Mental disorder labelling as an extralegal variable in mock jury deliberations

Kristin B. Wallengren

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Mental Disorder Labelling as an Extralegal Variable in Mock Jury Deliberations

By

Kristin. B.L. Wallengren

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

Doctor of Psychology (Forensic)

at the Faculty of Community Services, Education and Social Sciences

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Abstract

Previous research has shown that a number of characteristics of trial participants (extralegal variables) can and do influence juror’s judgements. This is of importance as only the legally relevant facts of the case should be considered during a trial. The present study investigates the influence of victim characteristics on the juror decision making process during deliberation and the judgements made about the victim, crime and defendant in a mock jury setting, as well as investigating mock juror gender differences. A representative sample of people eligible for jury duty in Western Australia viewed a video vignette depicting a trial, in which the mental disorder label (no label, schizophrenia, depression, intellectual disability) was varied. Deliberations were videotaped and subject to an analysis in conjunction with pre and post test questionnaire measuring victim characteristics. A 4x2x2 repeated measures ANOVA was used to analyse the data, in addition to the analysis of the deliberations. The qualitative findings suggest that mock jurors invested relatively much time in some mental disorder labels may function as extralegal variables. This inference is supported by the quantitative findings in this study. The mental disorder label assigned to the victim had an impact on mock jurors’ perception of the likeability, reliability and honesty of the victim, the responsibility for the crime and the guilt of the defendant, often interacting with mock juror gender and deliberation. However, no clear pattern of bias against or in favour of any specific victim could be discerned. There was slightly more evidence of a negative bias than a positive bias towards the no label and schizophrenia victims, while the opposite was true for the depression and intellectual disability victims.
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.

Signature.

Date..................
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Introduction

In recent times members of the general public have indicated that they are unhappy with the workings of the justice system (Findley, Odgers, & Yea, 1999). The Law Reform Commission of Western Australia (1997), found that some people believe that the trial procedures and outcomes are biased and work against them. Finding ways of improving the justice system has therefore become a research question of importance and numerous studies have investigated different aspects of this issue (see for example, Berman & Cutler, 1996; Bornstein, 1999; Kerr, Hymes, Anderson, & Weathers, 1995; Whittemore & Ogloff, 1995).

One of the areas that keeps on attracting the attention of researchers is juror decision making (Devine, Clayton, Dunford, Seying, & Pryce, 2001). In their excellent review of the juror decision making research which has been conducted over the past 50 years, Devine and his colleagues distinguished between the following areas of research: first, research on procedural characteristics that focus on institutional parameters for jury functioning such as jury size or instructions; secondly, case characteristics that correspond to variables relating to specific trials, for example, strength of the evidence and the specific charges; thirdly, deliberation characteristics, which refer to all aspects of juror interaction such as interpersonal influence and participation or the content of discussion; and finally participant characteristics that they defined as individual difference variables relating to the jurors themselves, defendants, victims, judges and other individuals involved in the legal system.

In respect of participant characteristics, a major focus of research has been the influence extralegal factors have on jury decision making (see for example Bagby, Parker, Rector, & Kalemba, 1994; Barnett & Field, 1978; Dean, Holliday-Wayne,
Mack, & Thomas, 2000; Erian, Lin, Patel, Neal & Geiselman, 1998; Hymes, Leinhart, Rowe, & Rogers, 1993; Leventhal & Krate, 1977; Stewart, 1985). Extralegal factors are characteristics of offenders, victims and witnesses not prescribed in the relevant law that influence judicial decisions, in this case juror’s judgements (Berman & Cutler, 1996; Dane & Wrightsman, 1982; Hendry, Shaffer, & Peacock, 1989; Kerr et al., 1995). Examples of extralegal variables include race (Barnett & Field, 1978; Dean et al., 2000; Gordon, Bindrim, McNicholas & Walden, 1988; Hymes et al., 1993; Poli, 2004; Willis, 1992), gender (Bull Kovera, McAuliff & Herbert, 1999; ForsterLee, Horowitz, ForsterLee, ForsterLee & McGovern, 1999; Guy & Edens, 2003) and attractiveness (Bagby et al., 1994; Barnett & Field, 1978; Erian, et al., 1998; Leventhal & Krate, 1977; Stewart, 1985).

The literature review undertaken as part of this study, and reported in the next section, revealed that there were a number of problems in respect of the operation of extralegal factors in jury decision making.

Very little published research was found that examined the possibility that the labelling of offenders, victims or witnesses as mentally disordered may act as an extralegal factor (see for example Walsh 1985, 1990). This is surprising because the prejudice by people in the community towards people suffering of mental disorders is well recorded (see for example Link, 1982; Martin, Pescosolido & Tuch, 2000; Reber, 1995; Wilson, Nairn, Coverdale & Panapa, 2000; Wolff, Pathare, Craig, & Leff, 1996). In fact a study by Henry, Keys, Balcazar, and Jopp (1996) that examined the attitudes of 340 staff members in community living programs for intellectually disabled individuals found that even they treated people with an intellectual disability differentially.
The differential treatment people suffering from a mental disorder are subject to is understandable if it is taken into account that jury members, lawyers, and judges, like all human beings, have their own cognitive schemas and stereotypes about people with mental disorders. These individual schemas and stereotypes lead them to react in different ways when confronted with an individual with a mental disorder. It therefore seems reasonable to assume that stereotypes and discrimination against mentally disordered people will inevitably be present in a courtroom. This suggests that a mental disorder label may function as an extralegal factor in jury decision making.

Tentative support for the suggestion that a mental disorder label may function as an extralegal factor can be found in a study by Walsh (1990) who found that sex offenders who were labelled as having a mental disorder were twice as likely as other sex offenders to be incarcerated. This is especially notable because other extralegal variables included in the study, such as acceptance of blame, IQ, race, and socio-economic status did not affect the decision to incarcerate, leaving mental disorder as the only extralegal variable that significantly affected sentencing, even after effects of legally relevant factors were taken into account.

It is important to examine whether mental disorder is an extralegal variable because people suffering from mental disorder and disability make up a considerable proportion of the victims and offenders processed by the justice system (Cockram, Jackson, & Underwood, 1992; Holland, Clare & Mukhopadhyay, 2002). This is of particular importance as juries are composed of members of the community, who may not possess in depth knowledge about mental disorders and disabilities. Research has shown that even individuals who could be assumed to be more knowledgeable in this area may not necessarily be. This is illustrated by a study by McGillivray and Waterman (2003) in which lawyers’ knowledge and attitudes regarding offenders with
intellectual disabilities were examined. Most of the lawyers surveyed had represented a minimum of 15 intellectually disabled clients and 57% of the participants had some or close social experience with intellectually disabled individuals. However, results indicated that although the majority of practising criminal lawyers included in the study did have some understanding of the problems encountered by intellectually disabled offenders in the criminal justice system, there were still clear deficits in their knowledge about the difficulties experienced by this population, ranging from need for support to behaviours in a court setting.

Secondly, most of the research that has examined extralegal variables focused on the defendant characteristics (see for example Bagby et al., 1994; Deitz & Byrnes, 1981; Leventhal & Krate, 1977; MacCoun, 1990). Limited research has been published relating to victim characteristics variables (Kerr, Bull, MacCoun, & Rathbom, 1985; Mulder & Winkel, 1996; Seligman, Brickman, & Koulack, 1977; Singleton & Hofacre, 1976) that may act as extralegal variables. There therefore appears to be a gap in the research in this regard because victim characteristics that function as extralegal variables could have an impact on both the defendant and the victim.

Examining the extent to which victims' characteristics function as extralegal variables is also important for another reason. Research has shown that victims tend to under-report crimes (Marley & Buila, 1997; Nikolic-Ristanovic, 1998; Violante, 1992). This seems particularly true in the case of sexual crimes (Gartner & MacMillan, 1995), as this is a very intimate crime and many victims may worry that their personality characteristics may influence jury decision making. If the victim fears that he or she will be discriminated against in the justice system (Keilty & Connelly, 2001), the reporting of crimes will likely decrease even more. It is therefore
of vital importance to identify any potential discrimination against victims that may take place during the trial process.

The current study aims to address the deficits identified from the literature review. It aims to identify whether a mental disorder label acts as an extralegal variable in the justice system leading to bias. Further, the study seeks to identify the influence of jury deliberations and gender on jury decision making and the measurement of bias.

Jury deliberation was the third area of research identified by Devine et al., (2001). While the results are not conclusive (see for example Dillehay & Nietzel, 1980; Tanford & Penrod, 1986; Weiten & Diamond, 1979), there is a large body of research that indicates that the individual opinions of jurors are notably influenced by jury deliberations (Izzett & Leginski, 1974; Kaplan & Miller, 1978; Kassin & Wrightsman, 1983; Kerwin & Shaffer, 1994; MacCoun & Kerr, 1988; McGuire & Bermant, 1977; Tanford & Penrod, 1986; Weiten & Diamond, 1979). It is therefore possible that the prejudices jurors may possess before deliberations, may be mediated by deliberations (London & Nunez, 2000).

Gender is known to function as an extralegal variable (Bull et al., 1999; ForsterLee, et al., 1999; Guy & Edens, 2003). In an Australian study Forster Lee et al. (1999) found that female jurors were more likely to award higher compensation to sexually abused female victims, whereas male jurors awarded higher compensation to sexually abused male victims. Gender of the juror may be particularly important if the relevant offence is of a sexual nature, such as in this case where the charge was rape (Cowan, 2000; Fischer, 1991; Guy & Edens, 2003; Kanekar & Nazareth, 1988; Langley, Yost, Taylor, Frankel, & Craig, 1991; Lonsway & Fitzgerald, 1994). This is further illustrated by a study by Guy and Edens (2003) in which female jurors in a
sexually violent predator trial, judged a defendant labelled as a *high risk psychopath* more severely than they judged a defendant labelled as *high risk* only. Amongst the male jurors, however, there was no significant difference between the judgements of the different defendants. Cowan (2000) also found gender differences in beliefs about different types of rape and Wayne, Riordan, and Thomas (2001) found gender differences amongst jurors dealing with a sexual harassment case.

Finally, a feature of the research carried out on extralegal variables, especially in respect of jury decision making, is the broad measures used for assessing possible bias. Most studies appear to have used either length of sentence assigned (Barnett & Field, 1978; DeSantis & Kayson, 1997; Dovidio et al., 1997; Erian et al., 1998; Mazzella & Feingold, 1994; Stewart, 1985; Vito & Keil, 2000) or conviction rates of the defendant (Bagby et al., 1994; Dean et al., 2000; Hofacre & Singleton, 1976; Stewart, 1985). The problem with using such a broad measure is that it is an indirect measure of possible bias. In contrast, Greene and her colleagues (e.g. Greene, 1999; Greene, Koehring, & Quiat, 1998) used a more sensitive measure in their work on victim impact statements. They distinguished between victim, crime and defendant variables, rather than an ‘all or nothing’ type of approach.

In order to achieve the general aim of this study the following research questions were examined. Due to the lack of existing published research regarding the impact of mental disorder of the victim on jury decision making the research questions were exploratory in nature.

1. Will a victim labelled as suffering from depression, intellectual disability and schizophrenia and those with no label of mental disorder (control group):


a) Be perceived by a jury to have different affective characteristics, specifically likeability, reliability, honesty, valuableness of victim as well as sympathy felt for the victim.

b) Have a differential effect on the jury’s perception of the crime in relation to the perceived seriousness of the crime, the impact it had on the victim and perceived responsibility of the victim.

c) Have a differential effect on the jury’s decision about the defendant’s guilt and recommended sentence.

2. Will jury deliberations change the decisions and opinions of jurors in relation to the victim, the defendant and the crime?

3. Will individual juror gender influence the decisions and opinions of the jurors made in relation to the victim, the defendant and the crime?

The following steps were followed to accomplish the aim of the study and are reported on in this study. As an initial step a comprehensive literature review was undertaken during which concepts crucial for the execution of the project were examined. The focus was on extralegal variables in general, the possible operation of a mental disorder label as an extralegal factor, and the effect jury deliberations and gender could have on a study of mental disorder as extralegal factors where the crime involved is a sexual offence. To ensure that the study meets sound methodological practice, the relevant literature was examined to identify methodological issues that could be relevant for a study of this nature. The next stages of the research involved undertaking the quantitative and qualitative components. The quantitative component consisted of a series of questionnaires given to the jurors for completion. The qualitative component consisted of the videotaping of the deliberation in order to
enable a greater understanding of the deliberation process and its influence on the jurors. The qualitative analysis of the jury deliberations was added in order to triangulate the qualitative findings (Patton, 2000) as it is possible that the participants gave socially acceptable responses when they completed the questionnaires. Following these steps, a discussion of the results is presented.

For the purposes of this study, the following definitions will be used. For ease of expression, the term juror or jury in the study is taken to include mock juror or mock jury respectively. While the present study was conducted for the purposes of completing a thesis, it will be referred to throughout this paper as a study.
Literature Review

Five pertinent issues will be examined in the course of this literature review. The literature review commences with an examination of the construct extralegal factors and their social psychological basis. It continues with an examination of whether mental disorder labels may act as extralegal factors and follow on with an examination of deliberation as a mediating variable. As the offence selected for this study is of a sexual nature, gender as a factor in jury research where the offence is of a sexual nature is considered. The literature review concludes with an examination of aspects of jury research methodology that are pertinent to this study.

Extralegal Factors

In a court case the only variables that should enter the process of determining the outcome of a case are legally relevant and admissible facts (Nagel, 1983). These include factors referred to in legislation, factual evidence about the incident, the type of crime and severity of the crime (Langworthy & Crum, 1996), generally referred to as legal variables. The use of legally relevant and admissible facts is required to ensure that the trial procedure is as fair to all parties as possible, to enhance the prospects of justice being done, and being seen to be done.

However, research has shown that the correspondence between formal law and its application is far from perfect (Nagel, 1983). Research into the area of jury decision making has indicated that a number of variables and characteristics of the trial participants can, and do, influence juror's judgements (Berman & Cutler, 1996; Dane & Wrightsman, 1982; Giner-Sorolla, Chaiken, & Lutz, 2002; Hendry et al., 1989; Kerr et al., 1995; Kramer, Kerr, & Carrol, 1990; Sommers & Ellsworth, 2000). These variables are called extralegal variables, as they are not legally relevant and
should be irrelevant to the determination of guilt in a court case (Dane & Wrightsman, 1982). Langworthy and Crum (1996) define extralegal variables as those which are not described in the law as a reason for disparate processing of individuals in the justice system.

Extralegal factors can result in negative or positive bias. For example, defendants' characteristics that act as extralegal factors that influence jury decision making, may act to the advantage (see for example findings of Kerr et al., 1995; Perez, Hosch, Ponder, & Trejo, 1993) or disadvantage (see for example findings of Deitz & Byrnes, 1981; Erian et al., 1998) of the defendant. However, what is to the advantage of defendants, may be to the disadvantage of victims, and vice versa. If defendants end up with lighter sentences due to some personality characteristics of themselves or the victims, it could be said that the victim has not received justice and has been discriminated against as a legally non-relevant variable came into play in the courtroom. Likewise, if defendants receive harsher sentences it could be argued that they did not have a fair trial for the same reason.

It is unnecessary for the purposes of this study to review the literature in respect of all these extralegal variables. However, attractiveness (Efran, 1974; Erian, Lin, Patel, Neal, & Geiselman, 1998; MacCoun, 1990; Kanekar & Nazareth, 1988; Kerr et al., 1985; Deitz & Byrnes, 1981; Leventhal & Krate, 1977; Thornton & Ryckian, 1983) and race (Bagby, Parker Rector, & Kalemna, 1994; Barnett & Field, 1978; Dean et al., 2000; Gordon et al., 1988; Hymes et al., 1993; Pfeifer & Ogloff, 1991; Poli, 2004; Sommers & Ellsworth, 2000; Willis, 1992) have been examined in detail in many studies throughout the years, and they are therefore used as examples of how personal characteristics function as extralegal variables, and appropriately influence juror judgements and therefore the outcome of the trial.

In respect of physical attractiveness some research suggests that physically attractive defendants are less likely to be convicted than unattractive defendants (Bagby et al., 1994; however, for neutral findings see Stewart, 1985; Singleton & Hofacre, 1976). The results of a number of studies suggested that an unattractive defendant was more likely to receive a harsher punishment than an attractive defendant (Barnett & Field, 1978; Stewart, 1985), especially when the evidence was weak (Erian et al., 1998). These laboratory studies are supported by Downs and Lyons’ (1991) study of the court records of 2,000 women and men who had been arrested for a range of less serious offences (misdemeanours) and more serious offences (felonies). The researchers asked police officers who had not been involved in the cases to rate the attractiveness of participants by looking at the photographs that were taken after their arrest and the results were compared with the outcomes of the cases. The researchers found that attractiveness had no significant effect on sentencing in the case of felonies. However, for the misdemeanours significant attractiveness effects were observed. It is likely that the seriousness of the offence
may also explain the different findings by Stewart (1985), Singleton and Hofacre (1976) and Bagby et al. (1994).

In respect of race, Mulder and Winkel (1996) found that white victims displaying white non-verbal behaviour were perceived as more credible than black victims displaying black non-verbal behaviours. Unlike attractiveness, race appears to influence both conviction rates (Dean, Holliday Wayne, Mack & Thomas, 2000; Stewart, 1985) and the harshness of the sentence (DeSantis & Kayson, 1997; Dovidio, Smith, Donnella & Gaertner, 1997; Stewart, 1985; Vito & Keil, 2000). A recent study by Wuensch, Campbell, Kesler and Moore (2002), where racial bias in a sexual harassment case was investigated, found that the jurors tended to favour litigants of their own race and that there was also a gender bias in that white male jurors displayed the highest rate of racial bias.

Other studies investigating variables in the courtroom also show that race does have an effect on the outcome, both in relation to victims and defendants. Willis (1992) for example, found that black victims were perceived as less truthful in their account of events, as well as more responsible for the crime than white victims were. Mazzella and Feingold's (1994) meta analysis of 79 studies found that jurors recommended harsher punishment for the defendant when the victim was white than when the victim was black. Finally, a study by Pfeifer and Ogloff (1991) showed that when white juror members rated the guilt of the defendant, black defendants were found guiltier than white defendants, especially when the victim was white.

While it is a concern that extralegal factors may influence the outcome of a court case, the reason why this happen can be explained by reference to
social psychological theory. The next section will examine the literature on the relevant theoretical principles and investigate how those principles influence jury decision making.

_Social cognition with special reference to schemas_

Individuals are constantly inundated with stimuli that they perceive through their sensory organs. However, it is impossible for people to attend to every stimulus to which they are exposed. They therefore use various strategies to screen and process stimuli to cope with the stream of impinging stimuli. The method of interest here is the cognitive strategies humans employ to sort, analyse, and remember information in order to make sense of their social environment so that they can interact with it (Fiske, 2004; Fiske & Taylor, 1991). These strategies are sometimes called mental shortcuts or _heuristics_ (Fiske & Taylor, 1991). It is well established that heuristics influence the way people perceive and think about themselves, other people and their social environment (see e.g. Brewer, 1989; Fiske & Neuberg, 1990) and as such they form part of the broader method people use to process information (Hamilton, Devine, & Ostrom, 1994). The cognitive strategies of particular interest for the purposes of this study are social schemata or schemas (referred to as schemas in this study). In this section attention will be given to defining schemas; identifying different types of schemas; discussing their acquisition; development; operation and use. Finally this theoretical framework will be applied to jury decision making.

_Definition of schemas_

Schemas are people’s preconceptions and theories about the social world. As such they represent knowledge about a concept, including its attributes and the relations
among those attributes, and rules about how to use the relevant knowledge (Fiske, 2004; Fiske & Glick, 1995; Fiske & Taylor, 1991). Some schemata can be very detailed and elaborate, but their distinguishing feature is that they are over-simplistic generalisations that enable people to cope with an otherwise sensory and information overload. Consequently schemas tend to minimise or reduce the variability and complexity that can be found in, for example, a group (Judd, Ryan, & Parke, 1991).

**Types of Schemas**

As schemas represent people's organised beliefs, expectations and feelings about a specific domain they can be classified according to the domains they represent. Five of the more common types of schemas identified by Fiske and Taylor (1991) and Fiske (2004) will be discussed here: First, *person or personality schemas* that unite people's conception of the psychology of specific people with reference to their traits and goals; secondly *self-schemas* that refer to people's conception of their own traits and self; thirdly *event schemas* which involve knowledge of an event that makes up an episode. Event schemas may also be called scripts because they provide a blueprint of the sequence of the events that make up the specific episode (Eiser, Eiser, & Jones, 1990), for example when somebody visit a general practitioner for a flu injection; fourthly *social role schemas*, which refer to individuals' expectations and generalisations of people in specific roles, such as a clinical psychologist; and finally, and the most important for this study, are *social group schemas* that are also referred to as stereotypes. Social group schemas represent people's beliefs, expectations and feelings about people in groups, usually a group to which they do not belong, that is out-groups. Social group schemas or stereotypes will be examined in greater detail when the application of these theoretical principles in respect of juries are discussed.
Acquisition and Development of Schemas

People start forming schema as children (Leahy & Harris, 1997) and they serve as frameworks people use to hang and organise new knowledge from, particularly information about specific people, themselves, events and roles. This process carries on as individuals mature and are exposed to new people and situations that give them insight into themselves, events and roles. The acquisition and development of schemas can be through direct experience or based on what people read and hear from other people (Anderson & Lindsay, 1998). Once people have been exposed to the same situation more than once they start generalising about the common features of the experiences and developing a schema for it (Fiske & Taylor, 1991). Especially when a schema is still in its early stages of development it will undergo rapid adjustments as people are exposed to new situations. During this stage people are usually very attentive to information that is inconsistent with the schema (Macrae, Hewstone, & Griffiths, 1993; Sherman, Lee, Bessenoff, & Frost, 1998), probably as they are busy developing a comprehensive schema and tend to recall discrepancies better because they are struggling to resolve them (Stangor & McMillan, 1992).

However, schemas become more entrenched as people reflect on them or find support for their initial judgements without taking the trouble to re-examine them (Fiske & Taylor, 1991) because it takes energy to reconstruct a schema (Fiske, 2004).

With the exception of those cases where a lack of new information may leave a person’s schema impoverished, schemas generally become richer, more complicated, organised, flexible and abstract as time goes on (Fiske, 2004). While they generally also become more accurate this is not always the case because for schema to bring predictability and effectiveness into their lives, a point can be reached
where people may resist changing them (Fiske & Taylor, 1991). This conservatism to change a well-developed schema may even persist despite disconfirming evidence. People may therefore either ignore such disconfirming evidence or interpret it as support for their schema (Anderson, Lepper, & Ross, 1980; Lord, Ross, & Lepper, 1979). They may also seek information that will confirm their existing beliefs, expectations, and hypotheses creating a closed cognitive loop (Nickerson, 1998).

However, as people use schema to make their social interaction more effective, it follows that if schemas prove to be ineffective because they are wrong, people will be motivated to change them (Fiske, 2004). Consequently they are generally accurate enough for everyday use (Gigerenzer & Todd, 1999), but as a general rule a schema can never be an accurate representation of reality as it is always an abstract cognitive representation of reality (Allan, personal communication, 30 June, 2004).

*Operation of Schemas*

As suggested above schemas serve an important function in human functioning as they give people a sense of prediction and control by helping them understand a situation and knowing what to do (Fiske & Taylor, 1991).

Schema may therefore influence how people perceive a situation and guide their behaviour in that situation. Fiske (2004) explains that in practice this means that if people are exposed to stimuli they immediately categorise them. Social categorisation can be defined as the process people use to organise and simplify information coming from the environment so that it fits into their cognitive framework, i.e. schema (Tajfel, 1978). Humans are highly practised at categorising the
salient features of something they are perceiving and can do so within a milli-second (Fiske, 2004).

In the case of other people categorising usually this is based on visual cues such as race, sex, and age (Fiske, 1998). If the information resembles previous information represented in a schema, the full schema is activated (Fiske, 2004). This means that the perceiver does not only have the incoming information in his or her mind, but also the information captured in his or her relevant schema.

It is important for this study to note that schemas can also be activated by a label, for example, “Peter is a clinical psychologist”. A label can best be described as a set of pre-categorised stimuli, and when the label is registered by perceivers it will inevitably activate the relevant schema (Gilbert & Hixon, 1991; Neely, 1991).

However, schemas are not always activated as their activation appears to be depend to some degree on the cognitive capacity of the person at the time. Research by Gilbert and Hixon (1991) suggest that because it takes cognitive resources to activate a schema, the likelihood that a stereotype will be activated is reduced when people are busy with cognitive tasks. Nevertheless, once activated restricted cognitive capacity will facilitate the application of schema (Fiske, 2004).

Activated schema come to mind instantly and provide a perceiver with a database of organised prior knowledge about the specific category, whether it is a person, event or group, and the rules governing the situation. Consequently it becomes easier to interpret the incoming information, understand what is going on and fill in gaps that may exist in the information and to make inferences and decision (Fiske, 2004).

The influence of schemas on the encoding of new information, remembering of old information, and responding will be discussed next. However, as much of what
is reported here is still the subject of research, it is not necessarily accepted by all scholars in the area.

*What information gets people's attention.*

Schemas strongly affect the way in which people encode incoming information because once a schema is activated the typical characteristics associated with it come to mind readily (see e.g. Brewer, 1989; Fiske & Neuberg, 1990; Higgins & Bargh, 1987).

As new information can be fitted into an existing framework, it is easier and faster to encode information consistent with a schema, than information that is not consistent with it (Dovidio, Evans, & Tyler, 1986; Schneider & Pressley, 1989). Nevertheless, both Macrae, Hewstone, & Griffiths (1993) and Sherman, Lee, Bessenoff, and Frost (1998) found that this difference was not significant under normal circumstances. However, when people had low processing capacity they took longer at encoding both consistent and inconsistent information, especially inconsistent information (also see Stangor & McMillan, 1992). What is notable of Sherman et al (1998) study is that schema-irrelevant information was virtually ignored.

Schemas also influence how people are judged. For example, when a child who was depicted to be from a wealthy background performed ambiguously on a test, she was perceived to be more able than one from a poor background (Darley & Gross, 1983).
What information is stored in the memory.

Research suggests that when individuals process information, they tend to store schema relevant material (Bodenhausen & Lichtenstein, 1987; Bodenhausen & Wyer, 1985) better than irrelevant material (Crocker, Hannah, & Weber, 1983; Smith & Graesser, 1981). In the case of well-developed schema research shows that if people have the chance to think about relevant material afterwards, they tend to remember the information that was consistent with the schema (Wyer & Martin, 1987). For example, if a person’s schema in respect of a specific race group is that they are unreliable, the person will tend to remember relevant information confirming this better than disconfirming information. In the case of recognition memory relevant information consistent with the schema is better recognised (Fiske, 2004).

What information is retrieved and used.

It is well-established that people use their schemas when, for example, they read material (Pritchard, 1991). Once a schema is activated the typical characteristics associated with it comes to mind readily (Higgins & Bargh, 1987). This is important because it has long been known that information presented initially has a relatively greater effect on impression formed than later information, the so-called primacy effect (Asch, 1946). People therefore give more attention to schema consistent information (O'Sullivan & Durso, 1984), process such information faster (Dovidio et al., 1986), rehearse it more frequently, and consequently tend to remember it better (Bodenhausen, 1988; Judd et al., 1991) when making a judgement.

However, while the categorisation of people is ever present and largely automatic (Fiske & Glick, 1995) people do seem to make a decision whether to use a schema or not in specific situations. Possibly because they realise that as a general
case a schema is never an accurate representation of reality, people seem to make a decision how much they will in a specific situation rely on a schema and how much on the evidence. The exact balance will fall somewhere on a continuum depending on the perceived accuracy of the schema (Fiske & Taylor, 1991), and people's motivation (Fiske, 2004).

A perceiver would therefore rely more on data when, for example, a schema is clearly not relevant in the situation, too extreme or when there is very clear and unambiguous evidence that undermines the schema (Fiske & Taylor, 1991). Schemas may also be ignored where pragmatic goals outweigh the cognitive economical advantages of using them (Fiske & Glick, 1995).

Fiske and Taylor (1991) and Fiske (2004) discuss a number of cases where the potential cost of being wrong, if a schema is relied upon, is high enough to lead people to rely more heavily on data. Five of the cases that are relevant will be discussed here, due to their relevance to this research.

The first is where a person must form an opinion about another person who needs to be trusted, for example where the person will be a member of a team.

The second is where people know beforehand that they will be held accountable for their decisions by people whose biases they do not know or who they believe will unbiased. Under these circumstances people become more vigilant (Janis & Mann, 1977) and move beyond their schema to examine the information at hand more carefully (Rozelle & Baxter, 1981; Tetlock, 1983; Tetlock & Kim, 1985). However, if people feel committed to a specific position they had previously taken they may not go beyond their schemas but may rather try to justify their position (Tetlock, Skitka, & Boettger, 1989). While accountability makes people more
vigilant about using their schemas this does not necessary make them more accurate (Tetlock & Boettger, 1989).

People tend to protect their self-image and the third case where people may go beyond a schema is where they believe that their judgements could reflect negatively on a facet of their self that is significant to them (Freund, Kruglanski, & Shpitzajzen, 1985; Kruglanski & Freund, 1983; Kruglanski & Mayseless, 1988). Therefore schemas are less influential if people believe their judgements may reflect negatively on decision making abilities; or will be compared to an objective standard; or that they would have to explain their judgement to peers; or that the decisions are of the utmost importance to the person who is being judged.

The fourth situation where people may be cautious about using their schemas is, when they are in a purposeful decision making frame of mind when they consider their decision (Gollwitzer & Kinney, 1989).

Finally, people are inclined to examine information more carefully if they are told what the personal cost will be if they fail to take factual evidence into account and they are told how to move beyond their biases (Fiske, 2004).

Nevertheless, even when these circumstances are present people may still fast and frugal heuristics. This typically happens when people are under time pressure to make important decisions based on a large amount of complex and ambiguous information (Davis & Davis, 1996; Fiske & Taylor, 1991; Tversky & Kahneman, 1971; 1974). In such circumstances people tend to focus on a minimum of information, usually one or two factors (Kunda & Thagard, 1996; Macrae & Bodenhausen, 2000; Rieskamp & Hoffrage, 1999). This will often mean that they stick to their schema and limit their search for additional information (Kruglanski, 1989).
A number of explanations have been advanced to explain this situation (Fiske & Taylor, 1991; Fiske, 2004). A cognitive explanation is that people may not have the cognitive resources to find the necessary relevant and informative data to make the decision under such circumstances, and consequently use schemas that are usually effective (Gigerenzer & Todd, 1999). It is also possible that physiological reasons may contribute to this situation in that time pressure may have a physiological effect that promote the use of schemas, especially stereotypes (Kim & Baron, 1988).

Application of Theory to the Jury Situation

From the above it is clear that all people use schemas and that they serve an important function in our everyday interaction with the world by simplifying and streamlining the perception process (Macrae & Bodenhausen, 2000). It is therefore inevitable that jury members will also at times use schemas in the normal course of their lives. However, two factors discussed above imply that people may be able to check the use of schemas when they serve as jury members. First, people are less likely to use schemas if they are warned to consider only the relevant evidence; realise they will be held accountable for their decision; appreciate that the outcome of the decision they are making is important to somebody; or feel that their decision may reflect on their abilities. All of these circumstances are present in the case of jury decision making. Consequently is likely that jury members will usually be able to override their schemas and base their decisions the relevant evidence. Secondly, serving as a jury member requires the use of cognitive capacity. The use of cognitive capacity may limit the capacity of people to have recourse to schemas (Gilbert & Hixon, 1991).
Therefore it would appear that if jury members find their task cognitively demanding but manageable, they may not divert cognitive energy to active schemas. However, jury members like other legal decision-makers must sometimes process a complex body of ambiguous information (Hymes, Leinhart, Rowe, & Rogers, 1993) and come to a decision within a short period of time (Saks & Hastie, 1986). As noted earlier, it is under these circumstances of cognitive overload that people tend to use heuristics (Gilbert & Hixon, 1991; Wegner et al., 1993).

From a theoretical perspective the heuristic that jurors are most likely to use when they are under cognitive pressure will be stereotypes because they are the most commonly used cognitive simplification methods (Hilton & von Hippel, 1996; Macrae & Bodenhausen, 2000). The reason why stereotypes are most likely to be activated first, and very early, is because perceivers automatically classify people according to visually prominent physical features such as their age, gender and race (Fiske & Taylor, 1991) and this leads to automatic associations with a stereotype (Fiske, 1998). There is also laboratory research with jury members that support the theory that jurors use stereotypes (Bodenhausen, 1988).

The problem with stereotypes is that despite being prevalent and usually effective in enhancing the cognitive functioning of people, they are inherently biasing (positive or negative) because their distinguishing feature is that they are oversimplistic generalisations about typical characteristics of the members of a group (Tversky & Kahneman, 1971; 1974). People of the relevant group are not recognised as distinct and unique individuals because a stereotype suggests that all members of the relevant construct share similar characteristics (Judd et al., 1991).

This is particularly concerning because people firstly appear to classify people as members of an out-group (them) of one of their own in-group (us).
According to Fiske, (1998) this classification takes place in respect of any dimension on which the person differs from the perceiver, for example, race, gender, age, or physical capacity. Further, categorisation of the person takes place faster in respect of that specific personal dimension, rather than other dimensions. Out-group members are faster associated with stereotypic attributes than is the case with in-group members, and these stereotypic attributes prime other stereotypes for the relevant group. The effect of classifying a person as a member of an out-group and using the relevant stereotype in respect of the person has been demonstrated by researchers. For example, using priming methods, Fazio and Olson (2003) demonstrated that people identify positive attributes faster after subliminal exposure to the prompt *us* than to the prompt *them*.

Collating the research evidence presented, and applying it to the jury situation, would appear to suggest that jurors would normally focus on the evidence offered in court, it does not overwhelm their cognitive capacity. However, if they are under cognitive pressure, their decision-making may be influenced by their stereotypes in respect of the victim and or the offender. Consequently features such as the person’s race, gender or age may trigger stereotypical thinking on the part of the jurors. If this occurs it means that the relevant characteristic of the person has functioned as an extralegal variable. This would explain why the characteristics mentioned in the previous section such as age, appearance, gender, and race have been found in research to function as extralegal variables.

However, unlike race, gender, and age, mental disorders are usually not visually discernable. Nevertheless, stereotypes can also be triggered by labels (Fiske, 2004), and *mental disordered* is a label. It is therefore likely that people’s stereotypes about individuals with mental disorders may function as an extralegal variable. In the
next section the literature on the nature of this stereotype in modern Western culture, and the impact that it has on perceivers when somebody is labelled as mentally disordered, will be examined.

**Mental Disorder Stereotype**

A cursory examination of the literature in the field reveals the discrimination that mentally disordered people have had to endure at social and legal levels during the centuries (see for example Allan, 2002). This suggests that Western people’s stereotype of people with a mental disorder is negative and will have a negative impact on perceivers and lead to negative bias in the form of prejudice and discrimination.

Much of the research regarding the prejudice and bias in respect of people with mental disorders was generated by proponents and critics of the sociological labelling theory of mental disorders as formulated by Scheff (1966; 1984). While not always directly relevant to this study, parts of this body of research literature will be examined because it provides the best source of information about the prevailing mental disorder stereotype in Western culture and its effect. Where appropriate psychological terminology will be used in this review instead of the original authors’ sociological terminology.

**Labelling Theory of Mental Disorder**

Scheff (1966; 1984); first introduced the concept of labelling theory. Though it is unnecessary for the purpose of this study to fully examine Scheff’s theory, Scheff argued that people’s stereotype of people with mental disorders are shaped by influences such as media reports, cartoons and jokes. He argued that the mental
disorder stereotype has two important components, namely that people with mental disorders are devalued and discriminated against. This stereotype is pivotal in how a person suffering a mental disorder is perceived by themselves and other people. As Link, Cullen, Frank, and Wozniak (1987), later proponents of labelling theory put it, the mentally disordered label serves as a “starting point that activates an array of beliefs about the designated person that may ultimately affect the level of acceptance or rejection such a person experiences” (p. 1474; and also see Reber, 1995). People are guided by this stereotype when they perceive and behave towards people with a mental disorder. Likewise, when people are given a mental disorder diagnosis (label) they expect to be devaluated and discriminated against. Consequently, Scheff argues, they behave in conformity with these stereotypical expectations. This stereotypical behaviour is reinforced by a system of rewards and punishment that confine the labelled person to the role of a mentally disordered person. If labelled people internalise this stereotypical role it becomes part of their central identity, and the end result is a chronic mental disorder.

Some support for the labelling theory can be found in a classic study by Rosenhan (1973), however it should be taken into account that this study had several difficulties, including questionable ethics by today’s standards, and the results should therefore be treated cautiously. Researchers in the Rosenhan study asked participants to complain of specific psychotic symptoms to psychiatrists at a psychiatric hospital. The participants were all admitted to the hospital. Upon admission to the psychiatric ward, all participants stopped complaining of the symptoms, and ceased any abnormal behaviour. When asked by staff how they were feeling, the pseudo-patients indicated that they felt fine. In spite of this, they were labelled as schizophrenics and spent considerable time in the hospital receiving treatment. Once discharged, they were
labelled as having schizophrenia in remission. Rosenhan concluded that once labelled, there was nothing the patient could do to overcome the tag and additionally the label influenced others' perceptions of the patient's behaviour. Furthermore, it was found that normal behaviour displayed by the participants were interpreted by the nursing staff as pathological, including such behaviours as diary writing. Rosenhan hypothesised that the staff reasoned that given that the patient was hospitalised, the patient must be suffering from a psychological disturbance and since the patient was disturbed, the writing must be a behavioural manifestation of the disturbance. In short, the label did have a severe impact on how the pseudo-patients were viewed. The application of labels has lead to the creation of labelling theory, which is discussed below.

Labelling theory has been heavily researched in recent decades (see for example Bottoms, Nyss-Carris, Harris, & Tyda, 2003; Link, Cullen, Frank, & Wozniak, 1987; Link, Phelan, Bresnahan, Stueve, Pescosolido, 1999; Link, Struening, Cullen, & Shrout, 1989; Martin, Pescosolido, & Tuch, 2000; Rosenfield, 1997; Walsh, 1990; Weinstein, 1983). However, the findings of these studies are not conclusive.

That labelling stigmatises people suffering from a mental disorder (Link, 1982; Walsh, 1990) and starts at a young age is well accepted. Wilson, Nairn, Coverdale and Panapa (2000), for example, demonstrated that labelling occurs as young children are being socialised into stigmatising concepts of mental illness when watching television. However, there has been criticism of the theory by, for example, Lehman, Ward, and Linn (1982) and Schwartz, Myers, and Astrachan (1974). The latter view mental disorders as a form of individual pathology in which the fate of people suffering from mental disorders depends on the severity of their symptoms and
the treatment they receive, not on factors such as labels. This led to the formulation of a so-called modified labelling theory (Link, Cullen, Struening, Shrout, & Dohrenwend 1989). The modified theory does not postulate that the label directly causes mental illness, but emphasises that a label may have negative consequences for the patient in, for example, reducing self esteem and inducing fear of discrimination and prejudice.

Consequences of Labelling People as Suffering a Mental disorder Disorder

Irrespective of what the status of labelling theory and the modified theory may be currently, research arising from these theories has provided data that shed light on how pervasive the negative effect of the mental disorder stereotype can be.

Personal implications to people suffering of a mental disorder.

Both Link (1987) and Struening, Dohrenwend, Cullen, Shrout and Link (1989) found that people who are officially diagnosed as mentally disordered devalue themselves; fear that they may be rejected by others, and believe that they were discriminated against by others. Likewise Sirey, Bruce, Alexopoulos, Perlick, Raue, Friedman, and Meyers (2001) discovered that the majority of patients seeking treatment for depression in their study, believed they experienced prejudice. This was especially true for younger people.

The issue of perceived prejudice is important as it often adversely affects well-being and life satisfaction of the relevant individuals. A study illustrating this fact was conducted by Rosenfield (1997). The effects of received services and perceived stigma on life satisfaction were examined, and it was found that both stigma and services received were significantly correlated with quality of life, but in opposite
directions. The fact that the diagnosis allowed the individual to receive mental disorder services was positively linked with life satisfaction. The perceived stigma attached to the label, however, was negatively associated with life satisfaction.

A number of other studies have found similar results, indicating a negative effect on wellbeing correlated with the implementation of a label. For example, Link, Struening, Rahav, Phelan and Nuttbrock (1997) found a strong and enduring negative effect of perceived prejudice on the wellbeing of participants when examining the experiences of individuals with dual diagnoses of mental illness and substance abuse. Their results further suggested that the perceived prejudice continued to affect the lives of the participants even after they had successfully gone through treatment and symptoms were alleviated.

_Treatment implications._

Sirey et al. (2001) found that while older patients reported lower levels of perceived prejudice than did younger patients, they were more likely to discontinue the treatment as a result of perceived prejudice. It should also be noted that research has found that social and cultural factors may lead some individual to express the psychological distress in somatic terms (headaches, limb and joint pains etc) in an effort to avoid being stigmatised (Raguram, Weiss, Channabasavanna, & Devins, 1996).

_Social impact._

Struening, Dohrenwend, Cullen, Shrout and Link (1989) found that both patients and community residents believe that most people will reject mental disorder consumers. An indication that this fear is probably well-founded is the study by
Martin, Pescosolido and Tuch (2000) in which they, amongst other things, measured the social distance participants indicated they would keep from psychiatric patients. The researchers showed that participants were unwilling to interact with people with a mental disorder label and kept a social distance from them. Martin and his colleagues concluded that this was a manifestation of discrimination because those participants who believed that mental illness was caused by bad character or upbringing, sought the greatest social distance.

It is therefore hardly surprising that Link (1982) found that psychiatric labelling increases underemployment, and decreases income when compared to similarly impaired people, who are undiagnosed and unlabelled.

Content of Stereotypes

Initial studies did not examine what exactly it was about a mental disorder label that led to the prejudice and discrimination in the form of, for example, social distancing, that researchers observed. Consequently critics like Clausen (1981) suggested that perceivers may react to the inappropriate behaviour of people with a mental disorder, rather than the labels themselves.

When Link et al. (1987) examined this suggestion they found that in ten of the twelve studies they reviewed, the effect for behaviour was significantly stronger than the influence of the mental disorder label. They hypothesized that it was not the disorder as such, but a stereotype that associates dangerousness with mental disorders, that leads to prejudice and discrimination. This was confirmed when they found that it was only when perceived dangerousness was introduced together with a mental disorder label, that strong negative effects emerged in respect of the measure of social distance.
This is an important finding because a growing list of recent studies suggest that while the public’s knowledge of mental illness is improving, this is not necessarily changing the cultural stereotype of a person with a mental illness. This cultural stereotypes seems to link a mental disorder with violent behaviour. Three studies that demonstrate this link between mental disorder violence, and shed some more information on the content of the mental disorder stereotype, will be briefly discussed next.

Link et al. (1999) examined the public conception of mental disorders, conceptions related to recognition of mental disorders; perceived causes for mental disorder, perceived dangerousness of people with mental disorders and desired social distance. It was found that the majority of the respondents were able to identify disorders such as schizophrenia and depression and that they were able to give a multicausal explanation for the disorders, including stress, genetics, biological factors and drugs. However, the results further indicated that the symptoms of mental disorders remained strongly linked to perceptions of violence and it is hypothesised that the fear of violence in turn leads to a desire for social distance.

Pescosolido, Monahan, Link, Stueve, and Kikuzawa (1999) analysed the data of the General Social Survey that has been conducted since 1972 by the National Opinion Research Center at the University of Chicago. This is a national face-to-face survey designed to monitor the attitudes, beliefs, and behaviour of American people on critical social issues. The authors found that participants differentiated between different forms of mental disorders, and were more sympathetic to people suffering from depression. However, the data did not reveal whether this was because they were more familiar with depression, or failed to recognize depression as a mental disorder problem. Another explanation may be that they found depression more
acceptable than other mental illnesses due to a perceived reduced level of violence. Nevertheless, Pescosolido and her colleagues found that the American public’s negative attitude of people with mental disorders continues and that respondents perceived people labelled as mentally disordered as less competent and more likely to be violent.

The third study is that by Phelan (2000) who examined American public conceptions of mental illness, specifically comparing the conceptions in 1950 and 1996. Phelan found that the general public in 1996 were better informed and included a greater proportion of non-psychotic disorders under the mental disorder umbrella than they did in 1950. However, the research also confirmed the perception that individuals with mental disorders, particularly individuals with psychosis, are violent and frightening has increased since the 1950’s.

While these three studies are not Australian, they provide some indication of what the Australian jurors’ stereotypes of people with a mental disorder may be. Some support for this suggestion was found in a depression awareness study conducted by the Mental disorder Institute of Victoria (2004). Results from a survey conducted in five different postcode specified regions in Victoria revealed poor levels of community literacy about major depression. Results indicated that depression often was not viewed as an illness, but as a personal weakness or inadequacy. The researchers also found a lack of understanding of the nature of the illness, with respondents confusing the illness with a more transient mood state (sadness).

From the identified research it can be surmised that jurors may be sophisticated enough to distinguish between different forms of mental disorders such as schizophrenia and depression. However, it would appear likely that the stereotype of people with mental disorders may in general still be negative, especially if the
perceiver makes an association between mental disorder and the risk of violent behaviour (Pescosolido et al., 1999; Phelan et al., 2000). Other elements of the stereotype may be that people with a mental disorder are incompetent and even responsible for their condition. A study by Weiner, Perry, and Magnusson (1988) investigated attribution of responsibility and found that students, when asked to make judgements about people such as AIDS patients, the obese and war veterans suffering from mental disorders, viewed people with mental disorders as more responsible for their condition. The participants in that study were found to be just as likely to regard people suffering from a mental disorder with anger as with pity and the authors concluded that the participants viewed people with a mental disorder as choosing to behave the way they do.

**Deliberations as a Mediating Factor of Individual Prejudice**

It can be argued that the deliberation phase of a jury trial is not only a vital part of the justice process, but it is also particularly interesting in relation to extralegal biases, as it is a group process where the opinion of individuals may well be influenced by the opinions of others. The possibility of being influenced during the deliberation is of particular importance in relation to extralegal variables, as there exist a possibility that the individual prejudices brought to deliberation by jurors may be decreased (Kaplan & Miller, 1978) or increased (MacCoun, 1990) by the deliberation process, as the jurors influence each other. Juror influence is illustrated by a study conducted by Foley and Pigott (1997) who found that all members of the jury wielded influence, but that the foreperson in particular influenced the other jurors significantly more than other members of the jury. That study concluded that this was because the foreperson
is chosen due to his or her willingness to be an opinion leader, not because of any specific knowledge or leadership qualities.

Also pertinent for this research is the observation that, (as was discussed earlier) there are situations where jurors are likely to be more vigilant and it would appear that deliberation may be such a situation. For example, during deliberation, jurors must express opinions in front of other people whose biases they do not know, or may suspect will be unbiased (see Janis & Mann, 1977). They may also want to appear to be good decision-makers (Freund et al., 1985; Kruglanski & Freund, 1983; Kruglanski & Mayseless, 1988). Given that they are gathered to make a decision they are also likely to be in a purposeful decision making frame of mind (see Gollwitzer & Kinney, 1989). Finally, they will realise that their decision is important for the litigants and will have been warned to set aside their biases and focus on the evidence (see Fiske, 2004).

It is therefore not surprising that there has been a considerable amount of research into jury decision making and judgements (see for example Devine et al., 2001; Hastie, Schkade, & Payne, 1999; Otto, Penrod, & Dexter, 1994). Research has shown that the deliberation process may act as a mediating variable (Izzett & Leginski, 1974) in relation to prejudices and stereotypes of jurors, however, there are some contradictory results (Kramer, Kerr & Carroll, 1990). The literature on deliberation will now therefore be further examined.

In looking at the deliberation process, it has been found that jurors often form their opinions regarding the defendant’s guilt early on in the trial and transfer these to the jury room (Weiten & Diamond, 1979). Tanford and Penrod (1986) studied several aspects of the jury decision making process, including individual voting behaviour, group verdicts, the content of deliberations and jurors’ cognitive processes after
deliberation. Their results indicated that the initial vote distribution was a good indicator of the final verdict, and the participants subscribing to an opinion held by the majority of the jury tended to win. Furthermore, the findings of the study suggested that the first vote was the result of the content of the deliberation, (e.g. the facts of the case and the juror’s preference for guilty/not guilty), and vote distribution, whereas the following votes were based on normative pressures. Tanford and Penrod’s (1986) results supports the findings of Dillehay and Nietzel (1980). Both of the mentioned studies did not show any change in vote distribution after deliberation and it was initial preconceptions of jurors that determined their individual judgements, both before and after jury room discussion.

However, other research has found deliberation processes do notably effect individual judgements. A study by McGuire and Bermant (1977) on individual and group decisions in a mock trial indicated that before the deliberation there was no difference in distributions of the individual juror’s verdicts in relation to the sex of the attorney and race of the offender. Post-deliberation however, jurors who had viewed a video depicting a male defence attorney were more likely to vote for acquittal than were the jurors who had viewed a video depicting a female defence attorney. In an unrelated study about inadmissible evidence and the effect jury deliberations have on jurors’ propensity to comply with instructions to dismiss the evidence, London and Nunez (2000) discovered that although the inadmissible evidence did influence the jurors pre-deliberation, this effect had been eliminated post-deliberation. Their finding supported that of Kerwin and Shaffer (1994) who found that juries that participated in deliberation were more likely to follow judicial instructions to ignore inadmissible evidence than jurors who did not deliberate. This appears to confirm the social
cognitive research that people who are in decision making mode and know that they will be judged can set aside their stereotypes (Fiske, 2004; Fiske & Taylor, 1991).

A high number of studies have investigated leniency effects (e.g. the tendency to be more understanding and/or assigning lesser guilt) as a result of deliberation processes. Leniency effects as a result of deliberation can be seen as an increase in bias, whereby the leniency towards one trial participant (defendant or victim) will positively affect that individual in an unfair way, and at the same time, another trial participant (defendant or victim) will be disadvantaged due to the leniency provided to the other party.

Although a few studies suggest that deliberation does not change attitudes of the jurors (Dillehay & Nietzel, 1980; Tanford & Penrod, 1986; Weiten & Diamond, 1979), this is inconsistent with a large body of research which suggests that deliberation often leads to leniency effects as an outcome (MacCoun, 1990; Izzett & Leginski, 1974; Stewart, 1985). The leniency effect is illustrated by a study conducted by Izzett and Leginski in 1974. The researchers asked participants to decide on a sentence for a defendant. Results indicated that prior to group deliberation, an unattractive defendant received a significantly longer sentence than an attractive defendant by the individual jurors. After the deliberation, there was a shift towards leniency. The unattractive defendant now received a significantly lower sentence than before the deliberation. There was no difference for the attractive defendant. The authors suggest that jurors might abandon the most extreme positions when part of a group. However, reversed findings were found in a study by MacCoun (1990). Here results indicated that the physical attractiveness of the defendant influenced the jury members during deliberation. When the defendant was attractive, there was a shift towards leniency, but no such shift was found when the defendant was unattractive.
Kassin and Wrightsman (1983) have also found deliberation processes might reduce prejudicial effects. However, this study did not establish whether this is the typical pattern of deliberation effect.

It could be argued that research findings supporting the leniency effect effectively support the suggestion that the deliberation process has a mediating effect on pre-deliberation biases (biases held by the individual jurors before the deliberation). It therefore seems that deliberation may be vital in the effort to minimise extralegal variables and thereby increase the fairness of the trial for all participants involved.

Deliberation has also been shown to have a positive impact on reducing biases. In a classic study by Kaplan and Miller (1978) investigating variables that could reduce the effect of juror bias, it was found the effects of trait biases (e.g. leniency or harshness) were significantly reduced when conditions that increased the credibility, reliability and trustworthiness of the trial evidence were introduced. Situational biases (transient mood states, e.g. bad mood) were introduced in another experiment and these were ameliorated by a period of deliberation. Kaplan and Miller interpreted the findings to mean that the bias reducing procedures introduced into the situation increased the salience of the information taken into account in judgement formation. In another study investigating jury decision making, it was shown that deliberation also impacts favourably on jurors' compliance with judicial instructions to ignore inadmissible evidence, something that would decrease bias of the jury and the outcome of the trial (Kerwin & Shaffer, 1994).

Another phenomenon that has emerged in research on deliberation effects is polarisation. MacCoun and Kerr (1988) have shown that individual verdict decisions at pre-deliberation become stronger and often more polarised during the deliberation.
Brauer, Judd and Gliner (1995) built on the existing knowledge on attitude polarisation in deliberation by focusing on the effects of repeated expressions (e.g. opinions expressed more than once) during the discussions. It was found that repeated expression did produce a reliable shift in extremity, in that other jurors changed their opinions after having listened to repeated expression. This effect was even stronger in groups where the jurors repeated the others' statements and used them in their own line of reasoning. The authors considered that polarisation is at least partly accounted for by repeated expressions and that social interaction also plays a part. This phenomenon is important to take into consideration when investigating group influences during deliberation, as it may aid in explaining the behaviour of the jurors.

A final aspect of jury deliberation that should be noted is that a large portion of the research on deliberation previously cited in this study, does not analyse the group processes within juries during the deliberation. Instead, the research appear to largely examine individual juror answers before and after the deliberation, without analysing the potential influence of a group discussion on these. Typically individual juror answers are analysed as a unit (all answers and scores put together and the average is used) but with little or no group deliberation analysis conducted (see for example Izzett & Leginski, 1974; McCoy, Nunez, & Dammeyer, 1999; London & Nunez, 2000, none of which analysed deliberation contents).

**Gender as a Factor in Jury Research Where the Offence is of a Sexual Nature**

It appears that one aspect of deliberation that has not been much researched to date is gender differences in juries and how these may influence the outcome of deliberation. While group processes within the deliberation period have attracted some attention, gender issues have rarely been investigated. One notable exception is
research into decision making when the case involves sexual assault. Here, research relating to judgements about sex crimes suggest that gender is indeed related to the perception of rape and sexual assault (Cowan, 2000) and research on attitudes about sexual offences has further indicated that men in general are more accepting of rape myths than are women (Lonsway & Fitzgerald, 1994).

A wealth of research confirm that gender difference relating to beliefs about sexual assaults transfer into the courtroom and influence jurors attitudes and reasoning about sexual assault crimes (Kanekar & Nazareth, 1988; Cowan, 2000; Guy & Edens, 2003). Gender differences are illustrated in a study by Kanekar and Nazareth (1988) in which jurors were asked to recommend the sentence for a defendant, after having read a case in which the victim’s attractiveness, degree of physical harm and emotional disturbance was varied. The results showed that females recommended longer sentences than did males in all conditions. Males also assigned greater fault to the victim than the female jurors did, though they were somewhat more lenient towards the emotionally disturbed victim. The results from the Kanekar and Nazareth study mirror the findings in a similar study by Fischer (1991), investigating cognitive predictors of not-guilty verdicts in mock rape trials. In that study, the results indicated that jurors who were male or who tended to blame the victim, were more likely to render a not-guilty verdict than female participants, or participants who did not blame the victim.

However, although female jurors appear to be consistently more punitive toward the defendant in sexual assault cases, some research also suggests that females tend to blame the victim more, especially when they perceive the behaviour of the victim to be inappropriate (Langley, Yost, Taylor, Frankel, & Craig, 1991).
While it is established that gender is related to differing perceptions of the victim, defendant and the crime in sexual assault cases, it can not safely be said that these findings can be generalised to other types of crimes, as little research has been conducted in other areas, at least until recently. In a study by Bull Kovera, McAuliff, and Hebert (1999) into the reasoning about scientific evidence in a hostile work environment case, it was found that male jurors who heard expert testimony were more likely to consider the plaintiff's workplace hostile, than male jurors who did not hear expert testimony. Expert testimony did, however, not influence the female jurors liability judgments. In another study, by ForsterLee et al. (1999) gender differences were found when examining community members' perceptions of evidence. The participants were asked to act as jurors in a recovered memory civil trial. Results indicated that female jurors were more likely to find the defendant liable when the plaintiff was female than when the plaintiff was male. The reverse was true for the male jurors.

When examining gender as an extralegal variable, it becomes clear that research often fails to consider potential gender differences. While studies depicting sex crimes have found gender differences in the assignment of punishment and responsibility (Cowan, 2000; Fischer, 1991; Langley et al., 1991), similar studies of juror decision making and gender differences in crimes other than sexual assaults, have been far and few between. Even in studies depicting sex crimes, the contrast in perceptions between the genders are rarely reported.

Methodological Issues in Jury Research

Uncertainty about exactly how jury deliberations and extralegal variables influence the decision making processes of jurors is exacerbated by several
methodological concerns regarding jury research. Consequently a review of the literature on pertinent methodological issues in jury research was undertaken and the findings are now reported.

*Real Versus Juries*

In their review of jury decision making, Devine et al. (2001) found that four different methodologies primarily were used in this type of research. These included jury experiments, post-deliberation interviews with ex-jurors, analyses of jury verdicts from archival sources and experiments with real juries. Devine et al. (2001) concluded that while the juror paradigm had been used most frequently, all of the different methods have advantages and disadvantages. Though traditionally, jury research has relied on juries, this may impact on the generalisability of the studies. It is however hard to avoid simulated settings for juror research for several reasons. Firstly, in many countries, there are restrictions on access to actual jury deliberation. In Australia it is difficult to obtain permission to use actual juries for research and few studies have therefore been conducted analysing deliberation data from actual juries. Secondly, due to the nature of jury research, the experimental design often does not allow for the use of real juries. For example, to find twelve similar rape cases, where the victim suffered from specific mental disorders, and compare them to each other, would not be a feasible proposition and there would be inherent problems with confounding variables, as the victims would be different, as well as the details of the case. Therefore, a jury is often the better option. However, when constructing a mock jury, there are some aspects that need to be considered, in order to obtain a jury as similar to an actual jury as possible. These include issues such as the size of the jury and choice of participants, which now be considered.
Size of Juries

Though the research available is somewhat inconsistent, it appears that fewer than twelve jurors in a jury does not necessarily affect the process of decision making. This is illustrated by a study by Kerr and MacCoun (1985) who investigated jury size. It was found that no process differences emerged when the number of members of a jury were between six to twelve people. However, when juries were limited to three people or less, process differences began to appear when compared to the larger groups. A more recent study by Saks and Weighner Marti (1997) also indicated various advantages with larger juries, namely that larger groups are more likely to contain members of minority groups, and that they tend to deliberate for a longer time period. However, this study also found that larger juries also hang more often than smaller ones. Horowitz and Bordens (2002) investigated jury size, evidence complexity and note taking in civil trials and found that twelve person juries deliberated longer, recalled more probative information and relied less on evaluative statements than did six-person juries. As no process differences seem to appear in juries with as few members as six (Kerr & MacCoun, 1985), a jury of this number appears to be a viable option.

From the mentioned jury research it appears that small juries may not be as advantageous as larger juries in that they may not deliberate in as much depth and may not contain members from minority groups. However, it should also be noted that research has shown that even when jury members are of the same minority as the victim, this may not work in the victim’s favour. The minority juror may well be more critical of the victim’s conduct than other jurors would be (Kerr et al., 1995) thus raising the question as to the utility of including minority members in the jury.
Participants

It is commonly accepted that when recruiting participants for jury research, one should strive to use a sample that is not only randomly selected but which is also representative of the people who could be expected to be in a jury, that is, the population at large (Allan, personal communication, 30/06/04).

Previous research on jury simulations has shown an overreliance on University students forming these juries (Cvetkovich & Baumgardner, 1973). The limitation is that while students are community members and therefore potential jurors, they represent a select group rather than being representative of the general population for jury duty. Dillehay and Nietzel (1980) suggest students are, for example, less likely to convict defendants. Pfeifer and Ogloff (1991) argue that students are more likely than non-students to pay attention to details in the case, in addition to understanding jury instructions better than non-students. These studies indicate that students may be less prejudicial than the general population, and due to their studies, more cognitively astute. In terms of the extralegal variables it could be speculated that they may be better informed about issues such as race or mental illness and may therefore give more socially acceptable answers. This would lead to skewed results and therefore, while it is often easy to obtain large student samples, it is not advisable to use students for these reasons.

Material Used to Present Simulated Court Proceedings

When conducting jury research, the generally accepted methodology for jury experiments consist of either a script, audio recording or a video depicting a trial (Devine et al., 2001). While all these methods carry with them the disadvantage of
being a condensed version of a case and thus not as authentic as a real trial, they also allow for keeping all variables constant, thus eliminating many potentially confounding variables, such as different settings, victims, defendants. Observations have been made about the requirements for the simulation of court proceedings. For example, a study by Bray and Kerr (1979) criticised written case material and stated that it was often too brief and overly simplistic, thus taking away from the authenticity of the situation. Furthermore, they considered that audio recordings commonly between 30-90 minutes long, were too short, again detracting from the authenticity of the process.

However, though jury simulations have been criticised, they are generally accepted given the impracticality of research on real juries and cases. The use of a videotaped trial appears to be used more than scripts or audio recordings (Devine et al., 2001) and offers several advantages. Video recordings are richer in context in that jurors will see what is taking place, whereas in a script, this is not possible. Furthermore, it is closer to what a real trial is like, therefore making generalisation to a larger population easier. However, a potential disadvantage of video recording is that jurors will also have a greater opportunity to incorporate their own personal interpretations of trial participant behaviour and the reasons for this, and while this would inevitably occur in a real trial, it may not be desirable in an experimental setting.

Instructions

One of the causes for concern with the research previously conducted on jury deliberations, is the lack of jury instructions. It appears that many studies have not included jury instructions before letting the participants commence the deliberation
(Foley, & Piggott, 1997; Kameda, 1991; McCoy, Nunez, & Dammeyer, 1999). This is problematic as it not only takes away from the authenticity of the experiment, but also because studies have shown that jury instructions are very important. For example a study by Ellsworth and Reifman (2000) on juror comprehension and public policy (in response to a claim that jurors are not competent to make fair decisions, but that professional juries may be a better option). Results indicated that the problems with juries may not be due to bad jurors but due to procedural obstacles, such as incomprehensible instructions, to decision making. Finkel (2000) reached a similar conclusion when investigating. He reported that jury nullification (explained as occurring when a jury does not apply the law, or rejects evidence in a case, because the result dictated by the law is contrary to the jury’s sense of justice) was more likely due to a failure of the jury instructions, rather than the inability of the jurors. When clear jury instructions are provided the jurors have a guide as how to come to their decision and will know that they should focus on the facts rather than their schema. This in turn may aid in eliminating the use of extralegal variables, as was discussed earlier. Therefore, in this study it was considered essential to include jury instructions.

Ambiguous facts

Another issue to consider when designing a study on juries, is ambiguous facts in trials. Some research indicates that deliberations and juror decision making are influenced if the facts of the case are ambiguous, for example presentation of weak evidence or inconsistent testimony. This is illustrated in a study by Hendry, Shaffer and Peacock (1989) who focused on the interaction between evidential strength (strong, balanced or weak) and defendant’s demeanour (control or deceptive). This study found that the demeanour effects were strongest when the evidence was weak
and it was concluded that a defendant can undermine the chances of acquittal by poor self-representation.

Another study exemplifying the influence ambiguous factors can have in a trial was that of Berman and Cutler (1996). This study found that any type of inconsistent testimony had a clear negative impact on conviction rates. Jurors who were exposed to inconsistent testimony not only picked up on it, but were also significantly less likely to convict the defendant. The jurors further found the defendant less culpable of the crime and the eyewitness was perceived as less effective.

However, ambiguous facts may be deliberately brought into a study, when the purpose is to observe the deliberation process and the influence jury members have on each other. With weak evidence comes uncertainty, something that is likely to increase the deliberation time and may also cause the jurors to use their schemas and therefore bring their own biases into the discussion. For this reason, in this study the decision was made to deliberately have ambiguous facts.

Conclusion to Literature Review

This literature review demonstrates that various extralegal variables in the criminal justice system have been identified and that stereotypes about personal characteristics such as race and attractiveness can function as extralegal factors that influence the outcome of jury decision making. Factors that may however influence the effect of stereotypes are jury deliberation and, especially in the case of sexual offences, gender of jury members. Despite evidence that people in the Western world have negative stereotypes about people suffering from mental disorders, the
possibility that mental disorder of a person may function as an extralegal variable has not been examined to date.
Method

*Design and Analysis*

This study aimed to investigate whether jurors’ perceptions of victims, the crime and the defendant would be different if the victims were labelled as mentally disordered. The mental disorder labels of the victims (schizophrenia, depression, intellectual disability) and the control group (no label) were manipulated in the design of the experiment. The participants were randomly assigned to one of the four experimental conditions. Random assignment was conducted in order to establish equivalent groups for each research condition by balancing individual differences.

Another aim of the study was to determine whether jurors’ perceptions of victims, the crime and the defendant would be different for male and female jurors and whether deliberation would change these perceptions of the individual jurors. This study therefore aimed to investigate the simultaneous effect of three independent variables. A mixed factorial design was employed with mental disorder of the victim and the gender of the jurors as between subject factors, and deliberation the within subject factor.

The following dependent variables were investigated. Variables concerned with perceptions of and emotions related to the victim included: likeableness, reliability, honesty, sympathy felt for the victim, and value to the community. Variables related to perceptions of the crime included seriousness of the crime, impact of and responsibility for the crime. Variables regarding perceptions and decisions related to the defendant included: defendant guilt and recommended sentence. The length of sentence could range from one to ten years, and all the other dependent variables were measured on a seven-point Likert scale.
As the object of the study was to investigate the interactions between two between subject variables (mental disorder label and gender) and one within subject variable (deliberation) a mixed design analysis of variance (ANOVA) technique was utilised to analyse the data. A series of $4 \times 2 \times 2$ ANOVAs (mental disorder x gender x deliberation) were employed across ten affective (victim) and cognitive (crime, guilt) dependent variables. The effect size was investigated by means of eta squared and interpreted based on Cohen’s (1988) guidelines. Single factor ANOVAs and Tukey’s Honestly Significant Differences (HSD) tests were employed for post hoc analyses of significant interaction effects, and significant main effects where indicated. An alpha level of .05 was used in the study, as it is a significance level commonly used and accepted in behavioural research (Whitley, 1996).

In addition, qualitative analysis was used for the deliberation phase and matched with the ANOVA results, to assist in clarifying the results and adding richness to the interpretation. Ellsworth (1989), found that the content of jury deliberation included a discussion of the evidence, the defendants’ and witnesses’ testimony, the law, call for a vote, and the judge’s instructions. Based on Ellsworth’s research, a list of categories that defined particular topics of conversation was developed by an independent psychologist in collaboration with the researcher. The categories (defendant, victim, witnesses, defendant’s guilt, evidence, crime, jury instructions, miscellaneous) were based upon the most frequently discussed themes in these juries and information from previous research. To triangulate the chosen categories, two postgraduate psychology students viewed the taped deliberations without having any prior knowledge of the study. They were asked to first view the tapes looking for emerging themes. The postgraduate students (assessors) agreed with the researcher’s developed themes, thus the eight original themes were used. Once the
themes had been decided, the assessors began to analyse the individual comments made by the jurors with a view of placing them in one of the categories (themes). Each comment assigned to a category had to be agreed upon as belonging to that particular theme by both assessors before it could be assigned to the category. Comments that did not fit into any one category and comments that the assessors failed to agree upon, were put the miscellaneous category. The content of the eight categories is:

- **Defendant**: All discussion related to the defendant, including testimony, appearance, behaviour at trial, overall believability and motive;
- **Victim**: All discussion related to the victim, including testimony, appearance, behaviour at trial and on the night of the crime, and overall believability;
- **Witnesses**: Discussion related to all witnesses including their testimony, conduct in court, overall believability and appearance;
- **Defendant's Guilt**: Discussion related to the guilt of the defendant including arguments as to the guilt of the defendant, and polling methods used by jurors;
- **Evidence**: Discussion related to the evidence presented during the trial, including the missing watch, the jacket etc., as well as all testimony of the witnesses related to the evidence;
- **Crime**: Discussion related to the crime, or that of attempted rape in general, including severity and differentiation between different sex crimes;
- **Jury Instructions**: Discussion related to the jury instructions including queries as to what they mean, and how to interpret them;
- **Miscellaneous**: All discussion that did not fit into any previous category, including discussion about other crimes, prior jury situations experienced by the jurors, such as crime TV shows.
The assessors used stopwatches to measure the length of time the juries spent discussing each of the different categories. The researcher then reviewed the comments assigned to each category, to ensure that all comments had indeed been classified. Finally the researcher calculated the mean of the two assessors timed categories, to reach the final time spent per category. The results were inserted in Table 4.

Participants

Ninety three participants were recruited via a series of advertisements in community newspapers and community centres in Perth, Western Australia. All participants were required to be over the age of 18, citizens of Australia and were on the electoral roll, thus making them eligible for jury duty. In accordance with the Jury Act (1957) people who are or have been judges, masters/registrars of a court, legal practitioners, members/officers of the legislative assembly or council, sheriffs of Western Australia, bailiffs or assistant bailiffs, police officers, special constables or Aboriginal Aides were excluded from participating in the study. When recruited, the participants were not asked whether they had any experience of jury duty, but during deliberations it became clear that three participants out of 93 had indeed had prior experience.
Table 1
*Gender Representation in the Different Mental Disorder Conditions*

<table>
<thead>
<tr>
<th></th>
<th>Control</th>
<th>Schizophrenia</th>
<th>Depression</th>
<th>Intellectual Disability</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>7</td>
<td>12</td>
<td>9</td>
<td>14</td>
<td>32</td>
</tr>
<tr>
<td>Female</td>
<td>16</td>
<td>11</td>
<td>14</td>
<td>10</td>
<td>51</td>
</tr>
<tr>
<td>Total</td>
<td>23</td>
<td>23</td>
<td>23</td>
<td>24</td>
<td>93</td>
</tr>
</tbody>
</table>

For the reasons identified in the literature review, it was decided to proceed with the experiment though some participants did not attend the session allocated to them, provided that there were no less than six participants per jury. This resulted in twelve juries being involved in the study. The gender representation in the different conditions can be viewed in Table 1 above. In all conditions, there were more female jurors than male jurors, however the proportions remained relatively consistent across the conditions.

Volunteers did not receive any form of remuneration for their participation, apart from some light refreshments.

*Material*

A video depicting a mock trial was used. The master video was filmed in a neutral court-like setting, namely the Francis Burt Law Museum. The roles of the trial participants, as well as the filming and editing were performed by Edith Cowan University students and faculty.

Nine actors played the role of judge, defence lawyer, prosecutor, the accused, an eyewitness, a flatmate of the accused, a clerk, a policeman and the victim respectively.
This master video was used for all three conditions and the control group (no label). However, in order to distinguish between the information provided to the participants, an introduction was added to the master video that differed for the different conditions. In the schizophrenia, depression and intellectual disability conditions, the complainant was clearly identified as someone suffering from schizophrenia, depression or an intellectual disability respectively. This comment was not included in the introduction to the control group condition. The participants in each condition therefore viewed the same master video with the exception of the small difference in the introduction.

The scenario was as follows: The defendant is accused of attempted rape. The alleged crime took place one evening when the female victim was driving home from work. The car broke down and the victim was forced to leave the car in order to get to a phone box. The victim was then pulled into an alley by the male defendant. The victim claims that the defendant began ripping her clothes off and attacking her. The victim did not scream, as she was frightened that he would kill her. A male bystander witnessed the incident and came to assist the victim. The defendant rushed off. The bystander recommended to the victim that she should report the attempted rape, but the victim was too frightened and declined. However, three days later, the victim changed her mind and did report the incident to the police. At this time she had burned her clothes and thoroughly washed several times. At investigation, no evidence was found. At a line-up, the victim was able to describe the appearance of the attacker and in addition was able to identify the defendant. The defence is now claiming mistaken identity. The bystander is called as a witness and identifies the defendant as the attacker. A second witness, a forensic scientist, is called but can only testify that the evidence from the crime scene is inconclusive. The policeman
handling the case is also called on to give his opinion on the credibility of the victim. All three witnesses, the defendant, and victim were subjected to direct and cross-examination. For the transcript of the vignette, refer to Appendix B. The trial evidence was carefully designed to be ambiguous (in consultation with experienced lawyers), favouring neither the defendant nor the victim to encourage jurors to rely on external information, such as the characteristics of the defendant/victim (Hymes et al., 1993).

A juror decision making questionnaire was developed from Greene, Koehring, and Quiat (1998) for pre and post testing. Nine statements about the victim (likeableness, reliability, honesty, sympathy, value to community), crime (seriousness, impact, victim’s responsibility); and defendant (guilt) were provided in randomised order with a seven-point Likert scale anchored by strongly disagree to strongly agree. For example, “The victim is a valuable member of the community”. A further statement relating to defendant sentencing differed from the others, in that it ranged from a sentence of one year to ten years. Questionnaire A was completed pre-deliberation by the individual jurors (See Appendix A, Questionnaire A).

Questionnaire B was completed post-deliberation (See Appendix A, Questionnaire B). Questionnaire B contained the same questions as questionnaire A, however the items were in randomised order, in an attempt to ensure that the participants would find it more difficult to recall their previous answers and simply copy them.

The third questionnaire (See Appendix A, questionnaire C) contained two open response questions, which attempted to directly assess the impact of mental disorders of victims on the participants’ responses to the previous items on both Questionnaires A and B. This questionnaire was required to be completed after questionnaire B, that is, post-deliberation. Like the previous questionnaires, this
questionnaire was anchored by a seven-point Likert scale, but also contained a free response section. This was provided to allow the participants to name the reasons for the selected option on the scale. The questionnaires were placed in a sealed envelope after being answered. The questionnaires also contained an ‘administration’ section to remind participants of the victim details as well as providing the researcher with information of participant gender. No identifying information was required in the questionnaires, but each one was coded to allow the researchers to compare each participant’s pre- and post-deliberation perceptions.

The experiments were held at different Edith Cowan University Campuses (Joondalup, Churchlands and Mount Lawley, all in the Perth Metropolitan area), to make it easier for a range of participants to take part. The setting was kept as simple as possible, to ensure that confounding variables were kept to a minimum. The materials used included a large room equipped with chairs, a television, and a videocassette recorder. Pens were also provided. A video camera (put unobtrusively in a corner) was used for the taping of the deliberation and a box was provided for the questionnaires. Apart from this, the rooms used for the experiments were empty.

Other resources used included the aid and expertise of an experienced lawyer, who assisted in reading the manuscript of the trial and made suggestions for improvements; an independent psychologist who assisted in developing the categories used for the analysis of the deliberation phase, and; two post-graduate psychology students who acted as assessors and went through the videotaped deliberations. These individuals were all employed or studying at Edith Cowan University at the time this study was conducted.
Procedure

After reading an information sheet (which also included the mental disorder labels when describing the victim) and signing a consent form, the participants were seated and asked to watch the vignette. There were three versions of the vignette (Appendix B) and one control condition (no label), each introducing different victim characteristics (schizophrenia, depression, and intellectual disorder). After watching the vignette, the participants were asked to complete the pre-deliberation questionnaire about the trial individually (Appendix A, Questionnaire A). Upon completion, this questionnaire was placed in a locked box and the participants were served some refreshments after which they proceeded to a group deliberation. The participants were asked not to discuss the case before commencement of the deliberation phase. The deliberation began with the researcher reading off a set of standard jury instructions, which were to guide their deliberation. Each group was allowed to deliberate for up to an hour, and were informed that they must reach a verdict within the time limit. During the deliberation, the participants were videotaped to allow for subsequent observation of their discussion and how they addressed mental illness and the other areas being researched. Where necessary, the participants were informed when they had five minutes left of deliberation time, after which they were asked to render a verdict. Three juries out of twelve needed this prompt. After finishing the deliberation, participants were asked to complete the post-deliberation questionnaires (refer to Appendix A, Questionnaire B and Questionnaire C). Finally they were fully debriefed about the study, and their questions were answered.

The jury instructions were obtained from a study by MacCoun et al. (1988), and modified to suit the present study. They were read out to the participants verbatim according to the format below:
Before you can find a man guilty of a crime, the prosecution must show by a preponderance of the evidence that the defendant committed the crime. That is, it is up to the prosecution to prove there is more evidence of the defendant’s guilt than of his innocence. If the weight of the evidence for the defendant’s guilt is greater than the weight of evidence for his innocence, then the prosecution has met its burden and you must find the defendant guilty as charged. If, on the other hand, you feel that the evidence for the defendant’s innocence has greater weight than the evidence for his guilt, then you must find him not guilty. If the evidence suggests to you that it is more likely that the defendant committed the crime, than not, the law requires you to find him guilty as charged; but if you feel that it is more likely that he is innocent than guilty, the law requires you to find him not guilty. In summary, your verdict must favour the side that has presented the stronger evidence.
Results

*Quantitative*

Preliminary oneway analyses showed no significant differences within each set of juries dedicated to any victim's label. Data for the different juries for each mental disorder label were thus combined for the series of three-way ANOVAs. Cell means and standard deviations for the critical comparison variable labelling of mental disorder, as well as for gender and deliberation are reported in Table 2 below alongside significant effects. The detailed ANOVA results are presented in Table 3.

The requirements of ANOVA are that the data meet two assumptions, namely normality and homogeneity of variance.

Most of the items approached a normal distribution, but some skewness and non-normal kurtosis were identified for four of the items. For seriousness of the crime the distribution of both pre and post scores showed some positive kurtosis and negative skewness, indicating that the majority of the participants regarded the crime as very serious. For sympathy towards the victim the distribution of pre-deliberation scores were negatively skewed, indicating that the majority of the participants were very sympathetic towards the victim. In contrast, the distributions were positively skewed both pre and post-deliberation for responsibility for the crime and post-deliberation for length of sentence assigned to the defendant. This indicates that the majority of the participants rated the victim's responsibility for the crime as low, and assigned a relatively short sentence to the defendant. Skewness in favour of the victim is not surprising, given the nature of the crime, but the relatively short sentence is. However, the indecision in relation to the guilt of the defendant, is probably the reason for the short sentence.
The deviations from normality are not of much concern. The skewness and kurtosis were not great and the values tended to be the same across all disorders and for both males and females. According to Keppel and Wickens (2004) "computer packages can pick up deviations from normality that have no impact on the test of means" (p. 144). When groups of about twelve or more are compared, they suggest that researchers need not be concerned about the assumption of normality. Keppel and Wickens warn that skewness can be a problem when sample sizes are unequal, as is the case for males and females in this study. However, this is not a concern as the SPSS regression approach was used which give equal weight to all means regardless of the sample size. As the comparison groups were sometimes less than 12 for gender, caution was necessary in the interpretation of the results for gender, especially in respect of the control group which included only 7 male participants (see Table 1).

Tests of homogeneity showed some non-homogeneity of variance and covariance matrices for sympathy towards the victim, responsibility for the crime, and the sentence assigned to the defendant. For these variables, both the assumptions of normality and homogeneous variances are thus violated. In these cases there is a possibility of Type 1 error (Keppel & Wickens, 2004). The simplest response to heterogeneity is to use a more stringent significance level. The authors suggest that the Type 1 error will be kept below the 5 percent level if the alpha level is set at .025. For the variables of sympathy towards the victim, responsibility for the crime and sentence assigned to the defendant, the effect of a more stringent significance level will be considered.
Victim

There were no significant effects on the sympathy felt for the victim or the value of the victim to society in the analyses.

There was however a significant main effect for likeableness of the victim depending on disorder label ($\chi^2 = .078$). The intellectual disability ($M = 5.24$) and schizophrenia victims ($M = 4.87$) were perceived as the most likeable, followed by the depression ($M = 4.46$) and no label victim ($M = 4.34$). Post hoc HSD tests showed that the intellectual disability victim was significantly more likeable than the depression victim ($p < .05$) and the victim without label ($p < .05$).

Furthermore, there was a significant interaction between disorder, deliberation and gender in respect of the perceived reliability of the victim ($\chi^2 = .032$). The interaction is illustrated in Figures 1 and 2 (on pages 64 and 65).
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Note: Pre and Post indicate pre- and post-deliberation judgements with the main effect for deliberation demonstrated in the Total column. Sentence recommendation ranged from 1-10 years. All other judgements rated on a 7-point Likert scale (1=Strongly Disagree to 7=Strongly Agree). X=Interaction.
Table 3

*Analysis of Variance for Judgements of the Victim, Crime and Defendant across Victim Disorder, Jury Member Gender and Deliberation*

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*Note.* The degrees of freedom for the between subject and within subject error (error df) is 81 unless otherwise specified.  
A error df = 82.  
B error df = 84.  
*p < .05.
Figure 1. Perceived reliability of victim: Interaction between victim's disorder label and juror deliberation for male jurors.

As shown in Figures 1 and 2, the salient finding in terms of victims' reliability occurred in the context of the depression victim. There was a reversal based on mock jurors' gender. Female mock juror's perception of victim's reliability was generally higher than for male mock jurors, but it also increased following deliberation while it generally decreased for male mock jurors. Single factor ANOVAs were used to further investigate the 3-way interaction. The only significant difference was for the depression victim, where female mock jurors rated the victim as more reliable after deliberation (M = 5.4) than before (M = 4.3), F(1,14) = 9.58, p < .005.
In relation to honesty, there was a significant interaction between disorder and gender ($\eta^2 = 0.065$). The interaction between disorder and gender is illustrated in Figure 3 below.

Post hoc HSD tests showed that there were no significant differences across disorders for males, or for females. The results of single factor ANOVAs indicated
that there were no significant differences between male and female jurors for the victims with different disorder labels. However, for the schizophrenia victim the difference between males and females approached significance, $F(1,21) = 4.30, p = .051$. The interaction between deliberation and gender is illustrated in Figure 4 below.

![Figure 4](image)

*Figure 4. Perceived honesty of victim: Post hoc analysis of deliberation and gender interaction.*

There was also a significant interaction between deliberation and gender ($\gamma^2 = .019$). Here, male jurors provided lower honesty scores before deliberation than after. Conversely, female jurors provided higher honesty scores before deliberation than after, creating a cross-over effect.

**Crime**

There were no significant effects on the seriousness of the crime, or its impact on the victim, but in respect of responsibility assigned to the victim there was a significant main effect for disorder ($\gamma^2 = .091$), and a significant interaction between disorder and gender ($\gamma^2 = .082$). When the ANOVA results for responsibility were
evaluated at a more stringent significance level of .025 to take account of the increased risk of Type 1 error due to non-homogeneity of variance and covariance matrices, these effects were still significant. Jurors perceived the intellectual disability victim \((M = 2.63)\) to be more responsible for the incident than control group \((M = 2.09)\), and schizophrenia \((M = 2.17)\) victims. However, post hoc tests revealed that the only significant difference was between the intellectual disability and depression victims \((p < .01)\). The interaction between disorder and gender is illustrated in Figure 5 below.

![Figure 5. Perceived responsibility of victim: Interaction of victim's disorder label and juror's gender](image)

Post hoc HSD tests revealed no significant differences for victims with different disorder labels for male jurors. However, female jurors regarded the intellectual disability victim \((M = 3.31, \ p < .05)\) as significantly more responsible than the control \((M = 2.16, \ p < .05)\), schizophrenia and depression victims (means of 1.41 and 1.27 respectively, \(p < .001\)). The results of single factor ANOVAs further indicated that the only significant gender difference occurred for the schizophrenia
victim. Male jurors assigned significantly higher responsibility to the schizophrenia victim, $F(1,21) = 6.73, p < .05$, than did female jurors ($M = 1.41$).

**Defendant**

There were significant main effects across victim's disorder label ($\eta^2 = .076$), juror gender ($\eta^2 = .042$) and deliberation ($\eta^2 = .018$) in respect of defendant’s guilt and significant interaction between disorder and deliberation ($\eta^2 = .062$). Overall, deliberation caused a decrease in the perceived guilt of the defendant (pre and post means of 3.81 and 3.36 respectively). Male jurors agreed more that the defendant was guilty than did female jurors (means of 3.89 and 3.34 respectively). Post hoc analysis (HSD) of the main effect for disorder showed that the jurors agreed less that the defendant was guilty in the case of the schizophrenia victim ($M = 2.93$) when compared to the depression victim ($M = 3.67, p < .05$), and the intellectual disability victim ($M = 3.93, p < .001$). However again it was deliberation that had an important role in shaping these perceptions as shown in Figure 6 below.

![Figure 6. Perceived guilt of the defendant: Interaction between victim's disorder label and deliberation.](image-url)
As shown in Figure 6, the assignment of defendant guilt was consistent across all disorder labels prior to deliberation. However deliberation had an effect in lowering the perceived guilt of the defendant when the victim was not labelled (pre and post means of 4.32 and 3.32 respectively), $F(1,22) = 12.83, p < .01$. But the greatest decrease in perceived guilt of the defendant occurred after deliberation in the case of the schizophrenia victim (means of 3.65 and 2.22), $F(1,21) = 26.27, p = .001$. Post hoc analyses (HSD) showed no significant differences across victim disorder labels prior to deliberation. However, after deliberation the defendant in the schizophrenia victim case was perceived as significantly less guilty, than in the case of the depression victim ($p < .05$) and the control victim ($p < .01$).

Finally, in respect of sentence, there was a significant main effect for deliberation ($\eta^2 = .013$). Length of sentence assigned to the defendant significantly decreased after deliberation (means of 2.78 and 2.00 respectively). However, when this result was evaluated at a more stringent significance level of .025 to take account of the increased risk of Type 1 error due to non-homogeneity of variance and covariance matrices, it failed to reach significance.

**Qualitative**

The qualitative data was structured and discussed with reference to the main three research questions, namely how:

- Mental disorder labelling influence juror deliberations and judgements relating to the victim’s affective characteristics, and the juror perception of the crime and defendant guilt and sentence;
- Jury deliberations would change the decisions and opinions of the jurors and;
- Individual juror gender influences the decisions and opinions of the jurors.
When the time invested in the different themes is taken into consideration it appears that the jurors mainly confined their deliberation to six different aspects of the vignette. These were; the victim, the defendant, the witness, the evidence, assignment of guilt, and the crime. A further category was labelled as miscellaneous and contained comments that either did not pertain to the case or did not fit into any one category. The amount of time spent discussing each of the aspects of the crime can be seen below, in Table 4.

Table 4  
Time Spent (%) Discussing Different Aspects of the Crime During Deliberation

<table>
<thead>
<tr>
<th>Category</th>
<th>Control</th>
<th>Schizophrenia</th>
<th>Depression</th>
<th>Intellectual Disability</th>
<th>Mental Disorder Average</th>
<th>Overall Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victim</td>
<td>5.6</td>
<td>29.6</td>
<td>23.7</td>
<td>32.8</td>
<td>28.7</td>
<td>22.9</td>
</tr>
<tr>
<td>Defendant</td>
<td>19.9</td>
<td>11.0</td>
<td>6.2</td>
<td>6.5</td>
<td>7.9</td>
<td>10.9</td>
</tr>
<tr>
<td>Witness</td>
<td>2.3</td>
<td>4.9</td>
<td>4.3</td>
<td>1.3</td>
<td>3.5</td>
<td>3.2</td>
</tr>
<tr>
<td>Evidence</td>
<td>42.3</td>
<td>16.1</td>
<td>21.3</td>
<td>23.0</td>
<td>20.1</td>
<td>25.7</td>
</tr>
<tr>
<td>Guilt</td>
<td>21.5</td>
<td>22.7</td>
<td>29.2</td>
<td>25.3</td>
<td>25.7</td>
<td>24.7</td>
</tr>
<tr>
<td>Crime</td>
<td>1.9</td>
<td>4.0</td>
<td>8.0</td>
<td>1.6</td>
<td>4.5</td>
<td>3.9</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>6.5</td>
<td>11.7</td>
<td>7.4</td>
<td>9.8</td>
<td>9.6</td>
<td>8.9</td>
</tr>
</tbody>
</table>

Note. Mental Disorder Average is the average of Schizophrenia, Depression and Intellectual Disability.

As expected the juries who were participating in one of the mental disorder conditions (schizophrenia, depression, intellectual disability) spent notably more time discussing the victim, victim characteristics, behaviour and the victim's credibility (average 28.7%) when compared to the control group (no label) who spent only 5.6% of the total deliberation time discussing the victim (see Table 4). The reverse was true for the discussion relating to the defendant. The juries in the mental disorder conditions spent an average of 7.9% of their time discussing defendant characteristics,
behaviour and credibility whereas the juries in the control condition spent 19.9% conferring about the same aspects.

In relation to the witnesses, it should be noted that all juries focused on the man who observed the incident, and a much lesser extent on the flatmate of the defendant, but did not consider the other witnesses featured in the court case (e.g. police woman). This was irrespective of the condition the jurors had been participating in, as the time spent was similar in all conditions, though somewhat less in the intellectual disability condition (1.3%) as compared to the overall average for all four conditions (3.2%) or to schizophrenia (4.9%), depression (4.3%) or control (2.3%). It is possible that this finding can be explained by a preference on the part of the jurors' for more direct evidence over less direct evidence.

The evidence in the case was something on which the jurors paid a relatively large amount of time to. Themes that emerged included the lack of forensic evidence, the allegedly stolen watch, the need for additional evidence in order to convict the defendant, and the circumstantial evidence used during the trial. In all juries, comments were made in relation to the ambiguous evidence presented and the need for more hard evidence. Jurors in the schizophrenia condition spent the shortest amount of time deliberating on the evidence (16.1%) followed by the depression condition (21.3%) and the intellectual disability condition (23.0 %) with an overall average for the mental disorder conditions of 20.1%. For the control group however, participants appeared to pay more attention to the evidence spending a total of 42.3% of their deliberation time discussing evidence related matters.

Assigning guilt was another aspect that the jurors considered important when deliberating. Several themes emerged involving the defendant and the degree of guilt that could be assigned. Guilt assigned appeared to be closely tied to the perceived
credibility of the victim, the defendant and the witnesses. It was also connected to the perceived reliability of the evidence, as well as the amount of evidence going against the defendant. Several juries discussed at length their views that the defendant was indeed guilty but that there was not enough evidence to convict him. There did not appear to be any major difference between the mental disorder groups and the control groups on this issue. Jurors in the depression condition spent the longest time discussing guilt followed by intellectual disability condition and schizophrenia and finally the control group. The overall average time spent amounted to 24.7% of the total deliberation time.

The crime per se was evidently not judged to be of specific importance to the jurors. The fact that it was a rape crime and what this means to the victim was mentioned in a few juries, but still did not seem to merit much deliberation time. Instead the jurors appeared to focus more on the presented evidence and the credibility of all the involved individuals. This is illustrated by the limited time spent discussing the type of the crime, with jurors in the schizophrenia condition spending 4% of total deliberation time, as compared to depression condition (8.0%), intellectual disability condition (1.6%) and the control condition (1.9%). The average for the four conditions amounted to 3.9%, with the average of the mental disorder conditions somewhat higher (4.5%).

The final category, miscellaneous, consisted of instances when the jurors did not discuss issues relevant to the present study. This mainly included crimes in general and opinions attached to those, as well as comparisons between other crimes featured in the media and the present study. The jurors in the schizophrenia condition seemed to make use of such comparisons somewhat more (11.7%) than the other
conditions (intellectual disability, 9.8%; depression, 7.4%; control, 6.5%). The overall average time spent by the four conditions amounted to 8.9%.

For the purposes of the present study, it was of interest to further analyse the individual and group perceptions the jurors had of the victim. In particular, it was important to find out if the labelling of the victim with a mental disorder influenced the jury deliberation. The results from the qualitative analysis supported the quantitative analysis, suggesting that the jurors were indeed influenced by the psychiatric label given to the victim. The qualitative analysis both confirmed the quantitative results and added information that would not otherwise have been obtained. The relevant findings from each mental disorder condition will be discussed next.

Schizophrenia

Results from the qualitative analysis of the victim suffering from schizophrenia indicated that the jurors had many questions about this condition. However, though it was evident that some jurors had very limited knowledge about the disorder, many of them still held negative attitudes and opinions regarding people suffering from the disorder. For example;

*Juror 1A: The information sheet states that she has got schizophrenia, I think we should take that into consideration.*

*Juror 1B: Is she on medications? If so, she could be sort of normal, right?*

*Juror 1C: We don't know that.*

*Juror 1D: If she was schizophrenic, and not on medication, it would tip the balance for me. I wouldn't believe her story.*
Juror 1A: Yes, it is too vague, she supposedly can't remember a thing. It's a bit suss if you ask me.

Furthermore, jurors who demonstrated a strong attitude about the disorder were likely to make strong judgements about the victim, in particular in relation to her credibility as a witness. For example, they were also likely to strongly criticise the actions and behaviour of the victim, especially during the events leading up to the trial. Comments made by jurors ranged from questioning why she had delayed reporting the crime for so long to harsh statements that the victim “obviously wasn’t entirely there” (jury 3). In general strong judgements were made in relation to the disorder and some participants commented that they believed that “schizophrenics are quite mentally disturbed” (jury 2). They further described the behaviour of people with schizophrenia as erratic (jury 2).

It became clear that a number of participants believed that the testimony given by the victim was less than credible due to her disorder. This is illustrated by statements made by participants in jury 2:

Juror 2C: Well, I would not have believed her had it not been for the eyewitness. She was a schizophrenic and easily could have made it all up.

Juror 2E: Yeah, I think so too. She has no evidence anyway.

Juror 2F: Look, she is a crazy chick who cannot be seen as reliable, and her delusions could quite easily lead her to telling stories that were not true.

Juror 2A: I feel sorry for her, but I guess we don't know if she was on meds and if she wasn't I don't think she was reliable

Other jurors voiced concerns about the mental state of the victim at the time of the crime, stating for example that she might not have been stable and if this was the case, an innocent man may end up in prison because of it (jury 1).
Though some jurors appeared to be negatively inclined towards the victim due to her disorder and judged her quite harshly because of it, other participants seemed willing to be more lenient in their treatment of the victim, due to her mental disorder. This was particularly so when discussing the fact that the victim did not report the incident for two weeks. While some participants strongly questioned why this was the case, for example juror 3A stated “why didn’t she report it though, I mean two weeks...”, others appeared more sympathetic. For example, jurors 3B, G and D respectively made the following comments:

*Juror 3B:* She obviously didn’t have a conviction on her mind then, I don’t understand why she showered and got rid of her clothes and stuff either.

*Juror 3G:* A rape is the worst fear of a woman and I think your instinct is to wash yourself. And she said she was scared so that is why she didn’t report it.

*Juror 3D:* Mmmm, she was schizophrenic... her mind may have wavered, it [the attack] may have gone out of her mind if she is schizophrenic. When it came back she reported it.

Most jurors in the cohort, seemed aware of that most people with schizophrenia are prescribed medication. This led many participants to believe that the victim may have been stable, especially since no deviant behaviour was displayed by the victim in court (jury 2). However, it still led to some discussion. While some participants assumed that the victim was on medication since she didn’t sound erratic, others believed this could not be taken for granted and stated that “if she is not on meds nothing she has said can be automatically taken as true. It may be true in her mind, but not in reality” (jury 3). After some debate about whether or not the victim was on medication, it appeared that the general consensus was that she probably was. Coupled with the perceived normal behaviour of the victim, this appeared to lead the
majority of the participants to the conclusion that the mental disorder did not have an effect on the victim. One participant (jury 1) remarked that “she is holding down a job, she must be normal”. As the victim’s behaviour was inconsistent with the participants’ perceptions of people with schizophrenia, the jurors focused on legal facts of the case and did not seem to make any specific allowances for the victim’s mental disorder. It appeared that although they had stereotypes about the behaviour of a person with schizophrenia, especially in relation to reliability, their final verdict was largely based on the presented evidence. However, given that the quantitative results indicated some bias, it can not necessarily be assumed be that victims with schizophrenia are treated without bias, even when their behaviour is perceived as normal.

Depression

Participants viewing the victim with depression seemed less critical of her actions and behaviour than did the participants exposed to the schizophrenia condition. In general it appeared that people had a better understanding of what depression meant compared to the other disorders and that they were more supportive of this victim. One participant (jury 4) stated that “just because she was depressed doesn’t mean she was bawling her eyes out all the time”, indicating that even when a person is depressed, the person acts rationally. Participants expressed sympathy for the victim and one individual reported during the debrief session that although the group had not openly discussed the disorder during the deliberation, it was clear that the jurors did feel for the victim (jury 5, male) and thereby treated her with more consideration than they would have treated someone without depression. Another aspect of the deliberation that seem to indicate some amount of sympathy for the
victim were the large number of jurors who stated that their *gut instinct* told them that
the defendant was guilty, but that regrettably there was not enough evidence to
convict him. The number of participants who voiced opinions as illustrated by the
following: “I think he may be guilty, but there is not evidence to support a conviction”
(jury 5) was notably higher in the depression condition than compared to the other
conditions. Furthermore, the disorder was used as a rationale for the inability of the
victim to report the crime at an earlier stage and to explain why she burned her
clothes. Comments such as “she was depressed, we can’t know how she would react
to this episode” (jury 4, female) and “she was traumatised on top of the depression, so
she didn’t report it straight away, I don’t think that makes her less credible, it only
makes it more difficult for the police to solve the crime” (jury 6, male), seem to
suggest compassion and empathy for the victim based on her disorder.

Some bias was however shown, even with the greater understanding of the
disorder. When discussing the inability of the victim to provide a positive,
identification of the attacker, some jurors believed since the victim was depressed it
was “possible that she [victim] was unable to identify him due to depression and some
stress” (jury 6). It seemed that these jurors considered that the victim would be unable
to focus on the situation due to her depression. Furthermore, it was suggested by one
juror that the victim may have made the whole incident up: “She is depressed, she
may be making this thing up in order to get attention” (jury 5).

As in the schizophrenia condition, the victim’s behaviour was perceived to be
*normal*. Participants indicated that they did not consider that she *acted depressed* but
rather that the victim seemed *coherent*, as illustrated by the excerpts below:

*Juror 4A:* They said she was depressed. Why was that brought up?
Juror 4B: I think for us to assume that this was the reason she waited for two weeks to report the incident.

Juror 4E: I don't know, she didn't seem depressed to me, she seemed coherent, maybe a bit anxious, but that would be normal.

Juror 4D: And depression was never mentioned in cross examination either.

Juror 4B: She didn't seem depressed to me, but it was difficult to say since we couldn't see her facial expression.

The fact that the face of the victim was blocked out on the tape was mentioned by participants in the different mental disorder conditions, however it was more salient in the depression condition, and may be linked to a general belief that people with depression are emotional, look sad and are prone to burst into tears at all times. However, women seemed less inclined to believe this was the case, as exemplified by a comment made by one female juror (jury 6) stating that “just because she is depressed doesn’t mean that she will be bawling her eyes out all of the time” and other female jurors echoed this sentiment. After the deliberation, the general consensus in the juries seemed to be that the victim was not displaying any unusual behaviour and should therefore be treated like any other victim. This is, however, inconsistent with the results from the quantitative findings, which indicate that the agreement on defendant guilt was higher in this condition. It therefore appears that the sympathy felt for this victim may have influenced their decision.

Intellectual Disability

Participants viewing the intellectual disability condition did not perceive the victim to display any unusual behaviour. In fact several jurors commented that the victim sustained employment, lived independently and appeared to function well.
Others did not consider that she acted like a person with an intellectual disability. One another participant (jury 9, female) expressed the view that “in the end it [the disability] didn’t matter as she [the victim] did not come across as having a disability”, perhaps indicating that if the victim had acted as if she had a disability, she would have received special treatment. Some jurors further stated that the speech of the victim was also normal suggesting that they held the generalised belief that all individuals with an intellectual disability have speech difficulties. Additionally, one participant (jury 8) commented that she felt somewhat confused, as “the sheet said that she [the victim] was disabled, but she [the victim] came across as confident and not anxious”. It appeared that although none of the jurors defined what they perceived as typical behaviour displayed by people with intellectual disabilities, the victim's behaviour was not consistent with their perceptions of such behaviour.

Special treatment due to the disorder of the victim was also discussed. This is exemplified by the following excerpt from the deliberation of jury 7.

Juror 7A: So we know she is disabled, does that mean we should have more sympathy with the victim?

Juror 7B: No I don’t think so.

Juror 7C: Yeah, I agree with you [juror 7B], a victim is a victim. We shouldn’t make any special allowances for her I don’t think.

Juror 7D: Well, I reckon some people may feel more sympathetic...She’s retarded after all.

Juror 7A: Yes, exactly! But at the same time others may feel less sympathetic, they may feel she is not worth as much, seeing as she has a disability.

Juror 7E: You know if she had acted like she was intellectually disabled, it may have affected the outcome more. She seemed normal to me.
Juror 7A: I think I would have missed it [the intellectual disability] if they hadn't mentioned it on the sheet, cause she didn't come across as disabled. If she had acted differently, it may have affected the way I saw her as a witness.

It further appeared that participants made strong judgements in relation to the honesty of the victim based on the perceived normal behaviour. As they did not view the victim as disadvantaged, some participants seemed to feel that the gaps in her testimony could be due to lies or exaggerations and that she was less honest.

Juror 9A: She seems perfectly normal, I mean listen to her talk, it is not simple stuff and you can understand her fine.

Juror 9B: It states here that she has an intellectual disability though.

Juror 9A: But she doesn't act like it.

Juror 9C: Seems ok to me.

Pause

Juror 9C: Maybe I am mean, but her story isn't exactly waterproof. I think she is making it sound worse than it was.

Juror 9A: Yes, for compensation maybe?

Juror 9B: There is no evidence, she claims she got rid of it all, why did she do that?

What if there wasn't anything wrong with her clothes?

However, there appeared to be no consensus about whether the victim was lying or not though there appeared to be a gender difference on this matter. This finding was supported by the quantitative data, which indicated a significant gender difference on perceived honesty.
Process

In general, the qualitative analysis showed that even though the participants were given clear jury instructions before commencing the deliberation phase, instructions that were directing them to base their decision on evidence and the balance of probabilities principle, no consensus in regards to whether the victim’s mental disorder should be taken into consideration was found. Several jurors considered the victim’s mental disorder was relevant, whereas others considered that no special considerations should be made due to the disorder. Furthermore, jurors with strong opinions and attitudes regarding the mental disorder appeared to influence the rest of the jury, reinforcing and in some cases polarising the opinions of the members of the jury, as illustrated by the excerpt below.

*Juror 1A:* Well, I still believe we are missing something here, she has schizophrenia after all. That influences her reliability if you ask me.

*Juror 1C:* I think he [1A] has a point here.

*Juror 1B:* NO! Look at her, she acts and talks normal, she is obviously on medication and that would make her story believable.

*Juror 1D:* No one has told us she is on meds you know.... I think 1A might be right.

It should further be noted that the jurors spent a relatively high proportion of their time debating about the victim and perceived victim characteristics and that the mental disorder came into play although it is not a legal fact and was never mentioned at all during the proceedings shown to the participants. At the same time, they did not appear to apply similar time to discussing the defendant, although the defendant was the individual whose guilt they were required to determine.

Another salient finding relating to the interpretation of the jury instructions during the deliberation was that for the control condition participants appeared to
adhere to the instructions much more strictly than for the mental disorder conditions. In the control groups, time was spent trying to understand exactly what the instructions meant. Many questions were raised this way, such as, “who has the burden of proof” (jury 10); “isn’t a person innocent until proven guilty” (jury 10); “do we have enough proof for balance of probabilities” (jury 11). However even in these instances, in trying to understand what the instructions meant, the jurors often brought in their own interpretations and thoughts as illustrated by the following comment, I believe justice should prevail, and that means we should not only look at the evidence, but also use our heads and figure out what was really going on (jury 11).

Another aspect of the control condition that was salient was the fact that considerably less time was spent discussing the victim and the defendant. Instead, the participants seemed to focus on the available evidence and the question of guilt. However, a large proportion of the jurors perceived the defendant in a negative light, although they all considered that there was not enough evidence to convict him. Comments illustrating this include; “I have a gut feeling that he is guilty, but there just isn’t enough evidence to support it” (jury 4) and “The defendant is shifty, but we can’t convict him” (jury 5) to “He certainly seems dodgy” (jury 9). It is hypothesised that this attitude could be due to the nature of the crime or the fact that there were many women in the juries. Another aspect of the defendant behaviour that was discussed in one jury was his perceived levels of anger. It was stated that the defendant seemed very angry even before he was questioned. This was interpreted by one juror as follows; “I think you would be angry too, if you were innocent” (jury 4). The jurors agreed that he seemed angry and appeared to be more inclined to believe the defendants account of events after having discussed this perceived demonstration of emotions.
The qualitative analysis established some misunderstanding of the question relating to length of sentence in the questionnaire. While the item in the questionnaire relating to sentence, requested the participants to assign a sentence to the defendant should they find him guilty of the crime, some participants believed they were required to assign a sentence even when not believing the defendant was guilty. As most jurors agreed that there was not enough evidence to convict the defendant they concluded they could not assign a long sentence. This is demonstrated by the following comment; “If he was found guilty, I would give him the maximum penalty, but we can’t convict him so I will have to keep it lower” (jury 1).

A final issue that emerged during the deliberation was the influence the participants had on each other. There were many examples of individual jurors who did believe that the defendant was guilty, but when they found that the majority did not believe this was the case, they were swayed by the majority and changed their mind. This was particularly the case when some of the other jurors held strong contrary opinions, when there was a clear group leader or when the juror considered that the evidence was ambiguous. Comments such as; “I think the defendant is suss but I can’t back it up so I guess he is not guilty” (jury 10) and “I am not one hundred percent sure he did it, but speaking to you has brought me more towards the middle” (jury 11) demonstrate this phenomena.

It is also interesting to observe that although there were no instructions directing the participants to choose a foreperson, several juries spontaneously did so of their own volition, with the foreperson usually being the person who made the suggestion. Forepersons also tended to be male and or have experience of prior jury duty.
One interesting finding emerging in all experiments was a tendency to criticise the victim for her behaviour, as illustrated by a comment made by a juror in the schizophrenia condition; “Why didn’t she report it though? I mean two weeks” (jury 3). There also appeared to be a gender difference in the qualitative data with males being more critical than females in their perceptions of the victim, her actions and behaviour.

Overall, both genders were negatively inclined towards the labelled victim, irrespective of the condition, with many participants stating that the victim was not displaying any emotion and that this is turn made them think she was not telling the truth. The perceived lack of emotion made the victim less believable and credible as a witness to the jurors. These jurors seemed to make stronger judgements about the actions of the victim, such as the fact that she burned her clothes, took a shower and waited two weeks before reporting the incident.
Discussion

Research in the area of jury decision making has demonstrated that there are a number of factors that function as extralegal variables in the courtroom (see for example Mazzella & Feingold, 1994; Hymes et al., 1993; MacCoun, 1990; Erian et al., 1998; Dean et al., 2000). Personal characteristics of individuals that appear to function as extralegal variables include physical attractiveness (Bagby, Parker, Rector, & Kalemba, 1994; Barnett & Field, 1978; Erian, Lin, Patel, Neal & Geiselman, 1998; Leventhal & Krate, 1977; Stewart, 1984), race (Barnett & Field, 1978; Dean, Holliday-Wayne, Mack, & Thomas, 2000; Gordon, Bindrim, McNicholas & Walden, 1988; Hymes, Leinhart, Rowe, & Rogers, 1993; Poli, 2004; Willis, 1992), gender (Bull Kovera, McAuliff & Herbert, 1999; ForsterLee, Horowitz, ForsterLee, ForsterLee & McGovern, 1999; Guy & Edens, 2003) and socio-economic status (Deitz & Byrnes, 1981). Given the substantial body of research that suggests that being labelled as mentally ill may lead to negative bias in everyday life (e.g. Link, 1987; Martin, Pescosolido & Tuch, 2000; Rosenfield, 1997; Reber, 1995; Wolff, Pathare, Craig, & Leff, 1996; Wilson, Nairn, Coverdale & Panapa, 2000), it was surprising to find no published literature that has examined whether such a label could function as an extralegal variable. The main aim of this study was therefore to determine whether this is the case, specifically focusing on the mental disorder label of the victim.

Also, as it is known that the gender of the jury member is an extralegal variable (Guy & Edens, 2003) and that there are gender differences in attitudes to charges of sexual offences (Cowan, 2000), the research design took gender into account. The design also took the influence of the deliberation process into account.
because research findings indicate that this has an effect on jury members’ individual perceptions (McCoy, Nunez, & Dammeyer, 1999; London & Nunez, 2000).

These aims were pursued by measuring the effect different mental disorder labels (schizophrenia, depression and intellectual disability) and a control group (no label), gender of jury members, and the deliberation process have on juries’ perception of the victim, the crime and the defendant. To triangulate the quantitative findings a qualitative analysis was undertaken of the deliberation process, primarily to examine whether the participants gave socially acceptable responses when they completed the questionnaires, but also to provide a deeper understanding of the quantitative findings.

Overall the results of the study indicate that the jurors generally perceived the victim, irrespective of condition, in a fairly positive light. They appeared to feel compassion for her and for what happened to her. Although many jurors were critical about the victim’s ability to recount the event and were reluctant to convict the defendant of the crime with which he had been charged, they did not hold the victim responsible for what had happened to her. The crime was further perceived as a serious incident, which was not acceptable in our society and the jurors generally acknowledged that it had had a large impact on the victim, causing her great distress. However, due to the victim’s inability to provide detail and the lack of forensic evidence, the jurors displayed notable indecision about defendant guilt, many of them stating that though they had a gut feeling that the defendant was indeed guilty, there was no proof to support it. Perhaps given the consequences of their decision, a number of jurors found it difficult to render a guilty verdict. The indecision in relation to guilt also carried over to the assigned sentence, in that the jurors were hesitant to assign long sentences when they considered there was a lack of evidence, even though
the questionnaire clearly asked them to assign a sentence only if they thought the defendant was guilty. Furthermore, though many acknowledged that the intention had been rape, the rape was disrupted and as such should only be rated as an attempted rape, warranting a lower sentence.

The findings in respect of the research questions will now be discussed under the headings mental disorder label, deliberation and jury member's gender.

**Mental Disorder Label**

There were no significant mental disorder label effects for the victim variables *sympathy* and *valuable*, the crime variables *serious* and *impact* on victim, and the defendant variable *sentence*. In respect of all the other variables there were some significant effects, but the jury members did not consistently express a positive or negative bias against any specific victim.

**Control Group Victim**

There were not many or consistent differences in how the jury members perceived the control group victim with no label and those with mental disorder labels. An examination of the differences demonstrates that the control group victim was perceived as less *likable* than the intellectually disabled victim. This suggests that there is a negative bias towards the control group victim, but the finding that female jurors regarded the control group victim as less *responsible* for the crime than the intellectual disability victim suggests a positive bias towards the control group victim on the part of females. Overall there seems to be a slight negative bias towards the control group victim.
Schizophrenia Victim

An indication of positive bias towards the schizophrenia victim is the finding that female jurors regarded her as less responsible for the crime than the intellectually disabled victim. Female jurors may have considered people suffering from schizophrenia cannot generally be held responsible for their behaviour due to their disorder, and thus that the victim was not responsible for the incident. Previous research by Pescosolido et al. (1999) indicated that people suffering from mental disorders are viewed as less competent, supporting the finding of the current study that individuals suffering from schizophrenia may be viewed as less responsible for the occurred incident. Individuals suffering from schizophrenia may experience hallucinations and delusions, which could affect their reliability as witnesses. While the jurors perceived the schizophrenia victim as the least reliable witness, this rating was not significantly different from the reliability ratings of the other victims. However the results in respect of guilt suggest a negative bias towards the schizophrenia victim. Post-deliberation the defendant was rated as less guilty in the case of the schizophrenia victim than in the case of the depression and intellectual disability victims.

While these results appear somewhat contradictory, the responsibility, or lack of responsibility, of the victim is not necessarily directly related to the verdict. Overall there is slightly more evidence of a negative than a positive bias towards the schizophrenia victim.

Depression Victim

The finding that participants perceived the depression victim as less likeable than the intellectually disabled victim indicates a negative bias towards the former.
The qualitative analysis also seemed to suggest that some jurors considered individuals with depression were difficult to be around, as they were often sad, devoid of energy and generally pessimistic in their outlook on life. A few jurors further voiced opinions indicative of their lack of understanding of the difficulties arising from depression. Instead they were of the opinion that an individual with depression should and could snap out of it. This finding is also in accordance with the conclusions of the Mental disorder Institute of Victoria in 2004. These juror attitudes may have lowered likeability scores assigned to the depression victim, as it is possible that the depressed person will not be seen as a very likeable person, but instead as somewhat of a whiner, if an individual does not understand that depression is a disease, but instead attributes the behaviour to the depressed person’s personality.

The finding that female jurors regarded the depression victim as less responsible for the crime than the intellectually disabled victim, is indicative of a positive bias towards the depression victim. Another indication of such a positive bias is that post-deliberation the defendant was judged to be more guilty in the case of the depression victim than when the victim was suffering of schizophrenia.

It is emphasised that the responsibility, or lack of responsibility, of the victim is not necessarily related to the verdict. Overall, when considering all identified affective characteristics there seemed to be a slight positive bias towards the depression victim. This is in accordance with a study by Pescosolido et al. (1999) where findings indicated that participants treated mental disorders differentially and that they were more sympathetic towards people suffering from depression.
**Intellectual Disability Victim**

There was evidence of a negative bias towards the intellectual disability victim in respect of responsibility for the crime, but a positive bias in respect of likeability and defendant guilt. While female jurors regarded the intellectual disability victim as more responsible for the incident than all the other victims, male and female jurors found this victim more likable than the depression and control group victims. Post-deliberation, the defendant was also regarded as more guilty than in the case of the schizophrenia victim.

The higher likeability of the intellectual disability victim may be a result of a commonly accepted stereotype of the intellectually disabled, suggesting that as they have a limited cognitive capacity, they are naïve (Bottoms, Nysse-Carris, Harris, & Tyda, 2003), but generally nice enough individuals with a cheerful, loving personality (Williams, 1986). The higher defendant guilt rating may partly have originated from the high likeability of the victim, making the jurors consider the victim did not deserve something so bad to happen to her.

Overall, when considering all identified affective characteristics, there is slightly more evidence of a positive than a negative bias towards the intellectually disabled victim.

**Mental Disorder Label as an Extralegal Variable**

The composite findings discussed suggest that a mental disorder label can lead to bias among jurors, both positive and negative. This indicates that a mental disorder label can function as an extralegal variable. However, as the results in respect of the control victim indicate, the presence of a mental disorder label does not necessarily lead to a negative bias towards such a victim, relative to the control
victim. In fact, the different mental disorder label (schizophrenia, depression and intellectual disability) victims were perceived to differ more from each other than from the control group victim with no label. While there was no consistent pattern of bias against or in favour of any specific victim, there was slightly more evidence of a negative bias than a positive bias towards the control group and schizophrenia victims, while the opposite was true for the other victims.

Theoretically the level of guilt is the most direct indicator of the possibility that a mental disorder label functions as an extralegal variable. The level of guilt assigned to the defendant in the case of victims with mental disorder labels, did not differ significantly from that of the control group victim. This finding suggests that there is no bias towards victims with mental disorder labels, when compared to the victim without a label, on the measure of defendant guilt. However, after deliberation less guilt was assigned to the defendant in the case of the schizophrenia victim, than in the case of the depression and intellectual disability victims. The more negative bias encountered in the case of schizophrenia may well be a result of the different types of disorders chosen for this study. While depression and intellectual disability are mental disorders which carry with them some stigma, schizophrenia is perceived to be associated with traits of unpredictability and violence (Pescosolido et al., 1999). People suffering from schizophrenia are perceived as a danger to society (Phelan et al., 2000), and the results of this study, that the jurors were more negatively inclined towards a victim suffering from schizophrenia, is consistent with earlier research. In the study by Link et al. (1987) it was found that it was not the mental disorder itself, but the stereotype that the label invoked that lead to prejudice and discrimination. When the stereotype was associated with dangerousness, negative bias was found. As schizophrenia and other psychotic disorders have been shown to be associated with
dangerousness and violence (Pescosolido et al., 1999; Phelan et al., 2000) the negative bias relating to the schizophrenia victim was expected.

It is notable that several jurors in those cases where the victim had a mental disorder label commented on the fact that she still *acted normal* and was holding down a job, living on her own and generally functioning well. From a legal perspective the mental disorder label of a victim is irrelevant, as it is the behaviour relevant to the legal proceedings that the jury should focus on. It appears then that in spite of the jurors knowing that the decision was of importance for the person being judged, and despite having to justify their judgement to their fellow jurors, aspects that have been shown to render schemas less influential (Freund et al., 1985; Kruglanski & Freund, 1983; Kruglanski & Mayseless, 1988), there were some reliance on mental disorder schemas. The jurors were puzzled by the absence of behaviour they expected of a person with a corresponding mental disorder label is therefore strong support for the conclusion that a mental disorder label may serve as an extralegal variable.

**Deliberation**

While deliberation had a limited effect on the jury members' perception of the victim's *reliability* and *honesty*, it did not have a significant effect on the jury members' perception of the crime. However, deliberation had a significant effect on the *guilt* rating of the defendant and the recommended *sentence*. It should be noted that there was an increased risk of Type 1 error due to non-homogeneity of variance and covariance matrices in respect of the recommended sentence. When the ANOVA results were evaluated at a more stringent significance level of .025 to take account of this, the deliberation effect failed to reach significance. The lower recommended
sentence after the deliberation will be discussed in spite of the increased risk of Type I error, as this is supported by other results of the quantitative and qualitative investigations in this study, as well as the findings of other researchers.

In respect of the victim, the effect of deliberation appears to be different for male and female jurors, but not in a consistent way. Cross-over effects occurred in the honesty and reliability ratings of the victim. While male jurors regarded the victim as more honest after deliberation than before, female jurors regarded the victim as less honest after deliberation than before. However, contrary to the honesty finding, female jurors considered the depression victim as more reliable after deliberation than before, while male jurors tended to rate this victim as less reliable after deliberation. The qualitative analysis further indicated that deliberation had an important impact on the perceived reliability of a rape victim who is labelled with depression.

The quantitative findings also suggested that deliberation had an impact on the outcome of the trial in that it made the jurors more lenient towards the defendant. The jurors regarded the defendant as less guilty after deliberation for schizophrenia and control group victims, and for all victims recommended a shorter sentence after deliberation than before. However, while it was not a significant finding, it is interesting to note that for the intellectual disability victim the opposite happened in respect of defendant guilt. Here, the perceived guilt increased after deliberation, contrasting with the leniency encountered in the schizophrenia and control group. While not significant, deliberation also led to leniency in the case of the depression condition.

The post-deliberation guilt rating in the schizophrenia condition was significantly lower than in the control group and depression conditions and also significantly lower than before deliberation. This suggests that the deliberations
brought about a significant negative bias towards the schizophrenia victim. When analysing the qualitative material, it was clear that some of the jurors held strong negative opinions and attitudes about schizophrenia. As many of these jurors were quite vocal, and voiced their opinions the jury it appears that in many cases the other jurors, who may not have started out with a specific opinion in the matter, were swayed, perhaps in the absence of contrary information. This finding is in accordance with what Foley and Piggott (1997) whose results indicated that jurors influenced each other and that forepersons in particular were influential on the deliberation process.

It is possible that the decrease in perceived guilt and the length of the assigned sentence may be due to the ambiguity of the facts in the case as well as the weak evidence. During the deliberation, these factors were discussed at length and the individual jurors may have been influenced by others and as than felt less sure about guilt post-deliberation. The qualitative analysis indicated that many jurors did not believe that there was enough evidence to prove balance of probabilities that the defendant was guilty. Prior research has shown that contradictory statements by testifying witnesses led to the acquittal of the defendant (Garrett & Cutler, 1996) and when evidence presented in a case is weak, it may lead to leniency (Hendry, Schaffer, & Peacock, 1989). Deliberation appeared to highlight the weak evidence and the contradictions in the witness testimony, thereby having an effect on the verdict and the assigned sentence.

The decrease in perceived guilt and the length of sentence in this study is consistent with Izzet and Leginski’s (1974) finding that deliberation shifts the verdict towards leniency. Qualitative analysis of the deliberation process indicated that the discussion heavily influenced individual jury members, especially when some of the
jurors present had a strong opinion about the lack of evidence presented in the case or when they made strong judgements about the victim.

Another relevant aspect of the deliberation process is the influence that group members had on each other. Findings from the qualitative analysis indicated that members of the jury tended to be unwilling to contradict the majority opinion in the group. Some jurors would go along with the majority, even when they stated that they did not necessarily believe that the defendant was not guilty. This is consistent with a large body of research from the social psychology field, where findings have indicated that conformity, a type of social influence, leads individuals to change attitudes or behaviours in order to adhere to social norms in a specific setting (see for example Moscovici & Personnaz, 1980). The qualitative analysis further suggested that even when jurors were reluctant to change their opinions, their opinions were more likely to be mediated by that of the majority. This is illustrated by the following example:

*Juror 1A: Well, I still believe we are missing something here, she has schizophrenia after all. That influences her reliability if you ask me.*

*Juror 1C: I think he [1A] has a point here.*

*Juror 1B: NO! Look at her, she acts and talks normal, she is obviously on medication and that would make her story believable.*

*Juror 1D: No one told us she is on meds you know.... I think 1A might be right.*

*Pause*

*Juror 1B: Well, I still think she would probably be on medication, but I suppose there are some holes in her story.*

A final aspect of the jury deliberation process to be noted was the reliance on, and compliance with, the jury instructions. The qualitative analysis indicated that jurors in the mental disorder conditions adhered less to the instructions, than did the
control group juries. This suggests that in the absence of extralegal variables jurors may focus on the legally relevant facts of the case and adhere to instructions better, even when the evidence presented is ambiguous. It appears that the mental disorder label brought confusion to the deliberation process and this is a further indication that a mental disorder label may serve as an extralegal variable. Though the participants were not in agreement on whether or not the mental disorder should be taken into account, considerable time was still used discussing the disorder and its impact on the victim, leading them away from the legally relevant facts of the case. However, the juries found the defendant not guilty due to the lack of evidence and many jurors stated that although they believed the defendant committed the crime, the evidence failed to prove balance of probabilities that this was the case. In these instances, it seems clear that, despite their discussion of extralegal factors, the jurors ultimately adhered to legal instructions.

These findings are generally inconsistent with the results of Horowitz (1997) who investigated compliance with reasonable doubt instructions. He found that juries may not be complying with the instructions due to lowered standards for what constitutes balance of probabilities. Horowitz hypothesised that the lowered standards may be due to increased crime control values in the jurors. In the present study on the other hand, the jurors often spent some time discussing what balance of probabilities meant and came to the conclusion that even if they thought the defendant may be guilty, there was not enough evidence to say that he committed the crime based on the balance of probabilities.
Gender

In the present study gender differences were salient, both in the quantitative and qualitative analyses. The results of the study present an interesting picture where each disorder interacts with affective and cognitive perceptions uniquely in the context of gender and deliberation. As the crime selected for the purposes of this study was rape, this is perhaps to be expected. Research has shown that there exists a gender difference in relation to rape crimes, with men with their cognitive predispositions being more accepting of rape myths, whereas women, who often have been exposed to rape victims, are less accepting of rape myths (Anderson, Cooper, & Okamura, 1997). Even though gender differences can be expected in relation to rape crimes, caution is warranted in the interpretation of gender differences in this study, as the cell sizes were sometimes very small (see Table 1).

In the current study the most important effects of juror gender were in respect of the victim's honesty, her responsibility for the crime and the defendant's guilt. Female jurors judged the schizophrenia victim as less responsible for the crime than male jurors did. They also tended to rate the schizophrenia victim as more honest than did male jurors. Both these findings suggest that a gender bias exists for the schizophrenia victim, with female jurors more positive towards this victim than male jurors. Furthermore, there was an interaction between gender and deliberation in their effect on the honesty rating, with male jurors rating the victim as more honest after deliberation than before, while the opposite was true for female jurors. This indicates a gender bias, with male jurors slightly more positive toward the victim than female jurors after deliberation. It should however be noted that in spite of the significant interaction between gender and disorder, and gender and deliberation, the changes in honesty ratings were small.
Male jurors judged the defendant as more guilty than female jurors did indicating a positive bias towards the victim among male jurors. This appears to be inconsistent with the findings in sexual offending studies that suggest that males are more susceptible to rape myths (Anderson, Cooper & Okamura, 1997) and therefore more likely to rate the guilt of a defendant lower than their female counterparts.

Research has further indicated that men attribute more responsibility to the rape victim than do women (Kanekar & Kolsawalla, 1980). The findings in the present study suggested a pattern in which male jurors rated the responsibility of the schizophrenia victim slightly higher than did the female jurors, thereby partly supporting the findings of Kanekar and Kolsawalla. However, these findings may be explained by previous research which indicates that when there is a juror defendant similarity, in this case male juror- male defendant, jurors may assign a higher level of guilt to the defendant, if the juror is a minority in the jury (Kerr et al., 1995). As most of the juries had a majority of female jurors, a case can be made that the male jurors were in fact a minority. Furthermore, male jurors only assigned more responsibility to the schizophrenia victim, not to the control group, depression or intellectually disabled victim. As it remains unclear why the schizophrenia victim was deemed more responsible for the situation, this is an area which would benefit from more investigation.

Overall, the results indicate that male jurors are more positive towards the victim than female jurors. Based on the findings of this study it could be concluded that in rape trials, more male than female jurors may benefit female victims, but would have adverse effects for a male defendant.
Limitations

The present study had some limitations in its design. Firstly, as with most jury studies, the simulation of the trial took place in a laboratory setting. It has been shown in previous studies that there is a difference between what participants decide in an experimental setting compared to what they decide in a real trial (Pfeifer & Ogloff, 1991). An additional limitation is the relatively short deliberation time allowed to the participants. In a real court-case, jurors deliberate until they reach a verdict. As this would be impossible to do in an experiment such as this, a time limit was imposed on the participants. This necessarily detracts from the authenticity of the experiment. However, given that it is difficult to study actual juries during the deliberation process in Australia, studies examining jury decision making are required to use juries in laboratory settings. In any event, the design of the current study made it quite impractical to use real juries, given the difficulties in finding sexual assault cases with the specific mental disorder labels used in this study, and given the additional difficulties that would have arisen, for example variable timing of trials.

Most of the juries in the present study did not contain twelve jurors. This was due to jurors signing up for the study, but not presenting on the assigned day. However, as noted earlier, given previous research that has shown that the decision making process of a jury is not affected when the jury consists of at least six individuals (Kerr & MacCoun, 1985) this issue was addressed in this study by having a minimum requirement of six jurors.

A limitation that needs to be considered is the choice of jury instructions. The jury instructions used in this study were adapted from a study by MacCoun et al. (1988), however, it appears that they had made use of instructions used for civil
matters as opposed to criminal matters and as such the wrong set of jury instructions were used in this study.

Another limitation of the present study was the choice of the index crime. As the crime of rape was used in this study the findings may be limited to that crime (Field, 1979).

Some skewness and non-normal kurtosis were identified in respect of the seriousness of the crime, sympathy towards the victim, the victim’s responsibility for the crime, and the length of the sentence assigned to the defendant and most of them also shared some non-homogeneity of variance and covariance matrices. As indicated in the results section, the violation of the normality assumption was not regarded as a serious problem, but the violation of the homogeneity assumption caused concern. The effect of a more stringent significance level was therefore considered

Finally, the effect sizes were relatively small in this study, suggesting that the association between the independent and dependant variables for the significant main and interaction effects were not particularly strong (Cohen, 1988). However, the small sample size may also have contributed to the small effect sizes and sample size was a particular concern in respect of gender comparisons.

Future Research

As the present study is an exploratory study, there is a need for further research in several areas.

First, it appears as if the different mental disorder labels have a differential effect on jurors. Both the quantitative and qualitative findings suggest that the schizophrenia label leads to the clearest negative bias. The data does not reveal why this is the case. It is possible that participants were concerned about the possible
effect of symptoms such as hallucinations and delusions and their effect on the reliability and honesty of the victim. An alternative explanation is that the participants were ignorant about the symptoms of schizophrenia but had a preconceived schema for the disorder, which told them that individuals with schizophrenia are violent, unpredictable and cannot be trusted.

Future research should further explore the effect of juror gender and specifically what role mental disorder labels play in the gender effects that occur during the deliberation process. Such research may clarify whether the direction of bias depends critically on stereotypes relating to mental disorders.

Some important methodological issues to be further considered for future research include the possible use of real trial investigations where possible and the extension of research to include crimes other than sexual assaults, as it is hard to generalise the findings to other cases involving different types of crimes, such as murder, assault and robbery (Field, 1979). Also, it may assist future research if larger samples were used, in respect of using a larger number of juries and possibly also more participants in the juries, ensuring twelve jurors in each jury as well as a larger total number of juries. Finally, future research focusing on labelling could benefit from using more explicit and clear labels to ensure that participants are aware of the specific mental disorder being examined.

**Conclusion**

The findings of this study confirm that juror gender may serve as an extralegal variable. Juror gender had an impact on the perceived reliability and honesty of the victim, responsibility for the crime and the guilt of the defendant, mostly interacting with victim disorder label and deliberation. Quantitative findings indicated that
overall male jurors were found to be more positive towards the victim than female jurors.

The findings of this study further confirm that the deliberation process can change jurors’ perceptions of the victim and the defendant. In respect of the perceived reliability and honesty of the victim, deliberation interacted with mental disorder label and juror gender, and no clear pattern could be discerned. However, after deliberation jurors were generally more lenient towards the defendant, rating him less guilty than before, and assigning a shorter sentence than before.

The qualitative analysis of the deliberation process suggested that many jurors had limited knowledge about the different disorders, but that they nevertheless often held strong opinions about mentally disordered people. In particular, they considered that people suffering from mental disorders behave in a distinct way and when the victim portrayed in the study did not behave according to their stereotype, the jurors believed they should not show her any special consideration. It was clear that stereotypes influenced the discussion and that jurors with strong opinions were able to influence the rest of the jury.

The fact that the jurors invested relatively much time in discussing why the victims with labels did not present with the behaviour they expected and were functioning well in everyday life, is confirmation of the proposition that some mental disorder labels may function as extralegal variables. This proposition is supported by the quantitative findings in this study. The mental disorder label assigned to the victim had an impact on jurors’ perception of the likeability, reliability and honesty of the victim, the responsibility for the crime and the guilt of the defendant, often interacting with juror gender and deliberation. However, no clear pattern of bias against or in favour of any specific victim was established this study. There was
slightly more evidence of a negative bias than a positive bias towards the control group and schizophrenia victims, while the opposite was true for the depression and intellectual disability victims.

In conclusion, this study indicated that a mental disorder label, juror gender and the deliberation process influence juror’s perceptions and decisions, in the instance of the crime of rape.
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Appendix A

Juror Decision Making Questionnaires

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**Questionnaire A**

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

The defendant is guilty.

**Strongly Disagree**  **Strongly Agree**

[ ] [ ] [ ] [ ] [ ]

I perceive this crime to be serious.

**Strongly Disagree**  **Strongly Agree**

[ ] [ ] [ ] [ ] [ ]

This crime had a large impact on the victim.

**Strongly Disagree**  **Strongly Agree**

[ ] [ ] [ ] [ ] [ ]
I have sympathy for the victim.

Strongly Disagree                        Strongly Agree

The victim is likeable.

Strongly Disagree                        Strongly Agree

The victim is reliable.

Strongly Disagree                        Strongly Agree

The victim is honest.

Strongly Disagree                        Strongly Agree

The victim is a valuable member of the community.

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

**Extremely Responsible**

---

**Not responsible at all**

---

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

1 yr  

---

5 yrs  

---

10 yrs  

---
Date: 

Your Gender: 

Mental Disorder of the Victim: 

Mental Disorder of the Defendant: 

Questionnaire B

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

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

Extremely Responsible Not responsible at all

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

Strongly Disagree Strongly Agree

3. The victim is likeable.

Strongly Disagree Strongly Agree

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4. The defendant is guilty.

**Strongly Disagree**  
**Strongly Agree**

|                                |                                |

5. The victim is reliable.

**Strongly Disagree**  
**Strongly Agree**

|                                |                                |

This crime had a large impact on the victim

**Strongly Disagree**  
**Strongly Agree**

|                                |                                |

I perceive this crime to be serious.

**Strongly Disagree**  
**Strongly Agree**

|                                |                                |

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

1 yr  

|                                |                                | 5 yrs  

|                                |                                |

10 yrs

|                                |                                |
9. I have sympathy for the victim.

Strongly Disagree

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Strongly Agree

|                      |

10. The victim is honest.

Strongly Disagree

|                      |

Strongly Agree

|                      |
Date: 

Your Gender: 

Mental Disorder of the Victim: 

Mental Disorder of the Defendant: 

**Questionnaire C**

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

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

   If the victim’s mental disorder did affect your responses to the above statements, please give some details below:

   __________________________________________________________
   __________________________________________________________
   __________________________________________________________

2. The mental disorder of the victim had no effect on the other jurors’ perceptions regarding the crime, victim and defendant.

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

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

   __________________________________________________________
   __________________________________________________________
   __________________________________________________________
Appendix B

Transcript of Videotape

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

‘You are about to watch the re-enactment of a court case regarding the attempted rape of a young woman suffering from (schizophrenia/depression/intellectual disability/control) which occurred in June 2000. To protect their anonymity, actors and actresses will play the roles of all involved.’

Cast and Characters:

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

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

Transcript

Clerk:

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

Judge:

The court is now in session.

Clerk:

You may be seated.
Judge:

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

The Accused:

Not guilty.

Barrister:

He pleads not guilty, your honour.

Judge:

Would the prosecution care to make their opening remarks?

Prosecution:

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

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

Barrister:

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

Judge:

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

Prosecution:

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

Judge:

Does the defense agree to this?

Barrister:

The defense agrees.

Judge:

Very well, hand them forward please.’ (Prosecution gives the exhibits to the clerk).

Would the prosecution please call their first witness?

Prosecution:
Your honour, the people call the complainant, Miss Anna Mitchell.

Clerk:

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

Anna Mitchell:

I do.

Judge:

State your name.

Anna Mitchell:

Anna Mitchell.

Judge:

Be seated please.

Prosecution:

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

Anna Mitchell:

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

Prosecution:

What time was this?

Anna Mitchell:

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

Prosecution:

Where do you work?

Anna Mitchell:

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

Continue.

Anna Mitchell:

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

Prosecution:

Where is home?

Anna Mitchell:

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

Prosecution:

And who lives with you?

Anna Mitchell:

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

Prosecution:

Please continue.

Anna Mitchell:

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

Prosecution:

Where did this take place?

Anna Mitchell:

On Karrinyup Road in Gwelup.

Prosecution:

Can you be more precise?

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

Prosecution:

Continue. What happened next?

Anna Mitchell:

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

Prosecution:

So what time was it at this stage?

Anna Mitchell:

It was 7:50pm. I remember looking at my watch when I broke down to see how late it was.

Prosecution:

Continue.

Anna Mitchell:

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

Prosecution:

Where was the phone box?

Anna Mitchell:

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

Prosecution:

Continue.
Anna Mitchell:
So I decided to walk to the phone box so I could call the RAC.

Prosecution:
Continue.

Anna Mitchell:
Well I had just started walking and I was going past this park

Prosecution:
Which park was that?

Anna Mitchell:
Its called Gwelup Reserve.

Prosecution:
Continue.

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

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

Anna Mitchell:
Yes, I saw him.

Prosecution:
Could you describe what he looked like?

Anna Mitchell:
He was wearing dark tracksuit pants and a burgundy top but I couldn’t properly make out his face.

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

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

Prosecution:
Do you see anybody in court that resembles the attacker?

Anna Mitchell:
The attacker was about the size that the accused is.

Prosecution:
Please continue – you said he threw you on the ground.

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

Prosecution:
Please continue…I know this is hard.

Anna Mitchell:
I tried to scream but he shoved something in my mouth, I think it was a sock or something and…

Prosecution:
Please continue

Anna Mitchell:

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

Prosecution:

Continue.

Anna Mitchell:

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

Prosecution:

Continue.

Anna Mitchell:

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

Prosecution:

And?

Anna Mitchell:

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

Prosecution:

Please continue, what happened next?

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

Prosecution:
And then what happened?

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

Prosecution:
What happened to the gag?

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

Prosecution:
Do you remember where the gag went?

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

Prosecution:
Continue.

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

Prosecution:
Carry on.
Anna Mitchell:

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

Prosecution:

And what did you do once you got home?

Anna Mitchell:

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

Prosecution:

Did you have any bruises or cuts?

Anna Mitchell:

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

Prosecution:

Did your require any medical treatment?

Anna Mitchell:

No.

Prosecution:

Continue. What happened next?

Anna Mitchell:

I went to bed.

Prosecution:

What happened to your clothes?

Anna Mitchell:
I threw them in the rubbish bin outside my house. I just didn’t want them anywhere near me and I didn’t ever want to wear them again.

Prosecution:

Continue.

Anna Mitchell:

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

Prosecution:

What did you do?

Anna Mitchell:

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

Prosecution:

Did you report the attack to the police?

Anna Mitchell:

Yes.

Prosecution:

And when did you do this?

Anna Mitchell:

About 2 weeks later.

Prosecution:

Why did you wait 2 weeks?

Anna Mitchell:

Well, my parents don’t like me living alone and I didn’t want them to find our what had happened.
Prosecution:

So what made you report the attack?

Anna Mitchell:

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

Prosecution:

What happened next?

Anna Mitchell:

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

Prosecution:

Who was the police officer that accompanied you?

Anna Mitchell:

Her name was Sergeant Howard.

Prosecution: (gets map off clerk)

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

Anna Mitchell:

Yes it does.

Prosecution:

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

Anna Mitchell:

Just here. (points to area C5)
Prosecution:

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

Anna Mitchell:

Yes, they found a watch.

Prosecution:

Did you see them find the watch?

Anna Mitchell:

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

Prosecution:

Thank you. No more questions your honour.

Barrister:

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

Anna Mitchell:

Yes it is.

Barrister:

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

Anna Mitchell:

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

Barrister:

Had it stopped raining when your car broke down?

Anna Mitchell:
Yes.

Barrister:

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

Anna Mitchell:

Yes, it was quite dark.

Barrister:

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

Anna Mitchell:

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

Barrister:

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

Anna Mitchell:

No, it was quite dark.

Barrister:

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

Anna Mitchell:

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

Barrister:

It looks like him? But you testified that you could not identify him!
Anna Mitchell:

But...

Barrister:

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

Anna Mitchell:

Yes, I guess so.

Barrister:

No further questions your honour.

Judge:

Does the prosecution wish to re-examine?

Prosecution:

No, your honour.

Judge:

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

Prosecution:

Your honour, the people call Mr Andrew White.

Clerk:

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

Mr White:

I do.

Judge:

State your name.

Mr White:
Andrew White.

Judge:

Be seated please.

Prosecution:

Mr White, what were you doing on the night of June 25th, 2000?

Mr White:

I was walking my dog.

Prosecution:

What time was this?

Mr White:

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

Prosecution:

Where do you live?

Mr White:

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

Prosecution:

And which park is this?

Mr White:

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

Prosecution

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

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

Prosecution

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

Mr White:

Yes, it was almost 8pm.

Prosecution:

Continue.

Mr White:

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

Prosecution

What happened next?

Mr White:

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

Prosecution:

Do you see the woman in court?

Mr White:

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

Prosecution:

Let the record show that the witness identified the complainant as the woman he saw that night. (gets map off the clerk).
I have with me a map of Gwelup Reserve (pulls out map and holds in front of Mr White) and surrounding streets. Could you please point out to me exactly where these bushes were?

Mr White:

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

Prosecution:

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

Mr White:

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

Prosecution:

What did the man look like?

Mr White:

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

Prosecution:

Do you see a similar person in court?

Mr White:

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

Prosecution:

And did you see what he was wearing?

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

Prosecution:

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

Mr White:

I helped her up and she was crying.

Prosecution:

Who did you help up?

Mr White:

The complainant.

Prosecution:

Please continue.

Mr White:

I asked her what had happened but she was crying too much and didn’t answer me. I told her I would help her and not to be scared, but that we should go to the police because I could see that the man had ripped her clothes and I thought that he had been trying to rape her.

Prosecution

Why did you think he was trying to rape her?

Mr White:

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

Prosecution

Then what did you do?
Mr White:

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

Prosecution

What happened next?

Mr White:

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

Prosecution:

Continue.

Mr White:

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

Prosecution:

And then what happened?

Mr White:

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

Prosecution

Then what happened?

Mr White:

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

Mr White:
The complainant.

Prosecution:

Please continue.

Mr White:

Well she rang me up and asked me if I would help her.

Prosecution

What did she say?

Mr White:

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

Prosecution

Continue.

Mr White:

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

Prosecution:

No more questions.

Barrister:

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

Mr White:

Most nights.
Barrister:

And what do you usually take with you on your walks?

Mr White:

Well... a leash for the dog, sometimes a jumper depending on how cold it is, that’s pretty much it.

Barrister:

So you never take a torch?

Mr White:

Uh, no.

Barrister:

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

Mr White:

Yes.

Barrister:

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

Mr White:

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

Barrister:

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

Mr White:

Yes it was.

Barrister:

Tell me about the lighting in the park?
Mr White:
There were not many streetlights, but I could see where I was going. I know the park well.

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

Mr White:
Yes, I would.

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

Mr White:
I was about 3 metres away

Barrister:
And of what colour top did you say the attacker was wearing?

Mr White:
I'm not sure, it was a dark top though.

Barrister:
In other words, it was too hard to see wasn’t it Mr White

Mr White:
Yes, I guess it was.

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

Mr White:
Yes he did.
Barrister:
(places same map in front of witness) – Here is the map again – can you point out to
the court where you were and which way you were facing.

Mr White:
I was here and I was facing this way. (points north).

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

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

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

Mr White:
Yes.

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

Mr White:
No, I can’t – I didn’t see his face.

Barrister:
So we’ve established that it was dark, you are unsure of the colour of his clothes, and
you didn’t even seen his face.

Mr White:
Yes.

Barrister:
So you’re not really sure that the accused is the man who attacked the complainant that night are you?

Mr White:
Well, no I can’t be certain.

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

Mr White:
No.

Barrister:
No more questions.

Judge:
Does the prosecution wish to re-examine?

Prosecution:
No your honour.

Judge:
Would the prosecution care to call their next witness?

Prosecution:
Your honour, the people call Sergeant Michelle Howard

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

Sergeant Howard:
I do.

Judge:
State your name and rank.

Sergeant Howard:

Sergeant Michelle Howard from Scarborough Police station.

Judge:

Please be seated.

Prosecution:

How many years have you been in service Sergeant?

Sergeant Howard:

27 this year.

Prosecution:

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

Sergeant Howard:

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

Prosecution:

Who was the lady in question?

Sergeant Howard:

It was Anna Mitchell.

Prosecution:

Continue.

Sergeant Howard:

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

Prosecution:
Did you take her call?

Sergeant Howard:

Yes, the call was put through to me.

Prosecution:

Continue.

Sergeant Howard:

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

Prosecution: (gets map off the clerk)

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

Sergeant Howard:

Just here. (points to area C5).

Prosecution:

Let the record show that the witness also identified C5 as the area as the crime scene.

Please continue, what happened next? (returns map to the clerk).

Sergeant Howard:

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

Prosecution:

Do you have a photograph of the watch?

Sergeant Howard:

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

Please continue.

Sergeant Howard:

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

Prosecution:

What did the inscription and stamp say?

Sergeant Howard:

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

Prosecution:

And then what happened?

Sergeant Howard:

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

Prosecution:

And what happened next?

Sergeant Howard:

I contacted Mark Smith that same day on July 3rd - and asked if he would come in for questioning with regard to the finding of his watch at the crime scene. He came in that afternoon and was questioned. Upon seeing the watch, he said that it was his and that it had been stolen at a football game around a month earlier.

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

Sergeant Howard:

No, it was not.

Prosecution:

Please continue.

Sergeant Howard:

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

Prosecution:

Was anyone else interviewed with regards to this case?

Sergeant Howard:

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

Prosecution:

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

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

Sergeant Howard:

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

Prosecution:

(Returns watch to the clerk) As if someone had been wrestling with another?
Sergeant Howard:
It’s possible.

Prosecution:
Can you tell me Sergeant where the accused lives?

Sergeant Howard:
He reported to me that he lives in Karrinyup, on Taunton Way.

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

Sergeant Howard:
It’s very close, I’d say approximately 1.2 kilometres.

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

Sergeant Howard:
I’d say no more than a 10-minute walk, and in the car, well only a few minutes.

Prosecution:
Thank you, no more questions your honour.

Judge:
Does the prosecution have any more witnesses?

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

Judge:
Defense, would you like to call your first witness?

Barrister:
Your honour, the defense calls Mr Mark Smith.

Clerk:

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

Mark Smith:

I do.

Judge:

State your name.

Mark Smith:

Mark Smith.

Barrister:

Mark Smith, could you please tell the court where you were on the night of June 25th 2000?

Mark Smith:

Sure, I was at home watching television.

Barrister:

What program were you watching?

Mark Smith:

I was flipping between the channels, mainly watching 60 minutes.

Barrister:

What time was this?

Mark Smith:
Around 7.30, 8pm.

Barrister:

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

Mark Smith:

Yes there is. My roommate, Daniel Taylor was also at home.

Barrister:

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

Mark Smith:

Well I had been playing football at Gwelup Reserve several weeks earlier.

Barrister:

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

Mark Smith:

It was Saturday, the 27th of May. We were playing most of the afternoon. But I think we probably began playing around lunch and finished around 4 or 5pm.

Barrister:

Continue. What happened while you were playing football?

Mark Smith:

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

Barrister:

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

Mark Smith:
Yes, Daniel was playing football with me.

Barrister:

No more questions your honour.

Prosecution:

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

(shows watch).

Mark Smith:

Yes, it is my watch.

Prosecution:

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

Mark Smith:

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

Prosecution:

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

Mark Smith:

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

Prosecution:

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

Mark Smith:

Maybe, but it is what happened.
Prosecution:

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

Mark Smith:

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

Prosecution:

Well perhaps it was broken in a struggle then.

Mark Smith:

Maybe.

Prosecution:

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

Mark Smith:

It’s about 4 streets away.

Prosecution:

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

Mark Smith:

A minute or two.

Prosecution:

And walk?

Mark Smith:

I don’t know, I guess about 5 to 10 minutes?

Prosecution:

So you could quite easily have walked to the park and tried to rape Miss Mitchell couldn’t you?

Mark Smith:
Yes, but I didn’t!

Prosecution:

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

Mark Smith:

Yes.

Prosecution:

Did anyone of you make coffee that night?

Mark Smith:

No.

Prosecution:

Did you communicate at all?

Mark Smith:

I really can’t remember – maybe.

Prosecution:

What was Daniel doing that night?

Mark Smith:

He was watching a video.

Prosecution:

What video was it?

Mark Smith:

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

Prosecution:

No further questions your honour.

Judge:
Does the defense wish to re-examine?

Barrister:

No your honour.

Judge:

Defense, would you like to call your next witness?

Barrister:

Your honour, the defense calls Mr Daniel Taylor.

Clerk:

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

Daniel Taylor:

I do.

Judge:

State your name.

Daniel Taylor:

Daniel Taylor.

Judge:

Please be seated.

Barrister:

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

Daniel Taylor:

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

Barrister:

I see, and where were you on the night of the 25th June 2000?
Daniel Taylor:
I was at home.

Barrister:
And what time did you first arrive home?

Daniel Taylor:
After work, about 6pm.

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

Daniel Taylor:
Yes, Mark was home too. He usually gets home a bit earlier than me.

Barrister:
What was Mark doing when you got home?

Daniel Taylor:
Watching television.

Barrister:
What was he watching?

Daniel Taylor:
I can’t really remember.

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

Daniel Taylor:
No I did not.

Barrister:
And did Mark leave the house that night?

Daniel Taylor:
No he did not.

Barrister:

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

Daniel Taylor:

Yes it is.

Barrister:

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

Daniel Taylor:

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

Barrister:

What date was this?

Daniel Taylor:

It was the 27th of May, a Saturday.

Barrister:

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

Daniel Taylor:

It looks like Mark’s watch.

Barrister:

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

Daniel Taylor:

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

Barrister:

Mark stated that his watch was stolen that day. Can you confirm this?
Daniel Taylor:
Yes, I do recall him saying that he had lost his watch.

Barrister:
No more questions your honour.

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

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

Prosecution:
Continue.

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

Prosecution:
So there is only one door?

Daniel Taylor:
Yes.

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

Daniel Taylor:
Yes.

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

Daniel Taylor:

He was in the lounge room watching television.

Prosecution:

And tell me what else happened that night?

Daniel Taylor:

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

Prosecution:

Did either of you make coffee that night?

Daniel Taylor:

No, I don’t think we did, I can’t remember.

Prosecution:

Did you talk to Mark during the course of the evening?

Daniel Taylor:

I don’t know. I can’t remember.

Prosecution:

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

Daniel Taylor:

I watched a video.

Prosecution:

What video did you watch?

Daniel Taylor:

Mission Impossible.

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

Daniel Taylor:

Yes, I am sure.

Prosecution:

So you watched Mission Impossible in YOUR room?

Daniel Taylor:

Yes, because Mark was watching a television program and didn’t want to watch my video.

Prosecution:

And what time did you put on the video?

Daniel Taylor:

At 7.30pm I think, I can’t be sure of the exact time, but it was around then.

Prosecution:

And how long did the video go for?

Daniel Taylor:

About two hours.

Prosecution:

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

Daniel Taylor:

Yes.

Prosecution:

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

Daniel Taylor:
It was closed.

Prosecution:

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

Daniel Taylor:

No, I watched it from start to finish.

Prosecution:

And when the video finished what did you do?

Daniel Taylor:

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

Prosecution:

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

Daniel Taylor:

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

Prosecution:

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

Daniel Taylor:

No, of course not.

Prosecution:

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

Daniel Taylor:

Yes.

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

Daniel Taylor:

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

Prosecution:

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

Daniel Taylor:

Well I can’t.

Prosecution:

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

Daniel Taylor:

Of course its possible but…

Prosecution:

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

Daniel Taylor:

No, I didn’t notice.

Prosecution:

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

Daniel Taylor:

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

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

Daniel Taylor:

Well...

Prosecution:

So you cannot answer that?

Daniel Taylor:

No.

Prosecution:

No more questions your honour.

Judge:

Does the defense wish to re-examine the witness?

Defense:

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

Daniel Taylor:

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

Defense:

Thank you. No more questions your honour.

Judge:
Are there any more witnesses?

Barrister:

No your honour. The defense closes its case.

Judge:

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

FADE OUT AND THEN IN TO DEMONSTRATE PASSED TIME.

Prosecution:

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

Barrister:

Ladies and gentlemen of the jury, many men live in the same street as Mr. Smith - not to mention the other streets surrounding Gwelup Park, also giving them ample opportunity to attack the complainant. His address should not convince you that he is the attacker, because as we all know - people who attack others do not have to be on foot, they may also have access to vehicles, meaning a number of people in
surrounding areas would also have the opportunity to attack Miss Mitchell! Mr. Smith may fit the very brief description given by the two witnesses, but let's not forget that it was very dark in the bushes and one witness only saw the attacker from behind as he ran away. Hardly enough time to form an accurate description. How can they be sure that it was actually Mr Smith they saw and not someone else? In addition to this, there is absolutely no physical evidence that ties Mr. Smith to the crime. The fact that his watch was found at the scene of the crime does nothing but tell us that the thief had also been at the bushes since the watch was stolen. There is no real evidence against Mr Smith. Don't convict an innocent man. PICTURE TO FADE.