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## THE IMPACT OF THE MEDIA ON COURT DECISIONS

IPP Note 

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### Summary

Cross-sectional analysis of penal sentencing and the content of French evening television news (at 8pm on TF1 and France2) reveals the influence of media on court decisions. We find that, in the Assize courts, sentences are heavier the day after reports devoted to crime stories, and inversely, shorter after stories about miscarriages of justice. This effect is not due to actual changes in criminality, but to a reaction to television news. It is a very short-term influence – only reports broadcasted on the eve of the court decision exert it – and it is greater when the television audience is high. Moreover, only information about justice affects the sentence. Other “bad news” - about natural disasters or unemployment – have no effect on the pronounced punishment. Our results also indicate that the media influence court decisions only in the courts of Assize, where professional magistrates and popular juries sit together. Courts composed solely of professionals – correctional tribunals and children's courts – are not affected. Professional experience thus seems to limit the influence of media on court decisions. ■

- On average, each crime news report broadcast on the evening bulletins increases by 24 days the length of the sentence pronounced the following day in the Assize courts.
- Each report on legal errors/miscarriages of justice reduces Assize court sentences the following day by an average of 37 days.
- These effects are linked to media coverage and not to actual changes in the number of crimes committed.
- The probability of being acquitted is not affected by news media content.
- Only information relevant to the judicial domain has an influence on sentencing.
- The media effect on sentences occurs only in the Assize courts, and not in courts composed solely of professional judges.



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The presence of a popular jury in the Assize courts allows the French people to be directly represented in judicial decisions. In the exercise of this civic and legal duty, jurors must be “neutral and objective” and they swear to decide according to the charges and defence, “in accord with [their] conscience and [their] personal conviction, with the impartiality and firmness expected of a free and upright man”.<sup>1</sup> This vow, and the presence of professional judges along with popular juries, aim to ensure that the decisions relate only to the case in hand. But are they sufficient to protect judgements against the noise of the world? In particular, are they enough to keep at bay information relayed by the media, which consists of general bad news (about unemployment, war, etc.) and specific information about crime and justice? If media coverage of crime affects the judgements of juries, is it because their role is precisely to represent the concerns of citizens, or does news media have a specific influence beyond the actual crime trends?

The research presented in this Note shows the importance of the media coverage context in the penal justice system, as it is reflected in the content of evening news programmes. In doing so, it questions one of the pillars of justice: the equality of the accused before the law. If verdicts are more severe against defendants being tried the day after a sordid crime story, or conversely, more lenient in a context of distrust of the legal system, then the equity of the process is undermined. The problem is even more significant given that the variations are ad hoc and do not reflect a change in crime or attitudes.

### Assize courts: citizens drawn by lot to try the most serious crimes

The Assize courts try the most serious violations of the penal code: crimes which attract sentences of more than ten years in prison. The court is composed of three professional magistrates and jurors drawn by lot from electoral lists: during the period of our study, the latter numbered nine in the first instance and twelve on appeal.<sup>2</sup> The court decides on the guilt or innocence of the accused and where appropriate, the sentence to be applied. The judges present in the court direct the discussions during the hearing and guide the citizen-jurors, who are inexperienced in matters of justice. However, their voices have the same weight as those of the jurors during the deliberations. Decisions are made immediately after the hearing. Guilty verdicts pronounced by the Assize courts are registered by the national criminal records office for each individual and collected together in statistical data bases by the Sous-direction de la Statistique et des Etudes du Ministère de la Justice (Sub-Directorate of Statistics and Studies of the Ministry of Justice). Acquittals, which are few in the Assize courts (fewer than five per cent of cases), are not noted in the records, so we collected them after the deliberations. Each year, around 2,500 people are found guilty in Assize courts. As we see in [Table 1](#), the cases judged there are very serious ones: murder (16.9 per cent of cases), extreme violence (11.9 per cent), rape (48 per cent), armed or violent robbery or damage to property (21.8 per cent). The sentences handed down are on average around ten years.

1. See <http://vosdroits.service-public.fr/particuliers/F1540.xhtml> and <http://www.vos-droits.justice.gouv.fr/procès-penal-11923/jure-11933/jure-dassises-20167.html>

2. The number of jurors required for an Assize court trial was changed on 1 January 2012 to six in the first instance and nine on appeal.

3. Data collected by Médiamétrie and available by programme from l'INAtèque.

Table 1 – Distribution of crimes judged in Assize courts (cases heard between 2004 and 2010)

| Infraction          | Number of cases heard | Part of trials judged in Assize court | Average sentence (in years) | Average time of the trial (in years) |
|---------------------|-----------------------|---------------------------------------|-----------------------------|--------------------------------------|
| Voluntary Homicides | 3008                  | 16,9%                                 | 15,0                        | 3,5                                  |
| Aggravated assault  | 2108                  | 11,9%                                 | 8,7                         | 3,7                                  |
| Rape                | 8518                  | 48,0%                                 | 9,1                         | 6,9                                  |
| Damage to property  | 3865                  | 21,8%                                 | 8,0                         | 3,8                                  |
| Other crimes        | 256                   | 1,4%                                  | 9,2                         | 6,7                                  |
| <b>Total</b>        | <b>17755</b>          | <b>100%</b>                           | <b>9,8</b>                  | <b>5,3</b>                           |

Note: From 2004 to 2010, there were 3,008 convictions for wilful murder in French Assize courts. That represents 16.9 per cent of the cases heard by these courts. The average sentence for this kind of infraction was fifteen years. The trials lasted, on average, 3.5 years.

Source : Casier Judiciaire National, calculations made by the authors.

### The evening news: media coverage of crime and justice

Broadcast on public television and watched by a large audience, evening television news represents one of the main sources of information in France. In particular, the 8pm bulletins on France 2 and TF1 were watched by on average of five and eight million people respectively every evening between 2004 and 2010. That is, during this period, almost one-fifth of French people watched one of the news programmes in the evening<sup>3</sup>.

The reports of television news programmes on TF1 and France 2 are archived by the Institut national de l'audiovisuel (INA) and the content is categorised into keywords. We obtained the information for all TF1 and France 2 evening news programmes between 2004 and 2010. Analysing these keywords, we counted the number of reports per day on criminality in general, on crime stories (excluding matters relating to pending litigation and legislation), and on legal errors and miscarriages of justice. Crime stories appear frequently: on average, there is one every two days. Reports about miscarriages of justice are less common: on average one every two weeks (see [Table 2](#)).

Table 2 – Reports on crimes and legal errors on TF1 and France2 evening news programmes

| Theme                  | Days with at least one report on the theme | Average number of reports per program | Average time dedicated to the theme (in minutes) |
|------------------------|--|---------------------------------------|--|
| Crime (general)        | 56,6%                                      | 1,28                                  | 1,72   |
| Specific crime stories | 44,8%                                      | 0,89                                  | 1,21   |
| Legal errors           | 7,5%                                       | 0,14                                  | 0,22   |

Note: On 56,6 per cent of evenings, at least one of TF1 or France 2 news programmes televises at least one story on crime. On average, there are 1.28 stories on crimes every evening, lasting on average 1.72 minutes.

Source : INAtèque, authors' calculations.

## The empirical challenge : isolating the effect of media on court decisions

By merging the two sources of information, we can study the effect of the content of evening news broadcast on guilty verdicts and, where applicable, on the sentences pronounced. The methodology is based on a comparison of trials that took place *just after* the media reports of certain events (criminal matters, miscarriages of justice) with trials that took place while other stories filled the news programmes.

Starting from this simple comparison, it is tricky to establish that media reports influence legal decisions. Indeed, the causality could work in the other direction: the seriousness of the charges could lead to significant media coverage. For example, the trial of Klaus Barbie in 1987 received very high media coverage and ended in a life sentence. However, the sentence was certainly not an effect of media: the horror of the crime on trial and the heavy sentence expected were the cause of the intense media coverage.

In order to measure the effect of the media coverage on court decisions, we adopt several strategies. First, we focused on the media coverage of crimes committed – such as a homicide that occurred the day before – as opposed to crimes tried, by excluding reports about ongoing trials. Where investigations last several years, publicised crimes can only be those tried at the same time. Also, trial dates are determined weeks in advance and none of the parties can change the time of the trial in order to benefit from favourable media coverage.

In addition, we also study the effect of reports broadcasted the evening before and the evening after the trial. News stories broadcasted after the trial cannot affect the verdict. Thus this serves as a “placebo”. If we find a correlation between the news broadcasted the day after the verdict and the sentence, then it may be that there were periods when the crime was given intensive coverage and the sentences were heavier, for various political or social reasons. That would call into question the validity of our methodology.

4. The difference between the effect seen in the figure (+83 days) and the effect measured by regression (+24 days) is because media reports on crimes usually come in clusters. The effect measured by the regressions are valid for one report, and it is increased if two, three or more stories are broadcast on the same day.

## Results : the media do not influence acquittals, but do affect sentences

We start by measuring the effect of the media on acquittals, since there are no sentences unless the accused is found guilty. The results indicate that neither the probability of acquittal nor the probability of “correctionalisation” (being found guilty of a lesser offence though one was on trial for a crime), nor the number of guilty verdicts per day are affected by media reports.

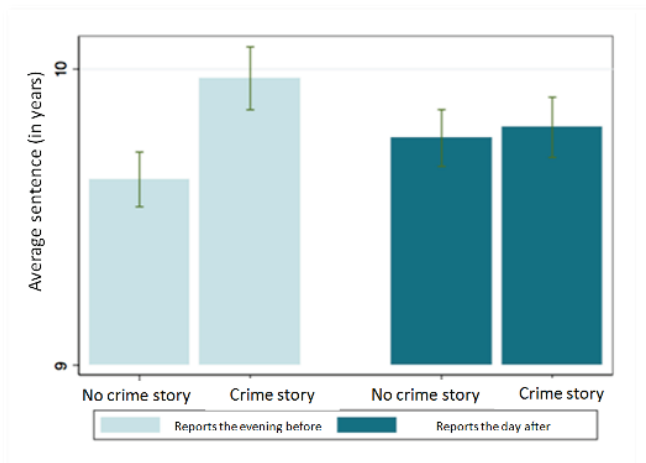
Second, we measure the effects of media reports on the prison sentences handed down. We explore the relationship between sanctions and news content the evening before sentencing. The effect of crime stories is presented in Figure 1. The light-coloured bars represent the average sentences pronounced in relation to the news content the evening before the verdict, with or without reports on crime stories. We see that sentences are significantly heavier when news reports on crime have been broadcasted the evening before. The difference is 83 days, that is, almost three months more for sentences handed down the day after. Conversely, prison sentences are not correlated with the presence of reports on crime stories broadcast the day following the verdict.

We quantify more precisely the positive effect on a sentence load of an additional story broadcasted the day before by means of linear regressions. This permits us to control for the effect of other factors that might be correlated to the punishment and or the content of evening news stories, such as spatio-temporal effects and the specific characteristics of the case. We find that an extra story on crime leads to an increase of prison sentences by an average of 24 days.<sup>4</sup>

The influence on sentences of news stories about miscarriages of justice is measured according to the same methodology. As in the case of coverage of crime stories, we find that sentences pronounced the day after coverage of legal errors and miscarriages of justice are lower than those handed down in the absence of any such reports (see Figure 2). This difference, statistically significant, is of the order of 90 days. Here, again, the sentences are not correlated with news reports the following day. Statistical analysis indicates that the broadcasting of an extra story about legal error reduces sentences by an average of 37 days.

Media therefore have a significant impact on sentences handed down by the Assize courts. Sentences are heavier the day after the broadcast of a crime story, and lower the day after a story about miscarriages of justice.

Figure 1: Effect of news reports about crimes on prison sentences



Note: The bars represent the average sentence handed down according to the content of the evening news the day before (the first two columns) and the day after (columns 3 and 4). Bars 1 and 2 have confidence intervals of 95 per cent. For example, the average sentence pronounced the day after crime reports on the evening news (column 2) is 9.96 years (9 years and 350 days), with a 95 per cent chance of being between 9.86 years and 10.08 years (the confidence interval). The average sentences following the reporting of crime stories the day before have a confidence interval that does not overlap, which means that their difference is statistically significant (which is not the case for average sentences that are followed by crime stories the day after).

Source : Casier Judiciaire National, INAthèque, authors' calculations

## Media effect or reflection of the real crime?

The correlation between news reports on crime and sentences can have two causes. It could be due to the responses of jurors to current media coverage. It is also possible that an increase in the number of crimes leads to a greater number of reports on this subject, while also creating a greater probability that a juror (or a family or neighbour) has directly suffered from a crime. This is all the more plausible because we find that the impact of media coverage is higher where the crimes take place in a province close to the Assize court.

We study this question by measuring the effect of the content of news programmes and the effect of the number of crimes actually committed (using police<sup>5</sup> statistics). Sentences are not affected by the number of crimes committed, while the influence of media coverage remains the same.

In addition, we find that the effect of news reports on the sentences is greater when the news audience is greater. These two results confirm that crimes only have an effect on sentences when they are publicised.

5. We could also use the number of criminal matters heard during the next five years and committed the evening before. The results are identical.

Figure 2 – Effect of news reports about miscarriages of justice on prison sentences



Note: The columns indicate the average sentence handed down according to the content of the evening news the day before (first two columns) and the day after (columns 3 and 4). Bars 1 and 2 have confidence intervals of 95 per cent. For example, the average sentence pronounced the day after evening news stories about court errors (column 2) is 9.58 years (9 years and 210 days), with a 95 per cent chance of being between 9.41 years and 9.74 years (the confidence interval). The average sentences following the reporting of court error stories the day before have a confidence interval that does not overlap, which means that their difference is statistically significant (which is not the case for average sentences that are followed by miscarriage of justice stories the day after)

Source: Casier Judiciaire National, INAthèque, authors' calculations.

## A short-term effect

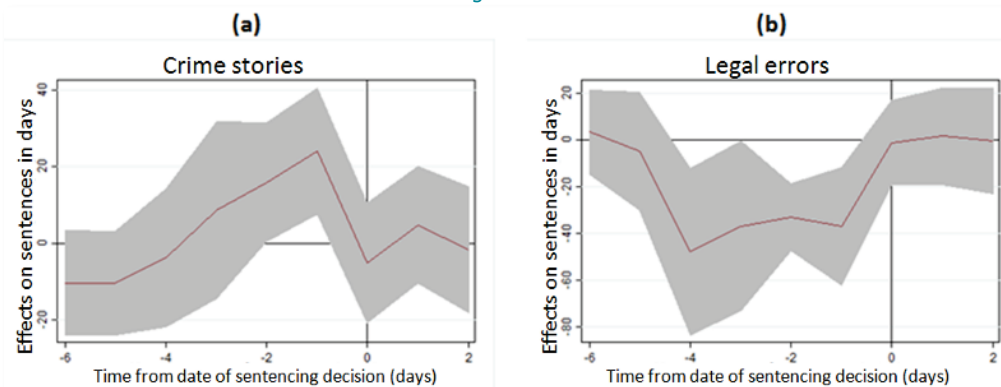
While news reports the day before influence court decisions, what influence have reports broadcast longer ago than that before the trial? Is the effect that we are measuring due to the "visibility" of certain events or the more long-lasting influence of changes in opinion on criminality? To answer this question, we studied the way in which the effects of news reports vary in relation to the time between the date of broadcast and the date of judgement in the criminal matter.

The effects are present in Figure 3. Using a linear regression, for each day around the date of the verdict, we measure, the effect of an extra story on the sentences pronounced.

Figure 3 shows certain results presented earlier: the significant effect of reports broadcasted the evening before (+24 days for a crime story report, -37 days for a story about miscarriage of justice); and the lack of effect of stories broadcast the day after. This graph also shows that reports on crime (figure 3a) have a very short-term effect. Only the stories broadcasted the day before have an influence on the sentences handed down.

News reports on legal errors/miscarriages of justice (figure 3b) seem to have a longer lasting effect. Evening news stories dedicated to these matters four days before the decision are correlated with shorter sentences. One interpretation of this result is that miscarriages of justice are less frequent and take up media space for several days in a row.

Figure 3 – Effects of reports on crime and miscarriages of justice on the length of prison sentence, according to the time of the broadcast in relation to the verdict



Note: The red line indicates the effect of an additional crime story (figure 3a) and a miscarriage of justice (figure 3b) on sentences, according to the time between the broadcast date and the sentencing decision. 0 is the day of the decision, -1 is the day before, +1 the day after, etc. the grey zone shows the confidence interval (at the threshold of 10per cent). While 0 is excluded from the confidence interval, the effect is considered statistically significant.

Source: Casier Judiciaire National, INAthèque, authors' calculations.

## Only news stories about the legal domain have an influence on penalties

The impact of reports of crime stories on the length of sentences could come from a feeling of fear or from a simple “change of mood” after hearing unpleasant announcements. While this second hypothesis would have difficulty explaining the negative effect on sentences following stories about miscarriages of justice (which are also a sort of bad news), it would nevertheless be coherent with the other results (longer sentences after news stories about crime, the short-term nature of the news story effect).

In order to test this hypothesis, we measured the effect of news reports about different “bad news” stories (such as natural disasters, unemployment) and other news likely to affect the daily lives of judges and jurors (such as strikes and social conflicts). The results are presented in Table 3. Only reports on miscarriages of justice and murders broadcasted the night before the court verdict have a statistically significant effect of sentences. Our results suggest, then, that only news stories relating to the judicial sphere significantly influence court decisions.

Table 3: Effect of news reports about different subjects on prison sentences.

| Date of news report        | Non -justice subjects |              |                 |         | Subjects crime and justice |        |
|----------------------------|-----------------------|--------------|-----------------|---------|----------------------------|--------|
|                            | Natural disasters     | Unemployment | Social conflict | Strikes | Legal errors               | Murder |
| Evening before the verdict | -3,18                 | -15,46       | 8,25            | 4,85    | -37,17*                    | 26,74* |
| Day after the verdict      | 6,10                  | -1,045       | -2,86           | -1,70   | 0,73                       | -3,86  |

*Note:* A report on strikes, the evening before the trial decision, is associated with an increase in penalties handed down of 4.85 days (first column). The absence of an asterisk indicates that the result is not significant. On the other hand, an additional report on murder broadcasted the evening before the trial decision is associated with a penalty heavier by 26.74 days (last column). This difference is significant (indicated by an asterisk), which means that we can exclude the possibility that the result is random.

*Source :* Casier Judiciaire National, INAthèque, calculs des auteurs.

## Professional experience protects against media bias

The results presented up to this point pertain to the Assize courts. We used the same method to study the effect of media reports on decisions made by judges in other criminal courts in France: the correctional tribunals, where three professional judge the offences (infractions attracting a maximum sentence of ten years in prison); and the children’s courts, in which a children’s judge and two specialist assessors judge offences committed by minors.<sup>6</sup>

We found that decisions taken in these two types of courts are not affected by news stories broadcasted the evening before verdicts are handed down. This lack of media effect on local criminal courts and children’s courts could have at least two causes. It is possible that only the most serious crimes are involved. Theft and petty drug trafficking might be judged in a relatively routine manner, and in the framework of case law and standard practice across jurisdictions. It is also possible that judges (and justice professionals for minors) are less sensitive to random media coverage than are jurors with no prior knowledge of courts. Professional experience could, therefore, protect against the effect of media. This second hypothesis seems more likely: complementary analyses indicate that even the most serious cases judged by professionals, without juries, particularly crimes committed by those under sixteen years of age, are not affected by television news.

6. We only look at matters judged in an immediate hearing and for which we know the precise date of the charge. In most cases when the decision is taken under advisement, ministry of justice data bases do not contain the exact date of the verdict, which means that we cannot easily ascertain the media context of the decision.

## Conclusion

Several recent works have shown the influence of media on different aspects of social life including voting, levels of corruption and ethnic conflicts. In addition, a number of studies have shown the bias that judges may be affected by, including ethnic bias, the influence of the order in which cases are dealt with, and judge fatigue. The work presented in this article covers both of these literature fields, in the French context, which has been little studied until now. The results demonstrate that court decisions, too, are influenced by the media context. However, contrary to other biases, professional judges are not influenced by news content.

These results suggest that jury training during Assize court hearings be strengthened, and that jurors be reminded that they must take into account only the facts of a case. Further, the presentation to justice professionals of recent studies into bias in their own decisions might reduce the influence of external factors and irrelevant information.

### Reference study:

This Note is based on the article: “No Hatred or Malice, fear or affection: Media and Sentencing”, by Arnaud Philippe and Aurélie Ouss, available at: [http://aouss.github.io/media\\_sentencing\\_oct2015.pdf](http://aouss.github.io/media_sentencing_oct2015.pdf)

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