
Inadmissible Testimony, Instructions to Disregard, and the Jury: Substantive Versus Procedural Considerations

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The present study tested the hypothesis that jurors comply selectively with instructions to disregard inadmissible evidence. A total of 81 mock jurors read a murder trial summary in which a wiretap was ruled admissible, inadmissible because it was not reliable, or inadmissible because it was illegally obtained (there was also a no-wiretap control group). As predicted, participants were more likely to vote guilty and interpret subsequent evidence as more incriminating in the admissible and inadmissible/due-process conditions than in the admissible/unreliable and control groups. These results suggest that jurors are influenced not by the judge's ruling per se but by the causal basis for that ruling. Conceptual and practical implications are discussed.

During the course of every trial, the jury is instructed to render a verdict based solely on facts formally admitted into evidence. The courts have thus developed elaborate rules designed to regulate the traffic of information in the courtroom and ensure that these goals are achieved. These rules dictate who may serve as a witness, the kind of testimony that may be given, the content and format of direct and cross-examination questions, the scope of opening and closing statements, and the phrasing of the judge's instructions (see Mueller & Kirkpatrick, 1995).

Although the trial is a well-orchestrated event, juries are often exposed to information not admitted into evidence. To the extent that extralegal factors alter perceptions of a defendant's culpability or standards of proof deemed necessary for conviction, they will have a prejudicial effect on decisions. Indeed, mock jury research has shown that verdicts are influenced by a wide range of nonevidentiary factors, including pretrial publicity (Kramer, Kerr, & Carroll, 1990; Otto, Penrod, & Dexter, 1994), disclosure of the defendant's past record (Greene & Dodge, 1995; Wissler & Sacks, 1985), presumptuous cross-

examination questions (Kassin, Williams, & Saunders, 1990), death qualification voir dire (Haney, 1984), and hearsay, as communicated by an expert witness (Schuller, 1995).

According to the rules of evidence, information is admissible if it is relevant and has probative value—unless it was illegally obtained or is inflammatory, misleading, confusing, or redundant. If a lawyer or witness discloses inadmissible testimony in court and if the opposing attorney objects, the judge typically strikes the evidence from the record and admonishes the jury to disregard it. On the question of whether jurors comply with this instruction, Kassin and Studebaker (in press) described different theoretical perspectives that suggest a range of possible effects. Studies of directed forgetting show that people can ignore information on command, depending on how the to-be-forgotten items are encoded, the scope of the instruction, the type of retrieval task, and other factors (Johnson, 1994). In contrast, belief perseverance studies indicate that people often cling to newly created beliefs even after their evidentiary basis has been discredited (Anderson, Lepper, & Ross, 1980; Johnson & Seifert, 1994; Schul & Burnstein, 1985). Finally, research on the paradoxical effects of thought suppression (Wegner, 1994) and reactance (Brehm, 1966) suggests the disconcerting possibility that admonishment backfires, increasing rather than decreasing the weight given to forbidden information. This latter effect

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PSPB, Vol. 23 No. 10, October 1997 1046-1054
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is particularly likely to occur when the item to be disregarded is emotionally charged (Edwards & Bryan, 1997).

Do instructions to disregard have a curative effect, serving as a "mental eraser" that leads jurors to discount material to which they have been exposed? There is widespread disagreement within the courts.¹ Moreover, research has yielded mixed results. In an early experiment, Sue, Smith, and Caldwell (1973) had mock jurors read about a defendant charged with armed robbery and murder. In a control group containing only weak circumstantial evidence, no one voted guilty. In a second group, the prosecution added a taped phone conversation in which the defendant made self-incriminating remarks. The defense argued that the wiretap was illegal, but the judge admitted the tape into evidence and the conviction rate increased to 26%. In a third group, the judge ruled the tape inadmissible and admonished the jury to disregard it, but 35% voted for conviction. Carretta and Moreland (1983) also found that mock jurors presented with an inadmissible wiretap were more likely to judge the defendant guilty—not only in pre-deliberation ratings but in post-deliberation ratings as well.

Whereas the foregoing studies suggest that an instruction to disregard has no effect, others suggest that it may even produce a "boomerang" effect. This phenomenon was first demonstrated in a mock jury study by Broeder (1959), who argued that admonishment draws added attention to the information in dispute, heightening its salience and accessibility in memory. Arguing that admonishment may also arouse psychological reactance, Wolf and Montgomery (1977) found that subjects were least likely to comply with a prohibitory instruction when the judge flatly stated, "You have no choice but to disregard it." More recently, Pickel (1995) found that mock jurors discounted inadmissible testimony when given a simple instruction to disregard but not when the admonishment included an extensive legal explanation. As in the Wolf and Montgomery study, elaborated admonishment proved counterproductive.

In contrast to these findings, some researchers have found that people can and do discount testimony that is later discredited (Elliott, Farrington, & Manheimer, 1988; Hatvany & Strack, 1980; Weinberg & Baron, 1982). Schul and Manzury (1990) presented mock jurors with an assault trial in which an eyewitness confirmed the victim's story. In one version, it was revealed that this witness was drunk at the time, a disclosure that led the judge to declare the testimony invalid. Consistent with the discounting hypothesis, guilt ratings increased in the credible-witness group (compared with those in a no-witness control group) but returned to baseline in the discredited-witness condition. Schul and Manzury speculated that "court settings activate a schema that leads

people to deliberately correct for potential biases" (p. 337).

Although past research has yielded mixed results and although the problem has been conceptualized in broad cognitive and motivational terms, we believe that the impact of an instruction to disregard depends more specifically on whether it calls on the jury to set aside probative information that would promote accurate decision making or whether the information is withdrawn because it lacks credibility. In our view, juries are more concerned with achieving a just outcome than they are about due process (Kadish & Kadish, 1971). Various studies are consistent with the notion that juries are motivated more by a concern for outcomes than by procedural considerations. For example, Thompson, Fong, and Rosenhan (1981) presented inadmissible evidence that either corroborated or contradicted the defendant's alibi and found that although mock jurors were not more likely to vote guilty when the inadmissible item implicated the defendant, they were more likely to vote not guilty when that item favored acquittal. With false conviction being the least tolerable outcome, they were unwilling to ignore information that vindicated the accused. Pickel (1995) found that mock jurors complied with an instruction to disregard hearsay, which is often excluded out of concern for reliability. In a second study, however, they did not disregard inadmissible testimony about the defendant's prior record, an item that has probative value but is excluded for fear that it is prejudicial. Unfortunately, the two studies varied in many ways, so the difference cannot be attributed to the relative probative values of the to-be-disregarded evidence.²

The present study was designed with two goals in mind. First, we sought to test the hypothesis that jurors comply on a selective basis with admonishments to disregard. We predicted that jurors would discount evidence if it is ruled inadmissible because it lacks credibility but not if it is excluded because it violates due process. Our second goal was to collect midtrial measures of the on-line impact of the instruction and test the hypothesis that an incriminating disclosure—even when it is immediately withdrawn—alters the way jurors evaluate the subsequent evidence. Each participant was thus provided with a hand-held response dial and asked to turn it up or down at specified points in the case to indicate the extent to which the evidence led them to see the defendant as guilty or innocent.

METHOD

Participants and Design

A total of 81 undergraduates played the role of mock jurors in exchange for extra course credit. Scheduled in small groups ranging in size from 2 to 6, students were

randomly assigned to one of four conditions that varied in the presentation and judge's ruling on a critical item of incriminating evidence ($n_s = 19$ to 21).

The Stimulus Trial

Participants received one of four versions of a criminal trial summary entitled *State v. Givens*. This case involved a man charged with murdering his estranged wife and male neighbor. The prosecutor charged that the defendant killed the victims in a fit of jealous rage. The defendant said he had found the bodies when he returned to his former home to retrieve personal papers. The presentation contained 23 paragraphs that summarized opening statements (Paragraphs 1 to 5), the examinations of six witnesses—a private investigator, a police officer, the coroner, an eyewitness, the defendant, and a friend of the defendant (Paragraphs 6 to 18), closing arguments (Paragraphs 19 to 22), and the judge's instruction on first-degree murder and the requirements of proof (Paragraph 23). The paragraphs were presented in sequence and on videotape for 35 s each.

In a baseline control version of the case, the prosecutor's evidence was circumstantial, incomplete, and ambiguous. In three experimental versions, however, a police officer revealed that a wiretap from an unrelated case produced an audiotaped telephone conversation in which the defendant can be heard confessing to a friend minutes after fleeing the scene ("I killed Marylou and some bastard she was with. God, I don't . . . yeah, I ditched the blade").³ In all conditions, the defense lawyer objected to this disclosure. In the admissible group, the judge overruled the objection, admitted the tape, and instructed the jury that it was proper as a form of evidence. In the inadmissible/due-process group, the judge sustained the objection and admonished the jury to disregard the tape because it was secured without a proper warrant. He explained that to ensure a fair trial, the jury should not consider evidence that was illegally obtained. In the inadmissible/unreliable group, the judge again sustained the objection but admonished the jury to disregard the tape because it was barely audible and difficult to determine what was said. The judge then explained that to ensure a fair trial, a jury should not consider evidence that is unreliable. In all groups, the wiretap appeared in Paragraph 9 and the judge's ruling in Paragraph 10.

Procedure

Upon their arrival, participants were told that to simplify and condense the trial presentation, we had prepared a written summary of an actual case. They were informed that the entire case would be summarized in paragraphs and shown on a TV monitor and that each paragraph would be presented for 35 s (this pace was

determined through a pretesting of reading times). To examine the on-line impact of the wiretap item and the judge's ruling and their possible effects on perceptions of subsequent evidence, we gave each participant a wireless hand-held response dial equipped with a digital numeric display that ranged from 0 (with the dial pointed to the left) to 100 (with the dial pointed to the far right), with a midpoint of 50 (with the hand pointed straight up).⁴ The experimenter then read the following instructions:

To get your views on the material while it is fresh in your mind, I will ask you to register your responses using these hand-held dials. Each of you will be given a dial to hold. After each paragraph, the word "respond" will appear on the screen. You will then have 10 seconds to register your response to that item on a scale ranging from 0 to 100. You can make your response as precise as you want by checking the digital readout on the face of the dial.

As I said, your responses can range from 0 to 100. As we start the experiment, I'd like you to set your dial to 50—which we define as the neutral point. To respond to the trial evidence, you should move your dial up or down from that point, depending on your view of the evidence as summarized in the preceding paragraph. With 50 being the neutral point, move the dial up toward 100 if the paragraph you just read leads you to see the defendant as guilty. So you might move the dial up to 55, 75, 90, or even 100 depending on how guilty you think the defendant is based on the last item of evidence. With 50 being the neutral point, you can also move the dial down toward 0 if the paragraph you just read leads you to think the defendant is innocent. So you can move the dial down to 45, 25, 10, or even 0 depending on how innocent you think the defendant is from the last item of evidence.

You will have 10 seconds to settle in on a response. After you do, leave the dial alone, and your response will be recorded. When I say the word "reset," you should then reset your dial to 50. At that point, you'll receive another item of evidence for 35 seconds, read it, respond, reset the dial for the next item, and so on, until the entire trial summary has been presented. Any questions?

Participants watched the videotape and rated each item for the extent to which it portrayed the defendant as innocent or guilty on a 0-100 scale. The presentation took 18 min. Afterward, all participants filled out a questionnaire in which they rendered a verdict (guilty or not guilty) and rated their confidence in that judgment on a 10-point scale (ranging from 1 = *not at all* to 10 = *very confident*). With verdicts being a dual function of the subjective probability that the defendant committed the crime and the standard of proof deemed necessary for conviction, these factors were also assessed. All participants thus estimated the likelihood that the defendant committed the murder by circling a number from 0 to

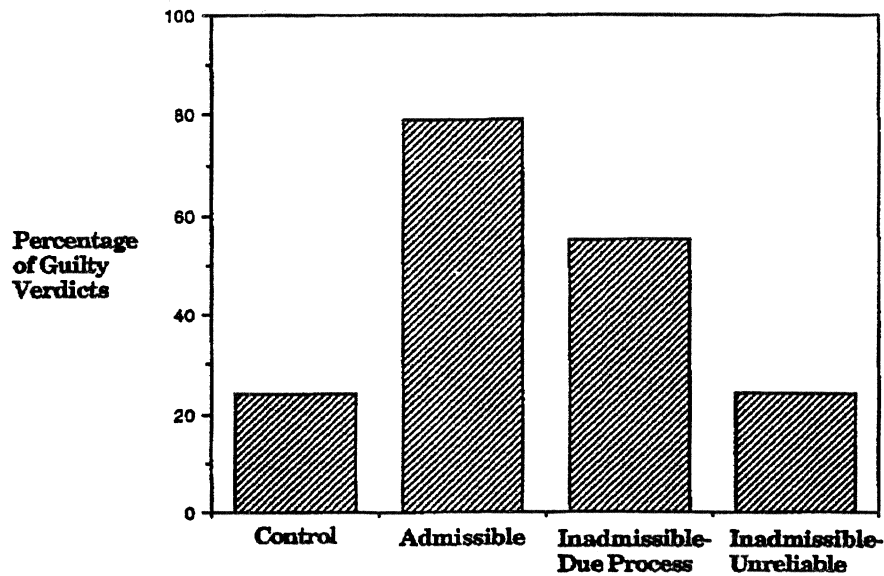


Figure 1 Posttrial conviction rates in the control and experimental conditions.

100 and filled in the sentence, "The defendant should be found guilty if there is at least a ___% chance that he committed the crime." They then listed the factors that led to their verdicts. As a check on the effectiveness of our manipulations, those in the experimental groups were also asked to recall the defense lawyer's reaction to the wiretap, the judge's ruling, and the reason for that ruling.

RESULTS

Manipulation Checks

Participants in the experimental conditions were uniformly accurate in their understanding of our manipulations. All mock jurors recalled that the defense attorney had objected to the wiretap, 58 out of 60 correctly recalled the judge's ruling, and 39 out of 41 in the two inadmissible groups correctly recalled the judge's explanation for his instruction (that the wiretap evidence was either illegally obtained or not reliable). There were no significant between-group differences on any of these measures.

Posttrial Measures

Overall, 36 participants voted guilty, and 45 voted not guilty, yielding a conviction rate of 44.4%. Broken down by condition, the results support the hypothesis that jurors would exhibit selective compliance with instructions to disregard. Compared with a low 24% conviction rate in the control group, the conviction rate increased in the admissible wiretap group (79%) and in the inadmissible/due-process group (55%) but not in the inad-

missible/unreliable group (24%), $\chi^2(3, N = 81) = 17.31$, $p < .001$ (see Figure 1).

To obtain a more sensitive measure of verdict preferences, a scalar variable was created by assigning positive confidence values to guilty verdicts and negative values to not-guilty verdicts. Scores could thus range from -10 (maximum confidence in a not-guilty verdict) to +10 (maximum confidence in a guilty verdict). A one-way ANOVA on this measure produced a significant difference, $F(3, 77) = 11.23$, $p < .001$. Post hoc tests revealed that compared with the control group ($M = -2.90$), participants were significantly more likely to view the defendant as guilty when the wiretap was admissible or when it was inadmissible because it violated due process ($M_s = 6.16$ and 2.45 , respectively; $p_s < .05$ via Newman-Keuls). In contrast, they were not more likely to judge the defendant guilty when the wiretap was inadmissible due to a lack of reliability ($M = -2.14$).

After rendering a verdict, all participants estimated the likelihood that the defendant committed the crime on a 0- to 100-point scale. Closely paralleling the verdict-confidence data, a one-way ANOVA revealed a significant overall difference, $F(3, 77) = 5.41$, $p < .002$. Compared with a mean probability estimate of 58.57 in the control group, there were significant increases in the admissible and inadmissible/due-process conditions ($M_s = 82.89$ and 76.75 , respectively; $p_s < .05$ via Newman-Keuls) but not in the inadmissible/unreliable condition ($M = 65.48$). On the standard-of-proof item, participants estimated that there should be at least an 89.22% chance that the defendant committed the crime before voting guilty. This quantification of "beyond a reasonable

doubt" closely matches estimates obtained in prior research (Kagehiro, 1990). There were no between-group differences on this measure, $F(3, 77) < 1$.

To assess the self-reported influence of the wiretap evidence, all participants were asked to list the factors that led them to reach their verdict. These open-ended responses were later coded for whether the wiretap was on the list. Among participants in the experimental groups, there was an interesting, highly significant difference. Whereas 63% cited the wiretap in the admissible group, only 15% and 14% listed this item in the inadmissible/due-process and inadmissible/unreliable groups, respectively, $\chi^2(2, N = 60) = 14.56, p < .001$. Thus, although participants in the inadmissible/due-process condition were clearly affected by the forbidden wiretap evidence, they did not cite that item as important in their self-reports.

On-Line Evidence Ratings

Participants rated each paragraph for the extent to which it led them to see the defendant as innocent or guilty. Using the computerized hand-held dials described earlier, these ratings were made on a scale ranging from 0 (innocent) to 100 (guilty), with 50 defined as the neutral point. These data were then analyzed within a 4 (condition) \times 23 (items of evidence) repeated-measures ANOVA.

Consistent with the posttrial results, a significant main effect for condition, $F(3, 72) = 8.11, p < .001$, revealed that participants saw the evidence overall as more incriminating in the admissible ($M = 68.14$) and inadmissible/due-process groups ($M = 60.09$) than in the control ($M = 52.97$) and inadmissible/unreliable groups ($M = 55.75$). A significant main effect also indicated, as expected, that some items were seen as more incriminating than others, $F(22, 1,584) = 32.37, p < .001$. More important, a significant two-way interaction was also obtained, $F(66, 1,584) = 3.97, p < .001$. As shown in Figure 2, mock jurors from the four groups reacted similarly to the evidence until the wiretap was introduced (Item 9) and ruled on by the judge (Item 10), at which point perceptions of the evidence diverged sharply.

To focus on the specific effects of the wiretap and the judge's ruling, we compared the four groups for their perceptions of these two items. As shown in Figure 3 (Item 9), guilt ratings increased sharply in response to the wiretap disclosure in all experimental conditions (admissible $M = 81.32$, inadmissible/due-process $M = 76.45$, inadmissible/unreliable $M = 80.14$) compared with the control group ($M = 53.90$; all $ps < .05$ via Newman-Keuls). Then, in response to the judge's ruling (Item 10), guilt ratings were significantly higher when the tape was ruled admissible ($M = 86.42$) than in the

inadmissible/due-process condition ($M = 64.75$), which, in turn, was higher than in the inadmissible/unreliable and control groups ($Ms = 55.05$ and 52.43 , respectively; all $ps < .05$ via Newman-Keuls).

Finally, to test the hypothesis that a highly incriminating disclosure leads jurors to assimilate subsequent evidence, we combined for between-group comparisons the predisclosure (Items 1 to 8) and postdisclosure (Items 11 to 23) evidence ratings. The results clearly supported the hypothesis. On predisclosure ratings, there were no between-group differences in perceptions of the evidence, $F(3, 74) = 1.01, p < .50$. On the combined postdisclosure ratings, however, there was a highly significant effect, $F(3, 74) = 9.10, p < .001$. As shown in Figure 3, the postdisclosure ratings were lowest in the control ($M = 52.38$) and inadmissible/unreliable groups ($M = 56.25$) and were higher in both the admissible and the inadmissible/due-process groups ($Ms = 72.47$ and 62.57 , respectively; all $ps < .05$ via Newman-Keuls). Ratings were also significantly higher when the tape was admissible than in the inadmissible/due-process group ($p < .05$).

DISCUSSION

The present study provided strong support for the hypothesis that jurors would exhibit selective compliance with instructions to disregard inadmissible evidence. Participants read a murder case in which a wiretap was ruled admissible, inadmissible because it was not reliable, or inadmissible because it violated the defendant's rights. As predicted, the jurors were more likely to judge the defendant guilty in the admissible and inadmissible/due-process groups than in the admissible/unreliable and control groups.

Participants also rated the evidence during the trial using hand-held response dials. These data revealed that the wiretap disclosure was seen as highly incriminating in all experimental groups but that the judge's ruling lowered guilt ratings only in the inadmissible/unreliable group. Also interesting is that the wiretap item—even when immediately followed by an instruction to disregard—altered the way subsequently presented evidence was evaluated. Jurors in the admissible and inadmissible/due-process groups thus saw the remaining items as generally more incriminating than did those in the inadmissible/unreliable and control groups. This latter result is consistent with Pennington and Hastie's (1992) notion that jurors engage in integrative processing of the evidence and with social-cognitive research on the assimilation of new information to preexisting beliefs (Darley & Gross, 1983).

To test the integrative processing hypothesis via the on-line evidence ratings, it was necessary to ensure that participants rated the incrimination value of each indi-

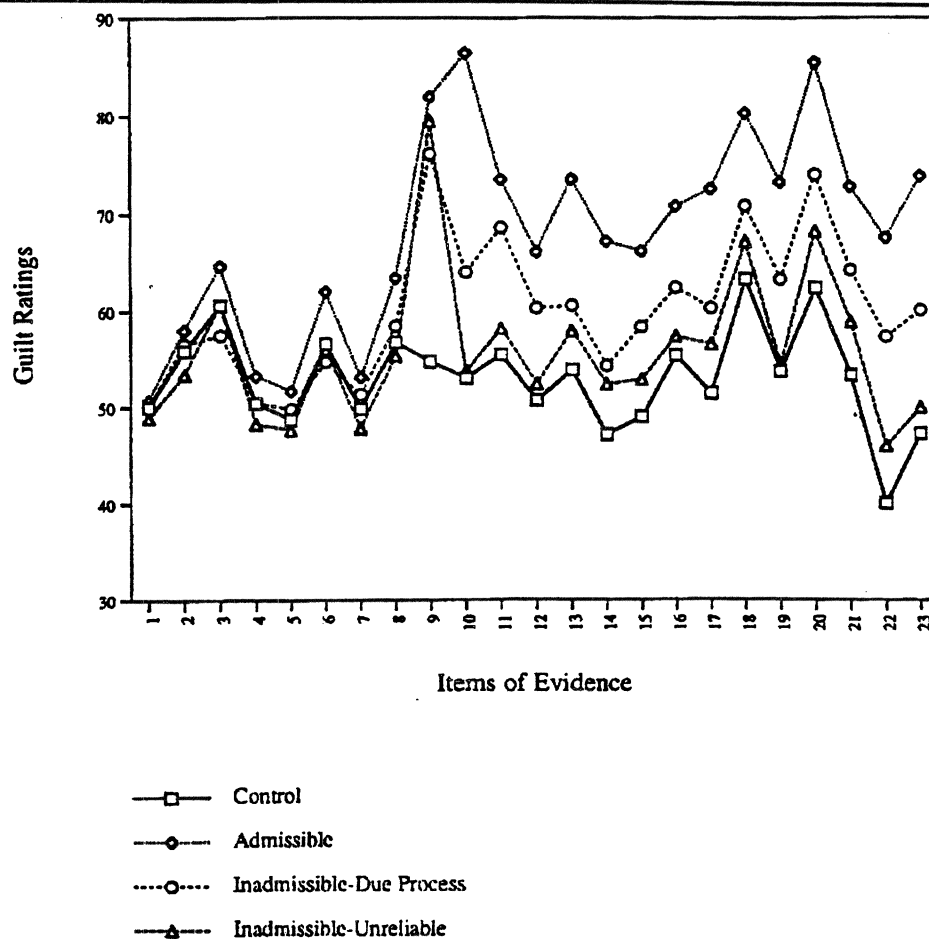


Figure 2 On-line 0- to 100-point ratings of the 23 items of evidence.

vidual item, not provide cumulative ratings of the defendant based on all previous items. Participants were thus asked to set their response dials to 50 (the neutral midpoint) rather than to 0 (as implied by a presumption of innocence), and our instructions stated clearly and repeatedly that each rating should be "based on the last item of evidence," "as a result of the last item of evidence," "depending on your view of the evidence summarized in the preceding paragraph," and "in the paragraph you just read." Moreover, participants were required to physically reset the dials to 50 after each rating. The fluctuating response patterns shown in Figure 2 suggest that they followed our directions to rate each item on its own terms. These patterns contrast sharply with those found in pretesting for participants who were asked to start at 0 and rate their cumulative impressions of the defendant without resetting the dials.⁵

Both midtrial and posttrial judgments support the hypothesis that jurors comply with an instruction to disregard when evidence is inadmissible due to a lack of

credibility but not when it is excluded due to a legal technicality. Participants in the former situation thus behaved as jurors should—in contrast to findings obtained in belief perseverance studies in which people maintain their newly formed beliefs even after the supporting evidence has been discredited (Anderson et al., 1980; Johnson & Seifert, 1994; Schul & Burnstein, 1985). It is interesting that participants in the latter situation also appeared to behave as ideal jurors in that they did discount the testimony immediately after the judge's ruling and did not later cite it as having swayed their verdicts. It is important to note, however, that these same participants saw subsequent items of evidence as generally more incriminating and were more likely to vote guilty. These results suggest that jurors may be influenced without realizing it—and not by a judge's ruling per se but by their attribution for that ruling. As we reasoned earlier, it is precisely because jurors seek just outcomes that they cannot resist the temptation to use information they see as relevant—whether it satisfies the law's technical rules or not.

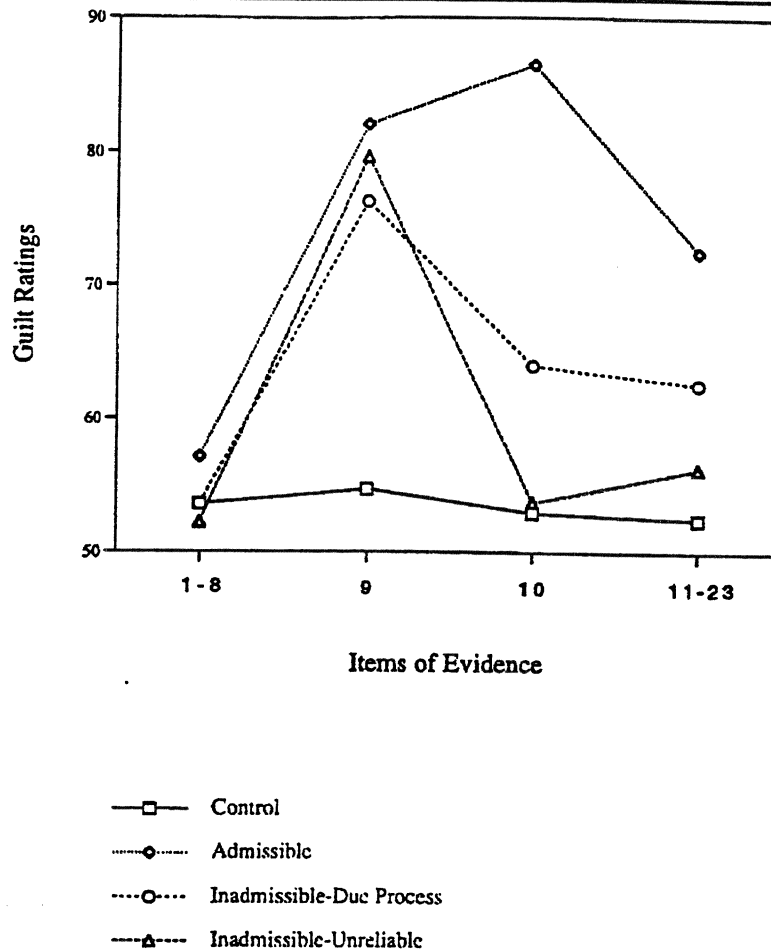


Figure 3 On-line ratings before (Points 1 to 8), during (Points 9 to 10), and after (Points 11 to 23) the critical testimony and ruling.

Our findings help to reconcile the disparity in past studies. Some researchers have found that people do not discount evidence ruled inadmissible (Carretta & Moreland, 1983; Pickel, 1995; Sue et al., 1973; Wolf & Montgomery, 1977). Yet, others have found that people reject the testimony of a discredited witness (Elliott et al., 1988; Hatvany & Strack, 1980; Schul & Manzury, 1990; Weinberg & Baron, 1982). In the former studies, the information was always excluded for procedural reasons (e.g., it was illegally obtained), whereas in the latter studies, it was withdrawn for substantive evidentiary reasons (i.e., it was not credible). Our results are consistent with the finding that mock jurors were influenced by a judge's re-charge when they thought it was self-initiated but not when they believed it was forced by the law (Cavoukian & Doob, 1980). The results are also consistent with impression formation research showing that people are influenced by trait information that is withdrawn because it was confidential, but they discount that

information when it is withdrawn because it was incorrect (Golding, Fowler, Long, & Latta, 1990; Golding & Hauselt, 1994).

There are three possible qualifications of these results. One is that all participants rated evidence during the trial, perhaps leading them to process information in a more active or analytical manner. Using a similar paradigm, however, Kassin and Wrightsman (1979) found that mock jurors who made midtrial judgments were not affected by this procedure in posttrial responses to the case. A second limitation concerns the fact that participants made their judgments individually, not in groups. Kerwin and Shaffer (1994) found that mock jurors were more likely to comply with a judge's admonishment when they deliberated than when they did not. It is important to note, however, that jury verdicts are often highly predictable from the predeliberation distribution of individual votes (Kalven & Zeisel, 1966; Kerr, 1981) and that the biasing effects of objectionable mate-

rial are often exacerbated by group deliberation (Padawer-Singer & Barton, 1975; Kramer et al., 1990). Third, we did not examine individual differences in reactions to the judge's ruling. People differ in the relative values they attach to due process versus crime control (Packer, 1968)—and these orientations may predispose jurors to discount or refuse to discount evidence ruled inadmissible on the basis of a "legal technicality" (Fitzgerald & Ellsworth, 1984).

From a practical standpoint, inadmissible testimony poses a difficult problem. On one hand, trial lawyers are advised that it may be better not to object in the jury's presence to avoid drawing added attention to the damaging information. On the other hand, a lawyer who fails to make a timely objection cannot later cite the item as a basis for appeal. A party damaged by a breach in the rules of evidence thus faces a strategic dilemma, forced to choose the lesser of two evil options (Kassin & Wrightsman, 1988).

Is there anything more that the courts can do to prevent the leakage of evidence not in the record? One possibility is for judges to inoculate juries at the start of a trial with a general warning that they may receive evidence that will be inadmissible. Indeed, Schul (1993) found that early warning, when accompanied by a timely reminder, enabled participants to suspend integrative processing and think more critically about items later discredited. A second strategy is for judges to explain the basis of the ruling once the contaminant is introduced. Although strong admonishments can backfire, our study shows that jurors can discount inadmissible evidence on cue—and will do so when that evidence is excluded for reasons that are substantive rather than procedural.

A variant of this latter approach is to arouse suspicion among jurors concerning ulterior motives of the source of inadmissible information. Attribution research has shown that a state of suspicion concerning an actor's motives triggers critical thinking and facilitates discounting of behaviors with multiple plausible causes (Fein, 1996; Fein, Hilton, & Miller, 1990). In a test of the hypothesis that suspicion would similarly attenuate the biasing effects of nonevidence, Fein, McCloskey, and Tomlinson (in press) had mock jurors read a murder case with or without exposure to a damaging newspaper story. Despite an admonishment to disregard, pretrial publicity had the usual contaminating effect. In a third group, however, in which questions were raised about the motives of the news media (e.g., "to sell papers"), this effect was erased. At this point, further research is needed to examine these strategies and other possible curative mechanisms.

NOTES

1. In *Carter v. Kentucky* (1981), the U.S. Supreme Court described admonishment as a "powerful tool" (p. 303) that can "remove any influence of unspoken adverse inferences" (p. 301; also see *United States v. Steele*, 1984). Yet, other courts have described the practice in more derogatory terms (*Krulewitsch v. United States*, 1949; *United States v. Grunewald*, 1956)—as an "exorcising phrase intended to drive out evil spirits" (Frank, 1930, p. 184).

2. Jury nullification cases are also consistent with the view that jurors are outcome oriented. Indeed, juries throughout history have reached verdicts that seemed fair and equitable but violated the letter of the law (Horowitz & Willging, 1991).

3. Although there is no way to estimate the frequency with which juries are exposed to potent inadmissible evidence of this nature, Underwood and Fortune (1988), authors of *Trial Ethics*, maintained that the practice is not uncommon.

4. These dials are part of Perception Analyzer, a computerized program that simultaneously records and stores multiple on-line responses from a large number of participants.

5. In prior testing, we found that a cumulative instruction elicited a pattern of guilt ratings that more closely resembled a smooth, negatively accelerating learning curve.

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Received July 10, 1996

Revision accepted October 22, 1996