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THE USE OF RESPONSIBILITY RULES  
IN JURY DECISION-MAKING:  
MORISSETTE REVISITED

by

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May 1976

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## Introduction

Since the beginnings of trial by jury the law has tried to control the way in which juries decide cases. In earliest times the control was occasionally direct and blunt, as in the Throckmorton case, 1 St. Tr. 869 (1554) where a jury which acquitted a man accused of treason was committed to prison for their verdict. (See Chambliss & Seidman, 1971: 420.) The passing of such harsh procedures does not indicate a lessening of the disquietude with which much of the legal profession has viewed trial by jury.

One area of repeated concern has been that juries take the law into their own hands and decide cases according to what they think the law should be, rather than according to the judge's instructions.<sup>1</sup>

A related issue is the degree to which juries employ legally irrelevant evidence in arriving at verdicts. Such evidence includes the existence of insurance in tort cases (Keeton & O'Connell 1965: 32, 73) and personal attributes of defendants and/or victims (plaintiffs in civil cases) (Broeder, 1965: 131).

Until recently, however, there has been very little empirical evidence as to how juries do decide cases. In the last ten years a growing body of experimental and survey data has begun to address these questions.

A main branch of this literature has been done by psychologists and social psychologists usually under the banner of what has come to be called attribution theory (Heider, 1959; Jones, et.al., 1971-2; Kelly, 1967). Their main method of inquiry has been the laboratory experiment.

The experiments done in this tradition have indicated that such things as victim and defendant attractiveness (Landy & Aronson, 1969; Efran, 1974; Sigall & Ostrove, 1975), defendant character traits (Kaplan & Kemmerick, 1974, Nemeth & Sosis 1973), attitudes (Mitchell & Byrne, 1972 and 1973), sex of juror (Stephan, 1974) and status (Thibaut & Rieken, 1955) affect decisions

as to responsibility. It is with this experimental tradition that we are primarily concerned.

One way to summarize the experimental literature is to say that it has pursued the legal realist line of looking for ways in which the law in action deviates from the law on the books. The results thus far indicate that there is variance. The conclusion often drawn from this work is that there is a significant use of what would appear to be legally irrelevant criteria in the jury decision-making process. The data, however, are not untainted. There are both methodological and conceptual problems with much of the research which may have influenced the results of these studies and/or the interpretation one may place on these results. This paper addresses the conceptual issues.<sup>2</sup>

### Conceptual Issues

In The American Jury, Kalven and Zeisel found that in 19.1 per cent of the cases (N=3,380), the judge and jury disagreed<sup>3</sup> as to the proper verdict. In cases where there was a disagreement the researchers asked the trial judge why there had been a disagreement. According to the judges, a large percent of these disagreements were due to "jury sentiments about the defendant and jury sentiments about the law."

Jury use of tort concepts such as contributory negligence in deciding criminal cases is an example of "sentiment about the law." For example, in one case the defendant and the victim had been playing "chicken," that is testing each other's nerves by driving recklessly. The judge's explanation for the jury acquittal was:

the jury did not follow the charge of the court, they saw some evidence of contributory negligence on the part of the person assaulted. Contributory negligence is no defense in the laws of this state to criminal actions. (1966: 243)

An example of sentiments about defendant or victim is a judge's remark in a rape case:

A group of young people on a beer drinking party. The jury probably figured the girl asked for what she got...(1966:250)

While both examples are occasions of judge-jury disagreements, it is important to distinguish between them.

To put this distinction in more abstract terms, it is useful to call upon H. L.A. Hart's perspective that responsibility is a defeasible concept (Hart, 1949; 1968). That is, responsibility is an accusation that a person is connected to an untoward event, and the accused is called to account for his behavior by presenting an adequate excuse. The kinds of excuses which are appropriate depend upon the nature of the responsibility rule.<sup>4</sup> Certain types of excuses are not appropriate for certain types of responsibility rules. For instance, in negligence cases, where the issue is primarily whether a person behaved as a reasonable man, an excuse that one did not intend the consequence is inappropriate. According to the legal definition of negligence, such an excuse should be rejected no matter how convinced the adjudicator is that it is factually true. Or, in the "chicken" driver example above, the defendant's guilt or innocence should not be contingent upon the carelessness of his victim.

Given a particular responsibility rule, there is still the further question as to whether under such a rule the defendant has an excuse which exculpates or mitigates his responsibility. At this level, two important issues are: a) what evidence the adjudicator is willing to consider in assessing the adequacy of the excuse, and b) the probativeness of the evidence considered. In the rape case, the only disagreement between the judge and jury may be whether going to a party is probative as to whether the girl really resisted. In some situations, certain evidence may seem so irrelevant that the adjudicator does not wish to consider it at all. In many cases, the predictive validity of the evidence is a factual question about which disagreement may arise. The definition of a responsibility rule, however, is an issue of a different order. Given different responsibility rules, whole types of evidence may become relevant or irrelevant.

Most of the experimental literature does not make this distinction. The typical jury experiment compares variation on some experimental variable

such as victim attractiveness with the frequency of guilty verdict or, given the guilt of the defendant, the amount of punishment to which he should be subjected. The results of most of the experiments are that these associations are significant. On this basis, the conclusion is reached that juries are to some degree irrational. (See Landy & Aronson, 1969: 151; Kaplan & Kemmerick, 1974: 498.)

There are two problems with this analysis. First, in some experiments the jurors are presented with little evidence beyond the independent variable.<sup>5</sup> It is unclear whether such evidence would assume the same importance in situations where more probative evidence is available.

The second problem is that, because the issue of responsibility rule is never raised, it is impossible to know how jurors are using or misusing information. There are two ways in which jurors might misuse information, such as defendant attractiveness. On the one hand they may be mistaken as to its probativeness, but, nevertheless use it within the context of the responsibility rule. On the other hand, they may set up such information as a clearly independent ground of decision. By and large, the experimentalists have ignored the first possibility. This interpretation implies greater jury irrationality than may in fact exist.

For example, in the experiment reported below, one juror during the deliberations made the following comment. "Well. . .I think that if he had wanted to steal those deliberately he would have gone about it in a much more secretive way. In the middle of the night. . .or to disguise his person." The question the juror was wrestling with was whether the defendant intended to take some bricks. She may be wrong about the probativeness of the evidence. Perhaps most thieves commit their crimes in broad daylight, thinking no one will pay attention. She was, however applying this evidence in accordance with the judicial instructions about the responsibility rule that should govern the case.

Parallel to the conceptual distinction made above, there are two types of judicial instructions as to the law: a) The judge may instruct the jury as to the responsibility rule they should employ in deciding the case or b) may instruct the jury as to the relevance or irrelevance of certain evidence given a responsibility rule. The present study focuses upon the first type of instruction.

### The Experiment

The experiment reported here is based upon a criminal case loosely based on the facts and legal issues of *Morrisette v. United States*, 342 U.S. 246, 96 L.Ed. 288, 72 S. Ct. 240 (1952). Briefly, the case involves the nature of the intention an individual must have to be guilty of the federal crime of conversion of government property, 18 USC Sec. 641. Morrisette took \$84 worth of old army dummy bombshell casings from some land in northern Michigan which the Air Force used as a practice bombing range. There was no argument as to whether Morrisette took the casings and sold them for scrap. He did so in broad daylight and freely admitted he had done so. Morrisette claimed, however, that he believed the casings were abandoned property and, therefore, he did not intend to steal the casings.

The trial judge refused to allow the jury to consider this excuse, saying (in our terminology) that the appropriate responsibility rule only required that the defendant have the general intent to take. He did not have to possess the specific intent to steal. This position was upheld by the court of appeals, but the Supreme Court, per Justice Jackson, unanimously reversed.<sup>6</sup>

A case was devised which would incorporate, among other considerations, the issue of intent raised in *Morrisette v. U.S.* The facts of the experimental case are that approximately 9 months after a building burned down on a piece of property on the outskirts of a town, a retired citizen, named William Harris, who lived in the area, removed a large pile of uncleaned bricks and used some of them to build an outdoor barbecue. As the act of taking the bricks occurred during the afternoon, it was observed by a woman who lived across the street from the property. She recognized Harris and reported the event to the police when they questioned her in the course of their investigation about the missing bricks. As a result, Harris was

arrested and charged with the theft of the bricks. At the time of his arrest, and throughout his testimony, Harris claimed that he thought that the bricks had been abandoned.

The trial was presented to the subjects by means of a videotape of a courtroom procedure. Attempts were made to assure the believability of the trial but the subjects were informed at the outset that it was staged and that certain aspects of an actual trial (for example, the attorney's opening and closing arguments) were omitted.

The first part of the videotape consisted of the testimony (including some cross-examination testimony) of four witnesses. The testimony was identical for all versions of the experiment with the exception of the identity of the owner of the property. In half of the trials the owner of the property was the State of Michigan and a representative for the state presented testimony in the trial. In the remainder of the trials, the property was owned by a private individual and he testified. Through these manipulations, the facts of the case remained virtually unchanged while the "size" of the victim varied.

After the presentation of the witnesses' testimony, the judge gave his instructions to the jury. Among these instructions, two additional experimental variables were introduced.<sup>7</sup>

One variable was the degree to which the jurors were expected to follow the judge's instructions. At the beginning of his instructions the judge either informed the jury that it was their duty to determine the facts (and to determine them only from the evidence in this case) and to decide the case by applying the law, as the judge stated it, to the facts. (Hereinafter, this instruction is called Judge law.) Or the judge said that whatever he told them about the law, while it was intended to be helpful to them in reaching a just and proper verdict in the case, was not binding upon the members of the jury, and they could accept the law as they apprehended



it to be in the case. ( Hereinafter this instruction is called Jury law.)

At a later point in the instructions, the judge presented the definition of the intent necessary to find the defendant guilty. The alternatives of general or specific intent were defined, respectively, as:

In determining the defendant's intention, the law assumes that every person intends the natural consequences of his voluntary acts. Therefore, the defendant's intention is inferred from his voluntary commission of the act forbidden by law, and it is not necessary to establish that the defendant knew that his act was a violation of law.

Or, the crime charged in this case requires proof of specific intent before the defendant can be convicted. Specific intent means more than the general intent to commit the act. To establish specific intent the government must prove that the defendant knowingly did an act which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case. The word "knowingly" means that the act was done voluntarily and purposefully not because of mistake or accident. Knowledge may be proven by the defendant's conduct, and by all the facts and circumstances surrounding the case. No person can intentionally avoid knowledge by closing his eyes to facts which should prompt him to investigate.

The experimental design can therefore be summarized as follows:

	General Intent		Specific Intent	
VICTIM	Judge Law	Jury Law	Judge Law	Jury Law
State				
Individual				

The two variables on the heading relate to the importance of the responsibility-rule. The dimension of judge law-jury law establishes whether, in general, the jury is bound by the set of responsibility rules presented by the judge. The intent variable defines explicitly one key element of the responsibility rule in this case. Finally, the state vs. individual variable introduces one irrelevant factor which may produce variance in jury verdicts. This distinction has produced different assessments of

responsibility among respondents in a large scale attitude survey (Smigel, 1956).

### Subjects

The subjects were drawn from the Circuit and District Courts of Wash-tenaw County (Ann Arbor). These individuals were actual jurors who recently served for a two-month period in these Courts. A participation rate of about 35% of all eligible jurors was achieved.<sup>9</sup> Each experimental jury consisted of five or six members<sup>10</sup> and each cell of the experimental design contained six juries (however one cell contained seven juries).

After the videotape was shown the jurors were asked to deliberate and reach a verdict. If a verdict was not reached within 25 minutes, the subjects were informed that they had five minutes to make a decision. If a decision was not made in the additional time, the jury was considered to be "hung". Subjects were then interviewed individually by the researchers.

For purposes of the present discussion, the relevant interview questions were those that asked the jurors their individual assessment of the defendant's guilt and whether they believed the abandonment defense. In addition, the interview contained manipulation checks, questions concerning the deliberation process and background information on the jurors.

### Analysis

This analysis describes the juries' use of responsibility rules in arriving at their verdicts. The first part of the analysis assesses the relative importance of responsibility rules in the determination of the verdict. Next we discuss how different responsibility rules affect the juries' interpretation of evidence in reaching a verdict. By their effect on use of evidence, the rules should also have an "indirect" effect on the outcome of the verdict.

The statistical methods used are the techniques of regression analy-

sis with effect variables (Hays, 1973; Kerlinger & Pedhazur, 1973) ; analysis of covariance (Kerlinger & Pedhazur, 1973), and an analysis using linear structural equation modeling (Jöreskog, 1973). :

To provide the reader with a feel for the results, Table 1 presents a contingency table of the three experimentally manipulated variables by jury verdict. The dependent variable in this table is a dichotomy of guilty verdicts versus all other verdicts.<sup>11</sup> :

#### Effect of Responsibility Rules on Verdict

Table 2 presents the results of a regression analysis using three effect coded independent variables which represent the experimental manipulations. The dependent variable is a seven level variable (1=unanimous guilty verdict and 7= unanimous not guilty verdict) which rank orders hung verdicts depending upon the ratio of guilty to not guilty votes within the jury. Thus, for example a verdict where the jury voted five guilty and one not guilty is treated as a more guilty verdict than a four-two outcome.

An examination of the regression coefficients in the table shows that intent is most important in predicting the outcome of the jury deliberations. The instruction variable is also significant but the "size" of victim variable is not significant.

Juries under the general intent instruction are more likely to find the defendant guilty. This follows from the fact that the judge has instructed the jury that the only relevant issue is whether or not the defendant took the bricks; and this is freely admitted by all the witnesses in the testimony. Under the specific intent instruction, however, the jury has to decide further questions about the defendant's intention. This is disputed in the trial. Given this additional constraint one would expect fewer guilty verdicts if the juries are actually basing their verdicts on

the responsibility rule. This expectation is confirmed by the data.

Similarly, when the judge informs the jury that they must follow the instructions that he gives them (i.e., that they must base their decision on a given responsibility rule) we would expect more guilty verdicts than when he allows the jury to decide both the law and the facts of the case. Again, our expectations are confirmed by the data -- juries are more likely to find the defendant guilty under the "judge law" instruction.

The "size" of the victim variable is not statistically significant in the regression equation which includes two other independent variables. This result supports the hypothesis that when both relevant and irrelevant evidence are available, the latter type of evidence is not very important to juries in determining verdicts.

These results support our contention that juries do use appropriate responsibility rules in deciding cases. They stand against the commonly presented image of juries as easily swayed by legally irrelevant evidence.

#### Effect of Responsibility Rules on the Interpretation of Evidence: The Issue of Abandonment

While the judicial instructions do have a significant impact upon jury verdicts, it is clear that they do not explain a great deal of the variance in verdicts. In order to fully assess the effect of responsibility rules on verdicts, however, it is important not only to consider the "direct" effect of the instructions on the verdict, but also to consider the juries' interpretation of evidence under different rules. This too may have an effect on the verdict. Thus, the results of the preceding analysis may be a conservative estimate of the use of responsibility rules in arriving at a verdict.

For instance, the jury may, given the judge's instructions, employ a specific intent responsibility rule but conclude that the defendant did

not believe the bricks were abandoned. Or, they may believe that Harris thought the bricks were abandoned, but think that a reasonable person would not have thought so; and that Harris should be held to the standard of a reasonable man. Recall that the last part of the judge's instructions in the specific intent treatment in fact proposes this latter argument to the juries (see p.7). In both of these situations a guilty verdict is consistent with the specific intent responsibility rule. Thus, a consideration of the responsibility rule alone (ignoring the jurors' interpretation of the evidence) would lead to the erroneous conclusion that a guilty verdict in specific intent cases is "irrational".

In the post-experimental interview we asked the jurors whether they thought that Harris believed the bricks to be abandoned (reasonable defendant) and whether a reasonable person would have thought that the bricks were abandoned (reasonable person). Both questions were coded on a seven point scale from strongly agree (7) to strongly disagree (1).

These two variables are central to the remaining analysis. They are relevant in three ways. First, as suggested above, they should be relatively more important for juries hearing the specific intent instruction. Judicial instructions should specify the relationship between the reasonableness variables and verdict.

Second, comparing the coefficients of these two variables should tell us something about the relative importance of a reasonable person standard versus a standard based upon Harris's belief.

Third, if we are to argue that jury decision-making is a system based on responsibility rules rather than irrelevant criteria, any influence of the "size" of victim on jury verdicts should operate indirectly through variables such as these. For instance, a jury might well conclude that it is more reasonable to believe the abandonment argument when the bricks are on public land. Used in such a way the "size" of victim is not an independent

criterion for judgement, but is being used within the context of a responsibility rule.

a) Abandonment Under Different Rule Logics

We hypothesize that the reasonableness variables<sup>12</sup> are relatively more important in the specific intent treatments where the abandonment issue is central to a decision on Harris's guilt. In the general intent cases, although the defendant testified that he thought the bricks were abandoned, the instructions made this legally irrelevant. We, therefore, would expect an interaction effect between the reasonableness variables and the intent instruction.

To test this we used the analysis of covariance and looked for slope differences for the reasonableness variables on guilt between the two different intent instructions. Table 3 indicates that there is a significant slope difference for the reasonable person variable. The slopes are not significantly different for the reasonable defendant variable.<sup>13</sup>

Given this interaction we constructed two models for jury decision making, one for general intent juries and one for specific intent juries. These are presented in Figure 1.<sup>14</sup> Note that as implied by the analysis of covariance the coefficient describing the relationship of "reasonable person" to guilt is considerably larger for specific intent juries than for general intent juries (.667 and .314 respectively). Note further that, the addition of the reasonableness variables adds significantly to explained variance on guilt, especially for the specific intent jurors. When those juries are not persuaded by the abandonment defense they are likely to find Harris guilty. With these models we can address the remaining hypotheses about the juries' use of responsibility rules.

b) Relative Importance of Reasonableness Variables

Examination of the coefficients of the two reasonableness variables on guilt indicates that the juries place relatively more importance on what

a reasonable person would conclude than upon what the defendant himself believed. One should not interpret this as indicating that the jurors necessarily disbelieved Harris, or that they could not appreciate his situation. Rather, it seems that they focused more upon what he should have known in making their judgement. Jurors might well believe that Harris thought the bricks to be abandoned, yet find him guilty because to them this appeared to be an unreasonable belief. In making their decisions then, the juries were applying universalistic criteria to the defendant rather than assessing his case only on the basis of the particular circumstances. This is important evidence in countering the charge that jurors base their decision on sympathy for the defendant rather than using standards which apply to everybody.

c) Indirect Effect of Victim "Size"

The "size" of the victim does appear to have an indirect effect on verdict through the reasonableness variables especially in relation to what a reasonable person should have believed concerning abandonment. Note that the coefficients between victim and the reasonableness variables is higher under the specific intent instruction. Given this instruction issues like victim size become more important as facts upon which juries conclude whether a belief in abandonment is reasonable.

Instruction Effect

Finally, comparing the effect of the jury law-judge law manipulation on guilt, it appears that this variable makes a difference primarily in the general intent situation. While not hypothesized, this result is not surprising.

There is considerable personal sympathy for the defendant in this case. In addition many jurors might well feel that abandonment is a reasonable excuse. The specific intent instruction allows juries to take the abandonment issue into consideration, and, therefore, there is not a large discrepancy between the way in which the juries would like to decide the case

and the way the judge instructs them to decide. Under the general intent manipulation, however, the judge is ordering the jurors to pay no attention to the abandonment issue and the jurors feel constrained by this instruction to find the defendant guilty. When the judge tells them they can determine the law as well as the facts this may relieve them from a strict interpretation of the general intent responsibility rule and they are more likely to find the defendant not guilty.<sup>15</sup>

### Discussion

At this point in our research, the discussion must be guarded. We believe, however, that we have shown that the reported results of most previous jury experiments are flawed by their conceptualization of the decision-making process. Specifically we conclude that:

1) It is important, especially in studying people processing institutions, to investigate the activities leading to final products ( here, jury verdicts) as well as the final products themselves. The technology of such institutions is not such that we can know the methods of manufacture simply by looking at the product. (Littrell, 1973).

Much of the existing jury research has proceeded as if the technology were known or as if it were irrelevant to decision-making. On the contrary, we argue that the responsibility rule is a central technological device of jury deliberations. Jury studies must consider this element in order to be able to understand jury verdicts.

2) Given the central role of the technology, we have demonstrated that, in this experiment at least, juries are amenable to judicial instructions as to the proper technology (responsibility rule).

The responsibility rules directly affect final outcomes. Moreover, they also affect the way in which juries interpret and draw inferences from the evidence in the case. Evidence, by and large, is not relevant or irrelevant



in the abstract. Rather, the relative relevance and/or probity of evidence is contingent upon the responsibility rule being used. Viewed from this perspective, jury decisions appear less irrational than they do when responsibility rules are left unexamined.

### Conclusion

In conclusion, we might add that it has not been our purpose or expectation to show that juries are in fact pursuing some absolutely formal-rational ideal type of system in arriving at verdicts (Weber, 1967). Clearly a good deal of substantive rationality is involved in jury decisions. In fact, this is one of the primary justifications for trial by jury. The system, however, is rational and principled.

TABLE 1: INTENT, INSTRUCTION & VICTIM BY VERDICT (N=49)

	Specific Intent				General Intent			
	Jury Law		Judge Law		Jury Law		Judge Law	
	State	Individual	State	Individual	State	Individual	State	Individual
Guilty	2	1	2	4	3	4	5	5
Not Guilty or Hung	4	5	4	2	3	3	1	1

TABLE 2: UNSTANDARDIZED COEFFICIENTS FOR EXPERIMENTAL VARIABLES ON VERDICT (N = 49)

	Coefficient	Standard Error	P
INTENT Specific=1 General=-1	.647	.252	.0137
INSTRUC- TION Jury=1 Judge=-1	.562	.252	.0309
VICTIM State=1 Individual=-1	.313	.252	.2203
CONSTANT	2.44	.252	.0000
R <sup>2</sup>	.223	1.76	.0095

TABLE 3: TEST OF SLOPE DIFFERENCES OF REASONABLENESS VARIABLES ON GUILT BY INTENT CONDITION (DF=1,45)

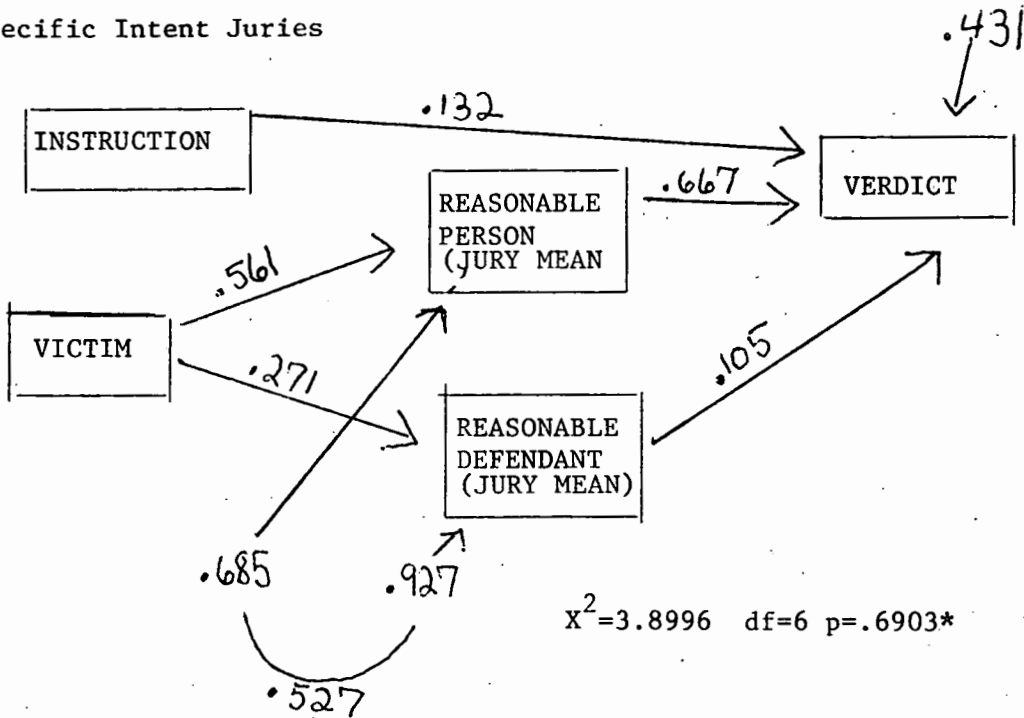
	General Intent	Specific Intent	F	P
REASONABLE PERSON <sup>a</sup>	.5796	1.4194	4.05	p<.05
REASONABLE DEFENDANT <sup>b</sup>	.50165	1.196	1.71	p>.05

a This variable is measured as follows: A reasonable person would have thought that the bricks were abandoned. (1=very certain that the statement is not true...4=uncertain...7=very certain that the statement is true).

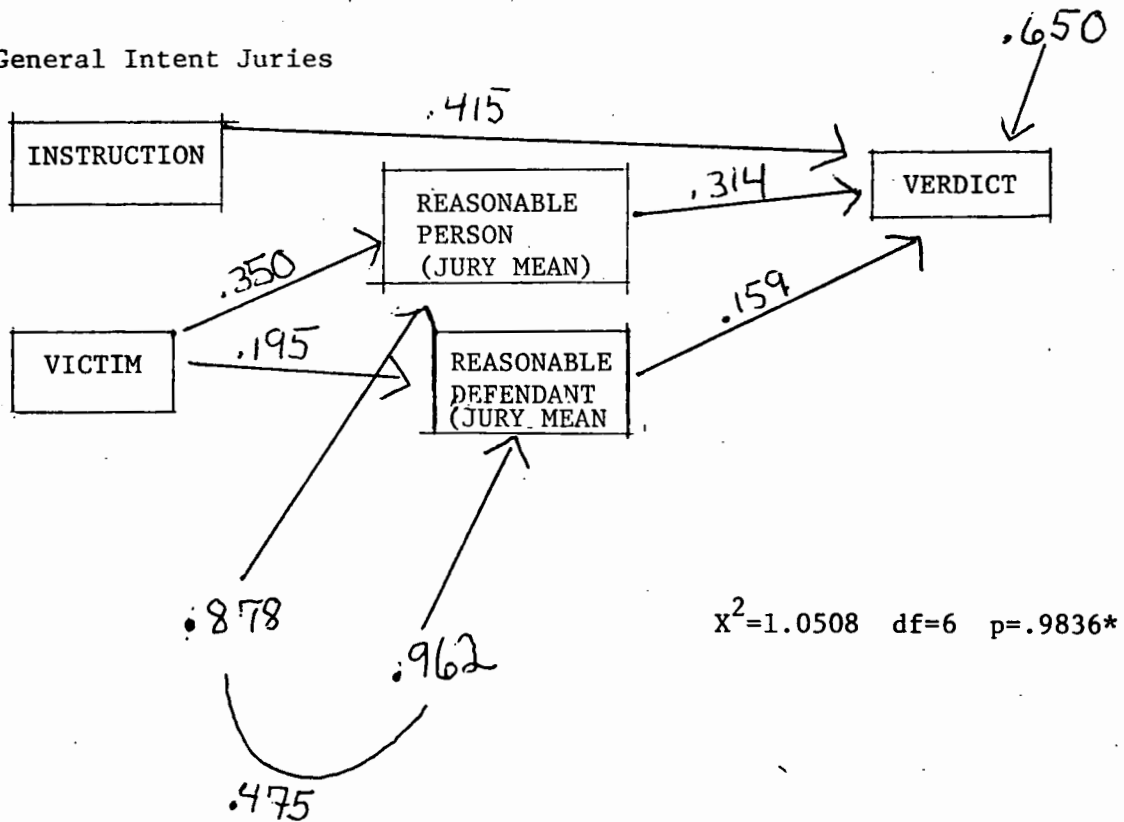
b The defendant really thought that the bricks were abandoned. (same scale as above).

FIGURE 1: MODEL OF JURY DECISION-MAKING PROCESS

a. Specific Intent Juries



b. General Intent Juries



\* There is no satisfactory discussion in the literature about the probability level necessary to conclude that an adequate "fit" of the hypothesized model has been attained. However, the p-values reported here are, we believe, sufficiently close to 1.0 to warrant accepting the model.

## APPENDIX A

### A Methodological Note on Aggregation

Throughout this analysis we have used the jury as our unit of analysis. There is considerable controversy in the literature as to the effects of such aggregation on explained variance and correlation coefficients. (Hannan 1971; Hannan & Burstein, 1974; Grunfeld & Griliches, 1960).

We believe that in this case the appropriate analysis is at the jury level. We are in fact interested in jury verdicts. We wish to know what influences the six person groups which deliberate together. To use an individual level analysis when the conceptual focus is on the jury is to create a disaggregation bias. It is clear that aggregated data produces greater explained variance than individual level data. We prefer to interpret this larger explained variance as the truer estimate. The jury level data leads to higher explained variance because it eliminates error variance introduced by the deviation of the individual juror from the jury mean.

We have in fact examined the data at the level of the individual juror and the explained variance is considerably lower. The only significant change in the correlation coefficients is that defendant reasonableness is relatively more important at the individual level, and there is a significant interaction effect between intent and this variable. There is considerable controversy as to whether differences such as these can bear any substantive interpretation, or whether they are due to statistical artifacts introduced by the disaggregation process.<sup>16</sup>

Nevertheless, our main substantive conclusions about the importance of responsibility rules in jury decision-making are not affected by the level of analysis.

APPENDIX B

Correlation Matrices Used in Analysis

I. All Juries (N=49)

	INTENT	INSTRUCTION	VICTIM	VERDICT
INTENT	1.0			
INSTRUCTION	-.020	1.0		
VICTIM	.020	-.020	1.0	
VERDICT	.335	.283	.164	1.0

II. Specific Intent Juries (N=24) (below diagonal)  
 General Intent Juries (N=25) (above diagonal)

	REASONABLE PERSON (JURY MEAN)	REASONABLE DEFENDANT (JURY MEAN)	VERDICT	INSTRUCTION	VICTIM
REASONABLE PERSON (JURY MEAN)	1.0	.544	.351	-.143	.350
REASONABLE DEFENDANT (JURY MEAN)	.679	1.0	.283	-.130	.195
VERDICT	.753	.551	1.0	.360	.022
INSTRUCTION	.222	.030	.278	1.0	-.038
VICTIM	.561	.271	.278	0.0	1.0

## FOOTNOTES

1. In the early years of the Republic, this in fact was the accepted norm. Juries were considered "judges both of the law and the facts in a criminal case and were not to be bound by the opinion of the court." (Baldwin, J, in U.S. v. Wilson, Federal Case No. 16, 730 C.C.E.D. Pa. (1830). Not until 1895 in Sparf v. United States, 156 U.S.51 (1895) did the Supreme Court hold that the judge and not the jury was the decider of the law. See, Howe, "Juries as Judges of Criminal Law," 52 Harvard Law Review 582 (1939).

2. In another paper, "From Laboratory to Juryroom: A Review of Experiments on Jury Decision-Making" (in progress), we discuss the methodological problems of these experiments.

3. This percentage does not include the 5.5% of the cases where the jury hung. Of the 19.1% reported in the text, 16.9% were cases where the jury acquitted and the judge would have found guilty. In only 2.2% of the cases did the jury find the defendant guilty where the judge would have acquitted. (Kalven and Zeisel 1966: 55-59). Thus, it appears that in criminal cases, juries are more lenient than judges.

4. This view of responsibility has a tradition in sociology as well as law. The Sykes and Matza (1957) theory about techniques of neutralization concerns the different application of excuses by delinquents and the juvenile court. Scott & Lyman's discussion of accounts also approaches responsibility from this perspective (1968). Goffman exhibits a similar approach in his concept of "remedial work" which is designed to transform "what could be seen as offensive into what can be seen as acceptable." (1971:109) (For a recent quantitative study along these lines, see Blumstein, et. al, 1974: 551).

None of these studies makes precisely the distinction we are making between the responsibility rule and the evidence used to judge it, although Scott and Lyman come close with their concept of illegitimate account. (1968:55).

5. In the Kaplan and Kemmerick study the jurors were provided with two independent variables. One (the defendant's driving behavior at the time of an accident), was clearly more probative than the other (defendant's personal characteristics). While the authors do not present any analysis of the amount of variance explained by the two variables, an examination of the figures in the article indicates that the relevant evidence played a relatively larger role in the jurors' decision. (1974; 496).

6. "The court thought the only question was, Did he intend to take the property? That the removal of them was a conscious and intentional act was admitted. But that isolated fact is not an adequate basis on which the jury should find the criminal intent to steal or knowingly convert, that is, wrongfully to deprive another of possession of property. Whether that intent existed, the jury must determine, not only from the act of taking, but from that together with defendant's testimony and all of the surrounding circumstances.

In course, the jury, considering Morissette's awareness that these casings were on government property, his failure to seek any permission for their removal and his self-interest as a witness, might have disbelieved his profession of innocent intent and concluded that his assertion of a belief that the casings were abandoned was an afterthought. Had the

jury convicted on the proper instructions it would be the end of the matter. But juries are not bound by what seems inescapable logic to judges. They might have concluded that the heaps of spent casings left in the hinterland to rust away presented an appearance of unwanted and abandoned junk, and that lack of any conscious deprivation of property or intentional injury was indicated by Morissette's good character, the openness of the taking, crushing and transporting of the casings, and the candor with which it was all admitted. They might have refused to brand Morissette as a thief. Had they done so, that too would have been the end of the matter." 342 U.S. 246, 276 (1952).

7. The manipulations were embedded in the body of the instructions. We attempted to make them no more obtrusive than they would be in a real trial. Thus, out of something over 7 minutes of instructions, the manipulations accounted for only 30 to 45 seconds.

8. These instructions are those now given to federal juries in light of Morissette.

9. Although comparable data was not available for the population of jurors in Washtenaw County, an examination of the distributions of our sample of jurors on certain demographic variables seemed to indicate that our sample was not seriously biased. 46.6% of the jurors were male and 53.4% female. Blacks were somewhat underrepresented (94.3% white, 5% black and .7% another race). As would be anticipated in a county containing two large universities, professionals and students were overrepresented. (31.8% professional and technical workers and 12.4% students) and the education and income distributions were more to the high end of the scales than is true for the population in general (median income was about \$20,000 and median education was just over three years of college, with almost one quarter of the sample having some graduate training). The mean age of the sample was 39 years.

Census data for the city of Ann Arbor in 1970 shows the population was 91% white and the median years of schooling was reported to be 15.4. Also the largest proportion of workers was in the category of professional and technical workers.

Even though our sample seems to be representative of the Ann Arbor population, one might challenge our conclusions by arguing that the population of Ann Arbor is not representative of the general population. In order to test the hypothesis that the over-representation of well-educated jurors in Washtenaw County accounts for our findings of more juror rationality than was previously thought to exist, we divided our sample into those with a high-school education or less and those with more than a high school education. As one might expect, the subjects with lower educational attainment were slightly more conviction prone. But in other respects discussed in this paper there were no significant differences between the two groups.

10. While eight subjects were always scheduled, we found it to be extremely difficult to always get at least six jurors to come. We, therefore decided to run the experiment with five person juries when necessary. A comparison of five and six person juries indicates that there are differences in their verdicts. The primary difference is that, as one might expect, five person juries were more likely to reach a unanimous verdict than were six person juries (82% vs. 49%).

Other differences, however, lead us to conclude that the use of the smaller juries does not affect our findings. In all cases where there are differences,

the five person juries are operating against our hypotheses. Moreover, the main effects in the experiment remain significant when we look only at six person juries. Given these results, we will treat all juries as a single data set.

11. The verdicts of the 49 juries produced a skewed distribution toward guilty verdicts with a large percentage of hung juries. Twenty-six juries found the defendant guilty, nineteen juries hung and only four found the defendant not guilty.

The percent of hung juries is largely an artifact of the short time we allowed juries to deliberate. A longer deliberation time might have reduced the percentage of hung juries.

Dichotomizing the dependent variable between guilty and all other verdicts produces nearly an even split on the dependent variable (26 vs. 23). Conceptually, we believe it is justifiable to combine hung juries with those who returned verdicts of not guilty since a hung verdict indicates that the State could not convince six people that the defendant was guilty. Although the State can of course retry such cases, this is often not done and the defendant is released.

12. For purposes of this and subsequent analysis, we created reasonableness variables for juries by aggregating the individual juror scores. The aggregated variable is the mean score for juries on these two variables. See the methodological note in Appendix A for a general discussion of use of aggregation in analyzing the data.

13. Although the hypothesis must be rejected in the case of the reasonable defendant variable, this must be interpreted in light of its relative unimportance in predicting jury verdicts (see discussion in b. below).

14. The models were estimated using the linear structural equation system developed by Karl Jöreskog. This system allows the researcher to solve a series of simultaneous equations representing relationships among the independent and dependent variables. This produces standardized coefficients which are analogous to those produced by a path analysis program. In addition, Jöreskog's method will produce a chi-square test of how closely the specified relationships approximate the total set of relationships contained in the correlation matrix.

A further advantage of the Jöreskog program is that it allows one to assume that the disturbance terms of the independent variables are correlated. This was important for us because the two reasonableness variables have correlated disturbance terms. This correlation is shown in the models. In fact we also did the analysis using ordinary least squares estimates and the consequences for the path coefficients was slight.

15. In the interview we asked the subjects about the duty of jurors to obey judicial instructions. Seventy-seven percent of the jurors who received the "judge law" instruction said the juror must obey the instruction; eighteen percent said the juror should obey unless some special circumstance arises; and only five percent said jurors should not follow the instruction, but should do justice between the parties. For jurors who heard the "jury law" instruction the respective percentages were 59%, 27% and 14%. A chi-square test indicates this difference to be significant at the .004 level (N=274).

16. This problem is especially difficult where, as here, grouping is by values of a variable not explicitly included in the substantive model. For a discussion see Hannan & Burstein, 1974:374).



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