Severity of Penalty, Seriousness of the Charge, and Mock Jurors’ Verdicts*

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It has been suggested that jurors in criminal trials are less likely to convict when the penalty is more severe or the charge is more serious. This was explained by Kerr (1975) in terms of a perceived increase in the cost of a Type I error (convicting an innocent person) that resulted in a criterion shift in the amount of evidence jurors required to vote guilty. The previous research found only weak support for the prediction regarding severity but consistent support for the predicted effect of seriousness. However, in the case materials used in these studies, more evidence was legally required to prove guilt on the more serious charges. This article presents studies in which the amount of evidence needed to prove guilt was equated for all charges. Under these circumstances, there was no effect on verdicts of seriousness of charge or severity of penalty and no evidence of a criterion shift due to either variable. There may still be reason to believe that these factors affect real juries, but this belief is not supported by the systematic evidence from mock jury studies.

Many of those who are involved in or study the judicial system seem to believe that the likelihood of conviction in a criminal trial is decreased when the penalties are more severe or the charges more serious (Kerr, 1975; Radzinowicz, 1948; Tobias, 1967; Vidmar, 1972). Among lawyers, this belief seems to be based largely on experience and intuition, but there is some scientific work on the issue. Kerr (1975) analyzed the effect of the severity of the penalty in terms of statistical decision making. He assumed that in making their decisions, juries focus on avoiding Type I errors (i.e., convicting an innocent person) and also that the more

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severe the penalty, the greater the perceived cost of such an error. He proposed
that as the perceived cost of an error increases, jurors would require more evi-
dence of guilt before voting for conviction. A criterion shift of this kind would
cause juries to be less likely to vote guilty when the penalty was more severe.

A similar argument could be made regarding the effect of the seriousness of
the charge. It is presumably worse to be convicted of a more serious charge than
a less serious one (even if for some reason the legal penalties were the same).
Therefore, juries should be more concerned about Type I errors when the charge
is more serious, there should be a criterion shift toward requiring more evidence,
and the likelihood of conviction should decrease.

Although these analyses are plausible, it is not difficult to construct argu-
ments that lead to the opposite effects or to no effects of penalty and seriousness.
For example, just as juries are concerned about making Type I errors, they are
also concerned about making Type II errors (releasing a guilty person). Kerr
recognizes this but suggests that worries about Type II errors either are less
pressing or are important mainly when the crime is especially terrible. Certainly,
it seems likely that concern about freeing a guilty person increases as the charge
becomes more serious (it is presumably worse to release someone who might kill
again than to release someone who might shoplift again). Trying to avoid Type II
errors would cause a criterion shift toward requiring less convincing evidence and
would accordingly lead to more convictions with more serious charges. Of course,
if concerns about both types of errors increase, the net effect would depend on the
strength of each and could lead to more or fewer convictions or, if they just
balanced, to no effect on likelihood of a guilty verdict. The point is not that this
line of reasoning is better or more plausible than the one proposed by Kerr, but
merely that there are other reasonable mechanisms that would lead to different
effects.

Moreover, it is entirely possible that juries ignore these factors in making
their decisions. The jury is told to vote guilty only if they are certain beyond a
reasonable doubt, and this instruction is the same in all cases. They are not
supposed to change their criterion for certainty just because the charge is more
serious, the penalty more severe, or for any other reason. Perhaps they really do
obey these instructions and are not influenced by these factors that are irrelevant
to the facts in the case.

Thus, whether the severity of the penalty and the seriousness of the charge
affect jurors' decisions is an empirical question. There is no systematic evidence
based on actual trials, so we must rely on the results of mock jury studies. As
noted above, the literature seems to assume that both factors do reduce the
likelihood of conviction. Yet a careful reading of the relevant research reveals that
there is no convincing support for either effect.

In two studies (Kerr, 1975; McComas & Noll, 1974), the severity of the
penalty was varied independently of the charge facing the accused. In both stud-
ies, the penalty that was associated with each charge varied from mild to severe
(four levels in the former study, three in the latter). Neither McComas and Noll
nor Kerr found any effect of penalty on ratings of guilt. Kerr combined the two
milder penalty conditions and the two more severe penalty conditions and did find