Making the Legal System More Fair and Effective

Objective :Describe the sources of errors and biases that have to be overcome in order to make the legal system fair

Outside many court buildings throughout the world is a statue of "Lady Justice." As shown in Figure 12.10, she is depicted as blindfolded, which represents the idea that all people should be equal under the law and treated in the same, impartial manner. While this is an admirable ideal, it can be very hard to achieve in real life. As you learned in Chapters 2 and 6, it is very difficult for us to ignore the words, behav iors, or personal attributes of other people and to dismiss our preconceived ideas, beliefs, and stereotypes when thinking about and making decisions about people. Therefore, to achieve a fair and impartial legal system, many social psychologists believe that we must first understand the potential sources of error and bias that exist within the current legal system. By better understanding how people actually think about others and recognizing the possible risks for biased judgments in a legal context, we may then be able to take effective steps toward correcting problems. Let's look at what research has revealed about potential pitfalls and how we can seek to reduce them.

12.3.1: Social Influence in the Legal Process

In a sense, most legal processes involve an element of social influence. For example, during crime investigations, although police detectives attempt to discover the truth from the people they interview, they may inadvertently affect people's responses. Likewise, during trials attorneys attempt to persuade jurors, and perhaps the presid ing judge, of the guilt or innocence of the person(s) on trial. While social influence is a potential factor affecting many legal system activities, we will focus here on two par ticular areas where social psychology has identified issues that can affect the fairness of outcomes: how police lineups are conducted and the use of prior legal judgment information.

Lineups: How Social Pressure Can Lead to Errors One technique com monly used by police to help identify suspects is the **lineup** (see Figure 12.11). In this procedure, witnesses to a crime are shown several people, one of whom is typically a suspect in the case. The witnesses are then individually asked if they recognize anyone

in the lineup as the person(s) who committed the crime. To protect anonymity, wit nesses may view people through a one-way glass window or be shown photographs of them, which is likely to occur weeks or even months after the crime initially occurred. Although lineups are intended to reveal the truth, they can be subject to several forms of serious bias. In fact, despite the widespread belief in the truth-value of eyewitnesses, they are notoriously error-prone (Wells, Steblay, & Dysart, 2015). We will examine sev eral reasons why that is the case.

Consider the way in which suspects are presented in a lineup. In *sequential lineups,* suspects are presented one at a time, and witnesses indicate whether they recognize each one or not. However, in *simultaneous lineups*, all the suspects are shown at once, and witnesses are asked to indicate which one (if any) they recognize. Results of many studies indicate that sequential lineups are better in the sense that they reduce the likelihood that witnesses will make a serious mistake—identify someone who did not commit the crime. Steblay, Dysart, and Wells (2011) performed a meta-analysis of the many studies that compared rates of false identification using these two lineup presentation strategies, when the actual perpetrator was in the array presented to the witnesses. The meta-analysis con firmed that sequential lineups produce greater accuracy than simultaneous lineups. This is because in sequential lineups witnesses are forced to make absolute judgments, by com paring each individual to their memory of the person. In contrast, simultaneous lineups result in witnesses making comparative judgments between the suspects in the array they are presented with, which results in witnesses selecting the person who looks *most* similar to their memory of the person. When eyewitnesses of actual crimes are randomly assigned to view the same array of photo lineups in either a simultaneous or sequential procedure (Wells et al., 2015), no differences in correct identification occurs (25 percent overall). But, importantly, a reduction in false identifications occurs with the sequential procedure (11 percent) compared to the simultaneous procedure (18 percent).

Another important, but subtle, form of social influence on lineups is the type of instructions given to witnesses. Totally neutral instructions simply ask witnesses to identify the person who committed the crime; no statements are made about whether this person is or is not present in the lineup. In contrast, biased instructions suggest that the suspect is present and the witnesses' task is to pick this person out from the others (Pozzulo & Lindsay, 1999). Such instructions can cause witnesses to feel pressured to identify someone as the suspect, even if they do not recognize anyone present

Research by Pozzulo and Dempsey (2006) very clearly illustrates the danger of biased instructions. They had both children and adults watch a videotape of a staged crime—one in which a woman's purse was stolen. Both groups were then shown a lineup consisting of photos of people who resembled the person who committed the crime. Simultaneous presentation of the photos was used. A key aspect of the study involved instructions to the participants. In one condition (neutral instructions), they were told that the criminal might or might not be present in the lineup. In the biased instructions condition, participants were led to believe that the suspect was indeed present in the lineup. In fact, though, this person was *not* included in the lineup. The key question was: "Would the biased instructions lead participants to falsely identify someone—an innocent person—as the culprit?" That's exactly what happened. Both adults and children were more likely to falsely identify an innocent person after hear ing the biased instructions (ones leading them to conclude that the suspect was pres ent) than after hearing the neutral instructions.

Further, when lineup administrators suggest to witnesses that their identifications are correct, rather than giving no feedback, this strongly increases the witnesses' con fidence in their identifications (Smalarz & Wells, 2015). As these researchers noted, mistaken but confident eyewitnesses have been involved in 72 percent of the instances where innocent people have been convicted and later revealed to be innocent as a result of DNA testing.

These findings indicate that social influence is at work in police lineups, and strin gent procedures should be adopted to avoid such effects. Instructions to witnesses should be neutral and not imply that the potentially guilty party is actually present, or that the witness after identifying someone has indeed picked the person suspected by police. Sequential rather than simultaneous lineups should be used whenever possi ble. Social influence is a powerful and often very subtle process, so guarding against it is a difficult task. But doing so will help to increase the likelihood that lineups, which are commonly used around the world, provide more accurate results.

Effects of Prior Convictions and Prior Acquittals As shown in Fig ure 12.12, you've likely seen a trial in a movie or TV show in which the judge tells the jury: "Ignore that information." However, once we have been exposed to information, people do not function like a computer and just delete it from their memory. In fact, there is a large body of evidence indicating that jurors cannot "strike inadmissible evidence from the record"—and behave as if they never heard or saw it

(Lieberman & Arndt, 2000). This is not due only to the ways in which memory works, but also to several social psychological effects we described in earlier chapters. For instance, belief perseverance is the tendency to adhere to our beliefs or attitudes, even when new evidence indicates inaccuracies. Another example is the hindsight bias—the tendency to believe that "I knew it all along," when an event occurs or new information is received that is consistent with the conclusion reached. So, when evidence is presented that jurors are not supposed to remember and use, they may later assume they knew the information before it was presented in court and be actually influenced by it.

Effects like these can occur with respect to a defendant's past convictions. If this information is revealed to members of a jury, they are more likely to convict the defendant of the present charges. After all, jurors may reason, this person already has a criminal record, so the chances are good that he or she also committed the present crime (e.g., Greene & Dodge, 1995). Might information concerning prior acquittals also increase the likelihood of juries reaching a guilty verdict since the defendant already is believed to have a criminal record? On the other hand, it is possible that information on past acquittals could actually help the defendant and reduce the likelihood of a guilty verdict. From this perspective, because the defendant was declared innocent in the past, she or he may well be seen as innocent now. Which of these effects is most likely to occur? And, does a judge's instruction to a jury to ignore such information about a defendant's past help them to do so?

A study conducted by Greene and Dodge (1995) tested these possibilities. The researchers arranged for mock juries to read a description of a bank robber trial. Some of these juries were presented with information about the defendant's past while others received no information of this type. In addition, some of the juries were instructed by the judge to ignore the information provided, while others were not. Then, all juries rated the defendant's guilt, and how confident they were of their decisions. Results indicated that juries that received information on both past convictions and acquittals were more likely to decide that the defendant was guilty now, than those who received no information on the defendant's past record. Moreover, instructions to ignore such information had virtually no effect: Information about the defendant's past, still influenced juror decisions. In short, once evidence was introduced, warnings to ignore it had little or no effect. Understanding how information that people have when impressions of others are being formed—even if such informa

tion is false—clearly has important implications for the legal system.

The Influence of Prejudice and Stereotypes
in the Legal System

If justice were truly blind, then, it would be completely unaffected by race, gender, ethnic background, and other factors. In other words, decisions by judges and juries would be based entirely on evidence, and the characteristics of defendants would have no effect. However, as human beings, each of us enters any social situation, including legal proceedings, with complex sets of attitudes, beliefs, values, and stereotypes concerning various groups. It is unquestionably the case that these factors can influence the decisions people reach as jurors, even if they intend for them not to do so.

The Importance of Racially Diverse Juries Before members of juries are selected, they are questioned by the opposing attorneys (defense, prosecution). Individuals whose answers indicate strong biases that could interfere with their fair evaluation of the evidence are not chosen to be jurors. This examination process is known as *voir dire*, an Anglo-French phrase that means "to speak the truth." In instances where the case may be race relevance, pretrial questioning can ask potential jurors if they have any biases or prejudices that would prevent them from judging an African American defendant fairly. Jurors selected as a result of such questioning tend to be less likely to vote guilty when the defendant is black compared to those jurors not subjected to questions about their potential racial biases.

One factor that might influence jurors' actual decision making is the racial composition of the jury. Sommers (2006) investigated the effects of jurors' racial diversity on their deliberations and decisions. Prior to this research, the role of juror diversity was not known. One possibility is that, in racially diverse juries, white members might be more reluctant to discuss negative evidence for a black defendant than a white one. And, perhaps information about racial injustice would be more likely discussed in racially mixed juries than in all white or all black juries. This research sought to determine whether there might be important beneficial effects of juries with racial diversity among the jurors.

To test these possibilities, Sommers (2006) assembled two different types of mock juries: Half were all white and the other half were racially diverse. The juries were then shown a tape of an actual trial in which a black defendant was charged with sexual assault. The evidence was mixed, so there was much for the juries to discuss. Measures of the quality of their discussions were then obtained, for instance, the

length of deliberations, the number of facts discussed, the number of relevant facts ignored, and the number of inaccurate statements made about the evidence.

As you can see in Table 12.1, the diverse juries were superior to the homogeneous (all white) juries in several respects. The diverse juries spent more time deliberating, discussed more facts, were less likely to make errors in discussing the evidence, and were less likely to ignore relevant information. In short, racially diverse juries functioned more effectively—and fairly—than those that were not diverse. The overall message, then, is clear: Attorneys conducting voir dire to choose jurors should do their best to construct racially diverse juries.

How Characteristics of Defendants and Jurors Can Influence Legal Proceedings Characteristics of defendants on trial have been found to influence jury decisions and other legal outcomes. In the United States, African American defendants have generally been found to be at a disadvantage. For example, they are more likely than whites to be convicted of murder and to receive the death penalty and are disproportionally over-represented on death row (Price, 2015). In addition to race, physical appearance (attractiveness), gender, and socioeconomic status can be influential factors in legal proceedings. For example, people accused of most major crimes are less likely to be found guilty if they are physically attractive, female, and of high socioeconomic status rather than low (Mazzella & Feingold, 1994). Attractiveness has been studied the most. In real as well as mock trials, attractive defendants have a major advantage over unattractive ones with respect to being acquitted, receiving a light sentence, and gaining the sympathy of the jurors (Downs & Lyons, 1991; Quigley, Johnson, & Byrne, 1995; Wuensch, Castellow, & Moore, 1991).

In addition to race and attractiveness, another visible characteristic—gender— plays an important role in legal proceedings. In general, female defendants tend to be treated more leniently by juries and courts than male defendants, but this depends on the specific crime. For instance, in cases involving assault, female defendants are more likely to be found guilty than male defendants, perhaps because assault is considered an even more unacceptable and unusual behavior for women than men (Cruse & Leigh, 1987).

The gender of jurors, too, can be important. One of the consistent differences between male and female jurors is in their reactions to cases involving sexual assault. In judging what occurred in cases of rape, men are more likely than women to conclude that the sexual interaction was consensual (Harris & Weiss, 1995). An analysis

of the results of 36 studies of simulated cases of rape and child abuse revealed that in responding to defendants accused of either crime, women were more likely than men to vote for conviction (Schutte & Hosch, 1997)

When Eyes Deceive

Is eyewitness testimony often inaccurate? Stories abound of innocent people who have wasted years in prison because of the testimony of eyewitnesses who were sin cerely wrong (Brandon & Davies, 1973; Doyle, 2005; Wells & others, 2006). Seventy years ago, Yale law professor Edwin Borchard (1932) documented 65 convictions of people whose innocence was later proven (and who were released after receiving clemency or being acquitted after a new trial). Most resulted from mistaken identi fications, and some were narrowly saved from execution. In modern times, among the first 130 convictions overturned by DNA evidence, 78 percent were wrongful convictions influenced by mistaken eyewitnesses (Stambor, 2006). Another analysis estimated that 0.5 percent of 1.5 million American criminal convictions each year err, with roughly 4,500 of these 7,500 wrongful convictions based on mistaken iden tification (Cutler & Penrod, 1995).

To assess the accuracy of eyewitness recollections, we need to learn their overall rates of "hits" and "misses." One way for researchers to gather such information is to stage crimes comparable to those in everyday life and then solicit eyewitness reports. Over the last century this has been done many times in Europe and elsewhere, sometimes with disconcerting results (Sporer, 2008). For example, at California State University, Hayward, 141 students witnessed an "assault" on a professor. Sev en weeks later, when Robert Buckhout (1974) asked them to identify the assail ant from a group of six photographs, 60 percent chose an innocent person. No won der eyewitnesses to actual crimes sometimes disagree about what they saw. Later studies have confirmed that eyewitnesses often are more confident than correct. For example, Brian Bornstein and Douglas Zickafoose (1999) found that students felt, on average, 74 percent sure of their later recollections of a classroom visitor but were only 55 percent correct.

Three studies of live lineups conducted in England and Wales show remarkable consistency. Roughly 40 percent of witnesses identified the suspect. Forty percent made no identification. And, despite having been cautioned that the person they

witnessed might not be in the lineup, 20 percent made a mistaken identification (Valentine & others, 2003)