

1 A Modern Approach to the Psychology of Legal Decision-Making

Logan A. Yelderman, Jason A. Cantone, Monica K. Miller, and Matthew T. Huss

Decisions made within the legal and criminal justice systems are often consequential, shaping the lives of individual people and providing a foundation by which people perceive, interpret, and understand justice. These decisions are made by individual people (e.g., judges, case workers, and attorneys) and collectives (e.g., juries, legislatures, and parole boards), and often have far-reaching implications. Together, they create a historical backdrop to how society views and comprehends current legal decision-making. This book provides a comprehensive understanding and detailed synthesis of legal decision-making research, examining theories and decision models and discussing applications to law, policy, and practice from a psychological perspective.

Legal decisions are commonplace and many are well known to the general public. Prosecutors, judges, and juries make high-profile decisions every day. For example, consider the recent cases of attorney Alex Murdaugh. During Murdaugh's criminal trial, the media closely followed the killing of his wife and son, the charges the prosecutor made, the decisions of the judge and jury, and the statements and qualifications of dozens of witnesses. In March 2023, the jury found him guilty after deliberating for less than three hours, and he was sentenced to life in prison without the possibility of parole. But Murdaugh's time in the media and public spotlight continues. Soon after his trial, he decided to appeal his convictions and sentence. Further, in May 2023, prosecutors indicted Murdaugh on 22 federal charges related to wire fraud, bank fraud, and money laundering. The Murdaugh cases publicly highlighted the legal decision-making processes related to both violent and financial crimes, and how they can become closely intertwined.

Other decisions, however, are not nearly as public or publicized. Behind-the-scenes legal decisions begin with the (allegedly) injured party's decision whether to report the crime (in criminal trials) or file a lawsuit (in civil trials). Police officers, witnesses, suspects, forensic experts, and forensic mental health evaluators all make decisions that determine whether and when a case proceeds in the legal process. Once filed, the judge could dismiss the case, the defendant could be found incompetent to stand trial, the defendant could accept a plea bargain or settle via an alternative dispute resolution (ADR) method, or any number of other legal decisions could terminate a case before trial. If the case does go to trial, then a host of legal actors

(e.g., jurors, judges, experts, witnesses, and mental health examiners) all make decisions that affect the trial's outcome. This applies to both criminal and civil trials.

In criminal trials, even more, decisions are made after a conviction. Judges, and less commonly jurors, give sentences to the criminal and mental health experts to decide whether the offender is a risk and is amenable to treatment. Parole board members and probation officers will further make decisions that affect the offender's sentence or other outcomes.

Important decisions are made in noncriminal trials as well. Decisions are made in immigration courts, civil matters (e.g., negligence cases), juvenile delinquency cases, and juvenile dependency cases. These cases often reflect special situations in need of legal action to sort out disagreements, confirm the status of a person or group of people, establish and protect individual people's rights, and regulate interpersonal transactions.

Finally, some decisions are made outside the trial context. Criminals decide whether to commit a crime (including violent crime and white-collar crime), legislators decide what is considered a crime, and social workers decide how to manage nonnormative behavior. Often trials are averted through ADR, leading to legal decisions made through negotiation rather than the adversarial court system. Sometimes judges decide that a person cannot make decisions for themselves. Such judgments can affect a person's ability to make decisions such as making a will, managing financial affairs, or getting a guardian to make healthcare decisions.

The Cambridge Handbook of the Psychology of Legal Decision-Making includes discussions of all these wide-ranging areas in which legal decisions are made. Our goal for this handbook is to present the reader with state-of-the-art summaries of both emerging and established topics in legal decision-making as well as directions for future work and practical applications to law, policy, and practice. The main sections of the book contain chapters that synthesize the historical context and research that has led to the current state of knowledge; the chapters also identify gaps in the existing literature, propose future directions of study, and present policy implications.

In addition, this handbook differs from other law and psychology texts with the inclusion of seven brief "perspectives from the field" essays, which are written by professionals (e.g., social workers, attorneys, probation officers, and police officers) who provide insight into how research translates into their day-to-day practice. These essays bridge the gap between academic research and the real world, as the authors comment on how research in the substantive chapters relates to their real-life experiences.

In sum, this interdisciplinary book covers topics that include decisions made within the criminal justice system (e.g., police, parole board), the legal process (e.g., defendants, judges, attorneys, and juries), clinical settings (e.g., clinicians conducting assessments and providing treatments), and broader legal settings (e.g., social workers, legislators). Ultimately, each chapter is intended to be a helpful source for readers who want to immerse themselves in a body of scientific research related to particular legal decisions. This chapter sets the foundation for the book, starting with a discussion of the psychological basis of legal decisions.

What Is Psychology?

This handbook concerns the psychology of legal decision-making. For this book, psychology refers to thoughts, attitudes, emotions, and behaviors, and the chapters address the applications of these concepts in legal decision-making and the processes involved. With an emphasis on psychology, the chapters place the person and groups of people at the center of the decision-making process and examine how those people's attitudes, cognitions, emotions, and behaviors influence decision outcomes and the route by which their decisions are made. This section provides an overview of two main areas of psychology that are found throughout the book: clinical assessments and psychological theory.

Clinical Assessment

Clinical and forensic psychologists use a variety of assessment tools to help them make decisions. This handbook provides numerous examples of how clinical assessments can affect the decisions of individual people in the legal system, including attorneys, judges, juries, and parole boards.

Clinical assessments are often used to evaluate mental states. For example, psychological assessments of offenders at the time or around the time of a crime might help determine an offender's mental state and provide the basis for an insanity plea (see Maeder & Yamamoto, Chapter 25), as well as the validity of an insanity defense. Though experts might not be able to testify directly to the implications of the assessment for the verdict, they can testify on the outcome and interpretation of the assessment for the court (see Kois et al., Chapter 18). Many of these types of assessments involve the use of formal diagnostic criteria, as in the DSM-V (see Madon et al., Chapter 11), in criminal cases and proceedings; however, clinical assessments can also be used in assessing children's witness statements (see Block et al., Chapter 19), civil proceedings (see Foote & Goodman-Delahunty, Chapter 35), and the provision or denial of benefits in immigration cases (see Barber-Rioja & Vendzules, Chapter 34).

Clinical assessments can also help establish a defendant's competency to stand trial (see Heilbrun & Zapotocky, Chapter 17) or a person's competency to make legally binding decisions, such as writing a will or deciding not to challenge a child custody dispute (see Nason & Drogin, Chapter 43). These assessments evaluate whether people understand the nature of their decisions and comprehend the possible outcomes and legal implications of their decisions.

Clinical assessments also assess risk for offenders, communication of risk throughout the legal process (see Krauss & Ellsworth, Chapter 30), postconviction risk (see Serin et al., Chapter 32), risk of future reoffending (see Huss & Hand, Chapter 33), general risk of violence (see Boccaccini & Murrie, Chapter 14), and responsiveness to treatment (see Bellamy et al., Chapter 28).

Readers interested in the clinical assessment will find numerous chapters explaining their development, effectiveness, predictive ability, related biases, psychometric properties, history of use, appropriateness of use, and typical context of use.

Although clinical assessments and other tools often undergo revisions, critical analyses, and implementation changes due to evolving case law and legal shifts (including local, state, and federal rules), it is clear from the past 50 years that the use of clinical assessments and psychological evaluations is increasing in legal decision-making and is accepted at an increasing rate in the legal and criminal justice systems.

Psychological Theories

This handbook also informs readers of how psychological theories help explain the process and outcome of legal decisions, presenting empirical tests of these theories where available. This section introduces the reader to some of these theories.

Throughout the book, the chapter authors describe psychological theories and apply them to specific decision-making contexts, roles, or decision-makers. For instance, Peoples et al. (Chapter 39) discuss several specific theories of power structures that influence legislative decisions, including state-centered theory, pluralist theory, and elite-power theory. Edwards et al. (Chapter 20) discuss a variety of social cognitive processes associated with cognitive psychology theories (e.g., stereotypes, cognitive biases, attribution theory, and counterfactual thinking) that have been applied to jury decision-making. These are examples of chapters that rely heavily on specific theories to explain decision-making.

Some theories in the book are applied primarily in one or two areas, while others are applicable across multiple decision-making contexts. For example, numerous chapters discuss the use of heuristics and biases in legal decision-making. Cantone et al. (Chapter 4) provide examples of heuristics and biases that can affect judicial decision-making and include a discussion of two systems of thinking: one which more often employs heuristics and biases and another which employs more deliberate and systematic thinking. DeMatteo et al. (Chapter 10) likewise discuss the use of heuristics and biases in judges' rulings in Daubert decisions. Meanwhile, Perlin (Chapter 2) discusses the use of heuristics in mental health and disability law. The concept of implicit bias is brought up in Summers et al.'s chapter (Chapter 38), with specific reference to the implicit association task (IAT) in measuring unconscious bias in heuristic decision-making, and by Cantone et al. (Chapter 4) regarding whether and how judges can be trained about unconscious bias. Yelderman et al. (Chapter 31) similarly discuss how parole board members might use the heuristic process of "routinization" when making discretionary release decisions, which is the process of being biased toward the reliance on only certain types of information and devaluing other types of information. Combined, these chapters highlight different ways that legal decision-makers use mentally efficient, though sometimes error-prone, strategies to make rather complex and often consequential legal decisions.

Beyond discussions of unconscious bias, other chapters discuss how both explicit and implicit biases can affect the legal decision-making process. Grown and Neal (Chapter 13) discuss how biases can affect forensic evaluators' decisions, and then link their susceptibility to bias to professional experience and level of expertise. Biases are further discussed regarding jury decisions in criminal trials that might be

affected by race (see Hunt, Chapter 3) and gender (see Hanzelin et al., Chapter 21), and how biases can affect civil case decisions (see Hans & Robbenolt, Chapter 37).

As discussed in other chapters, research on bias in decision-making goes beyond defendants and attorneys. Spellman and Frampton (Chapter 26) examine “myside” bias in judicial decisions in which judges evaluate evidence and information and compare it to the general opinions and attitudes they held prior to that evaluation, while West and Rorie (Chapter 6) discuss age bias in the context of bystander reporting. Across these chapters, the authors explore how assumptions, expectations, and stereotypes might result in biased decisions.

Other theories that appear across chapters include theories describing how decision-makers’ personalities might impact how they view information, evaluate evidence and others, and think about their decisions. Both Jones and Karandikar (Chapter 36) and Snow and Eastwood (Chapter 15) discuss personality from the Big Five theoretical perspective. Jones and Karandikar examine the Big Five as they relate to the perpetration of white-collar crimes and Snow and Eastwood examine how the Big Five play a role in confirmation bias during interviewing. Lieberman (Chapter 22) examines the trait of self-monitoring as a predictor of juror adherence to judicial instructions. All three chapters describe how underlying personality traits can provide individual-level foundations by which decisions are made and information is interpreted.

Another theoretical perspective described in many chapters is attribution theory. Hunt (Chapter 3) and Edwards et al. (Chapter 20) both discuss differences in dispositional and situational attributions as they relate to racial bias, and Maeder and Yamamoto (Chapter 25) discuss dispositional and situational attributions as they relate to gender bias. Additionally, Yelderman et al. (Chapter 31) examine attributions as explanations of crime, specifically those held by parole board members when making release decisions. These four chapters provide an overview of how attribution theory can be applied in legal decision-making, including promising ideas for future work.

Although many theories are found in numerous chapters throughout the handbook, some theories are more limited to one or two chapters. Two chapters examine juror decision-making, using the story model, one of the seminal theories of jury decision-making. Schweitzer et al. (Chapter 24) and Ruva (Chapter 7) discuss how jurors categorize and filter information through their own narrative of the crime, fitting information that is consistent with the narrative and discarding inconsistent information. These chapters describe the story model and demonstrate how it applies in juror decision-making contexts (including in cases involving pretrial publicity).

Two chapters discuss focal concerns theory: Goodman-Delahunty et al. (Chapter 16), on prosecutorial decision-making, and Yelderman et al. (Chapter 31), on parole decision-making. Both chapters emphasize community safety in their theoretical applications and examine the validity and utility of focal concerns to explain legal decision-making.

Numerous other theories that apply to legal decision-making are discussed in the book. For example, Maeder and Yamamoto (Chapter 25) discuss the chivalry–paternalism hypothesis in insanity cases. Peoples et al. (Chapter 39) discuss power

structure theories in legislative decision-making. Catlin et al. (Chapter 12) discuss social influence and negotiation theories in plea bargaining. Girvan et al. (Chapter 40) discuss conflict theories in ADRs. Haney (Chapter 29) discusses the process effect of death qualification and the role of moral disengagement in capital sentencing decisions. Haney-Caron et al. (Chapter 9) examine social influence theories and theories of obedience regarding decisions related to *Miranda* rights. Madon et al. (Chapter 11) use self-regulation theory and ego depletion to understand and describe decisions related to interrogations and decisions. Jones and Karandikar (Chapter 36), Preston-Shoot (Chapter 42), and Ruback and Kurpiel (Chapter 5) examine various theories and frameworks that incorporate culture and socialization in legal decision-making. Jones and Karandikar also discuss the use of general strain theory to explain white-collar crime. Perlin (Chapter 2) discusses mental health law from a therapeutic jurisprudence theoretical approach. Ruva (Chapter 7) and Haney (Chapter 29) use pretrial publicity and media exposure models to understand juror decision-making. Schweitzer et al. (Chapter 24) and Yelderman et al. (Chapter 31) evaluate decision-making under the influence of emotions. Serin et al. (Chapter 32) use identity theory to examine probation decision-making, and Walters (Chapter 41) assesses criminal decision-making with rationality-based decision-making theories. In some cases, theoretical models are developed specifically for a particular phenomenon, such as bystander decision-making models, as described in West and Rorie (Chapter 6).

Overall, this handbook provides numerous examples of how psychological theories can explain how legal decisions are made. The aforementioned examples are only a few of the theories discussed by the authors across numerous areas. Although the theories mostly originated in different disciplines of psychological research (e.g., cognitive psychology, social psychology, developmental psychology, and personality psychology), they often work in tandem with theories from related fields, including criminal justice, law, criminology, sociology, and communications. Combined, the theories form a foundation for the legal decision-making research presented throughout the book and help explain how decisions are made.

What Is the Law?

This book concerns psychology, which focuses on the “decision-making” component of this book’s title. But the book specifically focuses on legal decision-making. This necessitates a discussion of what is meant by terms such as “law” and “legal.” This section provides the foundation for understanding the legal components of this handbook.

Legal Decision-Making: Context

The preceding paragraphs of this chapter highlight many of the types of decisions made by criminals, victims, judges, jurors, psychologists, probation officers, and many more decision-makers. Just as there are many different decision-makers, there

are many contexts for such decisions. In the legal process, few cases make it to trial (Galanter, 2004; US Sentencing Commission, 2017), so it is essential to also consider pretrial legal decision-making (including related to plea bargains and ADR/settlement contexts), as well as decisions made outside of the courtroom in hospitals, jails, and outpatient facilities (see Heilbrun & Zapotocky, Chapter 17), probation officer offices (Serin et al., Chapter 32), interrogation rooms (Madon et al., Chapter 11), the deliberation room (Hanzelin et al., Chapter 21), immigration proceedings (see Barber-Rioja & Vendzules, Chapter 34), and legislative houses (Peoples et al., Chapter 39). But other settings are less formal; for instance, criminals, victims, and bystanders might make decisions at home or at the scene of the crime. The location of decisions is important because outside influences (e.g., family, friends, social media) can affect decisions. As Ruback and Kurpiel (Chapter 5) note, “victims are likely to be influenced by others (especially friends and relatives) who might or might not have the victims’ best interests at heart.”

This book highlights major legal decisions throughout the legal process and provides an overview and state of the science in each chapter. However, as shown in this handbook, the science of legal decision-making should be considered alongside the laws and statutes that guide such decisions.

How Does the Law Guide Decisions?

Making effective legal decisions, regardless of the context, requires an understanding of the laws and statutes that guide these decisions. For example, when judges rule on the admissibility of expert evidence, they do so with an understanding of the Federal Rules of Evidence (FRE) (including FRE 702) and the Daubert standard established by the US Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993), as discussed in DeMatteo et al. (Chapter 10), Costanzo et al. (Chapter 23), and Grown and Neal (Chapter 13). Judges also rely on legal guidance when making juvenile waiver decisions (see Bellamy et al., Chapter 28), deciding whether to accept a plea (see Catlin et al., Chapter 12, for discussions of *Brady v. United States* (1970) and *North Carolina v. Alford* (1970)), and deciding on dispositive motions (as in *Ashcroft v. Iqbal* (2009); see Cantone et al., Chapter 4).

In addition to providing guidance for judges, case law also guides and directs juries by establishing rules governing jury selection or how juries are to consider certain types of evidence and make decisions. Maeder and Yamamoto (Chapter 25) examine how insanity decisions were largely shaped by the early case of Daniel M’Naghten (*Queen v. M’Naghten*, 1843). In some instances, a series of major decisions cumulatively shape a particular legal decision or decision-making process. Haney (Chapter 29) provides a detailed timeline of major case decisions that shaped the current death penalty landscape. Other laws directly affect the composition of decision-makers, such as the number of jurors necessary to render a verdict, as in *Williams v. Florida* (1970; see Hanzelin et al., Chapter 21), or offer guidance regarding the rehabilitation of juveniles (see Bellamy et al., Chapter 28 for discussions of *Roper v. Simons* [2005], *Graham v. Florida* [2010], and *Miller v. Alabama* [2012]), juvenile dependency cases (see Summers et al., Chapter 38), prosecutorial

decision-making (see Goodman-Delahunty et al., Chapter 16), how courts can assist self-represented litigants (see Tabashnek et al., Chapter 27), and competency standards for trial participation and legally binding decisions (see Heilbrun & Zapotocky, Chapter 17, Kois et al., Chapter 18, and Nason & Drogin, Chapter 43).

Cases also involve interactions between the police and community members. *Miranda v. Arizona* (1966) and *North Carolina v. Butler* (1979) both guide how law enforcement officers are required to advise suspects of their rights when being detained or talking with law enforcement during interviews and investigations; they also shape how citizens interact with law enforcement (see Haney-Caron et al., Chapter 9 and Madon et al., Chapter 11). Similarly, *Weeks v. United States* (1914) guided warrantless search and seizures, laying the foundation for the requirements of law enforcement during searches of personal property (see Spellman & Frampton, Chapter 26).

Regardless of the context, the same principles apply to effective decision-making. As Preston-Shoot (Chapter 42) discusses in the context of social workers but which could also be applied to legal contexts throughout the handbook, legal decision-makers must maintain ethical, legal, and professional literacy; they must understand the laws that guide their decisions, the appropriateness and fairness of their application, and the regulations that surround these processes. Laws, statutes, regulations, guidelines, and recommendations set the parameters for decisions. However, within these parameters, there is often discretion. How decision-makers use this discretion in making their decisions is based on numerous psychological factors discussed throughout this book.

The Relationship Between Psychology and Law

The two previous sections discuss psychology (e.g., theories/methods) and the law (e.g., laws and important cases). Sometimes this is an uneasy relationship. Psychology works with probabilities, estimates, and predictions. In contrast, the law likes black-and-white, clear-cut answers. Referring to competency to stand trial decisions, Heilbrun and Zapotocky (Chapter 17) point out that “[s]ome of these decisions are legal, entirely within the domain of the court. Others are forensic, associated with appraising defendants’ relevant symptoms and functional-legal capacities to best inform legal decision-makers. Yet others are clinical, with decision points regarding how to intervene, for what duration, and with what intensity.” For example, while psychologists can determine whether someone fits the criteria to be diagnosed with schizophrenia, their clinical assessment does not ultimately answer the question of whether the person was insane at the time of the offense; the trier of fact retains that decision.

The role of the psychologist in law and the legal system is continually evolving. Psychology is increasingly becoming integrated into the legal realm, though this is much truer in research than in practice. With societal trends carving out a substantial need for mental health professionals, their input, and their research, the legal system will likewise need to incorporate more psychology professionals. Some clear

examples of these needs can be found in the prevalence rates of mental illness in prisons, mental health courts, and other specialty courts, and the understanding that juveniles and adults are developmentally different in the ways they think, are motivated, are guided by emotions, and respond to treatment. Perhaps one of the best ways for psychologists to contribute to the legal and criminal justice systems is through research and the development of knowledge and recommended practices. Many courts strive to incorporate evidenced-based treatments, evidence-based practices, and evidence-based decisions, so it is worthwhile to better understand how research is conducted on legal decision-making.

How Is Legal Decision-Making Studied?

To understand and interpret research, such as legal decision-making in this case, it is critical to know how researchers conduct their studies. This knowledge provides context when interpreting results. For example, if a person is studying police decision-making, then it is important to know if the researchers are observing police during academy training, taking notes during public ride-alongs, or reviewing bodycam and dash-cam footage. Each of these methods of studying police decisions might have different implications. This section will provide an overview of the ways researchers study legal decision-making by reviewing many of the methods presented in the chapters of this book.

Surveys

Arguably, the most widely used method in social science research is the survey or questionnaire. This is the practice of asking a participant several questions and allowing them to self-report their answers. It is popular because it allows the participants to answer for themselves, which likely increases accuracy, and it is quite easy to administer, especially with recent advances in technology.

Judges are a difficult-to-reach population, and whilst numerous methods can be used with judges fairly easily, such as surveys and observations, other methods are harder, such as experiments. Often surveys are used to assess judges' opinions, observations, attitudes, and decisions. For example, DeMatteo et al. (Chapter 10), Tabashnek et al. (Chapter 27), and Kraus and Ellsworth (Chapter 30) provide examples of surveys being used to study judicial decision-making. Surveys can also be great to assess public attitudes. For example, Girvan et al.'s (Chapter 40) discussion of ADR detailed survey results that provided insight into the public's consumer and political perspectives and attitudes. These types of broad and wide-scale surveys can help guide and direct legal decision-making research and practice recommendations. Surveys can also be used to study experts, such as clinical practitioners (Costanzo et al., Chapter 23). Surveys provide a relatively straightforward avenue by which researchers can access otherwise hard-to-reach populations (e.g., experts and judges).

Another form of questioning similar to surveys is interviews. Interviews can be useful to better understand legal decision-makers as they reflect on a recent decision or decision in the past, such as work done with jurors after they served on a trial, as described in Hans & Robbennolt (Chapter 37) and Hanzelin et al. (Chapter 21). Interviews are useful especially to gain more in-depth responses. They also can be valuable when the research questions are exploratory or novel. However, interviews can be more time intensive and difficult to coordinate than surveys.

Experiments

Determining cause and effect is one of the main goals – if not *the* main goal – of research, and this is also true in legal decision-making. While knowing what types of decisions people make is of interest, understanding *why* people make certain decisions is what most researchers want to know. To determine cause and effect, experiments are needed to associate two variables, control for possible extraneous factors, rule out possible alternative explanations, and control the order of events. To do this, experimental designs must be used.

Several areas of legal decision-making research rely, quite considerably, on experiments. One of these is eyewitness identification (see Katzman & Kovera, Chapter 8). One of the reasons why experiments are useful and accessible in eyewitness research is because eyewitnesses are usually ordinary members of the public, who are very accessible, and the conditions of eyewitness events can be fairly accurately replicated or mimicked in a research setting, whether in a lab or in natural environments.

Another area that has been heavily impacted by experiments is juror decision-making. However, juror and jury research involving experiments is usually conducted with “mock” jurors or juries. This is because it is unethical to run experiments with actual jurors and juries. After all, the outcomes affect the potential legal/criminal status of the defendant. Mock jurors are participants who are eligible for actual jury service (typically) and address some version of a simulated trial (shortened version of a trial usually presented as a live reenactment, video, or text transcript). Much mock juror research is conducted on individual jurors, though some research does use mock juries (see Hanzelin et al., Chapter 21).

Mock juror research is sometimes conducted in civil contexts (see Hans & Robbennolt, Chapter 37, and Hanzelin et al., Chapter 21), but it is primarily conducted in criminal contexts. Mock juror experiments allow researchers to examine how changing one or two things about a trial can affect verdict outcomes. For example, Hunt (Chapter 3) discusses mock juror research in which racial prejudice is examined by asking different groups of mock jurors to make a verdict decision but varying the race of the defendant between the two groups. Moreover, Ruva (Chapter 7) describes research in which mock jurors are exposed to different kinds of pretrial information, and Schweitzer et al. (Chapter 24) describes mock juror research in which different types of evidence are manipulated and shown to different groups of mock jurors. Mock juror research is especially popular in “specialty”

criminal trials, such as insanity trials (Maeder & Yamamoto, Chapter 25) and death penalty trials (Haney, Chapter 29).

Likely as an outgrowth from the rapid popularity of mock juror research, “mock” decision-making research has begun to permeate other areas, including mock plea decisions (see Catlin et al., Chapter 12), mock parole decisions (see Yelderman et al., Chapter 31), mock bystander witness decisions (see West & Rorie, Chapter 6), and mock investigator interviews (see Snow & Eastwood, Chapter 15). Although the field seems to be generally more accepting of mock juror decisions because participants are generally representative of jury-eligible citizens, mock decision-making in other areas has not been easily welcomed. For example, parole boards have special training, and actual offenders face consequential outcomes compared to mock offenders in plea decision-making scenarios. However, in all “mock” decision research the onus is on the researcher to make the best case that mock decisions are somehow translatable to real decisions.

Experiments are used in a wide array of research and, throughout this handbook, experiments will be discussed across various contexts, such as perceived criminal intentions (see Walters, Chapter 41), restorative justice program performance (Perlin, Chapter 2), or confessions (see Madon et al., Chapter 11). However, legal decision-making research involves statute and law-binding processes, and because the consequences of actions are so significant, experiments are not plausible in many situations. As a result, many other research methods are used.

Other Observational and Nonexperimental Studies

Although experiments might not be practical or ethical in many situations, nonexperimental designs and observational studies can be used to make important comparisons. For example, the effects of policy reform can be assessed by comparing outcomes before, during, and after implementation (see Goodman-Delahunty et al., Chapter 16). Video-taped forensic interviews can be assessed to examine coercion or suggestibility (see Block et al., Chapter 19). Observational research can also help identify themes in certain decisions, such as what types of emotions people experience, differences in decisions based on demographics, and the use of assessments in decision-making (see Yelderman et al., Chapter 31). Comparison research designs can be used when researchers want to know if expertise plays a role in decision-making, such as with parole training (Yelderman et al., Chapter 31) or forensic science training (Growth & Neal, Chapter 13).

Case file reviews provide researchers with access to data collected in the past along with data from hard-to-reach populations. Case file reviews are used in research about *Miranda* comprehension (Haney-Caron et al., Chapter 9), attorney decisions in insanity defense cases (Kois et al., Chapter 18), judicial decision-making (DeMatteo et al., Chapter 10), and juvenile justice (Summers et al., Chapter 38). Huss and Hand (Chapter 33) describe experimental research in which forensic psychologists and psychiatrists were asked to conduct case file reviews. Case file reviews are time consuming and are limited to the data provided, but they can still produce unique research opportunities for legal decision-making. Another

way to access information is to access public records or observe and collect publicly available data, such as legislative voting records (see Peoples et al., Chapter 39) criminal records and recidivism (see Ruback et al., Chapter 5; Yelderman et al., Chapter 31), and program outcomes (Heilbrun & Zapotocky, Chapter 17).

Formal assessments are often used to better understand legal decision-making. Boccaccini and Murrie (Chapter 14) discuss the Psychopathy Checklist-Revised (PCL-R) and its use in forensic mental health evaluations. Nason and Drogin (Chapter 43) discuss the role of the Adult Functional Adaptive Behavior Scale and the Assessment of Capacity for Everyday Decision Making Scale in the context of civil commitment.

Legal decision-making researchers have also used various forms of media content to better understand legal decisions and factors that impact legal decisions. For example, Haney (Chapter 29) describes research that analyzed newspaper articles, which included stories about death penalty cases, and evaluated who the sources were for the information printed in those articles. West and Rorie (Chapter 6) discuss research that involved video surveillance from real-world incidents as research materials in bystander studies. Yelderman et al. (Chapter 31) describe research in which video recordings of parole hearings were coded and analyzed in combination with release data.

After a significant amount of research is published on a subject, specifically quantitative research, scholars can use a method called “meta-analysis” in which the results of numerous studies are compiled to create a “big picture” of that particular subject of study. Edwards et al., (Chapter 20) describe meta-analysis techniques used to present a sort of overall statement of how race impacts juror decisions across dozens of studies.

As shown across the handbook, legal decision-making research is not done just for the sake of research. It is applied across different contexts to provide actionable information to inform and improve decisions. Often this comes in the form of guidelines. For example, research on eyewitness identification led to the release of scientific review papers outlining the more influential factors in eyewitness identification; these findings have been shared in American Psychological Association–authored amicus briefs filed with the US Supreme Court (see Katzman & Kovera, Chapter 8). Another example of using research to form guidelines is the “five stage model” for assessments. This model provides guidelines and recommendations as to how evaluators should conduct assessments, what information they should gather, and how they should interpret and communicate the results (see Foote & Goodman-Delahunty, Chapter 35).

Legal decision-making research shares the goal of eventually using the results to make suggestions or actual changes to improve and refine the legal system. In many instances this is the case, but in other areas the research is currently underway and not yet advanced enough to produce sound recommendations and changes. Nevertheless, the pursuit of such goals remains important and hinges on the types of methods and the extent to which these methods closely represent real-life circumstances so that the public will support and trust both the research and the recommendations word? from it.

Overview of the Book

The book is divided into several parts. Part I consists of four chapters. This introduction chapter is a broad overview of the purpose, layout, and content of the book. Two other chapters lay the foundation for later chapters by describing the basic psychological principles and the justice principles that underlie legal decision-making. The final chapter in this section addresses a critical issue in many areas of legal decision-making: diversity and bias.

Part II consists of several chapters regarding decision-making in the pretrial phase. These include decisions made by victims and witnesses, which will largely determine whether the crime is brought to the attention of authorities. The section also includes discussions of decisions made by police, prosecutors, and forensic experts who will determine whether charges are filed. Decisions by suspects (e.g., whether to confess or plea bargain) will determine if the case goes to trial. Decisions made by clinicians regarding competency and insanity will also determine the course of the trial. Judges make pretrial decisions about the admissibility of evidence under Daubert rules. Finally, this section includes pretrial influences on trial outcomes, such as pretrial publicity.

Part III consists of several chapters regarding decision-making in the trial phase. These include decisions made by juries, judges, attorneys, and experts. The section also includes chapters about the influence of instructions, experts, evidence, and emotions on jury decisions (both criminal and civil). Next, the section provides chapters on the decisions by attorneys and experts about the nature and process of presenting evidence.

Part IV consists of chapters regarding decision-making in the postconviction phase. This includes presentencing, sentencing, prison, and postprison decisions. Parole officers and probation officers make such decisions. This section also includes a chapter on sentencing in death penalty cases. Other chapters describe how clinicians decide and communicate information about the defendant's risk and treatment amenability, both of which can affect sentencing.

Part V consists of several chapters regarding decision-making in other legal issues or settings. These include topics such as decisions made in juvenile dependency and delinquency cases, in alternative dispute resolution settings, and in civil settings requiring a determination of competency (e.g., writing a will). The chapter also summarizes the research on decisions made by legislators, social workers, children, and criminals.

Part VI consists of seven brief essays that are "perspectives from the field" written by those who work in relevant areas (attorney, judge, trial consultant, social worker, probation officer, clinician, and police officer). These author-professionals comment on the relevant chapters and provide commentary and recommendations for future research based on their own experiences. These are intended to encourage readers to think about the ways academic research is relevant to the real world. These "perspectives from the field" essays are intended to bridge the gap between academic research and its application in the real world.

The final chapter provides a take-home message and discusses the overarching themes across chapters, offering future directions and policy suggestions as needed. The conclusion weaves together the main points of the other chapters and addresses ways in which researchers studying one group (e.g., police officers) can benefit from research on other groups (e.g., jurors). The authors focus on theories and measures that are (or could be) used across groups. Finally, the chapter reflects on the “perspectives from the field” essays written by professionals, noting the future research and methodological considerations raised by the authors and addressing how researchers and professionals can better work together to apply research to practice.

Conclusion

This handbook is a collection of chapters on how various legal decisions are made by various legal actors. These terms are used broadly to include a multitude of decisions, such as decisions to commit a crime, jury verdicts, and decisions as to what criminal charges to bring against an accused suspect. The legal actors include a dozen or more groups, including victims, people injured by someone else’s negligence, judges, and police officers. As such, we believe this is the most encompassing work of its kind.

We hope that this handbook will provide students and academics with the background to start their research on these legal decision-making topics. Beyond academic research, however, we hope that the book will be beneficial to professionals in many fields. Legal professionals (including attorneys, trial consultants, and judges) often do not receive psychological training; this handbook will allow them to examine the psychological foundations of the decisions they make every day and to apply those lessons going forward to better inform their practices. Policy-makers and practitioners could also benefit from understanding how psychology and law affect decisions, and may draw from the policy and practice recommendations made throughout the volume. Others in applied fields (e.g., policing, social work) will also benefit from a broad understanding of legal decision-making and its application to their work. Psychologists in many fields will benefit from learning about the legal aspects of topics.

In conclusion, this handbook aims to provide broad overviews of the science related to numerous legal decisions. The experts who wrote these chapters have summarized the research in that area of legal decision-making in hopes of enabling readers to better understand that body of research’s history and shape its future.

References

- Galanter, M. (2004). The Vanishing trial: An examination of trials and related matters in Federal and State courts. *Journal of Empirical Legal Studies*, 1(3), 459–570.
- United States Sentencing Commission. (2017). *2017 Sourcebook of Federal sentencing statistics*. The Commission.