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# **Methodological Issues in Research on Legal Decision-Making, With Special Reference to Experimental Simulations**

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## **Introduction: Undue Optimism About Legal Psychology?**

Rather optimistic appraisals of the status of the "interface" between the law and psychology are frequent. Optimism is implicitly present in the highly regarded volume dealing with the use of social science data in the law (Monahan & Walker, 1985), careful and level-headed as this volume is. One certainly finds it in the "concordance of experts" surveys of psychologists who have acted as expert witnesses in court. At least on the surface, such surveys are impressive in terms of the sheer number of polled experts and the frequency of their court testimony (for example, 63 experts with a total of 478 court appearances, in a recent survey by Kassin, Ellsworth, & Smith, 1989), and, more importantly, in the experts' high agreement about the scientific reliability of the issues on which they testify (Kassin et al., 1989; Yarmey & Jones, 1983). And one finds favorable assessments of the status of the field in numerous published reports (e.g., Tanford & Tanford, 1987), as well as in the present volume, for example, in the papers by Farrington, Kaiser, and Loftus, among others.

Some of the reasons for the optimism are: (1) The exuberance that often characterizes the early stages of development of interdisciplinary fields, an exuberance that blinds researchers to the fact that the interface sometimes consists of the inferior components of the two fields; (2) The social desirability of overemphasizing the positive features of the interdisciplinary effort at conferences and in journals that are specifically set up to promote the interface; (3) A neglect of the sociology and economics of science (cf., Konečni & Ebbesen, 1986, p. 120): The incentive system in which legal psychologists function - in terms of both research grants and expert-witnesses fees - encourages an optimistic view of the interdisciplinary enterprise (a rarely discussed, taboo topic; cf., Yuille's paper in this volume); (4) The hope that the theoretical conceptualizations developed in psychology - notably cognitive and social psychology - will be of considerable substantive and heuristic value in the domain of the law (cf., Konečni & Ebbesen, 1984); and (5) The belief that by using experimental simulations to answer questions pertaining to the law, one will automatically reap the rewards that the experimental method has unquestionably brought to the physical and natural sciences.

Points 1 - 3 are, on our opinion, self-evident and need not be elaborated here. A frank airing of these problems should remedy them as the interdisciplinary effort matures. Point 4 is more intricate and deserves a separate article. But it is Point 5 - the use and validity of experimental simulations in legal psychology - that is the primary concern of the present paper.

It is important, however, to acknowledge that one's stance on Points 4 and 5 is necessarily shaped by one's view of what legal psychology ought to do at the present stage of its development. Thus, our skepticism about the value of importing psychological theory

and experimental simulations to the domain of the law can be traced to our biases about what the fundamentals of a sound psychology of law should be.

The plan of the paper is to describe briefly the essential core of legal psychology first. We will then discuss some new data on "death-qualified" juries to show that conclusions based on simulations can be not only irrelevant, but actually socially harmful and ethically questionable (if upholding the law of the land is the objective), when accompanied by an overzealous (or ideologically biased) presentation of results or expert testimony. The possibility that the incentive system and ideological bias actually affect the *design* of simulation studies will also be mentioned - with reference to new data regarding the confidence-accuracy relationship in eyewitness identification. Finally, our view of the role that experimental simulations should play in the overall research effort in legal psychology will be described.

### The Core of Legal Psychology: A Proposal

The approach we favor at the present stage of development of legal psychology has previously been described in detail (Ebbesen & Konečni, 1982b; Konečni & Ebbesen, 1982b), so that only the main features will suffice here. The approach consists of a socio-systemic, descriptive/predictive, decision-making analysis of the law and the development of causal models and a meta-theory of the legal system's operation.

We define the legal system as a temporally ordered and interconnected network of "nodes" occupied by classes of decision-makers (legal participants) who have discretionary powers (i.e., a range of decision options with, at best, vague guidelines describing how these options are to be selected). The links among nodes are seen as causal pathways, many of which involve social influence.

From our perspective, a descriptive and predictively useful account of the operation of the legal system requires a number of steps (cf., Ebbesen & Konečni, 1982b, pp. 7 - 21). (1) Information is obtained about the aspects of the legal system's operation that are, and are not, constrained by the rule of law. (2) Classes of decision-makers are defined in terms of the type of decisions they make. For example, offenders decide whether or not to commit a crime. Police officers, district attorneys, defense attorneys, and judges make the arrest, prosecutorial, plea-bargaining, bail and sentencing decisions, respectively. (3) The range and details of decision options available to each class of legal participants are specified. (4) Information available to the respective classes of decision-makers at each point in time is identified. (5) The subjective values and weights of the various types of information is empirically obtained. (6) The percent of variance (in the processing of cases by the system as a whole), accounted by a particular node, is calculated. (7) Multi-tiered causal models - decision rules used by participants at various nodes - are formulated.

If all of these components have been correctly defined and estimated, the result is a predictively accurate *theory* of the particular ... (legal) ... system being studied. If any of these steps are missing, or if the empirically derived solutions at a given step are in error (e.g., an important influence channel has been overlooked, or a particular type of information has been greatly underweighted at a given node), the theory will generally

provide unsatisfactory predictions of the behavior of participants in the system. (Ebbesen & Konečni, 1982b, p. 11)

Because our approach so strongly emphasizes the importance of understanding the operation of the real-world legal system (jurisdiction by jurisdiction, if necessary), it is not surprising that we have been rather preoccupied with issues of external validity (e.g., Konečni & Ebbesen, 1979, 1982; Ebbesen & Konečni, 1980). Similarly, our concern with the day-to-day administration of criminal justice has led us to question repeatedly the wisdom of the hugely disproportionate amount of research effort and theoretical attention devoted in legal psychology to issues such as (simulated) jury decision-making and eyewitness identification - disproportionate, that is, to their relative unimportance (in terms of the percent of variance they account for) in the real-world processing of criminal cases.

Above all, however, our real-world concerns have led us to probe the pervasive and uncritical use of unvalidated experimental simulations in legal psychology.

### Experimental Simulations in Legal Psychology

In principle, one's intention to understand how a real-world system (*any* system) operates or to test the performance of a theoretically-based application (be it a machine or a new law) by no means precludes the use of simulations. They are convenient and relatively cheap and safe, in comparison to the real thing. In aeronautics, for example, simulations ranging from wind-tunnel tests of aircraft wings to flights operated by test pilots fall along a continuum of similarity to the eventual intercontinental flight with 350 passengers. The graded sequence of simulations allows the adjustment of a multitude of variables and this is necessary even in engineering ventures that are based on intimately understood principle of physics. The goal of the continuum of simulations is a gradual approximation to the fully loaded passenger flight; the final test-pilot simulation is still cheaper - in terms of the number of lives lost if the plane crashes - than the first passenger flight. What one has here are *validated* simulations.

Taking shortcuts in this sequence of simulations makes it cheaper, but carries a considerable risk. Specifically, a series of simulations can be considered fully validated *only if* all the main effects and *all the higher-order interactions* of all the relevant variables are tested. Even in highly sophisticated space engineering efforts, the failure to test the higher-order interactions in simulations can have dire or very costly consequences.

For example, in describing the reasons why the camera on the \$ 1.5 billion Hubble Space Telescope would not be fully usable due to the faulty mirrors, Mr. J. Olivier, deputy project manager, was quoted as saying:

Separately, each mirror tested perfectly before launching ... and the flaw became apparent only when they were used together in space ... The mirrors were not tested in combination on the ground ... Doing so would have required mounting them on an elaborate structure that would have cost additional hundreds of millions of dollars. (Leary, 1990)

There are important methodological lessons here for the social sciences, in general, and legal psychology, in particular. It is dangerous and bordering on the irresponsible to draw conclusions and make recommendations to the legal system on the basis of simulations

which examine effects independently of their real-world contexts (i.e., on the basis of unvalidated simulations or those that are not designed to examine the higher-order interactions). And *all* legal decisions take place in highly complex contexts and are very costly (in both human and economic terms). Moreover, as we put it in an earlier paper,

... human social behavior - legal and illegal - is governed by a host of genetic, economic, personality, organismic, social, and cultural factors (and) [it] is precisely this complexity of antecedents of the more interesting and socially important aspects of human social behavior that makes the ... accurate prediction of such actions so difficult. (Konečni & Ebbesen, 1984, p. 5)

The *only* way to validate a simulation properly is to carry out a real-world study as well (and this in each jurisdiction to which one wishes to generalize). Over the years, we have studied many different criminal and civil legal decisions (cf., Konečni & Ebbesen, 1984). In some of the projects (e.g., the setting of bail, the processing of mentally-disordered sex offenders, the sentencing of convicted adult felons), several different methodologies were used (as many as six in the case of sentencing, of which four were different simulations and two were real-world studies). In *none* of the projects did the results of the experimental simulations (and of the non-experimental approaches, such as interviews, questionnaires, and rating scales) match those obtained by methods (coding of hearings, archival analysis) that were applied to real-world data.

Results of simulations may be valuable to some social scientists regardless of how well they match real-world data. For example, for someone studying judicial attitudes, the judges' notions of what influences their sentencing decisions are of considerable interest. But if one wants to understand how the real-world criminal-justice system operates, an experimental simulation of sentencing (whether with judges or students as subjects) has merit only to the extent that it successfully duplicates real-world findings and thus provides information about the judges' real-world sentencing behavior - but does so cheaply, conveniently, and flexibly (more on this later).

From the latter point of view, a poor simulation is useless at best. At worst, when poor or unvalidated simulations are used as a basis for influencing the legal system, they are not simply useless, they are conceivably dangerous - as we will show in the next two sections.

### **Research on the Death Penalty and Juror Verdicts**

One example of the potentially serious consequences of asserting external validity for unvalidated simulations is the "death-qualification" of jurors in capital-crime cases. In such cases, in the State of California, the same jurors decide, first, whether the defendant is guilty or not guilty (the verdict) and, second, if the person is convicted of first-degree murder, what the sentence should be (life imprisonment without parole or death). The goal of the death-qualification portion of *voir dire* (the jury-selection process) is to identify those individuals (veniremen) whose attitudes toward the death penalty prevent them from reaching either a verdict or a sentence based solely on the evidence presented in open court. The exclusion of veniremen who oppose the legally available capital-punishment

option regardless of the merits of the case has lead many to argue that the resulting juries are unfairly skewed toward conviction in the verdict phase of the trial (see Bersoff, 1987, for a review).

So great is the tendency to accept weak and inconsistent results when they support one's favorite policy position that the California Supreme Court cited a single, unpublished study by Haney (it was published four years later, in 1984) as the key factor in their decision to require individual sequestration of prospective jurors for the death-qualifying portion of *voir dire*. (The ostensible purpose of sequestration is to prevent the eventual jurors from being more conviction-prone in the verdict phase by virtue of knowing that other jurors also do not oppose capital punishment.) The opinion, written by then Chief Justice, Rose Bird,<sup>1</sup> included:

In order to minimize the potentially prejudicial effects identified by the Haney study, this court declares, pursuant to its supervisory authority over California criminal procedure, that in future capital cases that portion of the *voir dire* of each prospective juror which deals with issues which involve death-qualifying the jury should be done individually and in sequestration. (*Hovey v. California*, 1980)

The *Hovey* decision changed the way capital-crime juries are selected in California adding, at minimum, time and expense to the process.<sup>2</sup> (Slow justice is poor justice, in principle, and also because the passage of time lowers the probability that the truth about the case will be discovered in court, for example, because key witnesses for both sides may become unavailable for a variety of reasons.) While this kind of direct impact has been rare, it demonstrates a potential problem when findings from research, the external validity of which remains to be established, are used as an aid to legal reasoning and judicial action in real cases.

A review of the work done in the area and our own research (see below) convince us that the U.S. Supreme Court was right when, in a more recent decision (*Lockhart v. McCree*) it concluded - contrary to the *Hovey* decision - that the evidence on this issue is not yet sufficient to support the claim that the death-qualification *voir dire* increases the conviction-proneness of juries. In a sharp attack on the American Psychological Association's willingness to submit unsubstantiated *amicus* briefs, Elliott's (in press) analysis of the studies cited in the Association's *Lockhart* brief concluded that their results do not, in fact, support the brief's conclusion that the death-qualified juries are more conviction-prone. He also reported that the overall correlation between the death-penalty attitudes

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<sup>1</sup> Chief Justice Rose Bird and two other California Supreme Court Justices, Joseph Grodin and Cruz Reynoso, failed to be re-elected (under confirmation law) by the people of California in 1986. It is generally agreed that this occurred because of the Court's frequent reversal of death-penalty verdicts in a State where 80 % of the electorate favors capital punishment. Fifty-two of 55 death-penalty decisions heard by the court during the tenure of these Justices were reversed (Lacayo, 1986).

<sup>2</sup> For example, while we were doing research on this topic, jury selection was in progress at a murder trial in the San Diego Superior Court (*California v. Lucas*). Sequestered *voir dire* under the guidelines mandated by the *Hovey* (1980) decision was in its fourth month and expected to continue for at least two additional months. From an original pool of 500 veniremen, half had been excused for hardship and 109 had passed the death-qualification *voir dire*. General *voir dire* would not begin until the *Hovey* phase of the selection process was completed.

and verdict decisions averaged between .05 and .12 and barely accounted for 2% of the variance in verdict decisions.

Even if much higher correlations were the norm, however, another feature of the research in the area raises serious concerns about its external validity. In particular, none of the research (including Haney's 1984 study, and the Cowan, Thompson, & Ellsworth's 1984 study) has empirically examined the following rather obvious question: What is the effect of the death-penalty attitudes on verdicts in the context of variations in (a) the nature of the case and (b) in the strength of the evidence against the defendant?

With this in mind, we (Hock, Konečni, & Ebbesen, 1990) recently conducted three simulation experiments in which the above two factors were varied. We used simulation methodology on purpose, so that our results could be more readily compared to those obtained in other simulations, the external validity of which we were questioning. We thought, for example, that the size of the correlation between the death-penalty attitude and the verdict choice might vary with the specific features of the case (e.g., gruesomeness), which would raise doubts about the correctness of generalizing the claim that the death-penalty attitudes influence verdict decisions even across studies *within* the simulation paradigm. However, in all three studies, the strength of the evidence dominated verdict decisions to such an extent that in not one study did the pre-trial death-penalty attitudes account for a significant portion of the variance in individual verdict decisions. This occurred despite the fact that these same attitudes accounted for a large portion of the variance in sentencing decisions. In short, our results were consistent with the notion that even if the death-penalty attitudes are related to verdict decisions, the relationship is so weak that it would be obliterated by many case-factor configurations that are encountered in the real world.

One is tempted to conclude that some psychologists and justices have behaved as they claim jurors do: Their private attitudes against capital punishment have caused them to ignore the strength of the evidence and to assert external validity for a conclusion the truth of which as a scientific fact had been far from being established.

### **Research on the Confidence-Accuracy Relationship in Eyewitnesses**

To us, it seems striking that someone would want to talk about the relationship between the death-penalty attitudes and conviction-proneness on the basis of studies that do not vary something as obvious as the strength of the evidence is in the real-world capital cases. Is this merely ineptness (on the part of investigators, and journal reviewers and editors) or do personal biases (policy, ideological, etc.) interfere with the very design of experiments from the drawing-board stage on?

In regard to this issue, it is of interest to examine the research on the confidence-accuracy relationship in eyewitnesses. In *Neil v. Biggers* (1972), the U.S. Supreme Court commonsensically concluded that one of several factors that could be used to decide whether an eyewitness's identification was reliable was the confidence that the witness expressed in the identification. However, the previously mentioned recent survey of researchers and experts who testify in court about the reliability of eyewitnesses (Kassin et al., 1989) clearly suggests that most of them believe that the relationship between confidence and accuracy is weak or nonexistent. For example, over 80 % felt that the evidence for the

claim, "An eyewitness's confidence is not a good predictor of his or her identification accuracy," was reliable enough to testify about in court (presumably for the defense, as 93% of them had previously done, according to the survey). But what is the research basis for this consensus?

There is, in fact, a rather large and heterogeneous collection of simulation studies that report correlations between the eyewitness confidence and accuracy of identifications (see the reviews by Bothwell, Deffenbacher, & Brigham, 1987; Deffenbacher, 1980; Fleet, Brigham, & Bothwell, 1987; Wells & Lindsay, 1985). And although one review (Bothwell et al., 1987) found the correlations to average around .20, the variability in the size of the correlations across studies is quite large: At one end one finds statistically significant negative correlations and at other correlations well above .50.

More importantly, as in the death-qualification area, the researchers on whose work the expert consensus is based have failed to design the experiments and to analyze the results in a manner that takes into account the everyday functioning of the legal system. In particular, the researchers have ignored the simple fact that the prosecution overwhelmingly relies only on witnesses who express high confidence that they can identify the culprit(s) correctly. Witnesses who admit that their identifications are "just guesses" are virtually never used in court because of the ease with which their testimony can be destroyed by defense attorneys in cross-examination; yet, data obtained from such "witnesses" are routinely included in simulation studies.

Therefore, the correct test of the Supreme Court's reliance on the witnesses' confidence as one of the criteria for estimating their identification accuracy is to ask whether the variation in accuracy that is produced by such commonly studied variables as the duration of exposure and the retention interval can be explained by knowing how confident the witness is. And in a recent study of just this issue (Ebbesen, Konečni, & Boucher, 1990) we indeed found that the confidence that people expressed in their identifications accounted for all of the (highly significant) variation produced by the length of the retention interval and by the duration of exposure to the "culprit".

Thus, because of some elementary flaws in their reasoning about the role that the eyewitnesses' confidence plays in the legal system, and because of not being (or not wanting to be) aware of the differences between their studies and the real world, the researchers' published claims and the "experts'" litanies in court have potentially tilted the scale of justice toward unjustified acquittals by lowering the jurors' quite justified reliance on the witnesses' confidence.

### **The Proper Role for Simulations in Legal Psychology**

Based on the use to which simulations are typically put, one can surmise that many researchers believe that a good simulation is one that has "face validity", that is, the procedures somehow "look like" the contexts to which one wishes to generalize. For example, investigators frequently claim - explicitly or implicitly - that their studies have high external validity because videotapes of a simulated trial, rather than written summaries of the evidence, are used as stimulus materials, or because the subjects are somehow deceived to believe that their decisions will have "real" consequences. The face validity of such studies may be high, but their external validity remains *entirely* untested.



A puzzling extension of confusing face with external validity is the argument that one can test the degree of the latter in a given simulation with low face validity by comparing it to other simulations, with apparently greater face validity, along a single dimension (such as the representativeness of the subject sample) and showing that there are no differences in the pattern of results (O'Rourke, Penrod, Cutler, & Stuve, 1989).<sup>3</sup> The obvious logical flaw, again, is that face validity simply does not guarantee external validity. Merely because a result from one simulation (the external validity of which is not known) matches the result of another simulation, differing from the former along one dimension, does not establish that both results reflect a process operating in real-world legal settings.

Were legal settings readily available for observation, accurate measurement, and controlled field experimentation, the only reason to conduct simulations would be their lower social and economic cost. But because research is not built into the legal system, some argue that simulations provide the only way to discover whether causal relations exist among certain variables and that the simulation should therefore be the primary data-collection method in legal psychology. However, knowing that a causal relationship exists in one setting does not guarantee that it accounts for any variance in the legal settings to which psychologists and lawyers wish to generalize. Other variables (that were held constant at arbitrarily chosen levels in the simulation) may completely control the behavior of the participants in the legal setting, leaving virtually no variance left to be explained by the "discovered" causal process.<sup>4</sup> Alternatively, the causal process may have a limited range of values over which it operates, such that when the levels of other variables change, the causal process is no longer operative.

Despite these criticism, we are not arguing that there is no role for simulations in legal psychology, but rather that they should be more thoughtfully and carefully used. In our opinion, in psycho-legal research, the first step should always be that the existence of a relationship (for example, the probation officer's recommendation and the judge's sentence are identical 87 % of the time) be established on real-world data by means of archival or observational research methods. A family of simulations can then be carried out, using

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<sup>3</sup> O'Rourke et al. (1989) used virtually identical stimuli, tasks, instructions and contexts as were used in five prior experiments on eyewitness identification accuracy. These procedures asked subjects to view a videotape of a simulated robbery in which the robber was present for 75 s and then seven days later make identifications from a serially presented videotaped lineup. The authors simply replicated prior procedures with a sample of subjects broader than college students. That the identification results did not vary with the age of the subjects was used to suggest that the effects of various factors (weapon presence, disguise, and context reinstatement) were externally valid. This claim was made despite the fact that no tests had been carried out to see whether the lack of an interaction with the age factor might not depend on the duration that the robber was present, the length of the retention interval, the nature of the instructions the subjects received, and so on.

<sup>4</sup> Other variables may dominate for a number of different reasons. They may simply control more of the variance, that is, the causal connections may be stronger. The range of values of the factors manipulated in the simulation may be very small compared to the range of values of other factors that occur in the real world, or the range of values of the variables studied in the simulation may simply never occur in the real world.

the range of values of variables that had been discovered in real-world legal data.<sup>5</sup> The simulations would be finely honed (in terms of the type of subjects, instructions given to them, method of presentation of stimuli, supposed consequences of the subject's decisions, and so on) until the pattern of results obtained with real legal data can be reliably duplicated. Once this has been accomplished, further simulations can be carried out to tease apart hopelessly confounded processes. To insure that these additional simulations continue to capture the basic relationship, they can be tested on both the original and new real-world legal data, collected specifically for this purpose.

The co-occurrence pattern of the variables is equally important. For example, when studying bail-setting (Ebbesen & Konečni, 1975, 1982a), we found that the amount of bail recommended by the district attorney was highly correlated with the amount recommended by the defense attorney. A simulation that varied the district attorney's recommendation from \$ 1,000 to \$ 10,000 and the defense attorney's recommendation from \$ 0 to \$ 5,000 would produce several combinations of levels (e.g., the district attorney recommends \$ 1,000 and the defense recommends \$ 5,000) that never occur in the real world, despite the facts that the simulation met every criterion for a well-designed factorial experiment and that the range of variables matched those that most frequently occur in the real bail hearings.

In our view, in legal psychology - a field where enormous human and economic costs are potentially at stake - simulations can be relied on as a source of information for the legal system only if they are fully validated. The best way to insure this is to incorporate them into a coherent, carefully conceived real-world/simulation/real-world alternating sequence. Real-world data and (ideally) archival methodology (see Konečni & Ebbesen, 1979) should be used as standards against which to test, repeatedly, the results obtained in such a sequence of simulations.

## Conclusion

The general approach to legal psychology that we have been recommending for over ten years, and the archival methodology itself, are labor-intensive and often painfully slow. Thousands of cases have to be meticulously coded by a well-trained army of coders, and patience and cooperation by the various agencies of the legal system have to be cultivated. The unorthodox locations and style of this type of research, as well as the methodological and statistical sophistication, also require a different approach to graduate education in legal psychology. The models of legal decisions that have been developed in this work are characterized by a degree of predictive power and simplicity that are rather counterintuitive, in reference to both legal and lay truisms. However, the *contents* of the models, that is, the variables that are uncovered, are sometimes reacted to by researchers (those who have excellent hindsight) with an "I could have told you so" shrug. Yet, for example, our three-tiered causal model of sentencing (e.g., Ebbesen & Konečni, 1981;

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<sup>5</sup> It makes little sense, for example, to study the effects of duration of exposure on eyewitness memory in simulations that vary exposure duration from .25s to 2.0s, if the shortest duration of exposure that occurs in real crimes is 15s and the longest is several days. The duration-accuracy function may be flat after 10s of exposure.

Konečni & Ebbesen, 1982a, 1984) containing a total of five variables, was not, and possibly could not have been, revealed by any other than archival methodology. The postscient researchers simply mistake their familiarity with individual variables for knowledge of the details and the intricate causal features of the overall model. Moreover, the model is just as interesting for the variables that it *excludes*, many of which are at the heart of popular theories in criminology, sociology, and psychology, especially those of the social-activist variety.

In our opinion, it is the laboriousness and slowness of the approach advocated here, the change in research orientation and training that are required, the academic incentive system as currently constituted, and the inertia of blind faith that what (sometimes) works in physics must work in legal psychology, which jointly maintain the continuing popularity of experimental and other simulations. And - we apologize for having to say this - because of the speed with which they can be carried out, simulations are a convenient way to disseminate one's ideological views on legal policies and procedures.

However, if one's goal is to understand how the legal system operates *in vivo*, simulations - except under carefully delineated conditions - are useless, and, if applied uncritically in the legal system, potentially detrimental to fairness, justice, and the rule of law.

If societies were sincerely interested in fairness and justice, their legal systems would incorporate methodologically sophisticated procedures for keeping data on their own performance. The on-line data collection and the development of continually adjusted causal decision models would insure that the legal participants and agencies (individually and collectively) behave in accordance with the rule of law. Such innovations would also make much of what we discussed in this article and what is currently being done in legal psychology superfluous. The logistics, trained manpower, and computing power for these procedures already exist in Western societies. What is lacking in these societies is the collective will to make their powerful, self-satisfied, and inert legal systems more self-analytical. Psychologists of law and other scientists should prod their societies and legal systems in this direction, but they can do so authoritatively and honestly only on the basis of a solid body of data about legal decisions, not the esoteric, irrelevant, or partisan findings obtained in *inert* simulations.

It is possible that the emerging democratic structures in Eastern, Central, and Southern Europe will give their legal systems the flexibility, open-mindedness, and enthusiasm that are needed to adopt the innovative, self-analytical stance we are recommending. Our remarks - at the Second European Conference on Law and Psychology in Nürnberg and in this article - are therefore to a large extent directed at our colleagues from these fledgling democracies. These colleagues are finally free to join the international community of psychologists of law, but they should ignore the fact that the latter are currently busy doing simulations.

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