

# **The Truth Can Be Deceiving: How Criminal Justice Headlines Are Misinterpreted**

**Author Bio:** Dr. Michael Conklin is the Powell Endowed Professor of Business Law at Angelo State University. His primary areas of scholarship include formulating objective measures for Supreme Court reporting, free speech on college campuses, and the effectiveness of jury instructions to combat courtroom fallacies. He also enjoys popular-level writing with op-eds and letters published in *The New York Times*, *The Wall Street Journal*, *The Washington Post*, *The Boston Globe*, *Los Angeles Times*, *The Denver Post*, *The Dallas Morning News*, and *Houston Chronicle*.

## **I. Introduction**

Just as the criminal justice system has a profound effect on those involved, media accounts of the criminal justice system can profoundly affect those reported on. It is important for those in the media to not only report accurately criminal justice matters, but also to be aware of how factually accurate reports can be misunderstood by lay audiences and the resulting consequences these misunderstandings can have.

The purpose of this study is to examine how various newspaper headlines regarding the criminal justice system are commonly interpreted. In doing so, journalists are provided valuable information to guide them in determining what report on, and how to best craft headlines. Additionally, journalistic resources, such as the Society of Professional Journalists Code of Ethics, are examined for their lack of guidance provided.

## **II. Headlines**

The distinction between a media headline and the full piece is a valuable and often overlooked one. Because most people only spend a short time with a newspaper, “headlines are likely the only contact that people have with most stories.”<sup>1</sup> Even when people do read the entire article, the headline frames the issue and therefore plays a vital role in how readers interpret the article.<sup>2</sup> News consumption is a top-down activity where all information is interpreted in light of the headline.<sup>3</sup>

---

<sup>1</sup> Blake C. Andrew, *Media-Generated Shortcuts: Do Newspaper Headlines Present Another Roadblock for Low-Information Rationality?*, 12 HARV. INT’L J. OF PRESS/POL., April 2007, at 24, 28 (2007).

<sup>2</sup> *Id.* at 28–29.

<sup>3</sup> *Id.* at 29.

Studies have confirmed this by demonstrating how, even when someone reads an entire article, variations in the headline significantly impact how the reader remembers the article.<sup>4</sup>

Numerous studies have found that newspaper headlines frequently misrepresent the underlying story.<sup>5</sup> This should come as no surprise given the severe space limitations that are inherent in the nature of newspaper headlines. This limitation naturally leads to subjective decisions regarding the inevitable enhancement or playing up of some information while concurrently suppressing other information.<sup>6</sup> Numerous studies have confirmed this result, concluding that newspaper headlines are often misleading due to issues such as non-objectivity, oversimplification, and sensationalism.<sup>7</sup>

The issue of headline inaccuracy is likely exacerbated by the recent adoption of Twitter and other online platforms for media dissemination. One study found that the majority of social media links are shared without ever being clicked.<sup>8</sup> Furthermore, online media platforms allow immediate feedback regarding how well different headlines are attracting viewers, thus incentivizing the media's use of alluring headlines over accurate ones.

Detailed taxonomies exist for how to write a headline, such as Dor's ten-step taxonomy.<sup>9</sup> For simplicity's sake, the following two-step function of headlines provided by Elly Ifantidou is better suited for the purposes of this study:

Headlines should seek to perform the following two functions:

1. To summarize the full-text newspaper article and
2. To attract attention to the full-text newspaper article<sup>10</sup>

However, the notion that these two functions are listed in order of importance is likely only aspirational, especially since the widespread adoption of online media dissemination. While in the past consumers had relatively few news outlets to choose from, the internet now affords consumers many options. This results in increased competition among media outlets to attract readers to their articles, therefore placing more emphasis on the second function over the first. Online media outlets enable the use of algorithms to determine which headline generates the most clicks (the

---

<sup>4</sup> John G. Geer & Kim Fridkin Kahn, *Grabbing Attention: An Experimental Investigation of Headlines During Campaigns*, 10 POL. COMM. 175, 186 (1993).

<sup>5</sup> Elly Ifantidou, *Newspaper Headlines and Relevance: Ad Hoc Concepts in Ad Hoc Contexts*, 41 J. PRAGMATICS 699, 699–700 (2009). Headlines can be misleading because they “highlight[] the topic in a non-objective, yet intriguing way, by oversimplifying the full-text content, while consistently masking other ‘relevant’ information.”

<sup>6</sup> Andrew, *supra* note 1, at 29.

<sup>7</sup> Ifantidou, *supra* note 5, at 700.

<sup>8</sup> Caitlin Dewey, *6 in 10 of You Will Share This Link Without Reading It, a New, Depressing Study Says*, WASH. POST (June 16, 2016), <https://www.washingtonpost.com/news/the-intersect/wp/2016/06/16/six-in-10-of-you-will-share-this-link-without-reading-it-according-to-a-new-and-depressing-study/>.

<sup>9</sup> Ifantidou, *supra* note 5, at 700.

<sup>10</sup> *Id.* at 699.

click-through rate).<sup>11</sup> These algorithms are designed to manipulate headlines with the goal of maximizing viewers and not with the goal of maximizing the accuracy of the headline.

The increased demand for enticing headlines caused by the internet is made even more problematic when the preferences of media consumers are also considered. One study found that readers generally prefer creative and non-informative headlines.<sup>12</sup> Another found a clear preference for ambiguous headlines over explicitly informative headlines.<sup>13</sup>

### **III. Methodology**

The purpose of this study was to measure how newspaper headlines of the criminal justice system are interpreted. The hypothesis was that non-experts will demonstrate a variety of misinterpretations. In this study, 101 undergraduate and graduate business students at a regional university in the United States were surveyed. Participants received one of four different versions of the survey. Each version contained three different headlines regarding someone in the criminal justice system. After each headline, the participant was instructed to affix a percentage probability that the person in the headline actually committed the crime. The situations in the headline ranged from being the prime suspect of a crime, being charged with a crime, having charges dropped, pleading guilty, being adjudicated not guilty, and being adjudicated guilty.<sup>14</sup>

---

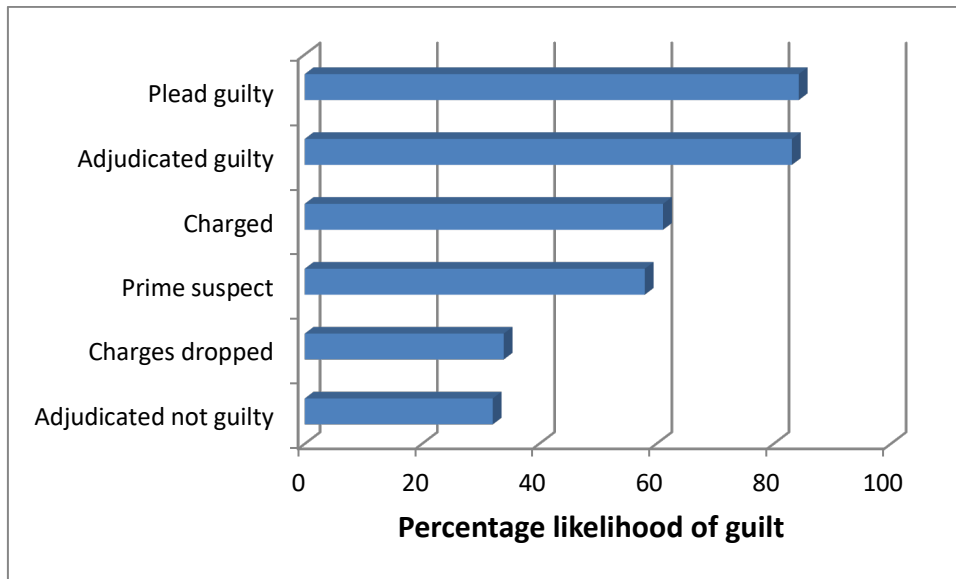
<sup>11</sup> Joon Hee Kim et al., *How to Compete Online for News Audience: Modeling Words that Attract Clicks*, KDD (2016), <https://www.kdd.org/kdd2016/papers/files/rpp1054-kimAemb.pdf>.

<sup>12</sup> Ifantidou, *supra* note 5, at 705, 717.

<sup>13</sup> *Id.*

<sup>14</sup> The six headlines were, “Matt Cook is charged with burglary,” “Burglary charges against Matt Cook were dropped,” “Jury renders guilty verdict in Matt Cook case,” “Jury renders not guilty verdict in John Wilson case,” “John Wilson pleads guilty to burglary,” and “John Wilson is the prime suspect in burglary.”

## IV. Results



The results of the study provide three main areas of concern. These include the inability to differentiate between pleading guilty and being convicted, public perception of dropped charges and acquittals, and the frequencies of 100% predictions of guilt. The predicted likelihood of guilt for people who pleaded guilty to a crime (84.3%) is higher than the predicted likelihood of guilt for someone adjudicated guilty in court (82.7%).

The first area of concern is the inability of participants to differentiate between pleading guilty and being convicted. While innocent people are sometimes convicted of a crime they did not commit, an innocent person accepting a guilty plea is a more common occurrence. This is because guilty plea offers can be a highly attractive alternative to going to trial, even for the innocent.<sup>15</sup> Furthermore, sometimes guilty pleas are offered for “time served,” which is an even more enticing offer. With a “time served” plea offer, the option is between pleading guilty and receiving no additional jail time or going to trial (where the accused will stay in prison awaiting trial) and risk being found guilty, therefore serving more prison time.<sup>16</sup>

Research conducted on false pleas (when an innocent person pleads guilty) confirms the high frequency at which they occur. For example, one study simulated being falsely accused of a crime by falsely accusing students of cheating on a test and then offering the students a less severe

<sup>15</sup> Vanessa A. Edkins & Lucian E. Dervan, *Pleading Innocents: Laboratory Evidence of Plea Bargaining’s Innocence Problem*, 21 CURRENT RES. SOC. PSYCHOL. 14, 18 (2013).

<sup>16</sup> Jenia I. Turner, *Plea Bargaining*, in 3 Reforming Criminal Justice: Pretrial and Trial Processes 73, 84 (Erik Luna ed., 2017), [https://law.asu.edu/sites/default/files/pdf/academy\\_for\\_justice/Reforming-Criminal-Justice\\_Vol\\_3.pdf](https://law.asu.edu/sites/default/files/pdf/academy_for_justice/Reforming-Criminal-Justice_Vol_3.pdf).

punishment if they were willing to falsely admit to cheating.<sup>17</sup> Although the students were innocent, 56.4% accepted the plea offer and falsely admitted to cheating.<sup>18</sup>

The second problematic area from the results of this study is that headlines of dropped charges and acquittals do not completely undo the reputational harm caused by being accused of a crime. The study shows that the average predicted likelihood of guilt after an acquittal or dropped charges is 33.9% and 32.1%, respectively. Therefore, these headlines still leave significant lingering doubt as to the innocence of the defendant. Employers and neighbors who err on the side of caution may treat someone they estimate to be 33% likely to have committed a crime with the same stigma as someone who is 82.7% likely (which is the average for someone adjudicated guilty of a crime).

One final problematic finding from the study was how many participants stated they were 100% certain of guilt after reading a headline. The survey given to participants was not on a Likert scale where the options were limited to 10% intervals. Participants were allowed to put any whole-number percentage they desired. They were free to state their certainty of guilt as 98% or 99% instead of 100%. Nevertheless, after reading a headline that stated “Jury renders guilty verdict in Matt Cook case,” 29.4% of participants stated they were 100% certain of guilt.

The result was even more striking for the headline that stated, “John Wilson pleads guilty to burglary.” There, 34% of participants stated they were 100% certain of guilt. While there are certainly isolated cases where the evidence is so overwhelming that someone who studied the proceedings can be essentially 100% certain of the defendant’s guilt, the notion that so many people think they can be 100% certain of guilt after only reading a headline is troubling. It is important to reiterate that the study participants were undergraduate and graduate college students. The vast majority of respondents would have completed business statistics and business law coursework, meaning that the average American may be even less informed about the legal system and probabilities than these study participants who nonetheless produced such troubling responses.

## V. Application

Experienced journalists who report on the criminal justice system likely have the requisite knowledge to better understand the headlines that were misunderstood by the study participants in this study. However, in an effort to minimize the risk of a headline being misunderstood, journalists should be better aware of common misperceptions their readers are likely to make. This awareness will prove valuable in journalistic efforts not just to create headlines that are factually accurate, but also the more challenging task of creating headlines that are accurately interpreted. This

---

<sup>17</sup> Lucian E. Dervan & Vanessa A. Edkins, *The Innocent Defendant’s Dilemma: An Innovative Empirical Study of Plea Bargaining’s Innocence Problem*, 103 J. CRIM. L. & CRIMINOLOGY 1, 28–33 (2013).

<sup>18</sup> *Id.* at 34.

mindfulness will better serve readers by giving them a more accurate view of the criminal justice system and will also serve to minimize the harm to those accused of a crime.

Due to the amorphous nature of how headlines affect public perceptions, it is no surprise that journalists do not receive a lot of specific guidelines on the matter. The Society of Professional Journalists' Code of Ethics (SPJCE) contains less than 800 words, and only one of the thirty-five bullet points explicitly deals with reporting on legal issues: "Balance a suspect's right to a fair trial with the public's right to know. Consider the implications of identifying criminal suspects before they face legal charges."<sup>19</sup>

Journalists can, however, interpret this one explicit provision in the SPJCE in light of the other provisions to gain a more robust understanding. For example, the SPJCE instructs journalists to: "Provide context. Take special care not to misrepresent or oversimplify . . . ."<sup>20</sup> Additionally, one of the four categories in the code is "minimiz[ing] harm," which includes "[b]alanc[ing] the public's need for information against potential harm or discomfort."<sup>21</sup>

The frequency of misunderstandings by readers of media headlines in this study is a powerful call for journalistic mindfulness when reporting on the criminal justice system. Issues with criminal justice headlines are not just limited to the three mentioned in this study, however. Many lay people do not understand the distinction between civil and criminal courts. Therefore, readers may not be able to distinguish a headline referring to someone being held liable in civil court for an assault from that person being convicted of the crime of assault. In reality, being adjudicated guilty of assault in criminal court (which generally requires a unanimous jury verdict based on the very high standard of beyond a reasonable doubt) is very different from being adjudicated liable for assault in a civil case (which may only require a majority of the jury to determine the defendant is liable based on the much lower preponderance of the evidence standard).<sup>22</sup>

Furthermore, insinuating media accounts, while properly understood by legal experts, are likely to be misunderstood by lay readers. Examples include a suspect's refusal to comment, a defendant refusing to take the stand at trial, or a suspect's past criminal history.<sup>23</sup> Due to the prejudicial nature of the aforementioned examples, and the harms that would likely result from their dissemination, the law provides explicit safeguards to protect against these common misunderstandings. For example, defendants have a right to a jury instruction that a refusal to testify is not evidence of

---

<sup>19</sup> *SPJ Code of Ethics*, SOC'Y PROF. JOURNALISTS, <https://www.spj.org/ethicscode.asp>, (last updated Sept. 6, 2014).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Must All Jury Verdicts Be Unanimous?*, FINDLAW, <https://litigation.findlaw.com/legal-system/must-all-jury-verdicts-be-unanimous.html> (last visited Oct. 8, 2019).

<sup>23</sup> People may infer that a suspect who refuses to comment must be guilty because otherwise he would want to clear his name. The same logic could be applied to a defendant who exercises his right not to testify at trial. People may also infer that if someone has committed crimes in the past, they are more likely to have committed the crime they are presently accused of.

guilt.<sup>24</sup> Also, past criminal behavior is generally not allowed to be considered in judicial determinations of guilt.<sup>25</sup> While journalists do not owe the same duty to defendants as the criminal justice system does, the underlying reason for the protections in criminal trials—to not prejudice the jury—is also applicable to journalistic writings. Journalists should consider the purposes for these legal protections and how they might also apply to their coverage of the criminal justice system.

## **VI. Conclusion**

The duty of the journalist to not create misleading headlines when covering criminal justice matters is not an easy task. Many readers lack the understanding of the underlying topic to properly interpret a headline on the matter. Additionally, many only read the headline and not the accompanying article. As illustrated in the findings of this study, journalists covering the criminal justice system should be cognizant of the level of understanding their readers have, the fact that many will only read the headline, and that later clarifications about dropped charges or not-guilty verdicts do not serve to clear the accused's name. These considerations will help contribute to a more ethical form of journalism.

---

<sup>24</sup> Sharon R. Gromer, *Fifth Amendment—The Right to a no Adverse Inference Jury Instruction*, 72 J. CRIM. L. & CRIMINOLOGY 1307, 1307 (1981).

<sup>25</sup> Leigh Segars, *Evidence of Prior Convictions: Admissible Against Defendants Who Testify?*, NOLO, <https://www.nolo.com/legal-encyclopedia/evidence-prior-convictions-admissible-against-defendants-who-testify.html> (last visited Oct. 8, 2019).