

# Psychology of the courtroom essay sample



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' While the jury can contribute nothing of value so far as the law is concerned, it has infinite capacity for mischief, for twelve men (sic) can easily misunderstand more law in a minute than the judge can explain in an hour.' Judge Jerome Frank (USA) 1948.

Juries listen to evidence sometimes over considerable period of time without having a legal context in which to place it. By the time and explanation of its legal relevance is provided - when the judge gives the final summing up - the evidence has all been heard and must be recalled to mind and fitted within the legal framework. It is scarcely surprising, therefore, to find that if a judicial summing up simultaneously reminds jurors of some evidence they heard but instructs them to disregard it, the admonishment appears to be counter productive (Hastie et al 1983).

Studies of juror comprehension of legal instructions have produced conflicting results. In a study by Heuer and Penrod (1995) who questioned jurors who had participated in real trials, the jurors became less confident that the verdict complied with judicial instructions as the quantity of information increased. However, they were still content with the fairness of the proceedings, although they were more confident of that where they were able to question witnesses.

### Work of Prosecution and Defence Lawyers

Lawyers will attempt to use psychological techniques to support the jury accepting their case. Frederick (1990) has detailed some of the more important features of opening and closing statements that help to persuade juries of their position.

## Features of Persuasive Openings and Closings (Frederick 1990) –

Techniques that lawyers use to support their opening and closing arguments include –

First, they present a clear theme of the case. A good theme provides the jurors with both the conceptual framework for the facts and the emotional undercurrent for the case.

Second, persuasive openings and closings are well-organized. Consideration is given to the placement of key information or points in the presentation, capitalizing on the presence of primacy and recency effects. Primacy and recency refer to the principle that information is remembered best when encountered first or last, respectively. The issue of when primacy or recency effects will dominate is complex. However, as a rule, information encountered in the middle of a presentation is remembered least well.

## Jury Selection

Whilst no qualifications are required to sit on the jury and one might therefore assume that the first 12 people selected would form the jury, there are procedures by which objections may be made to a limited number of potential individual jurors. In the UK these are called peremptory challenges, whilst in the USA the process is called voir dire and has become a significant feature in the run up to a trial. Objections are often based on assumptions about the personalities, attitudes and beliefs of potential jurors which legal professionals think they influence their judgment about the defendant.

Lawyers, in common with many other people, tend to rely on implicit personality theories and cultural stereotypes in order to form their impressions of others. Lawyers want to use this information to select jurors who will be sympathetic to their client. Thus, it has been suggested, that occupation is an important influence with, for example, engineering types likely to be unemotional, athletes lacking in sympathy for victims and butchers very unlikely to be shocked by violent crime (Fulero and Penrod, 1990)

### Jury Decision Making

Judges and jurors tend to reach their decisions in different ways. Judges offer an individual unprofessional view based on legal experience, whilst jurors offered could decisions based on their own general knowledge and life experience. A classic study by Kalven and Zeisel (1966) compares jury verdicts with the trial judge's views in 3576 criminal cases and found agreement in 78% of cases. However following the publication of this study many American states passed laws forbidding jurors to participate in future studies of this kind. This is true for today since in the USA and the UK it is now a legal to witness the activity of jury making decisions unless special dispensation has been given by the trial judge. This means that much of the research into this area has to be conducted in simulated ways. In addition to such methods we can also use well documented areas of social psychology and apply them to jury settings.

Conformity within Juries.

What happens when a jury can not decide on a verdict? One possible process that may occur is the process of conformity, whereby the individual(s) who are not agreeing with the majority are coerced into agreeing through this group process. One of the most influential pieces of research into conformity was conducted by Asch (1956). In this study confederates of the experimenter deliberately gave wrong answers to critical questions in a series of questions regarding the length of lines. Asch found that a significant number of Ps were unable to resist this group pressure and gave at least one wrong answer, rather than go against the group. One can extrapolate from this study to the jury situation in which the majority may pressurise a dissenting individual until they bow to the pressure and go with the majority view. The pressure on an individual (or number of individuals) to conform is important because in most countries (with the exception of England and Wales in certain cases) juries are required to give a unanimous verdict. Whilst the trial judge will ask if a unanimous verdict has been reached he/she will not ask how this decision was arrived at. The fact that the privacy of the jury room is regarded as sacrosanct means that if bullying or even threats are made by some jury members against others, this is unlikely to come to light.

### Leadership within Juries

In theory all the jurors are equal, but in practice they have to elect a foreperson who will relate their decision back to the court. This person may or may not be the actual leader of the group, however, and dominance hierarchies soon develop with a handful of individuals tending to control the discussion. Others participate to much slower rate and some merely watch

from the sidelines. This phenomenon – allowing some people to do all work – has been called social loafing (Latane et al 1979).

The jury foreperson occupies a crucial role in the decision-making process and research suggests that this role is most likely to be occupied by someone of higher socio-economic status, someone who has had previous experience as a juror, someone who simply sits at the head of the table the first time the jury meets, or who speaks first (Strodtbeck and Lipinski 1985).

### Children As witnesses

Ceci and Bruck (1996) in a review of the relevant research in this area argue that while preschool-age children are capable of providing forensically relevant testimony, they are more suggestible than older children who are, in turn, more suggestible than adults. Through suggestive interviewing techniques and repeated questioning, children can be led to get wrong not only peripheral details, but the central gist of events they experienced, even events affecting their bodies that could have sexual implications.

Ceci and Bruck examined in detail the factors, gleaned from laboratory research and elsewhere, that can affect children's testimony. These include: Interviewer bias, repeated questions, encouragement to imagine and visualize, peer pressure, authority figures.

Thus there does seem to be some weight to the assumption that children can not always be relied upon to give reliable evidence.

### Evaluation Points You Must Know

### Point 1: Methods of Studying Juries

Simulated jury panels. The great advantage of this approach is that their deliberations can be recorded and analysed and systematic variations introduced. In the usual version, a mock jury is presented with the reconstruction of a real trial, perhaps an audio tape of actors reading from a trial transcript. A further development is the shadow jury, which is put into the courtroom alongside, as it were, the real one. The subsequent deliberations of the shadow jury are recorded. While the shadow jury is more exposed to courtroom reality than simulated juries, neither has to determine the fate of the defendant in question, and therefore lack ecological validity. In addition the make up of a shadow/mock jury may not be the same as a real jury because they will be paid for their time whereas for real jury members this is not the case (though they get their normal pay if they are employed). Also Ps volunteer whereas jurors are required to do their jury service as a civil requirement. Again this may mean that the mock/shadow jury is not a true representation of real jury, thus we should be careful about generalising from a potentially biased sample.

Further, simulated juries may feel the need to act in socially desirable ways because they know they are being watched. Thus some behaviours (racism, sexism, etc) which may be a part of real jury decision making are not displayed in simulated juries because of the Ps knowledge that they are being observed. Thus the findings from such approaches may be partial and lacking in validity.

### Point 2: Method Concerns re Children as Witnesses

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Much of what has been learned about the influence of suggestive interviewing techniques on children has come from laboratory research, which Ceci and Bruck acknowledge is not a perfect analog to real-life sexual abuse and real-life questioning. However, they also note that it would be ethically impermissible to interview children in the laboratory as intensively as they have been in real cases, much less to sexually abuse them in the name of science! However we need to keep in mind that even when medical settings are used to simulate recall of a 'stressful' event, this is not the same as systematic abuse or watching others commit a crime, which is invariably what children are called into court to act as witnesses/victims of.

Stephenson (1988) argues that most of the research into eyewitness reliability is flawed because it is artificial. For example, watching a film is not the same as being present at the scene of a crime. It could be that real eyewitness testimony is significantly more accurate than lab studies would lead us to believe.

There are also many practical problems with using children as Ps. Children may well give socially desirable responses and show demand characteristics because they want to please adults, especially strangers (i. e. the researcher). Thus the validity of findings from such studies may well be contaminated by the socially desirable behaviours that the children may be showing. Further, children may not understand instructions given to them and certainly are easily confused (as shown in Samuel and Bryant's study from the AS level course). How questions are worded and how they are asked is very important when working with children. Additionally the whole setting of the research may elicit different responses from children. In a



classic study, Labov found that Black children gave different responses in regards to detail and quantity, to Black interviewers compared to White interviewers. Thus who the researcher is and where the study takes place may have more of an effect on child Ps than we may suspect. Again these factors reduce both the reliability and the validity of studies which use children as Ps.

### Point 3: Ethical Concerns

Children can not give informed consent so their parent(s)/gaurdians need to, but even then are they aware of what may upset their child? Children are also more vulnerable due to their status as minors. Thus they are more vulnerable to potential harm and may not understand their right to withdraw, indeed they may be so intimidated by the authority of the researcher that they would never ask to leave. All of these are very important considerations due to the often controversial and potentially anxiety provoking settings and issues that this area is concerned with.