

# A Critical Review of the Jury Simulation Paradigm

## The Case of Defendant Characteristics\*

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While empirical study of the jury has a long history (cf. Marston, 1924), recent years have witnessed a substantial expansion of research interest. Especially noticeable has been the proliferation of studies involving attempted simulation of jury functioning. The recent popularity of the jury simulation paradigm is probably due to researchers' perception that it offers both theoretical and pragmatic potential.

The jury's task, that of making a social judgment based on various kinds of information, provides an arena in which social psychologists can test a variety of theoretical conceptions: the just-world model (Jones & Aronson, 1973), the reinforcement model of attraction (Mitchell & Byrne, 1973), information integration theory (Kaplan & Kemmerick, 1974), social decision scheme models (Davis, Kerr, Atkin, Holt, & Meek, 1975), attribution theory (Izzett & Fishman, 1976), and equity theory (DeJong, Morris, & Hastorf, 1976). At the same time, because of the intrinsic difficulties associated with research on actual juries, the jury simulation paradigm offers an apparently reasonable source of pragmatic insights about jury functioning. For example, legal prohibitions enacted to ensure absolute privacy for the jury (Burchard, 1958) bar social scientists at the door when a real jury retires for deliberation. In addition, the behavioral scientist can exercise only limited experimental control over court

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proceedings. Intriguing variables, such as defendant characteristics or composition of the jury, cannot be directly manipulated. Nor can one repeat a trial for purposes of experimental replication. In contrast, the jury simulation paradigm offers the researcher access to deliberation, the opportunity to exercise experimental control, and the ability to replicate.

Most formal definitions of simulation are rather broad in scope. For instance, Abelson (1968) defines simulation as "the exercise of a flexible imitation of processes and outcomes for the purpose of clarifying or explaining the underlying mechanisms involved" (p. 275). In a similar vein, Browning (1973) states that "simulations are working models of the processes under study" (p. 384). The key features of simulation as specified by these definitions are the attempt to imitate and the selection of ongoing behavioral processes as the target of study. Browning (1973) has suggested that the unique value of simulations lies in their ability to "reproduce observed behavior, even of complex systems, with a high degree of precision" (p. 384). In the area of jury research, the quality of the simulation is especially critical since researchers have generally not been reluctant to make policy recommendations about sensitive legal issues based on the results of their simulation studies. Clearly, the generalizability of their findings must hinge upon the authenticity and accuracy of their simulations. However, as Bray (Note 1) has pointed out, these jury simulations have varied greatly in complexity and verisimilitude; in many studies the resemblance between the simulation and the actual courtroom has been minimal.

The mission of this article is twofold. First, we address the fundamental question: does the jury simulation paradigm provide an accurate basis for drawing conclusions about real jury functioning? As the legal establishment devotes greater attention to empirical research (Zeisel & Diamond, 1974), the external validity of that research becomes a critical issue. It is especially critical since lawyers, judges, and legal scholars generally lack expertise in social science and may be prone to overgeneralization. In this discussion we identify problems in the external validity of the jury simulation paradigm as it has been employed and explore the potential explanatory power of the jury simulation paradigm as it might be employed in the future. Second, we examine the jury simulation paradigm as a vehicle for testing and developing psychological theory and evaluate both the effectiveness with which it has been employed thus far and the potential effectiveness with which it might be employed in the future.

In assembling the collection of jury simulation studies, a simple and intentionally broad criterion was applied. Studies in which subjects were asked, either explicitly or implicitly, "to act as jurors," whether individually or in concert, were deemed jury simulation efforts. Entries under the headings adjudication, law, and legal processes in *Psychological Abstracts* were scanned for the years 1969 through 1978 to accumulate appropriate studies. The relatively rare pre-1969 studies and other additional references in journals not reviewed by *Psychological Abstracts* were identified by scrutinizing the References sections of the post-1969 studies. An effort was also made to secure most of the convention papers and unpublished manuscripts cited in the published articles. Two points worthy of note emerged in the compilation of the bibliography. First, outside of the University of Chicago Jury Project studies (for which a comprehensive bibliography was available), very little jury simulation research was done prior to 1969. The recent increase in jury simulation studies has indeed been spectacular. If unpublished dissertations and papers are included (but not counted twice if they ultimately generated a publication), the figures for consecutive

three-year periods are: 1964–1966, 7 studies; 1967–1969, 14 studies; 1970–1972, 25 studies; 1973–1975, 62 studies. Second, this is a truly multidisciplinary research topic. Although much of the research is published in psychology journals, a significant portion of it appears in law reviews and journals, as well as speech/communication journals, sociology journals, criminology journals, and journalism journals.

This literature search also revealed that the jury simulation paradigm has been used to investigate an enormous variety of issues of both theoretical and practical significance. Among these are the influence of: litigants' characteristics such as attractiveness, socioeconomic status, and sex; jurors' characteristics such as personality attributes, socioeconomic status, and sex; and procedural variations involving factors such as jury size, judge's instructions, availability of verdict options, and exposure to pretrial publicity. A comprehensive survey of these issues is beyond the scope of the present review.<sup>1</sup> Our purpose is to focus on general problems in the jury simulation literature, and we will use the influence of defendant characteristics on jury decision-making as a case in point. This area is fairly representative of the jury simulation literature and a substantial portion of the recent research falls into this category. Furthermore, the studies in this area have generally had more relevance to psychological theory than most other jury simulation research and thus represent some of the best of what is available.

This review is organized in the following manner. First, we provide a brief analysis of the results of jury simulation studies which have dealt with defendant characteristics. It will be apparent from this summary that, at first glance, the literature appears to provide a consistent, coherent, theoretically sensible demonstration of the role defendant characteristics play in the courtroom. However, in the second section we examine these studies *as applied research* and argue that the findings cannot be extrapolated from the laboratory to the courtroom with any reasonable degree of confidence. Furthermore, in the third section, we scrutinize the studies as *basic research*, and argue that their contribution to the validation and development of psychological theory has thus far been minimal. The sections on applied and basic research each conclude with recommendations for improving research quality in these areas.

## REVIEW OF STUDIES

Social psychologists have extended several of their traditional research paradigms on attraction to the simulated jury task. For instance, most of the research on the effect of defendant characteristics has centered on variables thought to influence jurors' attraction to, or liking of, the defendant. In the typical procedure, some personal characteristics of the defendant are manipulated in a manner thought to influence the jurors' liking of the defendant. This manipulation is then checked by having subjects rate their impressions of the defendant on an evaluative scale. Attraction is then conceptualized as an intervening variable which influences the simulated juror's decision-making. Generally, the hypothesis has been that an attractive defen-

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<sup>1</sup>For an excellent review of the entire spectrum of jury-simulation studies consult Davis, Bray, and Holt (1977). Two other broad reviews are also available: Erlanger (1970) and Gerbasi, Zuckerman, and Reis (1977).

dant will be treated more leniently than an unattractive one. In manipulating the personal characteristics of the defendant, three variations have been common. The bulk of the studies have made *global* manipulations in which several characteristics such as age, marital status and personality attributes are varied simultaneously (e.g., Landy & Aronson, 1969). The remaining studies have focused on either physical attractiveness (e.g., Efran, 1974) or attitudinal similarity between the defendant and the juror (e.g., Mitchell & Byrne, 1973) as determinants of attraction.

As a whole, these studies suggest that defendant attractiveness is a variable of great significance in the courtroom. Each of ten studies which made global manipulations of social attractiveness (Berg & Vidmar, 1975; Friend & Vinson, 1974; Izzett & Fishman, 1976; Izzett & Leginski, 1974; Kaplan & Kemmerick, 1974; Landy & Aronson, 1969, Nemeth & Sosis, 1973; Reynolds & Sanders, 1975; Rumsey & Castore, Note 2; Sigall & Landy, 1972) provided at least partial support for the hypothesis that attractive defendants received more lenient treatment than unattractive defendants. Similarly, four of five studies (Efran, 1974; Jacobson & Berger, 1974; Kulka & Kessler, Note 3; Sigall & Ostrove, 1975; Stephan & Tully, 1977) which manipulated physical attractiveness, and all five studies (Bray, Note 4; Griffitt & Jackson, 1973; Laughlin & Izzett, Note 5; Lineberry, Becker & Lammers, Note 6; Mitchell & Byrne, 1973) which varied attitudinal similarity provided at least partial support for the leniency hypothesis. This alleged relationship is intuitively appealing and corresponds to lawyers' lore. The bulk of this research has been conducted within the framework of Byrne's (1971) reinforcement model of attraction and has generally been interpreted as supportive of that model. In addition, this research has generally been attributed considerable practical significance. For instance, Mitchell and Byrne (1973) note,

The results of the present study, and of others reported here, could have important implications for the legal system. Most notably, the constitutional guarantee of trial by a jury of peers takes on added importance. (p. 128)

In contrast, the research on demographic variables suggests that defendant socioeconomic status, sex, and race are only marginally important. Only one of three studies (Gleason & Harris, 1975, 1976; Gordon & Jacobs, 1969) found the defendant's socioeconomic class influenced jury decision-making. The five studies on sex of defendant (Boor, 1975; Richey & Fichter, 1969; Rose & Prell, 1955; Snortum & Ashear, 1972; Stephan, 1974) yielded mixed findings which suggest that the impact of the defendant's sex may be mediated by the sex of the juror and the nature of the crime. All three studies focusing on the defendant's race (Gleason & Harris, 1975; Nemeth & Sosis, 1973; Snortum & Ashear, 1972) suggest that it is not a significant variable. As was the case with the attraction research, investigators have shown a willingness to extrapolate their findings from the laboratory to the courtroom. For instance, Gordon and Jacobs (1969), who found that the defendant's socioeconomic class did not affect verdicts, suggest that,

The study provides a measure of experimental support for the often expressed contention of legislators, judges and attorneys that jurors discount prejudicial social factors in attempting to reach a just and valid verdict. (p. 146)

As the preceding summary indicates, the literature in this area seems to provide a fairly clear picture of the role of defendant characteristics in the courtroom. This pic-

ture however, is deceptive, and behind the comfortable consensus lie some serious questions about the validity of these results.

## JURY SIMULATION AS APPLIED RESEARCH

Does the jury simulation paradigm provide a useful basis for the practical understanding of real jury functioning? What is its value as a tool for conducting *applied research*? Some investigators might cogently argue that the jury paradigm is simply a convenient vehicle for theory-testing and thus its results need not be directly applicable to the courtroom. They would assert that it was not their intention to do applied research. Yet many of the studies reviewed here were conducted with no apparent theoretical foundation and merely attempted to answer specific questions about jury functioning (e.g., Boor, 1975; Cornish & Sealy, 1973; Doob & Kirshenbaum, 1972; Friend & Vinson, 1974; Gleason & Harris, 1975, 1976; Gordon & Jacobs, 1969; Hans & Doob, 1976; Jacobson & Berger, 1974; Nemeth & Sosis, 1973; Reynolds & Sanders, 1975; Sigall & Landy, 1972; Stephan, 1974).

Furthermore, in many of the studies which *were* conducted within a theoretical framework, the researchers suggest that their findings have pragmatic significance. Typically, they provide some caveat that their results are merely suggestive regarding the practical realities of jury functioning. Nonetheless, they have generally not been very timid about discussing practical implications. Three examples will illustrate this incongruity.

Although we must make the usual, and necessary caveats about generalizing from the laboratory microculture to the real world, the present study does have some potentially applied aspects. (Berg & Vidmar, 1975, p. 156)

Finally, we feel compelled to note that our laboratory situation is quite different from actual courtroom situations . . . However, simulations constitute legitimate avenues for investigating person perception and interpersonal judgment, and there is no obvious reason to believe that these processes would not have the effects in trial proceedings that they do elsewhere. (Sigall & Ostrove, 1975, p. 413)

These findings, should their generalizability to an actual jury setting be demonstrated, could have immediate practical implications. Counsels representing both sides of a legal dispute could use this information to more efficiently map their arguments against prominent jury concerns. (Rumsey, 1976, p. 67)

Finally, and perhaps most importantly, even if researchers make absolutely no claim regarding the generalizability of their findings, the fact that they used a simulated jury will tempt others to make those extrapolations to the courtroom. The legal establishment has been paying increasing attention to the research of social scientists. The danger of misinterpretation and overgeneralization on the part of professionals in the legal field is a very real one (Zeisel & Diamond, 1974).

Thus, it is important to consider the major threats to the external validity and policy relevance of present jury simulation research. There are six.

### **Problem 1: Inadequate Sampling**

Only six of the reviewed studies that investigated the effects of defendant characteristics employed non-students as subjects (Cornish & Sealy, 1973; Doob &

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Kirshenbaum, 1972; Hans & Doob, 1976; Jacobson & Berger, 1974; Lineberry, Becker, & Lammers, Note 6; Snortum & Ashear, 1972). Students are not representative of the population of individuals from which juries are drawn and the question of validity centers on the comparability of decision-making behaviors of students and jurors.

In addition, some evidence suggests that interactions between experimental treatments and subject variables may pose threats to valid cross-sample inference. There are data that suggest that authoritarianism (Mitchell & Byrne, 1973; Berg & Vidmar, 1975; Boehm, 1968) and conservatism (Crosson, note 7, Jurow, 1971; Zeisel, Note 8) are positively correlated with harsh jury decision-making. If college students tend to be less authoritarian and conservative than the general adult population, they may be more lenient than actual jurors and, for example, less responsive to official witness testimony. One study uncovered a difference consistent with this analysis. Simon and Mahan (1971) found that sociology students were more likely to acquit a defendant than were jurors drawn from a jury pool.<sup>2</sup>

On the other hand, field data (Adler, 1973; Reed, 1965) and data from two jury simulation studies (Miller & Hamilton, Note 9; Sealy & Cornish, 1973) suggest that high socioeconomic status is associated with greater severity in jury decision-making. Since college students tend to be from higher socioeconomic strata, this suggests that as a group they should be harsher than the typical pool of jurors. Thus, there is some reason to believe that the groups of student jurors might tend to be either more or less lenient than the groups of people drawn from actual jury pools. Another possibility is that age interacts with socioeconomic status, but evidence for this relationship is not yet available.

A second possibility is that student versus juror differences are mediated by differences in information retention. Miller, Fontes, Boster, and Sunnafrank (Note 10) found that student jurors manifested significantly greater retention of trial-related information than did actual jurors. Thus, there may be important cognitive as well as attitudinal differences between student and real jurors which could plausibly produce divergence in their decision-making. For example, if education produces greater concentration on complex material, college student verdicts might be more responsive to the content of expert testimony than would jury pool verdicts. Again the major concern is that such differences may interact with case characteristics and not simply affect overall guilt rates.

When Nemeth and Sosis (1973) compared two student samples, an attraction/leniency effect emerged for only one of the samples. The failure to find this effect for the more educated sample of University of Chicago graduate students might reflect a bona fide propensity on the part of outstanding graduate students to be more objective in simulated legal decision-making, or it may reflect a greater research sophistication on the part of graduate students which allowed them to see through the experimental manipulations. Whatever the appropriate interpretation might be, it is apparent that Nemeth and Sosis uncovered a type of aptitude by treatment interac

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<sup>2</sup>Simon and Mahan did not report a statistical test of their results. However, our own analysis of their data on individual verdicts indicated that the student-juror difference was significant ( $\chi^2 = 17.43$ ,  $df = 1$ ,  $p < .01$ ).



tion. Such interactions may be quite common in jury decision-making. Cronbach (1957; 1975) has commented extensively on the folly of ignoring such interactions in educational research. If similarity effects are as great as some research suggests (Mitchell & Byrne, 1973; Griffitt & Jackson, 1973), then interactions between sample composition and manipulations of defendant characteristics appear quite likely.

### **Problem 2: Inadequate Trial Simulations**

One cannot conduct a jury simulation without some form of trial simulation. With only a few exceptions (Bray, Note 4; Griffitt & Jackson, 1973; Kulka & Kessler, Note 3) these trial simulations in studies on defendant characteristics have provided subjects with written case materials that have often been characterized by startling brevity. For instance, the often-used Landy and Aronson (1969) case materials are roughly 400 words in length. These brief written case summaries can in no way mirror the complexity of actual trials. The information input to the simulated jurors is minute in comparison to that generally received by real jurors. In the context of such meager input, it is hardly surprising that various experimental manipulations are effective. The policy-relevant question is whether such manipulations would be effective if embedded in the vastly greater flow of information more typical of an actual trial.

It is, of course, the very essence of controlled laboratory research to abstract from exceedingly complex situations only those variables thought to be important. This methodological tradition has a long history of yielding worthwhile data in both basic and applied research. It may be worth demonstrating that facts A and B produce particular results even if facts A and B do not produce those results when accompanied by facts C through Z. However, if it is known that facts C through Z are inevitably present in the setting of interest, the practical significance of the results regarding facts A and B alone is limited at best.

The grim reality is that real trials virtually never resemble the simple 400-word descriptions commonly used and there is evidence that content complexity affects jury simulation results. Bermant, McGuire, McKinley, and Salo (1974) exposed four groups of undergraduate subjects to different simulations of an actual murder trial. The most realistic version involved an automated slide show portraying an enactment of the trial accompanied by an edited audiotape of the original trial transcript. The other versions employed the audiotape only, a written 30-page transcript of the audiotape, and a 4-page summary of the case. Bermant et al. found that the verdicts returned by the simulated jurors were significantly influenced by the nature of the trial simulation. Fewer guilty verdicts were observed as the complexity and realism of the case simulation were increased. In view of Bermant et al.'s findings, it seems plausible that the influence of factors such as defendant attractiveness might be substantially exaggerated due to the sparse simplicity of many simulations.

In addition to reducing the amount of information input, many simulations have changed the mode of information input (reading as opposed to listening). That change deprives the simulated juror of a key source of information available to real jurors, who are known to devote considerable attention to the nonverbal behavior of trial participants (Miller et al., Note 10).

As Bray (Note 1) has noted, another problem with trial simulations is that they

often omit many integral elements of a real trial such as *voir dire* or judge's instructions to the jury. The potential importance of such omissions was demonstrated in a recent study (Weiten, Note 11). A modified version of the Landy and Aronson (1969) paradigm was employed, but for half of the subjects, one small element of judicial realism was added: they received the standard Illinois judge's instructions (regarding the criteria of guilt) for an automobile negligence case. Consistent with most previous research, the sentencing variable was quite sensitive to the attractiveness manipulation, with a significant leniency effect being observed regardless of whether judge's instructions were included. However, the leniency effect was observed for guilt ratings only when instructions were absent.

### Problem 3: Lack of Jury Deliberation

With only a few exceptions, studies in this area have chosen to focus on individual juror decisions rather than on collective jury decisions. Several studies (Gleason & Harris, 1976; Hans & Doob, 1976; Izzett & Leginski, 1974; Laughlin & Izzett, Note 5; Rumsey, 1976; Rumsey & Castore, Note 2; Stephan, 1974) have included some form of group discussion; however, those discussions have generally: (a) had very severe time limitations (15 minutes or less in most of the studies); (b) employed extremely small groups of three to four subjects; and (c) rarely pursued a group verdict. It is interesting to look at the rationale that researchers often offer (cf. Mitchell & Byrne, 1973) for ignoring the deliberation process. They typically cite the evidence collected in a large-scale field study by the Chicago Jury Project (Kalven & Zeisel, 1966) that the first ballot is a strong predictor of jury verdicts and conclude that deliberation is generally unimportant.

This interpretation seems unwarranted. First, Kalven and Zeisel's data on initial ballot may not have adequately captured the predeliberation leanings of the jurors, since juries frequently engage in much discussion before a formal vote is taken. In addition, it should be noted that the Chicago Jury Project did not rely on individual votes in its research; in fact, it devoted intensive attention to the deliberation process. Moreover, as Izzett and Leginski (1974) have argued cogently, deliberation might lead to a "eureka" type insight regarding the inappropriateness of being influenced by a defendant's social attractiveness. There are ample data available from several research traditions in social psychology that indicate that individual and group decisions represent fundamentally different phenomena. Studies of acquiescence by the minority to the view of the majority (cf. Festinger, 1950), "risky shift" (cf. Wallach, Kogan, & Bem, 1962), and "group polarization" (cf., Myers & Bishop, 1970) all indicate that group decision-making processes do not parallel individual decision-making processes. It has been recently demonstrated that these group shifts can occur in simulated juries (Myers & Kaplan, 1976; Vidmar, 1972).

Jury simulation studies on defendant characteristics that have compared individual and group decisions have generally yielded data that demonstrate the non-equivalence of individual and group decisions. A number of studies (Gleason & Harris, 1976; Izzett & Leginski, 1974; Laughlin & Izzett, Note 5; Rumsey, 1976; Rumsey & Castore, Note 2) have uncovered a leniency effect with postdiscussion individual sentences being less severe than prediscussion individual sentences. More im-

portantly, three studies have observed *interactions* between experimental treatments and group discussion. Izzett and Leginski (1974) found a significant effect for social attractiveness in their *prediscussion* condition only. In direct contrast, Laughlin and Izzett (Note 5) found a significant effect for attitudinal-similarity in their *postdiscussion* condition only. Hans and Doob (1976) found a significant effect for record disclosure on *collective verdicts* but not on individual verdicts. In view of these results, it seems hazardous to draw pragmatic inferences about jury functioning based on studies that have only examined individual decisions made by noninteracting jurors. On the other hand, it should be stressed that there undoubtedly is some value in examining the impact of defendant characteristics upon *individual* jurors' perceptions and predeliberation decision propensities. Individual prediscussion positions are important determinants of the deliberation proceedings and are certainly related to the final verdict. However, it is essential that researchers not equate individual decisions with group verdicts.

#### **Problem 4: Inappropriate Dependent Variables**

Most jury studies have asked subjects to return probability-of-guilt ratings or sentences rather than guilty-not guilty verdicts. In reality, jurors are generally not involved in sentencing.<sup>3</sup> While sentence apparently provides a sensitive and convenient dependent measure, verdict is the most jury-relevant dependent variable. Furthermore, inferences about processes involved in guilt determination, but based on sentencing judgments, may be unwarranted. While the legal system<sup>4</sup> considers it appropriate to use a defendant's prior record, character, and attitudes in setting sentence, these pieces of information are intended to affect judgments about guilt only insofar as they aid in the evaluation of defendant credibility. Although there is evidence that jurors may not entirely limit their use of such evidence to credibility judgments (Doob & Kirshenbaum, 1972), different bases for verdict and sentence judgments may contribute needlessly to inconsistent outcomes across studies. Thus, it is not surprising that some studies have observed a disparity between sentencing and guilt-related dependent variables (cf. Bray, Note 4; Wilson & Donnerstein, 1977).<sup>5</sup>

#### **Problem 5: Lack of Corroborative Field Data**

If it could be shown that there was substantial correspondence between data on juries gathered in the field and those gathered in the laboratory, then subject, stimulus, and measurement characteristics would evoke less concern. Various researchers using the jury simulation paradigm have asserted that such a cor-

<sup>3</sup>Although exceptions to this general rule are rare, they are significant. For example, juries generally participate in sentencing on capital crimes. Moreover, a few states (e.g., Missouri) use juries to sentence in other capacities.

<sup>4</sup>See for example the sentencing provisions of the American Law Institute, Model Penal Code (P.O.D. 1962).

<sup>5</sup>Differences in sentence and verdict results could be attributable to the greater sensitivity of the continuous measure of sentence as opposed to the dichotomous measure of verdict. Such an inference, however, is not consistent with the Wilson and Donnerstein (1977) finding of an effect of the independent variable on verdict but not on sentence.

response does exist. However, they have been rather lax about providing evidence for that assertion. For instance, Mitchell and Byrne (1973) state,

Some comfort about the comparability of the laboratory and the "real world" is provided by the correspondence between experimental findings and the correlational and descriptive data gathered in legal settings. (p. 128)

Unfortunately, Mitchell and Byrne are not very specific about what that "correspondence" might be. Many jury simulation researchers are fond of suggesting that their findings parallel those of Kalven and Zeisel (1966), who conducted a large-scale field study of jury functioning in America. Kalven and Zeisel collected questionnaire data from judges who were asked to specify in each case how they would have decided prior to the jury rendering its verdict. In cases of disagreement between the judge and the jury, the judge was asked to speculate about the reasons for the disparity. With this methodology, Kalven and Zeisel were able to gather substantial, if indirect, material on jury functioning. Like many other investigators, Landy and Aronson (1969) suggest that their findings are similar to those of Kalven and Zeisel (1966):

We are encouraged by the fact that, in the absence of extraneous stimuli, our results paralleled some of the findings of Kalven & Zeisel (1966) in their examination of actual cases.

Once again, the specific nature of the correspondence is not given and consists of the rather general conclusion that defendant attributes may influence juror judgments.

In reality, the degree of correspondence between jury simulation and field data is difficult to assess. There are relatively few field data available and none of them measure attraction or liking per se. Kalven and Zeisel (1966) did find that factors such as a good job history, displaying kindness to the victim, favorable courtroom demeanor, and veteran status appeared related to jury leniency. Insofar as it is reasonable to assume that these factors are related to liking, the jury simulation findings parallel Kalven and Zeisel's data. On the other hand, in a study of first-degree murder cases in California from 1958 to 1966 (Stanford Law Review, 1969), verdicts were not found to be correlated with factors such as military record or stability of family background that may increase attraction. Similarly, in a study based on post-trial questionnaire data collected from jurors, Reed (1965) failed to find a relationship between verdicts and defendants' marital status and church attendance. Thus, it is not really clear whether field data are consistent with the laboratory data suggesting a link between attraction and leniency.

In regard to demographic variables the picture is less ambiguous and there appears to be some *inconsistency* between laboratory and field data. For the most part, the jury simulation data suggest that demographic variables such as socioeconomic status, sex, and race are *not* particularly influential. While the field data are not altogether consistent, the preponderance of evidence suggests that defendants' socioeconomic status (Reed, 1965), sex (Kalven & Zeisel, 1966), and race (Broeder, 1965) may influence decisions.

Finally, it should be noted that in some areas correspondence between lab and field research has been found. The effect of defendant repentance in producing leniency (Jacobson & Berger, 1974; Rumsey, 1976) and the role of a previous criminal

record in increasing severity (Cornish & Sealy, 1973; Doob & Kirshenbaum, 1972; Hans & Doob, 1976) roughly parallel observations made in the Kalven and Zeisel (1966) study.

In conclusion, the overall picture regarding the correspondence between laboratory and field research on defendant characteristics does not suggest clear congruence. Thus, laboratory researchers cannot automatically assume that there will be substantial correspondence between their findings and those of field studies.

### Problem 6: The Issue of Role-Playing

Perhaps the most critical difference between real and simulated jury decision-making, and the gap most difficult to close, is the difference in the consequences of the two decision tasks. This crucial disparity has been noted by many researchers in this area and was elucidated in a compelling manner by Stephen (1974):

The most critical difference between actual trials and jury simulation lies in the implication of the decision. The simulated juror knows that no real persons will be affected by his decision, while the actual juror is acutely aware of the power of his decision to alter a human's life. (p. 311)

What is at issue here is the validity of role-playing as a research technique. In jury simulations, subjects are asked to speculate about how they would behave *if they were real jurors*. Thus role-playing represents the very essence of the jury simulation paradigm. Yet, role-playing has been the target of much criticism (Aronson & Carlsmith, 1968; Freedman, 1969), which has questioned the premise that subjects can predict with substantial accuracy how they would behave in various situations. Freedman (1969) argues that role-playing data represent subjects' *guesses* as to how they would behave if they were in a given situation. He further asserts that people's guesses "are not the stuff of which a science of human behavior is made" (p. 114).

The literature has only begun to explore the consequences of this problem, and thus far the results are ambiguous. In a recent series of three experiments, Wilson and Donnerstein (1977) exposed undergraduate subjects to written case materials involving a manipulation of defendant social attractiveness under two different conditions. Half of the subjects were told that their decision regarding the case, which involved a student accused of stealing an exam, would have real consequences for a real student at their school (real consequence condition). The other half of the subjects were simply given instructions to judge the case as if "you were a real jury member" (hypothetical consequences condition). Significantly more guilty verdicts were returned in the real consequences condition than in the hypothetical consequences condition. In a second experiment, *real* as opposed to *hypothetical* jurors again returned significantly more convictions. Finally, in the third experiment, similar but nonsignificant differences were observed.

The disparity in results between the hypothetical and real consequences conditions in the Wilson and Donnerstein (1977) study suggests that the concern about differences in role-playing behavior for simulated jurors is appropriate. However, a similar study by Kerr, Nerenz, and Herrick (1979) has yielded contrasting results. Kerr et al. suggest that the cover story employed by Wilson and Donnerstein may have been transparent and attempted to resolve this problem in their study, which employed college students assigned to six-person juries that deliberated for a max-

imum of 45 minutes. Kerr et al. found that individual predeliberation verdicts and sentences, collective jury verdicts, deliberation time and number of polls, individual jurors' retention of case-related facts, and their criteria of reasonable doubt were *not* significantly affected by the role manipulation.

A field study by Diamond and Zeisel (1974; Zeisel & Diamond, 1978) provides additional data on the issue of role-playing. In each of 12 criminal cases they compared the verdict of the real jury with the verdicts of two simulated juries, one composed of persons challenged by the attorneys and the other "English" jury composed of persons randomly selected from the jury panel. They found that the English juries (i.e., one set of role-playing juries) tended to return more convictions than the actual juries, and that these differences could not be accounted for by differences in jury composition.

Thus, the three studies relevant to the issue of role-playing have yielded the entire spectrum of potential results. Role-playing jurors have been found to be more lenient (Wilson & Donnerstein, 1977), harsher (Diamond & Zeisel, 1974; Zeisel & Diamond, 1978), and no different (Kerr et al., 1979) than real jurors. Thus, while such bias has logical and some empirical support, its direction and strength are unclear.

The existence of a role-playing bias towards leniency or severity would not be particularly troublesome as a main effect because it could be taken into account in interpreting results. One would still be able to learn from simulations how defendants' characteristics affected juror responses. The real difficulty results from the possibility of interactions with other variables. The data from Wilson and Donnerstein's first experiment (1977), while not strong, offer some evidence that interactions may occur. In addition to the real versus hypothetical consequences conditions, they varied defendant social attractiveness. While guilty verdicts in the real consequences condition did not vary with defendant attractiveness (83% for both levels), in the hypothetical consequences condition 59% convicted the unattractive defendant while 33% convicted the attractive defendant. Furthermore, in their third experiment subjects in the real consequences condition recalled more situational evidence of the case than did hypothetical consequences jurors. This result suggests that responsiveness to situational cues may differ depending on verdict consequences.

Another signal of interactions as yet unidentified may be the opposite main effects in the Wilson and Donnerstein (1977) and Diamond and Zeisel (1974) studies. For example, college student jurors may be more lenient in a hypothetical than in a real situation (Wilson & Donnerstein, 1977), while less well-educated jury pool members may be more lenient when confronted with a decision having real consequences (Diamond & Zeisel, 1974).

The questions surrounding role-playing persist. The findings of all three of the relevant studies described in this section can be questioned on several grounds. The Diamond and Zeisel design did not directly address the issue of role-playing (it focused on the efficacy and importance of voir dire) and they acknowledge a potentially important confounding variable regarding this issue. Their English juries were not individually questioned in the voir dire proceedings, while, of course, the real juries were. Since their data suggest that mere participation in the voir dire proceedings may have affected voting on the first ballot, definite conclusions cannot be drawn about the role-playing question from their study. On the other hand, the obvious problem with the studies by Wilson and Donnerstein (1977) and Kerr et al. (1979) is

that there was no real "real" condition. Both studies had to face the formidable task of convincing college students in a laboratory situation that their decisions had real consequences. Although subjects in the Kerr et al. study reported on a postexperimental questionnaire that they treated the "real" case as a genuine one, Orne (1962) has noted the tendency of subjects to tell experimenters what they want to hear on postexperimental probes. Furthermore, Kerr et al. (1979) face the quandary of trying to prove a null hypothesis.

Questions about role-playing are not easily solved and probably represent the most serious threats to the applied value of jury simulation research. As we turn to a discussion of the research needed in this area, this issue will be a major focus.

### IMPLICATIONS FOR FUTURE RESEARCH

The six problems outlined above suggest that extreme caution should be exercised in extrapolating from present jury simulation research to the courtroom. Yet, although there may be some difficulties with the jury simulation paradigm as a vehicle for applied research, it may also have a potential that has not yet been achieved. This hopeful perspective is based on three points: (a) many of the potential problems in past applications can be handled without excessive difficulty, (b) the jury simulation paradigm offers various advantages that field research simply cannot match, and (c) a series of future methodological studies may be able to establish guidelines for drawing practical inferences from jury simulation studies.

Most of the methodological problems outlined in this section are not insurmountable. The additional expense and effort required to enhance the functional verisimilitude of future studies would not be prohibitive. Insofar as future researchers are interested in the generalizability of their findings, they should procure more representative samples, employ more realistic trial simulations such as lengthy and complex audio or videotaped trials, and focus more on collective verdicts arrived at by deliberating juries. There is no reason, apart from increased cost, why these improvements cannot be incorporated into laboratory research. In fact, there is some movement in this direction already. For instance, Hamilton (1978) followed many of these suggestions in a recent jury simulation study exploring attributions of responsibility for destructive obedience. An effort was made to recruit a diverse sample of subjects from the community, a slide and audio-tape trial presentation was employed, and six-person juries deliberated (for a maximum of 60 minutes) to collective verdicts. Similarly, in a study of the legal concept of "reasonable doubt," Kerr, Atkin, Stasser, Meek, Holt, and Davis (1976) exposed student jurors to an audio and videotaped trial simulation and had six-person juries deliberate (for 30 minutes) to collective verdicts. These studies are not offered as examples of methodological perfection. For instance, the wisdom of procedures such as limiting deliberation to relatively brief periods and collecting predeliberation verdicts and guilt ratings might be questioned. However, these studies do represent vast improvements over most previous jury simulation efforts and they show that many of the methodological problems cited can be overcome in laboratory research.

These efforts at improving the verisimilitude of jury simulations are especially encouraging, because, when employed judiciously, the laboratory approach has much

to offer. In the laboratory, the investigator has access to deliberation and the opportunity to exercise experimental control. These advantages permit the social scientist to examine issues that are extremely difficult, if not impossible, to study in the field. It is unfortunate that, thus far, most investigators have not made maximal use of those advantages. As has been noted previously, most researchers have not even used their access to deliberation. Moreover, their exercise of experimental control has lacked precision. For instance, the widely used Landy and Aronson (1969) paradigm involves a simultaneous manipulation of many defendant characteristics which obscures the meaning of the findings. It was not unreasonable for Landy and Aronson to make such a global manipulation of social attractiveness in their ground-breaking, exploratory study. However, follow-up studies have continued to confound variables such as age, socioeconomic status, marital status, personality attributes, and similarity to the simulated juror. Consequently, researchers have failed to use their opportunity for experimental control to delineate the specific factors operative in these global manipulations. In field research, the investigator may be helpless in the face of inevitable confounding of variables such as those listed above. In the laboratory, the social scientist can separate these variables and determine their relative importance. It would be worth exercising this control in future studies. For instance, it should be fairly simple to create attractive defendants who are low in socioeconomic class or likely to be perceived as dissimilar by the subjects.

Working in the laboratory offers another advantage which ought to be utilized in future research. A substantial problem confronting field researchers is their inability to control the evidentiary situation. It seems likely that at extremely high and extremely low levels of incriminating evidence, the influence of defendants' characteristics would be minimal. Correlational studies done in the field might fail to discern authentic relationships between defendant characteristics and verdicts because "open and shut" cases might dominate the sample of trials (see Lempert, 1975, for an extensive discussion). In contrast, laboratory researchers can, and should, control evidentiary level quite precisely to ascertain its importance and to maximize the sensitivity of the experiment.

A series of methodological studies should be conducted to elucidate the manner in which simulated and real jury decision-making are related. Although many of the methodological flaws which undermine the practical relevance of jury simulation research can be ameliorated, the role-playing problem is not easily circumvented. Additional studies using approaches similar to Diamond and Zeisel (1974; Zeisel & Diamond, 1978) are needed to shed light on this critical problem. It would be most instructive if such studies could be done comparing real and simulated jury reactions under systematically varied, but legally permissible, conditions (e.g., with and without access to written instruction).

The major role-playing question centers on the impact of severe consequences on decision-making. This question can also be addressed more broadly by studying non-jury decision-makers under real and simulated conditions. Sentencing judges, student admissions committees, and citizen review boards all are involved in decisions that have serious implications for the people involved. Decisions could be compared under real and simulated conditions by having the stimulus materials for decision-making group A simulated for group B's responses, and the materials for group B's real decisions simulated for group A. Figure 1 would show that group A decision-makers



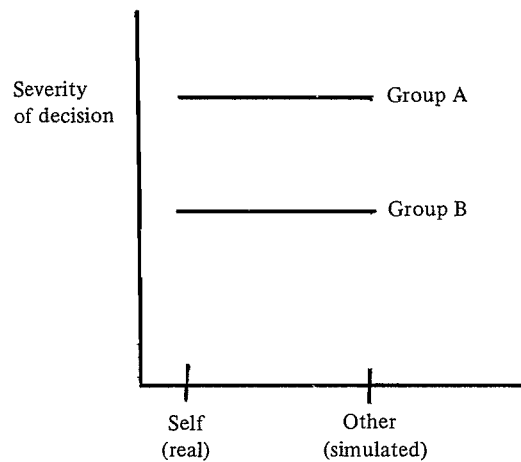


Fig. 1

tended to be more severe, and that simulated and real decisions did not differ in severity.

Studies are also needed to ascertain what features of trial simulations are essential to capture the essence of the phenomena under investigation. This could be accomplished by manipulating defendant characteristics in the usual manner in the context of several different types of simulations. One could compare the impact of such a manipulation in a variety of conditions employing a brief, written case, a lengthy, detailed version of the same written case, an audiotape of the case, a videotape of the case, and a live enactment of the case. Experimental manipulations embedded in the fabric of a complex simulation may not prove to be very influential.

The gap between the laboratory and the courtroom can also be bridged by encouraging research projects that use a dual approach, gathering both simulation and field data on the same or related issues. Such an approach was employed profitably by Ebbesen and Konečni (1975) in a study of bail setting. They asked judges to set bail in a series of simulated cases and then went into the courtrooms of some of those judges to collect analogous field data. Their comparison of their laboratory and field data sheds considerable light on the limitations of simulations in exploring this particular practical legal issue. Such studies integrating the two research traditions are both needed and possible, and are likely to provide the surest base for confident inference.

## JURY SIMULATION AS BASIC RESEARCH

Some investigators have cited theory rather than application as the basis for their work, and we now examine this collection of studies *as basic research*. Most of the studies that have been conducted within a theoretical framework have focused on the

dynamics of attraction and their relevance to the understanding of jury decision making. The typical hypothesis has been that attraction to the defendant will generate a leniency effect. Generally, the results of most of the studies have been interpreted as supportive of this hypothesis. As Davis, Bray, and Holt (1977) have pointed out, the link between attraction and leniency has then been explained by reference to Byrne's (1971) reinforcement model of attraction, Anderson's (1968) information integration theory, and Fishbein's (1967) model for predicting behavioral intentions. Although each of these models seems theoretically sensible, several problems emerge upon closer inspection.

### **Problem 1: Alternative Explanations for the Findings**

Many of the studies relating attraction to leniency have problems of construct validity. As already noted, the most common manipulation of social attractiveness has been a global one in which many characteristics, such as age, socioeconomic status, marital status, and personality attributes are varied simultaneously. Various studies (cf. Landy & Aronson, 1969; Friend & Vinson, 1974; Rumsey & Castore Note 2) have shown that in response to such manipulations, subjects rate the "attractive" defendant as more likable and then behave in a more lenient manner toward that defendant. However, Gleason and Harris (1975) have shown that a manipulation of socioeconomic status alone can also generate a leniency effect. Moreover, they do not use attraction as a mediating variable to explain their finding. One could argue reasonably enough that liking is related to higher status and that attraction might account for Gleason and Harris' (1975) finding. On the other hand, one could likewise argue that the subjects reasoned that a high-status defendant presumably has less need to engage in armed robbery and therefore is less likely to be guilty. The crucial point is that manipulations of socioeconomic status *singly*, which do not necessarily require liking as an explanatory concept, could be responsible for the differences in jury decisions observed in the studies where global manipulations of social attractiveness were made.

The second study by Gleason & Harris (1976) also raises important questions about the alleged link between attraction and leniency. In this study they asked subjects to rate the likelihood that they could find themselves in a situation similar to the defendant's. It was found that subjects who felt there was a relatively great likelihood of their being in a similar situation were more lenient in their judgments of guilt and blameworthiness. This finding raises the possibility that in the studies where attitudinal similarity is manipulated (Mitchell & Byrne, 1973; Griffitt & Jackson, 1973) it may be the subjects' *identification* with the defendant rather than *liking* for the defendant which is crucial to the leniency effect. Since relatively high-status college student subjects seem more likely to identify with the attractive defendant in the studies employing global manipulations of social attractiveness, this potential confounding of liking and identification may be applicable to those studies as well.

Another problem centers on Orne's (1962) concept of demand characteristics. Orne suggests that some subjects are motivated to behave in a manner that they feel will validate the experimenter's hypothesis. If cues are readily available that permit the subject to infer the nature of the hypothesis, the presence of these demand characteristics may in some cases account for the experimental results. In many of the jury simulation studies, demand characteristics are easily discernible. For instance, in

the studies where physical attractiveness is manipulated, the usual procedure entails attaching a photograph of the defendant to the *case* description (cf. Efran, 1974; Jacobson & Berger, 1974). It seems likely that it would not require spectacular insight on the part of the subjects to realize the true purpose of the photo. Unfortunately, experimenters have usually chosen not to provide any rationale for the presence of the photo. This is especially disconcerting since it would be relatively easy to provide a reasonable explanation for the presence of a photo of the defendant. For instance, a photo would seem less out of place if it appeared in a "defendant dossier" which accompanied the case description. Kulka and Kessler (Note 3) attempted to integrate the photo of the defendant into their simulation and flashed slides of the various trial participants (judge, attorneys, as well as the defendant) when they spoke on the tape. While this procedure appears to be a great improvement over that employed in other studies, it was still somewhat artificial in that "yearbook" type photos of the participants were used.

While the problem of demand characteristics is most salient in the studies manipulating physical attractiveness, it may also be relevant to the studies that make global manipulations of social attractiveness and manipulations of attitudinal similarity. For instance, in studies of attitudinal similarity subjects are often exposed to information about the defendant's attitudes that appears irrelevant to the case at issue, but just happens to correspond to information they recently gave in an attitudinal survey. It seems likely that the demand characteristics in this situation will be apparent to some subjects.

Yet another problem involves subjects' tendency to behave in a socially desirable manner. Several studies have varied the race of the defendant (Gleason & Harris, 1975; Nemeth & Sosis, 1973; Snortum & Ashear, 1972) and failed to find significant differences. These consistent results do *not* coincide with correlational field data which indicate that black defendants tend to receive more severe dispositions (Bullock, 1961; Thornberry, 1973). Additionally, Broeder (1965) reported that post-trial interviews with real jurors indicated that racial prejudice played an important role in all four cases involving black defendants. It seems likely that college students are very sensitive about racial issues and therefore scrupulously avoid behaving in a socially undesirable, prejudicial manner.

The attraction-leniency relationship is intuitively appealing. At present, however, there appear to be serious questions about the fit between the construct of attraction and its operationalization. This problem suggests that skepticism is appropriate in regard to the authenticity of the attraction-leniency relationship, even within the boundaries of traditional laboratory paradigms.

### **Problem 2: Lack of Comparative Theory Testing**

Assuming that the attraction-leniency relationship is an authentic one, a number of different theoretical approaches might explain the phenomenon. Unfortunately, there has been little effort to test alternative theories to ascertain which can best account for the role attraction plays in jury decision-making. For instance, both Byrne's (1971) reinforcement model of attraction and Anderson's (1968) information integration theory have been used to explain how manipulations of defendants' personal qualities can affect juror judgments. While these theories are somewhat complementary, they would yield contradictory predictions in some cases. Consider the follow-

ing example. The reinforcement model predicts that the positive traits possessed by the defendant will have a favorable impact on *all* evaluative judgments of the defendant. The model thus implies that these positive qualities will influence judgments on alleged traffic offenses, swindles, and murders in the same manner. Information integration theory considers the nature of the judgment and allows for differential weighting of the defendants' traits depending on their relevance to the particular judgment to be made. This implies that the same collection of traits might exert differential influence on different types of crimes. Thus, learning that the defendant is *intelligent* and *articulate* might exert positive influence in a rape trial but negative influence in a swindle trial, where the defendant's cunning and loquacity may have played a role in the crime. Consistent with this analysis is Sigall and Ostrove's (1975) finding that a defendant's physical attractiveness has a different impact depending on the nature of the crime. Studies where two theoretical conceptions are pitted against each other are virtually nonexistent in the jury simulation literature. Without such studies it is unlikely that much progress in theory building will be made.

A closely related aspect of this problem involves researchers' largely inadequate efforts to gain insight into the mechanisms that might underlie the attraction-leniency relationship. Attractiveness may influence jury decisions by affecting jurors' assessment of the defendant's credibility, the defendant's responsibility for the incident, the defendant's probability of repeating the crime, etc. Generally, the studies in this area have not employed auxiliary dependent variables which might permit the investigators to learn *how* attraction might produce juror leniency.

### **Problem 3: Lack of Precision**

Jury simulation studies of attraction have consistently circumvented the thorny problem of defining social attraction. Admittedly, this evasiveness is common in research on attraction, as Marlowe and Gergen (1969) have noted:

Social attraction seems to have been relegated to that felicitous state made up of "common understanding" and generalized inexplicitness (p. 622).

Nonetheless, this evasion means that the jury simulation studies on attraction lack precision from the very point of conception. Furthermore, the manipulations of the independent variables have been crude, with many defendant characteristics varied simultaneously. Variables such as the defendant's age, socioeconomic status, and personality traits are hopelessly confounded. In addition, the experimental designs have generally been relatively simple two-group affairs which allow the investigator to conclude only that a variable does or does not have an effect. More sophisticated designs with several groups being exposed to several levels of the independent variable have rarely been employed. Finally, the dependent variables of guilt ratings and sentencing have naively been regarded as equivalent, and, in fact, have occasionally been combined in a single measure. Researchers have not attempted to sort out which aspects of social attractiveness influence each type of dependent variable.

### **Problem 4: Failure to Address Crucial Theoretical Issues**

A relevant criterion in evaluating basic research involves whether or not that research attempts to answer important theoretical questions. Insofar as one wants to

understand the role attraction plays in jury decision-making, the crucial issue involves the manner in which defendant attractiveness affects *group* decision-making processes. There is already a fairly substantial literature in social psychology devoted to the impact of attraction upon *individual* judgments and behavior. On the other hand, relatively little work has been done to assess the impact of attractiveness upon *group* judgments and behavior. This is unfortunate since occasions when groups must evaluate someone are certainly not rare. Group evaluations are made in a diversity of situations ranging from judging an application to join a sorority to judging a dissertation defense. Jury simulation can provide an extremely well-suited vehicle for exploration of how group decision-making is influenced by attraction. Such an exploration could produce worthwhile progress in social psychological theory.

### IMPLICATIONS FOR FUTURE RESEARCH

The shortcomings outlined in this section suggest that the jury simulation paradigm has not lived up to its potential as a vehicle for basic research. Thus far, the studies in this area have made minimal contributions to the advancement of psychological theory. The suggestions outlined here, like those following the critique of applied research, should improve the jury simulation paradigm as a vehicle for basic research.

The necessary revisions follow logically from the critique in this section. First, studies should be conducted to ascertain the significance of the massive confounding of potential independent variables. Such studies are needed to sort out which defendant characteristics are crucial to the leniency effect. Second, efforts should be made to determine whether, in fact, transparent demand characteristics have played a substantial role in jury simulation research. Conjectural analysis about the influence of demand characteristics needs to be supplanted by research. It should be fairly straightforward to conduct a jury simulation study in which the salience of demand characteristics is varied. Third, the theoretical framework of future studies should be made explicit. More attention should be devoted to assessing the relative explanatory efficacy of various theories which might be used to account for the dynamics of jury decision-making. Fourth, greater usage of auxiliary dependent variables is recommended. More extensive probing of subjects is needed to discover the cognitive and/or emotional mechanisms that are operative. Fifth, experimental designs ought to be employed that permit more variation of the phenomena in question. Most dimensions of defendants' characteristics represent a continuum of possible values rather than an either/or situation. Rather than comparing attractive versus unattractive defendants, one might compare several levels of attractiveness to get a more complete picture of the relationship between attraction and jury decisions. Regression models ought to be employed to estimate how much of the variance in decision-making is a function of defendant characteristics. Sixth, the naive assumption that there is a one-to-one correspondence between sentencing and guilt determination should be discarded. Instead, future research should focus on which characteristics of the defendant influence each type of dependent variable. For instance, it seems logical to suggest that a defendant's old age might have more of an impact on sentencing than on guilt determination. Such hypotheses should be empirically tested. Finally, more

work is urgently needed on *group* decision-making in the simulated jury situation. Although it is more time consuming and expensive to do research on groups, *juries are groups*. Moreover, to continue to ignore group processes would constitute a repudiation of the richness of social phenomena that is a special focus of social psychology.

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