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Section 12 of the Canada Evidence Act and the Deliberations of Simulated Juries

Valerie P. Hans and Anthony N. Doob†*

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In the past, there have been three major approaches to the experimental investigation of the jury. First, juror selection research involves the study of the relation between verdicts or leniency toward certain classes of defendants and the characteristics of potential jurors. This approach is correlational, with the emphasis almost exclusively on the effects of demographic variables or personal traits of jurors on verdicts.

The second class of research is group study, in which the amount and style of individual participation is observed within the context of simulated jury deliberations (*e.g.*, Strodbeck, James and Hawkins, 1957). Group research, by both legal scholars and social psychologists, does provide information about social influence and how certain individuals function within a group. However, this type of research does not usually furnish information about which verdict will be reached, nor about what factors influence specific group verdicts. Rather, the emphasis has been on how an individual operates within a group.

Finally, experimental psychology has made another con-

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tribution to the study of the jury; numerous researchers have conducted experimental studies employing legal stimulus materials. Typically, in such a study, the presence or absence of a piece of evidence or other information about a hypothetical case is varied, and its effects on judgments about the defendant by individual jurors are assessed (*e.g.*, Landy and Aronson, 1969). Research from these three traditions has concentrated on the effects of characteristics of the potential juror on behaviour in simulated juries or on verdicts, or has experimentally tested the effects of pieces of evidence on simulated individual juror's judgments of guilt. Thus, the focus in previous research has been primarily on the individual juror.

If one wishes to understand the jury decision-making process and to generalize results from experimental studies of the jury to the court-room, the emphasis and reliance on individual judgments or verdicts may not be entirely appropriate. There are two compelling reasons for studying groups in addition to studying individuals. First, the method by which an individual arrives at a judgment may not be analogous to the procedure by which a jury arrives at a verdict. It may be the case that effects on verdicts occurring at the individual decision-making level may not occur at the group decision-making level. For example, it is conceivable that effects obtained on the individual level, where an individual has only to justify a decision to himself or herself, may be "washed out" in a logical discussion of the case with others. Alternatively, some information may increase in importance as one attempts to persuade others in a discussion of the case. Group studies are more comparable to the setting in which actual jury verdicts are rendered.

A second disadvantage in relying solely on individual verdicts is the difficulty in examining the decision-making process, since it is essentially private. The public nature of a group deliberation allows greater accessibility to these processes. By examining group discussions of cases, one may gain insight into the manner in which certain factors affect jury decisions. Thus, it is worthwhile to carry out experimental studies using groups of simulated juries.

These are two sets of questions to which the present

research addresses itself. First, by using both individuals and groups of jurors in an experimental jury simulation paradigm, we will be able to compare the verdicts that are made by individuals and groups. To test whether group membership affects an individual, an experimental manipulation was selected — presence or absence of the defendant's criminal record — which prior research had suggested was influential in altering individual judgments of the defendant's guilt (Doob and Kirshenbaum, 1972). In their study, Doob and Kirshenbaum presented subjects with a case transcript and asked them to judge the likelihood of the defendant's guilt. Doob and Kirshenbaum found that subjects who were given additional information about the prior record of the defendant were much more likely to judge the defendant than subjects who were not given record information. One concern of the present study was whether Doob and Kirshenbaum's results would replicate with groups; that is, whether the presence of a defendant's criminal record would increase the probability of guilty verdicts in simulated juries.

Given that presence of criminal record does influence group verdicts, the question arises as to how the presence operates to increase the probability of conviction for the defendant. Does knowledge of a defendant's record change the content of the jury decision-making process in systematic, identifiable ways?

There exist a number of potential ways in which the defendant's record might alter the group deliberation. First, one means by which presence of a criminal record may influence deliberations of a jury is that the credibility of the defendant may be questioned more in "Record" groups. This might well be expected, since the alleged purpose of allowing the defendant's criminal record to be introduced as evidence (Canada Evidence Act, R.S.C. 1970, c. E-10, s. 12) is so that the juror may utilize the record information in evaluating the defendant's credibility as a witness.

Psychological research indicates other ways in which record may affect a juror's judgments, even though the judge's instructions specify record may only be used by jurors to assess the defendant's credibility as a witness. It is well documented (Rosenberg and Sedlak, 1972) that persons generalize nega-

tive characteristics: that is, subjects will infer from knowledge of one negative trait that a person possesses other negative traits. It is likely, therefore, that a juror who has knowledge of one negative characteristic about the defendant (such as previous record) will be likely to infer other unfavourable characteristics about the defendant (such as guilt). A "halo" effect may function in this manner to ensure the defendant's guilt in the eyes of the juror.

A change of meaning interpretation of the halo effect suggests that the connotation of labels or events may change when presented in different contexts (Wyer, 1974). That is, when a characteristic is presented in two different contexts, its meaning is partly a function of the context in which it appears. Studies in impression formation (Anderson, 1974) conceptualize halo effects as the operation of differential weighting of pieces of information in different contexts. Both of these interpretations would predict that the meaning, weight, or significance of evidence in a case may be different when the context is varied by presenting or withholding information about the defendant's record.

Finally, the standard of proof used in deciding conviction, or what constitutes reasonable doubt, may be affected by the presence of the defendant's record. The criteria used for convicting a defendant about whom the juror feels negatively may be lower than the criteria used in convicting a more positively evaluated defendant.

By examining and comparing the content of simulated deliberations where the jury is or is not given information about the defendant's record, the precise means by which the presence of record might influence verdict-making may be clarified. Specifically, we may be able to ascertain whether or not jurors are following the judge's instructions in the appropriate use of a defendant's record.

Method

Experimental design

The experiment was designed to assess the effects of a defendant's criminal record on both individual and group verdicts of his guilt. Presence or absence of the defendant's

record and whether verdicts were made individually or in groups were varied orthogonally. There were 20 persons in each of the individual verdict conditions, and 15 groups comprised of four persons in each of the group verdict conditions.

Subjects

Subjects were 160 men and women living in or visiting the Toronto area. Forty of these were undergraduate students at the University of Toronto who were paid for their participation in the experiment. The remaining 120 were visitors to the Ontario Science Centre in Toronto who volunteered for participation in the experiment. Although the exact sample characteristics are not known, the Ontario Science Centre group appeared to be heterogeneous with respect to age and occupation. All subjects were over 17 years of age.

Procedure

Subjects were randomly assigned to and participated in one of the four conditions of the experiment.¹

Subjects were told to imagine that they were jurors, sitting in court on jury duty. They were told that their task was to reach a verdict in the case before them. Each person then read a description of a hypothetical case about a man accused of burglary.

It described the court proceedings in the burglary case. A woman testified that while she was at a party, her unoccupied home had been broken into. Approximately \$200 had been stolen. As she arrived home, she caught a glimpse of the burglar fleeing through the back yard. She immediately reported the incident to the police. The police picked up a man in the vicinity who fitted her description and who had \$200 in the glove compartment of his car. In a police line-up, this man

¹ There were two exceptions to this. First, subjects from the University of Toronto were randomly assigned to only two of the four conditions (Record and No Record groups). Secondly, there was a constraint on the strict random assignment for the Ontario Science Centre subjects: persons knowing each other were not assigned to the same group. Thus, Ontario Science Centre groups were composed of four persons who had not known one another prior to the beginning of the experiment. This was not necessarily the case for University of Toronto groups.

was positively identified by the woman as the burglar. The girlfriend of the accused testified, however, that the accused was with her at the movies at the time of the break-in. The defendant took the stand and stated that the events of the evening in question were just as his girlfriend had testified.

At this point in the experiment, half of the subjects received an additional piece of information — that the accused had been previously convicted of burglary (Record condition). These subjects were also given the “judge’s instructions” which are given whenever a defendant’s record is made known to the jury. These instructions were as follows:

In the judge’s instructions to the jury, the judge noted that, according to law, the accused person’s prior criminal record should not be used to determine whether or not the defendant is guilty. Prior record should be used only to determine the credibility of the defendant, that is, whether he is to be believed as a witness.

After reading the case, either with or without the record information and judge’s instructions, subjects either (a) made an individual decision about the defendant’s guilt, or (b) engaged with three others in a simulated jury deliberation and reached a group verdict.² The experimenter was not present during the group discussions and the case description was not available to subjects during the verdict-making process.

Data analysis for the jury deliberations

In order to determine the manner in which the defendant’s record may have influenced discussions in the group deliberation of the case, tape recordings of the group discussions were made. The group deliberations were analyzed by first breaking down each discussion into codes representing different types of statement. Approximately 45 different classes of statements were coded in this manner. For example, statements about the strength of the evidence, probable guilt, the line-up, the alibi,

² In fact, all but one of the 30 groups came to a verdict. Three of the groups called the experimenter in during the course of the deliberation and asked if it was really necessary to come to a single group decision. The experimenter reiterated the importance of coming to a single group verdict and asked again that they try to do so. Two of these three groups arrived at a final verdict. The other group, after further deliberation, again called the experimenter in and said that they simply could not reach a group verdict and would have to be considered a “hung jury”.

the defendant's credibility and mention of other specific pieces of evidence were all assigned different codes. In addition to being coded for content, each statement was assigned a *valence*: each statement was classified as (a) a neutral comment, (b) a comment damaging to the defendant's case and consistent with his conviction, or (c) a comment favourable to the defendant's case and consistent with his acquittal.³ After each deliberation had been coded in this manner, the frequencies of each type of statement were tabulated for each group. To test whether or not the presence of record resulted in significant differences in types of statements made by jurors, t-tests⁴ were performed on frequencies of particular statements or codes for Record and No Record groups.

Two different types of comparisons were made to assess the effects of the record manipulation. Typically, the absolute frequencies of occurrence of particular codes in Record groups and in No Record groups were compared. In some instances, however, it was desirable to establish whether a difference existed between Record and No Record groups if one corrected for the differences in time spent deliberating. On the average, Record groups deliberated 1.4 times as much as No Record

³ A reliability check is an estimate of how reliable or repeatable the data analysis is, and it is typically taken when the coding and analysis of data involve subjective judgments on the part of the coder. The measure is taken even when, as in the present experiment, the person coding the data is unaware of the specific hypotheses being tested. The check attempts to assess whether or not any systematic biases of the person coding the data contribute to the results, and, therefore, whether the conclusions based on the results are justified or invalid.

The reliability measure for the coding of the tape recorded deliberations was calculated in the following manner: a second person, in addition to the regular person coding the tapes, coded three arbitrarily selected discussions. The codes for the two persons were compared, and the percentage of agreement in coding was computed. The percentages of agreement for the three discussions were: 64 per cent, 70 per cent and 83 per cent. The mean reliability for the three groups was 72.3 per cent, representing a total of 135 codes. It is not uncommon for studies involving coding of verbal behaviour to obtain reliability measures of between 70 and 80 per cent. After examining the specific disagreements between the two coders in the reliability checks, it does not seem likely that errors in coding in the present experiment systematically biased the results.

⁴ A t-test is a statistical test which provides an estimate of the probability that an observed difference between means (in the present experiment, for example, differences between frequency of a statement for Record and No Record groups) occurs by chance. A statistically significant result from a t-test of $p < .05$ indicates that an apparent difference between the mean frequency of a particular code for Record and No Record groups is likely to be due to chance alone fewer than one in twenty times. A significant t-test which yields a p-value of less than .01 specifies that the probability that the observed difference between Record and No Record groups occurred by chance is less than one in one hundred. In this experiment, a significant difference from a t-test indicates that there is a clear, quantitative difference between Record and No Record groups on a particular type of statement.

groups spent deliberating. Given that Record groups talked somewhat longer than No Record groups, we wanted to know whether the *nature* of the discussion was affected by the presence of record. Did Record groups simply talk longer about the same topics as No Record groups, or did Record groups discuss particular issues qualitatively more or less than No Record groups? This sort of question may be answered by comparing the frequency per minute rather than the absolute frequency of occurrence of particular codes for Record and No Record groups.⁵

Results and Discussion

Effect of record on verdicts

We predicted that there would be differences between the number of subjects deciding guilty verdicts in the Record and No Record conditions. We thought that more persons reading a case who had information about the defendant's prior conviction would choose to convict the defendant than persons who did not have the record information. We also predicted that the presence of record would increase the percentage of guilty verdicts whether verdicts were made individually or in groups. The results, which are displayed in Table 1, partially supported our predictions. The juries who had the record information were significantly more likely to convict the defendant than the juries without the record information ($p < .01$, Fischer exact test). However, the presence of record did not seem to make much of a difference in the percentage of guilty verdicts when the verdicts were made individually. The results from the individual verdict conditions do not replicate Doob and Kirshenbaum's (1972) original finding, contrary to expectations. There is reason to believe that their experimental manipulation of the presence of a criminal record was stronger

⁵ For most items reported in this paper, the results from these two different types of comparisons were similar. A difference in the absolute frequency of a particular statement in Record and No Record groups typically meant that the item was discussed more per unit time. For some items, although the same pattern of results was found with both analyses, the p-values in the frequency per minute analysis were somewhat higher than the p-values in the absolute frequency analysis. In addition, there were two comparisons in which results from these different analyses were not the same. When results from the two analyses diverge, it is noted. In general, however, correcting for the time difference between Record and No Record groups did not significantly alter the overall pattern of results or affect the interpretation of the data.

than ours, however. In the Doob and Kirshenbaum experiment, the defendant in the case transcript had seven previous convictions, whereas in the present experiment, the defendant had only one prior conviction. The strength of the record manipulation probably increases with the number of previous convictions, and one prior conviction may be a relatively weak manipulation.

What is most striking about the overall pattern of results obtained is that what is apparently a *weak* manipulation (one prior conviction) in the individual verdict condition proves to be a *strong* manipulation in the group verdict condition. In the individual verdict condition, persons were better able to follow the judge's instructions to ignore the defendant's record when assessing guilt. It may be relatively easy to ignore record information if, after given the information and told to disregard it, one immediately makes a verdict, as was the case in the individual verdict conditions. However, these circumstances are a rather artificial approximation to the temporal placement of events in a court-room. In the group verdict condition, which more nearly approximates the jury decision situation, there is more time for the fact that the defendant has a record to "sink in" and possibly affect the group verdict. Presence of record, then, appears to reliably increase the probability that a defendant will be found guilty by a jury, regardless of the evidence.

Table 1

Percentages of guilty verdicts in each of the four conditions

	Individual verdict	Group verdict
Record condition	45% (N= 20)	40% (N= 15 groups)
No Record condition	40% (N= 20)	0% (N= 15 groups)

Content of the jury deliberations

Examination of the content of the deliberations for the Record and No Record groups indicated numerous ways in which the presence of record appeared to alter the deliberation process.

Initial statements

Comparison of the initial statements (the first ten codes of each group discussion) made by members of Record and No Record groups revealed that members of Record groups were significantly more likely to make initially negative or damaging statements about the defendant's case, while members of No Record groups were more likely to make initially positive or favourable statements about the defendant's case. These results and other results from the analysis of the jury deliberations are presented in Table 2. The knowledge that the defendant had a criminal record may have affected some jurors' confidence in their first impressions of the case and thus affected their willingness to make initial statements about the case in the presence of others.

Evidence

Differences between Record and No Record group discussions of the evidence in the case were striking. Although the identical case was given to Record and No Record groups, Record groups considered the evidence against the defendant to be stronger than did No Record groups. This trend manifested itself in two ways: first of all, Record groups were significantly more likely than No Record groups to state that the evidence against the defendant was strong. Furthermore, Record groups tended to bring up more frequently than No Record groups the facts in the case that were most damaging to the defendant. On the average, Record groups mentioned the amount of money stolen and/or found and the glove compartment of the defendant's car more often than No Record groups did. The amount of money found in the defendant's glove compartment approximately corresponded to the amount of money which the victim reported stolen. This fact, although

circumstantial, was clearly a damaging piece of evidence against the defendant. In addition, Record groups more often than No Record groups tended to discuss the fact that the defendant had been identified as the burglar in a police line-up by the burglary victim.⁶

Apparently, presence of record increased the *salience* of the negative evidence against the defendant, since in the Record groups, evidence damaging to the defendant was discussed more frequently, and there was a tendency to view the evidence as indicative of the defendant's guilt. It seems that the actual facts of the case — their salience, their strength, their plausibility — were subtly altered by the presence of record.

This interpretation is further supported when one examines the process by which the No Record groups arrived at their invariably not guilty verdicts. No Record groups *discredited* the evidence significantly and consistently more per unit time than Record groups did. Frequencies of statements which were interpretable as discrediting the evidence⁷ were tabulated, and both the absolute frequencies and mean frequencies per minute of these statements were compared for Record and No Record groups. Although comparing absolute frequencies of statements discrediting the evidence did not yield a significant difference between Record and No Record groups, results from the mean frequency per minute analysis demonstrated that No Record groups were significantly more likely to disparage the evidence ($p < .01$). For example, the No Record juror was more likely to say that the law was biased against the defendant. No Record groups were also more likely to say that police line-ups were biased against the defendant, or that the probability of an accurate identification under the circumstances was low, or that the evidence was only circumstantial. The *validity* of the

⁶ It should be noted that when one corrects for time (see footnote 5), the Record groups were no more likely than the No Record groups to discuss the identification per unit time. However, in their total deliberations, members of Record groups did mention the identification more frequently than did members of No Record groups.

⁷ Statements which discredited the evidence included: comments that the evidence was insufficient or circumstantial, comments about the difficulty of accurately identifying the defendant in a police line-up, statements that police line-ups were biased against the defendant, and similar other comments.

evidence, then, was questioned more by the members of No Record groups.

Regardless of the desirability of questioning evidence or accepting it at face value, it is quite apparent that the presence of record changed the manner in which the jurors interpreted the facts of the case. When the record of the defendant is made known to the jurors, the evidence in the case changes meaning and appears more damaging against the defendant. This finding is important, for it specifies one way in which defendants with and without records receive different treatment.

Table 2
Content differences between Record and No Record group deliberations.

Effect	Record \bar{X}	No Record \bar{X}	t	df	p- value
1. Initially damaging statements about the defendant's case	3.66	1.20	3.09	28	<.01
2. Initially favourable statements about the defendant's case	1.26	2.86	-2.20	28	<.05
3. Statements that the Crown's evidence is strong	4.20	1.13	2.42	28	<.03
4. Discussion of glove compartment	2.33	.80	2.18	28	<.05
5. Discussion of amount of money	10.53	4.86	2.02	28	<.06
6. Discussion of identification	8.40	4.46	1.74	28	<.10
7. Discussion of pieces of evidence as indicative of guilt	8.60	3.80	1.83	28	<.10
8. The discrediting of evidence	21.73	19.60	.38	28	>.10
9. Statements that the law is biased against the defendant	.06	.73	-1.83	28	<.10
10. Statements that reasonable doubt be considered	.53	.06	2.29	28	<.05
11. Credibility:					
(a) total discussion of credibility	9.73	4.40	1.28	28	>.10
(b) of victim	3.40	1.80	.95	28	>.10
(c) of defendant	2.26	.40	1.40	28	>.10
(d) of defendant's girlfriend	4.06	2.20	1.22	28	>.10

Reasonable doubt

The issue of reasonable doubt was brought up significantly more in Record groups than in No Record groups. This result is notable, since the standard of reasonable doubt was one of the ways mentioned above in which the presence of record could conceivably affect the verdict. Record groups discussed more often the standard by which they should decide the defendant's guilt, although exactly how the issue was considered by Record and No Record groups cannot be determined from the frequency comparison data.

Credibility

Since the judge's instructions advised that jurors in the Record condition were to use the record in assessing the defendant's credibility, it might be expected that the Record groups would, on the average, discuss more frequently than No Record groups the credibility of the defendant. A weak trend towards greater discussion of credibility in the Record groups was found, but this difference fell far short of statistical significance.

Credibility of the defendant was mentioned in less than half of the Record groups (6 of 15). Given the judge's instructions, it is surprising that there was not more consideration of the issue of the defendant's credibility. Since the defendant said nothing that was not said by his girlfriend, it is also surprising that her credibility was not brought into question more often by Record group jurors. In this particular case, since the defendant had an alibi, his credibility may not have been seen as a crucial issue. In a situation in which the defendant's version of the story is uncorroborated, jurors may be more apt to focus on the defendant's credibility. One must conclude that in this case, however, the jurors used record only minimally in considering the issue of credibility.

Record comments

Reviewing the specific comments made by members of the Record groups about the defendant's record allows one to draw additional inferences about the manner in which a juror

used record information. In all, 75 comments were made about criminal record; 71 of these were made in the Record groups. Comments usually fell into one of the first six categories listed in Table 3. Some types of comments are clearly related to the different trends found in Record and No Record group deliberations that have already been discussed (*e.g.*, discussion of the strength of evidence, credibility). In addition, it appears that persons in Record groups tend to discuss the consequences of a guilty verdict for the defendant more than No Record groups do. This tendency exists for both the Record groups that arrive at guilty verdicts and the Record groups that come to not guilty decisions. Some types of comments about the defendant's record, then, fit the general pattern of differences between Record and No Record group discussions.

An unforeseen, yet quite intriguing cluster of comments about record are those which refer to the repeating criminal's expertise in or method of committing a burglary. It appears, from these comments, that the jurors use record to assess the likelihood of a repeating offender performing the burglary in a specific manner. For example:

Juror A: ". . . if he did it before, I'm sure he would have worn gloves, so why would he get cut?"

Juror A: "He's a bit more intelligent too. He'd know how to pick locks and that."

The following excerpt is particularly instructive:

Juror A: "Why does everyone keep bringing the fact up — that he was accused before? It makes no difference what happened before."

(following)

Juror B: "I would say — you pick up experience from what you do. And if this guy has robbed before, then he's picked up a bit of experience. People learn from their mistakes."

Table 3
Comments about Record

Type of Comment	Frequency of Occurrence
A. (1) "The defendant has a criminal record."	26
(2) "The record should not be held against him."	14

(3)	“He’d know what he was doing if he’d done a burglary before.”/or/“He would have done it differently if he was an experienced burglar.”	12
(4)	“Since the defendant has a record, the sentence will be heavier if he’s convicted.”	6
(5)	“Disregarding the fact that he has a record, the evidence is strong.”	6
(6)	Credibility and record	5
B. (1)	Miscellaneous comments about criminal record	6
	Total =	75

The examples cited in Table 3 demonstrate that knowledge of prior conviction operates in another way: it is used to estimate the probability that a defendant with a record (and thus, prior experience) committed the particular offence.

Members of the *Record* groups frequently mentioned the fact that the defendant had a criminal record (category 1) and, somewhat less frequently, asserted that the record should not be held against him (category 2). How conscious the jurors were of being biased against the defendant because of his criminal record is not evident. Consciousness of bias (and bias itself) may be assumed to vary with the individual. The following examples demonstrate this variability:

Juror A: “He’s been on a burglary charge before, right?”

Juror B: “Okay, ignore that; okay, we’re humans, we can’t ignore that, right?”

Juror A: “Do you think our having known he had committed a previous burglary . . .? No, I don’t think in this case it really changed our minds.”

Jurors in the *Record* groups, both during the deliberations and afterwards during debriefing, frequently stated the belief that the defendant’s prior record did not influence their feelings about his guilt. Despite many jurors’ honest convictions in their unbiased, fair consideration of the defendant with a record, the results of the present study clearly demonstrate the opposite. The juror’s perception of impartiality is an illusion — the fact is that presence of record prejudices the case against the defendant.

Distortions of fact

It is notable that there were many distortions of fact made by jurors in the course of the deliberations. The case transcripts read by the jurors were removed from the experimental room during the deliberations. Simulated jurors in this study had to depend on their own memories to recall pertinent facts, as jurors do in the court-room situation.

The total number of errors in recalling facts, over all 30 groups, was 51. This is a surprisingly high number, given that the case description was slightly over a page long, and that the jurors deliberated immediately after reading it. One would predict considerably more errors in recall in a court-room situation, in which there is a greater quantity of evidence and a longer time between presentation of the evidence and deliberation.

Forty-one per cent of the distortions of fact were corrected by other group members, leaving 59 per cent uncorrected. Interestingly, whether or not an error was corrected seemed to be related to the presence or absence of the defendant's record. Record groups were somewhat more likely than No Record groups to correct distortions of fact which occurred during the discussion of the case. Uncorrected distortions did not differ for Record and No Record groups. This greater tendency to correct errors may imply that members of the Record groups were alerted to the possible biases they themselves or other group members might have had towards distorting the case because of the defendant's record. However, there is no direct evidence to support this interpretation.

Psychological research has suggested that past events are often distorted to fit present constructions or evaluations of a situation. To assess the operation of this sort of bias in our study, the distortions of fact were categorized as being either consistent, inconsistent or neutral with respect to the direction of the argument being made by the distorter. For example, a person arguing for the difficulty that the burglary victim would have in seeing the defendant made the following statement: "Well, she only saw him running from behind which gives a pretty poor" In fact, the case description described the defendant as turning around while he was on the fence, giving

the victim a view of his face. This would of course increase the accuracy of an identification. This type of error would be classified as being consistent with the distorter's argument.

Table 4 displays the number of errors made for each of the three different categories of distortions. The frequency of errors consistent with and neutral with respect to the immediate argument being made were approximately equal, but the number of distortions made against the direction of the person's argument was extremely low. This discrepancy between consistent and inconsistent directions provides some support for the notion that we alter past facts to better coincide with our current assessments of a situation.

Table 4

**Number of distortions as a function
or direction of distortion**

Direction of error with respect to argument

Consistent	Neutral	Inconsistent
26	23	2

Summary and Conclusions

The present research leaves little doubt that knowledge of a previous conviction biases a case against the defendant. The likelihood that a jury will convict the defendant is significantly higher if the defendant's record is made known to the jury. The fact that the defendant has a record permeates the entire discussion of the case, and appears to affect the juror's perception and interpretation of the evidence in the case.

Throughout the paper, the ways in which knowledge of record affects the deliberations of juries have been specified. These include: differences in perception of the strength of evidence, differences in discrediting evidence and differences in treatment of the issue of reasonable doubt. These effects are present in spite of the fact that jurors were given specific instructions to ignore the fact of record while assessing the defendant's guilt. The data indicate that the case is biased against the Record defendant in ways which are contrary to the specifications of s. 12 of the Canada Evidence Act. This evident

failure to follow instructions suggests that similar instructions of judges in actual court cases might well be futile.

There are a number of factors to take into consideration in assessing the generalizability of results from this study to the court-room. There is one assumption that is fundamental to a study of decision-making of this sort: that the decision-making process is accurately reflected in the dialogue of the jurors. That is, it is assumed that the frequency with which each factor is discussed is an accurate indication of its importance or salience in the decision-making process. In particular, we assume that the manner in which the factor of prior record influences jurors is reflected in their explicit verbal deliberations.

In addition, there are two methodological considerations: the subject population and the simulated, rather than real-life quality of the deliberation. We used students and visitors to the Ontario Science Centre as subjects in the experiment, rather than drawing from the population of people on jury lists. Although the two populations are not identical, the subjects in the experiment seemed to be a heterogeneous group, and there would certainly be some overlap between subjects and those on jury lists. Also, it does not seem likely that changes in subject population would substantially alter the overall pattern of results.

Finally, the jury deliberation was a simulation. The subjects were not in reality deciding someone's fate, and other factors conceivably operating in the court-room were not present. The presence of record could interact with some factors not present in the simulation. There is no way of telling whether the pattern of results from a simulation would be replicated in the court-room setting. However, here again, there are no compelling reasons to suspect that these results would not obtain, and correlational evidence (Kalven and Zeisel, 1966) based on actual court cases supports our findings.

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