



Thin slice expert testimony and mock trial deliberations[☆]



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ABSTRACT

This study examined impressions of expert witness testimony in a not guilty by reason of insanity defense on two outcomes: witness's credibility and verdict. Borrowing in part from the "thin slice" methodology, we assessed outcomes in a 2 (deliberating vs. non-deliberating jurors) \times 3 (length of videotaped testimony) between-subjects design. In 30 mock juries, 188 participants viewed the testimony by a forensic psychologist; then half of the juries deliberated. Thinner slices of the testimony were defined by the lower (30 s long) and upper (5 min long) temporal bounds in the literature. The third, fuller testimony condition was 10 min long and served as the accuracy marker for the shorter sliced exposures. We aimed to explore potential consequences to jurors relying on impressions of the expert, and his or her opinion, and to test that effect post deliberation. Accounting for deliberation, brief impressions of expert credibility generally exerted a similar influence on credibility to fuller considerations. The essential finding was that a two-way interaction emerged from time slice and deliberation on verdict for jurors in the 30 s condition. Overall, predictive accuracy was found in the 5 min slice, yet accuracy was not supported in the predictions based on the shortest slice. Individually-formed impressions are not likely to translate to the verdict ballot post-deliberation. Instead, brief impressions are likely to be heavily influenced by deliberation. Implications for understanding how impression-based testimony evaluations translate from the jury box to the deliberation room are discussed.

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1. Introduction

Jurors are asked to make a fair judgment based on the evidence presented to them. These judgments are susceptible to preconceptions, subjectivity, and information processing biases that influence decision-making (Salerno & Diamond, 2010). For example, almost a century of social psychology research has concluded that first impressions provide a predictive mechanism for how social judgments are made (Allport, 1937; Ambady & Rosenthal, 1992; Funder, 1987; Gray, 2008; Kenny & Albright, 1987; Kruglanski, 1989; Swann, 1984). Impression formation is particularly relevant to understanding how jurors evaluate evidence, assess witness credibility, and decide verdicts (Gray, 2008; Greene & Ellis, 2007). This study examined the influences of brief impressions of expert testimony and subsequent deliberations on decision-making.

2. Evaluations of expert testimony

The court holds expert witnesses to a higher standard than it does lay witnesses. Once on the stand, accepted as experts and permitted to testify, experts are deemed qualified and implicitly credible by the court. Still, the triers of fact evaluate experts and their testimony for its merit and utility. This situation poses challenges for both the triers of fact and expert witnesses. The experts may present complex and cognitively taxing testimony. The jurors, already under a high cognitive load, may rely on cognitive shortcuts to simplify information (Tversky & Kahneman, 1974). Given that much information is presented during a trial, reliance on heuristically-based judgments can be helpful and in fact, can lead to accurate impressions (Gray, 2008). However, over-reliance on cognitive shortcuts may lead to erroneous and overly subjective conclusions (e.g., Greene & Ellis, 2007; Kamin & Rachlinski, 1995; Kelman, Rottenstreich, & Tversky, 1996; Moore, 1989). One such instance may be relying on impression-based evidence interpretations.

This study examines how reliance on impressions may introduce the potential for bias in evaluating experts and their testimony. Evidence interpretation may be influenced by *first* impressions of courtroom players such as defendants, lawyers, and experts. It is also possible that when listening to or thinking back on testimony, jurors rely on cognitive shortcuts to consider only *brief excerpts* of testimony when making sense of case facts and forming opinions. These brief excerpts form

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the "impressions" examined in the current study. We borrow from the thin slice literature as it relates to person-impression formation and judgments to inform how impressions were defined and measured in this study.

2.1. Thinly sliced exposures

As Ambady, Bernieri, and Richeson (2000) explain, "a thin slice is defined... as a brief excerpt of expressive behavior sampled from the behavioral stream" (p. 203–4). While thin slices can be verbal or nonverbal, they are characterized by "reducing or sometimes eliminating" information presented in the verbal exchange, as well as the context of the behavioral stream and the target's history (Ambady et al., 2000, p. 204). In the operational definition of a thin slice, it is less than 5 min, typically presented in slices anywhere from 30 s to 5 min (Ambady & Rosenthal, 1992). Thin slices of observations have accounted for significantly accurate predictions and judgments ($r = .39$) of individuals and situations being rated (Ambady, Hallahan, & Rosenthal, 1995; Ambady & Rosenthal, 1992). For instance, ratings based on only brief, thinly sliced exposures have predicted targets' personality characteristics, interpersonal styles, subjective well-being, psychopathology deception, and sales effectiveness (e.g., Ambady & Rosenthal, 1992; Carney, Colvin, & Hall, 2007; Fowler, Lilienfeld, & Patrick, 2009; Funder & Colvin, 1988; Gray, 2008; Pretsch, Flunger, Heckmann, & Schmitt, 2013).

2.2. Thin slices and the expert witness paradigm

Within a legal context, expectations of trial outcome and a defendant's criminal history have been predicted based on thin slices (Ambady, Krabbenhoft, & Hogan, 2006; Funder, 1995; Kenny, 1991; Kraus & Keltner, 2009; Kruglanski, 1989). However, no research has examined thinly sliced expert testimony and jury decision-making. Accuracy in thin slices research is the correspondence between a judgment and a criterion or as consensus among individuals judging a particular attribute of a third party (Ambady & Rosenthal, 1992; Gray, 2008; Kruglanski, 1989). In jury decision-making context, for example, one might compare the thin slice judgments of an expert to a criterion such as agreement with the expert (i.e., verdict) or to a consensus such as a jury's view of an expert's credibility. Predictions based on thin slices have also been found comparable to longer observations (Ambady & Rosenthal, 1992; Funder & Ozer, 1983). Thus, it is also possible to use thin slice methodology to test if mock jurors make the same decisions for verdict and credibility when exposed to a brief slice of testimony as they would if exposed to longer slices.

While jurors are rarely exposed to merely 30 s (or even just 5 min) of testimony, due to the cognitive demands of their task and the often complex nature of expert testimony, jurors may use impressions to incorporate expert evidence into their story of the events (Bennett & Feldman, 2003; Fiske & Taylor, 1991; Pennington & Hastie, 2003). While it is possible jurors may rely on only brief excerpts of testimony, what they actually do with that impression and how it influences their decisions has not yet been examined. It is not yet known if an expert can have just as much impact, and the same type of influence, in a few seconds of testimony as he or she would in longer testimonies. If so, trial strategists could use this knowledge to prepare witnesses and inform courtroom tactics, and the courts would better understand the potential impact of mere impressions of expert testimony on jurors' decision-making.

3. From the jury box to the deliberation room

Jurors are instructed to immerse themselves in deliberation to make legal sense out of often ambiguous or complicated evidence (Greene & Ellis, 2007). On the surface, this instruction buffers against potential errors that may arise from pre-existing beliefs and against jurors having

maximized their cognitive loads by the time deliberations begin. For example, deliberations have been shown to yield increased comprehension of trial information and instructions, and less attention to inadmissible testimony (e.g., Diamond, 1997; Diamond & Levi, 1996; Ellsworth, 1989; Kerwin & Shaffer, 1994). While jurors often rely on probative evidence when deliberating, heuristic processing that helps to shape jurors' evaluations of the evidence may also factor into deliberations (Gray, 2008; Greene & Ellis, 2007; Miller & Burgoon, 1982; Salerno & Diamond, 2010). However, generalizable findings regarding the effects of "deliberation" are limited due to methodological challenges and context-dependent issues (Diamond, 1997; Greene et al., 2002; Nietzel, McCarthy, & Kern, 1999; Nunez, McCrea, & Culhane, 2011; Salerno & Diamond, 2010). Nonetheless, pre-deliberation trial factors, such as expert testimony, have been linked with post-deliberation jury outcomes (see review by Devine, 2012; see also Diamond & Casper, 1992; Devine, Clayton, Dunford, Seying, & Pryce, 2001; Greene et al., 2002; Nietzel et al., 1999). It is not known whether jurors relying on brief impressions to interpret evidence while experts are on the stand are likely to carry those impressions into the deliberation room. Nor it is known how such impressions may interact with deliberation to influence decision-making.

4. Investigative framework and design

Research has yet to compare considerations of thinly sliced testimony with longer, fuller considerations of the testimony. The present study used different expert testimony slices to examine how reliance on cognitively shortened impressions may influence testimony interpretation and decision-making when a brief deliberation was included. We used a not guilty by reason of insanity (NGRI) case due to the intrinsic reliance on expert psychological testimony and documented heuristic processing of evidence in such cases (Louden & Skeem, 2007). The shortest slice included the 30 s of testimony in which the expert opined an unequivocal affirmation that the defendant's mental state at the time of the offense (MSO) was significantly impaired due to a mental disorder. We also included this same testimony in a 5-min long "thin slice" condition, as well as a 10-min long "fuller slice" condition (Ambady & Rosenthal, 1992, p. 3). We recognize that traditional thin slice exposures typically aim to minimize differences in information encoding between time slices (Ambady et al., 2000) and that testimony manipulations in this study are not "thin slices" in their purest form due to this influence. However, the influence of testimony content was minimized by providing all mock jurors with a case fact sheet that outlined the major aspects of the expert's testimony.

Our aim was to manipulate the degree to which the expert verbally presented this information as a function of time exposed to the testimony. Thus, the length of the testimony was varied to experimentally manipulate the behavioral stream upon which mock jurors may base their impressions. We tested for differences in mock juror ratings of expert credibility and verdict. We also included a deliberation condition to see if the thin slice phenomenon held after a deliberation. Finally, we tested the potential for impressions from each of these three time periods to interact differently with deliberation to influence credibility and verdict.

4.1. Hypotheses

Guided by the thin slice literature, we postulated that brief impressions would be as influential on decision-making as longer exposures. We hypothesized that witness credibility ratings and verdicts would not significantly differ between the 30 s and 5 min conditions, the 30 s and 10 min conditions, or between the 5 and 10 min conditions. We included a deliberation condition to see if the results hypothesized above would hold true for both non-deliberating and deliberating mock jurors. We generally anticipated that decisions in the 30-s and 5-min

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