report, and one puts it down with some despair. We haven't gotten far in answering Farran's basic research question about "how language is altered or modified given different environmental conditions" (p. 19). And the current economic situation can only aggravate the "stress-inducing life events" that affect parent-child relationships (Snow *et al.*, p. 54) and escalate the effects on school-age youths that Ogbu describes. But such despair must not become grounds for a public policy of doing nothing for children now. (For an analysis of the potential consequences of such a policy see "A Children's Defense Budget: An Analysis of the President's Budget and Children," Children's Defense Fund, Washington, D.C., 1982.) For example, McGinness reports briefly the important follow-up study by Lazar *et al.* ("The Persistence of Preschool Effects," Cornell University, Ithaca, N.Y., 1977) of children who attended 14 different experimental preschool programs before 1969 and are now in high school. Although early IQ gains were not maintained, the experimental children had sufficiently lower levels of retention in grade and referral to special education to repay the cost of their preschool experiences.

COURTNEY B. CAZDEN
Graduate School of Education,
Harvard University,
Cambridge, Massachusetts 02138

Psychology Applied to Law

The Psychology of the Courtroom. NORBERT L. KERR and ROBERT M. BRAY, Eds. Academic Press, New York, 1982. xiv, 370 pp. $29.50.

The Criminal Justice System. A Social-Psychological Analysis. VLADIMIR J. KONEČNI and EBBE B. EBBESEN, Eds. Freeman, San Francisco, 1982. xiv, 418 pp. Cloth, $20; paper, $14. A Series of Books in Psychology.

The British criminal justice system is said to be like the mannered ritual of a Japanese tea ceremony imposed on an assembly line. The American system shares some of the ritual and probably involves greater mass processing. In addition, we have our own native customs. We honor the common sense of ordinary people. Our Bill of Rights curbs governmental power in the name of individual rights. Our lawyers and judges are both excessively skeptical and gullible about the symbol and substance of science and technology. Finally, we have never invested anything close to the resources needed to carry out any coherent theory of criminal justice. We get about what we should expect. As is true at many theaters, one who examines the costumes and sets too closely will be disillusioned, and one who loves the show should hesitate to venture backstage.

The two books under review offer studies of parts of our criminal justice system. Both are collections of essays written, for the most part, by social psychologists. Other behavioral sciences are ignored or dismissed in a few sentences. With a few exceptions, both books see judges and lawyers as, at best, fools who know not what they do. Legal rules are assumed not to explain much of what happens in the system. However, the approaches of the two books are dissimilar: Kerr and Bray represent the best of a research tradition that Konečni and Ebbesen seek to overthrow as speedily as circumstances permit.

The book edited by Kerr and Bray focuses on the courtroom. Seventeen authors contribute ten essays dealing with the adversary system, jury selection, jury decision-making, the reliability of eyewitness testimony, and the psychology of judging. All in all, the message of the book is that there is a great risk of bias and error in the courtroom. Most of the chapters apply psychological findings and theories to courtroom issues or report experiments in which an investigator attempted to simulate features of a trial to subjects acting as witnesses or jurors. The editors note the difficulty of studying real trials and the high cost of creating realistic simulations. They argue that even highly artificial methods can suggest what to look for in an actual process.

The book edited by Konečni and Ebbesen focuses on the criminal justice system rather than the courtroom. Indeed, Konečni and Ebbesen suggest that psychologists have been excessively preoccupied with juries and that, given the rarity of jury trials and the prevalence of plea bargains, juries could be ignored as mere "noise" in the criminal justice system. That system involves a sequence of "decision nodes," and the book considers choices made at these points in the process. For example, there are chapters on decisions to commit a crime, to report one to the police, to arrest, to grant bail, to prosecute, to convict a defendant, to sentence, and to grant parole.

Konečni and Ebbesen advocate what they call archival analysis. In archival analysis one codes the transcript of a hearing and the file containing all the documents available to those involved, say, in the decision about what sentence to impose on a person convicted of a crime. Then one determines how much is explained by which factors. Konečni and Ebbesen contrast the merit of this behaviorist approach with the flaws of other commonly used methods. For example, in their studies of sentencing decisions, traditional methods such as interviews and simulations indicated that sentencing is a complex process, with every case different. Archival analysis, however, showed an extraordinarily strong association between the probation officer's recommendation to the judge and the actual sentence imposed. In effect, the judge announced a decision made by a probation officer. In turn, the recommendations were based on a very few factors. Sentencing hearings were not decision-making occasions but expensive ritualistic performances staged for the benefit of the defense lawyer, the offender, and, perhaps, the public.

Konečni and Ebbesen recognize that their preferred method cannot be applied easily to many decisions involved in the system. Criminals, for example, do not create a file before they decide to rob a bank. When necessary, the editors offer essays based on other research methods, including simulation. However, they attack conventional social psychological studies that "borrow concepts from theories and attempt to test them in situations that simulate a few isolated, impoverished aspects of the legal system."

In the view of Konečni and Ebbesen, judges and lawyers do little more than conduct rituals unrelated to the real operation of the criminal justice system. They could be eliminated, but, failing that, their roles should be played by people with an appreciation of statistics, computers, and scientific method. The editors recommend that "on-line data gathering procedures capable of encoding numerous characteristics of each case . . . be instituted at each significant decision node. There seems no excuse for not transforming the criminal justice system into a sophisticated data-gather-

ing and data-analysis system with feedback features, making it a true self-experimenting system." Sentencing, for example, "could be considerably improved by computerization." Myths would be replaced by hard facts. We could then ask if the system is doing what we want it to do.

Konečni and Ebbesen see their position as unlikely to be influential in legal circles. "Legal Luddites" benefit from the status quo and are afraid of social science; prosecutors, defense lawyers, and judges "share similar values and distrust of applying scientific procedures to the law."

What can one who is properly, but not unduly, skeptical of the claims of both lawyers and social scientists gain from these books? They should be read together to gain the full flavor of their differences, and such a consideration of them offers much to ponder. Though we claim "a government of laws and not of men," the reality is discretion at point after point in the criminal justice system. Though we honor individual rights, the reality is mass processing, which almost inevitably turns discretion into rules of thumb. Witnesses can be mistaken and jurors can be biased. All actors in the system, in some measure, respond to self-interest. Many legally trained people want to play by ear, making use of what they call common sense rather than rigorous logic.

Nonetheless, both books can be questioned. Both suffer from having a psychological perspective that tends to underplay broader structural factors. The more traditional research reported in the Kerr and Bray book often fails to reflect operations of the total legal system. For example, a great deal of research by psychologists shows that eyewitness testimony may be unreliable. Undoubtedly the risk is real, and this research has prompted more care by police and more challenges from defense lawyers. Yet, as Wallace Loh has stressed (79 *Mich. L. Rev.* 659 [1981]), showing the fallibility of witnesses in a laboratory does not establish that lawyers engaged in plea bargaining or jurors making decisions are often misled. Moreover, jury studies seldom deal with the impact of socialization to the role or with the responsibility of deciding to send someone to jail. Perhaps more important, most criminal cases are diverted to juvenile procedures or plea bargaining. Those tried before juries are likely to be special. Yet unless these special kinds of cases are presented to experimental juries we may learn from simulations only how a jury might react to a type of case that a jury would never see. Finally, police often are under pressure to make certain kinds of arrests and not others, lawyers need to make a living and most criminal defendants cannot pay high fees, public defenders face heavy work loads, prosecutors are elected and need to win cases to guard their reputation, and judges need to keep their dockets moving and may be reluctant to send a convicted defendant to an overcrowded prison. Few of these considerations are recognized in research by psychologists, but there is reason to think they influence a great deal of what happens.

The essays in Konečni and Ebbesen also fail to recognize that what happens at one point in the system may influence and be influenced by what happens at other points. For example, police may not make an arrest if they think that prosecutors will not push for adequate sentences, judges will be too lenient, or parole boards will let out those convicted too soon. Sentencing hearings may usually be purely ceremonial, but they offer a chance to spot mistakes so often associated with mass processing or to add information relevant to the rules of thumb that guide the recommendations of probation officers. The chance that they could be embarrassed at these hearings may itself prompt probation officers to be more careful in making recommendations. Moreover, if prosecutor, defense lawyer, and probation officer all have done their jobs before the hearing, there may be little left to say. If judges seldom accepted the recommendations of probation officers and if hearings were points of decision-making, the system would not be working well.

Konečni and Ebbesen's view of the boundaries of the criminal justice system seems too narrow. Their model reflects the statute book and omits the press and television, elites in the community, the bar, and those involved in politics. Prosecutors, for example, court the press in trying to build and protect their reputations. The powerful can sanction police who too zealously enforce certain laws. Judges, too, are often elected and respond to pressure to crack down on crime. The rituals of the system may help legitimate both the law and society. At least some of those not directly involved with the criminal justice process may be reassured that something is being done about crime and that what is being done is fair.

Legal rules and processes, dismissed by Konečni and Ebbesen as ritual, may be our only insulation from politics and power, protecting whatever rationality and fairness there is in the system. The usual complaint against judges and lawyers is not that they are redundant but that their concern with due process and the rights of the accused makes the system inefficient. Perhaps the increased availability of public defenders, the innovations of the Warren court directed at police behavior, and the coming of due process to prison discipline have also proved to be empty rituals, swallowed up and transformed by the criminal justice system. But one reading Konečni and Ebbesen would be unaware of the great changes in rules and processes of the past 25 years. To agree that decisions in the system are not determined by legal rules is not to accept that doctrine has no influence. A broader focus might have suggested the need to account for the impact, if any, of these developments.

STEWART MACAULAY
University of Wisconsin Law School, Madison 53706

Political Developments in Prehistory

The Transition to Statehood in the New World. Papers from a conference, Clinton, N.Y., Jan. 1979. GRANT D. JONES and ROBERT R. KAUTZ, Eds. Cambridge University Press, New York, 1981. x, 254 pp., illus. $27.50. New Directions in Archaeology.

The 15th of April has just passed as I write this review, and most Americans have dispatched their annual tribute to representatives of our administrative chiefs. Taxes have not always been as certain as death. They are a product of comparatively recent political centralization that has a history covering only a small fraction of the archeological record.

This volume is a collection of papers that examine the general problem of political centralization and focus on archeological data from the New World. Jones and Krautz provide an admirable introduction. They review the venerable problem of definition of "the state,"