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Linking the Visions

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By Phoebe C. Ellsworth • Kirkland and Ellis Professor of Law; Robert B. Zajonc Professor of Psychology

I am an empiricist; I believe that when courts and legislatures address empirical questions about human behavior, their decisions should be informed by empirical research. Courts and legislatures are faced with such questions every day. Do juries really understand the facts and the law? When parents divorce, what kind of custody arrangement is least harmful to the children? Why do people favor or oppose the death penalty? How can we tell when we can trust the testimony of a young child? For that matter, how can we tell whether an adult's testimony is accurate?

Legal analysts and decision-makers have traditionally addressed questions like these with rational analysis, intuition, and common sense. What my training in psychology gives me is a set of systematic techniques for ruling out some answers and confirming others, for *testing* my rational analyses, intuitions, and common sense. For example, in my research on juries I have brought in groups of 12 jury-eligible citizens, shown them a videotaped trial, and then let them deliberate and try to reach a verdict, just like real juries. Their deliberations are videotaped, and afterwards I ask them questions to find out how well they remembered and understood the facts of the case and the judge's instructions on the law. My research, and that of other psychologists who study juries, shows that juries come to an accurate understanding of the facts. During deliberation they correct each other's mistakes, and by the end of this process their understanding of the facts is more complete and accurate than it was at the beginning. However, this is not true for their understanding of the law. The jurors want to get the law right, they try to get it right, but they fail, and group deliberation doesn't help.

A critic might argue that these results are untrustworthy, because these were just mock jurors, not real ones, so maybe they didn't take their task very seriously. One of the beauties of systematic research is that the scientist's toolkit contains many methods, and so it is possible to do a second study to compensate for the weaknesses of the first. So I interviewed real jurors after they had decided real cases, and asked them questions about the legal instructions they had been given. They were just as confused as the mock jurors.

During the 1990s the jury system was widely criticized, and a number of reforms were proposed. Systematic empirical research is extremely useful (of course I would say it is essential) in discovering which of the problems are real and which of the proposed reforms are effective.

The opportunities for applying empirical methods to legal questions are endless. I have done research on factors that affect the accuracy of eyewitness testimony, on the reasons for people's attitudes toward the death penalty, and on the fairness and the quality of decision making of juries in real cases. The differences between my expertise and that of my lawyer colleagues make collaboration especially valuable. When two well-trained people with very different approaches to defining and answering questions work together on a project, the experience is much more challenging but also much more exciting than it is when the two people think alike to begin with. It can be frustrating, sometimes even exasperating, but it is always exciting, and in general I think that multidisciplinary collaboration results in answers that are both deeper and more comprehensive.

An empirical approach has one other attribute that is rare in traditional legal analysis, and that is the possibility that the results will show that your ideas were just plain wrong. For instance, in one study I set out to test the hypothesis that witnesses make many more false identifications when they are only shown the suspect by himself than when they have to pick him from a full lineup. Everybody "knew" this, including the Supreme Court, but in fact there wasn't any research on the question. My plan was to fill this small gap. Much to my surprise, witnesses made just as many mistakes — or more — with the full lineup. This unexpected finding led me to new ideas and new research paths that I would not have been able to conceive if I had not been an empiricist.