2003

Some Steps Between Attitudes and Verdicts

Phoebe C. Ellsworth
University of Michigan Law School, pce@umich.edu

Publication Information & Recommended Citation

Ellsworth, Phoebe C. "Some Steps between Attitudes and Verdicts." In The Jury Trial in Criminal Justice, edited by D. D. Koski, 301-16. Durham, N.C.: Carolina Academic Press, 2003. (Adapted from a chapter of the same title in Inside the Juror: The Psychology of Juror Decision Making, edited by R. Hastie. New York: Cambridge Univ. Press, 1993.)

2 Some steps between attitudes and verdicts

Phoebe C. Ellsworth

The paradox of individual differences

Most research that has attempted to predict verdict preferences on the basis of stable juror characteristics, such as attitudes and personality traits, has found that individual differences among jurors are not very useful predictors, accounting for only a small proportion of the variance in verdict choices. Some commentators have therefore concluded that verdicts are overwhelmingly accounted for by "the weight of the evidence," and that differences among jurors have negligible effects. But there is a paradox here: In most cases the weight of the evidence is insufficient to produce first-ballot unanimity in the jury (Hans & Vidmar, 1986; Hastie, Penrod, & Pennington, 1983; Kalven & Zeisel, 1966). Different jurors draw different conclusions about the right verdict on the basis of exactly the same evidence. That these differences are consequential is indicated by the frequently replicated finding that first ballot splits are the best-known predictor of the final jury verdict. In most laboratory studies of jury decisions, there are some *juries*, as well as jurors, that reach nonmodal verdicts. The inescapable conclusion is that individual differences among jurors make a difference.

Of course these influential individual differences need not be differences in character or philosophy of life. The process by which a juror comes to a decision about the right verdict may resemble Brownian motion more than it does the Galilean laws of cause and effect. First, many trials are long and any given juror's level of attention is likely to vary considerably. Different jurors will be especially attentive or especially inattentive to different bits of the testimony, and thus their final impressions of what was said will differ. Some of the factors that affect level of attention may be systematic and predictable. As an academic, for example, I will probably be especially attentive to the testimony of experts, particularly other psychologists, while the attention of my fellow jurors may wander. When it comes to testimony

about the identity and trajectory of a bullet, a hunter may be a more attentive witness than I.

Other attentional differences may be more haphazard. For example, one juror may have a sleepless night and attend poorly to witnesses on the afternoon of the following day while another witness is well rested and alert. Or, one juror may be inattentive while she daydreams or worries about whether her business is running smoothly in her absence, whereas another juror focuses intently on the witness at the the front of the courtroom.

Second, haphazard, unpredictable events that occur outside the courtroom may influence jurors' judgments. For example, a juror may read a relevant newspaper article, have a relevant conversation, or observe a relevant incident on an evening between trial days, and see things differently the next day. The event could be as obviously pertinent as a conversation with a spouse or a friend about the proper verdict in the case, or it might be an apparently irrelevant event such as a chance encounter with a person who resembles a witness or defendant. These outside events will vary unsystematically among jurors, and thus may be responsible for unpredictable individual differences in judgments that cannot be discovered at voir dire.

But of course most lawyers and most researchers are interested in individual differences that can be identified before trial: clearly recognizable characteristics of the juror that make a difference in his or her propensity to favor one side. This class of factors comprises systematic background characteristics of the juror that he or she brings into the jury box at the start of the case. This class of factors can be broken down into subsets such as individual differences in beliefs and knowledge about how the world works or should work; enduring personality traits, preferences, and attitudes; mental capacities; past experience; and a hodgepodge of biological, social, and economic factors that are often labeled "demographic background." Individual differences such as these have received the most attention from researchers, scholars, and legal professionals who want to predict, understand, and steer the outcomes of jury trials. There are probably several reasons for the high level of interest in predicting predeliberation verdict preferences from individual differences in attitudes, personality, and demographic characteristics.

First, in our culture there is an almost irresistible compulsion to attribute differences in behavior to differences in a person's personality, attitudes, or background. This tendency to see causes of behavior in the person rather than the situation has been labeled a "fundamental error of social perception" (Ross, 1977), and it is a bias that affects professional students of behavior as well as the person in the street. Indeed, some personality researchers have accused other researchers of being blind to the truth about the actual variability of personality because of our cultural habit of attributing individual differences in behavior to stable properties of the individual (Mischel, 1968). A glance at a sample of modern trial tactics handbooks reveals that attorneys, like almost everyone else in our culture, incessantly generate

hypotheses - some common, some bizarre - about the ways that personality, gender, ethnicity, and occupation affect jurors' decisions (see Hastie, Penrod, & Pennington, 1983: chapter 6 for examples; Appleman, 1968; Bodin, 1954; Rothblatt, 1966).

Second, the practice of selecting jurors by exercising peremptory challenges in a voir dire proceeding has channeled a great deal of energy into discovering ways to discriminate between prosecution (or plaintiff) and defense jurors on the panel of prospective jurors (cf. discussion in Hastie, Penrod, & Pennington, 1983, chapter 6). Indeed a small industry of jury selection experts has evolved that provides advice to attorneys about what to ask during voir dire (Bonora & Kraus, 1979; Schulman, Shaver, Colman, Emrich, & Christie, 1973). Most of these experts are social scientists who rely on survey methods and clinical intuition to pick jurors with the right personalities, attitudes, or prejudices to assist the side that has employed them in winning at trial.

Third, the "classic" study in the field of research on jury decision making concluded that the distribution of jurors' individual verdict preferences before deliberation predicted the verdict at the end of deliberation in "nine out of ten juries" (Kalven & Zeisel, 1966: p. 488). The implication was that an account of the manner in which predeliberation verdicts arose, with a focus on the reasons for differences among jurors who heard the same case, would provide us with the answer to the question of the final verdict.

But, alas, when an intelligent person is faced with the task of choosing among many candidates for a small number of positions, there is a pervasive tendency to see evidence for individual differences where little or none exists. What is called "personality" is a complex product of current situation and personal history that is rarely manifested in a simple, enduring, cross-situational behavioral propensity. Furthermore, the scanty scientific evidence concerning the utility of systematic jury selection techniques does not suggest that these methods provide much leverage to control the verdict by the side that employs them. Kalven and Zeisel's "nine out of ten" rule is an exaggeration of the strength of the relationship between initial verdict preferences and the jury's verdict, especially so when the jury is faced with several verdict choices, or several counts, or any task more complex than a simple guilty–innocent choice. Nonetheless, some stable individual differences apparently do matter and this chapter is a review of the research on an attitudinal individual difference that does predict jurors' verdicts. Discovering and analyzing an individual difference that *does* have some predictive value allows us to study the *mechanisms* by which the internal propensity affects the judgment of a legal case, and thus may guide our search for other meaningful individual difference variables in a manner that goes beyond the usual low-level stereotyping social scientists and lawyers have employed.

Systematic scientific research on the relationships between individual differences in juror background and verdicts has taken three forms: analyses

of national surveys relating aggregate trends in jury verdicts to aggregate trends in public attitudes (e.g., Levine, 1983); studies of the correlations between jurors' characteristics and the actual trial verdicts they retrospectively report (Costantini & King, 1980; Moran & Comfort, 1986); and studies of the correlations between juror background factors and juror verdicts in controlled mock-jury tasks. In a pure form this research seeks stable characteristics of the individual juror that predict his or her tendency to favor one verdict or another at different points in time and even in different cases (although we usually expect to find a tendency that is exhibited for very similar cases, e.g., violent crimes against a person).

The search for individual differences that predict verdict preferences or behavior in deliberation might set out inductively by first trying to identify individuals who have a stable tendency to convict or to acquit and then, after "convictors" and "acquitors" have been identified, to search for characteristics of the jurors that discriminate between the two groups. Rarely, however, do we have a sufficient string of decisions by the same juror, except in the most abstract and cursory of case presentations, to use this method. In practice, research has usually proceeded in the reverse direction – starting with a hypothesis about a characteristic of the juror that will predict verdicts and then working "forward" to see if the predictor discriminates between jurors who favor different verdicts. In fact, because research in this area is so nascent, the typical study begins with a guess about an individual difference (or differences) and looks for correlations with juror verdicts in a single case (cf. Hastie, Penrod, & Pennington, 1983, for a review and an example).

Early studies seeking individual differences that would predict verdict choices sometimes adopted a global hypothesis that there were some people who would be conviction prone for virtually any criminal case and others who would be acquittal prone for virtually any case, something akin to "hardliners" and "bleeding hearts." For the most part research has not found simple individual differences in juror decisions (Saks, 1976; Saks & Hastie, 1978; Suggs & Sales, 1978). However, a more sophisticated "interactionist" perspective now guides most research and the usual expectation is that there will be "case *X* individual interactions" so that one individual may exhibit a tendency to convict in certain types of (similar) cases, but not all cases. This shift from a search for "global conviction proneness" to selective conviction proneness follows a similar development of research sophistication in the area of personality and individual differences where there has been a shift from the search for global cross-situational individual differences to a search for "person *X* situation interactions" (Bem & Allen, 1974).

In our own research we have focused on jurors' attitudes toward capital punishment. Individual differences in specific attitudes about legal institutions seem to be one of the only clear exceptions to our general conclusion that there are no simple individual difference effects in legal judgments. (Another is the tendency for females to give harsher verdicts in rape cases,

cf. Hans, 1982). There is a well-established relationship between a juror's attitude toward capital punishment and the tendency to vote for conviction or acquittal. Jurors who favor the death penalty tend to favor conviction more than jurors who oppose the death penalty. The relationship is modest in strength; for example, when indexed by an r^2 statistic between a scaled measure of attitude intensity and conviction proneness the typical value would be +.04, not much better than the predictive value of a major league baseball player's batting average on the likelihood that he will get a hit at a particular "at bat" (Abelson, 1985). But the relationship keeps showing up, appearing in a great variety of research designs across a range of real and artificial criminal case decisions. However, there do seem to be some instances in which the relationship is attenuated or even reversed. For example, there is some evidence that jurors who favor capital punishment tend to be conviction prone for major felonies but tend to be acquittal prone in comparison to jurors who oppose capital punishment when deciding driving-while-intoxicated cases.

Our initial goal was to find out whether attitudes toward the death penalty did in fact predict other proprosecution attitudes and verdict preferences in actual cases. Once the basic relationship had been established, we went on to explore some possible mechanisms by which general attitudes might affect verdicts in particular cases.

A generic model for jury decision making

A review of the literature on individual juror decision making suggests a variety of subprocesses that contribute to the final decision (see the other chapters in this book). Seven conceptually distinct components that constitute a modal model for performance of the decision task have been singled out by Pennington and Hastie (1981). These are listed below, with no implication that the order presented here is necessary or even typical.

1. The juror takes in information from trial events. Probably most of this information is legally relevant evidence, but extralegal information ranging from nonverbal cues provided by a witness's behavior to off-the-record statements made by an attorney or witness would also be included in the category. Understanding individual variability in outcomes at this stage of the judgment process requires an effective theory of the factors that influence selective attention.

2. The juror constructs a causal–sequential representation of the facts in the case. In Pennington's terms, the juror is attempting to construct a valid story of the events that occurred relevant to the criminal charges (see Pennington, this book). According to Pennington and Hastie (1986) there is a definite relationship between the outcome of this stage of the judgment process and the ultimate verdict. However, as yet no one has been able to predict the form of evidence representation from information available about a juror's background or anything else.

3. In the meantime, the juror attempts to evaluate the credibility of the information conveyed by the witnesses. This includes evaluations of the individual witness's demeanor, character, and motivations as well as judgments of the plausibility of statements made by witnesses with reference to the juror's knowledge of how the world works. Undoubtedly, the factors that affect perceptions of credibility in other contexts apply to the courtroom as well, factors such as perceived power, competence, trustworthiness, and similarly to the juror (Zimbardo, Ebbesen, & Maslach, 1977), along with other more case-specific characteristics such as the "fit" of the witnesses's appearance and demeanor to his or her role in the story the juror is constructing.

4. The juror is supposed to separate admissible from inadmissible evidence in order to ignore inappropriate information when deciding on a verdict. Advice on the performance of this task is provided in the judge's instructions during the trial and in the final instructions concerning admissibility. We know of no research on individual differences in performance of this subtask. The ways in which inadmissible or extralegal evidence may influence a juror can range from blatant intentional disregard of the judges' instructions to subtle alterations in the construal of the rest of the evidence in jurors who make a sincere effort to ignore the inadmissible evidence and believe that they have succeeded (Gerbasi, Zuckerman, & Reis, 1977; Ross, 1987).

5. The juror learns the legal categories relevant to the verdict. In criminal cases the verdict definitions are provided in the judge's instructions on the law. There is considerable variability across jurors in their performance of this subtask, but no simple, direct relationship has emerged between success in learning the verdict definitions and a bias to favor the prosecution or defense (Hastie, Penrod, & Pennington, 1983).

6. The juror attempts to relate the evidence to the legal categories in order to select the appropriate or best-supported verdict.

7. The juror compares his or her strength of belief in the verdict to a legal standard of proof, usually the beyond reasonable doubt instruction in a criminal case. Kerr (this book), Thomas and Hogue (1976) and others have shown that variations in subjective threshold to convict are predictive of verdicts. But, we do not know of a useful a priori predictor of variations in the threshold.

Our research on individual juror decision making suggests that jurors do not perform these seven component tasks in a fixed temporal sequence, do not necessarily perform all of the tasks before deliberation begins, and do not perform all of the tasks with a high degree of competence. Our observations suggest that jurors concentrate on comprehending trial events, constructing a fact sequence, evaluating credibility, and relating the evidence to a legal category. However, they do not seem to spend a great deal of time trying to define the legal categories, evaluating the admissibility of

evidence they are using, or testing their final conclusion against a standard of proof. In fact, many jurors simply appear to select a sketchy stereotyped theme to summarize what happened (e.g., "cold-hearted killer plots revenge," "nice guy panics and overreacts") and then choose a verdict on the basis of the severity of the crime as they perceive it.

Research on the relationship between attitudes toward capital punishment and juror decision making

We chose to study attitudes toward capital punishment in part because they are generally strongly held and closely related to other attitudes about the criminal justice system (Ellsworth & Ross, 1983) and in part because they are legally consequential. In a trial in which the defendant faces possible execution, citizens who strongly oppose the death penalty are not allowed to serve as jurors. They are excluded from service both at the ultimate stage of the trial concerned with the penalty and at the earlier stage in which the jury decides whether or not the defendant is guilty. The empirical relationship between death penalty attitudes and verdicts is legally significant because several defendants have appealed their convictions on the grounds that a "death-qualified jury" is more likely to convict than a standard jury with no one excluded on the basis of their anticapital punishment attitude (the most important cases include *Hovey v. Superior Court,* 1980; *Lockhart v. McCree,* 1986; *Witherspoon v. Illinois,* 1968). These defendants claim that the jury decision process is biased against them if there is a correlation between death penalty attitudes and verdicts *and* potential jurors are excluded from service on the basis of their attitudes.

Another good reason to study individual differences in attitudes toward the death penalty is that there was already good evidence for the relation between these attitudes and verdicts. During the past thirty years social scientists have conducted more than a dozen studies using survey methods, posttrial interviews with actual jurors, and mock-jury simulation experiments to study the attidue–verdict relationship. Every study found that jurors who did not oppose the death penalty were more likely to convict than jurors who opposed the penalty. In our view, the answer to the basic "prediction question" is firmly established; attitude toward the death penalty, a fairly stable individual difference, does predict jurors' verdicts in a wide range of criminal cases. Having replicated this relationship in our own research (Cowan, Thompson, & Ellsworth, 1984), we turned to the "mediation question" where we have tried to determine which components of the global juror decision process are influenced by the attitude.

Attitudes as individual differences

Psychologists have developed the concept of attitude to represent an internal mental state that indicates a propensity or predisposition to respond in

one manner or another (Campbell, 1963; McGuire, 1969, 1983). Attitudes can be thought of as beliefs that have three properties; they refer to a condition, object, or event in the real world; they include a prescription of evaluation, goodness, or preference; and they provide implications for behavior. Attitudes rarely exist in isolation. Rather they come as bundles or constellations of related beliefs, and a scientifically ineffable but intuitively sensible consistency seems to apply *locally* to constellations of closely related attitudes. However, global and strict logical consistency do not seem to apply (Abelson, Aronson, McGuire, Newcomb, Rosenberg, & Tannenbaum, 1968). In the case of attitudes toward the death penalty, the subject of the attitude statement is the legal institution of punishing criminals by execution. The evaluative component of the attitude is usually measured as a preference: Is the person whose attitude is measured in favor of or opposed to the existence of the legal institution of capital punishment? The implications for action include social endorsement ("Would you vote for new legislation that would establish/repeal capital punishment?") and, most important in the context of juror decision making, ramifications of the belief for related behaviors ("As a juror, would you refuse to impose the death penalty on a convicted defendant in any case, no matter what the evidence was?").

In legal contexts the most significant implication for behavior associated with attitudes toward the death penalty is concerned with the possibility that the attitude will influence jurors' decisions in a criminal trial. The most direct implication is that during the penalty phase of the trial a juror who strongly opposed the death penalty will be unable to follow a trial judge's instructions to consider imposing a death penalty. The reverse extreme is also legally significant, and a juror who is so enthusiastic about the capital punishment that he or she would automatically vote for the death penalty whenever it is available would also be excluded from impanelment. The attitude might also influence a juror's behavior at the guilt–innocence phase of the trial. Of special legal significance is the possibility that a juror who strongly opposes the death penalty cannot be impartial when deciding on a verdict in a capital case. Even knowing that execution is only a possibility might incline the juror to acquit, or convict of a lesser charge. The covariation of people's attitudes toward capital punishment with other attitudes in conformity with some rule of psychological consistency has also been investigated. There is a degree of local consistency among beliefs related to the criminal justice system such that a person's attitude toward the death penalty is correlated with a constellation of other attitudes (Boehm, 1968; Jurow, 1971). Specifically, a person who opposes the death penalty is likely to exhibit other attitudes that are associated with an emphasis on due process guarantees in the criminal justice system. For example, in comparison to people who oppose the death penalty, people who favor capital punishment tend to be more concerned about high levels of violent crime, to exhibit less sympathy for criminal defendants, to be more suspicious of defense attorneys, and to exhibit more favorable attitudes toward prosecuting

attorneys and the police (Bronson, 1970; Fitzgerald & Ellsworth, 1984; Tyler & Weber, 1982; Vidmar & Ellsworth, 1974). It has been argued (Ellsworth & Ross, 1983; Tyler & Weber, 1982) that attitudes toward the death penalty are an especially pure example of "symbolic attitudes" (Sears & Kinder, 1971), emotionally based attitudes that serve to express a person's ideological self-image - as a practical person who takes a no-nonsense approach to crime or as a champion of the individual against the mistakes and prejudices of the state.

We view this constellation of attitudes as analogous to a set of premises in a logical argument that serve as the bases for inferences that are generated when a juror is asked to make a decision in a specific criminal trial. We believe that a juror's attitude toward the death penalty predicts his or her verdict because it is embedded in this constellation of relevant beliefs about the justice system. For example, if we consider a juror who strongly favors capital punishment, several beliefs in the constellation will operate to produce a guilty verdict. His positive attitude toward the prosecution side of the case will lead him to attend to the prosecuting attorney and to see the prosecution story as more plausible; similarly for police officers called as witnesses. His suspicion of defense attorneys will cause him to discount the testimony of defense witnesses, and render the defense less persuasive. His lack of sympathy for the defendant and his worries about the high levels of crime he perceives in his society will lead him to be relatively unconcerned about the possibility of a mistaken conviction, and may even lower his personal standard of proof to convict for any charge. Just the reverse pattern of biases would be expected to apply to a juror who was strongly opposed to capital punishment. The point is that because attitudes toward the criminal justice system come in a "bundle," they will operate concomitantly to influence several aspects of a complex decision process to produce a bias toward one outcome.

The distributed character of the influence of the constellation of attitudes on the verdict decision will render it virtually undetectable to a subjective introspection. Legal decisions by their very nature require the decision maker to resolve a host of ambiguities and incompletenesses in the patchwork of evidence presented at trial. The ultimate decision also requires the application of presumption of innocence and standard of proof instructions that are demonstrably imprecise and subject to large differences of interpretation (cf. Fletcher, 1968; Shapiro, 1986; Simon & Mahan, 1971). It is not surprising that individual jurors may feel that they have performed in a rigorous and rational manner, yet reach sharply divergent conclusions. In fact, one of the most surprising experiences for jurors in many cases is to discover, at the start of deliberation, that other jurors could disagree with them on a verdict that seems patently obvious (Ellsworth, 1989).

We have examined three ways in which an attitude might affect a verdict. First, we thought that a juror's attitude might influence his or her evaluation of witness credibility. Social psychologists have established that an

audience is more persuaded by a communicator toward whom they have a favorable attitude than by one they dislike or oppose (Hovland, Janis, & Kelley, 1953). Our specific hypothesis is that jurors who favor the death penalty will find police witnesses and prosecutors more credible and persuasive than will jurors who oppose the death penalty. On the other hand, jurors who oppose the death penalty should find defense attorneys and witnesses relatively more persuasive.

Second, inferences partially based on attitudes about the criminal justice system should affect the juror's construction of a fact sequence or story to summarize the evidence that he or she accepts as credible. Many statements by witnesses are ambiguous in their implications or may be fitted into an overall fact sequence in several places. There is evidence from research by cognitive and social psychologists that attitudes influence the perception of a complex event by influencing gap-filling inferences and the resolution of ambiguities in the interpretation of stimulus information. As a general principle ambiguous or incomplete information will tend to be interpreted in a fashion that is consistent with a person's initial attitudes and that confirms their expectations (Chapman & Chapman, 1967; Ross, Lepper, & Hubbard, 1975; Snyder, Tanke, & Berscheid, 1977; Vallone, Ross, & Lepper, 1985). Death penalty attitudes may also be correlated with the relative availability of various crime "scripts." Insofar as a juror's own script matches the story presented in the prosecution case, the prosecution story will seem "natural," plausible, and familiar. In effect, one's attitudes affect one's Bayesian prior probability estimates of the truth of any particular story presented in court. In the context of a criminal trial our hypothesis is that jurors who favor the death penalty, and also favor the prosecution side of the case, will tend to interpret ambiguous and incomplete evidence in a manner consistent with the prosecution theory of the case, while jurors who oppose the death penalty will resolve perceptual questions to fit the defense theory.

Third, we thought that the ultimate step in the juror's decision, the application of the judge's instructions on the reasonable doubt standard of proof, might be influenced by the juror's attitudes toward the death penalty. The beyond-reasonable-doubt standard creates a decision threshold that varies across individuals (Simon & Mahan, 1971; *U.S. v. Fatico*, 1978). Thus, just as an attitude might influence a juror's perceptions of ambiguous information about an objective event, an attitude might influence a juror's interpretation of the subjective degree of confidence associated with the term "beyond reasonable doubt." The specific hypothesis we entertain is that those favoring the death penalty would have a lower threshold for conviction than those opposed to the death penalty.

We assessed our subjects' attitudes toward the death penalty in two ways. First, we asked them to complete a set of questionnaire items designed to assess their attitudes on a five-point scale with endpoints labeled "strongly opposed" and "strongly in favor" (Capital Punishment Attitude

Questionnaire—Form A; Jurow, 1971). Second, the subjects answered several questions designed to determine their eligibility for inclusion on a death-qualified jury based on legal precedents established by the Supreme Court (*Witherspoon v. Illinois*, 1968).

Is your attitude towards the death penalty such that as a juror you would never be willing to impose it in any case, no matter what the evidence was, or would you consider voting to impose it in some cases? (A) I would be unwilling to vote to impose it in any case. (B) I would consider voting to impose it in some cases.

A response of (A) meant the subject was a "Witherspoon Excludable" juror.

Now suppose that you were a juror in the first part of the trial, just to decide whether the accused person is guilty or not guilty of the crime. The judge instructs you that in reaching your verdict you are only allowed to consider evidence presented in court, and must follow the law as he will state it to you. If the accused is found guilty, there will be a separate trial to decide whether or not he or she will get the death penalty. Which of the following expresses what you would do if you were a juror for the first part of the trial? (A) I would follow the judge's instructions and decide the question of guilt or innocence in a fair and impartial manner based on the evidence and the law. (B) I would not be fair and impartial in deciding the question of guilt or innocence knowing that if the person was convicted he or she might get the death penalty.

Any subjects who answered (B) to this item were eliminated from service in the research because jurors who say they cannot judge guilt fairly are excluded from service at trials. Because of the legal significance of the distinction between death-qualified jurors and excludable jurors, in most analyses we separated our subjects into two groups according to their classification as death-qualified or excludable.

Empirical research on the impact of attitudes on juror decisions

The method we used to test our first two hypotheses concerned with credibility evaluation and evidence interpretation was a simulated juror decision making task. We showed jury-eligible California residents a videotaped fragment of the criminal trial (Thompson, Cowan, Ellsworth, & Harrington, 1984). The tape depicted the testimony of a police officer who had been on crowd control duty at a rock music concert. The officer testified that the defendant refused to follow his instructions and then assaulted him. The defendant's testimony was also presented. He claimed that he did not resist the officer, that he was behaving in an orderly manner, and that the officer abused him verbally with racial slurs.

Subjects, instructed in the role of jurors, viewed the videotape and then answered questions designed to assess their evaluations of witness credibility and to capture some of the inferences they made from the testimony on the tape.

As we had predicted, jurors who were in favor of the death penalty (death-qualified) evaluated the evidence in a manner more favorable to the

Table 2.1. *Mean evaluations of evidence by death-qualified and excludable subjects: Study 1*[a]

Question	Group[b]		
	Death-qualified	Excludable	*t*-value
Credibility of witnesses			
1. Officer's truthfulness	4.55	3.44	3.42[c]
2. Defendant's truthfulness	3.69	3.05	1.76
3. Relative accuracy of witnesses	4.35	3.25	2.49[d]
Plausibility of facts			
4. Defendant threatened to punch officer	4.15	2.87	2.49[d]
5. Defendant struck officer	4.45	2.37	4.25[c]
6. Officer was cut by bottle	2.81	1.85	1.78
7. Defendant was limping	3.68	3.45	0.48
8. Officer used racial slurs	4.44	3.65	1.68
9. Defendant was derogatory to officer	5.00	4.31	1.65
Inferences from facts			
10. Who initiated the struggle?	4.06	2.35	3.36[c]
11. Was the officer too rough?	4.18	3.10	2.05[d]
12. Defendant's breaking police line justified?	4.00	1.95	4.09[c]
13. Officer antagonistic to defendant?	4.37	3.05	2.70[d]
Attributions about the witnesses			
14. Defendant had previous trouble with police	4.80	3.50	2.76[d]
15. Officer had racial bias	3.12	2.60	1.38
16. Defendant unduly hostile to police	4.45	3.50	2.69[d]

[a] The scale ranged from 1 to 6; higher numbers indicate evaluations more favorable to the prosecution.
[b] Death-qualified n = 19; excludable n = 16.
[c] $p < .05$.
[d] $p < .01$.

prosecution than did jurors who were opposed to the death penalty (excludables). We assessed our subjects' judgments of credibility by asking direct questions about the truthfulness of each witness and indirect questions about the plausibility or accuracy of six assertions taken directly from the witness's testimony. Mean responses of the death-qualified and excludable subjects are presented in the top panel of Table 2.1. On the average, death-qualified subjects responded more favorably to the prosecution than did excludable subjects on every one of the nine items; for four of the nine items this difference was statistically significant. These results strongly support our hypothesis that death penalty attitudes influence evaluation of credibility. Although the result is essentially correlational, there is no doubt that the attitudes (both the specific penalty attitudes and the related criminal

justice attitudes) existed before subjects saw our tape of the policeman and the defendant, implying that the attitudes caused the judgments.

Seven additional questionnaire items, presented at the bottom of Table 2.1, capture some of the subjects' inferences from the testimony. Again we present average ratings for the death-qualified subjects and the excludable subjects for each item. The direction of each inference is consistent with our hypothesis that death-qualified jurors will be more favorable to the prosecution side of the case; five of the seven differences were statistically significant. The inference questions ask for subjects' judgments about issues that are relevant to their decisions but were not addressed directly in testimony. For example, there were no references in testimony to the defendant's prior experience with the police, but death-qualified subjects were more likely than excludable subjects to infer that the defendant had had prior trouble with the law. Again we found that attitude toward the death penalty predicted decision-relevant reasoning.[1]

We also examined the relationship between the subjects' global index of attitudes toward capital punishment on Jurow's scale and a summary index of their responses on all sixteen of the questionnaire items (credibility and inference items). The correlation between the Jurow scale value and the evidence evaluation index was +.60 (statistically significant at the $p < .01$), a remarkably high coefficient in the context of the small or nonexistent correlations between general attitudes and interpretation of specific situations obtained in most research.

Because of the correlational nature of the analysis, and because a person's attitude toward the death penalty is correlated with a constellation of other attitudes relevant to the criminal justice system, it is not clear exactly which attitudes may have served as "premises" for our subjects' inferences about credibility and evidence implications. For example, the willingness to make inferences from assertions in the testimony may have been conditioned simply on their liking and trust for one witness over the other. Perhaps an application of a method such as those proposed by Schum and Martin (1982), involving multiple ratings of subelements of the evidence and the contingencies among them, or the method proposed by Pennington and Hastie (1985), in which subjects "think aloud" as they listen to the trial information, might elucidate some of these fine-grained questions.

The findings of this first experiment were corroborated in a second mock-jury experiment in which subjects rated the credibility of six witnesses who

[1] A reviewer suggests that perhaps subjects, anticipating that they would later vote for death, reinterpreted the story in order to justify their penalty decision. Thus the inferences subjects draw from the facts are not based on the mechanisms we propose, but on subjects' need to create consistency with their own expected sentencing behavior in this case. This is a plausible psychological mechanism in the abstract, but not in this particular case, as the death penalty would never be an option in a simple assault and battery case involving only minor injuries. In addition, the subjects' death penalty attitudes had been assessed two to six weeks earlier, along with a number of other variables, and so were unlikely to be salient to the subjects at the time they participated in the study.

presented evidence in a two and a half hour reenactment of a murder trial (Cowan et al., 1984). Again we divided subjects into two groups, excludables (opposed to the death penalty or neutral) versus death-qualified (in favor of the death penalty). After viewing the trial and deliberating in twelve-person mock juries for an hour, these subjects rated the "believability" and "helpfulness" of each witness. The mock-jurors' attitudes predicted the average differences in ratings of all witnesses and these effects were significant for each of the prosecution witnesses considered individually. Replicating the results from our first study, excludable mock jurors rated the prosecution witnesses less believable and less helpful than did death-qualified mock jurors.

Our third hypothesis concerned the relationship between attitudes toward capital punishment and a juror's personal threshold for conviction associated with the beyond-reasonable-doubt standard of proof. The simplest research method would be to ask subjects to assign a numerical value (i.e., a probability estimate) corresponding to the degree of certainty that they would have to have to convict a defendant under the beyond-reasonable-doubt standard. For example, Simon and Mahan (1971) asked various groups of potential jurors what subjective probability of guilt they would require before voting to convict a criminal defendant. They found that the mean probability stated by jury-eligible citizens was .79. Proceeding with the direct approach we would then look for a relationship between an individual's rated subjective probabiloity for the threshold and their attitudes toward capital punishment.

We did not pursue the direct approach. First, we doubt that untrained subjects can accurately express their decision thresholds as numerical probabilities (cf. Behn & Vaupel, 1982). Second, the standard-of-proof instruction as presented in many legal trials seems to include more than the meaning expressed in a single numerical probability. Efforts to better define the standard of proof with alternate expressions such as "to a moral certainty" and historical analyses of the vicissitudes in definitions popular in various courts imply that the concept is richer than a single number (e.g., Fletcher, 1968; Shapiro, 1986). Finally, we already had evidence that jurors' attitudes toward capital punishment did not predict their global estimates of the level of certainty necessary to justify a verdict of guilty. Estimates were highly variable, and both death-qualified and excludable subjects gave mean probability estimates of about 86 percent (Cowan et al., 1984). Obviously, if there are differences, a better method was needed to detect them.

We started with a consideration of the two possible errors that can be made when a juror renders a verdict in a criminal case: The juror can acquit a defendant who should have been convicted or the juror can convict a defendant who should have been acquitted. We assume that jurors associate a degree of regret or "disutility" with each of these errors. Furthermore, we assume that the juror's threshold for conviction is related to the relative regret associated with each type of error. Specifically, we assume that the

greater the regret the juror feels for a mistaken conviction relative to a mistaken acquittal, the higher will be his or her threshold of conviction. We do not assume that our subjects are perfect normative utility maximizers, but we assume that the difference in felt regret from erroneous convictions and acquittals does correspond to some degree to the threshold for conviction.

Based on the assumption of a relationship between regret and decision criterion, we designed a method to assess the regret associated with the two types of errors in a series of hypothetical cases. We used the difference between the degrees of regret associated with a lenient error (false acquittal) and harsh error (false conviction) to calculate an index to reflect each subject's threshold of conviction. Our prediction was that jurors who favor capital punishment would show less regret for wrongful convictions than for wrongful acquittals, compared to jurors opposed to capital punishment.

Experimental subjects were asked to consider sixteen hypothetical situations and to express the degree of regret they felt in each situation as a number ranging between 0 and 100. Zero indicated that they felt no regret and one hundred indicated that they felt the most regret they could possibly feel. The sixteen situations were defined with reference to possible outcomes of a murder trial. The subjects were asked to imagine that they had served on a jury that reached one of four possible verdicts: guilty of first degree murder, guilty of second degree murder, guilty of manslaughter, or not guilty. Furthermore, they were to imagine that after the trial, evidence was uncovered that demonstrated conclusively that the defendant was actually guilty of one of the three crimes or innocent. The sixteen hypothetical case situations were composed by combining each of the four jury verdicts with each of the four posttrial evidence outcomes. Thus, four of the situations represented correct jury verdicts and twelve represented errors.

For the analysis we separated subjects (jury-eligible California residents) into two groups, death-qualified and excludables, with reference to the Witherspoon question (see above). A refined statement of our hypothesis would be that when a juror made an error in a harsh direction, by convicting an innocent defendant or convicting a defendant of a crime more severe than the crime actually committed, death-qualified subjects would show less regret than excludable subjects. In contrast, when the jury's error was in the lenient direction, acquitting a guilty defendant or convicting a guilty defendant of a crime less severe than that actually committed, the death-qualified jurors would express more regret than the excludable jurors. This is the pattern that we observed (see Table 2.2); the difference in regret expressed by death-qualified and excludable subjects was statistically significant.

Death-qualified subjects expressed nearly equal regret for harsh and lenient errors, while the excludables expressed more regret than the death-qualified subjects for harsh errors and less for lenient errors. As we noted above, this result is consistent with the constellation of attitudes that are associated with a procapital punishment position; namely a concern for crime control and a sympathy for the prosecution side of legal cases. Conversely,

Table 2.2. *Mean regret expressed by death-qualified and excludable subjects: Study 2*[a]

	Crime defendant actually committed			
Verdict of jury	1st degree murder	2nd degree murder	Manslaughter murder	Not guilty
1st degree murder				
d.q.[b]	0.67	43.2	54.33	68.86
Exc.[c]	7.50	66.07	70.71	90.71
2nd degree murder				
d.q.	45.00	0.33	49.13	68.20
Exc.	27.14	7.14	53.12	85.71
Manslaughter				
d.q.	54.00	46.33	0.0	69.20
Exc.	49.28	44.64	8.2	73.57
Not guilty				
d.q.	73.73	70.53	60.20	0.0
Exc.	71.78	61.07	58.21	6.43

[a] Higher numbers indicate greater regret. Death-qualified n = 15; excludable n = 14.
[b] d.q. = death-qualified.
[c] Exc. = excludable.

the constellation of attitudes associated with opposition to the death penalty fits the pattern of regrets expressed by excludable subjects; namely, these subjects will have more sympathy for the defendant and more concern for due process considerations in the operation of the criminal justice system. We believe that our measures of degree of regret have direct implications for a juror's decision threshold to convict in criminal cases. However, we must emphasize that the step from regret ratings to a conclusion about subjective standards of proof is based on the assumption that the juror's reasoning bears some resemblance to the popular subjective expected utility model for decision making (Edwards, 1954). This assumption is common in the legal literature (Blackstone, 1769/1962) and it is also compelling intuitively. Some researchers (e.g., Nagel, 1979) have been willing to accept this assumption in its strongest form and calculate absolute numerical values for the probability threshold to convict based on jurors' rated "disutilities." We believe that our data shows that death-qualified jurors and excludables differ in the relative level of their thresholds for conviction, but we stop short of an exact numerical derivation.

Summary of research on juror's predeliberation decisions

The three studies we have summarized help us understand links in the chain of mediating factors that connect the constellation of attitudes associated

with a person's attitude toward the death penalty and the decision concerning guilt or innocence in a criminal trial. Essentially, we have supported our hypotheses that the jurors' attitudes influence three components of the larger decision process: evaluation of witness credibility, inferences that go beyond the given evidence, and the value of the juror's personal standard-of-proof threshold for conviction. This research illustrates a productive approach to the study of individual differences in juror decision making. We started with the finding that there was a consistent and pervasive relationship between jurors' attitudes toward the death penalty and their propensities to acquit or convict in criminal trials. Second, following Pennington and Hastie (1981), we abstracted seven components of a generic model of the juror decision process that we felt were likely to mediate the attitude–decision relationship: evaluation of witness credibility, inferences from the evidence, and setting a subjective standard of proof. We then conducted a series of experiments to evaluate the impact, or correlation, of attitudes toward the death penalty on verdict decisions. The key to our approach is the intermediate step in which we attempted to spell out how global attitudes might affect verdicts in particular cases.

Individual differences in juror behavior in deliberation

As we noted above, we disagree with Kalven and Zeisel's generalization that in nine out of ten juries the verdict is determined by the distribution of initial verdict preferences at the start of deliberation (Kalven & Zeisel, 1966: p. 488). One reason we believe this generalization may be an exaggeration stems from the findings of other mock-jury research. Hastie, Penrod, and Pennington (1983) found that in more than 25 percent of their mock juries a faction that was initially in the minority at the start of deliberation prevailed. Although we know very little about the method Kalven and Zeisel used to collect the data on which their conclusion is based (the study is referenced in a footnote and no further reports of its methods or results are available), it may be that the simple two-choice guilty-or-innocent verdict allows for less movement, e.g., through compromise. Also it is likely that a juror's postdeliberation recollections would be biased to suggest that the juror subscribed to the jury's final verdict all along. Similar effects have been reported in research on voters' retrospective reports of voting in political elections, where voters report that they voted for the winner more often than they actually did, and in other studies of "hindsight phenomena" (Fischhoff, 1975; Hawkins & Hastie, 1990). Furthermore, even if most final verdicts can be predicted as simple functions of the initial distribution of the verdict preferences, it still is an important scientific problem to understand the social mechanisms that translate initial preferences into the ultimate verdict. And finally, there are still significant legal questions which derive from guarantees of due process. Surely a convicted defendant would feel cheated if he or she knew that the guarantee of an

impartial, thorough, deliberation process was cut short after the first jury ballot.

What sort of behaviors in deliberation would be of significant interest in an analysis of individual differences, specifically individual differences in juror attitudes? First, and most obviously, we would like to predict what contributions are made by jurors to the discussion and deliberation. Attitudes should give us some leverage in predicting what prodeath and antideath penalty jurors will say. For example, the constellation of due process attitudes associated with the antideath penalty stance implies that these jurors would be more likely to speak for the defense side of the case, more likely to cite the presumption of innocence and standard-of-proof instructions, and more critical in their evaluations of credibility of testimony from the prosecution side of the case. In contrast, the constellation of attitudes associated with the prodeath stance leads us to expect that these jurors would make more remarks in favor of the prosecution side of the case; should evaluate the credibility and implications of testimony from prosecution witnesses as more important and more substantial than statements by defense witnesses; and should emphasize crime control factors over due process factors, for example by citing the danger of allowing the defendant to return to the streets unpunished. These predictions are relatively uncontroversial and follow directly from the concepts associated with the attitude difference we have studied.

There are other individual differences in behavior which might be associated with the attitude individual difference, but which are not associated with differences in jurors' backgrounds in a direct fashion. For example, there are substantial differences in the amounts of talking done by different jurors on the same jury. Typically four jurors out of twelve consume more than half of the talking time. Three variables are known to predict the amount of talking. One variable, labeled "worldly success" by Hastie, Penrod, and Pennington (1983), comprises social status and education; more "successful" jurors talk more than less successful ones. Second, juror gender matters; men talk more than women. It is interesting to note that the one-and-one-half to one differential in speaking rates has not changed since the 1950s when Kalven and Zeisel conducted their original mock-jury experiments (Strodtbeck & Lipinski, 1988), despite apparent shifts in the conceptions of male and female social roles. Third, occupancy of the foreman's role is associated with higher amounts of talking; the foreman talked about twice as much as any other juror. We would also like to be able to predict which jurors will be most susceptible to persuasive influence from other jurors; who is likely to have a change of mind on the jury? However, the search for predictors of the "wavering" and the "stubborn" juror has been inconclusive.

As we anticipated, the primary effects of the death penalty attitude variable on behavior during deliberation appear in our analyses of the content of statements made by jurors. Our conclusions are based on a mock-jury

Table 2.3. *Each mock juror classified by attitude toward the death penalty and the side of the case favored by a preponderance of the juror's statements in deliberation*[a]

	Statement type			
Juror type	Unclear[b]	Proprosecution	Prodefense	Total
Excludable	4	8	18	30
Death-qualified	11	91	84	186
Total	15	99	102	216

[a] $X^2(2) = 6.05$, $p < .05$.
[b] "Unclear" means juror made an equal number of proprosecution and prodefense statements, or made no statements in deliberation.

study in which California residents qualified to serve as jurors watched the reenactment of a murder trial used in our previous research and then deliberated for a minimum of an hour in an attempt to reach a verdict. None of the mock juries reached a verdict within the first hour of deliberation, but the contents of this deliberation provide an indication of what would occur in the first stages of a deliberation that ran to a conclusion. Again, we divided our subjects into excludable and death-qualified jurors and we tabulated the remarks they made during deliberation. First we classified the overall set of statements made by each juror by counting the number of proprosecution and prodefense statements made by each juror. If a majority of the statements were proprosecution we classified the juror in the proprosecution column of Table 2.3; conversely, if the majority of the statements were prodefense we classified the juror in the prodefense column; and if the corpus of statements made by a juror did not clearly support either side of the case we listed them in the "unclear" column. Two hundred sixteen mock jurors were crossclassified by their status on the attitude variable (excludable versus death-qualified) and by the balance of statements during deliberation (proprosecution, prodefense, unclear). A significant association was observed between these two variables, indicating that excludable jurors tended to favor the defense side of the case in discussion to a greater extent than did death-qualified jurors.

We also reviewed the corpus of statements made by each juror with reference to the number of remarks they made in favor of a guilty verdict versus a not guilty verdict, and again produced a two-way table with juror attitudes (excludable versus death-qualified) and verdict favored (guilty, not guilty, unclear) as the two factors defining the table. Again, a significant relationship was observed between the two variables such that excludable

jurors were more likely to speak for a not guilty verdict than were death-qualified jurors.

Conclusion

Most of the published writing on the effects of individual differences on juror's verdicts consists either of overoptimistic claims that various personality or background variables are reliable indicators of a proprosecution or prodefense juror, or of gloomy criticisms of these claims, typically ending with the equally simplistic claim that the evidence determines the verdict and that individual differences do not. A review of the relevant research indicates that the usual hoary or trendy stereotypes are not very useful (race, class, gender, occupation, and nationality on the hoary side; power speech, color preferences, locus of control, and dress on the trendy side; authoritarianism somewhere between). But we also know that juries are rarely unanimous on the first ballot, and thus, because the evidence presented is the same for all the jurors, individual differences must make a difference. The evidence presented is the same, but the evidence perceived by the jurors is not.

Some of these influential individual differences may be accidental, as when a juror suddenly remembers that she forgot to pay the mortgage bill and misses a few minutes of crucial testimony. This sort of error may often be corrected in deliberation. Others may be understandable in retrospect, but unforeseeable in advance, as when the victim turns out to be the spitting image of the juror's deceitful Uncle Louie. Many may be attitudes that only become influential in relation to very specific case facts, but may be potentially discoverable through an extensive voir dire.

Death penalty attitudes are more general, yet they still provide some predictive power. Thus they allowed us a laboratory to explore how a general attitude might affect a person's interpretation of a body of evidence, and his or her response to it. We have argued that the process may involve an accumulation of many slight differences – in perceptions of the plausibility of witnesses, in the availability of different scripts or stories for the crime, in the unarticulated sense of how much doubt is reasonable doubt. Sometimes the accumulation of these tendencies will be sufficient to move a juror across the line from one verdict to another, sometimes not. There are undoubtedly other ways in which general attitudes can affect jurors' decisions about evidence, and there are probably other attitudes that predict verdicts in certain domains of cases. The kitchen-sink approach of tacking a sheaf of questionnaire measures onto a jury study in case something turns out significant is likely to continue to produce discouraging results. More carefully crafted studies of specific intermediate processes may prove more fruitful, both for understanding verdicts and for understanding attitudes.

References

Abelson, R. P. (1985). A variance explanation paradox: When a little is a lot. *Psychological Bulletin, 97,* 129–133.

Abelson, R. P., Aronson, E., McGuire, W. J., Newcomb, T. M., Rosenberg, M. J., & Tannenbaum, P. H. (1968). *Theories of cognitive consistency: A sourcebook.* Chicago: Rand-McNally.

Appleman, J. A. (1968). Selection of the jury. *Trial Lawyer's Guide, 12,* 207–239.

Behn, R. D., & Vaupel, J. W. (1982). *Quick analysis for busy decision makers.* New York: Basic Books.

Bem, D. J., & Allen, A. (1974). On predicting some of the people some of the time. *Psychological Review, 81,* 506–520.

Blackstone, W. (1962). *Commentaries on the laws of England of public wrongs.* Boston: Beacon. (Original work published 1769)

Bodin, H. S. (1954). *Selecting a jury.* New York: Practicing Law Institute.

Boehm, V. R. (1968). Mr. Prejudice, Miss Sympathy and the authoritarian personality: An application of psychological measuring techniques to the problem of jury bias. *Wisconsin Law Review, 1968,* 734–750.

Bonora, B., & Krauss, E. (Eds.). (1979). *Jurywork, systematic techniques: A manual for lawyers, legal workers and social scientists.* Berkeley, CA: National Jury Project.

Bronson, E. J. (1970). On the conviction proneness and representativeness of the death-qualified jury: An empirical study of Colorado veniremen. *University of Colorado Law Review, 42,* 1–32.

Campbell, D. T. (1963). Social attitudes and other acquired behavioral dispositions. In S. Koch (Ed.), *Psychology: A study of a science* (Vol. 6, pp. 94–172). New York: McGraw-Hill.

Chapman, L. J., & Chapman, J. P. (1967). Genesis of popular but erroneous psychodiagnostic observations. *Journal of Abnormal Psychology, 72,* 193–204.

Costantini, E., & King, J. (1980). The partial juror: Correlates and causes of prejudgment. *Law and Society Review, 15,* 9–40.

Cowan, C. L., Thompson, W. C., & Ellsworth, P. C. (1984). The effects of death qualification on jurors' predisposition to convict and on the quality of deliberation. *Law and Human Behavior, 8,* 53–79.

Edwards, W. (1954). The theory of decision making. *Psychological Bulletin, 51,* 380–417.

Ellsworth, P. C. (1989). Are twelve heads better than one? *Law and Contemporary Problems, 52,* 205–224.

Ellsworth, P. C., & Ross, L. (1983). Public opinion and capital punishment: A close examination of the views of abolitionists and retentionists. *Crime and Delinquency, 29,* 116–169.

Fischhoff, B. (1975). Hindsight ≠ foresight: The effect of outcome knowledge on judgment under uncertainty. *Journal of Experimental Psychology: Human Perception and Performance, 1,* 288–299.

Fitzgerald, R., & Ellsworth, P. C. (1984). Due process vs. crime control: Death qualification and jury attitudes. *Law and Human Behavior, 8,* 31–51.

Fletcher, G. P. (1968). Two kinds of legal rules: A comparative study of burden-of-persuasion practices in criminal cases. *Yale Law Journal, 77,* 880–935.

Gerbasi, K. C., Zuckerman, M., & Reis, H. T. (1977). Justice needs a new blindfold: A review of mock jury research. *Psychological Bulletin, 84,* 323–345.

Hans, V. (1982, June). *Gentlewomen of the jury.* Paper presented at the annual meeting of the Law and Society Association, Toronto, Ontario, Canada.

Hans, V. P., & Vidmar, N. (1986). *Judging the jury.* New York: Plenum.

Hastie, R., Penrod, S. D., & Pennington, N. (1983). *Inside the jury.* Cambridge, MA: Harvard University Press.

Hawkins, S. A., & Hastie, R. (1990). Hindsight: Biased judgments of past events after the outcomes are known. *Psychological Bulletin, 107,* 311–327.

Hovey v. Superior Court, 28 Cal. 3d 1 (1980).

Hovland, C. I., Janis, I. L., & Kelley, H. H. (1953). *Communication and persuasion: Psychological studies of opinion change.* New Haven, CT: Yale University Press.

Jurow, G. (1971). New data on the effect of a "death qualified" jury on the guilt determination process. *Harvard Law Review, 84,* 567–611.

Kalven, H. K., Jr., & Zeisel, H. (1966). *The American jury.* Boston: Little, Brown.

Levine, J. P. (1983). Jury toughness: The impact of conservatism on criminal court verdicts. *Crime & Delinquency, 29,* 71–87.

Lockhart v. McCree, 106 S. Ct. 1758 (1986).

McGuire, W. J. (1969). The nature of attitudes and attitude change. In G. Lindzey & E. Aronson (Eds.), *The handbook of social psychology* (2nd ed.): *Vol. 3. The individual in a social context* (pp. 136–314). Reading, MA: Addison-Wesley.

McGuire, W. J. (1983). A contextualist theory of knowledge: Its implications for innovation and reform in psychological research. In L. Berkowitz (Ed.), *Advances in experimental social psychology* (Vol. 16, pp. 1–47). Orlando: Academic Press.

Mischel, W. (1968). *Personality and assessment.* New York: Wiley.

Moran, G., & Comfort, J. C. (1986). Neither "tentative" nor "fragmentary": Verdict performance of impaneled felony jurors as a function of attitude toward capital punishment. *Journal of Applied Psychology, 71,* 146–155.

Nagel, S. (1979). Bringing the values of jurors in line with the law. *Judicature, 63,* 189–195.

Pennington, N., & Hastie, R. (1981). Juror decision-making models: The generalization gap. *Psychological Bulletin, 89,* 246–287.

(1985). *Causal reasoning in decision making.* Unpublished manuscript, University of Chicago.

(1986). Evidence evaluation in complex decision making. *Journal of Personality and Social Psychology, 51,* 242–258.

Ross, L. (1977). The intuitive psychologist and his shortcomings: Distortions in the attribution process. In L. Berkowitz (Ed.), *Advances in experimental social psychology* (Vol. 10, pp. 173–220). New York: Academic Press.

(1987). The problem of construal in social inference and social psychology. In N. Grunberg, R. E. Nisbett, & J. Singer (Eds.), *A distinctive approach to psychological research: The influence of Stanley Schachter.* Hillsdale, NJ: Erlbaum.

Ross, L., Lepper, M. R., & Hubbard, M. (1975). Perseverance in self-perception: Biased attributional processes in the debriefing paradigm. *Journal of Personality and Social Psychology, 32,* 880–892.

Rothblatt, H. B. (1966). Techniques for jury selection. *Criminal Law Bulletin, 2*(4), 14–29.

Saks, M. J. (1976). The limits of scientific jury selection: Ethical and empirical. *Jurimetrics Journal, 17,* 3–22.

Saks, M. J., & Hastie, R. (1978). *Social psychology in court.* New York: Van Nostrand Reinhold.

Schulman, J., Shaver, P., Colman, R., Emrich, B., & Christie, R. (1973, May). Recipe for a jury. *Psychology Today,* pp. 37–44; 77–84.

Schum, D. A., & Martin, A. W. (1982). Formal and empirical research on cascaded inference in jurisprudence. *Law and Society Review, 17,* 150–151.

Sears, D. O., & Kinder, D. R. (1971). Racial tensions and voting in Los Angeles. In W. Z. Hersch (Ed.), *Los Angeles: Viability and prospects for metropolitan leadership* (pp. 51–88). New York: Praeger.

Shapiro, B. J. (1986). "To a moral certainty": Theories of knowledge and Anglo-American juries 1600–1850. *The Hastings Law Journal, 38,* 153–193.

Simon, R. J., & Mahan, L. (1971). Quantifying burdens of proof: A view from the bench, the jury, and the classroom. *Law and Society Review, 5,* 319–330.

Snyder, M., Tanke, E. D., & Berscheid, E. (1977). Social perception and interpersonal behavior: On the self-fulfilling nature of social stereotypes. *Journal of Personality and Social Psychology, 35,* 656–666.

Strodtbeck, F. L., & Lipinski, R. M. (1988). *Women jurors, then and now.* Unpublished manuscript, University of Chicago, Social Psychology Laboratory.

Suggs, D., & Sales, B. D. (1978). The art and science of conducting the voir dire. *Professional Psychology, 9,* 367–368.

Thomas, E. A. C., & Hogue, A. (1976). Apparent weight of evidence, decision criteria, and confidence ratings in juror decision making. *Psychological Review, 83,* 442–465.

Thompson, W. C., Cowan, C. L., Ellsworth, P. C., & Harrington, J. C. (1984). Death penalty attitudes and conviction proneness: The translation of attitudes into verdicts. *Law and Human Behavior, 8,* 95–113.

Tyler, T. R., & Weber, R. (1982). Support for the death penalty: Instrumental response to crime or symbolic attitude. *Law and Society Review, 17,* 21–45.

U.S. v. Fatico, 458 F. Supp. 388–413 (1978).

Vallone, R. P., Ross, L., & Lepper, M. R. (1985). The hostile media phenomenon: Biased perception and perceptions of media bias in coverage of the Beirut massacre. *Journal of Personality and Social Psychology, 49,* 577–585.

Vidmar, N., & Ellsworth, P. C. (1974). Public opinion and the death penalty. *Stanford Law Review, 26,* 1245–1270.

Witherspoon v. Illinois, 391 U.S. 510 (1968).

Zimbardo, P. G., Ebbesen, E. B., & Maslach, C. (1977). *Influencing attitudes and changing behavior: An introduction to method, theory, and applications of social control and personal power* (2nd ed.). Reading, MA: Addison-Wesley.