DO JURIES UNDERSTAND?

IVAN POTAS
AND
DEBRA RICKWOOD

stralian Institute of Criminology

DO JURIES UNDERSTAND?

Concerning the ability of lay persons to understand and apply certain standard jury instructions that are being developed for possible use in the criminal courts of New South Wales.

Ivan Potas*

and

Debra Rickwood[x]

* BA LLB LLM, Criminologist, Australian Institute of Criminology, Canberra ACT.

x BA (Hons), Psychologist, Social Psychiatry Research Unit, Research School of Social Sciences, Australian National University. Canberra ACT.

Australian Institute of Criminology, December 1984.

Published and printed by the Australia Institute of Criminology, 10-18 Colbee Court, Phillip, A.C.T. Australia, 2606

The National Library of Australia has catalogued this work as follows:

Potas, I.L. (Ivan Leslie), 1944-
Do juries understand?

ISBN 0 642 07428 3.

1. Instructions to juries - New South Wales. I. Rickwood, Debra. II. Australian Institute of Criminology. III. Title.

345.944'075

DO JURIES UNDERSTAND?

Concerning the ability of lay persons to understand and apply certain standard jury instructions that are being developed for possible use in the criminal courts of New South Wales.

Ivan Potas* and Debra Rickwood[x]

* BA LLB LLM, Criminologist, Australian Institute of Criminology.

x BA (Hons), Psychologist, Social Psychiatry Research Unit, Research School of Social Sciences, Australian National University.

ACKNOWLEDGEMENTS

We wish to thank students and teachers of Stirling College as well as students of the Criminology course at the Canberra College of Advanced Education for having participated so willingly in the present study.

We also wish to express our gratitude to the following persons for providing us with invaluable comments and advice: Dr Valarie Braithwaite, Mr Paul Duncan-Jones, Mr Richard Bosley-Craft and Dr David Grayson (all of the National Health and Medical Research Council Social Psychiatry Research Unit ANU) and Dr John Braithwaite (Department of Sociology, Research School of Social Sciences ANU). A number of researchers from the Institute of Criminology also provided us with useful and constructive comments. In this regard we also thank Dr Suzanne Hatty, Dr Grant Wardlaw, Dr Peter Grabosky, the Director, Professor Richard Harding and the Deputy Director, Mr David Biles. We are also indebted to Miss Susan Liepelt who typed the final manuscript.

Despite the generous assistance received, the views and conclusions expressed herein are ultimately those of the authors who accept full responsibility for all errors and omissions.

Ivan Potas
Debra Rickwood

CONTENTS

CHAPTER I INTRODUCTION PAGE NUMBER

Introduction.....1
Development of Standard Jury Instructions.....4
Drafting Principles.....8
Some hypotheses of the present study.....15

CHAPTER II METHOD

Method.....17
Materials.....17
Initial Procedure.....19
Script.....21
Onus of Proof.....22
Self Defence (in murder).....24
Provocation.....25
Good Character.....27
Common Purpose.....28
Statement from the Dock.....29
Identification.....29
Alibi.....30
Common Purpose.....31
Desirability of Jury Agreeing on a Verdict.....31

CHAPTER III RESULTS

Results.....41
Order Effects.....41
Understanding the Instructions.....41
Frequencies of Instruction Scores (Table 1).....43
Frequency Distribution of Understanding Scores.....44
Relationship between Comprehension and Applicability.....45
Instructions versus No Instructions.....45
Severity of Verdict.....46
Differences between Instructions.....47
Mean Scores (Table 3).....49
Relationships between Understanding, Complexity and Effectiveness of the Instructions.....50
Instruction Ratings (Table 4).....51

CHAPTER IV CONCLUSION

Conclusion.....52
Summary of Findings.....52
Concluding Remarks.....53

CHAPTER V AGENDA FOR FUTURE RESEARCH

Agenda for Future Research.....58

PREFACE

In recent years there have been increasing expressions of concern regarding the language in which juries are instructed upon the law. It has been suggested that complex directions are not readily capable of being comprehended by juries. With a view to achieving some improvement in this critical aspect of communication between judge and jury, the Chief Justice of NSW, Sir Laurence Street, invited Mr William Clifford, the then Director of the Australian Institute of Criminology, to participate in a project involving the drawing up of standard directions on commonly encountered matters of law expressed in language that could be easily understood. Mr Clifford agreed that he and the Institute would co-operate in this project. In response to invitations, there was a meeting of a large group of persons widely representative of those involved in the administration of the criminal justice system. At this meeting a small working party was appointed to prepare draft standard directions to juries on difficult aspects of criminal law.

The Australian Institute of Criminology was represented on the working party by Mr Clifford and Mr Ivan Potas, the other members being Supreme Court and District Court Judges. After some 20 instructions had been prepared by the working party with a view to submission to a further meeting of the representative group, the Institute decided to test whether instructions, so framed, were readily comprehensible to lay persons and to this end it undertook the work which is outlined in the following report. It chose nine of the drafted instructions and included them in a hypothetical summing up made to a number of experimental groups, the members of which subsequently answered a series of questions indicating the extent of their comprehension of what they had been told.

CHAPTER I - INTRODUCTION

Introduction

In criminal trials the terms of the partnership between judge and jury are well known. The judge decides what evidence is admissible before the jury and directs the jury on matters of law. The jury decides on the given evidence what the facts are or, more realistically, the jury decides upon the evidence what it believes the facts to be. Whether jurors accept or reject certain evidence and the weight they give to such evidence is a matter for them. [1]

In view of the seriousness of a court's verdict it is important that jurors are able to understand and carry out their functions properly. Indeed the importance of the jury decision is brought home in the following frequently cited passage from the High Court decision of Ross[2]:

---

1. In the recent House of Lord's case of Courtie (1984) 1 All ER 740 Lord Diplock had occasion to refer to the function of the jury in the following terms:

> the function of the jury as triers of fact to the exclusion of the judge in a trial on indictment is limited to finding facts that are brought to their attention by admissible evidence, all questions as to credibility and weight to be attached to such admissible evidence being for the jury alone. What evidence is admissible, however, is a question of law and accordingly the function of determining it is vested in the judge to the exclusion of the jury, even though this may involve, as in the cases of dispute as to the voluntary character of confessions, determination by the judge and not the jury of questions of credibility and weight to be attached to evidence of fact directed to the collateral issue of admissibility. Ibid 742.

His Lordship qualified these observations by pointing out that Parliament could, by legislating, modify or exclude the application of either or both of these principles, whether in relation to particular offences or generally, but any such qualification would be construed in accordance with well established principles, practices and procedures of English criminal law.

2. (1922) 30 CLR 246

> ...if there be evidence on which reasonable men can find a verdict of guilty, the determination of guilt or innocence of the prisoner is a matter for the jury and for them alone, and with their decision based on such evidence, no court or judge has any right or power to intervene. It is of the highest importance that the grave responsibility which rests on jurors in this respect should be thoroughly understood and always maintained. [3]

Despite this 'grave responsibility', there is some question as to whether the system has become so complicated that jurors are prevented from discharging their duties adequately. For example, Roden J in his dissenting judgment in Petroff,[4] expressed the view that there was a need for 'rationalisation and simplication of the criminal law' because the law was often unnecessarily artificial, complex and (therefore) unintelligible. His Honour quoted, inter alia, the following passage from a report of the English Criminal Law Revision Committee to support this point of view:

> The present law requires Judges to direct juries to achieve certain mental feats which some Judges think impossible for many lawyers to achieve, and it is no answer to criticisms of this kind to say, as is sometimes said, that there is no difficulty in directing the jury in the way in which the Courts have said they should be directed. There may be no difficulty in saying the right words: the question is what the jury make of them and nobody can be sure of that. (Cmnd 4991, par 25).

The Jury Committee[5] which was set up in New South Wales to inquire into the problems of communication between judge and jury, was not concerned with recommending changes to the law in order to simplify it - this task was outside its terms of reference.

---

3. Ibid.

4. (1980)2 A Crim R 101

5. The 'Jury Committee' is the term used here to describe the working party referred to in the Preface

Rather it was concerned with finding a form of words which would render sometimes complex legal concepts embodied in jury directions into forms that lay jurors were likely, or would be more likely, to understand.

Jury directions on the law, or 'jury instructions' as these will more commonly be referred to here, present difficulties in at least two respects. First, a concern for legal accuracy may draw some judges into adopting language that makes excessive use of legal jargon. The same concern may also invite the use of non technical uncommon words and complex sentence structures. In one sense such an approach is encouraged because of an awareness on the part of judges that misdirections present all too common grounds for appeal. They strive to overcome this problem by selecting legally accurate words or phrases.

The second difficulty arises from an attempt to overcome the first, and it affects most adversely those persons who are not trained in the law and who are therefore unfamiliar with legal language. The problem is that the complexity of the law coupled with the concern for legal accuracy renders it less rather than more likely that ordinary men and women of the jury are able to fully comprehend the trial judge's instructions and therefore apply them in the very manner that the law so positively intends. Furthermore, although much reliance is placed on the common or good sense of juries, neither individual jurors nor juries as a group are required to indicate the reasons for their verdicts.[6]

---

6. It is not intended to suggest that juries should be required to provide reasons for their verdicts. This would complicate the process immensely. The point simply is that we have no way of knowing whether verdicts are reached rationally, or intuitively, or on completely misinformed, or illogical grounds, see S. Callinan 'Jury of her Peers' (1984) 9 Legal Service Bulletin 166.

Thus, while a careful analysis of the words used in the trial judge's directions to the jury may reveal that the appropriate concepts have been presented, it is simply not known whether, or to what extent, jurors appreciate and are able to apply the considerations embodied in the instructions. Legal accuracy alone does not guarantee that the words spoken are understood.

Development of Standard Jury Instructions

To help ameliorate such problems, some overseas jurisdictions have developed model jury instructions. These instructions are standardised forms or precedents intended to be used by all trial judges as a guide for the use of simple, yet legally accurate language. Standard jury instructions were first used in California over 30 years ago and are used in the majority of US jurisdictions.[7] There is also broad support for such guidelines by the Canadian judiciary,[8] and also in England and Wales.[9]

---

7. See the Law Reform Commission of Canada The Jury in Criminal Trials Workng Paper 27, Ottawa Canada 1980, 78. Three principal sets of pattern criminal instructions used in the federal court system of the United States are: Devitt and Blackmar, Federal Jury Practice and Instructions (3d ed 1977); Committee of Pattern Jury Instructions, (Criminal Cases) (1978); and Committee on Federal Criminal Jury Instructions of the Seventh Circuit, Federal Criminal Jury Instructions (1980).

8. A survey of judges in Canada reported that over 80 per cent of respondents favoured standardised guidelines (except British Columbia where 56 per cent of respondents were in favour of guidelines) see The Jury in Criminal Trials, supra, at 78.

9. Specimen Directions prepared by Master D.R. Thompson, QC and his staff, at the request of the Judicial Studies Board and approved by Lord Chief Justice Lane.

The object of standard jury instructions is to maximise the legal accuracy of instructions given by judges without confounding jurors with unnecessary technical language. In addition to legal accuracy and intelligibility, time-saving, uniform treatment and impartiality have been cited as major advantages of jury instruction guidelines.[10] Time is saved because instructions are drafted concisely and accurately, thereby relieving judges from the need to duplicate research on specific charges and allowing them to concentrate on fitting standard instructions to the circumstances of the particular case. Legal practitioners as well as appeal courts, may also benefit because they are able to assess more quickly whether an incorrect or unusual direction has been given by the trial judge simply by refering to the relevant standard instructions.

Another advantage of standard jury instructions is that uniform treatment is promoted. This is because judges dealing as they must with individual cases, have the same reference point for framing their directions to the jury. In addition, the availability of standard instructions may reduce the likelihood of some judges expressing a view during the course of the summing up that might be regarded as unfairly favouring one side or the other. In other words, jury instructions may serve to remind judges of their duty to remain impartial at the critical closing stages of the trial.

---

10. The Jury in Criminal Trials Op cit n 7, at 81 to 83.

Like some overseas jurisdiction the Jury Committee has been developing a set of standard jury instructions for potential use in the criminal courts of New South Wales. When drafting these instructions the concern of the Committee was to keep each one squarely within legally acceptable bounds and at the same time, taking care to avoid excessively technical or otherwise unduly sophisticated language. Simplicity of language, it was thought, would ensure so far as it was possible, that jurors would understand and apply the judge's directions and hence minimise the likelihood of a miscarriage of justice. It should be noted however, that instructions formulated thus far have not been developed scientifically or with the assistance of psychologists trained in the use of language and communications. In other words, in the course of drafting, the instructions were not subjected to rigorous testing and analysis but merely developed intuitively by members of the Jury Committee.

Before deciding upon the form that the instructions should take, the Jury Committee reviewed much of the literature dealing with standard jury instructions. In this regard several kinds of jury instructions were examined, including a work entitled Pattern Jury Criminal Instructions (US Federal Judicial Center 1982) being a set of jury instructions prepared by the Federal Judicial Center's Committee to Study Criminal Jury Instructions,[11] Houlden's Criminal Charges, as revised by Mr Justice Southey, of the Supreme Court of Ontario and Specimen Directions, prepared by

---

11. The Committee was constituted by Judge Thomas A. Flannery of the District Court for the District of Columbia, Judge Patrick E. Higginbotham of the District Court of Northern District of Texas and Chairman Judge Prentice H. Marshall of the District Court for the Northern District of Illinois.

Master D.R. Thompson QC and his staff at the request of the Judicial Studies Board and approved by Lord Chief Justice Lane of England and Wales. A working paper of the Canadian Law Reform Commission, entitled The Jury in Criminal Trials[12] was also consulted and found to be most informative.

Ultimately however, the Jury Committee recommended that the English approach was the most acceptable model to follow for New South Wales. In particular, it felt that standard jury instructions were not to be regarded as magic formulae to be followed verbatim. Certainly standard instructions were not intended to replace the need for care on the part of trial judges when presenting their directions to the jury. The Jury Committee makes this clear in the preface to its work pointing out that:

> [t]he draft standard directions are necessarily expressed in an impersonal manner. There is no reason why they should not be reworded to suit the style of the individual trial judge who wishes to use them. They are not intended to limit the freedom of the individual judge to direct the jury as he or she thinks fit. The intention of the Committee has been simply to set out what is required in each such direction in a form which should fully communicate the relevant legal concept to lay jurors.
>
> In each case the aim has been to frame a direction which is technically correct, but which does not state anything more than the bare legal requirements.
>
> Elaboration, repetition, or illustration is left to the individual trial judge.

No sophisticated techniques were used in drafting the instructions. Initially each judicial member of the Jury Committee undertook to draft particular directions. When this was done each draft was considered in turn by the Committee. During

---

12. Op cit n 7.

this process, and with the object of ensuring that the terminology was both clear and legally accurate, amendments deemed necessary or desirable were made to each instruction by consensus of all members of the Committee. About 20 such jury instructions were drafted, but at this stage they have no official status.

The main object of the present study was to examine a number of these instructions with a view to determining whether the terminology and the concepts encapsulated in them could be regarded as being reasonably and substantially intelligible to ordinary people. As will be seen, most of the jury instructions tested were identical to those drafted but in some cases minor modifications were made in order to tailor them to the hypothetical case presented in the study. Before describing the study, however, the following discussion may enhance the appreciation of the problems encompassed in the drafting of jury instructions.

Drafting Principles

In 1978 Allan Lind and Anthony Partridge prepared a paper on the subject of drafting jury instructions for the United States' Federal Judicial Center's Committee to Study Criminal Jury Instructions.[13] They referred to several empirical studies, which tested the extent to which pattern jury instructions were understood by lay persons.[14]

---

13. See Pattern Jury Instructions Federal Judicial Center; 1982.

14. The two principal studies examined were: Charrow & Charrow, 'Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions', (1979) 79 Colum L Rev 1306. Elwork, Sales & Alfini, 'Juridic Decisions: In Ignorance of the Law or in Light of It', (1977) Law & Human Behaviour 163. Now see also Elwork, Sales and Alfini Making Jury Instructions Understandable, The Michie Company, Charlottesville, Virginia 1982.

These studies indicated that improvements in understanding could be achieved by careful selection of words, and more particularly by avoiding certain linguistic features which tended to hinder rather than facilitate comprehension.

Lind and Partridge then enumerated several of the linguistic constructions which they believed should be avoided in order to achieve more effective communication. Many of their suggestions are of course self-evident, such as the basic rule that instructions should be delivered in 'easily understood, unambiguous English'. Nevertheless their major prescriptions are worth noting, for they contain important practical considerations relating to the issue of improving communications in the courtroom.[15]

First they suggest that words which are uncommon in everyday speech and writing should be avoided. They argue that every effort should be made to use high-frequency words (ie, words in common usage) in preference to low-frequency words. They list twenty commonly occurring words in jury instructions, such as 'demeanour', 'discrepancy', 'erroneous', 'impartial', 'inference', 'pertain', 'scrutinise' and identify these as words which in ordinary parlance are used relatively infrequently.[16] They

---

15. The problem of effective communication is not restricted to judge and jury. See the series of articles by G. Andrewartha 'Psychological Communication in the Courtroom' (1983) and (1984) 18 and 19 Law News, Dec, Jan and March issues respectively.

16. In order to determine whether a word is uncommon they refer to The Teacher's Word Book of 30,000 Words: by Thorndike and Lorge, Bureau of Publications, Teachers College, Columbia University 1944. In that book the number of times a particular word appears in written form per million words is set out.

point out that words such as 'immunise', 'insofar' and 'misrecollection' appear fewer than one time in a million, whereas words such as 'discredit', 'inference', 'unanimous' and 'deliberation' appear about six times per million words of writing. They suggest that words occurring at least ten times per one million words of writing are to be preferred.[17]

Of course, material listing the frequency of written word use in the United States some forty years ago may not be a very reliable guide to frequency of word use in contemporary Australia. Thus, in drafting the 20 jury instructions no scientific approach for selecting the particular words was employed. Instead, the Jury Committee simply (and intuitively) selected what it regarded as words which lay persons would be likely to understand.[18]

Lind and Partridge warn against using homonyms when such words are used to convey their less common meanings. For example a judge may use the word 'admit' in the context of meaning the admission of evidence. This, they suggest, may readily be confused with the more common meaning of the word, 'admit' - ie, 'conceding the

---

17. A possible criticism upon the reliance of the frequency of written words is that these may not present an accurate reflection upon the use of spoken English.

18. The fact that a scientific approach was not adopted does not preclude the possibility, and indeed desirability of testing the draft instructions with a view to making improvements upon them. Such 'testing' would involve a different kind of study from the one described below, although similar techniques could be employed. See for example Lori B. Andrew's, 'Exhibit A: Language' February 1984 Psychology Today 28 and the studies referred to therein.

truth of a proposition'. They cite other examples of idioms that may confuse rather than clarify, for example: 'competent witness', 'disregard evidence', 'find a fact', 'material matter' and 'sustain objections'.

Their third suggestion flows from the previous one. They suggest that use of legal terms, such as 'indictment', should be avoided unless the words, although legalistic, are also used and understood in ordinary discourse. The word 'arrest' is an example of this. They also caution lawyers against believing that once a legal term has been introduced and defined it will henceforth necessarily be remembered and understood by lay persons. They point out that often it is possible to communicate relevant concepts or ideas in a way that allows legal terms to be omitted altogether.[19]

---

19. They quote the following alternative versions to illustrate their point:

    EXAMPLE 1 (legalistic)

    'An accomplice is one who unites with another person in the commission of a crime, voluntarily and with common intent. An accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony of one who asserts by his testimony that he is an accomplice, may be received in evidence and considered by the jury, even though not corroborated by other evidence, and given such weight as the jury feels it should have. The jury, however, should keep in mind that such testimony is always to be received with caution and considered with great care'.

    EXAMPLE 2 (non-legalistic)

    'You have heard testimony from ... who stated that he was involved in the commission of the alleged crime charged against the defendant. You may give his testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.'

The fourth suggestion by Lind and Partridge is concerned with syntax. They suggest that sentences with multiple subordinate clauses should be avoided and that length of a sentence is not as important as its grammatical structure. Thus subordinate clauses should not precede the main clause. Furthermore, the listener should not have to wait until the end of the sentence to find out what the speaker is trying to say.

Lind and Partridge also suggest - that relative pronouns and auxiliary verbs should not be omitted because these aid comprehension, that the use of double negatives should be avoided and that a concrete style rather than an abstract one is generally to be preferred. They also advise that the jury should not be instructed upon matters which are not relevant to the case in hand. For example, it would be foolish to explain the distinction between direct and circumstantial evidence if the distinction was not one which fell for consideration in the case under consideration.

As previously stated, the NSW Jury Committee did not draft its instructions scientifically. However the following examples of its work illustrate how plainly legalistic language was reduced to simpler forms without avoiding the obligation for retaining legal accuracy.

First, compare an early draft of the instruction dealing with Common Purpose with the final one -

> EXAMPLE 1
> Where two or more persons embark upon a common criminal enterprise each one is liable for the acts of the other done within the ambit of the common design. In deciding upon the extent of the ambit of the common purpose all those

> contingencies which can be held to have been in the contemplation of the participants or which in the circumstances ought necessarily to have been in such contemplation will fall within the scope of the common design. This means that where two or more persons set out to commit a criminal act and one of them does an act which constitutes another crime the other will be liable for that other crime and equally guilty of it, if the act done by the former was done within the ambit of the common criminal enterprise upon which they both embarked.
>
> In the present case if you are satisfied beyond reasonable doubt that the murder of the deceased by A - that is the shooting at the deceased by A with intent to kill him - was contemplated by both accused as a possible incidence of the original planned venture to rob the deceased, then B is guilty of the crime of murder along with A.
>
> EXAMPLE 2
> Where several persons act together to carry out an unlawful purpose every act done by every one of them in carrying out that common purpose is in law the act of all of them. Each is liable for the acts of the others done in carrying out the common purpose (if appropriate add 'and liable also for unusual consequences if they arise from the carrying out of the agreed common purpose') but if one of them goes beyond what has been expressly or tacitly agreed as part of the joint enterprise the others are not liable for the consequences of his act.
>
> You have first to decide was there a common purpose? (When there are more than two accused - was each of the accused party to that common purpose?) Did it extend to ... (whatever the crime charged is) eg, the shooting of the deceased with intent to kill him. You answer this question by considering what did each of the accused actually have in mind? What would he have had in mind if he had thought about it?

Consider also the following paragraph, being part only of an earlier draft instruction on Self-Defence:

> By claiming that he acted in self-defence the accused, in effect, requires the Crown to prove that he was not acting in self-defence. So, the Crown must prove beyond reasonable doubt that self-defence has no basis in the present case.

In the final version the last sentence was replaced by the following sentence:

> So, the Crown must prove beyond reasonable doubt that he was not acting in self-defence before you could find him guilty.

Of course once reference is made to the accused by name and reference also made to some of the salient facts of the case,

communication is further enhanced. Thus in an actual case the last sentence derived from the particular instruction might be presented in the following form:

> So the Crown must prove beyond reasonable doubt that John Smith was not acting in self defence when he stabbed Mary Smith, before you could find him guilty of her murder.

It is necessary at this stage to reiterate that standard jury instructions are intended to provide guidelines only. They are not intended to be read out verbatim without editing or altering them to suit the circumstances of the particular case. Indeed their effectiveness is enhanced when they are adapted or moulded to fit the particular circumstances of the particular case. It is for that reason also that judges should be aware of the need to reduce complex law into easily understood and easily understandable forms. Repetition, rhythm of speech, tone of voice, eye contact and body language are also important tools of communication, but these were not the subject of analysis in the present study. Nor was an attempt made to gauge the need for, or determine the advantages of, providing jurors with written instructions.[20] These are all considerations

---

20. A trial judge is not debarred from using written documents as an aid to the summing up on matters of law, or from leaving for the jury's consideration written questions pertaining to the verdict. The summing up is the judge's sole responsibility and he or she is not obliged to discuss with counsel from either side how he or she intends to sum up. Petroff (1908) 2 A crim R 101 at 117 per Nagel CJ at CL. Like rulings on evidence judges must exercise their own judgments whether this be with or without submissions from counsel. Nor does the fact that judges use written material mean that they can simply substitute a written summing up for an oral one. It merely means that it is permissible for judges to provide written material as an aide memoire for the jury. More particularly such a course may be appropriate where the issues before the jury are unusually complicated. See for example the six point formulation of the defence of excessive self-defence for murder as given by Mason J. in Viro (1978) 52 ALJR 418 at 440. Clearly the more issues that a jury is charged with to decide the greater is the likelihood of confusion, misunderstanding and therefore error.

that affect effective communication but their impact must be left for future analysis.

Some hypotheses of the present study

The task of understanding standardised instructions by lay persons was assumed to utilise two distinct abilities, the ability to comprehend the legal concept contained in the instruction and also the ability to apply that instruction to a particular criminal case. Understanding was therefore defined in terms of both these abilities. These abilities were expected to be strongly associated, in that the better a person was able to comprehend an instruction the better he or she would also be able to apply that instruction to a specific criminal case.

It was predicted that education and age of the subjects would, to some extent, affect the ability of individuals to understand the instructions. Subjects who were older and more educated were expected to perform better at understanding the instructions than younger and less educated subjects, whose understanding of the instructions was expected to vary more widely.

A further assumption was that most people would have some baseline general knowledge of some of the legal concepts contained in the instructions. It was therefore of interest to determine how effective the instructions were at increasing knowledge above this baseline level. It was predicted that hearing the instructions would result in greater understanding than if no special instructions were given.

Some of the instructions were expected to be better understood than others. Understanding was expected to vary partly as a function of the complexity of the legal concept contained in a particular instruction. Those instructions with more complex legal concepts were expected to be less well understood than those instructions with less complex legal concepts. Thus, some instructions were anticipated to be more effective at conveying the meaning of the legal concept contained within them than were others.

Finally, the level of understanding was expected to affect severity of verdict in some way. Those subjects who understood the instructions very well were expected to come to different conclusions (verdicts) compared to subjects who did not understand the instructions very well. This difference would arise if the subjects who did not understand the instructions devised their verdicts only from the facts of the case or personal opinion (ie, intuitively) without referring to the instructions, while the subjects who did understand the instructions used them effectively in consideration of their verdicts. The direction this difference might take was not hypothesised. It was expected only that some difference would emerge.

In summary, the current study evaluated understanding of standardised instructions developed for use in the Criminal Courts of New South Wales by examining the ability of subjects both to comprehend and apply the instructions. Understanding was expected to vary between the instructions according to their complexity and effectiveness and to vary between the subjects according to their chronological ages and levels of educational attainment.

CHAPTER II - METHOD

Method

The majority of subjects consisted of 128 school students with an average age of 18 years from Stirling College in the Australian Capital Territory. These students were regarded as a sample of potential jurors who, apart from the relative uniformity of their ages (none was under 17 years of age) represented a broad cross-section of the community in terms of their sex, educational attainment and socio-economic status. It was considered that what these students lacked in life experiences (a significant proportion being just below voting age and hence not quite eligible for jury service) was made up by their scholastic levels.

A further 15 students aged between 20 and 45 were selected from evening college classes in criminology at the Canberra College of Advanced Education (CCAE). These students, many of whom were in their final year of a Bachelor of Arts degree, represented an older group of persons with greater life experience and presumably, with greater intellectual skills. They were selected to provide a contrast to the more limited social, work and educational background, of the senior high school students.

Materials

A script of the judge's summing up based on an entirely fictitious case was developed for presentation before the subjects referred to above. It was based on a hypothetical case concerning the trial of three persons accused of murder and armed robbery. The details of the case are set out under the section headed 'script' below.

The hypothetical case was specifically designed so that a large number of the standard jury instructions could be evaluated. It was also designed to be reasonably realistic in terms of a criminal trial and a judge's summing up of such a trial, given the constraints of the testing environment. However it was decided not to introduce the felony murder rule (and a corresponding instruction) because this would interfere with the analysis of some of the instructions that were to be tested. Accordingly some licence was taken with the law itself in an effort to restrict and control the number of choices put before the subjects.

In all, only nine instructions were selected for testing from the set of 20 standard jury instructions developed by the Jury Committee. These instructions covered many diverse points of law but naturally were chosen primarily for their suitability to the particular case devised for the script of the judge's summing up. The case itself was designed to be sufficiently complex to require a number of decisions to be made by the subjects but not too complex lest a problem of 'information overload' should unduly interfere with the results.

Finally, in addition to the fictitious case incorporating the judge's summing up, a questionnaire was required to measure the subjects' understanding of the instructions. This instrument was a 24 item multiple-choice questionnaire, constructed in consultation with psychologists and teachers of the Stirling College students. Twenty-one of these questions examined the students' understanding of each of the instructions. This was done in terms of their ability to comprehend the relevant legal concepts contained within each instruction and their ability to

apply those concepts to specific situations. The remaining three questions required the student to decide upon a verdict for each of the three accused persons in the simulated trial. The students indicated which, if any, crimes they thought each of the accused should be found guilty of. The multiple choice questionnaire is set out immediately following the script.

Initial Procedure

The Stirling College students were approached during English classes since almost all students take some English courses. Participation was voluntary and all students agreed to take part. Confidentiality was assured. All testing was administered in a class-room situation with groups ranging in size from 11 to 25 students. It may be noted here that there was no attempt at replicating precisely 12 member juries, as the primary object was to evaluate whether individuals rather than groups understood the instructions. Testing required approximately one hour per group.

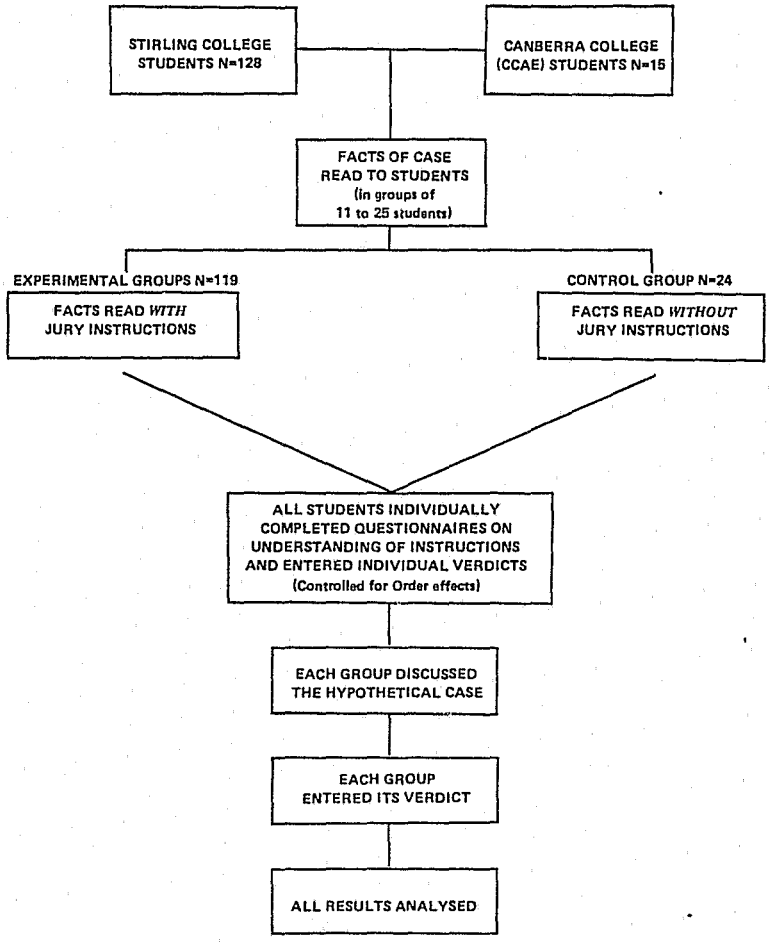
At the commencement of the exercise a brief outline of the object of the research was presented to the students. The experimenter then read out the prepared script, simulating a judge's summing up of the facts of the case in a criminal trial. The nine instructions being tested formed part of the script read to each of the experimental groups. To provide a control group, against which to compare the effectiveness of the instructions, one group of 24 students was selected at random from the Stirling College students. This group was given the facts of the case as required by the script except that the nine jury instructions were omitted from the script. Without the instructions the outline of the case

took only 10 minutes to present to the control group. With the instructions, reading took approximately 25 minutes, so that all groups, other than the control group were required to listen to and absorb all the material contained in the script.

An overview of the experimental design is presented in figure 1.

Figure 1

EXPERIMENTAL DESIGN



SCRIPT

We are interested in finding out how well members of the jury understand a judge's summing up instructions. At the end of a criminal trial the judge sums up all the evidence presented at the trial and instructs the jury on any legal points that arise.

To look at how jurors understand such summing up I want you all to take the part of being members of a jury in a criminal trial. I want you to imagine that the trial is concluding and that the judge is summing up the evidence that has been presented. I will now read out such a summing up. Please try to listen carefully because when it is finished I will want you to answer some questions about what you've just heard and also to break into groups of approximately twelve people, like a jury and decide upon the guilt or innocence of the people you're about to hear about.

The facts of the case are that the three offenders, named Peter, Paul and Mary, respectively, have been charged with armed robbery and the murder of a man named Mr Jones. The Crown, which is the term often employed for the prosecution, is required to prove that each of the accused committed their offences beyond reasonable doubt. In this regard, the trial judge gives you, the jury, the following instructions:

'Members of the jury, you will soon retire to consider your verdict in this case. By now you know that the three accused persons are charged with murder and armed robbery. Note that one of them has pleaded guilty to armed robbery so you do not need to worry about that charge in respect to him.'

ONUS OF PROOF

> In a criminal trial the Crown must prove that the accused is guilty. The Crown carries the onus or the burden of proof. There is no onus at all on an accused; he does not have to prove that he is not guilty. The onus is on the Crown to prove that he is guilty. It discharges that onus if it proves the guilt of the accused beyond reasonable doubt. Unless you are satisfied beyond reasonable doubt of the guilt of the accused you must return a verdict of not guilty. If, after considering all the material in this case there remains in your mind a reasonable doubt as to his guilt, it is your duty to acquit the accused by bringing in a verdict of not guilty. If, however, having considered all that material you are satisfied beyond reasonable doubt of his guilt then it is your duty to convict by bringing in a verdict of guilty.
>
> Whether you have a reasonable doubt or not is a matter for each of you to say and it is only if each one of you is satisfied beyond reasonable doubt that he is guilty that you can bring in a verdict of guilty.

The case for the Crown is that Mary and Peter wanted money for drugs. The Crown submits that Mary knew that a man named Jones always kept a large sum of money at his home and therefore they decided they would break into Jones' house, find whatever money was there and abscond with the proceeds. Much against Mary's wishes, Peter decided to take an old hunting rifle with him, 'just in the event of trouble' he said.

Instead of going directly to the scene of the crime, Mary and Peter decided to stop off at the local pub. According to the Crown, this was for the purpose of obtaining 'dutch courage' or with a view to fortifying themselves for the task at hand. There they met Paul, who was an old boyfriend of Mary's. The Crown alleges that after they had consumed several drinks Mary or Peter told Paul that they intended to go to Jones' house that night so that they could obtain money for drugs. They then invited Paul to join them. The Crown further alleges that although Paul was a reluctant participant he nevertheless agreed to go along with the two other accused persons because he,

Paul, did not want to be labelled a coward and in any event he had a deep dislike for the man Jones. There is convincing evidence that at that time Paul did not know that Peter was armed. I repeat, the evidence indicates that Paul did not know that Peter had taken his hunting rifle along.

Evidence given by the publican and by another witness who saw all three accused consuming alochol suggests that all three accused were under the influence of liquor when they left the hotel. The Crown alleges they drove directly to Jones' house where Mary, the driver, waited in the car, while Peter and Paul set about gaining entry to the house. According to Paul's signed record of interview with the police, it was at this time that he, Paul noticed that Peter carried a rifle. Paul said 'What's the gun for?' and Peter replied 'To scare Jones if he's home. Don't worry, it's not loaded'. The two men then proceeded to gain entry by forcing open a side window and climbing through it.

There was evidence that Peter went into the back part of the house and entered the flat where the deceased, Jones, was sleeping. He woke Jones and threatened to shoot him unless Jones obtained some money for him. According to the evidence Jones said he had about $1000 in a wall safe in another bedroom. Peter told Jones to get the money. Jones went unaccompanied into the other bedroom, but instead of going to the wall safe he reached for a concealed .22 calibre rifle which he always kept under the bed. He then returned to the accused Peter with what later proved to be an unloaded weapon. He shouted, 'Drop that gun or I will put a hole in you, you bastard!' These words were the last Jones would ever utter. As soon as Peter saw Jones was armed he fired his weapon. The bullet lodged in Jones' heart and killed him instantly.

Peter is charged with murder, but has raised two defences. The first is self-defence. The second is provocation. You, the jury, must decide whether the accused, Peter, should be found guilty of murder alternatively of manslaughter, or thirdly whether Peter should be acquitted altogether. It is not necessary for you to consider whether Peter should be found guilty of armed robbery, because he has already pleaded guilty to that charge. Please note that Peter does not deny that he shot Jones. Rather he claims that first, he should be acquitted because he acted in self-defence or alternatively because he was provoked you should return a verdict of not guilty of murder but guilty of manslaughter.

SELF-DEFENCE (in Murder)

A man who is attacked in circumstances where he reasonably believes that his life is in danger or that he is in danger of serious bodily harm may use such force as is reasonably necessary to defend himself and repel his attacker. If in using such force he kills or injures his assailant he is not guilty of any crime at all neither murder, manslaughter or assault. You must ask yourselves whether the accused, Peter, believed on reasonable grounds that he was in danger of death or serious bodily injury from an attack being or about to be made upon him. In considering that you look at the circumstances as they reasonably appeared to him at the time. You ask yourselves whether the force used was reasonably necessary to prevent or resist that attack. In that regard you have regard to all the circumstances of the case.

One matter that is always to be taken into account in considering self-defence is the opportunity open to the accused to retreat and get away from his attacker. The fact that retreat is open is a factor that has to be borne in mind in considering the reasonableness of the accused's conduct. However, merely because a man does not run away, does not mean that he cannot be found to have acted in self-defence. You must consider the circumstances proved in the evidence here.

It is for the Crown to satisfy you beyond reasonable doubt that Peter was not acting in self-defence in the way I have just explained before you can find him guilty. Accordingly, you must find this accused not guilty unless you are satisfied beyond reasonable doubt that he was not lawfully defending himself. If, however, you are so satisfied, you may find him guilty of murder.
But what is the position if although the accused did reasonably believe that his life was in danger or that he was

in danger of serious bodily harm the Crown has satisfied you beyond reasonable doubt that he used more force than was reasonably necessary? In that event, he will be guilty of manslaughter, not murder, provided he did believe that the force which he in fact used was reasonably necessary to avoid the danger in which he believed he stood. In short, if although more force was used than was reasonably necessary he still thought he was protecting himself he should be acquitted of murder. If, however, you are satisfied beyond reasonable doubt not only that he used more force than was reasonably necessary but also that he did not believe that the force he was using was reasonably necessary for his protection then you may find him guilty of murder.

So much for my direction to you on the issue of self-defence.

I now turn to consider the defence of provocation.

PROVOCATION

Provocation simply means any conduct on the part of the deceased, Jones, which tends to cause the accused Peter to lose his self-control. Grossly insulting words or gestures may be provocation; blows may be provocation. The two together may be provocation as in the present case where the deceased called the accused Peter, a 'bastard' and at the same time pointed a weapon in his direction. For a killing to be a killing under provocation it is necessary that any intention to kill formed by the accused be the result of the provocation, only be formed as a result of and after the provocation. If the intention to kill is formed before, then provocation has no significance.

When the law talks of a killing under provocation it is speaking of conduct of the deceased which is provocative in the sense that I have just explained which causes the accused to lose his self-control and to form an intention to kill the other person and proceeds to do it.

For a killing to be a killing of provocation it is necessary that any intention to kill by the accused be the result of that provocation. That is to say, that by the loss of self-control as a result of the provocation there was the formation of an intention to kill. If that is what happened, then, subject to one qualification I will shortly mention, the killing of the deceased, the law says, is a killing under provocation. It is not necessary that the act of killing should be done suddenly nor is it necessary that the killing causing the death of the person should be - that is, the attack in which the accused person engages that brings about the death - proportionate to the provocation offered.

> If there has been provocation and the accused has thereby lost his self-control and thereby formed an intention to kill, that is a killing under provocation, provided - and here is the qualification I mentioned a moment ago - that the provocation offered by the deceased man was such as could have caused an ordinary person in the position of the accused to have so far lost his self-control as to have formed an intention to kill or inflict grievous bodily harm upon the deceased. In other words, members of the jury, the provocation offered by the deceased was such as could have caused an ordinary person (meaning thereby just what the word says: an ordinary person with all his weaknesses and strengths of character) to lose his self-control and form an intention to kill. If that is the situation, the accused cannot be convicted of murder but he can be convicted of manslaughter.
>
> Let me repeat it: the law is saying that if the provocation offered by the deceased Jones, caused the accused Peter to lose his self-control and form an intention to kill and if the provocation was such that it could have caused an ordinary person in the position of the accused to lose his self-control and form an intention to kill, then the accused Peter cannot be convicted of murder; he may be convicted of manslaughter.
>
> It is for the Crown to satisfy you beyond reasonable doubt that this was not a killing under provocation. There is no onus on the accused Peter to prove his innocence or to prove that he was provoked or that he lost his self-control or any other matter involved in this matter of provocation. The onus is upon the Crown to satisfy you beyond reasonable doubt that it was not a killing under provocation.

During the trial the accused Peter gave evidence on oath relating to his own good character. In addition another witness described as his best friend also gave evidence of Peter's good character. In summary this evidence suggests that:

> Peter has no prior convictions, a matter not disputed by the Crown; he is a likeable, hardworking and honest person; he is an active member of the Lions Club and performs charitable work on weekends.

GOOD CHARACTER

> You have been told that the accused is a person of good character in that he has no prior convictions and is basically hardworking, honest and so on. The law is that you must - and I emphasise that 'you must' - take into account Peter's good character in determining whether he is guilty or not guilty. The law permits the accused, Peter, to place his favourable character before you as a matter which makes it unlikely that he committed this crime and it thus requires you in coming to a decision as to whether he is guilty or not to take his good character into account. You do not of course say to yourself - well because he is a man of good character we will not convict him. The weight which you give to the accused's good character is entirely a matter for you.

After you have decided upon your verdict with regard to Peter, that is, whether he should be found guilty of murder or manslaughter or acquitted altogether, you should then turn your minds to the position of the accused, Paul. Paul, you will recall does not deny that he went with Peter, and that he entered the house. However, he says that he had no intention of threatening the deceased Jones with a weapon, and furthermore that he believed Peter when he said the rifle was not loaded. The question you must ask yourselves is whether Paul's participation in the enterprise was sufficient to render him liable to a verdict of guilty of armed robbery and also a verdict of guilty of murder. A similar test can be applied to Mary's alleged role in the criminal enterprise, and I shall briefly repeat the relevant instruction when I consider Mary's position in greater detail.

Although Peter shot Jones, you should consider whether, Paul or Mary, or both of them are guilty of murder even though they did not carry the rifle or pull the trigger. Similarly although neither Paul nor Mary carried a firearm you may consider nevertheless whether either of them or both should be found guilty of armed robbery. This has to do with the doctrine of common purpose.

COMMON PURPOSE

Where several persons act together to carry out an unlawful purpose, for example break enter and steal, every act done by every one of them in carrying out that common purpose is in law the act of all of them. Each is liable for the acts of the others done in carrying out the common purpose and liable also for unusual consequences if they arise from the carrying out of the agreed common purpose. However if one of them goes beyond what has been expressly or tacitly agreed as part of the joint enterprise the others are not liable for the consequences of his act.

You have first to decide was there a common purpose to rob Mr Jones? Was each of the accused party to that common purpose? Then what was the extent of that common purpose? In the present case did it extend to armed robbery, and did it extend to murder? You answer this question by considering what did each of the accused actually have in mind? What would he or she have had in mind if they had thought about it?

You should also recall that Paul made the following statement from the dock but not from the witness box:

I agreed to go along for the ride but I did not intend to steal anybody's money. I must have been very drunk even to have contemplated breaking into Jones' house. I certainly did not realise that Peter was armed until it was too late. I did not know that the rifle was loaded, nor did I imagine it would be used. If I had for a moment believed that someone would get hurt, let alone killed I would not have gone to Jones' house. I must have been drunk at the time -that's all I can say.

STATEMENT FROM THE DOCK

> The accused, Paul, has made a statement to you. That statement is not evidence in the same sense as evidence given on oath from the witness box - it is not subject to the test of cross-examination by the Crown Prosecutor. It is, however, your duty to consider that statement along with all the evidence given in the case and give it such weight as you consider it deserves.

Mary is charged with armed robbery and murder. Mary claims that she was nowhere near the scene of the crime at the time these offences were committed. She admits going to the pub, but claims that the two offenders left her at a bus stop outside the pub and proceeded to the scene of the crime without her. However, only minutes before the offence was committed there was evidence given by the policeman who was driving in the opposite direction to which he claims the three accused were travelling. He claims that he recognised Mary in the driver's seat, and that there was one person who he later identified as the accused, Peter, seated next to her, and that a further person whom he did not recognise, was seated in the back seat. If this evidence is believed Mary must have been an active participant in the unlawful enterprise. The policeman claims that he recognised Mary because he had arrested her some four weeks previously on a charge of receiving stolen goods. He claims to have seen Mary, even though it was night time and even though he had only time to glimpse at her as the two vehicles passed each other at about ten miles per hour at a set of traffic lights just 100 yards from Jones' residence.

IDENTIFICATION

> The Crown case against the accused Mary depends upon the identification of the accused by the policeman as one of the persons who participated in the enterprise. The defence says that the policeman is mistaken. I must therefore warn you of

the special need for caution before convicting in reliance on the correctness of the identification. This is a direction which must be given in every case in which the issue of identification is in dispute. The reason for this is that it is quite possible for an honest witness to make a mistaken identification and notorious miscarriages of justice have occurred as a result. A mistaken witness can be a convincing one and even a number of convincing witnesses can all be mistaken.

You must examine carefully the circumstances in which the identification by this witness was made to satisfy yourself not only that the witness is honest but that his identification of the accused Mary is accurate. A witness who identifies a person is asserting that he saw the person, what he saw was impressed on his mind, that he really retains the original impression and that the resemblance between the original impression and the accused is sufficient to base a judgment, not of resemblance, but of identity.

In order to make an accurate judgment of identity the following matters are important. Was the person a stranger to the witness? What were the opportunities for observation? In what circumstances did it take place? Was the witness's observation impeded in any way? How long elapsed between the original observation and the first description of the offender?

You will note that the only evidence linking Mary to the proximate scene of the crime was the evidence of the policeman.

ALIBI

The accused Mary has claimed that she was somewhere else namely, at the bus stop outside the hotel when the crime was committed. This is what is commonly called an alibi. Mary does not have to prove that she was somewhere else. On the contrary, rather, the prosecution has to prove that she was there at Jones' place and committed the crime or crimes charged. That is, on the whole of the evidence the Crown is obliged to prove the guilt of the accused beyond reasonable doubt.

With regard to Mary, the first question for you to decide is whether she went with the two others to the scene of the crime. It is only after you are satisfied that she did participate in the enterprise that you should apply the direction which I gave earlier on the issue of common purpose. I stress that in order to find her guilty of armed

robbery or murder it is not necessary for you to find that

Mary herself had pulled the trigger.

COMMON PURPOSE

I repeat, each accused is liable for the acts of the other done in carrying out the common purpose and liable even for unusual consequences, in this case murder, if they arise from the carrying out of the agreed common purpose armed robbery where there is a likelihood of someone being seriously wounded or killed. If, on the other hand, you decide that one of them, for example Peter, went beyond what was expressly or tacitly agreed as part of the joint enterprise, Mary is not liable for the consequences of Peter's act - because this is outside the ambit of the common purpose.

You have first to decide whether Mary was present at the scene of the crime. If so, you must then decide whether there was a common purpose. Was each of the accused party to that common purpose? What was the extent of that common purpose? In the present case did it extend to armed robbery? Did it extend to murder? You answer these questions by considering what did each of the accused actually have in mind. What would Mary have had in mind if she had thought about it?

Members of the jury, you should now retire to consider whether:

First the accused Peter

a) is guilty of murder, OR
b) is not guilty of murder but guilty of manslaughter, OR
c) is not guilty of either murder or manslaughter.

Second you should consider whether the accused Paul

a) is guilty of murder, OR
b) is not guilty of murder but guilty of manslaughter, OR
c) is not guilty of either murder or manslaughter, AND/OR
d) is guilty or not guilty of armed robbery.

Third you should consider whether the accused Mary

a) is guilty of murder, OR
b) is not guilty of murder but guilty of manslaughter, OR
c) is not guilty of either murder or manslaughter, AND/OR
d) is guilty or not guilty of armed robbery.

DESIRABILITY OF JURY AGREEING ON A VERDICT

You are a body of twelve men and women. Each of you has taken an oath to return a true verdict according to the evidence, but of course you have a duty not only as individuals but collectively.

No one must be false to that oath, but in order to return a collective verdict, a verdict of you all, there must necessarily be argument and a certain amount of give and take and adjustment of views within the scope of the oath that you

> have taken and it makes for great public inconvenience and expense if jurors cannot agree owing to the unwillingness of one or some of their number to listen to the arguments of the rest. It is very desirable that you should come to a conclusion one way or the other because if you do not it means that some other jury will have to do what you have been empanelled here to do. That is a great hardship upon all concerned - the accused, the witnesses for the Crown, and is to be avoided if possible. As I have said, there must in the process of arriving at a verdict be a willingness upon the part of each to listen carefully to the views of the others and a recognition of the fact that some viewpoints are sounder than others and that our own viewpoints are not necessarily sound merely because we hold them. Sometimes, as we all know, we are inclined to form viewpoints and once we have formed them we do not like to let them go even though we feel and know really that they cannot be sustained or that the other viewpoint is really the better viewpoint. When that happens we must not hold to such viewpoints. To approach the matter sensibly in the way I have indicated is quite within the scope of the oath which you each have taken as jurors.

Subsequent Procedure

After the script had been read the subjects were required to complete two tasks. The presentation of these tasks was counterbalanced across the groups so that half the subjects undertook each task first to control for any order effects. For one of the tasks the students were required to individually complete a multiple choice questionnaire testing their understanding of the instructions and also asking them to give an individual verdict regarding the guilt of each of the three accused persons. This questionnaire took 10 to 15 minutes to complete. Note that both the experimental groups and the control group were required to complete the same questions even though the standard jury directions were omitted from the script in the case of the control group.

To ensure that answering the comprehension questions or the verdict questions first did not systematically affect answering subsequent questions, two versions of the questionnaire were prepared: one with the verdict questions presented first and the

other with the verdict questions presented last. By doing this, any effects of the understanding questions on the verdicts or the verdicts on the understanding questions were counterbalanced and could be examined in the results.

The other task took approximately 25 minutes and required the students to break into groups of approximately 12 people. These groups were instructed to elect a foreperson and come to a group verdict as to whether Peter was guilty of murder or manslaughter and whether Paul and Mary were guilty of murder or manslaughter and also whether the latter two were guilty of armed robbery. The students were left on their own with minimal interference from the teacher or experimenter.

QUESTIONNAIRE

Read each question carefully and circle the most correct answer Please answer all questions.

1 The onus of proof lies:
   a) on the jury
   b) on the accused
   c) on the Crown
   d) on the judge

2 In the present case, if the members of the jury think that one of the accused probably committed an offence, but are not satisfied beyond a reasonable doubt, then they are obliged to:
   a) to find the accused guilty of the charge
   b) to find the accused guilty of a lesser charge
   c) to find the accused not guilty of the charge
   d) to adjourn the case

3 Which of the following must be taken into account when considering a plea of self-defence when the defendant is accused of murder:

a) whether the accused believed his/her life was in danger
b) whether the accused had an opportunity to retreat
c) whether the accused used no more force than he/she believed was necessary
d) all of the above

4 If the accused believing his/her life to be in danger used more force than was reasonably necessary to defend him/herself, and in doing so killed a person, then he/she should be found:

a) guilty of murder
b) not guilty of murder but guilty of manslaughter
c) not guilty of murder and acquitted
d) guilty of assault

5 If the accused used more force than he/she believed was reasonable necessary in order to defend him/herself, and in doing so killed a person, then he/she should be found:

a) guilty of murder
b) not guilty of murder but guilty of manslaughter
c) not guilty of murder and acquitted
d) guilty of assault

6 In the present case if Peter is found to have acted reasonably in defending himself when he killed Mr Jones, then he should be found:

a) guilty of murder
b) not guilty of murder but guilty of manslaughter
c) not guilty of murder and acquitted
d) guilty of assault

7 Provocation is any conduct on the part of the deceased that:

a) could cause an ordinary person to lose his/her self-control
b) could cause the accused to lose his/her self-control
c) could cause you to lose your self-control
d) could cause the victim to lose his/her self-control

8 In a murder trial, for the offence to be a killing under provocation it is necessary that any intention to kill be formed by the accused:

a) at the time of the provocation
b) before the provocation
c) after the provocation
d) as a result of the provocation

9 In the present case, if Peter is found to have acted out of provocation when he killed Mr Jones, then he should be found:

a) guilty of murder
b) not guilty of murder but guilty of manslaughter
c) not guilty of murder and acquitted
d) guilty of assault

10 The law allows the accused to place his/her good character before the jury as a matter which:

a) makes it necessary for the jury to acquit the accused of the charges
b) makes it unlikely that the accused was at the scene of the crime
c) makes it unlikely that the accused committed the crime
d) all of the above

11 In the present case, when deciding Peter's guilt, the weight given to information on his good character depends on:

a) the judge
b) the Crown
c) each jury member
d) the defendant

12 If several people act with a common purpose to commit a crime, then:

a) they are all liable for the acts of each other in carrying out the common purpose
b) they are all liable for unusual consequences that arise from carrying out the common purpose
c) they are not all liable for consequences of an act that goes beyond what was agreed upon in carrying out the common purpose
d) all of the above

13 In the present case, if you were to find that Peter, Paul and Mary acted with a common purpose to rob Mr Jones but that neither Paul nor Mary knew that Peter's gun was loaded, then they are:

a) all guilty of murder and armed robbery
b) all guilty of manslaughter and armed robbery
c) all guilty of armed robbery only
d) all guilty of armed robbery and only Peter also possibly guilty of murder or manslaughter

14 A statement from the dock is not evidence in the same sense as evidence given from the witness box because:

a) it is given under oath
b) it is not subject to cross-examination by the Crown
c) it is not subject to examination by the defence
d) it is not legal

15 In the present case, on the basis of Paul's statement from the dock claiming that he did not know Peter was armed until it was too late, you MUST find Paul:

a) guilty of murder
b) guilty of manslaughter
c) not guilty of all charges
d) none of the above

16 Which of the following must be taken into account when considering the correctness of an indentification:

a) whether the witness was an honest person
b) whether the witness knew the accused
c) whether the witness described the offender soon after the original observation
d) all of the above

17 In the present case, if you find that the girl the policeman saw outside Mr Jones' house merely resembled Mary, then you should find Mary:

a) guilty of murder
b) guilty of manslaughter
c) guilty of armed robbery
d) not guilty on all charges

18 If an accused has an alibi, then

a) it is up to the Crown to prove that he/she was at the scene of the crime
b) it is up to the accused to prove that he/she was not at the scene of the crime
c) it is up to the accused to prove that he/she was with someone else at the time of the crime
d) it is up to a witness to prove that the accused was with him/her at the time of the crime

19 In the present case, if the Crown cannot disprove Mary's alibi beyond a reasonable doubt then you should find Mary:

a) guilty of murder
b) guilty of manslaughter
c) guilty of armed robbery
d) not guilty on all charges

20 Members of the jury have a duty to:

a) return a true verdict as individuals
b) return a true verdict as a group
c) attempt to agree on a verdict
d) all of the above

21 In the present case, if you were the only member of the jury who tended to believe that Peter should be found guilty of murder, then:

a) you should stick by your opinion
b) you should modify your opinion if there is a sounder point of view
c) you should change your opinion so that it agrees with the majority
d) none of the above

VERDICT QUESTIONS

22 Peter has already pleaded guilty to armed robbery. Indicate whether he should also be found guilty of: (tick which crime/s)

____ murder

____ manslaughter

____ assault

____ none of the above

23 Indicate whether Paul should be found guilty of: (tick which crime/s)

____ murder

____ manslaughter

____ assault

____ armed robbery

____ none of the above

24 Mary should be found guilty of: (tick which crime/s)

____ murder

____ manslaughter

____ assault

____ armed robbery

____ none of the above

Measures

The questionnaire was designed to produce scores for a number of different measures. A sum of the number of correct answers to all 21 questions about the instructions produced a measure of overall understanding of the instructions. This measure was then broken into two components: a comprehension score and an applicability score. That is, some questions related specifically to the comprehension of the particular instruction, while other questions measured how well the students could apply particular instructions to the fictitious case presented. The number of comprehension

questions varied depending on the complexity of the instruction. It was assumed that the ability to comprehend and apply the instructions were two important skills for the juror. These comprehension and applicability scores were looked at within each instruction and also were aggregated over all the instructions to provide a general measure of comprehension and applicability.

It was predicted that the CCAE students would be better at comprehending and applying the instructions than the Stirling students. It was also predicted that the subjects in the control group, who did not receive the instructions but were otherwise read the relevant facts of the case, would exhibit less understanding of the instructions than those students who did hear the instructions.

Furthermore, it was hypothesised that some of the instructions would be much more easily understood than others. It was thought that the ability to understand would vary as a function of how complex the legal concept contained in the instruction was and also how well this concept had been explained by the instruction.

To obtain measures of these two attributes, copies of the instructions were given to 20 teachers from Stirling College. Each teacher was asked to rank the instructions from one to nine according to how complex they thought the legal concept was and

also according to how effective the instruction was in explaining that concept. These ratings were then summed and again ranked to provide a grading of each instruction for both concept complexity and instruction's effectiveness. These measures were then compared with the students understanding scores.

The questionnaire also required the students individually to reach a verdict about the guilt of Peter, Paul and Mary. These verdicts were rated and summed to provide an index of severity of individual verdict for each accused and for all three accused combined. This was done by giving a finding of murder a rating of 3, manslaughter 2, armed robbery 1, and not guilty 0.[21] Although these ratings were arbitrary, it was assumed that this provided an index of severity of verdict.

A further severity of verdict measure was obtained for each group from the second experimental task of the group jury discussion. The relationship between the students individual and group verdicts and between the severity of their verdicts and their understanding of the instructions were of interest.

---

21 The assault category was not included in the ratings because none of the accused were actually charged with assault. This category was a red herring, and was included in the questionnaire to determine whether some students were confused as to the parameters of their role as jurors.

CHAPTER III - RESULTS

After the facts of the hypothetical case had been read to the various groups of students, and after the questionnaires had been completed in accordance with the directions described in the previous chapter, the time had come to analyse the data thus far obtained. This was done with the assistance of the computer and, as will be seen, various statistical procedures were used to test the appropriateness of the initial hypotheses. In order to assist readers unfamiliar with statistical techniques footnotes have been provided explaining some of the technical terms used.

Order Effects

It will be recalled that half the subjects completed the questionnaire first while the other half undertook the jury discussion first. A t-test was used to compare understanding and severity of individual verdicts for students in these two groups.[22] There was no difference between those who completed the questionnaire first and those who completed the jury discussion first on measures of either total understanding of the instructions or severity of individual verdicts.

Similarly, it will be noted that half the subjects were presented with a questionnaire having the individual verdict questions first and the other half of the subjects were presented with a questionnaire having the questions testing understanding of the instructions first. A t-test revealed no significant differences between these two groups on measures of either total understanding of the instructions or total severity of individual verdicts.

---

22. The t-test is designed to test whether the means of two separate samples differ significantly from each other given the variation in each of their scores. For the number of subjects tested in this study, the means of the two samples can be said to differ significantly from each other if t is less than -1.96 or greater than +1.96.

Understanding the Instructions

As explained in the measures section, there were three scores produced by the questionnaire related to understanding of the instructions. These measures were: a total understanding score, a comprehension score and an applicability score.

Table 1 presents frequencies for these scores per instruction for both Stirling College and CCAE students. Each score refers to the number of questions that were correctly answered for each instruction. Where, as under some of the comprehension and applicability columns, a dash is given, this indicates that there were no further questions relevant to the particular instruction.

As predicted, the CCAE students performed better on all three indices than the Stirling students. The CCAE students total understanding scores were significantly higher than those of the Stirling students[23] $t(127)=-2.93$, $p<.004$,[24] (CCAE: $\bar{X}=16.00$, Stirling: $\bar{X}=12.73$). Their total comprehension scores were also significantly higher than those of the Stirling students $t(130)=3.53$, $p<.001$, (CCAE: $\bar{X}=10.54$, Stirling: $\bar{X}=7.66$) as were their applicability scores $t(137)=-2.11$, $p<.047$, (CCAE: $\bar{X}=6.29$,

---

23. Although there were only 15 students in the CCAE group, the statistics used to compare the CCAE and Stirling students are robust with respect to small sample size.

24. PROBABILITY OF MAKING A STATISTICAL ERROR (p)

    The 'p' parameter indicates the probability of making a TYPE I error, that is rejecting the null hypothesis (usually that there is no significant difference between the means) when it is true. It is a generally applied rule that for a difference to be accepted as statistically significant, 'p' must be less than.05.

TABLE 1

FREQUENCIES OF INSTRUCTION SCORES

		UNDERSTANDING				COMPREHENSION				APPLICABILITY			
		STIR		CCAE		STIR		CCAE		STIR		CCAE	
INST	SCORE	N	%	N	%	N	%	N	%	N	%	N	%
Onus of Proof	0	31	24.2	0	0.0	46	35.9	0	0.0	59	46.1	2	13.3
	1	42	32.8	2	13.3	79	61.7	15	100.0	69	53.9	13	86.7
	2	52	40.6	13	86.7	-	-	-	-	-	-	-	-
Self Defence	0	6	4.7	0	0.0	7	5.5	0	0.0	91	71.1	10	66.7
	1	26	20.3	3	20.0	33	25.8	4	26.7	37	28.9	4	26.7
	2	49	38.3	5	33.3	58	45.3	5	33.3	-	-	-	-
	3	34	26.6	4	26.7	27	21.1	5	33.3	-	-	-	-
	4	10	7.8	2	13.3	-	-	-	-	-	-	-	-
Provoc-ation	0	6	4.7	0	0.0	15	11.7	1	6.7	42	32.8	2	13.3
	1	28	21.9	1	6.7	53	41.4	2	13.3	86	67.2	13	86.7
	2	51	39.8	4	26.7	58	45.3	11	73.3	-	-	-	-
	3	41	32.0	9	60.0	-	-	-	-	-	-	-	-
Good Character	0	17	13.3	0	0.0	53	41.4	2	13.3	36	28.1	3	20.0
	1	55	43.0	4	26.7	75	58.6	12	80.0	92	71.9	12	80.0
	2	56	43.8	10	66.7	-	-	-	-	-	-	-	-
Common Purpose	0	24	18.8	4	26.7	96	75.0	10	66.7	30	23.4	4	26.7
	1	78	60.9	6	40.0	32	25.0	5	33.3	98	76.6	11	73.3
	2	26	20.3	5	33.3	-	-	-	-	-	-	-	-
Dock Statement	0	28	21.9	0	0.0	59	46.1	0	0.0	50	39.1	7	46.7
	1	52	40.6	7	46.7	66	51.6	15	100.0	77	60.2	8	53.3
	2	44	34.4	8	53.3	-	-	-	-	-	-	-	-
Ident-ification	0	14	10.9	0	0.0	34	26.6	4	26.7	45	35.2	7	46.7
	1	51	39.8	11	73.3	94	73.4	11	73.3	83	64.8	8	53.3
	2	63	49.2	4	26.7	-	-	-	-	-	-	-	-
Alibi	0	22	17.1	0	0.0	43	33.6	1	6.7	39	30.5	3	20.0
	1	38	29.7	4	26.7	84	65.6	14	93.3	89	69.5	12	80.0
	2	67	52.3	11	73.3	-	-	-	-	-	-	-	-
Jury Agreeing	0	33	25.8	0	0.0	65	50.8	4	26.7	49	38.3	1	6.7
	1	47	36.7	5	33.3	63	49.2	11	73.3	77	60.2	14	93.3
	2	46	35.9	10	66.7	-	-	-	-	-	-	-	-

FIGURE 2: FREQUENCY DISTRIBUTION OF UNDERSTANDING SCORES

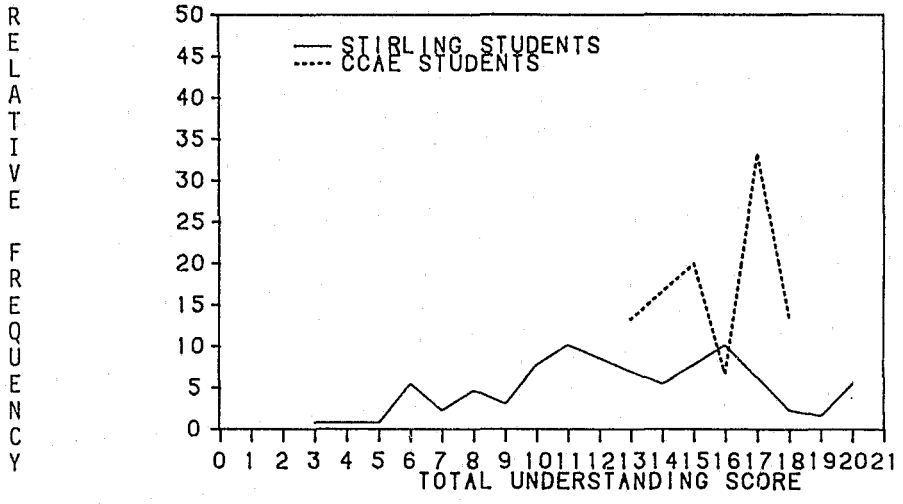


FIGURE 3: FREQUENCY DISTRIBUTION OF COMPREHENSION SCORES

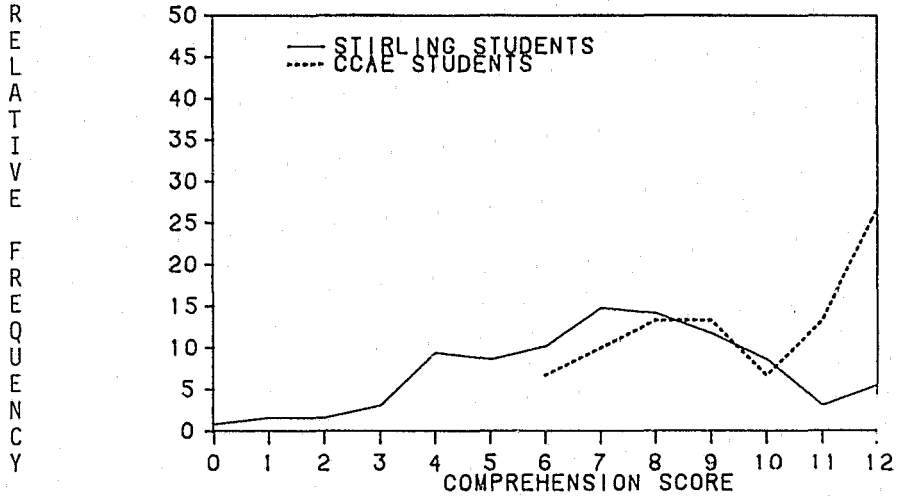
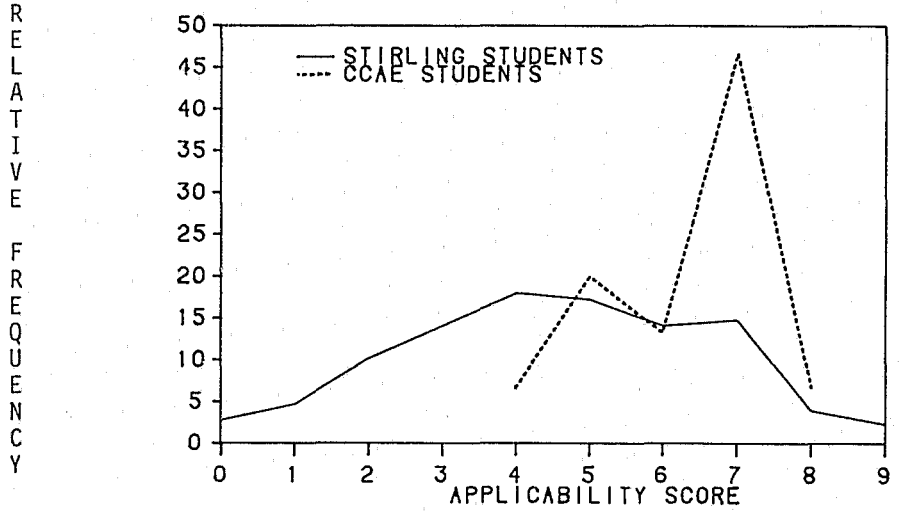


FIGURE 4: FREQUENCY DISTRIBUTION OF APPLICABILITY SCORES



Stirling: $\bar{X}$=5.55). This confirmed the hypothesis that the CCAE students were better at understanding the instructions in the areas of both comprehension and applicability than the Stirling students.

Figures 2, 3 and 4 show the relative frequency distributions of the CCAE and Stirling students total understanding, comprehension and applicability scores. In each case the curve of the Stirling students is more normal in shape and has a wider range than that of the CCAE students, which is positively skewed. This shows that while most of the CCAE students understood the instructions very well, only some of the Stirling students understood them equally well. The majority of Stirling students however, understood the instructions reasonably well although some exhibited very poor understanding.

Relationship between Comprehension and Applicability

T-tests between the comprehension and applicability scores showed that they did not differ significantly from each other in either the CCAE or Stirling samples. Therefore, applying the legal concepts was no more or less difficult than comprehending them. There was a reasonably strong positive correlation of .53 between the two measures suggesting that, as expected, the better the performance on the comprehension questions, the better the students were able to apply the instruction.

Instructions versus No Instruction

The hypothesis that the control group which did not hear the instructions would exhibit less understanding of the instructions than those which did hear the instructions was not supported by

the data. T-tests revealed that the control group did not differ significantly on any of the measures of understanding, comprehension or applicability from those students who received the instructions. This was an unexpected finding and will be discussed in greater details in Chapter IV.

There was a significant difference between these two groups however, on the measure of severity of individual verdict. Those students who did not receive the instructions were significantly less severe in their individual verdicts than those who did receive the instructions $t(141)=-2.66$, $p<.009$, (no instructions: $\bar{X}=4.04$, instructions: $\bar{X}=5.03$). This difference was not evident for the group verdicts.

Severity of Verdict

Five different indicators of severity of verdict were measured; severity of individual verdict for each of the accused, Peter, Paul and Mary, a total score for severity of individual verdict and a group verdict score derived from the group discussion. Mean scores for each of these measures for both Stirling and CCAE are

---

25. PEARSON PRODUCT MOMENT CORRELATION COEFFICIENT
The Pearson product moment correlation coefficient describes the relationship between two continuous variables. It varies between -1 and +1. If the correlation is around 0, then the two variables are not at all related to each other. If the correlation is close to +1, then the two variables are strongly positively related, meaning that a change in one variable is associated with a change in the same direction in the other variable, If the correlation is close to -1, then the two variables are strongly associated with a change in the opposite direction in the other variable. A strong correlation does not show that either variable is causally related to the other, but rather that variation in one variable is associated in some way with variation in the other.

presented in Table 2. T-tests showed that the Stirling and CCAE students did not differ significantly from each other on any of these measures.

TABLE 2

MEAN SCORES FOR SEVERITY OF VERDICT

	PETER	PAUL	MARY	TOTAL	GROUP
Stirling	2.38	1.12	1.32	4.82	5.15
CCAE	2.60	1.20	1.40	5.20	5.00

There was a difference between those who completed the questionnaire after the jury discussion and those who completed it before the jury discussion in terms of the relationship between their individual and group verdicts. The Pearson product moment correlation coefficient[25] between individual and group verdicts for those who undertook the jury discussion before the questionnaire was mildly positive with $r(n=92)=.317, p<.001$. However, for those who initially answered the questionnaire and then undertook the jury discussion there was no relationship between individual and group verdicts ($r(n=51)=-.010, p<.471$). There was also no relationship between verdict severity and understanding of the instructions. The Pearson product moment correlation coefficient between severity of individual verdict and understanding (as measured by total understanding score) was $r(n=129)=-.176, p<.023$ and between group verdict and understanding was $r(n=129)=-.147, p<.048$.

A few students emerged as being rather confused regarding the parameters of their roles as jurors. This was suggested by their endorsement of the assault category as a verdict for one of the accused. Five Stirling students and one CCAE student wanted to find Peter guilty of assault, eight Stirling students and one CCAE students wanted to find Paul guilty of assault and six Stirling students wanted to find Mary guilty of assault.

Differences between Instructions

From Table 1 it is evident that some instructions were much better understood than others. Differences between the instructions in terms of how well they were understood were analysed in a 2 (sample source: Stirling/CCAE) X 9 (type of instruction) analysis of variance[26] with repeated measures across the instructions.

No significant interaction between the sample source and type of instruction emerged, indicating that the relative difficulty levels across the instructions was similar for both CCAE and Stirling students. A significant main effect for sample source was obtained $F(91,127)=7.699, p<.005$ with the CCAE students performing better at understanding across all the instructions than the Stirling students (CCAE: $\bar{X}=6.792$, Stirling: $\bar{X}=5.476$). Most importantly, a significant main effect for type of instruction was obtained $F(8,1016)=9.427, p<.005$ showing that some instructions were better understood than others.

Table 3 presents the mean understanding score for each instruction. The table is organised by presenting the least through to the best understood instruction. It also shows the differences between the means for each pair of instructions.

---

26. ANALYSIS OF VARIANCE (F)
The analysis of variance is a test of the hypothesis that all possible comparisons among the means are equal to zero. It is equivalent to performing separate t-tests for all comparisons among the means, but is more appropriate statistically for making multiple comparisons. If the overall test of significance (using the F ratio) is significant, then there is at least one significant difference between the means. The analysis of variance does not, however, tell you which pair of means differ significantly from each other.

TABLE 3

MEAN SCORES FOR EACH INSTRUCTION AND

DIFFERENCES BETWEEN THESE MEANS

	Common $\bar{X}$=5.14	Self	Agree	State	Onus	Good	Iden	Prov
Self $\bar{X}$=5.40	.256							
Agree $\bar{X}$=5.87	.727	.471						
State $\bar{X}$=5.92	.776	.520	.049					
Onus $\bar{X}$=6.23	1.089	.833	.362	.313				
Good $\bar{X}$=6.76	1.620*	1.364*	.893	.844	.531			
Iden $\bar{X}$=6.86	1.714*	1.458*	.897	.938	.625	.094		
Prov $\bar{X}$=6.91	1.767*	1.511	1.040	.991	.678	.147	.053	
Alibi $\bar{X}$-7.05	1.097*	1.651*	1.180#	1.131#	.818	.287	.193	.140

* $p<.001$ # $p<.005$

Common: Common Purpose
Agree: Jury Agreeing
Onus: Onus of Proof
Good: Good Character
Prov: Provocation

Self: Self Defence
State: Statement from Dock
Alibi: Alibi
Iden: Identification

Tukey's HSD test[27] was applied to each of these differences. This statistic revealed that common purpose and self-defence were significantly less well understood than good character, identification, provocation and alibi. Desirability of a jury agreeing on a verdict and statement from the dock were similarly less well understood than alibi. All the other instructions were equally well understood.

Relationships between Understanding, Complexity and Effectiveness of the Instructions

The teachers' rankings for each of the instructions in terms of their complexity and effectiveness were summed and these sums were again ranked from one to nine. A rank of one indicated the most complex and least effective instruction. Mean understanding scores were similarly used to rank the instructions from one to nine in terms of how well they were understood by the students, with one being the least well understood instruction. Spearman's rank correlation coefficient[28] was used to examine the relationships between understanding, complexity and effectiveness of the instructions. There was a positive relationship between understanding and complexity (r_s=.467). This indicated that the instructions that were less well understood by the students were perceived as less effective by the teachers. There was no relationship between instruction complexity and effectiveness (r_s=.000).

---

27. TUKEY'S HONESTLY SIGNIFICANTLY DIFFERENT TEST (HSD)
Tukey's HSD test is used when the overall test of significance (in this case the analysis of variance) indicates that at least one pair of means differ significantly from each other. It is used to make all possible pairwise comparisons among the means to determine which means differ from each other.

28 SPEARMAN RANK CORRELATION COEFFICIENT (r_s)
The Spearman rank correlation coefficient describes the relationship between two ranked variables. It is interpreted in much the same way as the Pearson Product moment correlation coefficient.

TABLE 4

INSTRUCTION RATINGS FOR COMPLEXITY, EFFECTIVENESS AND UNDERSTANDING

Instruction	Understanding	Complexity	Effectiveness
Common Purpose	1	3	2
Self Defence	2	1	6
Jury Agreeing	3	5	9
Statement from Dock	4	8	5
Onus of Proof	5	4	1
Good Character	6	7	3
Identification	7	6	4
Provocation	8	2	8
Alibi	9	9	7

1 = least well understood — 9 = best understood
1 = least complex — 9 = most complex
1 = least effective — 9 = most effective

CHAPTER IV - CONCLUSION

Summary of Findings

In general, the results of our study support the initial hypotheses. Analysis of the questionnaire quite clearly revealed that some instructions were much better understood than others. The alibi instruction was found to be best understood while the common purpose and self-defence instructions were found to be least well understood. Understanding was shown to vary according to the perceived complexity and effectiveness of the instructions. The least complex instructions were best understood while the most complex instructions were least well understood.

The CCAE students were found to be better at understanding, in terms of both comprehending and applying the instructions, than the Stirling College students. While all the CCAE students understood the instructions moderately to very well, only about half of the Stirling College students understood the instructions equally well. Thus age and educational status seemed to be positively associated with the ability of subjects to understand and apply the instructions.

The two abilities of comprehending and applying the instructions were, as expected, strongly associated. Those students who were able to comprehend the instructions were also able to apply them to specific situations while those students who were unable to comprehend the instructions were also unable to apply them.

An unexpected result was revealed by comparing the understanding of those students who did receive the instructions with those students who did not. Hearing the instructions was not shown to

increase their understanding. The only difference between the students who did and did not receive the instructions was that those who did receive the instructions were more severe in their verdicts than those who did not receive the instructions.

Concluding Remarks

The results of this study must be interpreted with care because the sample of students tested was not representative of people who actually serve on juries. The students, particularly those from Stirling College, were younger and possibly better educated than the majority of jurors. The CCAE students were closer in age to what might be expected of a typical sample of jurors but were probably better educated then the average juror. Certainly the CCAE students had reached a higher level of education than the Stirling College students.

Women were also over-represented in the sample compared with their likely representation on juries. Also, the testing environment was not comparable with conditions in an actual trial. The subjects could not take into account the usual cues from witnesses nor were they subjected to the repetition of arguments that inevitably contribute to the learning and therefore communication process. The following conclusions must therefore be interpreted with these restrictions in mind. Nevertheless, some trends were clearly evident in the data and have implications for the effective communication of instructions.

The most striking and unusual finding of the study was that the students who did not receive the instructions (the control group) scored as well on the questionnaire as the students who did receive the instructions. This result was unexpected and is

difficult to explain. It may be that most people have some common sense or intuitive knowledge of many legal concepts. Certainly it is likely that via the media and other sources of general knowledge most people develop some degree of familiarity or baseline understanding of legal terms and concepts. Understanding may therefore be based on notions preconceived from such sources. Alternatively the legal concepts themselves may be attuned to ordinary notions of fairness and morality, so that the issues as presented in this particular case called for similar kinds of responses whether instructions were given or not. In other words, the law itself may be remarkably well tuned to the moral sentiments of ordinary people.

Other possible explanations relate to the experiment itself. Perhaps the case that was designed for the study was not sufficiently sophisticated to adequately reveal a difference between the experimental and control groups. On the other hand it is possible that the case was too complex and created a problem of channel overload, with the result that the experiemental groups, like the control group, were all responding to the questions intuitively.[29]

The latter interpretation is worrying because it suggests that jury instructions may serve no useful purpose. However an analysis of tape recordings of the deliberations of the various groups of subjects revealed that where instructions were given

---

29. Future research could overcome this problem by limiting quite severely the number of instructions being tested at any one time. (See below)

discussion was more focussed and less likely to drift into irrelevant unhelpful paths. This is a redeeming feature of jury instructions and one which does suggest that they do serve an important function. Meanwhile the whole issue concerning the extent to which jurors operate from preconceived notions is complex and problematic, and cannot be addressed by these data.

No relationship was found between understanding of the instructions and severity of verdict. Students with less understanding of the instructions were no more or less severe in their verdicts than students with better understanding. This result also raises some doubts as to the extent to which students were relying on the instructions when considering their verdicts. From an examination of the tape transcriptions it appeared that, while there was some debate on the criteria encapsulated in the legal instructions, verdicts often seemed to be derived from the facts of the case and personal opinions without adequate regard to the instructions. In other words, while debated and serving to focus the direction of deliberations, the instructions appeared to be relegated to a position of secondary importance. One cannot determine of course, the extent to which the instructions were taken into account at an unarticulated or unconscious level. However it appeared that whether or not the instructions were well understood, they were not of much relevance to the students when deliberating upon a verdict.[30]

---

30. This result may indicate that it is necessary for the courts to take some action to make people attend to the instructions rather than rely on preconceived notions. This could possibly be achieved by providing juries with written copies of the instructions, a course now followed in complex cases only.

Whether the greater age and life experience of the CCAE students offset any limitations resulting from less education in the Stirling College students is an issue that may also be relevant to the question of comprehension. Our data could not address that particular question in sufficient depth, although prima facie there seemed to be a relationship between level of understanding and level of education. Certainly it would be informative to test the instructions on a group of less educated people who are typically represented on juries in order to determine whether their understanding is at an acceptable level. Findings in this regard may have important ramifications for jury selection, but again this issue was not explored in the present study.

Common purpose and self-defence emerged as instructions that were least well understood. These two instructions contain very complex legal concepts that have important implications for the outcome of a case. From the transcriptions of the tapes of the group jury discussions, it was obvious that these instructions caused considerable trouble and were the subject of much debate and disagreement. The students could not remember what the instructions actually said and were therefore unsure of how to relate them to the case. It appeared that written copies of these instructions would have removed such ambiguity because, even in this limited experimental situation, the students had a lot of information to absorb and apply. In an actual trial the information load is much greater but is presented over a longer period of time and reinforced by repetition. However, particularly for complex instructions, the practice of providing

written copies and repeating the instruction several times to ensure that they are attended to and correctly remembered would be beneficial. This would undoubtedly facilitate the jurors ability to remember, comprehend and apply the instructions.

In summary, the nine instructions tested in this study appeared to be reasonably well understood by the majority of students. One important reservation may be that less educated people may have less adequate understanding, a consideration that emphasises the importance of using simple language whenever possible. Furthermore, although not tested, it is believed that the task of effectively communicating complex instructions would be facilitated by the provision of written copies of instructions to jurors and by techniques of verbal repetition. Certainly the development and use of standard instructions appears to be one way of approaching the problem and further work in this area is recommended.

CHAPTER V - AGENDA FOR FUTURE RESEARCH

Agenda for Future Research

If there is one lesson to be learned from the preceding study it is that there is a need for further research. In the first place it would seem desirable to provide for a more structured approach to the development of standard jury instructions by employing a gradual process of empirical testing.

This would involve taking instructions initially developed by judges and subjecting them to an analysis of the language used. If more common words or less complicated phrases or forms of expression can be found, then these should be substituted. The judges themselves would be involved in this process to ensure that despite amendments to the language the legal concepts are retained. Instructions would be subject to testing in order to determine whether one form of words is more suitable, ie more easily understandable, than another. In short standard jury instructions would be empirically developed on a 'trial and error' basis.

In order to avoid criticism relating to the age or educational status of subjects, it would be highly desirable that groups tested should more realistically correspond to typical jurors. This could be achieved by ensuring that subjects are randomly selected from those who would normally be accepted for jury service.

One of the possible weaknesses of the present study was that the hypothetical problem was too complex, and that there was an attempt to evaluate too many issues at the one time. Future

research should be less ambitious, testing should relate to a case that relies less on memory (recall), and fewer instructions should be presented to the 'jury' at any one time.

A further study might test for memory alone, in order to determine how much information can reasonably be retained without the need for supplementary information.

A study that gauges the difference between oral instructions and oral instructions supported by written instructions should also be undertaken.

Finally, once a set of standard jury instructions have been developed and tested in this way it may then be possible to try out the instructions in some actual cases. This would involve eliciting the cooperation of one or two judges and also obtaining permission to question jurors immediately after they have entered their verdict and have been discharged from further service.

Unless research of the kind referred to above is undertaken it will be increasingly difficult to refute arguments directed at eliminating juries altogether from the criminal justice system. What is required is some reassurance that the jury system does work and can work efficiently and well. If improvements can be made to the system then they should be made. Identifying where the weaknesses are and recommending how these may be overcome must surely be the primary object of research in this area. Such research has been sorely neglected in Australia and unless confidence in the jury system is restored, it is likely to give way to other less democratic systems of decision-making.