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***JURORS' PERCEPTIONS OF
THE INFLUENCE OF
EXTRA-EVIDENTIAL FACTORS
ON THEIR DECISION MAKING.***

A thesis presented in partial fulfilment
of the requirements for the degree of
Master of Arts in Psychology
at Massey University.

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ABSTRACT

One of the major assumptions underlying the jury system is that juries' verdicts are based exclusively on the evidence presented in court. However, many have challenged this assumption and claim that a number of extra-evidential factors influence jurors' decision making. The present research was designed to investigate jurors' perceptions of the influence of various extra-evidential factors related to the defendant, the lawyers and the judge on their decision making, and to examine possible relationships between jurors' perceptions of the trial participants and their evaluations of the defendant, and the lawyers and their cases. Structured interviews were conducted with sixty-nine respondents who had served on a jury within the last three years, and the data collected was statistically analysed using a .05 level of statistical significance. The results indicated that respondents perceived that some of the extra-evidential factors investigated had influenced their decision making, and relationships were also found between some of these factors and respondents' evaluations. The implications of the results are limited by various methodological considerations, particularly relating to the sample and the nature of the data, but the results do suggest that extra-evidential factors may influence jurors' decision making, and that this is an area worthy of further investigation.

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CHAPTER 1

INTRODUCTION

The legal system in New Zealand, and in many other countries has one distinctive, central feature - juries: 'ad hoc groups of amateurs' who are entrusted with making its most critical decisions (Sabini, 1992). The jury trial, has been described as "the most dramatic and . . . controversial element of the judicial process" (Fisher, 1982, p. 658). It is an institution by which 'ordinary' citizens are routinely drawn into the decision making apparatus of the criminal justice system to make decisions that directly affect the lives of many people every year.

History of the Trial by Jury

The trial by jury has a long history, but because it occurred in so many forms over the centuries, the precise origin of the modern trial jury and its functions is difficult to determine. In fact, it has been said that "[f]ew subjects have . . . baffled the research of the historian more than the origin of the jury trial" (Forsyth, 1971, p. 2).

Some scholars claim that it evolved from early German and Scandinavian tribunals. A form of democratic justice was practised by ancient Germanic tribes, and in the tenth century the Danes also used a type of group accusation of criminal activity (Nemeth, 1981). Others have argued that the similarities between these practices and the modern jury are only coincidental, and claim that the jury trial as we know it evolved from the Greek and Roman forms of trial by jury (see Guinther, 1988; Horowitz & Willging, 1984; Nemeth, 1981; Wrightsman, Nietzel & Fortune, 1994).

Five or six centuries before the birth of Christ, the law of the ancient Greeks prescribed that "those accused of wrongdoing should be allowed to argue their cases before a tribunal of their peers" (Guinther, 1988, p. 2). Trials took place before juries alone, without judges, and the size of the jury increased in direct proportion to the importance of the case (Abraham, 1980). In 400 B.C., Socrates was condemned to death after being tried by 501 jurors and a hundred years earlier, Alcibiades was tried for treason before 1,501 jurors (Abraham, 1980). Some ten centuries later, juries also appeared in Rome (Abraham, 1980; Horowitz & Willging, 1984).

Although there appears to be evidence of the existence of trial by jury in one form or another for centuries, the origins of the modern jury trial are often traced to 9th century France where the Carolingian kings devised a procedure called the 'inquisition' or 'inquest' (Abraham, 1980; Frank, 1950; Horowitz & Willging, 1984; Simon, 1967). This procedure was imported from France into medieval England by William the Conqueror with the Norman invasion of Britain in 1066, and was practised during the reign of Henry II (1154 - 1189) (Abraham, 1980; Hans, 1992; Horowitz & Willging, 1984; Simon, 1967).

However, these 'Clarendon' juries were not quite the same as the modern jury. Representatives of the king would be sent out to make inquiries about events among the local residents and would choose 12 'good and lawful' men of the neighbourhood to serve as jurors (Forsyth, 1971; Guinther, 1988; Hans & Vidmar, 1986; Horowitz & Willging, 1984; Rembar, 1980; Simon, 1967). They were summoned to declare the truth 'according to their conscience' and testified under oath about what they personally knew about certain individuals engaging in criminal activity (Forsyth, 1971; Guinther, 1988; Hans & Vidmar, 1986; Simon, 1967). Essentially they were called on to confirm the validity of accusations. If the 'jurors' were believed to be telling the truth, the accused would be arrested, charged and brought to trial by ordeal for the determination of guilt or innocence (Frank, 1950; Guinther, 1988; Horowitz & Willging, 1984; Kaplan, 1971). Thus, jurors were in effect witnesses rather than judges of fact.

Trials by ordeal took a number of forms. The ordeal of the hot iron and the ordeal of hot water both required the accused person to expose his or her hand to extreme heat. The injured hand was then bound up in bandages and if, after three days, the wound had healed and not become infected, the person was declared innocent. If not, the defendant was judged to be guilty. In another variation, the accused was bound up and immersed in a body of water. If the water 'rejected' the defendant's body, indicated by its floating, the defendant was judged guilty. A defendant who sank to a prescribed depth was pulled out and declared innocent (Hans & Vidmar, 1986).

This method of trial may seem ridiculous from a modern perspective, but those who lived in these times believed that events were controlled by unseen and unknowable forces. Ordeals, in all their various forms, were usually accompanied by prayers and

incantations and it was assumed that if the accused was innocent, God would intervene (Hans & Vidmar, 1986).

Eventually, faith in the ordeals began to decline and jurors started being asked whether the facts warranted a guilty or not guilty verdict. This meant that jurors were now functioning as both an accusing body and also passing judgment on the guilt or innocence of the accused (Abraham, 1980; Forsyth, 1971; Horowitz & Willging, 1984). The ordeal was not abolished as a method of trial, but remained for some years as an option available to defendants (Guinther, 1988).

However, by the beginning of the 13th century, trial by ordeal was under threat. In 1215, Pope Innocent III at the Fourth Lateran Council removed its religious sanction and forbade clerical participation in any religious ceremony surrounding this practice (Green, 1985; Groot, 1988; Hans & Vidmar, 1986; Kaplan, 1971). Then in June of the same year, the Magna Carta was signed, with Clause 39 stating that “[n]o freeman may be taken, or imprisoned, or disseised, or outlawed, or banished, or in any way destroyed, nor will we go against him, or send against him, except by the lawful judgment of his peers” (Levin, 1988, p. 493). This mandate brought the practice of trial by ordeal to an abrupt end, and trial by jury became the primary means of determining guilt or innocence in criminal cases (Green, 1985; Hans, 1992; Kaplan, 1971).

Eventually the role of the jury began to change and jurors no longer acted as a body of witnesses who made decisions on the basis of their own knowledge, but ‘neutral triers’, making decisions based solely on the evidence presented before them. Thus they were no longer providers of the facts but finders of the facts just as modern juries are.

The role of the modern jury is prescribed by the nature of the judicial system on which the legal system is based. The New Zealand legal system is based on English law and thus follows the ‘adversary model’ of procedure as opposed to the ‘inquisitorial model’ which is followed extensively in Continental Europe. The adversarial system is designed to promote informed and impartial decisions through the presentation of relevant information and arguments by trained advocates, who are pledged to give undivided loyalty to their clients, to a theoretically impartial tribunal (Horowitz & Willging, 1984; Wrightsman et al., 1994). Whether this is the best system to achieve justice is a topic of debate.

The Controversy Surrounding the Jury System

Virtually since its inception, the jury system has been the subject of much controversy and debate (Kassin & Wrightsman, 1988; Wrightsman et al., 1994). It has attracted “the most extravagant praise and the most harsh criticism” (Kalven & Zeisel, 1966, p. 4), and continues to do so today.

It is not hard to understand why the jury is a target for criticism from some: “It opposes the cadre of professional, experienced judges with this transient, ever-changing, ever-inexperienced group of amateurs” (Kalven & Zeisel, 1966, p. 3-4). In his essay entitled “Twelve Men”, G. K. Chesterton (1968) wrote:

Our civilization has decided . . . that determining the guilt or innocence of men is a thing too important to be trusted to trained men. . . . When it wants a library catalogued, or the solar system discovered, or any trifle of that kind, it uses up its specialists. But when it wishes anything done which is really serious, it collects twelve of the ordinary men standing around (p. 56).

Twelve ordinary citizens who have often had no previous contact with the court system, are selected more or less at random from the widest population. They are brought together briefly for the duration of a specific trial, and asked to perform a task without the benefit of any training. They are required to sit quietly and listen to “different versions of a story in which they have no personal interest” (Guinther, 1988, p. xiii) and evaluate evidence which is sometimes of a highly complex nature. They are entrusted with important powers of official decision making, retire to a room to “try to sort out what they believe to be the truth from all they have heard” (Guinther, 1988, p. xiii), and “decide upon matters affecting the reputation and liberty of those charged with criminal offences” (Baldwin & McConville, 1979, p. 1).

They are allowed to deliberate in complete privacy and to render their verdict as a group, without offering explanation or justification. They are accountable for that verdict to their own conscience and no one else, then, or at any time in the future (Baldwin & McConville, 1979). “[T]heir decisions do not establish a precedent that is binding on future cases, and in criminal cases if the jury acquits the accused their decision is final” (Brooks & Doob, 1975, p. 174). Upon rendering a verdict, they disperse and return to the community from which they were drawn (Baldwin & McConville, 1979).

When described in this way, it is not hard to understand why the jury system has attracted such harsh criticism from some quarters. Many writers have voiced doubts about the competence of juries. They have argued that ordinary citizens without any formal training in the law do not have the special skills necessary to evaluate the evidence impartially, accurately assess the facts of the case, and render fair verdicts (see Pfeiffer, 1992; Simon, 1967; Visser, 1987; Wrightsman, 1991). Juries, they claim, “fail to recall the evidence accurately, become confused by complex trials or those involving multiple defendants, and are often swayed by legally irrelevant information” (Visser, 1987, p. 1).

Judge Jerome Frank, who had many years of experience in the judicial system, was among those to criticise the jury for its lack of competence and efficiency. In his words: “the jury is the worst possible enemy of this ideal of the ‘supremacy of the law’”. For ‘jury-made law’ is, par excellence, capricious and arbitrary, yielding the maximum in the way of lack of uniformity, of unknowability” (Frank, 1950, p. 132), and elsewhere: “To my mind a better instrument than the usual jury trial could scarcely be imagined for achieving uncertainty, capriciousness, lack of uniformity, disregard of the [rules], and unpredictability of decisions” (Frank, 1950, p. 123).

Prominent trial lawyers have made statements along similar lines. Highly successful lawyer F. Lee Bailey (1978, cited in Wrightsman, 1978) wrote: “A trial by jury, conceived long before there was a United States as a great equalizer purporting to deliver to all citizens equal justice under law, is in fact a terrifying experience, riddled with uncertainty and often happenstance” (p. 138). Even Mark Twain has taken a shot at the topic: “The jury system puts a ban on intelligence and honesty, and a premium on ignorance and stupidity” (n.d., cited in Kassin & Wrightsman, 1988, p. 4).

Many critics have claimed that juries are swayed by subjective emotions and that their verdicts “are often based upon unwarranted and irrational sympathies and prejudice” (Hans & Vidmar, 1986, p. 131). Judge Frank summarized this assertion in a frequently quoted phrase: “[P]rejudice has been called the thirteenth juror and it has been said that ‘Mr. Prejudice and Miss Sympathy are the names of witnesses whose testimony is never recorded but must nevertheless be reckoned with in trials by jury’” (Frank, 1950, p. 122).

Defence lawyer Percy Foreman, known for his showmanship in murder trials was of the view that “[i]t is the object of the defense to prejudice the minds of all persons possible. . . . My clients want freedom, not justice” (n.d., cited in Smith, 1966, p. 93).

Evidential and Extra-evidential Factors

A number of assumptions exist within the legal system about juries and the way they reach verdicts. These assumptions include the following: (a) jurors respond without bias; (b) jurors can separate evidence from that which is not evidence and base their verdicts only on the evidence and the law; (c) jurors process the information with which they are presented, accurately and completely; (d) jurors can suspend judgment until all of the evidence has been presented and they are instructed in the law; and (e) jury deliberations are based on the evidence and the law and are not affected by group pressures or personal wishes (Wrightsmen, 1987; Wrightsmen et al., 1994).

Possibly the most fundamental of these assumptions is that juries’ verdicts are based exclusively upon the admissible legal evidence presented in the courtroom during the course of the trial in the form of testimony and exhibits. Such legally relevant considerations that pertain directly to the alleged crime are referred to as ‘evidential factors’.

However, evidential factors are not the only sort of information jurors are exposed to, they are also exposed to ‘extra-evidential’ factors (also referred to as ‘extralegal’ factors by some authors). Generally, extra-evidential factors are those that are legally irrelevant to the guilt or innocence of the defendant, and it is assumed that such information should not influence the jury’s decision making and the ultimate verdict. However, ‘this assumption has been challenged by many legal scholars and researchers. They maintain that juries do not reach verdicts solely on the basis of the evidence, but are influenced by a variety of extra-evidential factors, which ultimately affect their decisions. It is assertions such as these, that have provided the impetus for much of the research in the field of legal psychology.

History of Jury Research and the University of Chicago Jury Project

Interest in the application of psychology to the legal system has quite a long history, dating back to the early days of experimental psychology towards the beginning of this century. The first area of psycholegal research, as well as one of the oldest areas of applied psychology in general, was the reliability of witness testimony (Loh, 1981; Oskamp, 1984). In 1908, the first book written in English on the subject was published. It was entitled "On the Witness Stand" and was written by Hugo Munsterberg, Director of the Psychological Laboratory at Harvard.

The concept, however, "did not catch on, and Munsterberg's efforts brought him only disfavour from the rest of the psychological establishment" (Bermant, Nemeth & Vidmar, 1976, p. 3). A 'period of silence and inaction' in the field of psycholegal research followed, and lasted about 15 years (Loh, 1981). Then, towards the end of the 1920s, a revival of interest in psychology and law occurred. However, on the whole, not much was published about the jury during this period, and the few studies that were carried out "were not conducted in any disciplined way: the samples of jurors interviewed were small, the biases of the researchers were evident, and the results were not analysed with any sophistication" (Wishman, 1986, p. 256).

Thus, prior to the 1950s, legal psychology "had been an applied endeavour in name only. It had made little direct impact on litigation or judicial decision making" (Loh, 1981, p. 323). Aside from individual impressions, not much was known about how juries actually functioned (Wishman, 1986). The origin of jury research is usually traced to the 1950s, when the first and most frequently cited systematic empirical study of the jury, was conducted in Chicago.

In 1952 a team of researchers at the University of Chicago Law School were offered a \$400,000 grant by the Ford Foundation to find out as much as they could about how juries reach their decisions (Kassin & Wrightsman, 1988). According to the Dean of the University of Chicago Law School at the time, Edward Levi, the aim of the project that was to become known as the University of Chicago Jury Project was to

determine to what extent (a) the jury conceives of its functions the same way that the form of law conceives it; (b) the jury comprehends the judge's instructions; (c) the jury's criteria for a verdict are consistent with those laid

down by the law; (d) the jury comprehends the evidence in the case; [and,]
 (e) the jury was moved by 'rational' or emotional factors rooted in personality,
 social background, and the social situation of the courtroom, the jury box, and
 the jury room discussions (Wishman, 1986, p. 257).

The director of the project, Law Professor Harry Kalven, Jr., predicted that it would be "the most comprehensive study of the workings of the American jury ever undertaken" (Kassin & Wrightsman, 1988, p. 13).

The researchers decided to take the most direct approach to investigating juries' decision making processes, and sought to spy on the deliberations of real juries. In 1953 they asked federal judge Delmas C. Hill if he would assist in their research by allowing them to 'bug' the jury room in his courtroom in Wichita, Kansas. In the Spring of 1954, with the approval of the judge and lawyers, Harry Kalven and Fred Strodbeck hid microphones and tape recorders behind the heating system of the jury room and covertly recorded the deliberations of juries in five civil cases. In order to protect the rights of the individuals involved, access to the tapes was strictly controlled and the transcripts were edited to ensure anonymity (Hans & Vidmar, 1991). However, although this research was supposed to be a secret, it became public.

It was the first time in history that actual jury deliberations were recorded, and it would be the last. Kassin and Wrightsman (1988) explain how it was as if the researchers had hit a raw nerve. Later that year, at a conference in Colorado, the taping was described and an edited version of one of the recordings was played. Soon afterwards, a story about the recordings appeared in the Los Angeles Times and a huge public outcry ensued. Within days, newspapers, nationwide, carried more articles and editorials, all critical of this invasion into the jury room.

In response to the uproar, Attorney General Brownell announced that the "Department of Justice will present for the Congress at first opportunity a proposed bill to prevent such intrusions upon the privacy of the deliberations of both grand and petit juries of the Court of the United States by any persons whomsoever and by any means whatsoever" (Kassin & Wrightsman, 1988, p. 13) and a congressional investigation began. A federal law was subsequently passed by Congress specifically forbidding anyone from observing, eavesdropping on, or recording the deliberations of actual juries.

Many states followed suit, and today jury deliberations take place in privacy, “behind a closed door that cannot be opened by judges, social scientists, the jurors themselves, or anyone else” (Kassin & Wrightsman, 1988, p. 14).

Despite this, the researchers fulfilled all expectations, with an additional one million dollars donated by the Ford Foundation to support another four years of research. No longer able to observe juries directly, other less direct approaches were utilised, including analysis of trial statistics from court records, questioning jurors and other trial participants, experimental jury simulations, and courtroom observations.

Writing in the late 1950s, the researchers concluded that

[t]he jury takes its responsibility seriously; it checks many of its prejudices at the door of the jury room; it recognizes its special role as temporary members of the judiciary bound by rules of law and procedures not present in their business transactions or informal conversations. The fact is that ordinary citizens are willing to accept those trappings and are able to work within them. The fears voiced by critics that jurors are led by bias, incompetence, and irrelevant factors to make capricious decisions were not substantiated (Simon, 1975, p. 14-15).

The investigative function that the project played is evidenced by the large number of books and articles which members of the project contributed to the literature on jury functioning. The most significant of these was the seminal book, “The American Jury” by Harry Kalven and Hans Zeisel (1966). In this book, the authors report the results of the most extensive survey of jury trial outcomes ever undertaken.

The purpose of the study was to find out when trial by judge and trial by jury lead to divergent results. Kalven and Zeisel sent questionnaires to judges throughout the United States and collected data on 3,576 criminal trials heard between 1954 and 1958. After each trial, while the jury was deliberating, judges were asked to complete the detailed questionnaire which asked them to indicate what verdict they would have reached had they been responsible for deciding the case, and the jury’s verdict. The judges were also asked to give some other descriptive and evaluative information, and opinions regarding the nature of the case and the evidence, and the trial participants. They were also asked to speculate on how the juries had reached their decisions, and if their hypothetical verdict differed from the jury’s verdict, the judge attempted to identify the reasons for this.

In this manner, the researchers obtained data on how often the jury and judge disagree on the verdict, the direction of this disagreement, and an assessment of the reasons for it. The frequency of agreement data indicated a high degree of similarity between verdicts reached by juries and those the judge would have reached: the judge and jury agreed on the verdict 78% of the time. Of the remaining 22% of cases in which the judge and jury disagreed on the verdict, the juries were more lenient in 19% of them and were more severe in only 3%.

Kalven and Zeisel formulated a series of hypotheses to explain the disagreements and evaluated these using the converging methods of 'reason assessment' (the judges' impressions of factors within the trial that may have caused the disagreement), and cross-tabulation of cases on various features.

The authors first evaluated the possibility that judges and juries disagreed because jurors had difficulty understanding the evidence in the case, and found that disagreements were just as likely to occur in 'easy' cases as in difficult cases. After further analysis, Kalven and Zeisel concluded that a number of other factors were responsible for the judge and jury reaching different verdicts, such as different interpretations of the reasonable doubt standard, the jury's quarrel with the law itself, and its sentiments towards the defendant. Their results will be discussed more fully throughout the following literature review where appropriate.

Since its completion, this study has been criticised on the basis of its methodology. Primarily, the conclusions drawn about juries' decision making were based on judges' self reported perceptions and interpretations, and there is simply no way of knowing whether these were accurate. Furthermore, two different questionnaires were used during the study: the first was distributed between 1954 and 1955, and a second questionnaire was then developed which built on the first to include more specific questions (Hans & Vidmar, 1991).

The unrepresentativeness of Kalven and Zeisel's sample of judges has also been a target for criticism. Half of the 3,576 cases were reported by just 15% of the judges which means that "specific biases may not have been sufficiently counterbalanced" (Ellison & Buckhout, 1981, p. 134). In addition, owing to the lack of independence of the data, statistical tests were not possible.

While there were some methodological weaknesses in the study, it continues to be frequently referred to as the classic study on jury decision making and has also been frequently cited in Supreme Court and lower court decisions in the United States. Basically, Kalven and Zeisel described a variety of factors that judges believed were influencing juries' verdicts, and since the completion of this study, a great deal of research on juries has been conducted at many different research settings.

CHAPTER 2

APPROACHES TO JURY RESEARCH

“There can be few fields of scientific inquiry in which research is so heavily circumscribed and few institutions which are to such a degree protected as is the jury” (Baldwin & McConville, 1979, p. 132).

The major problem faced by those wishing to study the jury, and a difficulty that is unique to jury research, is that much of its activity is inaccessible since laws were put in place making it illegal to observe or record jury deliberations. Denied access to the behaviour of actual jurors, social scientists interested in conducting research in this area have been forced to adopt other indirect methods of investigation. The various research methods employed generally fall into two distinct categories: field studies involving real juries, and experimental research involving simulations of the courtroom trial and mock juries.

Experimental Research

Most of the research has been experimental, commonly referred to as jury simulation research, which was developed by social scientists to enable them to study jury decision making processes more directly (Hans, 1992). These simulation studies typically involve research participants being randomly assigned to experimental conditions and exposed to a situation that simulates some aspects of a courtroom trial. They are asked to role play jurors, and some measures are taken of their responses.

There are many good reasons for utilising this approach. The first is the law prohibiting the observation of the deliberation process of real juries in the natural environment. With the experimental approach, there is no such barrier and thus researchers are able to record, dissect, and analyse the deliberation process (Baldwin & McConville, 1979). Furthermore, a variety of measures can be taken at any time during the study. In short, through utilising this method, researchers are not limited to observing the outcome of jury decision making but are also able to observe the process.

There are also methodological reasons for this choice of approach. The methodological advantages of the experimental approach are well known. The principal advantage is the virtue of the experimental method: rigorous experimental control. In the natural courtroom environment, it is not possible for the experimenter to observe trials and then reach strong conclusions, because too many factors operate at once. Researchers are unable to exercise control over the proceedings, so variables of interest cannot be directly manipulated. However, with the mock trial, the researchers are able to secure full control over the events that take place in the 'courtroom', and are able to carefully isolate and manipulate only one or a few variables. The high internal validity attained by varying factors experimentally means that researchers can then draw strong conclusions about cause-and-effect relationships between the specific variables under investigation and jury verdicts.

The experimental approach also has the added methodological advantage of permitting multiple replications of procedures across 'juries' within the context of a single case, which also assures high internal validity. In the real world, it is impossible to repeat a trial for experimental replication purposes, and thus only one jury's responses to any one trial can be observed.

Furthermore, researchers are not limited to studying the legal system as it exists today. Using simulations, factors within the trial can be varied (e.g., the timing of jury instructions and the order of presentation) and this freedom to experiment with factors that do not exist in the present system is seen as important if improvements are to be made (Elwork, Sales & Suggs, 1981, Kassin & Wrightsman, 1988).

As Horowitz and Willging (1984) point out, there is also the "not inconsequential issue" of cost effectiveness. Using the experimental method, large numbers of replications can be conducted quickly and inexpensively in terms of both time and money.

However, as is the case with any indirect method of inquiry, the experimental approach is not perfect. While control is maximised with this approach, external validity is compromised. This will be discussed in more detail in Chapter 4.

Field Research

A much more externally valid approach, and the most popular alternative research strategy to the experimental approach is the field study, which involves the investigation of real juries in the natural environment. This approach includes: direct in-court observations, post-trial interviews with jurors and other trial participants, and analysis of court records or archives.

The most indirect of these, archival analyses, involves statistically analysing data from court records or court reporting services to identify relationships between various case characteristics and verdicts, and longitudinal trends. This method of investigation has the obvious advantage of collecting data on actual trial outcomes. Court records are readily accessible, so a considerable amount of data relating to a long period of time, and large geographical areas can be collected.

However, while this method provides information about actual jury verdicts, much potentially important information is missing from archival data sources, and they often include confounding variables. They also document only the outcome and not the process of jury deliberation, and researchers "must attempt to infer the latter, which is precarious because one can never completely disentangle the natural covariation among various case and trial characteristics" (MacCoun, 1989, p. 1046).

A way of collecting information that is missing from archival sources is to interview trial participants. Information can be obtained by questioning the other trial participants, an approach first taken by Kalven and Zeisel (1966) in their classic study involving judges and later by Baldwin and McConville (1979) with judges, lawyers, and police officers. However, the accuracy of data obtained this way is compromised by the fact that other people's perceptions are subjective, and are limited by their inability to question the jurors or observe their deliberations.

A way of overcoming this limitation is to interview the jurors themselves after their trial service. This method has the unique advantage of being able to get insights from jurors into the decision making process that is not possible through any other method of field research. Data can be collected on jurors' reactions and motivations, and about what actually happened during the jury's deliberations.

Interviewing jurors can provide valuable insights into the decision making of juries (Hans, 1992) and “promises to bring us closer to the actual processes of jury deliberations and decision-making than any other method” (Oskamp, 1984, p. 282). However, this method has not often been used. Oskamp (1984) suggests that this is probably because it is time consuming and the findings apply only to the particular case being studied. In New Zealand there are also legal considerations related to this method which shall be discussed in Chapter 5.

This approach also suffers from a major drawback: it rests entirely on the ability and willingness of respondents to disclose accurate information (Kassin & Wrightsman, 1988). It has long been realised that self report data can be very unreliable. The accuracy of this type of data is compromised by such things as respondents’ memories and their desire to present themselves favourably (Kassin & Wrightsman, 1988).

The main disadvantages of conducting any sort of field research are that the data obtained is correlational and thus cannot be used to draw conclusions about causal relationships, and it tends to be very expensive to conduct in terms of both time and money.

Unfortunately no one method is perfect, the strengths of one strategy are often the limitations of another. Realism, precision of control and measurement, and generality over actors, behaviours and situations cannot all be maximised in any one study (Bray & Kerr, 1982).

CHAPTER 3

EXTRA-EVIDENTIAL FACTORS RELATED TO THE TRIAL PARTICIPANTS

Much of the research conducted in the area of jury decision making has been concerned with investigating the influence of various extra-evidential factors. The results of this research question the assumption that juries operate in a rational, objective, and fair manner, and are not influenced by irrelevant factors. They suggest that the evidence is not the only determinant of verdicts rendered by juries, but that a host of extra-evidential factors also contribute to these decisions. Among these are the characteristics and behaviour of the various trial participants. Ideally the same verdict would be reached in a given case, regardless of who the other trial participants are and how they behave, but research appears to suggest that this is not the case.

Greenberg and Ruback (1982) propose a model of juror decision making that consists of two stages: an attribution stage and a social-exchange stage. During the attribution stage, jurors attribute dispositions to the defendant such as 'guilty' and 'dishonest', or alternatively, 'innocent' and 'honest'. These dispositions are based on a number of factors including: the evidence, the defendant's characteristic (e.g., appearance, demeanour, and demographic characteristics), the demeanour and appearance of the lawyers, and information from the other jurors. Having attributed certain characteristics to the defendant, jurors are said to then enter the social-exchange stage. During this stage they reach a verdict that rests on the expected outcomes of social exchanges with the defendant, the lawyers, the judge and the other jurors. Of any of the trial participants, the defendant has been the focus of most of the research attention.

The Defendant

It is a long-standing assumption among those in the legal and social science fields that jurors are sensitive to the personal and behavioural characteristics of the defendant, and that their impressions of, and reactions toward, the defendant are important sources

of influence in their decision making (Baum, Fisher & Singer, 1985; Clary & Shaffer, 1985; Hendry, Shaffer & Peacock, 1989; Landy & Aronson, 1969; Saks & Hastie, 1978).

The folklore of trial lawyers is filled with anecdotes of jury acquittals because of the 'blond and beautiful' defendant whose appearance captivates the all-male jury, or about the defendant's mother who broke down in tears as she testified at the trial, causing most of the jury to cry with her (Hans & Vidmar, 1986, p. 132).

A number of eminent judges and trial lawyers have attested to the importance of the jury's perception of the defendant. The famous criminal lawyer, Clarence Darrow (1936, cited in Sutherland & Cressey, 1966) once claimed that such extra-evidential influences as a defendant's reputation, mannerisms, social background, or any other characteristic that influences the way jurors feel about the defendant, contribute more to jury verdicts than the legal evidence itself does. He maintained that "[j]urymen seldom convict a person they like, or acquit one that they dislike" (p. 442) and that the primary function of a defence lawyer is to "make a jury like his client, or, at least, to feel sympathy for him; facts regarding the crime are relatively unimportant" (p. 442). While this statement may appear strong, empirical evidence from a large body of research suggests that there may be some truth in it, that sentiments towards the defendant do influence juridic decisions.

Most of the research concerning the effect of defendant characteristics has focused on variables thought to influence jurors' attraction to, or liking of, the defendant. This is motivated by the 'liking-leniency hypothesis' (sometimes referred to as the 'sentiment hypothesis') which holds that people act more positively towards those they like than those they do not like (Micheline & Snodgrass, 1980). When this is applied to the courtroom, it predicts that if jurors like the defendant they will be more lenient in their judgments of her/him, and if jurors do not like the defendant, they will be more harsh in their judgments.

A large number of researchers have investigated this hypothesis, by manipulating personal characteristics of defendants in a manner thought to make them more or less likable. The characteristics that have probably been found to have the strongest effect most often in the experimental studies are the physical and social attractiveness of the defendant.

Physical Attractiveness

In principle, we are told that “beauty is only skin deep” and that “you cannot judge a book by its cover”. However, research indicates that in practice, the way we perceive and react to others is often influenced by their physical appearance. Studies have shown repeatedly that when people are asked for their impressions of others (especially those whom they do not know), they are influenced by that person’s appearance. Furthermore, research investigating the interpersonal consequences of physical attractiveness has clearly demonstrated that physically attractive persons, when compared to their less attractive counterparts, enjoy many advantages.

It has been well documented that physical appearance is a major determinant of initial interpersonal attraction (e.g., Adams, 1981; Byrne, London & Reeves, 1968). Reviews of studies investigating the benefits of physical attractiveness have also concluded that physical attractiveness elicits positive attitudes and behaviour in a large variety of interpersonal contexts (Berscheid, 1985; Berscheid & Walster, 1972, 1974).

This does not necessarily mean that people are so shallow that their judgments of others are based on looks alone, but rather, that physical attractiveness is associated with other positive personal traits. Dion, Berscheid and Walster have conducted extensive research documenting the existence of a stereotype regarding physical attractiveness that appears to be widespread in our society: physically attractive people are thought to be good people. In other words, there is a predisposition to believe that ‘what is beautiful is good’ (Berscheid, 1985; Dion, Berscheid & Walster, 1972). Dion and colleagues (1972) found that attractive people of both sexes were simply assumed to possess more socially desirable personalities and were seen as more likely to lead happier, more successful and fulfilling lives.

Dion (1972) also found that physical attractiveness influenced judgments of children and their transgressions. She presented female college students with a brief written account describing either a mild or severe transgression supposedly repeatedly committed by a seven-year-old child. Accompanying the description of the child’s behaviour was a small photograph depicting either an attractive or an unattractive child. The results indicated that evaluations of the children were influenced by their physical attractiveness, with attractive children being judged less harshly. The same behaviour

was viewed as less antisocial when it had been committed by an attractive child than when the offender was unattractive, and physical attractiveness also influenced judgments of the undesirability of the transgression, regardless of the severity of the offence. Furthermore, when the child was unattractive the severe transgression was more likely to be seen as reflecting an enduring disposition toward antisocial behaviour than when the child was attractive, and subjects believed that unattractive children were more likely to be involved in future transgressions.

In light of these findings, one might question whether this bias in favour of the physically attractive extends to the courtroom, and defendants are evaluated at all “by the images they present? or is justice truly blind?” (Brehm & Kassin, 1993, p. 574). A number of studies have been conducted to find out whether this ‘halo effect’ produced by physical attractiveness biases jurors in favour of good-looking defendants. The findings suggest that the effects of appearance do carry into the courtroom and influence jurors’ decision making, and that if you are a defendant in a criminal trial, “as one might expect . . . it is better to be good looking than to be ugly” (Horowitz & Willging, 1984, p. 158).

One of the earliest attempts to investigate the influence of a defendant’s physical attractiveness on juror decision making was a study conducted by Michael Efran in 1974. He first asked some of his University of Toronto students whether they thought that defendants’ physical appearance should play a role in jury decisions, and 93 percent said that it should not. He then predicted that despite this finding, evaluations of a defendant would be influenced by the defendant’s physical attractiveness, and that attractive defendants would be evaluated more positively than unattractive ones. To test this hypothesis Efran then simulated a jury situation using different subjects from the same college student population. They were asked to role play jurors in a student faculty court, and evaluate the guilt of a hypothetical student accused of cheating in an examination.

Subjects were presented with a written description of the case, accompanied by a photograph of either an attractive or an unattractive defendant of the opposite sex. The subjects were asked to evaluate the guilt or innocence of the student and then recommend punishment. The results indicated that attractive defendants were found guilty less often than their unattractive counterparts. Furthermore, when an attractive

defendant was found guilty, subjects were less sure of their decisions and recommended less severe punishment than when an unattractive defendant was found guilty.

Bartol and Bartol (1994) caution that because the subjects were always asked to evaluate a defendant of the opposite gender, a possible attractiveness variable was probably accentuated. While not significant, an interaction was observed between the attractiveness of the defendant and the sex of the subject, with female 'jurors' being not as strongly influenced by male attractiveness as males were by female attractiveness. Efran (1974) suggested that this finding may have been due to either a weaker experimental manipulation of male attractiveness, or to a tendency for males to be more responsive to physical attractiveness than females.

Bray (n.d., cited in Dane & Wrightsman, 1982) conducted an extension of Efran's study with a female defendant, and also found that the more attractive defendant was rated as less guilty, received less severe punishment, and was rated as less likely to cheat again in the future.

In a similar study, McFatter (1978) systematically varied the physical attractiveness of a male defendant portrayed in a photograph (either unattractive or attractive) which accompanied case descriptions of 10 different crimes. Subjects were asked to rate the crime and the offender on a number of scales including seriousness of the crime, likelihood of recidivism, and blame attributed to both the defendant and victim, and to recommend a sentence for each of the 10 crimes. A general leniency effect was observed for physically attractive defendants when compared to unattractive defendants. The attractiveness of the defendant had a significant effect on the severity of sentence imposed, with the attractive defendants being assigned less severe sentences than unattractive defendants. Unattractive defendants were also seen as more psychologically abnormal and more likely to commit the crime again in the future. In the manslaughter case, subjects were also more willing to blame accidental circumstances for the crime when it was committed by an attractive defendant.

Leventhal and Krate (1977) conducted an experiment in which they had one group of subjects rate the physical attractiveness of the defendant and another group assign sentences. Those in the second group were presented with information about the crime and a colour photograph of the defendant and were asked to recommend a sentence.

A significant negative relationship was observed between the physical attractiveness of the defendant and the length of the sentence recommended. Those defendants who were rated as attractive by the other group were assigned less severe sentences than those rated as unattractive.

In another experiment, Solomon and Schopler (1978) presented subjects with one of six case folders containing information about a defendant who had supposedly been on trial recently for fraud. Accompanying the description of the case was a photograph portraying a young woman who was either attractive, average looking, or unattractive. After reading the description, subjects first completed a questionnaire designed to elicit their perceptions of the physical attractiveness of the defendant, liking of the defendant, responsibility of the defendant, seriousness of the crime, and competence required to commit the crime. Subjects were also told that the defendant had been found guilty of embezzlement and were asked to recommend a sentence. The results supported previous findings, indicating that the attractive defendants received significantly less severe punishment than those of average attractiveness or unattractive defendants.

In an experiment conducted by Jacobson (1981), subjects were presented with a description of a rape case accompanied by a photograph of both the defendant and the victim in which their physical attractiveness was varied. They were then asked to respond to a series of questions relating to both the victim and the defendant, rate the defendant's guilt, and recommend a prison sentence. The results indicated a main effect for the defendant on every one of the defendant-related dependent measures. The attractive defendant was more likely to be believed than was the unattractive defendant, and subjects were more sympathetic towards the attractive defendant than the unattractive defendant. The attractive defendant was less likely to be seen as having committed the rape than the unattractive defendant, and subjects were more likely to vote guilty when the defendant was unattractive than when he was attractive. Finally, when subjects were asked how long a prison sentence they would recommend for the defendant if he were found guilty, a significantly shorter term was recommended for the attractive defendant than for the unattractive defendant.

Darby and Jeffers (1988) had mock jurors consider six different cases involving a female student including cheating, shoplifting and plagiarism. Each subject was presented with three different case descriptions accompanied by a photograph of the

defendant who was in one case attractive, in another case moderately attractive, and in the other case unattractive. Subjects were asked to evaluate the guilt or innocence of the defendant and her responsibility for the charges being brought, recommend suitable punishment for those found guilty, and rate the defendant on a number of other scales.

The results indicated that the more attractive defendant was found guilty significantly less often, and when convicted received significantly less severe punishment and was considered to be less responsible for the offence than the unattractive defendant. More attractive defendants were also rated as more likable, more trustworthy, happier and less responsible for the offence than less attractive defendants. Darby and Jeffers concluded that their study "demonstrates again the significant benefits that attend physical attractiveness" (p. 49). "It clearly pays to be physically attractive if one is a defendant in a courtroom trial" (p. 48).

Gerdes, Dammann and Heilig (1988) presented subjects with one of eight versions of a fictional newspaper article describing a rape case in which the defendant was obviously guilty, accompanied by pictures of the defendant and the victim who were both described as average, middle-class students. Whether the victim and defendant were acquainted prior to the incident, and the attractiveness of both the defendant and the victim were varied. Subjects were asked to recommend an appropriate sentence, rate the likelihood that the defendant would continue to engage in antisocial behaviour and also respond to a number of victim-related dependent measures.

The results indicated that when the defendant was unattractive, female subjects considered the victim less responsible than when the defendant was attractive. Furthermore, especially when the victim and defendant were previously acquainted, unattractive defendants were rated as more likely to engage in antisocial behaviour in the future than attractive defendants and this was positively related to the severity of the sentence recommended.

Recently, Mazzella and Feingold (1994) used meta-analysis to integrate the findings of 80 studies conducted in the United States and Canada between 1969-1993 in which the effects of defendant and victim characteristics on mock jurors' judgments were investigated. They concluded that mock jurors were less likely to find physically

attractive defendants guilty than physically unattractive defendants and also recommended less punishment for better looking defendants for many types of crimes.

It has also been found that the physical attractiveness of the defendant influences decisions in civil cases. Kulka and Kessler (1978) presented subjects with an automobile negligence case in which the plaintiff had been injured in the accident and was suing the defendant. The physical attractiveness of the defendant and the plaintiff were varied in slides shown during the audio presentation.

The results indicated that the defendant was perceived as more likable when he was depicted as attractive than when he was portrayed as unattractive. Subjects exposed to an attractive plaintiff and unattractive defendant found in favour of the plaintiff significantly more often than those exposed to an unattractive plaintiff and an attractive defendant, and also awarded the greatest amount of money in damages. The defendant was only awarded about half as much when the defendant was unattractive and the plaintiff was attractive. The authors concluded that their data "are consistent with the belief of practicing attorneys that the attractiveness of their clients may influence the outcome of a jury trial" (p. 374).

However, it would be misleading to give the impression that physical attractiveness has always been found to be an asset in a jury trial. A number of studies have failed to find a positive relationship between physical attractiveness and leniency.

Wilson and Donnerstein (1977) presented subjects with material describing a fellow-student discipline case in which they manipulated the defendant's physical attractiveness, and found that this did not significantly affect either the judgments of guilt, or the severity of the recommended punishment.

Burke, Ames, Etherington and Pietsch (1990) presented subjects with a scenario of a domestic violence case, accompanied by pictures of the defendant and the victim which were varied according to physical attractiveness. The results indicated that physical attractiveness did not have a significant effect on decisions of guilt, or other dependent measures including severity of recommended sentence, attribution of responsibility to the wife, and the subjects' certainty of their decisions.

The results of a field study lend support to these findings. Stewart (1980) conducted an observational study of actual trials in order to explore the "potency of the physical attractiveness variable as a determinant of trial outcome" (p. 348). He had in-court observers rate 74 defendants accused of a range of crimes, on various traits, including physical attractiveness, and later obtained data on verdict and sentencing from the court. While a negative correlation was found between the ratings of the physical attractiveness of the defendants and the sentence handed down by the judge, no relationship was found between defendants' attractiveness and verdicts. Stewart concluded that "juries do *not* seem to be swayed by the physical appearance of the defendant" (p. 359) and are "not more likely to acquit attractive persons than unattractive ones" (p. 355).

Other researchers have not only failed to find a positive relationship between physical attractiveness and leniency, but have found that in some cases physical attractiveness may be a liability rather than an asset, and actually lead to harsher treatment by jurors.

Harold Sigall and Nancy Ostrove (1975) reported an interaction between the physical attractiveness of the defendant and the relationship of physical attractiveness to the type of crime allegedly committed. They predicted that when the crime was unrelated to attractiveness (burglary) the attraction-leniency effect would hold, but that when the defendant's attractiveness facilitated the commission of the crime (swindle) the attractive defendant would be punished more severely than the unattractive defendant.

To test this, they presented subjects with a written account of a case involving a female defendant accused of either burglary or a swindling scheme. Accompanying the description was a photograph which portrayed the defendant as either an attractive or an unattractive woman, with the exception of those in the control condition who did not receive any information regarding the defendant's appearance. The case description left little doubt that the defendant was guilty of the crime, so after reading one of the case accounts, subjects were asked to recommend a sentence.

The results supported the hypothesis. When presented with the woman accused of burglary, the attraction-leniency effect held and the attractive defendant received significantly less severe punishment than the unattractive defendant. However, when presented with the swindle case, the attractive defendant received a more severe sentence

than the unattractive defendant. The authors suggested that attractive people are viewed as 'better' people, but that people react particularly negatively toward an attractive person who uses this advantage to commit a crime. Furthermore, sentence recommendations by subjects in the unattractive defendant condition and those by subjects who did not have a photograph of the defendant were almost identical. This suggests that being unattractive did not yield discriminatory responses, but that being attractive did.

In a later study, Smith and Hed (1979) obtained similar results with mock juries rather than individual jurors. In this experiment, both the attractiveness and age of the defendant were varied in either a burglary or a swindle case as described in a case report. When asked to recommend a sentence, those in the burglary condition treated the attractive defendant significantly less severely than the unattractive defendant. However, in the swindle condition, the punishment recommended for the attractive defendant and that recommended for the unattractive defendant were not significantly different, the attractiveness of the defendant did not appear to have any influence on the sentencing.

More recently, Castellow, Chia and Weunsch (1988, cited in Weunsch, Chia, Castellow, Chuang & Cheng, 1993) conducted a replication of Sigall and Ostrove's (1975) study and also manipulated the gender and race of the defendant (American or Chinese). They failed to find an interaction between the type of crime and the effect of the defendant's attractiveness, and found that male subjects gave shorter sentences to attractive defendant regardless of race and type of crime, but female subjects did not. Later they replicated this study with Chinese college students as subjects, and found that physical attractiveness was associated with lenient sentencing for American burglars, and with stringent sentencing for American swindlers, but no such relationship was observed when the defendant was Chinese (Weunsch et al., 1993).

Friend and Vinson (1974, cited in Sigal, Braden & Aylward, 1978) found an interaction between the effect of physical attractiveness and the type of instructions subjects received. They replicated the finding that attractive defendants received shorter sentences than either average of unattractive defendants when subjects were not instructed to remain impartial. However, when subjects were given specific instructions to be impartial and disregard information regarding the defendant's attractiveness and were asked to publicly commit themselves to doing so, a reversal of the leniency effect

was observed and attractive female defendants were actually sentenced more severely than unattractive female defendants. Esses and Webster (1988) suggest that in an effort to appear unbiased, these subjects overcorrected in the opposite direction to their normal inclination.

Piehl (1977) found a similar interaction with the severity of the consequences of the crime allegedly committed by the defendant. Subjects were presented with a record of a traffic accident in which the attractiveness of the female defendant was manipulated along with the consequences for the innocent driver. There was either no serious consequences for the innocent driver, the innocent driver's car was completely demolished, or the innocent driver's car was totally demolished and he was also killed.

No significant differences were found between the sentence recommended for the attractive defendant and that recommended for the unattractive defendant, but there was a significant interaction between her attractiveness and the severity of the consequences of the accident. When the accident did not have any serious consequences for the innocent driver the unattractive defendant was punished more severely than the attractive defendant. However, when the accident resulted in the death of the innocent driver the attractive defendant was treated more severely.

In summary, the results of experimental research on the effects of the physical attractiveness of defendants on mock jurors' judgments has had mixed results, but the majority of it appears to support the contention that the physical attractiveness of the defendant does influence decision making and may produce significant variation in jurors' judgments.

It has been found that physically attractive defendants (a) are less likely to be found guilty (Darby & Jeffers, 1988; Efran, 1974; Jacobson, 1981; Mazzella & Feingold, 1994) and rated as less guilty (Bray, n.d., cited in Dane & Wrightsman, 1982), (b) receive significantly less severe punishment if thought to be guilty (Bray, n.d., cited in Dane & Wrightsman, 1982; Darby & Jeffers, 1988; Efran, 1974; Gerdes et al., 1988; Jacobson, 1981; Leventhal & Kratochwill, 1977; Mazzella & Feingold, 1994; McFatter, 1978; Piehl, 1977; Sigall & Ostrove, 1975; Solomon & Schopler, 1978; Smith & Hed, 1979), (c) are considered less responsible for the offence (Darby & Jeffers, 1988), and (d) are seen as

less likely to engage in antisocial behaviour in the future (Bray, n.d., cited in Dane & Wrightsman, 1982; Gerdes et al., 1988; McFatter, 1978) than unattractive defendants.

Attractive defendants were also rated as more likable (Darby & Jeffers, 1988; Kulka & Kessler, 1978), more trustworthy (Darby & Jeffers, 1988), more credible (Jacobson, 1981), less psychologically abnormal (McFatter, 1978), and more likely to be the recipient of sympathy (Jacobson, 1981) than less attractive defendants. In civil cases, mock juries were more likely to find in favour of the plaintiff, and awarded more money in damages to the plaintiff when the defendant was unattractive than when he was attractive (Kulka & Kessler, 1978).

Conversely, in one experiment the defendant's physical attractiveness was not found to have a significant effect on the severity of the sentence recommendations or judgments of guilt (Burke et al., 1990), and in a field study, ratings of defendants' physical attractiveness were not found to be related to verdicts (Stewart, 1984).

Other researchers have found there to be conditions under which attractive defendants were not treated more leniently, and in some cases were treated more severely than unattractive defendants, such as (a) when the crime has serious consequences for the innocent party (Piehl, 1977), (b) when subjects were given specific instructions to be impartial (Friend & Vinson, 1974, cited in, Sigal et al., 1978), and (c) when the defendant's attractiveness maybe considered important to the successful commission of the crime (Sigall & Ostrove, 1975; Smith & Hed, 1979). However, other researchers failed to replicate this latter finding with American subjects (Castellow et al., 1988, cited in Weunsch, et al., 1993), and later replicated it with Chinese subjects only when the defendant was American (and not when he was Chinese) (Weunsch et al., 1993).

Physical Presentation

Another aspect of defendants' physical appearance that is thought to be influential is their physical presentation. Defence lawyers generally believe that the way in which the defendant is presented is important, and often do what they can to ensure that their clients are well groomed and appropriately dressed (Kassin & Wrightsman, 1988). A number of researchers have investigated the relationship between the physical appearance of defendants in terms of their physical presentation and jurors' judgments.

In their experiment, Jacobson and Berger (1974, cited in Kulka & Kessler, 1978) had adult residents of a suburban community serve as subjects and presented them with a resume of a negligent homicide case. They manipulated the male defendant's attractiveness by varying the level of 'neatness' as portrayed in a photograph and found that this had no significant effect on the sentences recommended.

Sigal and colleagues (1978) found support for these results when they conducted two experiments in which they asked mock jurors to judge a defendant on trial for murder and attempted robbery. They manipulated both the sex and the physical presentation of the defendant, the number of witnesses to the crime and the type of motivation for the crime. The results of both experiments indicated that the defendant's presentation had no significant effect on decisions.

Stewart (1984) also found support for these findings in his field study in which he had observers rate 60 defendants in a series of actual criminal trials on neatness, cleanliness, and quality of dress, and physical attractiveness. He later obtained data on verdict and sentence, and found that the ratings on the four-item Attractiveness Index correlated negatively with the severity of the sentence handed down by the judge, but did not correlate with the verdicts reached by the juries. Defendants who were rated as more attractive, clean, neat, and well dressed were not significantly more likely to be acquitted than were those who rated lower on these four scales, or vice versa.

In another field study, Bridgeman and Marlowe (1979) conducted posttrial interviews with 65 jurors from 10 actual trials. At one point during the interview, participants were given a list of potentially influential factors and were asked to place them in order of importance according to how much they believed each factor influenced their final decision. The list included the defendant's appearance, but none of the respondents ranked this either first or second.

Sigal and colleagues (1978) found that 65% of the subjects in their experiment indicated that the physical attractiveness of the defendant was the least important factor to be weighed in determining guilt or innocence, ahead of the sex, race, and attitude of the defendant.

Social / Psychological Attractiveness

Many researchers have also manipulated what has been termed the 'psychological' or more commonly, the 'social' attractiveness of defendants to determine what effect this has on jurors' decision making. Social attractiveness is an attribute that is not so much a specific trait but rather a variety of characteristics that combine to make the defendant more or less attractive such as age, marital status, occupational status, work history and personality traits.

David Landy and Elliot Aronson (1969) conducted two trend setting experiments in this area in which they examined the effect of varying the personality traits and social attributes of the defendant and the victim on the judgments of mock jurors in a case involving a drunk driver running a red light and hitting and killing a pedestrian. In the first experiment, only the status of the hypothetical victim was manipulated and in the second, the two levels of victim status were maintained, and three levels of defendant status (high, neutral, low) were also introduced.

The defendant described in a relatively attractive manner was said to be a 64-year-old insurance adjuster, who had been employed by the same firm for 42 years. He was happily married, generally well-liked and considered to be responsible. The defendant portrayed in less attractive terms was described as a 33-year-old janitor who had been working in the same building for only two months and was not known by many of his colleagues. He had been divorced twice, had three children by his first marriage and had a criminal background. In the control condition, the defendant was described in a neutral manner, as an employee from nearby. The results indicated that those subjects in the unattractive defendant condition recommended a significantly more severe sentence than those in either the attractive or neutral defendant conditions.

The suggestion of a relationship existing between the social attractiveness of a defendant and the decisions made by juries proved to be "too provocative to ignore" (Bartol & Bartol, 1994, p. 201) and a large number of similar studies followed.

Izzett and Leginski (1974) replicated Landy and Aronson's results when they used the same case materials, and Dowdle, Gillen and Miller (1974, cited in, Gerbasi, Zuckerman, & Reis, 1977) used modified versions of Landy and Aronson's case materials and also replicated the finding that defendants with positive characteristics

were treated more leniently than those with negative characteristics. Later, Gray and Ashmore (1976) also found that significantly more severe sentences were recommended for a socially unattractive defendant than for a socially attractive defendant.

Nemeth and Sosis (1973) also conducted an experiment using Landy and Aronson's case materials and also manipulated the race of the defendant. They found that the severity of the sentence recommended by subjects was a direct function of the attractiveness of the defendant, the more attractive the defendant the more lenient the sentence. Furthermore, the unattractive defendant was assumed to be a heavier drinker than was the attractive defendant, and the attractive defendant was assumed to feel more regret for his actions than the unattractive defendant.

The problem with the results of these studies is that the descriptions of the defendant were loaded with such a variety of background and personal characteristics that it is impossible to identify precisely which characteristics among those manipulated were influential. A number of follow-up studies were conducted to separate out the effects of some of the characteristics that were confounded in these experiments.

One characteristic confounded with the attractiveness manipulation in Landy and Aronson's case materials, age of the defendant, was separated out in an experiment by Reynolds and Sanders (1975). These researchers believed that in Landy and Aronson's study the attractive defendant was not clearly attractive so they varied the salience of the defendant's attractiveness. They presented half of their subjects with Landy and Aronson's description ('ambiguous' condition) and the other half with new descriptions designed to be more explicitly attractive and unattractive ('unambiguous' condition) in which attractiveness was manipulated by varying the defendant's work history, marital status, and evaluative statements given by his peers.

In the ambiguous condition, the average sentence recommended for the unattractive defendant was not significantly different from that recommended for the attractive defendant. However, those in the unambiguous condition sentenced the unattractive defendant significantly more severely than the attractive defendant. With regard to the age of the defendant, those in the ambiguous condition sentenced the older defendant to significantly fewer years imprisonment while there was not a significant difference in the unambiguous condition.

Reynolds and Sanders suggested that, while Landy and Aronson's conclusion was correct, their reasoning was incorrect. They suggested that the difference in sentencing observed in Landy and Aronson's study was not due to the difference in attractiveness of the defendants, as Landy and Aronson contended, but rather, the difference in age of the attractive and the unattractive defendants. They concluded that the mock jurors were "operating within a hierarchy of cues" and that judgments were influenced by the most salient cues. Only when the social attractiveness of the defendant appeared to be most salient did the attractive defendant receive a significantly less severe sentence than the unattractive defendant. When the attractiveness of the defendant was 'ambiguous', subjects appeared to focus on the age of the defendant.

Another factor that was confounded in Landy and Aronson's case materials was injury. The attractive defendant was said to have been injured during the commission of the crime while the unattractive defendant was not. Sigall and Landy (1972) conducted an experiment to separate injury and attractiveness and determine whether suffering associated with the commission of a crime influences juridic judgment. Subjects were presented with an account of a manslaughter case in which the defendant was described as either attractive (e.g. loving, warm) or as unattractive (e.g. cold, unapproachable). He was also said to have suffered loss of sight in one eye either before, during or after the commission of the crime, or suffering was not mentioned at all.

The researchers predicted that the unattractive defendant would receive more severe punishment than the attractive defendant and that subjects would feel sympathetic towards the injured attractive defendant and would be more lenient, whereas suffering by an unattractive defendant would be seen as further evidence of his guilt and would increase severity. This prediction of an interaction was not supported by the results but the unattractive defendant received a significantly longer prison sentence than the attractive defendant regardless of whether he was said to have been injured during the commission of the crime or not. The authors concluded that "sympathy aroused by suffering is not an essential part of the relationship between defendant likability and punishment administered to him" (p. 150).

Kaplan and Kemmerick (1974) also varied trait adjective descriptions in their study, and obtained similar results to Sigall and Landy, when they presented subjects with summaries of eight traffic accident cases varying in the type and seriousness of charge.

The level of incrimination depicted by the evidence was varied so that half of the summaries contained information that was highly incriminating for the defendant, and half contained information that was mildly incriminating. The accompanying descriptions of the defendant contained either positive traits, negative traits, both positive and negative traits which were all irrelevant to the commission of the crime (neutral condition), or no information about the defendant's attractiveness (control condition).

The results indicated that as the number of negative defendant characterisations increased, so too did guilt judgments, and recommended sentence. The defendant described in negative terms was attributed the most guilt and punished the most severely, whereas the positively described defendant was treated most leniently. Those subjects who received no information about the defendant's character gave ratings that were similar to those given by those who received a negative description. Dane and Wrightsman (1982) suggest that when subjects did not receive any information about the character of the defendant, they made unfavourable assumptions.

Kaplan and Kemmerick (1974) draw attention to the fact that they employed trait descriptions as characterizations and suggest that the size of these effects may increase in the courtroom, where the defendant's behaviour is 'in the flesh'.

The findings of two other studies employing positive and negative trait adjectives also provided support for the attraction-leniency effect.

Micheleni and Snodgrass (1980) conducted a study similar to Kaplan and Kemmerick's in design, but modified to include manipulations of both the attractiveness of the defendant's character traits and the relevance of these traits to the likelihood of having committed the crime. The results indicated that the defendant described in a positive manner was more likely to be found not guilty than the defendant described in a negative manner only when the traits appeared to be relevant to the likelihood of having committed the crime. When the traits were irrelevant, no significant difference was observed. However, when asked to recommend an appropriate sentence, subjects were significantly more lenient with the attractive defendant than the unattractive defendant regardless of the relevancy of the traits to the crime. These results are contrary to those obtained by Sigall and Ostrove (1975) when they manipulated the physical attractiveness of the defendant.

Weiten (1980) also manipulated the social attractiveness of the defendant by describing the defendant as either 'a cold, impolite, and self-centred high school dropout who gambled' or 'a warm, helpful and cooperative high school graduate who coached little league baseball' and found that a significantly less severe sentence was recommended for the attractive defendant than for the unattractive defendant.

Gleason and Harris (1975) presented simulated jurors with a transcript describing a trial involving a defendant charged with armed robbery. The transcripts included a summary of police files on the background of the defendant in which the defendant was described as either white or black, and either lower or middle class. After reading this subjects were asked to make a series of judgments about the guilt of the defendant, the length of sentence he should receive and the amount of blame he should be assigned assuming he was guilty. The results indicated that middle class defendants were judged less guilty and assigned shorter sentences than lower class defendants, regardless of race.

In a similar study, Hoffman (1981) presented subjects with a newspaper article in which he varied the social class of a defendant on trial for either petty larceny or armed robbery. He found that the lower-status defendants were viewed as less attractive and were more likely to be viewed as a typical offender, than higher status defendants.

Wilson and Donnerstein (1977) conducted an experiment in which they presented subjects with material concerning a fellow-student discipline case. They manipulated the attractiveness of the defendant's character by varying his: grade point average, membership to various campus organizations, class attendance and contribution in class discussions. They found that while the socially unattractive defendant was punished significantly more severely than the attractive defendant, judgments of guilt were unaffected by the manipulation.

Bierhoff, Buck and Klein (1989) report an experiment in which they and two other colleagues manipulated the behavioural respectability of a defendant. Subjects were presented with a transcript about a woman involved in a car accident who was described as either respectable (friendly and generous) or not respectable (troublemaker). The transcript allowed for both internal and external causal attributions. Subjects were asked to rate the plausibility of a number of possible situational and personal explanations for the cause of the accident and then to assign an appropriate level of

punishment for the offender. The researchers predicted that the highly respected offender would evoke a tendency for situational attributions and mild punishment, whereas the less respected offender would evoke a tendency for internal attributions and more severe punishment.

The results indicated that responsibility attributions did depend upon the offender's respectability. The highly respectable woman was assigned less personal responsibility than the less respectable woman, which in turn correlated with the severity of the recommended punishment. As expected, the more internal the subjects' causal attributions were, the more severe the recommended sentence.

While the results of these studies show support for the contention that socially attractive defendants are treated more leniently, a number of other studies have found it have no effect on judgments and others have found it to have a negative effect.

Hatton, Snortum and Oskamp (1971) presented subjects with an account of an automobile accident case in which they manipulated the information about the character of the victim and the defendant. One group was presented with biasing information in favour of the defendant and against the victim, a second group received information to bias them in the reverse direction, and those in the control group did not receive any biasing information. The responses to the questionnaire indicated that anti-victim biasing information led to 'anti-victim inferences' about the accident and anti-defendant biasing information led to 'anti-defendant inferences'. However, conviction rates were not significantly affected by the biasing information.

Foss (1976) reported similar findings when he presented mock jurors with a summary of a murder case which included the testimony of the four main witnesses and a brief description of the victim. Subjects were asked to rate the defendant and the victim on a number of scales, return a verdict, and recommend a sentence if appropriate. They were then divided into groups of six and instructed to deliberate until they had reached a unanimous verdict. When they had done this, they were asked to complete a questionnaire about the decision, and recommend a sentence if appropriate. The results indicated that there was no difference in verdict or in sentences as a result of the manipulation.

Other researchers have reported that other factors interact with defendants' social attractiveness.

In one experiment, Izzett and Fishman (1976) found support for their prediction of an interaction between the effect of social attractiveness and defendant justification. Subjects were presented with a mock embezzlement case in which the defendant was either socially attractive or socially unattractive and was said to have either used the money to pay a large medical bill (high external justification) or had used the money to pay a personal debt (low external justification). The results indicated that the socially attractive defendant was sentenced more leniently than the socially unattractive defendant when he had high external justification, but was sentenced more severely when he had low external justification for his act. With regard to ratings of guilt, unexpectedly, the socially attractive defendant was perceived as more guilty than the socially unattractive defendant regardless of the amount of justification.

Barnett and Feild (1978) found that the extent of the effect of the defendant's social attractiveness on mock jurors' sentencing depended on the nature of the crime. The social attractiveness of the defendant was found to play an important role in deliberations when jurors were considering a person-oriented crime such as rape. However in the case of burglary (a property-oriented crime), attractiveness had only a negligible effect on their decisions, and only when combined with the gender of the defendant, attractive males were given significantly harsher sentences than were attractive females.

Bray, Struckman-Johnson, Osborne, McFarlane and Scott (1978) found evidence to support the responsibility hypothesis which holds that defendants who are perceived to have used their attractiveness to commit a crime will be treated more severely (Sigall & Ostrove, 1969). Subjects from both student and community populations were presented with a simulation of a murder trial, based on an actual case, in which two men in a drunken state had murdered a woman while in her apartment. The defendants were portrayed as either medical interns (high social status) or maintenance employees (low social status) and the results indicated that significantly more severe sentences were recommended for the high-status defendants than for the low-status defendants.

The authors suggested that the high-status defendants received harsher punishment than the low-status defendants in this situation because medical doctors killing someone was seen as a misuse of their status-related abilities and was thus a violation of the

subjects' expectations. Thus, the authors predicted that the effects of the defendant's status would depend on whether abilities associated with their status were seen to be misused to commit the crime. However, while the social status of the defendant influenced judgments of appropriate sentence, judgments of guilt were not affected by the manipulation of the defendants' social status.

In summary, the experimental research investigating the influence of social attractiveness on mock jurors' judgments has had mixed results.

The majority of researchers have found a negative relationship between social attractiveness and the severity of recommended punishment (Bierhoff et al., 1989; Bray et al., 1978; Dowdle et al., 1974, cited in, Gerbasi et al., 1977; Gleason & Harris, 1975; Gray & Ashmore, 1976; Izzett & Leginski, 1974; Kaplan & Kemmerick, 1974; Landy & Aronson, 1969; Michelini & Snodgrass, 1980; Nemeth & Sosis, 1973; Reynolds & Sanders, 1975; Sigall & Landy, 1972; Weiten, 1980; Wilson & Donnerstein, 1977). Such a relationship was not found in only one of the studies reviewed (Foss, 1976). It has also been found that unattractive defendants were assumed to be heavier drinkers, feel less regret for their actions (Nemeth & Sosis, 1973) and were more likely to be viewed as a typical offender (Hoffman, 1981) than attractive defendants.

Other researchers have found there to be conditions under which socially attractive defendants (a) were not treated more leniently, such as when a property oriented crime was being considered as opposed to a person oriented crime (Barnett & Feild, 1978); and (b) were treated more severely than a socially unattractive defendant, such as when the attractive defendant had little external justification (Izzett & Fishman, 1976) and when defendants may have used their status to commit the crime (Bray et al., 1978).

However, the results concerning the effect of social attractiveness on judgments of guilt are less conclusive. Some researchers have found that attractive defendants are assumed to be less guilty (Gleason & Harris, 1975; Kaplan & Kemmerick, 1974), some have found that this is the case only when the descriptive traits were relevant to the commission of crime (Michelini & Snodgrass, 1980), some have found it to have no significant effect at all (Bray et al., 1978; Foss, 1976; Hatton et al., 1971; Izzett & Leginski, 1974; Landy & Aronson, 1969; Wilson & Donnerstein, 1977), and others have found that a socially attractive defendant was perceived as more guilty than a socially unattractive defendant (Izzett & Fishman, 1976).

The Influence of Defendant Characteristics

Experimental Research

In summary, there is considerable experimental evidence to suggest that defendant characteristics influence the severity of mock jurors' judgments, and that characteristics promoting liking of the defendant lead to less severe judgments. A number of reviews of the experimental literature have supported this conclusion.

In an early review of the studies investigating the effect of defendant characteristics, Stephan (1975) concluded that much more data needed to be collected, but later, Gerbasi, Zuckerman and Reis (1977) conducted a similar review and concluded that defendant characteristics "can influence the severity of verdicts rendered by individual jurors" (p. 343).

In a more recent review, Nemeth (1981) came to the conclusion that defendants who are physically and socially attractive are less likely to be convicted, and if convicted are treated more leniently than their less attractive counterparts. Similarly, Dane and Wrightsman (1982) concluded that their "thorough review of the literature completely supports the premise that juries do react to defendant characteristics" (p. 84) and that trial outcomes are often affected by jurors' sentiments towards defendants. However, they also concluded that "it remains difficult to state that extralegal characteristics are of sufficient strength to override the legal evidence presented during a trial" (p. 109).

More recently, Pennington and Hastie (1990) reported a series of experiments which were much higher in realism than most of the earlier experimental studies. They drew mock jurors from actual jury pools, gave them instructions comparable to those they would receive in a real trial, and then presented them with filmed trials based on transcripts of real trials. They then had the mock jurors 'think aloud' as they reasoned their way to an initial decision. These think-aloud protocols were then analysed, and it was found that the jurors did not dwell on "the personal characteristics of the defendants or the victims or on their social membership groups" (p. 97). Less than 5% of the jurors' commentary made reference to the defendant's character or social class, or other personal attributes.

Field Research

In their field study, Kalven and Zeisel (1966) found that some of the judges they surveyed believed that certain defendant characteristics did appear to influence juries, and were related to disagreements about the defendant's guilt or innocence.

On a number of occasions, judges thought that the jury had been influenced by the physical appearance of the defendant: an attractive female defendant tried to an all-male jury, a well dressed and well spoken man who presented an overall good appearance, and a 'very handsome' and 'personable' man on trial for incest.

On other occasions, judges believed that defendants were recipients of sympathy: a 'clean-cut' young man on trial for petty theft who was accompanied by his mother throughout the trial; an unemployed young man on trial for receiving stolen goods whose wife was pregnant; and an attractive woman who claimed to have tuberculosis and wore a white mask for the duration of the trial, had a loyal and well-liked husband and a 'fine' twelve-year-old son, and also provided for her mother.

Defendants with handicaps or disabilities were also believed to have engendered chords of sympathy: a crippled polio victim on trial for indecent exposure came into court on crutches, and a man who was on trial for statutory rape had lost a leg in Korea and 'presented a sorry spectacle'. On other occasions, defendants' physical appearance and circumstances were believed to have been responsible for the jury being lenient: a young defendant on trial for grand larceny from a 'less-chance home' whose father had been dead for two years, and was 'not a bad looking youngster'; and an 'exceptionally good-looking' woman whose husband was a heavy drinker and had beaten her.

Some of the respondents in a field study modelled on Kalven and Zeisel's study expressed similar sentiments. John Baldwin and Michael McConville (1979) collected information on 370 criminal trials in Birmingham and London, between February 1975 and September 1976, in order to evaluate the verdicts of the juries against the opinions of other key participants in the cases. Not only did they obtain the views of the trial judge after the trial had ended, as Kalven and Zeisel (1966) did, but they also obtained the views of both the prosecution and defence lawyers, and the principal police officer in the case.

Unfortunately during the construction of the questionnaire, judges with whom the researchers discussed the content, requested the deletion of questions about whether the jury had returned the 'correct' verdict, or even whether it was the verdict they expected or not. This meant that these researchers had to rely on respondents to volunteer any doubts they had about verdicts, and only those cases in which respondents made a clear and unambiguous statement of disagreement were considered questionable.

Nevertheless they found that "there was considerable dissatisfaction expressed by respondents about many of the verdicts delivered by juries both in Birmingham and in London" (p. 45). However Baldwin and McConville were unable to find any clear cut pattern to explain those cases in which there was disagreement with the jury's verdict. As far as they could tell, they occurred entirely at random. Baldwin and McConville concluded that

it seems to us that opponents of trial by jury will have to contend with the fact that the jury seems to enjoy the considerable confidence of the public; it appears to return verdicts that are generally deemed reasonable by judges, lawyers and the police . . . On the other hand, defenders of the jury must take account of the fact that . . . its verdicts are with some frequency highly questionable in character; that its capriciousness is likely both to prejudice the innocent and to benefit the guilty; and that there is no obvious corrective for its unpredictability (p. 134).

With regard to the perceived influence of defendant characteristics, in one case in which an employee was said to have stolen money from the till, the judge believed that the jury returned a verdict that was not according to the evidence but 'because of sympathy for the defendant'. On other occasions, more than one of the respondents expressed similar views. In a case in which four men were said to have been involved in a violent altercation, the judge believed that the jury 'sympathised with the accused', the prosecuting lawyer felt that it was a 'sympathy verdict' and the primary police officer in the case also believed that 'the defence were banking on a sympathy verdict and this they got'.

Clearly some of the respondents in these studies believed that there were times when the jury was moved by sentiments to acquit an otherwise guilty defendant, but would a

jury, out of antipathy, convict an innocent defendant? Some of the judges surveyed by Kalven and Zeisel (1966) thought that this had sometimes been the case, that defendants who aroused negative sentiments alienated the jury and were convicted when the judge would have acquitted.

On a number of occasions, judges were of the opinion that evidence of 'immoral' or 'vulgar' behaviour on the part of the defendant prejudiced the jury. On one such occasion in which the defendant was charged with beating his companion to death, testimony revealed that the defendant and decedent 'engaged in perverted sexual intercourse' and the judge felt that this fact probably 'weighed heavily with the jury'. In another case, the judge thought that the jury was probably influenced by the 'loose morals' of the defendants. However, Kalven and Zeisel concluded that

it is likely that the unattractiveness of the defendant will bear primarily on the jury's decision by way of reducing in their eyes, the defendant's credibility. . . .

Although it is now clear that the jury is often alienated by the unattractiveness of the defendant, we find no cases in which the jury convicts a man, so to speak, for the crime of being unattractive. In the cases examined it is apparent that there is always a considerable link, in the eyes of the jury, between the unattractiveness of the defendant and his credibility (p. 385).

Defendants' Behaviour

The way defendants behave during the trial is also believed to influence jurors' perceptions and decision making. One author has gone so far as to say that the way defendants conduct themselves during the trial may be nearly as important as the evidence itself in determining trial outcomes (Shaffer, 1985).

Salekin, Ogloff, McFarland and Rogers (1995) use the trial of Lindy Chamberlain, a high profile case in Australia, to illustrate the potential importance of the defendant's behaviour. The lack of emotion showed by the defendant in this case was a focal point for both the police and the media. The prosecutor drew attention to the defendant's 'lack of proper emotions' and tried to paint her as a harsh and uncaring mother, incapable of sorrow. It is likely that these efforts played an important role in the subsequent conviction of the defendant, a verdict that has since been overturned.

Defendants' Failure to Testify

The best opportunity jurors get to evaluate the defendant is when s/he takes the witness stand and testifies. However, this opportunity does not always arise because defendants in criminal trials have the right to remain silent during their trial, to protect themselves from self incrimination. The judge and prosecuting lawyer are prohibited from commenting on the defendant's failure to testify, and jurors are often instructed that they are not permitted to draw any inferences from this. However, critics of this privilege have argued that invoking it is 'self-defeating' because jurors cannot help but draw negative inferences about defendants who fail to take the stand (see Foley, 1993; Shaffer, 1985). It has been said that jurors tend to distrust and be suspicious of defendants who remain silent and, despite efforts not to, will often assume that the defendant who does not take the stand is hiding something (Bailey & Rothblatt, 1971; Dillehay & Nietzel, 1986; Foley, 1993; Nietzel & Dillehay, 1986; Shaffer, 1985).

Psychological consultants on trial preparation and conduct, Ronald Dillehay and Michael Nietzel generally recommend that it is better for the defendant to testify than not, although they sometimes advise otherwise (Dillehay & Nietzel, 1986; Nietzel & Dillehay, 1986). It is their view that jurors want to hear the defendant's own story, and even jurors who have been prepared for the defendant not testifying may form inferences about her/his failure to do so "that are more detrimental than the results of that testimony" (Dillehay & Nietzel, 1986, p. 186).

There are at least two main reasons why a defence lawyer advises the defendant not to testify, in light of the fact that those who do not testify may be viewed negatively. One of the most common reasons is that the defendant has a prior criminal record, because this information can only be introduced during the trial if the defendant testifies. Another reason that the defence lawyer may advise the defendant not to testify is if s/he thinks that the defendant will not make a good impression on the stand.

Defendants' General Behaviour

A significant amount of research has been conducted on how jurors use defendants' nonverbal behaviour on the witness stand to evaluate the credibility of their testimony (e.g., Erikson, Lind, Johnson & O'Barr, 1978; Miller, Bauchner, Hocking, Fontes,

Kamonski, & Brandt, 1981; Miller & Burgoon, 1982). However, what is of interest in the present study is not so much specifically the way defendants behaved on the witness stand and their perceived credibility, but the influence of their general demeanour throughout the trial on jurors' evaluations of their guilt or innocence. Obviously, in some cases this would include their behaviour on the stand, but it is not restricted to this.

It could be said that the defendant is always a witness, whether s/he testifies or not because, during the trial, jurors regularly observe the defendant and make judgments based upon her/his demeanour and reactions to the evidence (Kalven & Zeisel, 1966; Shaffer, 1985). Defence lawyers are acutely aware of the potential influence of the defendant's demeanour and often coach their clients on how to behave in the courtroom.

However, while lawyers accept the importance of the defendant's demeanour, there is very little supporting empirical evidence. The influence of the characteristics of defendants on jurors' impressions and judgments has been studied extensively, but relatively little research has been conducted on the effect of defendants' general behaviour.

A number of the judges surveyed by Kalven and Zeisel (1966) thought that sometimes the defendant's demeanour during the trial was responsible for the jury reaching a verdict that differed from the one that they would have returned. In a case in which the defendant was charged with violating the Mann Act, the judge came to the conclusion that while there was no evidence that the defendant had taken money from prostitutes "the defendant did not take the stand but because of his association with the white victims and because of the loss of sight in one eye, he may have made a bad impression on the jury" (p. 383).

In another case in which the defendant did not testify, the judge reported that the jury learned a lot from her demeanour:

The defendant gave the picture of a pious old fraud. She took her seat in plain view of the jury with a big cross swinging from her neck and thereupon opened her bible in front of her. Then she brought out a bottle of smelling salts, preparing herself spiritually and mentally for any eventuality (p. 383).

In an attempted rape case, the judge was of the opinion that the jury was more severe than he would have been because "[the] defendant did not make a good impression. He was insolent looking and smart" (p. 383). In a drunk-driving case which "turned entirely on credibility of the witnesses . . . [the] defendant, a blowhard and smart aleck, sought to impress the jury with the weight of his influence and importance of social connections" (p. 383) and had a negative influence on the jury.

On other occasions, the judge felt that the jury was moved by a display of emotion in the courtroom. On one such occasion the judge said that the jury was lenient with a woman on trial for murder because of the way in which the victim had treated her and her sorrow during the trial. On another, the defendant cried on the stand and in another case, the judge reported that the defendant's wife cried "and four of the jurors cried with her." On a number of other occasions the judge felt that the jury was inclined to vote not guilty because the defendant appeared remorseful.

A number of the judges in Baldwin and McConville's (1979) study expressed similar views. In one case of stealing, in which the judge thought that the verdict was "perverse", the accused was caught red-handed but was acquitted because of what the judge said was a staged outburst of tears during cross-examination.

Kerr (1982) conducted a field study in which he had observers record data on the personal characteristics and behaviour of the defendant in more than 100 trials in San Diego and then related these to conviction ratios. The behaviour of the defendant was classified on four different scales: awareness (interested - indifferent), mannerisms (calm - nervous), attitude (respectful - surly), and conduct (aggressive - passive). He found that even with a rather liberal level of significance ($p < .1$) none of these correlated with juries' conviction ratios.

With regard to the experimental literature, very few studies have addressed the influence of defendants' general demeanour on jurors' judgments. In light of this fact, a number of studies that may have some degree of applicability to this topic will also be reviewed.

When Sigal and colleagues (1978) presented subjects with a simulated murder and attempted robbery trial, they found that 99% the subjects selected 'attitude of the

defendant' ahead of the defendant's physical attractiveness, gender, or race as the most important factor to be weighed in determining guilt or innocence.

Boone (1973) presented mock jurors with a written description of an assault and robbery case in which he manipulated the defendant's behaviour in the courtroom. The defendant was portrayed as either arrogant or humble and subjects were asked to return a verdict, sentence him if appropriate, and state how they felt about the defendant. The results indicated that the defendant who behaved arrogantly was not significantly more likely to be found guilty than the humble defendant, but was sentenced significantly more severely when convicted. The results of a later field study appear to lend support to this finding. Parkinson (1979, cited in Greenberg & Ruback, 1982) analysed the transcripts of 38 trials and found that defendants who were acquitted were more courteous, more deferent and referred to themselves less often than those who were convicted.

Savitsky and Sim (1974, cited in Izzett & Sales, 1981) conducted an experiment to investigate the effect of a defendant's emotional demeanour on mock jurors' decisions. Subjects were asked to observe a defendant who expressed one of four emotional states (anger, happiness, sadness/distress, or neutral) through standardized nonverbal behaviour such as demeanour, facial expressions and vocal inflections. They were then asked to role play probation officers and rate the severity of the defendant's act, and the likelihood that the defendant would commit the act again, and recommend an appropriate punishment.

The results indicated that subjects' judgments were influenced by the defendant's emotional demeanour. On ratings of the likelihood of recurrence, and appropriate punishment, the defendant who expressed sadness and distress during the trial was evaluated the least severely, followed by the defendant who appeared neutral, then the defendant who appeared happy. The defendant who expressed anger was judged the most severely.

Rumsey (1976) presented mock jurors with a modified version of Landy and Aronson's (1969) case materials in which the defendant was described as either 'extremely remorseful' or as having given 'no indication of remorse', and found that

those in the 'remorseful' condition recommended significantly shorter sentences than those in the 'nonremorseful' condition.

Pryor and Buchanan (1984) conducted an experiment designed to investigate the effect of a defendant's nonverbal behaviour on jurors' perceptions of the defendant. Subjects selected from jury pools in Florida were presented with a two page case summary of a trial in which a man had allegedly broken into a drug store with the intention of committing a crime. Subjects in the three experimental conditions were then shown a brief videotaped 'deposition', during which each lawyer questioned the defendant whose level of anxiety was varied across three levels (high, moderate and low). The results indicated that the defendant's demeanour did influence subjects' attributions and perceptions of the defendant's guilt. The defendant who exhibited little or no anxiety was rated as significantly more credible, more competent, more trustworthy, and was found guilty significantly less often than either the highly anxious or the moderately anxious defendant.

The authors concluded that "a defendant who projects moderate to high levels of anxiety during testimony appears to be judged more harshly than one who projects a calm, confident image" (p. 99). They also point out that their subjects had an opportunity to observe the defendant only during a brief 'testimony', and suggest that the effects of a defendant's demeanour on jurors' evaluations may be accentuated by more prolonged exposure to a defendant, as is the case in real trials.

More recently, Salekin and colleagues (1995) presented mock jurors with a case in which either a man or a woman was on trial for second degree murder after having allegedly caused the death of her/his two children. The presentation included a videotape showing the defendant being examined by both lawyers, in which the defendant's emotional expression was varied across three conditions (flat, moderate and high affect). In the 'flat affect' condition, the defendant answered any questions with a flat tone of voice and responded to any questions that would usually elicit an emotional response in a 'stoic manner' without ever appearing upset. In the 'moderate affect' condition, the defendant's responses were as would be expected from most people, with some level of emotional response. In the 'high affect' condition, the defendant displayed emotions that exceeded what would probably be expected from the average person.

Subjects were then asked to rate the guilt of the defendant, deliver a verdict, assign a sentence if appropriate, and respond to a number of open-ended questions.

The authors predicted that the defendant who displayed either flat or high affect would be perceived as more guilty than the defendant who displayed moderate affect. They also predicted an interaction based upon traditional sex role stereotypes: that the female defendant would be perceived as more guilty when she displayed flat affect than when she displayed moderate affect, and that the male defendant would be perceived as more guilty when he displayed high affect than when he displayed moderate affect.

The results provided support for these predictions for the female defendant but not for the male defendant. When the defendant was male, ratings of guilt did not differ significantly as a function of the level of emotionality. However, when the defendant was female, she was seen as more guilty when she displayed extreme affect (either flat or high), than when she displayed moderate affect. Also, the female defendant who displayed flat affect was rated significantly more guilty than the defendant in any of the other conditions (male and female). No significant differences were observed among the conditions on either the forced choice verdict measure, or the severity of recommended punishment for those defendants found guilty. The authors caution that although they failed to find any significant difference in verdicts as a result of level of emotion, this does not necessarily exclude the possibility that it may be an important factor in jurors' perceptions of the defendant's guilt.

In summary, the data are extremely sparse at present but there may be enough to suggest that the way defendants conduct themselves during trials may influence jurors' judgments.

The Overall Impact of Extra-evidential Factors Related to the Defendant

The evidence appears to suggest that a variety of extra-evidential factors related to the defendant may influence jurors' judgments. However, as Dane and Wrightsman (1982) point out, it is not enough to say that extra-evidential characteristics have an influence on jurors' decisions, it is also necessary to try and assess the extent of the impact, and find out just how influential these factors are.

Kalven and Zeisel (1966) estimated that defendant characteristics made a significant contribution in 22% of the cases in which the jury was more lenient than the judge would have been (only about 4% of the 3,576 trials). With regard to 'prejudice', the jury was more severe than the judge would have been in only 3% of the trials and Kalven and Zeisel calculated that anti-defendant sentiments accounted for only about 10% of these (approximately 0.3% of the 3,576 cases).

Overall, Kalven and Zeisel's exhaustive analysis revealed that strong sentiments toward the accused (whether positive or negative), were only present in about one-third of the cases. Even in those cases in which extra-evidential sentiments towards the defendant were thought to be strong, they were likely to influence jury decisions only in close or 'balanced' cases: those in which the evidence did not clearly favour either side. They concluded that "the jury does not often consciously and explicitly yield to sentiment in the teeth of the law. Rather it yields to sentiment in the apparent process of resolving doubts as to [the] evidence" (p. 165) and elsewhere: "[t]he closeness of the evidence makes it possible for the jury to respond to sentiment *by liberating* it from the discipline of the evidence" (p. 165). They referred to this as the 'liberation hypothesis'.

Thus, Kalven and Zeisel's data suggest that jurors' sentiments towards the defendant on their own, are not a very important source of guilt attributions. They concluded that "sentiments about the individual defendant are seldom powerful enough to cause disagreement by themselves; rather, they gain their effectiveness only in partnership with some other factor in the case. . . . for the defendant to be poor and crippled or beautiful and blonde is by itself rarely a sufficient stimulus for the jury to disagree with the judge" (p. 114).

More recently, Barbara Reskin and Christie Visser conducted some research involving courtroom observations of 38 actual sexual assault trials, and posttrial interviews with 331 of the jurors from these trials (Reskin & Visser, 1986; Visser, 1987).

Reskin and Visser (1986) investigated whether the effect of jurors' sentiments towards the victim and defendant depends on the strength of the evidence, as Kalven and Zeisel maintained. The effects of the attractiveness and employment status of both the victim and the defendant were chosen for examination on the basis of comments made

by the participants about defendants' and victims' personal characteristics or lifestyles. The effects of the jurors' reactions to the characteristics of the defendant and victim in strong and weak cases were then compared.

The results indicated that jurors' judgments were affected by the characteristics of both the defendant and the victim excluding the effects of the evidence. If the defendant appeared attractive or was employed, jurors were less likely to believe that he was guilty. However, the effect of these extra-evidential factors was largely restricted to weak cases, in which the prosecution did not present enough hard evidence of the defendant's guilt. When faced with this situation, jurors' verdicts were significantly affected by factors such as the characteristics of the defendant. However, when the prosecution presented a strong case, offering ample hard evidence, jurors tended to be convinced of the defendant's guilt without considering such extra-evidential factors.

Thus, the liberation hypothesis first proposed by Kalven and Zeisel was supported, and Reskin and Visser concluded that "if the state can muster enough hard evidence in the form of disinterested eyewitness testimony or physical exhibits, sentiments play a minor role in jurors' decisions" (p. 437).

Visser (1987) conducted some further analysis to find out how much effect extra-evidential factors have on jurors' decisions once evidential influences are accounted for. Among the four extra-evidential factors examined were an assessment of the defendant's attractiveness, and an assessment of the defendant's educational level. It was found that jurors' decisions were dominated by evidential issues, and that the effects of victim and defendant characteristics accounted for only a small percentage (8%) of the explained variance (44%) in jurors' predeliberation judgments.

In conclusion, estimates of the power of extra-evidential factors related to the defendant vary according to the data base being considered. The bulk of experimental literature suggests that they play a significant role in mock jurors judgments of defendants. However, evidence from field studies appears to suggest otherwise. It suggests that in actual criminal trials, defendant characteristics do not have a marked effect on trial outcomes, and contribute very little, by themselves to jury verdicts (Bridgeman & Marlowe, 1979; Kalven & Zeisel, 1966; Reskin & Visser, 1986; Stewart, 1980, 1984; Visser, 1987). It suggests that the strength of the evidence is the primary

determinant of juridic decisions and that extra-evidential factors are likely to affect verdicts predominantly, in close cases, when the relevant evidence is ambiguous (Kalven & Zeisel, 1966; Reskin & Visser, 1986). Although, it should be noted that the social and financial status of defendants affects the quality of the legal defence they receive (Stephenson, 1992).

The hypothesis that the influence of extra-evidential factors is strongest when the evidence is ambiguous has received support from a number of experimental studies.

Sue, Smith and Caldwell (1973) found that when the initial evidence against the defendant was ambiguous, the introduction of additional testimony by the prosecution that was ruled inadmissible, biased mock jurors in favour of finding the defendant guilty (when compared to the condition in which the inadmissible testimony was never introduced).

Kaplan and Miller (1978) conducted three experiments and found that a common principle emerged, namely that jurors' judgments are a joint function of two components: extralegal bias towards the defendant and legally relevant evidentiary information. They concluded that these two components are inversely weighted so that as the importance of one increases the effective importance of the other tends to decrease. Thus, as the legal evidence becomes stronger the impact of extralegal biases is reduced.

Baumeister and Darley (1982) conducted two experiments using a modified version of Landy and Aronson's case history. Their results also indicated that increasing factual information available on the case significantly reduced the bias of simulated jurors in favour of an attractive defendant. They concluded that "increasing the quantity and precision of relevant facts transfers the emphasis from judging the perpetrator to judging the crime" (p. 286).

However, even if the weight of the evidence does contribute more to jurors' judgments and trial outcomes than extra-evidential factors, this does not mean that these factors are not important (Shaffer, 1985). Furthermore, even if extra-evidential factors are most influential in ambiguous cases, it is these cases that juries are required to make decisions in. In reality, the majority of cases that go to trial are the more ambiguous ones. Those cases that clear cut are usually either not proceeded with, or elicit a guilty plea, and do not go to trial.

Other Trial Participants

It has often been said that jurors are not only sensitive to the characteristics and behaviour of the defendant but are also often quite sensitive to the characteristics and behaviour of the opposing lawyers and the judge (e.g., Darrow, 1936, cited in Sutherland & Cressey, 1966; Foreman, cited in Smith, 1966; Frank, 1950).

According to the model of jury decision making proposed by Greenberg and Ruback (1982), the lawyers and the judge are influential. During the attribution stage, the lawyers' demeanour and appearance are said to be influential in the jurors' assigning dispositions to the defendant. Then, during the social exchange stage, jurors reach a verdict based on the expected outcomes of social exchanges with the lawyers and the judge and other trial participants.

However, the effects of the characteristics and behaviour of lawyers and judges have not been studied extensively, which is unfortunate because they are usually considerably more active during the trial than the defendant.

The Lawyers

The jury trial is often compared to a stage performance, and the lawyers are seen as the key figures in the drama, always on stage, performing as actors and also functioning as producers and directors (Greenberg & Ruback, 1982; Kalven & Zeisel, 1966). If this analogy is extended, the jurors become the audience and the critics.

It is a commonly held belief that juries tend to try the lawyers rather than the defendant (Goldstein, n.d, cited in Frank, 1950; Hans & Vidmar, 1986; Kalven & Zeisel, 1966). Clarence Darrow and Percy Foreman were among those who claimed that this is true, and Balzac (n.d., cited in Levine, 1992) once defined the jury as "twelve men chosen to decide who has the better lawyer" (p. 65).

Under the adversarial system of justice, the lawyers play critical roles in the conduct of the trial, and the outcome of any trial clearly depends on the skill of the opposing lawyers. However, although the skill of the lawyers undoubtedly affects jurors' decision making, there is also another source of influence related to the lawyers: the characteristics attributed to them (e.g., their likableness) and their behaviour during the trial.

A number of writers have claimed that jurors are influenced by the characteristics of the lawyers (e.g., Brooks & Doob, 1975; Greenberg & Ruback, 1982; Hahn & Clayton, 1996).

Villemur and Hyde (1983) presented mock jurors with a rape trial in which they manipulated the gender of the defence lawyer and found that those who were exposed to a female defence lawyer were significantly more likely to return not guilty verdicts than those exposed to a male defence lawyer. Conversely, Hahn and Clayton (1996) also manipulated the gender of the defence lawyer when they presented mock jurors with a summary of an assault and robbery case, and found that male defence lawyers were more successful than female defence lawyers.

Writers have also stressed the importance of lawyers' behaviour. Hahn and Clayton (1996) claim that jurors are likely to be influenced by the presentation style of lawyers, and that they interpret the information as a function of the presentation. Former President of the Association of Trial Lawyers of America, Michael Colley (1981, cited in Nietzel & Dillehay, 1986) maintained that impressions decide cases, not content.

In her book entitled "What Makes Juries Listen," communications expert Sonya Hamlin (1985) advises lawyers that they are judged by jurors:

The jury judges *you* based on how you examine the witnesses. They're there to judge and judge they do . . . [t]hey watch how you get other people to talk, how you extract information, how aggressive or manipulative you are, how disinterested or supportive you seem, how respectfully you behave towards lay people like themselves" (p. 9).

Under the adversarial system, it is the duty of the lawyers to represent their client to the best of their ability. They are not expected to present their case in a colourless and detached manner, as if the facts spoke for themselves, but rather in such a way that it will appear most favourable to their side (Elwork & Sales, 1980; Fuller, 1971; Nietzel & Dillehay, 1986). Their task is "tantamount to moulding beliefs, feelings, and behaviour" (Nietzel & Dillehay, 1986, p. 134) by imposing "the most influential content, style and structure at their disposal on the facts as they see them" (Nietzel & Dillehay, 1986, p. 134) in an attempt to persuade the jury to render a verdict favourable to their side.

Greenberg and Ruback (1984) stress the importance of lawyers establishing and maintaining credibility if they are to have an influence on the jury. Saks and Hastie (1978) also claim that attitude change in an advocated direction is increased if the source is high in (a) credibility (perceived as possessing expertise and objectivity); (b) attractiveness on the dimension of familiarity, similarity and likability (including personal style and physical appearance); and (c) power, prestige and status. Psychological consultants on trial preparation and conduct say that lawyers are generally aware of the impact of appearance and behaviour on credibility and interpersonal effectiveness (Dillehay & Nietzel, 1986).

Lawyers are "allowed - more, are expected - to appeal to the crudest emotions and prejudices of the jurors" (Frank, 1950, p. 122). It has been suggested by some of the most successful lawyers that effectiveness is at least partially based on an "ability to recognize and exploit any of the jurors' biases, to elicit the jury's sympathy and preference for themselves and their clients, or merely to entertain the jury" (Kerr, 1982). Frank (1950) maintained that "in many a jury trial, . . . a man's life, livelihood or property often depends on his lawyer's skill or lack of it in ingratiating himself with the jury rather than on the evidence" (p. 122).

In the first half of this century, eminent trial lawyers produced pamphlets which advised lawyers to 'ingratiate' themselves with the jury. In one such pamphlet it is asserted that jurors' reactions to the trial lawyer may be more important than their reactions to the defendant, because while the defendant appears on the stand only for a relatively brief period (if at all), the lawyers almost always occupy centre stage.

In a chapter on trial conduct in a New Zealand trial manual, lawyers are advised that because they are continually in view throughout the trial, they are likely to be the focus of the jurors' attention, and "[a]ny shortcomings in the way [they] present themselves are readily visible. . . . [and] detract from [their] authority and credibility" (Eichelbaum, 1989, p. 42).

In other, older trial manuals, lawyers are repeatedly advised of the importance of jurors' perceptions of them:

[W]ithout realising it, the jurors allow their opinions of the evidence to be swayed in favour of the side represented by the lawyer they like (Goldstein, n.d., cited in Frank, 1950, p. 121).

Jurors are not machines, they are human beings. They do not see only the evidence. They also see two rivals . . . each vying for their friendship. If they like you, it will probably be reflected in their verdict; if they dislike you, the road will be uphill all the way (Bailey & Rothblatt, 1971, p. 86).

Jurors cannot remove from their minds the assessments or opinions of lawyers they have stored away. . . . When the jurors like one side and dislike the other, they will, without hesitation resolve every doubt in favor of the [side] that they like (Morrill, 1973, cited in Linz, Penrod & McDonald, 1986, p. 282).

The lawyers' relationships with other trial participants, particularly the defendant, are also evaluated by jurors (Hahn & Clayton, 1996). Greenberg and Ruback (1982) explain how lawyers influence the verdicts of juries using attribution theory. Certain characteristics are attributed to the lawyers by the jurors (e.g., credibility and confidence in their cases) which are influenced by the lawyers' demeanour, particularly towards the defendant. Defence lawyers try to convey to jurors that they believe the defendant by showing liking, respect, sympathy, and understanding toward their client. Prosecuting lawyers, on the other hand, try to prove to the jury that they know that the defendant is guilty by maintaining a consistently aggressive approach towards her/him (Greenberg & Ruback, 1982).

In an older, popular trial manual defence lawyers are advised that "[t]he jury's verdict will not rest solely on evidence 'from the box' . . . part of the decision will turn on what the jury thinks you think of your client. Even if you believe 100 percent in your client, if you are cold toward him during the trial the jury may conclude that you think he's a liar'" (Hegland, 1978, cited in Greenberg & Ruback, 1984, p. 161).

Anecdotal evidence provides support for the assertion that "[e]ven with the best of intentions, it may well be almost impossible for the wandering mind of the . . . juror to overcome . . . the histrionics that so often characterize presentation by counsel" (Abraham, 1980).

Austin (1982) interviewed most of the jurors from a trial and retrial (after the first jury hung) in Cleveland, and found support for the assertion that jurors are sensitive to the characteristics and behaviour of the lawyers. He found that

[a]ll of the jurors retained vivid memories of the lawyers. Their advocacy style was a frequent subject of conversation during lunch breaks since it was not included in the judge's admonition not to discuss the case. . . . Daydreaming, grimacing at testimony, glaring at rivals, every movement by lawyers was observed and digested by the jurors (p. 16).

Similar sentiments were expressed by a juror in a medical malpractice trial. Stone (1992) reported that "[e]ven though jurors are admonished to reach a verdict based only upon the evidence heard in the courtroom, it is difficult to ignore the manner in which competing lawyers conduct themselves" (p. 203) and that the 'ineptness' of the lawyers, "inevitably affected the reliance and believability [he] attached to what was put forth by that party" (p. 202). Even the lawyer's fumbling with the video recorder "diminished [his] evaluation of the views espoused by that lawyer" (p. 202). He also claimed that objections by the lawyers, regardless of whether they were sustained or overruled, tend to influence the jury's view of their competence.

Unfortunately there is very little empirical research investigating the effect of lawyers' characteristics and behaviour on jurors' decision making. Most of what has been conducted has been concerned with the presentation style of lawyers, rather than their characteristics or behavior towards the other trial participants.

Kaplan and Miller (1978) presented mock jurors with one of four different versions of a simulated trial in which the courtroom demeanour of the lawyers was varied. In one version, the prosecutor acted obnoxiously and badgered the witness, in another version the defence lawyer acted this way, in the third version the judge and the experimenter acted obnoxiously and in the control version, none of the participants were obnoxious. The results indicated that the behaviour of the lawyers did affect judgments of guilt, with the least guilt being attributed to the defendant when the prosecutor behaved obnoxiously and the most guilt being attributed when the defence lawyers was obnoxious. These findings appear to suggest that while prosecutors are advised to show

that they are convinced of the defendant's guilt, they may be well advised to avoid being too aggressive (Greenberg & Ruback, 1984).

In another study, Parkinson (1979, cited in Greenberg & Ruback, 1982) compared the speech styles of successful and unsuccessful prosecuting lawyers in transcripts from 38 actual trials. It was found that more verbal aggression was shown by successful prosecutors than their less successful counterparts. Unsuccessful prosecutors tended to use more polite speech and more conditional statements, whereas the more successful lawyers tended to speak for longer and asked more questions referring directly to the witness.

Sigal, Braden-McGuire, Hayden and Mosley (1985) conducted an experiment designed to investigate the effects of the presentation style of the lawyers. They presented mock jurors with a videotape of a trial involving a defendant charged with robbery, and manipulated both the sex and the presentation style of the defence lawyer so that s/he was either aggressive, assertive or passive in her/his presentation.

The passive style was characterised by slow speech with many pauses, limited use of gestures and body language, and little eye contact. The assertive style was characterised by normal conversational speech that was clear and without pauses, some expressive gestures and body language, and a moderate amount of eye contact. The aggressive style was characterised by high amplitude speech that was fast and contained hostile inflection, a lot of gesturing (including pounding on the table), and a considerable amount of eye contact. The prosecuting lawyer was male and adopted a neutral style in all of the conditions.

The researchers predicted that the defence lawyer who adopted a passive or nonassertive presentation style would be least successful in obtaining an acquittal, and that this would be the case regardless of whether the defence lawyer was male or female. The results supported both of these predictions. Both male and female defence lawyers who adopted a passive presentation style were significantly less successful in getting the defendant acquitted than those who either adopted an assertive or an aggressive style of presentation. As predicted, no significant differences in the number of not guilty verdicts were observed between those subjects in the assertive condition and those in the aggressive condition, but aggressive lawyers were rated as more effective than assertive lawyers.

More recently, Hahn and Clayton (1996) conducted an experiment designed to examine the effects of the defence lawyer's presentation style and gender on jurors' judgments. They presented subjects with a summary of an assault and robbery case, followed by a videotape in which the male or female defence lawyer was interrogating a witness in either a passive or aggressive style. Subjects were then asked to render a verdict and rate the lawyer and the witness on various scales. The results indicated that overall, aggressive lawyers were more successful in obtaining an acquittal than passive lawyers, and male lawyers were more successful than their female counterparts.

Gibbs, Sigal, Adams and Grossman (1989) presented mock jurors with a videotaped simulated personal damages trial, involving expert testimony from a psychologist regarding the plaintiff's psychological problems. The male defence lawyer's cross-examination of the expert witness was varied so that he was either (a) hostile and asked leading questions, (b) hostile and asked nonleading questions, (c) non hostile and asked nonleading questions, or (d) non hostile and asked leading questions. After viewing the videotape, subjects were asked to rate their impression of the lawyer and the psychologist on various scales, and also give a verdict and recommend the amount of damages that should be awarded if appropriate.

The results indicated that the hostile lawyer who asked leading questions, and the nonhostile lawyer who asked nonleading questions were rated as less effective than the lawyer who was hostile and asked nonleading questions, or the lawyer who was not hostile and asked leading questions. However, owing to the disproportionate number of guilty verdicts in this study the authors could not assess the effect on either verdict or amount of judgment.

Kerr (1982) also found that lawyers make a difference when he conducted a field study, in which he attempted to relate the personal characteristics and behaviour of various trial participants to conviction ratios in more than 100 trials in San Diego. He found that 3 of the 17 characteristics and behaviours of the defence lawyers significantly correlated with juries' conviction rates. The first was the rate of supportive reactions directed toward the prosecuting lawyer, the more supportive s/he was, the lower the proportion of convictions. The other two were ratings of her/his working knowledge of the evidence, and how convincing her/his arguments were. Those lawyers who displayed a good working knowledge of the evidence and those who made

convincing arguments tended to be more successful. Two other variables showed a nonsignificant association with conviction ratios. Defence lawyers who were perceived as more 'indifferent' were more likely to be unsuccessful than their more enthusiastic counterparts and those who displayed more negative reactions toward the prosecuting lawyer were also less successful.

With regard to the prosecuting lawyers, three variables significantly correlated with juries' conviction ratios. A correlation was found between the number of supportive reactions towards the defence lawyer and conviction ratios. However, in the case of the prosecuting lawyers the relationship was a negative one: those who were supportive towards the defence lawyer were *less* successful than those who were less supportive. The other two variables were interest/indifference and respectfulness/surliness. Prosecuting lawyers who appeared to be more interested and respectful tended to be less successful than those who were less so. Thus, defence lawyers who showed a strong interest in the case were more successful than those who did not, but prosecuting lawyers who did were more likely to be unsuccessful.

Kerr concluded that although these impressions of effective lawyers are speculative, "the data clearly demonstrate that the moods, styles and skills of the contesting lawyers in a criminal trial are associated with the trial's outcome" (p. 281).

Some of the judges surveyed by Kalven and Zeisel (1966) were of the opinion that the jury was sometimes swayed by the personalities of the lawyers. In a robbery case in which the jury could not reach a verdict, the judge saw the defendant as having the benefit of "innocence by association" with the defence lawyer. He was young, honest and sincere and had previously known the defendant and believed his story. The judge believed that his honesty and decency rubbed off on the jurors. In another case, the judge reported that the "able, congenial, likable defense counsel helped" (p. 364), and in another, the defence lawyer "is one of the old timers and very colourful. He grunts and laughs and disparages witness' testimony on the other side by holding his hands to his ears. The court had to cut him down several times. But everybody likes Mr. R, the defence attorney" (p. 365).

In other cases the judge was of the opinion that the character of the defence lawyer was a factor in the jury being more *severe* than s/he would have been. In a disorderly

conduct case, the judge reported: "The conduct of counsel for the defence became so argumentative and obnoxious that the court threatened to hold him in contempt. This conduct may have helped to influence the jury" (p. 392-393).

In summary, the anecdotal and empirical research suggests that jurors are sensitive to the characteristics and behaviour of the lawyers. The gender of defence lawyers has been found to influence mock jurors' verdicts (Hahn & Clayton, 1996; Villemur & Hyde, 1983). The behaviour of the lawyers has been found to affect mock jurors' judgments of the defendant's guilt (Kaplan & Miller, 1978) and judgments of the lawyers' effectiveness (Gibbs et al., 1989), and relationships have been found between the behaviour or presentation style of lawyers and verdicts in field studies (Kerr, 1982; Parkinson, 1979, cited in Greenberg & Ruback, 1982), and in experimental studies (Hahn & Clayton, 1996; Sigal et al., 1985).

However, if Kalven and Zeisel's (1966) widely acclaimed study paints an accurate picture of courtroom dynamics, the frequency with which lawyers have a significant impact in real trials is minimal. The judges in their sample reported that the lawyers were equivalent in both skill and impact in 76% of the cases. According to Kalven and Zeisel's calculations, the defence lawyer led the jury to reach a verdict that was in the judge's opinion contrary to the evidence in slightly more than 1% of the 3,576 cases.

When Bridgeman and Marlowe (1979) interviewed jurors and asked them to rank a list of potentially influential factors according to how much they believed each factor influenced to their final decision, 26% of the participants ranked the prosecuting lawyer first or second, and 4.6% ranked the defence lawyer first or second. The authors concluded that jurors "appeared not to be influenced by subtle sociopersonal considerations such as the . . . attorney's personal style or appearance."

However, Bartol and Bartol (1994) caution that it would be unwise not to acknowledge the tremendous power that lawyers have in the courtroom, especially when the evidence is not clearly in favour of one side or the other. They claim that when the opposing lawyers are not equally skilled and/or charming, the stronger lawyer is likely to have a considerable effect on the jury. Even if lawyers are significantly influential in only a small proportion of cases, as Kalven and Zeisel (1966) suggest, many defendants may still be affected.

The Judge

Of all of the participants in the jury trial, the judge has the most power over the proceedings and the outcome. The judge decides who can testify, what evidence can be admitted, and what the lawyers and the witnesses can say. The design of the courtroom emphasizes this power and authority. The focus is the judge's bench, which is centred at the head of the courtroom and is elevated above the floor of the court.

The role of the judge is similar to that of an umpire or referee. It is the judge's duty to maintain order and discipline, and control the conduct of the lawyers and other trial participants. The judge is also responsible for making decisions regarding issues pertaining to the law. At the conclusion of the lawyers' presentations, the judge instructs the jury on the nature of the laws that govern the case, and how they should weigh the evidence according to these specific legal criteria as they deliberate to a verdict.

Judges are supposed to remain impartial throughout the trial, not unduly influencing the jury. However, a number of authors have asserted that they have a significant influence in directing the verdict. Some maintain that judges tend to be biased towards one side or the other, in most cases the prosecution (Winick, 1979, cited in Foley, 1993). This inclination is seen as important because it is evident in the way the judge treats the opposing lawyers, and the favoured lawyer is often the successful one.

Blanck and colleagues, who have written extensively on the behaviour of judges, express similar views (Blanck, 1987, 1991; Blanck & Rosenthal, 1992; Blanck, Rosenthal, & Cordell, 1985). They claim that during the course of a trial, the judge, as other people do, develops attitudes and beliefs about particular aspects of the trial, including the defendant's guilt or innocence. Blank and Rosenthal (1992) caution that this is not necessarily undesirable, because "we want 'humane and concerned' judges in our courts" (p. 90). However, such attitudes and beliefs sometimes influence the way in which judges behave during the trial and in extreme circumstances some defendants may be denied their right to a fair trial (Blanck, 1987).

It has long been recognised by legal practitioners, scholars, social scientists and the courts that judges' verbal and nonverbal behaviour can significantly affect the verdicts reached by juries (Baum et al., 1985; Blanck et al., 1985). Levine (1992) says that judges influence juries in a number of ways including: (a) the way they deliver

instructions to the jury, present the standard of proof, and define the laws in question; (b) their rulings on the admissibility of evidence and testimony - "a relentless series of sustained or overruled objections can prejudice jurors in a particular direction. They may be more likely to think that someone is guilty if his or her lawyer is constantly being rebuffed" (p. 72); and (c) their own beliefs about which side should be successful, which are communicated through verbal and nonverbal cues to jurors who may be seeking guidance from the judge.

Baum and colleagues (1985) also claim that jurors pick up clues about the 'correct verdict' from the behaviour of judges such as their tone of voice when delivering instructions or "expressions uttered during key testimony . . . even when the gestures are unintended or meaningless" (p. 351). Blanck and colleagues (1985) go so far as to say that aspects of a trial's outcome can be predicted from the judge's unintended verbal, and nonverbal behaviour alone.

Greenbaum (1975) writes of one juror who maintained that "[d]uring the testimony the attitude of the judge is very important. His movements and gestures, even his posture, affect the jury and they react accordingly" (p. 1268).

Judges have also acknowledged that juries "can be easily influenced by the slightest suggestion coming from the court, whether it be a nod of the head, a smile, a frown, or a spoken word" (State v. Wheat, 1930, cited in Blanck & Rosenthal, 1992, p. 89). The susceptibility of jurors to the influence of judges was acknowledged by the Supreme Court in the United States at least as early as 1893, and was reaffirmed a year later:

It is obvious that under any system of jury trials the influence of the trial judge on the jury is necessarily and properly of great weight, and that his lightest word or intimation is received with deference, and may prove controlling (Starr v. United States, cited in Greenbaum, 1975, p.1267).

Appellate courts in the United States have also repeatedly cautioned that juries bestow "great weight and deference upon even the most subtle nonverbal behaviours of the judge" (Blanck & Rosenthal, 1992, p. 89). "It is well known, as a matter of judicial notice, that juries are highly sensitive to every utterance by the trial judge" (Bursten v. United States, 1972, cited in Blanck, Rosenthal, & Cordell, 1985, p. 99).

In her article, Greenbaum (1975) suggests that the high level of agreement found between judges and juries by Kalven and Zeisel (1966) may be due at least partly to judges conveying their feelings about the trial participants and their preferences for verdicts to the jurors, who are subsequently influenced by these. Greenbaum likens the relationship between judges and jurors to the relationship between experimenters and their research participants. Research seems to show that experimenters unconsciously convey information to the research participants during the experiment through their nonverbal and paralinguistic behaviours, and that participants are influenced by these. Greenbaum suggests that a similar process occurs between judges and juries in the following way:

- (1) Any conscious or subconscious evaluative feelings a judge has toward the trial participants may be reflected in nonverbal and paralinguistic behaviors, despite his attempts to conceal such feelings.
- (2) Jurors can perceive these cues and interpret them accurately even when they consist of subtle behaviours directed toward others.
- (3) Jurors are likely to attend to, decode, and be influenced by these nonverbal and paralinguistic behaviours when the trial situation contains three factors: (a) a desire by the juror to behave correctly; (b) a context novel to the juror in which the appropriate behaviours are perceived as unclear; and (c) a high status figure, the judge, emitting cues to proper performance (p. 1279).

Greenbaum concludes that if this does occur in the courtroom, and influences juries' verdicts, "judicial impartiality, a basic foundation of the adversary system, becomes illusory" (p. 1279) and a defendant who requests a jury trial "may actually receive a judge's decision clothed in a jury's verdict" (p. 1281).

Although the judge plays a prominent role in the trial process, judges have been the focus of only a limited amount of research. There have been a number of studies conducted on the impact of instructions from the judge on the behaviour of juries, but most of this has been concerned with the effect of instructions to disregard inadmissible evidence. Very little has addressed the interpersonal or global behaviour of judges. It has been suggested that the reason for the lack of research in this area is that it is difficult to persuade judges to participate in experimental research and it is equally difficult to try and simulate their behaviour (Elwork & Sales, 1980; Elwork et al., 1981).

In an early study of judges' behaviour, Smith and Blumberg (1967, cited in Blanck & Rosenthal, 1992) used participant observation methods to examine the differences in the working styles of nine criminal court judges, and concluded that the judge "completely dominates the proceedings and manipulates them towards his own ends . . . He manipulates juries through smiles, smirks, and unrecorded off-the-cuff comments which may tend to discredit a witness or a defendant's testimony during a trial" (p. 94). Later, O'Mara (1972, cited in Baum et al., 1985) surveyed jurors immediately after their trial service and found that "jurors are very interested in pleasing the judge and can be swayed by his or her behaviour" (p. 351).

Blanck and colleagues (1985) conducted some research on the behaviour of judges, in which they videotaped portions of actual criminal misdemeanour jury trials. They then had groups of individuals, who were not connected with the trials, rate the judges' behaviour on 10 different scales. They found that the expectations of judges regarding the outcome of the trial predicted their verbal and nonverbal behaviour, and this was related to the verdicts returned by juries.

In his field study, Kerr (1982) had in-court observers rate judges' behaviour, and found a significant correlation between judges' relative favouritism for the opposing lawyers and juries' conviction ratios. Juries were less likely to convict the defendant when the judge was relatively favourable towards the defence lawyer, and more likely to convict when the judge acted more favourably towards the prosecuting lawyer. Kerr suggested that "much greater care may be required from judges if they are to successfully fulfill their roles as neutral arbiters" (p. 282).

In summary, it appears from the extremely limited amount of research on the topic, that the behaviour of judges may influence juridic decision making.

Conclusion: Extra-evidential Factors Related to the Trial Participants

In conclusion, the available literature suggests that various extra-evidential factors related to defendants, lawyers and judges may influence jurors' decision making. However, there are some important issues that need to be considered about the studies on which many of these conclusions are based. The strongest evidence that jurors are influenced by extra-evidential factors in their decision making derive from simulation studies and, despite their popularity, there are considerable problems in drawing conclusions from these studies.

CHAPTER 4

MOCK JURY RESEARCH

As the use of simulations to study jury behaviour has become more widespread and the experimental literature on juries has increased, so too has concern for the external or ecological validity of such studies. This concern regards the extent to which the results obtained using this method can be generalized to real juries in the actual courtroom setting.

As a general rule, the more similar the research conditions are to the real event (in this case the courtroom trial), or the greater the 'mundane realism', the more likely it is that the results can be generalized from the former to the latter. Unfortunately, the majority of experimental studies investigating jury decision making issues have been characterised by a number of differences from actual jury trials in real courtroom settings which could plausibly limit the external validity of such research. There are five major procedural differences between typical jury simulations and real trials which threaten the external validity of the results. These are (a) inadequate sampling, (b) the issue of role-playing, (c) the inadequacy of the trial simulations, (d) the use of inappropriate dependent variables, and (e) the omission of integral elements of the trial situation.

Inadequate Sampling

One often voiced criticism of jury simulation studies is the choice of mock jurors. In the vast majority of simulation studies, the juries have been composed exclusively of college students. This choice of subjects is owing to the ready availability of a student population as a convenient sample to study at the universities and colleges where such research is generally conducted.

However, employing college students as 'jurors' raises an important question concerning the generalizability of the results to the general population, since college student samples are generally not representative of the population from which juries are drawn (Baldwin & McConville, 1979; Baum et al., 1985; Bermant, McGuire, McKinley, & Salo, 1974; Monahan & Loftus, 1982; Weiten & Diamond, 1979).

The most obvious difference between the two populations is age and education (Bartol & Bartol, 1994; Foley, 1993). College students also tend to differ from the general population in other ways such as: socio-economic status, intelligence and political ideology (Bartol & Bartol, 1994; Smart, 1966, cited in Monahan & Loftus, 1982).

A number of researchers have made comparisons between the responses of samples typical of those used in these studies and samples more representative of the population of actual jurors, and have found a number of differences. When compared to older subjects, younger subjects have been found to be less likely to convict (Sealy & Cornish, 1973), more punitive in their hypothetical sentencing (Ackerman, McMahon, & Fehr, 1984) and more likely to be influenced by extra-evidential factors (Nemeth & Sosis, 1973). Juries composed of students have been found to be more likely to acquit (Simon & Mahan, 1971), and more lenient in sentencing (Feild & Barnett, 1978) than juries made up of citizens or members of an actual jury pool.

Conversely, other studies have found little or no difference in responses (Bray et al., 1978; MacCoun & Kerr, 1988; Sue, Smith, & Gilbert, 1974).

However, even when subjects have been drawn from actual jury lists or jury pools, other dissimilarities to the real courtroom trial typically still remain.

The Issue of Role Playing

“One of the most persistent intuitions . . . is that a fundamental difference exists between mock and real juries” (Davis, Bray, & Holt, 1977, p. 349) and it concerns the different consequences of their decisions. This dissimilarity has been noted by many authors and is perhaps the most critical difference between the decision making of real and simulated juries (Monahan & Loftus, 1982; Stephan, 1974; Weiten & Diamond, 1979; Wilson & Donnerstein, 1977; Wrightsman, 1987).

In simulation studies, subjects are asked to speculate about how they would behave if they were real jurors in an actual case. They are asked to make decisions that have no real consequences for the parties involved in the case. In contrast, their real-life counterparts in actual court cases are required to make decisions that have very real consequences for the defendant and the other parties involved, and are “acutely aware of the power of [their] decision to alter a human’s life” (Stephan, 1974, p. 311).

Even in the most realistic simulation, subjects are still aware that they are “playing a role devoid of all the stresses and anxieties that deciding the fate of another human being can generate” (Sabini, 1992, p. 112). Unfortunately this is one aspect of reality that is extremely difficult to incorporate into experiments (Oskamp, 1984).

A number of attempts have been made by researchers to determine whether mock jurors who are aware that their decisions will have no real consequences, behave differently from real jurors whose verdicts may carry important consequences. The results of these studies have been inconsistent. In two studies, no differences were found between the responses of subjects who knew that their decision would not have any real consequences and those who were led to believe that it would (Kerr, Nerenz, & Herrick, 1979; Zeisel & Diamond, 1978). In another, a nonsignificant tendency towards leniency was found for those who knew that their decisions would not have any consequences (Nietzel, Dillehay, & Rogers, 1976, cited in Dillehay & Nietzel, 1980). The results of another study indicated that those who knew that their decision would not have any real consequences were significantly less likely to return guilty verdicts than those who were led to believe that their decision would have real consequences (Wilson & Donnerstein, 1977).

Inadequate Trial Simulations

Another common criticism of jury simulation research pertains to the lack of complexity and realism in the presentation of cases, in terms of both the content and mode of presentation. In most jury simulation studies, subjects have been presented with written case materials describing usually fictitious cases that are characterised by startling brevity and simplicity and very rarely approximate the complexity of real jury trials (Bray & Kerr, 1979). For example, many studies have employed the case materials first used in the seminal study by Landy and Aronson (1969) which are only approximately 400 words long. Such brief written case summaries oversimplify the type and amount of information that jurors in the real world are exposed to in the courtroom situation. They provide very little relevant evidence and focus much more on extra-evidential factors than is normally true in actual trials (Shaffer, 1985).

Elwork and colleagues (1981) describe how, before we know someone, we are inclined to make judgments on the most available information (e.g. physical appearance).

However, in a real courtroom situation, this information makes up only a small fraction “of the total stimulus field to which jurors in are exposed” (Bridgeman & Marlowe, 1979, p. 91). Horowitz and Willging (1984) describe the effect of this in the following way: “In the laboratory experiment, defendant’s characteristics are etched in strong relief, which becomes a stark figure on a rather plain background of trial evidence. In the actual trial, defendant’s characteristics are embedded in a wide and rich network of evidentiary materials that vitiate the characteristics to a minor role in the trial’s outcome” (p. 79).

It is argued by many authors that as a consequence of the sparse simplicity of many simulations, the variable being studied (e.g. the attractiveness of the defendant) is more prominent than it would be in real life, and consequently has a greater impact on jurors’ attributions than it would normally have, leading to conclusions that do not reflect reality (Bray & Kerr, 1982; Foley, 1993; Greenberg & Ruback, 1982; Horowitz & Willging, 1984; Visher, 1987; Weiten & Diamond, 1979). There is evidence to support these claims.

The results of one study indicated that as the complexity and realism of the trial presentation increased, the number of guilty verdicts decreased (Bermant et al., 1974). These findings received support from a meta-analysis of 78 simulation studies which indicated that the effects of the manipulated variable were generally stronger as the realism of the simulation decreased (Linz & Penrod, 1982, cited in Kramer & Kerr, 1989). However, in a more recent study, Kramer and Kerr (1989) found that increasing the length and complexity of the trial did not result in a reduction of the effects of defendants’ characteristics on the decisions.

Many simulations have used a different mode of presentation from that which is characteristic of a real trial. The majority of studies have employed the least realistic medium, a written presentation of case materials. There is evidence to suggest that variations in the way in which case materials are presented to mock jurors affects the verdicts rendered by them (Juhnke, Vought, Pyszcynski, Dane, Losure, & Wrightsman, 1979). In contrast, two other studies found no significant differences in reactions between different modes of presentation (Farmer, Williams, Lee, Cundick, Howell, & Rooker, 1976; Miller, 1976).

Inappropriate Dependent Variables

Another criticism of jury simulation research concerns what Vidmar (1979) refers to as 'legal naiveté', an attribute that he says characterises a great deal of jury simulation research. It concerns what he sees as research psychologists' lack of knowledge of the judicial system, which is evidenced by 'the inclusion of unrealistic scenarios or instructions' in their experiments.

An example of this is the use of inappropriate dependent variables in jury simulations. Subjects are commonly asked to recommend punishment, or return ratings of guilt on continuous scales rather than make a dichotomous choice between guilty and not guilty. It has been argued that it may be inappropriate to generalize from effects on other measures to effects on verdicts because the equivalence of different dependent variables to the dichotomous verdict is questionable (Dane & Wrightsman, 1982; Pfeiffer, 1992; Stewart, 1984).

It has been found that experimental manipulations influenced recommended punishment but not judgments of guilt (Bray et al., 1978; Wilson & Donnerstein, 1977), or influenced verdicts only under certain conditions (Clary & Shaffer, 1985). The results of two field studies indicated that the physical attractiveness of the defendant correlated with the severity of the sentence handed down by the judge but not the verdict reached by the jury (Stewart, 1980, 1984)

The Omission of Integral Trial Elements

Another major criticism of jury simulations and another example of what Vidmar (1979) refers to as researchers' 'legal naiveté' concerns the fact that mock jurors are commonly required to make decisions in the absence of integral procedural elements that characterize decision making in actual trials, and that assume great importance in real jurors' behaviour (Baum et al., 1985). One such procedural feature is the deliberation stage in which real juries engage, but which has been omitted from most simulations.

Even in those relatively few studies in which some form of group deliberation has been included, the discussions have generally been characterised by one or more of the following: (a) researchers have imposed severe, unrealistic time limitations (10 to 30 minutes, 15 minutes or less in most of the studies); (b) extremely small groups of three

to four 'jurors' have been employed; and, (c) a group verdict has not been pursued (Weiten & Diamond, 1979).

Davis, Bray and Holt (1977) argue that focusing on individual juror decision making does not tell us very much about jury functioning. The results of studies in which individual and group decisions have been compared have been mixed. Some researchers have found no significant differences between judgments given without deliberation and judgments given after deliberating as a group (Bray et al., 1978; Rumsey & Castore, 1974, cited in Davis et al., 1977; Stephan, 1974). Others have found that judgments become more lenient after deliberations (Gleason & Harris, 1976; MacCoun & Kerr, 1988), and others have found that judgments have become polarised after deliberations (Bray & Noble, 1978; Kaplan & Miller, 1977; Myers & Kaplan, 1976, cited in Davis et al., 1977).

Of particular importance in the present study are the findings regarding the influence of deliberation on the effect of extra-evidential factors. Some researchers have found that extra-evidential factors that were influential before deliberations were not influential after subjects were given the opportunity to discuss the case as a group (Bray, 1974, cited in Clary & Shaffer 1985; Carretta & Moreland, 1983; Izzett & Leginski, 1974; Kaplan & Miller, 1978; Kerwin & Shaffer, 1994). The results of other studies indicate the opposite: that extralegal biases that were not present in judgments given before deliberations were present in judgments given after deliberations (Hans & Doob, 1976; Laughlin & Izzett, 1973, cited in Davis et al., 1977; MacCoun, 1990; McGuire & Bermant, 1977).

Another integral element of a real trial that is often completely omitted from trial simulations is the judge's instructions to the jury.

Weiten (1980) has demonstrated the potential importance of the omission of judge's instructions and another methodological shortcoming of simulation research, the use of inappropriate dependent variables. He found that when attention was paid to actual courtroom procedures, and mock jurors were given appropriate instructions from the judge and were required to perform the appropriate task - decide guilt or innocence rather than imposing punishment - the influence of the defendant's personal characteristics became insignificant.

In summary, a large number of studies have been conducted investigating factors that influence the behaviour of mock jurors in various types of cases. However, very little is known about the extent to which the results can be applied to real juries making real decisions in real cases, primarily because of the dissimilar conditions under which they have been conducted. While the debate over this is far from resolved, there appears to be good reason to hesitate in generalizing from the laboratory to the courtroom.

The general consensus among many writers in this field appears to be in line with the view of Konecni and Ebbesen, who have written extensively on the external validity of jury simulations (Ebbesen & Konecni, 1980; Konecni & Ebbesen, 1979, 1982, 1992): that caution should be exercised when interpreting the results, but that simulated jury research should not be dismissed altogether (Baldwin & McConville, 1979; Baum et al., 1985; Bray & Kerr, 1982; Bridgeman & Marlowe, 1979; Foley, 1993; Horowitz & Willging, 1984; Lloyd-Bostock, 1988; Pyszcynski, Greenberg, Mack, & Wrightsman, 1981).

The experimental approach offers a number of advantages that cannot be matched in field research (e.g., access to deliberations, the opportunity to exercise control, and the ability to replicate). However, it cannot, and is not intended to, determine whether variables found to have an effect would have the same effect outside the laboratory. The answer to this question can only come from research conducted outside the laboratory. Theories and hypotheses developed in the laboratory need to be tested in the field with real juries from real trials before conclusions can be reached (Anderson & Hayden, 1980; Bartol & Bartol, 1994). Only by "gathering converging lines of evidence, and bringing various methods to bear on the same empirical question, can we truly hope to understand juries" (Kassin & Wrightsman, 1988, p. 19).

CHAPTER 5

JURY RESEARCH IN NEW ZEALAND

In addition to there being a shortage of field research in general, there is also an extreme shortage of any sort of New Zealand jury research. Most of the research has been carried out in the United States, and it would be presumptuous to assume that the findings of these studies are necessarily generalizable to New Zealand juries.

There are a number of differences between the jury system in the United States and New Zealand jury system that need to be kept in mind when considering the applicability of most of the existing the research to New Zealand. These differences include the following: (a) jury selection in the United States contains the 'voire dire' process, during which the lawyers question potential jurors, and no such procedure occurs in the New Zealand system; (b) in the United States, jury verdicts are not always required to be unanimous whereas in New Zealand unanimity is always required; and (c) in some jurisdictions in the United States, juries also determine the punishment the defendant will receive whereas in New Zealand they are required only to reach a verdict.

There are a number of reasons why such little research has been conducted on juries in New Zealand, particularly field research involving actual jurors. The Juries Act (1981) prescribes that jury lists containing the names of people who have served on juries must be kept confidential, and there is also a very 'grey' area surrounding the legality of talking to jurors about their experiences. During the development of the present research, legal advice on the appropriateness of interviewing jurors was obtained.

The solicitors consulted explained that: "The Courts place a high value on the jury system and are protective of it" (J. W. Maassen & P. M. Hunter, personal communication, November 30, 1995). The criminal charge of 'contempt of Court' is the mechanism by which the Courts impose severe restriction on the circumstances under which people who have served on a jury may later be contacted and questioned about their experiences.

The crime of contempt of Court has never been codified in New Zealand. The exact conduct which constitutes contempt of Court has never been defined and “[i]t has been left to the Courts to develop the law on a case by case basis” (J. W. Maassen & P. M. Hunter, personal communication, November 30, 1995).

The solicitors advised the researcher that to the best of their knowledge, no New Zealand Court has ever specifically considered the legality of research into how juries function, so there would be an element of uncertainty regarding possible prosecution if the research was conducted. However, it was their opinion that in light of the fact that the researcher would not be directly approaching jurors or questioning participants about the deliberation process “a Court would not hold that the research constitutes contempt” (J. W. Maassen & P. M. Hunter, personal communication, November 30, 1995).

Approval to conduct the research was then obtained from the Massey University Human Ethics Committee, and indemnity was provided by Massey University in respect of reasonable legal costs incurred in the event that criminal proceedings were initiated against the researcher.

CHAPTER 6

THE PRESENT STUDY

The aim of the present research was to address the aforementioned lack of field research with juries and the lack of any sort of New Zealand research on the decision making of jurors.

More specifically, the present study was designed to investigate jurors' perceptions of the influence of certain extra-evidential factors related to the defendant, the lawyers and the judge on their decision making, and examine possible relationships between jurors' perceptions of the trial participants and their evaluations of the defendant, and the lawyers and their cases.

Some of the areas of investigation were exploratory in nature owing to the lack of existing research on which to base expectations. However, specific hypotheses were as follows:

Defendants' Characteristics and Behaviour

Respondents' evaluations of defendants' guilt or innocence will be related to the following:

- Respondents' sentiments towards the defendant.

Those respondents who liked the defendant will be less likely to have thought that s/he was guilty than those respondents who did not like the defendant.

Those respondents who felt sympathy for the defendant will be less likely to have thought that s/he was guilty than those who did not feel sympathy for the defendant.

- Respondents' perceptions of the defendant's physical attractiveness, physical presentation and the attractiveness of her/his lifestyle.

Those respondents who perceived the defendant to be physically attractive, well presented and as having an attractive lifestyle will be less likely to have thought that

s/he was guilty than those respondents who perceived her/him to be physically unattractive, badly presented and as having an unattractive lifestyle.

- Whether the defendant testified.

Defendants who did not testify will be more likely to have been thought to be guilty than those who did testify.

- How the defendant behaved in court.

Defendants who appeared indifferent, disrespectful, nervous, and aggressive in court will be more likely to have been thought to be guilty than defendants who appeared interested, respectful, calm, and passive in court.

Respondents' liking of defendants will be related to the following:

- Respondents' perceptions of the defendant's physical attractiveness, physical presentation and the attractiveness of her/his lifestyle.

Those respondents who perceived the defendant to be physically attractive, well presented and as having an attractive lifestyle, will be more likely to have liked the defendant than those respondents who perceived the defendant to be physically unattractive, badly presented and as having an unattractive lifestyle.

- How the defendant behaved in court.

Respondents who thought that the defendant appeared interested, respectful, calm, and passive in court will be more likely to have liked her/him than those who thought that the defendant appeared indifferent, disrespectful, nervous, and aggressive in court.

Respondents' perceptions of the credibility of the defendant's testimony will be related to whether they liked the defendant.

Those respondents who liked the defendant will be more likely to have believed her/his testimony than those respondents who did not like the defendant.

Lawyers' Characteristics and Behaviour

Respondents' evaluations of the lawyers' cases will be related to the following:

- Respondents' perceptions of the lawyers' physical attractiveness.

Those lawyers who were perceived to be physically attractive will have had their cases evaluated more favourably than those who were perceived to be physically unattractive.

- Respondents' liking of the lawyers.

Those lawyers who were liked by respondents will have had their cases evaluated more favourably than those lawyers who were not liked.

- The manner in which the lawyers behaved towards the jury, the judge, and their opponent.

Those lawyers who were seen to behave towards the jury, the judge, and their opponent in a positive manner will have had their cases evaluated more favourably than those who were seen to behave in a negative manner towards the jury, the judge, and their opponent.

Respondents' liking of the lawyers will be related to the following:

- Respondents' perceptions of the lawyers' physical attractiveness.

Lawyers who were perceived to be physically attractive will have been more likely to have been liked than those who were perceived to be physically unattractive.

- The manner in which the lawyers behaved towards the jury, the judge, and their opponent.

Lawyers who were seen to behave positively towards the jury, the judge, and their opponent will be more likely to have been liked than those who were seen to have behaved negatively towards the jury, the judge, and their opponent.

Respondents' evaluations of defendants' guilt or innocence will be related to:

- The manner in which the lawyers behaved towards the defendant.

Those respondents who thought that the prosecuting lawyer behaved towards the defendant in a positive manner will be less likely to have thought that the defendant was guilty than those respondents who thought that the prosecuting lawyer behaved towards the defendant in a negative manner.

Those respondents who thought that the defence lawyer behaved towards the defendant in a positive manner will be less likely to have thought that the defendant was guilty than those respondents who thought that the defence lawyer behaved towards the defendant in a negative manner.

Judges' Behaviour

- Respondents' evaluations of defendants' guilt or innocence will be related to the manner in which the judge behaved towards the defendant.

Those respondents who thought that the judge behaved towards the defendant in a positive manner will be less likely to have thought that the defendant was guilty than those respondents who thought that the judge behaved towards the defendant in a negative manner.

- Respondents' liking of the lawyers and their evaluations of the lawyers' cases will be related to the manner in which the judge behaved towards the lawyers.

Those lawyers who were seen to be treated in a positive manner by the judge will be more likely to have been liked, and will have had their cases evaluated more favourably than those who were seen to be treated in a negative manner by the judge.

- Respondents who thought that the judge favoured one side or the other will also have favoured that side when evaluating the lawyers and their cases.

CHAPTER 7

METHODOLOGY

Participant Recruitment

In light of the high degree of legal protection surrounding people who have served on juries (as discussed in Chapter 5), the only way that the researcher was permitted to contact potential research participants was indirectly, through advertising. Advertisements were placed in a number of newspapers distributed throughout the Palmerston North and outlying areas (see Appendix A for examples). Advertisements were also placed on public noticeboards throughout the Palmerston North and Feilding areas and in a number of Massey University publications. In order to obtain a sample of adequate size, an advertisement was also later placed in a newspaper with a larger distribution area (The Dominion). A number of the participants were also put in contact with the researcher through word-of-mouth.

A time limit of two years since serving on a jury was imposed in an attempt to recruit participants who would be more likely to be able to recall the trial accurately. However, in light of the real possibility of not obtaining a sample of adequate size, a number of people who were interested in participating but had served between two and three years previously were also interviewed, on the understanding that if they had trouble remembering any of the details required, the interview would be terminated.

Those people who responded to the advertisement by phoning the researcher were sent a letter and an information sheet which explained the nature of the research, what participation would involve, and what their rights were as a participant if they chose to participate (see Appendices B and C). In the covering letter, those people who were still interested in participating after having read the information sheet were asked to phone the researcher to arrange the interview.

Participants

A total of 69 respondents were interviewed. The respondents' demographic characteristics and history of jury service are shown in Table 1. The representativeness of the sample is addressed in Chapter 8.

Table 1

Respondents' Demographic Characteristics and History of Jury Service (N=69)

Respondent characteristics		n	%
Gender	Male	31	44.9
	Female	38	55.1
Ethnicity	New Zealand European	57	82.6
	New Zealand Maori	2	2.9
	Australian	4	5.9
	American	1	1.4
	Irish	2	2.9
	Fijian	1	1.4
	Mixture	2	2.9
Age group	20 - 29 years	3	4.4
	30 - 39 years	11	15.9
	40 - 49 years	33	47.8
	50 - 59 years	13	18.8
	Over 60 years	9	13.1
Occupational group ^a	Legislators, administrators & managers	10	14.5
	Professionals	19	27.5
	Technicians & associate professionals	11	15.9
	Clerks	6	8.7
	Service & sales workers	3	4.3
	Agriculture & fishery	1	1.5
	Trades	2	2.9
	Plant & machine operators	1	1.5
	Elementary occupations	2	2.9
	Retired	5	7.3
	Homemaker	4	5.8
	Student	3	4.3
	Unemployed	2	2.9

Table 1 continued

Respondents' Demographic Characteristics and History of Jury Service (N=69)

Respondent characteristics		n	%
Highest educational qualification	No formal qualifications	6	8.7
	School certificate	10	14.5
	Sixth form certificate	6	8.7
	Seventh form qualification ^b	5	7.3
	Undergraduate tertiary qualification	35	50.7
	Graduate tertiary qualification	7	10.1
Personal annual income	Under \$ 5,000	4	5.8
	\$ 5,001 - \$10,000	5	7.3
	\$10,001 - \$20,000	12	17.4
	\$20,001 - \$30,000	11	15.9
	\$30,001 - \$40,000	13	18.8
	\$40,001 - \$50,000	12	17.4
	\$50,001 - \$99,999	11	15.9
	Preferred not to answer	1	1.5
History of jury service	Had not served before	59	85.5
	Had served once before	9	13.0
	Had served twice before	1	1.5

^a Occupations were classified according to the New Zealand Standard Classifications of Occupations 1990 (Department of Statistics, 1990).

^b Higher school certificate / University Entrance / Bursary

Some of the characteristics of the trials in the present sample are shown in Table 2. Tables showing the characteristics of the defendants, and the most serious charge faced by each of the defendants in the present sample can be found in Appendix D.

Table 2

Characteristics of the Trials in the Present Sample of Cases (N=69)

Trial characteristics		n	%
Geographical location	Palmerston North	52	75.4
	Wellington	9	13.0
	Other areas ^a	8	11.6
Type of court	High Court	34	49.3
	District Court	34	49.3
	Unsure	1	1.4
Number of defendants on trial ^b	1	60	87.0
	2 - 5	7	10.1
	More than 5	2	2.9
Number of charges against the defendant	1	40	58.0
	2 - 5	21	30.4
	More than 5	8	11.6

^a These included Auckland, Napier, Rotorua, Gisborne and Wanganui.

^b In cases in which there was more than one defendant on trial, respondents were asked to focus on the defendant they remembered most clearly.

Instrument

The questionnaire utilised during the interviews was designed specifically for the present research and contained a mix of both open ended questions, and closed questions with predetermined response categories, and in many cases, seven point Likert rating scales (see Appendix E). The rating scales relating to the defendant's behaviour, were based on those used in a previous observational study (Kerr, 1982). Respondents were shown copies of the rating scales when appropriate during the interview.

In light of the fact that this is the first time that this instrument has been used, the reliability and validity of the questionnaire have not been established. It is noted, however, that in order to maximise the reliability and validity of the interview, all interviews were conducted by the researcher using a highly structured format.

In order to test the comprehensiveness and clarity of the questionnaire and also to obtain an estimate of how long the interview would take to conduct (so that this information could be included in the advertisements), a pilot study was conducted with six people. As a result of this, minor changes were made to the manner in which two of the questions were phrased.

Procedure

The majority of the interviews were conducted at either the respondent's place of residence or place of work. Six of the interviews with respondents who resided outside of the Manawatu/Wairarapa area were conducted over the telephone. On these occasions, respondents were sent copies of the rating scales to be used during the interview. They were then phoned at a time specified by them, and the interview was conducted in the same manner as the face-to-face interviews, with the interviewer prompting them when the ratings scales were applicable.

Before proceeding with the interview, respondents were asked to read and sign an informed consent form in which they were reminded of what participation would involve, what their rights were, and that their responses would be completely confidential and anonymous (see Appendix F). They were then verbally reminded that they would not be asked about the jury's deliberations and told that they had a legal obligation to refrain from talking about what took place during the deliberation process.

A number of steps were taken in an effort to increase the accuracy of responses:

- The researcher tried to establish rapport with the respondents, which is seen as the most effective way to dispel respondents' possible fear and put them at ease so that questions will be answered completely and honestly (Chadwick, Bahr, & Albrecht, 1984). The researcher also tried not to give respondents any cues about her own attitudes about the topic (Chadwick et al., 1984).
- Before the interview began, respondents were reminded that their responses were completely anonymous and confidential and that only the researcher would have access to the information taken from the interview. They were then told that because the researcher was interested in their perceptions, there were no 'right' or 'wrong'

answers to the questions but rather that their honest perceptions constituted the only 'right' answers.

- The structure of the interview was explained to respondents. They were told what was going to be required in terms of the format of the questions (e.g., that they would be asked to indicate on rating scales etc.) which is also thought to improve the accuracy of self report responses (Chadwick et al., 1984).
- The interview began with questions that were nonthreatening and relatively easy to answer (e.g., questions about the characteristics of the trial and the defendant) and as respondents became more relaxed, the more complex and perhaps more sensitive questions were asked.

Data Analysis

The responses were coded where appropriate and the data was then analysed using the Statistical Package for the Social Sciences (SPSSPC). T-tests for independent and related groups were conducted to compare group means. Cross-tabulations using Pearson's chi-square test of significance were conducted to determine whether systematic relationships existed between responses when all of the assumptions for using this test were met (e.g., fewer than 20% of the cells had an expected frequency of less than five, and no cell had an expected frequency of less than one).

When feasible, variable categories were combined to eliminate small cell count expectancies that resulted from the small sample size. When each variable had only two categories and each cell had an expected frequency of at least five, the chi-square value was corrected for continuity (Cramer, 1994). When each variable had only two categories, the number of cases was less than 40 and one of the cells had an expected frequency of less than five, Fisher's Exact Test of Probability was utilised.

The conventional level of .05, or less where indicated, was taken as the critical cut off point of statistical significance.

CHAPTER 8

SAMPLE REPRESENTATIVENESS

In light of the method of participant recruitment used in the present study, there is a strong possibility that the sample of respondents is not representative of the general population of jurors. In an attempt to go some way to determining the representativeness of the sample, the composition of the present sample was compared with data from a nationwide survey of the composition of juries in New Zealand, conducted in the latter part of 1993 (Dunstan, Paulin, & Atkinson, 1995).

Before presenting the results of this comparison, it should be pointed out that Dunstan and colleagues did not present separate data for different geographical areas within New Zealand, and that the majority of respondents in the present study were from the Palmerston North area.

Table 3 shows the gender distribution of the present sample compared with that of the sample in the study by Dunstan and colleagues. It can be seen that males are slightly underrepresented in the present sample and females are slightly overrepresented.

Table 3
Gender Distribution of the Present Sample (N=69) Compared with that of the Sample in Dunstan et al. (1995) (N=1608)

Gender	Present study	Dunstan et al. (1995)
	%	%
Male	44.9	48.8
Female	55.1	51.2

Table 4 shows the age distribution of the present sample compared with that of the sample in the study by Dunstan and colleagues. It can be seen that those in the 20-29 year old age group were very underrepresented in the present study, 40-49 years olds were very overrepresented, 30-39 year olds were slightly underrepresented, and those in the 50-59 year old and over 60 year old age groups were slightly overrepresented.

Table 4

Age Distribution of the Present Sample (N=69) Compared with that of the Sample in Dunstan et al. (1995) (N=1608)

Age group	Present study	Dunstan et al. (1995)
	%	%
20 - 29	4.4	23.5
30 - 39	15.9	24.0
40 - 49	47.8	26.9
50 - 59	18.8	17.3
60+	13.1	8.3

Table 5 shows the ethnic distribution of the present sample compared with that of the sample in the study by Dunstan and colleagues. It can be seen that New Zealand Europeans were slightly overrepresented in the present sample, Maoris were underrepresented and other ethnic groups were slightly overrepresented. However, with regard to the apparent underrepresentation of Maoris in the present sample, Dunstan and colleagues found that of the 13 districts examined, Maoris were most poorly represented in Palmerston North (the area from which the majority of respondents in the present sample came).

Table 5

Ethnic Distribution of the Present Sample (N=69) Compared with that of the Sample in Dunstan et al. (1995) (N=1608)

Ethnic group	Present study	Dunstan et al. (1995)
	%	%
New Zealand European	82.6	80.5
New Zealand Maori	2.9	8.5
Other	14.5	11.0

Table 6 shows the occupations of the respondents in the present study compared with those of the respondents in the study by Dunstan and colleagues. Occupations are classified according to the New Zealand Standard Classifications of Occupations 1990 (Department of Statistics, 1990). However it should be noted that in the study by

Dunstan and colleagues, jurors were asked what their occupation was *when employed*, rather than their *present* occupation as was asked in the present study. Furthermore, 16% of the jurors surveyed in the study by Dunstan and colleagues did not provide information about their occupation (the percentages reported below are proportions of the total sample).

Keeping these considerations in mind, it can be seen that legislators, administrators and managers, and professionals were overrepresented in the present sample. Clerks, service and sales workers, tradespeople, plant and machine operators, and the unemployed were underrepresented and the other groups were quite well represented.

Table 6

Occupational Groups of the Present Sample (N=69) Compared with that of the Sample in Dunstan et al. (1995) (N=1608)

Occupational group	Present study	Dunstan et al. (1995)
	%	%
Legislators, administrators & managers	14.5	8.1
Professionals	27.5	7.8
Technicians & associate professionals	15.9	13.1
Clerks	8.7	19.8
Service & sales workers	4.3	13.4
Agriculture & Fishery	1.5	2.9
Trades	2.9	8.0
Plant & machine operators	1.5	8.1
Elementary occupations	2.9	2.2
Retired	7.3	5.5
Homemaker	5.8	6.4
Student	4.3	1.4
Unemployed	2.9	6.7

In summary, when compared to the findings of the survey by Dunstan and colleagues, a number of groups were underrepresented in the present sample while other groups were overrepresented. This should be borne in mind when considering the following results.

CHAPTER 9

RESULTS

THE DEFENDANT

Respondents' Impressions of the Defendant

When respondents were asked what their initial impression of the defendant was, only 27.5% reported having a first impression of the defendant that could be classified as neutral. For 42% of the respondents, their initial impression was negative, for 18.9% it was positive, and for 11.6% it could be classified as sympathetic.

Three-quarters of the respondents reported that their impression of the defendant did not change throughout the course of the trial. Of the 17 who indicated that their impression did change, 8 said that it changed for the better and 9 said that it changed for the worse. The most common reasons cited for a positive change in impression were: the defendant's behaviour, the progression of the trial, and the defendant's testimony. The most common reasons cited for a negative change in impression were: the evidence, and a belief that the defendant was lying.

When the respondents were classified according to the nature of their impression of the defendant, no differences were found between the groups on whether they liked the defendant. However, significant differences were found between those respondents who had or developed a negative impression of the defendant and those who did not, when they were asked whether they felt sympathy for the defendant, and also when they were asked how they felt about the guilt or innocence of the defendant at the end of the trial.

Those respondents whose impression of the defendant was negative, were significantly less likely to feel sympathy for the defendant than those whose impression of the defendant was not negative ($\chi^2 (1, N = 69) = 3.86, p < .05$). Only 41.9% of those who reported having a negative impression of the defendant felt sympathy for her/him, compared with 68.4% of those who did not. Those respondents who had a negative impression of the defendant were also significantly more likely to think that the

defendant was guilty at the end of the trial than those respondents who did not ($\chi^2 (1, N = 69) = 4.04, p < .05$). Of those respondents who had a negative impression of the defendant, 74.2% thought that s/he was guilty at the end of the trial, compared with 47.4% of those whose impression of the defendant was not negative.

Physical Attractiveness of Defendants

Physical Attractiveness of Defendants and Respondents' Sentiments

Of the 68 participants who responded to this question, 41.2% indicated that the physical attractiveness of the defendant influenced how they felt about her/him: 26.5% said that it had a slight influence, 13.2% said that it had a moderate influence, and 1.5% said that it had a lot of influence (a more detailed breakdown is shown in Table 7).

Table 7
Perceived Influence of Defendants' Physical Attractiveness on Respondents' Liking of Them

Level of influence	Defendants' physical attractiveness		
	Attractive	Average	Unattractive
	(n=16) %	(n=22) %	(n=30) %
Not at all	43.8	81.8	50.0
Slightly	31.2	9.1	36.7
Moderately	25.0	9.1	10.0
A lot	0.0	0.0	3.3

No significant difference was found between those respondents who said that the defendant was attractive and those who said that s/he was unattractive, on whether they thought that this influenced the way they felt about her/him. However, those respondents who either said that the defendant was attractive or said that s/he was unattractive were significantly more likely to think that it was influential, than those who said that the defendant was of average attractiveness ($\chi^2 (1, N = 68) = 5.77, p < .05$).

Of the 22 respondents who indicated that the defendant was of average physical attractiveness, only 18.2% said that this influenced how they felt about her/him.

No significant difference was found between those respondents who said that the defendant was physically attractive and those who said that s/he was physically unattractive, when they were asked whether they liked the defendant (see Table 8).

Table 8
Defendants' Physical Attractiveness and Respondents' Liking of Them

	Defendants' physical attractiveness		
	Attractive	Average	Unattractive
	(n=16)	(n=22)	(n=30)
Liking	%	%	%
Liked	37.5	50.0	26.7
Neutral	25.0	36.4	33.3
Did not like	37.5	13.6	40.0

However, when the cases were divided according to the gender of the respondent, this finding stood for male respondents, but not for female respondents.

Female respondents were not more likely to *report* that the physical attractiveness of the defendant influenced the way they felt about her/him, but when they were asked whether they liked the defendant, those who had said that the defendant was unattractive were significantly more likely to say “no” than those who had either said that s/he was attractive or had said that s/he was of average attractiveness (χ^2 (1, N = 38) = 5.54, p < .05). Of those who indicated that the defendant was unattractive 57.9% did not like her/him, compared with 15.8% of those who either said that s/he was attractive or said that s/he was of average attractiveness. Those who said that the defendant was attractive were not significantly more likely to like her/him than those who said that s/he was of average attractiveness.

No significant difference was found between those respondents who said that the defendant was physically attractive and those who said that s/he was physically unattractive when they were asked whether they felt sympathy for the defendant.

Physical Attractiveness of Defendants and Perceptions of Their Guilt or Innocence

No significant differences were found between those respondents who said that the defendant was physically attractive, those who said that s/he was physically unattractive, and those who said that s/he was of average physical attractiveness when they were asked how they felt about the guilt or innocence of the defendant at the end of the trial. When the sample was divided according to the gender of the respondent, this was found to be true for both male and female respondents.

Physical Presentation of Defendants

Physical Presentation of Defendants and Respondents' Liking of Them

Of the 69 respondents, 57.9% indicated that the defendant's physical presentation influenced how they felt about the her/him: 27.5% said that it had a slight influence, 26.1% said that it had a moderate influence, and 4.3% said that it had a lot of influence (a more detailed breakdown is shown in Table 9).

Table 9
Perceived Influence of Defendants' Physical Presentation on Respondents' Liking of Them

	Well presented (n=45)	Neither well nor badly presented (n=9)	Badly presented (n=15)
Level of influence	%	%	%
Not at all	40.0	77.8	26.7
Slightly	31.1	11.1	26.7
Moderately	26.7	11.1	33.3
A lot	2.2	0.0	13.3

No significant difference was found between those respondents who said that the defendant was well presented and those who said that s/he was badly presented on whether they thought that this influenced the way they felt about her/him or not. However, those respondents who either said that the defendant was well presented or

said that the defendant was badly presented were significantly more likely to think that this influenced how they felt about her/him than those respondents who said that the defendant was neither well nor badly presented ($\chi^2 (1, N = 69) = 3.87$, Fisher's Exact test = .02). Only 22.2% of the respondents who said that the defendant was neither well nor badly presented indicated that this influenced how they felt about her/him compared with 60% of those who said that s/he was well presented and 73.3% of those who said that s/he was badly presented.

No significant differences were found between those respondents who said that the defendant was well presented, those who said that s/he was badly presented and those who said that s/he was neither well nor badly presented when they were asked whether they liked the defendant (see Table 10).

Table 10
Defendants' Physical Presentation and Respondents' Liking of Them

	Well presented (n=45)	Neither well nor badly presented (n=9)	Badly presented (n=15)
Liking	%	%	%
Liked	33.3	33.3	33.3
Neutral	28.9	55.6	26.7
Did not like	37.8	11.1	40.0

Defendants' Physical Presentation and Perceptions of Their Guilt or Innocence

No significant differences were found between those respondents who said that the defendant was well presented, those who said that s/he was badly presented and those who said that s/he was neither well nor badly presented when they were asked how they felt about the guilt or innocence of the defendant at the end of the trial.

However, comments made by six of the respondents in the present study suggest that in some cases jurors are influenced by the physical presentation of the defendant. In one case the respondent reported that a number of the other jurors said that "you just have to look at him to know that he's guilty" and another respondent was of the opinion

that “if [the defendant] had been in a suit, it would have been a different story altogether.” In the other cases it was the association between defendants’ presentation and their association with a gang that appeared to influence other jurors, rather than whether they were well presented or badly presented in itself.

Attractiveness of Defendants’ Lifestyles

Attractiveness of Defendants’ Lifestyles and Respondents’ Liking of Them

Of the 65 subjects who responded to this question (four respondents said that they did not find out enough about the defendant to make a judgment), 66.2% said that the attractiveness of the defendant’s lifestyle influenced how they felt about her/him: 20% said that it had a slight influence, 30.8% said that it had a moderate influence, and 15.4% said that it had a lot of influence (a more detailed breakdown is shown in Table 11).

Table 11
Perceived Influence of the Attractiveness of Defendants’ Lifestyles on Respondents’ Liking of Them

Level of influence	Attractiveness of defendants’ lifestyles		
	Attractive	Average	Unattractive
	(n=8)	(n=12)	(n=45)
	%	%	%
Not at all	50.0	58.3	24.4
Slightly	37.5	25.0	15.6
Moderately	0.0	16.7	40.0
A lot	12.5	0.0	20.0

No significant difference was found between those respondents who said that the defendant’s lifestyle was attractive and those who said that it was of average attractiveness on whether they thought that this influenced how they felt about her/him. However, those respondents who said that the defendant’s lifestyle was unattractive were significantly more likely to think that this influenced how they felt about her/him than those who either said that it was attractive or said that it was of average attractiveness (χ^2 (1, N = 65) = 4.49, p < .05). Of those respondents who said that the defendant’s

lifestyle was unattractive, 75.6% indicated that this influenced the way that they felt about the defendant (60% at least moderately), compared with 55% of those who either said that the defendant’s lifestyle was attractive or said that it was of average attractiveness.

Those respondents who indicated that the defendant’s lifestyle was unattractive, were also significantly more likely to dislike her/him than those who either said that it was attractive or said that it was of average attractiveness ($\chi^2 (1, N = 65) = 4.04, p < .05$). Of those respondents who said that the defendant’s lifestyle was unattractive, 44.4% did not like her/him compared with 15% of those who either said that the defendant’s lifestyle was attractive or said that it was of average attractiveness (see Figure 1).

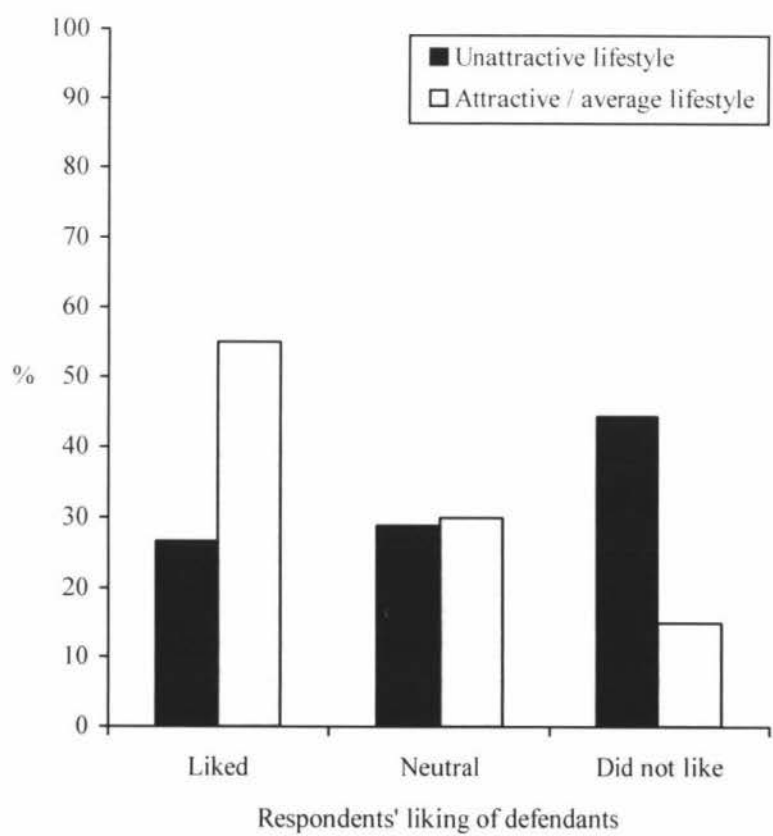


Figure 1. Perceived attractiveness of defendants’ lifestyles and respondents’ liking of them.

Attractiveness of Defendants' Lifestyles and Perceptions of Their Guilt or Innocence

Those respondents who reported that the defendant had an unattractive lifestyle were also significantly more likely to think that s/he was guilty at the end of the trial than those who either said that her/his lifestyle was attractive or said that it was of average attractiveness ($\chi^2 (1, N = 65) = 8.01, p < .01$). Of those who said that the defendant's lifestyle was unattractive, 71.1% thought that s/he was guilty at the end of the trial compared with 30% of those who either said that her/his lifestyle was attractive or said that it was of average attractiveness (see Figure 2).

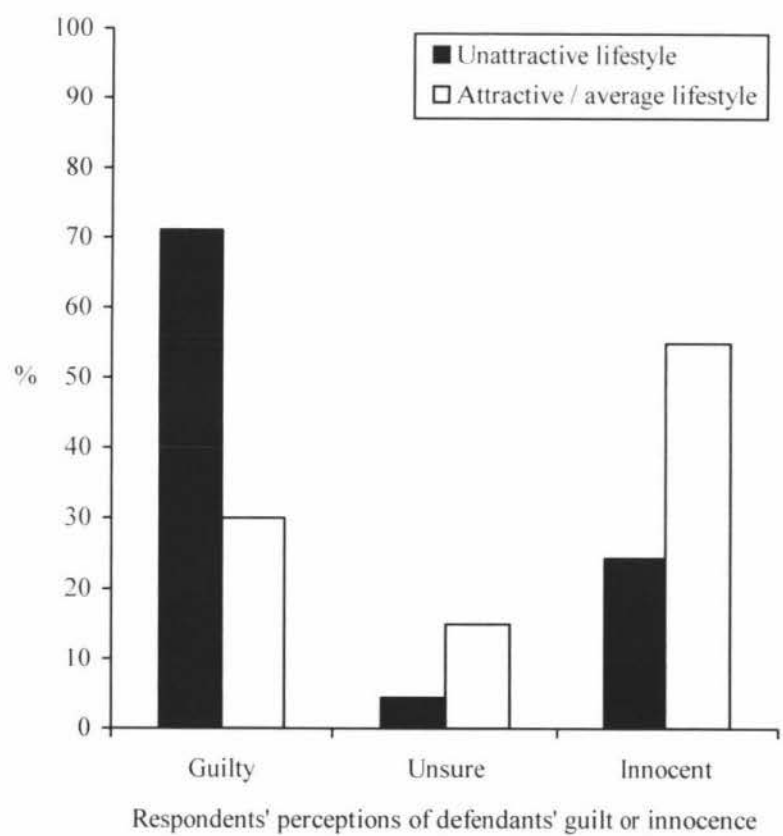


Figure 2. Perceived attractiveness of defendants' lifestyles and respondents' perceptions of their guilt or innocence.

Some of the respondents indicated that other jurors appeared to be influenced by their perceptions of the defendant's lifestyle. Four respondents indicated that the defendant's association with a gang weighed heavily with other jurors. One respondent said that the defendants "were found guilty because they were gang members", another said that the defendant "was obviously a Nomad, if he hadn't been it would have been a

different story.” One respondent said that the defendant’s unattractive lifestyle reflected on his credibility, and on the other side of the coin, one respondent said that most of the other jurors thought that the defendant was innocent purely because he was a policeman.

Defendants’ Failure to Testify

The defendant testified in 60.9% of the cases and did not testify in the remaining 39.1%.

Of those respondents who said that the defendant did not testify 25.9% said that this influenced their evaluation of the defendant’s guilt or innocence: 7.4% said that it had a slight influence, 14.8% said that it had a moderate influence, and 3.7% said that it had a lot of influence.

No significant differences were found between those respondents who said that the defendant testified and those who said that s/he did not, when they were asked how they felt about the guilt or innocence of the defendant at the end of the trial (see Table 12).

Table 12
Respondents’ Perceptions of Defendants’ Guilt or Innocence as a Function of Whether They Testified

	Defendant testified (n=42)	Defendant did not testify (n=27)
Perceived guilt or innocence	%	%
Guilty	57.2	63.0
Unsure	9.5	3.7
Innocent	33.3	33.3

Furthermore, no significant difference was found between those who said that the defendant’s failure to testify influenced their evaluation of her/his guilt or innocence and those who said that it did not, when they were asked how they felt about the guilt or innocence of the defendant at the end of the trial. Respondents who said that they were influenced by the defendant’s failure to testify were not significantly more likely to think that the defendant was guilty at the end of the trial than those who said that it did not have any influence.

When the 27 respondents who said that the defendant did not testify were asked how they felt about her/his failure to do so, 16 said that they were not concerned about it, two indicated that they would have liked to have heard the defendant testify but were not too worried about it, three indicated that they felt “frustrated” about it, one was shocked that the defendant did not testify because the defence “did not have a case without it,” and five said that they were suspicious about the defendant’s failure to testify.

Defendants’ Behaviour

Defendants’ Behaviour and Respondents’ Liking of Them

No significant differences were found between (a) those respondents who said that the defendant appeared interested and those who said that s/he appeared indifferent, (b) those who said that the defendant appeared calm and those who said that s/he appeared nervous, (c) those who said that the defendant appeared respectful and those who said that s/he appeared disrespectful, or (d) those who said that the defendant appeared passive and those who said that s/he appeared aggressive when they were asked whether they liked the defendant.

Defendants’ Behaviour and Respondents’ Perceptions of Their Guilt or Innocence

Of the 69 respondents, 50.7% indicated that the way the defendant behaved in court influenced their evaluation of her/his guilt or innocence: 29% said that it had a slight influence, 17.4% said that it had a moderate influence, and 4.3% said that it had a lot of influence.

No significant differences were found between (a) those respondents who said that the defendant appeared interested and those who said that s/he appeared indifferent, (b) those who said that the defendant appeared calm and those who said that s/he appeared nervous, (c) those who said that the defendant appeared respectful and those who said that s/he appeared disrespectful, or (d) those who said that the defendant appeared passive and those who said that s/he appeared aggressive on whether they thought that the behaviour of the defendant influenced their evaluation of her/his guilt or innocence.

Furthermore, no significant differences were found between these groups when respondents were asked how they felt about the guilt or the innocence of the defendant at the end of the trial.

However, comments made by four of the respondents suggest that the defendant’s behaviour may be quite influential in some cases. One of these respondents said that the defendant “put on an excellent performance and impressed many of the other jurors” and another said that the fact that the defendant was obviously embarrassed and ashamed for his family and girlfriend had a “huge influence” on her and the other jurors’ evaluations of his guilt or innocence.

Respondents’ Sentiments Towards Defendants

Respondents’ Liking of Defendants and Perceptions of Their Credibility

Those respondents who did not like the defendant were significantly less likely to believe all of the defendant’s testimony than those who either liked or felt neutral about the defendant (χ^2 (1, N = 42) = 5.00, Fisher’s Exact test = .01). None of the respondents who did not like the defendant believed all of her/his testimony, compared with 42.8% of those who liked the defendant and 30.8% of those who felt neutral about her/him (see Table 13). No significant difference was found between those respondents who liked the defendant and those who felt neutral about her/him when they were asked whether they believed the defendant’s testimony.

Table 13
Respondents’ Liking of Defendants and Perceptions of Their Credibility

	Respondents’ liking of defendants		
	Liked	Neutral	Did not like
	(n=14)	(n=13)	(n=15)
Amount of testimony believed	%	%	%
All	42.8	30.8	0.0
Some	28.6	38.4	53.3
None	28.6	30.8	46.7

Respondents' Liking of Defendants and Sympathy for Them

Those respondents who did not like the defendant were also significantly less likely to feel sympathy for her/him than those who either liked or felt neutral about the defendant (χ^2 (2, N = 69) = 6.65, p < .05). Of the respondents who indicated that they did not like the defendant, only 34.8% felt sympathy for her/him, compared with 66.7% of those who liked the defendant and 68% of those who felt neutral about her/him.

Respondents' Liking of Defendants and Perceptions of Their Guilt or Innocence

No significant differences were found between those respondents who liked the defendant and those who did not like her/him on whether they thought that this influenced their evaluation of her/his guilt or innocence (see Table 14).

Table 14
Perceived Influence of Respondents' Liking of Defendants on Their Evaluations of Defendants' Guilt or Innocence

Level of influence	Liked the defendant	Did not like the defendant
	n=24 %	n=23 %
Not at all	37.5	39.1
Slightly	25.0	21.7
Moderately	20.8	26.1
A lot	16.7	13.1

A significant difference was found between those respondents who did not like the defendant and those who either liked her/him or felt neutral about her/him when they were asked how they felt about the defendant's guilt or innocence at the end of the trial. Those respondents who indicated that they did not like the defendant were significantly more likely to think that s/he was guilty at the end of the trial than those respondents who either liked the defendant or felt neutral about her/him (χ^2 (1, N = 69) = 3.97, p < .05). Of those respondents who did not like the defendant, 78.3% thought that s/he was guilty at the end of the trial, compared with only 50% of those who either liked the

defendant or felt neutral about her/him (see Figure 3). Those respondents who liked the defendant were not significantly more likely to think that s/he was innocent than those who felt neutral about her/him or those who did not like her/him.

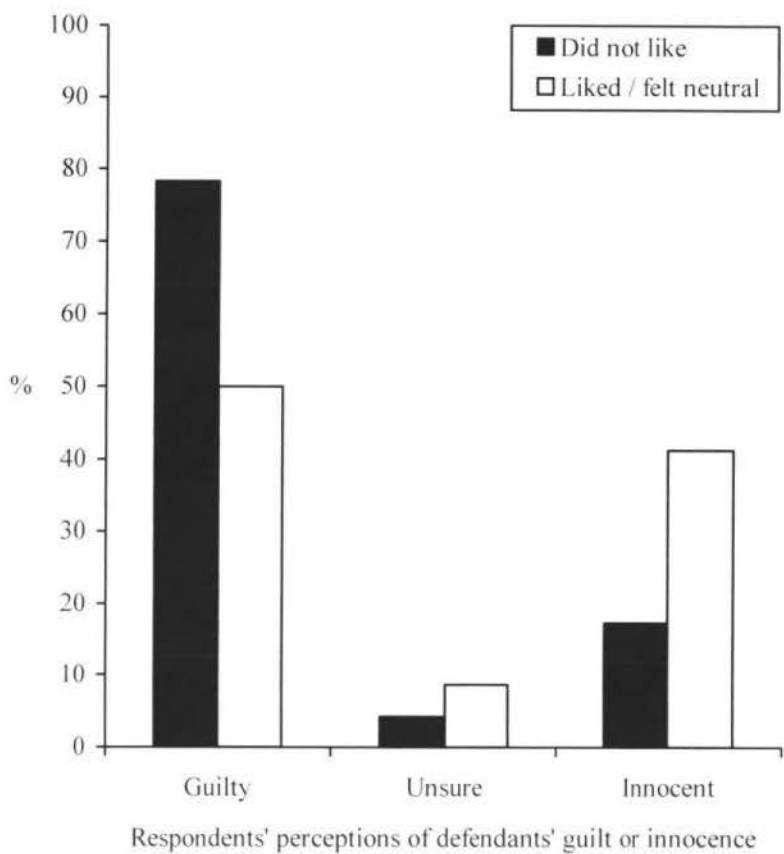


Figure 3. Respondents liking of defendants and perceptions of their guilt or innocence at the end of the trial.

Sympathy

Of the 69 respondents, 56.5% reported feeling sympathy for the defendant. Just under half of these (48.7%) said that this influenced their evaluation of the defendant’s guilt or innocence: 30.8% said that it had a slight influence, 12.8% said that it had a moderate influence, and 5.1% said that it had a lot of influence.

Those respondents who indicated that they felt sympathy for the defendant were significantly less likely to think that the defendant was guilty at the end of the trial than

those who indicated that they did not feel any sympathy for the defendant ($\chi^2 (1, N = 69) = 5.34, p < .05$). Of those respondents who felt sympathy for the defendant, 46.2% thought that s/he was guilty, compared with 76.7% of those respondents who did not feel any sympathy for the defendant (see Figure 4). Those respondents who felt sympathy for the defendant were not significantly more likely to think that the defendant was innocent than those who did not feel sympathy for her/him.

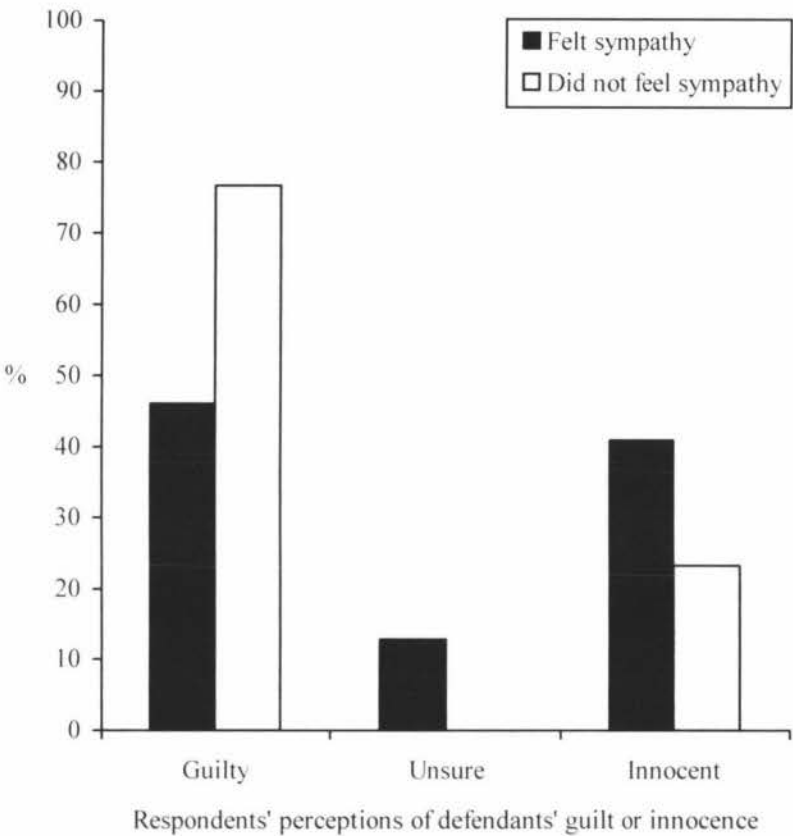


Figure 4. Whether respondents felt sympathy for defendants and their perceptions of defendants' guilt or innocence.

THE LAWYERS

Before presenting the results regarding respondents' evaluations of the lawyers' cases, it is important to point out that lower ratings on the rating scales indicate more favourable evaluations. For example a rating of 1 corresponded with "very skilled" and a rating of 7 corresponded with "very unskilled" (see Appendix E for other rating scales).

Lawyers' Physical Attractiveness

Prosecuting Lawyers

No significant differences were found between those respondents who said that the prosecuting lawyer was physically attractive, those who said that s/he was unattractive and those who said that s/he was of average physical attractiveness when they were asked whether they liked her/him.

Table 15 shows the mean ratings of the prosecuting lawyers' skill, the impact of the various aspects of their presentations, and the strength of their cases, given by those respondents who said that s/he was physically attractive, those who said that s/he was of average physical attractiveness and those who said that s/he was physically unattractive.

Table 15
Physical Attractiveness of Prosecuting Lawyers and Mean Ratings of Various Aspects of Their Presentations

Aspects of prosecuting lawyers' presentations	Prosecuting lawyers' physical attractiveness		
	Attractive	Average	Unattractive
	(n=37) <u>M</u>	(n=22) <u>M</u>	(n=8) <u>M</u>
Skill	2.11	2.41	3.00
Opening statement	2.38	2.82	2.38
Examination & cross examination	2.30	2.68	2.75
Closing argument	2.35	2.82	2.13
Strength of case	2.97	3.23	3.13

Note. Two respondents preferred not to comment on the lawyers' physical appearance.

It can be seen that prosecuting lawyers who were perceived as physically attractive were rated more favourably on most aspects than those perceived as physically unattractive or of average physical attractiveness. However, none of the differences were found to be significant, and there was also no significant difference found between these groups when respondents were asked how they felt about the defendant's guilt or innocence at the end of the trial.

Defence Lawyers

When the sample was taken as a whole, no significant differences were found between those respondents who said that the defence lawyer was physically attractive, those who said that s/he was physically unattractive and those who said that s/he was of average physical attractiveness when they were asked whether they liked her/him. However, when the cases were divided according to the gender of the respondent, a significant difference was found for female respondents but not for male respondents. Female respondents who indicated that the defence lawyer was attractive were significantly more likely to like her/him than those who either said that the defence lawyer was unattractive or said that s/he was of average attractiveness ($\chi^2 (1, n = 37) = 4.07, p < .05$). Of those who said that the defence lawyer was physically attractive, 81.3% liked her/him, compared with 42.9% of those who either said that s/he was unattractive or said that s/he was of average attractiveness.

Table 16 shows the mean ratings of the defence lawyers' skill, the impact of the various aspects of their presentations, and the strength of their cases, given by those respondents who said that s/he was physically attractive, those who said that s/he was unattractive and those who said that s/he was of average physical attractiveness.

Table 16
Physical Attractiveness of Defence Lawyers and Mean Ratings of Various Aspects of Their Presentations

Aspects of defence lawyers' presentations	Defence lawyers' physical attractiveness		
	Attractive	Average	Unattractive
	(n=28) <u>M</u>	(n=24) <u>M</u>	(n=15) <u>M</u>
Skill	1.93	2.58	2.93
Opening statement	2.62	3.17	3.92
Examination & cross examination	2.74	2.92	3.13
Closing argument	2.25	2.63	2.87
Strength of case	3.00	3.71	3.87

Note. Two respondents preferred not to comment on the lawyers' physical appearance.

It can be seen that defence lawyers who were perceived as physically attractive were rated more favourably on all aspects than those perceived as physically unattractive or of average physical attractiveness. However the only significant difference was on ratings of the impact of their opening statements. Those respondents who said that the defence lawyer was attractive ($M = 2.62$, $SD = 1.47$) rated their opening statement as having significantly more positive impact than those who said that s/he was unattractive ($M = 3.92$, $SD = 1.88$) ($t(36) = -2.62$, $p < .05$). No significant differences were found between the three groups when respondents were asked how they felt about the defendant's guilt or innocence at the end of the trial.

Lawyers' Behaviour

Lawyers' Behaviour Towards the Defendant

Prosecuting Lawyers

When respondents were asked how the prosecuting lawyer behaved towards the defendant, 30.5% said that s/he did not acknowledge the defendant at all, 29% said that s/he behaved in a positive manner, 21.7% said that s/he behaved in a neutral manner and 18.8% said that s/he behaved in a negative manner.

Of the 48 respondents who said that the prosecuting lawyer did acknowledge the defendant, 22.4% reported that the manner in which the prosecuting lawyer behaved towards the defendant influenced their evaluation of the defendant's guilt or innocence: 12.2% said that it had a slight influence, 8.2% said that it had a moderate influence and 2% said that it had a lot of influence (a more detailed breakdown is shown in Table 17).

No significant differences were found between those respondents who said that the prosecuting lawyer behaved towards the defendant in a negative manner, those who said that s/he behaved in a positive manner and those who said that s/he behaved in a neutral manner on whether they thought that this influenced their evaluation of the defendant's guilt or innocence. Furthermore, no significant differences were found between these groups when respondents were asked how they felt about the guilt or innocence of the defendant at the end of the trial.

Table 17

Perceived Influence of Prosecuting Lawyers’ Behaviour Towards the Defendant on Respondents’ Evaluations of the Defendant’s Guilt or Innocence

Level of influence	Prosecuting lawyers’ behaviour		
	Positive	Neutral	Negative
	(n=20)	(n=15)	(n=13)
	%	%	%
Not at all	75.0	93.3	61.5
Slightly	15.0	0.0	23.1
Moderately	10.0	6.7	15.4

Defence Lawyers

When respondents were asked how the defence lawyer behaved towards the defendant, 24.6% said that s/he did not acknowledge the defendant at all, 31.9% said that s/he behaved in a neutral manner, 36.2% said that s/he behaved in a positive manner and 7.3% said that s/he behaved in a negative manner.

Of the 48 respondents who said that the defence lawyer did acknowledge the defendant, 20.8% reported that the manner in which the defence lawyer behaved towards the defendant influenced their evaluation of the defendant’s guilt or innocence: 13.2% said that it had a slight influence and 7.6% said that it had a moderate influence (a more detailed breakdown is shown in Table 18).

Table 18

Perceived Influence of Defence Lawyers’ Behaviour Towards the Defendant on Respondents’ Evaluations of the Defendant’s Guilt or Innocence

Level of influence	Defence lawyers’ behaviour		
	Positive	Neutral	Negative
	(n=25)	(n=22)	(n=5)
	%	%	%
Not at all	72.0	90.9	60.0
Slightly	20.0	9.1	0.0
Moderately	8.0	0.0	40.0

No significant differences were found between those respondents who said that the defence lawyer behaved towards the defendant in a negative manner, those who said that s/he behaved in a positive manner and those who said that s/he behaved in a neutral manner on whether they thought that this influenced their evaluation of the defendant's guilt or innocence. Furthermore, no significant differences were found between these groups when respondents were asked how they felt about the guilt or innocence of the defendant at the end of the trial.

Lawyers' Behaviour Towards the Judge

Prosecuting Lawyers

When respondents were asked how the prosecuting lawyer behaved towards the judge, 85.5% said that s/he behaved in a positive manner, 7.2% said that s/he behaved in a neutral manner and 7.3% said that s/he behaved in a negative manner. These latter two relatively small percentages should be kept in mind when considering the following results.

No significant differences were found between those respondents who said that the prosecuting lawyer behaved towards the judge in a positive manner, those who said s/he behaved in a negative manner, and those who indicated that s/he behaved in a neutral manner when they were asked whether they liked the prosecuting lawyer.

Of the 69 respondents, 15.9% indicated that the way in which the prosecuting lawyer behaved towards the judge influenced their evaluation of her/his case: 11.6% said that it had a slight influence, 2.9% said that it had a moderate influence and 1.4% said that it had a lot of influence. Those respondents who said that the prosecuting lawyer behaved towards the judge in a negative manner were significantly more likely to think that her/his behaviour influenced their evaluation of the prosecuting lawyer's case than those respondents who either said that s/he behaved in a positive manner or said that s/he behaved in a neutral manner ($\chi^2 (1, N = 69) = 4.67$, Fisher's Exact test = .03). Of those respondents who said that the prosecuting lawyer behaved towards the judge in a negative manner, 60% said that this influenced their evaluation of her/his case compared with 12.5% of those who either said that s/he behaved in a neutral manner or said that s/he behaved in a positive manner.

Table 19 shows the mean ratings of the prosecuting lawyers’ skill, the impact of the various aspects of their presentations, and the strength of their cases, given by those respondents who said that s/he behaved towards the judge in a positive manner, those who said that s/he behaved in a negative manner and those who said that s/he behaved in a neutral manner. None of the differences were found to be significant, and no significant differences were found between these groups when respondents were asked how they felt about the defendant’s guilt or innocence at the end of the trial.

Table 19
Prosecuting Lawyers’ Behaviour Towards the Judge and Mean Ratings of Various Aspects of Their Presentations

Aspects of prosecuting lawyers’ presentations	Prosecuting lawyers’ behaviour		
	Positive	Neutral	Negative
	(n=59) <u>M</u>	(n=5) <u>M</u>	(n=5) <u>M</u>
Skill	2.32	2.60	2.20
Opening statement	2.51	2.25	2.60
Examination & cross examination	2.49	3.20	2.20
Closing argument	2.53	2.60	2.00
Strength of case	3.00	4.20	3.80

Defence Lawyers

When respondents were asked how the defence lawyer behaved towards the judge, 79.7% said that s/he behaved in a positive manner, 5.8% said that s/he behaved in a neutral manner and 14.5% said that s/he behaved in a negative manner. These latter two relatively small percentages should be kept in mind when considering the following results.

Defence lawyers who were seen to behave towards the judge in a negative manner were significantly more likely to be disliked than those who were seen to behave in either a positive manner or in a neutral manner (χ^2 (1, N = 69) = 4.42, Fisher’s Exact test = .02). Of those defence lawyers who were said to have behaved in a negative manner,

50% were not liked, compared with 15.3% of those who either behaved in a positive manner or behaved in a neutral manner.

Of the 69 respondents, 11.6% reported that the way in which the defence lawyer behaved towards the judge influenced their evaluation of her/his case: 7.3% said that it had a slight influence and 4.3% said that it had a moderate influence. No significant differences were found between those who said that s/he behaved in a positive manner, those who said that s/he behaved in a negative manner and those who said s/he behaved in a neutral manner on whether they thought that this influenced their evaluation of her/his case.

Table 20 shows the mean ratings of the defence lawyers' skill, the impact of the various aspects of their presentations, and the strength of their cases, given by those respondents who said that s/he behaved towards the judge in a positive manner, those who said that s/he behaved in a negative manner and those who said that s/he behaved in a neutral manner.

Table 20

Defence Lawyers' Behaviour Towards the Judge and Mean Ratings of Various Aspects of Their Presentations

Aspects of defence lawyers' presentations	Defence lawyers' behaviour		
	Positive	Neutral	Negative
	(n=55)	(n=4)	(n=10)
	<u>M</u>	<u>M</u>	<u>M</u>
Skill	2.24	3.50	2.70
Opening statement	3.00	3.67	3.33
Examination & cross examination	2.59	3.50	4.00
Closing argument	2.22	2.50	4.10
Strength of case	3.29	1.75	4.50

No significant differences were found between the groups on mean ratings of defence lawyers' skill, the impact of their opening statements, and the impact of their examination and cross examination of the witnesses. However, significant differences were found between some of the groups on ratings of the impact of defence lawyers'

closing arguments and ratings of the strength of their cases. Those respondents who said that the defence lawyer behaved in a negative manner ($M = 4.10$, $SD = 1.60$) rated their closing arguments as having significantly less positive impact than those who said that s/he behaved in a positive manner ($M = 2.22$, $SD = 0.92$) ($t(10.11) = 3.62$, $p < .01$). Those respondents who said that the defence lawyer behaved in a negative manner ($M = 4.50$, $SD = 1.84$) also rated them as having significantly weaker cases than those who said that s/he behaved in a neutral manner ($M = 1.75$, $SD = 0.98$) ($t(12) = -2.79$, $p < .05$), and those who said that s/he behaved in a positive manner ($M = 3.29$, $SD = 1.65$) ($t(63) = 2.09$, $p < .05$).

No significant differences were found between these groups when respondents were asked how they felt about the defendant's guilt or innocence at the end of the trial.

Lawyers' Behaviour Towards Their Opponent

Prosecuting Lawyers

Of the 69 respondents, 20.3% reported that there was not really any interaction between the two lawyers, 36.2% said that the prosecuting lawyer behaved towards the defence lawyer in a neutral manner, 34.8% said that s/he behaved in a positive manner and 8.7% said that s/he behaved in a negative manner.

No significant differences were found between those respondents who indicated that the prosecuting lawyer behaved towards the defence lawyer in a positive manner, those who indicated that s/he behaved in a negative manner, and those who indicated that s/he behaved in a neutral manner when they were asked whether they liked the prosecuting lawyer.

Of the 55 respondents who said that there was some interaction between the two lawyers, four said that the way in which the prosecuting lawyer behaved towards the defence lawyer had some influence on their evaluation of the prosecuting lawyer's case. Two respondents said that it had a slight influence (one of those who said that s/he behaved in a positive manner and one of those who said that s/he behaved in a negative manner), and two said that it had a moderate influence (one of those who said that s/he behaved in a positive manner and one of those who said that s/he behaved in a negative manner).

Table 21 shows the mean ratings of the prosecuting lawyers' skill, the impact of the various aspects of their presentations, and the strength of their cases, given by those respondents who said that s/he behaved towards the defence lawyer in a positive manner, those who said that s/he behaved in a neutral manner and those who said that s/he behaved in a negative manner.

Table 21

Prosecuting Lawyers' Behaviour Towards the Defence Lawyer and Mean Ratings of Various Aspects of Their Presentations

Aspects of prosecuting lawyers' presentations	Prosecuting lawyers' behaviour		
	Positive	Neutral	Negative
	(n=24) <u>M</u>	(n=25) <u>M</u>	(n=6) <u>M</u>
Skill	2.42	2.32	2.17
Opening statement	2.33	2.32	3.33
Examination & cross examination	2.54	2.36	2.83
Closing argument	2.70	2.40	2.00
Strength of case	2.75	3.32	3.33

No significant differences were found between the groups on mean ratings of the prosecuting lawyers' skill, the impact of their examination and cross examination of the witnesses and closing arguments, and the strength of their cases. However, those respondents who said that the prosecuting lawyer behaved towards the defence lawyer in a negative manner ($\underline{M} = 3.33$, $\underline{SD} = 0.82$) rated their opening statements as having significantly less positive impact than those who said that s/he behaved in a positive manner ($\underline{M} = 2.33$, $\underline{SD} = 0.96$) ($t(28) = -2.33$, $p < .05$) and those who said that s/he behaved in a neutral manner ($\underline{M} = 2.32$, $\underline{SD} = 0.75$) ($t(29) = -2.93$, $p < .01$).

No significant differences were found between the groups when respondents were asked how they felt about the defendant's guilt or innocence at the end of the trial.

Defence Lawyers

Of the 55 respondents who said that there was some interaction between the two lawyers, 47.3% said that defence lawyer behaved towards the prosecuting lawyer in a neutral manner, 43.6% said that s/he behaved in a positive manner and 9.1% said that s/he behaved in a negative manner.

No significant differences were found between those respondents who indicated that the defence lawyer behaved towards the prosecuting lawyer in a positive manner, those who indicated that s/he behaved in a negative manner, and those who indicated that s/he behaved in a neutral manner when they were asked whether they liked the defence lawyer.

Three of the respondents said that the way in which the defence lawyer behaved towards the prosecuting lawyer influenced their evaluation of the defence lawyer's case: two said that it had a slight influence (one of those who said that s/he behaved in a negative manner and one of those who said that s/he behaved in a neutral manner), and one said that it had a moderate influence (one of those who said that s/he behaved in a positive manner).

Table 22 shows the mean ratings of the defence lawyers' skill, the impact of the various aspects of their presentations, and the strength of their cases, given by those respondents who said that s/he behaved towards the prosecuting lawyer in a positive manner, those who said that s/he behaved in a negative manner and those who said that s/he behaved in a neutral manner.

No significant differences were found between the groups on mean ratings of the impact of defence lawyers' examination and cross examination of the witnesses and closing arguments, and the strength of their cases. However, those respondents who said that the defence lawyer behaved towards the prosecuting lawyer in a positive manner ($M = 3.13$, $SD = 1.36$) rated their opening statements as having significantly more positive impact than those who said that s/he behaved in a negative manner ($M = 4.00$, $SD = 0$) ($t(22) = -3.07$, $p < .01$). Those who said that s/he behaved in a positive manner ($M = 2.00$, $SD = 1.63$) also rated the defence lawyer as significantly more skilled than

those who said that s/he behaved in a neutral manner ($M = 2.77$, $SD = 1.63$) ($t(40.32) = 2.07$, $p < .05$) but not significantly different from those who said that s/he behaved in a negative manner.

Table 22

Defence Lawyers' Behaviour Towards the Prosecuting Lawyer and Mean Ratings of Various Aspects of Their Presentations

Aspects of defence lawyers' presentations	Defence lawyers' behaviour		
	Positive	Neutral	Negative
	(n=24)	(n=26)	(n=5)
	<u>M</u>	<u>M</u>	<u>M</u>
Skill	2.00	2.77	2.80
Opening statement	3.13	3.04	4.00
Examination & cross examination	2.96	2.58	4.00
Closing argument	2.71	2.35	3.40
Strength of case	3.33	3.12	4.60

No significant differences were found between the groups when respondents were asked how they felt about the defendant's guilt or innocence of the defendant at the end of the trial.

Lawyers' Behaviour Towards the Jury

Prosecuting Lawyers

When respondents were asked how the prosecuting lawyer behaved towards the jury, 49.3% indicated that s/he behaved in a positive manner, 13% said that s/he behaved in a negative manner and 37.7% said that s/he behaved in a neutral manner.

No significant differences were found between those respondents who said that the prosecuting lawyer behaved towards the jury in a positive manner, those who said that s/he behaved in a neutral manner and those who said that s/he behaved in a negative manner when they were asked whether they liked the prosecuting lawyer.

Of the 69 respondents, 30.4% reported that the way in which the prosecuting lawyer behaved towards the jury influenced their evaluation of her/his case: 18.8% said that it had a slight influence, 10.1% said that it had a moderate influence, and 1.5% said that it had a lot of influence (a more detailed breakdown is shown in Table 23).

Table 23
Perceived Influence of Prosecuting Lawyers' Behaviour Towards the Jury on Respondents' Evaluations of Their Cases

Level of influence	Prosecuting lawyers' behaviour		
	Positive	Neutral	Negative
	(n=34)	(n=26)	(n=9)
	%	%	%
Not at all	55.9	92.2	55.6
Slightly	26.5	3.9	33.3
Moderately	14.7	3.9	11.1
A lot	2.9	0.0	0.0

No significant differences were found between those respondents who said that the prosecuting lawyer behaved towards the jury in a negative manner and those who said that s/he behaved in a positive manner on whether they thought that this influenced their evaluation of her/his case. However those respondents who either said that s/he behaved in a positive manner or said that s/he behaved in a negative manner were significantly more likely to think that this influenced their evaluation of her/his case than those respondents who said that s/he behaved in a neutral manner ($\chi^2 (1, N = 69) = 8.54, p < .05$). Of those who either said that the prosecuting lawyer behaved in a positive manner or said that s/he behaved in a negative manner, 44.2% said that this influenced their evaluation of her/his case compared with only 7.8% of those who said that s/he behaved in a neutral manner.

Table 24 shows the mean ratings of the prosecuting lawyers' skill, the impact of the various aspects of their presentations, and the strength of their cases given by those respondents who said that s/he behaved towards the jury in a positive manner, those who said that s/he behaved in a negative manner and those who said that s/he behaved in a neutral manner.

Table 24

Prosecuting Lawyers' Behaviour Towards the Jury and Mean Ratings of Various Aspects of Their Presentations

Aspects of prosecuting lawyers' presentations	Prosecuting lawyers' behaviour		
	Positive	Neutral	Negative
	(n=34) <u>M</u>	(n=26) <u>M</u>	(n=9) <u>M</u>
Skill	2.15	2.58	2.33
Opening statement	2.35	2.64	2.67
Examination & cross examination	2.35	2.50	3.22
Closing argument	2.44	2.46	2.78
Strength of case	2.47	3.96	3.33

It can be seen that prosecuting lawyers who behaved towards the jury in a positive manner were rated more favourably on all of these than those who behaved in a negative manner. However none of these differences were significant. The only significant difference was between ratings of the strength of their cases, given by those who said that s/he behaved in a positive manner and those who said that s/he behaved in a neutral manner. Those respondents who said that s/he behaved in a positive manner ($\bar{M} = 2.47$, $SD = 1.52$) rated their cases as significantly stronger than those who said that s/he behaved in a neutral manner ($\bar{M} = 3.96$, $SD = 2.07$) ($t(44.25) = 3.09$, $p < .01$).

No significant differences were found between these groups when respondents were asked how they felt about the defendant's guilt or innocence at the end of the trial.

Defence Lawyers

When respondents were asked how the defence lawyer behaved towards the jury, 47.8% indicated that s/he behaved in a positive manner, 20.3% said that s/he behaved in a negative manner and 31.9% said that s/he behaved in a neutral manner.

Those respondents who indicated that the defence lawyer behaved towards the jury in a negative manner were significantly more likely to dislike her/him than those who either said that s/he behaved in a neutral manner or said that s/he behaved in a positive

manner (χ^2 (1, N = 69) = 7.42, Fisher’s Exact test = .005). Of those respondents who said that the defence lawyer behaved in a negative manner 50% did not like her/him compared with 12.7% of those who either said that s/he behaved in a neutral manner or said that s/he behaved in a positive manner. Those defence lawyers who behaved towards the jury in a positive manner were not significantly more likely to be liked than those who behaved in a neutral manner.

Of the 69 respondents, 27.5% reported that the way in which the defence lawyer behaved towards the jury influenced their evaluation of her/his case: 14.5% said that it had a slight influence, 8.7% said that it had a moderate influence, and 4.3% said that it had a lot of influence (a more detailed breakdown is shown in Table 25).

Table 25
Perceived Influence of Defence Lawyers’ Behaviour Towards the Jury on Respondents’ Evaluations of Their Cases

Level of influence	Defence lawyers’ behaviour		
	Positive	Neutral	Negative
	(n=33)	(n=22)	(n=14)
	%	%	%
Not at all	66.7	100	42.9
Slightly	15.0	0	35.7
Moderately	15.0	0	7.1
A lot	3.3	0	14.3

No significant differences were found between those respondents who said that the defence lawyer behaved towards the jury in a negative manner and those who said that s/he behaved in a positive manner on whether they thought that this influenced their evaluation of her/his case or not. However those respondents who either said that the defence lawyer behaved towards the jury in a positive manner or said that s/he behaved in a negative manner were significantly more likely to think that this influenced their evaluation of her/his case than those who said that s/he behaved in a neutral manner (χ^2 (1, N = 69) = 9.86, p < .01). None of those respondents who indicated that the defence lawyer behaved in a neutral manner said that it influenced their evaluation of

her/his case, compared with 40% of those who either said that s/he behaved in a positive manner or said that s/he behaved in a negative manner.

Table 26 shows the mean ratings of the defence lawyers' skill, the impact of the various aspects of their presentations, and the strength of their cases given by those respondents who said that s/he behaved towards the jury in a positive manner, those who said that s/he behaved in a negative manner and those who said that s/he behaved in a neutral manner.

Table 26

Defence Lawyers' Behaviour Towards the Jury and Mean Ratings of Various Aspects of Their Presentations

Aspects of defence lawyers' presentations	Defence lawyers' behaviour		
	Positive	Neutral	Negative
	(n=33)	(n=22)	(n=14)
	<u>M</u>	<u>M</u>	<u>M</u>
Skill	2.27	2.14	3.00
Opening statement	2.86	3.20	3.36
Examination & cross examination	2.58	2.52	4.00
Closing argument	2.30	2.36	3.21
Strength of case	3.24	3.14	4.07

It can be seen that defence lawyers who behaved towards the jury in a positive manner were rated more favourably on all of these than those who behaved in a negative manner. However, the only difference that was found to be significant was on ratings of the impact of their examination and cross examination of the witnesses. Those respondents who said that the defence lawyer behaved towards the jury in a negative manner ($\underline{M} = 4.00$, $\underline{SD} = 2.11$) rated their examination and cross examination of the witnesses as having significantly less positive impact than those who said that s/he behaved in a neutral manner ($\underline{M} = 2.52$, $\underline{SD} = 1.08$) ($t(17.56) = -2.41$, $p < .05$) and those who said that s/he behaved in a positive manner ($\underline{M} = 2.58$, $\underline{SD} = 1.30$) ($t(17.33) = -2.34$, $p < .05$).

No significant differences were found between these groups when respondents were asked how they felt about the defendant's guilt or innocence at the end of the trial.

Respondents’ Liking of the Lawyers

Prosecuting Lawyers

Of the 45 respondents who indicated that they liked the prosecuting lawyer, 40% said that this influenced their evaluation of her/his case. Of the 11 respondents who indicated that they did not like the prosecuting lawyer, 45.5% said that this influenced their evaluation of her/his case (see Table 27).

Table 27
Perceived Influence of Respondents’ Liking of Prosecuting Lawyers on Their Evaluation of Prosecuting Lawyers’ Cases

Level of influence	Respondents’ liking of prosecuting lawyers	
	Liked	Did not like
	n=45 %	n=11 %
Not at all	60.0	54.5
Slightly	22.2	27.3
Moderately	15.6	18.2
A lot	2.2	0.0

No significant difference was found between those respondents who liked the prosecuting lawyer and those who did not like the prosecuting lawyer on whether they thought that this influenced their evaluation of her/his case.

Table 28 shows the mean ratings of the prosecuting lawyers’ skill, the impact of the various aspects of their presentations, and the strength of their cases, given by those respondents who liked the prosecuting lawyer and those who did not. None of these differences were found to be significant.

However, those respondents who liked the prosecuting lawyer were significantly more likely to think that the defendant was guilty at the end of the trial than those who either felt neutral or did not like her/him ($\chi^2 (1, N = 69) = 6.01, p < .05$) (see Figure 5).

Table 28

Respondents’ Liking of Prosecuting Lawyers’ and Mean Ratings of Various Aspects of Their Presentations

Aspects of prosecuting lawyers’ presentations	Respondents’ liking of prosecuting lawyers	
	Liked	Did not like
	n=45 <u>M</u>	n=11 <u>M</u>
Skill	2.24	2.18
Opening statement	2.39	2.73
Examination & cross examination	2.44	2.55
Closing argument	2.33	2.55
Strength of case	3.16	3.36

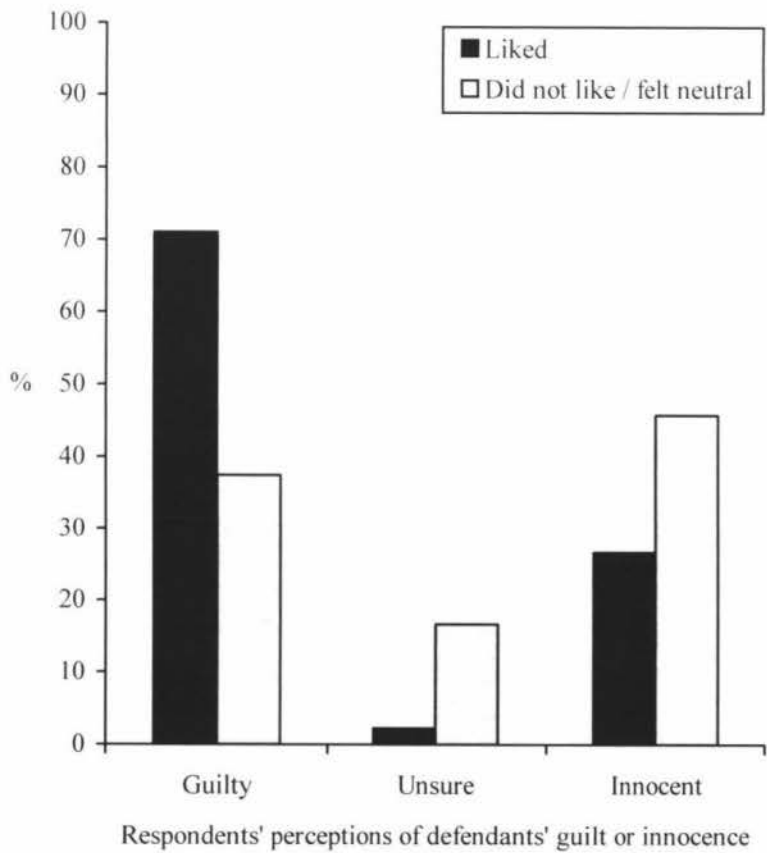


Figure 5. Respondents’ liking of prosecuting lawyers and their perceptions of defendants’ guilt or innocence.

Of those respondents who said that they liked the prosecuting lawyer 71.1% thought that the defendant was guilty at the end of the trial, compared with 37.5% of those who either felt neutral about her/him or did not like her/him. Those respondents who indicated that they did not like the prosecuting lawyer were not significantly more likely to think that the defendant was innocent than those who either said that they felt neutral about her/him or said that they liked her/him.

Defence Lawyers

Of the 43 respondents who indicated that they liked the defence lawyer, 25.6% said that this influenced their evaluation of her/his case. Of the 14 respondents who indicated that they did not like the defence lawyer, 42.9% said that this influenced their evaluation of her/his case (see Table 29). No significant difference was found between those respondents who liked the defence lawyer and those who did not like the defence lawyer, on whether they thought that this influenced their evaluation of her/his case.

Table 29
Perceived Influence of Respondents’ Liking of Defence Lawyers on Their Evaluation of Defence Lawyers’ Cases

Level of influence	Respondents’ liking of defence lawyers	
	Liked	Did not like
	n=43	n=14
	%	%
Not at all	74.4	57.1
Slightly	18.6	21.5
Moderately	7.0	14.3
A lot	0.0	7.1

Table 30 shows the mean ratings of the defence lawyers’ skill, the impact of the various aspects of their presentations, and the strength of their cases given by those respondents who liked the defence lawyer and those who did not like her/him.

Table 30
Respondents’ Liking of Defence Lawyers’ and Mean Ratings of Various Aspects of Their Presentations

Aspects of defence lawyers’ presentations	Respondents’ liking of defence lawyers	
	Liked	Did not like
	n=43 <u>M</u>	n=14 <u>M</u>
Skill	2.21	2.93
Opening statement	3.00	3.33
Examination & cross examination	2.58	3.50
Closing argument	2.33	3.00
Strength of case	2.93	4.64

The only significant difference between the two groups was on the mean rating of the strength of their cases. Those respondents who said that they liked the defence lawyer (M = 2.93, SD = 1.52) rated them as having significantly stronger cases than those who said that they did not like her/him (M = 4.64, SD = 1.78) (t (55) = 3.51, p < .01).

Those respondents who did not like the defence lawyer were also significantly less likely to think that the defendant was innocent at the end of the trial than those who either liked the defence lawyer or felt neutral about her/him (χ^2 (1, N = 69) = 4.04, Fisher’s Exact test = .02). Of those respondents who did not like the defence lawyer, only 7.1% thought that the defendant was innocent at the end of the trial compared with 40% of those who either liked the defence lawyer or felt neutral about her/him (see Figure 6).

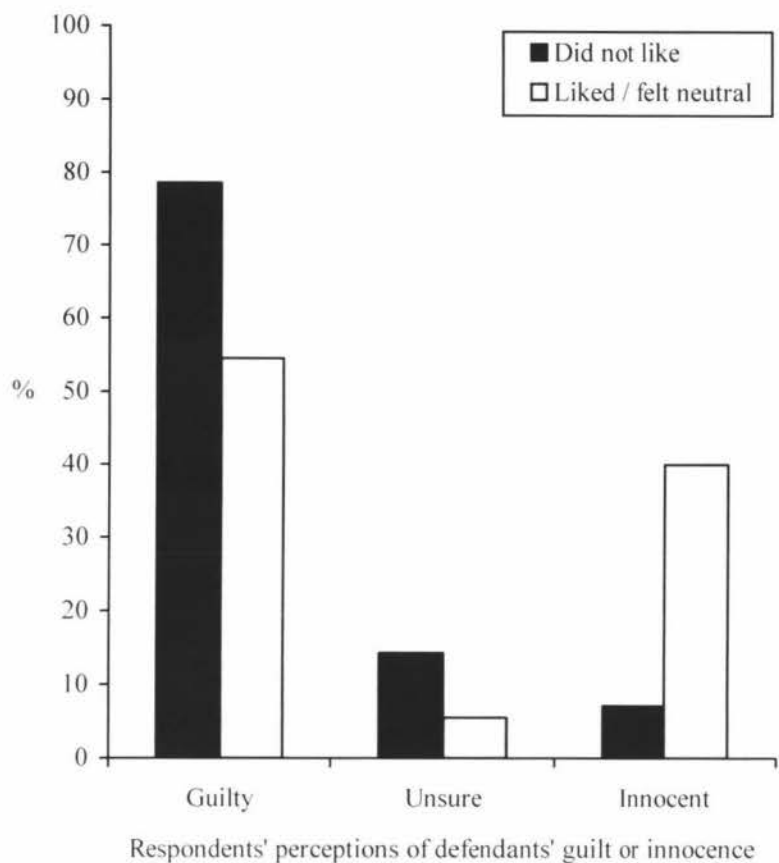


Figure 6. Respondents’ liking of defence lawyers and their perceptions of defendants’ guilt or innocence.

Respondents’ Comments about the Lawyers

The lawyers’ performances drew comments from many of the respondents during the interviews. Respondents were particularly resistant towards lawyers who appeared to be trying to manipulate the jury. On a number of occasions this was seen to be manifested in the way the lawyer ‘eyeballed’ the jurors (in one case the lawyer was even reprimanded for it by the judge) and in another case the respondent said that the lawyer was dogmatic and appeared to be trying to influence the jury with his approach rather than his case, and this had a negative effect on his evaluation of the lawyer and his case.

Lawyers who came across as arrogant were also viewed negatively. In one case, the respondent reported that the defence lawyer was arrogant and condescending, and he had to keep reminding himself that “it was the defendant we were trying, not his lawyer.” He said that if the lawyers had been reversed, and this lawyer was the prosecuting lawyer, he would have been less likely to think that the defendant was guilty. Another

respondent described how he felt particularly resistant towards one of the lawyers when the lawyer frequently made comments like “you can’t possibly believe that!” to the jury.

Aggressive approaches by the lawyers were also not looked upon favourably by respondents. However, lawyers (particularly defence lawyers) who did not appear to put much effort into their presentation and were seen to be “just going through the motions” drew negative comments from a number of other respondents. Lawyers who appeared to be doing their best and seemed confident without being arrogant were looked upon favourably by respondents.

The most commonly voiced criticism of the lawyers’ presentations (as opposed to their approach or personalities) related to their asking what were seen as stupid or irrelevant questions and failing to ask ‘the right questions’. Another source of frustration was lawyers who appeared to be wasting time by going over the same things over and over again. In one case the defence lawyer objected frequently, causing numerous retirements to the judge’s chambers and the respondent said that this definitely had a negative influence on her evaluation of the defence lawyer’s case.

The most common positive comments about the lawyers related to the way in which they treated the witnesses and the jury. A lawyer who was “gentle with the complainant and brought out the real personality of an arrogant witness” was described as “brilliant” by one respondent. Similar sentiments were expressed by other respondents: “he was gentle with the complainant,” “he handled an aggressive witness very well.” Other descriptions associated with favourable impressions of lawyers were: ‘polite’, ‘fair’, ‘nonjudgmental’, ‘warm’, ‘pleasant’, ‘sincere’, ‘professional’, and ‘not aggressive’.

Other respondents said that the way in which the lawyers behaved towards the jury had a positive influence: “he behaved towards the jury with a lot of respect and this definitely influenced other jurors”, “he was patient and tolerant with the jury”, “the prosecuting lawyer explained the court system, he pointed out the typist, and talked about how the witnesses would be speaking slowly etc. and this had a huge impact on a lot of the other jurors. They thought he was nicer than the other lawyer and were very impressed by his attitude.” One respondent described how “the prosecuting lawyer had the other jurors in the palm of her hand, most of them thought she was wonderful, so nice, and wasn’t she dressed well.” He believed that she successfully manipulated the jury.

THE JUDGE

Apparent Favouritism

When respondents were asked whether the judge appeared to favour one side or the other, 10 (14.5%) said that he did (all of the judges in the present sample of cases were men). Six of these said that he appeared to favour the prosecution and four said that he appeared to favour the defence.

When the Judge Appeared to Favour the Prosecution

Three of the six respondents who said that the judge appeared to favour the prosecution said that this influenced their decision making: two said that it had a slight influence and one said that it had a moderate influence. When the mean ratings of each lawyer's skill, the impact of the various aspects of their presentations and the strength of their cases were compared in these six cases, the prosecuting lawyers were found to be rated considerably more favourably than the defence lawyers on all aspects (between 1.6 and 2.7 rating points). In light of the small number of cases in question these differences were not tested for statistical significance.

When the Judge Appeared to Favour the Defence

Two of the four respondents who said that the judge appeared to favour the defence said that this influenced their decision making: both said that it had a lot of influence. When the mean ratings of each lawyer's skill, the impact of the various aspects of their presentations and the strength of their cases were compared in these four cases, the defence lawyers were found to be rated considerably more favourably than the prosecuting lawyers on all aspects (between 1 and 3 rating points). These differences were also not tested for statistical significance in light of the small number of cases in question.

Summing up and Direction

Of the 69 respondents, 66.7% said that that the judge's summing up and direction influenced their decision making: 21.7% said that it had a slight influence, 26.1% said that it had a moderate influence, and 18.9% said that it had a lot of influence.

Judges' Behaviour Towards the Defendant

Of the 69 respondents, 47.8% percent said that the judge did not acknowledge the defendant at all, 31.9% said that he behaved in a neutral manner, 17.4% said that he behaved in a positive manner, and 2.9% said that he behaved in a negative manner.

One of those respondents who said that the judge behaved towards the defendant in a positive manner said that this had an influence on her/his evaluation of the defendant's guilt or innocence, and this influence was only slight. Of those respondents who said that the judge behaved towards the defendant in a positive manner, 42% thought that the defendant was innocent at the end of the trial compared with 23% of those who reported that he behaved in a neutral manner and 39% of those who said that he did not acknowledge the defendant at all. Thus, those respondents who said that the judge behaved towards the defendant in a positive manner were slightly more likely to think that the defendant was innocent than those who either said that he behaved in a neutral manner or said that he did not acknowledge the defendant at all, but this difference was not significant.

Of the two respondents who said that the judge behaved towards the defendant in a negative manner, one said that this had a moderate influence on her/his evaluation of the defendant's guilt or innocence. Both of these respondents thought that the defendant was guilty at the end of the trial, compared with 58% of those who said that the judge behaved in a positive manner, 68% who said that he behaved in a neutral manner and 52% of those who said that the judge did not acknowledge the defendant at all.

Judges' Behaviour Towards the Lawyers

Prosecuting Lawyers

When respondents were asked how the judge behaved towards the prosecuting lawyer, 69.6% said that he behaved in a neutral manner, 18.8% said that he behaved in a positive manner and 11.6% said that he behaved in a negative manner.

No significant differences were found between these groups when respondents were asked whether they liked the prosecuting lawyer.

Three of those respondents who said that the judge behaved towards the prosecuting lawyer in a negative manner, and one of those who said that he behaved in a neutral manner said that this influenced their evaluation of the prosecuting lawyer’s case: all said that it only had a slight influence.

Table 31 shows the mean ratings of the prosecuting lawyers’ skill, the impact of the various aspects of their presentations and the strength of their cases given by those respondents who said that the judge behaved towards the prosecuting lawyer in a positive manner, those who said that he behaved in a negative manner, and those who said that he behaved in a neutral manner.

Table 31
Judges’ Behaviour Towards Prosecuting Lawyers’ and Mean Ratings of Various Aspects of Their Presentations

Aspects of prosecuting lawyers’ presentations	Judges’ behaviour		
	Positive	Neutral	Negative
	(n=13) <u>M</u>	(n=48) <u>M</u>	(n=8) <u>M</u>
Skill	2.31	2.19	3.25
Opening statement	2.46	2.49	2.63
Examination & cross examination	2.92	2.33	3.00
Closing argument	2.23	2.60	2.25
Strength of case	3.38	2.85	4.50

It can be seen that those lawyers who were seen to be treated in a positive manner by the judge were rated more favourably on all aspects than those who were seen to be treated in a negative manner. However none of these differences were found to be significant. The only significant difference was: those respondents who said that the judge behaved towards the prosecuting lawyer in a negative manner (M = 4.50, SD = 2.07) rated them as having significantly weaker cases than those who said that he behaved in a neutral manner (M = 2.85, SD = 1.74) (*t* (54) = -2.41, *p* < .05).

No significant differences were found between these groups when respondents were asked how they felt about the guilt or innocence of the defendant at the end of the trial.

Defence Lawyers

When respondents were asked how the judge behaved towards the defence lawyer, 71% said that he behaved in a neutral manner, 20.3% said that he behaved in a positive manner and 8.7% said that he behaved in a negative manner.

No significant differences were found between these groups when respondents were asked whether they liked the defence lawyer.

One of those respondents who indicated that the judge behaved towards the defence lawyer in a negative manner and one of those who indicated that he behaved in a neutral manner said that this influenced their evaluation of the defence lawyer’s case: both said that it only had a slight influence.

Table 32 shows the mean ratings of the defence lawyers’ skill, the impact of the various aspects of their presentations and the strength of their cases given by those respondents who said that the judge behaved towards the defence lawyer in a positive manner, those who said that he behaved in a negative manner and those who said that he behaved in a neutral manner.

Table 32
Judges’ Behaviour Towards Defence Lawyers’ and Mean Ratings of Various Aspects of Their Presentations

Aspects of defence lawyers’ presentations	Judges’ behaviour		
	Positive	Neutral	Negative
	(n=14) <u>M</u>	(n=49) <u>M</u>	(n=6) <u>M</u>
Skill	2.86	2.14	3.17
Opening statement	2.86	2.93	4.67
Examination & cross examination	2.86	2.81	3.17
Closing argument	2.64	2.43	2.83
Strength of case	3.71	3.20	4.00

It can be seen that those defence lawyers who were seen to be treated in a positive manner by the judge were rated more favourably than those who were seen to be treated

in a negative manner. However, none of these differences were found to be significant. The only significant difference was: those respondents who said that the judge behaved towards the defence lawyer in a negative manner ($M = 3.17$, $SD = 1.94$) rated them as significantly less skilled than those who said that he behaved in a neutral manner ($M = 2.14$, $SD = 1.04$) ($t(53) = -2.05$, $p < .05$).

No significant differences were found between these groups when respondents were asked how they felt about the guilt or innocence of the defendant at the end of the trial

Different Treatment of the Lawyers

While 85% of the respondents reported that the judge treated both lawyers in the same manner, a small percentage indicated that he treated them differently.

Six respondents indicated that the judge behaved towards the prosecuting lawyer in a negative manner and behaved towards the defence lawyer either in a positive manner or in a neutral manner. Three of these respondents said that this influenced their evaluation of the prosecuting lawyer's case slightly and did not influence their evaluation of defence's case at all. The other 3 respondents, said that it did not influence their evaluation of either case at all.

When the mean ratings of the various aspects of each lawyer's case were compared in these six cases, the defence lawyers were found to be rated more favourably than the prosecuting lawyers on all aspects. In light of the small number of cases in question these differences were not tested for statistical significance.

Four respondents reported that the judge behaved towards the defence lawyer in a negative manner and behaved towards the prosecuting lawyer in a positive manner. One of these respondents said that this influenced her evaluation of the defence's case slightly and did not influence her evaluation of the prosecuting lawyer's case at all. The other three respondents said that it did not influence their evaluation of either case.

When the mean ratings of the various aspects of each lawyer's case were compared in these four cases, the prosecuting lawyers were found to be rated more favourably than the defence lawyers on all aspects. These differences were also not tested for statistical significance in light of the small number of cases in question.

The Overall Contribution of Various Factors

The responses of the participants when they were asked how much various evidential and extra-evidential factors contributed to how they felt about the defendant's guilt or innocence at the end of the trial are shown in Table 33.

Table 33

Perceived Contribution of Various Factors to Respondents' Perceptions of Defendants' Guilt or Innocence

Factor	Perceived contribution			
	Not at all	Slightly	Moderately	A lot
	%	%	%	%
The respondent's impression of the defendant	44.9	27.5	17.4	10.2
The way the defendant behaved	42.0	37.7	14.5	5.8
The defendant's failure to testify	70.4	14.8	7.4	7.4
The defendant's testimony	16.7	40.4	16.7	26.2
The testimony of the other witnesses	1.5	20.3	21.7	56.5
The prosecuting lawyer and the way s/he presented her/his case	17.4	39.1	30.4	13.1
The defence lawyer and the way s/he presented her/his case	15.9	39.2	29.0	15.9
The judge	39.1	23.2	26.1	11.6
The other jurors	53.6	23.2	11.6	11.6

It can be seen that the majority of the respondents indicated that their impression of the defendant, and the way the defendant behaved contributed to their perception of her/his guilt or innocence, and that just over half of these indicated that they made at least a moderate contribution. The majority of the respondents said that the lawyers and the way that they presented their cases contributed to their perception of the defendant's guilt or innocence (82.6% and 84.1%), and over half of these indicated that the contribution was at least moderate. Over half of the respondents said that the judge contributed to their perception of the defendant's guilt or innocence and just under half of the respondents said that the other jurors did. The factor reported by the most

respondents to have contributed was the testimony of the other witnesses (besides the defendant), and the factor reported by the least number of respondents as having contributed was the defendant's failure to testify.

The responses of the participants when they were asked what contributed the most to how they felt about the guilt or innocence of the defendant at the end of the trial are shown in Table 34.

Table 34

Factor Perceived to Have Contributed the Most to Respondents' Perceptions of Defendants' Guilt or Innocence

Factor	%
Extra-evidential factors	
The respondent's impression of the defendant	7.2
The defendant's behaviour / manner / attitude	4.3
The defendant's lack of support	1.5
The arguments of the lawyers	2.9
The judge	4.3
The other jurors	2.9
The complainant's demeanour	2.9
Total: Extra-evidential factors	26.0
Evidential factors	
The evidence	23.2
Witness testimony	14.5
The defendant's testimony	2.9
Videotaped police interview with the defendant	2.9
The defendant's previous history of crime or similar behaviour	2.9
The complainant's testimony	5.8
The complainant's history	1.5
The weakness of the prosecution's case	14.5
The strength of the prosecution's case	4.3
The weakness of the defence's case	1.5
Total: Evidential factors	74.0

It can be seen that the majority of respondents (74%) indicated that an evidential factor contributed the most to their perception of the defendant's guilt or innocence. However there were still a significant number of respondents who indicated that an extra-evidential factor was most influential, and in half of these cases it was an extra-evidential factor related to the defendant.

The Liberation Hypothesis

In order to make comparisons between trials in which the two cases (prosecution and defence) were of similar strength and trials in which the cases were of different strength, the cases were divided according to respondents' perceptions of the relative strength of the two cases. Those cases in which the respondent rated the two cases as being equally strong or only one point on the rating scale away from each other were considered to be cases in which the cases were of similar strength. All other cases (those in which at least one scale point separated the respondent's ratings of the strength of the two cases) were considered to be those in which the cases were perceived to be of different strength.

These two groups were compared on the perceived influence of four of the extra-evidential factors investigated in the present study: whether respondents liked the defendant, whether they felt sympathy for the defendant, whether they liked the prosecuting lawyer, and whether they liked the defence lawyer. These factors were chosen on the basis that they had been found to be related to respondents' evaluations of the defendant's guilt or innocence when the sample was taken as a whole.

No significant differences were found between the groups on the percentage of respondents who reported that these factors influenced their decision making. Furthermore, no significant differences were found between these groups on the percentage of respondents who indicated that the factors listed in Table 33 (p. 125) contributed to their perceptions of the defendant's guilt or innocence at the end of the trial. In other words, those respondents who perceived the cases to be of similar strength were not more likely to report that extra-evidential factors were influential than those respondents who indicated that the cases were of different strength.

The Effect of Deliberations

Table 35 shows the final verdicts in cases in which respondents thought that the defendant was guilty, those in which they thought that the defendant was innocent and those in which they were unsure.

Table 35
Respondents' Perceptions of Defendants' Guilt or Innocence at the End of the Trial and Final Verdicts

Verdict	Respondents' perceptions		
	Guilty	Unsure	Innocent
	(n=41)	(n=5)	(n=23)
	%	%	%
Guilty of all charges	46.3	80.0	30.4
Guilty of some and not guilty of others	22.0	0.0	0.0
Not guilty of some and hung jury on others	2.4	0.0	4.4
Not guilty of all charges	24.4	20.0	47.8
Hung jury on all charges	4.9	0.0	17.4

It can be seen that in the 41 cases in which the respondent thought that the defendant was guilty at the end of the trial, the defendant was found guilty of at least one charge in 68.3% of the cases, was not found guilty of any of the charges in 26.8% of the cases, and was not found either guilty or innocent (hung jury) in 4.9% of the cases.

In the 23 cases in which the respondent thought that the defendant was innocent at the end of the trial, the defendant was not found guilty of any charges in 52.2% of the cases, was found guilty in 30.4% of the cases, and was not found either guilty or innocent (hung jury) in 17.4% of the cases.

In 18 of the 69 cases (26.1%), the final verdict was different from how the respondent felt about the guilt or innocence of the defendant at the end of the trial.

CHAPTER 10

DISCUSSION

The results obtained support some of the research hypotheses, and fail to support others. Some support was found for the hypotheses that relationships would be found between respondents' sentiments towards the defendant and the lawyers and their evaluations of defendants' guilt or innocence. However, little support was found for the hypotheses that relationships would be found between the behaviour of the trial participants and respondents' evaluations.

THE DEFENDANT

Respondents' Impressions of the Defendant

Only a small percentage of the respondents reported that their initial impression of the defendant was neutral, and the majority of the remainder said that their initial impression was negative. Furthermore, only a quarter of the respondents said that their impression of the defendant changed during the trial. Thus, it appears that jurors form impressions of the defendant very early on in the trial, and that these usually stay constant throughout the trial, so it would be wise for the defence team to ensure that the impression the defendant wants to give the jury is projected from the minute s/he is exposed to them.

The results also suggest that it is in the defendant's best interest to ensure that jurors do not have reason to form a negative impression of her/him. Respondents who had or developed a negative impression of the defendant were significantly less likely to feel sympathy for her/him, and were also significantly more likely to think that the defendant was guilty at the end of the trial than those who did not have or develop a negative impression. This finding lends some support the assertion that impressions of the defendant are important, especially if these impressions are negative.

Physical Attractiveness of Defendants

Physical Attractiveness of Defendants and Respondents' Sentiments

It is well documented in the research literature that physical appearance plays a major role in interpersonal attraction, especially between people who do not know each other. The finding that more than a third of the respondents said that the defendant's physical attractiveness influenced how they felt about her/him reflects the findings of this large body of research.

The majority of respondents however, said that the physical attractiveness of the defendant did not influence how they felt about her/him. This appears to be supported by the fact that when the sample was taken as a whole, no relationship was found between the perceived physical attractiveness of defendants and whether respondents liked them. Those respondents who said that the defendant was attractive were just as likely to say that they did not like her/him as those who said that s/he was unattractive, and those who said that the defendant was unattractive were just as likely to like her/him as those who said that s/he was attractive. This finding is contrary to the results of previous experimental studies which indicated that physically attractive defendants in a criminal trial (Darby & Jeffers, 1988) and in a civil trial (Kulka & Kessler, 1978) were rated as more likable by mock jurors.

However, another finding in the present study offers some support for the hypothesis that respondents' liking of defendants would be related to their perceptions of defendants' physical attractiveness, in some cases. When the cases were divided according to the gender of the respondent, female respondents who indicated that the defendant was unattractive were significantly more likely to dislike her/him than those who either said that the defendant was attractive or said that s/he was of average attractiveness.

This finding appears to suggest that female respondents were more likely to be influenced by the defendant's physical attractiveness than male respondents. However, it is perhaps equally possible that respondents who were trying a defendant of different gender were more likely to be influenced by the defendant's physical appearance than those trying a defendant of the same gender. Owing to the overrepresentation of males

in the defendant population, 95% of the female respondents were exposed to a defendant of different gender, while this was the case for only one of the male respondents. It is possible that the observation of a relationship between the perceived attractiveness of the defendant and whether respondents liked her/him would depend on whether the respondent and the defendant were of the same or different gender. Unfortunately it was not possible to investigate this hypothesis in the present study because there were not enough cases in which female respondents were exposed to a defendant of the same gender, or in which male respondents were exposed to a defendant of different gender.

It is interesting to note, however, that Efran (1974) found a nonsignificant tendency for male mock jurors to be more strongly influenced by the physical attractiveness of a female defendant than female subjects were by the physical attractiveness of a male defendant. The one male respondent in the present study who was exposed to a female defendant said that the defendant was unattractive and also said that he did not like her. It appears that this area may be worthy of further research.

Physical Attractiveness of Defendants and Evaluations of Their Guilt or Innocence

The hypothesis that respondents' evaluations of the defendant's guilt or innocence would be related to their perceptions of her/his physical attractiveness was not supported by the results. The failure to find a relationship is also contrary to the results of previous research that have indicated that the halo effect, allegedly produced by physical attractiveness, carries into the courtroom and biases jurors in favour of good looking defendants.

The equivalency of measures of punishment recommendations and guilt judgments is debatable (see Chapter 4). If the results of studies using sentencing as the dependent variable are generalizable to judgments of guilt or innocence, the results of the present study are contrary to those of the majority of previous experimental studies which have indicated that physically attractive defendants received significantly less severe punishment than attractive defendants (Bray, n.d., cited in Dane & Wrightsman, 1982; Darby & Jeffers, 1988; Efran, 1974; Gerdes et al., 1988; Jacobson, 1981; Leventhal & Krate, 1977; McFatter, 1978; Piehl, 1977; Sigall & Ostrove, 1975; Smith & Hed, 1979;

Solomon & Schopler, 1978). They are consistent with the findings of only one of the experimental studies reviewed, in which the physical attractiveness of the defendant was not found to have a significant effect on the severity of mock jurors' sentence recommendations (Burke et al., 1990).

The results of the present study are also contrary to those of the majority of experimental studies in which judgments of guilt were taken as the dependent measure, and which have indicated that physically attractive defendants were less likely to be found guilty (Darby & Jeffers, 1988; Efran, 1974; Jacobson, 1981) and rated less guilty (Bray, n.d., cited in Dane & Wrightsman, 1982) than unattractive defendants. They are consistent with the results of only one of the experimental studies reviewed, in which the physical attractiveness of the defendant was not found to have a significant effect on judgments of guilt (Burke et al., 1990).

The present results are also contrary to those of a meta-analysis of 80 studies which indicated that the physical attractiveness of defendants influence mock jurors' judgments of both guilt and appropriate punishment (Mazzella & Feingold, 1994).

If findings regarding judgments of defendants in civil trials are generalizable to those in criminal trials, the results of the present study are also contrary to the findings of an experimental study in which mock jurors' decisions were found to be influenced by the defendant's physical attractiveness (Kulka & Kessler, 1978).

With regard to relationships with other variables, the finding that physically attractive defendants were not more likely to be recipients of sympathy is contrary to the results of another study, in which attractive defendants were found to be more likely to receive sympathy than less attractive defendants (Jacobson, 1981).

It is not possible to comment on the findings of experimental studies in which interactions were found between the effects of physical attractiveness and other variables. Very few of the crimes in the present sample of cases could be considered crimes in which the physical attractiveness of the defendant may be seen as important to the successful commission of the crime (Sigall & Ostrove, 1975; Smith & Hed, 1979) and no measure was taken of the perceived seriousness of the consequences of the defendant's alleged crime (Piehl, 1977).

There are many possible reasons for the discrepancy between the results of the present field study and those of the majority of previous experimental studies. The many differences between simulations and real jury trials discussed in Chapter 4 are among these. Perhaps the most obvious of these in relation to the present study is the difference in composition of the samples. The samples used in most experimental studies have been composed of college students, while the majority of the respondents in the present study were from the older age groups, and were professionals. It also needs to be kept in mind that most of the previous research has been conducted in the United States and a considerable amount of it was conducted some time ago (predominantly in the 1970s).

While the results of the present study are contrary to those of the majority of previous experimental studies, they are consistent with the results of one of the few other field studies in this area, in which no relationship was found between ratings of the physical attractiveness of defendants and juries' verdicts in real trials (Stewart, 1980).

Physical Presentation of Defendants

Physical Presentation of Defendants and Respondents' Liking of Them

The finding that the majority of the respondents said that the defendant's physical presentation influenced how they felt about the her/him, and over half of these said that the influence was at least moderate, appears to support the belief among defence lawyers that the defendant's physical presentation is important. Furthermore, those respondents who said that the defendant was well presented were just as likely to think that this influenced how they felt about her/him as those who thought that s/he was badly presented. Taken together, these findings suggest that the defence team's efforts or lack thereof, to ensure that the defendant is well presented do not go unnoticed by jurors.

However, while the majority of respondents indicated that the defendant's physical presentation influenced how they felt about her/him, no relationship was found between respondents' perceptions of defendants' presentation and whether they liked them. Those respondents who said that the defendant was well presented were just as likely to dislike the defendant as those who said that s/he was badly presented, and those respondents who said that the defendant was badly presented were just as likely to like her/him as those who said that s/he was well presented.

Physical Presentation of Defendants and Evaluations of Their Guilt or Innocence

The way in which defendants were presented was also not found to be related to perceptions of their guilt or innocence. Those respondents who said that the defendant was well presented were just as likely to think that s/he was guilty at the end of the trial as those who thought that s/he was badly presented.

These findings regarding defendants' physical presentation fail to support the hypotheses that respondents' liking of defendants and their evaluation of defendants' guilt or innocence would be related to the way in which defendants were presented. However, they are consistent with the findings of the few experimental studies in which the physical presentation of the defendant has been manipulated and found to have no effect on mock jurors' judgments (Jacobson & Berger, 1974, cited in Kulka & Kessler, 1978; Sigal et al., 1978) and are also consistent with the results of the only other field study available on the topic, in which no relationship was found between ratings of defendants' presentation and the verdicts of real juries' (Stewart, 1984).

The failure to find a relationship between the perceived physical attractiveness, or physical presentation of defendants and perceptions of their guilt or innocence also appears to be consistent with the findings of another study in which jurors were interviewed after their trial service. None of the respondents ranked the physical appearance of the defendant either first or second in order of how much they believed various factors influenced their final decision (Bridgeman & Marlowe, 1979).

Comments made by five of the respondents in the present study suggest that in some cases jurors are influenced by the physical appearance of the defendant, but in most of these cases it was more the association between the way the defendant was presented and other personal characteristics (gang membership) that appeared to be influential than whether s/he was well presented or badly presented in itself.

Attractiveness of Defendants' Lifestyles

The hypotheses that respondents' liking of defendants and their evaluations of defendants' guilt or innocence would be related to their perceptions of the attractiveness of defendants' lifestyles were supported by the results.

Attractiveness of Defendants' Lifestyles and Respondents' Liking of Them

The majority of the respondents indicated that the attractiveness of the defendant's lifestyle influenced how they felt about her/him, and more than two-thirds of these said that the influence was at least moderate. Those respondents who said that the defendant's lifestyle was unattractive were significantly more likely to think that it was influential than those who either said that it was attractive or said that it was of average attractiveness. These observations appear to be supported by the finding that those respondents who indicated that the defendant had an unattractive lifestyle were significantly more likely to say that they did not like her/him than those who did not.

Attractiveness of Defendants' Lifestyles and Evaluations of Their Guilt or Innocence

Those respondents who perceived the defendant's lifestyle to be unattractive were also significantly more likely to think that s/he was guilty at the end of the trial than those respondents who said that her/his lifestyle was attractive or said that it was of average attractiveness.

In comparing the results of the present study with previous research, it is important to point out that the term 'lifestyle' was used in the present study in place of 'social' or 'psychological' attractiveness, because it was thought that 'lifestyle' is a term that respondents would be more familiar with than social or psychological attractiveness.

In the case materials that have been most frequently used in studies investigating the effects of defendants' social or psychological attractiveness (Landy & Aronson, 1969), the defendant's marital situation and history, employment situation and history, criminal history and reputation were manipulated. Other researchers have manipulated the socio-economic status of defendants. These are all characteristics that may be considered to contribute to the lifestyle of the defendant.

Insofar as the term 'lifestyle' incorporates the characteristics that have been manipulated in these studies, the results of the present study are consistent with much of the experimental literature.

If the results of studies in which judgments of appropriate punishment were used as the dependent variable are generalizable to judgments of guilt or innocence, the results

of the present study are consistent with the majority of these experimental studies in which socially unattractive defendants were found to be judged more severely than socially attractive defendants (Bierhoff et al., 1989; Bray et al., 1978; Dowdle et al., cited in Gerbasi et al., 1977; Friend & Vinson, 1974, cited in, Sigal, et al., 1978; Gleason & Harris, 1975; Izzett & Leginski, 1974; Kaplan & Kemmerick, 1974; Landy & Aronson, 1969; Michelini & Snodgrass, 1980; Nemeth & Sosis, 1973; Reynolds & Sanders, 1975; Sigall & Landy, 1972; Weiten, 1980; Wilson & Donnerstein, 1977). The present results are contrary to only one of the experimental studies reviewed in which the social attractiveness of the defendant was not found to influence judgments (Foss, 1976).

When compared with experimental studies in which measures of guilt have been used as the dependent variable, the findings of the present study are consistent with those of two studies in which socially unattractive defendants were rated as more guilty than socially attractive defendants (Gleason & Harris, 1975; Kaplan & Kemmerick, 1974). They are inconsistent with the more frequently reported finding that manipulation of the defendant's social attractiveness did not have a significant effect on judgments of guilt (Bray et al., 1978; Foss, 1976; Hatton et al., 1971; Izzett & Leginski, 1974; Landy & Aronson, 1969; Wilson & Donnerstein, 1977).

The comments made by four of the respondents in the present study about other jurors appearing to be influenced by the fact that the defendant(s) associated with a gang, are in line with claims made by some of the judges surveyed by Kalven and Zeisel (1966) that juries were influenced by their perceptions of the defendant. The comment made by another respondent about the defendant's unattractive lifestyle reflecting on his credibility is directly in line with Kalven and Zeisel's comment that "it is apparent that there is always a considerable link, in the eyes of the jury, between the unattractiveness of the defendant and his credibility" (p. 385).

Defendants' Failure to Testify

It has been claimed that jurors draw negative inferences about defendants who fail to take the witness stand and testify. In the present study, only just over a quarter of the respondents who reported that the defendant did not testify said that this influenced their evaluation of her/his guilt or innocence.

When respondents were asked how they felt about the defendant not testifying, the majority indicated that they were not really concerned about it. The replies of the remaining respondents, are consistent with the views of two psychological consultants on trial preparation and conduct, that jurors want to hear the defendant's own story (Dillehay & Nietzel, 1986; Nietzel & Dillehay, 1986). Approximately a third of these said that they were either frustrated about the defendant not testifying, or shocked that the s/he did not testify. Almost half of these respondents indicated that they were suspicious about the defendant's failure to testify, providing support for the contention that jurors tend to distrust and be suspicious of defendants who remain silent (Bailey & Rothblatt, 1971; Dillehay & Nietzel, 1986; Foley, 1993; Nietzel & Dillehay, 1986; Shaffer, 1985).

However, these respondents comprised less than a quarter of all of those who did not hear the defendant testify, so it would seem unjustified to say that respondents were *usually* suspicious of defendants who did not testify. This is supported by the failure to find a relationship between whether defendants testified and respondents' perceptions of their guilt or innocence at the end of the trial. Furthermore, those respondents who said that the defendant's failure to testify influenced their evaluation of the her/his guilt or innocence were not more likely to think that the defendant was guilty at the end of the trial than those respondents who said that it did not have any influence. Thus, the hypothesis that defendants who did not testify would be more likely to have been thought to be guilty than those who did testify was not supported.

Defendants' Behaviour

The behaviour of defendants in terms of respondents' ratings on the four scales utilised, was not found to be related to whether respondents liked the defendant, or their perceptions of defendants' guilt or innocence at the end of the trial.

This latter finding is consistent with the findings of the field study on which the rating scales related to the behaviour of defendants in the present study were based. Kerr (1982) also failed to find a relationship between observers' ratings of defendants' behaviour on similar scales and juries' conviction ratios even with a rather liberal level of significance.

However, the failure to find a relationship between respondents' ratings on the four scales used and their perceptions of defendants' guilt or innocence at the end of the trial does not necessarily mean that the behaviour of defendants was not influential. In hindsight, the questions relating to the behaviour of the defendant should possibly have been open ended in format rather than a series of closed questions with predetermined rating scales.

The reason that this format was used, was to enable comparison of the results with the findings of the one other field study available on the general behaviour of defendants (Kerr, 1982). This lack of similar research is precisely the reason that an open ended question may have been more appropriate. Open ended questions are best suited to areas in which the research on which to base expectations is lacking. The use of closed questions forces the participant to respond within the limits set by the researcher, and one cannot be sure that the set of responses contains the reply that respondents would have given had the question been asked in an open format (Chadwick et al., 1984).

The suggestion that it was not that the behaviour of the defendant was not influential, but rather that the structure of the question imposed too severe restrictions on responses, is supported by the finding that the majority of the respondents indicated that the way the defendant behaved in court influenced their evaluation of the defendant's guilt or innocence. This finding lends support to the belief that the behaviour of defendants may be an important factor in jurors' perceptions and decision making.

In addition, many of the respondents indicated that they were looking for signs of guilt or innocence in the defendant's behaviour. This supports the claim made by some writers that defendants are always witnesses regardless of whether they testify or not, because during the trial, jurors observe defendants, taking note of their demeanour and reactions to the evidence (Kalven & Zeisel, 1966; Shaffer, 1985).

Comments made by some of the respondents also support the contention that the way the defendant behaved may have been influential. The comments of one respondent regarding the defendant's apparent remorse having an influence on evaluations of his guilt or innocence is in line with the views of a number of judges surveyed by Kalven and Zeisel (1966) that the jury was inclined to vote not guilty because the defendant appeared remorseful. It is also in line with the results of two experiments in which a

'remorseful' defendant was given significantly less severe punishment than a 'nonremorseful' defendant (Rumsey, 1976), and a defendant who expressed sadness and distress was found to be evaluated less severely than defendants who were neutral, happy or angry (Savitsky & Sim, 1974, cited in Izzett & Sales, 1981).

However, overall, it appeared that the defendants in most of the trials in the present sample behaved quite neutrally. There did not appear to be any 'Lindy Chamberlains', and none of the respondents spoke of 'pious old frauds' or 'blowhard smart alecks' that some of the judges in Kalven and Zeisel's (1966) survey referred to. No mention was made of any 'outbursts of tears' (staged or otherwise), that some of the judges in Kalven and Zeisel's and Baldwin and McConville's (1979) studies thought were responsible for verdicts contrary to the weight of the evidence. However, three of the respondents in the present study said that if the defendant had behaved in a 'negative' way this would have influenced their evaluation of her/his guilt or innocence.

Insofar as the behaviour of defendants may reflect their attitude, the finding that more respondents said that the defendant's behaviour influenced their evaluation of her/his guilt or innocence than whether they liked the defendant or whether they felt sympathy for the defendant appears to lend support to the findings of a previous experimental study (Sigal et al, 1978). In this study 99% of the mock jurors selected the attitude of the defendant above other defendant characteristics as the most important factor to be weighed in determining guilt or innocence.

The few experimental studies that have investigated the influence of the behaviour of defendants on mock jurors' judgments have focused on specific behaviours, and the defendants' testimonial demeanour rather than their general behaviour during the trial. This, coupled with the restrictions imposed by the closed format of the questions in the present study, and the fact that very few of the respondents indicated that the defendant behaved in a negative manner, makes it difficult to comment on the findings of these studies in which differences have been found in responses to defendants who behaved arrogantly and defendants who behaved humbly (Boone, 1973), defendants exhibiting different levels of anxiety (Hendry et al., 1989; Pryor & Buchanan, 1984) and defendants displaying different levels of affective response (Salekin et al., 1995).

However, the fact that the majority of the respondents said that the defendant's behaviour influenced their evaluations of her/his guilt or innocence suggests that this may be an area worthy of further investigation.

Respondents' Sentiments Towards Defendants

Many critics of the jury system have claimed that in making their decisions, jurors are swayed by their sentiments towards the defendant. The findings of the present study regarding respondents' liking of defendants and whether or not they felt sympathy for defendants lend some support to this assertion.

Liking

The majority of respondents who either liked or did not like the defendant (as opposed to feeling neutral about her/him) indicated that this influenced their evaluation of the defendant's guilt or innocence. This appears to be supported by the finding that respondents' perceptions of defendants' guilt or innocence were related to whether they liked the defendant or not.

Those respondents who liked the defendant and those respondents who did not like the defendant were equally likely to report that this influenced their evaluation of her/his guilt or innocence. However, only disliking the defendant was found to be related to respondents' perceptions of the defendant's guilt or innocence at the end of the trial. More specifically, those respondents who liked the defendant were not more likely to think that the defendant was innocent at the end of the trial than those who either felt neutral about the defendant or did not like her/him, but those respondents who did not like the defendant were significantly more likely to think that s/he was guilty at the end of the trial than those who either liked the defendant or felt neutral about her/him.

In light of this finding, it might be appropriate to question the directness of the previously described relationship between respondents' perceptions of the attractiveness of defendants' lifestyles and perceptions of their guilt or innocence. It was found that those respondents who perceived the defendant to have an unattractive lifestyle were significantly more likely to think that the defendant was guilty than those respondents who did not perceive her/him to have an unattractive lifestyle. However, this may not necessarily be a direct relationship, but may be mediated by respondents' liking of

defendants. In other words, those respondents who perceived the defendant to have an unattractive lifestyle were more likely to say that they did not like the defendant than those respondents who did not, and those respondents who did not like the defendant were more likely to think that the defendant was guilty than those who either liked the defendant or felt neutral about her/him.

Disliking the defendant was also found to be related to respondents' perceptions of defendants' credibility. More specifically, when respondents were asked whether they believed the defendant's testimony, those who did not like the defendant indicated that they found the defendant's testimony less credible than those who either liked the defendant or felt neutral about her/him. In fact, none of those respondents who did not like the defendant believed all of her/his testimony.

Furthermore, respondents who did not like the defendant were also less likely to feel sympathy for her/him than those who either liked the defendant or felt neutral about her/him.

Sympathy

Just over half of those respondents who felt sympathy for the defendant said that this did not influence their evaluation of the defendant's guilt or innocence. However, this still left a large proportion who indicated that it was influential, and as predicted, respondents' evaluations of defendants' guilt or innocence were found to be related to whether they felt sympathy for the defendant. Respondents who felt sympathy for the defendant were significantly less likely to think that s/he was guilty than those who did not feel sympathy for the defendant. This finding is consistent with the views expressed by some of the judges surveyed by Kalven and Zeisel (1966) and Baldwin and McConville (1979) who were of the opinion that in some cases, juries' were influenced by sympathy for the defendant.

In summary, it appears that the establishment of positive sentiments towards defendants was not related to more lenient judgments of them, but that the establishment of negative sentiments towards defendants was related to more severe judgments from respondents. It appears that defendants who aroused negative sentiments in respondents, may have alienated them and were judged more harshly than those who did not.

This finding fits with a modified version of the liking-leniency hypothesis in that those respondents who did not like the defendant appeared to be more severe in their judgments than those who either liked or felt neutral about the defendant. Those who liked the defendant appeared to be more lenient than those who did not like the defendant, but did not appear to be more lenient than those who felt neutral about the defendant. This finding also offers some support for the claims of some of the critics of the jury system that jurors are swayed by their sentiments towards defendants.

THE LAWYERS

Lawyers' Physical Attractiveness

Lawyers' Physical Attractiveness and Respondents' Liking of Them

The hypothesis that a relationship would be found between the perceived physical attractiveness of the lawyers and respondents' liking of them was not supported by the results when the sample was taken as a whole. However, when the cases were divided according to the gender of the respondent, female respondents who indicated that the defence lawyer was physically attractive were significantly more likely to like her/him than those who either said that s/he was unattractive or said that s/he was of average attractiveness.

As with a similar observation when considering the physical attractiveness of defendants, it is suggested that the difference in gender of the respondent and the defence lawyer may have been the interacting factor in this relationship, rather than the gender of the respondent in itself. Owing to the underrepresentation of female lawyers in the present sample of cases, 87% of the female respondents were involved in trials in which the defence lawyer was of different gender, and this was the case for only one of the male respondents.

Lawyers' Physical Attractiveness and Respondents' Evaluations of Their Cases

The hypothesis that a relationship would be found between the perceived physical attractiveness of the lawyers and respondents' evaluations of their cases was not supported by the results. Mean ratings of the lawyers' skill, the impact of most aspects

of their presentations, the strength of their cases, and the perceived guilt or innocence of the defendant at the end of the trial, were not found to be related respondents' perceptions of lawyers' physical attractiveness.

The findings relating to the prosecuting lawyer are compromised by the very small number of respondents who indicated that s/he was unattractive. Of the eight respondents who said that the prosecuting lawyer was unattractive, only three thought that the defendant was guilty at the end of the trial, compared with over two-thirds of those who said that the prosecuting lawyer was attractive. The remaining five respondents who said that the prosecuting lawyer was unattractive thought that the defendant was innocent at the end of the trial compared with less than a quarter of those who said that s/he was attractive.

Furthermore, the results indicated that there was a nonsignificant tendency for those respondents who said that lawyers (both prosecution and defence) were physically attractive to rate them and their cases more favourably in most aspects, than those who said that the lawyers were unattractive. These two observations suggest that this may be an area worthy of further investigation.

Lawyers' Behaviour Towards the Defendant

Authors of trial manuals advise lawyers that jurors evaluate their behaviour towards the defendant. Prosecuting lawyers are advised to maintain a consistently aggressive approach towards the defendant and defence lawyers are advised to show liking, respect sympathy and understanding towards their client.

In the present research, the hypothesis that respondents' evaluations of the defendant's guilt or innocence would be related to the manner in which the lawyers behaved towards her/him was not supported by the results.

Only a small percentage of the respondents indicated that the manner in which the lawyers behaved towards the defendant influenced their evaluation of the defendant's guilt or innocence. This appears to be supported by the failure to find a relationship between the way in which either of the lawyers behaved towards the defendant and respondents' perceptions of the defendant's guilt or innocence at the end of the trial.

Those respondents who said that the lawyers behaved towards the defendant in a positive manner were just as likely to think that the defendant was guilty at the end of the trial as those who said that they behaved towards the defendant in a negative manner.

Lawyers' Behaviour Towards the Judge

Lawyers' Behaviour Towards the Judge and Respondents' Liking of the Lawyers

The hypothesis that respondents' liking of the lawyers would be related to the manner in which the lawyers behaved towards the judge was not supported by the results in the case of the prosecuting lawyers, but was supported in the case of the defence lawyers. Those defence lawyers who were seen to behave towards the judge in a negative manner were significantly more likely to be disliked than those who were seen to behave in either a positive or a neutral manner. In considering this difference, it should be noted that the defence lawyer was seen to behave towards the judge in a negative manner twice as often as the prosecuting lawyer was. This should also be kept in mind when considering the following results regarding respondents' evaluations of the lawyers' cases.

Lawyers' Behaviour Towards the Judge and Respondents' Evaluations of Their Cases

Only a small percentage of the respondents said that the way in which the lawyers behaved towards the judge influenced their evaluation of the lawyers' cases, and the majority of these said that it only had a slight influence. This appears to be supported in the case of the prosecuting lawyers by the failure to find a relationship between the manner in which they behaved and mean ratings of their skill, the impact of the various aspects of their presentations, the strength of their cases and respondents' perceptions of defendants' guilt or innocence at the end of the trial.

The results concerning the defence lawyers are less conclusive. Those respondents who indicated that the defence lawyer behaved towards the judge in a negative manner rated their closing argument as having significantly less positive impact on their decision making, and also rated their cases as less strong than those who said that s/he behaved towards the judge in a positive manner. However, mean ratings of defence lawyers' skill, the impact of their opening statements and examination and cross examination of

the witnesses, and respondents' perceptions of defendants' guilt or innocence were not found to be related to the manner in which defence lawyers behaved towards the judge.

Thus, some support was found for the hypothesis that respondents' evaluations of the lawyers' cases would be related to the manner in which they behaved towards the judge in the case of the defence lawyers but not in the case of the prosecuting lawyers.

Lawyers' Behaviour Towards their Opponent

Lawyers' Behaviour Towards their Opponent and Respondents' Liking of Them

The hypothesis that respondents' liking of the lawyers would be related to the way in which they behaved towards their opponent was not supported by the results.

Lawyers' Behaviour Towards their Opponent and Respondents' Evaluations of Their Cases

Only a very small percentage of those respondents who said that there was some interaction between the two lawyers said that the manner in which the lawyers behaved towards their opponent influenced their evaluation of the lawyers' cases. This appears to be supported by the finding that most of respondents' evaluative ratings of the lawyers and their presentations, and their perceptions of defendants' guilt or innocence at the end of the trial were not found to be related to the manner in which the lawyers behaved towards their opponent.

Thus, the hypothesis that a relationship would be found between the manner in which lawyers' behaved towards their opponent and respondents' evaluations of their cases was not supported. These findings are also contrary to some of the findings reported in another field study in which conviction ratios were found to be related to ratings of various aspects of lawyers' interpersonal behaviour (Kerr, 1982). However, it does need to be said that Kerr's study involved ratings of specific behaviours as opposed to the general behaviour described by respondents in the present study. Furthermore, Kerr found that only 3 of the 17 characteristics and behaviours of the lawyers correlated with conviction ratios and even these correlations were at a somewhat liberal level of significance.

Lawyers' Behaviour Towards the Jury

Lawyers' Behaviour Towards the Jury and Respondents' Liking of Them

The hypothesis that respondents' sentiments towards the lawyers would be related to the manner in which they behaved towards the jury was supported by the results in the case of the defence lawyers but not in the case of the prosecuting lawyers. Those defence lawyers who were seen to behave towards the jury in a negative manner were significantly more likely to be disliked than those who were seen to behave in either a neutral or a positive manner. This difference may be due to the fact that defence lawyers were seen to behave negatively towards the jury more often than prosecuting lawyers, and thus, the statistical analysis was more likely to produce a positive result.

Lawyers' Behaviour Towards the Jury and Respondents' Evaluations of Their Cases

The finding that over a quarter of the respondents indicated that the way in which the lawyers behaved towards the jury influenced their evaluation of the lawyers' cases, and that many of these said that the influence was at least moderate, lends some support to the claim that jurors are sensitive to the way in which lawyers behave towards the jury.

The majority of the respondents, however, said that the manner in which the lawyers behaved towards the jury did not influence their evaluation of the lawyers' cases. This appears to be supported by the finding that most of respondents' evaluative ratings of the lawyers and their presentations, and respondents' perceptions of the defendant's guilt or innocence at the end of the trial, were not related to the manner in which the lawyers behaved towards the jury. Thus, the hypothesis that respondents' evaluations of the lawyers' cases would be related to the way they behaved towards the jury was not supported.

Respondents' Sentiments Towards the Lawyers

Many writers have claimed that jurors' sentiments towards the lawyers influence their decision making, and the findings of the present study lend some support to this claim.

A large proportion of the respondents in the present study who either liked or did not like the lawyers (as opposed to feeling neutral about them) said that this influenced their evaluation of the lawyers' cases.

While no relationships were found between respondents' liking of the lawyers and most ratings of the lawyers and their presentations, relationships were found between whether respondents liked or disliked the lawyers and what is arguably the ultimate evaluation of their cases: respondents' perceptions of the defendant's guilt or innocence at the end of the trial.

Those respondents who liked the prosecuting lawyer were significantly more likely to think that the defendant was guilty at the end of the trial than those who either felt neutral about the prosecuting lawyer or did not like her/him. Those respondents who did not like the defence lawyer were significantly less likely to think that the defendant was innocent at the end of the trial than those who either liked the defence lawyer or felt neutral about her/him.

These findings support the hypothesis that respondents' evaluations of the lawyers' cases would be related to their liking of the lawyers. They also lend some support to the claims that lawyers may be well advised to ingratiate themselves with the jury and that the defendant is not the only one on trial.

These claims are also supported by comments made by many of the respondents during the interviews that indicated that particular approaches by the lawyers influenced respondents' evaluations of them and their cases.

The observation that aggressive approaches by the lawyers were not looked upon favourably by respondents is contrary to the findings of a number of other studies in which aggressive lawyers were found to be more successful than those who adopted a more passive approach (Hahn & Clayton, 1996; Parkinson, 1979, cited in Greenberg & Ruback, 1982; Sigal et al., 1985).

However, lawyers (particularly defence lawyers) who did not appear to put much effort into their presentations also drew negative comments from a number of other respondents. This observation is in line with Kerr's (1982) finding that defence lawyers who were rated as more 'indifferent' were more likely to be unsuccessful than their more enthusiastic counterparts.

The observation that lawyers who appeared to do their best and appeared confident without being arrogant were looked upon favourably by respondents, fits with Greenberg and Ruback's (1982) model of jury decision making which holds that lawyers' confidence in their cases influences the attributions made by jurors about the lawyers.

Comments made by respondents about feeling particularly resistant towards lawyers who appeared to be trying to manipulate the jury appear to fit with the theory of 'psychological reactance'. When applied to this situation, this theory predicts that if jurors feel as though "their freedom of choice is being threatened, or their decisions being manipulated, they become 'aroused,' motivated to reassert their autonomy. . . . [and will] often make decisions that they perceive as contrary to the desires of the manipulator" (Bartol & Bartol, 1994, p. 177).

Other comments from the respondents suggest that lawyers may be well advised not to appear as though they are wasting time, to attempt to cover everything, and also ensure that the relevance of questions they ask the witnesses is clear.

The comment made by one of the respondents about her evaluation of the defence lawyer's case being negatively influenced by his repeated objections, is in line with comments made by Stone (1992) that objections by the lawyers, regardless of whether they were sustained or overruled, tended to influence the jury's view of their competence.

Other comments suggest that the manner in which lawyers behave towards the witnesses and the jury influences jurors' impressions of them. If lawyers are interested in making a favourable impression on the jury they may be well advised to treat witnesses in kind, and behave towards the jury with respect and consideration.

THE JUDGE

Apparent Favouritism

The finding that 10% of the respondents said that the judge appeared to favour one side or the other is possibly a cause for concern considering that the judge is supposed to maintain a strict neutrality towards the opposing lawyers. However it needs to be kept in mind that respondents' perceptions of the impartiality of the judge may have been coloured by their own feelings about the lawyers and their cases.

Half of the respondents who said that the judge appeared to favour one side said that this influenced their evaluation of the defendant's guilt or innocence. When the mean ratings of the lawyers and various aspects of their presentations were compared in the cases in which respondents indicated that the judge favoured one side or the other, the apparently favoured side was rated considerably more favourably on all aspects.

These differences were not tested for statistical significance in light of the small number of cases in question, but these findings do indicate some support for the hypothesis that if the judge appeared to favour one side or the other, respondents would also favour that side when evaluating the lawyers and their cases. The judges' perceived favouritism did not appear to be related to respondents' perceptions of defendants' guilt or innocence.

Summing up and Direction

Almost two thirds of the respondents said that the judge's summing up and direction influenced their decision making, and almost half of these said that the influence was at least moderate. The implications of this finding are problematic in light of the way in which the question was phrased. A number of respondents expressed uncertainty about whether it was the process of making the decision that was of interest, or the decision itself, an ambiguity that was not detected during the pilot study. The judge's summing up and direction is intended to guide the jury in reaching a decision but is not supposed to direct the jury to a particular verdict.

Judges' Behaviour Towards the Defendant

Almost half of the respondents said that the judge did not really acknowledge the defendant at all, and the majority of the of the remainder said that he behaved in a neutral manner, leaving only a small proportion who said that he behaved in either a positive or a negative manner. In light of this, statistical comparison of these latter two groups was not viable, so it is not possible to claim either support or lack of support for the hypothesis that defendants who were treated by the judge in a positive manner would be less likely to have been perceived as guilty than those who were treated in a negative manner.

Judges' Behaviour Towards the Lawyers

When considering the results regarding the manner in which judges behaved towards the lawyers it should be kept in mind that in the majority of cases the judge was said to have behaved in a neutral manner. Only a relatively small proportion of the respondents said that the judge behaved in a positive manner, and fewer still said that he behaved in a negative manner.

Judges' Behaviour Towards the Lawyers and Respondents' Liking of the Lawyers

The hypothesis that respondents' liking of the lawyers would be related to the manner in which the judge behaved towards them was not supported by the results. Those lawyers who were seen to be treated in a negative manner by the judge were just as likely to be liked as those who were treated in a positive manner.

Judges' Behaviour Towards the Lawyers and Respondents' Evaluations of Their Cases

Very few of the respondents said that the way in which the judge behaved towards the lawyers influenced their evaluation of the lawyers' cases. This appears to be supported by the finding that the manner in which the judge behaved towards the lawyers was not related to most of respondents' evaluative ratings of the lawyers and their cases, or respondents' perceptions of defendants guilt or innocence at the end of the trial.

These findings fail to support the hypothesis that respondents' evaluations of the lawyers' cases would be related to the manner in which the judge behaved towards them. However, further findings suggest that under some circumstances, namely when the judge treats the opposing lawyers differently, this hypothesis should not be completely rejected.

In four of the ten cases in which the judge was said to have treated the lawyers differently, the respondents said that this influenced their evaluation of at least one of the lawyer's cases. While the number of cases in question was too small to conduct any statistical analysis, the results indicated that respondents' ratings of the lawyers and their cases were related to the different treatment of the lawyers by the judge. The lawyer who was seen to be treated in a more positive manner by the judge was rated more favourably on all of the measures.

The Overall Contribution of Various Factors

The majority of the respondents reported that their impression of the defendant, the way the defendant behaved, the lawyers and the way that they presented their cases, and the judge contributed to their perception of the defendant's guilt or innocence at the end of the trial, and a considerable proportion of these respondents indicated that the contribution was at least moderate. These findings suggest that extra-evidential factors related to the trial participants do contribute to jurors' decision making and their evaluation of the defendant's guilt or innocence. The additional finding that almost a quarter of the respondents indicated that an extra-evidential factor contributed the most to their perception of the defendant's guilt or innocence at the end of the trial suggests that in some cases the influence extra-evidential factors is considerable and contribute more to jurors' decisions than evidential factors.

The Liberation Hypothesis

The liberation hypothesis first proposed by Kalven and Zeisel (1966) holds that extra-evidential factors are influential predominantly in cases in which the evidence is close and either verdict could be justified. The results of the present study fail to support this hypothesis and subsequent studies which have offered support for the idea that the influence of extra-evidential factors is strongest when the evidence is ambiguous (Baumeister & Darley, 1982; Kaplan & Miller, 1978; Reskin & Visser, 1986; Sue et al., 1973). Those respondents who perceived the lawyers' cases to be of different strength and those who perceived them to be of similar strength were equally likely to think that various extra-evidential factors influenced their decision making.

In comparing the results of the present study with previous research it is important to remember that the conclusions in the present study are based on respondents' perceptions, which may or may not be an accurate reflection of the reality. This may explain the discrepancy between the present findings and those of previous studies in which conclusions were based on judges' perceptions, and more often, the results of experimental manipulations.

The Effect of Deliberations

The focus of the present study was on the decision making of individual jurors' and approval to conduct this research was given on the condition that respondents would not be asked about the deliberation process and what occurred during this phase of the trial.

The deliberation stage is an important part of the decision making process of juries. It is well documented that a number of group processes occur during jury deliberations that determine the final verdict. Furthermore, results of previous experimental research have indicated that extra-evidential factors that were influential before deliberations were not influential after mock jurors were given an opportunity to deliberate, and the results of other studies indicate that extra-evidential biases that were not present in judgments given before deliberations were present in judgments given after deliberations (see Chapter 4).

It is not claimed that the results of the present study are generalizable from the decision making of individual jurors to juries' verdicts. The fact that in just over a quarter of the cases, the final verdict differed from how the respondent felt about the defendant's guilt or innocence at the end of the trial indicates that this would be an unjustifiable generalization.

However, it should be acknowledged that in almost three-quarters of the cases, respondents' perceptions of the defendant's guilt or innocence before deliberations was consistent with the final verdict. This finding appears to be in accordance with previous findings of a high level of agreement between how jurors felt about the guilt or innocence of the defendant before deliberations and final verdicts (Kalven & Zeisel, 1966; Sandys & Dillehay, 1995).

Respondents' Additional Comments

At the end of the interview, respondents were asked if there was anything else they would like to comment on. Most of the respondents took advantage of this opportunity, and the more commonly voiced comments can be found in Appendix H.

METHODOLOGICAL CONSIDERATIONS

There are a number of methodological considerations that need to be taken into account when considering the implications of the results of the present study.

The Sample

The generalizability of the findings of the present study to the larger juror population is compromised by the method of participant recruitment. The implication of advertising for voluntary research participants is that, because the sample was not randomly selected, the external validity of the research is compromised. The participants in the present study had to have seen one of the advertisements or have been told about the research to even be aware that the study was being conducted. Then, those who fitted the criterion specified in the advertisement (had served on a jury within the last two years) had to be prepared to talk about their experience, and do this without any form of incentive. Any of these factors may distinguish the participants in the present study from the 'average' juror.

When the composition of the present sample was compared with the results of a nationwide survey of the composition of New Zealand juries (Dunstan et al., 1995), a number of groups were found to be poorly represented in the present sample (e.g., 20-29 years olds and members of various occupational groups) while other groups were overrepresented (e.g., 40-49 year olds and professionals). Furthermore, while data regarding jurors' education and socio-economic status was not collected by Dunstan and colleagues, respondents in the present study generally appeared to be well educated (over 60% had at least an undergraduate tertiary degree), and from the higher income brackets (over 50% had a annual personal income of over \$30,000).

The Instrument

The questionnaire was designed specifically for this research and thus its validity and reliability have not been established.

The Data Analysis

The large number of hypotheses investigated led to a considerable number of statistical analyses being conducted. This carries with it an increased likelihood of

making Type I errors, or obtaining false associations purely on the basis of chance. The .05 level of significance used in the present study means that of every 100 tests conducted, an average of 5 will produce a positive result purely by chance.

The Non-experimental Nature of the Research

The limitations of any nonexperimental research also apply to the present study. Primarily, in light of the correlational nature of the data, it is not possible to draw conclusions regarding cause and effect relationships. For example, the results indicated that respondents who said that they did not like the defendant were more likely to think that s/he was guilty than those respondents who either liked the defendant or felt neutral about her/him. It is not possible to conclude with any certainty that not liking the defendant led respondents to think that s/he was guilty, because it may be just as likely that thinking that the defendant was guilty caused respondents to dislike her/him.

The Self Report Nature of the Data

Perhaps, the most important methodological consideration in the present study relates to the self report nature of the information on which the conclusions are based. The focus of the research was jurors' perceptions, which meant that only jurors themselves could provide the information. This being the case, the data is subject to all of the limitations of any self-report information. Of particular relevance in the present study is the issue of social desirability bias.

When people are asked for information, particularly in a face-to-face interview situation, they respond through 'a filter of what will make them look good' (Babbie, 1995). Through admonitions from the judge to stay open-minded, assume that the defendant is innocent, withhold judgment until all of the evidence has been presented and consider only the evidence, jurors become aware of what is expected of them (Bridgeman & Marlowe, 1979). It is very possible that what respondents' perceived to be socially desirable, was reflected in their responses (even though steps were taken in an attempt to reduce the likelihood of this occurring). Furthermore, people are often unaware of what factors influence their behaviour (Bridgeman & Marlowe, 1979).

SUGGESTIONS FOR FUTURE RESEARCH

It is difficult to draw strong conclusions about the decision making of jurors from the findings of the present study in light of the methodological considerations discussed, and the size of the sample. The value of the study lies in the suggestion that this area is worthy of further investigation and the implications of the findings depend on whether they are replicated in future research with larger samples.

It would be difficult to overcome most of the methodological limitations noted, but replications would go some way to establishing the reliability and validity of the instrument, and more widespread advertising may result in a sample more representative of the juror population.

Any similar research conducted in the future would benefit from a larger sample size in a number of ways:

- Some of the more tentative observations in the present study that were not supported by the results of tests of statistical significance possibly because of the small numbers in the categories, could be investigated. Increasing the size of the sample would decrease the chances of making Type II errors, or falsely rejecting the hypothesis that a relationship exists. On other occasions in the present research, differences were not tested for statistical significance because too few cases were involved for this to produce meaningful results (e.g., cases in which the judge appeared to favour one side or the other).
- Responses to the open ended questions would not have to be categorised as broadly as was necessary in the present study in order to obtain categories of sufficient size to be able to conduct statistical analysis. For example, it was necessary to categorise responses to questions regarding the trial participants' behaviour into 'neutral', 'positive' and 'negative' in order to obtain expected frequencies of adequate size when conducting cross-tabulations. With a larger sample, it would be possible to classify responses into more specific categories and still have large enough expected frequencies in the cells of the contingency tables. This would enable researchers to investigate the suggestion from comments made by respondents in the present study and the findings of previous research that specific behavioural characteristics of

lawyers (e.g., how much interest they show in their case) may be related to jurors' evaluations, and that particular defendant behaviours may be related to jurors' evaluations of them.

- It would also be possible to make comparisons across groups of respondents based on their demographic characteristics. In the present study it was found that the gender of the respondent was an important factor in some relationships, but it was not feasible to make comparisons across other demographic variables such as educational level or age group, owing to the small number of respondents in various categories. It was also not possible to investigate the suggestion from the results of previous research that lawyers' gender may influence jurors' evaluations of them (Hahn & Clayton, 1996; Villemur & Hyde, 1983), because there were so few female lawyers in the present sample of cases.

Comments made by some of the respondents during the interviews suggested that other extra-evidential factors that were not addressed in the present study may be influential, such as the number of people present in the courtroom supporting the defendant. Future research could be directed at investigating the effect of this, and other extra-evidential factors such as the number of defendants on trial, the number of charges the defendant is facing, and other characteristics of the defendant such as their similarity to jurors in gender, age group and ethnicity.

In light of the extremely limited amount of research that has been conducted with juries in New Zealand, any research in this area would make a valuable contribution to the body of knowledge. Although the legal issues surrounding research with juries may deter those contemplating conducting field research in this area, the importance of evaluating the fundamental principles on which our criminal justice system is based should not be overlooked.

MAIN FINDINGS AND IMPLICATIONS

The main findings of the present study, and those with the greatest implications for lawyers and defendants, concerned relationships between respondents' sentiments towards the defendant and towards each of the lawyers and their perceptions of defendants' guilt or innocence.

The results suggest that it would be in the defence team's best interests to do what they can to ensure that jurors do not dislike, or develop a negative impression of the defendant, because this appears to increase the chances of the defendant being perceived to be guilty. It also appears that defence lawyers would be well advised to encourage jurors to feel sympathy for the defendant because this appears to *decrease* the chances of the defendant being perceived to be guilty.

The only factor that was found to be related to respondents liking of defendants was the perceived attractiveness of defendants' lifestyles (which was also found to be associated with an increased chance of defendants' being perceived as guilty). Defendants' who did not testify were not more likely to be perceived as guilty than those who did testify, and only a small minority of the respondents indicated that the defendant's failure to testify influenced their evaluation of her/his guilt or innocence. Taken together, these findings suggest that if the defendant has what may be considered an unattractive lifestyle, and jurors may become aware of this if the defendant testifies, then it may be in the defence team's best interests not to have the defendant testify.

The results suggest that both prosecution and defence lawyers may be well advised to appear likable to the jurors because those respondents who liked the prosecuting lawyer were more likely to think that the defendant was guilty than those who either felt neutral about her/him or did not like her/him, and respondents who did not like the defence lawyer were less likely to think that the defendant was innocent than those respondents who either liked her/him or felt neutral about her/him.

The implications of the findings of the present study for the jury system as a whole are compromised by the methodological limitations discussed and the scope of the research in terms of the size of the sample, but the findings do challenge the assumption that jurors are not influenced by extra-evidential factors in their decision making.

However, whether measures such as judicial admonitions could be instituted into the jury trial to eliminate or at least reduce the effects of these extra-evidential factors is problematic. The results of most of the empirical research which has investigated the effectiveness of instructions from the judge to disregard extra-evidential factors has indicated that judicial admonitions are largely ineffective and may merely draw more attention to these factors and enhance their impact.

SUMMARY AND CONCLUSION

The present research was designed to investigate jurors' perceptions of the influence of various extra-evidential factors related to the trial participants on their decision making, and to examine possible relationships between respondents' perceptions of the trial participants and their evaluations of defendants, and the lawyers and their cases.

It was found that respondents perceived that some of the extra-evidential factors had influenced their decision making, some to a considerable degree, and relationships were also found between some of these factors and respondents' evaluations.

Although there are a number of methodological considerations that could plausibly limit the generalizability of these findings, the research has value in that it is a field study in an area which is almost entirely dominated by experimental research. Furthermore, this study is also, as far as the researcher is aware, one of the very few studies that have been conducted on juries in New Zealand, and the only one that has investigated their decision making.

In conclusion, the results of the present study challenge the assumption that extra-evidential factors do not influence the decision making of jurors and "[i]f the principle of 'equal justice under the law' is to become reality in our society, any suspected differences in juror decisions based on legally irrelevant criteria should be cause for social concern and serious additional investigation" (Kulka & Kessler, 1978, p. 377).

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APPENDIX A

ADVERTISEMENTS

ATTENTION PAST JURORS!

HAVE YOU SERVED ON A JURY SINCE
MARCH 1994?

If so: Would you mind talking to me about it?

I am a postgraduate student at Massey University and as part of the research for my Masters thesis which I am currently undertaking, I am interested in talking to people who have served on a jury within the last two years. The interview would be about an hour long and would be made up of questions about your perceptions of the trial. You would not be asked to identify any of the trial participants nor will you be asked about what took place during deliberations. If you agree to take part I can assure you that your responses will be completely confidential and because you are not required to give any information that would identify you as the respondent, there is no way that your responses can be traced back to you. This research project has been approved by the Massey University Human Ethics Committee.

If you are interested in taking part or
have any concerns or queries, please contact
Catherine Priest on (06) 357-8593 or
Ms. Joan Barnes at Massey University on (06) 350-4120

Evening Standard

HAVE YOU BEEN A JUROR?

Was it within the last two years? If so, would you mind talking to me about it?

I am a post-graduate student at Massey University and as part of some research I am conducting, I would like to talk to people who have served on a jury within the last two years. The interview would take about an hour, and I can assure you that anything you say will be completely confidential and anonymous.

If you are interested in taking part or would like to know more, please call Catherine on (06) 357-8593 or Joan on (06) 350-4120.

The Dominion

APPENDIX B

LETTER ACCOMPANYING THE INFORMATION SHEET

(Date)

(Name)
(Address)



**MASSEY
UNIVERSITY**

Private Bag 11222
Palmerston North
New Zealand
Telephone +64-6-356 9099
Facsimile +64-6-350 5673

**FACULTY OF
SOCIAL SCIENCES**

DEPARTMENT OF
PSYCHOLOGY

Dear Mr. / Mrs.....,

Thank you very much for showing interest in participating in my research. Please find enclosed the information sheet I told you about over the phone which describes the nature of the research, what participation in this project will involve, and what your rights are as a participant.

If you would like to clarify anything or would like to know anything else I would be only too happy to answer any questions you may have. If you are still interested in taking part in this research after reading the information sheet please ring me at (06) 357 8593 to arrange the a time for the interview.

Yours sincerely

Catherine Priest
Researcher.

APPENDIX C

INFORMATION SHEET

INFORMATION SHEET

JURORS' PERCEPTIONS OF THE INFLUENCE OF EXTRALEGAL FACTORS ON THEIR DECISION MAKING.

Researcher : Ms. Catherine Priest
Research Supervisor : Ms. Joan Barnes

Psychology Department
MASSEY UNIVERSITY



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**FACULTY OF
SOCIAL SCIENCES**

DEPARTMENT OF
PSYCHOLOGY

The purpose of this research project is to find out from jurors, how much they think various factors influenced their decision-making.

Participation in this study will involve taking part in an interview which will be about an hour long. During the interview I will ask you questions about your feelings about the trial and your decision making and a few questions about yourself such as your age group and occupation. You will not be asked to identify the defendant or any of the other trial participants nor will you be questioned about what took place during deliberations.

I can assure you that everything you tell me will be completely confidential and because the information will be collected anonymously, it will not be possible to trace anything you say back to you, or to identify you in my final report. Only I will have access to the information I collect during the interview and as soon as this information is no longer needed it will be destroyed. This research will be reported in my Master of Arts thesis and may be published in appropriate academic journals.

If you agree to participate, you have the right to decline to answer any of the questions I ask and to withdraw from the study completely at any time. You also have the right to ask me any questions about the study at any time during your participation, and if you would like, you will be sent a summary of my findings upon completion of the study.

If you have any concerns or queries please feel free to contact me at (06) 357 8593 or my supervisor Ms. Joan Barnes at Massey University on (06) 350 4120.

APPENDIX D
DEFENDANT CHARACTERISTICS

Table D1

Most Serious Charge Faced by the Defendants in the Present Sample of Cases (N=69)

Charge	n
Murder	5
Manslaughter	1
Possession of a Class A drug for resale	3
Sexual Violation / Rape	12
Attempt to commit murder	1
Discharging a firearm with intent	1
Aggravated robbery	6
Arson	1
Sexual Abuse	7
Attempted Rape	2
Incest	1
Burglary	2
Indecent assault	6
Assisting an escaped prisoner	1
Theft as a servant	1
Assault with a weapon	1
Accessory to an armed hold up	1
Possession of a pistol	3
Threatening to destroy property	1
Aggravated assault	1
Assault with intent to injure	2
Corruption and bribery of a law enforcement officer	1
Assault on a child	2
Assault by a man on a woman	1
Car conversion	5
Drunk in charge of an automobile	1

Note. Charge seriousness is based on the maximum available penalty for the crime.

Table D2
Characteristics of the Defendants in the Present Sample of Cases (N=69)

Defendant characteristics		n	%
Gender	Male	66	95.7
	Female	3	4.3
Perceived age group	Under 20 years	9	13.0
	20 - 29 years	25	36.2
	30 - 39 years	21	30.4
	40 - 49 years	5	7.3
	50 - 59 years	4	5.8
	Over 60 years	5	7.3
Perceived ethnicity	New Zealand European	40	58.0
	New Zealand Maori	24	34.8
	Polynesian	4	5.8
	Asian	1	1.4

APPENDIX E
INTERVIEW QUESTIONS

1) How long ago did you serve on the jury? _____

2) Was this the first time that you had been on a jury? (1) Yes (2) No - How many other times? _____

3) Was it a High Court or a District Court case? (1) High Court (2) District Court

4) How many defendants were on trial? _____ (If more than one, will focus on the one s/he can remember most clearly)

5) Was the defendant male or female? (1) Male (2) Female

6) How old would you say s/he was? (1) Under 20 (2) 20 - 29 (3) 30 - 39 (4) 40 - 49 (5) 50 - 59 (6) 60 +

7) Which ethnic group would you say s/he belonged to? (1) New Zealand European
(2) New Zealand Maori (3) Polynesian (4) Asian Other (specify) _____

8) How many charges was s/he facing? _____

9) What sort of charges were they? _____

10) What was your initial impression of the defendant? _____

11) Did this change during the trial? (1) Yes (2) No

12) If yes: why did it? _____

13) How would you rate the defendant's physical attractiveness?

1 Very attractive 2 Quite attractive 3 Slightly attractive 4 Of average attractiveness 5 Slightly unattractive 6 Quite unattractive 7 Very unattractive

14) How much do you think this influenced how you felt about the defendant?

1 Not at all 2 Slightly 3 Moderately 4 5 6 A lot 7

☐

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13 14

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15 16

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17

☐

18 19

☐

20

☐

21

15) How would you rate the defendant's physical presentation?

1	2	3	4	5	6	7
Very well presented	Quite well presented	Slightly well presented	Neither well nor badly presented	Slightly badly presented	Quite badly presented	Very badly presented

22

16) How much do you think this influenced how you felt about the defendant?

1	2	3	4	5	6	7
Not at all		Slightly		Moderately		A lot

23

17) In terms of his/her lifestyle, how attractive was the defendant?

1	2	3	4	5	6	7
Very attractive	Quite attractive	Slightly attractive	Of average attractiveness	Slightly unattractive	Quite unattractive	Very unattractive

24

18) How much do you think this influenced how you felt about the defendant?

1	2	3	4	5	6	7
Not at all		Slightly		Moderately		A lot

25

19) Did you like the defendant?

(1) Yes (2) No

26

20) How much do you think this influenced your evaluation of his/her guilt or innocence?

1	2	3	4	5	6	7
Not at all		Slightly		Moderately		A lot

27

21) Did you feel any sympathy for the defendant?

(1) Yes (2) No

28

22) How much do you think this influenced your evaluation of his/her guilt or innocence?

1	2	3	4	5	6	7
Not at all		Slightly		Moderately		A lot

29

How would you describe the defendant's behaviour in court (in terms of his/her):

23) Awareness

1	2	3	4	5	6	7
Very Interested	Quite Interested	Slightly Interested	Neither Interested nor Indifferent	Slightly Indifferent	Quite Indifferent	Completely Indifferent

30

24) Mannerisms

1	2	3	4	5	6	7
Very Calm	Quite Calm	Slightly Calm	Neither Calm nor nervous	Slightly Nervous	Quite Nervous	Very Nervous

31

25) Attitude

☐

32

- 1

Very Respectful
- 2

Quite Respectful
- 3

Slightly Respectful
- 4

Neither Respectful nor Disrespectful
- 5

Slightly Disrespectful
- 6

Quite Disrespectful
- 7

Very Disrespectful

26) Conduct

☐

33

- 1

Very Aggressive
- 2

Quite Aggressive
- 3

Slightly Aggressive
- 4

Neither Aggressive nor Passive
- 5

Slightly Passive
- 6

Quite Passive
- 7

Very Passive

27) How much do you think the way the defendant behaved in court influenced your evaluation of

his/her guilt or innocence?

☐

34

- 1

Not at all
- 2
- 3

Slightly
- 4
- 5

Moderately
- 6
- 7

A lot

28) Did the defendant testify?

- (1) Yes (To Q 31)
- (2) No (To Q 29)

☐

35

If s/he did not testify:

29) How did you feel about this?

☐

☐

36

37

30) How much do you think the fact that s/he did not testify influenced your evaluation of

his / her guilt or innocence?

☐

38

- 1

Not at all
- 2
- 3

Slightly
- 4
- 5

Moderately
- 6
- 7

A lot

If s/he did testify:

31) Did you believe his / her testimony?

- (1) Yes (all of it)
- (2) Some of it
- (3) No, none of it

☐

39

PROSECUTING LAWYER

32) Was the prosecuting lawyer male or female?

- (1) Male
- (2) Female

☐

40

33) How old would you say s/he was?(1) 20 - 29

- (2) 30 - 39
- (3) 40 - 49
- (4) 50 +

☐

41

34) How would you rate his/her physical attractiveness?

☐

42

- 1

Very physically attractive
- 2

Quite physically attractive
- 3

Slightly physically attractive
- 4

Of average physical attractiveness
- 5

Slightly physically unattractive
- 6

Quite physically unattractive
- 7

Very physically unattractive

35) Did you like the prosecuting lawyer?

(1) Yes(2) No

43

36) How much do you think this influenced your evaluation of his/her case?

44

1234567

Not at allSlightlyModeratelyA lot

37) How would you rate the skill of the prosecuting lawyer?

45

1234567

Very Quite Slightly Neither Skilled Slightly Quite Very
Skilled Skilled Skilled nor Unskilled Unskilled Unskilled Unskilled

How would you rate the impact of the following on your decision-making:

38) His/her opening statements:

46

1234567

Great Moderate Minimal No Impact Minimal Moderate Great
Positive Positive Positive Negative Negative Negative
Impact Impact Impact Impact Impact Impact Impact

39) His/her examination and cross-examination of the witnesses:

47

1234567

Great Moderate Minimal No Impact Minimal Moderate Great
Positive Positive Positive Negative Negative Negative
Impact Impact Impact Impact Impact Impact Impact

40) His/her closing argument:

48

1234567

Great Moderate Minimal No Impact Minimal Moderate Great
Positive Positive Positive Negative Negative Negative
Impact Impact Impact Impact Impact Impact Impact

41) Overall, how would you rate the strength of the prosecution's case?

49

1234567

Very Quite Slightly Neither Strong Slightly Quite Very
Strong Strong Strong nor Weak Weak Weak Weak

How did the prosecuting lawyer behave towards the following:

42) The defendant:

5051

43) How much do you think this influenced your evaluation of the defendant's guilt or innocence?

52

1234567

Not at allSlightlyModeratelyA lot

44) The jury: _____

☐

☐

53

54

45) How much do you think this influenced your evaluation of his/her case?

1 2 3 4 5 6 7
Not at all Slightly Moderately A lot

☐

55

46) The judge: _____

☐

☐

56

57

47) How much do you think this influenced your evaluation of the his/her case?

1 2 3 4 5 6 7
Not at all Slightly Moderately A lot

☐

58

48) The defence lawyer: _____

☐

☐

59

60

49) How much do you think this influenced your evaluation of the prosecuting lawyer's case?

1 2 3 4 5 6 7
Not at all Slightly Moderately A lot

☐

61

DEFENCE LAWYER

50) Was the defence lawyer male or female? (1)Male (2) Female

☐

62

51) How old would you say s/he was?(1) 20 - 29 (2) 30 - 39 (3) 40 - 49 (4) 50 +

☐

63

52) How would you rate his/her physical attractiveness?

1 2 3 4 5 6 7
Very Quite Slightly Of average Slightly Quite Very
physically physically physically physical physically physically
attractive attractive attractive attractiveness unattractive unattractive unattractive

☐

64

53) Did you like the defence lawyer? (1) Yes (2) No

☐

65

54) How much do you think this influenced your evaluation of his/her case?

1 2 3 4 5 6 7
Not at all Slightly Moderately A lot

☐

66

55) How would you rate the skill of the defence lawyer?

67

- 1

Very Skilled
- 2

Quite Skilled
- 3

Slightly Skilled
- 4

Neither Skilled nor Unskilled
- 5

Slightly Unskilled
- 6

Quite Unskilled
- 7

Very Unskilled

How would you rate the impact of the following on your decision-making:

56) His/her opening statement:

68

- 1

Great Positive Impact
- 2

Moderate Positive Impact
- 3

Minimal Positive Impact
- 4

No Impact
- 5

Minimal Negative Impact
- 6

Moderate Negative Impact
- 7

Great Negative Impact

57) His/her examination and cross-examination of the witnesses:

69

- 1

Great Positive Impact
- 2

Moderate Positive Impact
- 3

Minimal Positive Impact
- 4

No Impact
- 5

Minimal Negative Impact
- 6

Moderate Negative Impact
- 7

Great Negative Impact

58) His/her closing argument:

70

- 1

Great Positive Impact
- 2

Moderate Positive Impact
- 3

Minimal Positive Impact
- 4

No Impact
- 5

Minimal Negative Impact
- 6

Moderate Negative Impact
- 7

Great Negative Impact

59) Overall, how would you rate the strength of the defence's case?

71

- 1

Very Strong
- 2

Quite Strong
- 3

Slightly Strong
- 4

Neither Strong nor Weak
- 5

Slightly Weak
- 6

Quite Weak
- 7

Very Weak

How did the defence lawyer behave towards the following:

60) The defendant: _____

72

73

61) How much do you think this influenced your evaluation of the defendant's guilt or innocence?

74

- 1

Not at all
- 2
- 3

Slightly
- 4
- 5

Moderately
- 6
- 7

A lot

62) The jury: _____

75

76

63) How much do you think this influenced your evaluation of the his/her case?

77

- 1

Not at all
- 2
- 3

Slightly
- 4
- 5

Moderately
- 6
- 7

A lot

64) The judge: _____

☐☐

7879

65) How much do you think this influenced your evaluation of the his/her case?

1234567

Not at allSlightlyModeratelyA lot

☐

80

66) The prosecuting lawyer: _____

☐☐

8182

67) How much do you think this influenced your evaluation of the defence lawyer's case?

1234567

Not at allSlightlyModeratelyA lot

☐

83

JUDGE

68) Was the judge male or female? (1)Male (2) Female

☐

84

69) Did you like the judge? (1) Yes (2) No

☐

85

70) Did the judge play a very active role in the trial proceedings? (1) Yes (2) No

☐

86

71) Did the judge appear to favour one side or the other? (1) Yes (2) No

☐

87

72) If yes: Which side? (1) Prosecution (2) Defence

☐

88

73) How much do you think this influenced your evaluation of either side's case?

1234567

Not at allSlightlyModeratelyA lot

☐

89

How did the judge behave towards the following:

74) The defendant: _____

☐☐

9091

75) How much do you think this influenced your evaluation of the defendant's guilt or innocence?

1234567

Not at allSlightlyModeratelyA lot

☐

92

76) The prosecuting lawyer: _____

☐

☐

93

94

77) How much do you think this influenced your evaluation of the prosecution's case?

☐

95

1 2 3 4 5 6 7
Not at all Slightly Moderately A lot

78) The defence lawyer: _____

☐

☐

96

97

79) How much do you think this influenced your evaluation of the defence's case?

☐

98

1 2 3 4 5 6 7
Not at all Slightly Moderately A lot

80) How much do you think the judge's summing up and direction influenced your decision making?

☐

99

1 2 3 4 5 6 7
Not at all Slightly Moderately A lot

81) At the end of the trial, after the judge's summing up, how did you feel about the guilt or innocence of the defendant?

☐

100

1 2 3 4 5 6 7
Definitely Guilty Probably Guilty Possibly Guilty Unsure Possibly Innocent Probably Innocent Definitely Innocent

Overall, how much do you think the following contributed to you feeling this way:

82) Your Impression of the Defendant

☐

101

1 2 3 4 5 6 7
Not at all Slightly Moderately A lot

83) The Testimony of the Witnesses

☐

102

1 2 3 4 5 6 7
Not at all Slightly Moderately A lot

84) The Defendant's Testimony / The Defendant not Testifying

☐

103

1 2 3 4 5 6 7
Not at all Slightly Moderately A lot

85) The Prosecuting Lawyer and the way s/he presented her/his case

☐

104

1 2 3 4 5 6 7
Not at all Slightly Moderately A lot

86) The Defence Lawyer and the way s/he presented her/his case

☐

105

1

2

3

4

5

6

7

Not at all

Slightly

Moderately

A lot

87) The Judge

☐

106

1

2

3

4

5

6

7

Not at all

Slightly

Moderately

A lot

88) The Other Jurors

☐

107

1

2

3

4

5

6

7

Not at all

Slightly

Moderately

A lot

89) The Way the Defendant Behaved

☐

108

1

2

3

4

5

6

7

Not at all

Slightly

Moderately

A lot

90) What contributed the most to you feeling this way? _____

☐

109

91) When you retired to deliberate did all of the jurors agree on what the verdict(s) should be? (1) Yes (2) No

☐

110

92) What was the final verdict? Guilty _____ Not guilty _____

☐

111

☐

112

Any other comments:

DEMOGRAPHICS

93) Gender

(1) Male

(2) Female

113

94) What is your present age group?

(1) Under 20

(2) 20 - 29

(3) 30 - 39

(4) 40 - 49

(5) 50 - 59

(6) 60 +

114

95) Which ethnic group do you most identify with?

(1) New Zealand European

(2) New Zealand Maori

(3) Polynesian

(4) Asian

Other (specify) _____

115 116

96) What is your highest educational qualification?

Secondary:

5th Form / (eg School Certificate)

6th Form / (eg Sixth Form Certificate)

7th Form / (eg Higher School Certificate / UE)

Tertiary :

Degree _____

If none of the above when did you leave school ? _____

117 118

97) What is your present occupation?

119 120

98) What is your personal annual income?

(1) Under \$5000

(2) \$ 5,001 - \$10,000

(3) \$10,001 - \$20,000

(4) \$20,001 - \$30,000

(5) \$30,001 - \$40,000

(6) \$40,001 - \$50,000

(7) Over \$ 50,000

(8) Over \$100,000

121

APPENDIX F
INFORMED CONSENT FORM

CONSENT FORM

**JURORS' PERCEPTIONS OF
THE INFLUENCE OF EXTRALEGAL FACTORS
ON THEIR DECISION MAKING.**

Researcher : Ms. Catherine Priest
Research Supervisor : Ms. Joan Barnes

Psychology Department
MASSEY UNIVERSITY



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**FACULTY OF
SOCIAL SCIENCES**

DEPARTMENT OF
PSYCHOLOGY

I have read the information given to me by Catherine Priest explaining the research she is conducting and I am willing to participate in Catherine's research under the conditions set out which are summarised below:

- * The interview will involve Catherine asking me questions about my perceptions of various aspects of the trial and a few general questions about myself such as my age group and occupation. I will not be asked to identify the defendant or any of the other trial participants, nor will I be asked about what took place during deliberations.*
- * Everything I say during the interview is confidential and because the information will be collected anonymously, nothing I say can be traced back to me and it will not be possible to identify me as a participant in Catherine's final report.*
- * Only Catherine will have access to the information she collects during the interview and as soon as this information is no longer needed it will be destroyed.*
- * I have the right to decline to answer any of the questions Catherine asks and to withdraw from the study completely at any time.*
- * I have the right to ask Catherine any questions about the study at any time during my participation, and if I wish, I will be sent a summary of her findings when she has finished.*

Name:

Signature: Date:/...../.....

Address (optional):

APPENDIX G

RESPONDENTS' ADDITIONAL COMMENTS

Asking Questions

A source of great frustration for nine of the respondents was that they were only allowed to know what the lawyers wanted them to know, and they were not able to ask questions to get information that the lawyers did not present that they thought was important in order to reach an informed decision.

Access to Trial Transcripts

Four of the respondents said that they needed access to the transcript of the trial because they had difficulty remembering details from previous days of the trial (particularly in lengthy trials) and because some of the jurors had different had interpretations of some of the evidence.

Selection Process

Five of the respondents found it frustrating that those in the jury pool were left waiting, without any directions when they arrived at the court. A respondents from outside the Palmerston North area said that a videotape of what was going to happen was shown to those in the jury pool when they arrived at court, which s/he found very helpful. A large number of respondents also said that they found it frustrating having to be at court every morning only to find out later that they were not going to be required that day.

Length of Deliberations and the Decision Rule

Three of the respondents said that they were deliberating too late, and that there should be a limit on how late juries deliberate. One respondent said that if he had been "holding out", he "would have caved" and another said that she did give in to the majority because it was so late. Six of the respondents said that the verdict should not have to be unanimous and that a majority decision rule would be preferable.

Lack of Familiarity with the Trial Process

Four of the respondents said that some jurors were “overawed” by the whole trial process. One respondent suggested that it should be compulsory for potential jurors to sit in on some of a trial before serving, so that they become familiar with the proceedings, and will be less ‘overwhelmed’ when they are acting as jurors.

Intimidation and the Architecture of the Court

Five of the respondents said that they should not have had to walk past the defendant’s supporters at the front of the courtroom, and that jurors should be able to enter and leave the court through a different entrance. Some of these respondents spoke of being intimidated as they arrived at the court and others when they had to leave during the lunch break. Five of the respondents said that the jury room was too small.

Judges’ Summing up

Four respondents said that the judge did not adequately define “reasonable doubt” and consequently jurors had different interpretations of it, which caused difficulty when they were trying to reach a verdict. One of these respondents said that the verdict might have been different had they all had the same idea of what constituted reasonable doubt.

Speed of the Stenographer

Another source of frustration for many of the respondents (8) was the fact that the witnesses had to speak slowly and were often interrupted by the judge so that the stenographer could get everything down. They said that it was very easy to get distracted by this and found it very disruptive. It is hard to believe that this is unavoidable in light of the capabilities of modern technology.

Remuneration

The remuneration for serving as jurors was also a target for comment from self employed respondents. They were of the opinion that serving as a juror should not be at such great personal cost and some said that they would be reluctant to report for jury service if summoned again.

Parking

Another criticism voiced by ten of the respondents was that no provision was made for parking for jurors. A number of these respondents suggested that jurors should be given something to put in their windscreen for the duration of the trial to exempt them from parking fines. Another solution would be for the Court to make arrangements for them to have free access to a nearby parking building.

Lack of Debriefing

One of the most concerning comments made by four of the respondents concerned the lack of provision for debriefing jurors after they have returned a verdict. These respondents said that they needed to talk to someone after they had returned the verdict. One said that they were asked if they wanted to talk to a counsellor but were then told that s/he had already gone home for the day and were told to ring her/him the next day. A number of respondents indicated that talking to the researcher while participating in this research was beneficial. It appears that some provision needs to be made for some sort of debriefing for jurors immediately after the verdict has been delivered, regardless of what time this occurs.