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## Mock jurors' judgements of the victim, crime and defendant as a function of victim race and deliberation

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Mock Jurors' Judgements of the Victim, Crime and Defendant  
as a Function of Victim Race and Deliberation

By

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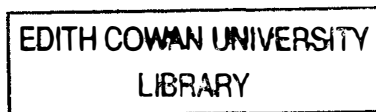
A Thesis Submitted for Partial Fulfilment of the Requirements for the Degree of

Doctor of Psychology (Forensic)

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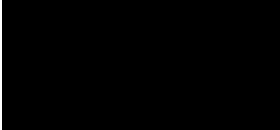
## Abstract

Extra-legal variables are factors within a trial that are logically irrelevant to the determination of a verdict. They are deemed extra-legal as they are *extra* to the law and are not prescribed in the relevant statutes upon which the relevant issue must be decided. Research investigating judicial decision-making, however, demonstrates that extra-legal variables often affect jurors' judgements and improperly influence their decision-making. Examples of extra-legal variables include the personal attributes of trial participants, e.g., the victim's physical attractiveness, socio-economic status, and age. Studies conducted in North America indicate that the race of the victim and defendant inappropriately influences jurors' decision-making. However, to date, no such published research has been conducted in Australia. Due to Australia's diverse population, which consists of several minority groups and a dominant Caucasian group, it is likely that race may act as an extra-legal variable. Furthermore, several Australian studies have documented a strong prejudice against Aborigines and Asians, with the potential for a newly emerging prejudice against individuals from Middle-Eastern countries. The present study investigated whether the race of the victim would affect jurors' perceptions and judgements in a simulated attempted-rape trial. Research also indicates that the process of deliberation amongst other things, can affect the influence of extra-legal variables on decision-making, and that it can either exaggerate or attenuate this influence. Therefore, the impact of deliberation on the jurors' perceptions and judgements was investigated, and also whether an interaction occurred between race and deliberation. One hundred and six participants were recruited to examine the effects of the race of the victim on their judgements of the defendant, crime, and victim. Due to Australia having a dominant Caucasian race, it was assumed that when the victim is Aboriginal, Asian or of a Middle-Eastern origin, jurors' judgements of the defendant, crime and the victim will be negatively prejudiced by the victim's race, and that when the victim is Caucasian, no such prejudice will impact upon the jurors' decision-making. It was also assumed that deliberation would attenuate the influence of the extra-legal variable of the victim's race, such that any bias observed in pre-deliberation judgements will be reduced in post-deliberation judgements. The quantitative data was analysed with a series of 4 x 2

repeated measures ANOVAs and a qualitative analysis was undertaken of the deliberation discussions. Quantitative results revealed no significant effects for victim race. However, the effect for race approached significance regarding the seriousness of the crime, with the crime perceived as least serious for the Middle-Eastern victim. The pattern of results identified across several items also revealed a consistent trend toward the different races. An overall positive trend was observed toward the Aboriginal victim, and a negative trend identified toward the Middle-Eastern victim, and to a lesser extent, the Caucasian victim. Qualitative analyses support this pattern of results. The effect for deliberation revealed a number of significant findings, with the victim's character perceived as more positive, and the defendant as less guilty following deliberation. Significant interactions were also identified regarding the defendant's sentence and the responsibility of the victim. In particular, following deliberation, the defendant in the Caucasian condition was given a significantly reduced sentence, and the Asian victim was perceived as significantly less responsible. The results are discussed in terms of the need for closer analyses of Australian intergroup relations, social desirability and cultural stereotyping, and their influence on courtroom decisions.

I certify that this thesis does not, to the best of my knowledge and belief:

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Signature.....  .....

Date..... 5 OCTOBER 2004 .....

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## INTRODUCTION

For many years, the jury has been the subject of intense interest, curiosity and scrutiny (Ellsworth & Reifman, 2000). As Kalven and Zeisel (1966) proposed, much of this interest likely stems from the incredible amount of responsibility and power granted to a jury. Not only do the decisions of the jury have a large and far-reaching impact on the individuals taking part in a given trial, but they also affect the greater community and the justice system. Furthermore, also of concern is that the jury employs laymen, chosen at random from the wider population, often including the uneducated, the unemployed, and people who pay very little attention to the news and current events (Ellsworth & Reifman, 2000). Such people are then entrusted with great and powerful decisions in a technical and serious business of which they often have very little or no experience (Kalven & Zeisel, 1966). For these reasons, recent decades have seen the jury subjected to frequent criticisms and numerous investigations and research evaluations, in particular regarding the competency and processes of jurors' and juries' decision-making (Devine, Clayton, Dunford, Seying & Price, 2001; Hastie, 1993).

An area of jury decision-making that has attracted the attention of researchers are the biases in this process, commonly known as extra-legal variables (MacCoun, 1990), and the effect of deliberation on these biases (Kramer, Kerr & Carrol, 1990). Extra-legal variables are factors that are *extra* to the law, as they are not found in relevant statutory law (Nagel, 1983), and which often influence and prejudice jurors' judgements (MacCoun, 1990). The most commonly researched extra-legal variables are characteristics specific to trial participants that are irrelevant to the determination of a verdict (Gordon, 1990; Mazzella & Feingold, 1994). Such characteristics commonly include the defendant's age, attractiveness or gender (Mazzella & Feingold, 1994), with fewer studies examining victim characteristics, including their race (Foley, Adams & Goodson, 1996; Willis, 1992).

While no literature that investigates the effect of a victim's race on jury decision-making could be located in Australia, North American research demonstrates that the race of the victim, and of other trial participants has a significant impact in the courtroom

(Hymes, Leinhart, Rowe & Rogers, 1993; Sorenson & Wallace, 1995). Due to Australia's diverse and multicultural population, individuals who present before the court often represent a diverse range of races. In addition, prejudice toward minority groups is well documented within Australia (Mellor, 2003; Pedersen & Walker, 1997) and it is for this reason that the current study investigates the impact of race upon jurors' judgements. Due to the dearth of research investigating characteristics of the victim, and an abundance of research examining characteristics of the defendant and other trial participants, this thesis will examine the race of the victim.

Some studies have suggested remedies to reduce the impact of extra-legal variables on jury decision-making (Ellsworth & Reifman, 2000). One of these is jury deliberation (Kerwin & Shaffer, 1994; Kramer et al., 1990). One potential effect of deliberations is that they may serve as a de-biasing technique such that deliberating juries would be less likely than individual jurors to openly endorse biased or prejudiced attitudes (Greene, Johns & Bowman, 1999). Reasons for this may include that deliberations make jurors accountable for their decisions (Tetlock, 1983). Tetlock found when people have to justify their views, they appeared to engage in pre-emptive self-criticism to anticipate the counter-arguments and objections that potential critics may raise. In contrast, non-deliberating participants did not engage in such activities, and instead were cognitively *lazy* (Tetlock, 1983). As such, deliberation may cause jurors to realise that they must justify their verdicts to others, and thus reduce their reliance on biasing, irrelevant information.

To provide a background for the thesis, I will first review the aspects of jury decision-making that are important for this research, with specific attention given to race and deliberation within this context. As the majority of research on the impact of race within the justice system has been performed in North America (Hymes et al., 1993; Sorenson & Wallace, 1995), an analysis and review of this research is presented. To provide a context for the races included in this study, an overview of the literature examining prejudice and racism toward minority groups within Australia is provided. Those races who have experienced, or are likely to experience prejudice and racism in Australia due to recent world events, include Aboriginal, Asian and Middle-Eastern cultures. As such, these three races will be reviewed. Secondly, special attention will be

given to reviewing the most frequently utilised methodology in jury decision-making research that is important in the context of this thesis. I will then report on the results of this study and discuss these with reference to the relevant literature in this field.

The present study, which was exploratory in nature, investigated whether the race of the victim (an extra-legal variable), and the process of deliberation, would influence jurors' perceptions and judgements of the defendant, the victim and the crime. Also of interest was whether an interaction would occur between the victim's race and deliberation, and in particular, whether deliberation would cause an attenuation or exaggeration of any racial bias that may exist. Due to the ever changing nature of intergroup relations and a lack of comparative analyses in past racial research in Australia, combined with debates over the effect of deliberation on extra-legal variables, precise directional hypotheses were not made. However, it was anticipated that the Caucasian victim should benefit from being part of the dominant race in Australia, by being perceived in a more positive manner than the other relevant races in Australia (Aboriginal/Asian/Middle-Eastern victims). Therefore, this should result in her being viewed as more favourable regarding victim honesty, reliability, likeableness, value, responsibility and sympathy. In addition, the crime should be perceived as being more serious and as having a larger impact on the Caucasian victim as compared to the other races. Finally, it is assumed that the favourable attitude toward the Caucasian victim should affect perceptions and judgements of the defendant in this condition, regarding his guilt and the recommended sentence.

For the purpose of clarity, the term *bias* is used in this thesis to refer to both positive or negative tendencies toward a group of individuals, (e.g., a racial group) based solely upon their group membership. For example, the tendency to find group A more favourable than group B based solely upon group A's membership, is an example of a *positive bias* toward group A; and a tendency to find a group less favourable than another, is an example of a *negative bias*.



## REVIEW OF JURY DECISION-MAKING RESEARCH

The past few decades have seen numerous studies conducted in the field of jury decision-making (Abshire & Bornstein, 2003; Baumeister & Darley, 1982; Kameda, 1991; Saks, 1996). The findings from such research are both informative and beneficial, as they may influence and assist lawyers in their preparation and delivery of cases to the jury, improve the law by improving jury performance, and provide a greater understanding for the way in which juries behave (Hastie, 1993). A comprehensive review of the last 45 years of research on juries and decision-making was recently completed by Devine et al. (2001). From this review, four main themes emerged. These concerned the process by which jurors reach their decisions; the influence of characteristics of the jury members; the implications of a trial with ambiguous evidence; and the deliberation process. A brief examination of each of these themes will provide a useful context for this study.

### The Jurors' Decision-Making Process

In the interest of providing a fair trial for all involved, the legal system requires that legal decisions are made using legal factors and criteria which are specifically prescribed in the relevant statutory law (Nagel, 1983). For this to occur, several assumptions exist regarding the process by which juries make their decisions. Among these assumptions is that jurors are able and willing, to use or avoid information (e.g., evidence, pre-trial publicity, opening and closing arguments), and evaluate this information in ways that reflect the requirements and constraints of the law (Wegener, Kerr, Fleming & Petty, 2000). However, the first theme identified from the review on jury decision-making indicated that jurors often fail to make decisions in the manner intended by the courts, regardless of how they are instructed (Devine et al., 2001). If one examines the literature, it appears that what the courts expect is best demonstrated with reference to Pennington and Hastie's (1981) model. This model has divided the jury's task, as prescribed by the courts and legal professionals, into eight components:

- a) The jurors must encode the trial contents: The juror is expected to pay attention to, encode and remember not only all of what is said at the trial verbatim, but also make observations of the defendant and witnesses behaviour.
- b) The jury must define the legal categories as they are presented in the judge's instructions: It is assumed that the juror has an accurate recording of events during the trial and is able to establish the judgement categories, based on information in the judge's instructions about substantive statutory issues, (e.g., mental state, circumstances, actions for the verdict choices).
- c) The jury must select admissible evidence: The jury is instructed and expected to ignore the evidence that is inadmissible (e.g., the attorneys' opening and closing arguments, the attorneys' behaviour), and select only the admissible evidence.
- d) The jury must construct the sequence of events: The jury are expected to determine what happened at the time of the alleged crime by constructing the sequence of events and evaluate the credibility of this sequence. Not all of the details of a potential sequence are specified in trial testimony, and as such, this task involves inference procedures. The ideal juror would include each piece of evidence in appropriate temporal or causal sequence, give equal regard to evidence throughout the trial, include alternative event representations, and make use of appropriate world knowledge, to construct a coherent account of the events in question.
- e) The jury must evaluate the credibility of the witnesses: Jurors are expected to evaluate the credibility of witnesses by examining their statements with relevance to two attributes; the credibility of the statement (how likely it is that it is true) and the probity of the statement (its implications for guilt in terms of actions, circumstances or mental state).
- f) The jury must evaluate the evidence in relation to the legal categories provided in the instructions: As certain elements of the story the jury constructs are particularly important in determining the appropriate verdict, the jury is expected to identify these elements and understand how differences in the interpretation of the facts translate into differences in the appropriate verdict choice.
- g) The jury must apply the procedures for presumption of innocence and reasonable doubt: The jury is expected to test its interpretation of the facts and the implied

verdict choice against the standard of proof: preponderance of evidence, clear and convincing evidence, or beyond a reasonable doubt.

h) The jury must decide on the verdict.

However, if one examines the literature on how decisions by juries are actually made, it is clear that this model is rarely followed. Instead, as Devine et al. (2001) acknowledge, decades of research on human cognition suggest that this model would rarely hold in the real world, as decisions are more commonly based upon past experiences in the form of stereotypes, schemas and scripts, and other cognitive mechanisms including personal beliefs and values about what is right, wrong and fair.

Other research states that the reason individuals utilise such processes is to simplify large amounts of information into smaller, more comprehensible amounts (Kunda & Thagard, 1996; Macrae & Bodenhausen, 2000). When faced with multiple sources of information, individuals attempt to make sense of it by integrating and deciphering the meaning of such information. To make this process easier, the individual's pre-existing knowledge base that includes representations of social constructs such as stereotypes, traits, and behaviours as well as the interrelationships among these constructs, is utilised (Kunda & Thagard, 1996).

The most commonly used cognitive simplification methods include schemas, stereotypes, and scripts (Hilton & Hoppel, 1996; Macrae & Bodenhausen, 2000). Schemas are commonly referred to as cognitive structures that represent knowledge about a concept or a type of stimulus, including its attributes and the relations among those attributes (Fiske, 1995). In other words, schemas are preconceptions or theories about the social world. A stereotype is similar to a schema for a particular role. Stereotypes represent peoples' expectations about people who fall within particular categories, e.g., nurses, males. Finally, scripts are similar to schema's for different events, and contain appropriate sequences of events for particular social situations, e.g., dining at a restaurant (Fiske, 1995).

As well as simplifying information processing by allowing the perceiver to rely on previously stored knowledge in place of incoming information, schemas, stereotypes and scripts commonly emerge in response to environmental factors. These include different social roles, differences in power, and group conflicts, all of which are frequently evident

when one is part of a jury (Hilton & Hippel, 1996). In addition, when jurors are presented with the confusing task of encoding multiple sources of information and storing and evaluating this in a prescribed way, it appears likely that any information perceived as relevant or useful will be used to help the information make sense to them, which is why they tend to utilise processes such as stereotypes, schemas and scripts (Devine et al., 2001).

However, while these processes serve as an important function in our everyday interaction with the world, by simplifying and streamlining the perception process (Macrae & Bodenhausen, 2000), the downside is that they can lead to bias. The finding that juries fail to make decisions as prescribed by the courts is therefore no surprise. Nagel (1983) states that there is a less than perfect correspondence between formal law and its application, and that legal rules are but one consideration in judicial decisions. In addition, while some findings suggest that legally specified criteria play a dominant role in decision-making, this has been shown to vary across different cases. For these reasons as well as the way in which individuals have been shown to reach decisions, it appears that extra-legal variables are inevitable, and that it is impossible to rule out the operation of subjective factors that introduce discrimination (Nagel, 1983).

### *Extra-legal Variables*

An examination of the literature on jury decision-making reveals that a variety of extra-legal variables exist, which have a profound impact on the way a juror perceives the defendant, the victim and the crime, and which can improperly influence subsequent verdict decisions (Gordon, 1990; Hymes et al., 1993; Krahe, 1988; Wayne, Riordan & Thomas, 2001; Willis, 1992). Kaplan and Miller (1978) state that extra-legal variables may be specific to the trial participants (e.g., racial, ethnic or economic prejudice) or more general (e.g., acquittal or conviction proneness - how likely the juror is to acquit or convict the defendant). In addition, they may be enduring and stable *trait* dispositions in the jurors themselves (e.g., leniency or harshness) or relatively transient, situational *states* in the individual (e.g., a temporally and situational induced good or bad mood) (Kaplan & Miller, 1978).

Other extra-legal variables, or *juridic biases* as Devine et al. (2001) name them, include the tendency to rely on proscribed information (e.g., pre-trial publicity) (e.g., Kramer et al., 1990); and testimony ruled inadmissible or irrelevant (Sue, Smith & Gilbert, 1974), as well as the misuse of available information (e.g., use knowledge of a defendant's past criminal record not to evaluate his/her credibility but as direct evidence of culpability for the present offence (Hans & Doob, 1976, cited in Wegener et al., 2000)). The most heavily researched area within the domain of extra-legal biases is arguably that which focuses upon participant characteristics (Devine et al., 2001). This popularity is likely due not only to the long-standing focus on individuals in psychology, but from increasing evidence from research in cognitive science that humans do not process information in a rational manner, by maximising the use of relevant information, but instead use other methods (Devine et al., 2001; Kunda & Thagard, 1996; Macrae & Bodenhausen, 2000). Whilst most studies examining the impact of such extra-legal variables have focussed on the personal characteristics of the defendant (Bray, 1982; Gleason & Harris, 1976; Gordon, 1990; Shepherd & Sloan, 1979; Sigall & Ostrove, 1975; Wuensch, Castellow & Moore, 1991), the research conducted on the influence a victim's characteristics have on the jury has been limited.

Research investigating the personal characteristics of the victim has included their race (Arkin, 1980; Dean, Wayne, Mack & Thomas, 2000; Foley et al., 1996; Foley & Pigott, 1997; Gross & Mauro, 1984; Hymes et al., 1993; Mazzella & Feingold, 1994; Pfeifer & Ogloff, 1991; Sorenson & Wallace, 1995; Ugwuegbu, 1979; Willis, 1992), gender (Clarke & Nightingale, 1997; Mazzella & Feingold, 1994; Wayne et al., 2001), physical attractiveness (Landy & Aronson, 1969; Mazzella & Feingold, 1994), respectability (Greene, Koehring & Quiat, 1998; Jones & Aronson, 1973) and age (Foley & Pigott, 1997; Nunez, McCoy, Clark & Shaw, 1999; Ross, Dunning, Toggia & Ceci, 1990). In particular, jurors were often prejudiced to victims that were a different race to their own (Abshire & Bornstein, 2003), who were elderly (Nunez et al., 1999), less respectable (Greene et al., 1998), and unattractive (Landy & Aronson, 1973). Gender also impacted upon juror decision-making with regard to sexual harassment, with female harassers of male victims more likely to be found guilty than males who harassed female victims (Wayne et al., 2001).

As Australia's population is very diverse and multicultural, it is expected that a defining feature of individuals in an Australian courtroom may be their race, in place of other individual characteristics, which may impact as extra-legal variables. Of particular interest is the effect that the race of the victim may have on jurors' perceptions of themselves, the crime, the defendant and their subsequent verdict. The majority of research investigating the impact of race in the courtroom has been conducted in North America. Due to the absence of such published research in Australia, an analysis of the research conducted in North America is presented next.

A considerable proportion of this research demonstrates how prejudice and racism affects the legal system within the interplay of the defendant, victim, and crime (Hymes et al., 1993). A study by Willis (1992) examined how victim and defendant race affected jurors' perceptions of victims of a simulated rape trial. Willis found that black victims were perceived as less truthful and more responsible for the crime than white victims were. More recently, Dean et al. (2000) found that victim race had a significant impact upon jurors' verdicts. Defendants were perceived as more likely to be guilty when the victim of a crime was white, than if the victim was a minority. A meta-analysis by Mazzella & Feingold (1994) demonstrated similar results, with the finding that jurors recommended greater punishments for the defendant when the victim was white than when the victim was black. Interestingly, the findings from inter-racial crime (when the race of the victim and defendant are different) also produce a considerable biasing effect. Here, defendants who commit a crime against a victim of another race are more likely to receive a guilty verdict than when the victim's race is identical to their own (Ugwuegbu, 1979). In line with this finding, Pfeifer and Ogloff (1991) also demonstrated that black defendants were found guilty significantly more than white defendants when their victims were white.

In addition, a number of studies examining the relationships between victim race, defendant race and the imposition of the death penalty using data from court records and juror interviews in the United States demonstrate similar findings of prejudice in the legal system (Arkin, 1980; Gross & Mauro, 1984). It found that the race of the victim was an important factor in the determination of who received the death penalty, with killers of white victims generally found to have higher odds than the killers of black victims.

Furthermore, victim race was found to interact with defendant race such that a black defendant killing a white victim stood a much greater chance of receiving the death penalty than a white defendant killing a white victim (Sorenson & Wallace, 1995). The General Accounting Office for the American Federal Government (1990, cited in Devine et al., 2001) also conducted a review on all empirical studies investigating the issue of race in capital sentencing. The review concluded that the race of the victim influenced the likelihood of a defendant being charged with murder and receiving the death penalty, with a race of victim effect indicated in 82% of the studies reviewed. Although the bias was sometimes stronger at the prosecutorial stage, it was also observed at the jury verdict stage (Devine et al., 2001).

Foley et al. (1996) similarly found that judgements formed by officials of the court, such as judges, attorneys, and probation officers, were also influenced by the race of the individuals involved in the offense, with both the race of the defendant and victim having a significant impact upon perceptions of the defendant's criminality. However, in contrast to the findings from previously mentioned studies, defendants with White victims received shorter sentences than did defendants with minority victims. Furthermore, the crime was seen as more serious, and defendants were given longer sentences when the victim was a minority than when the victim was White.

As the literature illustrates, extra-legal variables can produce a significant impact in the courtroom (MacCoun, 1990; Mazzella & Feingold, 1994). Furthermore, North American research indicates that the race of the victim can also influence the judgements formed by jurors' regarding the victim, defendant, crime and subsequent verdict.

#### *Australian Racial Research*

As previously mentioned, there is very little research documenting racial biases in Australia and less that links prejudice to the court system. Research that has investigated racial biases in Australia has instead explored racism in government policy (Sanson et al., 1998), political issues (Chamarette, 2000), as biases introduced as a result of media coverage (Duck, Lalonde & Weiss, 2003), and Aborigines' experiences with the mental health and justice systems, including biases regarding their assessment and treatment

(Kyaw, 1993). The little research that has been conducted demonstrates that prejudiced attitudes have been identified toward Aborigines and Asian people (Sanson et al., 1998), and as demonstrated later in the thesis, there appears to be an emergent level of racism toward individuals from Middle-Eastern countries.

Interestingly, an examination of the research also identified the presence of different forms of prejudice, including *modern* and *aversive* racism (Augoustinos, Tuffin & Sale, 1999; Pedersen & Walker, 1997). These forms of prejudice are more frequently identified as contemporary theories of racism. While several theories are present, the most widely accepted are that of *modern* racism and *aversive* racism (Nail, Harton & Decker, 2003).

The modern racism theory, coined by McConahay (1976), asserts that while racism still widely exists, it is now typically expressed only in subtle, symbolic or indirect ways because contemporary societal norms generally oppose such direct expressions of prejudice (McConahay & Hough, 1976). For example, a modern racist may still support segregation between black and white persons, however would be unlikely to publicly support such an attitude because such behaviour would provide clear and direct evidence that they are prejudiced. Instead, such beliefs may manifest in behaviours that implicitly indicate prejudiced attitudes, (e.g., crossing the street when a member of an out-group is ahead, or avoiding heavily populated areas which are inhabited by out-groups). Thus, the modern racist's traditional beliefs and values allow them to reject overt racism and reconfigure their negative feelings toward minority individuals into attitudes, allowing justifiable discrimination. While modern racists are still said to be *prejudiced at heart*, having all of the negative feelings and beliefs that typically accompany such attitudes, they do not admit to such feelings, even to themselves. Instead, they avoid direct expressions of racism because it is not acceptable in most contemporary social settings (Nail et al., 2003).

The theories of aversive racism (Dovidio & Gaertner, 1998 cited in Nail et al., 2003) also maintain that racism now tends to be expressed in subtle and indirect ways. However, these theories are different from that of modern racism as they propose that many individuals have actually internalised non-prejudiced, egalitarian values to a degree. At some level, such individuals genuinely believe in the ideals of equality, justice



and fair treatment for all. However, at the same time, they continue to harbour certain non-conscious negative emotions and feelings against minority groups. These feelings are thought to be based on factors such as (a) socialisation experiences in local cultures with racist traditions and (b) the ongoing competition between social groups in a world with limited resources. The aversive racism theory therefore obtains this name due to the underlying emotional conflict that exists between the desire of the individuals to be non-prejudiced, and their anxiety and discomfort when around people of other races (Nail et al., 2003).

As society generally dictates that individuals should avoid direct expressions of negative attitudes toward others on the basis of their ethnicity, expressions of modern and aversive racism are difficult to measure. Research includes the measurement of involuntary facial expressions, such as electrodermal activity as a psychophysiological marker of ethnic prejudice; facial electromyography to differentiate the valence and intensity of affective reactions; and psychometric measures of modern-prejudice including the Modern Racism Scale which uses a voluntary self-report from individuals (Vanman, Paul, Ito & Miller, 1997).

### *Australian Aborigines*

The relationship between Aborigines and White Australians is characterised by a history of conflict and controversy, and like many Aboriginal groups across the world, Australian Aborigines have experienced considerable cultural and social dislocation (Augoustinos, Ahrens & Innes, 1994). The present day disadvantaged position of Aborigines is reflected in the statistics relating to health, finances, life chances, and their involvement in the justice system. This is discussed in more detail in the following review of research studies that have examined Aborigines.

A recent study conducted by Mellor (2003) found that Aborigines have three times the national rate of infant mortality; a disproportionate rates of diabetes, respiratory disorders, ear and eye diseases, and circulatory disorders. In addition, Aborigines have a life expectancy that is 20 years lower than the non-Aboriginal population.

Statistics also indicate that Aborigines are disadvantaged with regard to their financial situation, with the unemployment level being three times more than the national unemployment rate. Furthermore, the average income of the Aboriginal population is one third less than the majority population (Mellor, 2003).

In addition, Mellor (2003) and Sonn, Bishop and Humphries (2000) found that Aborigines are disadvantaged with regard to life chances. In particular, Aboriginal students' experiences in mainstream higher education indicated that subtle and overt forms of racism affected the students' experience and progress. In particular, issues associated with conflicts between Aboriginal and mainstream cultural values reflected in course content and levels of support were identified (Sonn et al., 2000).

Numerous studies have also reported an over-representation of Aborigines in prison (e.g., Allan & Dawson, 2002), as victims or perpetrators of crime (e.g., Allan & Dawson, 2002), in West Australian courts appearing as juvenile and adult defendants (Allan, Allan, Giles & Drake, 2003), and as having higher recidivism rates than non-Aboriginal offenders (Allan, Allan, Marshall & Krazlan, 2003).

Allan & Dawson (2002) reported that Aborigines were 14 times more likely to be in prison than non-Aboriginal people were. This extended to Western Australia, with the finding that between 1990 to 1991, 35% of all victims and 32% of all perpetrators of homicide were Aboriginal, despite the fact that Aborigines only represent 2.7% of the population. Allan, Allan, Giles et al. (2003) similarly identified an overrepresentation of Aborigines in the criminal justice system. Of 648 defendants observed over seven different courts in Perth in late 2001, one quarter were observed to be of Aboriginal origin. Furthermore, nearly one quarter of the adult defendants (24%) and nearly one half (48%) of the juvenile defendants in this sample were Aboriginal. In addition, research examining recidivism among male juvenile sexual offenders in Western Australia demonstrated that Aborigines had a higher sexual recidivism rate (15.8%) than non-Aboriginal offenders (5.0%) convicted between January 1998 and June 1998. However, these findings should be interpreted with caution as the Aboriginal offenders had a longer follow-up time, and therefore a greater opportunity to be reconvicted (Allan, Allan, Marshall et al., 2003).

When compared to the rest of the Australian population, Aborigines are clearly disadvantaged with reference to their social, health and financial situation. This paired with their over-representation within the justice system, and their different customs and world views, makes them a highly salient group within Australian society (Allan, Allan, Marshall et al., 2003). These findings not only indicate the salience of Aboriginal people within the Australian population, but may also contribute to an understanding of the racial biases they experience.

Historically, the Aboriginal population has borne the brunt of prejudice and several studies have demonstrated the ongoing negative stereotypes, unfavourable attitudes and prejudice toward Aborigines (Augoustinos et al., 1994; Black-Gutman & Hickson, 1996; Pedersen & Walker, 1994). Larsen (1981) and Majoribanks and Jordan (1986) claim that Aborigines are the most discriminated against group in Australian society. Pedersen, Griffiths, Contos, Bishop and Walker (2000) investigated peoples' attitudes toward Aborigines in samples from Perth and Kalgoorlie, Western Australia, and found that most respondents showed some degree of negative feelings about Aborigines. An earlier study by Pedersen and Walker (1997) found that modern prejudice was prevalent in Australia, with approximately one-quarter of a local (Perth) sample scoring above the midpoint on a measure of old-fashioned prejudice, and more than one-half scoring above the midpoint on a measure of modern prejudice. Discursive analyses by Augoustinos, Tuffin and Sale (1999), Augoustinos, Tuffin and Rapley (1999) and Guilfoyle (2002) also identified a negative construction of Aborigines' social identity in discussions of focus groups. Although these groups scored low on scales of modern and old-fashioned racism, and acknowledged that Aborigines were socially and economically disadvantaged, modern racism was evident in their discourse. This was most commonly expressed by the participants' significant concerns about the government spending too much money on programs for the Aboriginal population, with many believing that too much money was being spent on them unproductively (Augoustinos, Tuffin & Sale, 1999).

In a more recent study Mellor (2003) performed semi-structured interviews on 34 Aborigines and found that a significant level of prejudice in the Australian community still exists. Participants reported experiencing racism in many forms, including verbal

abuse, by name-calling, insults and other remarks. A strong emphasis on skin colour was also associated with verbal abuse, incorporated through a list of derogatory terms.

Racism experienced through behavioural means was also extensively reported. In the more extreme forms, racism was expressed through physical violence, and harassment from the police. More subtle forms, such as reports of an awareness of being watched, of being avoided, of being talked about, and being stereotyped on the basis of race were also discussed.

In summary, research demonstrates that prejudice toward the Aboriginal population pervades most sectors of the Australian community and has the potential to interact with jury decision-making.

### *Asian*

Research on Asian racial groups is also limited, however the large immigration of Asian groups to Australia over the past century, and a historical *White Australia* policy promotes an out-group status in this race, which could impact juridic decision-making. Walker (1994) states that throughout the twentieth century, the predominant view of migrants and immigration in Australia, held both by government policy and public opinion, has been assimilationist (e.g., that migrants should be assimilated with the general population rather than remain distinct). Furthermore, heavy preference was given to the British and Irish, followed by Northern Europeans, Southern Europeans and others. In addition, while the position of some groups has fluctuated over the years, (e.g., Italians, Germans and Greeks), that of Asian groups remained steadfastly at the bottom (Walker, 1994).

In a study examining attitudes toward minority groups including Aborigines, Asians and women in Western Australia, Walker (1994) mailed questionnaires to 500 residents in the Perth metropolitan area. Results from the questionnaires indicated that a significant amount of prejudice exists in the general community toward Asians. In particular, prejudice was expressed by individuals in attitudes regarding the high level of Asians migrating to Australia. Items on the questionnaires that yielded the highest percentage of negative attitudes indicated that a significant number of participants

believed that there were too many Asians in the country, and that more Asians should not be allowed to migrate to Australia. In addition, results from another Australian study investigating the relationship between racial attitudes and social-cognitive development in children, found that attitudes to Asians in Australia were only marginally better than those found toward Aborigines (Black-Gutman & Hickson, 1996).

A more recent review on racism and prejudice by Sanson et al. (1998) demonstrated that racism against Asian groups is present in Australia. A search for the literature cited in Sanson et al. was unsuccessful, and as such, references to this review unfortunately appear as secondary citations. A nation-wide study by Cahill (1996, cited in Sanson et al., 1998), showed that racism in the context of Asian groups has a persistent presence in most schools. In Queensland, 30% of teachers indicated that instances of racism occurred frequently in their schools, with 25% of teachers surveyed indicating that they thought Australia was becoming *Asianised* too quickly. Kee and Hsieh (1997, also cited in Sanson et al., 1998) reported that approximately 50% of Taiwanese students in Australia reported having experienced racial discrimination, most commonly verbal abuse, with 15% experiencing physical attacks, 24% encountering racism on the streets, and 42% being the recipients of discrimination at their educational institution.

In a more recent study, Reid, Higgs, Beyer and Crofts (2002) investigated ethnic Vietnamese individuals' vulnerability to involvement with illicit drug use and distribution in Australia. Results demonstrate that factors contributing to the involvement with illicit drugs by Vietnamese individuals included high levels of unemployment, poor English proficiency, social and economic difficulties, intergenerational conflicts and acculturation, and the experience of racism.

Given these findings, it is highly plausible to assume that race may contribute significantly to the perception of Asian victims by jurors', and that this may influence the decisions made within the Australian courtrooms.

### *Middle-Eastern*

To date, no existing psychological literature examining racism toward people from Middle-Eastern cultures in Australia has been located. However, over recent years

the media's reporting of crimes in Australia's eastern states has demonstrated an emergent racism toward Middle-Eastern people. An article from a Sydney newspaper ("Multicultural Malignancy," 2001) claimed that in the past two years there have been more than 70 organised rapes by ethnic gangs (in particular from a Middle-Eastern background) on Australian women, with claims that the women were subjected to racial taunts. While the article suggests that the rapists were racist toward Caucasians, an emerging racism toward the Middle-Eastern culture has resulted in response to the attacks. A large backlash by the Australian public was well reported, with claims that the rapes against the Australian women were racially based and committed by Middle-Eastern men against the women because the latter were Caucasian ("Multicultural Malignancy," 2001).

The gang rape of two Caucasian girls in Sydney's southwest by youths of Middle-Eastern background also received extended national media coverage. Ethnic leaders from the representing Middle-Eastern communities consequently began demanding an end to the link between ethnicity and crime, as it was causing much racial tension. In addition, this *counter-racism* drew the ire of many callers to talk back radio ("Race Reason for Rapes - Hanson," 2001).

Furthermore, the debate over ethnic-based crime in Sydney's south-western suburbs has reportedly had ramifications across the wider community in New South Wales, with widespread concern about a racially based crime wave ("Anger Over Ethnicity and Crime", 2001). Of notable concern is the recent incidence of verbal abuse of Muslim women in Sydney by Caucasian individuals, as an apparent result of the publicity over the gang rapes by youths described as *Lebanese Muslims* ("Angry Men", 2001).

Also of concern are recent international and national developments that may indicate the potential for prejudice toward individuals from Middle-Eastern countries. In recent years, international terrorist activities have included the bombing of a holiday destination popular with Australian tourists, and the destruction of the World Trade Centre Towers in the United States. Both of these events have been received extended international and national media coverage, and have been linked to Middle-Eastern terrorist organisations. Research on human cognition indicates that an individual's

attitude to others is often influenced by information received from a number of sources, including that of the media (Fiske, 1995). As a result, stereotypes that are formed about groups of individuals (e.g., a particular race) are often dependent upon information received about that particular group. This social psychological theory suggests that an extended media coverage that presents a negative view of individuals from Middle-Eastern countries may affect the attitudes of individuals toward that particular group. This may result in prejudiced attitudes toward Middle-Eastern individuals.

#### The Influence of Jurors' Characteristics on Verdict Outcomes

The second theme identified by Devine et al. (2001) in the area of jury decision-making, is that characteristics of individual jurors and mock jurors may predict jury outcomes better than juror verdict preferences. While the authors emphasise that most of the studies included in the review have yielded little evidence that individual verdict preferences are reliably predicted by personal characteristics, they propose that the lack of a relationship between a particular characteristic and juror verdict preferences does not imply independence at the jury level. Rather, Devine et al. (2001) suggest that characteristics associated with jurors may act as substantial biases in some instances, particularly those stemming from defendant-jury demographic similarity (Abshire & Bornstein, 2003; Fischer, 1997), jury personality composition regarding authoritarianism/dogmatism (Narby, Cutler & Moran, 1993; Shaffer & Case, 1982), and juror attitudes and values (Cowan, Thompson & Ellsworth, 1984).

Research investigating the effect of the demographic composition of juries on their judgements and verdicts has revealed a juror-defendant similarity bias across a number of studies (Fischer, 1997). In particular, when the evidence against the defendant is weak or ambiguous (as in the present study), juries that are demographically similar to the defendant tend to be more lenient; however, when the defendant's culpability is clear, juries tend to be more harsh (Devine et al., 2001). In contrast however, results from a study by Hastie et al. (1998) which examined jurors' judgements in civil cases indicated that while income and ethnicity were very weakly related to juror judgements, individual differences in the jurors' backgrounds were not strongly related to their verdicts. More

recently, Abshire and Bornstein (2003) found that the racial composition of the jury can also have an effect upon judgements and verdicts. In their study, black and white mock jurors watched a simulation of a murder trial of a black defendant in which the race of the eyewitness was varied (black/white). The results indicated that black mock jurors were more lenient than white mock jurors to the black defendant; with white mock jurors rendering more guilty verdicts if the defendant is black, however eyewitness race had no effect on the verdict.

Jury outcomes have also been consistently linked to the personality composition of the jury, with respect to levels of authoritarianism and dogmatism (Devine et al., 2001). More specifically, juries that contain a high proportion of authoritarian or dogmatic jurors tend to convict more often, than juries with a low proportion of such individuals (Shaffer & Case, 1982). Juror attitudes and values have also been linked to verdict preferences, in particular, with attitudes toward capital punishment. Cowan et al. (1984) found that jurors that favoured the death penalty were more likely to vote for guilt before and at the end of deliberation. In addition, juries that consisted of both jurors for, and against, the death penalty were better able to recall evidence after deliberation, than those juries composed entirely of jurors in favour of the death penalty.

While the aforementioned studies demonstrate that the characteristics of jurors may have an impact on verdict preferences, research suggests that the bias produced by the jury composition should have little impact when the evidence clearly favours one side or the other (Rector, Bagby & Nicholson, 1992). This is discussed in more detail in the next theme.

### The Implications of Ambiguous Evidence

The third theme identified in Devine et al.'s (2001) review on jury decision-making was that Kalven and Zeisel's (1966) *liberation hypothesis* is still supported. The hypothesis states that the weight of the evidence in a case is the primary determinant of most jury verdicts. However, when the evidence clearly does not favour one side, they hypothesised that jurors would be liberated from the constraints of the evidence and be more susceptible to influence from extraneous and biasing factors (Devine et al., 2001;



MacCoun, 1990). Research clearly demonstrates that jury decisions are influenced most often by the presented evidence, and that a strong and consistent relationship has been observed between the strength of the evidence and jury verdicts (Devine et al., 2001; Greene et al., 1999; Horowitz & Kirkpatrick, 1996; Ugwuegbu, 1979). In addition, several research studies that have identified biases attributable to procedural or participant characteristics (eg. pre-trial publicity, characteristics of trial participants) have done so when presenting ambiguous evidence (Bagby, Parker, Rector & Kalembe, 1994; Baumeister & Darley, 1982; MacCoun, 1990). Furthermore, biases have been observed to have little to no impact when the evidence is either very strong or very weak (Hymes et al., 1993; Rector et al., 1992).

### The Deliberation Process

The fourth theme identified in the review on jury decision-making by Devine et al. (2001), relates to the process of deliberation. A large amount of research has been conducted examining the deliberation process, which has focussed primarily on issues including initial verdict preferences and their relation to the final verdict (Kalven & Zeisel, 1966), the influence of task order on group decisions (Davis, Tindale, Nagao & Hinsz, 1984), the structure and style of deliberation (Hastie et al., 1983; Kameda, 1991), polling mechanics (Kerr & MacCoun, 1985), faction shifts (Kerr, 1981), foreperson characteristics (Foley & Pigott, 1997), the content of deliberation (Devine et al., 2001), and the impact of deliberation on extra-legal variables (Kassin & Wrightsman, 1983; London & Nunez, 2000; Wright & Wells, 1985).

The early view on deliberation that hailed from research performed by Kalven and Zeisel (1966) was that deliberation plays a minor role in determining jury verdicts because the pre-deliberation majority generally prevails in the end (Diamond, 1997). However, more recent research by Sandys and Dillehay (1995) suggests that significant discussion often precedes any vote by the jury, and considerable opinion shifts often take place as a result of deliberation. The deliberation process has also been shown to help realign the juror with the facts and rules of the case, serving an additive function of the legal standard (Bagby et al., 1994).

The review on jury decision-making by Devine et al. (2001) demonstrates that the deliberation process has a significant impact on jury outcomes. The main influence of deliberation, as identified in the literature, relates to the style of deliberation and its impact on the jury outcome, and the impact of the deliberation process on extra-legal variables. A discussion of these two issues follows.

### *The Impact of Deliberation Style on Jury Outcome*

The style of deliberation primarily refers to the manner in which juries approach their task of reaching a verdict (Hastie, Penrod & Pennington, 1983). Through observations of mock juries, Hastie and colleagues identified two styles of jury deliberations, namely the verdict-driven and the evidence-driven jury. In the former, juries tend to open their deliberations with a public expression (e.g., polling) of individual verdict preferences. The initial exchange of jurors' verdict preferences, that each juror formed individually before deliberation began, is the focus of this style of deliberation. After this exchange, jurors commonly discuss the case whilst being aligned in opposing factions by their verdict preferences. Relevant evidence is used by jurors' in support of these preferences. In contrast, the evidence-driven jury, according to Hastie and colleagues, focuses on reviewing evidence closely and constructing a plausible story of the case. This style of deliberation begins with an exchange of jurors' views of the facts, rather than exchanging overall verdict preferences. The first task set by such juries is to establish the plausible facts of the case, and end with a final verdict (Kameda, 1991).

Research demonstrates that the evidence-driven style of deliberating is similar to the normative ideal desired by the courts, which was outlined earlier with reference to Pennington and Hastie's (1981) model (Kameda, 1991). However, many juries adopt the verdict-driven style, which leads to the rapid delineation of factions and increases normative pressure (Sandys & Dillehay, 1995). The verdict-driven style of deliberating may also prevent minority factions from providing input to the jury discussion, due to pressure from other members opposing their verdict. In contrast, an evidence-driven style may allow members of the minority faction to identify others in the jury who share

the same viewpoint, and allow for a more successful defense of such (Devine et al., 2001).

### *The Impact of Deliberation on Extra-Legal Variables*

Research demonstrates that deliberation has a significant impact upon extra-legal variables (London & Nunez, 2000; Thomson, Fong & Rosenhan, 1981), and has been proposed by several researchers as a way in which biases may be prevented from affecting jury decision-making (Ellsworth & Reifman, 2000; Kerwin & Shaffer, 1994; Kramer et al., 1990). Several studies suggest that this is due to the advantages found in group decision-making as opposed to decisions made by individuals (McCoy, Nunez & Dammeyer, 1999). Among these advantages are that groups exhibit advanced thought processes and memory recall (McCoy et al., 1999; Tetlock, 1983), which provides support that jurors deliberating as a group should make more effective and well-reasoned decisions, than individual jurors (Greene et al., 1999). A review of these studies is provided next.

McCoy et al. (1999) investigated differences in the decision-making process between individual jurors and jurors participating in a group setting. The results indicated that deliberating jurors exhibited better reasoning skills than individual jurors. In particular, jurors who engaged in deliberation seemed more aware of alternative theories, and evidence supporting and not supporting their given verdict, than individual jurors who did not engage in deliberation. Furthermore, deliberating jurors made more statements that discounted their chosen verdict and alternative verdicts, and made more judgmental statements (McCoy et al., 1999). According to Kuhn, Weinstock & Flaton (1994) considering alternatives and reflecting on evidence is clearly more competent than not doing so. The finding that deliberating jurors exhibited more advanced reasoning skills than individual jurors may have also been the result of exposure to different ideas during deliberations, which may broaden their view and challenge their own opinions (McCoy et al., 1999).

Greene et al. (1999) also point out that deliberation may act as a corrective technique, whereby misinterpretations of evidence and instructions can be detected and

corrected during discussion with other jurors. In addition, deliberation may also enhance the jurors' involvement with the case, increasing the seriousness and care with which the jurors' consider and scrutinize the evidence. Tetlock (1983) also demonstrated the advantages of group discussion on thought processes in a research study investigating the impact of accountability – the need to justify one's views to others. Results indicated that having to justify one's position to others with unknown views increases an individual's accountability and that having to defend ones position leads to an increase in integrative complexity and helps prevent individuals from becoming cognitively *lazy* in their decision-making. This suggests that when deliberating jurors are discussing their viewpoints, they are more likely to integrate others' ideas and critically analyse them as compared to individual decision-making, as they become accountable for their opinions (Tetlock, 1983). In addition, Greene et al. (1999) similarly state that deliberation may act as a de-biasing technique. This is due to the realisation of jurors' that they may have to justify their verdicts and opinions to others, and therefore they tend to make their decisions based only on relevant evidence. Thus, one would expect the process of deliberation would lead to a reduction in extra-legal biases as the jurors put more effort and cognitive work into their judgements and decisions.

Kaplan and Miller (1978) state that biases originate in the individual juror, with suggestions that the source of bias in individuals is localised in their initial impressions, which continue to affect the subsequent interpretation of information. In addition, prior attitudes in individuals appear to affect the importance they consequently place on congruent and discrepant information regarding the person they are evaluating (Kaplan & Miller, 1978). Furthermore, since the average recall of the jury should be superior to the average recall of the individual juror, more evidence should be available for consideration during the deliberation process, increasing the chances that alternative options may be discussed. Therefore, even if individual jurors had not contemplated particular events, involvement in the group may broaden their ability to consider other scenarios (Kuhn et al., 1994; Ellsworth, 1989). Collectively, the finding that deliberating jurors exhibit better reasoning skills (McCoy et al., 1999), and that biases originate in individuals (Kaplan & Miller, 1978), indicate that the competency of juries is likely superior to that of individual jurors.

Research investigating the impact of deliberation on extra-legal biases, in particular, whether they are attenuated or exaggerated during the process of deliberation has been limited, with many early simulation studies excluding deliberation and focussing on individual judgements (Bagby et al., 1994; Pfeifer & Ogloff, 1991). Despite this lack of research, the studies that have examined this process have found mixed results. A review of this literature is provided next, with eight studies suggesting that extra-legal variables are attenuated following deliberation, and four studies indicating that deliberation causes an exaggeration of extra-legal variables.

An early study by Izzett and Leginski (1974) demonstrated that extra-legal biases that were identified prior to jury discussions, were reduced following deliberation. Results indicated that the contribution of extra-legal variables was lessened when deliberation allowed the integration of legally relevant information into the discussion. More generally, it was found that any conditions that permit the juror to consider and then integrate relevant information would reduce reliance on preexisting dispositions. Furthermore, when able to rehearse (or discuss) relevant information, individuals are better able to integrate the information and draw the response away from the more neutral preexisting disposition (Izzet & Leginski, 1974).

In another early study investigating juror bias, Kaplan and Miller (1978) performed three experiments to explore the contribution of biases to decisions made by juries, by varying the weight of trial evidence. The authors defined biases as "tendencies to judge a defendant or issue on a basis apart from the qualities of the defendant, the case, or the issue" (p. 1444). More specifically, two categories of biases were indicated, the first being specific to the defendant or plaintiff (e.g., racial or ethnic prejudice), and the second being more general (e.g., conviction or acquittal proneness). The results indicated that judgments made by jurors are a joint function of existing predispositions (biases) and information pertinent to the judgment (evidence). The common principle behind this assertion is that the bias decreases as the importance of the evidence increases, in an inverse function. In their study, Kaplan and Miller found that deliberation resulted in a reduction of biases, and had the dual effect of polarising individual jurors' pre-deliberation responses, and reducing their reliance on biases. They suggested that this was due to the facts of the case being reiterated during deliberation and as a consequence,

the jurors took more evidence into account when making their post-deliberation judgement. Therefore, the jurors' increased reliance on the evidence resulted in a decrease in their reliance on biases. The authors concluded that biases found in pre-deliberation judgments should therefore be attenuated in post-deliberation judgments, and judgments should polarise in the direction favoured by the evidence (Kaplan & Miller, 1978).

Kassin and Wrightsman (1983) also provide support for the reduction of extra-legal biases following deliberation, which they state often relies on the jury's foreperson. In their study, they found that a task-oriented foreperson may focus the jury on the rules and facts to be considered in the case, thereby reducing informational ambiguity and the influence of extra-legal biases on decisions made by jurors. In addition, Wright and Wells (1985) also found support for the attenuation of biases following discussion, by investigating the impact of deliberation on the dispositional bias (a tendency to attribute dispositional qualities to an individual, even when they have responded to obvious situational pressures). Results indicated that the dispositional bias was not only reduced, but also eliminated, when the individuals were instructed to render their judgement after deliberating. It was further suggested that discussion made the individuals more cautious or moderate in their judgements, moving them away from such biases.

This finding is consistent with research demonstrating that mock juries are more likely to follow judicial instructions to ignore inadmissible evidence and testimony than are individual mock jurors (Carretta & Moreland, 1983; Kerwin & Shaffer, 1994; London & Nunez, 2000; Thompson et al., 1981). Though few studies have examined the impact of bias and inadmissible testimony, results indicate that deliberation lessens rather than increases bias. Carretta and Moreland (1983) performed a study whereby individuals read a mock trial summary with evidence that favoured either prosecution or acquittal. Results demonstrated that prior to deliberation, the jurors' verdicts and views toward the defendant were biased by inadmissible evidence. Following deliberation, jurors in the pro-acquittal inadmissible evidence condition continued to show bias, however there were no differences in post deliberation verdicts between jurors in the pro-prosecution inadmissible and control groups. This suggests that deliberation can in some

circumstances help jurors' to control the influence of inadmissible evidence on their decisions.

Further support for deliberation reducing bias due to inadmissible evidence comes from Kerwin and Shaffer (1994) who investigated whether members of deliberating juries were more likely than individual jurors to adhere to judicial rulings to ignore inadmissible evidence. Results indicate that the verdicts of both individual non-deliberating jurors and pre-deliberation jury members were biased. However, it was found that following deliberation, mock jury members often changed their pre-deliberation verdicts to disregard inadmissible evidence. Further support that deliberation helps reduce bias caused by the introduction of inadmissible evidence is provided by Thompson et al. (1981). In this study, three versions of a mock trial were presented to mock jurors. The first contained inadmissible evidence supporting acquittal, the second contained inadmissible evidence supporting conviction, while the third mock trial contained no inadmissible evidence. Results revealed that following deliberation, mock jury members that received inadmissible evidence supporting conviction were not biased. Furthermore, bias was only displayed when the inadmissible evidence favoured the defendant's acquittal. The authors suggested that the pro-acquittal jurors might have been especially prone to bias because of an intense reluctance to convict an innocent person. Overall, results displayed that participating in deliberation led to a greater likelihood that inadmissible testimony would be disregarded.

In a more recent study London and Nunez (2000) found that although mock jurors were biased by inadmissible evidence prior to deliberations, the bias was tempered following deliberation. In their first experiment, the post deliberation jurors disregarded inadmissible evidence because of due process concerns (that the evidence was obtained by an illegal search and seizure). The results from the second experiment replicated these findings, that deliberation lessened the biasing impact of inadmissible evidence. In both experiments, mock jurors were generally biased by the presentation of such evidence, however following deliberation, their verdicts were not biased.

However, in contrast to the findings from the aforementioned studies, that deliberation attenuates extra-legal biases, some researchers have suggested that

deliberation has no effect on extra-legal variables, with others stating that this process exacerbates extra-legal biases. A review of these is presented next.

Kramer et al. (1990) performed a study examining the effectiveness of three remedies (judicial instructions, deliberation, and continuance) to combat biases on juror judgements caused by pretrial publicity, by examining verdicts given pre and post deliberation. Results indicated that neither instructions nor deliberation reduced the impact of either form of publicity (factual or emotional) and that a continuance had a small effect most likely attributed to the jurors' forgetting information. Admonitions from the judge to ignore all publicity had no effect on juror or jury verdicts, nor were instructed juries more likely to contest references to pretrial publicity during jury deliberation, than non-instructed juries. With regards to deliberation, this process initially appeared to have served its remedial function, as pretrial publicity was mentioned infrequently during deliberation, and was usually in a cursory manner. Furthermore, reminders from other jurors that it should not be considered almost always accompanied such comments. However, when comparing the pre and post deliberation verdicts, results displayed that neither instructions nor deliberation had any remedial effect on this bias, and deliberation in fact actually strengthened publicity biases. Kramer and colleagues suggested that exposure to such a bias probably affects the actual deliberation process, as the prejudicial pretrial publicity may create a bias in the selection or presentation of arguments during deliberation. For example, the publicity may have led jurors to have a negative impression of the defendant, so jurors may have been less willing to be his defenders in the jury. In addition, very emotional publicity was also demonstrated to reduce the jurors' confidence of their verdict, which may also make them easier to persuade by other jurors' (Kramer et al., 1990).

Results from MacCoun (1990) also provide support that extra-legal biases are exaggerated following the process of deliberation. In a study manipulating the attractiveness of the defendant, results indicated that the physical attractiveness bias only influenced post deliberation mock juror and jury judgments. When the defendant was attractive, there was a shift in judgments toward acquittal, but when the defendant was unattractive, there was no such shift. As a result, mock juries were more likely to acquit the attractive defendant than the unattractive defendant. As prior research demonstrates



that a shift toward acquittal is the modal pattern during deliberation in many criminal cases (MacCoun & Kerr, 1988), MacCoun (1990) suggested that the unattractive defendant did not receive the benefit of the doubt that is usually granted to criminal defendants.

More recently, Steblay, Besirevic, Fulero & Jimenez-Lorente (1999) conducted a meta-analysis of 44 empirical tests representing 5,755 participants on the effects of pre-trial publicity on juror verdicts. Results indicated that a significant impact of pre-trial publicity on juror judgements was identified at three points in time; at pre-trial (contradicting the presumption of innocence until proven guilty); at post-trial, but before deliberation; and at the post-deliberation verdict. Therefore, the data from such studies supported the existence of continued pre-trial publicity effects despite the jurors having deliberated. In support of this finding, Greene et al. (1999) also found that the process of deliberation caused an increase in jurors' biases in a study investigating the effects of injury severity on jury negligence decisions. According to the laws of negligence, jurors' liability decisions are to be influenced by the defendant's conduct, but not by the severity of the plaintiff's injuries. Results indicated that while the defendant's conduct had a strong impact on liability judgements, evidence related to injury severity also had a small effect. Furthermore, it was found that deliberations were of no benefit in reducing the effects of this bias, and injury severity influenced juror decisions even more so after they had deliberated, in contrast to the influence prior to deliberating. Greene et al. (1999) suggested that the jurors may not realise that they are using outcome information (injury severity) to judge the defendant's liability, and when they hear fellow jurors referring to this evidence during deliberation, they may do a poor job of monitoring themselves to ignore such information.

Overall, research investigating the impact of deliberation and group discussion on the effects of extra-legal biases is inconsistent, with support demonstrated for both the reduction and exaggeration of such biases. Moreover, the degree to which the deliberation process reduces or amplifies salient extra-legal biases, such as victim race, has not yet been investigated prior to the current study.

### Summary of the Review on Jury Decision-Making

The four themes that emerged from the literature on jury decision-making indicate that flaws within the jury system are abundant. In addition, findings from the reviewed research suggest that jurors do not make decisions as the courts intend them to. Instead jurors decisions are commonly influenced by stereotypes, schemas and scripts, as well as extra-legal variables, one of these being the race of the victim. Furthermore, jurors' decisions may also be influenced by their own attitudes and values, personality, and demographic similarity to the trial participants. Research also indicates that in cases where the evidence is weak or ambiguous, a jurors' tendency to rely on extraneous, biasing factors that they are either instructed to ignore, or are prohibited from using to make their decision, greatly increases. Finally, the process of deliberation also influences the outcome of the jury. The style of deliberation, whether verdict or evidence-driven, as well as the actual processes involved in deliberation, affect not only the outcome of the jury, but may also affect the influence of extra-legal variables on decision-making.

### METHODOLOGICAL ISSUES IN JURY STUDIES

Jury decision-making has been heavily researched and criticised in the last few decades, with many critiques focussing upon the research designs of such studies, and the subsequent validity of their findings. The most common methodological issues include an inadequate sample of participants, the use of inappropriate dependent measures, the poor presentation of trial information, and a lack of standard jury instructions or jury deliberation. In addition, the demographic composition and the size of the mock jury can also limit the findings of jury research. Finally, a critique of the comparison between decisions made by mock jurors and real jurors is often made. Each of these issues will be discussed next.

### Participant Sample

Most studies investigating jury decision-making have included samples comprised of university student populations (Bagby et al., 1994; Davis et al., 1984; Davis, Au, Hulbert, Chen & Zarnoth, 1997). The use of students has come under much criticism as they form a relatively homogeneous group and are not representative of the population that comprises an actual jury. Dillehay and Nietzel (1980, cited in Bagby et al., 1994) point out that the characteristics of students relative to the public at large, would probably render them less likely to convict. In addition, Sears (1986) identified a number of attributes of college students that illustrate the hazards of using them in studies requiring cognitive tasks or in situations involving conformity pressures. In particular, the students were more susceptible to normative pressures, especially from peers, and were more accomplished at cognitive tasks than members of the general population. As a result, simulations using students as mock jurors may lead to an overestimation of the ability of jurors to handle complex trial testimony or instructions, and the power of an initial majority to produce a unanimous verdict (Diamond, 1997). In addition, Pfeifer & Ogloff (1991) state that students are more likely to pay more attention to details in the simulation, and understand jury instructions better than non-students. Kaplan and Simon (1972) also point out that students may represent a personality component not generalisable to the composition of actual juries, which could affect guilt ratings over stereotypical variables, such that students are less likely to fall victim to stereotypes and labels. Differences between standard jury members and students would likely therefore limit the generalisability of many studies.

### Dependent Measures

A number of studies investigating jury decision-making have also been criticised for using inappropriate dependent variables, such as mock jurors' sentence recommendations for defendants (Gordon, 1990; Guilfoyle, 2002). While data gathered from mock jurors' sentence recommendations have little direct application in Western Australia, as juries do not recommend sentences (Juries Act 1957), research demonstrates

that sentence recommendations can provide a valid measure of prejudice (Gordon, 1990). In a study investigating the effect of prejudice on guilt ratings, Gordon (1990) found a significant main effect for race on sentence recommendations. Guilfoyle (2002) also found that sentence recommendations (measured in years) varied as a condition of the perpetrator's identity in a rape context, with Indigenous Australian perpetrators receiving greater sentences than those who were Asian, white Australian or Ethnic. Therefore, while some critics assert that sentence recommendations are inappropriate dependent measures in jury decision-making research, the literature demonstrates that they can however, inform us about general attitudes to crime, particular races, and the prejudice that arises from these.

#### Presentation of Trial Information

A literature review examining different methods of trial presentation in mock jury studies, conducted by Devine et al. (2001), identified that studies completed in the 1970's and early 1980's lacked elements of mundane realism (e.g., visual media), and instead relied heavily on the written presentation of trial information. Since 1985 however, most studies have used audiotaped or videotaped stimulus materials, or a combination of the two (Devine et al., 2001). In a study investigating the ecological validity of jury simulations, Bornstein (1999) found very few differences between the written, audio and video presentation of trial information. However, it was noted that the courts do not welcome psycholegal research findings when they derive from methods that are not realistic or representative of the actual legal processes. Therefore, it was recommended that research is conducted with more representative and realistic methods, including the use of videotaped trials (Bornstein, 1999).

#### Jury Instructions

Early studies investigating jury decision-making have been criticised for neglecting to provide mock jurors with standard jury instructions that specify the conditions required to find a defendant guilty (Bernard, 1979; Field, 1979). Not only are

these studies limited by neglecting to provide legally relevant variables into their research design, but they also fail to consider the effect of judicial instructions on prejudicial biases (Rector et al., 1992). Pfeifer and Ogloff (1988, cited in Rector et al., 1992) found dramatic differences between mock jurors who received standard jury instructions and those who did not. Results from Pfeifer and Ogloff indicated that although jurors may have prejudicial attitudes regarding a minority person's guilt, they were reluctant to endorse these attitudes when they were given jury instructions to guide their decision-making. These results were later replicated by Pfeifer and Ogloff (1991) who found that the tendency for participants to rate a black defendant as guiltier than a white defendant, disappeared when participants were provided with jury instructions. A study by Rector et al. (1992) also supports the contention that applying jury instructions affects jurors' perceptions of the defendant, victim and incidence of guilty verdicts. Results from this study indicated that jurors weigh the factors of a case more closely when provided with jury instructions. When the judge's instructions were absent, the jurors' decisions appeared to be influenced more directly by the physical characteristics of the defendant, including their race. Therefore, it seems crucial that jury instructions are included in the research design.

Research also indicates that the comprehensibility of jury instructions is an important factor in jury decision-making (Lieberman & Sales, 1997). In particular, the literature indicates that jury instructions are often difficult for lay persons to understand and apply, often attributed to the convoluted and legalistic language of the instructions themselves (Lynch & Haney, 2000). Lieberman and Sales (1997) found that jurors often do not remember, understand or apply the judges' instructions correctly. Hastie, Schkade & Payne (1998) found very low levels of comprehension and memory for information conveyed in instructions on the law. More recently, Lynch and Haney (2000) investigated instructional comprehension and found that participants encountered significant difficulties comprehending the judicial instructions that were intended to guide them, indicating a serious problem with the judge's instructions is evident.

## Deliberation

Research studies investigating jury decision-making that neglect to use group deliberation in their study, and instead rely solely on juror's individual judgments have also been criticised (Kerwin & Shaffer, 1994; Pfeifer & Ogloff, 1991). By failing to incorporate a deliberation period, the study's applicability to the field of law where deliberation is an important part of the process is limited (Pfeifer & Ogloff, 1991). In addition, Kerwin and Shaffer (1994) state that by using only individual judgements, the research ignores the critical role of discourse in verdicts. Furthermore Kerwin & Shaffer found that mock juries that participated in deliberation were more likely to follow judicial instructions and ignore inadmissible testimony than those asked to render a decision individually without deliberation. As a whole, these results indicate the value of testing the impact of deliberations on jury verdicts. In addition, it appears crucial that any study utilising a mock jury that wishes to be generalised to real world situations should employ a deliberation period.

## The Size of the Jury

Research has also investigated differences in the decision-making process of juries of different sizes. An early study by Kerr and MacCoun (1985) investigated the effects of jury size on the process and product of deliberation, by comparing juries with 3, 6 and 12 individuals. Results indicated that as group size increased, the observed probability of a hung jury increased significantly. Furthermore, while no process differences were observed between 6 and 12 person groups, juries with 3 people exhibited several process differences from the larger groups. More recently, Saks and Marti (1997) completed a meta-analysis to assess the effects of jury size on deliberation outcomes using 17 studies comparing 6 and 12 person juries. Results indicated that larger juries took longer to deliberate, were more likely to include an individual from an ethnic minority, and were hung more often. However, they were no more likely to arrive at the *correct* verdict, (defined by the preference of the majority of individuals in the population), than were smaller juries. Smaller juries on the other hand, took less time to

reach a verdict and participation was greater and more variable. Davis et al. (1997) examined the effect of jury size on damage awards in mock civil juries and also found that 6-person juries took less time to reach a verdict and awarded larger damages than 12-person juries and were also more variable in their awards. In contrast to these findings, an earlier study by Saks (1996) concluded that juries should include no less than 12 individuals, as a reduction in this number adversely affects the quality of deliberation. In particular, the author stated that the reliability of the jury's fact finding, the verdict ratio, and the vulnerability of jurors in the minority to conform to pressure by jurors in the majority, were difficulties encountered by smaller juries.

In summary, studies investigating process differences between juries of different sizes demonstrate varying results. It appears that smaller juries not only reach a verdict or decision faster than larger juries, but foster more participation from group members. It is clear that more research is required to determine the true impact of having smaller numbers of jurors than the standard 12 members.

#### Mock Jurors versus Actual Jurors

Due to legal and practical constraints, in addition to the privacy laws governing jury deliberation and discussions, the majority of research investigating jury decision-making has been conducted on mock juries in simulated trials (Hastie, 1993). More recently, however researchers in the United States have been conducting investigations using actual jurors and juries (Devine et al., 2001). Both mock and real forms of jury research have obvious limitations including the lack of generalisability to actual juries for the former, and an inability to control and manipulate multiple variables for the latter. For these reasons, the comparisons made between decisions made by mock jurors and actual jurors is often criticised. Research demonstrates that a number of factors that affect actual jurors are unlikely to affect mock jurors, making their comparison questionable (Greene et al., 1999). Presumably, jurors in a real case are more motivated to attend to the trial evidence, to determine the verdict he or she really prefers, to persuade fellow jurors that the jury verdict is consistent with that preference, and be more emotionally invested in the case, as opposed to mock jurors (Devine et al., 2001)

## RATIONALE FOR THE PRESENT STUDY

As the literature demonstrates, jury decision-making has been well researched, with numerous studies having been conducted in the last 45 years. Results from such studies clearly indicate that despite efforts to make the practice of jurors and juries as fair and accurate as possible according to law, there exist many flaws, including the influence of extra-legal variables on jury decision-making. Due to Australia's diverse and multicultural population, individuals presenting before the court often represent a diverse range of races. In addition, it is well documented that prejudice toward minority groups has been identified within Australia (Mellor, 2003; Pedersen & Walker, 1997). It is for these two reasons that race is an important extra-legal variable that requires investigation within Australia. Unfortunately, the majority of studies investigating race as an extra-legal variable have been conducted in North America. Results from such studies have indicated that the race of both the defendant and the victim often influence jury decision making. Due to the dearth of research investigating the effect of characteristics of the victim, and an abundance of research examining the effect of characteristics of the defendant and other trial participants, this thesis will examine the race of the victim.

Due to Australia having a dominant Caucasian race, it was assumed that when the victim is Aboriginal, Asian or of a Middle-Eastern origin, jurors' judgements of the defendant, crime and the victim will be negatively prejudiced by the victim's race, and that when the victim is Caucasian, no such prejudice will impact upon the jurors' decision-making. It was also assumed that deliberation would attenuate the influence of the extra-legal variable of the victim's race, such that any bias observed in pre-deliberation judgements will be reduced in post-deliberation judgements.



## Method

### *Participants*

Participants were recruited from the Perth metropolitan area via advertisements and posters placed within community newspapers and shopping centres respectively. The posters contained information which requested the voluntary participation of persons for a study investigating juries and the legal system, and made no mention of race. One hundred and six participants applied to take part in the study, all of whom were selected. Selection was made according to the criteria set forth for actual jury participation in the Juries Act of Western Australia (1957). The participants were aged between 18 and 64 years, and the sample was comprised of 47 males and 59 females. Research displays that the gender composition of the jury may have an effect on decision-making in rape cases (Fischer, 1997). Findings from a study by Fischer (1997) indicated that juries that were composed mostly or entirely of women tended to convict a male defendant more often than juries with a lower proportion of women. As the current study utilises an attempted rape trial, participants were randomly assigned to each jury group in an attempt to prevent this problem from occurring. Table 1 displays the number of males and females in each jury across the four conditions.

Table 1  
*Gender Distribution of Mock Jurors across Victim Race Condition*

	Aboriginal	Asian	Caucasian	Middle-Eastern	Total
Male	7	17	12	11	47
Female	18	13	14	14	59
Total	25	30	26	25	106

An observation of participants indicated that while the majority was of Caucasian race, the sample also included several individuals from Asian and Middle-Eastern countries. It was also noted that of the Caucasian individuals, several were originally from the United Kingdom and the United States. However, it should be noted that all of these individuals had become Australian citizens and were therefore eligible to

participate. Research investigating the effect of the demographic composition of juries on their judgements and verdicts has revealed a juror-defendant similarity bias across a number of studies (Abshire & Bornstein, 2003; Hastie et al., 1998). For this reason, mock jurors were randomly allocated to 1 of 12 jury groups in an attempt to prevent this problem from occurring. When participants failed to attend a set jury, they were randomly placed in another, and the experiment continued as long as the mock jury had no less than six people. The number of participants in each jury ranged between 7 and 12. As previously mentioned, most research investigating jury size indicates that significant process differences only tend to emerge when members of a jury have fewer than four individuals, with few differences detected between 6 and 12 person juries (Kerr & MacCoun, 1985; Saks & Marti, 1997). For this reason, the slight variation in the size of the juries in the current study should not pose any problems. Participants were not paid, nor did they receive any inducements for their part in the study.

### *Research Design and Analysis*

The study aimed to investigate whether mock jurors' perceptions of victims, the crime and the defendant would be different if the victims were of different races, and if deliberation would change these perceptions. The race of the victim (Aboriginal, Asian, Caucasian, Middle-Eastern) was manipulated in an experimental design. The participants were randomly assigned to one of the four experimental conditions, with three juries allocated to each of the four victim race conditions. All participants engaged in a deliberation period and their perceptions pre and post deliberation were compared. This study therefore aimed to investigate the simultaneous effect of two independent variables. A mixed factorial design was employed with the race of the victim as the between subjects factor, and deliberation as the within subject factor. The dependent variables, obtained from a study by Greene et al. (1998), included five variables related to the victim: Sympathy for the victim, Victim's likeableness, Victim's reliability, Victim's honesty, and Victim's value to the community. Another three related to the crime: Seriousness of the crime, Impact of the crime on the victim, and Victim's responsibility for the crime. Finally, the last two related to the defendant; the Guilt of the defendant, and a sentence recommendation for the defendant.

As the researcher aimed to investigate the interaction between a between subjects variable (race) and a within subjects variable (deliberation), a mixed design analysis of variance (ANOVA) technique was utilised to analyse the data. A series of 4 x 2 ANOVAs (race x deliberation) were employed across the ten dependent variables. Despite the use of multiple tests in the analysis of the data, the Bonferroni adjustment was not applied to the alpha level to reduce the probability of Type 1 errors. Bender and Lange (2001) state that multiple test adjustments are not strictly required as long as the research is exploratory in nature and the data is collected with an objective hypothesis. Due to the limited amount of research performed in the area of the current study, this research is not only exploratory, but was collected without key hypotheses. Furthermore, as each test was performed separately, and each was measuring a separate construct (each dependent variable) the correction was deemed unnecessary. Finally, the Tukey's Honestly Significant Difference (HSD) test and single factor ANOVAs were applied to perform post-hoc comparisons across each of the means. The effect size, using eta squared was interpreted using Cohen's (1988) guidelines.

An analysis of the deliberation period for each mock jury was also conducted. As previously mentioned, research investigating the process and style of deliberation identified that jurors most often deliberate in one of two ways. The first is to begin with verdict preferences and discuss evidence relevant to these preferences; the second begins with a detailed discussion of the evidence and construction of a plausible story of the case, ending with verdict preferences (Kameda, 1991). In addition, from an analysis of 18 mock juries, Ellsworth (1989) found that the content of jury deliberation included a discussion of the facts of the case (evidence), important contested issues (defendant and witnesses testimony), the law, a call for a vote, and the judge's instructions. This research was used as a guide in the development of a series of categories that defined particular topics of conversation, based upon the most frequently discussed themes in these juries and information from previous research. This classification was checked and refined by a postgraduate supervisor. Two trained, postgraduate psychology students then coded each statement made by the jurors into one of the eight categories, and timed the duration of discussion within each category with a stopwatch, to allow for a comparison between

juries. Any disagreement in coding was resolved by consensus. The categories are listed below with a brief description of the types of conversation each comprised.

- The Defendant: Discussion specific to the defendant, ranging from his appearance, his testimony, his actions on the night of the crime, and his demeanor/conduct.
- The Witnesses: Discussion specific to the witnesses (excluding the defendant and victim), including their demeanor, testimony, conduct, and appearance.
- The Evidence: Discussion related to the evidence presented during the trial, including the watch, the jacket, the gag, and the testimony of the witnesses related to the evidence.
- The Defendant's Guilt: Discussion specific to the guilt of the defendant, (e.g., Jurors' polling methods, arguments as to his guilt).
- The Crime: Discussion specific to the 'crime' itself, or that of attempted rape in general.
- Jury Instructions: Discussion related to the instructions given to the jury before deliberation.
- The Victim: Discussion specific to the victim, ranging from her appearance, conduct/demeanor, testimony, and actions on the night of the crime.
- Non-Specific: Any discussion by members of the jury, which did not meet the criteria for inclusion in the aforementioned categories.

### *Instruments*

The present study aimed to examine jurors' judgements of the victim, crime and the defendant as a function of the race of the victim, and the effect of deliberation on such judgements. No specific instrument could be located which measured these criteria. As such, a juror decision-making questionnaire was developed for the purpose of this study (see Appendix A), based on a questionnaire used by Greene et al. (1998). In their study, the impact of a victim's character on jurors' judgements of the victim, defendant, crime, and the survivors, was measured by having participants rate their judgements on a number of items using a 6-point Likert-scale. Such items included: the weight the participants attributed to aggravating and mitigating circumstances; the defendant's likeableness, dangerousness and the chances for rehabilitation; the victims' likeableness,

decency and value to the community; the compassion the participants felt for survivors; the impact of the murder on the victim's family; and the severity of the offence. As the present study similarly aimed to measure the impact of a characteristic of the victim (her race, as opposed to her character in the Greene et al. study) on juror judgements of the victim, defendant and crime, the jury decision-making questionnaire was adapted from the instrument utilised by Greene and colleagues.

Two versions of the juror decision-making questionnaire were utilised. The first version was used in the pre-deliberation period and contained nine statements about the victim, crime and the defendant. These measured five aspects related to the victim: her honesty, reliability, likeableness, value, and sympathy toward her; three aspects related to the crime: its impact on the victim, its seriousness and the victim's responsibility for the crime; one aspect related to the defendant: a rating of his guilt; and finally, a sentence recommendation (1-10 years). Each of the items were provided in a randomised order next to a 7-point Likert scale, and with the exception of the victim's responsibility, were anchored by strongly disagree (value of 1) to strongly agree (value of 7). For the item regarding the responsibility of the victim, the anchor ranged from not responsible at all (value of 1) to very responsible (value of 7). The second version of the questionnaire was used in the post-deliberation period and contained the same nine statements and scales. The statements were placed in a different order however, to ensure that participants did not simply recall and repeat their responses to the first questionnaire. The third questionnaire, also completed post-deliberation, contained two questions to directly assess the impact of the race of the victim on their own, and other jurors' responses to the statements on the first two questionnaires. While these included a 7-point Likert scale, a free response section was also provided so participants could detail the reasons for their selected option on the scale.

To ensure participants were primed for the race of the victim, and that it was correctly identified, the questionnaires also contained a boxed off section on the top left-hand corner of the first page titled *Administration*. This asked participants to list the victim and defendant's race, the date, and their gender. The latter two details were included to avoid a focus on the race of the victim and defendant, and ensure that the administration section appeared as general as possible. An analysis of the participants'

responses to the victim's race in each condition revealed that all had correctly identified the victim's race.

### *Materials*

The materials consisted of four videotapes displaying the re-enactment of an attempted rape court trial. Each videotape was identical with the exception of the introduction, which described the ethnicity of the victim. This consisted of the statement: "You are about to watch the re-enactment of a court case describing the attempted rape of a young Aboriginal/Asian/Caucasian/Middle-Eastern woman." The following scenario was presented in the videos:

*A 24-year-old woman was driving home from work when her car broke down. While walking to find a phone box to call for assistance, she was pulled into bushes in a nearby park. The attacker ripped at her clothes and violently pinned her arms to the ground. A male bystander walking his dog disturbed the attack, causing the attacker to flee. He offered to take the victim to the police station, however she was too shaken and asked to be driven home, but took his phone number should she need a witness. Two weeks later, the victim was convinced by a friend to report the incident, and called the police who went with the victim to the scene of the crime. A watch with an inscription, stamp and broken band was found at the crime scene, which led to the questioning of the accused. The accused, who presented with an alibi, stated that his watch had been stolen weeks earlier. The bystander and the victim were unable to formally identify the accused due to impaired vision on the night of the attack due to poor lighting. Due to the time delay in the victim's reporting of the incident – no forensic evidence could be obtained.*

The transcript was written by the researcher and amended by two lawyers to enhance both its accuracy and realism. The scenario was specifically designed to be ambiguous, such that the evidence favoured neither the defendant nor the victim. This was done in view of findings that extra-legal biases most often emerge in cases of ambiguity as a lack of strong evidence leads jurors to rely on external information, such as the characteristics of the defendant or victim (Hymes et al., 1993; Rector et al., 1992).

The transcript was administered to a total of 40 participants known to the researcher, but who did not participate in the actual study. Each participant individually read the transcript and rendered a verdict. An analysis of the jurors' verdicts demonstrated that they were equally divided in their determination of guilt or innocence, indicating that the trial and the crime scenario was ambiguous, as designed.

A large room with 12 chairs and desks, a television and a videocassette recorder was organised. A video camera was used to record the deliberation process. Pens and paper were also provided for note taking. In Western Australia, to protect the anonymity of persons involved in a trial, the general ruling in the Supreme Court is that jurors are not permitted to take notes. However, this ruling is dependent upon the particular judge in each trial and taking notes is often permitted to enable jurors to accurately recall details of evidence. In addition, jurors may also view a limited selection of documents from the crown and defense, that they may also take notes from. In complex trials, judges have also been observed to instruct the jurors to take notes during the trial (P. Calabrese, personal communication, October 8, 2003).

Research investigating the effect of juror note-taking on decision-making indicates that note-takers demonstrate superior cognitive performance and more effective decision-making over non note-takers (Forster-Lee & Horowitz, 1997). Furthermore, a study by Heuer and Penrod (1994) which examined juror note-taking in 160 trials found that note-taking takes little time, does not distract jurors from the trial, or produce a distorted view of the case. Forster-Lee, Horowitz and Bourgeois (1994) similarly found that note-takers performed more competently than non note-takers with the greatest impact at the encoding stage, indicating that the process of writing notes aids in comprehension. For these reasons, the researcher permitted the jurors to take notes while watching the video simulation in the present study.

### *Procedure*

Before commencing any testing, all participants read the information sheet and signed the consent form. They were then seated at a desk, each of which had an envelope containing the three questionnaires. Each jury then viewed one of four versions of the videotape (dependent upon which condition they were placed in), which lasted

approximately 35 minutes. Following this, participants individually completed the pre-deliberation questionnaire, and placed it back in the envelope. The chairs were then rearranged so all participants were facing one another for the deliberation period.

The researcher then administered a simplified version of jury instructions to guide the jurors in deliberating. In Western Australia, the Supreme Court judges' instructions to the jury are very detailed and comprehensive, and include details of the evidence presented by both the crown and the defense, in particular what is ruled admissible and inadmissible; a statement and definition of the charges against the defendant; and all related elements of the law (G. Pride, personal communication, October 8, 2003). Due to the rather simple nature of the scenario presented to the juries in the present study, in addition to time constraints, the researcher decided to use a simplified version of jury instructions that were obtained from a study by MacCoun and Kerr (1988). As research demonstrates that jury instructions are often difficult for lay persons to understand, remember and apply, those obtained from MacCoun and Kerr (1988) were modified to improve their comprehensibility, and were as follows:

*Before you can find a man guilty of a crime, the prosecution must demonstrate with evidence that the defendant committed the crime beyond reasonable doubt. If the evidence suggests to you that it is more likely that the defendant committed the crime, than not, the law requires you to find him guilty as charged; but if you feel that it is more likely that he is innocent than guilty, the law requires you to find him not guilty. In summary, you must establish that the defendant is guilty or innocent beyond reasonable doubt and your verdict should favour the side that has presented the stronger evidence.*

Following the administration of the jury instructions, the mock juries were asked to deliberate regarding the case for a maximum of one hour. This was videotaped with the participants' consent, for the purpose of analysis. For those juries that neared the one hour maximum, the researcher informed them when five minutes of deliberation time remained, upon which it would be terminated. At the conclusion of the deliberation period, the chairs and desks were returned to their original positions, and each participant individually completed the two remaining post-deliberation questionnaires. After these



were returned to their envelopes, the researcher collected them. The participants were then debriefed regarding the purpose of the study after which they were given the opportunity to ask questions, and each were thanked for their participation.

## RESULTS

### Quantitative Analysis

The requirements of ANOVA are that the data meet two assumptions, namely normality and homogeneity of variance. While most of the items approached a normal distribution, a positive and negative skewness were identified for four of the items. For sympathy towards the victim, the impact of the crime, and the seriousness of the crime, the distributions were negatively skewed, indicating that the majority of the participants were very sympathetic to the victim, saw the crime as having a large impact, and the crime as being very serious. In contrast, the victim's responsibility was positively skewed, indicating that most participants perceived the victim as not being very responsible for the crime. Given the nature of the crime in the current study, skewness in favour of the victim, as identified in this case, is not surprising. This often indicates that the participants were engaged with the scenario and were on side with the victim. In addition, as indicated in Tabachnick and Fidell (2001), if there are at least 20 degrees of freedom for error, the *F*-test is regarded to be robust against violations of the normality assumption. The error degrees of freedom in the current study were 102 for all the factorial ANOVAs and the analyses could therefore be considered robust against violations of the normality assumption. For this reason, the data were not transformed to obtain normal distributions.

Tests of homogeneity showed some non-homogeneity of variance and variance-covariance matrices in the variables for reliability, value, seriousness, responsibility and sentence. However, as cell sizes were close to equal and the higher dispersions were generally not associated with the smaller sample sizes, except in the case of seriousness and impact, the risk to Type 1 error was low. Some caution in interpretations is required for the variables of seriousness and impact.

Preliminary one-way ANOVAs showed no significant differences within each set of three juries dedicated to one victim's race. The data from the different juries for victims of each race were then combined in further analyses. Independent *t*-tests across each variable at pre and post deliberation showed no significant differences in respect of the gender of the participants, and data for male and female participants were thus

combined. A series of 4 x 2 ANOVAs were then performed for the different questionnaire items - Victim: honesty, reliability, likeableness, sympathy, value; Crime: responsibility, seriousness, impact; and Defendant: sentence, and guilt. Cell means and standard deviations are displayed in Table 2 alongside an indication of significant effects. Table 3 displays the details of the ANOVA results.

### The Victim

As shown in Table 2, deliberation had a significant main effect on juror's judgements of the victim's character. Pre and post analyses showed that regardless of their race, the victim was seen as more reliable ( $M = 4.93$  versus  $M = 5.29$ ), and likeable ( $M = 4.98$  and  $M = 5.30$ ) after deliberation. There was also more sympathy for the victim after the jury deliberation ( $M = 5.90$  and  $M = 6.18$  respectively). The deliberation effect approached significance for ratings of the victim's honesty ( $p = .051$ ) with victims being seen as more honest post deliberation. However, the effect size as measured by eta squared was relatively small for all the judgements of the victim's character. The proportion of variance in the scores accounted for by deliberation was 1.4% for sympathy towards the victim, and 2% for both victim's likeableness and reliability.

### The Crime

The effects of the victim's race congregated about the crime rather than the victim per se. In respect of the seriousness of the crime, the effect for race approached significance ( $p = .053$ ). The crime was perceived as most serious when involving a Caucasian victim ( $M = 6.60$ ) and declining for the Asian ( $M = 6.50$ ) and Aboriginal victims ( $M = 6.44$ ). Participants viewed the crime as least serious when the victim was Middle-Eastern ( $M = 6.02$ ).

In respect of the judgements of the victim's responsibility, there was a significant interaction between the victim's race and deliberation. This is illustrated in Figure 1. on p. 47. However, at less than 1%, the effect size was small.

**Table 2**  
*Mean Scores and Standard Deviations of Judgements of Victim, Crime and Defendant as a Function of Victim Race and Deliberation*

Item	Aboriginal		Asian		Caucasian		Middle-Eastern		Total		Effect
	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>	
<b>Victim</b>											
Honest											
Pre	5.56	1.12	5.43	1.33	5.42	0.94	5.40	0.82	5.45	1.07	
Post	5.92	1.32	5.80	1.30	5.54	1.30	5.44	1.00	5.68	1.24	
Reliable											
Pre	5.08	1.08	5.13	1.33	4.69	1.40	4.80	1.15	4.93	1.25	D*
Post	5.36	1.18	5.53	1.30	5.11	1.34	5.12	0.88	5.29	1.19	
Likeable											
Pre	5.28	1.02	4.63	1.27	5.04	1.15	5.04	1.06	4.98	1.14	D*
Post	5.64	1.08	5.07	1.17	5.23	1.21	5.32	0.99	5.30	1.12	
Sympathy											
Pre	6.00	1.16	5.97	1.13	5.81	1.33	5.80	1.08	5.90	1.16	D*
Post	6.44	1.12	6.27	1.39	6.04	1.18	5.96	0.93	6.18	1.18	
Valuable											
Pre	5.96	0.98	5.37	1.42	5.31	1.49	5.24	1.09	5.46	1.29	
Post	6.04	0.98	5.60	1.22	5.27	1.34	5.72	1.17	5.65	1.20	
<b>Crime</b>											
Responsible											
Pre	1.36	0.91	2.07	1.39	1.88	1.28	1.64	0.91	1.75	1.17	D X R*
Post	1.56	1.36	1.67	0.88	2.38	1.55	1.76	1.13	1.84	1.26	
Serious											
Pre	6.52	0.65	6.40	0.81	6.58	0.64	5.92	1.19	6.36	0.87	
Post	6.36	1.29	6.60	0.89	6.62	0.80	6.12	1.13	6.44	1.04	
Impact											
Pre	5.88	1.17	5.60	1.52	5.65	1.06	5.64	1.26	5.69	1.26	
Post	6.04	0.94	5.80	1.16	5.65	1.06	5.84	1.18	5.83	1.08	
<b>Defendant</b>											
Guilt											
Pre	3.92	1.55	3.67	1.77	3.62	1.65	3.04	1.54	3.56	1.64	D*
Post	3.44	1.56	3.37	1.99	3.37	1.99	2.40	1.47	3.13	1.80	
Sentence											
Pre	4.36	4.10	3.27	3.60	4.85	3.71	1.44	2.24	3.48	3.67	D X R*
Post	3.96	4.20	3.67	4.00	3.42	3.94	0.92	1.89	3.03	3.80	

*Note.* Pre and Post indicate pre and post deliberation judgements with the main effect for deliberation represented in the Total column. The sentence recommendation ranged from 1-10 years. All other judgements on a 7-point Likert scale (generally 1 = Strongly Disagree to 7 = Strongly Agree, but for question about victim's responsibility 1 = Not Responsible at all to 7 = Extremely Responsible). X = Interaction. D = Deliberation. R = Race.

\* $p < 0.05$ .

Table 3

*Analysis of Variance for Judgements of the Victim, Crime and Defendant across Victim Race and Deliberation*

Item	<i>df</i>	<i>F</i>	<i>p</i>
Victim			
Honest			
Race	3	0.50	.680
Deliberation	1	3.89	.051
Race x Deliberation	3	0.56	.640
Reliable			
Race	3	0.99	.397
Deliberation	1	9.58	.003*
Race x Deliberation	3	0.08	.969
Likeable			
Race	3	1.60	.194
Deliberation	1	12.78	.001*
Race x Deliberation	3	0.36	.783
Sympathy			
Race	3	0.60	.615
Deliberation	1	7.25	.008*
Race x Deliberation	3	0.31	.819
Valuable			
Race	3	1.94	.127
Deliberation	1	3.08	.082
Race x Deliberation	3	1.04	.377
Crime			
Responsible			
Race	3	1.86	.140
Deliberation	1	0.87	.353
Race x Deliberation	3	2.97	.036*
Serious			
Race	3	2.65	.053
Deliberation	1	0.05	.499
Race x Deliberation	3	0.68	.564
Impact			
Race	3	0.43	.734
Deliberation	1	1.70	.196
Race x Deliberation	3	0.19	.899
Defendant			
Guilt			
Race	3	2.07	.109
Deliberation	1	7.12	.009*
Race x Deliberation	3	0.21	.886
Sentence			
Race	3	1.70	.179
Deliberation	1	0.93	.341
Race x Deliberation	3	4.14	.011*

*Note.* The degrees of freedom for the between subject and within subject error is 102.

\* $p < 0.05$ .

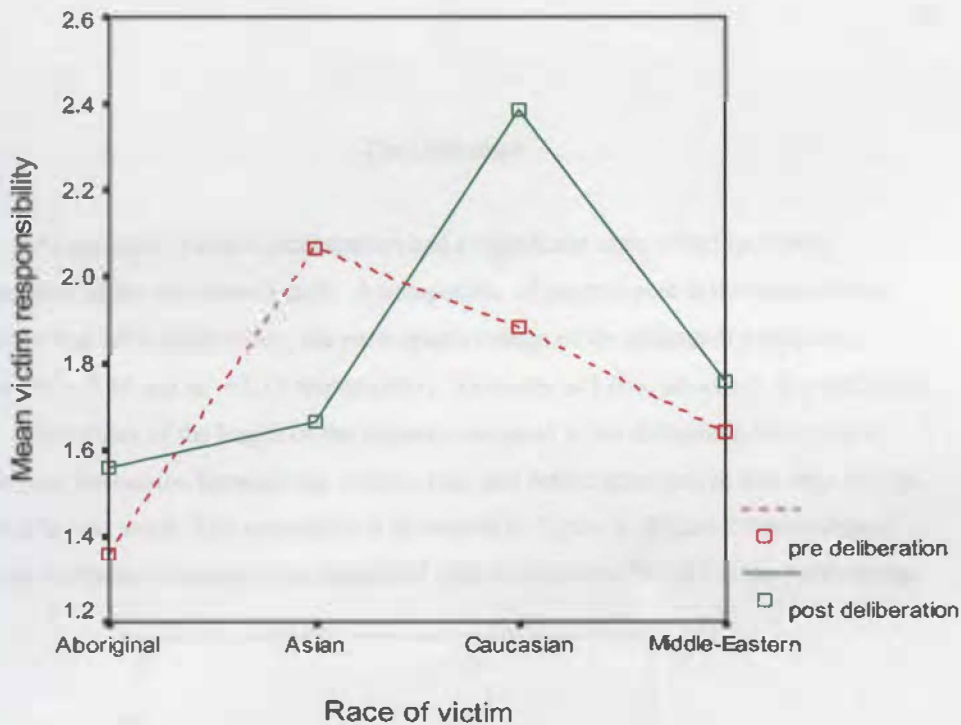


Figure 1. Jurors' judgements of victim's responsibility as a function of victim race and deliberation (1 = not responsible at all, 7 = extremely responsible).

Post-hoc analyses using Tukey's Honestly Significant Difference (HSD) tests showed no significant differences in the assigned responsibility for the victims of different race at either pre or post deliberation. The simple effects of deliberation were investigated by means of single factor ANOVAs. The deliberation effect approached significance for the Caucasian victim ( $p = .056$ ), with higher responsibility assigned to the victim post deliberation. However, the only significant difference in the pre and post deliberation assignment of responsibility was for the Asian victim,  $F(1,29) = 6.00$ ,  $p < .05$ . The Asian victim was assigned significantly less responsibility ( $M = 1.67$ ) after deliberation, than before ( $M = 2.07$ ).

### The Defendant

As shown in Table 2, deliberation had a significant main effect on jurors' judgement of the defendant's guilt. A comparison of pre and post deliberation scores illustrate that after deliberation, the participants ratings of the defendant's guilt were lower ( $M = 3.56$  and  $M = 3.13$  respectively). However at 1.6%, the effect size was small.

In respect of the length of the sentence assigned to the defendant, there was a significant interaction between the victim's race and deliberation but, at less than 1%, the effect size was small. The interaction is illustrated in Figure 2. Figure 2 demonstrates that the defendant's sentence was decreased after deliberation for all but the Asian group.

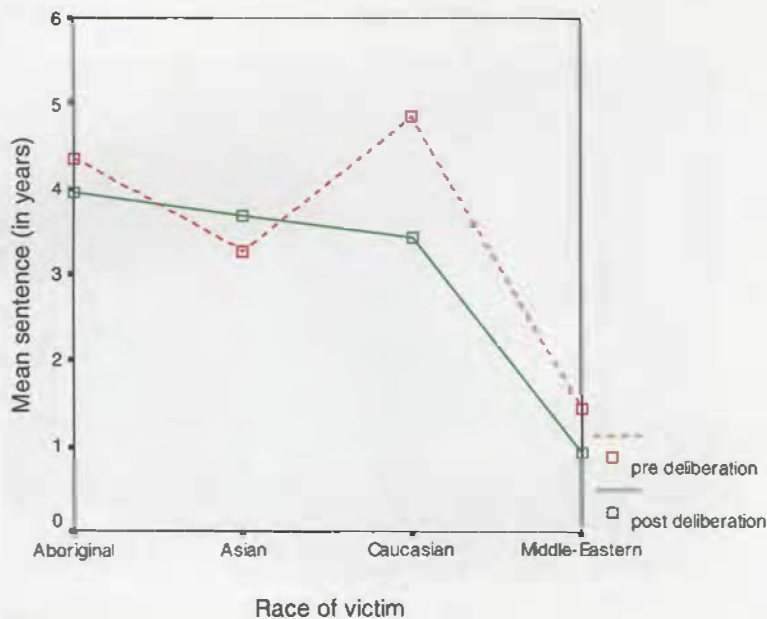


Figure 2. Juror's judgement of defendant's sentence as a function of victim race and deliberation.

Post-hoc Tukey's HSD tests showed no significant differences in the sentence assigned for victims of different race at either pre or post deliberation. The simple effects of deliberation were investigated by means of single factor ANOVAs, which indicated a

significant effect for the length of sentence for the Caucasian victim only,  $F(1,16) = 4.92, p < .05$ . In the case of the Caucasian victim, there was a significant decrease in the length of sentence assigned to the defendant from pre deliberation ( $M = 6.41$ ) to post deliberation ( $M = 5.24$ ).



### Qualitative Analysis

Preliminary analyses of the discussion in each deliberation period across the four conditions, demonstrated large differences regarding both the topics of discussion and the time dedicated to each. The content of the discussion was coded into eight set categories, namely: the victim, defendant, witnesses, evidence, guilt, the crime, jury instructions and a non-specific category. Each category was quantified as a percentage of the total deliberation period for that jury, to represent the amount of time dedicated to discussing that topic. This allowed a comparison across the different race conditions to be conducted. These results are displayed in Figure 3.

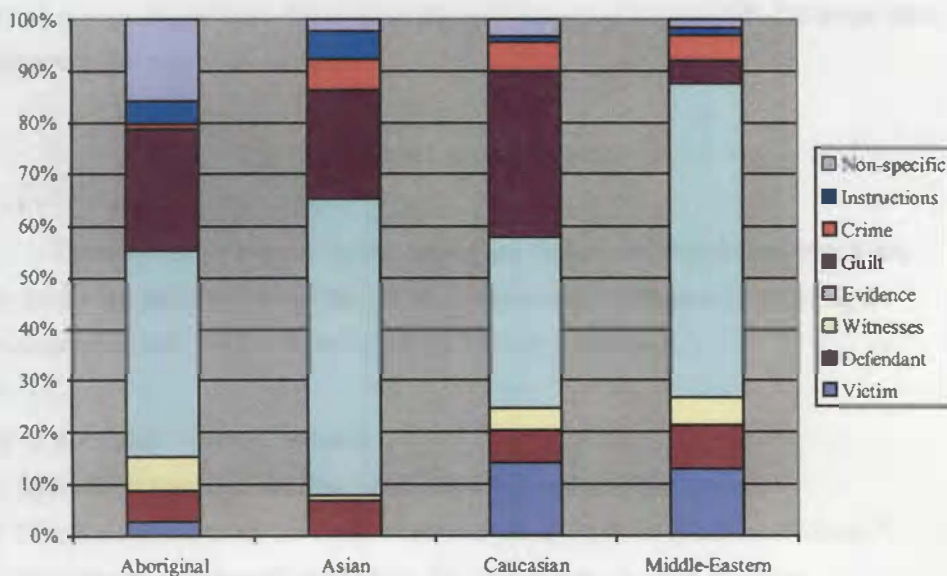


Figure 3. Percentage of time spent discussing specific categories during deliberation across the four race conditions.

As Figure 3 demonstrates, a discussion of the evidence presented during the trial (in particular the watch, eyewitness accounts of the perpetrator, and the victim's clothes) constituted the most sizeable proportion across all four conditions during the deliberation

periods. Discussion of the categories of jury instructions, the crime, the witnesses, and the defendant were fairly uniform across the four conditions with no major discrepancies noted. The most notable differences between the deliberations for each condition included the time dedicated to non-specific comments, discussion of the defendant's guilt, and of the victim. Juries in the Middle-Eastern condition spent very little time discussing the defendant's guilt, in comparison to the other juries. In addition, while most juries spent very little time discussing non-specific information, this constituted a sizeable proportion of discussion time in the Aboriginal condition. Finally, discussion of the victim constituted a small proportion of discussion in the Middle-Eastern and Caucasian conditions, a lesser amount in the Aboriginal condition, and with no mention of the victim in deliberations for the Asian condition. Further analyses of the discussions within the jury groups, in particular the topic of the victim, support the quantified findings with reference to the race of the victims.

#### Aboriginal Victim Condition

Discussions by the jurors in the Aboriginal victim condition demonstrated that they held a sympathetic view of the victim, with particular reference to her being the victim of an assault. This is illustrated in the following excerpt.

##### Jury 1: Aboriginal Victim Condition

*1A: "It makes it hard that she didn't come forward earlier to the police."*

*1B: "Yeah, she threw away her clothes and everything...got rid of all the evidence."*

*1C: "And she washed herself, everything. But that's such a natural reaction though...after all that she's been through."*

*1B: "Yeah, I think it's been proven that when you're assaulted, you feel ashamed and embarrassed about the whole act...that's why victims don't report it."*

*1A: "And her reasoning behind it all, that she didn't want to worry her parents and she felt awful...that's understandable. I feel that in her mind, she can't put it out of her head, this assault."*

Jurors also expressed sympathy toward the victim with direct reference to her race. As the following excerpt demonstrates, the discussion included that Aborigines have a *difficult* experience in Australian society and as such, the victim may not have felt comfortable in reporting the crime to the police. Furthermore, a closer analysis of the deliberation suggests that participants may have felt somewhat uncomfortable discussing the victim's race. This was indicated by some participants promptly changing the topic of the victim's race to that of her reaction to the crime, and her gender. When her race was mentioned for a second time, the same pattern emerged with the topic changed by a juror to that of the male witness.

Jury 2 : Aboriginal Victim Condition

2A - *"I really wonder why she didn't go to the police, maybe because she is an Aboriginal and she..."*

2B - *(interrupts) "Yes, and she'd have to answer more questions."*

2A - *"Yes, more questions, and she knows that she's going to be blamed for it, and everybody there, they're all white, the police, the witness, they're all white..."*

2C - *(interrupts) "But I think that's quite common regardless of her race, she was in shock, and she would just want to go home first."*

2B - *"It shouldn't matter that she's Aboriginal, any girl, if it happened to them, they're scared because its always said that they are to blame."*

2C/E - *"Yeah, yeah"*

2A - *"But I'd have to say, if I was an Aboriginal, I wouldn't go to the police."*

2E - *"Just being female, they won't believe you. More so if you're an Aboriginal, but just being female, those issues are there."*

2C - *"Yes, but even in the condition that she was, she wouldn't be in the position to answer all the questions they'd want to ask her."*

2D - *"What did everyone think about the man who was the witness?" → (Subject changes to witness).*

The jurors' sympathetic view toward the Aboriginal victim as displayed in the above analysis, was also demonstrated in several trends observed in the quantitative

analysis, which did not reach significance. When the victim was Aboriginal, participants rated the defendant as guiltier ( $M = 3.68$ ) than defendants in the Asian ( $M = 3.52$ ), Caucasian ( $M = 3.44$ ) and Middle-Eastern ( $M = 2.72$ ) conditions; and the crime as having a larger impact ( $M = 5.96$ ) on the Aboriginal victim, than the Asian ( $M = 5.70$ ), Caucasian ( $M = 5.65$ ) and Middle-Eastern ( $M = 5.74$ ) victims.

Participants also had more sympathy for the victim when they were Aboriginal ( $M = 6.22$ ), compared to the Asian ( $M = 6.12$ ), Caucasian ( $M = 5.92$ ) and Middle-Eastern ( $M = 5.88$ ) victims; and rated them as more likeable ( $M = 5.46$ ) than the Asian, Caucasian and Middle-Eastern victims (means of 4.85, 5.13 and 5.18 respectively). Aboriginal victims were also perceived as more honest ( $M = 5.74$ ) than the Asian, Caucasian and Middle-Eastern victims, ( $M = 5.62, 5.48, 5.42$ ); and as more valuable to the community ( $M = 6.00$ ) than the Asian ( $M = 5.48$ ), Caucasian ( $M = 5.29$ ) and Middle-Eastern ( $M = 5.48$ ) victims. In addition, the defendants also received the longest sentences when the victims were Aboriginal ( $M = 4.16$ ) and Caucasian ( $M = 4.13$ ) with shorter sentences assigned to defendants when the victims were Asian ( $M = 3.47$ ) and Middle-Eastern ( $M = 1.18$ ).

In addition, the open ended responses on the questionnaires demonstrated similar themes about potential stereotyping experienced by this group as well as a sympathetic attitude by jurors: *"The victim did not go immediately to the police to report the assault because being Aboriginal, she may not have been treated as a totally reliable witness and would probably have been met with prejudice"* (Juror 2E).

#### Asian Victim Condition

Analyses of the jurors' discussion during the deliberation period failed to find any mention of race, stereotypes or culture for victims in the Asian conditions. In addition, jurors in all three Asian victim conditions neglected to mention the victim at all. Instead, the discussion tended to focus mainly on the evidence, as displayed in the next excerpt.

#### Jury 11: Asian Victim Condition

11A - *"He may be guilty, but there's just not enough evidence."*

*11B - "And it has to be proven beyond a reasonable doubt."*

*11D - "I mean, that's right, you can't say that he's guilty just because of his height either."*

*11A - "Well, there's two or three jurors in this room that are that size too, it's probably the size of 50% of men in this country."*

*11C - "His alibi seems ok though, but..."*

*11B - "Well his roommate could be lying for him, don't forget that."*

*11D - "Regardless, you can't find him guilty over that."*

The finding that the Asian victim was not mentioned at all is interesting, given that a significant finding was obtained in the quantitative analysis with regard to the victim's responsibility for the crime. After deliberation, the Asian victim was found to be significantly less responsible than before deliberation.

#### Caucasian Victim Condition

Qualitative analyses of the deliberation periods for the Caucasian condition indicated that a large proportion of time was dedicated to discussing the defendant's guilt, the evidence and the victim. Interestingly, more time was spent discussing the victim than the defendant in this condition. As expected, jurors neglected to mention the race of the victim, a likely outcome when the victim is from the dominant race. Being part of the dominant race may also explain the elevated perception of the seriousness of the crime for the Caucasian victim condition, as found in the quantitative analysis. When discussing the victim, the discussion generally focussed on the victim's credibility and reliability. For example:

Jury 8: Caucasian Victim Condition

*8A: "Is there a question about the victim's integrity?"*

*8B: "Well, I believe she had a reason to report the crime. I mean, her car broke down and presumably this was true and the witness did drive her home. She had no reason to*

*just be driving along and report a rape. If you got assaulted, you'd report it wouldn't you?"*

*8A: "I don't know. I know people that would report it and some that wouldn't."*

*8C: "Its understandable that some young women would not want to report it, and would just want to hide it."*

*8D: "Well, what about how she threw the ripped clothes into the bin. Why would someone do that. I don't get it."*

*8A: "So is there a question about her..?"*

*8B: "I think she did break down in her car."*

*8C: "And she was all tousled and her clothes were ripped, the witness said."*

*8D: "That's right. And he found her, so it seems that it did happen."*

*8B: "Yeah, she had a witness and everything."*

Jury 9: Caucasian Victim Condition

*9A: "The attack did actually happen though, didn't it?"*

*9B: "What? That doesn't matter."*

*9A: "I know, but...how do you know? We don't know if she may have made it up."*

*9C: "Maybe if she reported it straight away there would be more evidence and they may have caught the guy."*

While jurors appeared evenly distributed in their attitudes regarding the reliability and credibility of the Caucasian victim, the quantitative findings demonstrate interesting results. While several non-significant trends indicate that many individuals were critical of the victim, these results are in opposition to the finding that the crime was perceived as most serious for this victim.

A significant decrease in the length of the sentence assigned to the defendant was evident after deliberation, and while not significant, the Caucasian victim was also viewed as more responsible for the crime ( $M = 2.13$ ), than the Aboriginal ( $M = 1.46$ ), Asian ( $M = 1.87$ ), and Middle-Eastern ( $M = 1.70$ ) victims. In addition, other trends identified in the quantitative analysis that were not significant included that the Caucasian victim was perceived as the least reliable ( $M = 4.90$ ) compared to the Aboriginal

( $M = 5.22$ ), Asian ( $M = 5.33$ ) and Middle-Eastern ( $M = 4.96$ ) victims'. Furthermore, the Caucasian victim was viewed as the least valuable to the community ( $M = 5.29$ ), compared to the Aboriginal ( $M = 6.00$ ), Asian ( $M = 5.48$ ) and Middle-Eastern ( $M = 5.48$ ) victims; and the crime was seen as having the least impact ( $M = 5.65$ ), when compared to the Aboriginal, Asian and Middle-Eastern victims (means of 5.96, 5.70 and 5.74 respectively).

#### Middle-Eastern Victim Condition

Discussion regarding the Middle-Eastern victim centred on issues of unreliability, credibility and dishonesty, as demonstrated in the following excerpt of deliberation between members of Jury 5 (Middle-Eastern condition).

Jury 5 : Middle Eastern Victim Condition

5A: *"Now, lets just talk about something here, can I just ask.... Is she lying? I mean, was she even attacked at all?"*

5B: *"Definitely.... Yes, she was attacked."*

5C: *"Well, she sounded credible, I think she was reliable..."*

5B: *"No, she's telling the truth I think, I mean...who knows."*

5A: *"Exactly, it's hard to be sure. We don't know if she's telling the truth or not."*

It was also apparent that while some jurors were keen to discuss the victim's race, certain jurors were averse to such discussions, preferring to change the topic to a more relevant theme. The next excerpt demonstrates how the jurors' discussion underwent several topic changes. It was evident that topics regarding the victim's morals and her race were avoided and were challenged as only being *assumptions*. The conversation then returned to stereotypical comments regarding the Middle-Eastern race and the victim's personality, which was again challenged by a juror as being irrelevant, only to return to the issue of race once again. Issues of reliability, credibility and dishonesty were also demonstrated.

Jury 4: Middle-Eastern Victim Condition

4A: *"Maybe she's just making this whole assault-thing up as she comes from an ethnic background and she doesn't want her parents to know she's been sleeping around."*

4B: *"Yeah, but that's an assumption."*

4C: *"Her race would come into it, as it would be the only reason she's been so late in reporting the crime, because culturally, Middle-Eastern women just put up and shut up. They're not gonna report it. There's a lot of shame there."*

4D: *"Yeah, but potentially she could be an introvert as well."*

4B: *"Yeah, yeah....but race aside."*

4E: *"Well, being Middle-Eastern though, don't you think it's strange she has a friend that is male?"*

4F: *"Lets just cut to the chase here though, lets talk about the evidence."*

Several trends identified in the participants' responses to the questionnaire items, which did not reach significance, provide further support to the aforementioned negative themes of unreliability, low credibility and dishonesty. Participants had the least sympathy for the Middle-Eastern victim ( $M = 5.88$ ) compared to the Aboriginal ( $M = 6.22$ ), Asian ( $M = 6.12$ ), and Caucasian victims ( $M = 5.92$ ); and also saw her as being the least honest ( $M = 5.42$ ), compared to the other races (means of 5.74, 5.62, and 5.48 respectively) for the Aboriginal, Asian and Caucasian victims. In addition, the defendant was seen as least guilty when the victim was Middle-Eastern ( $M = 2.72$ ) compared to when the victim was Aboriginal ( $M = 3.68$ ), Asian ( $M = 3.51$ ), or Caucasian ( $M = 3.44$ ).

The trend that participants had the least sympathy for the Middle-Eastern victim, in addition to perceiving her as the least honest, may account for the lowered perception of the seriousness of the crime for the Middle-Eastern victim. Furthermore, the trend that participants perceived the defendant as the least guilty in the Middle-Eastern condition may account for the lowered sentence for the defendant in the Middle-Eastern condition. These findings also support the results gathered from the qualitative analyses regarding the duration of time spent on particular topics during the deliberation period. In the Middle-Eastern victim condition, the least amount of time was spent discussing the



defendant's guilt or innocence when compared to the other races. This suggests that the ratings of his guilt were dependent upon the discussion of other topics, including the victim, which was a focal point for jurors in this condition.

In addition, it was also noticeable that several jurors assumed that as a Middle-Eastern woman, the victim was automatically of a Muslim religion, highlighting a stereotype associated with this race. Furthermore, issues regarding the victim's race were also raised with respect to her version of events during the attack. Again, some participants resisted discussing the topic of her race and opted to redirect the discussion to other issues, such as the gender of the victim. This is demonstrated in the following excerpt.

#### Jury 4: Middle Eastern Victim Condition

4F: *"She said she couldn't see his face when he was attacking her. Why was that? Maybe she closed her eyes."*

4E: *"She would have had her veil on, which would have obstructed her vision."*

4F: *"But just because she's of Middle-Eastern origin doesn't mean that she always wears it, or even wears it at all."*

4C: *"And she was working at a restaurant earlier, so she probably wasn't wearing it."*

4B: *"The fact that she's Middle-Eastern is irrelevant here."*

4E: *"The only thing her race may have a bearing on is that it took her two weeks to report the crime."*

4D: *"Yeah, but that could happen to anyone, whether you're white, black, orange or blue."*

4E: *"Even blokes, if they're raped, they may act exactly the same. If the victim was male, he may have also done that."*

Open ended responses on the questionnaires identified different qualities in mock jurors' attitudes toward the victim, including an understanding of the victim's actions:

*"She would be more likely to hide the crime because of her cultural background"* (Juror 4A); and *"Muslim women may be more afraid to report the rape as they aren't allowed to have sex before marriage, or maybe it was due to shame"* (Juror 4G). Other comments

demonstrated mock jurors' sympathy for the victim: "*Some jurors were very sympathetic as being raped is worse for virgins (unmarried, Muslim women)*" (Juror 4A); and "*Some of the jurors were more sympathetic to the victim because of her cultural background*" (Juror 4E).

## DISCUSSION

The current study investigated whether the race of the victim, and the process of deliberation, would influence jurors' perceptions and judgements of the defendant, the victim and the crime. Also of interest was whether an interaction would occur between the victim's race and deliberation, and in particular, whether deliberation would cause an attenuation or exaggeration of any racial bias that may exist. As research findings supported arguments from both sides, the current study was exploratory in nature and therefore precise directional hypotheses were not made. The findings indicate that jurors' perceptions and judgements are not formed exclusively by legal, evidential factors, but in some cases tend to be biased by the victim's race. In addition, deliberation produced an overall positive impact upon judgements of the victim's character, and appeared to both attenuate and exaggerate the effect of race as an extra-legal variable with regard to the defendant's sentence and the victim's responsibility. These findings are discussed in turn.

### Race

While the quantitative investigations failed to produce any significant main effects for race, the effect for race approached significance with respect to the seriousness of the crime. In addition, the pattern of results on most of the items revealed a consistent trend across the different races. While the evaluation of the victim was generally positive, the pattern of results suggests some racial bias. More specifically, the trends observed identified an overall positive bias toward the Aboriginal victim, and an overall negative bias toward the Middle-Eastern victim, and to a lesser extent, the Caucasian victim. Furthermore, the qualitative findings provide support for this pattern of results. An analysis of the participants' discussion during the deliberation period, for the Aboriginal victim included sympathetic views, while discussion regarding the Middle-Eastern and Caucasian victims focussed upon questioning the victim's reliability, honesty, credibility and her integrity. Furthermore, discussions in both the Aboriginal and Middle-Eastern victim conditions included the emergence of stereotypes regarding the victim's races.

### *Quantitative Findings*

Results from the quantitative analyses revealed that an effect for the victim's race approached significance with respect to the seriousness of the crime, with the crime perceived as being the most serious when the victim was Caucasian, as opposed to the other races. This is an understandable finding considering that the jury was comprised of a majority of Caucasian members, who one would assume would favour their own race. Furthermore, the results also indicate a level of prejudice toward the Middle-Eastern victim, with jurors rating the crime as being the least serious when a Middle-Eastern woman had been attacked. These findings are in contrast to a North American study by Foley et al. (1996), who found that crimes were perceived as more serious and defendants were awarded longer sentences when the victim was from a minority race, than when the victim was white. The difference in results between these two studies may reflect differences in education and the media with respect to minority races in North America and Australia, with the possibility that the former promote a greater acceptance and protection of minority races. An alternative explanation is that due to recent world events of terrorism linked to Middle-Eastern countries, individuals from Middle-Eastern cultures are viewed negatively, and thus crimes are viewed as less serious when the victim is of Middle-Eastern origin. This explanation seems plausible given that Foley et al.'s study was conducted pre 2001, while the current study is post 2001, thus close to the September 11 terrorist attacks in the United States.

### *Observed Patterns and Qualitative Findings*

The results from the quantitative analysis revealed a consistent pattern throughout the data, with a positive bias demonstrated toward the Aboriginal victim, a negative bias toward the Middle-Eastern victim, and to a lesser extent, the Caucasian victim, and mixed findings toward the Asian victim. Qualitative analyses of discussion during the deliberation periods for each of the races supported this pattern. A discussion of each race follows.

### *Australian Aborigines*

While no precise directional hypotheses were made regarding mock jurors' attitudes toward Aborigines, it was assumed due to the salient nature of this race in today's society, that the Aboriginal victim may be perceived in a negative fashion, and viewed less favourably when compared to the Caucasian victim. However, results indicate that the Aboriginal victim was perceived in a more positive light than victims from the other races were. While not significant, these positive perceptions were observed in the pattern of the mock jurors' ratings of the victim's honesty, likeableness and value. In addition, ratings of sympathy for the victim, the impact of the crime, the defendant's guilt and the victim's responsibility all indicated a positive bias in favour of the Aboriginal victim.

Overall, the Aboriginal victim was perceived as being the most honest and likeable, as well as having more value to the community than the other races. Furthermore, she received the most sympathy when compared to the victims from other races, and the crime was seen as having the greatest impact. Ratings of the defendant's guilt in the Aboriginal victim condition were also higher than those found for defendants in the other conditions. Finally, the results also revealed that the mock jurors viewed the Aboriginal victim as being the least responsible for the crime.

The finding that mock jurors rated the Aboriginal victim as the most honest was surprising, and contradicts findings by Willis (1992), who found that black victims in North America were perceived as less truthful than victims from the dominant race. In addition, the finding that favourable attitudes were demonstrated toward the Aboriginal victim contradicts research conducted in Australia examining attitudes and feelings toward Aborigines (Larsen, 1981; Mellor, 2003; Pedersen et al., 2000). Results from these studies indicated ongoing negative stereotypes and unfavourable attitudes toward the Aboriginal race (Larsen, 1981), including the finding that Aborigines are among the most discriminated against in Australian society (Pedersen et al., 2000). Furthermore, in a recent examination of prejudice and racism in Australia, Mellor (2003) determined that a significant level of prejudice exists within the general Australian community toward Aborigines, which is commonly expressed by verbal and physical means.

In addition, while the pattern of results demonstrated that the defendant in the Aboriginal victim condition received a stronger guilt rating than defendants in the other conditions, a study by Dean et al. (2000) displayed opposite findings, with defendants rated as more likely to be guilty in cases where the victim was white, than when the victim was from a minority race. Finally, results from Willis (1992) demonstrated that black victims were found to be more responsible for a crime than white victims were. This finding is in direct contrast to that found in the current study, whereby Aboriginal victims were perceived as being the least responsible, and Caucasian victims as the most responsible. While this finding appears to demonstrate prejudice and unfavourable attitudes toward the Caucasian victim, Guilfoyle and Walker (2002) and Guilfoyle (1998) suggest that prejudiced attitudes are more likely directed to the race perceived as the least responsible. Results found in Guilfoyle (1998) and Guilfoyle and Walker (2002) demonstrated the assignment of significant non-responsibility to the *low status* Aboriginal victim, when compared to the victim from the dominant race. It was noted by the authors that this expression may evidence *political correctness*, and a tendency not to explicitly state Aborigines as responsible (e.g., not *capable* of responsibility).

Qualitative analyses of the mock jurors' discussion during the deliberation periods supported the aforementioned pattern of results, and highlighted several stereotypical attitudes, judgements and beliefs regarding Aborigines. In particular, stereotypes discussed by mock jurors portrayed a positive construction of the victim, which centred on topics including the difficulties Aborigines face in society, the vulnerability of the Aboriginal race, and expressions of sympathy. Such attitudes may account for the more favourable ratings given by the mock jurors to the Aboriginal victim. This finding supports earlier research that jurors often utilise stereotypes when making decisions, and that this can lead to biases (Devine et al., 2001).

The sympathetic attitude towards the Aboriginal victim observed in the quantitative data, was also evident in the analysis of the deliberations of the different juries in this condition. Such sympathetic views were expressed in both the context of being a victim of an assault in general, as well as with specific reference to the victim's race. Discussions included that Aborigines have a *difficult* experience in Australia, and may not feel *comfortable* reporting the crime to the police. These views are interesting

when examined in the context of recent research conducted by Mellor (2003), who suggested that the police frequently express racism toward Aborigines, through harassment. As such, jurors' comments regarding the difficulty of Aboriginal individuals approaching the police may well be founded. Some mock jurors' also stated that the Aboriginal victim might have felt that had she reported the assault, she would not have been believed by the police. These perceptions are also credible given research which states that the victim's perception or realisation that they may not be believed can also effectively close avenues for reporting and seeking redress, and may possibly lead to their prolonged victimisation (Viano, 1996). In addition, research from Wyatt (1993, cited in Viano, 1995) found that black women in North America, expecting a negative and blaming response from the police and perceiving themselves as devalued by society, are less likely to report an incident of assault than are white women.

Analyses of the participants' discussions when discussing the Aboriginal victim indicated that some jurors appeared uncomfortable discussing the victim's race, preferring to avert the discussion to another subject. Such aversions included either an implicit expression of discomfort by changing the topic from the victim's race, to topics including the victim's gender, or the witnesses; or a more explicit statement that such comments were irrelevant to the discussion at hand. Juror discomfort with the topic of the victim's race appears to indicate that the participants may either foster racist attitudes that they cannot express due to society deeming this expression as unacceptable, or an awareness of the prejudiced attitudes and cultural stereotypes associated with this race.

While no precise directional hypotheses were made, it was assumed given the nature of the research conducted in Australia on racism and prejudice (Mellor, 2003; Pedersen & Walker, 1997) that the Aboriginal race would be perceived as less favourable than the Caucasian race, which was unsupported. As the mock juries in the present study were comprised of individuals who meet the criteria for actual juries (thus, were assumed not to be susceptible to the biases and leniency found in student populations), social desirability and modern racism may have influenced the findings of the present study. The mock jurors may have suppressed feelings of prejudice and openly expressed favourable attitudes in an overt avoidance of prejudice and racism so as not to be negatively evaluated by other mock jurors. This theory is supported by Pedersen and

Walker (1997) who found that modern prejudice was prevalent in Australia, with more than one-half of a Perth sample scoring above the midpoint on a measure of modern prejudice.

### *Asian*

As research conducted in Australia dictates some levels of prejudice toward individuals from Asian races (Walker, 1994; Sanson et al., 1998), it was assumed that the Asian victim would be seen as less favourable than the Caucasian victim, as indicated by the mock jurors' ratings. However, the pattern of results from the current study only partially support the findings from Walker (1994) and Sanson et al. (1998), with the Asian victim in the present study being perceived as the least likeable compared to the other victims, but also viewed as being the most reliable. Analyses of the mock jurors' discussion during the deliberation periods also failed to reveal any signs of prejudice toward the Asian victim, with not one mock juror mentioning the victim during deliberation. Instead, discussions focussed upon the witnesses and the evidence. The content of such discussions may provide a reason for the finding that the Asian victim's responsibility for the crime decreased after deliberation, as mock jurors tended to focus more on details of the crime, than of the victim. In addition, this rating paired with the lack of discussion regarding the victim during deliberation may also indicate a positive bias toward the Asian victim.

### *Caucasian*

It was assumed that as part of the dominant race in Australia, the Caucasian victim would be perceived in a more positive fashion than the other victims, as evidenced by jurors' ratings of the victim, crime and the defendant. Surprisingly however, a slight negative bias toward the Caucasian victim was identified in the pattern of quantitative results across a number of items. In particular, the Caucasian victim was perceived as being the least valuable and reliable victim compared to victims from the other races, and



the crime as having the least impact upon her. In addition, the Caucasian victim was perceived as the most responsible when compared to the other victims.

While the mock jurors' ratings of the victim's value, reliability and impact of the crime appear to illustrate prejudiced attitudes toward the Caucasian race, the rating of the Caucasian victim as being the most responsible for the crime may actually indicate a positive attitude toward her. As previously mentioned, findings from studies by Guilfoyle (1998) and Guilfoyle and Walker (2002) demonstrated that the tendency *not* to assign responsibility to individuals may be a form of implicit prejudice, based on a belief that the victim is not capable of being responsible. Therefore, as the Caucasian victim was rated as most responsible, results from Guilfoyle (1998) suggest that this indicates a positive attitude toward the victim. However, the fact that mock jurors' rated the same victim as the least valuable and reliable and the crime as having the least impact upon her does not support this argument.

### *Middle-Eastern*

Due to recent international and national developments, including crimes committed by offenders of a Middle-Eastern origin and major terrorist events including extreme Muslim groups, it was assumed that individuals from Middle-Eastern countries might emerge as a target for prejudice. The pattern of quantitative results across a number of items in this study support this assumption, with a slight negative bias demonstrated toward the Middle-Eastern victim. As the trends in the data displayed, the Middle-Eastern victim was perceived as the least honest and received the least sympathy when compared to the other victims. Furthermore, the defendant in the Middle-Eastern condition was perceived as being the least guilty when compared to the defendants from the other races.

The finding that the Middle-Eastern victim was perceived as the least honest supports Willis' (1992) finding that minority victims were perceived as less truthful than white victims were. Furthermore, the finding that the defendant in the Middle-Eastern condition was perceived as the least guilty supports findings from Dean et al. (2000),

which indicated that defendants were perceived as less likely to be guilty when the victim of a crime was from a minority race, than when they were from the dominant race.

Mock jurors' discussions during the deliberation periods in the Middle-Eastern condition supports the pattern identified in the quantitative data that indicated a slight negative bias toward the Middle-Eastern victim. In particular, prejudice was demonstrated in the expression of stereotypical views of individuals from Middle-Eastern countries, and a discussion of issues related to sexual intercourse, taboo's associated with extra-marital sexual behaviour, and the possibility that sexual assault is tolerated by Middle-Eastern women. The effect of such stereotypes may account for the lower sentence assigned to the defendant and the reduced seriousness of the crime when the victim was of a Middle-Eastern origin.

A preoccupation with the victim's race was also demonstrated with respect to the time dedicated to discussion of the victim in deliberation, when compared to the other race conditions. Closer analyses of the time dedicated to particular topics during deliberation revealed that, when compared to jurors' in the other race conditions, jurors in the Middle-Eastern condition spent very little time discussing the defendant's guilt. Instead, several mock jurors focussed the discussion on the victim, suggesting that the victim influenced mock juror' discussions and averted their attention from the question of the defendant's guilt. When compared to results from the other race conditions, who spent more time discussing the defendant's guilt, and less discussing the victim, it appears that this was due to the race of the victim acting as an extra-legal variable, by causing irrelevant factors (victim's race) to impact upon juror's decision-making process.

In addition, the behaviour of several mock jurors upon mention of the victim's Middle-Eastern origin appeared to indicate a level of implicit prejudice. More specifically, a number of mock jurors were noticed to avert the topic of conversation from the victim's race to other topics. This suggests that participants may foster racist attitudes, or have a strong awareness of cultural stereotypes with respect to the Middle-Eastern race. As such, discussion of the victim's race may make such jurors uncomfortable due to an inability to express negative attitudes, as these are deemed unacceptable by society. Instead, the mock jurors may have tended to increase their comfort level by averting these topics.

## Deliberation

The main finding to emerge as a result of deliberation was that it produced a change in mock jurors' judgements of the victim's character, with an overall increased favourable attitude demonstrated toward each victim post deliberation, regardless of their race. A leniency bias was also indicated, with mock jurors' giving lower ratings of the defendant's guilt following deliberation. In addition, deliberation appeared to attenuate biases observed pre deliberation. In particular, negative biases observed toward the Asian victim were reduced following deliberation, with the assignment of significantly less responsibility post deliberation. However, it appeared that biases stemming from the victim's race were also exaggerated after deliberation, with respect to the victim's responsibility for the crime and the defendant's sentence. Though not significant, the Caucasian victim was perceived as more responsible for the crime after deliberation, and the defendant in the Caucasian condition was given a significantly lighter sentence post deliberation. Therefore, the somewhat negative bias demonstrated toward the Caucasian victim as demonstrated through the pattern of quantitative results across a number of items appeared to be exaggerated after deliberation. These findings are discussed in turn.

Deliberation had an overall positive impact upon mock jurors' judgements of the victim's character, with all of the victims perceived as significantly more reliable and likeable, and being assigned more sympathy after deliberation, regardless of their race. In addition, while not significant, there was also a trend for victims to be perceived as more honest following deliberation. Unfortunately, an examination of the literature failed to locate any studies of jury decision-making that examined the difference between jurors' judgements and attitudes toward the victim before and after deliberation. This prevents a comparison between the findings in the current study and that of other research. However, given the process of deliberation whereby jurors' commonly discuss the nature of the crime, and construct a narrative of the events that occurred during the commission of the crime (Ellsworth, 1989), it is understandable that deliberation may create an overall positive attitude toward the victim.

The mock jurors' overall favourable attitude toward the victim after deliberation did not extend to their ratings of the defendant's guilt. Instead, there was an attenuation

of the guilt ratings, which decreased after deliberation. This finding is somewhat surprising. Given the fact that deliberation generally lead to more positive ratings of the victim, one could expect that these positive perceptions would influence the decision that mock jurors made about the defendant's guilt, i.e., rating the defendant as more guilty post deliberation. Furthermore, while not significant, the sentence assigned to the defendant followed a similar pattern after deliberation, with the defendants generally assigned shorter sentences after deliberation.

This may be a result of two factors. Firstly, the mock jurors in each race condition spent the majority of their deliberation time discussing the evidence, which was ambiguous and relatively weak. As a result, the mock jurors may have decided that they could not render a guilty verdict based upon this evidence, which resulted in decreased ratings of the defendant's guilt and shorter sentences assigned to the defendant. A second explanation for this attenuation is the *leniency bias* that is documented in the literature as occurring during deliberation (Devine et al., 2001; Kalven & Zeisel, 1966; MacCoun & Kerr, 1988). MacCoun and Kerr (1988) define the leniency bias as the process by which deliberation induces greater leniency in criminal mock jurors. The explanation proposed to explain this bias may account for the shift in guilt ratings in the present study, namely that jurors rely on the standard of proof (reasonable doubt) that must be met for criminal trials. When jurors are unsure about a verdict, research demonstrates that they most commonly err on the side of caution by selecting acquittal, rather than convicting an innocent person (MacCoun & Kerr, 1988). In the present study, jurors may have leaned toward acquittal due to the instructions received prior to deliberation, which included an emphasis on the standard of proof. In addition, jurors' discussions of the evidence, which was relatively weak, may have also influenced their guilt and sentence ratings post deliberation.

Significant interactions were also demonstrated between deliberation and the race of the victim, for ratings of the victim's responsibility, and the sentence assigned to the defendant. Whereas jurors awarded little responsibility for the crime to all victims in pre deliberation judgements, their perceptions and subsequent responsibility ratings increased after deliberation, but the Asian victim was awarded significantly less responsibility after deliberation than before. Therefore, it appears that deliberation reduced any negative bias

toward the Asian victim, resulting in her being perceived as less responsible after deliberation. Such results support findings from earlier studies, which demonstrated that extra-legal biases are attenuated post deliberation (Izzett & Leginski, 1974; Wright & Wells, 1985).

However, results also indicate that biases stemming from the victim's race were exaggerated after deliberation with respect to the Caucasian victim's responsibility for the crime, and the defendant's sentence in the Caucasian condition. While not significant, a pattern was observed whereby following deliberation, the Caucasian victim was perceived as more responsible for the crime. In addition, the defendant in the Caucasian condition was given a significantly lighter sentence after deliberation. Therefore, it appears that the somewhat negative bias demonstrated toward the Caucasian victim, evidenced in the pattern of quantitative results across several of the items, was exaggerated after deliberation. These results support findings from several studies, which state that deliberation causes an exaggeration of extra-legal biases (Greene et al., 1999; Kramer et al., 1990; MacCoun, 1990; Steblay et al., 1999). In particular, Kramer et al. (1990) suggests that exposure to a bias during deliberation affects the actual deliberation process, and that while all members of the jury may not endorse the bias, its introduction may affect the selection of arguments during deliberation.

#### Limitations of this Research

Prior to developing the design of the present study, efforts were made to determine the most frequently identified methodological limitations found in jury decision-making research, such that these could be minimised in the current study. As a result, this study included a sample representative of the actual population that comprise a real jury in Western Australia, a deliberation period followed the court simulation which was presented in a visual format, standard jury instructions were presented prior to deliberation, and all mock juries contained no fewer than six individuals.

However, as with all research, there are several caveats to this study that stem from the methodology utilised and the ability to generalise from these findings. As previous studies have noted (Diamond, 1997), due to the complexity observed within jury

trials, such situations are difficult to replicate in controlled laboratory environments, and as such limitations are inherent in this form of research. Firstly, the mock jurors in the present study were given a maximum of one hour to deliberate, which is much less than the time available to actual jurors. In addition, the mock jurors' viewing of a 40 minute simulated trial not only lacks the same degree of personal involvement than actual jurors have with real cases, but also offers much less information about a trial than is offered to real jurors. The results of the study are also limited to perceptions and judgements in the context of an attempted rape trial. As such, findings from this study cannot be generalized to crimes other than attempted rape cases, as one could expect that the dynamics found in sexual offence cases may be different to those found within other crimes, e.g., armed robbery. In addition, another limitation is that unlike actual juries, the mock jurors in this study did not deliberate to a final group verdict.

The methodology utilised also presents limitations to this research. While the simulation of the case presented the trial on videotape, the victim's appearance was blurred so as to conceal her race. Instead, her race was identified with labels presented on the information sheet, and an introductory statement to each video. It is highly likely that the presentation of the victim's race was not salient enough, and that had the victims been presented visually, for example with the Middle-Eastern victim wearing a veil and having an accent, different results may have emerged. While the qualitative data and patterns observed in the quantitative results indicated some degree of racial biases toward the victims, these were not found to be significant. Therefore, the lack of a specific visual representation of victims of different race groups could have played a role in the absence of significant race effects. In addition, the effect sizes were all very small suggesting that the association between the independent and dependant variables for the significant deliberation effects and the race and deliberation interactions was not particularly strong (Cohen, 1988). However, the small sample size may also provide an explanation for the lack of significant race effects, and the small effect sizes for the results that were found to be significant.

Despite these limitations, the mock jurors were jury eligible adults who viewed the evidence and details of the case, received instructions and deliberated as a group. As such, while the methodological design was not perfect by any standards, the researcher

believes that the design approximated as closely as possible, the circumstances and realities of an actual jury.

### Future Directions

Although one needs to be cautious about how these findings can be generalised to the perceptions and judgements of actual jurors, it is likely that the basic cognitive processes responsible for these results would also play a role in an actual courtroom setting. In addition, research has demonstrated that prejudice is apparent in Australian society, and it is likely that this may transfer into the courtroom. Furthermore, while it appears that deliberation reduced extra-legal biases to a degree, it also appears to have exaggerated biases. Future research should improve the trial simulation and the methodology that was utilised in the current study.

Methodological limitations including the blurred picture of the victim, the lack of an accent and the small sample size could be improved. Using a larger sample and making the victim's race more salient, for example, by presenting visible and audible racial features of the victim, may increase the likelihood that more significant results are identified. Other suggestions include that a final group verdict is acquired from the jury, a longer deliberation period and different crimes are incorporated, the mean deliberation time is calculated, as well as information regarding how many juries reached the 1 hour maximum, and how many were curtailed. The study would also be improved if the qualitative analysis of these deliberations and their effect on judgments, of victim, crime and defendant is extended, and more information regarding the participant sample (racial breakdown, detailed demographics, total participation time) was collected to make comparison possible.

### Summary

The findings of the current research confirm that firstly, mock jurors' decisions are not formed exclusively by legal, evidential factors but are subject to influences from the victim's race, and secondly, that deliberation also affects juror's judgements from pre

to post deliberation. In addition, the results also suggest that deliberation appears to both attenuate and exaggerate extra-legal biases.

In particular, the qualitative analyses and a pattern observed in the quantitative data suggest a slight bias toward the Middle-Eastern race. It is suggested that this apparent prejudice may be a result of two factors. Firstly, the recent world events of terrorism involving extremist Muslim groups including the bombing of a popular Australian tourist destination, and the World Trade Centre Towers in New York City by Middle-Eastern offenders; and secondly, the ongoing controversy regarding alleged racially based crimes in Sydney. Interestingly, the pattern of results also suggest that the Aboriginal victim was perceived as the most favourable of all the victims, even more favourably than the Caucasian victim, which contradicts research findings (Walker, 1994). This may be due to the mock jurors' heightened awareness of negative cultural stereotypes in Australian society regarding the Aboriginal race. Through social desirability factors, the mock jurors may have been trained by society to suppress prejudiced attitudes toward Aborigines, and counteract these prejudiced feelings and attitudes by making an effort to perceive the Aboriginal victim in a positive manner.

The findings also indicate that deliberation produced an overall positive impact upon jurors' perceptions toward the victim, with victims perceived as more likeable, reliable and gaining more sympathy after deliberation. Finally, it appears that deliberation both attenuated and exaggerated the effect of the race of the victim on juror judgements in respect of the victim's responsibility for the crime, and the defendant's sentence.

Due to a discrepancy between the quantitative and qualitative results, the findings of this study need to be integrated carefully when interpreting the meaning of these results for the legal system. The quantitative findings suggest that the legal process is functioning at an efficient level. More specifically, due to the small variation in scores and the lack of significant race effects, it appears that the extra-legal variable of victim race had little influence on jury decision-making. However, the pattern of results across several of the items suggests that there is some level of racial prejudice, albeit minor, which is operating. An analysis of the qualitative data supports this finding. As methodological limitations including the visual representation of the victims and the



small sample size were present, it is likely that these may have impacted upon the current findings. It is therefore suggested that there may have been more significant findings if a larger sample was used and if the visual representation of the victims included visible and audible racial features. It is important to note however, that even if victim race played a role in deliberation, the results on verdicts was very minor. This suggests that while race may play a role in deliberation, it does not necessarily impact upon the verdict.

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**Appendix A**  
**Juror Decision-Making Questionnaires**

<b>Administration Section -Please Complete First</b>
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Date:
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Your Gender:
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Race of the Victim:
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Race of the Defendant:
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### Juror Decision-Making Questionnaire A – Pre Deliberation

Please read each of the statements carefully and circle the mark on the scale that most represents your opinion. If you make a mistake, clearly mark your new response with a cross, such that we know which answer reflects your final opinion. Note that the scales 9 and 10 have different words on their ends.

1. The defendant is guilty.

**Strongly Disagree**

**Strongly Agree**



2. I perceive this crime to be serious.

**Strongly Disagree**

**Strongly Agree**



3. This crime had a large impact on the victim.

**Strongly Disagree**

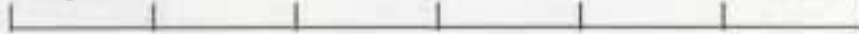
**Strongly Agree**



4. I have sympathy for the victim.

**Strongly Disagree**

**Strongly Agree**



5. The victim is likeable.

**Strongly Disagree**

**Strongly Agree**



6. The victim is reliable.

**Strongly Disagree** |-----| **Strongly Agree**

7. The victim is honest.

**Strongly Disagree** |-----| **Strongly Agree**

8. The victim is a valuable member of the community.

**Strongly Disagree** |-----| **Strongly Agree**

9. To what extent was the victim responsible for this crime?

**Extremely Responsible** |-----| **Not responsible at all**

10. If you think the defendant is guilty, recommend a sentence for him:

**1 yr** |-----| **5 yrs** |-----| **10 yrs**

<b>Administration Section - Please Complete First</b>
Date:
Your Gender:
Race of the Victim:
Race of the Defendant:

### Juror Decision-Making Questionnaire B – Post Deliberation

Please read each of the statements carefully and circle the mark on the scale that most represents your opinion. If you make a mistake, clearly mark your new response with a cross, such that we know which answer reflects your final opinion. Note that the scales 9 and 10 have different words on their ends.

1. To what extent was the victim responsible for this crime?

**Extremely Responsible**

**Not responsible at all**

2. The victim is a valuable member of the community.

**Strongly Disagree**

**Strongly Agree**

3. The victim is likeable.

**Strongly Disagree**

**Strongly Agree**

4. The defendant is guilty.

**Strongly Disagree**

**Strongly Agree**

5. The victim is reliable.

**Strongly Disagree**

**Strongly Agree**

6. This crime had a large impact on the victim

**Strongly Disagree** |-----| **Strongly Agree**

7. I perceive this crime to be serious.

**Strongly Disagree** |-----| **Strongly Agree**

8. If you think the defendant is guilty, recommend a sentence for him:

**1 yr** |-----| **5 yrs** |-----| **10 yrs**

9. I have sympathy for the victim.

**Strongly Disagree** |-----| **Strongly Agree**

10. The victim is honest.

**Strongly Disagree** |-----| **Strongly Agree**



Administration Section - Please Complete First
Date:
Your Gender:
Race of the Victim:
Race of the Defendant:

### Juror Decision-Making Questionnaire C – Post Deliberation 2

1. The race of the victim had no effect on my responses to any of the above statements.

**Strongly Disagree**

**Strongly Agree**

If the victim's race did affect your responses to the above statements, please give some details below:

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2. The race of the victim had no effect on the other jurors' perceptions regarding the crime, victim and defendant.

**Strongly Disagree**

**Strongly Agree**

If the victim's race did affect the other jurors' perceptions regarding the crime, victim and defendant, please give some details below.

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**Appendix B**

**Court Transcript used in the Videotaped Court Trial**

## TRANSCRIPT OF VIDEOTAPE

### Re-Enactment Of Court Case

A brief introduction to the court case will appear on each version of the videotape to once again prime the participants for the race of the victim:

‘You are about to watch the re-enactment of a court case regarding the attempted rape of a young (Middle-Eastern/Aboriginal/Asian/Caucasian) woman which occurred in June 2000. To protect their anonymity, actors and actresses will play the roles of all involved.’

Cast and Characters:

1. Judge Costello
2. Prosecutor, Mr Allen
3. Barrister, Ms Stedman
4. The Accused, Mark Smith
5. Eyewitness, Andrew White
6. Flatmate, Daniel Taylor
7. Policeman, Sergeant Michelle Howard
8. Clerk
9. The Complainant, Anna Mitchell

#### Setting:

The transcript was filmed in the original Supreme Courthouse – The Francis Burt Law Education Centre and Museum, on Wednesday, 23<sup>rd</sup> April 2002. It was edited into four versions, the only difference between each version being the introductory statement describing the race of the victim, as shown above.

### Transcript

Clerk:

*Calling case number 524 to session. The people vs. Mark Smith. All rise for the honourable Judge Costello.*

Judge:

*The court is now in session.*

Clerk:

*You may be seated.*

Judge:

*The charges brought against the accused, Mark Smith, are that of the Attempted Rape of the complainant on the night of June 25<sup>th</sup> 2000. How does the accused plead?*

**The Accused:**

*Not guilty.*

**Barrister:**

*He pleads not guilty, your honour.*

**Judge:**

*Would the prosecution care to make their opening remarks?*

**Prosecution:**

*Ladies and Gentlemen of the jury, we are here today to seek justice for the complainant, who was attacked and almost raped. When leaving her place of work late on June 25<sup>th</sup>, her car broke down, forcing her to look for the nearest telephone from which she could call for help. As she walked past a nearby park, she was grabbed and dragged into bushes where she was thrown onto the ground. As she was held against her will, her clothes were ripped from her body and her arms violently pinned to the ground. Frightened for her life, she fought back against her attacker, but was overpowered. Luckily, a man walking his dog nearby overheard a scuffle and disturbed what appeared to be a rape! Unfortunately, the attacker was able to escape, but as you will see – the accused not only fits the description of the attacker, he lives within minutes of the park **and** his watch was found at the crime scene. Today you will hear that he was not the attempted rapist – so listen carefully to the testimony, as you must be sure that the person responsible for this act will be punished, and justice will prevail.*

**Judge:**

*Defense, would you now care to make your opening remarks?*

**Barrister:**

*Ladies and gentlemen of the jury, Mark Smith has been wrongly accused of this crime. During the proceedings, I will demonstrate that this is not only a case of mistaken identity, but that there is no substantial evidence to prove that Mr Smith was even present at the scene of the crime and that he has a solid alibi that places him at home when the alleged crime occurred. In addition, there is no physical evidence that ties Mr Smith to this act and the finding of his watch at the crime scene does not indicate he was there as it was stolen several weeks before the alleged crime occurred. It is up to you to make sure that this innocent man is not wrongly convicted.*

**Judge:**

*Thank you. Were there any exhibits to be entered into the trial?*

**Prosecution:**

*Your honour, Ms Stedman and myself have agreed that the map of Gwelup Reserve from the Stirling City Council will be handed in as Exhibit A, and that this watch found at the alleged crime scene be entered as Exhibit B.*

Judge:

*Does the defense agree to this?*

Barrister:

*The defense agrees.*

Judge:

*Very well, hand them forward please.' (Prosecution gives the exhibits to the clerk).  
Would the prosecution please call their first witness?*

Prosecution:

*Your honour, the people call the complainant, Miss Anna Mitchell.*

Clerk:

*Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?*

Anna Mitchell:

*I do.*

Judge:

*State your name.*

Anna Mitchell:

*Anna Mitchell.*

Judge:

*Be seated please.*

Prosecution:

*I know this may be very hard for you, but please tell the court in your own words what happened on the night of June 25<sup>th</sup> 2000.*

Anna Mitchell:

*Well I left work a little bit late because it was really busy...*

Prosecution:

*What time was this?*

Anna Mitchell:

*Well I was supposed to knock off work at 7pm, but I left at about 7.35pm.*

Prosecution:

*Where do you work?*

Anna Mitchell:

*At Villa Bianchi, it's a café on Scarborough Beach.*

Prosecution:

*Continue.*

Anna Mitchell:

*And I got into my car and I started driving home.*

Prosecution:

*Where is home?*

Anna Mitchell:

*I live on Main Street in Balcatta, so it's about a 10-minute drive from work.*

Prosecution:

*And who lives with you?*

Anna Mitchell:

*I live by myself. I moved out of home when I got my full-time job at the café about a year ago.*

Prosecution:

*Please continue.*

Anna Mitchell:

*So I was driving and then all of a sudden it made this strange noise and broke down.*

Prosecution:

*Where did this take place?*

Anna Mitchell:

*On Karrinyup Road in Gwelup.*

Prosecution:

*Can you be more precise?*

Anna Mitchell:

*Well, I was on Karrinyup Road heading away from the coast – so I was heading east... and I'd just passed Huntriss Road when I broke down. So I was on Karrinyup Road, I'd say about 50 metres or less from the Huntriss intersection.*

Prosecution:

*Continue. What happened next?*

Anna Mitchell:

*I was worried. I didn't know what to do because I don't know anything about cars and I didn't have a mobile so I couldn't call anyone for help, and no one was around.*

Prosecution:

*So what time was it at this stage?*

Anna Mitchell:

*It was 7.50pm. I remember looking at my watch when I broke down to see how late it was.*

Prosecution:

*Continue.*

Anna Mitchell:

*I knew that there was a phone box nearby.... so I...*

Prosecution:

*Where was the phone box?*

Anna Mitchell:

*The nearest phone box that I knew of is on Karrinyup Road at this petrol station on the corner – I think the street is North Beach Rd. It was probably only a ten-minute walk on the same side of the road.*

Prosecution:

*Continue.*

Anna Mitchell:

*So I decided to walk to the phone box so I could call the RAC.*

Prosecution:

*Continue.*

Anna Mitchell:

*Well I had just started walking and I was going past this park*

Prosecution:

*Which park was that?*

Anna Mitchell:

*Its called Gwelup Reserve.*

Prosecution:

*Continue.*

Anna Mitchell:

*And then all of a sudden, I felt someone grab me from behind... ..and he pulled me into the bushes and threw me on the ground...and I tried to scream but his hand was over my mouth. I was so scared and I kept thinking, he was going to kill me and that I shouldn't have left my car!*

Prosecution:

*You say he grabbed you from behind and then threw you onto the ground – did you see the person who grabbed you?*

Anna Mitchell:

*Yes, I saw him.*

Prosecution:

*Could you describe what he looked like?*

Anna Mitchell:

*He was wearing dark tracksuit pants and a burgundy top but I couldn't properly make out his face.*

Prosecution:

*Could you describe his body – whether he was tall/short, his type of build and so forth?*

Anna Mitchell:

*Well, he was so strong. He was a really big built man and really tall too, at least 6 foot, possible a bit taller.*

Prosecution:

*Do you see anybody in court that resembles the attacker?*

Anna Mitchell:

*The attacker was about the size that the accused is.*

Prosecution:

*Please continue – you said he threw you on the ground.*

Anna Mitchell:

*He threw me down and then he climbed on top of me and started tearing at my blouse and I was trying to stop him but he was so strong **(voice starts to break, and puts hand over eyes and looks down)** and he pinned my arms above my head, and I couldn't move...'*



Prosecution:

*Please continue ...I know this is hard.*

Anna Mitchell:

*I tried to scream but he shoved something in my mouth, I think it was a sock or something and...*

Prosecution:

*Please continue*

Anna Mitchell:

*(Starts to cry) He starting pulling at my skirt and I was so frightened and there was nothing I could do!*

Prosecution:

*Continue.*

Anna Mitchell:

*Well, we were struggling, and he was holding my arms against the ground above my head and fumbling around with his other hand near his pants and I was trying to spit our the thing in my mouth and I couldn't...*

Prosecution:

*Continue.*

Anna Mitchell:

*Well, we were struggling and wrestling and then I could feel his erect penis pushing against my leg and...*

Prosecution:

*And?*

Anna Mitchell:

*I was struggling so much but it was no use, he was so strong and there was nothing I could do (starts to cry more) He was trying to move my legs apart with his knees and pushing at them, and....*

Prosecution:

*Please continue, what happened next?*

Anna Mitchell:

*Well, next thing I knew - I heard this dog barking in the background and all of sudden this man was there, and he yelled out 'Hey what's going on here?' and then the attacker who was trying to rape me got up and ran off.*

Prosecution:

*And then what happened?*

Anna Mitchell:

*The man who had yelled asked if I was okay and helped me up, and I couldn't talk...*

Prosecution:

*What happened to the gag?*

Anna Mitchell:

*I must have pulled it out when he ran off – I can't really remember how it all happened...*

Prosecution:

*Do you remember where the gag went?*

Anna Mitchell:

*I can't remember – I was struggling to get to my feet and I think I just pulled it out and dropped it.*

Prosecution:

*Continue.*

Anna Mitchell:

*Well I was crying and couldn't talk. Then the man said we should go to the police, but I was so scared and I couldn't stop crying, and I just wanted to go home. He told me not to be scared and that he would drive me home.*

Prosecution:

*Carry on.*

Anna Mitchell:

*Well I told him where I lived and he drove me home and he gave me his phone number and said that if I needed to contact him then he could help me.*

Prosecution:

*And what did you do once you got home?*

Anna Mitchell:

*I felt disgusting and dirty and awful and I just wanted to...to.... just feel better somehow. I ran a really hot bath and I soaked for so long, it must have been hours.*

Prosecution:

*Did you have any bruises or cuts?*

Anna Mitchell:

*We had been wrestling a lot and I had a couple of small bruises on my arms and wrists, and a couple on my legs too.*

Prosecution:

*Did your require any medical treatment?*

Anna Mitchell:

*No.*

Prosecution:

*Continue. What happened next?*

Anna Mitchell:

*I went to bed.*

Prosecution:

*What happened to your clothes?*

Anna Mitchell:

*I threw them in the rubbish bin outside my house. I just didn't want them anywhere near me and I didn't ever want to wear them again.*

Prosecution:

*Continue.*

Anna Mitchell:

*Well I had a rostered day off work and I just spent the day at home.*

Prosecution:

*What did you do?*

Anna Mitchell:

*I tried to keep myself busy so I wouldn't think about it. I was just so upset and needed to distract myself. So I cleaned the bathroom, the living room...the kitchen...and I called the RAC to pick up my car.*

Prosecution:

*Did you report the attack to the police?*

Anna Mitchell:

*Yes.*

Prosecution:

*And when did you do this?*

Anna Mitchell:  
*About 2 weeks later.*

Prosecution:  
*Why did you wait 2 weeks?*

Anna Mitchell:  
*Well, my parents don't like me living alone and I didn't want them to find out what had happened.*

Prosecution:  
*So what made you report the attack?*

Anna Mitchell:  
*About 2 weeks after the attack, I confided in my best friend and she convinced me that I couldn't let the man get away with what he had done to me – so I called the police and I told them what had happened.*

Prosecution:  
*What happened next?*

Anna Mitchell:  
*Well the police took my statement and then I showed them where I was attacked at the park.*

Prosecution:  
*Who was the police officer that accompanied you?*

Anna Mitchell:  
*Her name was Sergeant Howard.*

Prosecution: (gets map off clerk)  
*I have with me Exhibit A, which is a map of the park Gwelup Reserve. (Holds up map and unfolds it in front of the witness). Does this resemble the place you were attacked?*

Anna Mitchell:  
*Yes it does.*

Prosecution:  
*Looking at this map can you point out to me the exact place that you were attacked?*

Anna Mitchell:  
*Just here. (points to area C5)*

Prosecution:

*I see. Let the record show that by using the grid on the border of the map, the complainant pointed to area C5. Did they find anything at the place where you were attacked? (returns map to the clerk).*

Anna Mitchell:

*Yes, they found a watch.*

Prosecution:

*Did you see them find the watch?*

Anna Mitchell:

*Yes, I did. Sergeant Howard yelled out 'Look at this' and held it up.*

Prosecution:

Thank you. No more questions your honour.

Barrister:

*Miss Mitchell, you testified that your car broke down at 7.50pm the night you were allegedly attacked. Is this correct?*

Anna Mitchell:

*Yes it is.*

Barrister:

*Now, June 25<sup>th</sup> as we all know is in the middle of winter. Can you tell me what the weather was like that night? Was it overcast or was there a clear sky?*

Anna Mitchell:

*It was heavily overcast. It had been raining when I was at the café.*

Barrister:

*Had it stopped raining when your car broke down?*

Anna Mitchell:

*Yes.*

Barrister:

*So I'm assuming that at 7.50pm in the middle of winter - on a rainy night with a heavily overcast sky that it was also very dark. Is this correct?*

Anna Mitchell:

*Yes, It was quite dark.*

Barrister:

*Just before you were allegedly grabbed and pulled into the bushes by the attacker – can you tell me if there were any streetlights where you were walking, or whether any cars were passing?*

Anna Mitchell:

*The street was very quiet and there were no cars. There were **some** streetlights, but overall the street wasn't very well-lit, I think the nearest street light was probably several metres away – possibly 6 or 7.*

Barrister:

*You testified that you were pulled into some bushes in the park. Were there any lights in the park?*

Anna Mitchell:

*No, it was quite dark.*

Barrister:

*In this dark light, can you be sure that the attacker is the man accused of this crime?*

Anna Mitchell:

*No, I can't be certain because it was dark. But it looks like him.*

Barrister:

*It looks like him? But you testified that you could not identify him!*

Anna Mitchell:

*But...*

Barrister:

*Remembering that it was dark, and that many men fit this description - is it possible that the accused is not the attacker, but that the attacker is another man?*

Anna Mitchell:

*Yes, I guess so.*

Barrister:

*No further questions your honour.*

Judge:

*Does the prosecution wish to re-examine?*

Prosecution:

*No, your honour.*

Judge:

*Very well, would the prosecution care to call their next witness?*

**Prosecution:**

*Your honour, the people call Mr Andrew White.*

**Clerk:**

*Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?*

**Mr White:**

*I do.*

**Judge:**

*State your name.*

**Mr White:**

*Andrew White.*

**Judge:**

*Be seated please.*

**Prosecution:**

*Mr White, what were you doing on the night of June 25<sup>th</sup>, 2000?*

**Mr White:**

*I was walking my dog.*

**Prosecution:**

*What time was this?*

**Mr White:**

*Well after tea which was around 7.30pm, I drove to the park.... so it would have been about 7.40 pm by the time I got ready and began walking.*

**Prosecution:**

*Where do you live?*

**Mr White:**

*In Innaloo – which is quite close, I'd say no more than 3-5 minutes drive to the park.*

**Prosecution:**

*And which park is this?*

**Mr White:**

*It's a large park named Gwelup Reserve. It's on Karrinyup Road.*

Prosecution

*Tell me in your own words what happened as you walked your dog by Gwelup Reserve that night.*

Mr White:

*Well, I had been walking Bailey for about 15 minutes at this time, and as we neared the park I leaned down to take his leash off so he could have a quick run around the park.*

Prosecution

*So this would have been around 8pm now, adding 15 minutes to the time that you began walking? Could that be correct?*

Mr White:

*Yes, it was almost 8pm.*

Prosecution:

*Continue.*

Mr White:

*As we ran around the park, we neared some bushes where I heard some noises, kind of like a scuffle, which I thought, was some animals or something.*

Prosecution

*What happened next?*

Mr White:

*Well I jogged over to the bushes to see what the noise was, and I saw the woman.... Anna.*

Prosecution:

*Do you see the woman in court?*

Mr White:

*Yes, she is sitting in the back of the courtroom dressed in a red top and black pants.*

Prosecution:

*Let the record show that the witness identified the complainant as the woman he saw that night. (gets map off the clerk).*

*I have with me a map of Gwelup Reserve (pulls out map and holds in front of Mr White) and surrounding streets. Could you please point out to me exactly where these bushes were?*

Mr White:

*Sure – it was about here. (points to same spot on map as Anna)*

Prosecution:



*I see. Let the record show that the witness identified C5 as the area in which he saw the complainant being attacked. (returns map to the clerk). Please continue Mr. White - can you describe what you saw?*

Mr White:

*Well there was this man on top of her struggling with her, and I could see that her clothes were ripped, and I yelled out 'hey!' and the man jumped up really quickly and ran off.*

Prosecution:

*What did the man look like?*

Mr White:

*He was really tall, about 6 ft 2, with a large build.*

Prosecution:

*Do you see a similar person in court?*

Mr White:

*Yes, he looked like the accused, but I cannot say that it was him.*

Prosecution:

*And did you see what he was wearing?*

Mr White:

*He was wearing dark pants, I think they were jeans...and a darkish top, maybe dark blue or black.*

Prosecution:

*Ok, so he was wearing dark pants and a dark top – and then he ran away. Then what happened?*

Mr White:

*I helped her up and she was crying.*

Prosecution:

*Who did you help up?*

Mr White:

*The complainant.*

Prosecution:

*Please continue.*

Mr White:

*I asked her what had happened but she was crying too much and didn't answer me. I told her I would help her and not to be scared, but that we should go to the police because I*

*could see that the man had ripped her clothes and I thought that he had been trying to rape her.*

Prosecution

*Why did you think he was trying to rape her?*

Mr White:

*When I approached them, she was fighting with him and she was crying. Her clothes were all torn and she looked scared.*

Prosecution

*Then what did you do?*

Mr White:

*She said she wanted to go home but her car had broken down. I told her I would drive her and I helped her to my car. Then I drove her home.*

Prosecution

*What happened next?*

Mr White:

*Well, she was a mess, and I asked her if she was going to be alright and if she had someone who was staying with her – you know, someone she could talk to.*

Prosecution:

*Continue.*

Mr White:

*She said she lived alone but that she would be alright and that she just wanted to clean herself up.*

Prosecution:

*And then what happened?*

Mr White:

*She got out and was walking to the house, and I got out and ran up to her and gave her my business card and told her to call me if she needed a witness. She said thank you, and went inside the house.*

Prosecution

*Then what happened?*

Mr White:

*Well, I got in my car and I went home. I didn't hear from her until about 2 weeks later when she called me,*

Prosecution:

*Who called you?*

Mr White:  
*The complainant.*

Prosecution:  
*Please continue.*

Mr White:  
*Well she rang me up and asked me if I would help her.*

Prosecution  
*What did she say?*

Mr White:  
*She told me that she didn't want to do anything at first because she was frightened and didn't want people to know what had happened. But she said after speaking with her best friend that she wanted to get the man who attacked her.*

Prosecution  
*Continue.*

Mr White:  
*Well, she said she'd talked to the police and they wanted me to come in and make a statement. So I went in, made my statement and gave a description of the attacker.*

Prosecution:  
*No more questions.*

Barrister:  
*Mr White, you testified that you took your dog for a walk that evening? Do you walk your dog every night?*

Mr White:  
*Most nights.*

Barrister:  
*And what do you usually take with you on your walks?*

Mr White:  
*Well...a leash for the dog, sometimes a jumper depending on how cold it is, that's pretty much it.*

Barrister:  
*So you never take a torch?*

Mr White:

*Uh, no.*

**Barrister:**

*You testified that you were walking your dog on the night of June 25<sup>th</sup> at approximately 7.45/8pm, is this correct?*

**Mr White:**

*Yes.*

**Barrister:**

*That's interesting. Tell me, can you tell me what the weather was like that night?*

**Mr White:**

*It was pretty wet. It had been raining earlier and was quite overcast. I was wearing a raincoat.*

**Barrister:**

*So I'm assuming that it was quite a dark night then?*

**Mr White:**

*Yes it was.*

**Barrister:**

*Tell me about the lighting in the park?*

**Mr White:**

*There were not many streetlights, but I could see where I was going. I know the park well.*

**Barrister:**

*Would you say then Mr White, that it was quite dark at the park that night?*

**Mr White:**

*Yes, I would.*

**Barrister:**

*So can you tell the court how close you were to the attacker when you came across him and Miss Mitchell in the bushes?*

**Mr White:**

*I was about 3 metres away.*

**Barrister:**

*And so what colour top did you say the attacker was wearing?*

**Mr White:**

*I'm not sure, it was a dark top though.*

Barrister:

*In other words, it was too hard to see wasn't it Mr White*

Mr White:

*Yes, I guess it was.*

Barrister:

*So in your testimony, you mentioned that the attacker ran off quickly once you arrived.*

Mr White:

*Yes he did.*

Barrister:

*(places same map in front of witness) – Here is the map again – can you point out to the court where you were and which way you were facing.*

Mr White:

*I was here and I was facing this way. (points north).*

Barrister:

*And can you show the court which way he ran off?*

Mr White:

*He ran away from me. I was here and he ran this way. (points south).*

Barrister:

*In other words, you saw him from behind. Is that correct?*

Mr White:

*Yes.*

Barrister:

*So can you tell the court what his face looked like, for example the colour of his eyes or any distinguishing facial features?*

Mr White:

*No, I can't – I didn't see his face.*

Barrister:

*So we've established that it was dark, you are unsure of the colour of his clothes, and you didn't even see his face.*

Mr White:

*Yes.*

Barrister:

*So you're not really sure that the accused is the man who attacked the complainant that night are you?*

Mr White:

*Well, no I can't be certain.*

Barrister:

*Mr White, my client will testify that he is not the attacker. Do you have anything to comment about that?*

Mr White:

*No.*

Barrister:

*No more questions.*

Judge:

*Does the prosecution wish to re-examine?*

Prosecution:

*No your honour.*

Judge:

*Would the prosecution care to call their next witness?*

Prosecution:

*Your honour, the people call Sergeant Michelle Howard*

Clerk:

*Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?*

Sergeant Howard:

*I do.*

Judge:

*State your name and rank.*

Sergeant Howard:

*Sergeant Michelle Howard from Scarborough Police station.*

Judge:

*Please be seated.*

Prosecution:

*How many years have you been in service Sergeant?*

Sergeant Howard:

*27 this year.*

Prosecution:

*Can you please tell the courtroom in your own words about your involvement in this case?*

Sergeant Howard:

*Of course. I was assigned to this case when a call was made to the department on the 3<sup>rd</sup> of July by a woman claiming to have been attacked.*

Prosecution:

*Who was the lady in question?*

Sergeant Howard:

*It was Anna Mitchell.*

Prosecution:

*Continue.*

Sergeant Howard:

*She called and claimed 2 weeks earlier on the night of June 25<sup>th</sup> a man had tried to rape her.*

Prosecution:

*Did you take her call?*

Sergeant Howard:

*Yes, the call was put through to me.*

Prosecution:

*Continue.*

Sergeant Howard:

*I asked her to come in to make a formal statement which she did that afternoon, the 3<sup>rd</sup> of July. After I had gathered some information, I asked her to take me to the scene of the alleged crime, which was Gwelup Reserve. When we got to the park, she showed me where she was attacked.*

*Prosecution: (gets map off the clerk)*

*Here is a map of the park. Could you please point out where the crime scene was?*

*Sergeant Howard:*

Just here. (*points to area C5*).

*Prosecution:*

Let the record show that the witness also identified C5 as the area as the crime scene. Please continue, what happened next? (*returns map to the clerk*).

*Sergeant Howard:*

Upon looking at the crime scene – I discovered a man’s watch with a broken band, and an inscription and stamp on it,

*Prosecution:*

Do you have a photograph of the watch?

*Sergeant Howard:*

Unfortunately not. It was an extremely busy day and the photographer was unable to make it to the park.

*Prosecution:*

Please continue.

*Sergeant Howard:*

We collected the watch but unfortunately as 2 weeks had passed, we were unable to find any forensic evidence.

*Prosecution:*

What did the inscription and stamp say?

*Sergeant Howard:*

It said ‘M.Smith, Graduation, 1995,’ and the stamp had the name of a shop, Tom’s Jewelers.

*Prosecution:*

*And then what happened?*

*Sergeant Howard:*

*We went to Tom’s Jewelers and I talked to the manger who showed me the records of sales. I was able to determine the name and address of the buyer, which was Melanie Smith. Upon calling her, I determined that the watch had been purchased for her son, Mark for his graduation some years ago.*

*Prosecution:*

*And what happened next?*

*Sergeant Howard:*

*I contacted Mark Smith that same day on July 3<sup>rd</sup> - and asked if he would come in for questioning with regard to the finding of his watch at the crime scene. He came in that*



*afternoon and was questioned. Upon seeing the watch, he said that it was his and that it had been stolen at a football game around a month earlier.*

Prosecution:

*Was a police report filed with regard to the theft of his watch?*

Sergeant Howard:

*No, it was not.*

Prosecution:

*Please continue.*

Sergeant Howard:

*He further claimed that on the night of the attack he was at home. Upon being advised that he was a suspect in the attempted rape of Miss Mitchell, he became angry and refused to make a statement, upon which he was formally charged.*

Prosecution:

*Was anyone else interviewed with regards to this case?*

Sergeant Howard:

*Yes, we also interviewed the previous witness, Andrew White with regards to the 25<sup>th</sup> June. He gave a description of the attacker but a lineup was not worthwhile as his description was only of the size and build of the attacker.*

Prosecution:

*Finally, you mentioned that the watch, which was identified by Mark Smith as being his own, also had a broken band. (Gets watch off the clerk).*

*Here is the watch, labeled as Exhibit B (holds up watch in plastic bag). Can you tell us about the nature of the break?*

Sergeant Howard:

*Well, no one can be sure of how it broke, but it appears to have been snapped.*

Prosecution:

*(Returns watch to the clerk) As if someone had been wrestling with another?*

Sergeant Howard:

*It's possible.*

Prosecution:

*Can you tell me Sergeant where the accused lives?*

Sergeant Howard:

*He reported to me that he lives in Karrinyup, on Taunton Way.*

Prosecution:

*Approximately how far from the crime scene, which is Gwelup Reserve - is Taunton Way?*

Sergeant Howard:

*It's very close, I'd say approximately 1.2 kilometres.*

Prosecution:

*So approximately how long would it take to drive or walk there?*

Sergeant Howard:

*I'd say no more than a 10-minute walk, and in the car, well only a few minutes.*

Prosecution:

*Thank you, no more questions your honour.*

Judge:

*Does the prosecution have any more witnesses?*

Prosecution:

No, your honour. The prosecution is closing its case.

Judge:

*Defense, would you like to call your first witness?*

Barrister:

*Your honour, the defense calls Mr Mark Smith.*

Clerk:

*Do you swear to tell the truth, the whole truth and nothing but the truth, so help you god?*

Mark Smith:

*I do.*

Judge:

*State your name.*

Mark Smith:

*Mark Smith.*

Judge:

Be seated please.

Barrister:

*Mark Smith, could you please tell the court where you were on the night of June 25<sup>th</sup> 2000?*

**Mark Smith:**  
*Sure, I was at home watching television.*

**Barrister:**  
*What program were you watching?*

**Mark Smith:**  
*I was flipping between the channels, mainly watching 60 minutes.*

**Barrister:**  
*What time was this?*

**Mark Smith:**  
*Around 7.30, 8pm.*

**Barrister:**  
*Is there anyone who can testify that you were home that night?*

**Mark Smith:**  
*Yes there is. My roommate, Daniel Taylor was also at home.*

**Barrister:**  
*Lets clear something else up. The court has also heard that your watch was found at the crime scene. How do you explain this?*

**Mark Smith:**  
*Well I had been playing football at Gwelup Reserve several weeks earlier.*

**Barrister:**  
*Could you be more specific? Do you have an exact date and time?*

**Mark Smith:**  
*It was Saturday, the 27<sup>th</sup> of May. We were playing most of the afternoon. But I think we probably began playing around lunch and finished around 4 or 5pm.*

**Barrister:**  
*Continue. What happened while you were playing football?*

**Mark Smith:**  
*Well - before we began playing, I removed my watch and put it into the pocket of my jacket, which I took off. When we had finished playing, I noticed that my jacket had been stolen. I have not seen my watch or my jacket since.*

Barrister:

*And is there anyone who can confirm that you were playing football at Gwelup Reserve on the 27<sup>th</sup> of May?*

Mark Smith:

*Yes, Daniel was playing football with me.*

Barrister:

*No more questions your honour.*

Prosecution:

*(gets watch off the clerk) - Mark Smith, this is Exhibit B, the watch found at the crime scene at which Miss Mitchell was attacked. Can you identify this watch? (shows watch).*

Mark Smith:

*Yes, it is my watch.*

Prosecution:

*(gives the watch back to the clerk) - We have just heard your testimony that your watch was stolen some weeks ago. Do you have any proof that your watch was stolen along with your jacket?*

Mark Smith:

*No I don't. I didn't see who took it and none of my friends did either.*

Prosecution:

*Sergeant Howard testified that no police report was filed with regards to the theft of your watch. Can you explain this?*

Mark Smith:

*Well, I didn't think to report it, it wasn't a big deal.*

Prosecution:

*That appears to be an awfully convenient explanation for the placement of your watch at the crime scene doesn't it?*

Mark Smith:

*Maybe, but it is what happened.*

Prosecution:

*Sergeant Howard also mentioned that the watchband was also broken, can you tell us anything about this?*

Mark Smith:

*Well, it wasn't broken when I took it off to play football.*

Prosecution:

*Well perhaps it was broken in a struggle then.*

Mark Smith:  
*Maybe.*

Prosecution:  
*Lets move on. How far away is Gwelup Reserve from your home?*

Mark Smith:  
*It's about 4 streets away.*

Prosecution:  
*Ok, so how long would it take you to drive there?*

Mark Smith:  
*A minute or two.*

Prosecution:  
*And walk?*

Mark Smith:  
*I don't know, I guess about 5 to 10 minutes?*

Prosecution:  
*So you could quite easily have walked to the park and tried to rape Miss Mitchell couldn't you?*

Mark Smith:  
*Yes, but I didn't!*

Prosecution:  
*Mark Smith – you testified that Daniel was home with you on the night that Miss Mitchell was attacked.*

Mark Smith:  
*Yes.*

Prosecution:  
*Did anyone of you make coffee that night?*

Mark Smith:  
*No.*

Prosecution:  
*Did you communicate at all?*

Mark Smith:

*I really can't remember – maybe.*

Prosecution:

*What was Daniel doing that night?*

Mark Smith:

*He was watching a video.*

Prosecution:

*What video was it?*

Mark Smith:

*I can't really remember – I think it was *The Terminator*.*

Prosecution:

*No further questions your honour.*

Judge:

*Does the defense wish to re-examine?*

Barrister:

*No your honour.*

Judge:

*Defense, would you like to call your next witness?*

Barrister:

Your honour, the defense calls Mr Daniel Taylor.

Clerk:

Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

Daniel Taylor:

I do.

Judge:

State your name.

Daniel Taylor:

Daniel Taylor.

Judge:

Please be seated.

Barrister:

*Mr Taylor, could you please explain to the court your relationship to the accused?*

Daniel Taylor:

*He's my roommate. We have been living in the same apartment for about 18 months now.*

Barrister:

*I see, and where were you on the night of the 25<sup>th</sup> June 2000?*

Daniel Taylor:

*I was at home.*

Barrister:

*And what time did you first arrive home?*

Daniel Taylor:

*After work, about 6pm.*

Barrister:

*I see, and was anyone else home when you arrived?*

Daniel Taylor:

*Yes, Mark was home too. He usually gets home a bit earlier than me.*

*Barrister:*

*What was Mark doing when you got home?*

Daniel Taylor:

*Watching television.*

Barrister:

*What was he watching?*

Daniel Taylor:

*I can't really remember.*

Barrister:

*Tell me, did you, at any period, leave the house that night?*

Daniel Taylor:

*No I did not.*

Barrister:

*And did Mark leave the house that night?*

Daniel Taylor:

*No he did not.*

Barrister:

*So, on the night of the attack on Ms Mitchell, Mark Smith was at home with you, is this correct?*

Daniel Taylor:

*Yes it is.*

Barrister:

*Can you also tell us if you have played football recently with Mark Smith?*

Daniel Taylor:

*Yes, we played a few weeks back at Gwelup Reserve.*

Barrister:

*What date was this?*

Daniel Taylor:

*It was the 27<sup>th</sup> of May, a Saturday.*

Barrister:

*(Gets watch off the clerk) - Here is a watch (brings bag to Daniel). Can you identify who it belongs to?*

Daniel Taylor:

*It looks like Mark's watch.*

Barrister:

*Can you tell the court when you last saw the watch?*

Daniel Taylor:

*I can't remember an exact date – but it was a while ago. I'd say at least a month.*

Barrister:

*Mark stated that his watch was stolen that day. Can you confirm this?*

Daniel Taylor:

*Yes, I do recall him saying that he had lost his watch.*

Barrister:

*No more questions your honour.*

Prosecution:

*Mr Taylor – I'd like you to describe for me in detail what the layout of your house is.*

Daniel Taylor:



*Well, as you walk in the front door, we have a large open area. The kitchen and table are on your left and to the right is the lounge area, where we have our television and couches.*

Prosecution:  
*Continue.*

Daniel Taylor:  
*Further down, we have our two bedrooms and behind these is the bathroom and the laundry.*

Prosecution:  
*So there is only one door?*

Daniel Taylor:  
*Yes.*

Prosecution:  
*And the only walls are the ones surrounding the apartment itself, and those that section off the bedrooms and the laundry? Is this correct?*

Daniel Taylor:  
*Yes.*

Prosecution:  
*I see. Mr Taylor, when you arrived home where was Mark?*

Daniel Taylor:  
*He was in the lounge room watching television.*

Prosecution:  
*And tell me what else happened that night?*

Daniel Taylor:  
*I made tea, served up some extra for Mark and went to my room.*

Prosecution:  
*Did either of you make coffee that night?*

Daniel Taylor:  
*No, I don't think we did, I can't remember.*

Prosecution:  
*Did you talk to Mark during the course of the evening?*

Daniel Taylor:  
*I don't know. I can't remember.*

Prosecution:  
*So what did you do once you went to your room that night?*

Daniel Taylor:  
*I watched a video.*

Prosecution:  
*What video did you watch?*

Daniel Taylor:  
*Mission Impossible.*

Prosecution:  
*Are you sure that it was Mission Impossible that you watched? And not The Terminator?*

Daniel Taylor:  
*Yes, I am sure.*

Prosecution:  
*So you watched Mission Impossible in YOUR room?*

Daniel Taylor:  
*Yes, because Mark was watching a television program and didn't want to watch my video.*

Prosecution:  
*And what time did you put on the video?*

Daniel Taylor:  
*At 7.30pm I think, I can't be sure of the exact time, but it was around then.*

Prosecution:  
*And how long did the video go for?*

Daniel Taylor:  
*About two hours.*

Prosecution:  
*So from approximately 7.30 to 9.30pm you were in your room watching a video, is this correct?*

Daniel Taylor:

Yes.

Prosecution:

*And was your bedroom door open or closed while you watched the video?*

Daniel Taylor:

*It was closed.*

Prosecution:

*Did you at any time while watching the video venture out of your room to any other room of the house, say to the lounge room or the toilet?*

Daniel Taylor:

*No, I watched it from start to finish.*

Prosecution:

*And when the video finished what did you do?*

Daniel Taylor:

*I got a glass of water from the kitchen and went to bed.*

Prosecution:

*And did you see Mark as you went to the kitchen?*

Daniel Taylor:

*No, all the lights had been switched off, so I figured he had gone to bed.*

Prosecution:

*Did you check his bedroom to see if this was true?*

Daniel Taylor:

*No, of course not.*

Prosecution:

*I see, so for two hours between 7.30 and 9.30pm you were busy in your room watching a video and you did not leave the room once.*

Daniel Taylor:

*Yes.*

Prosecution:

*And is it possible Mr Taylor, due to your description of the house – that Mark could have left the house without you knowing?*

Daniel Taylor:

*Yes he could have, but he would have told me if he was going out.*

Prosecution:

*But how can you be certain that he did in fact stay home?*

Daniel Taylor:

*Well I can't.*

Prosecution:

*Is it possible Mr Taylor, that Mark did in fact leave the house around 7.30pm and return before or even after you finished watching your video and you did not know?*

Daniel Taylor:

*Of course its possible but...*

Prosecution:

*(interrupts) That's all we need to hear Mr Taylor. I think we've confirmed that Mr Smith's alibi is questionable to say the least. Lets talk about this watch that apparently was stolen. Did you see Mark wearing that watch before you started playing football that day at the park?*

Daniel Taylor:

*No, I didn't notice.*

Prosecution:

*So when did Mark tell you that his watch had been stolen and where did he say it had been stolen from?*

Daniel Taylor:

*A couple of weeks after we played football he told me that he had lost it that day.*

Prosecution:

So, you really do not know for sure that Mark was even wearing the watch that day. For all you know, Mark may not even have taken his watch to the park that day and had it stolen, for all you know, Mark may have worn that watch a couple of weeks later and had it ripped off by Miss Mitchell when he attacked her...which is why it was found at the park...

Daniel Taylor:

Well...

Prosecution:

So you cannot answer that?

Daniel Taylor:

No.

Prosecution:

No more questions your honour.

*Judge:*

Does the defense wish to re-examine the witness?

*Defense:*

Yes, your honour. Mr Taylor, when the prosecution asked you if it was possible that Mark left the house and you were unaware, he interrupted you. What was it that you wanted to say?

*Daniel Taylor:*

Well, I cannot be sure but Mark would have told me if he was leaving.

*Defense:*

Thank you. No more questions your honour.

Judge:

*Are there any more witnesses?*

Barrister:

No your honour. The defense closes its case.

*Judge:*

Very well, we'll hear your final remarks after a short recess.

FADE OUT AND THEN IN TO DEMONSTRATE PASSED TIME.

Prosecution:

*Ladies and Gentleman, you have just heard the testimony of several witnesses, the complainant and the accused. The defense would like you to believe that is just a form of mistaken identity and that Mark Smith was at home at the time of the attempted rape of Miss Mitchell. However, not only does the description of the attacker from both Miss Mitchell and Andrew White match that of the accused, but his alibi is highly questionable. His roommate is not even certain that he was indeed home – in fact as he lives only minutes away from the park where Miss Mitchell was attacked, he could quite easily have walked there and back and attacked her within a short period of time!! Not only this, but Mark Smith's watch was also found at the scene of the crime. Listen to the facts of the case as they stand before you as it is up to you to convict this man so that he won't attack any more women.*

Barrister:

Ladies and gentlemen of the jury, many men live in the same street as Mr. Smith - not to mention the other streets surrounding Gwelup Park, also giving them ample opportunity to attack the complainant. His address should not convince you that he is the attacker, because as we all know - people who attack others do not have to be on foot, they may

also have access to vehicles, meaning a number of people in surrounding areas would also have the opportunity to attack Miss Mitchell! Mr. Smith may fit the very brief description given by the two witnesses, but lets not forget that it was very dark in the bushes and one witness only saw the attacker from behind as he ran away. Hardly enough time to form an accurate description. How can they be sure that it was actually Mr Smith they saw and not someone else? In addition to this, there is absolutely no physical evidence that ties Mr. Smith to the crime. The fact that his watch was found at the scene of the crime does nothing but tell us that the thief had also been at the bushes since the watch was stolen. There is no real evidence against Mr Smith. Don't convict an innocent man. PICTURE TO FADE.