Pretrial Publicity and Juror Perception of Defendant Culpability: Social Media Biasing the Right to a Fair Trial

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Abstract

Pretrial publicity (PTP) of an upcoming court case through traditional media sources of print, television and radio have been demonstrated to bias juror decision-making and threaten fundamental judicial rights of impartiality and independence for defendants. Despite the now ubiquitous nature of digital media, little-to-no research has been conducted on the biasing effects of social media (Facebook™, Twitter™, YouTube™ etc.) PTP on juror decision making. Employing a 2*2 (and control group) experimental design, 131 participants read a mock-trial transcript and provided ratings of defendant culpability and confidence in verdict, with some participants exposed to PTP in the form of a Facebook post (pro-defendant or pro-defence slanted) and some exposed to a mock-judge's admonishment against relying on extralegal social media PTP when reaching a verdict. Planned comparisons revealed no difference between the control, pro-prosecution PTP (instruction and no instruction) and pro-defence (instruction and no instruction) groups for guilt ratings and verdicts. Exploratory analysis revealed the presence of a potential overcorrection effect whereby pro-prosecution groups provided lessened guilt ratings compared to the pro-defence and control groups. Participant confidence in the legal system was not found to moderate PTP's effects on guilt ratings. Implications of these findings for the psycho-legal context are discussed.

Declaration

This thesis contains no material which has been accepted for the award of any other degree of diploma in any University, and, to the best of my knowledge, this thesis contains no material previously published except where due reference is made. I give permission for the digital version of this thesis to be made available on the web, via the University of Adelaide's digital thesis repository, the Library Search and through web search engines, unless permission has been granted by the School to restrict access for a period of time.

Andrew Huckstepp

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1 Introduction

A core tenet of the Australian judicial system is the right of a defendant to receive a fair trial from an independent and impartial decision-maker (Attorney-General's Department, n.d.), with judges and jurors required to base their verdicts solely upon admissible evidence presented in court *(Evidence Act 1929* (SA); Fein, McCloskey, & Tomlinson, 1997). These fundamental judicial rights can however conflict with the rights of a free media, with Pretrial Publicity (PTP) of an upcoming court case threatening the defendant's right to a fair and impartial trial (Ruva, Guenther, & Yarbrough, 2011). Upcoming salacious trials, serious or unique crimes, and 'famous' defendants and victims, are all especially susceptible to a sensationalised media response and PTP (Ruva & LeVasseur, 2012; Ogloff & Vidmar, 1994), and often result in the wide dissemination of opinion, emotional outbursts, and information-sharing amongst the public (Daftary-Kapur, Penrod, O'Connor, & Wallace, 2014). Of concern for the judiciary, psycholegal research demonstrates that PTP can bias perceptions of defendant culpability for prospective jurors (Steblay, Besirevic, Fulero, & Jimenez-Lorente, 1999). The widespread emergence of online social media raises further concerns for the impact and remediation of PTP effects in the information-age. Such realities of the socio-legal landscape raise an important question for the judiciary, one that is the focus of this thesis: *To what extent are jurors biased in their legal decision-making by exposure to social media PTP?*

1.1 A Definition of PTP

PTP 'encompasses all media coverage of a case occurring prior to trial' (Ruva, 2018, p. 1). The American Bar Association considers PTP to be information about a defendant's character, reputation, or previous criminal record, as well as public and media opinions regarding the trial, or any information likely inadmissible in court (American Bar Association, 2018; Ruva, 2018). PTP may include details about guilty pleas, confessions or denials of guilt, and the results of forensic assessments (American Bar Association, 2018; Ruva, 2018).

Previous concerns from the judiciary were largely regarding PTP dissemination through the traditional news sources of print, television and radio (Ruva, 2018). Now, in the expanding world of digital and internet-based communications, psycholegal researchers are concerned about the potential of social media as a source of PTP that is resistant to traditional methods of control (McEwen, Eldridge, & Caruso, 2018).

1.2 Social Media: A Changed Social Landscape

Social media consists of internet-based platforms that facilitate the socialisation, communication, and information-generation by users online (Office of the Australian Information Commissioner, n.d.), and includes popular platforms such as Facebook™, Twitter™, Instagram™, and YouTube™. Unlike traditional sources of media, social media can facilitate both conventional news-sharing from reputable media outlets, as well as the unregulated "outpourings of emotion" and opinion-sharing by its users (McEwen et al., 2018, p. 128). Moreover, unlike most traditional media sources, social media is not limited by geographical location, once-off access or by the inefficiencies of physical dissemination (Ruva, 2018)

1.2.1 Social media and the courts. To date, the courts have reprimanded jurors for conducting extralegal 'google' research of defendants (Brickman, Blackman, Futterman, & Dinnerstein, 2008), for 'tweeting' information about trials, and for seeking outside advice through Facebook polls (Johnston et al., 2013; McEwen et al., 2018) to name but a few infractions. Additionally, the courts have experienced difficulty in remediating social media bias, due largely to the ubiquitous nature of the medium and its accessibility (Brickman et al., 2008). For example, a suppression order 'gagging' the Australian media from publishing information about the 2018 conviction of former Cardinal George Pell for child sex offences was largely ineffective in the face of thousands of online blogs, comments, and posts made online directly following the conviction (Younger, 2019a; 2019b; Farhi, 2018). Many of which

included links to overseas sources containing information not supressed by the Australian legal system (Farhi, 2018).

Despite the judicially relevant implications of social media, almost no empirical research has been conducted on digital PTP or its remediation. Therefore, research using traditional media sources must be consulted to understand PTP's biasing impact.

1.3 The Science of PTP

1.3.1 Past studies into PTP. The volume and methodology of PTP research has been comprehensive over the last 50 years (Steblay et al., 1999). Past studies have analysed the effects of PTP type (pro-prosecution, pro-defendant, neutral), PTP content (e.g. prior records, confessions), PTP medium (e.g. newspaper, TV), type of crime (e.g. sexual abuse, drug related), and realism of juror experience (Steblay et al., 1999) on measures of perceived defendant culpability. In refining the mixed base of PTP research, Steblay et al. (1999) meta-analysed 23 articles (44 tests) from between 1966 and 1997 (N = 5,755) predominately on studies which exposed mock-jurors to PTP and trial materials, and which measured perceived defendant culpability. Findings robustly demonstrated that subjects exposed to pro-prosecution PTP are more likely to find a defendant guilty than non-exposed subjects. Furthermore, findings demonstrated an increased bias where the crime involved murder or sexual assault, where PTP provided multiple pieces of information about the defendant and crime, and in studies employing realistic stimuli or legal venues. Overall, the meta-analysis provides a backdrop to many future studies and is an appropriate starting point for understanding PTP research literature.

1.3.2 Methodology of PTP research. Research into PTP has largely proceeded upon two methodologies; *field studies* and *experimental studies.* Field studies typically analyse the prejudgements and beliefs of potential jurors within communities with respect to real trials and PTP materials (Daftary-Kapur et al., 2014), with studies demonstrating the association between

PTP and prejudgements of guilt, as well as the misattributed belief of post-PTP impartiality in some cases (Moran and Cutler, 1991; Constantini and King, 1981). Field studies however typically fail to measure beliefs beyond the pre-trial stage and to address the mitigating effects of trial evidence or court processes on prejudgment (Otto, Penrod, & Dexter, 1994), and do not provide experimental control over extraneous and independent variables (Ruva, 2018; Moran and Cutler, 1991).

Conversely, experimental studies typically randomly allocate participants into PTP and non-PTP exposed groups (exposing experimental groups to controlled levels of PTP). Participants then observe a mock-trial and provide measures of perceived defendant culpability (Daftary-Kapur et al., 2014). Ecological validity is often maximised in field experiments, whereas experimental studies typically facilitate casual inferences being drawn between PTP variables and dependent measures of guilt, hence improving internal validity (Daftkary-Kapur et al., 2014).

1.3.3 Generalisability. Overall, the courts have expressed little interest in consulting the psycholegal literature in cases of suspected PTP-induced prejudice (Davis, 1986; McEwen et al., 2018) a sentiment which has been mirrored by the High Court in *Dupas v The Queen* (2010; McEwen et al., 2018). One explanation for this reluctance could be the perceived lack of ecological realism of mock-trial research (Daftary-Kapur et al., 2014) with real trials typically involving lengthy delays between PTP and verdicts, voluminous and sometimes conflicting trial evidence, numerous PTP exposures, and significant decisional responsibility inherent in real verdicts (see Daftary-Kapur et al., 2014; Smith, 1993).

Psycholegal research nonetheless provides support for the applicability of PTP research for judicial decision-making. Daftary-Kapur et al. (2014) studied PTP effects in two samples of mock-jurors regarding an actual upcoming trial; an experimental group (no previous

knowledge of the case and exposed to controlled amounts of real PTP) and a community group (community residents exposed to real PTP about the case). The findings demonstrate that even with a minimum delay of 10 weeks between PTP exposure and provision of verdicts (some participants in the naturally exposed groups experienced a delay of up to 14 months) PTP's biasing effects persisted across both experimental and naturally-exposed samples. With implications to real trials, bias was also demonstrated to increase with greater PTP exposure.

1.4 Slant and Amount of PTP

Experimentally-manipulated and real-life PTP may be slanted favourably, or unfavourably to the judicial party. Problematically for the rights of defendants, pro-prosecution and anti-defendant PTP are the most prevalent slants in both real-life criminal trials and under experimental manipulation (Daftary-Kapur et al., 2014). Pro-defence PTP has more prominence with regard to wealthy or famous defendants (Ruta & McEvoy, 2008) and in some murder and rape trials (Daftary-Kapur et al., 2014; Ruva, 2018).

As discussed, Steblay et al. (1999) robustly demonstrated the biasing effect of pro-prosecution PTP on juror verdicts in their large-scale systematic review. Although subject to considerably less empirical scrutiny, pro-defence PTP has conversely been shown to decrease the prevalence of guilty verdicts, and to increase perceived defendant credibility, over pro-prosecution PTP and control groups (Ruva & McEvoy, 2008). Of note, pro-defence PTP has been shown to be less influential on juror decision-making than its pro-prosecution counterpart (Ruva & McEvoy, 2008). Such findings may be in support of the *negativity bias* which posits the greater influence of negative information on decision-making than positive (Ruva & McEvoy, 2008), however other studies have not established this differential influence (Daftary-Kapur et al., 2014). The biasing of verdicts in the direction of the PTP slant was also established

in Daftary-Kapur et al. (2014) experimental and field study, which further showed that as PTP amount increased as did the effect of the bias on verdicts.

1.4.1 Social media and slant. With social media now facilitating the vast dissemination of opinions and activist-style stances, more nuanced research is clearly needed to delineate the effects of the various PTP slants on juror perceptions. With relevance to social media, studies reveal that even non-specific PTP can affect juror decision making. For example, Kovera (2002) demonstrates that individuals who watched a generalised pro-defence news story about rape (non-specific to the subsequent mock trial presented) reported that they required greater evidence to establish defendant culpability (for rape) than those exposed to pro-prosecution rape stories. Ultimately, further research is required to unpack the effect of PTP's slant on jurors' perceptions of trial evidence and the parties affected by crime.

1.5 How PTP Biases Jurors: Cognitive Approaches

Most research efforts into PTP have focussed on the practical biasing effects of PTP, with less consideration being given on *how* PTP imparts its bias (Ruva & McEvoy, 2008; Ruva & LeVasseur, 2012). Cognitive psychology offers some insights in bridging this deficit and illuminating the complex factual and legal decision-making processes jurors are required to undertake (Hope, Memon, & McGeorge, 2004; Fein et al., 1997).

1.5.1 Story Model. Under the story model, decision-makers establish preliminary casual models (*stories*) to explain available information and evidence, and then use this narrative as a foundation for evaluating subsequent information and evidence (Pennington & Hastie, 1986; 1988; 1992). The story model is regarded as domain specific and applicable to complex decisions requiring the comprehension of multiple interdependent factors, such as that of juror (Pennington & Hastie, 1981; 1992). Among the various alternate stories applicable to a legal matter, it is proposed that jurors select a story – and hence render their verdict – based

on principles of story coherence (plausibility, completeness and consistency), coverage (how much evidence the story explains), uniqueness (the story containing the most perceived coherence) and goodness-of-fit between the story and legal-verdict required (Pennington & Hastie, 1991; 1992).

In support of the story model, studies demonstrate that the presentation of coherent logically-ordered prosecution evidence to jurors increases the prevalence of guilty verdicts, confidence in verdicts, and perceptions of trial evidence strength, compared to non-ordered presentations of the same evidence (Pennington & Hastie, 1988). Interestingly, the bolstering effect of coherence is less apparent for the defence's arguments, and is perhaps suggestive of the discussed negativity bias (Pennington & Hastie, 1988).

1.5.2 Predecisional distortion. With relevance to the story model framework, *predecisional distortion* effects occur where decision-makers interpret new information – that may be unequivocal or ambiguous in nature – in a manner consistent with their 'leading' theory or opinion (Carlson & Russo, 2001; Hope, Memon & McGeorge, 2004). In demonstrating PTP's ability to impart predecisional distortion effects on the interpretation of trial evidence, Hope, Memon, and McGeorge (2004) required participants to read a sequence of witness testimonies in a mock-trial, indicating after each reading who their perceived 'leader' was at that point (prosecution or defence). Findings demonstrated that participants exposed to negative-defendant PTP (prior to the trial evidence sequence) tended to favour the prosecution, providing biased over-evaluations of prosecution evidence and increased conviction rates. Overall, cognitive psycholegal findings suggest that jurors are driven to construct a coherent logical story of the trial (Carlson & Russo, 2001), and may incorporate extra-legal information and distort trial evidence while doing so.

1.5.3 Impression of the defendant. There is evidence to suggest that exposure to PTP causes jurors to form either a pro-prosecution or pro-defendant impression of the defendant and the case (Otto, Penrod & Dexter, 1994; Ruva & McEvoy, 2008; Ruva, Guenther, & Yarbrough, 2011). Ruva and McEvoy (2008) demonstrated that perceptions of defendant credibility mediated the relationship between PTP and biased verdicts, as was the impression of litigating attorneys. The researchers suggest that jurors' impressions of the defence case and legal team may influence the subsequent appraisal of trial-evidence, and ultimately their verdicts, a finding consistent with the Story Model of juror reasoning. Overall, psycho-cognitive findings may support the argument that social media PTP poses a unique threat to the fairness of criminal trials. Prospective jurors may be exposed to a multitude of comments, posts, blogs and general discussion around an upcoming trial. If this information is encoded in memory and forms an early and incomplete narrative, and is attributed to having been heard in-trial, this may significantly bias jurors' recollections of trial evidence and ultimately findings of guilt.

1.6 PTP Remediation by the Courts

1.6.1 Judicial direction to the jury. The juror's role is both guided and circumscribed through judicial instruction (Baguley, McKimmie, & Masser 2017), with judges informing the jury as to the applicable law and trial-evidence to consider in decision making (Baguley et al., 2017; Brewer, Harvey & Semmler, 2004). Judicial instructions are made to ensure legally sound verdicts are made by juries, protect against subsequent appeals (Baguley et al., 2017) and are typically used to admonish juror reliance on pre-trial information and from prohibited independent research (McEwen, Eldridge & Caruso, 2018; Johnston et al., 2013). Given this reliance, their efficacy to remediate PTP effects requires empirical consideration.

Steblay, Hosch, Culhane, and McWethy (2006) conducted a meta-analytical review on the question; *can jurors ignore inadmissible evidence when directed by a judge to do so*? The

researchers reviewed 48 studies (N = 8,474) involving judicial instruction to mock-jurors to ignore a variety of inadmissible evidence (IE), and whether judicial admonishment influenced verdict outcomes. Similarly, to PTP findings, a robust biasing effect of IE on juror decision-making was established, despite judicial admonishment to disregard IE. The findings do however provide some optimism in support of judicial instructions. Instructions were more effective when accompanied with a reason for inadmissibility, such as the evidence being unreliable or having no bearing on the case. Various studies have established the ineffectiveness of judicial admonishments against juror reliance on PTP (e.g. Sue, Smith & Gilbert, 1974; Ruva & McEvoy, 2008; Fein et al., 1997).

1.6.2 Why are instructions ignored? Two main theories provide accounts for the failing of judicial admonishments on juror decision-making (Locatelli, 2011). The *ironic processes of mental control* theory purports that juror failure to follow admonishment stems from inherent failings in human mental processing (Wegner, 1994; Locatelli, 2011). When considering the available facts and evidence, decision-makers are theorised as engaging in a conscious 'operating process' whereby they attempt to locate mental content (e.g. admissible evidence adhering to the judicial instruction) in-line with the desired mental state (e.g. an unbiased decision; Wegner, 1994). Running concurrently to the operating process is a 'monitoring process' which searches for content in opposition or undermining the desired mental state (Wegner, 1994; Lee, Krauss, & Lieberman, 2005), such as potentially biased PTP materials. In times of reduced cognitive capacity (i.e. stress or time constraint) the less cognitively demanding monitoring process overwhelms the operating process and consequently draws the counter-information (i.e. PTP) into the forefront of consciousness (Wegner, 1994). Simply put, attempting to disregard the admonished material draws the decision-makers attention to it.

1.6.3 Reactance theory. A more conscious and deliberate perspective is provided by *reactance theory,* which posits that judicial admonishment of probative information (i.e. PTP) threatens the free-will and autonomy of the juror (Brehm, 1966; Lee, Krauss, & Lieberman, 2005). Consequently, the prohibited information becomes more attractive to decision-making processes (a 'backfire effect') and the juror consciously reinstates autonomy and free-will by engaging with the material (Lee, Krauss, & Lieberman, 2005) and drawing PTP into their decision making. Possibly in line with reactance theory are studies demonstrating that jurors adhere to proper judicial process when made suspicious of extralegal materials (Fein et al., 1997)

1.6.4 Other remediation methods and social media. The psycholegal literature further demonstrates the general ineffectiveness of judicial PTP remedies, other than suppression orders and judicial instructions already discussed. For example, studies on *jury deliberations* (a group consensus process presumed to eliminate individual bias) demonstrate a tendency of deliberating jurors to discuss PTP information during deliberations, contrary to the judicial admonishment (Ruva & LaVasseur, 2012). *Voire Dire* hearings, whereby legal practitioners question jurors as to their pretrial knowledge or legal commitment (Dexter, Cutler & Moran, 1992), and legislative rights by lawyers to challenge the empanelment of jurors (up to 3 pre-empanelled jurors; *Juries Act* (SA) s 61) are predicated on the dubious assumption that bias can be effectively identified by others, or accurately self-reported or ameliorated by jurors (Carroll et al., 1986; Sue et al., 1975). *Stay of proceedings,* where the trial is delayed to allow the influence of prejudicial material to dissipate, is arguably ineffective against instant and continually accessible social media (Johnston et al., 2013), and appears ineffective against PTP of a more emotionally charged nature (Kramer 1990; Honess, Charman, & Levi, 2003; Locatelli, 2011). The efficacy of all approaches are further questionable given psycho-cognitive findings showing a jurors tendency to forget the source of PTP information, and

mistakenly attributing the source as being admissible trial evidence (Ruva & McEvoy, 2008; Ruva, McEvoy, & Bryant, 2007).

1.7 Juror Attitudes and PTP

Research into the interaction between long-standing attitudes and PTP effects is scarce. Sue, Smith and Pedroza (1975) sought to establish whether authoritarian views (i.e. views supporting punitive and strict legal compliance) influenced PTP. Although the researchers found no evidence of authoritarianism interacting with PTP directly, those high in authoritarianism were more likely to view the prosecution's case as convincing. Moreover, other researchers demonstrate that the amount of recalled details of a highly sensationalised crime (from PTP) was a more effective predictor of defendant culpability than attitudes regarding the criminal justice system (Arbuthnot, Myers & Leach, 2002)

Some researchers have taken a more holistic look of the interactions between media, attitudes and the socio-legal landscape. Dixon and Linz (2002) provided an American example of the media's over-representation of minorities in negative news articles. The researchers demonstrated the media's propensity to influence public attitudes and beliefs (i.e. disseminating racial stereotypes of minorities) and to over-represent specific PTP information in-line with these attitudes (i.e Hispanic defendants receiving greater prejudicial PTP than white defendants).

Overall, an understanding of the interactions between pre-existing attitudes and PTP is necessitated given the devastating effects biased juries can have on defendant liberty. A sobering example of this comes from Butler's (2007) American study of 'death qualified' jurors, that is, jurors eligible to adjudicate capital trials given their proportioned support of the death penalty. Butler demonstrated that death qualified jurors tend to know greater extralegal

media details about a trial, and to prejudge the defendant as guilty, than participants who would be excluded from adjudication based on objections to the death penalty.

1.8 Present study

Despite the omni-present nature of online platforms, empirical scrutiny into social media PTP and juror verdicts has been scarce in the psycholegal literature. The present study seeks to address the following research questions (1) *does social media PTP effect juror verdicts of defendant culpability?* and if so: (2) *does pro-prosecution or pro-defence slant effect juror verdicts differently* (3) *is judicial admonishment of social-media PTP material an effective form of remediation?* Exploratory analysis will also be made into participants confidence in the legal system interacts with PTP effects.

The study replicates much of the methodology and materials of an unpublished thesis completed by Krishnan and Semmler (2017), which studied whether pro-prosecution and pro-defendant PTP and MTP (Mid Trial Publicity), in the form of a Facebook Post written by the mock-defendant, biased juror perceptions of defendant culpability. Using an adapted version of the American case *New Jersey v Bias* used in past research (i.e. Hope et al., 2004) the researchers found evidence for PTP having a greater effect than MTP on juror verdicts (however did not establish this with the control non-exposure group) and no difference was found between pro-prosecution and pro-defence PTP on juror verdicts. It is possible that the mock-forensic evidence included in the study was overly strong (approximately half of the participants cited the forensic evidence as informing their verdict). The forensic evidence was therefore removed from the present study in order to be isolate any potential PTP effects.

The following predictions regarding the impact of the manipulated variables on the measured variables are made:

1. Hypothesis 1(a): participants in the pro-prosecution PTP (no instruction) group will be more likely to render guilty verdicts than the groups: pro-prosecution PTP (instruction), pro-defence PTP (instruction) and pro-defence PTP (no instruction) groups.
2. Hypothesis 1(b): participants in the pro-prosecution PTP (no instruction) group will render higher guilt ratings than the groups: pro-prosecution PTP (instruction), pro-defence PTP (instruction) and pro-defence PTP (no instruction).
3. Hypothesis 2: participants in the pro-defence (no instruction) group will report lower guilt-ratings than the groups: pro-prosecution PTP (no instruction), pro-prosecution PTP (instruction) and pro-defence (instruction).
4. Hypothesis 3(a) participants in the pro-prosecution PTP (no instruction) group will have higher guilt ratings than pro-prosecution (instruction) group.
5. Hypothesis 3(b): participants in the pro-defence (no instruction) group will have lower guilt ratings than pro-defence PTP (instruction) group.

An exploratory analysis will also be made on whether participants degree of confidence in the legal system interacts with PTP and perceptions of defendant culpability.

2. Method

2.1 Participants and Study Design

Participants were 131 volunteers (Male = 37, Female = 94), with ages ranging from 18 to 61 (see results section for further demographic statistics). All participants were required to meet eligibility for jury duty in South Australia, including being; on the electoral roll for voting rights, between the ages of 18 and 70, fluent in English, and not having been convicted of a criminal offence (*Juries Act 1927* (SA) s. 11-13). Data from participants outside of these requirements were excluded (n = 1).

The design consisted of a 2 (pro-defence PTP, pro-prosecution PTP) X 2 (exposure to judicial instruction to ignore PTP, no exposure to instruction) between-subject's design. Participants were randomly assigned to one of the four following experimental groups (and a control group): 'pro-prosecution PTP x no instructions', 'pro-defence PTP x no instructions', 'pro-prosecution PTP x instructions' and 'pro-defence PTP x instructions', and a control group (no PTP/instructions).

2.2 Materials and Apparatus

2.2.1 Survey. The study was completed through a survey administered by the online survey creation and implementation software SurveyMonkey™. Participants accessed the survey at their convenience.

2.2.2 Pre-trial publicity – Facebook posts. Pre-trial publicity took the form of two fictitious Facebook posts from the perspective of the defendant Daniel Winger, and were adopted from Krishnan and Semmler's (2017) unpublished study in order to promote continuity of measurements and study replication. The 2017 study was completed pursuant to completing an Honours Degree, and unless otherwise specified, all materials and apparatus currently used were replicated from the 2017 study. The dates within the fictitious Facebook posts were changed from 2011 to 2018 for contemporaneity. In Figure 1, the posts incorporate both emotive text and a picture, and were suggestive of either Mr Winger's frustration and anger

towards his wife (left-most picture – pro-prosecution PTP) or emphasised positive sentiments towards his wife (right-most picture – pro-defence PTP).

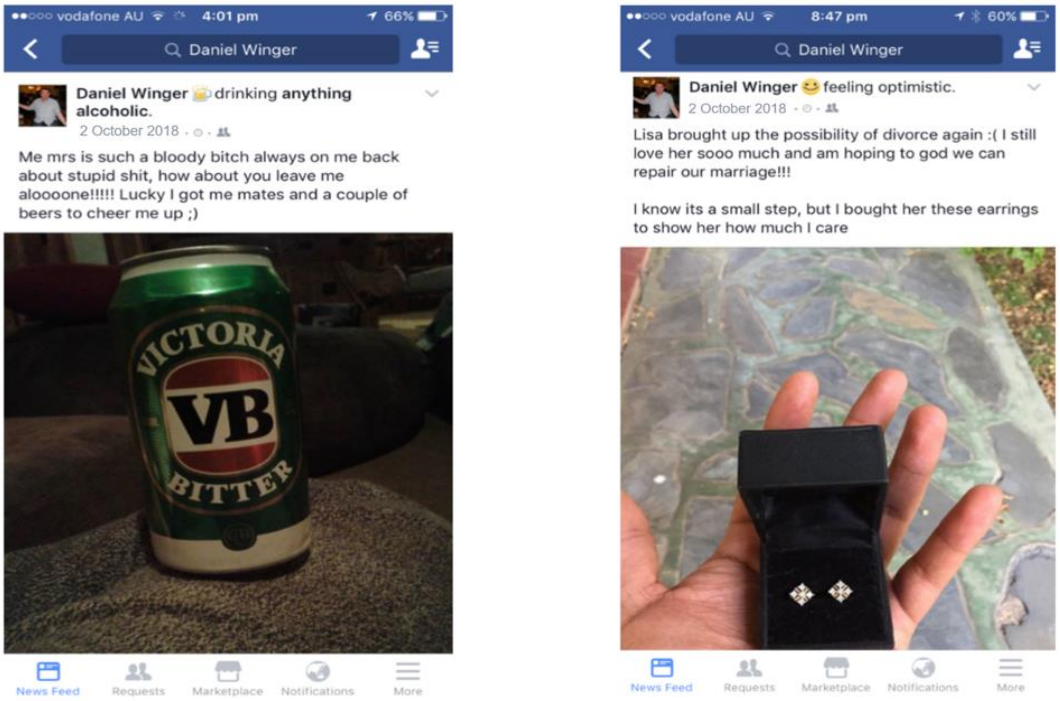

Figure 1. Fictious Facebook posts exposed to participants in the PTP experimental groups. Participants in the pro-prosecution PTP group were exposed to the left-most post, participants in the pro-defence PTP group were exposed to the right-most post.

2.2.3 Judicial instruction. Participants in the judicial instruction group read a judicial admonishment (315 words) reminding participants of their roles and responsibilities as mock-jurors, and admonishing reliance on any external publicity given it may be inaccurate and out of context. These materials were adopted from the New South Wales Criminal Trial Courts Bench Book (Judicial Commission of NSW, n.d.) as suggested oral directions for jurors in cases where social media posts may bias trials.

2.2.4 Trial transcript (R v Winger). The current study used the trial transcript *R v Winger* developed in Krishnan and Semmler's (2017) research project. Krishnan and Semmler adapted the transcript from the American court case of *New Jersey v Bias* (i.e. Hope, Memon & McGeorge, 2004), amended for the contemporary Australian context. This case has been used in other juror research due to perceived realism and believability, and ambiguity regarding guilt (Ruva et al. 2005), and participants are unlikely to be familiar with the case (Hope et al., 2004).

The trial transcript (see Appendix A) regards a criminal case in which the defendant (Daniel Winger) is being charged with the murder of his wife. The transcript includes court testimony from police, investigating officers and prosecuting lawyers (the prosecution's argument being that Winger wilfully murdered his wife), and from Winger and Winger's defence lawyer (claiming that his wife accidentally shot herself when Winger attempted to remove the gun from her). The transcript concludes with the prosecution and defence's final statements, and a judicial direction regarding the jury's role and responsibilities (i.e. finding a guilty or not guilty verdict *beyond a reasonable doubt*).

The current study amends the transcript with more contemporaneous dates. Forensic evidence from the 2017 study was removed due to concerns of these materials overshadowing PTP effects with an overly strong pro-prosecution slant. Notably, in the 2017 study 52% of participants cited the forensic evidence as most influential in their verdict.

2.2.5 Deliberation measures and checks. Following reading the trial transcript, participants were asked to provide a guilty or not guilty verdict. Participants were then asked a series of questions regarding the probability that the defendant committed murder, the participants' confidence in their verdict, and the extent to which the transcripts supported the prosecution and defence's arguments. Participants were additionally asked an open-ended question regarding the content of the Facebook post they read (to ensure it was read and

understood) and whether they believed the Facebook post influenced their decision. Participants provided an open-ended response following the deliberation items regarding what evidence they based their verdict on (closed-ended lists could prime recollection; Freeman et al., 1997). See Appendix A for full details.

2.2.6 Confidence in Justice System Scale. Participants completed three scales: *Confidence in Criminal Courts, Confidence in Prison System, and Confidence in the Police* on a 4-point likert scale ('None at all' – 'A great deal of confidence'). Each section included 4 questions. These were then compiled into the *Confidence in Justice System Scale* (= .80)

The three scales were adopted from the 2007 Australian Survey of Social Attitudes (AuSSA) a large-scale national survey implemented by the Australian Institute of Criminology measuring Australians perceptions of crime and justice (Roberts & Indermaur, 2009). Chronbach's alpha for the Confidence in Police, Criminal Courts, and Prison System was found to be .85, .84, and .77 by AuSSA respectively.

2.2.7 Manipulation checks. Questions 16-21 included manipulation checks to ensure participants read and understood all information relevant to their duties as mock-jurors (i.e. content of Facebook post etc.).

2.3 Procedure

2.3.1 Ethics and Open Science Registration. The study was conducted in compliance with the Australian Code for the Responsible Conduct of Research 2007 and National Statement on Ethical Conduct in Human Research 2007. The information sheet was included in the preamble of the study, and was also available upon request of the research team (see Appendix A). Participants were required to digitally sign a consent form in the preamble before commencing the study. The survey utilised by Krishnan and Semmler (2017) took approximately 20-30 minutes for participants to complete. It is expected that participants would take approximately the same amount of time for the present study. The study was reviewed and

approved by the sub-committee of the Human Research Ethics Committee (approval code 19/52). The study was preregistered under the Open Science Framework™ in promotion of transparent scientific rigour (under the title 'Pretrial Publicity and Juror Perception of Defendant Culpability: Social Media Biasing the right to a Fair Trial')

2.3.2 Recruitment. Volunteers were recruited through the SONA Research Participation System (RPS), an online tool used for recruitment of first-year University of Adelaide Psychology students for course credit (0.5 unit of course credit). Flyers were also placed around the University of Adelaide (which included a link to the survey). Intermittent Facebook posts were also used to advertise the study (see Appendix A for advertising materials).

2.3.3 Accessing the study. Participants accessed the SurveyMonkey™ link (pursuant to the advertising materials) at their convenience. Participants read the information sheet and digitally signed the consent form if they agreed to continue with the study.

2.3.4 Allocation to groups. Participants were randomly assigned to one of four of the following experimental groups (and a control group): 'pro-prosecution PTP v no instruction', 'pro-defence PTP x no instruction', 'pro-prosecution PTP x instruction' and 'pro-defence PTP x instruction', and a control group with no PTP or instruction. See Figure 2 for a summary of groups and trial procedure.

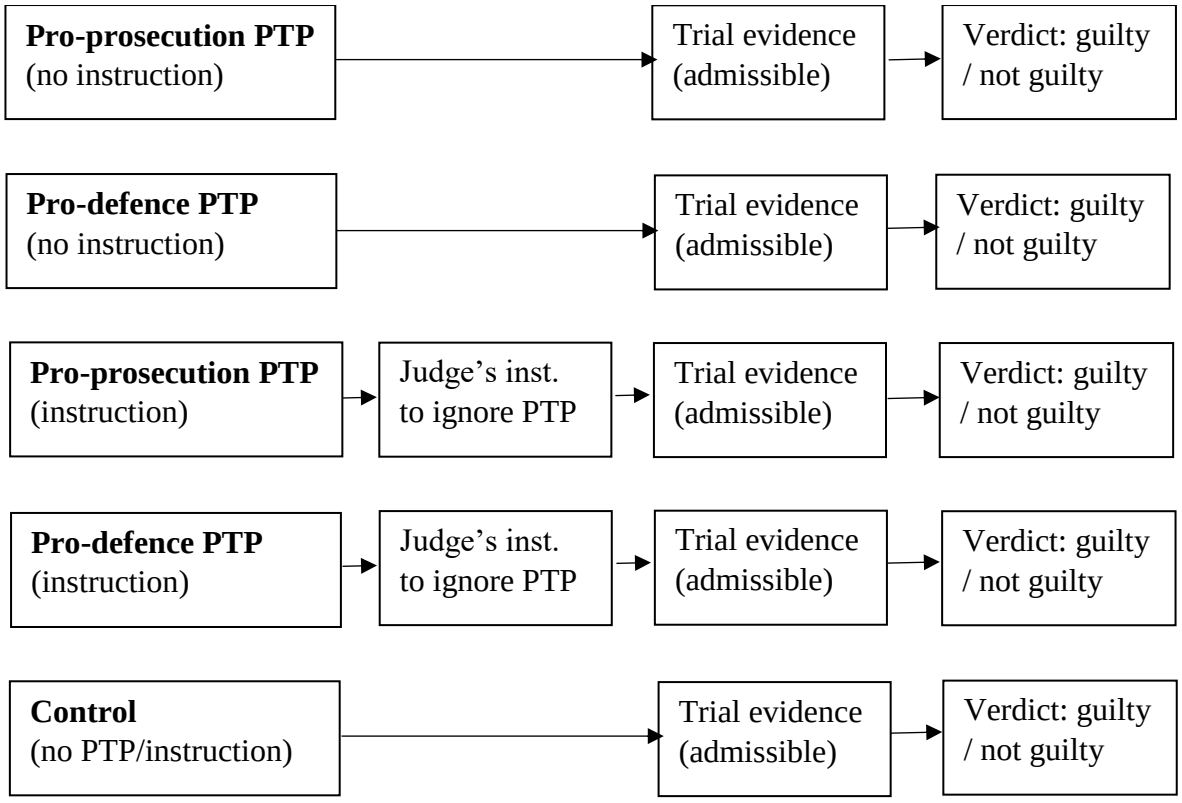

Figure 2. Showing the 5 experimental groups and their progress through the trial.

2.3.4 Trial evidence, social media and judicial admonishment. Participants read one of the social media posts (if in a PTP condition), a judicial admonishment against relying on social media PTP (if in the relevant condition), and subsequently read the trial evidence and final party statements.

2.3.5 Deliberation measures. Following the trial transcript, participants answered a series of questions regarding the defendant's culpability. They were asked to provide (1) a guilty or not guilty verdict (2) the probability of the defendant having committed the crime (11-point Likert scale, 0-100%) (3) the confidence in their verdict (5-point Likert scale, very uncertain – very certain) (4) an open-ended question regarding the content of the Facebook post (5) whether Facebook influenced their decision (Yes/No) (6) the extent the participant believes the transcript supported the prosecution argument (11-point Likert scale, 0-100%) (7)

the extent the participant believes the transcript supported the defendant's argument (11 point Likert scale, 0-100%) (8) a list of any pieces of evidence the participant based their verdict on (open ended).

2.3.6 Manipulation checks. Participants finished the survey by completing questions 16-21 (manipulation checks).

2.3.7 Design statement. The study involved manipulation of two independent variables – PTP exposure in the form of a pro-defendant or pro-prosecution Facebook post, and exposure to an instruction from a mock-judge regarding the inadmissibility and problems associated with pre-trial media reports and social media. This resulted in a 2 (pro-defence PTP, pro-prosecution PTP) by 2 (exposure to instruction, no exposure to instruction) between-subject's design. Dependent variables were the deliberation measures, including verdict (guilty/not guilty), confidence of defendant culpability, probability of murder, confidence of own verdict, and the perceived extent to which the transcript supported the defendant's and prosecution's argument (see Appendix A for full details).

3 Results

3.1 Data Cleaning and Demographics

3.1.1 Data cleaning. Incomplete surveys were excluded from the study (n = 33), with one participant (n = 1) excluded for having a prior criminal record and not meeting eligibility requirements for jury duty in South Australia. Manipulation checks responses were reviewed, and incorrect answers to questions which did not have a direct bearing on critical legal matters in the transcript were retained (upon review of the data certain questions were prevalently incorrectly answered, and were therefore retained, see Appendix B). Subsequently, n = 16 participants were excluded for incorrect answers on critical manipulation check questions.

3.1.2 Demographic information. Following the deletions, N = 131 participants constituted the final sample. Mean age of participants was 28.65 years (SE = 1.03). Age had skewness of 1.35 (SE = .42) and kurtosis of 1.02 (SE = .42). Please see Table 1 below for demographic information.

Table 1

Demographic Characteristics of Participants

Demographic Characteristic	Number (N = 134)	Percentage of total
Sex		
Female	94	71.76
Male	37	28.24
Recruitment source		
1st Year Psychology students	46	35.11
Community participants	85	64.89
Age		
10-19	35	26.72
20-29	54	41.22
30-39	21	16.03
40-49	9	6.87
50-59	8	6.11
60-69	4	3.05

Note. First year psychology students completed the survey for course credit. No other incentives were provided to either university or community sourced participants.

3.2 Scale and variable development

3.2.1 Guilt ratings variable. To create a continuous measure of perceived defendant culpability 'guilt rating', the dichotomous variable 'verdict' (guilty/not guilty) was combined with the 'confidence in verdict' variable (5-point Likert scale; very uncertain – very certain). This method was adopted from previous research which utilised guilt ratings as a continuous measure with more variability than its constituent variables (Ruva, 2011; Hosman & Wright, 1987; Bottoms & Goodman, 1994). To create this variable, guilty verdicts and not guilty verdicts were assigned scores of +1 and -1 respectively. Verdict scores were multiplied by confidence scores resulting in a 10-point Likert-scale of -5 (not guilty/very certain) to +5

(guilty/very certain) with no zero point (Bottoms & Goodman, 1994). This scale was converted to a 10-point Likert-scale of +1 (not guilty/very certain) to +10 (guilty/very certain) by adding +6 to all negative values (not guilty * confidence values) and +5 to all positive values (guilty * confidence values). See Table 2 for descriptive statistics for guilt ratings across the 5 experimental groups.

Table 2

Means, Standard Errors and 95% Confidence Intervals (of the Mean) for Guilt Ratings Across the Five Experimental Conditions.

Condition	M	SE	95% CI	
			LL	UL
Control	6.20	.60	5.01	7.39
PTP-D (I)	6.18	.52	5.15	7.21
PTP-D (NI)	6.08	.59	4.91	7.24
PTP-P (I)	4.81	.54	3.74	5.87
PTP-P (NI)	5.13	.75	3.64	6.61

Note. Conditions (going from highest in the column to lowest) goes; control (no PTP or judicial instruction to ignore PTP), pro-defence PTP (instruction provided to ignore PTP), pro-defence PTP (no instruction), pro-prosecution PTP (instruction to ignore PTP), pro-prosecution PTP (no instruction to ignore PTP).

Figure 3 below shows a comparative boxplot of guilt ratings across the five conditions. As shown in this figure, no outliers were detected in any of the conditions.

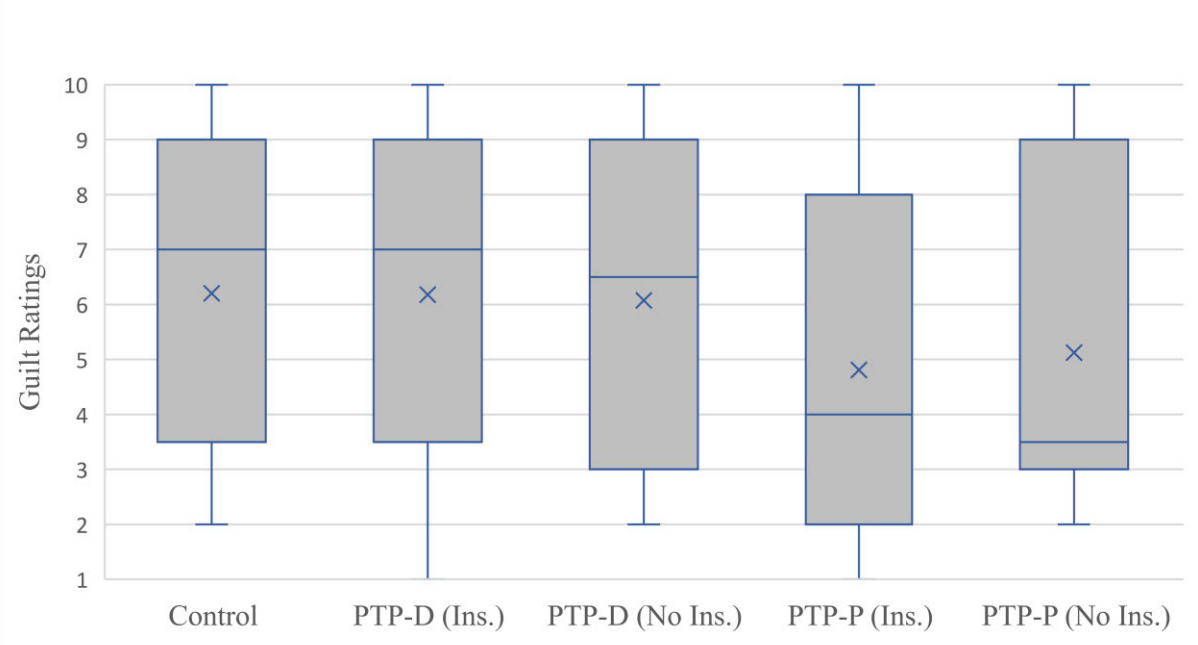

Figure 3. Boxplot representing median's and quartile ranges for guilt ratings across the 5 experimental conditions. No outliers were detected. Crosses (x) indicate mean scores. The minimum score possible was 1 (not guilty/very certain) and the maximum score possible was 10 (guilty/very certain).

3.2.2 Confidence in Justice Systems Scale. A Confidence in Justice Scale was created by adding participants' total scores from the Confidence in Criminal Courts, Confidence in the Police, and Confidence in Prison System scales. The resulting scale (named 'Confidence in Justice Systems' scale for present purposes) was found to have acceptable reliability (12 items; □ = .80) for use in non-clinical research settings (Bland & Altman, 1997). Being 12-items in length it is unlikely that the alpha level is be inflated by superfluous items (Tavakol & Dennick, 2011). Please see table 3 for descriptive statistics for the discussed scales.

Table 3

Descriptive Statistics for the Confidence in Legal Systems Measures

Scale	*M* (*N* = 131)	*SD*
Confidence in Criminal Courts		
to have regard for defendants' rights	2.72	.67
to have regard for victims' rights	2.72	.73
to deal with matters quickly	2.07	.62
to deal with matters fairly	2.62	.61
Confidence in Criminal Courts Total	10.12	1.90
Confidence in the Police		
to solve crime	2.82	.64
to prevent crime	2.42	.69
to respond quickly to crime	2.78	.69
to act fairly dealing with people	2.49	.76
Confidence in Police Total	10.51	2.20
Confidence in Prison System		
to rehabilitate Prisoners	1.90	.69
to act as a form of punishment	2.57	.79
to deter future offending	1.90	.70
to teach practical skills to prisoners	2.22	.73
Confidence in Prison Systems Total	8.59	2.07
Confidence in Justice Systems	**29.18**	**4.70**

Note. Answers for individual questions range from 1 ('none at all') to 4 ('a great deal of confidence'). Scale totals are out of a maximum of 16 (minimum of 4). Confidence in Justice Systems scale is calculated from the addition of the confidence in Criminal Courts, Police and Prison System scales (from the 2007 AuSSA survey of social attitudes; Roberts & Indermaur, 2009), with possible scores ranging from 12 to 48.

3.3 Assumption Checking and Power Analysis

3.3.1 Assumption Checking and Outliers. The assumption of independent responses is satisfied (Field, 2009), as the survey was to be completed as a stand-alone survey with no interaction between participants. For guilt ratings, homogeneity of variances was met across the 5 conditions, $F(4, 126) = .30$, $p = .88$. As shown in Appendix B, guilt rating scores for all 5 conditions were significantly non-normal for all K-S and Shapiro-Wilk tests ($p < .01$), with non-normality confirmed by consideration of P-P plots and histograms (Appendix B). Therefore, given the violation of normality, planned comparisons were performed using a bootstrap procedure (Efron, 1987; Field, 2013) with 10,000 permutations being completed (Arrontes, 2018; Haynes & Preacher, 2014) using the Bias-Corrected and Accelerated correction. As shown in Figure 3, no outliers were detected in guilt rating data.

Shapiro-Wilk tests ($p > .05$) and inspection of histograms supported normality for the confidence in justice systems scale discussed above.

3.3.2 Initial analysis (including power analysis). A one-way ANOVA performed over the 5 conditions showed no significant differences for guilt ratings ($F(4, 126) = 1.33$, $p = .26$.). A power analysis was performed using the software G*Power on the ANOVA, with power (1 – □) = .40. The insufficient power of the test further supports reliance on bootstrapping techniques.

3.4 Hypothesis Testing

All analyses maintained an alpha value of .05 (two-tailed). The statistical software package SPSS was used to run the bootstrapping procedures, which provides bootstrapping estimates of means as well as significance values.

3.4.1 Hypothesis 1(a) testing. Hypothesis 1(a) predicted that participants in the pro-prosecution PTP (no instruction) group will be more likely to render guilty verdicts than the

groups: pro-prosecution PTP (instruction), pro-defence PTP (instruction) and pro-defence PTP (no instruction) groups. A 2 (verdict: guilty/not guilty) by 4 (conditions: PTP-D(I), PTP-D(NI), PTP-P(I), PTP-P(NI) – with no control condition) Pearson's Chi-square test was performed. There was no association found between the 4 conditions and verdict choice, $\chi 2(3, N = 106) = 4.39$, $p = .22$ (Cramer's $V = .20$). Hypothesis 1(a) was not supported by the results. The addition of the control group did not affect the results, $\chi 2(4, N = 131) = 5.29$, $p = .26$ (Cramer's $V = .20$). See Table 4 for descriptive statistics for verdict across the 5 conditions.

Table 4

Frequency and Percentage of Guilty and Not Guilty Verdicts Across the Experimental Conditions.

Condition	Not Guilty	Guilty	Row Total
Control	11 (44.00)	14 (56.00)	25
Pro-defence PTP (instruction)	15 (45.45)	18 (54.55)	33
Pro-defence PTP (no instruction)	12 (46.15)	14 (53.85)	26
Pro-prosecution PTP (instruction)	20 (64.52)	11 (35.48)	31
Pro-prosecution PTP (no instruction)	11 (68.75)	5 (31.25)	16
Column Total	69 (52.67)	62 (47.33)	131

Note. Percentage of verdict choices per condition found in parenthesis.

3.4.2 Hypothesis 1(b) testing. Hypothesis 1(b) predicted participants in the pro-prosecution PTP (no instruction) group will render higher guilt rating than the groups: pro-prosecution PTP (instruction), pro-defence PTP (instruction) and pro-defence PTP (no instruction). A planned contrast revealed no significant difference between these two groupings $t(126) = -.69$, $p = .50$ (significance for bootstrap based on 10,000 permutations).

3.4.3 Hypothesis 2 testing. Hypothesis 2 predicted participants in the pro-defence (no instruction) group will report lower guilt-ratings than the groups: pro-prosecution PTP (no

instruction), pro-prosecution PTP (instruction) and pro-defence (instruction). A planned contrast between these two groupings revealed no statistically significant differences, $t(126) = 1.03$, $p = .30$ (bootstrapped significance based on 10,000 permutations).

3.4.4 Hypothesis 3(a) testing. Hypothesis 3(a) predicted that participants in the pro-prosecution PTP (no instruction) group will have higher guilt ratings than pro-prosecution (instruction) group. A planned contrast revealed no significant difference between the two groups, $t(126) = -.34$, $p = .74$ (bootstrapped significance based on 10,000 permutations).

3.4.5 Hypothesis 3(b) testing. Hypothesis 3(b) predicted that participants in the pro-defence (no instruction) group will have lower guilt ratings than pro-defence PTP (instruction) group. A planned contrast revealed no significant difference between these two groups, $t(126) = .13$, $p = .90$ (bootstrapped significance based on 10,000 permutations).

3.5 Exploratory Analysis.

3.5.1 Collapsing groups (rationale). As the above findings reveal, no differences were found between the pro-prosecution (no instruction) group and pro-prosecution (instruction) group for guilt ratings, therefore these groups were collapsed together. The same conclusion was made for the pro-defence (instruction and no instruction) groups, which were also collapsed together.

An additional *t*-test (bootstrapped with 10,000 bootstrapped samples) for guilt ratings between the control and collapsed pro-defence conditions further revealed a no significant difference between means, $t(82) = .09$, $p = .93$, as further supported by the bias-corrected and accelerated bootstrapped statistics for the difference between the groups means ($SE = .68$, 95% CI [-1.29, 1.42]). As observed, the 95% CI contained no 0 value (Wright & Field, 2009; Efron, 1987). Therefore, pro-defence and the control group were collapsed together.

3.5.2 Guilt Ratings between collapsed groups. To determine if the collapsed groups (control/pro-defence PTP v pro-prosecution) differed in mean guilt ratings, an independent

samples *t*-test (bootstrapped to produce 10,000 bootstrapped samples) was conducted. The test revealed a significant difference between mean guilt ratings across the groups, $t(129) = 2.30$, $p = .02$. Bias-corrected and accelerated bootstrapped statistics for the mean difference between the groups supported this finding (*SE* = .54, 95% CI [.13, 2.29]). Contrary to the hypotheses, control/pro-defence PTP groups had *higher* guilt rating scores than pro-prosecution PTP groups. See Table 5 for descriptive statistics.

Table 5

Descriptive Statistics for Control/Pro-Defence and Pro-Prosecution Groups.

Groups	*N*	*M*	*SD*	*SE* of Mean
Control/defence PTP	84	6.15	2.95	.32
Prosecution PTP	47	4.91	2.98	.44

3.5.3 Verdicts between collapsed conditions. Similar to the above finding, the control/pro-defence group were more likely to find the defendant guilty than participants in the prosecution PTP group, $\chi^2(1, N = 131) = 5.19$, $p = .02$, $\phi = .20$. This was also contrary to the predicted hypotheses (predicting higher guilt-verdicts for pro-prosecution PTP groups).

3.5.4 Differences in probability of murder verdict. Given the counter-intuitive findings, the pro-prosecution and control/pro-defence groups were tested to determine whether they differed in the other post-verdict decision: probability that the defendant committed murder. An independent *t*-test (bias-corrected and accelerated bootstrapped used with 10,000 permutations) revealed no difference between the groups on the measure of perceived probability the defendant committed murder, $t(129) = 1.37$, $p = .17$, as further supported by the bootstrapped statistics regarding the difference between means (*SE* = .50, 95% CI [-.31, 1.68]).

3.5.5 Differences in perceptions of the Facebook post's influence. To determine whether the control/pro-defence groups and pro-prosecution groups differed in whether they

believed the Facebook post influenced their verdict, a 2(pro-defence and pro-prosecution) * 2 (Facebook post influenced decision: yes/no) chi-squared test was completed. No differences were found between the groups, $\chi 2(1, N = 103) = .23, p = .63, \phi = .05$

3.5.6 Confidence in Justice Systems Scale – moderation analysis. An exploratory analysis was conducted on whether confidence in the justice system (per the 'confidence in justice systems' scale developed above) moderates the interaction between PTP condition and guilt ratings. The moderation analysis follows Hayes (2015) bootstrapped method (model 1). Figure 4 below demonstrates the moderation model used.

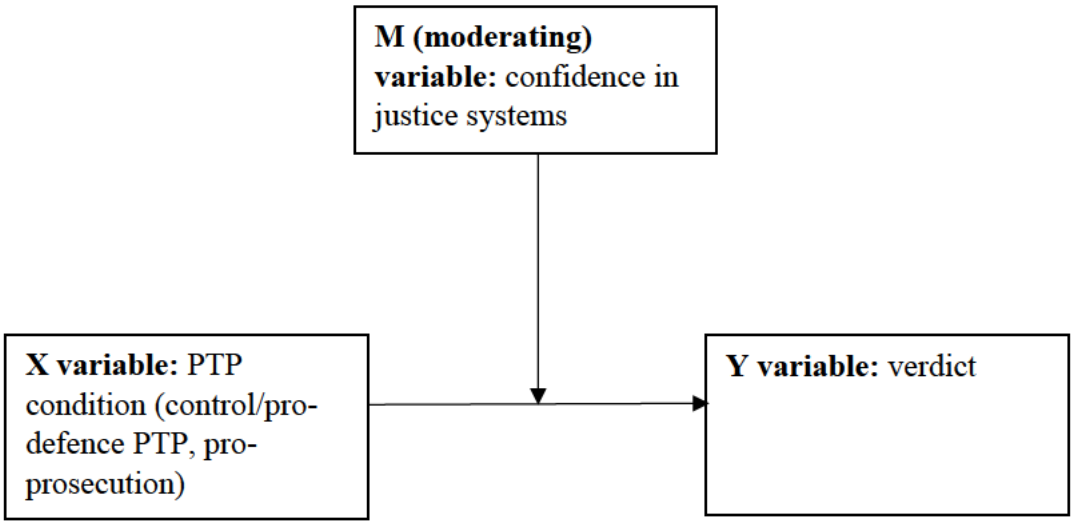

Figure 4. Hayes model 1 for moderation analysis. This model tests whether the moderator variable 'confidence in justice systems' moderates the interaction between PTP exposure (control/pro-defence and pro-prosecution) and guilt ratings regarding defendant culpability.

Firstly, assumptions of logistic regression were assessed. Linearity between the confidence in justice system measure and the logarithmic ('logit') value of the outcome variable (verdict) was non-significant ($p = .20$) indicating linearity has been met for the variable (Field, 2013), Independence of errors is assumed, as all responses are considered independent (Field, 2013). The moderator (confidence in justice systems) and PTP group bi-serial correlation did not suggest the presence of sufficient multicollinearity ($r = .17, p = .046$).

Using Hayes (2015) Process package (Model 1), findings revealed that the coefficient of the interaction (confidence in justice systems * PTP condition) of -.002 was non-significant (p = .98, 95% CI [-.16, .15]). Therefore, moderation was not established. This conclusion was consistent where the moderator variable was the continuous measure guilt ratings (linear regression), with an unstandardized coefficient (for the interaction term) of .01 (p = .90, 95% CI [-.21, .24]). Therefore, no moderation was found between PTP and defendant culpability measures.

3.5.7 Post-hoc power analysis. *Post hoc* power analyses revealed that a sample size of 298 was required to reach acceptable power of .80 to ascertain verdict preferences across the 5 groups (in a contigency table). As such, the sample size of 131 was insufficient to reach acceptable power.

4 Discussion

This study represents one of the first empirical inquiries into the effects of social media PTP on juror decision-making. With the information age expanding into newer and more pervasive forms (Twitter™, Instragram™, Facebook™, Snapchat™, Youtube™ etc.), communication has become more instantanous and polarising than ever. This study attempted to replicate over 50 years of robust psycholegal findings – associating 'traditional' PTP sources with biased juror decision-making – with social media PTP in the form of a pro-prosecution and pro-defence Facebook post. The study also aimed at determining the effectiveness of judicial instructions against social media PTP bias.

4.1 Overview of findings

The directional hypotheses of this study predicted an overarching conceptualisation of PTP effects so that; exposure to pro-prosecution PTP was predicted to result in increased guilt verdicts and guilt-ratings compared to the non-exposed 'control' condition (Steblay et al., 1999). Conversely, pro-defence PTP was predicted to result in decreased measures of the guilt ratings and guilty verdicts compared to the control group (Daftary-Kapur et al., 2014). Moreover, a clear judicial instruction, highlighting the unreliability of extralegal social-media PTP evidence, was predicted to dilute PTP's bias effect (Steblay et al., 2006). Therefore the findings will be discussed with respect to the overarching themes of *PTP slant* and *judicial instructions* below.

4.2 PTP Slant and Defendant Culpability

4.2.1 Pro-defence PTP findings. Hypothesis 2 predicted that participants in the pro-defence PTP (no instruction) group will report lower guilt-ratings than all other groups. This hypothesis was not supported, a similar finding to Krishnan's and Semmler's (2017) unpublished study. Despite the scarce literature on pro-defence PTP, Daftary-Kapur's et al. (2014) large-scale study, regarding both 'naturally' occurring PTP and experimentally

manipulated PTP, associated pro-defence PTP materials with a pro-acquittal bias. Therefore, reasons for the present null results warrant scrutiny.

4.2.1.1 Story Model and PTP amount. It is arguable that the pro-defence materials utilised in the current study were lacking in probative value and failed to infiltrate juror decision-making. Mock-jurors in Daftary-Kapur's et al. (2014) study, for example, were exposed to between 5-10 pro-defence PTP articles, each containing 500 words describing an 'upstanding' defendant and specific anti-victim information. Conversely, the single Facebook pro-defence post in the current study contained 43 words, and provided little extra information (many of the PTP details being contained within the admissible transcript also).

Recall that the story model posits that decision-makers utilise preliminary information (i.e. PTP) to establish causal models (stories), and subsequently use these narrative stories to evaluate future information and admissible evidence at trial (Pennington & Hastie, 1986; 1988; 1992). Importantly, evidence which promotes ease-of-story construction are more probative on verdicts and a have greater impact on decision-making (Pennington & Hastie, 1992). It is arguable that the current pro-defence materials do not facilitate the construction of a coherent narrative story by which mock-jurors can base their verdicts on (Pennington & Hastie, 1992). The pro-defence PTP materials were minimal, provided relatively little information or context, and potentially neither facilitated or diminished the creation of a coherent story. Stronger more emotionally provocative pro-defence PTP materials may be needed for the development of an observable pro-defence bias (Kramer, 1990).

4.2.1.2 Negativity Bias. In addition to story-model explanations, research has shown evidence for a 'negativity bias' in which negative information is more influential in decision making than positive information (Daftary-Kapur et al., 2014; Ruva, 2018; Hope, 2004). The negativity bias appears across the PTP literature. For example, Pennington and Hastie (1988)

discovered that increasing coherence of defence arguments (per the story model) is less impactful on decision-making than manipulating prosecution materials. Moreover, negatively valanced PTP information (i.e. showing grieving victims etc.) has also been shown to exert greater influence over juror decisions, even when a delay of several days is used between PTP presentation and trial materials (Kramer, 1990). It is possible that the minimal pro-defence PTP materials were insufficient in overcoming this bias and having an effect on verdict outcomes.

4.2.2 Pro-prosecution PTP findings. Hypothesis 1(a) predicted that participants in the pro-prosecution PTP (no instruction) group will be more likely to render guilty verdicts than all other groups. Hypothesis 1(b) predicted the same group comparisons, however with regard to increased guilt-ratings in the pro-prosecution PTP group. Leaving aside for now the exploratory findings which demonstrate counterintuitively that the *lowest* guilt ratings and guilty verdicts were found in the pro-prosecution groups, these null findings are in line with Krishnan and Semmler's (2017) unpublished study (which also failed to delineate a pro-prosecution bias from an anti-defendant one).

It is important to consider these findings against the history of PTP research and methodology. PTP research is a highly nuanced field and is affected by a myriad of different situational (e.g. strength of trial transcript, amount of PTP etc.) and individual factors (e.g. motivation for accuracy: Kassin & Sommers, 2001). In light of the mixed methodology, Steblay's et al. (1999) meta-analytical review on PTP helped clarify the literature and revealed a robust (yet often subtle) pro-guilt bias resulting from anti-defendant PTP. With this in mind, exploratory analyses focused on understanding the unexpected and counterintuitive finding that pro-prosecution PTP groups demonstrated the lowest guilt ratings and verdicts than the control and pro-defence PTP groups. Therefore, further discussion regarding the pro-prosecution findings occur below with respect to the exploratory analyses.

4.3 Effectiveness of Judicial Instruction

4.3.1 Findings regarding judicial instruction. Hypothesis 3(a) predicted that participants in the pro-prosecution PTP (no instruction) group will have higher guilt ratings than the pro-prosecution (instruction) group, and Hypothesis 3(b) predicted that participants in the pro-defence (no instruction) group will have lower guilt ratings than pro-defence PTP (instruction) group. Neither hypothesis was supported by the planned comparisons data, which revealed no effect of judicial instruction.

This finding was not unforeseen, given significant psycholegal research demonstrating the general ineffectiveness of judicial instructions on PTP (Steblay et al., 2006; Ruva & LeVasseur, 2012; Kramer, 1990). However, the instructions were adopted from the New South Wales Criminal Trial Courts Bench Book (Judicial Commission of NSW, n.d.), and were chosen because they provide a clear and simple rationale for why jurors should disregard social media reports (i.e. they are out of context, etc.). Therefore, the instructions were expected to be in-line with psycholegal research demonstrating the increased effectiveness of judicial instructions which highlight the unreliability or irrelevancy of inadmissible evidence, and contextualise the issues for jurors (Steblay et al., 2006; Sommers & Kassin 2001).

4.3.2 Reactance and ironic processes. Recall the ironic processes of mental control theory which posits a conscious operating process (searching for correct mental content; i.e. admissible evidence) and monitoring process (searching for incorrect mental content, i.e. PTP information) during decision-making processes (Wegner, 1994). In times of increased stress, time constraints, and cognitive load, the monitoring process purportedly overwhelms the operating system and (ironically) draws the decision-makers attention to the undesirable information (Wegner, 1994).

However, it appears unlikely that the judicial instruction in the current study incurred this backfire effect of extra attention being placed on PTP. Firstly, the pro-prosecution group – both instruction and non-instruction – counterintuitively favoured a not-guilty verdict in the current study. An ironic backfiring-effect in the pro-prosecution instruction group would arguably (1) focus participants' attention to pro-guilt considerations (per their PTP exposure and instruction to ignore it) and (2) increase guilty verdicts in the instruction group, neither of which were observed. Similarly, no differences in guilt ratings were found between the control and defence PTP groups regardless of instruction. Therefore, it appears that the judicial instruction simply had no effect in the current study, in either biasing or unbiasing juror guilt ratings. The same argument also undermines the applicability of psychological reactance theories (whereby jurors *deliberately* exert their independence and contravene judicial instructions; Brehm, 1966).

4.3.3 Methodological considerations. A simpler explanation of the findings is based on the study's methodology. As noted by prominent psycholegal researchers "the motivation to reach a just verdict is a crucial factor in determining whether jurors comply with instructions to disregard" (Sommers & Kassin, 2001, p. 1374) even if this requires jurors to disregard the correct application of evidentiary procedure and judicial admonishments (Sommers and Kassin, 2001). It is likely that the characteristics of the study primed participants to complete the survey in a manner already sensitive to the influence and presence of bias. Therefore, participants likely commenced the study already sensitive to their ultimate roles as jurors (to disregard bias and arrive at a just outcome) and suspicious of any upcoming prejeducial information (Fein et al., 1997) prior to any PTP exposure, judicial admonishment or trial materials. Subsequently, this suspicious disposition could have rendered the effect of any judicial instructions redundant. This priming affect is unlikely to occur in real-world cases, as prospective jurors are unlikely to be searching for sources of bias prior to trial.

4.4 Exploratory Analyses

4.4.1 Guilt ratings and counter-intuitive findings. Contrary to the hypothesised direction between PTP slant and defendant culpability, participants in the combined pro-prosecution PTP (instruction and no instruction) group provided *lower* guilt ratings and *fewer* verdicts of guilt compared to participants in the collapsed control and pro-defence PTP group. Potential reasons for this counterintuitive finding are discussed.

4.4.1.1 Overcorrection. A possible explanation for the reduced guilt measures in the pro-prosecution PTP group could be that of decisional 'overcorrection' (Wegener & Petty, 1997; Hope, 2004). Wegener and Petty (1997) posited the 'Flexible Correction Model' of decision-making and bias correction, stipulating that there are "individual and situational differences in motivation and ability to identify potential sources of bias" (Wegener & Petty, 1997, p. 151). The model posits an explanatory framework of bias-correction whereby individuals completing a decisional or judgment-required task may both search for, and subsequently correct for, any internal or situational biases that they perceive as influencing the judgment task. As shown in Figure 5 below (see also Chang, 2017), search and correction processes are moderated by both the perceiver's motivation *and* their ability to correct for bias, as well as the individual's naïve theories and beliefs of the target object and the nature of bias.

If perceivers are motivated and able, bias correction generally results in one of three outcomes (1) the correction has effectively met the bias and there is no overall effect on decision making (2) the correction has failed (or the bias is accepted as it is in the direction of the perceivers existing beliefs) and bias remains, or (3) the perceiver has engaged in *overcorrection* of their beliefs, and now render a judgment opposite to the content of the bias (Arendt, Marquart, & Matthes, 2015; Chang, 2017). Recent findings from metacognitive and marketing literature demonstrate increased overcorrections when individuals are motivated to be accurate and in the presence of highly predjucial materials (Chang, 2017).

4.4.3.2 Application to current findings. Arguably, the pro-prosecution PTP materials are highly prejudicial to perceived defendant culpability (the defendant discusses his wife in aggressive tones, discusses drinking alcohol etc.), and is potentially more salient compared to pro-defence PTP materials. Additionally, participants were likely primed as to the purpose of the study (to resist bias) due to the advertising materials and the survey's preamble. This priming potentially increased participant movitation to be an accurate and just juror (Sommers & Kassin, 2001). With this priming in place, and with the highly prejudicial nature of the pro-prosecution materials, it is possible that participants exposed to pro-prosecution PTP overcorrected their verdicts (favouring not-guilty) in order to effectively discharge their roles of jurors. In support of this, neither group (control/pro-defence v pro-prosecution) differed in the perceived probability that the defendant commited murder, with overcorrection appearing to occur at verdict (where requirements of accuracy are arguably greatest). Moreover, cursory analysis of open-ended reasons for verdict choice demonstrates that pro-prosecution participants were engaged and committed to their role (i.e. discussing probative evidence, their reasoning etc.), further supporting the above conclusions.

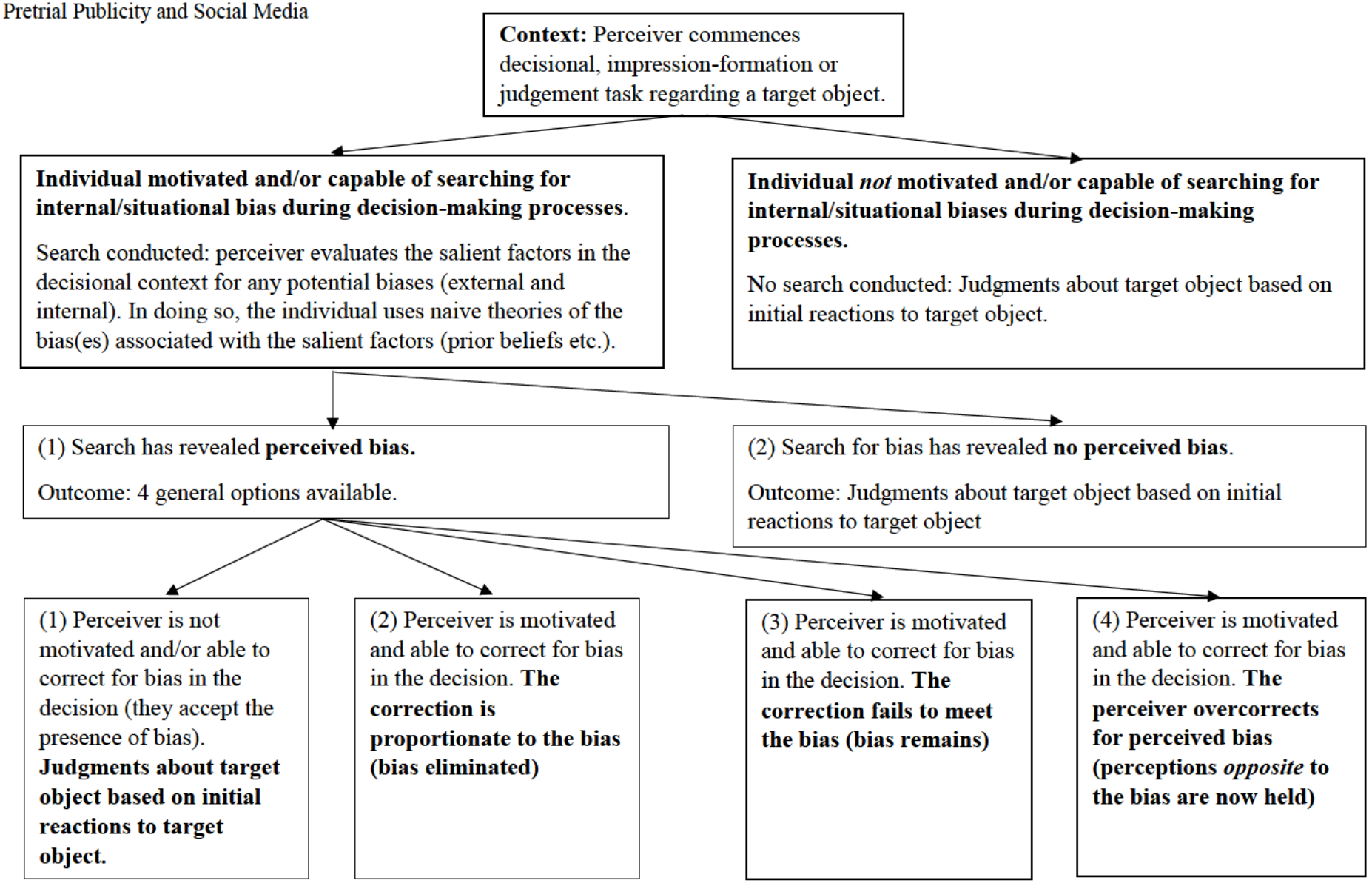

Figure 5. Wegener and Petty's (1997) Flexible Correction Model as it relates to bias identification and bias correction (see also Arendt, Marquart, & Matthes, 2015; Chang, 2017)

4.4.2 Confidence in Justice Systems. Preliminary findings regarding the development of the confidence in justice systems scale appears encouraging (alpha of .80), supporting reliance of the scale in the current study. However, findings from the exploratory analyses demonstrated no moderation effect by jurors confidence in the legal system on the relationship between PTP condition and guilt rating. As psychological literature on the association between attitudes and PTP effects is scarce, and given the lack of directional hypotheses, it is difficult to surmise a rationale for the lack of moderation effects. As stated by prominent attutidunal-behavioural researchers, regarding the predictability of behaviours via attitudes, "if the investigator chooses to observe a single action with respect to a given target in a given context in order to obtain correspondence, the attitude also has to be very specific" (Ajzen & Fishbein, 1977). Simply put, a general attitudinal scale regarding juror confidence in justice systems is unlikely to correspond with specific behaviours, such as the rending of a verdict with respect to a potential domestic-violence case, per the current study (see also Locatelli, 2011).

4.5 Methodological Weaknesses

4.5.1 Power and methodology. The current findings must be interpreted with regard to methodological weaknesses of the study. Firstly, *a priori* and *post* hoc analysis indicated that the study was signficantly underpowered to detect the small effect sizes present. Time restraints limited the number of participants that could be recruited, greatly limiting the power and generalisability of the study.

The short nature of the confidence scale used in the present study – a 5 point likert-scale adopted from the Krishnan and Semmler (2017) unpublished study – perhaps resulted in reduced variability when combined with the dicotomous verdict measure to create the 10-point scale of guilt ratings (Sommers & Kassin, 2001). Longer scales (perhaps 0-100% etc.) may allow for greater variance in the outcome measures and increased sensitivity in observing PTP effects (Sommers & Kassin, 2001).

4.5.2 The operationalisation of social media. A clear weakness of the current study is the lack of ecological validity with respect to the social media stimulus. As shown in the Cardinal Pell case, in real-world conditions prospective jurors can potentially be exposed to a plethora of individual electronic messages, community opinion, and general information-sharing via social media regarding an upcoming courtcase, and can include unsolicited emotional outbursts as well as details of the alleged crime (McEwen, Eldridge & Caruso, 2018). PTP in the current study however consisted of only one brief and somewhat non-contextual message from the defendant. Numerous PTP exposures, including more emotionally provoactive messages, could have increased sensitivity to any potential bias (Daftary-Kapur et al., 2014).

Moreover, in real criminal trials information is usually processed at different times and following delays (Sommers & Kassin, 2001), with this information-spacing resulting in mock-jurors forgetting the source of PTP materials and unintentionally incorporating PTP into their decision-making (Ruva et al. 2007). Due to the current study's one-step process and lack of time delay, it did not facilitate the creation of these more subtle and ecologically valid biasing effects.

4.6 Methodological Strengths

The court transcript used in the current study (*New Jersey v Bias*) is frequently utilised across the PTP research base and has been shown to be realistic, ambiguous regarding guilt, and unfamiliar to the audience (Ruva et al., 2005; Hope et al., 2004). Moreover, despite concerns sometimes expressed by the judiciary regarding the ecological validity of PTP literature (McEwen et al., 2018), large-scale and meta-analytical studies have demonstrated the robust validity of juror research across different juror samples as well as the medium of trial-presentation (written transcripts, video trial etc; Borstein, 1999)

A more conceptual strength of this study (and the Krishnan & Semmler, 2017 study) is that this research is among the first to recognize the potentially unique threat posed by social media to due legal process and defendant rights. Future research could broaden psycholegal understandings of social media's influence in the courtroom and highlight real-life examples of threatened legal rights.

4.7 Future Directions and Concluding Comments

Future studies into social-media PTP would benefit by specifically operationalising and testing the qualities of digitial media that make it a unique threat to due legal process. Studies should ideally subject participants to numerous exposures of social media PTP over the course of many days (or weeks) prior to the mock-trial and verdicts of guilt. This would more clearly proximate the nature of social media as an instantanous form of communication, and one where users are often exposed to media sources without their consent or control (i.e. seeing unsolicited posts). Moreover, in a similar vein to studies that test impression-formation following repeated stimuli exposure (Borstein, 1989), studies should actively manipulate variables such as time between PTP exposure and the judgment-task, frequency and amount of PTP exposure, and duration of PTP exposure (i.e. Borstein, 1989).

Importantly, future social-media based studies should vary the strength of PTP materials and test the effect of context-dependant attitudes. For example, cases where the PTP materials involve domestic abuse could potenially test whether specific domestic-violence attitudes have an interaction effect with PTP materials and verdicts of guilt.

4.8 Conclusionary Comments

This study represents an empirical first-step into the effects of social-media based pretrial publicity on perceptions of defendant culpability, and exploration of a judicially relied upon remediation of PTP bias, the juror instruction. Although the findings did not establish the expected assocation between PTP slant and juror bias, nor the effectivness of a judicial instruction, the findings of a pro-prosecution bias overcorrection and the development of a scale regarding legal system confidence, may serve to provide useful judicially-relevant insights going forward. Future studies into the field of social media PTP are increasingly relevant in light of the continued expansion and social reliance of the technological era, and the longstanding legal foundation of the defendant's fundamental right to a fair trial.

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THE UNIVERSITY of ADELAIDE

Appendices

APPENDIX A: Advertising Materials, Consent form, Survey

SOCIAL MEDIA AND THE COURTROOM

PARTICIPATE IN A STUDY THAT EXPLORES HOW SOCIAL MEDIA IMPACTS JURIES AND THE RIGHT TO A FAIR TRIAL!

Who can participate?

You are being invited to participate in this study if you:

- Are between the ages of 18 and 70
- Fluent in English
- Are not a legal student/legal practitioner
- Are included on the Electoral Roll (i.e. you can vote in Federal and State Elections)
- And do not have a criminal conviction
- **1st Year Psychology Students will receive 0.5 unit of course credit.**

What is involved and how do I participate?

- The study will take appx 15-20 minutes to complete, and involves reading court transcripts, and making various decisions about the case and the legal system in general.
- Follow this link: [redacted]
- OR use this QR Code with your smart device

[redacted]

Questions or concerns? please contact the following

- Andrew Huckstepp, Student Researcher (**andrew.huckstepp@student.adelaide.edu.au**)
- Associate Professor Carolyn Semmler (**carolyn.semmler@adelaide.edu.au)**

Attachment 1 (Version 1 - 8.5.19)

PARTICIPANT INFORMATION SHEET

PROJECT TITLE: Pretrial Publicity and Juror Perception of Defendant Culpability: Social Media Biasing the right to a Fair Trial.
HUMAN RESEARCH ETHICS COMMITTEE APPROVAL NUMBER: [redacted]
PRINCIPAL INVESTIGATOR: Professor Carolyn Semmler.
STUDENT RESEARCHER: Andrew Huckstepp
STUDENT'S DEGREE: Bachelor of Science (Psychology), Bachelor of Law

Dear Participant,

You are invited to participate in the research project described below.

What is the project about?
For many people, Social Media is an increasingly prevalent part of their lives and an important aspect of their social world. It can shape our beliefs and influence our decisions and behaviours, sometimes without us being aware of these influences. This research project aims to identify the ways in which pre-trial social media exposure – in the form of a Facebook post – later affects jury decision making about a defendant's guilt. The project also aims to explore ways that this effect can be reduced or eliminated, and how our beliefs about the fairness of the legal system affects this landscape.

This project is being conducted by Professor Carolyn Semmler (Principal Investigator, Supervisor) and Andrew Huckstepp (Student Researcher).

Why am I being invited to participate?
You are being invited to participate in this study if you:

- Are between the ages of 18 and 70
- Fluent in English
- Are not a legal student/legal practitioner
- Are included on the Electoral Roll (i.e. you can vote in Federal and State Elections)
- And do not have a criminal conviction

What am I being invited to do?
You are being invited to:

- Provide some information (such as your age, gender, whether you have a criminal record, your status as an Australian Citizen);
- You may be asked to read a Facebook post as well as a brief discussion from a mock-judge regarding Social Media and the courtroom.
- You will be asked to read a transcript regarding a criminal matter. ***Please note, the topic matter of the case involves discussion of murder and suicide. No graphic pictures are included. You are free to withdraw from the study at any point up until submission of the survey.***
- You will be asked to make a series of decisions about the defendant's guilt and the evidence presented in the trial.
- You will be asked a series of questions regarding you beliefs about the Australian justice system.
- This survey is completed through **Survey Monkey**.

How much time will my involvement in the project take?
This study will take you approximately 30 minutes to complete. The survey is once-off, and no follow up testing is required. Surveys cannot be re-submitted once completed.

1st year psychology students will receive 1 unit of course credit for their participation.

Are there any risks associated with participating in this project?
There are no serious foreseeable risks for participants part-taking in this study. Participants may experience discomfort from reading the included transcripts – which involve discussions of murder and suicide. Participants are free to discontinue their involvement in the survey at any time up until submission of the survey.

Participants who experience significant discomfort or experience any other adverse reaction from part-taking in the study are encouraged to make contact with the following counselling services:

- Student Counselling Services – for University of Adelaide students (phone: 08 8313 5663)
- Beyond Blue – www.beyondblue.org.au (phone: 1300 22 4636)
- Lifeline – www.lifeline.org.au (phone: 13 11 14).

What are the potential benefits of the research project?
This research may provide further support for the biasing effect media publicity has on juror decision making. Specifically, it seeks to establish these effects using Social Media – a relatively new body of research. The study also seeks to explore methods to decrease (possibly eliminate) this negative effect with regard to Social Media, and explores how our beliefs about the legal system (such as whether it is fair and just etc) affects these issues.

Can I withdraw from the project?
Participation in this project is completely voluntary. Your data can be withdrawn at any point prior to submitting the survey.

What will happen to my information?
Participation is anonymous (participants do not provide their names or other personal details in the research project). All data provided by participants will be stored in coded form and stored securely within University of Adelaide databases. Only the supervisor (Professor Carolyn Semmler) and student researcher (Andrew Huckstepp) will have access to any data, and all data will be destroyed after 5 years.

The study is being completed as a component of an Honours degree for the student researcher, and results of this study may be published in the future (i.e. journal articles, conferences, books, presentations etc). This will be a publication of the thesis or a summary of the findings only, and will not include data or any personal information.

Participants will be offered a copy of the final report if they requested (this can be requested in the final question of the survey), which includes a copy of the transcripts. If requested, this will be provided in electronic format once the project is completed.

Your information will only be used as described in this participant information sheet and it will only be disclosed according to the consent provided, except as required by law.

Who do I contact if I have questions about the project?
Participants can contact the research team by the below contact details if they have any questions about the project.

- Professor Carolyn Semmler ([redacted]) – Primary contact.
- Andrew Huckstepp, Student Researcher ([redacted])

What if I have a complaint or any concerns?
The study has been approved by the Human Research Ethics Committee at the University of Adelaide (approval number H-2018-xxx). This research project will be conducted according to the NHMRC National Statement on Ethical Conduct in Human Research 2007 (Updated 2018). If you have questions or problems associated with the practical aspects of your participation in the project, or wish to raise a concern or complaint about the project, then you should consult the Principal Investigator. If you wish to speak with an independent person regarding concerns or a complaint, the University's policy on research involving human participants, or your rights as a participant, please contact the Human Research Ethics Committee's Secretariat on:
Phone: +61 8 8313 6028
Email: hrec@adelaide.edu.au
Post: Level 4, Rundle Mall Plaza, 50 Rundle Mall, ADELAIDE SA 5000
Any complaint or concern will be treated in confidence and fully investigated. You will be informed of the outcome.

If I want to participate, what do I do?
If you wish to participate in this study please follow the below link and complete the consent form and survey electronically:
[XXXXXXXXXXXXXX].
If you would like further information about the study, please feel free to contact the research team per the contact details included.

Yours sincerely,

Professor Carolyn Semmler, Principal Investigator

Andrew Huckstepp, Student Advisor

Human Research Ethics Committee (HREC)

CONSENT FORM

1. I have read the attached Information Sheet and agree to take part in the following research project:

Title:	*Pretrial Publicity and Juror Perception of Defendant Culpability: Social Media Biasing the right to a Fair Trial*
Ethics Approval Number:	[redacted]

2. I have had the project, so far as it affects me, and the potential risks and burdens fully explained to my satisfaction by the research worker. I have had the opportunity to ask any questions I may have about the project and my participation. My consent is given freely.

3. I have been given the opportunity to have a member of my family or a friend present while the project was explained to me.

4. Although I understand the purpose of the research project, it has also been explained that my involvement may not be of any benefit to me.

5. I agree to participate in the activities outlined in the participant information sheet.

6. I understand that I am free to withdraw from the project at any time.

7. I have been informed that the information gained in the project may be published (i.e. in a book, journal article, thesis, news article, conference presentations, website, report etc). Data from the project may also be placed in open access repositories (databases for other researchers to access and use the data) such as Open Science Framework. This data will be in de-identified form (it will not identify participants).

8. I have been informed that in the published materials I will not be identified and my personal results will not be divulged.

9. I understand my information will only be disclosed according to the consent provided, except where disclosure is required by law.

10. I am aware that I should keep a copy of this Consent Form, when completed, and the attached Information Sheet.

Participant to complete:

Name: _____ Signature: _____

Date: _____

QUESTIONNAIRE - WORD VERSION (FINAL VERSION IN SURVEYMONKEY)

Demographic Question

Q1 What is your gender

Male	☐
Female	☐

Q2 How old are you (please note, participants must be **between the ages of 18 and 70**)

_____

Q3 Please confirm that you are **between the ages of 18 – 70**

Yes, I am between the ages of 18 – 70 *(please continue and complete the survey)*	☐
No, I am not between the ages of 18 – 70 (*please do not continue and complete the survey*)	☐

Q4. Please confirm that you are **not a legal practitioner or studying law**

I am not a legal practitioner and am not studying law *(please continue and complete the survey)*	☐
I am studying law OR a legal practitioner (*please do not continue and complete the survey*)	☐

Q5. Please confirm that you are an **Australian Citizen?**

Yes, I am an Australian Citizen *(please continue and complete the survey)*	☐
No, I am not an Australian Citizen (*please do not continue and complete the survey*)	☐

Q6. Please confirm that you **do not have a prior criminal record**

I do not have a prior criminal record *(please continue and complete the survey)*	☐
I have a prior criminal record (*please do not continue and complete the survey*)	☐

TRANSCRIPT

You are browsing Facebook one day and come across the following post. You do not know the gentleman who posted it at the time. Please read it carefully...

Pro Prosecution Slant

Pro Defence Slant

R v Winger

Introduction

You have been called upon to be a Jury member in the criminal case of *R v Winger.* Daniel Winger is being charged with the murder of his wife Lisa Winger, with the incident in question occurring on February 26th 2019. You will hear arguments from both the prosecution and defence regarding a verbal fight that occurred between Daniel and Lisa on the day. You will hear the arguments from Daniel and his defence attorney claiming that Lisa was killed in the course of Daniel attempting to wrestle a gun from her. You will hear the prosecution arguments claiming that Daniel retrieved a gun from under their bed in their room and shot and killed her.

The trial begins…please pay careful attention to all arguments and evidence provided by both the prosecution and the defence, including by Daniel himself. You will be asked to render a verdict at the end of the trial, answer various questions about the crime and your beliefs, as well as answering some questions to show you understood all the material presented (please pay close attention and take your time with the survey).

First, the Judge provides the following directions:

Media reports and Social Media

"Members of the jury should ignore any reports of the proceedings of the trial by the media. The report will obviously be a summary of the proceedings or some particular aspect of the evidence or arguments made by counsel. No importance should be attributed to that part of the evidence or any argument made simply because it happens to be reported in the media. Sometimes the material reported will be taken out of the context of the trial as a whole and may not be fair or accurate.

An adjournment of a trial or a stay of the prosecution may be granted because of adverse media publicity (i.e. the trial may be stopped in order to address these issues, and may or may not be later resumed). The court proceeds on the basis that the jurors will act in accordance with their oaths and directions given against being prejudiced by media publicity and opinions disseminated in social media. A stay will only be granted where no action can be taken by myself [the judge] to overcome any unfairness due to publicity taking into account the public interest in the trial of persons charged with serious offences."

Pre-Trial Media Publicity

"If you have read or heard or have otherwise become aware of any publicity about the events with which this trial is concerned, or about the accused, it is of fundamental importance that you put any such publicity right out of your minds. Remember that you have each sworn an oath, or made an affirmation, to decide this case solely upon the evidence presented here in this courtroom and upon the basis of the legal directions I give to you. You would be disobeying your oath or affirmation if you were to take into account, or allowed yourself to be influenced by, information that has come to you from something you have read, seen or heard outside the courtroom."

The Prosecutor calls Officer Thomas Walsh (Officer Walsh is the police officer who responded to the emergency call on the night of Lisa Winger' death).

Thomas Walsh: He stated that he returned home approximately an hour before the call, and he had an argument with the victim. He stated that he was watching t.v. when the victim came downstairs with the weapon and stated, "It's times like this that people kill themselves." He told the victim to go back upstairs and put the weapon away. Approximately two minutes later, he went upstairs, opened the door, and saw the victim pull the trigger.

Prosecutor: Now the defendant tells you that his wife came downstairs with the weapon. Is that correct?

Thomas Walsh: Correct.

Prosecutor: Did he describe the weapon to you?

Thomas Walsh: No.

Prosecutor: He told you that she said, "It's times like this that people kill themselves?"

Thomas Walsh: Correct.

Prosecutor: What was the next thing he told you then.

Thomas Walsh: He stated that he opened the door to the room and she pulled the trigger. At that time, the victim was standing in front of the mirror. He stated that he thought she was kidding around when she put the gun to her head in the bedroom, but then she pulled the trigger and the gun went off.

Prosecutor: Again, these are your words sir, or the defendant's words?

Thomas Walsh: I wrote them as the defendant spoke them.

****

The Prosecutor calls Detective John Flynn (he was the investigator on duty that night). His testimony allows the jury to see their first photograph of Lisa Winger.

Detective John Flynn: This is the photograph showing the body of Lisa Winger, the upper portion of the body, along with this gun underneath her right arm.

Prosecutor: Can you tell me whether or not this was the weapon that was found under the arm of Lisa Winger, as she lay on her back.

Detective John Flynn: Yes, it is. … we wanted to talk to her husband further about what happened when he arrived home that night and to take a detailed statement from him. At that point he began breathing heavily and I said that I knew it would be difficult to talk about. At that point he made a statement to me saying, "I know I said that my wife shot herself when I opened the bedroom door." And I said to him, "I know that. We'll be going into that." And he made a statement to me, "I guess I should tell you maybe I shouldn't have tried to grab the gun." And when he said that to me, I said, "What do you mean?" And he said, "When I entered the bedroom and saw her with the gun to her head, I ran and grabbed for the gun and it went off." Then he said, "Maybe I shouldn't have tried to get it from her."

****

The Prosecutor now presents to the court the videotaped statement Dan Winger gave at the police station in the early morning hours of February 27th,, 2012. The contents of the videotape are as follows:

Detective John Flynn: Could you explain what happened over at the house.

Dan Winger: Well, my wife and I had a little bit of an argument and it pretty much calmed down. The argument was about a piece of jewellery she saw today. So I said, "Look, you have enough jewellery and I really don't want to hear about it right now." So she got a little mad, and we started arguing just a little bit. I was watching T.V. and my wife walked downstairs and she pointed the gun at me and she says you see how easy somebody could shoot somebody. I could have just shot you and not even thought nothing of it. So I told her, "Stop playing around and just take that and put it back upstairs." She went upstairs and I waited a minute or two and I went upstairs and she was standing by the end of the bed and she had the gun up against her head. And I said, "Hey come on, that's enough of that stuff, quit messing around." And I told the other officer, that's when she shot herself. The gun went off when I tried to take it away from her. When it went off, it was like everything was in slow motion. She didn't move. She would just … one minute she was real happy and the next minute she couldn't bear to be around anybody. All she kept saying was maybe today she would fall asleep and she wouldn't wake up tomorrow.

Detective John Flynn: Did you have the gun on you?

Dan Winger: The gun was always loaded. She knew very well how to use the gun.

Police Investigator: I'm still a little confused about something. If she's holding it in her left hand to her head, she falls forward and sideways. How did that weapon wind up under her right arm?

Dan Winger: I don't know how. I don't know.

Police Investigator: Unless she was holding it in her right hand, maybe.

Dan Winger: She was not holding it in her right hand.

Police Investigator: I know, but it doesn't make sense. You know what I'm saying? I don't understand how that would happen. You're holding it in your left hand behind your head like that, you're falling this way, the weapon's behind you, it's not in front of you. You know what I'm saying?

Dan Winger: When she fell she hit the end of the dressing table and slid. And when she slid, her body was falling all different ways. I don't know how it got there.

Police Investigator: Do you know if you had your finger on the trigger?

Dan Winger: I definitely did not have my finger on the trigger. I definitely did not.

Detective John Flynn: How can you say definitely not?

Dan Winger: Because her hand … I had my hand on her hand. She was pretty much covering the top of the grip when I started to try and take the gun away from her. No way did

my hand hit that trigger. You guys are making me feel like I shot my wife. And I wouldn't ever do that or try and do that. And now you're making it sound like I did it accidentally.

Police Investigator: No, we're trying to get it clear. You were there, we weren't.

The videotaped statement ends and the trial testimony begins again.

*****

Defence attorney: Did you ever have any such tests performed on him that evening?

Detective John Flynn: No.

****

Prosecutor calls Chester Anthony Gasrowski (Lisa Winger' father) to the witness stand.

Prosecutor: Now, your daughter, Chester, was left handed or right handed?

Chester Gasrowski: Right handed.

Prosecutor: You and your daughter built a tool shed together, can you tell the jury when it was that you began construction of the tool shed?

Chester Gasrowski: Approximately five years ago, I decided to build an addition, and my daughter, Lisa, she helped.

Prosecutor: What did Lisa do besides helping you draw up the plans. Physically, what did she do?

Chester Gasrowski: Lifted corrugated sheets up onto the roof, nailed that roof with me.

Prosecutor: And what hand did she use, Chester.

Chester Gasrowski: Her right.

****

Defence attorney plays the recording of the emergency call Dan Winger made on the night that Lisa Winger died.

Dan Winger: Hi, this is Daniel Winger from 259 Melbourne Street. My wife just shot herself… I can't even …

Emergency Call Operator: We've got a 259 Melbourne St. Red alert.

Dan Winger: Oh my God.

Emergency Call Operator: So she shot herself? Where did she shoot herself?

Dan Winger: In the back of the head.

Emergency Call Operator: In the head?

Dan Winger: Oh God.

Emergency Call Operator: All right. All right. Just stand by, okay?

Dan Winger: Yes.

Emergency Operator: They're on their way, all right?

****

Defence attorney calls Dan Winger to the witness stand.

Defence attorney: Now, you had an opportunity to watch a videotape of a statement that you gave to the police that evening, correct?

Dan Winger: Yes, I have.

Defence attorney: Did you tell the police the truth when you gave them the statements that you gave them on the videotape?

Dan Winger: Yes, I did.

Defence attorney: Now, on that particular evening, the evening that Lisa died, thinking back on it, did you observe anything unusual about her that night?

Dan Winger: A few things.

Defence attorney: Tell us what they were.

Dan Winger: For the last couple of nights before then, she was very, very clingy. Normally, it was normal procedure, Lisa would normally go to bed probably an hour or hour and a half before I would. I would normally do things after she would go to bed. And then I would go to bed afterwards. And she demanded that Friday and Saturday that I went to bed when she went to bed, immediately. And she had never been like that before.

Defence attorney: When you went on that evening to take the gun from Lisa, what was in your mind?

Dan Winger: That she was clowning around.

Defence attorney: What was in your mind as far as her intention?

Dan Winger: That she was doing it for attention. But when she didn't acknowledge me when I walked into the room, then I got a little bit more concerned.

Defence attorney: And is that when you attempted to take the gun?

Dan Winger: Yes, it is.

Defence attorney: Is that when the gun went off?

Dan Winger: Yes, it is.

Defence attorney: Nothing further.

***

Prosecutor cross-examines Dan Winger.

Prosecutor: Listen to the question, Mr. Winger. Did Officer Walsh testify truthfully when he said that you told him that your wife came downstairs with a .357 Magnum and said, “It’s times like this that people kill themselves.”

Dan Winger: That’s incorrect, that is not what I said.

Prosecutor: So he was not testifying truthfully?

Dan Winger: I am not saying that he wasn’t testifying to what he thought I said, that is not what I said.

Prosecutor: Isn’t it a fact, Mr. Winger, that as this argument escalated, you began to lose your patience?

Dan Winger: No.

Prosecutor: And that you pulled out the gun from under the bed where you had kept it loaded. At that time, Mr. Winger, your wife, she was by the mirror, Mr. Winger.

Dan Winger: Absolutely not. What you’re saying is not true.

Prosecutor: She wasn’t by the mirror?

Dan Winger: No, what you’re saying about me pulling the gun out from underneath the bed.

Prosecutor: She was by the mirror, isn’t that right Mr. Winger? And she was walking out the door.

Dan Winger: Absolutely not.

Prosecutor: Because she told you, Mr. Winger, that she’d had it. She wanted a divorce.

Dan Winger: No, she did not.

Prosecutor: You were talking about divorce, weren’t you?

Dan Winger: Absolutely not.

Prosecutor: Didn’t you talk about divorce about a month or two before this incident?

Dan Winger: We had talked about possibilities of it, I would say, September or October, that’s what? Four months? Five months?

Prosecutor: About divorce?

Dan Winger: Yes.

Prosecutor: And she told you, Mr. Winger, that she was no longer going to have your baby, didn’t she?

Dan Winger: No.

Prosecutor: I’m dreaming?

Dan Winger: That’s right.

Prosecutor: Am I dreaming, Mr. Winger, that at that point you picked up this gun.

Dan Winger: Absolutely not.

Prosecutor: You pointed at her and you pulled the trigger.

Dan Winger: Absolutely not.

Prosecutor: At that point, Mr. Winger, she fell to the left, down against that heater. And at that point you panicked.

Dan Winger: No way. I did not shoot my wife.

****

Defence attorney re-examines Dan Winger.

Defence attorney: Mr. Winger, at the time of Lisa's death, did you love your wife?

Dan Winger: Absolutely.

Defence attorney: Were you discussing divorce with her?

Dan Winger: No, we were discussing having a baby.

Defence attorney: Was anything that prosecutor said to you about his version of the incidents that night true?

Dan Winger: No.

Defence attorney rests.

*****

suggest to you and submit to you, that's consistent with where the bullet entered the head of Lisa Winger at the angle. This is a very simple case. Did Lisa Winger want to commit suicide? Did she commit suicide? She couldn't have committed suicide. She couldn't have shot herself. It's impossible. It's physically impossible to shoot yourself with this gun from 15 centimetres away.

The judge now instructs the jury. Please read this instruction carefully as it tell you what your task as a juror will be in terms of the law.

Judge John Kingfield: If you are not satisfied beyond a reasonable doubt that the defendant did in fact intend to cause the victim's death then you must find the defendant not guilty of murder. If, on the contrary, you are satisfied beyond a reasonable doubt that the defendant did intend to cause the victim's death then you must find the defendant guilty of murder.

Deliberation

Q7. In your opinion, is the Defendant *Daniel Winger* guilty or not guilty of murder?

Guilty	☐
Not Guilty	☐

Q8. In your opinion, how probable is it that the Defendant committed the crime of murder?

0 – 9%	☒
10 – 19%	☒
20 – 29%	☒
30 – 39%	☒
40 – 49%	☒
50 – 59%	☒
60 – 69%	☒
70 – 79%	☒
80 – 89%	☒
90 – 99%	☐
100%	☐

Q9. How confident are you regarding your verdict (whether your verdict was guilty or not guilty?)

	Very Uncertain	Somewhat uncertain	Neither Certain or Uncertain	Somewhat Certain	Very Certain
Degree of confidence	☐	☒	☒	☒	☒

Q10. Please describe the content of the Facebook Post that you read?

_____

Q11. Did the Facebook Post influence your decision?

Yes	☐
No	☐

Q12. To what extent did the transcript support the prosecution argument?

0 – 9%	☐
10 – 19%	☐
20 – 29%	☐
30 – 39%	☐
40 – 49%	☐
50 – 59%	☐
60 – 69%	☐
70 – 79%	☐
80 – 89%	☐
90 – 99%	☐
100%	☐

Q13. To what extent did the transcript support the defence argument?

0 – 9%	☐
10 – 19%	☐
20 – 29%	☐
30 – 39%	☐
40 – 49%	☐
50 – 59%	☐
60 – 69%	☐
70 – 79%	☐
80 – 89%	☐
90 – 99%	☐
100%	☐

Q14. Please list any pieces of evidence that you based your verdict on?

_____

Confidence in Public Services	None at all	Not very much confidence	Quite a lot of confidence	A great deal of confidence
Confidence in Criminal Courts *How much confidence do you have in the criminal courts...*				
to have regard for defendants' rights?	☐	☐	☐	☐
to have regard for victims' rights?	☐	☐	☐	☐
to deal with matters quickly?	☐	☐	☐	☐
to deal with matters fairly?	☐	☐	☐	☐
Confidence in Prison System *How much confidence do you have in prisons…*				
to rehabilitate prisoners?	☐	☐	☐	☐
to act as a form or punishment?	☐	☐	☐	☐
to deter future offending?	☐	☐	☐	☐
to teach practical skills to prisoners?	☐	☐	☐	☐
Confidence in the Police *How much confidence do you have in the police...*				
to solve crime?	☐	☐	☐	☐
to prevent crime?	☐	☐	☐	☐
to respond quickly to crime?	☐	☐	☐	☐
to act fairly when dealing with people?	☐	☐	☐	☐

Please answer the following questions.

Q16. In court, what is the defendant's (Dan Winger's) version of the events that lead to his wife's death?

The defendant and his wife entered their bedroom during a fight. The defendant pointed a gun at his wife and pulled the trigger to scare her, but didn't think it was loaded.	☐
The defendant and his wife had a fight. He later walked into their room and saw her holding a gun to her head. When he tried to take the gun away from her it went off.	☒
The defendant and his wife had a fight. The defendant walked into the room at the moment his wife took her own life with his firearm.	☐
The defendant and his wife got into a heated fight over the prospect of divorce. In a rage the defendant shot and killed his wife.	☐

Q17. According to Chester Gasrowski (Lisa Winger' father) was Lisa right handed or left handed?

Right	☐
Left	☐

Q18. According to the defendant, his wife was holding the gun in which hand when he claimed she shot herself?

Right	☐
Left	☐

Q19. According to the defendant, what was he and his wife fighting about earlier in the night?

It was over the defendant drinking too much alcohol.	☐
It was over the defendant not wanting a baby.	☐
It was over jewellery.	☐
It was over the defendant watching too much TV and ignoring his wife.	☐

Q20 What was the Facebook post about that you read before the trial [**Pro Prosecution**]

The defendant asking his friends for advice about divorcing his wife.	☐
The defendant wanting to renew his vowels with his wife.	☐
The defendant wanting to have a baby with his wife.	☐
The defendant being angry with his wife and drinking with his friends.	☐

Q21 Some of you were asked to read a Facebook Post from the defendant Daniel Winger. – this post had a picture of a beverage in it. What was it about? [**Pro Defence**]

The defendant commenting on how he has a drinking problem, and wants to fix it?	☐
The defendant discussing his favourite brand of beer?	☐
The defendant discussing how he needs a coffee after a long day of arguing with his wife?	☐
The defendant speaking angrily about his wife and wanting to drink with his friends?	☐
N/A I did not read this Facebook Post.	

Q19. Some of you were asked to read a Facebook post from the defendant Daniel Winger – this post had jewellery in it. What was it about?

It defendant discussing his wifes wedding ring and how he wants a divorce?	☐
It was a picture of the jewellery his wife kept complaining about wanting?	☐
It was a picture of earrings to show how much he cared.	☐
It was a picture of earrings and the defendant saying how he was returning them to the store?	☐
N/A I did not read this post	

Q20 What was the Facebook post about that you read before the trial [**Pro Prosecution**]

The defendant asking his friends for advice about divorcing his wife.	☐
The defendant wanting to renew his vowels with his wife.	☐
The defendant wanting to have a baby with his wife.	☐
The defendant being angry with his wife and drinking with his friends.	☐

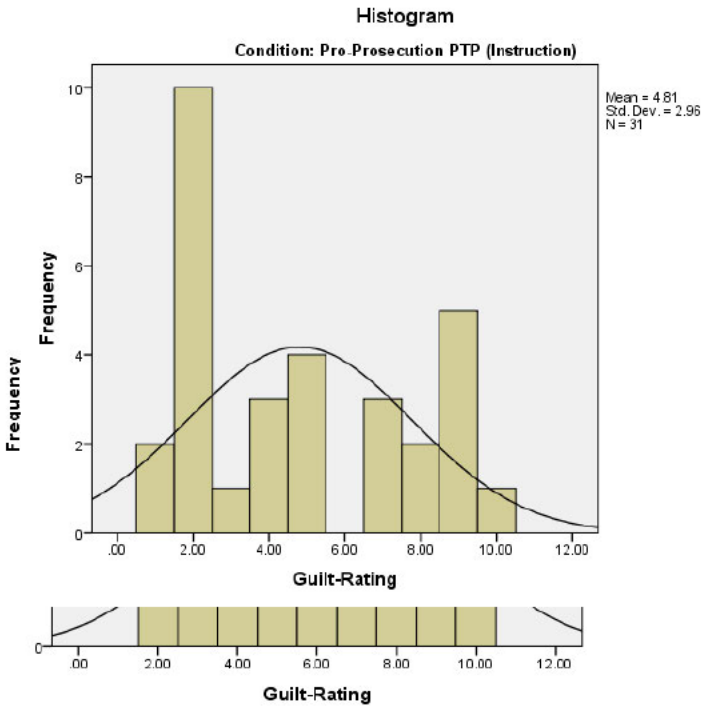
APPENDIX B: Normality Checks and Data Inspection

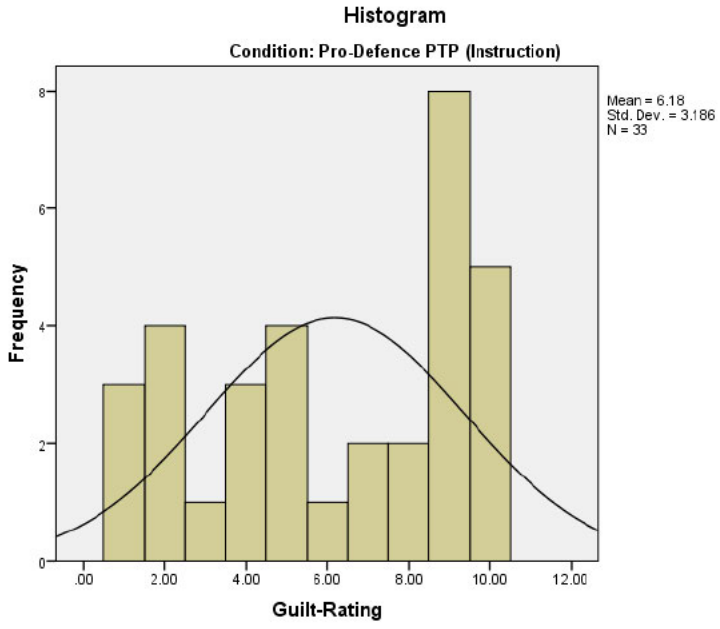
Assumption of Normality: Histograms and P-P Plots per condition: confidence and guilt ratings

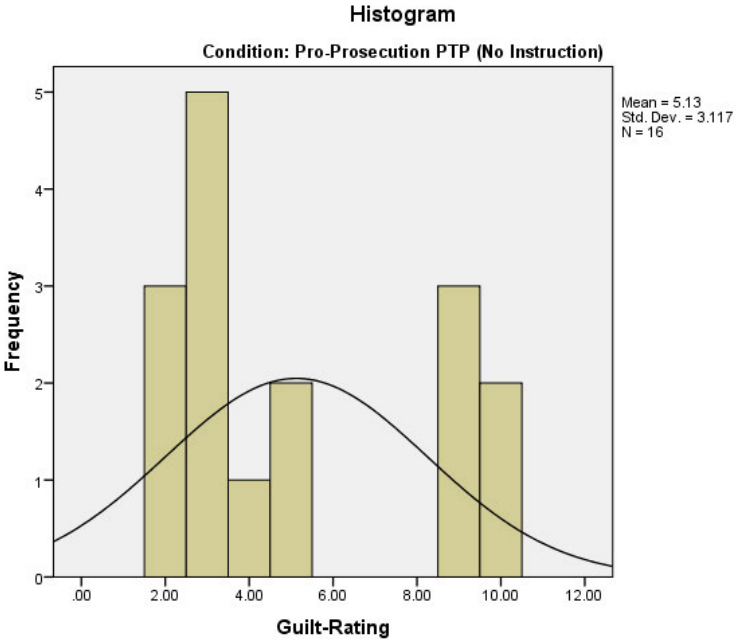
Tests of Normality

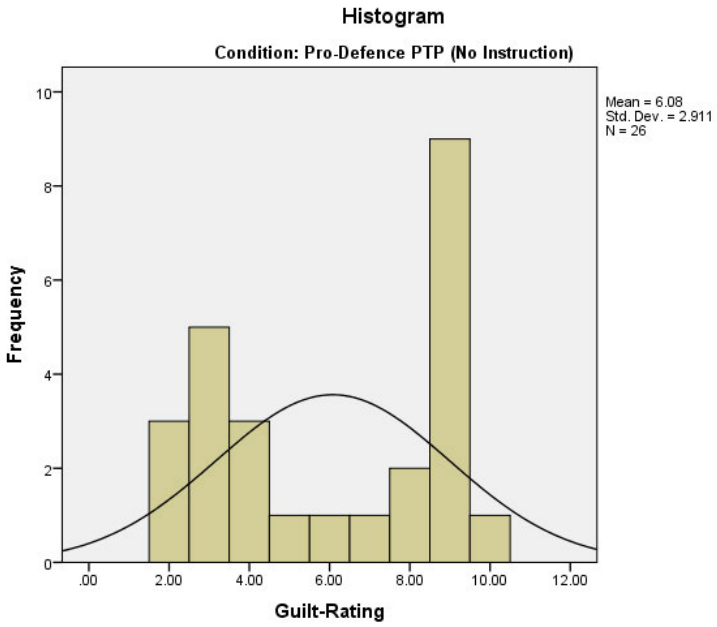
	Condition	Kolmogorov-Smirnov[a]			Shapiro-Wilk		
		Statistic	df	Sig.	Statistic	df	Sig.
Guilt-Rating	Control	.203	25	.009	.879	25	.006
	Pro-Defence PTP (Instruction)	.206	33	.001	.881	33	.002
	Pro-Defence PTP (No Instruction)	.227	26	.001	.832	26	.001
	Pro-Prosecution PTP (Instruction)	.216	31	.001	.872	31	.002
	Pro-Prosecution PTP (No Instruction)	.252	16	.008	.802	16	.003
Confidence	Control	.228	25	.002	.901	25	.019
	Pro-Defence PTP (Instruction)	.272	33	.000	.851	33	.000
	Pro-Defence PTP (No Instruction)	.272	26	.000	.857	26	.002
	Pro-Prosecution PTP (Instruction)	.312	31	.000	.841	31	.000
	Pro-Prosecution PTP (No Instruction)	.217	16	.042	.887	16	.051

a. Lilliefors Significance Correction


Histogram
Condition: Pro-Prosecution PTP (Instruction)
Mean = 4.81
Std. Dev. = 2.96
N = 31
Frequency
Guilt-Rating


Histogram
Condition: Pro-Defence PTP (Instruction)
Mean = 6.18
Std. Dev. = 3.186
N = 33
Frequency
Guilt-Rating


Histogram
Condition: Pro-Prosecution PTP (No Instruction)
Mean = 5.13
Std. Dev. = 3.117
N = 16
Frequency
Guilt-Rating
0
1
2
3
4
5
.00
2.00
4.00
6.00
8.00
10.00
12.00


Histogram
Condition: Pro-Defence PTP (No Instruction)
Mean = 6.08
Std. Dev. = 2.911
N = 26
Frequency
Guilt-Rating
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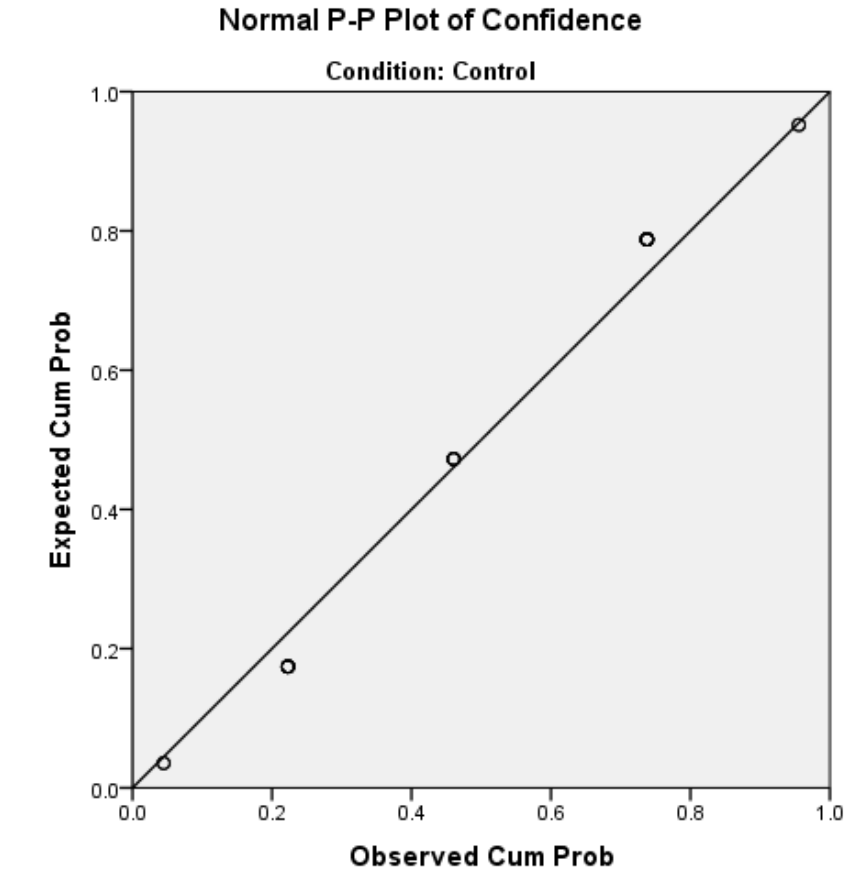
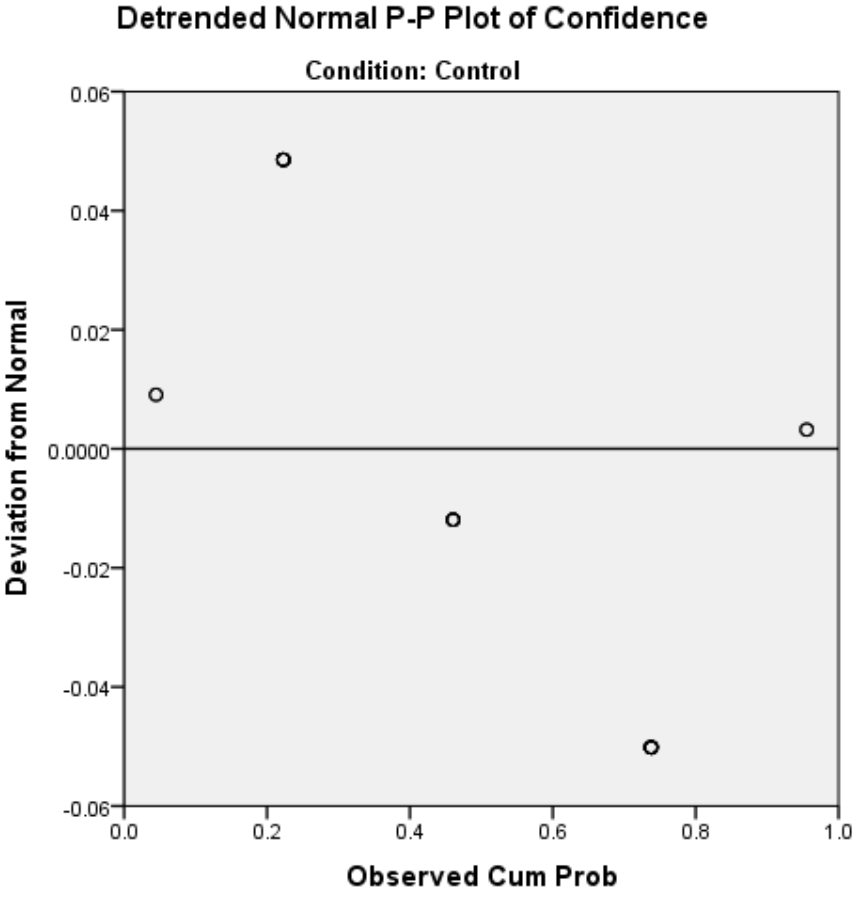
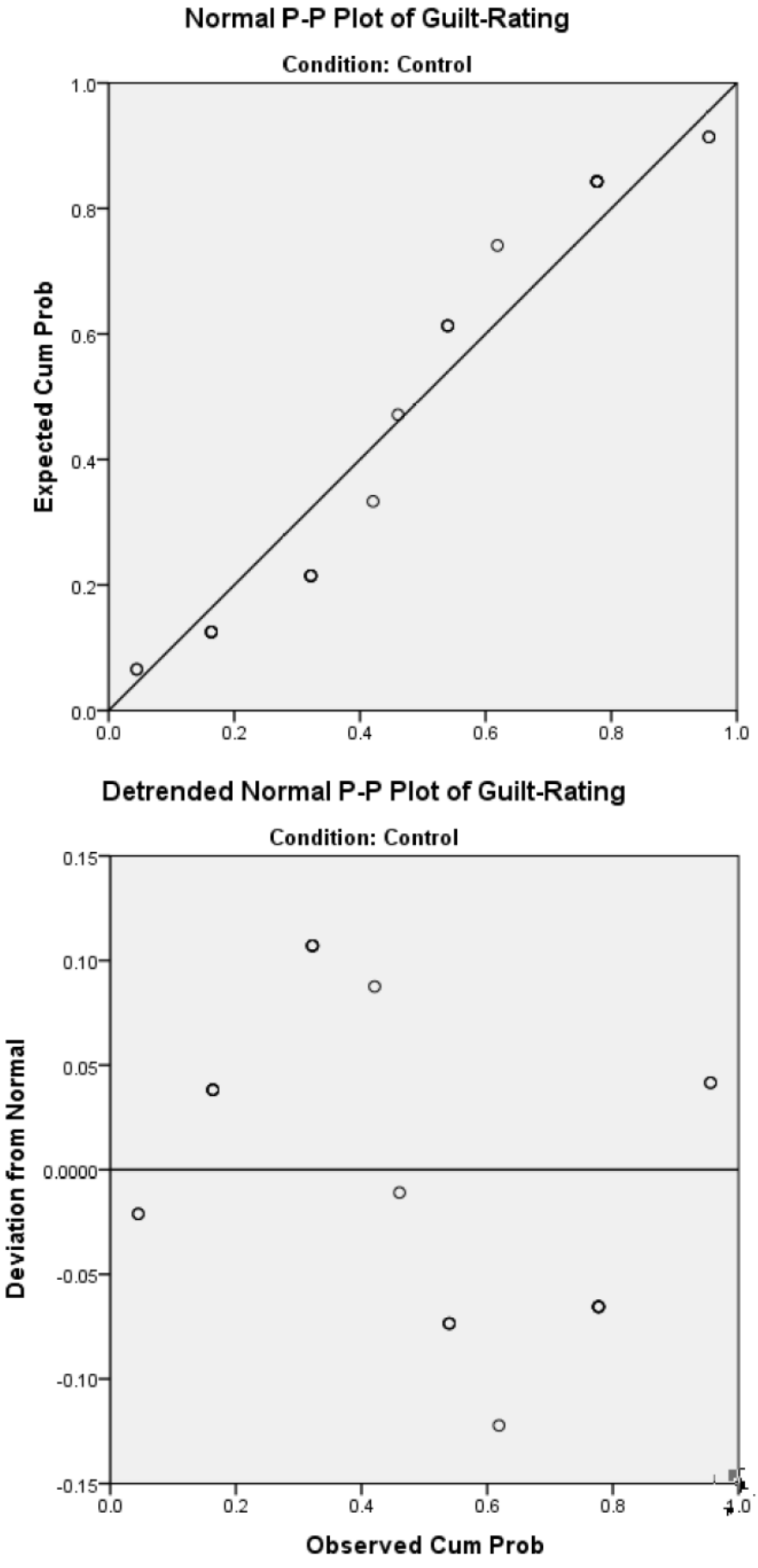
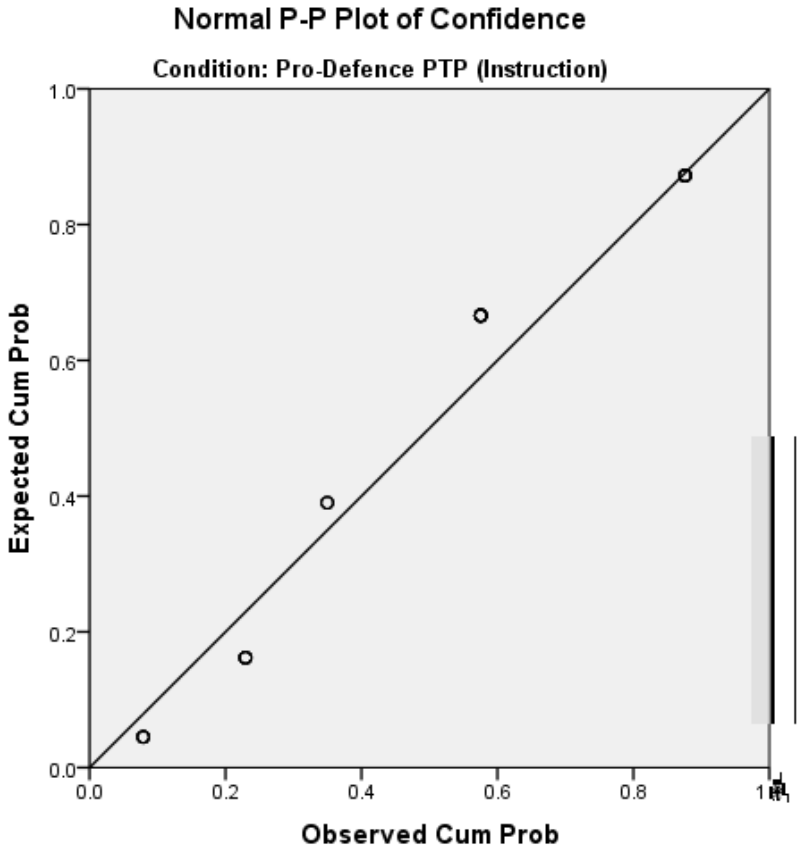
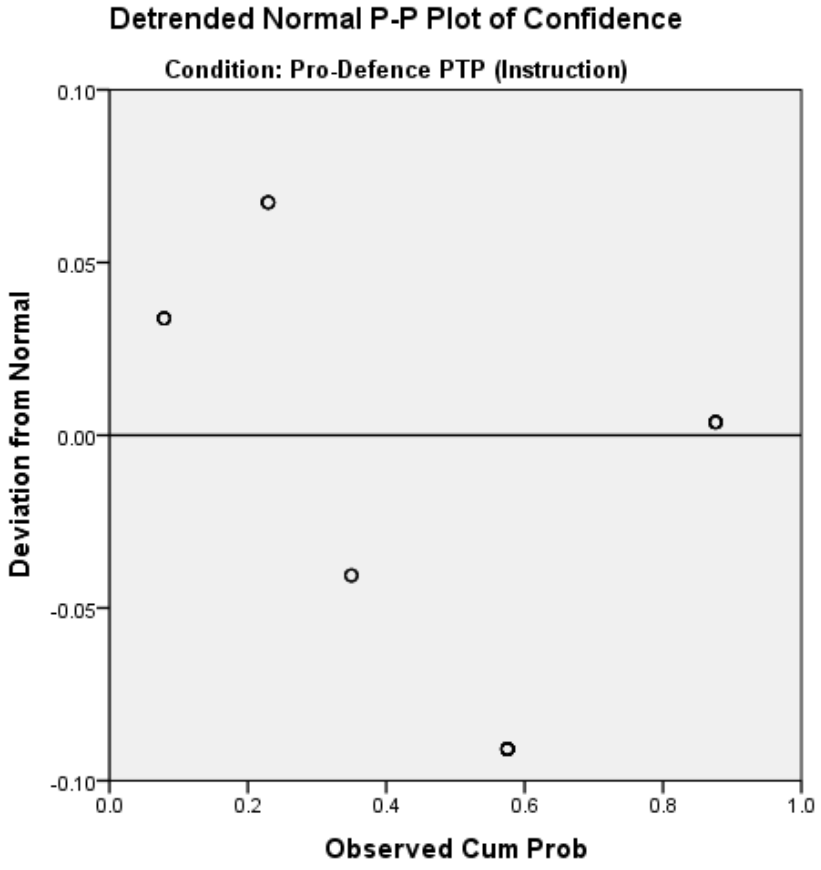
2
4
6
8
10
.00
2.00
4.00
6.00
8.00
10.00
12.00

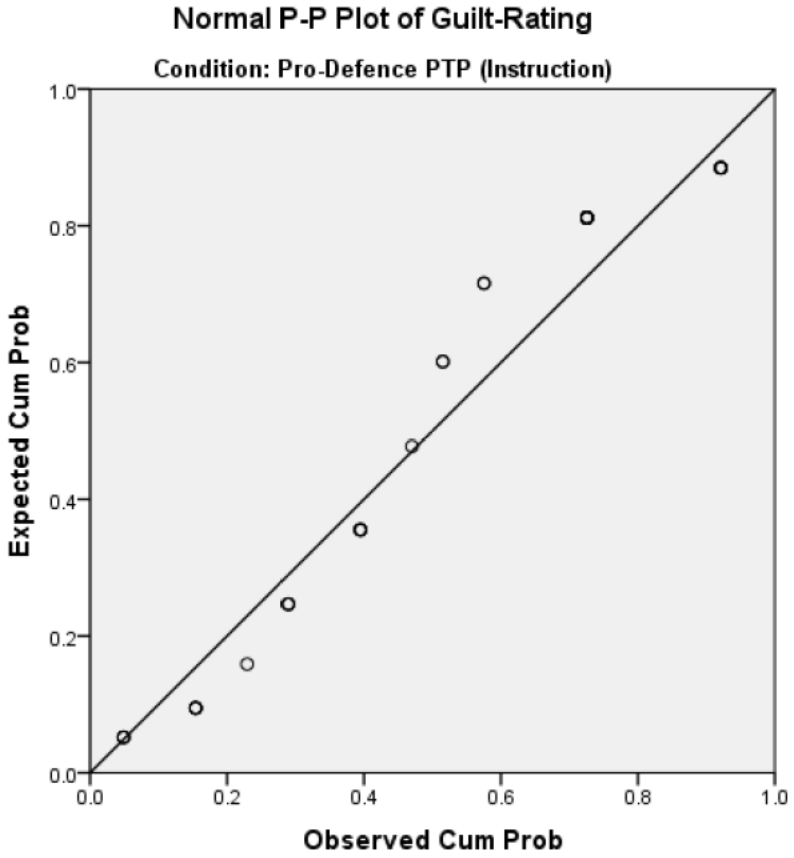

Normal P-P Plot of Confidence
Condition: Control
Expected Cum Prob
Observed Cum Prob
0.0
0.2
0.4
0.6
0.8
1.0

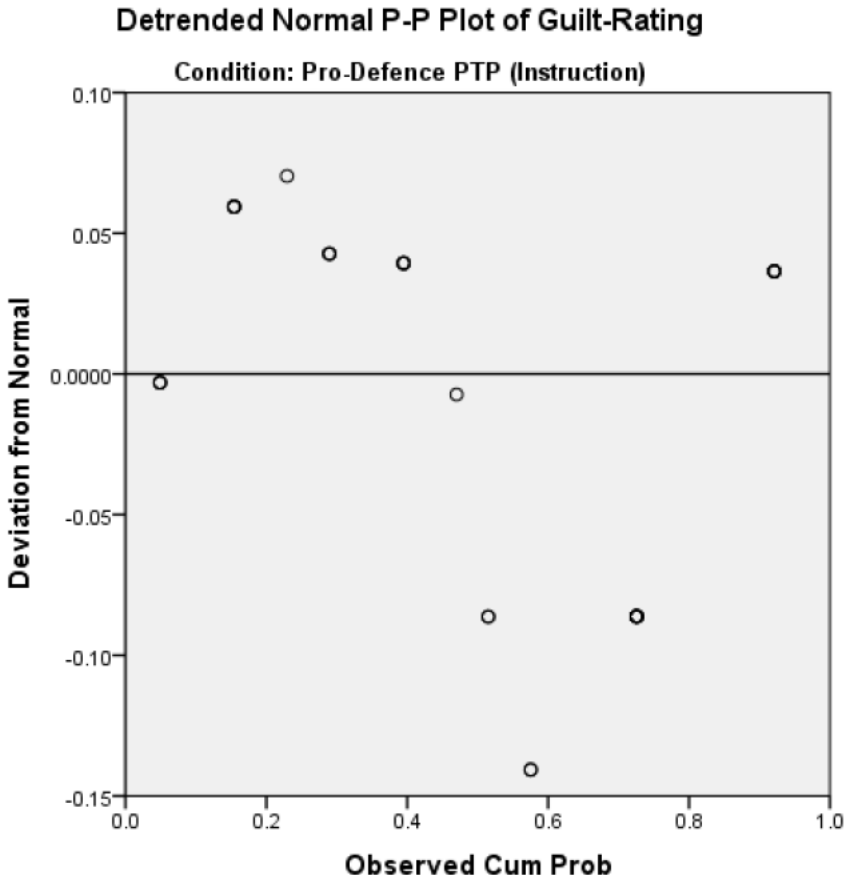

Detrended Normal P-P Plot of Confidence
Condition: Control
Deviation from Normal
Observed Cum Prob
0.06
0.04
0.02
0.0000
-0.02
-0.04
-0.06
0.0
0.2
0.4
0.6
0.8
1.0

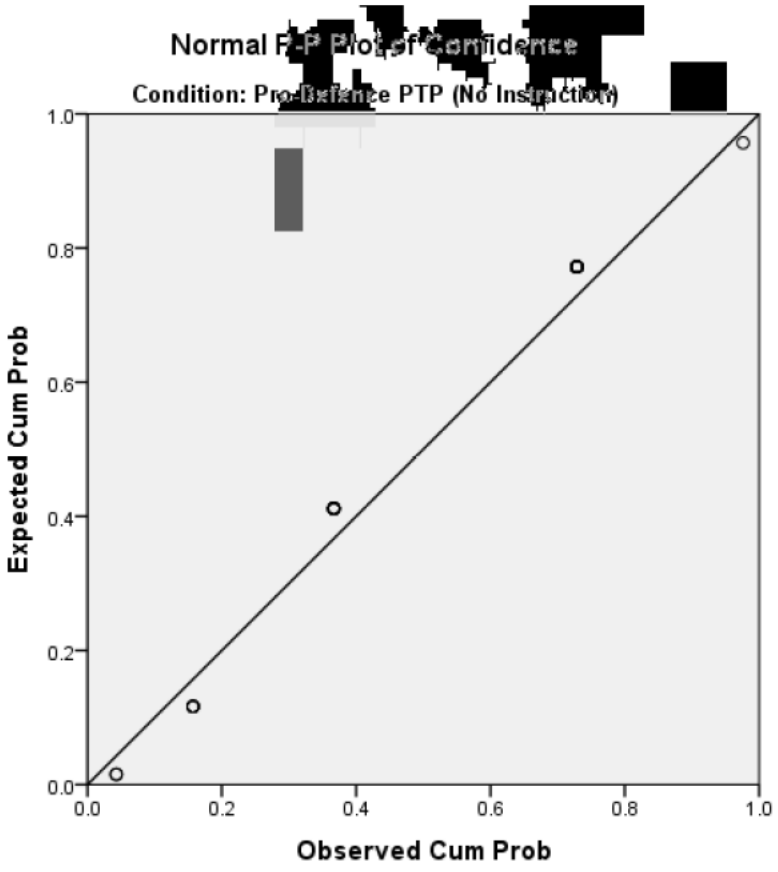

Normal P-P Plot of Guilt-Rating
Condition: Control
Expected Cum Prob
Observed Cum Prob
0.0
0.2
0.4
0.6
0.8
1.0
Detrended Normal P-P Plot of Guilt-Rating
Condition: Control
Deviation from Normal
0.15
0.10
0.05
0.0000
-0.05
-0.10
-0.15

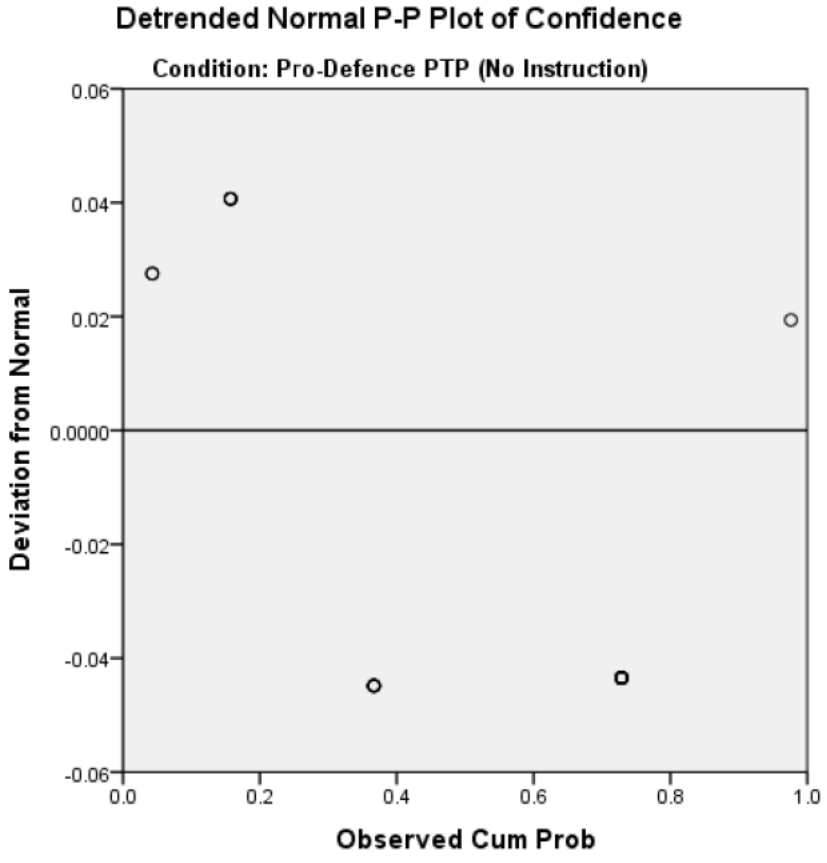

Normal P-P Plot of Confidence
Condition: Pro-Defence PTP (Instruction)
Expected Cum Prob
Observed Cum Prob
0.0
0.2
0.4
0.6
0.8
1.0

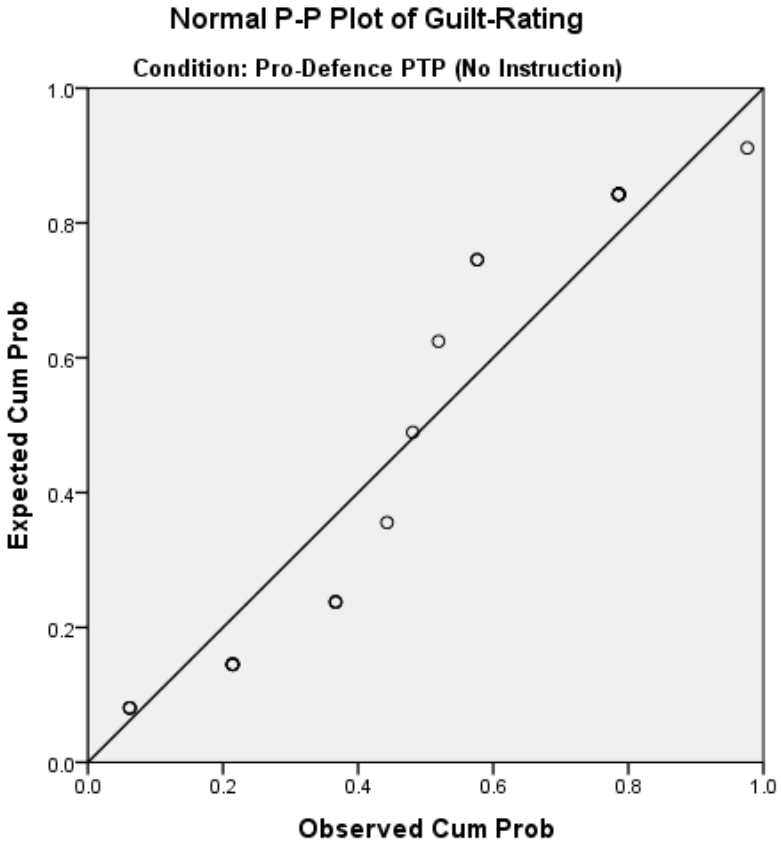

Detrended Normal P-P Plot of Confidence
Condition: Pro-Defence PTP (Instruction)
Deviation from Normal
Observed Cum Prob
0.10
0.05
0.00
-0.05
-0.10
0.0
0.2
0.4
0.6
0.8
1.0

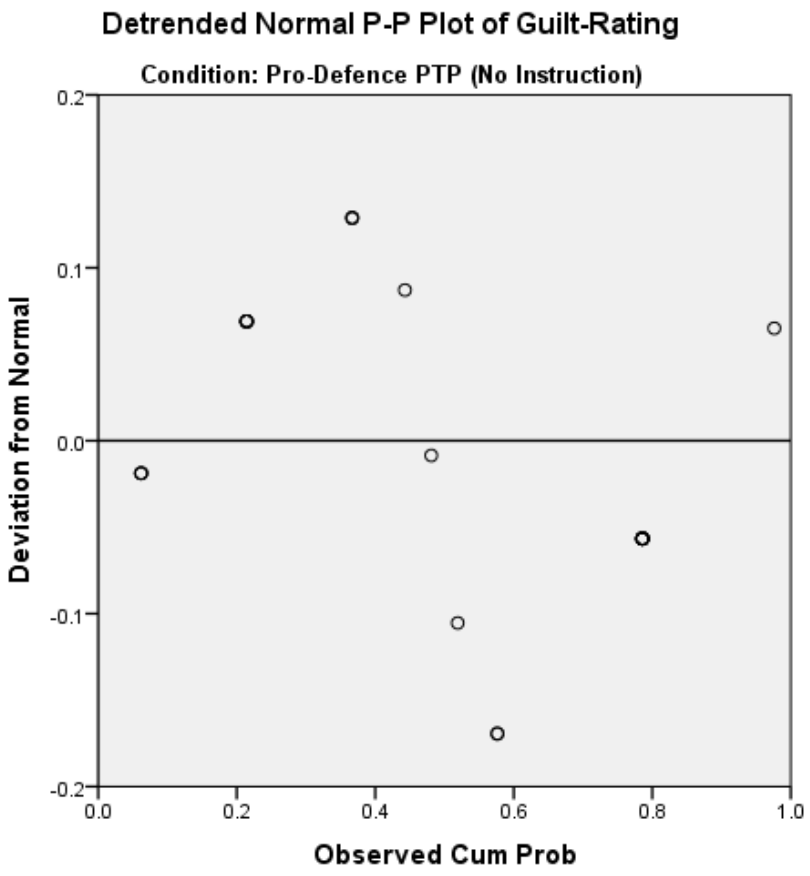

Normal P-P Plot of Guilt-Rating
Condition: Pro-Defence PTP (Instruction)
Expected Cum Prob
Observed Cum Prob
0.0
0.2
0.4
0.6
0.8
1.0

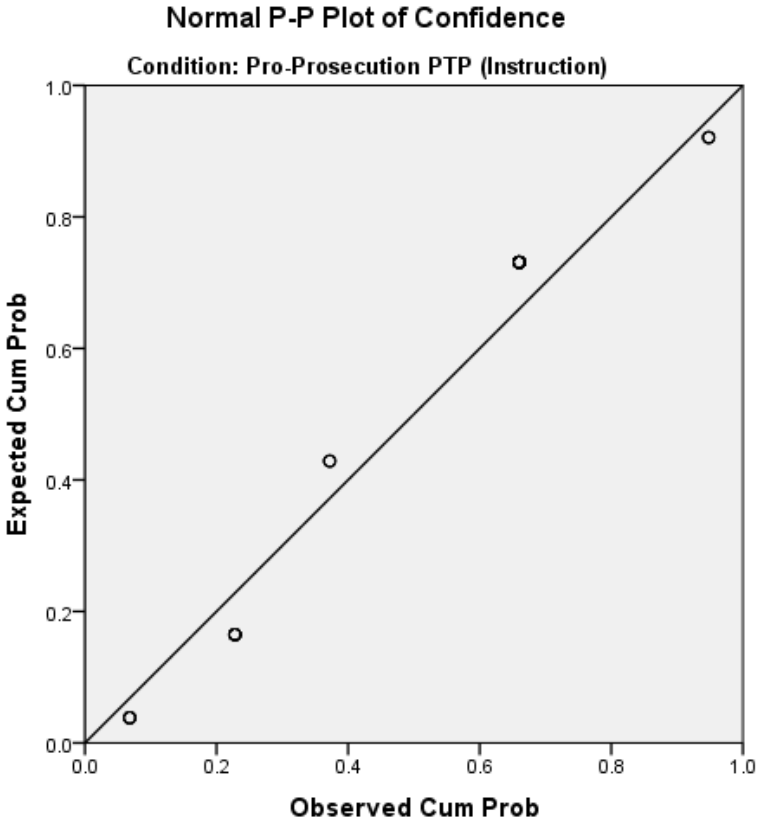

Detrended Normal P-P Plot of Guilt-Rating
Condition: Pro-Defence PTP (Instruction)
Deviation from Normal
Observed Cum Prob
0.10
0.05
0.0000
-0.05
-0.10
-0.15
0.0
0.2
0.4
0.6
0.8
1.0

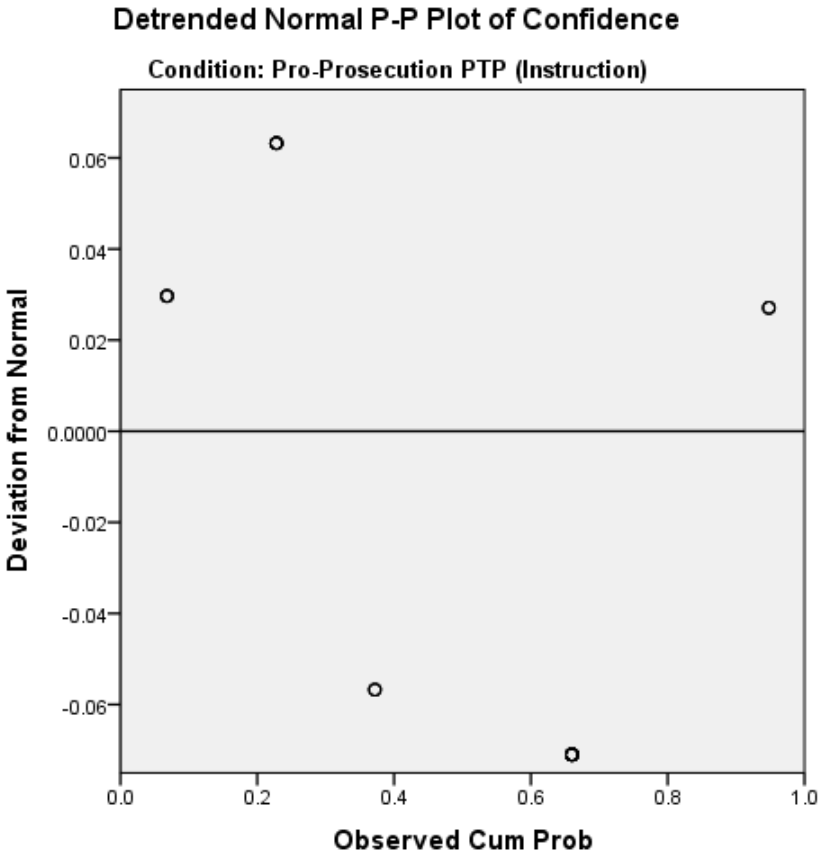

Normal P-P Plot of Confidence
Condition: Pro-Defence PTP (No Instruction)
Expected Cum Prob
Observed Cum Prob
0.0
0.2
0.4
0.6
0.8
1.0

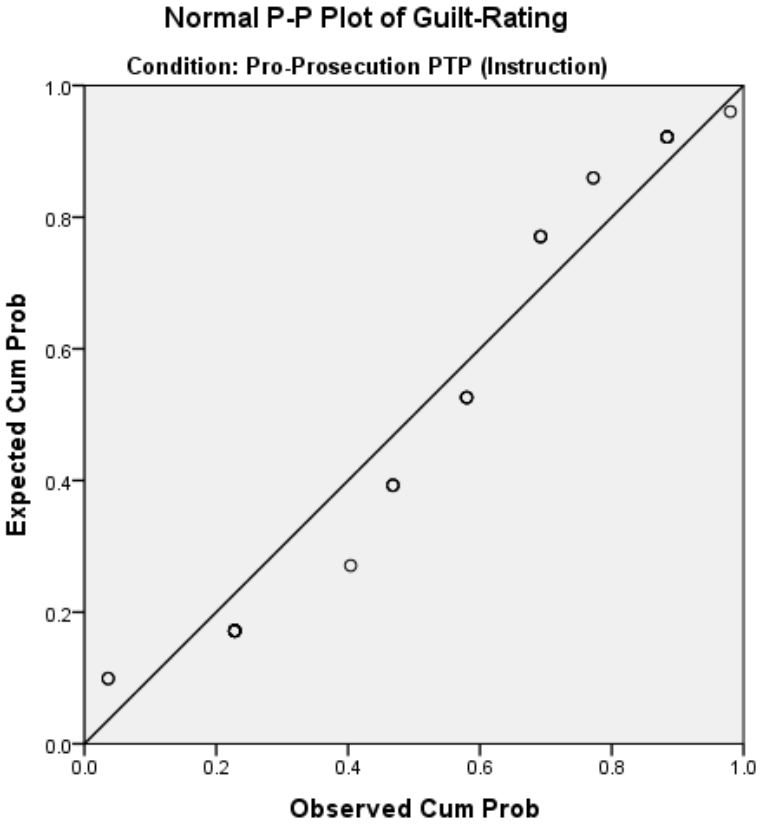

Detrended Normal P-P Plot of Confidence
Condition: Pro-Defence PTP (No Instruction)
Deviation from Normal
Observed Cum Prob
0.06
0.04
0.02
0.0000
-0.02
-0.04
-0.06
0.0
0.2
0.4
0.6
0.8
1.0

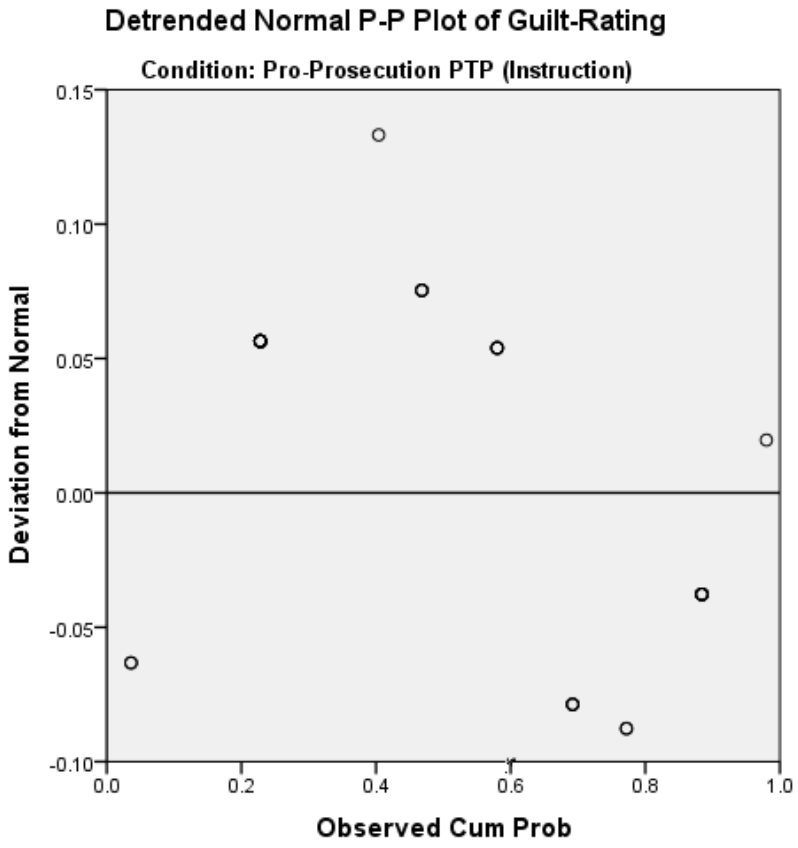

Normal P-P Plot of Guilt-Rating
Condition: Pro-Defence PTP (No Instruction)
Expected Cum Prob
Observed Cum Prob
0.0
0.2
0.4
0.6
0.8
1.0

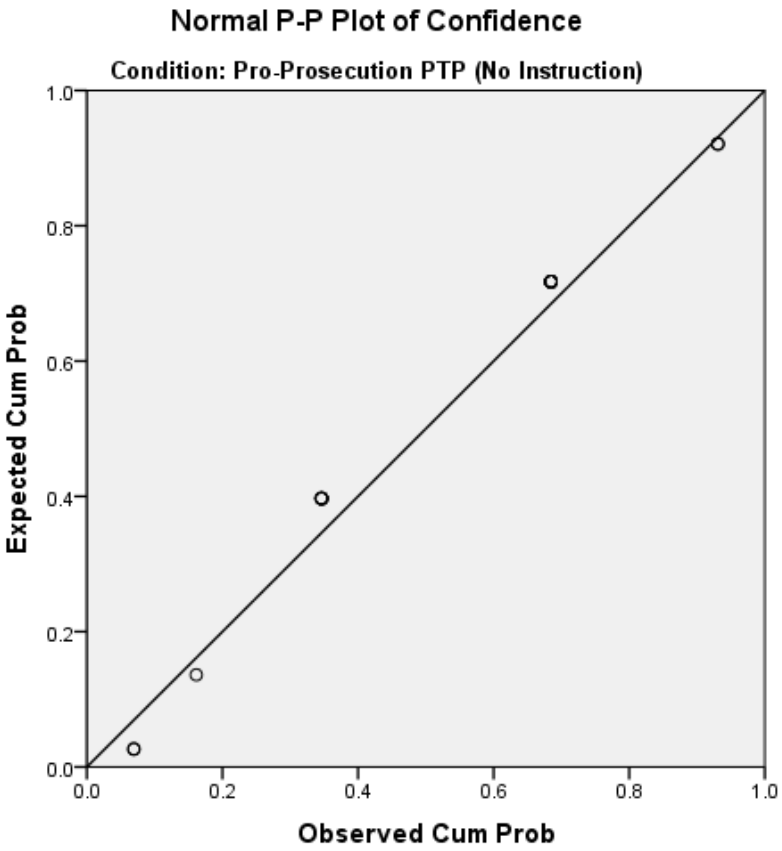

Detrended Normal P-P Plot of Guilt-Rating
Condition: Pro-Defence PTP (No Instruction)
Deviation from Normal
Observed Cum Prob
0.2
0.1
0.0
-0.1
-0.2
0.0
0.2
0.4
0.6
0.8
1.0

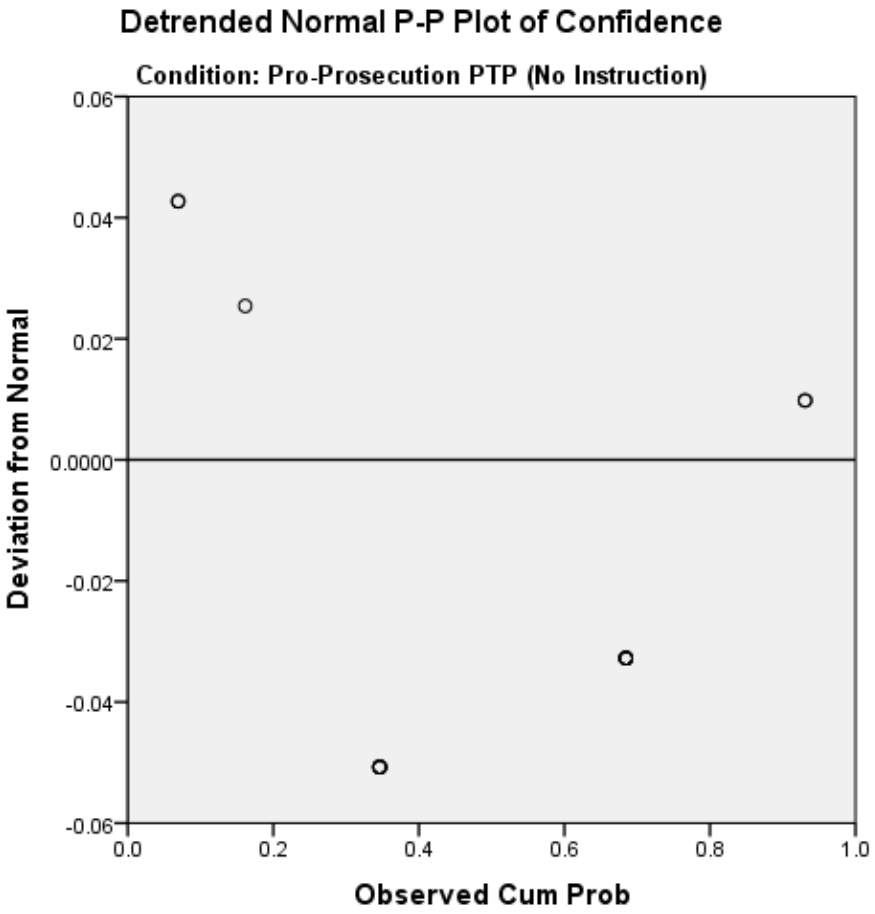

Normal P-P Plot of Confidence
Condition: Pro-Prosecution PTP (Instruction)
Expected Cum Prob
Observed Cum Prob
0.0
0.2
0.4
0.6
0.8
1.0

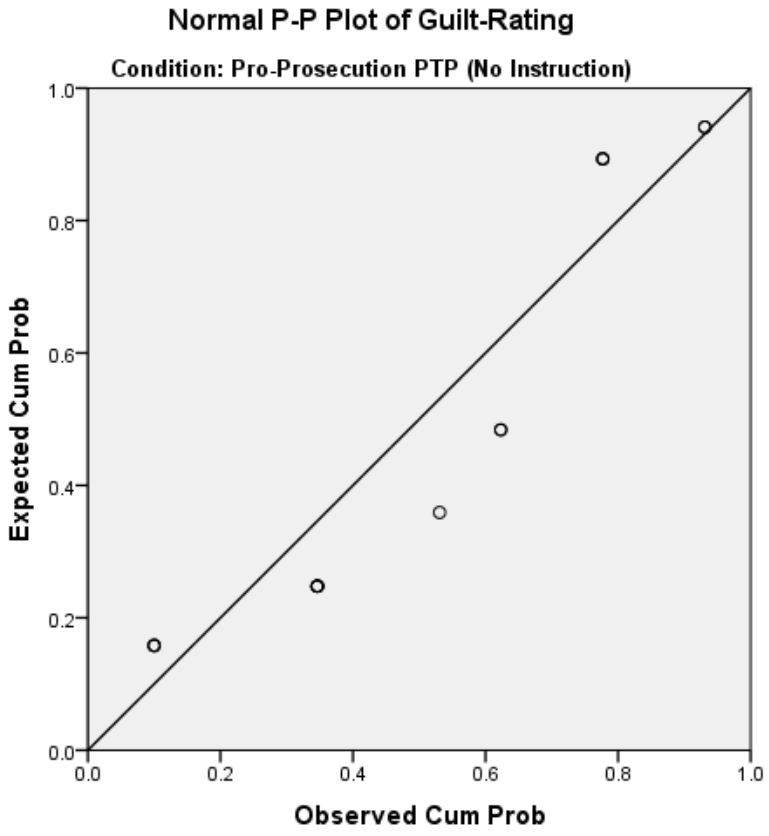

Detrended Normal P-P Plot of Confidence
Condition: Pro-Prosecution PTP (Instruction)
Deviation from Normal
Observed Cum Prob
0.06
0.04
0.02
0.0000
-0.02
-0.04
-0.06
0.0
0.2
0.4
0.6
0.8
1.0

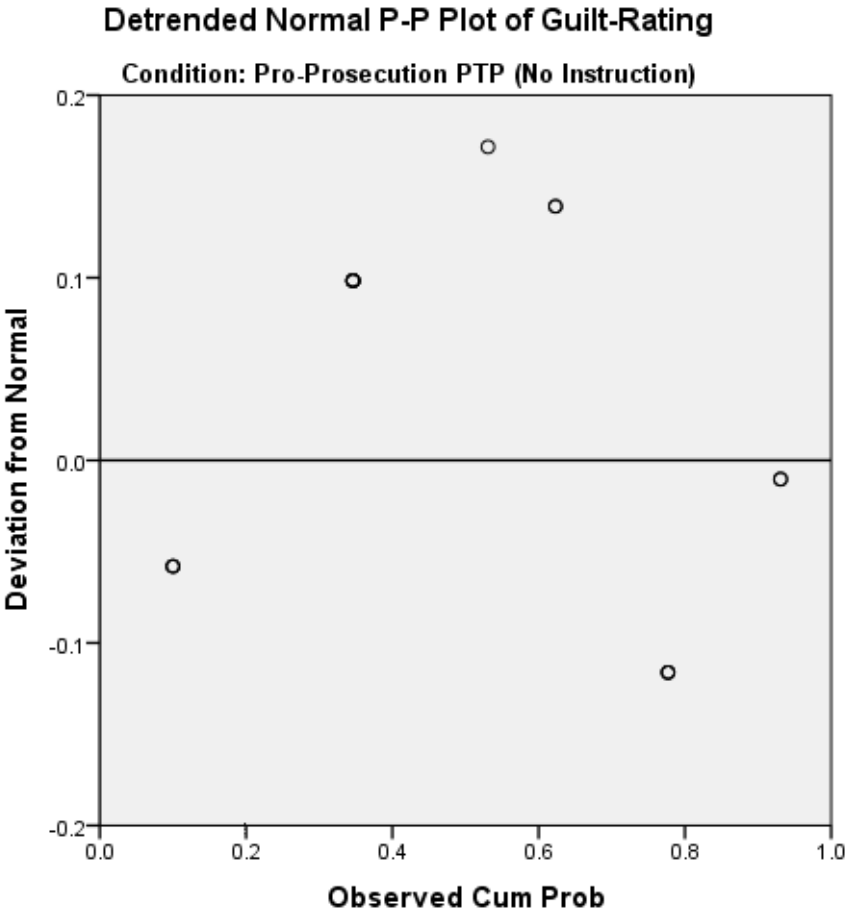

Normal P-P Plot of Guilt-Rating
Condition: Pro-Prosecution PTP (Instruction)
Expected Cum Prob
Observed Cum Prob
0.0
0.2
0.4
0.6
0.8
1.0


Detrended Normal P-P Plot of Guilt-Rating
Condition: Pro-Prosecution PTP (Instruction)
Deviation from Normal
Observed Cum Prob
0.15
0.10
0.05
0.00
-0.05
-0.10
0.0
0.2
0.4
0.6
0.8
1.0


Normal P-P Plot of Confidence
Condition: Pro-Prosecution PTP (No Instruction)
Expected Cum Prob
Observed Cum Prob
0.0
0.2
0.4
0.6
0.8
1.0


Detrended Normal P-P Plot of Confidence
Condition: Pro-Prosecution PTP (No Instruction)
Deviation from Normal
0.06
0.04
0.02
0.0000
-0.02
-0.04
-0.06
0.0
0.2
0.4
0.6
0.8
1.0
Observed Cum Prob


Normal P-P Plot of Guilt-Rating
Condition: Pro-Prosecution PTP (No Instruction)
Expected Cum Prob
Observed Cum Prob
0.0
0.2
0.4
0.6
0.8
1.0


Detrended Normal P-P Plot of Guilt-Rating
Condition: Pro-Prosecution PTP (No Instruction)
Deviation from Normal
0.2
0.1
0.0
-0.1
-0.2
0.0
0.2
0.4
0.6
0.8
1.0
Observed Cum Prob