

The use of personal knowledge and belief by jurors and juries

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Abstract

This research aims to generate a theory of juror and jury decision making that adequately accommodates and explains the role of personal knowledge and personal belief in the jury process and trial outcomes. In over sixty years of jury research, there has been surprisingly little focus on this aspect of juror and jury decision making. The judiciary acknowledges that jurors' use of their background knowledge and common sense is legitimate in most cases. However, actively investigating, and seeking out, new information is not. The distinction between the two may seem obscure or unimportant to jurors. The advent of the internet has made it much easier for individual jurors to conduct their own research and to thereby access and utilise information that comes from non-trial sources. The judiciary views this as a growing and disturbing trend that can lead to miscarriages of justice.

To understand the modern types of juror misbehaviour, it is useful to look at juror misbehaviour in its broader context. Doing this would enable researchers to seek to understand how, when and why jurors and juries use personal knowledge and belief in the decision making process. This understanding could then lead to the development of a theoretical framework of juror and jury decision making.

Using grounded theory methodology as advocated by Strauss and Corbin (1998), I used a qualitative approach in researching this problem. I analysed a large set of data comprising reminiscences created by, or in several cases with the assistance of, jurors. These jurors had participated in actual trials that took place in the United States of America and England over a period of more than four decades. The aim was to generate theory rather than to test it. However, the theory is derived from, and is consistent with, an extensive dataset of published juror memoirs that has largely been ignored by the academic community. The theory, grounded in that data, clearly possesses sufficient verisimilitude to warrant further consideration and testing.

The theory posits that jurors utilise a large toolkit of schemas and tools. Using these they make extensive use of personal knowledge and belief in the decision

making process. This knowledge and belief has numerous uses and comes from many sources—including investigations and experiments undertaken during the course of the trial. This is not a new phenomenon. What is new is the means of accessing information.

Jurors are sometimes subversive of the legal culture and, ironically, this is a byproduct of their diligence. To ascertain the truth, jurors have been willing to blatantly disobey judge's instructions to not investigate. Driven by a powerful epistemic objective they are drawn to an active, investigative role—both individually and as a collaborative group. Such behavior is more likely when cases are difficult to decide—for example when a prosecution case is neither overwhelmingly strong nor patently weak.

This thesis presents the idea of the Jurors' Toolkit as a large group of tools that jurors use—individually and in combination—to help them reach a decision in a case. These include mental schema, reasoning tools, heuristics and other internal mental mechanisms. Associations between the individual elements in the toolkit are explored—as are the relationships between those elements and external factors. Relying upon personal knowledge and belief—which is inescapable; and individual preferences for different schemas and tools—gives juror decision making a highly individual character. This thesis shows that no current model of juror and jury decision making can adequately account for all instances of it. However, the Narrative Construction Model, and Devine's (2012) more recent Integrative Multi-Level Model, enjoy a fair measure of empirical support. Most such models are idealised. They erroneously assume that juror and jury decision making is a methodical, logical process applied to a clearly defined set of trial inputs that include evidence, judge's instructions and attorney addresses. The analysis of data for this thesis shows that quite frequently jurors use other cognitive modes—including intuition and heuristics—and consciously or unconsciously make extensive use of personal knowledge and belief.

By explaining the important role of personal knowledge and belief, the theory developed in this thesis constitutes a significant step on the path to understanding how jurors and juries arrive at verdicts. The theory highlights some unresolved issues in the literature. Different demographic groups often

carry very different knowledge and belief into the jury room. The theory helps explain the weak correlations that exist between verdicts and jury demographics—such as race and gender composition. It better explains judge–jury verdict concordance—an accepted indicator of jury competence. Jury verdicts are generally sound. But juries can sometimes disagree with judges because they are using knowledge or belief entirely unknown to the judge.

Nothing in this thesis should be interpreted as a criticism of the jury system. Juror memoirs make it plain that most jurors are diligent and reliable, and strive to be accurate. That they sometimes stray from their proper role is evidence of the power of their drive to discover the truth.