

JURY PSYCHOLOGY: Social Aspects of Trial Processes

Psychology in the Courtroom,
Volume I

Edited by

Joel D. Lieberman

Daniel A. Krauss

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Jury Psychology: Social Aspects of Trial Processes

Psychology in the Courtroom, Volume 1

Edited by

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ASHGATE

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**JURY PSYCHOLOGY:
SOCIAL ASPECTS OF TRIAL PROCESSES**

To Celia—JDL

To Trina—DAK

To Bruce Sales, a mentor and a friend—JDL and DAK

Notes on Contributors

Natalie Anumba received a BA in psychology from George Washington University, and she is currently an advanced doctoral student in Drexel University's PhD Program in Clinical Psychology (Forensic Concentration). Her research interests include females in corrections and outpatient commitment.

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David DeMatteo received a PhD in Clinical Psychology from MCP Hahnemann University and a JD from Villanova University School of Law. He is Assistant Professor of Psychology at Drexel University, and Co-Director of the JD/PhD Program in Law and Psychology. His research interests include forensic mental health assessment, psychopathy, and drug policy. He has published more than 30 articles and book chapters, and co-authored two books. He was recently appointed a member of APA's Committee on Legal Issues.

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Tom Tyler is a University Professor of Psychology and Chair of the Psychology Department at New York University. He teaches in the psychology department and the law school. He received his BA from Columbia University and his MA and PhD from the University of California at Los Angeles. His research explores the dynamics of authority in groups, organizations, and societies. In particular, he examines the role of judgments about the justice or injustice of group procedures in shaping legitimacy, compliance and cooperation. His extensive research career focuses on the psychology of procedural justice—the fairness of group rules and processes. Dr Tyler is the author of several books, including *The Social Psychology of Procedural Justice* (1988); *Trust in Organizations* (1996); *Social Justice in a Diverse Society* (1997); *Cooperation in Groups* (2000); *Trust in the Law* (2002); and *Why People Obey the Law* (2006).

Matthew Vess is a graduate student in the Department of Psychological Sciences at the University of Missouri, Columbia working under the supervision of Dr Jamie Arndt. He earned his BA from Ohio University in 2005 and his MA from the University of Missouri-Columbia in 2007. His research has broadly examined how people construct and extract meaning when managing existential fears regarding the fragility of existence.

Series Preface

Over recent years many aspects of law enforcement and related legal and judicial processes have been influenced by psychological theories and research. In turn concerns that derive from investigation, prosecution and defence of criminals are influencing the topics and methodologies of psychology and neighbouring social sciences. Everything, for example, from the detection of deception to the treatment of sex offenders, by way of offender profiling and prison management, has become part of the domain of a growing army of academic and other professional psychologists.

This is generating a growing discipline that crosses many boundaries and international frontiers. What was once the poor relation of applied psychology, populated by people whose pursuits were regarded as weak and arcane, is now becoming a major area of interest for many students and practitioners from high school through to postgraduate study and beyond.

The interest spreads far beyond the limits of conventional psychology to disciplines such as Criminology, Socio-Legal Studies and the Sociology of Crime as well as many aspects of the law itself including a growing number of courses for police officers, and those associated with the police such as crime analysts or forensic scientists.

There is therefore a need for wide-ranging publications that deal with all aspects of these interdisciplinary pursuits. Such publications must be cross-national and interdisciplinary if they are to reflect the many strands of this burgeoning field of teaching, research and professional practice. The *Psychology, Crime and Law* series has been established to meet this need for up to date accounts of the work within this area, presented in a way that will be accessible to the many different disciplines involved.

In editing this series I am alert to the fact that this is a lively new domain in which very little has been determined with any certainty. The books therefore capture the debates inherent in any intellectually animated pursuit. They reveal areas of agreement as well as approaches and topics on which experts currently differ. Throughout the series the many gaps in our knowledge and present-day understanding are revealed.

The series is thus of interest to anyone who wishes to gain an up-to-date understanding of the interplays between psychology, crime and the law.

Professor David Canter

Preface to the Two-Volume Set

Joel D. Lieberman and Daniel A. Krauss

Over the past three decades there has been dramatic growth in the amount of research conducted that focuses on the application of psychology to legal issues. During that time period, researchers have examined issues related to evidence, testimony, and courtroom procedures with perspectives guided by their training in a variety of sub-disciplines within the field of psychology, including the areas of social, clinical, and cognitive psychology.

This two-volume set is designed to review the major areas in which psychology has been applied to court proceedings, to discuss relevant problems identified by psychological research, and to offer some perspective on how courts within and outside the United States endeavor to handle these problems. We have called upon a well-respected group of scholars to discuss psychological issues related to the procedures used by courts as well to specific types of evidence, and to specific types of trials.

The material presented in these two volumes is intended to offer an authoritative and comprehensive treatment of psychology in the courtroom. Recognizing that subdividing the chapters into two volumes has substantial benefits over one large tome, we are able to provide more expansive treatment of a wide variety of important topics by known experts in their respective fields. Such depth of coverage would not be possible in a single volume. Yet, at the same time, the two volumes afford the reader the opportunity to choose a single volume that offers exceptional depth on the topics in which he or she may be most interested.

Book Structure

The first volume, *Jury Psychology*, focuses on broad issues related to how courts and juries make decisions across a wide variety of topics with special emphasis placed on the application of psychological evidence and theory to factors that occur before and after the presentation of evidence in a standard trial, and to the nature of the trial itself. Issues from procedural justice to the psychology of jury instructions are examined in this volume. The second volume, *Psychological*

Expertise in Court, focuses on the use of psychological expert testimony and evidence in a diverse group of areas, from false confessions to sexual harassment.

Moving Beyond the Traditional Localized Focus of Research Application

In the process of conceptualizing the structure of these volumes, we realized that much of the research in psychology and law focuses on issues relevant to the United States. For example, research on jury instructions typically examines U.S.-based jury instructions; research on juror decisions in death penalty cases typically evaluates the impact of capital trial procedures in the U.S.; research in the area of defendant competency or insanity typically reviews U.S.-based criteria for such determinations. To some extent this ethnocentric focus is not surprising. Much of the relevant research has been conducted in the United States, thus researchers are simply more familiar (and concerned) with U.S.-based procedures and standards.

However, at the same time, the work in this area is generally not driven by a desire to understand U.S.-based procedures specifically, but rather from an interest in identifying problems and solutions in legal proceedings and decision-making from a psychological perspective. Psychology is based on cognitive and behavioral processes and responses, and not on national differences. Thus, many of the principles identified in U.S.-based research may be highly applicable to the legal systems of other countries as well.

We asked all of the contributors to these volumes to consider how the findings and conclusions they were writing about had international applicability. It should be noted that this volume set is not designed to provide a full international comparative analysis of the issues. Such a task would be truly daunting given the large number of legal systems that exist throughout the world. We believed that above all else, the main focus of the chapters should be on discussing the psychological principles relevant to the topic being written on. However, we felt that by asking authors to contemplate the international relevancy of their topics we could advance the application of existing research to legal systems outside the United States. In addition, we are hopeful that some international consideration of procedures used by legal systems in other countries might stimulate research in the United States, leading to the identification and application of new methods for increasing the overall fairness of the trial process.

Volume Integration

As previously noted, we felt that the topics covered in this two-volume set naturally fit into the areas covered by each volume, and that the two-volume approach allowed us (and the contributing authors) to provide greater coverage and depth for the topics than would have been feasible in a single volume. However, it is important to avoid

viewing the two volumes as separate works, or to think of the chapters within the volumes as entirely distinct. Rather, the material reviewed in various chapters is inherently inter-related. For example, to understand the impact of a specific type of evidence (e.g., sexual harassment, syndrome, insanity) one must first consider the admissibility of such information, and the likelihood that such information will be presented in court. One should then consider the type of trial in which testimony will be used (e.g., civil versus criminal, or perhaps even one where capital punishment may be considered), and special challenges that jurors may face within that type of trial. Further, it is important to understand how that testimony will impact the jurors, and how jurors will combine that testimony with information they are exposed to outside the courtroom, with previous relevant experiences they may have had, or with factors related to any important individual differences between jurors. One must then consider the instructions that a judge will provide jurors with regard to how such testimony is to be used, as well as the general instructions provided in that type of trial. Finally, overall theories of jury decision-making should be applied when attempting to determine how jurors will combine all of the information.

Thus, a true understanding of the issues involved in these volumes necessitates that readers approach the chapters in each book with a motivation to integrate the various topics. Doing so is critical for advancing one's understanding of the topics, as well as advancing future research in the field, and ultimately developing procedures that can be implemented to improve legal decision-making.

Preface to Volume I—Jury Psychology: Social Aspects of Trial Processes

Joel D. Lieberman and Daniel A. Krauss

Jury Psychology: Social Aspects of Trial Processes focuses on the influence of trial procedures on jurors (and ultimately on other trial participants, most notably defendants). In this volume, a number of global trial context issues are discussed in chapters on procedural justice, civil trials, and capital cases. In addition, as noted above, this volume focuses on the influence of factors that occur before and after the presentation of evidence, by reviewing topics such as pretrial publicity, jury selection, and jury instructions, rather than on the evidence itself, which is covered in *Volume II—Psychological Expertise in Court*. The authors address these issues by considering how trial procedure in the United States is similar to, and different from, that of other nations.

As this volume focuses on jurors as they experience the trial process, it is not surprising that many of the chapters reflect a strong social psychological orientation. Social psychology studies how people think about, relate to, and influence each other in social settings. As juries are groups who must work together to evaluate evidence, and may bring their biases, fears, and desires produced by a lifetime of experiences into the deliberation room, social psychology is highly relevant. As a result, social psychological theories provide a framework for predicting how jurors will incorporate different types of information into their decision-making. In addition, the traditional social psychological approach to conducting research involving a heavy emphasis on laboratory experiments is clearly seen in the techniques commonly used to study jurors (and other trial participants).

As a result, this volume begins by addressing the validity of jury decision-making research. In Chapter 1 David DeMatteo and Natalie Anumba discuss the development of research in this area. They then focus on the methodological approaches commonly used to study jurors, including the strengths and limitations of the typical research design. DeMatteo and Anumba then discuss the response of the legal community and social scientists to jury decision-making studies. The chapter concludes with a consideration of the degree to which valid inferences can be made from the findings that are obtained. Consequently, this

introductory chapter allows a context for interpreting the conclusions of many of the other chapters in this volume, as well as many of the chapters in the accompanying volume (*Volume II—Psychological Expertise in Court*).

Next, Chapter 2, provided by Tom Tyler, focuses on a discussion of procedural justice issues. Tyler reviews relevant research that has been conducted in this area over the past two decades. This research reveals that individuals are not motivated exclusively by self-interest, where their only concern is the outcome of a trial, but rather that the perceived fairness associated with the trial process itself is also highly important. Tyler discusses these issues in the context of the importance of maintaining public trust in the courts.

Chapter 3 presents a review of theoretical models of jury decision-making that have been developed by psychologists. In this chapter, Jennifer Groscup and Jennifer Tallon discuss the “Story Model” theory that maintains jurors attempt to integrate trial evidence as well as extra-legal evidence (e.g., pre-existing beliefs about the defendant based on defendant characteristics) through the development of a narrative structure. In addition, the theory of “Commonsense Justice” is examined. Commonsense justice maintains that jurors’ notions regarding what the law is or should be may differ from the law that is presented by the judge. The theory also maintains that jurors tend to rely on their commonsense beliefs over the stated law in their verdict determination. Groscup and Tallon also discuss more specific models that have been used to better understand jury decision-making, such as persuasion theories and other dual process models. This chapter provides readers with a basis for integrating the material presented in chapters that focus on specific elements of the trial process such as pretrial publicity, types of evidence, and jury instructions.

The biasing effects of pretrial publicity and inadmissible evidence are discussed by Joel Lieberman, Jamie Arndt, and Matthew Vess in Chapter 4. Procedural solutions to the problems of exposure to this type of information are reviewed. In terms of pretrial publicity, the authors compare approaches used in the United States (e.g., change of venue) with those commonly used in other nations, most notably the use of *sub judice* restrictions that prevent those involved with the case from publicly discussing it. A central focus throughout the chapter is the effects of admonitions delivered by the judge to disregard information. Lieberman et al. use a social psychological perspective to discuss these issues and to make several policy recommendations.

In Chapter 5, Joel Lieberman and Jodi Olson review the process and effectiveness of jury selection. More specifically, the authors discuss the relationship between individual differences (in terms of demographic and personality factors) and verdict decisions in criminal and civil cases. The authors also examine the “scientific jury selection” approach, and attempt to answer whether this recent approach to selecting jurors is superior to traditional approaches used by attorneys. In addition, the authors compare the jury selection approaches used in the United States, where jurors may be questioned extensively, leading many to be excluded from serving on a jury

(based on their responses or individual characteristics), to approaches used in other countries where minimal questioning occurs and exclusions are quite rare.

In Chapter 6, Joel Lieberman discusses the overall comprehensibility of jury instructions. Lieberman points out that jury instruction comprehension rates tend to be alarmingly low, and examines potential causes for the low comprehension rates among jurors. A variety of potential procedural solutions to improving the instruction process are presented. The chapter concludes with a discussion regarding the extent to which courts in the United States have begun to revise their instructions based on the recommendations proposed by social scientists.

Although jurors' primary job is to determine verdicts, in some cases jurors may have the power to sentence a defendant as well. The most important type of case where jurors have sentencing power is death penalty cases. In Chapter 7, Mona Lynch discusses issues associated with juror selection and decision-making in capital cases. In particular, the issue of bias created by the "death qualification" process of selecting jurors is explored. Lynch also reviews the impact of defendant and victim characteristics, evidence factors, and jurors' confusion and resistance to instruction guidance in capital cases.

The broad topic of civil trials is reviewed by Edith Greene in Chapter 8. Greene begins with a review of the nature of civil trials and provides a comparative look at civil trials in other countries. The issue of the vanishing civil jury in nations outside the United States is an area of particular interest for this author. Greene explores concerns that have been raised about civil juries, and whether their decisions tend to occur on an arbitrary and unpredictable basis. Greene concludes with a discussion as to whether jurors are able to understand the complexity of evidence and instructions that may be present in civil trials.

We hope that readers will enjoy the depth of coverage of each of these chapters. The authors have not only provided a thorough discussion of the relevant literature, but have also taken into account a variety of international considerations for each topic. It is our hope that this approach will stimulate readers to consider the effects of different trial procedures (as well as cultural customs) on the dynamics of juror behavior, as well as the behavior of other trial participants.

Psychology in the Courtroom

This two-volume set explores the major areas in which psychology has been applied to court proceedings. A renowned group of psychological and legal scholars explore relevant problems that are created by or influence courtroom procedure and trial outcome from a psychological perspective. The authors discuss how courts within and outside the United States endeavor to handle these problems, and present empirically based potential policy solutions for these issues.

Readers may also be interested in the accompanying volume: *Psychological Expertise in Court* edited by Daniel A. Krauss and Joel D. Lieberman. In this volume, authors direct their attention to the use of psychological expert testimony and evidence in a variety of legal contexts. They explore the controversies that surround it, from questions of its admissibility to its effects on eventual juror decisions. A wide range of topics are covered including expert testimony on psychological syndromes and recent research on false confessions. The authors also provide a comparative analysis exploring how different types of psychological expert testimony and evidence are used by different countries' legal systems. The authors conclude by making specific recommendations for how psychological research and information could be better utilized by courts around the world.

Contents to Volume II: Preface, *Daniel A. Krauss and Joel D. Lieberman*; The Admissibility of Expert Testimony in the United States, the Commonwealth, and Elsewhere, *Daniel A. Krauss, Desiree Cassar, and Allison Strother*; Psychological and Cultural Aspects of Interrogations and False Confessions: Using Research to Inform Legal Decision-Making, *Richard A. Leo, Mark Costanzo, and Netta Shaked*; System and Estimator Variables in Eyewitness Identification: A Review, *Solomon M. Fulero*; Insanity in the Courtroom: Issues of Criminal Responsibility and Competency to Stand Trial, *Patricia A. Zapf, Tina M. Zottoli, and Gianni Pirelli*; Psychological Syndrome Evidence, *M. Alexis Kennedy*; Child Sexual Abuse and the Courts, *Susan R. Hall*; Sexual Harassment: Antecedents, Consequences, and Juror Decisions, *Sarah M. Greathouse, Lora M. Levett, and Margaret Bull Kovera*.

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Chapter 1

The Validity of Jury Decision-Making Research

David DeMatteo and Natalie Anumba

Synopsis

The past several decades have witnessed remarkable growth in the amount of research that examines the application of psychology to legal issues. One important focus of this growing body of research is jury decision-making. Although researchers have amassed a considerable body of research examining various aspects of jury decision-making, there is often a reluctance among social scientists and legal practitioners to accept the research findings due to doubts regarding the validity of the research. In particular, critics of jury decision-making research point to concerns relating to the methodological soundness and resulting ecological validity of much of the research. As such, the validity of jury decision-making research, as well as other research that examines the application of psychology to legal issues, remains a hotly debated topic. We begin this chapter with a brief discussion of the history of jury decision-making research and the typical research designs used to study jury decision-making. Next, we discuss the responses to jury decision-making research among the legal community and social scientists. Finally, after addressing the major criticisms that have been leveled against jury decision-making research, we address the important question of whether jury decision-making research permits valid inferences.

The Validity of Jury Decision-Making Research

Perhaps the most interesting and noteworthy aspect of the legal system in the United States is the means by which many decisions are made. In many criminal and civil trial contexts, the outcomes are not determined by legal experts; rather, the decisions are made by a group of laypeople who typically have no formal legal education (Devine et al., 2001). As noted by Kalven and Zeisel (1966), the