCENT DECISIONS AS A FUNCTION OF EVIDENCE FOR GUILT AND RACE OF VICTIM

Evidence for Guilt	Race of Victim		
	Black	White	Overall
High	18.2 n=33	20.0 n=40	19.1 n=73
Mixed	50.9 n=57	63.2 n=38	55.7 n=95
Moderate	61.5 n=39	65.6 n=32	63.3 n=71
Low	93.9 n=33	94.3 n=35	94.1 n=68

trated in an examination of the evidence strength x choice structure interactions in Tables 2 and 3.

Table 2 presents a comparison of the three two-option structures collapsed over evidence strength. (F-1, S-1, and M-1). Confirming previous results we find that for both the black and white victim conditions, the severity of punishment associated with the guilty verdict is inversely related to the percentage of guilty decisions. In the black victim condition the F-1 structure produced a significantly higher ($p < .05$) percentage of innocent decisions (75.6%) than did the S-1 structure (56.2%), which in turn, produced a higher ($p < .06$) percentage than the M-1 structure (45.2%). In the white victim condition F-1 produced a higher percentage ($p < .05$) of innocent decisions (76.4%) than either the S-1 (61.2%) or M-1 (54.5%) structures, though the latter two conditions were not significantly different from each other at the .05 level.

TABLE 2: PERCENT INNOCENT DECISIONS AS A FUNCTION OF CHOICE OPTION, EVIDENCE FOR GUILT AND RACE OF VICTIM

Evidence for Guilt	Race of Victim							
	Black				White			
	Choice Option							
	F-1	S-1	M-1	4-choice	F-1	S-1	M-1	4-choice
High	44.4 n=9	20.0 n=10	0.0 n=9	0.0 n=5	41.6 n=12	22.2 n=9	0.0 n=9	10.0 n=10
Mixed	81.8 n=11	66.7 n=12	40.9 n=22	25.0 n=12	77.8 n=9	80.0 n=10	44.4 n=9	50.0 n=10
Moderate	77.8 n=9	70.0 n=10	50.0 n=12	100.0 n=8	100.0 n=7	42.9 n=7	85.7 n=7	45.4 n=11
Low	100.0 n=8	88.8 n=9	100.0 n=8	87.5 n=8	100.0 n=10	90.0 n=10	100.0 n=8	85.7 n=7
Total	75.6 N=37	56.2 N=41	45.2 N=51	42.5 N=33	76.4 N=38	61.2 N=36	54.5 N=33	44.7 N=38

In addition to the above comparisons, each of these percentages was contrasted with the percentage of innocent decisions emerging in the four-choice structure for both the black and white victim conditions.

The data support Vidmar's findings in the comparison most relevant to the Algiers Motel trials. The percentage of innocent decisions in the F-1 structure was significantly greater ($p < .01$) than that in the four-choice structure for both the black (42.5%) and white (44.7%) victim conditions. While the four-choice structure also produced a lesser percentage ($p < .05$) of innocent verdicts than the S-1 structure for both conditions, no significant difference emerged between the four-choice and

M-1 structures. Generally then, these results suggest that the inclusion of middle-ground verdicts produces a smaller percentage of innocent decisions than do two-choice structures when the guilty option is greater than manslaughter.

Examination of the relative percentages falling into each of the three guilty categories presents a different view of the same data (see Table 3). Collapsed over evidence strength, a greater percentage ($p < .05$) of first-degree decisions obtained in both the Black and White victim conditions for the F-I structure (26.4% and 23.7% respectively) than for the 4-choice structure (0% and 2.6% respectively). Likewise, for both conditions a greater percentage ($p < .01$) of second-degree decisions emerged in the S-I structure (39.0% and 38.9% respectively) than in the 4-choice structure (6.7% and 10.5% respectively). There was no significant difference between the percentage of manslaughter decisions in the M-I structure (53.4% and 45.5% respectively) and the 4-choice structure (51.5% and 42.2% respectively) though the general pattern remained the same.

Let us now turn to an examination of the choice structure-decision relationship over our four levels of evidence strength (High, Mixed, Moderate, and Low). Consider first the percentage of innocent decisions shown in Table 2. Under low evidence for guilt, no significant difference in percentage of innocent decisions emerges among the choice options for either the black or white victim conditions. For the black victim condition, however, significant differences were found at Moderate, Mixed, and High levels of evidence for guilt. In both High and Mixed conditions, F-1 ($p < .02$) and S-1 ($p < .10$) produced a greater percentage of innocent decisions than either M-1 or the four-choice option. In the Moderate condition F-1 ($p < .10$) produced a greater percentage of innocent decisions than either M-1 or the four-choice option.

In the white victim condition, high evidence for guilt produced a significantly greater ($p < .05$) percentage of innocent decisions for F-1 than either M-1 or four-choice. When evidence was mixed, F-1 and S-1 produced a significantly greater ($p < .10$ in both cases) percentage of innocent decisions than either M-1 or four-choice. When the evidence was moderate, F-1 and M-1 produced a significantly greater ($p < .05$ in both cases) percentage of innocent decisions than S-1 and four-choice. The general pattern of results to be emphasized in Table 2 is that for both "race of victim" conditions severity, and latitude of choice affect the percentage of innocent decisions only at ambiguous or High evidence for guilt.

TABLE 3: PERCENT MANSLAUGHTER, SECOND-DEGREE AND FIRST-DEGREE GUILTY DECISIONS AS A FUNCTION OF CHOICE OPTION, EVIDENCE FOR GUILT AND RACE OF VICTIM

EVIDENCE FOR GUILT	BLACK						WHITE												
	First Degree			Second Degree			Manslaughter			First Degree			Second Degree			Manslaughter			
	F-1 n=9	4-choice 0.0 n=5	S-1 80.0 n=10	4-choice 0.0 n=5	16.7 n=12	33.3 n=12	M-1 100.0 n=9	4-choice 100.0 n=5	58.3 n=12	59.1 n=22	22.2 n=9	F-1 58.3 n=12	4-choice 10.0 n=10	S-1 77.8 n=9	4-choice 40.0 n=10	M-1 100.0 n=9	4-choice 50.0 n=10	55.6 n=9	50.0 n=10
High																			
Mixed																			
Moderate																			
Low																			
Total	26.4 N=37	0.0 N=33	39.0 N=41	6.7 N=33	23.7 N=38	53.4 N=51	51.5 N=33	2.6 N=38	38.9 N=36	10.5 N=38	45.5 N=33	42.2 N=38							

*The percentages falling into each guilty category for the 4-choice option are, of course, dependent as they are based on the same sample. Specifically their sum plus percentage innocent must total 100%. The percentages falling into each guilty category for the respective 2-choice options (F-1, S-1 or M-1) are independent as they are based on different samples.

Table 3 provides us with an analysis for each level of evidence strength of the percentage of guilty decisions falling into each of the three categories. In the black victim condition, a greater percentage of first degree decisions obtained for F-1 than for four-choice for High, Mixed, and Moderate levels of evidence though this difference was only significant for the High condition ($p < .01$). For Low evidence, no difference emerged, both the F-1 and four-choice cells showing zero percentages. In the white victim condition the difference in first degree decisions between the F-1 and four-choice structures only emerged in the High and Mixed conditions, being significant in only the High condition ($p < .05$). In both the Moderate and Low conditions, zero percentages obtained for each cell.

Percentage of second-degree decisions was greater in the S-I than the 4-choice structure for both the Black and White victim conditions for all four levels of evidence. This trend, however, reached significance only at High ($p < .01$) and Moderate ($p < .05$) levels for the Black victim condition and at the Moderate level ($p < .01$) in the White victim condition though the High level shows a 37.8% differential between the two structures.

The pattern is reversed for percentage of manslaughter decisions. For the Black victim condition, no difference emerged between the M-I and 4-choice structures for High, Moderate or Mixed levels of evidence. For the Low condition, however, the trend, though insignificant, goes in the opposite direction, the 4-choice structure tending to produce a greater percentage of manslaughter decisions than M-1. In the White victim condition, the pattern is much the same, though a greater percentage of manslaughter decisions ($p < .01$) is provided by the M-I structure at High level of evidence. For mixed evidence no difference emerged; for both Moderate ($p < .05$) and Low evidence (not significant), however, 4-choice produced a higher percentage than did M-I.

Aside from the particulars, the general pattern to be emphasized for both black and white victim conditions is this: A two-choice structure tends to produce a higher level of first degree and second degree decisions than does the four-choice structure for all but Low levels of evidence, though this trend reaches significance primarily at High levels of evidence. For manslaughter decisions this pattern largely disappears, indeed tending to be reversed at Low and Moderate levels of evidence,

the four-choice structure producing a higher percentage of manslaughter decisions than the two-choice structure, a difference which, surprisingly, is significant only at Moderate evidence strength.

Examined as a whole, our results seem to indicate the following. First, race of the victim seems to have very little, if any, effect on either verdict behavior or attitudinal responses. Second, when the evidence for guilt is either High or Mixed, the percentage of innocent verdicts in a two-option choice structure is directly related to the severity of the guilty option in that structure. Under Moderate evidence strength, this trend becomes equivocal, completely disappearing under conditions of Low evidence strength. Finally, as a general pattern, the four-choice structure tends to produce a lesser percentage of innocent decisions than the two-choice structure though this trend drastically decreases with decreasing strength of evidence and decreasing severity of the guilty verdict in the two-choice structure. At the same time, however, the four-choice structure tends to produce a lesser percentage of a specific guilty verdict than that emerging in the corresponding two-choice structure. This trend, too, decreases, in fact reverses, with decreasing strength of evidence and decreasing severity of the guilty verdict in the two-choice structure.

One possible explanation of these results is that the type of crime—a traffic fatality—is seen as incompatible with any decision alternative more severe than manslaughter. At the same time, however, High evidence for guilt makes an innocent verdict inappropriate. It would appear that in such a dilemma an individual must choose between two unsatisfactory alternatives: the defendant being judged guilty but declared innocent and the defendant being punished more severely than his crime warrants. The inclusion of middle-ground options, in contrast, helps resolve this incongruity, dampening the proportion of extreme verdicts (either innocent or guilty of first degree murder) but only under conditions of High evidence for guilt (the defendant, though guilty, not deserving a first degree sentence—hence, a second degree or manslaughter option provides a way out). At lesser levels of evidence strength, this incongruity can be largely resolved through an innocent verdict in which the guilt implications of the evidence are discounted. Here including middle-range alternatives does not seem crucial.

It seems clear that the exclusion of middle-ground verdicts (as in Judge Beer's instructions in the Algiers Motel trial) often

forces the jury to choose between two unsatisfactory alternatives. We would conjecture that many extralegal influences on jury decisions derive from their being placed in incongruity situations. A wise counsellor, of course, can make these incongruities work for him. Yet it is imperative that the decisions deriving from our judicial apparatus rest on firmer ground than the simple resolution of incongruity between two unacceptable alternatives (cf. Kalven and Zeisel, 1966). Thus, this study serves to underscore the importance of offering a range of alternatives to the jury whenever a severe sentence is asked for by the prosecution. An example of this recommendation may be found in the comparative negligence standards found in some states, where the questions of guilt may be apportioned over parties. One danger in this approach, of course, may be the natural cautious tendencies of jurors to avoid extreme decisions. Thus, in some cases, a defendant may get a lesser sentence than he deserves, in others an innocent man may be found guilty of a mild infraction. Yet this must be balanced against acquitting a guilty man completely or finding an innocent man guilty of a serious crime — unpalatable alternatives all too common at the present time.

One point should be emphasized in closing. Ours, though a simulation, remains a laboratory study. It would have been impossible to manipulate these variables in an actual jury trial. As with any laboratory study which attempts to extrapolate to the “world beyond,” a degree of caution must be exercised. A strong objection to any attempt to generalize these results is that the penalties assigned to the others in the laboratory were not real. This argument only increases our cause for concern since we expect that the effects observed in the laboratory would be strengthened in practice. However, we are also aware that college students may represent a personality component not generalizable to the composition of actual juries. This may account for the lack of effects of the “race of victim” condition. In studies of this kind it seems especially incumbent for us researchers to make our simulations as lifelike as possible. Perhaps films, television, and guerilla theatre would afford better simulations than the paper-and-pencil stimuli used in the present study.

FOOTNOTES

- ¹ The source for the history presented throughout this article is a yet unpublished story by William Serrin, reporter for the *Detroit Free Press*. The authors are very grateful to Mr. Serrin for making this information available.

² Serrin describes Beer as "a man of immense ego" who prides himself on his ability to hammer out settlements and suggests that this refusal to allow "middle-ground" verdicts may have been based, in large part, on personal pique deriving from his inability to get Lippitt and Weiswasser to "settle" on a lesser sentence (see footnote¹).

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