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ABSTRACT

A study investigated the effects of order verdict consideration and decision rule on jury verdicts. After reading the summary of an actual trial, 240 mock jurors drawn from undergraduate communications classes were randomly assigned to six-member juries. Jury assignments were made under two verdict orders (ascending and descending order of potential penalty harshness) and two decision rule conditions (unanimity and quorum). The juries then deliberated until their assigned decision rules were achieved. Results indicated that ascending order juries deliberate longer, descending order juries hand down harsher verdicts, and unanimous juries spend more time in deliberation than quorum juries. (A 64-item bibliography is included.) (SG)

Order of Verdict Consideration and Decision Rule Effects on Mock Jury Decision Making.

by

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Abstract

Order of Verdict Consideration and Decision Rule Effects on Mock Jury Decision Making.

Key concepts: Jury decision making; Decision Rule; Verdict; and Group Behavior.

The effects of order of verdict consideration and decision rule on jury verdicts were investigated. After reading the summary of an actual trial, mock jurors were randomly assigned to six-member juries under two verdict orders (ascending/descending) and two decision rule (unanimity/quorum) conditions. The mock juries then deliberated until their assigned decision rules were achieved. Results indicate that ascending order juries deliberate longer; descending order juries have harsher verdicts; and unanimous decision rule juries spend more time in deliberation than quorum juries. The implications of these findings are discussed in reference to past research on procedural requirements and jury performance.

Order and Decision Rule

Recent changes in the composition of the U.S. Supreme Court are bound to reweave the legal fabric of society. Several controversial constitutional issues need reinterpretation by the new court. A central question that continues to plague the Supreme Court is whether the right to a fair trial guaranteed by the 6th Amendment and applied to the states through the 14th Amendment contains any reference to certain procedural requirements that are common practice in most State and Federal courts.

Two of the issues that are most relevant to the right to a fair trial by jury are setting the appropriate decision rule standard, and the order of verdict consideration. The main focus of the decision rule question is to investigate the constitutionality of non-unanimous verdicts especially in lieu of recent Supreme Court decisions. Order of verdict consideration is concerned with the differences between a harsh to lenient (descending order) and a lenient to harsh (ascending order) consideration of verdict preferences by juries based on the instructions provided by the judge.

The purpose of this study is to investigate experimentally the relationship between decision rule and order of verdict consideration in the final verdict of mock juries.

Despite the controversy over the precise origin of the unanimity rule, the Supreme Court has always recognized the requirement of unanimity as a component of the Sixth Amendment guarantee of a fair trial in criminal cases. However, in Johnson v. Louisiana (1972) and Apocada v. Oregon (1972), the Supreme Court stated that the due process clause of the Fourteenth Amendment was not violated by the provision for conviction by a less than unanimous verdict.

This decision was reaffirmed in the case of Burch v. Louisiana (1979). The Supreme Court disagreed with the Louisiana Supreme Court stating that allowing for non-unanimous six-member juries presents a threat to the preservation of the substance of jury trials as guaranteed by the Sixth Amendment. Although the Supreme Court has refused to allow non-unanimous verdicts in six-member juries, there is an indication that the decision is subject to change. First, the present interest of the U.S. Supreme Court is on the efficiency of the criminal disposition process, while the states are concerned with both efficiency and a reduction in the cost of judicial administration. Second, the Court has been known to welcome experimentation schemes by states aimed at improving judicial efficiency. In deciding cases, particular attention is also given by the Court to the popularity of certain ideas in the states (Williams v. Florida, 1970; Apocada v. Oregon, 1972; and Ballew v. Georgia, 1978). All these reasons make it imperative that as soon as the utility of non-unanimous verdicts from small juries are clearly determined, the Court will be compelled to alter its decision.

Social science researchers have demonstrated keen interest in the effect of decision rule, while investigating the process of jury decision making. Several studies have investigated the effect of decision rule on jury verdicts. Davis (1973) studied implicit decision rules and found that each alternative had equal probability of being chosen to be the group decision. Another study by Davis found no differences in decisions made by groups operating under three decision rules. Recent studies dealing with assigned social decision rule have found no significant difference in verdict

distribution (Bray & Struckman-Johnson, 1978; Davis, Kerr, Atkin, Holt & Meek, 1975; Hans, 1978; Kerr et al., 1976; Nemeth, 1977). Decision rule has been found to affect several measures of jury performance and decision making. Unanimous juries took longer to reach a verdict and took more polls during deliberation (Davis et al., 1976; Kerr et al., 1976). Unanimous juries were more likely to hang (Kerr et al., 1976; Hans, 1978; Foss, 1981; and Buckhout, Weg, Reilly & Frohboese, 1977). Jurors in the majority condition showed less satisfaction (Kerr et al., 1976), and less confidence about the correctness of their jury verdicts (Nemeth, 1977). Decision rule and size have also been studied as predictors of jury verdict. Saks (1978) investigated the effects of size and assigned social decision rule and found no significant differences in the verdicts of small and large juries under different decision rules. However, juries in the unanimous condition were also found to spend more time in deliberation and were more likely to hang. Juries required to reach unanimity showed superiority in juror communication with one another and in argument recall. Roper (1980) found no significant relationship between different sized juries under different social decision rules in their accuracy of evidence recall.

Hastie, Penrod, & Pennington (1983) using twelve member juries and different decision rules found significant process and product effects. Majority juries spent less time in deliberation and tended to vote sooner during deliberation. Jurors in majority conditions were more likely to hold out at the end of deliberation, and members of small factions were less likely to speak out.

Studies using six member juries have also found process and product

effects of decision rule. Unanimous juries were found to have longer deliberations (Holstein, 1985; Olaye, 1986a) and the jurors in the unanimous condition were more certain of their verdict preferences (Olaye, 1986b).

Based on the previously mentioned Supreme Court decisions and social science research findings, the following hypotheses concerning decision rule are being tested.

H1: No significant difference is expected between juries required to reach unanimity and those required to reach less than unanimous decision in their jury verdicts.

H2: Juries in the less than unanimous decision rule condition are expected to spend less time deliberating than those required to reach unanimity.

It is common practice within criminal courts in the United States to instruct the jury to consider multiple offense cases in a progressive order from greater to the least serious offense, whereby the jury is first asked to consider the most serious charge against the defendant. If the guilt of the defendant cannot be determined beyond a reasonable doubt on this charge, the jury is then instructed to consider the lesser offenses. It has been suggested that the process of instructing jurors to consider the harshest verdict first is likely to bias their verdict. This bias has been demonstrated in the experiments conducted by Greenberg et al. (1986). Their results indicate that instructing jurors to consider the harshest verdict first leads to harsher final verdicts. However, this study did not consider the effect of order of verdict consideration on the final verdict of juries. The decision making outcome of the jury process is considered in terms of group decisions

rather than individual decisions. The U.S. legal system only recognizes the decisions of the jury and not a specific juror.

In the second experiment (Greenberg et al.), the effect of time utilized in decision making was tested by using the rush versus no rush manipulation. This involved instructing the jurors in the rush condition, that the sooner they finished the sooner they could leave; while the no rush jurors were asked to remain for the entire period regardless of when they completed deliberation. Even though this technique is adequate as a manipulation check, it is of little significance to understanding the process and product of jury deliberations. Juries are never instructed that the sooner they finish, the sooner they can leave, or that they will have to deliberate for a specified period of time.

Other researchers have found process and product effects of order of verdict consideration. Davis et al. (1984) tested the effects of multiple charges and found a greater proportion of convictions in juries assigned to the descending order of seriousness condition. Order of cases has also been found to have a significant influence on juror judgments. Nagoa and Davis (1980a) found that subjects likelihood to vote for a guilty verdict increased when cases were arranged in descending order of seriousness. Combining charges, or joinder, has been found to evoke preference for guilty verdicts among jurors (Tanford and Penrod, 1982; Horowitz, Bordens and Feldman, 1980).

Based on the findings of Greenberg et al. (1986) and Davis et al. (1984) about the effect of order of verdict consideration on juror verdict preferences, the following hypotheses are being tested:

H3: Juries in the ascending order condition are expected to spend more

time deliberating than those assigned to the descending order of verdict consideration.

H4: Harsher verdicts are expected from juries in the descending order condition than those in the ascending order of verdict consideration condition.

Jury decision making process is highly susceptible to cognitive, motivational and attitudinal biases. Hastie and Carlson (1980) theorized that human information processing leading to the recall of past events involved acquisition, retention and retrieval. Acquisition is attending and encoding information from the outside environment. In a jury situation, exposure of the jurors to trial information is equitable with acquisition.

Retention is a process, in which the new information is organized or placed in some meaningful structure. Jurors in this situation use the trial information that they were previously exposed to in creating a meaningful system of comprehension. Retrieval is the stage, in which the stored information is decoded and utilized. Jurors at this stage tend to recall stored trial relevant information during deliberations in an attempt to convince others of their decision.

The process of group decision making is also affected by the hypothesis testing model proposed by Kruglanski and Freund (1983) and demonstrated by Greenberg et al. (1986). According to this model, individuals retain a given hypothesis because they lack a plausible alternative hypothesis or ignore inconsistent evidence related to the original hypothesis. This hypothesis generation process is said to freeze at some point as a result of the individual's capacity to produce various alternative hypothesis and his/her

motivation to do so.

Jurors tend to recall trial evidence under an organizing theme of guilt or innocence and then solidify this theme with supporting information. Unfortunately this process of recall or reconstruction of past events is susceptible to numerous errors (Sherrod, 1985). Among these errors is the suppression of information that is inconsistent with the organizing theme; the reconstruction of other information to fit the theme; and the recall of information that has never been heard.

This process of theme related selectivity of information is motivated by the desire to confirm the theme. Snyder and Swann (1978) found that individuals utilize confirmatory strategies to hypothesize about other people whereby the hypothesis confirming evidence appears to take precedence over hypothesis disconfirming evidence. In constructing past events, subjects have been found to exhibit consistency between earlier and later impressions (Snyder and Uranowitz, 1978). Applying this to a jury situation, exposure to descending order of verdict consideration creates a mind set for hypothesis testing. The hypothesis is then subjected to confirmation using trial relevant evidence.

Finally, the hypothesis is exposed to other jurors for consideration, public commitment and possible group consensus. This process possesses both normative and informational dimensions. The normative aspect stresses the importance of the mere presence of others, while the informative concerns itself with the cognitive effects. According to the social comparison theory, the main function of group discussion is to allow members to compare their positions to those of others.

H5: Decision rule and order of verdict consideration are expected to interact so as to affect the time juries spend in deliberation in a way that neither decision rule nor order of verdict taken separately can explain this effect.

H6: Decision rule and order of verdict consideration are expected to interact so as to affect jury verdicts in a way that neither decision rule nor order of verdict taken separately can explain this effect.

METHOD

Participants were 240 undergraduates drawn from several communication courses in two eastern colleges. They were solicited from sections of the courses and offered extra credit for participation. Subjects were randomly assigned into six-member juries, two decision rule conditions (unanimity/majority) and two verdict order conditions (ascending order/descending order) prior to reading the summary of a trial.

The summary was based on a trial obtained from the Franklin County Courts in Columbus, Ohio. It was a criminal trial that took place in June of 1975, involving the defendant James E. Harrison. He was charged with breaking and entering a fabric store. Other charges filed by the prosecutor also included force, trespass, and intent or purpose to steal. Although a Franklin County, Ohio jury found the defendant guilty of trespass, a strong possibility existed for verdicts of not guilty as well as breaking and entering. This possibility of multiple verdicts makes this case an appropriate stimulus material for a study on jury decision making. Before reading the summary of the trial, subjects were randomly assigned to groups of six and instructed to

act as jurors and informed of the decision rule their jury would follow.

The verdict order manipulation was included in the instructions attached to the case summary. Subjects in the descending order condition were asked to consider the defendant's guilt of breaking and entering first; and if reasonable doubt existed, they could consider trespass. For the ascending order condition the reverse instructions were given with not guilty as the first verdict considered. The juries were then allowed to deliberate.

After deliberation, the jury verdict, and jury deliberation time were recorded. Jury verdict was measured on a five point scale (1= Not Guilty, 3= Guilty of Trespass, and 5= Guilty of Breaking and Entering), while deliberation time was measured in minutes.

RESULTS

Deliberation Time:

To test the effects of decision rule and order of verdict consideration on the time mock juries spend in deliberation, a 2x2 (Majority/Unanimity x Ascending order/Descending order) analysis of variance was conducted.

Contrary to the fifth hypothesis, the interaction predicted between order of verdict consideration and decision rule were found to be nonsignificant ($F(1,39)= .27$, $p=.52$).

The nonsignificant interaction effect indicates that each independent variable can explain variations in the dependent (Kleinbaum and Kupper, 1979). Significant main effects were observed in both order of verdict considerations ($F(1,39)= 14.14$, $p=.001$) and decision rule ($F(1, 39)= 7.41$, $p=.01$). As predicted in the second hypothesis, the majority jurors spent

significantly less time in deliberation than juries required to reach a unanimous decision (Majority M= 40.21, Unanimity M= 44.2). The results also support the third hypothesis, since juries assigned the ascending order of verdict consideration condition spent significantly more time deliberating than juries in the descending order condition (Ascending order M= 45.15, Descending order M= 39.76).

Jury Verdicts:

The effects of order of verdict consideration and decision rule on the final verdicts of juries were tested using a 2x2 (majority/unanimity x ascending order/descending order) analysis of variance. Hypothesis 6, predicting an interaction effect between order of verdict consideration and decision rule, was not supported ($F(1,39)= .66$, $p=.41$). An examination of the main effect of decision rule indicates a nonsignificant difference between unanimity and majority conditions ($F(1,39)= 2.13$, $p=.12$). This supports the first hypothesis of no significant difference between juries required to reach unanimity and those required to reach a majority decision in their verdicts. A significance was observed in the main effects of order of verdict consideration ($F(1,39)= 4.09$, $p=.04$).

The prediction of the fourth hypothesis, that juries in the descending order condition will have harsher verdicts than the juries in the ascending order condition, was supported (Descending order M=4.21, Ascending order M=2.71).

DISCUSSION

The results of this study suggest that juries required to reach unanimity spend significantly more time in deliberation than juries required to reach a majority decision. This coincides with past research, using both six-member juries (Holstein, 1965; Olaye, 1986a) and twelve member juries (Hastie et al., 1983;; Davis et al; 1976; Kerr et al., 1976), supporting the proposition that unanimity is superior to majority decision rule regarding the time spent in deliberation. This also lends credence to the finding that the stricter the decision rule assigned, the more time the jury spends in deliberation, whereby majority decision rule juries halt deliberations as soon as enough votes for the verdict are obtained (Davis et al., 1975; Hans, 1979; Kerr et al., 1976 Nemeth, 1977; Saks, 1977; Hastie et al; 1983; Olaye, 1986 a).

During deliberation, jurors are exposed to informational and normative influences that alter their perceptions. The sharing of trial information along with persuasive exchanges with other jurors, determines the final verdict preference for a particular juror. When decision rule is applied to this scenario, a juror's opportunity to share information and be influenced by others increases as a result of stricter decision rules. Jurors in the unanimous condition will have more opportunity to interact than those in majority rule juries.

A major unresolved issue is whether the informational or normative influence is responsible for these significant deliberation time differences among decision rule conditions. Stasser et al. (1984) tested the significance of number of supporters (normative influence) against supporting arguments (informational influence) in the production of vote switches during jury

deliberations. Their results support the theory that informational influences rather than normative influences are responsible for choice shifts in jury decision making. In an attempt to persuade dissenters to conform, juries usually concentrate on areas of disagreement. The discussion of these disagreements, and pressure to conform, can explain the significant differences in the time juries spend in deliberation under prescribed decision rules. Foss (1981) found that disagreements in quorum juries dropped almost to half the level of those in unanimous juries. Jurors were generally less contentious in quorum juries, while more opinionated in unanimous juries. Applying these findings to assigned social rule indicates that dissenters display different levels of empowerment. Since jurors in quorum juries are aware of their inability to prevent a verdict or hang the jury, they are usually unwilling to mount a stiff opposition. This lack of resistance eliminates further discussion of trial relevant issues that are responsible for lengthy jury deliberations.

Conversely, the unanimity requirement enables minority members of the jury to have an equal voice in deliberation. This usually increases juror desire to participate in the discussion of issues, as well as the amount of time spent in deliberation.

Another significant finding of practical importance from this study is that juries charged with ascending order of verdict consideration deliberate longer than those presented with descending order. Ascending order juries appear to presume the defendant not guilty and thus spend time examining all other alternatives. Further research is needed to explain the time differences using deliberation dynamics of both ascending order and

descending order juries. A desirable focus of such a study could be centered in an actual jury setting as illustrated in a 1986 episode of Nova, a Public Broadcasting Service television program.

Regarding jury verdicts, the findings of this study indicate that juries in the descending order condition have harsher verdicts than the ascending order juries. This is consistent with the findings of Greenberg et al. (1986) and Davis et al. (1984) that alterations in the verdict consideration sequence influences the decisions of mock juries. Prosecutors and judges have the discretionary power in both State and Federal Courts as to how the jury is charged. Future researchers can examine the frequency with which prosecutors and judges opt for descending order (harsh to lenient verdict order) over ascending order (lenient to harsh verdict order).

The conclusions from this study include the fact that descending order juries have harsher verdicts; ascending order juries deliberate longer than descending order juries; and juries charged with unamimous decision rule spend more time in deliberation than quorum juries.

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