GROWTH AND MATURATION IN PSYCHOLOGY AND LAW

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The growth of research in psychology and law during the last decade is easy to document. The *Annual Review of Psychology* has included two chapters on the subject, the first in 1976 and the second in 1982. In 1981 the American Psychological Association approved a new Division of Psychology and Law and selected that theme for the 1982 Master Lecture series at its convention. New journals (e.g., *Law and Human Behavior*) and collections of articles (e.g., Sales, 1981; Kerr and Bray, 1982; Konečni and Ebbeson, 1982) have reported on the burgeoning literature.

Clinical psychologists have long explored the role of mental illness in crime, treating mentally disordered offenders and testifying in court on matters of competency and sanity. The recent explosion in psychology and law, however, has occurred primarily in nonclinical areas (e.g., studies by social psychologists of jury behavior, research on legal socialization by developmental psychologists, and work by experimental psychologists on witnesses' ability to provide accurate testimony). Not all of this research has contributed to an understanding of law and legal behavior, and some of it has been naive and poorly designed. There are signs, however, that the field is maturing; the articles in this Special Issue provide evidence that earlier casual inquiry has begun to evolve into serious study.

The recent history of jury research done by social psychologists provides a good illustration of this evolution. During the late 1960s, political trials were often in the news. Many of them involved defendants who, as antiwar activists, won the sympathy of members of the academic community. Juries and their verdicts became topics of general interest, and a number of psychologists responded with messianic fervor. Some joined forces with defense attorneys in frank advocacy, applying social science techniques in the attempt to select

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sympathetic juries.[1] Others, primarily social psychologists interested in the processes of social influence and small group dynamics, saw in the jury an ideal opportunity to be socially relevant. They initiated research apparently aimed at demonstrating jury subjectivity. Studies focused on the effect of variables such as defendant character (e.g., Kaplan and Kemmerick, 1974), victim status (e.g., Landy and Aronson, 1969), defendant socioeconomic class (e.g., Gordon and Jacobs, 1969), and defendant sex (e.g., Richey and Fichter, 1969) on jury decisions. When simulation research revealed a significant effect of one of these variables on jurors' judgments, it was generally interpreted as evidence that juries were unable to perform properly as impartial decision-makers. One review article summarizing the results of these and similar jury studies was entitled "Justice Needs a New Blindfold" (Gerbasi, *et al.*, 1977).

The typical jury study conducted in the late 1960s or early 1970s presented college students with a brief written description of a criminal trial or trial segment. The students then responded to a number of questions, generally recommending a sentence and only on occasion judging the guilt of the defendant as well.[2] In Landy and Aronson (1969), for example, college students read a 400-word vignette that described a drunk driving incident in which a pedestrian was killed. In one version the defendant was a twice-divorced janitor with a criminal record of breaking and entering (unattractive defendant), while in another version he was a well-liked insurance adjuster who was widowed by his wife's death from cancer (attractive defendant). Guilt was unambiguous, and the subjects were asked to indicate how many years of imprisonment they would recommend for the defendant.

Jury studies began to flood the journals. A review in 1979 (Weiten and Diamond) revealed 14 jury studies published in 1967-1969, 25 in 1970-1972, and 62 in 1973-1975. Amid this flurry of research activity a number of warning notes were sounded about the potential problems of generalizing from simulation to actual jury performance (e.g., Bermant *et al.*, 1974; Bray, 1976; Diamond, 1979). Critics suggested that the jury study label was often used to claim relevance for otherwise theoretically and

[1] The influence of 'scientific jury selection' on trial outcomes has been widely questioned (e.g., Saks, 1976), and attempts to demonstrate its effectiveness empirically have generally failed (e.g., Penrod, 1979).

[2] The focus on sentencing is ironic, since juries in all states decide on verdict, but much less frequently consider sentence.

methodologically weak research (Vidmar, 1979; Weiten and Diamond, 1979). But even if the basic relationships disclosed in the research were convincing—e.g., that observers blame attractive individuals less than unattractive ones—their applicability to legal settings was suspect. Not only is such information in a jury trial embedded in a complex web of legally relevant evidence, but it is balanced by *voir dire*, judicial instructions, and other procedural controls that are designed to reduce the impact of extralegal factors on jury decisions. All of these controls were omitted from most simulations.

Empirical work demonstrated that such concerns were more than methodological quibbles. Izzett and Leginski (1974) found that the attraction-leniency relationship observed in Landy and Aronson (1969) disappeared when jurors were permitted to deliberate. Weiten (1980) showed an effect of defendant attractiveness on recommended sentence both when judicial instructions were given and when they were omitted, but the dependent variable of verdict was affected only when judicial instructions were not given. Baumeister and Darley (1982) showed that defendant attractiveness affected the sentences recommended by simulated jurors when case details were omitted, but that defendant attractiveness had no effect when those offense details were provided.

These studies, and the criticism of earlier jury simulations signaled a growing awareness among psychologists that a study does not achieve legal significance by simple labeling. Some of the simulations that began appearing by the mid-1970s showed this new consciousness.[3] Researchers like Saks (1977) and Penrod (1979) conducted carefully planned simulations using jury pool members who viewed videotaped trials of several hours duration complete with instructions, and deliberated to verdict. While these elaborations have answered some criticisms of the jury simulation paradigm, the controversy about jury simulations is by no means over. The battle still rages over whether lack of real consequences for those being judged makes the role-playing jury study a poor predictor of actual jury decisions (e.g., Ebbesen and Konečni, 1979; Bray and Kerr, 1979; Diamond and Zeisel, 1974; Wilson and Donnerstein, 1977). But psychologists' claims about the 'clear

[3] Psychologists apparently needed to learn their own lessons; they generally ignored the available example of the Chicago Jury Project in which legal scholars and sociologists had carried out sophisticated jury simulations (cf. Simon, 1967).

implications' of their findings for the legal arena have become more circumspect.

In addition to qualifying claims for the generalizability of their findings, psychologists have also expanded their repertoire of research paradigms. For example, Bridgeman and Marlowe (1979) interviewed jurors at the end of their trial experience, and Mills and Bohannon (1980) analyzed the questionnaire responses of jurors describing their deliberation experience. Zeisel and Diamond (1978) and the London School of Economics Jury Project (McCabe and Purves, 1974) studied the behavior of shadow juries who sat through real trials along with the real jury. This diversity of approaches indicates growing flexibility of jury research and suggests greater accommodation to the demands of the legal setting.

Psychologists have also broadened their research agenda. One of the liveliest areas of jury study in the 1970s focused on jury size and unanimity requirements (*Ballew* v. *Georgia*, 1978; *Burch v. Louisiana*, 1979). A current research question concerns the competence of juries to decide complex civil cases (e.g., Saks, 1981; Lempert, 1981). In these latter studies jury performance is compared to the context-relevant alternative: the judge, or a specially qualified jury of experts, rather than to an abstract standard.

Perhaps the most telling measure of maturation in psychology and law is the recognition that the jury is not the only object of study in the legal world. Fewer than 20 percent of the articles published in the first five volumes of *Law and Human Behavior* deal with jury behavior. And the articles in this special issue focus primarily on topics other than jury decision making: victim behavior, parole decision making, the probative value of the lie detector, and the logical demands of rules of evidence. In methodological approach, they include formal mathematical and empirical laboratory work (Schum and Martin), public opinion surveys (Tyler and Weber), archival analysis (Carroll *et al.*), and field experimentation (Greenberg *et al.*). The theoretical perspectives range from psycholinguistics to social, cognitive, and mathematical psychology. Yet, each article shows an awareness of its legal context. The supports for a new legal consciousness are very concrete. One research team includes a legally trained psychologist (Greenberg *et al.*), and another team includes a psychologist lawyer (Severance and Loftus). Legal evidence scholars provided Schum and Martin with evidentiary issues to examine (e.g., the over-weighting of redundant testimony,

Lempert, 1977). In two other studies in this issue the research was conducted in the organization where the relevant decisions are made (the Parole Board in Carroll *et al.*; a major lie detection firm in Kleinmuntz and Szucko). The only article without a direct legal representative is the public opinion study of Tyler and Weber—and the topic they examine is one that has been specifically acknowledged as a public opinion issue by the Supreme Court.

THE CONTENTS OF THIS ISSUE

Public support for capital punishment is the topic of the first article in this issue. While economists and sociologists have focused primarily on the deterrent effects of capital punishment (e.g., Ehrlich, 1975; Bowers and Pierce, 1975), psychologists like Tyler and Weber have examined the beliefs and values associated with support for the death penalty, and the implications of those beliefs and values for related behavior. For example, Ellsworth and her colleagues (Cowan *et al.*, in press; Thompson *et al.*, in press) have shown that members of the public who oppose the death penalty are generally also less willing to convict. In many states the jury deciding a potential capital case must be death-qualified, that is, cleared of any juror with firm scruples against the death penalty. Thus, Ellsworth's research suggests that if a jury is death-qualified, the probability that it will convict is thereby increased.

Tyler and Weber's results suggest that the symbolic value of the death penalty as a just or fair punishment is a more powerful explanation for death penalty support than is belief in its deterrent value. Moreover they found that this attitude does not stem from personal fears about, or experience with, crime. There remains a need to track changes in values and death penalty support over time in a panel study, but Tyler and Weber's findings suggest that even the most persuasive evidence for the inability of capital punishment to deter crime would not directly erode basic support for it.

The second article in the issue deals with the victim's decision to report a crime. Research on crime victimization has been conducted on a large scale, beginning with the 1966 national survey sponsored by the President's Commission on Law Enforcement and the Administration of Justice. Sociological concerns about demographic and social class variations in crime reporting have formed a major thrust of analysis in these surveys (e.g., Ennis, 1967; Hindelang and

Gottfredson, 1976). Psychologists Greenberg, Ruback, and Westcott in this issue explore the role of social influence on the decision of the victim to call in the police. In their field experiments they test the effect of bystanders' advice on reporting.

Victimization surveys indicate that rates of nonreporting have been rising. Hindelang and Gottfredson (1976) attribute this to the growing belief among victims that the police will not be able to help. Greenberg *et al.* find, however, that reporting rates rise when a bystander encourages the victim to report. Their interview data indicate that victims often do consult others for advice, and those advisors may thus represent a potentially influential force.

A large portion of legal research by psychologists centers on courtroom events, and the next three articles have this focus. Unlike much courtroom research, however, which attempts to uncover the hidden prejudices of legal decision makers, these articles examine the caliber of information supplied to decision makers, and the cognitive ability of those decision makers to absorb and combine the material available to them.

Kleinmuntz and Szucko, two cognitive psychometricians, have examined the ability of lie detectors to accurately identify deception. In one of their studies the professional polygraph examiners were presented with the charts of 100 subjects, half of whom had confessed to a theft while the remainder had been cleared by another's confession. Interrater reliabilities were low, and the six examiners classified an average of 37 percent of the innocent subjects as guilty, producing validity correlations of between .45 and .61. Moreover, the best possible combination of physiological predictors did not perform substantially better. These results are not subject to most of the objections that have been raised about earlier laboratory attempts to study lie detection using simulated lying or nonprofessional examiners. They represent the application of psychometric techniques to a basic question of legal interest.

The second court-based study is one of the new generation of jury studies. Loftus and Severance have focused on the psycholinguistic complexities of jury instructions. They began by examining the questions about judicial instructions that actual juries have raised during deliberations. After rewriting the instructions according to principles from psycholinguistic theory (e.g., Charrow and Charrow, 1979), they tested the ability of mock jurors to comprehend and apply the old and

revised instructions, and the effect of instructional changes on verdicts in a simulated trial.

This research raises an interesting question about what jury simulations are best able to tell us. Psychologists studying human behavior distinguish between capacity and performance. Capacity refers to the underlying ability of the individual, while performance refers to observed behavior. Difficulties often arise when lack of performance is used to infer lack of ability, because the performance situation may simply not lead the subject to show his or her true ability. Parents are acutely aware of this difference when their child refuses to speak when asked to exhibit a known ability in the presence of company. Situational cues and motivational states are powerful influences on performance. In many jury simulations, the motivational and situational influence of the research environment may be particularly powerful: social desirability cues may reduce negative reactions to a minority defendant, and the absence of consequences for recommending a severe sentence or delivering a guilty verdict may make mock jurors more willing to convict (e.g., Diamond and Zeisel, 1974). In contrast, simulations aimed at testing the effects of procedural change on juror capacity create fewer of these difficulties. Subjects in a research study are generally motivated to appear competent. If simulated jurors show evidence of an increased ability to comprehend and apply judicial instructions when the instructions are revised, this will not guarantee that jurors will willingly apply more comprehensible instructions in real cases. But it reduces the likelihood that lack of application is attributable to lack of ability.

The third article concerned with psychological issues in court introduces the reader to formal and empirical studies of the properties of evidence. Legal rules of evidence and legal scholars (e.g., Wigmore [1937]) have long grappled with problems of how to judge witness credibility and how to combine pieces of evidence that, even if true, are only probabilistically related to the ultimate fact at issue. The logical demands for combining such pieces of evidence coherently are examined by mathematical psychologists Schum and Martin in their formal work in cascaded inference. In the empirical studies that form the second part of their article, the capacity of human judges to combine a variety of evidence items is examined. The study shows that while the human capacity for evaluating individual pieces of evidence

consistently is impressive, significant inconsistencies arise when subjects are asked to make aggregate judgments of the overall probative value of a case by intuitively combining individual pieces of evidence. This work not only offers a new approach to analyzing the capacity of legal rules of evidence, but also suggests the potential for subdividing legal tasks so that decision makers can achieve greater consistency.

The last article in the special issue is a study of release decisions by the Pennsylvania Parole Board. Carroll and his colleagues examine the factors that appear to influence the Board's release decisions, explicitly including the recommendations of those responsible for supplying the Board with information. The parole decision appears to depend primarily on the inmate's institutional behavior and his expected future behavior on parole. While these results suggest an orientation to predicting and avoiding parole failure, a study of the offenders released from prison showed that the subjective predictions of risk which accounted for Parole Board decisions had little predictive value for parole outcomes. Even a prediction model consisting of the best combination of available case data had quite low predictive power. Although Carroll and his colleagues offer a number of potential explanations for the inability to accurately predict parole failure, similarly disappointing prediction accuracy levels have been found in other research of this type. The current interest in preventive detention and incapacitation is likely to find this low predictive accuracy a substantial barrier because of the problem of false positives. It is, of course, not simply new models that are needed; the prediction models can be no better than the data used to construct and apply them, and most of the critical data are notorious for uneven quality of collection and maintenance.

The articles in the special issue show the emerging contribution by psychologists to the study of law-related behavior. The methodological net is spreading, the context of decision making is more fully acknowledged, and both psychological and legal theory are the source of stimulating new questions. Yet one aspect of the current collection is troubling: the dominance of criminal legal topics and the absence of attention to the huge area of civil law, an absence which reflects the general pattern of research by psychologists who study the law (Tapp, 1980). Monahan and Loftus (1982) have suggested that psychologists have neglected the civil side

of law out of ignorance and because of an antipathy for questions that smack of business. Whatever the reason, as psychological interest in the law deepens and widens, research on civil law is clearly the next logical step. As Lempert's introduction suggests, the *Law & Society Review* will be receptive to this further development and expansion of interests by psychologists studying the legal process.

REFERENCES

BAUMEISTER, Roy F., and John M. DARLEY (1982) "Reducing the Biasing Effect of Perpetrator Attractiveness in Jury Simulation," 8 *Personality and Social Psychology Bulletin* 286.

BERMANT, Gordon, Mary McGUIRE, William McKINLEY, and Chris SALO (1974) "The Logic of Simulation in Jury Research," 1 *Criminal Justice and Behavior* 224.

BOWERS, William J. and Glenn L. PIERCE (1975) "The Illusion of Deterrence in Isaac Ehrlich's Research on Capital Punishment," 85 *Yale Law Journal* 187.

BRAY, Robert M. (1976) "The Mock Trial: Problems and Prospects for Jury Research." Paper presented at the meeting of the American Psychological Association, Washington, D.C.

BRAY, Robert M. and Norbert L. KERR (1979) "Use of the Simulation Method in the Study of Jury Behavior: Some Methodological Considerations," 3 *Law and Human Behavior* 107.

BRIDGEMAN, Diane and David MARLOWE (1979) "Jury Decision Making: An Empirical Study Based on Actual Felony Trials," 64 *Journal of Applied Psychology* 91.

CHARROW, Robert P. and Vita R. CHARROW, (1979) "Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions," 79 *Columbia Law Review* 1306.

COWAN, Claudia, William THOMPSON, and Phoebe ELLSWORTH (in press) The Effects of Death Qualification on Jurors' Predisposition to Convict and on the Quality of Deliberation, *Law and Human Behavior*.

DIAMOND, Shari S. (1979) "Simulation: Does the Microscope Lens Distort?" 3 *Law and Human Behavior* 1.

DIAMOND, Shari S. and Hans ZEISEL (1974) "A Courtroom Experiment on Juror Selection and Decision Making," 1 *Personality and Social Psychology Bulletin* 276.

EHRLICH, Isaac (1975) "The Deterrent Effect of Capital Punishment: A Question of Life and Death," 65 *American Economic Review* 397.

ENNIS, Phillip H. (1967) Criminal Victimization in the United States (Field Survey II. A report of a National Survey. President's Commission on Law Enforcement and Administration of Justice). Washington, D.C.: U.S. Government Printing Office.

GERBASI, Kathleen C., Miron ZUCKERMAN, and Harry T. REIS (1977) "Justice Needs a New Blindfold: A Review of Mock Jury Research," 84 *Psychological Bulletin* 323.

GORDON, Robert I. and Paul D. JACOBS (1969) "Forensic Psychology: Perception of Guilt and Income," 28 *Perceptual and Motor Skills* 143.

HINDELANG, Michael and Michael GOTTFREDSON (1976) "The Victim's Decision Not to Invoke the Criminal Justice Process," in W. McDonald (ed.), *Criminal Justice and the Victim*. Beverly Hills, CA: Sage.

IZZETT, Richard and Walter LEGINSKI (1974) "Group Discussion and the Influence of Defendant Characteristics in a Simulated Jury Setting," 93 *Journal of Social Psychology* 271.

KAPLAN, Martin and Gwen KEMMERICK (1974) "Juror Judgment as an Information Integration: Combining Evidential and Nonevidential Information," 30 *Journal of Personality and Social Psychology* 493.

KERR, Norbert and Robert BRAY (eds.) (1982) *The Psychology of the Courtroom*. New York: Academic Press.
KONEČNI, Vladmir J. and Ebbe B. EBBESEN (eds.) (1982) *The Criminal Justice System: A Social Psychological Analysis*. San Francisco: W.H. Freeman.
——— (1979) "External Validity of Research in Legal Psychology," 3 *Law and Human Behavior* 39.
LANDY, David and Elliot ARONSON (1969) "The Influence of the Character of the Criminal and his Victim on the Decisions of Simulated Jurors," 5 *Journal of Experimental Social Psychology* 141.
LEMPERT, Richard O. (1977) "Modeling Relevance," 75 *Michigan Law Review* 1021.
——— (1981) "Civil Juries and Complex Cases: Let's Not Rush to Judgment," 80 *Michigan Law Review* 68.
McCABE, Sarah and Robert PURVES (1974) *The Shadow Jury at Work*. Oxford University Penal Research Unit: Blackwell.
MILLS, Carol J. and Wayne E. BOHANNON (1980) "Character Structure and Jury Behavior: Conceptual and Applied Implications, 38 *Journal of Personality and Social Psychology* 662.
MONAHAN, John and Elizabeth LOFTUS (1982) "The Psychology of Law," 33 *Annual Review of Psychology* 441.
PENROD, Steven (1979) Study of Attorney and 'Scientific' Jury Selection Models. Doctoral Dissertation, Harvard University.
RICHEY, Marjorie H. and James J. FICHTER (1969) "Sex Differences in Moralism and Punitiveness," 16 *Psychonomic Science* 185.
SAKS, Michael (1981) Small Group Decision Making and Complex Information Tasks. Federal Judicial Center.
——— (1976) "The Limits of Scientific Jury Selection," 17 *Jurimetrics Journal* 3.
——— (1977) *Jury Verdicts*, Lexington, MA: D.C. Heath.
SALES, Bruce D. (ed.) (1982) *The Trial Process*. New York: Plenum.
SIMON, Rita J. (1967) *The Jury and the Defense of Insanity*. Boston: Little, Brown.
TAPP, June L. (1980) "Psychological and Policy Perspectives on the Law: Reflections on a Decade," 36 *Journal of Social Issues* 165.
THOMPSON, William, Claudia COWAN, Phoebe ELLSWORTH, and Joan HARRINGTON (in press) Death Penalty Attitudes and Conviction Proneness: The Translation of Attitudes into Verdicts, *Law and Human Behavior*.
VIDMAR, Neil (1979) "The Other Issues in Jury Simulation Research: A Commentary with Particular Reference to Defendant Character Studies," 3 *Law and Human Behavior* 95.
WEITEN, Wayne (1980) "The Attraction-Leniency Effect in Jury Research: An Examination of External Validity, 10 *Journal of Applied Social Psychology* 340.
WEITEN, Wayne and Shari S. DIAMOND (1979) "A Critical Review of the Jury Simulation Paradigm: The Case of Defendant Characteristics," 3 *Law and Human Behavior* 71.
WIGMORE, John H. (1937) *The Science of Judicial Proof*. Boston: Little, Brown.
WILSON, David W. and Edward Donnerstein (1977) "Guilty or Not Guilty? A Look at the 'Simulated' Jury Paradigm," 7 *Journal of Applied Social Psychology* 175.
ZEISEL, Hans and Shari S. DIAMOND (1978) "The Effect of Peremptory Challenges on Jury and Verdict: An Experiment in a Federal District Court," 30 *Stanford Law Review* 491.

CASES CITED

Ballew v. *Georgia*, 435 U.S. 223, 1978.
Burch v. *Louisiana*, 47 L.W. 4393, 1979.