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RESEARCH NOTES

JURY SIMULATION: THE IMPACT OF JUDGE'S INSTRUCTIONS AND ATTORNEY TACTICS ON DECISIONMAKING

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Much research has been undertaken to investigate the methodology of the jury simulation paradigm. Each of these studies isolated some of the pitfalls involved in generalizing from experiments to the real world. These studies suggested that the method of presenting the stimulus,[1] with whom the decision rests[2] and the consequences of the decision[3] may all have a significant effect on the outcome of the laboratory experiment.

One possible criticism of most laboratory studies is the failure to include judicial instructions. After jury selection has taken place, jurors take an oath. In this oath they promise to do two things: 1) to decide the case solely on the facts as developed from the evidence and 2) to uphold the law as it is given to them by the court. The stimulus for most laboratory experiments, however, has been some sort of presentation of the facts with judicial instructions omitted. In a real trial the judicial instructions are never optional.

Judicial instructions often provide specific guidelines as to how jurors are supposed to respond to some of the typical independent variable manipulations that are found in laboratory simulations. For instance, in regard to the extraevidential factor of the judge's personality or demeanor, the following judicial caution is often given:

> Nothing I have said in these instructions—or done at any other time during this trial—is any intimation whatever as to what verdict I think you should find. The verdict is the sole and exclusive duty and solemn responsibility of you, the jury, and neither the Court nor anyone else can help you in performing that duty.[4]

Similarly, there are judicial instructions on such matters as sympathy for or against the defendant or the state, how to determine credibility of witnesses, how to respond to prior record of a defendant or confessions, and on many other evidential and extraevidential factors. This is not to say that jurors always follow these instructions; however, the small number of studies that have manipulated judicial instructions indicate that juries do pay attention to them.[5] Therefore, it would seem un-

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[1] *See* Bermant, McGuire, McKinley & Salo, *The Logic of Simulation in Jury Research,* 1 CRIM. JUST. & BEHAVIOR 224 (1974); Dipboye, *The Effectiveness of One-Sided and Two-Sided Appeals as a Function of Familiarization and Context,* 102 J. SOC. PSYCH. 125 (1977); Walker, Thibaut & Andreoli, *Order of Presentation at Trial,* 82 YALE L.J. 216 (1972); J. Kessler, Techniques of Jury Research (April 1974) (paper presented at the Central States Speech Convention).

[2] *See* Bray & Noble, *Authoritarianism and Decisions of Mock Juries: Evidence of Jury Bias and Group Polarization,* 36 J. PERSONAL & SOC. PSYCH. 1424 (1978); Cornish & Sealy, *Juries and the Rules of Evidence,* 1973 CRIM. L. REV. 208; James, *Status and Competence of Jurors,* 64 AM. J. SOC. 563 (1959); Mitchell & Byrne, *The Defendant's Dilemma: Effects of Juror's Attitudes and Authoritarianism on Judicial Decisions,* 25 J. PERSONAL & SOC. PSYCH. 123 (1973); Reed & Reed, *Liberalism-Conservatism as an Indicator of Jury Product and Process,* 1 LAW & HUMAN BEHAVIOR 81 (1977); Simon & Mahan, *Quantifying Burdens of Proof,* 5 LAW & SOC. REV. 319 (1971); Strodtbeck, *Social Status in Jury Deliberations,* 22 AM. SOC. REV. 713 (1957); R. Forston, The Decision-Making Process in the American Civil Jury: A Comparative Methodological Investigation (1972) (Ph.D. dissertation, University of Minnesota).

[3] *See* Kerr, *Severity of Prescribed Penalty and Mock Juror's Verdicts,* 36 J. PERSONAL & SOC. PSYCH. 1431 (1978); Wilson & Donnerstein, *Guilty or Not Guilty? A Look at the Simulated Jury Paradigm,* 7 J. APPLIED PSYCH. 175 (1977).

[4] These instructions were taken from the pattern judicial instructions of the state of Florida. SUPREME COURT COMM. ON STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES, FLORIDA STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES § 2.16, at 47 (1970).

[5] *See* Cornish & Sealy, note 2 *supra*; Forston, *Judge's Instructions: A Quantitative Analysis of Juror's Listening Comprehension,* 18 TODAY'S SPEECH 34 (1970); Gerbasi, Zuckerman, Miron & Reis, *Justice Needs a New Blindfold: A Review of Mock Jury Research,* 84 PSYCH. BULL. 323 (1977); Mitchell & Byrne, note 2 *supra*; Simon, *Juror's Evaluation of Expert Psychiatric Testimony,* 21 OHIO ST. L.J. 75 (1960); Sue, Smith & Caldwell, *Effects of Inadmissible Evidence on the Decisions of Simulated Jurors: A Moral Dilemma,* 3 J. APPLIED PSYCH. 345 (1973).

wise to use an experimental manipulation without the standard judicial instruction that accompanies such an occurrence in a real trial.

In the studies reported to date, only one judicial instruction has been manipulated. No study has yet reported an investigation of judicial instructions taken as a whole. Such a work should include the standard instructions on the juror's role and the definition of reasonable doubt, as well as the instructions that are specific to a particular trial. In the present investigation, judge's instructions, taken as a whole, were one independent variable.

The case used in the experiment was taken from a field study that included observations of criminal trials and interviews with attorneys and jurors. While several of the field study cases might have been selected, the one chosen was of particular interest because it ended in a mistrial. This meant that it probably would be tried again and that the results of an experimental study might have applied value for this specific case.

In all cases witnesses are not allowed in the courtroom during the testimony of other witnesses nor are they allowed to discuss their testimony with each other. In this case the prosecuting attorney pressed witnesses for details which, though seemingly minor, could be used to impeach the testimony of others. The pressure of this impeachment attack by the prosecutor probably contributed to the eventual mistrial. The mistrial was declared because defense witnesses were overheard discussing their testimony with each other during the trial.

After the mistrial was declared, it seemed questionable that the impeachment strategy was necessary for a conviction. Several of the jurors interviewed after the mistrial stated that they were ready to vote guilty. The prosecutor expressed the opinion that the impeachment had been necessary because of the low incrimination value of the facts alone. From these discussions an experiment was designed to explore systematically the influence of three variables in the case on the rate of conviction. The three variables were judge's instructions, level of incrimination and use of impeachment strategy.

It was predicted that the presence or absence of judge's instructions would significantly affect the verdict. It was further predicted that high levels of incrimination and use of impeachment tactics would produce more convictions. An interaction between these two variables was also predicted, the expectation being that the use of impeachment would have a greater effect on the conviction rate in the low incrimination situation. It was predicted that jurors would pay more attention to such a strategy in looking for additional information on which to base their verdict. A similar prediction of interaction between judge's instructions and level of incrimination was also made. It was thought that jurors in the low incrimination situation would be affected more by judge's instructions than those in the high incrimination situation because those jurors would be looking to extraevidential factors for additional information on which to base their verdicts.

Method

Subjects. The subjects were 217 male and female students enrolled in five introductory level sociology courses in a regional university in the Deep South. On the day of the experiment, to avoid the possibility of small group effects, the students were brought to a central auditorium. One male left before the experiment began and two female subjects returned blank verdicts; thus the number of subjects was reduced to 214.

Design. The three independent variables each had two levels yielding a $2 \times 2 \times 2$ factorial design resulting in eight versions of the trial stimulus. The variable of judge's instructions and the use of impeachment strategy were presence or absence manipulations. The incrimination variable consisted of a high and a low incrimination version of the facts.

Stimulus Materials. The case was a criminal case in which three individuals had been charged with breaking and entering and possession of more than five grams of marijuana. One of the defendants pleaded guilty and appeared as a witness for the prosecution. The other defendants were tried separately. The first trial ended in the mistrial described above. The facts from this case were used as the low incrimination version of the trial. The facts from the second defendant's trial, which resulted in conviction, were used for the high incrimination version. Pilot work on scaling the incrimination variable indicated that the testimony of two prosecution rebuttal witnesses in the second trial made a significant difference in conviction rates. The testimony of these two witnesses represented the only difference between the high and low incrimination versions. The stimuli for judicial instructions included the judge's opening remarks and instructions as they appeared in the trial transcript and the pattern judicial instructions. The impeachment variable consisted of four attempts by the prosecutor to discredit defense witness testimony on the basis of conflicts between or within

sworn statements or by attacking the character of the witness.

Procedure

When the subjects were seated in the auditorium, the experimenter read them the instructions. The nature of the study was explained, the anonymity of responses was assured and the subjects were asked to indicate whether they had any prior knowledge of the study. A promise of debriefing was made, and the subjects were asked not to discuss the case until after the debriefing.

The experimenter then passed out booklets containing one of the eight versions of the trial. The instructions in the booklet contained a caution not to communicate visual or auditory reactions to the materials. The subjects were told that they could leave after they recorded their verdicts. At the end of the school quarter a written description and explanation of the purpose and results of the study was handed out by the instructors to those classes that had participated.

Results

Since the experiment was conducted in two large groups, preliminary analysis was done on the two sets of data. This preliminary analysis revealed no significant differences between the two groups, so the data were combined for all subsequent analyses.

The dependent variable of final juror verdict was used as a measure of the effects of the three independent variables. Table I shows the frequencies of guilty, not guilty and cannot decide verdicts in each condition. The frequencies of this table were analyzed with a multiple contingency analysis[6] and the resultant chi-square values are given.

The resulting frequencies of guilty, not guilty and cannot decide verdicts were distributed in a significantly different pattern across the eight experimental conditions (chi-square = 36.43, df = 14, $p < .01$). The results displayed in Table I indicate that the main effects of level of incrimination and judge's instructions were also significant (chi-square = 15.94, df = 2, $p < .01$ and chi-square = 13.55, df = 2, $p < .01$, respectively). However, the prediction of a significant main effect for the impeachment strategy was not found. The predicted interactions between level of incrimination and impeachment (AB) and level of incrimination and judge's instructions (AC) also were unrealized.

In the conditions in which judge's instructions were included, subjects who voted cannot decide were given further instructions urging a verdict. Of these verdicts, 70% were changed as a result of an additional paragraph of instructions. Of these changed verdicts, 43% changed to guilty and 57% to not guilty. An examination of the changed verdicts by level of incrimination and use of impeachment revealed no differences caused by experimental conditions. It should be noted, however, that cannot decide as a final verdict was more than twice as frequent in the noninstructed conditions.

An examination of subject variables in the experiment revealed that age was significantly related to verdict pattern (chi-square = 4.13, df = 1, $p < .05$), but sex, class standing and occupation were not significant. College major was found to be distributed unequally among conditions and could not be further analyzed. On the age variable, voting patterns were similar among "college age" students (seventeen to twenty-one) and the older students (thirty and above). There was, however, a transitional group between younger and older students (twenty-two to twenty-nine) who were more lenient in their verdicts. An analysis of the occupation listing given by the transitional age group revealed that a majority of these students gave no occupation, listing themselves as full-time students. On the other hand, those students in the oldest age bracket (thirty and above) listed some occupation in most cases.

Discussion

The significant main effects were level of incrimination and judge's instructions. Since level of incrimination was scaled during pilot work into two different low and high incrimination versions of the facts, it would seem that this finding needs little comment. However, the difference between the two versions does have some interesting applied implications. Pilot work had shown that the testimony of two rebuttal witnesses that was developed after the mistrial and used in the trial of the codefendant changed the evidence from the value of low to high incrimination. Other results of the pilot work suggested that the rebuttal witnesses were even more important than an eyewitness who had seen the defendants near the crime area at the time it was committed. Therefore, the rebuttal witnesses were the only difference between the high and low incrimination versions.

The laws of full discovery in the state in which

[6] *See* Sutcliffe, *A General Method of Analysis of Frequency Data for Multiple Classification Designs*, 54 PSYCH. BULL. 134 (1957). *See also* N. WINER, STATISTICAL PRINCIPLES IN EXPERIMENTAL DESIGN (1971).

TABLE I

NUMBER OF CONVICTIONS AND NONCONVICTIONS BY EXPERIMENTAL CONDITIONS (N = 214)

Condition		Guilty	Not Guilty	Cannot Decide
High Incrimination				
With Impeachment	With Instructions	17	10	1
	Without Instructions	21	4	4
Without Impeachment	With Instructions	18	7	3
	Without Instructions	15	5	6
Low Incrimination				
With Impeachment	With Instructions	11	15	1
	Without Instructions	14	10	3
Without Impeachment	With Instructions	6	18	1
	Without Instructions	11	8	5
		113	77	24

TABLE II

CHI-SQUARE VALUES

Variable	Chi-square	df
Effect of Incrimination (A)	15.94*	2
Effect of Impeachment (B)	2.71	2
Effect of Instructions (C)	13.55*	2
AB	.56	2
BC	1.13	2
AC	.56	2
ABC	1.98	2
	36.43*	14

* $p < .01$

this trial took place mandate that all potential witnesses' names be made available to the opposing side. In addition, the opposing attorney has the right to take a sworn deposition from each witness, thus permitting him to learn the substance of each witness' testimony. With a well-taken deposition, an attorney can prepare an effective rebuttal in advance. The results of this experiment suggest that attention to rebuttal testimony may be an important preparation area for the attorney.

The experimental manipulation of impeachment did not produce a significant effect. It may be that this variable lost some of its impact in the written version of the trial. Some of the impact of impeachment is achieved by seeing the expression of the witness when a conflict in his or her testimony is introduced. On the other hand, some witnesses are well controlled and have ready explanations for inconsistencies. A second possible reason for the failure to find the predicted effect may be the juror's expectation that the attorney will find discrepancies. Due to the media, this may have become part of the attorney-role expectation, and thus jurors would not be easily swayed.

The final variable, judge's instructions, had a significant effect. The result of this presence-absence manipulation may be the major finding of the experiment. Jurors were affected by judge's instructions. Jurors without instructions were more likely to vote guilty or cannot decide. It appears that the instructions moved individuals from indecision or conviction to more lenient voting.

While it is difficult in a particular case to predict the direction of the overall impact of a set of

instructions, some instructions may help the case and others may hurt it. Prior to the reading of the instructions to the jury, the judge usually holds a conference with the attorneys to discuss what instructions will be given. Often attorneys will go on the record as objecting to certain instructions. These attempts to suppress certain instructions indicate that attorneys recognize the possible impact of judicial instructions on the final verdict.

The study of the impact of extralegal factors such as physical characteristics of participants,[7] personality or character,[8] juror attitudes[9] and other situational variables[10] has become a popular research area in social psychology. The law has long recognized that these nonevidential factors could influence a juror's verdict. The judge's instructions were developed in part to counteract these influences. The results of the present study support the conclusion that judicial instructions should be included in experimental investigations of the jury process.

Further evidence for this conclusion was the large percentage of subjects (70%) in the instructed conditions who changed from a verdict of cannot decide to either guilty or not guilty when additional instructions were given to them. The instruction that was used has been referred to as the "dynamite charge." A judge may use it when it appears that a jury is deadlocked. While it might be suggested that the demand characteristics[11] of this extra instruction were responsible for this change, it is also possible that similar demand characteristics exist in the courtroom when the judge instructs the jurors. In that case, the juror would be changing his vote to behave as a good juror, rather than changing because of a new evaluation of the evidence. This study along with other studies that have manipulated instructions indicates that this phase of the trial should be incorporated into a simulation in order to obtain functional equivalence with a real trial.

The predicted interactions of level of incrimination and judicial instructions with the impeachment variable were not found. Impeachment produced effects in the same direction and approximately the same magnitude across the two levels of each of the variables. This suggests that impeachment changed a small but approximately equal number of votes in the low and high incrimination situations. A cost-benefit analysis suggests that in the high incrimination situation, where an attorney has a good chance of winning, the risks of impeachment may outweigh the benefits. In the low incrimination situation, where there is a low probability of winning the case, impeachment might be worth the risks.

The failure to find significant relationships between subject variables with the exception of age and type of verdict is probably best explained by the homogeneity of the sample. Where other researchers have found background characteristics, such as occupation, to be related to verdict, the students in this sample were not representative of the ranges of those characteristics that would be found in the usual venire list.

One final interesting result should be noted. In trials involving drugs it is common for prosecuting attorneys to use peremptory challenges to remove younger prospective jurors from the panel. The results of this experiment with its collegiate subject pool suggest that there are substantial numbers of college students who voted for a conviction in a simulation trial involving drug charges. It might be concluded that automatic exclusion of all young persons in a drug case is unwarranted. College students who have been found to be "good" subjects in cooperating with the instructions of the experimenter in the laboratory may also be "good" jurors in following the instructions that they receive about the law in the courtroom. This is where comparative studies of homogeneous groups of subjects might be helpful to attorneys in the jury-selection process.

[7] *See* Sigall & Ostrove, *Beautiful but Dangerous: Effects of Offender Attractiveness and Nature of the Crime on Juridic Judgment*, 31 J. PERSONAL & SOC. PSYCH. 410 (1975).

[8] *See* Kaplan & Kemmerick, *Juror Judgment as Information Integration: Combining Evidential and Non-Evidential Information*, 30 J. PERSONAL & SOC. PSYCH. 493 (1974); Landy & Aronson, *The Influence of the Character of the Criminal and His Victim on the Decisions of Simulated Juries*, 5 J. EXPERIMENTAL SOC. PSYCH. 141 (1969).

[9] *See* Mitchell & Byrne, note 2 *supra*.

[10] *See* DeJong & Hastorf, *Effect of an Accomplice on the Punishment Assigned to a Criminal Defendant*, 33 J. PERSONAL & SOC. PSYCH. 271 (1974); Sue, Smith & Caldwell, note 5 *supra*; Wilson & Donnerstein, note 3 *supra*.

[11] *See* Orne, *Demand Characteristics and the Concept of Quasi-controls*, in ARTIFACT IN BEHAVIORAL RESEARCH (Rosnow ed. 1969).