

# Social Action & the Law

CENTER FOR RESPONSIVE PSYCHOLOGY  
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# CRP

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Death Penalty

Line-ups

Bk Reviews

Justice



JOHN J. GAMBARDELLA

Example (a)  
During the same one year period (1975)  
H. Agee #104984 was sentenced to -LIFE-  
for rape, in Richmond, Va. (and)  
W. Smith #104198 was sentenced to -3-  
years for rape, in Richmond Va.

....other cases follow

The list of examples of "UN-EQUAL JUSTICE" goes on and on, into the thousands. For further evidence, we would refer to the Department of Corrections computer printout ("daily population"), which list -all- of Virginia's prisoners, their sentences and the courts that convicted them.

## RAPE BOOK REVIEW

**Forcible Rape: The Crime, The Victim, and The Offender** Duncan Chappell, Robley Geis, and Gilbert Geis (Eds.), New York: Columbia University Press, 1977. ISBN 0-231-03839-9. Price: \$15.00.

Reviewed by  
Katherine W. Ellison, Ph.D.

Having been impressed by previous work of the editors of this volume, I had eagerly awaited its publication. Had it come out before the publication of LeRoy Schultz's Rape Victimology (reviewed in Social Action and the Law, 1977, 4 (3), 21-22), I should have been justified. As it is, I was disappointed. Although the editors promise that "a significant proportion of the material is published here for the first time" thirteen of the eighteen sections have appeared elsewhere, and several have been reprinted in other collections. The new ones tend to add little substantive information. The only major advantage of this work over Schultz's, is that it at least touches on some crucial literature, particularly that by Burgess and Holstrom, that Schultz rather pointedly ignored.

I found the introductory chapter, by Gilbert Geis, particularly disappointing. Billed as an overview, it was guilty of many of the vices for which it criticized others. I came

However, the Federal Courts have consistently ruled that such "UN-EQUAL" sentences are -NOT- in violation of the United States Constitution.

Respectfully submitted,

Donald B. Fitchett - Petitioner  
Prisoner - Virginia Penitentiary

The above petition was received, and acknowledged by W. Farley Powers, Jr., Clerk of the Federal District Court, Richmond Virginia, July 27, 1978. Petition has been assigned to Judge Bryan. □

away with the strong impression that Geis was trying not to offend anyone, and his criticisms lacked clear and coherent political or methodological focus. For example, while cataloging several of the problems in Amir's pro-paedetic work, Patterns in Forcible Rape, he neglected to mention the statistical illiteracy which characterizes many of Amir's analyses and renders the inferences based on them questionable. Particularly, Geis seems to fear offending feminist authors. A third rate polemic with heart in the right place is, nonetheless, a third rate polemic.

One of an editor's prior works that was omitted would have been welcome. Instead of the "selective bibliography" by Faith Fogerty, which failed to "select" in any systematic way I could determine, I should have preferred Chappell's excellent annotated bibliography.

This rather heavy-handed criticism is not to say that this is a bad book. It is, however, much less than I had expected from two of the best and most highly respected scientists working on the problem of rape. Chappell and Geis could have made an important contribution with this volume. Instead they delivered a competent rehash: □

## JURY VERDICTS BOOK REVIEW

**Jury Verdicts: The Role of Group Size and Social Decision Rule**  
Michael J. Saks. Lexington, Massachusetts: Lexington Books, D. C. Heath, 1977.

Reviewed by  
Bernard Grofman

Saks' slim volume is a major contribution to the rapidly growing literature on the implications of jury size and decision rule for verdict outcomes and the processes of group deliberation. It is well known that jury deliberation customarily fosters minority "conversion" to the majority view--an acquiescence which is a combination of genuine persuasion and conformity to social pressure (e.g., "it is not unusual for a juror to report after a verdict is delivered that he did not agree with the group, but acquiesced in the verdict." p. 3), but the nature and dynamics of this persuasion conformity process are little understood.

Attempting to discover the exact consequences of variations in group size and decision rule is difficult because effects are "mediated through psychological and sociological processes which may be not at all obvious" (p. 5) and because uncovering "discernible" effects may require very large sample sizes and/or dubious ceteris paribus assumptions. The task, however is an important one, particularly in the light of recent U. S. Supreme Court cases on the constitutionality of juries of less than twelve and of juries requiring less than unanimity to reach a verdict, in which various justices have (usually quite misleadingly) made use of social science findings to buttress their prejudices. Furthermore, as Saks eloquently and with only slight hyperbole puts it (p. 6)

The jury is a remarkable example of the use of groups to make decisions. A jury is composed of untrained citizens, drawn randomly from the eligible population, convened briefly

for a particular trial, entrusted with great official powers, permitted to deliberate in secret, to render a verdict without explanation, and without any accountability then or ever, to return to private life. In that such a firm institution is composed of such fluid members, and that these ordinary citizens judge criminal responsibility in place of professional agents of the state, the jury is a unique political institution. More than representative legislatures and popularly elected executives, it is the jury that characterizes democratic political systems.

Jury Verdicts is, as was Gaul, divided into three largely self-contained parts, of roughly equal length.

In the first part, Chapter 1, Saks reviews the questions raised by the court in Williams v Florida, and Apodaca v Oregon, and Johnson v Louisiana (e.g., "Does variation in jury size and/or decision rule affect the reliability of the jury as a factfinder of expected verdict outcomes?" "How does resistance to conformity pressure on the part of jurors in the minority vary with jury size and verdict requirements?" "Are there differences in the likelihood of obtaining a representative cross-section of the community as a function of jury size?" and "Is the reasonable doubt standard vitiated by a less-than-unanimous verdict?") and painstakingly compares the answers to the questions offered by the justices (both majority and minority) with those available from his own careful and thorough ransaking of the social science literature. In this comparison, Saks (like Hans Zeisel and Shari Diamond before him)<sup>1</sup> finds that Supreme Court justices by and

large make rather poor social scientists--they overgeneralize; are cavalier in their treatment of conflicting or ambiguous evidence; miss some important citations; and sometimes, indeed, simply get social science findings backwards.<sup>2</sup> This chapter is a model of careful scholarship, on a par with similar work by authors such as Hans Zeisel and Richard Lempert.

In Chapter 2, Saks reviews a number of empirical studies done after 1972. His analysis parallels that in Zeisel and Diamond (op. cit) and deals with the additional studies. He finds virtually all of these studies to "suffer from a variety of classical flaws in research design." (p. 38), and their findings to be thus highly suspect.

In the third part of the book, consisting of Chapters 3 and 4, Saks reports the results of his mock jury studies, which made use of the standard 2x2 functional design: juries of size six or twelve, crossed by decision rules of unanimity or two-thirds. Saks ran two experiments. The first, using 264 college students served as "full-dress pilot for the later experiment," which made use of a jury pool composed of former jurors from Franklin County (Ohio) state courts. In the later experiment there were 10 juries in each of the four cells of the design. In the first experiment the case (a defendant accused of complicity in jewelry store robbery) was presented in an eight-page single-spaced transcript which could be read in about twenty to thirty minutes. In the second experiment the juries were presented with a videotape of a staged felony trial (a night burglary of an inhabited dwelling). In this trial, law-related roles were played by law professionals, and the roles of the defendant and of witnesses were played either by actors or by individuals with appropriate background characteristics for the part. Participants performed their roles extemporaneously, based on the facts of the case provided them in the outline.

Saks is to be highly commended for the care he took to (a) pre-test his design; (b) insure realism in trial and setting; and (c) use an actual jury population for his final experiment rather than grabbing whatever college sophomores were handy. His is one of the most carefully done mock jury studies that we have yet seen, and also one of the most comprehensive. In addition to studying verdict outcomes, Saks looked at a number of phenomena related to jury deliberation processes including deliberation time, number of unique arguments generated during deliberation, juror recall, and juror participation rates. In addition, Saks collected sociometric ratings and ratings of juror influence as well as data on jurors' verdict certainty, satisfaction with the group, etc.

First, statistically significant differences in verdict outcomes as a function of jury size were not observed. (Of course, as Saks is careful to point out see especially pp. 73-76 if the effects in question are not very strong, a considerably larger sample size would be required to reliably detect differences.)

Second, large juries provide substantially more representative cross-sections of the community than do small juries. For example, in Experiment II,

blacks were present in 41 percent of the six-person juries, compared to 80 percent of the twelve-person juries. Extreme conservatives were represented on 40 percent of such six-person juries and 75 percent of twelve-person juries (p. 91).

This pattern of differences holds for a number of other comparisons, and is, as Saks points out, a straightforward consequence of the laws of probability sampling.

Third, individual juror certainty

of the correctness of a decision does not appear to be a function of the number of people concurring in the decision (p. 91).

Fourth, juries under non-unanimous decision rules do not necessarily terminate deliberation as the minimum necessary votes are available; but further deliberation has no effect on the ultimate verdict (pp. 93-99).

Fifth, while no significant differences were found in conviction-acquittal ratios or consistency of verdict outcomes between unanimous and non-unanimous juries; juries requiring

unanimous verdict hung more often than juries with only a 2/3rd requirement (pp. 98-99).

For anyone seriously interested in understanding the nature of jury decision-making, Jury Verdicts is must reading. □

<sup>1</sup>Hans Zeisel and Shari S. Diamond "Convincing Empirical Evidence on the Six-Member Jury" University of Chicago Law Review, 1974, 41.

<sup>2</sup>This harsh summary judgment is my wording not that of Saks.

## THE COURTS AND SOCIAL POLICIES BOOK REVIEW

**THE COURTS AND SOCIAL POLICIES**  
Donald L. Horowitz. Washington, D.C.:  
Brookings Institution, 1977. ISBN  
081-573-7335. Price: \$6.95.

Reviewed by  
T. Glenn Blakney

The American system of free government has its several organs distinct from each other for good reason; the doctrine of separation of powers ensures that none will dominate, and the primary focus of each provides a pool of expertise and information that future personnel may employ and enlarge upon. The latter point is but one of the failings which Donald L. Horowitz finds with the process of adjudication as it increasingly attempts to deal with issues of purely societal conflict. The fluid nature of these issues in a society where the rate of change is fast and furious is what specifically makes adjudication the wrong method for generating social policy. The mechanisms of periodic review and quantitative analysis are not found in the courts. He says, "the distinctiveness of the judicial process...is what unfits the courts for much of the important work of government." Clearly, Mr. Horowitz feels that social policy, particularly policy which must be subject to constant review and restructuring, should be formulated by a body which allows

and encourages such continuing scrutiny. The courts (in abstract), whose decisions are considered final and irrevocable, are not the place for such a function to occur, and to make them such a place would not only "erode the distinctive contribution the courts make to the social order," but would also make them "altogether too much like them (the Legislature and the Executive)."

Donald L. Horowitz' book, The Courts and Social Policy, is a well-researched and painstakingly precise document that offers over one hundred cases from recent judicial history. We say painstakingly precise because Mr. Horowitz can be exact to a distraction in his reproduction of the influences on and the factors of the judicial decision-making process. His concern for detail causes much of the last chapter to be a repeat of the first six--of the four cases in substance and of the second chapter in analysis. A careful researcher may accuse Mr. Horowitz of choosing his illustrative cases with his conclusion in mind, but these cases are notable, either as precedents or as legal curiosities.

The first chapter is a background history of the sources of expansion of the judicial role in legal inter-

SOCIAL ACTION AND THE LAW is a newsletter designed to bring relevant social science information to the attention of the practitioner in the legal, judicial and correctional fields. We endeavor to communicate recent research findings in clear non-technical language in order to aid the practitioner in putting social science to work. Each issue is devoted to a theme around which research findings, reviews, analyses and opinions are presented. You can expect to find our opinions expressed, especially in our featured "Proposals for Action and Change." Our opinions are strictly our own — we are an independent group of psychologists, students and attorneys unrelated to any legal agency. This newsletter has been designed to serve a catalytic function in the social science-legal area. We need your help, your feedback, your opinions and your writings to review. Letters to the editor will be printed if short and not repetitious. We are planning several theme issues including THE JURY, EVIDENCE, SOCIAL SCIENTISTS AS EXPERT WITNESSES, PSYCHOLOGICAL TESTING, and others. We wish to be timely and topical and won't hesitate to switch topics as events dictate. We welcome your suggestions and even your participation as guest editor. Our ideal is to give social science away to the user.

THE COURTS . . . continued from P. 11

pretation. He deals with interpretations of both the Constitution and of statutes enacted by the Congress and the State Legislatures. He also deals with the legitimacy of this expansion and the ability of the courts to deal with areas with which they are unfamiliar, as well as their predilections toward reexamining former decisions. The second chapter deals specifically with the adjudicative process and is primarily an exposition of its inadequacies in dealing with social problems. This chapter prepares the reader for the author's analysis of his illustrative cases and his conclusion, which may be reached without having read the final chapter. The four cases he has selected are, in order: North City Area-Wide Council v. Rommney (428 F. 2d 754), Hobson v. Hansen (265 F. Supp. 902), In re Gault (387 U. S. 1), and Mapp v. Ohio (367 U. S. 643). Each case is essentially an open door, that is, the final decision has left generous latitude for appeal on either a point which developed during litigation, or on a point which was glossed over for tactical or feasibility considerations.

The point he makes is that the fluidity of social change and the issues which its nature generates are not suited for resolution by judicial decision. Mr. Horowitz has clearly and succinctly pointed out the inadequacies of the adjudicative process, in chapter two, in chapter three, and so on until the reader has no doubt that the courts are not the body to formulate social policy, and they are not for those several reasons. He offers no solution for the problem of increased recourse to the courts for resolutions in this area, and offers few mechanisms to make the courts better equipped to deal with social policy. He feels that to do so would make the courts lose sight of their true nature as courts. What limited steps he does suggest would result in changes in the judicial system that would divert the courts from their function as an arbiter; impartial and final. His suggestions would be more useful to those branches whose original function was indeed to generate social policy. This is a clear and precise document which would be equally useful as a specific reference work or as a starting point for more comprehensive research. □