Jury deliberations – how do reasoning skills interplay with decision-making?

Bethel G.A Erastus-Obilo

Available at: https://works.bepress.com/bethel_erastus-obilo/3/
Jury deliberations – how do reasoning skills interplay with decision-making?

At the risk of stating the obvious, one of the most enduring features of our criminal justice system is the institution of trial by a jury of one’s peers. This constitutionally mandated system is, arguably, the best connection between the ordinary man and the judicial system. It has been argued, and all the evidence point to it, that jury trials allow the law to inject common sense as well as the ordinary man's perspectives into an otherwise, complex and hermetic, process.

Jurors, in their hallowed role as arbiters of fact, are charged with the ultimate decision as to whether or not the accused committed the offense charged and, as John Adams put it in 1771, "It is not only his right but his duty to find the verdict according to his own best understanding, judgment and conscience, though in direct opposition to the direction of the court". As we know from the English Courts, the judge cannot direct a conviction.¹

Chief Justice, John Jay, recognizing the potency of this statement, held, in Georgia v. Brailsford ² that the jury was supreme with regards to the verdict on both law and fact. This remains good law in the US today although the judicial system has sought to mitigate the statement on the jury’s right to judge the law by stating that it is the jury's duty to reach its own conclusion upon the evidence and regardless of the opinion of the judge as to the facts. With regards to the law, however, the judge's charge controls. It

¹ Kelleher, R v [2003] CA
² Georgia v. Brailsford 3 U.S. 1 (Dall.) (1794) "It is presumed, that juries are the best judges of facts; it is, on the other hand, presumed that courts are the best judges of law. But still both objects are within your power of decision... you [juries] have a right to take it upon yourselves to judge both, and to determine the law as well as the fact in controversy".

THE DELIBERATION PROCESS – HOW DO REASONING SKILLS INTERPLAY WITH JURIES' DECISION-MAKING?
does not quite say that the jury is prevented from judging the law but that it must pay deference to the judge’s directions on, and possibly, interpretations, of the law.

The judge’s paramount role is to assist the jury by enumerating and explaining the facts in issue. This means that judge may highlight, to the jury’s attention, the real merits of the case. He must also impartially summarize the evidence presented in open court and then spell out the applicable law under which the accused has been charged. It is then down to the jury.

Thus, in both civil and criminal cases, it is the jury’s duty to decide the facts in accordance with the principles of law laid down in the judge’s charge to the jury. The decision is made on the evidence introduced, and the jury’s decision on the facts is usually final.3

In order to adequately do this, the jurors must be totally engaged in the trial process and pay particular attention to the evidence tendered in open court. Research has shown, time and again, that the strength of the evidence, tendered in open court, enjoys the highest concentration of juror’s attention. This is how it should be and the results have served us well for a long time - sometimes, too well and sometimes, badly too. This evidence has, arguably, the greatest impact, amongst many factors, on the jury reason curve.

The judge and the jury are partners, of sorts, in the great drama that occurs in court with regards to a verdict. They have this collaboration that does not exist nor is added to by the dimension of the attorneys. Both the prosecution and defence seek to

---

present their positions in the best light and are, therefore, biased. The judge and the jury have the more challenging role of reaching a verdict that is devoid of prejudice. The judge performs this role by protecting the rights of the accused and assisting the jury in carrying out its duties.

A judge represents the authority of the state and personifies decorum and the rule of law in any given court. He is, however, more than this. He represents impartiality, good manners, order and above all, unbiased due process of law.

The jury, on the other hand, represents the community, perceived homogeneity and the ordinary man. Much more than this or in addition, the jury represents democracy, freedom and the rule of law. It sounds ideal but that is the building block of our participatory democracy and provides a hedge against arbitrary justice or tyranny.

To assist the jury in its task, the judge has one very onerous task: To provide direction and instructions in the form of a written document that enumerates their role, the facts of the case, the law allegedly broken and the charge to stay impartial and vigilant so as to ensure that fairness prevails in the case.

The judge in the Casey Anthony was no exception. The attorneys were not the only ones to make headline news or catch the public attention. The judge, in his reserved and elevated demeanour, imposed his authority on the court proceedings, challenged the attorneys, took issues with the prosecution and shielded the defendant from egregious trial fall-outs. Above all, he worked very hard to ensure the due process and that the jury was in a position to discharge its duties per the format of the law in an impartial and
reasonable manner. He also paid homage, in the classic sense, to the guidelines for judge’s conduct as prescribed both in the Florida Judges’ handbook and the ABA Handbook.

Of course, juries make a determination, arguably, according to their conscience and the judge has very little or no impact on this. However, the matter goes beyond this.

The conduct of the judges is a matter for training, experience, personality, temperament and judicial guidelines. Most trial judges are called after years of law practice (some are called directly from the academics but this is not to frequent). The American Bar Association which governs the Bar profession provides training and guidelines for a judge’s role. At Standard 6-1.1. General responsibility of the trial judge, the ABA provides that:

(a) The trial judge has the responsibility for safeguarding both the rights of the accused and the interests of the public in the administration of criminal justice.

The principles enunciated by these guidelines are central to the administration of process and the perception of fair trials. In all cases, the rights of the accused are to be safeguarded and when necessary, defended with the entire apparatus of the court system. This is fundamental to the presumption of innocence upon which our criminal justice system is built. However, the ABA is not just interested in the rights of the accused, it is also keen to ensure that the interests of the public in the administration of criminal justice are preserved. You may well ask what these are.

---

4 In February 1999, the ABA House of Delegates approved these “black letter” standards that have been published with commentary in ABA Standards for Criminal Justice: Special Functions of the Trial Judge, 3d ed., © 2000 American Bar Association at www.americanbar.org/publications
Well, the public is very interested to know that the system is safe, sound, impartial and robust. The public also needs to be assured that our system of justice is blind in the sense that it is will apply in the same way with the same level of sturdiness to all who come before it. Thus, if the court system does not take steps to ensure the stability of this process, any one of us who has the misfortune, at some future date, to be at the mercy of the system would not be able to point to any yardstick of stability.

In the midst of the contentious nature of our criminal trials, it is often a wonder that the judge manages to remain aloof and impartial. One would have expected such a gathering, teaming with rancor and contested evidence, to be bedeviled with animosity and unbridled bias. It often is and certainly more so between the opposing attorneys let alone those who have a direct interest in the outcome of the case. The judge is no exception. His humanity is not in question.

For this reason, the ABA guidelines go further:

‘The adversary nature of the proceedings does not relieve the trial judge of the obligation of raising on his or her initiative, at all appropriate times and in an appropriate manner, matters which may significantly promote a just determination of the trial’.

This guidelines place enormous burden on the person of the judge to instill and maintain a level of decorum and impartiality that venerates and elevates the process and preserves the dignity of the court system and the process.

The terms used by ABA are instructive. ‘…matters which may significantly promote a just determination of the trial’.

Very often, as members of the public watching court proceedings from the sidelines and fairly ignorant of the totality of the evidence and the court process, we find ourselves
reaching a judgment that is devoid of the real nuggets of a case. Yet, the judge is charged with taking the necessary and relevant action to ensure a just determination of the trial. These include but are not limited to: rules of evidence, due process, rights of the accused, constitutional provisions, legislation, custom and other issues that may impact the outcome of a case or its proceedings.

ABA continues:

‘The purpose of a criminal trial is to determine whether the prosecution has established the guilt of the accused as required by law, and the trial judge should not allow the proceedings to be used for any other purpose’.

This is the gravamen of the guidelines and the mainstay of our criminal trials. The prosecution must discharge its duties relative to the burden of proof. In other words, it is not enough to suggest guilt. It must be proven beyond a reasonable doubt. An approximation of it is insufficient and a hint of guilt does not discharge the burden. The suggested fact (presumably unproven in open court) that the accused did, in fact, commit the prohibited act is not sufficient. It must be proved, by the prosecution, beyond a reasonable doubt, that he did, indeed, do it with the requisite state of mind.

Every prosecutor would, during his opening and closing speeches, submit that he has met the threshold. Indeed, if we relied on the prosecution alone, every case would result in a verdict consistent with the charges from the prosecution.

On the other hand, if we adhered to the submissions of the defense, we would also conclude that the matter has not been proven and that the defendant must be set free.
Enter the judge who is assisted by the body of law, experience, guidelines of the ABA and the court system and his legal and judicial trainings.

When we observe the system at work, as imperfect as it is, we begin to understand what happens as a precursor to the reason curve and in fact, what is a thread in the reason curve.

There are many issues at trial principal of which is whether or not the prosecution has discharged the evidentiary burden of proof. The attorneys are not infallible and, as we have established, are bound to believe in the merits of their cases and presentations.

The jurors, who are not legally trained, are even in a more precarious position. The ultimate decision rests with them as it touches the facts in contest and, to some extent, the law in question. Yet, they must rely on the judge not only to maintain the court’s decorum and explain the law to them but also to provide them with directions that will assist in the discharge of their duties.

At Standard 6-2.6. Duty to juries, the ABA guidelines continue:

(b) The trial judge should conduct the trial in such a way as to enhance the jury's ability to understand the proceedings and to perform its fact-finding function.

Part of this requirement is the instruction given to the jurors by the judge. In the recent case of State of Florida v Casey Anthony,\(^5\) there is a full demonstration of the judge’s jury direction at work.

This is important to highlight because based on the evidence tendered in court, news reports and the trial proceedings, many people, for whatever reason, may conclude and

---

\(^5\) Case No. 2008-CF-15606-A-O
indeed, did conclude, that the jury’s ultimate verdict was inconsistent with what they might have believed. However, the jury, as we have stated, is the final arbiter of jury trials. To this end, jury deliberation becomes the focus of attention because this is where the jurors get together and sift evidence. Here too, prejudice is tested, sifted, challenged and hopefully, ultimately, defeated. Common sense is juxtaposed against the evidence, the law and the conscience. The triumph then belongs to the collective bargained verdict entered upon by the jurors.

The deliberation process is shrouded in secrecy for good reason. In nearly all the common law jurisdictions around the world, the jury separates, at the end of the trial, into a room to deliberate on its verdict. This process, protected from all intrusions and disturbances by the force of law and custom, provides a fertile ground for juror understanding and perception to interplay with the trial process and the weight of evidence.

The jurors cannot enter into this process without the directions of the judge. After the trial and before the jury retires, the judge submits the matter to the jury. In doing so, he includes these words:

“During deliberation, jurors must communicate about the case only with one another when all jurors are present in the jury room. You are not to communicate with any person outside the jury about this case. Until you have reached a verdict, you must not talk about this case in person or through the use of any …form of electronic media or any other means. Do not contact anyone to assist you during deliberations”.

---

6 S. 782.02, Fla.Stat. as provided in the Introduction to Final Instructions at the Anthony trial, 2011.
Regarding the presumption of innocence, the judge advises the jury that to overcome it, the State bears the burden of proving that the accused committed the crime and the threshold is beyond a reasonable doubt. The accused, in all criminal matters, does not bear any burden of proof (although there are instances when evidentiary burden shifts between the prosecution and the defence) and does not have to present evidence or prove any issues in question.

Black’s law dictionary defines reasonable doubt as the doubt that prevents one from being firmly convinced of a defendant’s guilt or the belief that there is real possibility that a defendant is not guilty.\(^7\)

Specifically, regarding the weight of evidence and the discharge of the burden of proof, the judge in the Anthony case adds that “…if after carefully considering, comparing and weighing the evidence, there is not an abiding conviction of guilt or, if having a conviction, it is one which is not stable but one which wavers and vacillates, then the charge is not proved beyond a reasonable doubt and you must find the defendant not guilty because the doubt is reasonable. It is to the evidence introduced in this trial and to it alone that you are to look for that proof.”

Recognizing that the evidence presented in court is also contested, the judge adds:

“A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence or the lack of evidence. If you have a reasonable doubt, you should find the defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty.”

\(^7\) Beyond a reasonable doubt is the standard used a jury to determine whether a criminal defendant is guilty. In deciding whether guilt has been proved beyond a reasonable doubt, the jury must begin with the presumption that the defendant is innocent – per Black’s Law Dictionary, 7th Edition at p. 1272
With regards to the weight to be given to each piece of evidence, the court system recognizes that there is no standard yardstick. The ordinary citizen makes various decisions in the course of the day and there are no hard or fast rules that guide this except that ubiquitous common sense. Thus, it is up to the jurors to decide what evidence is reliable. Using their common sense, the jurors are expected to determine, for themselves and collectively, which evidence is reliable and which is not and to use this judgement to reach a decision.

With those words, the jury is allowed to retire to deliberate its decision in solitude and peace.

What do we know of the deliberation process and how does it prepare the jury to explain its verdict? The ancient jury did not necessarily retire into a jury room to consider its verdict. At the Old Bailey in London, research indicates that sometimes, the juries just huddled together in a corner of the room to discuss their position out of earshot. Thus, it was sometimes possible to get the same jury to try several cases the same day because deliberations often lasted just a few minutes.  

The deliberation process was not always arduous given that juries often had to acquiesce to the wishes of the judge or face punishment and the same jury would often return verdicts within a few minutes of getting together thus ready to try another case.

The modern jury, on the other hand, is ‘quarantined’ for the duration of the deliberation process. There is no restriction on how long they can deliberate.

---

8 [http://www.oldbaileyonline.org](http://www.oldbaileyonline.org)
9 In the English courts since 1967, after two hours of deliberation, the judge may indicate that he would accept a majority verdict thus reducing the ignominy of a protracted incarceration. See UK Criminal Justice Act, 1967.
Just before they retire, the jurors receive instructions from the judge coupled with a summation of the case it has just heard. That was the extent of it then.

As to the efficacy of deliberation, methods and system of deliberation or insights into reasoning and bargaining skills, the jury is left to its own devices. How the factors affecting a juror’s judgment and the deliberation process interplay with juror strength of reasoning is a matter deserving further exploration.

Is deliberation essential to criminal trials in a democratic society? Or are its bargaining credentials circumscribed by the jury’s inherent ignorance? Perhaps the answer lies somewhere in between. Deliberation may have an epistemic value, improving the quality of information and arguments. It may also be transformative, shaping beliefs and opinions. Deliberations may also be part of a conception of justice that constrains the authority of the jurors by requiring that procedures be justified in terms of reasons acceptable to those burdened with authoritative decision-making but outside the benefit of those without. Although appealing, on closer scrutiny, the epistemic and transformative arguments are limited by the scale and complexity of the trials and the pseudo-opinion upon which a verdict is based. But the reason-giving argument however, is persuasive whenever collective decisions, epitomized in a general verdict allow the burden of a decision to be imposed on the jury. Beyond delivering the verdict, the extent of the acceptance of presented evidence or any other criteria should be exposed in an orderly fashion.
Research indicates that jury deliberation can reduce biases that operate at the individual juror level. This would suggest that deliberations have the potential to produce jury verdicts that are more consistent with legal and rationally defensible norms and probably affect the level of juror prejudice and by extrapolation, fair trials. This effect, it is argued, may be limited to situations where legal instructions are robust and clear and tendered evidence is persuasive. Deliberation offers a panel of decision-makers the chance to pool information together, correct misunderstanding to the extent that they can and bargain with their opinions. By extension then, if jurors engage in deliberation, feeding on each other’s reasoning skills, correcting each other’s mistakes and recollections, their comprehension of trial evidence and testimony should improve. This is a debatable point because the process can also have an adverse effect depending on many factors including the personalities of the players and the strength of evidence tendered in open court.

It is also possible that deliberation has the potential to promote personal ignorance and misunderstanding by re-enforcing prejudicial views when expressed by a majority or some outspoken juror. As we learn from the English cases of R v Connor, and R v Mirza, the tyranny of prejudice is palpable especially when there is a minority opinion that can be assailed by the majority. The case of Smith & Mercieca, however, indicates

---

11 Diamond, S. S. & Levi, J.N (1996). Improving decisions on death by revising and testing jury instructions, Judicature, 79, 224-232. The authors claim that jurors showed a significant improvement in comprehension of legal instructions but only when a substantial majority began deliberations with a correct understanding of the relevant instructions.
12 (2004) HL. There is recount of a letter sent by a juror to the judge days after the verdict indicating that ‘when I raised objection to this and said that we must look at whether it was one or the other, they maintained their guilty stance and said that we could be here for another week…”
13 (2004) HL. In this case, a juror who had written a letter to the judge days after the verdict indicated that when she pointed out the issue of prejudice, she was shouted down by the other jurors during deliberation.
14 R v Smith & R v Mercieca (2005) UKHL 12. In this case, the HI published a letter written by a juror which detailed some of the discussions in the deliberation chamber.
the difficulties and challenges inherent in jury deliberation and how sheer bloodily-mindedness and prejudice can have a debilitating effect on participation and deliberation. The current position is that the judicial system errs on the side of caution by not requiring an explanation and declaring the deliberations room sacrosanct. We are admonished to start with the proposition that a tribunal, such as a jury, is presumed to be impartial until there is proof to the contrary.\footnote{Le Compte, Van Leuven and de Meyere v Belgium (1981) 4 EHRR 1,21, para 58: Remli v France (1996) 22 EHRR 253, 262, para 38 in the opinion of the Commission: Sander v United Kingdom (2000) 31 EHRR 1003, 1008, para 25.}

This, in turn, potentially assists the perpetuation of prejudice. While the position can be justified on the basis that the reverse would be absurd, clearly, such a tribunal must be equipped with more than soft words to guide it through the deliberation process. R v Smith (2005) shows that mere admonitions and judicial instructions, however robust, are not enough to make straight a crooked jury mindset. Speaking on the competency of jurors to make decisions, Ellsworth\footnote{Ellesworth, P. (1989), Are twelve heads better than one? Law and Contemporary Problems, 524(4), 205-224} argues that the lack of attention to evaluating juror competency may be due to the fact that competent decision making is not clearly or operationally defined. Thus, to begin to evaluate a juror’s competency, one must have a theoretical model of competent decision making. Sadly, the best that can be approximated from various disciplines is guess work and objective assessment and these, at best, are result-oriented.

The judicial system in England and Wales has no such models when it comes to trial by jury except its legal assumptions. These, by definition, are not always borne out by empirical. In other words, deliver the evidence and we will consider divine your reasons based on our consideration of the evidence and our experience. Yet experience is a poor
predictor of conduct. Ellsworth’s argument, when applied to the judicial system, would suggest that the lack of a requirement to explain may be due to the fact that the judicial system, at best, does not understand how individuals, untrained in the art of making decisions could articulate an explanation and at worst, is extremely reluctant to be prescriptive. Yet, prescription as to reason need not be autocratic. Trial by jury is a public service and the force of the judicial system is always available to prevail on those who answer the call. Requiring an explanation for a verdict can only be seen as part of the discipline of the system that negates what Louis Bloom-Cooper calls ‘the apotheosis of amateurism’. A modern criminal trial is, by all indications, an exercise in conjecture mixed with fluid rules developed over many years but again, based on conjecture. These rules which are hypothetical in nature preside over a real dramatic event. Yet, even when the theoretical positions of the exercise are recognised, the challenges posed by the trial process may lack sufficient details or be too complex for a single correct response from the tribunal of fact. In this context, if the decision-maker is neither taught nor instructed to minimize subjective elements and maximise objectivity as a platform for articulating a response to the question ‘can you explain your verdict’?, degeneration into legal chaos may be forgiven but not excused. There is little justification for leaving the outcome of such an exercise shrouded in speculation.

Furthermore, decision-making is not a fine art and relies as much on evidentiary evaluation as it does on intuition. Group decision-making does not guarantee accuracy. However, it is submitted that a theoretical model of reason articulation needs to be developed in order to provide the yardstick that guides the jury. All groups, including trial juries are characterised, in part, by emotional dynamics that threaten to undermine
their deliberations and decision-making. This paper contends that if a plausible account of such a process is made in a way that re-enforces the values expected of the process, the benefits could mount up.

The Spanish Constitution makes such a demand of the jury. It is, arguably, the closest that any legislature has come to demanding a succinct accountability of the basis for a verdict.

It is worth noting that there has been no exploration of the relationship between the requirement to explain and accountability. It is also worthy of note that very little accountability is required of the jury beyond the remit of impropriety during the trial and the provisions of the Contempt of Court Act 1981 afterwards.

Juries are merely required to sit in on a trial and deliver a verdict following deliberations. In fact, strictly speaking, there is no requirement to deliberate. Juries are merely asked to retire and consider (a term that could stand as a euphemism for deliberation) their verdict. Given that there is no way of determining the occurrences, in the main, of events in the jury room, one cannot categorically state that deliberation takes place when the jury retires. This, however, is a red herring.

Nonetheless, deliberation as a group has the advantage of providing a higher form of reasoning skills amongst jurors and is preferred to individual opinions proffered post-deliberation or a voting in open court based on personal and private considerations of the trial process.

In arguing that juries will exhibit better reasoning skills than individual jurors, Tetlock17 found that having to justify one’s position to others with unknown views increases

---

accountability. Thus, the deliberation process provides a platform for a juror to defend not only his opinions on an issue but also his perspective and understanding of the trial process in a collective and inscrutable surrounding. This leads to an increase in integrative complexity and helps to prevent individuals from becoming cognitively lazy in their decision-making.

A study by McCoy et al\textsuperscript{18} of juror reasoning skills indicates some competence to explain a chosen verdict at a juror level.

The study was designed to examine whether involvement in the jury process encouraged jurors to reason in a more sophisticated way than they would prior to deliberation, and therefore, individually and to identify, following Kuhn’s\textsuperscript{19} study, whether group deliberation yields better jury reasoning than individuals.

Their findings, when applied to the concept of juror decision-making and explanations, indicate that when given clear and specific instructions, it is possible that jurors can articulate an explanation.\textsuperscript{20} In the event, we are really interested in good judgment and although this is a subjective element, good judgment requires an analysis of content in addition to laws, principles and axioms.\textsuperscript{21} Good judgement, when exercised, may make it easier for the decision maker to explain himself as a collective.

\textsuperscript{18} McCoy et al. op. cit. at page 561
\textsuperscript{20} The study utilised a video-tape of an actual murder trial. The participants were 104 undergraduate students at the University of Wyoming who received research participation credit for their general psychology course. The researchers concede that using students in this sort of work has its shortcomings and represents a narrow range of age and education. They point to the usual caution that should be exercised when mock jurors are used and the study was aimed at juror reasoning skill as opposed to jury level.
The experience from Spain is also instructive. There, juries are required to answer a series of questions that lead the judge to articulate the reason for their judgement. This is what Auld L.J recommended in his report. The difficulties with this approach have been articulated in previous chapters.

It is submitted that jury deliberation allows a good interchange of ideas that may sharpen reasoning skills. This, in turn, may lead to decisions consistent with the weight of evidence on the one hand or the jury’s sense of justice on the other. Either way, it will provide clarity but may not necessarily comfort one side or the other. The rationale for such a decision will be manifest and based on it, an informed system of criminal trials will develop.

Although a jury deliberates in secret in a trial that is, in the main, public, it is not a private institution. Most of the research into jury decision-making would probably become superfluous if we did have the system of accountability embedded into the judicial process when it comes to juries.

Whether or not this requirement would alienate potential jurors is worthy of further research. However, it is argued that an engaged panel of decision-makers is likely to be perceived as useful, robust and sufficiently an attractive option thus nullifying any potential adverse effect of the requirement to explain.

It is the submission of this paper that where the requirements are clear and unambiguous, a jury is much more likely to follow as directed and that much of the factors that may affect a jury’s verdict are either sustained or weakened by the deliberation process.

---

22 Criminal Courts Review at http://www.criminal-courts-review.org.uk

23 The advantage to be gained includes a verdict that is more objective and less subjective but still contains elements of human experience. With higher reasoning skills, it becomes easier to articulate an explanation for any subsequent decision.
The jury deliberation process is, by definition, a private matter\textsuperscript{24} involving no other actors in a criminal trial except the twelve jurors.

Statutory provisions in the UK\textsuperscript{25} and judicial rulings in the US\textsuperscript{26} deny access to the jury room, observation, recording, listening or asking questions of the jurors of decisions reached, arguments advanced or votes cast. As a result, there is scant material on which any conclusion can be drawn.

The literature that exists is largely based on studies of mock jurors and post-deliberation interviews where these are allowed by law. The literature is also largely from the social scientific community.

The research on juror’s cognitive reasoning has concentrated, in the main, on the decision-making process of individual jurors. One of the categories developed has been the cognitive model of decision-making. This category borrows from cognitive theory and information processing approaches.\textsuperscript{27} Other models have been developed. However, all of them attempt to describe decision-making by examining how evidence is mentally represented by jurors, how evidentiary facts are stored and later retrieved, the cognitive strategies used during the trial process and how the system monitors the decision-making process.\textsuperscript{28} With such emphasis, cognitive theorists tend to reduce the jurors’ task to identifiable steps in order to investigate the interplay between the information load due to

\textsuperscript{25} S. 8 Contempt of Court Act 1981
trial complexity,\textsuperscript{29} task specific strategies such as note taking\textsuperscript{30} and how that interplay affects jury decision making.

In their study of mock jurors, Hastie, Penrod and Pennington\textsuperscript{31} discovered that jurors make sense of the trial evidence by constructing a story, in their minds, to fit the events being played out in court. Thus, they proposed a story model.

The story was based on the evidence the particular juror found to be most compelling and any evidence that was inconsistent with the juror’s story was rejected. The model was made up of three stages:

First, the evidence is organised into one or more plausible accounts of events. This is influenced by the juror’s experience and general knowledge about human purposive action and episode schemas.

Secondly, the verdict categories are established, essential characteristics for each verdict are considered as well as assessment rules for each verdict.

Finally, the best match between story and verdict is chosen.

There are several problems with these models. As Hastie\textsuperscript{32} concedes, ‘…at present, none of these models is pre-eminently successful’ in predicting behaviours of jurors, whether actual or mock. In addition, there is no recognition for the possible individual differences in juror reasoning skills nor is the impact of demographic considerations on these skills sufficiently extant. It is possible that some jurors may only entertain one story during the

\textsuperscript{29} Horowitz et al, ibid.
trial process and thus would be less competent or sophisticated in the way they process information. Thus, the evidence presented would be set against just one possible story.

If this happens and if it becomes evident that a juror was unable to overcome some personal, mental and ideological reticence in reaching a verdict, doubts would rightly be entertained about his fairness. However, since a verdict is general and is never followed by an explanation, the reasoning skills of jurors remain an unknown territory. The implications for the fairness of a trial are far reaching.

A juror’s deficiency at reasoning skills would affect the interpretation of the evidence in a certain direction. Yet, there is no way of testing this skill.

On the other hand, a juror with better reasoning skills would possibly have a number of possible stories against which to set the evidence. He would know that there are always several possibilities in a given situation and would have the ability to conceive of or develop alternative and possibly counter arguments. This would allow him to generate other theories and alter his position as the evidence is presented and the debate ensues. He would also be able to make coherent contributions to the debate. Kuhn argues that the ability to conceive of counter arguments is thus as fully critical as the ability to conceive of alternative theories. In the absence of the ability to generate counter arguments, the ability to evaluate the correctness of one’s own theory is, at best, limited.33

In this context, the story model is limited to the extent that it does not acknowledge a juror’s ability to construct a theory outside of his sphere of experience. In other words, he may recognise the fallibility of his experience in light of the evidence presented and yet lack the ability to propose or develop a counter argument against himself.

When this ability is lacking in the juror, it is argued that the individual experiences what psychologists have called the theory of cognitive or pre-decisional dissonance as proposed by Leon Festinger\textsuperscript{34} and further demonstrated by Festinger and Carlsmith in 1959.\textsuperscript{35} These researchers proposed that dissonance can influence judgement and decision making. According to this theory, subjects or jurors in our case, try to reduce dissonance (defined as a negative drive state) whenever possible. In other words, people are motivated to reduce or avoid psychological inconsistencies. Thus, people experience cognitive dissonance when they simultaneously hold two thoughts that are psychologically inconsistent. If a juror believes that women are invariably less likely to commit violent crimes and yet is confronted by evidence of such culpability, he would experience cognitive dissonance and would attempt to reduce the inconsistency perhaps by rationalising the phenomenon or attempting to shift his opinion. In such a case, the story model would seem to be in abeyance. Instead of constructing a story that best fits the evidence, the juror’s dissonance would be mitigated by his attempt to construct a counter argument or alternative theory against his long held belief. However, as philosophers have argued, the individual does not necessarily rely on primary evidence to argue against himself. In order to do that, he must be able to envision the possibility that his theory or story is incorrect and must also understand what evidence would show it not to be correct. He must then seek and confirm the absence of such evidence to sustain his opinion. In the process, he might develop alternative theories or persuade the others of its correctness. In any event, the pressure to feel consistent will lead him to bring his

\textsuperscript{34} Festinger, L., (1957). A theory of social cognitive dissonance. Evanston, IL: Row, Peterson
opinions and beliefs in line with his ultimate voting behaviour thus reducing his dissonance.

In the end, the extent to which jurors have employed competent decision-making strategies in approaching deliberations may affect their final verdict.\textsuperscript{36}

The jury deliberation process, it is argued, provides an opportunity for jurors to trade experiences and concentrate their thoughts on trial evidence and less on extra-legal and possibly biasing information. This assertion is by no means conclusive of the process. This is because in order to reach a verdict, of necessity, objective and subjective evaluations are manipulated. However, since we have no access to the jury room, we merely speculate on the point. Such process, when subjected to judicial requirement for an explanation following a verdict, is more likely than not to produce an articulated response.

Turning back to the Anthony case, it can be presumed that during deliberations, the jury had one resounding question: Where is the evidence? In spite of what we saw and heard in the media, the weight of the evidence was very light to convict. Deliberation proved to be a fertile ground for the jury continuum and the reason curve. Thus, we can rest assured that justice, at least as far as the jurors saw it, was done and done in a fair manner.

The rest of us can only speculate as to what the jury found persuasive or otherwise. The judge did his job and the jury did its too. The demands of the reason were satisfied but not vocalized. Justice remains sealed.

\textsuperscript{36} McCoy et al. op.cit. at page 559.