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Biases toward defendants in joint criminal trials

Catherine J. Korda
Edith Cowan University

Edith Cowan University

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BIASES TOWARD DEFENDANTS IN JOINT CRIMINAL TRIALS.

CATHERINE J. KORDA

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Abstract

Under the Criminal Code Compilation Act 1913 (WA), any number of individuals may be joined as co-defendants in a single trial, forming a situation known as a joint trial. The charge/s against each defendant are considered separately and given a separate verdict by the jury. There is considerable debate in the legal arena as to the utility of joint trials, although to date little empirical research exists to substantiate any of the claims made. The present study aimed to contribute to the sparse knowledge base on joint trials by examining the impact of evidence strength on juror decision making in joint and single trials of the same defendant. Sixty mock juror university students were required to listen to an audiotaped trial summary about a hypothetical assault case that followed the same procedure as would be followed in Australian criminal courts. Evidence strength was manipulated so that defendant A had relatively weak and circumstantial evidence implicating him in the offence, and defendant B had very strong, substantive evidence implicating him in the offence. Two pilot studies confirmed that this manipulation was successful. The participants were assigned to one of three conditions – the single trial of defendant A, the single trial of defendant B, or the joint trial of defendants A and B. After listening to the trial summary, the participants were then required to give a verdict for the defendant/s, and rate the strength of the prosecution and defence evidence presented for the defendant/s. The hypothesis that the effect of joining their trials will be different for defendants A and B in terms of the proportion of guilty verdicts rendered for each defendant was supported. It was found that defendant A was significantly more likely to be found guilty in the joined condition than in the single condition ($p < .05$). There was no such effect observed for defendant B ($p > .05$). The second hypothesis that the effect of joining their trials will be different for

defendants A and B on the perceived strength of prosecution evidence was also supported. Statistical testing revealed that there was a significant increase in the perceived strength of the prosecution evidence for defendant A in the joint condition, as compared to the single condition ($p < .05$). There was no significant difference between the prosecution evidence strength ratings for defendant B in the single and joint conditions ($p > .05$). There was no support for the hypothesis that the effect of joining their trials will be different for defendants A and B on the perceived strength of defence evidence. For both defendants, there was no significant difference between defence evidence strength ratings in the joined and single conditions ($p > .05$). These results are interpreted with reference to impression formation theory. The limitations of the present study, including the sample, trial medium, trial elements, consequentiality of the task, and the trial materials are discussed. Directions for future research, such as improvements in the present study and additional sources of bias that may influence verdicts in joint trials, are also examined.

Declaration

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

(i) incorporate without acknowledgement any material previously submitted for a degree or diploma in any institution of higher education ;

(ii) contain any material previously published or written by another person except where due reference is made in the text ; or

(iii) contain any defamatory material

(Catherine J. Korda)

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Table of Contents

CHAPTER ONE: INTRODUCTION

Fairness in the criminal justice system is of paramount importance. One area of procedure that has attracted interest is the joinder of co-defendants. Such a situation arises when more than one defendant is charged in an indictment and tried on the same occasion. This research project examined the impact of evidence strength on juror decision making in joint and single trials of the same defendants.

In most jurisdictions that use the Anglo-American system of law, any number of persons can be joined as co-defendants in one trial, forming a situation known as a joint trial. For example, under section 586 (7) of the Criminal Code Compilation Act 1913 (WA), any number of individuals may be charged in the one indictment and tried jointly if is believed that the offences in question arose out of the same or related facts. Section 586 (7) provides that:

> *Any number of persons charged with committing different or separate offences may be charged in the same indictment and tried together if the offences arise out of the same or closely related facts.*

In theory, the defendants' charges are given separate consideration, and hence a separate verdict, by the jury (Just, 1988). Once defendants are charged jointly in an indictment, they have the option of applying for separate trials, a process known as severance (s. 624 of the Criminal Code Compilation Act 1913 (WA)).

1.1 Severance

Under section 624 of the Criminal Code Compilation Act 1913 (WA), the discretion to sever a multi-defendant indictment belongs to the trial judge. In making a decision about severance, the trial judge must weigh the risk of prejudice to the defendant against judicial economy (Wright, 1985-86). The section provides that:

> *When 2 or more persons are charged in the same indictment, whether with the same offence or with different offences, the court may at any time during the trial, on the application of any of the accused persons, direct that the trial of the accused persons, or any of them, shall be had separately from the trial of others, or others of them, and for that purpose may, if a jury has been sworn, discharge that jury from giving a verdict as to any of the accused persons.*

There are two commonly cited reasons underlying an application for severance. The first is that the complexity of the case may interfere with the jury's ability to compartmentalise the evidence relevant to each defendant. The second reason is that the evidence presented by a co-defendant may be inadmissible against the other defendant/s, resulting in prejudice to the defendant/s (Bordens & Horowitz, 1983; Rinaldi & Gillies, 1991).

Usually a defendant applies for severance at the beginning of the trial, before any evidence is presented. The onus is on the defendant to demonstrate that they will encounter substantial prejudice if the trial is joint in nature (Murray, 1984; Rinaldi & Gillies, 1991; Wright 1985-6). If the trial judge rules in favour of severance, then the defendants will be tried separately. However, an application for severance can be made at any point during the trial and the defendant still has to demonstrate that substantial prejudice occurred. Severance at a later stage in the trial may result in

trial continuing minus the defendant who was granted severance (Rinaldi & Gillies, 1991).

Even if an initial application for severance was unsuccessful, a defendant can have the appellate court review the decision after the trial has finished. If it is found that the counts in the indictment were incorrectly joined, or resulted in substantial prejudice to the defendant/s, a miscarriage of justice has occurred, and the conviction is generally quashed by the appellate court (Murray, 1984; Rinaldi & Gillies, 1991). However, it has been documented that the appellate courts are generally reluctant to intervene in such situations (Rinaldi & Gillies, 1991).

Weinberg (1984) and Rinaldi and Gillies (1991) have noted that the courts have consistently held that these dangers inherent in joint trials can be reduced through proper jury instructions. Throughout the course of a trial, the judge often provides the jury with short directions, and explanations where necessary, that the evidence being presented is admissible against one defendant only (Finlay, 1991). In their summing up, the judge must re-emphasise these points, as well as separating the case and evidence relevant to each defendant (Finlay, 1991; Weinberg, 1984).

In conclusion then, it is difficult for a defendant to obtain a separate trial once they have been charged jointly with a co-defendant in the one indictment (Murray, 1984; Rinaldi & Gillies, 1991; Wright, 1985-6). Similarly, it is difficult to have a refusal of severance overturned on appeal (Rinaldi & Gillies, 1991). It is therefore important to examine the legal debate over joint trials, and this will be done in the next section.

1.2 The Debate Over Joint Trials

There has been considerable debate in the legal literature as to the utility of joint trials for the criminal justice system. On the one hand, proponents of joint trials assert that trials of this nature are more efficient and practical than separate trials of

the same defendants, profiting all involved parties (Just, 1988; Popovski & Rudnick, 1990). On the other hand, the opponents of joint trials assert that the defendant's right to a just trial is being endangered by this emphasis on judicial economy (Just, 1988; Murray, 1984; Popovski & Rudnick, 1990; Weinberg, 1984).

1.2.1 Advantages of Joint Trials

The State benefits from joint trials as only a single courtroom, single judge and single jury are necessary, saving time, money and resources (Murray, 1984; Rinaldi & Gillies, 1991). Obviously, problems in scheduling and a build-up in cases to be heard can be prevented if defendants are tried jointly where appropriate. It also follows that the time required for jury selection can be minimised through joint trials of defendants.

It is believed that if the defendants were tried separately, the jury would receive only a fragmented account of the events in question and may not gain a full understanding of what actually occurred. Hence, joint trials are said to provide the jury with the entire picture of the alleged offence/s, enabling the jury to determine the relationship between the defendants and their relative culpability (Kidston, 1953; Popovski & Rudnick, 1990; Rinaldi & Gillies, 1991).

In the past, juries have also rendered inconsistent verdicts for defendants in separate trials who are legally indistinguishable, signifying the unequal treatment of these defendants. In contrast, joint trials are believed to facilitate more consistent (and hence more equitable) jury verdicts, as all defendants are being dealt with on the same occasion (Popovski & Rudnick, 1990).

The burden imposed on witnesses is also minimised through joint trials, as they are prevented from repeating their testimony in a series of trials (Popovski & Rudnick, 1990; Rinaldi & Gillies, 1991). This would be especially salient where witnesses have been traumatised through their direct or indirect involvement in the offence. Similar benefits would be received by the defendants in joint trials, who are

spared the necessity of testifying in multiple trials - their own, as well as those of their co-defendants (Yates, 1976).

However, Rinaldi & Gillies (1991) and Popovski & Rudnick (1990) argue that it is primarily the prosecution who benefit from joint trials. The prosecution is spared from preparing for, and presenting the same evidence in a number of trials, but is given the opportunity to obtain multiple convictions.

1.2.2 Disadvantages of Joint Trials

As previously mentioned, a number of legal writers (e.g., Just, 1988; Murray, 1984; Popovski & Rudnick, 1990; Weinberg, 1984) are concerned that the defendant's right to a fair trial is not being upheld in joint trial arrangements.

Some of the safeguards which operate to prevent a defendant from being unduly prejudiced in a separate trial do not uphold in the joint trial situation. Examples which will be discussed include criminal propensity evidence, and the competence and compellability of witnesses. There are also circumstances unique to joint trials which may act to prejudice a defendant. Examples which will be discussed include reciprocal blame, inadmissible evidence, and the jury's ability to deal with evidence presented in a joint trial.

Generally, in a trial the prosecution is not permitted to introduce evidence relating to the defendant's criminal propensity. The exceptions to this rule are where a defendant makes reference to their own good character, or the bad character of a prosecution witness, where a defendant has testified against a co-defendant, as well as situations where a defendant's previous criminal charges and / or convictions are admissible to show that a defendant is guilty of the current offence. This is embodied in sections 8 (e) and 8 (f) of the Evidence Act 1906 (WA).

Section 8 (e) provides that:

> *A person charged and called as a witness in pursuance of this section shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless -*
>
> *(i) the proof that he has committed or been convicted of such other offence is admissible in evidence to show that he is guilty of the offence wherewith he is then charged; or*
>
> *(ii) he has personally, or by his advocate, asked questions of the witnesses for the prosecution with a view to establish his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecutor; or*
>
> *(iii) he has given evidence against any other person charged with the same offence* (emphasis added).

Section 8 (f) provides that:

> *when subsection (e) (ii) or (iii) is or becomes applicable to any person charged who gives evidence for the defence, it shall be open to the prosecution, or to any other person charged against whom he has given evidence, to call evidence, that such person is of bad character or has been convicted of or charged with any offence other than that which he stands charged, notwithstanding that the case for the prosecution or of such other person charged may have already been closed* (emphasis added).

These sub-sections of the Evidence Act 1906 (WA) permit co-defendants to impugn the character of a defendant if it is necessary for their own defence. Furthermore, a co-defendant is also permitted to cross-examine a defendant (either themselves or through their legal representative) in relation to their character or prior criminal acts if the defendant has testified against them. The justification for this is that all defendants have the right to defend themselves, even if it involves discrediting the individual who has implicated them, defendant or not (Weinberg, 1984). Thus, the decision whether or not to testify against a co-defendant is likely to be a difficult one for a defendant, as there is always the possibility that their bad character or previous offences may be alluded to in cross-examination (Weinberg, 1984).

In joint trials, co-defendants do not have to testify as witnesses for the defendant (and immunity may also be granted to the co-defendant's spouse). Therefore, a defendant may not be able to access crucial evidence simply because they are being tried jointly with a co-defendant (Weinberg, 1984).

In all trials, there is always the possibility that evidence which is not admissible against a defendant may be given. This problem is somewhat exacerbated in joint trials. The jury may be persuaded by evidence admissible only against a co-defendant when considering the case against a defendant (Finlay, 1991; Kidston, 1953). For example, the confession of a defendant may be admitted into evidence through the testimony of the co-defendant (Finlay, 1991). The ability of the jury to disregard such inadmissible evidence is often questioned (Kidston, 1953; Weinberg, 1984).

An additional problem unique to joint trials is where the defendants attempt to blame each other for the commission of the offence. Obviously, the testimony of the defendants would be contradictory, and in extreme cases, the jury may have to believe the testimony of one defendant over the testimony of another (Kidston, 1953; Weinberg, 1984).

Perhaps the main concern in joint trials is the jury's ability to compartmentalise the evidence relevant to each defendant, and arrive at independent verdicts for them. Claims are often made that jurors may become confused about the evidence pertaining to each accused, thus impeding their ability to give an unbiased verdict (Kidston, 1953; Rinaldi & Gillies, 1991; Weinberg, 1984).

This superficial analysis of the joint trial debate leads one to conclude that the potential risks of joint trials appear to outweigh their benefits. As Yates (1976) so eloquently put:

> *The basic tenet that the defendant must be given a fair trial must be allowed precedence. Secondary to this is the need for the court and their personnel to save valuable time and expense...*(p. 432).

1.3 Psychological Research on Joint Trials

The "conclusions reached by legal commentators are based on subjective interpretations of a diverse collection of case law, which in itself is a collection of judicial intuitions" (Tanford & Penrod, 1984, p. 750). Thus, despite the vast legal commentary on joint trials, there are few studies that have scientifically examined this topic, meaning that it is not yet possible to verify any of the claims made by these legal commentators. At the time the present study was conducted, the researcher could only find two studies (Clayton, 1989; Horowitz, Bordens, & Feldman, 1980) that focused on joint trials.

Clayton (1989) conducted four studies to analyse potential biases toward joint trial defendants. In the first study, the verdict rendered and the confidence in the verdict given by the sample were compared for two defendants in joint and separate trials. The majority of the participants were university students; the remainder were acquaintances of the experimenter. The written trial summaries were based on a real

case involving a car accident at an intersection, and described two defendants (defendant A and defendant B), who were unknown to each other, charged with dangerous driving causing death. The evidence against the defendants was described as being circumstantial. The findings revealed that the joint trial condition significantly increased the number of guilty verdicts given to defendant A but not defendant B. There was no difference in confidence ratings in joint and severed trials, although generally subjects who gave guilty verdicts displayed significantly greater confidence than those who had given not guilty verdicts.

In the second study, the trial summaries were based on a hypothetical burglary case, where one defendant (C) was charged with the theft in question, and the other (defendant D) was charged with the theft in question, as well as two other thefts and an assault. The third study was almost identical to the second, except a few minor changes to the evidence pertaining to defendant C. Due to the similarity in the studies, the data collected from the two university student samples was combined for analysis. It was observed that the joint trial condition did not significantly increase the proportion of guilty verdicts rendered for defendant C in the second study. However, there was a significant increase in the proportion of guilty verdicts in the joint condition, compared to the severed condition, rendered for defendant C in the third study. There was a significant increase in the proportion of guilt verdicts rendered in the joint condition for defendant D in both the second and third studies. In the case of defendant D, this occurred for the theft in question, as well as one of the other theft charges.

The fourth study utilised the same trial summaries as the third, however, for defendant D, the charge of murder replaced the assault charge and an eyewitness testifying against him was made to appear more reliable. The general finding was that there was no significant increase in the proportion of guilty verdicts rendered for either defendant C or defendant D for the theft charges in the joint and severed conditions. There was also no significant difference in the confidence ratings

accompanying the verdicts for either of the defendants in the joint and severed conditions.

Generally, the findings demonstrated that in three of the four studies, at least one of the defendants was more likely to be found guilty in the joint condition when compared to the severed conditions. However, for studies two, three and four, there were additional charges for defendant D. These additional charges may have influenced the verdicts given by the participants for this defendant, meaning that the increase in guilty verdicts observed in the joint condition may not solely be attributable to the trial type (joint vs. severed) manipulation. However, the fact that not all of the experiments showed a joinder effect seems to imply that it depends heavily on the circumstances of the case at hand.

In another relevant study, Horowitz, Bordens, and Feldman (1980) compared the joint trial of two defendants (named Foster and Richards) against severed trials for the same defendants. The trial materials were based on a joint trial that went before the courts in Ohio in 1977, and were recorded onto audiotape. Three hundred and twelve undergraduate psychology students participated as part of their course requirement. The variables that were manipulated were the evidence strength in the Foster case (clear vs. close), trial mode (joint vs. severed) and the position of the Foster case (first vs. second). The participants rated the guilt of the defendant/s on a six point scale, where 1 - 3 indicated not guilty and 4 - 6 indicated guilty, and did not deliberate. One significant finding was that the first case consistently received higher guilt scores than the same case tried separately, whereas no such difference was observed for the second case. This effect was more pronounced when a close case (that is, a case where the evidence against the defendant was somewhat ambiguous) was presented first and combined with a clear case (a case where there was strong prosecution evidence against the defendant) in a joint trial. Both of the defendants received significantly higher guilt scores when tried jointly than when tried separately.

The two studies reviewed above tend to suggest that there may be some validity to the claims made by the opponents of joint trials, in particular that defendants may be more likely to be found guilty when tried in conjunction with another defendant. However, additional research is required to further verify this claim, and to examine some of the possible underlying psychological mechanisms which can help to explain these effects.

1.4 Impact of Evidence Strength Ratings on Juror Decision Making in Joint Trials

Perhaps one of the most potentially biasing situations in a joint trial is that where a defendant has relatively strong, substantive evidence implicating him in the offence, and their co-defendant has weak, circumstantial evidence implicating him (Justice Miller, personal communication, 26th May, 1999). Thus, evidence strength is likely to be an important variable influencing the decisions made by jurors in joint defendant trials. Indeed, Horowitz et al. (1980) report that prosecutors have admitted that by joining strong and weak cases, they hope that the evidence accumulates and results in an increased number of guilty verdicts.

However, the argument that it is prejudicial for one defendant who has weaker evidence against him to be tried with a defendant who has stronger evidence against him has not been effective in the court system (Finlay, 1991; Horowitz et al., 1980). For example, in the case of R v. Connell (1992), where an application for severance on these grounds was made in a conspiracy trial, Seaman J stated:

> *I am not persuaded that, by itself, the fact that a case against one is weaker than the case against others in a conspiracy trial is by itself a ground for the order of a separate trial. It seems to me that the relevant consideration is the likely effect of the difference in the evidence in the strength of the cases. In*

> *my opinion the difference must be shown to give rise to what is variously described as the risk of a miscarriage of justice, or prejudice to prevent a fair trial, or impermissible prejudice...* (p. 529).

In clarification then, the mere fact that one defendant has stronger evidence against him than the other defendant is not sufficient in itself to qualify for severance. Once again, the onus is on the defendant to illustrate that the situation caused, or is likely to cause, a prejudicial trial.

The empirical research seems to lend some support to the potentially biasing effects of varying evidence strength. This has been demonstrated by Horowitz et al. (1980) who found that the first case in the joint trial received higher guilt scores than the same case tried separately, and that the joinder effect was more pronounced when a close case (where the evidence implicating the defendant was relatively ambiguous) was presented first and combined with a clear case (where the evidence implicating the defendant was relatively strong) in a joint trial. However, the conclusions of this study are limited, as the evidence in the joint condition was presented separately for each defendant, rather than in combination as is the norm for joint trials.

Because as present there is a sparsity of psychological literature which looks at the impact of evidence strength in joint trials, it is necessary to extrapolate from the joinder of charges literature. The term joinder of charges refers to the situation where a defendant is tried for several charges at the same time and is governed by s. 585 of the Criminal Code Compilation Act 1913 (WA). It is a logical progression to apply the findings of the joinder of charges literature to the joint trial situation, due to the similar nature of these trial types. The existing joinder of charges literature demonstrates similar findings to the joint trial literature in relation to the impact of evidence strength.

Tanford and Penrod (1984) examined the extent to which juror judgements were influenced when charges were joined. Their sample consisted of 714 qualified jurors who had been summoned for service, and 18 undergraduate students. The

researchers varied charge similarity (identical vs. similar vs. dissimilar), evidence (similar vs. dissimilar) and judge's instructions (present vs. absent). The videotape of an abbreviated trial was based on actual reports of burglary, assault and armed robbery cases. It was found that the proportion of guilty verdicts significantly increased in the joinder condition. The participants also deliberated in groups to provide a verdict, and it was observed that joinder of charges increased the proportion of guilty and hung group verdicts. Another finding was that the subjects in the joined and single trials did not differ significantly in their ratings of evidence strength, although there was a trend for subjects in the joined conditions to rate the prosecution evidence as stronger and defence evidence as weaker than for subjects in the control groups. There was also a marginally significant tendency for subjects to convict more often and rate guilt as more probable when evidence for the joined charges was dissimilar than when it was similar.

Tanford, Penrod, and Collins (1985) examined joinder effects using non-deliberating undergraduate students in order to investigate the generality of the effects observed in the previous study. The materials used were the same as in the 1984 study reviewed above. They examined the impact of joinder of charges, charge similarity and evidence similarity for all of the offences, not just the target offence. The results showed that joinder increased convictions relative to single offence control groups, but only for similar charges and charges in the second and third positions. Interestingly, the charges in the second and third positions were weaker than the first, meaning that strength of evidence may play a role in joinder effects. Subjects in all joined conditions rated the prosecution evidence as significantly stronger (both globally and for specific items of evidence) than those in the severed conditions. There were no significant group differences for defence evidence strength ratings.

Bordens and Horowitz (1983) examined the influence of joinder of charges (joined vs. severed), offence similarity (identical vs. different), order of case presentation (first vs. second) and evidence strength (clear vs. close) on the decisions

made by 220 undergraduate students. The students listened to taped trial summaries of rape and murder cases in small groups, but did not deliberate. It was found that there was only a joinder effect for the first case but not the second, meaning that there was a significantly higher proportion of guilty verdicts in the first case in the joined condition when compared to the severed condition. This was irrespective of whether the first case was paired with a clear or close second case. To measure evidence strength, Bordens and Horowitz (1983) asked the participants to list all of the things that went into their decision concerning the defendant's guilt or innocence, including their thoughts and personal values. They were then asked to rate whether the thought or feature generated was considered favourable towards the prosecution or defence, on a six point scale where one indicated a very positive thought or feature, and six indicated a very negative thought or feature. It was hypothesised that if accumulation of evidence across cases was occurring, then the ratings of cognitions for the prosecution's case (called anti-defendant cognitions) would be more favourable in the joined condition, as opposed to the severed condition. However, Bordens and Horowitz (1983) found that anti-defendant cognitions did not differ in the joined and severed conditions, lending no support for the accumulation of evidence hypothesis.

Tanford and Penrod (1982) asked undergraduate students to rate items of evidence on a scale from 0 to 100 (where 0 strongly indicated innocence and 100 strongly indicated guilt), for both evidence against and in favour of the defendant. The 115 participants read and judged written trial summaries of three different offences - trespass, sexual assault (touching), and sexual assault (rape). Responses were compared across single, joined and sequential conditions. In the single condition, material for one offence only was presented to the relative participants. In the joined condition, the three offences were presented to the participants as a single case, whereas in the sequential condition, the participants were presented with material relating to the three offences, but read each one, and made decisions pertaining to each one, separately. There were significant joinder effects for verdict

and probability of guilt for all three offences (although the effect was marginal for rape verdicts). There was also a significant sequential judgement effect for probability of guilt in the sexual assault (touching) and sexual assault (rape), and there was a greater proportion of guilty verdicts for these charges when presented sequentially as opposed to when they were presented separately (although this was not significant). Evidence ratings were obtained for eight items of evidence from each of the offences that the participants judged. These items were divided into four categories- character evidence against the defendant (such as a criminal record), character evidence in favour of the defendant, trial evidence against the defendant (such as eyewitness identification) and trial evidence in favour of the defendant. Tanford and Penrod (1982) found that participants rated the evidence as significantly more incriminating in joinder and sequential trials than in single trials, regardless of the direction of the evidence (that is, regardless of whether the evidence was favourable or unfavourable toward the defendant).

Character evidence in favour of the defendant and trial evidence in favour of the defendant is likely to be presented by the defence in an attempt to demonstrate the defendant's innocence. Although the Tanford and Penrod (1982) study did not examine this directly, it can be inferred that the defence evidence was perceived to be weaker (that is, less favourable) in the joined and sequential conditions than in the single condition. Character evidence against the defendant and trial evidence against the defendant are likely to be presented by the prosecution in an attempt to demonstrate the defendant's guilt. Thus, it can also be inferred that the prosecution evidence was perceived to be stronger (that is, more unfavourable) in the joined and sequential conditions than in the single condition in the present study.

A number of conclusions can be drawn from the above literature review on the joinder of charges. As with the research on joint trials, the joinder of charges research has also consistently demonstrated that defendants are more likely to be found guilty when that charge is tried within the context of a joined, rather than

severed, trial (Bordens & Horowitz, 1983; Tanford & Penrod, 1982; Tanford & Penrod, 1984; Tanford et al., 1985).

There is no consistency between the findings of those studies (Bordens & Horowitz, 1983; Tanford et al., 1985) that examined the influence of position of a particular charge on the verdicts rendered. Bordens and Horowitz (1983) found that the only the first charge was subject to joinder effects, and that evidence strength of the second case had no impact on this. Tanford et al. (1985) found that the joinder effect occurred for charges in the second and third positions, where the evidence implicating the defendant was relatively weaker than for the first charge. The position of a particular charge may interact with the relative strength of the evidence for the additional charges, but this appears to depend on the circumstances of the case at hand.

Generally, the joinder of charges literature has shown that the prosecution evidence in joined trials is perceived to be stronger (or more unfavourable) than the same evidence presented in separate trials, with the exception of the Bordens and Horowitz (1983) study. However, this study can be criticised on the grounds that it did not use a direct measure of evidence strength, meaning that the method used may have been less sensitive to any existing biases. Two of the four studies (i.e., Tanford & Penrod, 1982; Tanford & Penrod, 1984) also found that the defence evidence was perceived to be weaker (or less favourable) in the joined than severed conditions. Thus, an increase in the perception of the strength of the prosecution evidence may lead to a resultant decrease in the perception of the strength of the defence evidence.

This type of prejudice is known as the accumulation effect. Evidence is said to accumulate across charges in a joined trial, therefore evidence against one charge serves to reinforce the evidence against the other charges, resulting in stronger perceptions of evidence strength (Tanford & Penrod, 1984). Logically, an associated decrease in the perceived strength of the defence evidence could be possible.

The accumulation effect was first acknowledged in the American case of US v. Foutz (1976). Here, the defendant Foutz was charged with two robberies that

occurred several months apart, despite the obvious discrepancies in the modus operandi of the perpetrators in the two robberies. He later successfully appealed on the grounds of prejudice resulting through the joinder of charges, as he was convicted for both of the robberies, despite evidence which clearly indicated that he was only involved in one of them.

1.4.1 Impression Formation and Evidence Strength

Tanford and Penrod (1984) have attempted to explain this accumulation effect within an impression formation paradigm, using the general findings of the impression formation research as their basis. The findings of this research, and their implications for the accumulation of evidence in joinder and joint trials will now be discussed.

Impression formation research has demonstrated that the evaluation of individual items is dependant on the direction of the overall context that the items are presented within, with this context usually being established through the use of positive or negative descriptors. So, if most of the items are positive, individual items are seen to be more positive, and if most of the items are negative, individual items are seen to be more negative (Tanford & Penrod, 1984).

The original impression formation research was carried out by Asch in 1946. He conducted a series of well-known experiments where two groups of university students were required to listen to a series of six adjectives. These adjectives were identical, except for one word, which functioned to create the context for the evaluation of the other adjectives. For one group, the adjective 'cold' was used, and for the other group, the adjective 'warm' was used. After being presented with the word list, the two groups were asked to write a brief character sketch of the individual whom the words described, and mark adjectives which best described the individual from a series of antonym pairs. It was found that participants in the warm condition wrote more favourable character sketches of the person and evaluated them

more favourably on the adjective checklist than those participants in the cold condition. An interesting observation was that participants within the two groups formed consistent impressions of the individual, despite the limited amount of information provided.

Since Asch's original work on impression formation, other researchers have attempted to replicate his findings and examine their generalisability to a variety of situations. Kelley (1950) conducted a similar experiment, except his participants formed impressions of an individual brought to university classes and introduced as a visiting instructor. The study was conducted across three different classes, and two different instructors were used. Half of the participants were led to believe that the individual was a 'warm' person, and the other half of the participants were led to believe that the individual was a 'cold' person. These impressions were created through brief character sketches describing the individual's background which were read prior to their arrival in the class. It was found that those participants who were in the warm condition rated the instructor more favourably on the adjective checklist, and interacted with them more during the class, than those participants in the cold condition. These effects were consistent across the two different instructors used. It appears then that impressions gained of people can also influence how other behave towards them.

Kaplan (1971) conducted two experiments where introductory psychology students were required to form impressions of individuals described by sets of personality trait adjectives, and then rate the likeableness of one test trait in the set. The other traits in the set were manipulated to create varying contexts – they described the individual as either highly likeable, moderately likeable, moderately unlikeable and highly unlikeable. The results showed that the context influenced ratings of the test trait, such that they moved towards the values of the other traits in the set. This study also provides evidence for the importance of context in impression formation.

The research on impression formation has also indicated that negative items of information are given greater weight than positive items of information (Tanford & Penrod, 1984). For example, Hodges (1974) used introductory psychology students to evaluate the weighting of traits in three types of personality descriptions – where all the traits were favourable (PP), where some traits were favourable and others were unfavourable (NP), or where all of the traits were unfavourable (NN). The observations were that the favourable traits in the PP condition were given equal ratings, and that the more negative traits in the NP and NN conditions were given more weight than the positive traits.

In another relevant study, Fiske (1980) asked undergraduate university students to rate how likeable 16 whi males were after viewing a standard face slide and two behaviour slides. The behaviour slides varied along the dimensions of sociability and civic activism, in each of these dimensions, half of the slides were negative and half of the slides were positive. It was found that the participants gave greater weight to extreme or negative behaviours when making their ratings, and that they also paid more attention to these slides (measured by the amount of time that participants spent looking at the slides).

The literature on context effects and weighting in impression formation suggests that negative items of trial evidence may build up or accumulate at a quicker rate than positive items of trial evidence, meaning that by the end of the trial the balance of evidence across all charges is likely to appear incriminating. This may result in stronger perceptions of evidence strength than if the charges were tried separately (Tanford & Penrod, 1984).

These impression formation research findings can be applied to joint trial situations where one defendant has relatively strong, substantive evidence against them and the other has relatively ambiguous evidence against them. As the majority of evidence against one defendant would be incriminating, a negative context may be established. The evidence against the co-defendant may then be perceived more negatively than it would be if presented separately, and hence, in this negative

context the incriminating items of evidence may be given more weight than the exculpatory items of information. Thus, the items of prosecution evidence may be perceived as stronger, and this could be associated with the items of defence evidence being perceived as weaker. In turn, this could lead to a higher proportion of guilty verdicts for a defendant who may not necessarily have substantive evidence against them.

CHAPTER TWO: THE PRESENT STUDY

The present study aimed to expand on the findings of the previous joint trial research conducted by Bordens, Horowitz, and Feldman (1980) and Clayton (1989) which has demonstrated that generally defendants are more likely to be found guilty when tried together than tried separately. This is an important area of research because despite the legal debate over the utility of joint trials, little empirical research has emerged to substantiate either of the two opposing schools of thought on this topic. Thus, the present study may either support or refute the claim that joint trial arrangements may be biasing for the defendants involved.

Specifically, the present study aimed to examine the impact of evidence strength on juror decision making in joint and single trials of the same two defendants. The situation where one defendant has relatively strong, substantive evidence implicating him in the offence, and the co-defendant has relatively weak, circumstantial evidence implicating him in the offence has been identified as a potentially biasing joint trial arrangement (Justice Miller, personal communication, 26th May, 1999). The findings of the joint trial study by Bordens et al. (1980) and the joinder of charges studies reviewed (Bordens & Horowitz, 1983; Tanford & Penrod, 1982; 1984; Tanford et al., 1985) serve to reinforce this viewpoint.

Evidence strength in this study was manipulated so that one of the defendants (defendant A) had relatively weak, circumstantial evidence against him, and the other defendant (defendant B) had very strong, substantive evidence against him. The joint transcript was constructed to mirror the proceedings of a joint trial in an actual criminal court, with the material implicating the defendants being presented in combination to allow a picture of the alleged events to be created, rather than separately for each defendant. Hence, position of each defendant is not a consideration in this study.

The study materials were constructed so that almost all people reading the transcript pertaining to defendant B would judge him as being guilty. As the majority of evidence against this defendant would be incriminating, a negative context will be established for the evaluation of items of information pertaining to defendant A. Given the strength of the evidence against defendant B, little change in juror ratings was expected between the joint and separate conditions for this defendant.

2.1 Hypotheses

A number of predictions have been made in relation to the impact of evidence strength on the proportion of guilty verdicts rendered and the perception of evidence strength (both prosecution and defence) for two defendants tried jointly, when compared to the same defendants tried separately. These were based on the review of the impression formation literature, and the research review on joint trials and the joinder of charges, in the previous section.

2.1.1 Proportion of Guilty Verdicts

Bordens et al. (1980) and Clayton (1989) demonstrated that generally, defendants are more likely to be found guilty when tried together than when tried separately. It was also shown by Bordens et al. (1980) that this joinder effect was more pronounced when a case with strong prosecution evidence was presented first, and combined with a case where the prosecution evidence was relatively ambiguous. A similar effect was noted by Tanford et al. (1985) who found that convictions were increased in the joinder conditions when the charges in the second and third positions were weaker than those in the first position. Hence, evidence strength may function to mediate the observed joinder effects.

It is therefore expected that there will be an increase in the proportion of guilty verdicts rendered for defendant A in the joint condition compared to the single condition. It is also expected that there will be no increase in the proportion of guilty verdicts rendered for defendant B in the joint condition compared to the single condition. The statistical hypothesis to be tested is that the effect of joining the trials will be different for defendant A and defendant B on the proportion of guilty verdicts rendered for each defendant.

Should such an effect be observed, support will be given to the proposition that joint trial arrangements are biasing in situations where the evidence implicating the defendants is markedly different, that is, relatively strong for one defendant and relatively weak for the other.

2.1.2 Perceptions of Evidence Strength

The literature on impression formation has consistently shown that items of information are evaluated in terms of the overall context (Asch, 1946; Kaplan, 1971; Kelley, 1950), and that negative items of information are weighted more heavily than positive items of information (Hodges, 1974; Fiske, 1980). This has implications for joint trial situations where the relative strength of evidence varies for the defendants. In the situation where the evidence against one defendant is relatively strong, a negative context may be created where the evidence against the other defendant (although relatively weak) may be perceived more negatively than if the second defendant was tried separately. This is especially salient given that negative items of information are weighted more heavily than positive items, meaning that these items will be emphasised in a context that has already been established as negative. Such an explanation has received empirical support through the study by Horowitz et al. (1980) and the joinder of charges literature (Tanford & Penrod, 1982; 1984; Tanford, Penrod & Collins, 1985), which have shown that generally prosecution evidence is perceived to be stronger in the joint/joinder conditions, as opposed to the separate

conditions. There has been some inconsistency in relation to perceptions of defence evidence in the existing research; however, it can tentatively be stated based on the findings of Tanford and Penrod (1982; 1984) that the increase in perceived prosecution evidence strength may be accompanied by a resultant decrease in perceived defence evidence strength.

Hence, it is expected that for defendant A, the prosecution evidence will be perceived as stronger in the joint condition compared to the single condition. No change is expected for defendant B in the perceived strength of the prosecution evidence. The statistical hypothesis is that the effect of joining their trials will be different for defendants A and B on the perceived strength of prosecution evidence.

It is further expected that for defendant A, the defence evidence will be perceived as weaker in the joint condition compared to the separate condition. It is also expected that there will be no change in the perceptions of defence evidence strength for defendant B in the joint and single condition. The statistical hypothesis to be tested is that the effect of joining their trials will be different for defendants A and B on the perceived strength of defence evidence.

If such an effect is observed, it will indicate that an increase in the perceived strength of prosecution evidence, and a decrease in the perceived strength of defence evidence, may help explain an accompanying increase in the proportion of guilty verdicts rendered for defendant A in the joint trial arrangement.

CHAPTER THREE: PILOT STUDY ONE

To examine the effectiveness of the evidence strength manipulations for defendants A and B, a pilot study was conducted. The following section describes the method used in the pilot study and its findings.

3.1 Method

3.1.1 Design

In the first pilot study, two groups of ten subjects read either the trial summary for defendant A (Group A) or defendant B (Group B).

3.1.2 Participants

There was an equal number of males and females (n = 5) in Group A. These participants ranged in age from 18 to 63 years, with an average age of 28.8 years. In Group B, three of the participants were male, and seven were female. The average age was 27.3 years, with a range of 18 to 53 years. The participants were assigned to these groups on the basis of their availability.

All of the participants were acquaintances of the experimenter and her family, hence they were members of the general community. No incentive or reward was given to the pilot study participants.

3.1.3 Materials

An information letter was used to introduce the experimenter and her credentials, and details about her thesis supervisor. It also explained the nature and

purpose of the study, although the task was described broadly as a decision-making task, and no reference was made to the potential biases that may be experienced by defendants in joint criminal trials. This was to prevent participants from consciously making an effort to respond in an unbiased manner. Also presented was information on the voluntary nature of the study, and the participant's right to withdraw without explanation. In addition, the participants were instructed not to write their name on any of the materials given to them or discuss any aspect of the study with other group members. A copy of the information letter can be seen in Appendix A.

A consent checklist was used to ensure that the information on the information letter was understood, and was attached to the front of the questionnaire. The participants were not required to sign the consent checklist to help promote anonymity; the fact that they completed the questionnaire was believed to be sufficient indication of consent to participate. The consent checklist is attached in Appendix B.

A standard set of instructions was used for all participants, and informed them of their role as a mock juror in the study. A copy of this can be seen in Appendix C.

Two separate trial summaries were used in the pilot study. One presented information about defendant A's involvement in a hypothetical assault case, where two Caucasian males allegedly assaulted another Caucasian male (see Appendix D1). The other presented information about defendant B's alleged involvement in the same assault case. In each scenario, it was mentioned that another defendant was believed to be involved, however, no identifying information or evidence was given relating to this second defendant. The transcripts followed the same procedure as would be followed in the Supreme Court - commencing with the introduction of the defendants and charges, the prosecution's opening statement, examination and cross-examination of the prosecution witnesses, the defence opening statements, examination and cross-examination of defence witnesses, summation of the prosecution's argument and summation of the defence's argument, and finally the

judge's instructions to the jury pertaining to the burden of proof. For the purpose of the pilot study only, participants were asked to provide a verdict of either guilty or not guilty for the defendant at the end of the written transcript material.

Attempts were made to keep the scenarios as similar as possible, although evidence strength was manipulated such that defendant A had evidence against him which was weak and circumstantial, and defendant B had evidence against him which was more substantive. Both defendants had similar items of circumstantial evidence against them – an eyewitness that could place them near the scene of the crime, physical injuries that could be consistent with being involved in an assault, and physical evidence found at the scene which implied that they were there. The trial summary for defendant B also described an additional eyewitness who saw him committing the alleged offence (but who could not identify the other offender). Both defendants had alibis that could be described as questionable.

A debriefing letter was also used, and functioned to thank the subjects for their participation in the study. The study was described in greater depth than on the information letter, introducing the evidence strength manipulations used, as well as the expected findings. Appendix E contains a copy of this debriefing information.

3.1.4 Procedure

Participants were given the materials and allowed to complete them in their own time at home. They were required to read the information letter and instructions, and participation was deemed to indicate consent, even though signatures were not obtained (for reasons already discussed). One group of participants read the trial summary for defendant A, and the other group read the trial summary for defendant B. All participants then gave a guilty or not guilty verdict for the respective defendant. On return of the materials, subjects were given the debriefing letter, which explained the study in greater detail.

3.2 Results

Three out of a possible ten guilty verdicts were given by the participants in Group A. Based on this result, it was believed that the evidence presented in the trial summary for defendant A was indeed weak and circumstantial. For group B, eight out of ten guilty verdicts were rendered. From this it could be inferred that the evidence presented in the trial summary for defendant B was strong and substantive as desired.

However, feedback from participants in Group B revealed that generally the participants were ambiguous about the evidence implicating the defendant in the offence, and considered the evidence to only just show the defendant's guilt rather than his innocence. This necessitated changes being made to the trial summary for defendant B in order to make the evidence more substantive. The effectiveness of these changes was then examined in the second pilot study, which is described in the next chapter.

CHAPTER FOUR: PILOT STUDY TWO

The results of the first pilot study necessitated some changes being made to the trial summary for defendant B, in order to make the evidence implicating him in the offence stronger and more substantive. This chapter details the changes made, and the method and results of the second pilot study.

4.1 Method

4.1.1 Participants

There were ten participants in the second pilot study that focused on the trial summary for defendant B (Group C). Seven of the participants were female, and three were male. The age range for participants in Group C was 18 to 55 years, with an average of 27.4 years.

As in the first pilot study, the participants were acquaintances of the experimenter and her family. No incentive or reward was offered or given to the participants.

4.1.2 Materials

The information letter (Appendix A), consent checklist (Appendix B), instructions (Appendix C) and debriefing letter (Appendix E) used in the second pilot study were identical to those used in the first. See section 3.1.3 for further details.

As already mentioned, changes were made to the trial summary for defendant B in order to increase the efficacy of the evidence strength manipulation for this defendant. The basic structure of the trial summary remained the same. It

described the items of circumstantial evidence implicating the defendant in the offence - an eyewitness that could place him near the scene of the crime, physical injuries that could be consistent with being involved in an assault, and physical evidence found at the scene which implied that he was there. In addition to the eyewitness who saw defendant B committing the alleged offence, a corroborating additional eyewitness was introduced, as was DNA evidence which linked him to the crime scene. The alibi for defendant B did not change. A copy of the final trial summary for the single trial of defendant B can be viewed in Appendix D2.

4.1.3 Procedure

Once again, participants were given the option of completing the task in their own time. After first reading the information letter and instructions, the participants read the trial summary, gave a verdict, and also rated the strength of the prosecution evidence against the defendant B. It was believed that these two measures would allow the evidence strength manipulation to be assessed more accurately than a verdict alone, as in the initial pilot study. A debriefing letter was included with the materials, and was the same as that used for the first pilot study (see Appendix E). It provided further information on the purpose and nature of the study.

4.2 Results

The data showed that nine out of ten participants considered defendant B to be guilty, and the average prosecution evidence strength rating was 5.75 out of 7. In combination, these two measures show that the modified evidence strength manipulation for defendant B's trial summary was successful.

CHAPTER FIVE: MAIN STUDY

5.1 Method

5.1.1 Design

An experimental between-groups design was employed in this study, and participants were compared across conditions where there was a single defendant in a trial and where there were two defendants in a trial. There were three conditions in total - the single trial of defendant A (single A), the single trial of defendant B (single B) and the joint trial of defendants A and B (joint A&B).

There were two independent variables of interest. The first was trial type. Participant responses were compared across the single condition, where there was one defendant being tried and the joint condition, where two defendants were being tried on the same occasion. The second independent variable of interest was evidence strength. The scenarios were constructed so that the evidence implicating defendant A was somewhat weak and circumstantial, and the evidence implicating defendant B was somewhat strong and substantive.

Measures were taken on three dependent variables. The first was verdict, and participants had the option of selecting a guilty or not guilty verdict for the defendant/s in the scenario that they read. Participants also rated the strength of the prosecution evidence on a seven point Likert-type scale, where one represented extremely weak and seven represented extremely strong. The strength of the defence evidence was rated in a similar manner.

5.1.2 Participants

There were 60 participants in the present study, and the sample was comprised of Edith Cowan undergraduate university students. The majority (n=53, 83.33%) were psychology students, with the remainder from the business (n=5, 8.33%), engineering (n=1, 1.66%) and marketing (n=1, 1.66%) faculties. The participants were predominantly female (n=42, 70%). All of the subjects were over 18 years of age, and thus potential jurors. The average age of the participants was 30.7 years, with a range of 18 to 57 years. They were recruited through the psychology department's participant register, tutorial and lecture classes, and from the campus grounds. Participants were all entered into a draw to win $50.

Participants were assigned to one of the three conditions based on their availability, with 20 participants in each condition. For practical reasons, the participants completed the task in groups, ranging in size from one individual to 13. In the single A condition, the average age of the participants was 34.2 years, with an age range of 18 to 55 years. Three of the participants were male, and seventeen were female. The participants in the single B condition ranged in age from 18 to 57 years, with an average age of 27.7 years. Nine of these participants were male, and 11 were female. In the joint A & B condition, the average age of the participants was 22.4 years, with an age range of 18 to 43 years. Six of the participants in this group were male, and 14 were female. A Kruskal-Wallis one-way analysis of variance revealed that there was a significant difference between the groups in terms of age. It appears that the participants in Group A were significantly older than those in Group C.

5.1.3 Materials

The information letter (Appendix A), consent checklist (Appendix B), instructions (Appendix C), trial summary for defendant A (Appendix D1) and debriefing letter (Appendix E) were the same as those used in the first pilot studies.

See section 3.1.3 for further details. The trial summary for defendant B was the same as the one used in the second pilot study (see section 4.1.2).

The individual trial summaries for defendant A and defendant B were integrated to create the trial summary for the joint condition, which deviated somewhat from the format described for the single trial conditions. In joint trials, the prosecution evidence for each defendant is not presented separately, rather the emphasis is on creating a picture for the jury of the alleged events and establishing a relationship between the defendants. However, separate defences are generally mounted for defendants in a joint trial (Miller, J., personal communication, 26th May, 1999). The trial summary for the joint condition followed this format.

The trial summaries were read onto audiotape by the author of this thesis. This was so that the participants would receive the information through the same medium as they would if they were in a criminal court. Copies of the trial summaries for the single trial of defendant A, single trial of defendant B, and joint trial of defendants A and B can be viewed in Appendices D1, D2, and D3 respectively.

The basic questionnaire for the single trial conditions consisted of one page, with three separate sections. The questions in each section were preceded by instructions that informed the participant on how to answer them. The first section required a verdict for the defendant in the trial to be given, and adhered to the dichotomous guilty / not guilty verdicts found in a criminal court. The next section examined the perceived strength of the evidence put forward by the prosecution and defence relevant to the defendant. These ratings were made on a seven point Likert scale, with one corresponding to extremely weak, and seven corresponding to extremely strong. The final section requested information on two demographic variables (age and sex), in order to ensure that the three groups did not differ significantly from each other. An example of the questionnaire for the single trial conditions can be seen in Appendix F1.

The questionnaire for the joint condition required verdicts to be given, and evidence strength ratings made, for both of the defendants, meaning that this

questionnaire consisted of two pages. The joint trial questionnaire is attached in Appendix F2.

5.1.4 Procedure

Upon arrival, participants were informed of the purpose of the experiment, and read the information letter. To promote anonymity, signed consent was not obtained, for reasons already described. Depending on the condition that they had been assigned to, participants were played the audiotape of either single A, single B or joint A & B. After listening to the tape, the subjects were given the appropriate questionnaire to complete. Once the questionnaires had been completed, the subjects were debriefed and thanked for their participation.

5.2 Statistical Analyses

To examine the observed differences in the proportion of guilty verdicts rendered for defendants A and B in the joint and single conditions, two chi-square tests for independence were used. There are three assumptions that must be satisfied before a chi-square test for independence can be conducted (Coakes & Steed, 1997). The first is that the sample used is a random sample drawn from the population of interest. The constraints of the present study meant that it was not possible to draw a random sample from the potential juror population. This means that the results obtained will only be generalisable to the population from which the sample was drawn (Minium, King, & Bear, 1993), that is, undergraduate potential jurors. The second assumption is that observations are independent. This assumption was satisfied for both chi-square tests. The final assumption for a chi-square test for

independence is that the lowest expected frequency must not be less than five. Unless otherwise stated, this assumption was met.

To examine the observed differences in the evidence strength ratings for prosecution and defence evidence in the single and joint conditions for defendants A and B, a series of Mann-Whitney U tests were conducted. Independent samples t-tests were not used as all but three of the relevant data sets demonstrated a marked deviation from normality according to the Shapiro-Wilks statistic. In order to conduct a Mann-Whitney U test, two assumptions must be satisfied (Minium, King, & Bear, 1993). These are that the samples are independent and that the scores are continuous. These assumptions were satisfied.

5.3 Results

5.3.1 Proportion of Guilty Verdicts

The number of guilty and not guilty verdicts (out of a possible twenty) rendered for defendant A and defendant B in the single and joint conditions can be seen in Table 1.

Table 1 shows that there was a considerable increase in the number of guilty verdicts rendered for defendant A in the joint condition compared to the single condition. A chi-square test for independence revealed that defendant A was significantly more likely to be found guilty in the joint condition than in the single condition ($\underline{X}^2 = 3.96$; $\underline{p}<.05$).

Table 1

Number of Guilty Verdicts for Defendant A and Defendant B across Conditions

	Single Trial		Joint Trial	
Defendant	Guilty	Not guilty	Guilty	Not guilty
A (weak evidence)	4 (20%)	16 (80%)	10 (50%)	10 (50%)
B (strong evidence)	18 (90%)	2 (10%)	19 (95%)	1 (5%)

There also appears to be little difference in the number of guilty verdicts rendered for defendant B in the single and joint conditions, as evidenced in Table 1. This was confirmed by a chi-square test for independence ($X^2 = .36$; $p>.05$). In this second chi-square test, there were two cells that had an expected frequency of less than five, meaning that one of the assumptions of the test has been violated. However, the observed frequencies specified in Table 1 show little difference, indicating that the results of the test seem valid, even though an assumption has been violated. Thus, the effect of joining their trials on the proportion of guilty verdicts rendered was different for defendants A and B, supporting the first hypothesis.

5.3.2 Perceptions of Evidence Strength

Table 2 shows the average prosecution and defence evidence strength ratings for defendants A and B in the single and joint conditions.

Table 2

Evidence Strength Ratings for Defendants A and B across Conditions

	Single Trial		Joint Trial	
Defendant	Pros	Def	Pros	Def
A (weak evidence)	3.1	3.7	4.2	4.0
B (strong evidence)	5.6	2.6	5.4	3.3

Note. Evidence strength ratings were obtained on a scale from 1 to 7, where 1 indicated extremely weak, and 7 indicated extremely strong.

As indicated by Table 2, there was an increase in the perceived strength of the prosecution evidence for defendant A in the joint condition, as compared to the single condition. A Mann-Whitney U test revealed that this difference was significant ($U = 125.5$; $p < .05$). According to a Mann-Whitney U test, the small observed variation between prosecution evidence strength ratings for defendant B in the single and joint conditions was not significant ($U = 186.0$; $p > .05$). Thus, the hypothesis that the effect of joining their trials will be different for defendants A and B on the perceived strength of prosecution evidence was supported.

Table 2 also indicated that there was little variation in defence evidence strength ratings for both defendant A and defendant B in the joint and single condition. There was no significant difference in the perceived strength of the defence evidence in the single and joint conditions for defendant A, based on the results of a Mann-Whitney U test ($U = 171.0$; $p > .05$). Similarly, there was also no difference in the perceived strength of the defence evidence in the single and joint conditions for defendant B ($U = 137.5$; $p > .05$). Thus, there was not support for the

third hypothesis which stated that the effect of joining the trials will be different for defendants A and B in relation to the defence evidence strength ratings given in the joint and single conditions.

CHAPTER SIX: DISCUSSION

The aim of the present study was to expand on the findings of the previous joint trial research (i.e., Bordens et al., 1980; Clayton, 1989), which had demonstrated that defendants were more likely to be found guilty when tried together than when tried alone. Specifically, it focused on the impact of evidence strength on the decisions made by mock jurors, with evidence strength being varied such that one defendant (defendant A) had weak, circumstantial evidence implicating him in the offence, and the other (defendant B) had strong, substantive evidence implicating him in the offence. This section will summarise the main research findings and their relevance for the guiding theoretical framework, the limitations in the present study and criticisms of joint trial research before examining the practical applications of the experimental findings and directions for future research.

6.1 Overview of Findings and Theoretical Implications

The findings of the present study demonstrated support for the first hypothesis that the effect of joining their trials will be different for defendants A and B in terms of the proportion of guilty verdicts rendered. As expected, the participants were significantly more likely to find defendant A guilty in the joint condition than in the single condition. There was no significant difference in the number of guilty verdicts rendered for defendant B in the joint and single conditions as predicted. Thus, the results of the present study suggest that a defendant, who has

weak, ambiguous evidence implicating him in the offence, when tried together with another defendant is more likely to be found guilty than when tried alone, especially if the evidence implicating the person that he is being tried with is relatively strong.

The observed increase in the proportion of guilty verdicts in the joint condition is consistent with the previous research on joint trials, including Clayton (1989) and Bordens et al. (1980). Clayton (1989) demonstrated that in three of her four studies, the joint condition led to an increase in guilt verdicts rendered for at least one of the two defendants. Similarly, Horowitz et al. (1980) found that the two defendants both received higher guilt scores when tried jointly, compared to when they were tried separately. From this starting point, it can be concluded that the existing joint trial research tends to support the assumption that defendants may be more likely to be found guilty when tried in conjunction with another defendant than when tried alone.

Support was also obtained for the second hypothesis that stated that the effect of joining their trials will be different for defendants A and B in relation to the perceived strength of the prosecution evidence. The current study found that the joint condition fostered significantly stronger perceptions of the strength of the prosecution evidence than the single condition for defendant A as expected. There were also no significant differences between the perceived strength of the prosecution evidence in the joint and single conditions for defendant B.

This finding indicates that the prosecution evidence is perceived as significantly stronger in the joint context in a situation where a defendant has relatively weak evidence implicating him in the offence and the co-defendant has substantive evidence implicating him in the offence. Similar observations have been made by Horowitz et al. (1980) who found that the joinder effect was more

noticeable when a case with strong evidence implicating the co-defendant (clear case) was paired with a case with relatively ambiguous evidence implicating the defendant (close case). The joinder of charges literature has also led to similar conclusions being drawn. Tanford and Penrod (1982; 1984) and Tanford, Penrod, and Collins (1985) all found that prosecution evidence was considered to be more incriminating when charges were joined than when they were tried separately, using university students as well as actual jurors as the sample groups.

The present study, in conjunction with the research literature reviewed, would seem to indicate that the accumulation effect is fairly robust, applicable to both joint trials and joinder of charges. Such an effect can be explained within an impression formation framework (Tanford & Penrod, 1984). In a situation where the evidence against the defendants varies in its relative strength, a negative context may be established (Asch, 1946; Kelley, 1950; Kaplan, 1971) through the strong, incriminating evidence against one defendant, against which the evidence against the other defendant is assessed. If the other defendant has weaker, circumstantial evidence against him, it may be perceived as stronger since it is presented within this negative framework. Given that negative items of information are given more weight than positive items of information (Hodges, 1974; Fiske, 1980), the incriminating items against the second defendant may be enunciated in a context that is already negative.

The third hypothesis that the effect of joining their trials will be different for defendants A and B in terms of the perceived strength of the defence evidence was not supported. As expected, there was no significant difference in the perceived strength of the defence evidence for defendant B in the single and joint conditions. It was predicted that the defence evidence for defendant A would be rated as weaker

(or less favourable) in the joint condition than in the single condition. However, this prediction was not supported.

Bordens and Horowitz (1983) and Tanford, Penrod, and Collins (1985) also failed to find a difference in the ratings of defence evidence in the joined and single conditions. It appears then that the increase in perceived prosecution evidence strength in joint trials is not accompanied by a resultant decrease in the perceived defence evidence strength.

There were no changes on any of the dependant measures for defendant B. This was anticipated as the evidence against defendant B was substantially strong, with the majority of individuals in the pilot and experimental studies finding him guilty beyond a reasonable doubt. The evidence against defendant B was constructed in this manner in order to create a negative context for the evaluation of the evidence relevant to defendant A, and hence, no changes in the dependant variables were expected for this defendant.

Thus, the present study demonstrated support for two of the three hypotheses, indicating that defendants can experience prejudice in joint trial situations in terms of the proportion of guilty verdicts rendered and prosecution evidence strength ratings, particularly when the evidence strength against the defendants is varied. However, the study itself is not without limitations.

6.2 Limitations of the Present Study

Bornstein (1999) has examined the major validity concerns pertinent to joint trial research. Of relevance to the present study are the sample used, the trial medium, the trial elements included and the consequentiality of the task. The flaws

in the trial materials and statistical procedures used in the present study will also be examined.

6.2.1 Sample

University student samples, such as that employed in the present study, have been criticised on the grounds that they are not representative of the potential juror population (Bornstein, 1999; Hastie, Penrod, & Pennington, 1983). Indeed, Hastie et al. (1983) note that university students differ from jurors on the variables of age, education, income and ideology, and that students rarely actually serve on juries. Thus, there are a number of differences between actual jurors and university students that may lead them to react differentially to the experimental materials.

Such a concern has been evaluated by Bornstein (1999), who focused on jury simulation studies published in the first twenty years of the journal Law and Human Behaviour. He notes that generally research comparing student and non-student samples has found little difference in the verdicts rendered, with only five out of twenty-six studies demonstrating discrepancies between these sample groups. The observed discrepancies were that in these five studies, university students had a tendency to be more lenient in criminal trials and award more damages than non-students.

The sample in the present study can also be criticised on the ground that there were considerably more females than males, meaning that gender differences in the responses may have impacted on the observed findings. Bornstein (1999) notes that research studies on the impact of sex on verdicts rendered by participants have yielded inconsistent results, and that the results seem to depend heavily on the circumstances of the case at hand. Gender differences only seem to be a concern when the case considered has sensitivity for the female gender, such as rape. It is therefore likely that gender played a little role in the present study, however only future research can ascertain this with certainty.

There was also a significant age difference between participants in two of the three conditions (single A and joint A and B), and this may have mediated the findings comparing these two groups. Hepburn (1980) has found that of nine demographic variables, only two (age and prior military service) are significantly correlated with participants' verdicts. Thus, future research is necessary to confirm the findings of the present study and rule out any potential gender effects.

Thus, it is likely that the sample used in the present study had only minimal impact on the observed findings. However, future researchers may be interested in replicating the findings of this study with the general population from which potential jurors are selected, to see if in fact any discrepancies would result.

6.2.2 Trial Medium

The present study was conducted in a laboratory environment, which does not simulate the courtroom environment. Although the participants received the trial materials aurally as they would in a court of law, none of the involved parties in the trial simulation could be seen. Such an unrealistic presentation prevents additional information being available to the participants, e.g., facial expressions, gestures (Hastie et al., 1983), which often influences the decisions made by jurors and mock jurors alike. However, Bornstein (1999) has concluded that the presentation medium (visual, aural or written) has little impact in the majority of the existing studies comparing them, influencing the verdicts rendered in only three of eleven studies. This suggests that mock jurors are able to discriminate between relevant and irrelevant sources of information in making their decisions, and that research can be efficiently conducted through less realistic methods.

6.2.3 Trial Elements

Another possible limitation of the present study is that the participants are not required to deliberate or provide a group verdict, as would be required in a court of law. Group decision making may involve different processes than individual decision making, meaning that the results obtained may not be representative of juror decision making. For example, the reasoning skills exhibited by juries may be different to those exhibited by individual jurors (McCoy, Nunez, & Dammeyer, 1999). McCoy et al. (1999) found that mock jurors questioned after deliberation showed superior reasoning skill and ability to mock jurors who were questioned prior to deliberation. Specifically, they were more likely to evaluate each possible explanation for the events in terms of the supporting and non-supporting evidence that existed. The authors believe that the jury context promotes an exchange of ideas which may improve individual reasoning ability. Thus, it is necessary for the findings of the present study to be replicated using a group decision making paradigm, as group decision making may differ considerably from individual decision making.

The elements of an actual criminal trial were somewhat simplified for the purpose of the present study. This is typical of jury simulation research as there are legal and ethical restrictions prohibiting the study of actual juries, and difficulty for researchers in creating and manipulating the conditions under which an actual jury functions. Laboratory research allows the effects of an independent variable on a dependant variable to be assessed to a greater extent than in a natural setting (Hastie et al., 1983). However, one problem inherent in less complex research such as this is that the salience of the independent variable may be enhanced, increasing its effects (Hastie et al., 1983; Kramer & Kerr, 1989). Thus, "the findings of studies that use

simple, abbreviated trials may be misleading because the effects that they produce on behaviour may be much stronger than the effects that would occur in actual trials" (Kramer & Kerr, 1989, p. 90).

This can be illustrated by making reference to a meta-analysis of seventy-eight juror simulation studies conducted by Linz and Penrod (1982). The methodological features of the studies analysed, such as case completeness, subject type and presentation form, were coded and then correlated with the observed effect size. The researchers found that there was an inverse relationship between treatment effects and research settings, such that treatment effects became stronger as research settings became less realistic. Similar results have been obtained by Kramer and Kerr (1989) who compared the verdicts given by undergraduate students for the same armed robbery case which varied in length and level of detail included. It was observed that the participants were significantly more likely to convict the defendant in the short and less detailed (and hence, less complex) trial version than in the lengthier (and hence, more complex) trial version.

Thus, the impact of evidence strength in the present study may have been enhanced through the use of such a simplified design. The increase in the proportion of guilty verdicts rendered for defendant A in the joint condition may be the result of this factor, that is, the enhancement of the accumulation effect, rather than the evidence strength manipulation. Due to the strength of the evidence implicating defendant B, there is little chance that an enhancement of the accumulation effect could have occurred for this defendant. Interestingly, Bornstein (1999) notes that despite the methodological concerns over jury simulation research, over the last twenty years experimental designs have become less realistic through the reliance on student samples and less sophisticated presentation modes. This means that this

particular problem is relevant to a large proportion of jury simulation research. Future research should attempt to use more realistic experimental designs so that the impact of the manipulated variables can be more accurately assessed. Hastie et al. (1983) have detailed the minimal requirements for a jury simulation trial to be realistic. They recommend that the experimental sample approximate the potential jury sample, that the elements included approximate an actual trial and that the participants deliberate to provide information on the group as a whole, rather than on individual participants.

6.2.4 Consequentiality of the Task

In the present study, the mock jurors were deciding the fate of a hypothetical defendant, meaning that the task had no consequentiality. However, in real life criminal trials, the jurors are deciding on the fate of an actual person. This difference may influence the verdicts rendered for defendants in mock and actual trials. Unfortunately, there are legal and ethical restrictions governing the study of actual juries (Hastie et al., 1983), meaning that at best, researchers can attempt to simulate the jury process as realistically as possible and generalise the findings to the legal system.

6.2.5 Trial Materials

In joint trials, part or all of the evidence against one defendant is usually admissible against the other defendant/s. This is because the defendants are charged with the same offence, meaning that the evidence implicating them is likely to

overlap. If the defendants are charged with different offences, it is likely that they will be related somehow due to the offences arising out of the same set of circumstances (Rinaldi & Gillies, 1991). The trial materials for the present study deviated from this format in that there was little overlapping evidence common to the two defendants. Such a situation may prejudice the defendants because the evidence relevant to each is distinctly different (Finlay, 1991; Yates, 1976). Future researchers should attempt to improve the existing experimental design to more closely resemble that of actual joint trials, such that at least part of the evidence is admissible against all defendants in the hypothetical scenario.

The evidence strength manipulations for defendant A and defendant B in the trial summaries were tested in pilot studies that used acquaintances of the experimenter as the participants. It may have been useful if a lawyer had examined the materials to provide feedback on the evidence strength manipulations from a legal perspective. However, it must be remembered that ultimately it is the jury that makes the decision as to the strength of evidence implicating defendants in courtroom trials.

6.2.6 Statistical Methods

The statistical techniques used to analyse the data in the present study were all non-parametric techniques. A chi-square test was necessary to analyse the verdicts obtained for each defendant as the data was in the form of frequency counts for guilty and not guilty verdicts. The data obtained on the evidence strength ratings however was ordinal in nature, but because of the violation of normality for many of the samples of interest, non-parametric statistics were required. Non-parametric tests

are known to be less powerful than parametric tests, that is, it is harder to reject a false null hypothesis when using a non-parametric test to analyse data (Grimm, 1993). This means that the tests used to analyse the evidence strength ratings may have been less sensitive to the differences between the groups. Future researchers may have more success in finding differences between groups of interest if parametric statistics are used where possible.

6.3 Ways of Minimising Bias in Joint Trial Situations

Despite the methodological weaknesses inherent in the present study and other joint trial research, the existing research to date has still demonstrated that defendants who are tried together are prejudiced by this arrangement, in that they are more likely to be found guilty than if they were tried separately. This necessitates some examination of ways in which potential biases can be minimised. Ways of minimising bias in joint trial situations include judge's instructions, juror aids and juror training.

6.3.1 Judge's Instructions

During the trial procedure the judge is required to instruct the jury in general, as well as case-specific, legal matters in areas such as the admissibility of items of evidence (Finlay, 1991; Kassin & Wrightsman, 1987). However, the majority of instruction occurs in the judge's summing up, where any prior instructions are re-emphasised,

the case and evidence relevant to each defendant is separated, and instructions on the requirement of proof are given (Finlay, 1991; Weinberg, 1984).

The joinder of charges literature has given consideration to the efficacy of judge's instructions in minimising bias. Greene and Loftus (1985) found that judge's instructions did not affect juror verdicts, their impressions of the defendant, their standards of reasonable doubt, or their memory of information presented in the transcripts when compared to measures obtained from a no instruction group, regardless of whether the instructions were given before or after the evidence was presented. Similarly, Tanford and Penrod (1984) found that the presence of judge's instructions had no effect on juror verdicts, memory, evidence ratings and defendant ratings in contrast to when judge's instructions were absent. However, Tanford et al. (1985) found that judge's instructions resulted in significantly fewer guilty verdicts than no instructions. Thus, the research seems to indicate that there is little consensus on the efficacy of judge's instructions. This necessitates a consideration of alternative methods of reducing bias in joint trial situations, and this will be done in the next section.

6.3.2 Juror Aids and Juror Training

To help minimise bias in joint trial situations, there are a number of inexpensive juror aids which may be incorporated into the trial procedure, including help with the decision making process, questioning, taping of testimony and judge's instructions, as well as notetaking. These techniques described could be applicable to joint trials in aiding the jurors to arrive at independent verdicts for each defendant, as well as separate the evidence pertaining to them. Allowing the jurors to question

the judge may aid in their comprehension of legal instructions and legal terminology (Reifman et al., 1992; Strawn & Munsterman, 1992), which may become complex in joint trials.

Strawn and Munsterman (1987) propose that training prior to the commencement of a trial may help to eliminate some of the problems typically experienced by juries, such as inadequate understanding of legal terminology and indecision within the jury group. Areas to be covered could include instruction of the relevant law, the deliberation process, and conflict resolution.

It follows then that by incorporating juror aids and training, jurors may become less naive to the task required of them, and hence, less likely to fall prey to a number of potentially prejudical factors (including those inherent in the joint trial situation). However, psychological research is still required to assess the possible benefits of the various juror aids and juror training for joint trial situations.

6.4 Directions for Future Research

The case of U.S. v. Foutz (1976) described previously specified two other sources of prejudice that may justify the granting of severance, in addition to the accumulation of evidence. It was stated that the jury may confuse the evidence and convict the defendant of one or both crimes when it would not convict him of either if it could keep the evidence properly segregated; and that the jury may find that the defendant is guilty of one crime and them find him guilty of the other because of his criminal disposition. Considerable psychological research has been dedicated to these potential sources of prejudice in joined trials, and a selection will be reviewed

below. The studies by Tanford and Penrod (1982; 1984), Tanford, Penrod, and Collins (1985) and Bordens and Horowitz (1983) previously reviewed also paid some consideration to these additional factors.

In the study by Tanford and Penrod (1982), recall of evidence was scored to obtain a measure of evidence intrusions, that is, items of evidence recalled as being relevant to one defendant when in fact it was relevant to the other defendant. Participants were exposed to a multiple choice recognition task, where they were required to select which facts were presented in relation to the target offence. It was found that combining the offences led to a greater proportion of intrusions than if the offences were tried separately. Their second study indicated that defendants in the joined condition rated the defendant more negatively on eleven nine-point character dimensions than those in the separate conditions.

These findings were replicated by Tanford and Penrod (1984), and Tanford, Penrod, and Collins (1985). Tanford et al. (1985) additionally observed that the number of intrusions increased as a function of charge similarity; as charges became more alike, the number of intrusions increased. Bordens and Horowitz (1983) also found that there were more evidence intrusions in joined trials when the cases were similar than when they were dissimilar.

Greene and Loftus (1985) conducted a study where ninety undergraduate students read case descriptions based on police records. One third of participants read a rape case, one third read a murder case, and one third read both. A greater proportion of guilty verdicts were rendered for the murder and rape cases when they were tried together than when they were tried separately. In addition, it was found that defendants in the joined condition were perceived to be more dangerous, less likeable and less believable.

The results of the studies reviewed above suggest that there are additional sources of bias that may be in operation when charges are joined, in conjunction to the accumulation of evidence. Thus, there may be some interaction between these sources of bias which produces the increase in the proportion of guilty verdicts rendered in the joined trials, compared to the separate trials. It is a logical progression to apply this to the joint trial situation. Jurors may have difficulty separating the evidence pertaining to each defendant, and defendants may be perceived more negatively in the company of co-defendants due to a guilt-by-association effect. Future research on joint trials should attempt to consider the impact of all three sources of bias (confusion of evidence, accumulation of evidence and the inference of a criminal disposition) on decisions made by jurors.

It is also possible that the types of crime that defendants are charged with in joint trials may influence the magnitude of any potential effects. Some types of crime may lead to more pronounced joinder effects in joint trial situations than others. Future researchers may wish to compare different types of crime to see if any difference in the magnitude of joinder effects arises.

6.5 Conclusion

The present study suggests that defendants in joint trials may be less likely to receive a far trial than if tried alone under certain conditions. Thus, a defendant who has relatively weak evidence implicating him in an offence is more likely to be found guilty if paired with another defendant who has relatively strong evidence implicating him in the offence. This observed finding is likely to be a function of the accumulation effect, that is, the tendency for prosecution evidence to be perceived as

stronger in the context of a joint trial, and can be explained using an impression formation paradigm. A negative context may be established as the majority of items of information would be incriminating rather than exculpatory, and these incriminating items of information may be given more weight than the exculpatory items, leading to an accumulation of evidence.

The findings of the present study are important because at the time it was conducted, only two psychological studies examining the potentially biasing effects of joint trials could be found. Both of these were conducted in the 1980s. This underscores the necessity of additional research to substantiate the research base in this area and to establish the generalisability of joinder effects in joint trial situations.

The major methodological weaknesses in the present study are related to the sample used, the trial medium, the trial elements employed, and the consequentiality of the task. Such weaknesses are common to the majority of jury simulation research because there are legal and ethical restrictions governing the study of actual jurors, meaning that some trade-off between experimental control and external validity is necessary. Attempts were made to keep the present study as ecologically valid as possible given the monetary and time constraints in operation. The methodological weaknesses in the present study are outweighed by its potential benefits. Possible biases toward defendants, although speculated upon in the legal literature, have had little empirical examination, with the present study contributing to the sparse knowledge base on this topic.

Given that the present study has demonstrated that defendants may be biased in a joint trial situation, particularly when the strength of evidence against the defendants is varied, some consideration of ways to minimise such bias is warranted. In the legal arena, judge's instructions are commonly employed as a way of minimising prejudice toward defendants in certain situations. Supplementary techniques for minimising bias toward defendants include a number of jury aids, such as note-taking, recorded transcripts accessible to jury members, and questions put forth to the judge and / or lawyers, as well as providing the jury with preliminary

training to orient them to the requirements of their task. The efficacy of these techniques of minimising bias in the joint trial situation still needs to be examined.

Future researchers may wish to expand on the findings of the present study by examining juror decision making in a situation that more closely approximates the courtroom setting. Additional sources of potential bias that may operate against defendants in joint trial situations, including confusion of evidence and inference of a criminal disposition, should not be neglected by future researchers. Consideration may also be given to the possible impact that the type of crime may have on the bias experienced by defendants in joint trials.

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Appendix A: Information Letter

Decision Making in Criminal Trials

My name is Cathy Korda and I am a sixth year Psychology student at Edith Cowan University. This study is being conducted in partial fulfilment of the requirements for a Master in Forensic Psychology degree, and has been reviewed by the Ethics Committee of the School of Psychology. My supervisor for this research is Dr. Alfred Allan. This study is investigating decision making in a criminal trial where there are two defendants and comparing it to decision making in separate trials of the same two defendants. The specific topic of interest is how decisions about the defendants' guilt are made. This is an important area of research because only one study to date has examined this issue, which is surprising due to the prevalence of joint trials in the Australian criminal justice system.

The following experiment should take approximately fifteen minutes to complete. You will be asked to listen to a tape of a criminal trial in which there is one or two defendants, and then answer a questionnaire which will take approximately five minutes to complete. There are no right or wrong answers, only your personal opinions and beliefs are important.

Please do not put your name anywhere on the questionnaire. This means that your responses will be anonymous. The data obtained will be used in a thesis, and at a later stage may be published in a psychological journal.

Your participation in this study is voluntary, and you retain the right to withdraw at any time during the proceedings without providing a reason or explanation. Your decision to withdraw will be respected, and you will not be penalised in any manner for this decision.

This information sheet is for you to keep. If any further information, or a summary of the findings of this study, is desired, I can be contacted on 94019668, or via email on ckorda@kangeroo.fhhs.ac.cowan.edu.au. My supervisor, Dr. Alfred Allan, can be contacted on 94005536 or via email on a.allan@cowan.edu.au.

Please do not discuss the trial, or your responses to the questionnaire with others in your group.

Thank you.

Cathy Korda

Appendix B: Consent Checklist

Decision Making in Criminal Trials

I confirm that:

* · I have read the information sheet that forms part of this document;
* · I was given an opportunity to ask questions;
* · All of my questions were satisfactorily answered;
* · I understand the information;
* · No pressure is being put on me to participate; and
* · I voluntarily complete this questionnaire.

Appendix C: Instructions

In this study you are required to listen to a taped criminal trial. Your role is to imagine that you are one of the jurors present at this trial. You should listen to the tape as carefully as you would in a real courtroom.

Once the trial has ended, you will be required to give a verdict of guilty or not guilty for the defendant/s and answer some questions about the trial.

Appendix D1: Trial Summary for Single Trial of Defendant A

Mr Steven Adams is charged with unlawful assault, under s. 223 of the WA Criminal Code Compilation Act 1913. He pleads not guilty to this charge.

Mr Steven Adams is charged with unlawfully assaulting Mr Victor Jones on the day of June 14, 1998. Mr Jones testified that as he was walking down Murray Street Mall at approximately 4.30pm on the aforementioned date, he was physically assaulted by two men from behind. In response to the attack, Mr Jones stated that he swung back one arm to protect his head, and in doing so, hit one of the offenders. Because he was attacked from behind and had his shirt pulled over his head, Mr Jones stated that he could not identify the assailants but stated that there were definitely two men. He testified that he sustained a number of injuries, including lacerations to his face and arms, multiple bruises to the face and chest area, and three cracked ribs. He was hospitalised for two days after the alleged assault.

The first witness summoned by the prosecutor, Mr Peterson, was Ms Williams. She testified that she saw a car the same colour and model as the defendant Adams', parked along Barrack Street near the scene of the alleged crime as she walked from her job at Baskin Robbins ice cream parlour toward the train station on Wellington street. She finished work at approximately 3.00pm, which was an hour and a half before the alleged crime. In cross-examination by Mr Davies, who appeared for Defendant Adams, it was put forth that although a car matching the description of the Defendant Adams' car was sighted near the alleged crime scene, this did not necessarily demonstrate his involvement.

The second witness called by Mr Peterson for the prosecution was Sergeant Sherman from the Forensics Division of Perth Police Headquarters. Sergeant Sherman testified that a muddy shoe print matching the Defendant Adams' Adidas shoe was found at the scene of the alleged crime. The defence lawyer, Mr Davies, raised the point that Adidas shoes are common and therefore the footprints are not necessarily those of the Defendant Adams. Upon cross-examination, Sergeant Sherman agreed that this is possible.

The next prosecution witness was Senior Constable Smithson. In response to questioning by Mr Peterson, Senior Constable Smithson testified that when the Defendant Adams was arrested one day after the alleged event, his right hand was bandaged and he was vague about how he obtained this injury. It was further proposed that such an injury could have resulted from Mr Jones swinging back his arm to protect his head. Mr Davies, in cross-examination of this witness, proposed to Senior Constable Smithson that the injury to the Defendant Adams' hand might have been inflicted at a time other than the alleged assault, and Senior Constable Smithson agreed that this was possible.

In the Defendant Adams's defence, Mr Davies called the Defendant Adams' father, Mr Frank Adams. He testified that on the date in question, the Defendant Adams arrived home at approximately 3pm on the afternoon in question and to his knowledge did not leave the house until the following morning. Mr Frank Adams further testified that his son had told him that his bruised hand was the result of a bicycle accident. In cross-examination by the prosecutor Mr Peterson, it emerged

that on the day in question, Mr Frank Adams was bedridden with the flu and could not be certain that the Defendant Adams did not leave the house later on that afternoon while he had been sleeping. Despite this, Mr Frank Adams was certain that he would have heard the Defendant Adams leave the house. Further, Mr Frank Adams could not verify that his son had actually received the bruise on his hand in a bicycle accident as he had only been told this by the Defendant Adams.

In summarising the case for the prosecution, Mr Peterson stated that the sighting of a car similar to the Defendant Adams' near the scene of the alleged crime, as well as the bruise on his hand and the footprint matching his brand of shoe, implied his involvement in the alleged event. He further stated that the alibi provided by Mr Frank Adams was questionable, as he had been ill which resulted in his being bedridden and asleep much of the day. In summarising the case for the defence, Mr Davies put forth that the items of evidence put forward by the prosecution did not necessarily prove that the Defendant Adams had any involvement in the alleged offence, and that Mr Frank Adams had provided an alibi which indicated the Defendant Adams was not involved.

The judge explained to the jury that they must only find Defendant Adams guilty of unlawful assault if the evidence proves beyond a reasonable doubt that he was involved in its commission.

Appendix D2: Trial Summary for Single Trial of Defendant B

Mr George Bartlett is charged with unlawful assault, under s. 223 of the WA Criminal Code Compilation Act 1913. He pleads not guilty to this charge.

Mr George Bartlett is charged with unlawfully assaulting Mr Victor Jones on the day of June 14, 1998. Mr Jones testified that as he was walking down Murray Street Mall at approximately 4.30pm on the aforementioned date, he was physically assaulted from behind. In response to the attack, Mr Jones stated that he swung back one arm to protect his head, and in doing so, hit one of the offenders. Because he was attacked from behind and had his shirt pulled over his head, Mr Jones stated that he could not identify the assailants but stated that there were definitely two men. He testified that he sustained a number of injuries, including lacerations to his face and arms, multiple bruises to the face and chest area, and three cracked ribs. He was hospitalised for two days after the alleged assault.

The first witness summoned by the prosecution lawyer, Mr Peterson, was Mr Quartermaine, a waiter at the Tea Merchant Café in the Murray Street Mall. Mr Quartermaine testified that he remembered serving tea and muffins to the Defendant Bartlett at approximately 3.45pm on the day in question, forty-five minutes before the event. In the cross-examination of Mr Quartermaine, Mr Everett made it clear that although he was sighted near the alleged crime scene, this did not necessarily demonstrate the Defendant Bartlett's involvement.

The next prosecution witness was Mrs Wesley, a middle-aged bank teller. She testified that she saw part of the alleged event on her afternoon break at 4.30pm, and that the Defendant Bartlett was one of the perpetrators, although she could not identify the other. She stated that at the time of the alleged event it was still light, and that she had a clear unobstructed view of the Defendant Bartlett, but not the other perpetrator. She further added that she did not stop to help Mr Jones out of fear for her own safety. Medical evidence revealed that Mrs Wesley had normal (20-20) vision. In cross-examination, Mr Everett pointed out that there had been a three month interval between the event and the trial. Despite this, Mrs Wesley testified that she was certain that the man she saw was the Defendant Bartlett, as the event was something that she found difficult to forget.

Mr Davidoff, a teenage check-out operator, who was questioned next, corroborated Mrs Wesley's version of events. He stated that he saw two men physically attacking a third in the Murray Street Mall as he was on his way home from work at approximately 4.40pm. He testified that as he approached the men, the two perpetrators ran away when they saw him, but not before he got a clear view of both of them. He further testified that one of the perpetrators was definitely the Defendant Bartlett. However, Mr Davidoff could not make a positive identification from the possible suspects in the police line-up for the other perpetrator. Medical evidence revealed that Mr Davidoff had astigmatism and required corrective lenses. Mr Everett used this information to question the veracity of Mr Davidoff's testimony. Mr Davidoff replied by affirming that he was wearing his glasses on the day in question, and was positive that one of the men he saw was the Defendant Bartlett.

Mr Peterson then examined Mr Bingham, an acquaintance of the Defendant Bartlett. Mr Bingham testified that the pair of sunglasses found at the alleged crime scene were similar to a pair he had seen the Defendant Bartlett wearing two months previous to the alleged event. Mr Everett, in cross-examination of this witness, uncovered that Mr Bingham was not certain that the pair of sunglasses he had seen the Defendant Bartlett wear two months to the alleged event, were identical to the ones found at the crime scene.

Mr Durham, a forensics expert, was called to testify next. He testified that at the scene of the alleged crime, two different blood types were found. DNA testing revealed that one of the blood samples contained DNA that had a 99% probability of matching Mr Jones' DNA, and that the other contained DNA that had a 99% probability of matching the DNA of the Defendant Bartlett. These tests had been run twice each, confirming the accuracy of the results. Mr Peterson then put forth that the blood found at the scene of the alleged crime, which had 99% probability of being Defendant Bartlett's blood, strengthened the two eyewitness accounts in confirming the Defendant Bartlett's involvement in the alleged crime. In cross-examination of Mr Durham by Mr Everett, it emerged that DNA testing is not an infallible procedure, subject to all of the problems associated with modern technology.

The next prosecution witness was Senior Constable Smithson. In response to questioning by Mr Peterson, Senior Constable Smithson testified that upon the Defendant Bartlett's arrest one day after the alleged event, the Defendant Bartlett had a deep purple bruise and a deep scratch on his right cheekbone which appeared to him to be recently inflicted. It was further proposed that such an injury could have resulted from Mr Jones swinging back his arm to protect his head. Mr Everett, in cross-examination of this witness, proposed to Senior Constable Smithson that the bruise and scratch may have been inflicted at a time other than the alleged assault and Senior Constable Smithson agreed that this was possible.

In the Defendant Bartlett's defence, Mr Everett called the Defendant Bartlett's employer, Mr Edwards, to testify. He testified that on the date in question, the Defendant Bartlett was working at his clothing store on Hay Street, although he himself was not present on this day. He reported that the Defendant Bartlett commenced work at approximately 9 am and finished at 7pm, as it was a late night shopping day. In addition, he testified that when he next saw the Defendant Bartlett, he had a bruised cheekbone and a scratch on the same cheek, which he attributed to his involvement in rugby. In Mr Peterson's cross-examination of Mr Edwards, it became apparent that Mr Edwards could not guarantee that the Defendant Bartlett had not left the shop at any point on the day in question, as he was the sole employee working that day. Furthermore, he could not verify the Defendant Bartlett's involvement in a rugby game, as he had only been told that by the Defendant Bartlett.

In summarising the case for the prosecution, Mr Peterson stated that the sighting of the Defendant Bartlett near the scene by Mr Quartermaine, and involved in the alleged act by both Mrs Wesley and Mr Davidoff demonstrated his involvement in the commission of the alleged offence. This was strengthened by the DNA evidence, the Defendant Bartlett's physical injuries, and sunglasses similar to those worn

previously by the Defendant Bartlett found at the alleged crime scene. He further stated that the alibi provided by Mr Edwards was questionable as he did not actually see the Defendant Bartlett on the day in question. In summarising the case for the defence, Mr Everett put forth that the evidence presented by Mrs Wesley and Mr Davidoff may be questionable due to the problems associated with eyewitness testimony, and that the sunglasses found at the scene of the crime did not necessarily prove that the Defendant Bartlett had any involvement in the alleged offence. He also pointed out that the DNA testing procedure is not 100% accurate.

The judge explained to the jury that they must only find the Defendant Bartlett guilty of unlawful assault if the evidence proves beyond a reasonable doubt that he was involved in its commission.

Appendix D3: Trial Summary for Joint Trial of Defendant A and Defendant B

Mr Steven Adams is charged with unlawful assault, under s. 223 of the WA Criminal Code Compilation Act 1913. He pleads not guilty to this charge.
Mr George Bartlett is charged with unlawful assault, under s. 223 of the WA Criminal Code Compilation Act 1913. He pleads not guilty to this charge.

Mr Steven Adams and Mr George Bartlett are both charged with unlawfully assaulting Mr Victor Jones on the day of June 14, 1998. Mr Jones testified that as he was walking down Murray Street Mall at approximately 4.30pm on the aforementioned date, he was physically assaulted by two men from behind. In response to the attack, Mr Jones stated that he swung back one arm to protect his head, and in doing so, hit one of the offenders. Because he was attacked from behind and had his shirt pulled over his head, Mr Jones stated that he could not identify the assailants but stated that there were definitely two men. He testified that he sustained a number of injuries, including lacerations to his face and arms, multiple bruises to the face and chest area, and three cracked ribs. He was hospitalised for two days after the alleged assault.

The first witness summoned by the prosecutor, Mr Peterson, was Ms Williams. She testified that she saw a car the same colour and model as the defendant Adams', parked along Barrack Street near the scene of the alleged crime as she walked from her job at Baskin Robbins ice cream parlour toward the train station on Wellington street. She finished work at approximately 3.00pm, which was an hour and a half before the alleged crime. In cross-examination by Mr Davies, who appeared for Defendant Adams, it was put forth that although a car matching the description of the Defendant Adams' was sighted near the alleged crime scene, this did not necessarily demonstrate his involvement.

Mr Peterson then called Mr Quartermaine, a waiter at the Tea Merchant Café in the Murray Street Mall. Mr Quartermaine testified that he remembered serving tea and muffins to the Defendant Bartlett at approximately 3.45pm on the day in question, forty-five minutes before the event. In the cross-examination of Mr Quartermaine, Defendant Bartlett's defence lawyer, Mr Everett, made it clear that although he was sighted near the alleged crime scene, this did not necessarily demonstrate the Defendant Bartlett's involvement.

The next prosecution witness was Mrs. Wesley, a middle-aged bank teller. She testified that as she walked to the car park on Pier Street at approximately 4.30pm, she saw two young men fighting with another, and that the Defendant Bartlett was one of the perpetrators, although she could not identify the other. She stated that at the time of the alleged event it was still light, and that she had a clear unobstructed view of the defendant. She further added that she did not stop to help Mr Jones out of fear for her own safety. Medical evidence revealed that Mrs Wesley had normal (20-20) vision. In cross-examination, Mr Everett pointed out that there had been a one month interval between the event and the trial. Despite this, Mrs. Wesley testified that she was certain that the man she saw was the Defendant Bartlett, as the event was something that she found difficult to forget.

Mr Davidoff, a teenage check-out operator who was questioned next, corroborated Mrs Wesley's version of events. He stated that he saw two men physically attacking a third in the Murray Street Mall as he was on his way home from work at approximately 4.40pm. He testified that as he approached the men, the two perpetrators ran away when they saw him, but not before he got a clear view of both of them. He further testified that one of the perpetrators was definitely the Defendant Bartlett. However, Mr Davidoff could not make a positive identification from the possible suspects in the police line-up for the other perpetrators. When asked by Mr Peterson if the Defendant Adams was the second perpetrator, Mr Davidoff stated that he was uncertain. Medical evidence revealed that Mr Davidoff had astigmatism and required corrective lenses. Mr Everett used this evidence to question the veracity of Mr Davidoff's testimony. Mr Davidoff replied that he was wearing his glasses on the day in question, and was positive that one of the men he saw was definitely the Defendant Bartlett.

Mr. Peterson then examined Mr Bingham, an acquaintance of the Defendant Bartlett. Mr Bingham testified that the pair of sunglasses found at the alleged crime scene were similar to a pair he had seen the Defendant Bartlett wearing two months previous to the alleged event. Mr Everett, in cross-examination of this witness, uncovered that Mr Bingham was not certain that the pair of sunglasses he had seen the Defendant Bartlett wear two months previous to the alleged event, were identical to the ones found at the crime scene. Mr Bingham also revealed that the two defendants were good mates, who had known each other since the beginning of high school, approximately 10 years ago. He further stated that the three of them still socialised with the same circle of friends.

Mr Durham, a forensics expert, was called to testify next. He testified that at the scene of the alleged crime, two blood types were found. DNA testing revealed that one of the blood samples contained DNA that had a 99% probability of matching Mr Jone's DNA, and that the other contained DNA that had a 99% probability of matching the DNA of the Defendant Bartlett. These tests had been run twice each, confirming the accuracy of the results. Mr Peterson then put forth that the blood found at the scene of the alleged crime, which had a 99% probability of being the Defendant Bartlett's blood, strengthened the two eyewitness accounts in confirming the Defendant Bartlett's involvement in the alleged crime. In the cross-examination of Mr Durham by Mr Everett, it emerged that DNA testing is not an infallible procedure, subject to all of the problems associated with modern technology.

The next witness called forth by Mr Peterson for the prosecution was Sergeant Sherman from the Forensics Division of Perth Police Headquarters. Sergeant Sherman testified that a muddy shoe print matching the defendant Adams' Adidas shoe was found at the scene of the alleged crime. Mr Davies raised the point that Adidas shoes are common and therefore the footprints are not necessarily those of the Defendant Adams. Upon cross-examination, Sergeant Sherman agreed that this is possible.

The next prosecution witness was Senior Constable Smithson. In response to questioning by Mr Peterson, Senior Constable Smithson testified that when the Defendant Adams was arrested one day after the alleged event his right hand was bandaged and he was vague about how he obtained this injury. Similarly, he

testified that upon Defendant Bartlett's arrest one day after the alleged event, Defendant Adams had a deep purple bruise and a deep cut on his right cheekbone which appeared to him to be recently inflicted. It was further proposed that such injuries could have resulted from Mr Jones swinging back his arm to protect himself. In cross-examination by both Mr Davies and Mr Everett, Senior Constable Smithson agreed that the injuries to the Defendants may have been inflicted at a time other than the alleged assault, and Senior Constable Smithson agreed that this was possible.

In the Defendant Adams defence, Mr Davies called the Defendant Adams father, Mr Frank Adams. He testified that on the date in question, the Defendant Adams arrived home at approximately 3pm on the afternoon in question and to his knowledge did not leave the house until the following morning. Mr Frank Adams further testified that his son had told him that his bruised hand was the result of a bicycle accident. In cross-examination by the prosecutor Mr Peterson, it emerged that on the day in question, Mr Frank Adams was bedridden with the flu and could not be certain that the Defendant Adams did not leave the house later on that afternoon while he had been sleeping. Despite this, Mr Frank Adams was certain that he would have heard the Defendant Adams leave the house. Furthermore, Mr Frank Adams could not verify that his son had actually received the bruise on his hand in a bicycle accident as he had only been told this by the Defendant Adams.

In Defendant Bartlett's defence, Mr Everett called the Defendant Bartlett's employer, Mr Edwards, to testify. He testified that on the date in question, Defendant Bartlett was working at his clothing shop on Hay Street although he himself was not present that day. He reported that the Defendant Bartlett commenced work at approximately 9:00 am and finished at 7:00pm as it was a late-night shopping day. In addition, he testified that when he next saw the Defendant Bartlett, he had a bruised cheekbone and a cut on the same cheek which he attributed to his involvement in rugby. In Mr Peterson's cross-examination of Mr Edwards, it became apparent that Mr Edwards could not guarantee that the Defendant Bartlett had not left the shop at any point on the day in question as he was the sole employee working that day. Furthermore, he also could not verify Defendant Bartlett's involvement in a rugby game as he had only been told this by Defendant Bartlett.

In summarising the case for the prosecution, Mr Peterson stated that the sighting of a car similar to the Defendant Adams' near the scene of the alleged crime, as well as the injury to his hand and the footprint matching his brand of shoe, as well as his association with the Defendant Bartlett, implied his involvement in the alleged event. He further stated that the alibi provided by Mr Frank Adams was questionable, as he had been ill, resulting in him being bedridden and asleep much of the day. He further stated that the sighting of the Defendant Bartlett near the scene by Mr Quartermaine and involved in the alleged act by both Mrs Wesley and Mr Davidoff demonstrated his involvement in the commission of the alleged offence. This was strengthened by the DNA evidence, the Defendant Bartlett's physical injuries, and sunglasses similar to those previously worn by the Defendant Bartlett found at the alleged crime scene. He further stated that the alibi provided by Mr Edwards was questionable as he did not actually see the Defendant Bartlett on the day in question.

In summarising the case for the Defendant Adams, Mr Davies put forth that the items of evidence put forward by the prosecution did not necessarily prove that the Defendant Adams had any involvement in the alleged offence, and that Mr Frank Adams had provided an alibi which indicated the Defendant Adams was not involved.

In summarising the case for the Defendant Bartlett, Mr Everett put forth that the evidence presented by Mrs Wesley, Mr Quartermaine and Mr Davidoff may be questionable due to the problems associated with eyewitness testimony, and the sunglasses found at the scene of the alleged crime did not necessarily prove that the Defendant Bartlett had any involvement in the alleged offence. He also pointed out that DNA testing is not 100% accurate.

The judge then explained to the jury that they must consider the case of each Defendant separately and that they are to reach independent verdicts for them separately. He further instructed the jury that they must only find a Defendant guilty of unlawful assault if the evidence proves beyond a reasonable doubt that he was involved in its commission.

Appendix E: Debriefing Information

Possible Biases Towards Defendants in Joint Criminal Trials

Thank you once again for your participation in this study. As previously explained, this study was concerned with the ways in which judgements of the defendant's guilt are made in separate and joint trials of the same defendants. It is expected that there will be differences in the number of guilty verdicts given for each of the defendants in the joint trial and severed trial, as this is what previous research has demonstrated (Clayton, 1989).

This study is specifically concerned with evidence strength, with one defendant having evidence which has been shown to be weak, and the other defendant having evidence which has been shown to be stronger. The impact of this on the proportion of guilty verdicts in the separate and joint trials will also be examined.

If you have any questions regarding any aspect of this study do not hesitate to ask me before leaving today. Alternatively, you can contact me on 94019668 or ckorda@kangeroo.fhhs.ac.cowan.edu.au.

Thank you.

Cathy Korda

Appendix F1: Single Trial Questionnaire

This questionnaire asks for your verdict for the defendant Bartlett, and asks you some questions about the trial itself. Please answer the questions in the order presented.

You have just listened to a trial about an assault allegedly committed by the defendant Bartlett. Do you find the defendant:

Guilty [ ]
Not Guilty [ ]

The following questions are concerned with your opinion about the strength of the prosecution's and defence's cases. When answering, consider ALL of the evidence presented by the prosecution and ALL of the evidence presented by the defence. Please mark one of the boxes for each question.

How strong do you think that the prosecution's case against the defendant Bartlett was?

[1] [2] [3] [4] [5] [6] [7]

extremely weak — neither strong or weak — extremely strong

How strong do you think that the defence's case for the innocence of the defendant Bartlett was?

[1] [2] [3] [4] [5] [6] [7]

extremely weak — neither strong or weak — extremely strong

Please provide information on the following variables :

Age: (in years)

Sex: [M] [F]

Appendix F2: Joint Trial Questionnaire

This questionnaire asks for your verdict for **defendant Adams**, and asks you some questions about the trial itself. Please answer the questions in the order presented, and once each section has been completed DO NOT flick back to look at it again or change your answers.

You have just listened to a trial about an assault allegedly committed by **defendant Adams**, in conjunction with defendant Bartlett. Do you find **defendant Adams**:

Guilty	[ ]
Not Guilty	[ ]

The following questions are concerned with your opinion about the strength of the prosecution's and defence's cases. When answering, consider ALL of the evidence presented by the prosecution and ALL of the evidence presented by the defence in relation to **defendant Adams**. Please mark one of the boxes for each question.

How strong do you think that the prosecution's case against **defendant Adams** was?

[1]	[2]	[3]	[4]	[5]	[6]	[7]
extremely weak			neither strong or weak			extremely strong

How strong do you think that the defence's case for the innocence of **defendant Adams** was?

[1]	[2]	[3]	[4]	[5]	[6]	[7]
extremely weak			neither strong or weak			extremely strong

Recall that the previous questionnaire asked you some questions about **defendant Adams**. This questionnaire asks for your verdict for **defendant Bartlett**, and asks you some questions about the trial itself. Please answer the questions in the order presented, and once each section has been completed DO NOT flick back to look at it again or change your answers.

You have just listened to a trial about an assault allegedly committed by **defendant Bartlett**, in conjunction with defendant Adams. Do you find **defendant Bartlett**:

Guilty	[ ]
Not Guilty	[ ]

The following questions are concerned with your opinion about the strength of the prosecution's and defence's cases. When answering, consider ALL of the evidence presented by the prosecution and ALL of the evidence presented by the defence in relation to **defendant Bartlett**. Please mark one of the boxes for each question.

How strong do you think that the prosecution's case against **defendant Bartlett** was?

[1]	[2]	[3]	[4]	[5]	[6]	[7]
extremely weak			neither strong or weak			extremely strong

How strong do you think that the defence's case for the innocence of **defendant Bartlett** was?

[1]	[2]	[3]	[4]	[5]	[6]	[7]
extremely weak			neither strong or weak			extremely strong

Please provide information on the following variables :

Age: (in years)

Sex: [M] [F]
