The impact of psychological expert testimony in child sexual abuse cases
The impact of psychological expert testimony in child sexual abuse cases

by

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ABSTRACT

While the admissibility of psychological expert testimony varies from one common law country to another, evidentiary analyses dealing with the impact of such testimony are invariably opinion-based and lack empirical support. Predictions from theoretical models of communication/persuasion processes suggest that psychological expert testimony in child sexual abuse cases may be given considerable weight by jurors, but the experimental literature investigating the impact of such testimony is scant.

This thesis reports four experiments designed to investigate the juridical impact of psychological expert testimony in a simulated child sexual abuse case, using gender-balanced juries throughout. In the first study, presence or absence of a psychologist's generalised testimony concerning children's cognitive abilities was varied across three ages of child victim/witness. Subjects viewing the expert testimony rated the child higher on memory ability, resistance to suggestion and reality monitoring ability and gave higher ratings of defendant guilt.

In the second experiment, the same expert testimony was presented by male and female experts in either an adversarial or nonadversarial role. Significant interaction effects indicated that, for the male expert only, ratings of the dependent variables were significantly lower in the adversarial role.

The third experiment investigated whether expert testimony presented before and after the child's testimony is differentially utilized. Ratings of the child-based variables and verdict ratings did not differ as a function of the sequence of testimony, but regardless of temporal order, presence of expert testimony led to significantly higher child-based ratings than the absence of such testimony.
In the fourth experiment, the differential impact of three types of expert testimony were studied; testimony concerning children's general cognitive abilities, testimony concerning characteristic behavioural reactions to sexual abuse, and testimony assessing the validity of the child's statement. The quality of the child's statement was varied, using content-based criteria. Subjects viewing the cognitive abilities testimony rated the child higher on memory, resistance to suggestion and reality monitoring, but there were no significant differences on verdicts by type of testimony. Those who viewed the child's enhanced statement gave higher ratings of defendant guilt on the aggravated sexual assault charge. Results indicated greater acceptance but less scrutiny of nonadversarial expert testimony.

In all four studies, the prime predictor of child credibility and verdict ratings were the jurors' perceptions of whether the child had misinterpreted the defendant's actions. Juror gender effects were also consistent in all studies, with females more likely to rate the child's credibility higher and to find the defendant guilty.

In general, results indicated that psychological expert testimony which details research findings concerning children's cognitive abilities seems less likely to change verdicts than to increase the degree of certainty felt by those voting guilty, and may therefore serve to improve the juridical decision-making process. The impact of psychological expert testimony appears to vary with expert role when the psychologist is male. Changing the order in which testimony is presented appears to have no significant impact on verdicts or jurors' perceptions of the child witness. The implications of the thesis findings for psychological theory and legal practice are discussed.
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Chapter 1

Introduction
Chapter 1

Introduction

As sexually abusive acts perpetrated against children generally occur in secret, the testimony of the alleged victim in a criminal case involving child sexual abuse may be the focus of the prosecution's case. Such cases are regarded by many prosecutors (Peters, 1991) and acknowledged by courts (Pennsylvania v. Ritchie, 1987), as the most difficult in which to secure convictions. Retractions and delayed disclosures are common (Sorensen & Snow, 1991) but jurors who lack this knowledge may interpret these as indicia of fabrication (Morison & Greene, 1992). There is frequently no corroborative physical evidence and the triers of fact may have appropriate concerns about the memory and credibility of a child witness, who also lacks the verbal, cognitive and self-presentational skills of an adult defendant. If the alleged perpetrator is a relative or once trusted adult, the child may be particularly anxious, ambivalent, or reluctant to testify.

Although much has been done recently to minimize the trauma associated with the child's courtroom appearance, it is still the case that the child's evidence must be given, and viewed by judge and jurors, whether that evidence be received by way of closed circuit television or videotaped deposition or by live court appearance. In Israel, a "youth examiner" having decided that a child should not give evidence, may then give evidence as a surrogate for the child based on pre-trial investigations and interviews (David, 1990; Harnon, 1990; Reifen, 1958). In the Anglo-American common law system, such surrogate testimony is not permitted, but both sides in a criminal case are allowed to lead expert testimony, under conditions which vary from one country to another, and internally, from one state or province to another. Analyses of the admissibility of expert testimony in child sexual abuse cases in American jurisdictions (Askowitz, 1992; Lorenzen, 1988; McCord, 1986; Myers et al., 1989; Sagatun, 1991; Serrato, 1988) vary in terms of their typologies of
expert testimony but agree that certain forms of testimony, such as vouching for the complainant’s credibility is, almost without exception, inadmissible and likely to remain so, yet other forms of expert testimony such as that which seeks to explicate delayed disclosure or recantations, have been generally admitted in American courts but not by jurisdictions adopting extreme positions (Askowitz, 1992).

Chapter 2 reviews and compares the general scope and admissibility of psychological expert testimony in major Anglo-American common law countries with adversarial legal systems, and in some European countries with inquisitorial systems of law. In Chapter 3, psychological expert testimony in child sexual abuse cases is discussed from a number of perspectives, including the concerns raised in the psycho-legal literature about such testimony, and the relative lack of empirical investigations. A form of psychological expert testimony, consistent with Monahan and Walker's (1988) conception of social frameworks for evaluating the facts of a particular case, is the provision of generalised testimony concerning children’s cognitive competence, focussing on the extensive research concerning children’s abilities as witnesses. This form of testimony has been recommended (Mason, 1991; Myers et al., 1989; Perry & Wrightsman, 1991) but has not been the subject of any published empirical investigations. Chapter 3 details the rationale and research basis for such expert testimony.

Chapter 4 reviews empirical studies of jurors' reactions to child witnesses and theoretical models and hypotheses concerning jurors' responses to child and expert witnesses. Social psychological theories which pertain to the likely interplay of child and expert evidence are reviewed. Convergence from social psychological theories of communication and persuasion lead to the formulation of a number of hypotheses which are tested by the experiments reported in this thesis. In Chapter 5, the introductory material is summarised and an overview of the thesis studies is presented, together with discussion of a number of methodological issues which
were considered during the planning of the experimental program. The four studies which comprise that program are reported in Chapters 6, 7, 8 and 9.

General results and conclusions pertaining to the impact of the psychologist's expert testimony and the expert's role are discussed in Chapter 10, and results and conclusions concerning areas other than expert testimony are presented in Chapter 11. Discussion on the implications of the some of the major thesis findings is presented in Chapter 12.
Chapter 2

Evidentiary analyses of the scope and admissibility of expert testimony with particular reference to psychological expert testimony in child sexual abuse cases:

A cross-national perspective
Chapter 2: Evidentiary analyses of the scope and admissibility of psychological expert testimony in child sexual abuse cases: A cross-national perspective

Given that the findings of the experimental studies in this psychological thesis may have implications for legal practice in varying parts of the world, it is important to look cross-nationally at the scope and admissibility of expert evidence generally.

2.1 In the United States of America

The predominant criteria for admissibility of expert testimony in criminal cases in the United States are provided specifically by Federal Rules of Evidence, 702 to 705 inclusive, adopted in 1975, and to a lesser extent by Rules 401 to 403. By 1993, thirty three states of America had adopted Federal Evidence Rules 702 and 704 either as is or with minor alterations, and a further three States regarded these rules as authoritative, but not binding. The main objective of the Federal Rules of Evidence is to maximise the amount of relevant and useful evidence which comes before the trier of fact, and Rules 702-705 were specifically designed to achieve greater admissibility of expert testimony (Berger, 1989).

Rule 702, entitled “Testimony by experts”, provides that expert testimony may be admitted when “scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue”, and the testimony may be given as “an opinion or otherwise” by “a witness qualified as an expert by knowledge, skill, experience, training, or education.” This rule has largely supplanted previous common law prohibitions which rendered inadmissible any expert testimony which was considered to be dealing with matters within the jury’s “common knowledge”. The impact of Federal Rule 702 is that experts may
now testify on issues which were purportedly "lay" issues, but about which research has indicated potential triers of fact display considerable lack of knowledge or understanding, such as battered women's reactions (Dodge & Greene, 1991; Greene, Raitz, & Lindblad, 1989) or the unreliability of eyewitness identification (Kassin & Barndollar, 1993; Loftus, 1993), or aspects of child sexual abuse such as the frequency of delayed disclosure and recantation (Morison & Greene, 1992).

Based on psychological studies investigating the fundamental attribution error (Miller, Ashton, & Mishal, 1990; Ross, 1977), obedience to authority (Blass, 1991; Milgram, 1974), group polarization (Isenberg, 1986), cognitive dissonance (Festinger & Carlsmith, 1959; Wicklund & Brehm, 1976), and bystander apathy (Latane & Darley, 1970; Latane & Naida, 1981), the results of which have revealed aspects of human behaviour which are clearly counter-intuitive, it has been demonstrated (Colman and Mackay, 1992; Mackay & Colman, 1991) how the ordinary person, being unaware of such findings, may fail to understand essential issues, even though they are deemed by the judiciary to be within the ambit of "common knowledge and experience". Tanford (1990) maintains that the United States Supreme Court continues "to approve legal rules based upon intuitive assumptions about human behaviour that research by psychologists has shown to be erroneous" (p. 158).

The provision of Rule 702 that the testimony "will assist" jurors is more expansive than the Frye test for the admissibility of novel scientific evidence. That test, the outcome of a 1923 (Frye vs United States) decision prohibiting polygraph evidence, required that general acceptance in the relevant scientific community be the hallmark for admissibility, even though it was unclear how courts were to determine what constituted general scientific acceptance (Myers et al., 1989). With some notable exceptions (Askowitz, 1992), the new rules of evidence have largely displaced the Frye test in many jurisdictions but it is uncertain whether that
was the intention of the Federal Rules Advisory committee, as they neither mentioned nor repudiated the Frye test (Mosteller, 1989; Saltzburg & Redden, 1986). The United States Supreme Court recently supplanted the Frye test with the more encompassing relevance analysis rule (Daubert v. Merrell Dow Pharmaceuticals, Inc., 1993), involving a thorough analysis of the reliability of the scientific principles supporting the expert testimony (Black, Francisco, & Saffran-Brinks, 1994).

U.S. Federal Rule of Evidence 703 allows an expert to go beyond the common law restriction which required opinions to be based solely on facts personally known to the expert or evidential facts disclosed during the trial process. Under Rule 703, an expert may now rely on data from reports which are not themselves admitted into evidence.

U.S. Federal Rule 704a provides a departure from the common law tradition, which prevented witnesses giving an opinion on what were regarded as "ultimate issue" questions. Such opinions were considered to be tantamount to a usurpation of the jury's role, and an encroachment on that area of law which was exclusively within the ambit of the trier of fact. Rule 704a states explicitly that "testimony in the form of an opinion or inference, otherwise admissible, is not objectionable because it embraces an ultimate issue to be decided by the trier of fact", a change which research indicated was deemed desirable by judges, lawyers and juries (Melton, Petrila, Poythress, & Slobogin, 1987; Melton, Weithorn, & Slobogin, 1985; Poythress, 1982) for a number of reasons, including:

1) that scientific or clinical terms with specific meanings are also found in legal tests and to avoid using such terms experts may have to resort to paraphrases confusing to jurors (Slobogin, 1989), or to use alternative terminology to avoid the appearance of reaching a legal conclusion (Mosteller, 1989)

2) that it is often difficult to ascertain which facts are "ultimate" or
"penultimate" or neither (Jackson, 1984; Slobogin, 1989).

3) that when an expert stops short of expressing a conclusion in order to avoid speaking to the "ultimate issue", the trier of fact may conclude that there is something to hide and therefore may depreciate the testimony given (Slobogin, 1989).

4) that "usurping the fact-finding function of the jury" is a "mere bit of empty rhetoric" (Wigmore, 1979) and a "logical absurdity" (Olicker, 1988), since, unless jurors are specifically directed by the judge to accept the expert's evidence, which would be tantamount to a directed verdict (Serrato, 1988), they are unfettered in their ability to draw their own conclusions (Jackson, 1984) and to disregard expert evidence (State (Oregon) v. Middleton, 1983). Myers et al. (1989) argue that even an expert's opinion that a child has been sexually abused is an opinion of ultimate fact, not an opinion concerning the ultimate legal issue. It is not an opinion as to whether the defendant should be found guilty (Myers, 1993), as jurors must assess the weight to be given to the expert's opinion and make their own decisions on the ultimate legal issues.

Rule of Evidence 705 states that an expert can "testify in terms of opinion or inference and give reasons therefore without prior disclosure of the underlying facts or data". Under common law, an expert could render an opinion only after the supporting facts and reasoning had been disclosed.

Notwithstanding the effects of U.S. Evidence Rules 702-705, an expert's testimony may yet be prohibited by invoking the more general Evidence Rule 403, "Exclusion of Relevant Evidence on grounds of prejudice, confusion or waste of time", which states; "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence".
McCord (1987) suggests that Rules 702 and 403 are interlocked in that "if the countervailing dangers outweigh the probative value, the evidence will not be of assistance to the trier of fact" (p. 91, footnote 342). Berger (1989) suggests that in some jurisdictions the judgement of unfair prejudice has been predicated on the belief that certain forms of testimony, such as expert testimony on eyewitness identification, have an aura of reliability, which may unduly impress jurors. McCord (1987) maintains that, generally, psychological evidence, being probabilistic in nature, is not likely to "overwhelm juries with its apparent infallibility", and Vidmar and Schuller (1989), after reviewing actual cases and empirical studies of the impact of social framework testimony conclude that "jurors do not suspend their own judgement in deference to the expert" (p. 173).

The current orientation in most U.S. states is toward admitting expert evidence, unless there are fairly strong countervailing arguments or factors (Weinstein & Berger, 1992). This liberalisation has been met with concern by those who cite instances of experts testifying beyond their experience and competence, or misstating and exaggerating their qualifications (Moenssens, 1993), making claims on the basis of ill-founded or speculative theories (Gianelli, 1993), and betraying accepted standards of practice in assessment (Campbell, 1992). The backlash is apparent also in some jurisdictions where the Frye test has been re-introduced as the criterion for admissibility of expert testimony in civil cases (Gianelli, 1993). The U.S. Civil Rules Committee (1991) proposed that Rule 702 be amended to allow information which is "reasonably reliable" and which will "substantially assist" the trier of fact.

Much has been written concerning the scope of psychological expert testimony in child sexual abuse cases and the implications of the U.S. Rules of Evidence and the Frye test for the admissibility of such evidence in child sexual abuse cases (Askowitz, 1992; Cacciola, 1986; Carter, 1989; Donner-Froelich, 1985; Gothard,
1987; Hall, 1989; Levy, 1989; Lorenzen, 1988; McCord, 1986, 1987; Myers et al., 1989; Perry & Wrightsman, 1991; Roe, 1985; Sagatun, 1991; Selkin & Schouten, 1987; Serrato, 1988). These authors vary in the nature and number of expert testimony types which they describe, but in general terms, it appears that expert evidence about the child in the case, or about children in general, may be classified as addressing either:

1) typical symptoms or behaviours observed in sexually abused children, with or without reference to the particular child in the case, or

2) elements of the "child sexual abuse accommodation syndrome" (Summit, 1983) to explain "unusual" behaviour such as delays in disclosure, with or without reference to the particular child, or

3) opinion as to a child's credibility or the credibility of children generally, or


McCord (1986), supported by Schultz (1980) and Hall (1989), contends that there are no common characteristics or typical symptoms displayed by child victims of sexual abuse, but Myers et al. (1989) suggest that there is broad agreement amongst mental health experts on the indicia of abuse. Nevertheless, the degree of variability, even asymptomatology, is such as to allow contradictory testimony across cases. In her analysis of 122 appellate court decisions in which expert testimony on the characteristics of sexually abused children was challenged, Mason (1991) found, amongst other contradictions, that fourteen experts proffered inappropriate knowledge of sex and sexual pre-occupation as indicia, whereas six others cited naivety and aversion to sexual matters as marks of abuse. In summarising the judicial response from the appellate courts to expert testimony, Mason noted that:

1) there was an overall trend in favour of admission,

2) there were rarely questions about the testimony's acceptance by the
appropriate scientific community,
3) testimony offered on rebuttal as rehabilitation testimony was more likely to be admitted than affirmative (substantive) evidence,
4) most judicial reference was made to those Federal Rules of Evidence concerned with assistance to the trier of fact or undue prejudice.

2.2 In the United Kingdom

The use of expert witnesses in English criminal cases is severely constrained by the "ultimate issue" and "common knowledge" rules. In England (Cross, 1985), and in Scotland (Wilkinson, 1986), the ultimate issue rule prohibits any expert evidence which directly addresses those matters which it is for the court to determine. For civil cases in England, the rule was abolished by the Civil Evidence Act (1968, s.3) but remains in force for criminal cases. Spencer and Flin (1990) maintain that, in Britain, "courts tend to distrust expert evidence in general and the evidence of psychologists and psychiatrists in particular" (p. 212). They suggest this distrust is related to the "deeply corrupting effect" of the adversarial system which ensures "that much of the expert evidence the court receives is unreliable through bias" (p. 213). Gee (1987) points out that, in England, other than by prohibiting admission, "the court has no say in deciding what expert evidence it will hear. This choice rests wholly in the hands of the opposing counsel" (p. 312). As a contrast, Gee cites the situation in Norway which has an adversarial legal system but in which any expert-witness is independent and responsible only to the court.

The "common knowledge" principle can be dated to the case of Folkes v. Chadd (1782), during which Lord Mansfield opined that expert evidence could be admitted only when it provided information beyond the common knowledge and experience of the jury. Almost two hundred years later, Lord Justice Lawton clearly indicated that little had changed in the British legal system with regard to the acceptance of expert evidence; "If on the proven facts a judge or jury can form their own conclusions
without help, then the opinion of an expert is unnecessary... Jurors do not need a psychiatrist to tell them how ordinary folk who are not suffering from any mental illness are likely to react to the stresses and strains of life” (R. v. Turner, QB 834, p. 841), and he reiterated the widespread judicial concern that expert testimony may unduly impress jurors.

This semi-sacrosanct view of jurors' “common knowledge” may be related to a particular conceptual model of the role and function of the jury. In England, and in other countries with the British common law tradition, the significance of the jury is frequently viewed by the judiciary as a kind of “mini-parliament” (Neal, 1980), the embodiment of popular democratic participation in the criminal justice system, and as a force which acts to demystify the law by intruding into the formalised interactional patterns adopted by the legal protagonists, the “closed shop” of legal experts (Bankowski, 1988). In this model, the traditional reluctance of judges to “overpower” lay viewpoints with even more expertise, albeit of a non-legal kind, is, perhaps, more readily understood.

2.3 In Europe

In France, Germany and Sweden, the potential for bias in the presentation of expert evidence is minimised as the expert gives his/her evidence as a “neutral servant of the court” (Spencer & Flin, 1990, p. 200) within the framework of an inquisitorial system of law.

2.3.1 France

Bardet-Giraudon (1990) has given an account of the expert’s place in the French legal system. In criminal cases, if required, experts are called by a judicial officer, the juge d’instruction, who is responsible for the preliminary enquiry and subsequent written report which goes to the court. Experts who are listed for court service perform their duties for relatively meagre remuneration, as assignment to
the list carries its own professional prestige. Moreover, an expert's failure to perform to the best of his/her abilities is considered a criminal offence (Clapham, 1981). If the expert's report is not acceptable to all parties involved in the case one or more other experts may be called in to produce a collaborative report. In cases where a child witness under 16 is involved, such as sexual abuse cases, the child gives unsworn evidence to the juge d'instruction and is usually not required to appear in court.

2.3.2 Germany

Experts appointed by the court are used extensively in the German legal system. Undeutsch (1982) cites the Code of Criminal Procedure, which imposes on the courts a duty to seek the truth, and which obligates the court to call for expert testimony "when the court does not possess the necessary knowledge and experience required for evaluating certain evidence" (p. 33). In contrast to the exclusionary implications of the British "common knowledge" rule, the German Supreme Court has ruled that "failure to call an expert witness is justifiable only if ... it can be taken for granted that the triers of fact actually do possess the knowledge needed to determine intelligently and to the best possible degree the particular issue" (Undeutsch, 1982, p. 33).

In contrast, also, to the "ultimate issue" prohibitions in the British legal system, the German Supreme Court since 1954 has held that "an expert psychiatrist or psychologist must be called upon to testify on the subject of the truthfulness of the witness's account, particularly in sex cases, if the conviction hinges primarily or exclusively on the testimony of a witness under the age of majority or if the witness's testimony is not substantially corroborated by other testimony" (Undeutsch, 1982, p. 37). In Germany any child under 16 gives unsworn evidence in court as all evidence must come before the court first-hand (Frehsee, 1990), but invariably, a psychologist is appointed to interview the child.
and assess the credibility of the child's statement, based on

1) analysis of the individual characteristics of the child witness
2) analysis of the possible motives for the witness to make a false accusation
3) analysis of the content of the statement itself

(Kohnken, 1990; Steller & Kohnken, 1989).

Statement analysis has been based on the use of "reality criteria" which purportedly "reflect specific features that differentiate truthful from invented testimonies" (Steller & Kohnken, 1989, p. 218). Court appointed experts whose task is to assess the credibility of a witness's statement are also used extensively in Sweden (Trankell, 1972, 1982).

2.4 In Australasia

Only those qualifying as experts can render opinion evidence in Australian State jurisdictions and the prerequisites for acceptance as an expert are that:

1) the subject matter of the witness's evidence is a proper area for expert evidence, and
2) the witness is skilled in that area (Waight & Williams, 1985, p. 581).

An expert may base an opinion upon other authors' published works which contain facts or data to support his/her opinion (R. v. Abadom, 1983), and may also render evidence to educate the court in matters which are deemed to be beyond the court's expertise (Cross, 1986).

Although abolition of the common knowledge rule has been recommended (Australian Law Reform Commission, 1987) the current restrictions on expert evidence in Australia remain similar to those existing under British common law. Criticising the rationale of the common knowledge test, the Australian Law Reform Commission (1987) document stated; "It is within areas classified by the court as
'common knowledge' that many experts are employed in undertaking research that could be very helpful to the courts. Notable among these are the work done by psychologists in conducting research in perception, memory, narration and in demonstrating the fallibilities of eyewitness identification and the giving of confessions. A refusal by the courts to utilise the fruits of such research means that they base their decisions on knowledge that is incomplete and out of date" (Australian Law Reform Commission, 1987, para. 354). In Australia, a psychologist's expert testimony on factors affecting eyewitness unreliability has been ruled inadmissible (R. v. Smith, 1987), and Warner (1987) has noted the limited extent to which an expert can assist the court in sexual assault cases, even to the rejection of "general information about research and learning on matters such as the reliability of children as witnesses or the behaviour of sexually abused children after abuse" (p. 50). Oakes (1994) has proposed that if Australian courts adopt similar criteria to those enunciated in the recent U.S. Supreme Court ruling in Daubert v. Merrell Dow Pharmaceuticals, Inc. (1993) the admissibility of certain forms of psychological expert testimony in Australian courts may be further restricted.

In New Zealand, legislation (Law Reform Miscellaneous Provisions Bill, 1989) now provides for an expert witness to give evidence on the intellectual attainment, mental capability and emotional maturity of a complainant under the age of 14 years; the general developmental level of children the same age as the complainant; and whether evidence given of the complainant's behaviour is consistent or inconsistent with the behaviour of sexually abused children of the same age group as the complainant (Warner, 1990).
Chapter 3

Psychological expert testimony
in child sexual abuse cases
Chapter 3

Psychological expert testimony
In child sexual abuse cases

3.1 Psycho-legal treatment of the impact of psychological expert testimony

The psycho-legal literature on psychological expert witnesses has largely focused on expert testimony concerning the unreliability of eyewitness identification (Berliner, 1988; Blonstein & Geiselman, 1990; Cutler, Penrod, & Dexter, 1989; Deffenbacher, 1984, 1988; Egeth, 1993; Elliott, 1993; Fox & Walters, 1986; Goodman & Loftus, 1988; Hatvany & Strack, 1980; Hosch, Beck, & McIntyre, 1980; Kassin & Barndollar, 1992; Kassin, Ellsworth, & Smith, 1989; Konecni & Ebbesen, 1986; Lempert, 1986; Loftus, 1980, 1986, 1993; Loftus & Monahan, 1980; Maass, Brigham, & West, 1985; Pachella, 1988; Wells, 1986; Wells, Lindsay, & Tousignant, 1980; Wells & Turtle, 1987; Wooucher, 1977, 1986; Yarmey, 1986; Yuille, 1980), and many of the general issues concerned with the justification, admissibility and impact of any form of psychological expert testimony have been discussed in the context of testimony concerning eyewitness reliability.

These issues include proposals that there is no need for such testimony as the jurors already have that knowledge (Egeth & McCloskey, 1984; McCloskey & Egeth, 1983), but cannot articulate it (Pachella, 1986, 1988), that there is not a sufficiently reliable body of psychological knowledge (Egeth & McCloskey, 1984; Elliott, 1993), that psychology is not an exact science (Pachella, 1986), that psychologist experts are prone to premature assumptions about the external validity of research (Yuille, 1989), that expert testimony sometimes misleads the court, resulting in incorrect decisions (Smith, 1989) that the status and influence of the expert may cause jurors to give his/her testimony undue weight (Smith,
that psychologists are prone to unavoidable partisanship (Elliott, 1993; Grisso, 1992; Willging, 1986), that the adversarial system favours the choice of experts with extreme views, rather than views that are representative of the scientific community (Saks & Van Duizend, 1983), that experts are well paid putting the party with greater resources at an advantage (Kalven & Zeisel, 1966; Saks & Wissler, 1984; Smith, 1989), that the expert may be pressured to overstate conclusions, bend or distort facts, or give an incomplete story (Wasyliw, Cavanaugh, & Rogers, 1985), that a "Pandora's box" of time-consuming battles of experts will bring courts to a standstill (Woocher, 1986), that psychologist experts will be unable to present testimony straightforwardly because of the hostile nature of cross examination (Gibbs, Sigal, Adams, & Grossman, 1989) and that the scientific method and adversarial legal system are incompatibly different conceptual systems (Goodwin Jones, 1986; Newman, 1991). The contrast between law and psychology has been encapsulated in Repucci and Crosby's (1993) description of the purposes of psychological research as "descriptive, proactive and academic", and the purposes of law as "prescriptive, reactive, and pragmatic" (p. 7).

Additionally, when psychological expert testimony in child sexual abuse cases is discussed the corpus of specific issues includes concerns that the mental health professional is prone to focussing on the child's feelings rather than objective reality (Faust & Ziskin, 1988), that the mental health professional's tendency to empathize with the child may diminish objectivity (Faust & Ziskin, 1988; People v. Beckley, 1990), and that a large proportion of those called to give expert testimony are also involved in therapy with the child (Mason, 1991).

Given that this list of concerns in no way exhausts the issues raised, it is understandable that many who have established a reputation in their field of psychology are nonetheless reluctant to serve as expert witnesses (Botter, 1982; Saks & Van Duizend, 1983), especially when they are aware that one or two
presumptuous questions in cross examination may, by innuendo alone, seriously diminish the impact of any expert's testimony (Kassin, Williams, & Saunders, 1990).

Nevertheless, the use of psychological expert testimony has increased considerably in areas such as child sexual abuse cases, but empirical studies of the juridical effects of such testimony have not kept pace. This gap between law and psychology is of some concern, given that decisions regarding admissibility often rest on the presumed helpfulness and possible prejudicial impact of expert testimony, which are essentially empirical questions.

The impact of psychological expert testimony in rape cases (Brekke & Borgida, 1988), and in sexual abuse cases with complainants aged 13 and 17 (Gabora, Spanos, & Joab, 1993) has been studied empirically, but to date there has only been one published empirical investigation (Crowley, O'Callaghan, & Ball, 1994) of the juridical impact of psychological expert testimony in child sexual abuse cases with the most common age group of victim/witnesses, complainants aged 12 or under.

Many legal scholars have examined the legal and scientific status of expert testimony in child sexual abuse cases. Serrato (1988) identified seven different types of actual or potential expert testimony in child sexual abuse prosecutions, and graded each type of testimony along a spectrum (Figure 3.1) according to its impact on the ultimate issue. However, the basis for Serrato's gradings was "a compilation and review of numerous court opinions" (p. 164). In other words, hers was an informed, but nonetheless, a priori, notion of differential impact and it lacked an empirical basis. For testimony such as the inadmissible "expert testimony on the abuser's identity" which Serrato deems to have the highest impact on the ultimate issue, she has no evidence even from juridical experience on which to base a claim about its potential impact.
A notable omission from Serrato's spectrum is expert testimony which informs the court about the general developmental characteristics of children. Such testimony is discussed by Myers et al. (1989) in their comprehensive review and analysis of expert testimony in child sexual abuse litigation. Having noted the research findings that many adults tend to regard children as less credible witnesses than adults (Goodman, Bottoms, Herscovici, & Shaver, 1989; Leippe & Romanczyk, 1987), Myers et al. suggest that if the defence counsel seeks to capitalise on these common beliefs, it is appropriate to present expert rebuttal testimony appraising the court of the counter-research. Jurors who regard children in general as less credible may discount or devalue the testimony of a child witness. This process may occur whether the defence counsel seeks to capitalise on such beliefs or not.

3.2 Rationale for generalised expert testimony on children's cognitive abilities

Peters (1991) maintains that jurors tend to disregard the child's word, if the case rests largely on the conflicting accounts of the child and another adult. Sex crimes against children, he notes, have been seen by many prosecutors as the most difficult cases in which to secure convictions. The lower conviction rates in these
cases (Cashmore, 1994) may be not only because such crimes are generally unwitnessed and thus rely on the child's uncorroborated evidence (Thomson, 1991), but also because that evidence may be depreciated by the trier of fact. Jurors may hear a child whose communicative competence is compromised by counsel's use of age-inappropriate, syntactically complex or ambiguous language, especially during cross-examination (Brennan & Brennan, 1988; Cashmore, in press; Walker, 1993).

If adults generally regard children as less credible witnesses than adults (Yarmey & Jones, 1983), then triers of fact may hold a priori misconceptions which may be detrimental to their assessment of the complainant's credibility and thereby prejudicial to case outcomes. Tetreault (1989) and Frazier and Borgida (1988, 1992) have argued for generalised educational expert testimony in rape cases, testimony that would contain information that might counteract common misconceptions about rape. Similarly, some have argued for the provision of educational expert testimony in child sexual abuse cases (Myers et al., 1989; Perry & Wrightsman, 1991), testimony that might counteract common misconceptions about children's competence and cognitive abilities.

After reviewing 122 appellate court decisions in which expert testimony concerning child sexual abuse characteristics was challenged, Mason (1991) suggested an alternative expert testimony which focussed on the research concerning children's abilities as witnesses. Such use of expert testimony accords with Monahan and Walker's (1988) conception of social frameworks for evaluating the facts of a particular case, that is, research findings which are not in themselves either legislative or adjudicative facts, but which may be used by the trier of fact as a frame of reference for decisions on factual issues germane to case outcomes. Such expert testimony would appear to come within the ambit of U.S. Federal Rules of Evidence 702, 703, 704, 705 which allow that such testimony may be led, provided
it is considered such as to assist the trier of fact, as specified under Rule 702, and is also admissible under U.S. Federal Rules of Evidence 401, 402, 403 which indicate that any relevant evidence which will assist the trier of fact to understand the evidence or determine a fact in issue may be admitted as long as its probative value outweighs its prejudicial impact. Some U.S. courts, however, have excluded social framework evidence (e.g. rape trauma syndrome) as not relevant precisely because it derives from general studies of groups and does not concern the particular individual in the case (Mosteller, 1989).

McCord (1987), noting that prosecutors have made “very little use of expert testimony in child sexual abuse cases to explain the capabilities of child witnesses” (p. 64), then applies his four-factor balancing test (McCord, 1986) and gives such testimony high ratings on necessity, understandability and importance, with less surety on reliability because of what he terms the “embryonic nature” of the research. McCord, a professor of law, does not clarify the sense in which he uses the word “reliability”, and it is possible that he may be referring to either:

1) the reliability which findings attain with increasing numbers of experimental studies, by virtue of their robustness across varying conditions and stimulus settings (Loftus & Ceci, 1991), or

2) ecological validity, that is, the extent to which research findings can be generalised from a research context to real life situations (Yuille & Wells, 1991).

As both senses are pertinent, it is important (Yuille & Wells, 1991) that the psychologist should point out to the court not just the research findings but also any problems, limitations or methodological issues which limit the generalizability of findings. In preparing the expert testimony for this series of experiments, limitations on generalizability were noted.
In the U.K., Justice Clapham (1981) suggests that the results of psychological research have been little used largely because the legal profession is not aware of the extent to which such advice is available or useful to them.

3.3 Empirical studies of the impact of generalised psychological expert testimony

The impact of four forms of generalised psychological expert testimony has been investigated; unreliability of eyewitness identification, (Wells, Lindsay, & Tousignant, 1980), the battered woman syndrome (Schuller, 1992), rape myths (Brekke & Borgida, 1988), and common symptoms and reactions to sexual abuse (Gabora et al., 1993).

Wells et al. (1980) found that those student-jurors who saw generalised testimony on unreliability factors in eyewitness identification were less likely to display overbelief in eyewitnesses and less likely to rely on eyewitness's confidence. The rationale given by Wells et al. for using a generalised testimony was their hope of developing a "standard form of expert advice that could be routinely delivered to triers of fact" (p. 284), a prospect unlikely in child sexual abuse cases given the rapidly expanding research on children's abilities and consequent changes in the nature of the expert advice a psychologist could give.

Schuller (1992) used student jurors reading a fifty page homicide trial transcript to study the impact of general and specific expert evidence on the battered woman syndrome. The general testimony dealt with social science research on battered women, to which in the specific testimony was added the psychologist's opinion that the woman displayed the emotional and behavioural characteristics of one suffering from that syndrome. While jurors exposed to the specific testimony as against the general testimony were more likely to believe that the killing was unintentional, the defendant was telling the truth and her life was in danger, there
was evidence that the general testimony was effective in addressing certain misconceptions. Relative to the no-expert condition, subjects who heard the general testimony were more likely to believe that the woman was trapped in the relationship, and unable to leave. In a second study, using audiotaped versions of the same stimulus trial, Schuller analysed the content of jurors' deliberations and found evidence that jurors deliberating in groups appeared to utilize the general testimony to a greater extent than individual jurors had done. In both the general and specific expert evidence conditions, jury members spent more time raising interpretations that supported the defendant's version of what occurred, relative to jurors who heard no expert evidence.

Using an audiotaped re-enactment of a rape trial and student jurors, Brekke and Borgida (1988) compared generalised expert testimony to dispel misconceptions about rape with expert testimony which gave the same information plus an explicit attempt to link it with the particular case by way of a series of hypothetical questions. Relative to those who heard the generalised testimony, subjects who heard the specific testimony were significantly more likely to vote for conviction. Similar results were found by Gabora et al. (1993) using students as mock jurors viewing a videotaped simulation of a sexual abuse case with victim ages 13 and 17. However, the specific testimony used by Gabora et al. was much more comprehensive than the generalised testimony, including, as it did, all the research findings mentioned in the general testimony plus test results and interview testimony and, more importantly, the psychologist's explicit opinion that the defendant had abused his daughter. In the Gabora et al. study, the finding of interest was that the specific and the general expert testimony were equally effective in overcoming misconceptions.

3.4 Role of the psychologist expert in a child sexual abuse case

Some maintain that, in common law countries, the kernel of the problem with regard to child witnesses is the nature of the adversarial system itself, described by
Haward (1982), as "primitive in conception" (p. 59), and by Yuille (1989) as "inappropriate for dealing with intrafamilial child sexual abuse" (p. 191)

Nevertheless, in countries with an adversarial legal system, there has been an outpouring of reforms and recommendations for change on matters such as competency and corroboration requirements for children, or admission of hearsay testimony, or the use of videotaped depositions or closed circuit television for the reception of children's evidence, in the U.S. (Bulkley, 1989; Perry & McAuliff, 1993; Whitcomb, 1990, 1992), in the U.K (Spencer 1990, 1992; Spencer & Flin, 1993), in Canada (Wilson, 1990) and in Australasia (Warner, 1990), even though in some of these countries more change has been desired by advocates of reform than achieved (Spencer, 1992). Recent studies have focussed on the extent to which implemented reforms have achieved their objectives (e.g., Cashmore, 1992; Cashmore & Cahill, 1990; Davies & Noon, 1992).

While a number of Evidence Acts passing through the legislatures in various countries have facilitated the admission of expert evidence in child sexual abuse cases, a fundamental conflict arises, in practice, between a psychologist's desire to maintain the ethically appropriate position of "impartial educator" (Camper & Loftus, 1985; Loftus, 1986b) and the exigencies of the adversarial system (Hall, 1989). Yuille and Wells' (1991) admirable exhortation to psychologists to refuse to offer testimonial services if lawyers cannot accept them in the impartial educator role is pre-empted by the nature of the opposing counsels' briefs, which are to present only information which supports their case, a position encapsulated by defence lawyer, Percy Foreman's view that "my clients want freedom, not justice" (Smith, 1966).

There is also the concern voiced by some (Faust & Ziskin, 1988) about the ability of psychologists to keep the rights and welfare of a child in balance with the
rights of the accused to due process, and there is empirical evidence (Otto, 1989) to support the view that some psychologists may experience role conflicts and become biased adversaries when called to give expert testimony in court, with conscious or unconscious bias (Haward, 1981). Levy (1989) has also described some child sexual abuse experts as "fiercely committed to the role of children's advocate, devoted to preferring child protection to any other value" (p. 396). Any indications of partisan stances tend to impair the perception of objectivity and professional credibility expected from a psychological expert witness, even when the psychologist feels hindered by the adversarial nature of courtroom proceedings (Spencer, 1987). The psychologist, delivering expert testimony in such a system, may strive to retain objectivity but may yet appear to be taking a partisan stance (Borgida, Gresham, Swim, Bull, & Gray, 1989).

In concluding their comprehensive evidentiary analysis of expert evidence in child sexual abuse cases, Myers et al. (1989) recommended a "new concept", which might tend to circumvent the pressures to partisanship. The authors suggested that the court should appoint experts on child development to assist the court in understanding the developmental and psychological needs of particular child witnesses.

The role of court-appointed experts has been discussed in positive terms by a large number of authors prominent in the psycho-legal field in the U.S. (Bulkley, 1989; Burk, 1993; Deffenbacher, 1984; Egeth & McClosky, 1984; Fienberg, 1989; Fox & Walters, 1986; Freckleton, 1987; Hall, 1989; Loftus, 1986b; McCord, 1986; Mason, 1991; Myers et al., 1989; Perry & Wrightsman, 1991; Smith, 1989; Wells, 1986) in the U.K. (Clapham, 1981; Gee, 1987; Sheldon & MacLeod, 1991; Spencer, 1987; Spencer & Flin, 1990) and in Australasia (Oakes, 1994; Robertson, 1989; Warner, 1987; Williams, 1994), and increasingly there have been calls for courts within the Anglo-American legal system to use court-
appointed experts, who are not restricted in their capacity to report comprehensively and accurately. As early as 1934, Wigmore, the doyen of scholars on evidence, maintained that all experts should be court-appointed (Wigmore, 1934). In the U.S., Federal Rule of Evidence 706 empowers a judge to appoint an expert witness, and there are indications that the court-appointed expert role is viewed positively by judges (Saks & Van Duizend, 1983) and by legal practitioners, both prosecution and defence, and the general public (Lindsay, McDonald, & McGarry, 1990). In the U.K., Spencer (1987) writes that this “is not such a revolutionary change as it sounds, because the judge in a criminal case already has a power, rarely exercised these days, to call a witness who has not been called by either of the parties, but it would require a significant change in the law if the parties were to be forbidden to call their own experts when an expert witness was appointed by the court” (p. 250). Goodwin Jones (1986) has noted that court-appointed experts or “assessors” were once regularly used in the U.K. legal system, but after increasing concern that appeals seemed to be going “not from judge to judge but from assessor to assessor” (p. 14), new rules of evidence were introduced to limit expert influence and relegate scientists to the role of “gamekeepers”, rather than “poachers” of the law, ensuring that the primary role of the lawyer was maintained and that the expert remained “on tap, but not on top”. The U.K. Royal Commission on Criminal Procedure (1993) addressed the issue of court appointed experts but eventually rejected them in favour of widening the admissibility of expert evidence towards a less adversarial orientation, which would allow the expert the opportunity to elaborate upon issues raised in examination and cross-examination.

Other concerns expressed about a court-appointed expert have been the potential over-reliance jurors are likely to place on a court-appointed expert’s testimony, reducing trial by jury to an “empty illusion” (Levy, 1961), or the diminished vigour with which court-appointed experts, receiving relatively meagre
In cases involving child witnesses, Haugaard (1988) has argued for a screening process in which a court-appointed examiner would interview a potential child witness before the trial. Citing the research studies which show that jurors are often sceptical of children’s testimony and give it less weight than that of adults (Goodman, Golding, & Haith, 1984), Haugaard suggests that a court-appointed examiner might supply information to the jury in testifying about the assessment procedure, the competency of the child as a witness, and relevant psychological research indicating the cognitive abilities of children in general. He suggests that such testimony may increase the value of the child’s testimony. The difficulty with Haugaard’s suggestion, as he himself notes, is that courts have been reluctant to allow testimony by an expert that directly relates to the determination of credibility, a function assigned to the jury. However, the courts have had fewer objections if the expert testifies in general terms about the abilities of specific groups, rather than of the individual child in the case.

In the only published empirical study of court-appointed experts in a trial involving a charge of a sexual nature (Brekke, Enko, Clavet, & Seelau, 1991), a videotaped re-enactment of an acquaintance rape case was used with expert evidence concerning rape trauma syndrome. Brekke et al. compared the impact of adversarial and nonadversarial (court-appointed) expert testimony and concluded that while jurors seemed to be less responsive to the content of the court-appointed expert’s testimony, there were indications it was weighed more heavily than the adversarial expert testimony on pre-deliberation verdicts and on ratings of the likelihood that rape had occurred.

3.5 Summary

While numerous concerns have been expressed about the use of psychological expert testimony in criminal trials including child sexual abuse cases, the use of
such testimony has expanded and appears unlikely to diminish. By contrast, there is a dearth of empirical studies investigating the impact of psychological expert testimony, and legal commentators addressing the issue of impact are largely reliant on a priori opinions. Authors prominent in the legal and psychological fields have recommended the use of a generalised educational expert testimony, focusing on children's cognitive abilities, in child sexual abuse cases. Empirical studies of the impact of generalised expert testimony indicate that such testimony can be as effective as more specific forms in overcoming misconceptions.

Psycho-legal scholars have also suggested that, as the adversarial system does not facilitate the adoption or maintenance of an impartial educator position, courts should consider appointing their own expert witnesses. The only published study on the impact of testimony given by a court-appointed expert in a case involving a sexual crime found that such testimony appeared to weigh more heavily than adversarially-presented testimony on jurors' decisions regarding the ultimate issue.

The next chapter reviews the findings on studies which have investigated jurors' responses to child witnesses, and then looks at predictions from theoretical models concerning jurors' perceptions of and responses to child witnesses and expert witnesses, and the likely interplay of child and expert evidence in the same trial.
Chapter 4

Jurors' reactions to child witnesses
and expert witnesses
Chapter 4

Jurors’ reactions to child witnesses
and expert witnesses

4.1 Empirical studies of jurors’ reactions to child witnesses

Some research indicates that many adults have an *a priori* conception of children as less credible witnesses than adults, in that children are believed to have less reliable memories (Cole & Loftus, 1987; King & Yuille, 1987), to be more susceptible to suggestion (Goodman & Reed, 1988), to be less internally consistent (Myers & Perry, 1987), and to be less able to distinguish fact from fantasy (Goodman, Golding, & Haith, 1984). The findings suggest that adults may have different processing and evaluation procedures for statements made by children and adults.

Brigham and Spier (1992) point out that perceptions of the child witness in the criminal justice system may be just as important at the investigative stage, in determining whether charges are filed and the case prosecuted, as they are at trial. It has been noted that, traditionally, children’s evidence has been viewed with suspicion by leading protagonists in the legal system (Davies, 1993). The British judiciary’s customary attitude to children’s evidence is a matter of concern for Hanson (1993) who, after citing a passage from Lord Cross’s judgement in *D.P.P. v. Boardman* (1975), draws the implication that “even the corroborative evidence of two young boys will be suspect, let alone the evidence of a single young boy” (p. 57). However, those most sceptical of the truthfulness and reliability of child witnesses appear to be defence lawyers (Brigham & Spier, 1992; Brigham & Wolfskiel, 1983; Leippe, Brigham, Cousins, & Romanczyk, 1989). Such scepticism may be entirely consonant and even an advantage (Leippe et al., 1989) for a role in which there are treatises giving instructions on how best to capitalise on any indications of misinformation, frailty or suggestibility in a child (Bailey & Rothblatt, 1980).
Cashmore (1992) found that, in contrast to other professionals in the legal arena, defence lawyers rated the more anxious children as the more effective witnesses, even though research indicates that high levels of anxiety impair the effectiveness of children's testimony (Flin, Bull, Boon, & Knox, 1992; Goodman et al., 1992).

At trial, the critical factor is not so much whether children are able to give accurate and reliable testimony, but whether they are perceived by the trier of fact to be doing so. Two studies (Goodman, Bottoms, Herscovici, & Shaver, 1989; Wells, Turtle, & Luus, 1989) have indicated that there may be a distinct lack of calibration. Ideally, the child's testimony should be accurate, and should be perceived as accurate. In both studies, jurors tended to believe witnesses perceived as confident, and confident witnesses were given higher accuracy ratings.

Generally, studies using mock jurors have found that young children were rated as less credible witnesses than adults. Goodman, Golding, Helgeson, Haith, and Michelli (1987) conducted a series of experiments using different modalities (videotape & written transcripts), juror groups (student & community), and cases (murder & vehicular fatality). 6-year-olds were consistently rated as less credible than ten- or thirty-year-old witnesses. Similar results were reported in two experiments by Leippe and Romanczyk (1987), who also found that testimonial inconsistency adversely affected perceptions of the 6-year-old witness but not the credibility of a 10- or 30-year-old witness. This apparently greater salience of contextual factors in jurors' perceptions of children was supported by Nigro, Buckley, Hill, and Nelson (1989), who varied powerfulness of speech style for an 8-year-old and 25-year-old eyewitness to a vehicular fatality. Jurors rated the 8-year-old with the powerful speech style as the more credible witness.

A witness's perceived degree of potential complicity in the crime may also affect jurors' judgements of credibility. Ross, Miller, and Moran (1987) found that an
8-year-old witness in a drug trafficking case was rated as more accurate, competent, consistent and truthful than a 21-year-old witness, who, the authors speculated, may have been believed to be somehow involved in the drug deal.

Similarly, in a case involving an allegation of forced oral sex, Goodman et al. (1989) found that a 6-year-old was judged to be a more credible victim/witness than a 22-year-old. The authors suggested that the young child's presumed honesty and lack of the requisite cognitive abilities to fabricate a sexual allegation may have enhanced her credibility. An equally plausible interpretation, though not advanced by Goodman et al., is that the 22-year-old female was perceived as having a greater degree of blame or complicity. Data from the Goodman et al. study indicate that the prime reason for the age effect on verdicts was the very low proportion of male jurors (18%) who voted the defendant guilty with the 22-year-old victim. A large number of studies from the literature on rape suggest that, compared with women, men identify more with defendants (Borgida & Brekke, 1985), have less empathy for rape victims (Deitz, Blackwell, Daley, & Bentley, 1982), attribute greater responsibility to the victim (Calhoun, Selby, & Warring, 1976; Luginbuhl & Mullin, 1981) and are significantly less likely to find a defendant guilty (Deitz & Byrnes, 1981; Kassin, Reddy, & Tulloch, 1990; Lyons & Regina, 1986; McNamara, Vattano, & Viney, 1993; Spanos, Dubreuil, & Gwynn, 1992; Weir & Wrightsman, 1990).

There is some evidence that an attribution of, at least, partial responsibility and blame may extend beyond adults down to 13-year-old sexual assault victims (Duggan et al., 1989; Nightingale, 1993) who are legally defined as minors and for whom responsibility and consent are not salient legal issues.

In studies which have used mock jurors, a consistent finding is that the perception of the child's credibility varies not only with the age of the child witness
but also as a function of type of case. Goodman et al. (1987), Goodman and Michelli (1981), and Leippe and Romanczyk (1987) all found that 6-year-olds were rated as significantly less credible witnesses than adults, whereas Nigro, Buckley, Hill and Nelson (1989) found that mock jurors rated a 6-year-old eyewitness as more accurate, intelligent, forceful, competent, consistent and truthful than a 21-year-old. In a simulated sex abuse case, Goodman et al. (1989) found a 6-year-old was judged as significantly more credible than a 22-year-old, although these authors did caution that concerns about children's suggestibility may be given more weight in actual cases than in laboratory studies. Anecdotal reports from jurors in the McMartin case and a Maryland child sexual abuse case (Perry & Wrightsman, 1991) suggest that caution in generalizing from laboratory simulations may be justified.

4.2 Theoretical models

4.2.1 Hypotheses and models formulated specifically to explain aspects of jurors' perceptions of child witnesses.

The Importance displacement hypothesis

A number of authors have postulated hypotheses about jurors' responses to child witnesses. In a series of experiments Goodman and others (Goodman, Golding, & Haith, 1984; Goodman, Golding, Helgeson, Haith & Michelli, 1987; Goodman & Michelli, 1981) consistently found that mock jurors rated 6-year-olds as less credible witnesses than adults and formulated the "importance displacement hypothesis", expressing jurors' tendency to give more weight to the testimony of other witnesses when the key witness is a child.

Ross et al. (1989) have suggested that there are two conditions under which the testimony of a child is evaluated more positively than that of an adult: "(1) when the child's testimony violates, in a positive manner, the juror's expectation about
children's eyewitness abilities, and (2), when witness credibility depends more on honesty than cognitive ability" (p. 42). In child sexual assault cases, the second condition may apply generally to child witnesses, and the first condition may apply if idiosyncratic aspects of the particular child victim/witness such as confidence, demeanour, and consistency are appraised positively. Thus the "importance displacement hypothesis" may not be relevant to child sexual assault cases. If it were relevant, a somewhat paradoxical outcome might result. For example, if more weight were given to the testimony of other witnesses in such cases, then a prosecution expert's testimony which is supportive of the child's case might be given more weight and presumably more scrutiny. However, as discussed below, an expert is most likely to disconfirm any expectations of bias when he/she leads evidence which is not supportive of the child, and which may be elaborated by the juror. Under these circumstances, the quid pro quo for enhancing expert credibility is to lead evidence which may detract from the credibility of the child.

Leippe and Romanczyk's communication/persuasion model

Leippe and Romanczyk's (1987) communication/persuasion model of jurors' reactions to child witnesses incorporates jurors' stereotyping about children's trustworthiness and memory "expertise" as an essential element in the processing that leads to judgments of the child's credibility. On the basis of their research, Leippe and Romanczyk (1987, 1989) propose that jurors' stereotypical attitudes toward children comprise a "perceptual filter" mechanism mediating the processing of idiosyncratic aspects associated with the "quality of testimony", and the interpretation of critical details. Their model highlights the centrality of jurors' implicit theories about children's general levels of cognitive competence, and the implications of discrepancies between jurors' pre-trial beliefs and research findings about children's cognitive abilities.
4.2.2 Pertinent models and theories from social psychological literature to elucidate the likely interplay of child and expert evidence

Petty and Cacioppo's (1986a) elaboration likelihood model posits that the amount and nature of issue relevant elaboration in which people are willing or able to engage to evaluate a message vary with individual and situational factors. For example, with high motivation and ability they are more likely to draw inferences about the merits of arguments for a particular recommendation. When a juror engages in issue relevant elaboration, it is hypothesised that it will typically result in any new message being integrated into the underlying belief structure (schema) for the attitude object (child witness). As Petty and Cacioppo (1986b) indicate, theories of attitude change can be placed on a continuum according to their assumptions about the degree of elaboration in which people typically engage.

Some theories such as Information Integration theory (Anderson, 1981) and the theory of reasoned action (Ajzen & Fishbein, 1980) assume that people usually engage in careful and systematic processing of a message, whereas other theories associate attitude change more closely with positive or negative affective cues, and others emphasise the use of persuasion rules or inferences. An example of the last is the heuristic model of persuasion (Chaiken, 1980, 1987; Eagly & Chaiken, 1984), which proposes that under certain circumstances, such as those in which there is no reason to doubt the communicator's expertise or trustworthiness, people evaluate messages by employing relatively simple decision rules, such as "statements by experts can be trusted". However, beliefs concerning source characteristics may be more salient when the individual believes that the expert may be advocating a particular position, requiring selective presentation of information. In these circumstances, attribution analysis (Wood & Eagly, 1981) may be used to predict the process of opinion change.
According to attribution analysis, a juror, exposed to the testimony of an expert witness in an adversarial role, may use information about the expert and his/her role to form a pre-message expectancy concerning the position the expert will advocate. Therefore, if jurors believe that, in an adversarial legal system, opposing counsels seek only to lead evidence which is favourable to their case, they may have certain pre-message expectancies about the testimony presented by an adversarial expert. Some jurors may believe that expert witnesses have certain attributes which facilitate their expression of differing testimony depending upon which side has hired them, and others may believe that expert witnesses are, in general, well-intentioned but, nonetheless, respond to the demand characteristics of the adversarial system by presenting biased testimony.

Attribution theory proposes that jurors' conclusions about whether their expectancies have been confirmed or disconfirmed are critical. If the expert disconfirms the expectancy of bias, the message is more likely to be attributed to factual evidence and the likelihood of attitude change is increased. If the juror has an expectancy of bias which is confirmed in the presentation of testimony, the outcome is more likely to be the perception that the communicator is not to be trusted and the message is less persuasive.

Predictions from attribution analysis are parallel to Kelley's (1972) discounting and augmentation principles, that is, that messages confirming negative expectancies tend to be discounted and those which disconfirm such expectancies tend to have increased persuasiveness. An adversarial expert may intentionally employ techniques designed to disconfirm possible expectancies of bias, and this is inherent in Brodsky's (1977) advice to mental health professionals called as expert witnesses; "Always be honest .. honesty, including evidence against the position of your side, is an impressive part of credibility" (p. 272).
Inferences from the foregoing theoretical considerations lead to a diversity of predicted outcomes, dependent upon each juror’s pre-message expectations about children and experts. If, for example, a juror holds certain negative stereotypes about children and also believes that adversarial experts are not likely to be impartial, then any one of the four outcomes in Figure 4.1 is possible.

<table>
<thead>
<tr>
<th>(Juror has pre-trial negative stereotype about children)</th>
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<tr>
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<tr>
<td><strong>Idiosyncratic aspects</strong> of child’s testimony</td>
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<tr>
<td>confirm the negative stereotype</td>
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<td><strong>Assimilation effect</strong></td>
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<td>juror tends to discount child’s testimony</td>
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<tr>
<td>(Juror has pre-trial expectation that adversarial experts give biased testimony)</td>
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<tr>
<td>Adversarial expert is seen as biased</td>
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<td>expert confirms expectations of bias</td>
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<td>v</td>
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<tr>
<td>Child’s testimony is discounted even more</td>
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Figure 4.1 Four possible interactional outcomes of child and expert evidence on jurors with pre-trial negative cognitions concerning children and experts.
An important consideration is that jurors' assessments of the credibility of child witnesses and expert witnesses are likely to be predicated on different components. Ross, Miller, and Moran (1987) found that subjects' general ratings of the credibility of an 8-year-old and a 74-year-old eyewitness did not differ, but the factors predictive of credibility did. Wigmore (cited in Saks & Hastie, 1978, pp. 165-166) proposed five components of witness credibility: witness accuracy, objectivity, character and demeanour, consistency of testimony, and corroboration. In judging the credibility of child witnesses, accuracy may be a particularly salient factor (Ross et al., 1987), whereas objectivity is more likely to be pertinent to subjects' perceptions of an expert's credibility.

4.2.3 Legal admonitions vs. legal reality: the juror as fact-finder or fact interpreter

It has been suggested (Lempert, 1993; Sealy, 1989) that juries engage more in fact interpreting than fact finding. Sealy cites the London School of Economics (LSE) jury studies to show that the facts of the case were fairly well established but they did not "speak for themselves" as far as indicating a verdict. Legal rules of procedure attempt to lock jurors into a legal "consensual universe" (Farr & Moscovici, 1981) with its own language, rituals and rules, and judges who deliver admonitions to jurors to act merely as fact-finders, but such instructions may be less than successful if jurors insist on fact interpretation, the mode of elaboration to which they are accustomed in their own consensual universe.

Sealy (1989) reviewed a number of major jury studies to reach the conclusion that interpretation dominates over fact establishment, and noted that jurors indulge in a high degree of elaboration beyond the facts to rationalize particular interpretations. For example in the LSE studies, Sealy observes that much of the
deliberation was spent discussing minor inconsistencies and other themes in the rape victim's evidence which might tend to justify acquitting the defendant. The elaboration by some jurors of relatively minor inconsistencies suggests that there may also be a process of selective perception and/or biased assimilation (Lord, Ross, & Lepper, 1979) of certain parts of particular witnesses' testimony.

Pennington and Hastie (1981, 1986, 1988, 1992, 1993) and Lempert (1993) maintain that jurors construct a narrative organization or "story", after the facts, which constitutes an interpretation of what the evidence is about. After reviewing traditional models of juror decision making, including the Information Integration model (Kaplan & Schersching, 1981), Bayesian models (Marshall & Wise, 1975; Schum, 1977; Schum & Martin, 1993), Poisson process stochastic models (Kerr, 1978, 1993; Thomas & Hogue, 1976), and sequential weighting models (Walker, Thibault, & Andreoli, 1972), Pennington and Hastie (1981) note that these models all assume that the juror engages in some form of linear, sequential processing. From their own research, Pennington and Hastie conclude that juror decisions do not show a continuous updating pattern and that there is a multiplicity of non-linear interdependencies among evidence items. They also maintain that the process of interpreting event sequences continues past the point at which all the evidence has been heard. If the juror's interpretation or "story" is crucial in decision making then important elements of that story construction process may be the juror's interpretations of how the witnesses themselves interpret events, especially in cases where there is relatively little disputation about the "facts".

In the sexual assault case used in this thesis, there is considerable agreement between plaintiff and defendant about basic facts leading up to the incident, but there is also considerable scope for jurors to construct different interpretations of the evidence depending upon the degree to which they believe the child may have misinterpreted the father's actions, or the extent to which they believe post-event
suggestions may have led the child to retrospectively misinterpret the incident. The juror's on-going process of interpretation throughout the trial may be accompanied by a tendency to selectively attend to both the child's and the expert's evidence.

In the scenario used in this thesis, particular aspects of the psychological expert testimony may be salient for particular interpretations of the evidence. If the juror engages in constructing an interpretation based on the belief that the child has exaggerated inadvertent touching of the genitals (which the father admits he may have done while rubbing the child's legs) into genital manipulation and/or penetration, then the psychologist's evidence on children's reality monitoring may be considered especially pertinent and may be closely scrutinized by the juror for evidence which supports his/her interpretation. Alternatively, a juror who is inclined towards believing that the child's mother may have imparted post-event suggestions involving fabrication or exaggeration of the incident may selectively attend to the expert's evidence on children's susceptibility to suggestion.

**4.2.4 Predictions from social psychology concerning the relative impact of adversarial and nonadversarial expert testimony.**

Petty and Cacioppo's (1986b) persuasion theory proposes that trustworthiness and expertise are the major components of perceived credibility. While there is no apparent reason why adversarial and nonadversarial experts should differ on perceived expertise, the adversarial expert, appearing as an advocate for one side in the case, may be perceived by jurors as less trustworthy than an expert in a nonadversarial role. If a nonadversarial expert is seen as more trustworthy and impartial then there may be greater message acceptance. However, Chaiken's (1987) heuristic model of persuasion predicts that jurors may be more likely to adopt a heuristic or "rule of thumb" mode of processing with an expert whom they consider less likely to be biased, and their motivation to carefully process
nonadversarial expert testimony may be lower. Therefore, nonadversarial expert testimony may be more readily accepted but less carefully scrutinized.

Petty and Cacioppo's (1986a) elaboration likelihood model predicts diminished motivation to process systematically when perceived communicator expertise is high, but if perceived expertise is unrelated to expert role, there may be no differences, on this model, between processing modes for adversarial and nonadversarial testimony. Petty and Cacioppo's model, however, also suggests that other characteristics of the communicator may pre-dispose jurors to hold positive or negative expectations about a message. If a juror's schema for "adversarial expert" is associated with derogatory cognitions about "hired guns" or "saxophones", then the juror may be more inclined towards finding faults or deficiencies in that expert's evidence than would be the case with a nonadversarial expert. Inferences from persuasion theories lead towards the hypothesis that communications from a nonadversarial source may be more readily accepted and have a more significant impact, but may also be accepted with less scrutiny.

4.3 Summary

Convergence from the theories of communication and persuasion discussed in this chapter leads to the following hypotheses relevant to the first three experiments of this thesis:

1. Expert testimony on children's cognitive abilities from a nonadversarial source is likely to be accepted as coming from an impartial educator and have significant impact on jurors' evaluations of a child witness.

2. The same expert testimony from an adversarial source may be less well accepted and be less influential in jurors' evaluations of a child and in subsequent decision making.
3. Jurors are prone to fact interpretation rather than fact finding. Therefore, their interpretations of the degree to which the child may have misinterpreted the alleged sexually abusive incident will be a particularly salient factor in their decision making.

4. Jurors' interpretations of evidence tend to be non-linear and on-going, even after all the evidence is heard. Therefore, the impact of variations in the temporal order in which evidence is presented will not be significant.
Chapter 5

Summary of introductory material:

Overview of experimental studies in this thesis:

Methodological issues and rationales
Chapter 5
Summary of Introductory material:
Overview of experimental studies in this thesis:
Methodological issues and rationales

5.1 Summary of Chapters 2-4

1. Evidentiary analyses of psychological expert testimony suggest that currently in common law countries, such testimony is more likely to be admitted if it is considered to be
   1) of assistance to the trier of fact
   2) relevant
   3) not unduly prejudicial
   4) of such a nature as to address matters which are beyond the common knowledge of jurors
   5) of such a nature as to avoid the expression of a direct opinion on any ultimate legal issues in the case.

2. Reviews of court decisions indicate that expert testimony which deals in generalizations about characteristic attributes, behaviours or abilities of a particular group of which the plaintiff (or defendant) is or may be a member may be more acceptable to the courts than specific testimony.

3. There is some evidence from studies of jurors' perceptions of child witnesses that jurors may hold certain misconceptions about children's cognitive/testimonial abilities. A number of authors prominent in the psycho-legal field have argued for a type of expert testimony which may address this problem without being unduly prejudicial to the defendant in a child sexual abuse case. Such testimony would detail research findings on the general capabilities of child witnesses, not the credibility or characteristics of a particular child.
4. There is a dearth of empirical studies on the impact of psychological expert testimony in child sexual abuse cases, and published statements about the impact of such testimony are invariably speculative.

5. Predictions from social psychological theories indicate that psychological expert testimony may be influential in jurors' pre-deliberation decision-making and that nonadversarial expert testimony may be more readily accepted than the same body of testimony presented in adversarial mode.

6. In this thesis, four studies are reported which were designed to investigate the juridical impact, in child sexual abuse cases, of psychological expert testimony concerning children's general cognitive abilities. In all the studies use is made, either alone or as a role variation, of the court-appointed (nonadversarial) expert mode of presentation, recommended by prominent authors in the psycho-legal area.

5.2 Overview of experimental studies in this thesis

In Experiment 1, presence or absence of expert testimony, age of the child victim/witness (6, 9 or 12 years), and gender of the child were manipulated in a 2x3x2 factorial design. In order to minimise possible confounding role effects, the expert testimony was presented by a court-appointed witness so that the focus of the investigation might remain on the impact of the content of the testimony. It was hypothesised that subjects exposed to the expert testimony would assess the child more favourably on those child-based credibility variables that were addressed by the expert, with a possible age gradient, that is, a greater effect with the 6 year old children and less with the 12 year old children. It was further hypothesised that more favourable judgements of the child's credibility would be a mediating factor in outcome decisions, specifically higher ratings of defendant guilt.
Without an expert in the adversarial role, no conclusions could be drawn about the relative impact of the jurors' perceptions of impartiality and assistance. Therefore, in Experiment 2, the same stimulus materials and body of expert testimony were used in an expert role manipulation. The design was essentially a 2 (expert role: court appointed vs witness for the prosecution) x 2 (age of child: 6 vs 9 years) x 2 (gender of child). Further, to allow scope for a full investigation of gender effects and interactions, both male and female psychological experts were used. It was hypothesised that jurors who saw the court-appointed experts may perceive them more as impartial educators and their testimony might be more likely to enhance perceptions of the child's cognitive abilities than the testimony of the prosecution expert who was more likely to be seen as a biased advocate.

Experiment 3 was designed to investigate whether the relative temporal order of the presentation of the child's and expert's testimony led to differential outcomes. The design was a 2 (order of expert testimony presentation: before vs after child's testimony) x 2 (Age of female victim/witness: 6 vs 9 years). A control group in a no-expert condition was also used. It was hypothesised that the expert testimony presented prior to the child's might be better utilized in that it might serve to modify stereotypical attitudes or misconceptions jurors may have about child witnesses before jurors saw the child. However, predictions from Pennington and Hastie's (1981, 1986, 1988, 1992, 1993) story model suggest that temporal order variations may not be significantly different.

In Experiment 4, the impact of the generalised expert testimony used in the first three experiments relative to two other types of expert testimony was investigated, with varying quality of child's evidence. The design was a 3 (type of expert testimony: cognitive abilities, psychological consequences, statement analysis) x 2 quality of the child's statement (moderate vs enhanced) x 2 (expert role: court-
appointed vs prosecution). It was hypothesised that those exposed to the generalised expert testimony on children's cognitive abilities would rate the child higher on those variables, but as the other types of testimony were likely to enhance the child's testimony in other ways, it was hypothesised that there would be no differences in verdict outcomes across type of testimony. It was further hypothesised that jurors who saw the child's enhanced quality statement would give higher ratings of the child's credibility and defendant guilt than those who saw the moderate statement. The final hypothesis was that, across all three types of expert testimony, jurors would show greater acceptance of the court appointed expert's evidence than the same testimony presented by the prosecution's expert.

5.3 Methodological issues and rationales

Before preparing the materials required for the experiments of this thesis a number of methodological issues needed to be addressed. The following section details the rationales for decisions pertaining to the format of the trial presentations, the use of 6-person rather than 12-person juries, the need for gender-balanced juries, the use of an ambiguous trial as a stimulus, and the matter of stimulus sampling.

5.3.1 The use of videotaped trial presentations rather than written transcripts or real life

Some large scale studies, such as the Oxford studies (McCabe & Purves, 1974) and later Chicago jury studies (Zeisel & Diamond, 1978) have used "shadow" juries which sat in court and observed criminal cases in their entirety. The use of real trials or re-enactments as stimulus trials provides manifestly high external validity, while evidence presented on videotape has less external validity and has also been argued to be less impactful because of its impersonal quality (Sharp, 1989). Nevertheless, when systematic variations necessitate multiple versions of the same basic trial and small group deliberations are to be videotaped, real life
presentations are not feasible. A particular problem with the use of videotaped simulations is their relative brevity and inability to capture the complexities and nuances of actual trials (Weiten & Diamond, 1979), but many studies using written formats also use remarkably abbreviated transcripts.

It has been suggested that there are two fundamental differences between the use of written and videotaped formats for trial presentation. Firstly, some authors have proposed (Leippe & Romanczyk, 1989; Ross et al., 1989) that written formats may tap into jurors' stereotypes of protagonists, so that for jurors presented with child sexual abuse cases in transcript format, stereotypes of children of a certain age and stereotypes of alleged molesters may be particularly salient mediators of jurors' decision making. Ross et al. (1989) maintain that when mock jurors actually see a witness, as they would be able to do in a real trial, confirmation or violation of the juror's stereotypical expectations by the witness's behaviour strongly influences perceived credibility.

Secondly, the modes of processing are hypothesised to vary according to the communication modality, so that written format presentations are thought more likely to involve systematic processing with a more careful appraisal of the material communicated (Leippe & Romanczyk, 1987), whereas videotaped presentations are thought more likely to be heuristically processed, that is, with particular emphasis on source characteristics (Chaiken & Eagley, 1980). A number of studies have shown that contextual factors and communicator characteristics which are apparent only to those who view the child, such as perceived speech style (Nigro et al., 1989), demeanour and confidence (Hendry, Shaffer, & Peacock, 1989) are powerful determinants of credibility.

In the experiments reported in this thesis the expert testimony is generalised and no opinions are given about a particular child's abilities. It is up to the jurors
to make their own inferences from the expert testimony to the particular child in
the case, and for this reason it was felt important to present subjects with the visual
image of a child of a certain age, while attempting also to ensure that contextual
differences across children of different ages and gender were minimised. Thus, no
interview was used wherein a child appeared anxious, distressed, or appeared to be
lacking in confidence. Alternatively, given that witness confidence is perceived as a
reliable indicator of accuracy (Loftus, 1979; Noon & Hollin, 1987) no interview or
segment was used wherein a child appeared to be manifestly over-confident, or
indulged in inappropriate behaviour such as smiling when giving answers which
would constitute part of the account of the sexually abusive incident. As far as
possible, differences in speech style and demeanour were closely monitored during
the interviews.

5.3.2 Rationale for the use of 6-person juries

It was decided to use 6-person juries throughout this research for two practical
reasons:
1) videotaping of deliberations, transcribing deliberations and content analysis
are all facilitated by the use of six-person rather than larger jury panels.
2) for convenience in assembling jury panels, it is easier to organise six people
to attend in the same place and at the same time than twelve, and

Since the Williams vs Florida (1970) case, 6-person juries have been used
with increasing frequency in U.S. criminal cases (Hans & Vidmar, 1986), but
indictable offences to which a not guilty plea is entered are tried before 12-person
juries in Australia and in England (Spencer & Flin, 1990). In Scotland, solemn
procedure cases are tried by a jury of 15, albeit with a simple majority decision
rule (Spencer & Flin, 1990).
While methodological concerns have been expressed about studies on jury size (Lempert, 1975; Saks, 1977; Zeisel & Diamond, 1974), McCabe (1988) has noted that participation in discussion and satisfaction with process is greater in smaller groups, although Saks (1977) found no differences in satisfaction with the deliberation process between 6-person and 12-person juries. Hastie, Penrod, and Pennington (1983) concluded that neither trial outcomes nor the quality of deliberations were significantly affected by using 6-person juries, although they noted the likelihood of a more restricted diversity of viewpoints and a tendency to reach unanimity more quickly than 12-person juries.

5.3.3 The need for a gender balance in research involving sexual assault cases

Hastie et al. (1983), after reviewing the literature on gender effects in jury research, concluded that only two reliable generalizations could be made:

1) that males participated in deliberation to a greater degree, and
2) that, in rape cases, females more frequently rendered guilty verdicts.

Since then, other studies involving rape trials (Brekke & Borgida, 1988; Kassin, Reddy, & Tulloch, 1990; Spanos, Dubreuil & Gwynn, 1992) and child sexual assault cases (Gabora et al., 1993; Ross et al., 1994) have supported the latter generalization, although significant gender effects on verdict were not found by Duggan et al. (1988) using a child sexual assault scenario. Given the apparent robustness of gender effects in sexual assault cases, potential confounding effects were minimised in this thesis by ensuring gender-balanced juries throughout all experiments. Weeks in advance, jurors were randomly allocated a time to attend. Each trial viewing and deliberation session was organised with three males and three females, who were all contacted the day before they were due to attend. If any juror then failed to appear, viewing of the trial did not proceed and the session was aborted, with thanks and apologies to those who had attended.
5.3.4 The use of an ambiguous trial as stimulus

The trial scenario written for use in these experiments was adapted as far as possible from actual trial transcripts, but to minimize the likelihood of early unanimity during the deliberation process, an ambiguous scenario was developed that involved conflicting accounts of the child and his/her father, and that would allow jurors to surmise possible motivation for fabrication from either of the plaintiff's parents, if they so desired. Dawes (1993) has proposed that any jury research should use a multiplicity of cases and these should not be ambiguous cases. Aside from the methodological difficulties involved in using multiple cases, there is inherent ambiguity in any trial scenario as there is no way of establishing a criterion of truth or correctness (Kadane, 1993), as one can never know that a particular jury, either in real life or under experimental conditions, has come to the "right" verdict.

5.3.5 The matter of stimulus sampling

Some have proposed that research on juror decision making should incorporate stimulus sampling (Dawes, 1993; Yuille & Wells, 1991). Wells, Turtle, and Luus (1989) used fourteen eyewitnesses at each of three age groups (8, 12, adult) and found no significant inter-age differences in perceived credibility but considerable intra-age group variability in jurors' perceptions of accuracy and credibility. However, in the Wells et al. study, each eyewitness was asked to watch a videotaped staged abduction and return the next day to answer seventeen questions concerning the incident. As desirable as stimulus sampling may be, it was not feasible in the experiments in this thesis. Ethical considerations precluded any involvement of children in answering questions about sexual abuse, and for this reason a parallel script was created in which the questions put and the child's answers were quite innocuous. Even so, the process of recruiting suitable children of each gender at ages 6, 9, and 12 presented several difficulties to be overcome. The decision was made
not to use professional actors in any of the roles, as the desired effect was to be one of ordinary people involved in a criminal case. Therefore, approaches had to be made to any friend or acquaintance who was known to have a child of the particular age and gender.

Even though assured that there was no hint or mention of sexual abuse in the child's actual interview (Appendix 4), a number of parents declined to allow their children to participate. Further, some children who did have parental permission to participate were interviewed and found to be unsuitable, even after rehearsal, either because they appeared unduly anxious on videotape or because it was obvious that they were reading the script which was written on large cue sheets and held behind the interviewer. For these reasons it took some time to complete the interviews for just one representative at each of the six age by gender conditions. Following the videotaping of the interviews, weeks were then spent editing each of the original interviews into the form required to show a child's account of a sexually abusive incident. Given all the difficulties described, the possibility of using multiple stimulus children in each age by gender condition was not practicable.
Chapter 6

Experiment one

The juridical impact of psychological expert testimony concerning children's cognitive abilities.
Chapter 6

Experiment 1: The juridical impact of psychological expert testimony concerning children's cognitive abilities.

6.1 INTRODUCTION

In Experiment 1, the focus was on investigating the impact of the content of the expert testimony and the psychologist was presented as a court-appointed expert so that there was no inherent basis for jurors' perceptions of bias due to partisan role demands. Perry and Wrightsman (1991), after analysing the problems associated with child witnesses, recommended that nonspecific testimony on children's abilities should be presented in a nonadversarial, nonpartisan manner to courts in order to inform the triers of fact. In this experiment, ages and gender of the child victim/witness were varied and the trial was presented in videotape format.

The expert testimony was generalized in that it did not address the specific behaviours or abilities of the child complainant, nor did the expert attempt to point out the connections between the general information and the situation of the child witness. The psychologist sought merely to present a cognitive developmental framework. His testimony summarized findings from relevant research across differing age levels, on these four points:

1) the likelihood of a delay in disclosure
2) children's memory expertise, that is, their abilities to give complete and accurate accounts of events,
3) children's reality monitoring abilities, that is, their abilities to distinguish fact from fantasy,
4) children's susceptibilities to post-event misleading information.

It was hypothesised that jurors who heard the expert testimony would assess the child more favourably on those child-based credibility variables which were
addressed by this expert, and that these more favourable judgments of the child's credibility would mediate higher ratings of defendant guilt.

6.2 METHOD

6.2.1 Subjects

One hundred and forty-four subjects participated in the study, in 24 groups each of six mock jurors. There were 72 undergraduate subjects drawn from an introductory psychology course and 72 subjects were jury-eligible citizens from the community, the equal numbers facilitating ANOVA analyses of student/community differences. Students and community members sat on separate juries, so that a student jury and a community jury were exposed to each of the twelve experimental conditions. Community subjects were solicited by requesting undergraduate psychology students to take a copy of a prepared letter and pass it to any jury-eligible citizen known to them. The letter informed the recipient of the general nature of the research without specifying the particular variables under investigation, and invited replies on the form enclosed from anyone willing to participate as a mock juror. It was explained in each letter that jurors would deliberate in groups of six after watching a simulated reconstruction of a sexual assault trial, and that the deliberations would be videotaped for later content analysis. Each videotaped trial was viewed by two mock jury panels, one each from the student and community samples.

The mean ages of the student participants (24.4 years) and the community participants (36.5 years) were significantly different, $t(142) = 8.33, p<.001$. As expected, there were significant differences between the mean number of children of the student participants (0.44) and the community participants (1.86), $t(142) = 6.51, p<.001$, and also between the mean years of parenting experience for students (1.84) and the community group (11.25), $t(142) = 7.57, p<.001$. Mean years of education (students, 12.7 years; community, 13.6 years) were not
significantly different. There were no significant differences between the mean ratings of the student and community groups on any of the dependent variable measures or verdicts, so data from the two groups were combined for analysis.

6.2.2 Experimental Design

Age of the child victim/witness (6, 9, or 12 years), gender of child victim/witness and presence or absence of expert testimony were varied in a 3x2x2 factorial design. Jurors were randomly assigned to the twelve cells, but a gender balance of three male and three female members was retained in the composition of every jury, permitting ANOVA analyses of juror gender effects.

6.2.3 Material

Videotapes

Twelve trial tapes were prepared following the 3x2x2 design. In preparing the scenario, a number of actual trial transcripts were examined but it was decided to develop a scenario which would be plausible across the three ages of victim/witness under investigation. In the development of the scenario, dialogue from actual transcripts was incorporated where possible. Two lecturers from the Law faculty at the University of Tasmania assisted in developing the trial scripts. Both were very familiar with child sexual abuse cases and had served on the Tasmanian Law Reform Commission Committee in the preparation of that Commission's report on child witnesses (Law Reform Commissioner of Tasmania, 1989).

A male staff member from the Law Faculty played the role of judge and two female final year law students played the roles of prosecuting and defence counsels. All adults involved as actors in the simulation were given extensive information and instructions, and were required to sign statements of informed consent (Appendix 2). Similar consent forms were signed by the parents of children involved in the simulation (Appendix 2). All participants were given assurances of confidentiality. The trial was videotaped in a courtroom, except for the children's testimonies, which
were presented as videodepositions within the videotaped trial. The reception of children's evidence by videodeposition was recommended by the Pigot Committee (U.K.) and videodeposition admissibility in principle has been endorsed in the 1990 Criminal Justice Bill (U.K.) (Davies, 1991). Legislation allowing the admissibility of videodepositions for child witnesses in the state of Tasmania in Australia has been introduced following the recommendations of the Law Reform Commissioner (1989). Following the format recommended by Pigot, each child was interviewed by a child psychologist, this interview constituting the examination-in-chief, and then interviewed by counsel for the defence, which interview constituted the cross-examination. To protect the children who played the part of victim/witnesses against possible adverse effects, a parallel script was created in which the questions put and the child's answers were quite innocuous, a procedure developed by Thornton (1989). All interviews were recorded using a video 8 recorder. The videotapes were then edited into the final versions, by substituting different questions from the interviewer onto the audio component of the videotape, using a Sony EVO-720P video 8 editor. The edited videotapes of each witness were then assembled into the sequence required for each of the twelve trial presentations on VHS format. Changes in the final wording of the transcripts for male and female child victims were minor. Except for the child witness and the expert testimony, each jury panel heard the same script lines and saw the same people playing the roles of the family doctor, the child's mother and the defendant, and the interactions of those three with the judge and prosecuting and defence counsels were the same.

In the development of the sexual abuse scenario, cognisance was taken of those factors which are generally characteristic of intrafamilial sexually abusive acts (Berliner & Conte, 1990; Christiansen & Blake, 1990; De Young, 1982; Russell, 1986). The characteristic factors incorporated into the present scenario were:

1) such acts do not usually involve violence or severe force,

2) coitus is more likely with pre-pubescent girls as fathers are more hesitant
to engage in coitus after puberty.

3) most incestuous acts occur at home, usually in a bedroom or living room,

4) the usual time is the late evening, and

5) the child is often offered a bribe or inducement to perpetuate secrecy.

Although incest frequently involves an elaborate psycho-social “grooming” process (Christiansen & Blake, 1990) leading to a progression of sexual acts over a period, Berliner and Conte (1990) report that about 30 per cent of victims have a single abuse experience, as was presented in this simulation.

A scenario was developed which involved conflicting accounts of the child and his/her father, and which allowed jurors to surmise possible motivation for fabrication from either of the complainant's parents, if they so desired. The child's parents had separated months before the alleged incident. The child normally resided with the mother, but spent some weekends with the father. On the last such weekend stay, the child stated that he/she had developed leg cramps during the night and had left the bedroom to seek help from his/her father in the living room. The father had responded by removing the pyjama pants and then rubbing the affected areas of the legs vigorously with oil. The father then alleged that the child had fallen asleep after some minutes of rubbing and had been taken back to bed. The child alleged that the rubbing developed further and was extended to the genital area, following which the father had then introduced something into the anus/vagina which was extremely painful. The child alleged having screamed out and requested the father to stop, but that the father continued and moved up and down above the child. The child alleged that he/she had kept his/her eyes closed throughout, but found the experience extremely painful. The father was alleged to have subsequently bribed the child with chocolate to avoid disclosure, which came one month later when the child declined to go to the father's house and then revealed to the mother what had allegedly occurred. The case for the defence rested largely on the absence of mens rea. The defence admitted that the father did rub the child's legs with oil to ease the child's pain, and
may even have made unintentional contact with the child's genital area, but there was no conscious intention to commit a sexual act, and no subsequent attempt to buy the child's secrecy.

*Preparation of psychological expert testimony on children’s cognitive abilities*


The body of expert testimony on children's cognitive abilities was based on studies published as of August, 1990, when the scripts were prepared for the videotaping of the various trial segments. A large number of empirical studies have been published since that time and some would certainly have warranted inclusion in the expert's testimony had they been available. For example, results of the series of experiments conducted by Clarke-Stewart, Thompson, and Lepore (Goodman & Clarke-Stewart, 1991) showed that 5-year-old and 6-year-old children's responses to interpretive questions, which were inconsistent with what they had observed, were strongly influenced by the post-event suggestions imparted in the experimental context. Nevertheless, the expert testimony, as prepared for this
experiment made it clear, on the basis of then published research, that young children were vulnerable to the influence of misleading information, especially when it is supplied by an adult (Ceci, Ross, & Toglia, 1987) and that children in the 6-year-old to 9-year-old age group were susceptible to demand characteristics, such as their perceptions of adults' expectations (King & Yuille, 1987).

The script was a brief summary of the major findings from research into children's memory competence, susceptibility to suggestion, and reality monitoring, and was based mainly on reviews of the pertinent literature available at that time (Bull, 1988; Ceci, Toglia, & Ross, 1987; Dunning, 1989; Fundudis, 1989; Penrod, Bull, & Lengnick, 1989). The expert also included testimony to explain why delayed disclosures are common in child sexual assault cases. In brief, the content of the psychological expert testimony, over the course of examination-in-chief and subsequent cross-examination, provided the following information:

**Delayed disclosure** Delayed disclosure was a typical reaction in cases of sexual abuse (Summit, 1983). Possible reasons for delayed disclosure include fear of retaliation, threats or inducements to keep a secret, a feeling of guilt or self-blame in the child, fear of hurting a loved one.

**Memory:** Much research on children's memory has involved slides or filmed stimuli and the results may not be good indicators of children's capacities to report sexual assaults. Research indicates that young children may provide less complete accounts of events than older children, but the accuracy of the accounts may not vary much with age. When tested four or five days after a playful interaction with an unfamiliar adult male, three year-olds had poorer recall than six year-olds, but the six year-old children and adults performed equivalently in answering objective questions and in identifying the man (Goodman & Reed, 1986).
**Suggestibility:** Both children and adults can be susceptible to the influence of suggested material. Whether children are more suggestible depends on other factors as well as age, including the degree of suggestion, the strength of the memory, whether the information to be recalled was central or otherwise, the status of the person asking the question, and the level of intimidation and stress experienced by the child. Young children are more likely to be vulnerable to the influence of misleading information when it is supplied by an adult rather than a seven year-old child (Ceci, Ross, & Toglia, 1987). In another study, children in the six to nine year age group reported that they had "gone along" with misleading suggestions because of what they perceived to be the adult questionner's expectations and or wishes (King & Yuille, 1987). Some research has shown no evidence of increased suggestibility in young children (Duncan, Whitney, & Kunen, 1982; Marin, Holmes, Guth, & Kovac, 1979). Other research indicates that children less than about seven years of age may be particularly vulnerable to misinformation which is concerned with peripheral details. On central, salient details young children may be no more susceptible to suggestive influence than adults (Johnson & Foley, 1984; King & Yuille, 1987).

**Reality monitoring** (ability to distinguish fact and fantasy): Piaget's conclusions, based on his research, that children can consistently distinguish between the real and the imaginary from about seven or eight years of age were cited (Piaget & Inhelder, 1966/1969). Children as young as six can be as accurate as adults when asked to distinguish between memories of what they said and what another said to them (Foley, Johnson, & Raye, 1983). Some children as old as nine may have difficulty distinguishing between what they did and what they imagined they had done (Foley & Johnson, 1985). Children under about age seven who lack full capacity for abstract thought are likely to base their imaginative fantasies on actual experiences (DeYoung, 1987).
The same expert testimony was used throughout and was delivered by a male senior lecturer in psychology. The psychological expert was questioned by the judge who also made it clear to the court at the outset that the witness was court-appointed and not present to support either the prosecution or defence case. The psychologist was cross-examined by defence counsel. For the jurors exposed to expert testimony, the judge's final instructions included this paragraph:

You have heard the testimony of a psychologist. His testimony has provided the court with results from psychological studies which have investigated the behaviours displayed by children of various ages. Bear in mind that his testimony is merely to provide information which you are free to use or reject in your decision making. You are the trier of fact and are solely responsible for any decisions you make.

The duration of the videotaped trial without expert testimony was approximately 33 minutes, and with expert testimony, 44 minutes.

**Juror Pre-deliberation Questionnaire (Appendix 3)**

Before deliberating, subjects assessed the child witness using a 9-point scale on the following variables; confidence, consistency of testimony, reliability of memory, resistance to suggestion, reality monitoring ability, attractiveness, and the likelihood that the child did not misinterpret the defendant's actions. Subjects also gave their assessment of the degree to which the abuse was harmful to the child, assuming it occurred. Similarly, on 9-point scales, subjects also assessed the degree to which the mother's and doctor's testimony enhanced the child's testimony, and then rated the overall credibility of the child, the mother, and the defendant. Those exposed to expert psychological testimony were asked to rate the helpfulness of that testimony and the degree of impartiality of the psychologist expert. Jurors not exposed to expert testimony were asked a similar question but worded hypothetically, that is, they were asked to assess how helpful it would have been to
have had expert psychological testimony concerning children's memory, susceptibility/resistance to suggestion, ability to distinguish fact from fantasy and the likelihood of a delay in disclosing sexual abuse. All jurors were asked to write what features of the child's testimony were convincing and what features were unconvincing. The questionnaire also requested juror age, sex, education, number of children, and number of parenting years. Finally, subjects were asked to vote guilty or not guilty and, on a 5-point scale, indicate the degree of certainty each felt about their vote.

Post-deliberation

At the end of the 25 minute deliberation period, subjects were asked to rate the child's confidence, consistency, reliability of memory, resistance to suggestion, reality monitoring ability, and overall credibility, and then to vote guilty or not guilty and give an indication of their subjective certainty.

6.2.4 Procedure

On arrival, jurors were given instructions (Appendix 2.5) which stated that, as a panel, they would view a videotaped simulation of a trial involving a child complainant bringing an allegation of sexual assault against his/her father. It was specified that each juror was to complete a brief questionnaire on aspects of the trial before and after a deliberation process of 25 minutes duration, and the deliberations were to be videotaped for later content analysis. Jurors' confidentiality was guaranteed. Each subject was required to sign a statement of informed consent (Appendix 2.6) before participating as a mock juror. This statement also explained to the mock jurors that guarantees of confidentiality had been given to the actors in the simulation.
6.3 RESULTS

Expert testimony effects

As the expert testimony addressed the issues of children's memory, resistance to suggestion and reality monitoring, these were the dependent variables of particular interest in so far as it was hypothesised that jurors who heard the expert testimony would assess the child more favorably on those variables. A multivariate $F$ test (3x2x2x2 MANOVA) using child age, expert testimony, gender of child and gender of juror as the independent variables was calculated on the jurors' ratings of the child's memory, resistance to suggestion and reality monitoring. The analysis indicated significant main effects for the presence of expert testimony, (Wilks' Lambda: $F(3, 118) = .906, p < .05$) and for juror gender, with female jurors' ratings significantly higher (Wilks' Lambda : $F(3, 118) = .930, p < .05$). The interaction of expert testimony x age of child x gender of juror was significant (Wilks' Lambda : $F(6, 236) = .894, p < .05$). Further univariate analyses indicated that while expert testimony x child age x gender of juror interactions were not significant on ratings of the child's memory and reality monitoring, there was a significant interaction on ratings of the child's resistance to suggestion, $F(2,120) = 3.858, p < .05$, with the mean for female jurors' ratings of the 9-year-old children with expert present ($M = 5.37$) being lower than the mean for male jurors in the same condition ($M = 6.25$). ANOVA tests indicated no significant impact of expert testimony on ratings of the child's confidence, $F(1,120) = 0.56, p > .05$, or consistency, $F(1,120) = 2.65, p > .05$, or attractiveness, $F(1,120) = 1.20, p > .05$, or harmfulness of the alleged act, assuming it occurred, $F(1,120) = 0.13, p > .05$, or the likelihood that the child had misinterpreted the defendant's actions, $F(1,120) = 0.92, p > .05$

Analysis of verdicts

Table 6.1 shows the frequency of guilty and not guilty pre-deliberation verdicts and post-deliberation verdicts, in terms of each independent variable studied. The
relationships between the independent variables and jurors' pre-deliberation verdicts were analysed using a log-linear analysis.

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**TABLE 6.1.** Pre- & post-deliberation verdict frequencies by independ. variables.

<table>
<thead>
<tr>
<th></th>
<th>PRE-DELIBERATION</th>
<th>POST-DELIBERATION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Guilty</td>
<td>Not guilty</td>
</tr>
<tr>
<td><strong>EXPERT TESTIMONY CONDITION</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expert present</td>
<td>48</td>
<td>24</td>
</tr>
<tr>
<td>No expert</td>
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<td>34</td>
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<tr>
<td><strong>GENDER OF CHILD CONDITION</strong></td>
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<tr>
<td>Male</td>
<td>46</td>
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</tr>
<tr>
<td>Female</td>
<td>40</td>
<td>32</td>
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<tr>
<td><strong>AGE OF CHILD CONDITION</strong></td>
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<tr>
<td>Six years</td>
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<td>Nine years</td>
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<td>22</td>
</tr>
<tr>
<td>Twelve years</td>
<td>31</td>
<td>17</td>
</tr>
<tr>
<td><strong>GENDER OF JUROR CONDITION</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>33</td>
<td>39</td>
</tr>
<tr>
<td>Female</td>
<td>53</td>
<td>19</td>
</tr>
</tbody>
</table>

**Column totals (for each Ind.Var)**: 86 58 75 69

There were no significant differences in the number of guilty votes with respect to the gender or age of the child or the presence of expert testimony, nor were there any significant interactions. The log-linear analysis showed a significant main effect for juror gender, \( X^2 (1, N=144) = 11.12, \ p < .01 \), with female jurors significantly more likely to vote for conviction. Before deliberation, 73.6% of the female jurors voted for conviction, compared to 45.8% of the male voters. After deliberation, both juror gender groups showed some movement toward acquittal, 12% change in the female jurors, and 4% change in the male juror group. After
nominating their verdicts, jurors were also asked to rate their degree of certainty / uncertainty on a five-point scale. These ratings were used to scale verdicts along a continuum from 1 (very certain defendant is not guilty) through varying degrees of uncertainty up to 10 (very certain defendant is guilty). These scaled verdicts are referred to in this experiment and subsequent experiments as verdict ratings. On these verdict ratings, there was a significant difference, $t(142) = 2.63$, $p < .01$, between those exposed to expert testimony ($M = 6.9$, $SD = 2.7$) and those without expert testimony ($M = 5.6$, $SD = 2.9$). There was also a significant difference between pre- and post-deliberation verdict ratings for the female jurors, $t(71) = 2.45$, $p < .05$, but not significant difference for the male jurors.

**Balance of verdicts within juries.**

Table 6.2 shows the balance of verdicts within juries before and after the deliberation process. Only one jury panel prior to and after deliberation was unanimous in voting guilty.

<table>
<thead>
<tr>
<th>Table 6.2</th>
<th>Number of jury panels with a particular balance of verdicts before and after deliberation.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unanimous for</td>
</tr>
<tr>
<td></td>
<td>Not guilty</td>
</tr>
<tr>
<td><strong>Pre-deliberation</strong></td>
<td></td>
</tr>
<tr>
<td>Expert present</td>
<td>0</td>
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<tr>
<td>Expert absent</td>
<td>0</td>
</tr>
<tr>
<td><strong>Post-deliberation</strong></td>
<td></td>
</tr>
<tr>
<td>Expert present</td>
<td>0</td>
</tr>
<tr>
<td>Expert absent</td>
<td>0</td>
</tr>
</tbody>
</table>

68
Evaluations of the expert testimony

Those jurors who heard the expert testimony were asked to assess the impartiality of the psychologist and the helpfulness of his testimony. On assessments of impartiality there was no significant difference between the mean rating ($M = 7.11$, $SD = 1.69$) for those voting for conviction ($n = 48$) and the mean ($M = 6.62$, $SD = 2.14$) for those who voted for acquittal ($n = 24$). Those who voted for conviction ($n = 48$) rated the expert testimony as being significantly more helpful ($M = 7.76$, $SD = 1.42$) than did the jurors ($n = 24$) who voted for acquittal ($M = 5.79$, $SD = 2.18$), $t(70) = 4.61$, $p<.01$.

Jurors who did not receive the expert testimony were asked to give a hypothetical rating, on a 9-point scale, of how helpful they would have found expert psychological testimony on the areas which were addressed. The mean for jurors who voted guilty was 7.42 ($SD = 1.78$), and for those who voted not guilty, 7.64 ($SD = 1.25$), a nonsignificant difference. Regardless of whether they voted for conviction or acquittal, the high ratings appear to indicate that jurors anticipated that they might have found the psychological expert testimony helpful, had they been exposed to it.

Gender of child effects

Relative to the male child witnesses, the female child witnesses were rated as significantly more resistant to suggestion, $F(1, 120) = 6.1$, $p<.05$, and significantly more attractive, $F(1,120) = 16.6$, $p<.01$. There was a significant gender of child x gender of juror interaction on ratings of the child's consistency. Relative to the female jurors, male jurors gave the male child significantly lower ratings on consistency, $F(1,120) = 5.44$, $p<.05$, but there was no corresponding juror gender difference on this variable with the female child.

A significant interaction involving gender of child x gender of juror x child age
was noted on ratings of the child's reality monitoring ability, $F(1, 120) = 3.26, p < .05$. Male jurors gave the 6-year-old girl ($M = 6.04$) higher ratings on reality monitoring than the 6-year-old boy ($M = 5.08$), and the female jurors gave the 12-year-old girl ($M = 7.16$) higher ratings on reality monitoring than the 12-year-old boy ($M = 5.91$).

**Age of child effects**

There were no significant differences on any dependent variable with respect to the age of the child.

**Gender of juror effects**

The retention of gender-balanced juries throughout facilitated analysis of gender of juror effects on the child-based dependent variables. Female jurors gave significantly higher ratings to the child victim on memory, $F(1, 120) = 3.97, p < .05$, resistance to suggestion, $F(1, 120) = 4.48, p < .05$, reality monitoring, $F(1, 120) = 7.33, p < .05$, and overall credibility, $F(1, 120) = 8.72, p < .01$, and they also gave significantly higher pre-deliberation verdict ratings, that is, certainty of guilt ratings, $F(1, 120) = 7.78, p < .01$. There was also a significant interaction associated with the attractiveness variable, $F(1, 120) = 4.80, p < .05$. In the absence of expert testimony, male jurors, relative to female jurors, rated the children significantly lower on attractiveness, but there was no significant juror gender difference when the expert was present.

Table 6.3 shows the mean ratings for the child-based dependent variables and for pre-deliberation verdict ratings with respect to all the independent variables.
Table 6.3 Mean ratings for child-based dependent variables and mean verdict ratings, by independent variables

<table>
<thead>
<tr>
<th></th>
<th>Conf'd</th>
<th>Consist</th>
<th>Memory</th>
<th>Resist to Reality</th>
<th>Harmful</th>
<th>Attract Non-mis</th>
<th>Verdict</th>
<th>Credibility</th>
</tr>
</thead>
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<tr>
<td><strong>Expert Testimony</strong></td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>Presence</td>
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<td>7.1</td>
<td>6.7</td>
<td>5.8</td>
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<td>6.9</td>
<td>5.4</td>
<td>7.0</td>
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<tr>
<td>Absence</td>
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<td>5.0</td>
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<td>7.0</td>
<td>5.2</td>
<td>6.7</td>
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**Gender of child**

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<th>Memory</th>
<th>Resist to Reality</th>
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<th>Attract Non-mis</th>
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<th>Credibility</th>
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<tr>
<td>Male</td>
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<td>7.0</td>
<td>6.4</td>
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<td>6.7</td>
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**Age of child**

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<td>6 years</td>
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<td>6.2</td>
<td>6.9</td>
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**Gender of Juror**

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<td>5.7</td>
<td>6.7</td>
<td>7.2</td>
<td>5.4</td>
<td>7.4</td>
</tr>
</tbody>
</table>

**Analysis of Individual votes**

Prior to the deliberation process, jurors who voted the defendant guilty (n = 86) also rated the child higher on consistency of testimony, (t = 4.01, p<.01), memory, (t = 4.53, p<.01), resistance to suggestion, (t = 3.67, p<.01), ability to distinguish between fact and fantasy, (t = 4.55, p<.01), on the extent to which the abuse would have harmed the child, assuming it occurred, (t = 2.75, p<.01), and on overall credibility,(t = 7.44 , p<.01). They also rated the mother's credibility significantly higher, (t = 5.04, p<.01) and the defendant's credibility significantly
lower, \((t = 3.57, p<.01)\), and were less likely to attribute misinterpretation of the incident to the child, \((t = 6.95, p<.01)\).

**Correlation and regression analyses**

Intercorrelations of the child-based dependent variables, confidence, consistency, memory ability, resistance to suggestion, reality monitoring, harmfulness of the alleged act, the child's attractiveness, the likelihood that the child did not misinterpret the defendant's actions, pre-deliberation verdict ratings, and jurors' assessments of the child's overall credibility are shown in Table 6.4. Differential reliability of the individual child-based ratings may have accounted for some differences in the magnitude of the correlations.

---

**Table 6.4** Inter-correlations between verdicts and child-based dependent variables

<table>
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<th></th>
<th>Confid</th>
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<th>Memory</th>
<th>Resist to</th>
<th>Reality</th>
<th>Harmful</th>
<th>Attract</th>
<th>Non-mis</th>
<th>Verdict</th>
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<td>*</td>
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<td>.63 *</td>
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<td></td>
</tr>
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<td>Resistance to suggestion</td>
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<td>.39 *</td>
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<td>Harmfulness</td>
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<td>.06</td>
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<td>Attractiveness</td>
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<td>Non-mis -interpretation</td>
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<td>.47 *</td>
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<td>.25 *</td>
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<tr>
<td>Verdict rating</td>
<td>.25 *</td>
<td>.42 *</td>
<td>.44 *</td>
<td>.37 *</td>
<td>.40 *</td>
<td>.20 *</td>
<td>.17</td>
<td>.54 *</td>
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<tr>
<td>Overall child Credibility</td>
<td>.34 *</td>
<td>.52 *</td>
<td>.48 *</td>
<td>.40 *</td>
<td>.50 *</td>
<td>.21 *</td>
<td>.14</td>
<td>.60 *</td>
<td>.61 *</td>
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* \(p<.01\)

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To examine which of the child-based ratings made by jurors were most highly predictive of the jurors' ratings of the child's credibility, a stepwise regression...
analysis was used. The quantitative rating made by jurors as to the likelihood that the child had not misinterpreted the defendant's actions accounted for the most substantial proportion of the variance ($R^2 = .365$) and the next highest $R^2$ values were for the variables of consistency and resistance to suggestion. These three variables accounted for 46% of the total variance in child credibility ratings. The same predictor variables were entered into a stepwise regression analysis with the jurors' quantitative verdict ratings as the target variable. Again, likelihood of the child's non-misinterpretation accounted for the highest proportion of variance ($R^2 = .294$), with resistance to suggestion and memory having the next highest $R^2$ values. These three variables accounted for 36% of the variance in verdict ratings.

To investigate the hypothesis that rationales for verdicts differ with the age of the child victim (Goodman et al., 1989), a stepwise multiple regression analysis using the same child-based ratings was conducted for each age of child victim. For those jurors who saw the 6-year-old children, the likelihood of the child's not misinterpreting the event, followed by resistance to suggestion were the best predictors of pre-deliberation verdicts for the child's credibility (total $R^2 = .472$) and for verdict ratings (total $R^2 = .499$). For jurors who viewed the 9-year-old complainants, reality monitoring ability, followed by the likelihood of the child's not misinterpreting the event were the most salient predictors of the child's credibility ratings (total $R^2 = .53$), and reality monitoring ability was the best predictor of verdict ratings ($R^2 = .439$), with no further significant contribution to variance from any other variable. Reality monitoring ability, followed by memory ability and consistency were the chief predictors of the child's credibility for jurors who saw the twelve years-old witnesses (total $R^2 = .68$), and the likelihood of the child not having misinterpreted the event, followed by memory ability were most salient
as predictors of verdict ratings for jurors who saw the 12-year-old children (total $R^2 = .30$).

6.4 CONTENT ANALYSIS OF DELIBERATIONS

The deliberations of every jury group were videotaped and the contents transcribed. The contents of deliberations were analysed to determine how content varied as a function of the independent variables. The codebook used for the content analysis (see Appendix 11) was adapted from the codebook originally devised by Murray Levine and colleagues for use in the Duggan et al. study (1989). Two coders each had a preliminary six hours training in the use of the codebook. Following Duggan et al. (1989), the conversational "turn" was used as the unit of analysis, and each coder decided whether more than one content theme was contained within each utterance unit.

In assigning juror statements to the codebook categories, agreement between the coders from one deliberation to another ranged from 63% to 82%. Disagreements regarding classification were resolved by the two coders conferring with each other and a third person, who was also trained in the use of the codebook classifications, and who acted as the final arbiter, a technique used by Duggan et al. (1989). The most frequent sources of disagreement were between the categories 99 (Uncodable Statements), 97 (Personal anecdotes), 92 (Task focus), and 91 (Rule and role focus). With regard to jurors' perceptions of the child witness, the most frequent disagreements between coders were between the categories 10V (General belief), 12 (No cognitive distortion) and 17V (Sufficient explanation).

Prior to the statistical analyses, frequency data from some categories were combined. Categories 14V, 15V and 16V all dealt with jurors' perceptions of whether the child acted appropriately, and were therefore combined, as were the data from categories 24V to 26V inclusive, which concerned perceptions of whether
the child had acted inappropriately. Similarly, data were combined for categories 15D and 16D, involving jurors' perceptions of whether the defendant had acted appropriately, and for categories 25D and 26D, which dealt with jurors' perceptions of whether the defendant had acted inappropriately. Where two categories reflected the opposite poles of a dichotomy, the frequency data for each juror were combined using the formula, \( a-b/a+b \), to give a score which took account of the general orientation of the jurors' comments (favourable or unfavourable to the child) as a proportion of the total number of comments the juror made about belief or disbelief in the child. Frequency data from the following categories were combined into single dichotomous categories:

**Dichotomous categories relating to perceptions of the child**

10V (Expressions of general belief in the child) - 20V (expressions of general disbelief in the child)

11V (child's demeanour appropriate) - 21V (child's demeanour inappropriate)

12V (child does not display cognitive distortion) - 22V (child does display cognitive distortion)

13V (no apparent reason for child to lie) - 23V (child has motivation to lie)

14V to 16V inclusive (child behaved appropriately) - 24V to 26V inclusive (child behaved inappropriately)

17V (content of child's testimony sufficiently explains events) - 27V (content of child's testimony is insufficient explanation)

18V (Naivete) - 28V (Child has the intellectual capacity to lie)

**Dichotomous categories relating to the interview with the child**

19Ps (Psychologist conducted interview appropriately) - 29Ps (interview was not conducted appropriately)

19X (cross-examination of child was appropriate) - 29X (cross-examination of child was inappropriate)
Dichotomous categories relating to perceptions of the defendant

10D (Expressions of general belief in the defendant) - 20D (expressions of general disbelief in the defendant)

11D (defendant's demeanour appropriate) - 21D (defendant's demeanour inappropriate)

13D (no apparent reason for defendant to lie) - 23D (defendant has motivation to lie)

15D and 16D combined (defendant behaved appropriately) - 25D and 26D combined (defendant behaved inappropriately)

17D (content of defendant's testimony sufficiently explains events) - 27D (content of defendant's testimony is insufficient explanation)

Dichotomous categories relating to discussion of evidence

51M (Mother's testimony enhances the child's case) - 52M (Mother's testimony does not enhance the child's case)

51Dr (Doctor's testimony enhances the child's case) - 52Dr (Mother's testimony does not enhance the child's case)

51Ps (Psychologist's testimony enhances the child's case) - 52Ps (Psychologist's testimony does not enhance the child's case).

For all other categories, frequency data were analysed without modification.

There were, ultimately, 46 categories as listed below:

7 dichotomous categories relating to jurors' perceptions of the child witness,

5 dichotomous categories relating to perceptions of the defendant,

2 dichotomous categories dealing with the appropriateness of the examination-in-chief and cross examination,

10 categories on jurors' discussion of evidence, plus 3 dichotomous categories

9 categories on juror conclusions and concerns,

7 categories on process issues, &

3 miscellaneous categories.
In the following analyses, alpha was set at .01, because of the large number of content categories.

**Presence/absence of expert testimony:**

Those jurors who saw the expert testimony engaged in significantly more discussion of the child's testimony, $F(1,143) = 6.71, p = .01$, and were more likely to mention inconsistencies between the child's testimony and the father's testimony, $F(1,143) = 7.61, p < .01$.

Those who did not see the expert testimony were more likely to make statements concerning insufficiency of evidence, $F(1,143) = 12.14, p < .001$, and were more likely to express concern for the consequences of the verdict for the child, $F(1,143) = 9.4, p < .01$, and for the defendant, $F(1,143) = 12.2, p < .001$. They were also more likely to advance the hypothesis that the child's mother had acted as a fabricating or embellishing agent.

**Gender of child:**

There was significantly more discussion of the child's evidence with female victim witnesses, $F(1,143) = 6.71, p < .01$, and the mother's testimony was perceived as more likely to enhance the child's case with a female child, $F(1,143) = 7.5, p < .01$. There were more expressions of concern about consequences of the trial for the defendant when the complainant child was male, $F(1,143) = 9.61, p < .01$.

**Age of child:**

There was significantly more advancing of alternative hypotheses as interpretations of the alleged incident by jurors who saw the 12-year-old victim/witnesses relative to those who saw the nine year old children (Fisher's PLSD = .55, $p < .01$).
Gender of juror:

Female jurors were less inclined to think that the medical doctor's testimony had enhanced the case, $F(1,143) = 8.32, p<.01$. The mean number of utterance units per deliberation was substantially, but not significantly ($p=.12$) higher for females ($M = 35.2$) than for male jurors ($M = 30.5$).

Student subjects vs Community subjects:

Relative to community subjects, students were more likely to make inaccurate statements (see Appendix 11, Content Analysis Codebook, category 60), $F(1,143) = 6.61, p=.01$, and inappropriate statements (see Appendix 11, Content Analysis Codebook, categories 81-83), $F(1,143) = 15.98, p<.001$. Some examples of inappropriate statements from the student deliberation transcripts were:

"Yes, I think where there is doubt you should go with the child" (from case with 9-year-old girl victim).

"If it was your daughter, if that was your daughter, would you on the evidence, would you say the mongrel should be in jail?" (from case with 12-year-old girl victim).

"He should be punished for what he's done to her, but we can't prove it" (from case with 12-year-old girl victim).

"I only put guilty because we had to put one or the other" (from case with 6-year-old boy victim).

"It's such a sick and horrid crime you instantly jump to the defence of the child" (from case with 6-year-old boy victim).

"I would like to think he's guilty but I couldn't put someone away when there is a possibility he is innocent because the stigma attached to that is ... soul-destroying" (from case with 6-year-old boy victim).

"It's also because you know how many people do get away with it, and you sort of want this guy to pay for everyone else" (from case with 6-year-old boy victim).
"The 9-year-old male isn't really a male in the full sense of the word, because he hasn't gone through puberty and got the, but he still is a sex role, and he is still a child" (from case with 9-year-old boy victim).

"Even if it did happen I don't think the damage done in a crime like this is all that bad" (from case with 12-year-old boy victim).

There was a tendency for male students to make more inaccurate statements than female students, but this did not reach significance ($p=.07$). The tendency for students to want more information about the defendant's sexual or criminal history than the community subjects approached significance ($p=.02$). Relative to the community subjects, students were also more likely to express concern about the consequences of the trial and/or verdict for the child, $F(1,143) = 19.95$, $p<.001$, and for the defendant, $F(1,143) = 13.65$, $p<.001$. Finally the number of statements considered uncodable, because the meaning was unclear or they were expressions not classifiable under any category, was significantly higher for student jurors, $F(1,143) = 12.28$, $p<.001$.

**Relationship of deliberation contents to verdicts**

A stepwise multiple regression analysis was used to determine the relationship between content analysis categories and the jurors' quantitative ratings of post-deliberation verdicts. The most salient predictor of verdicts was the proportion of favourable or unfavourable comments made by a juror concerning the child victim's cognitive abilities ($R^2 = .208$). The next contributing variable, bringing $R^2$ to .289 was the proportion of statements indicating that the juror considered the child would not have been capable of fabricating or maintaining a fabrication relative to statements that the child did have the intellectual capacity to lie. Further contributions to variance were made by the degree to which jurors regarded the mother's testimony as enhancing the child's case, the number of jurors' statements about the appropriateness of the child's behaviour during and after the alleged sexual
assault, and the proportion of favourable or unfavourable comments made about the child's demeanour and manifest affect. These five variables together accounted for 41% of the variance in post-deliberation verdicts.

6.5 DISCUSSION

The aim in the present study was to investigate the impact of general psychological testimony on mock jurors in a simulated sexual abuse trial. The expert testimony did not bear on the substance of the allegation of sexual abuse nor did it advert to any specific characteristics or behaviours of the child complainant, rather it informed the court of what His Honour Justice Pigot (1989) termed the "fruits of modern research into child psychology" (p. 210). While the expert testimony had significant impact on the child-based variables, the impact on verdicts was less clear. The jurors who heard the general testimony on children's memory expertise, reality monitoring and resistance to suggestion rated the child complainant significantly higher on these variables. Those who heard the expert testimony gave significantly higher ratings of the defendant's guilt on a 10-point scale, but the effect of the presence or absence of expert testimony on dichotomous guilty/innocent verdicts failed to reach significance. The findings lend support to Haugaard's (1988) claim that a court-appointed psychologist's testimony regarding the cognitive abilities of children in general may increase the jurors' perceptions of the child's credibility or, as Haugaard (1988) terms it, the "value" of the child's testimony in a sexual abuse case. It is not clear, however, whether that increased "value" of the child's testimony mediates increased numbers of guilty verdicts. In this study, the presence of the psychologist's expert testimony was related to increased guilty verdicts, but the trend failed to reach significance. However, on the scale incorporating degree of certainty in one's verdict decision, the effect of the presence of expert testimony was highly significant. Previous studies (Goodman et al., 1987; Ross et al., 1989) have found no straightforward link between the weight attached to a child's key witness testimony and case decision. A possible
interpretation of the present findings is that while the effect of exposure to the expert testimony had no significant effect on pre-deliberation verdicts, it may have been particularly salient in increasing the degree of certainty in those jurors who voted for the defendant's guilt.

It is of particular interest that the most salient predictor of both the child's perceived credibility and the verdict ratings was not one of the child-based variables addressed in the expert testimony but rather the jurors' ratings of the likelihood that the child may have misinterpreted the defendant's actions. In the case presented to the jurors the major protagonists in the trial differed little on facts, except for the differing accounts of the details of the alleged incident given by the child and by the defendant. The child's story was that there was full and painful penetration. The defendant claimed that if he made any contact at all with the genitals while he rubbed the child's legs it was inadvertent and nothing more. Thus, the jurors' beliefs concerning the likelihood that the child may have misinterpreted the defendant's action were salient, suggesting, as Pennington and Hastie (1986, 1988, 1992, 1993) have proposed, that jurors tend to construct a story, or causal explanation of the evidence, based on their interpretations of key evidentiary information.

The pattern of juror gender differences on pre-deliberation verdicts was similar to that found by Gabora et al. (1993) with female complainant witnesses aged 13 and 17, in a simulated child sexual abuse case. The juror gender differences found in this experiment and in the other studies of this thesis are discussed further in Chapter 11.

The finding in this experiment of no significant main effects for credibility according to the age of the child victim differs from the findings of Duggan et al. (1989). It was hypothesised that the expert's testimony on children's cognitive abilities may have greater impact on those who saw the 6-year-old children.
Indeed, the expert had much to say about children in the 6-year-old to 9-year-old range and very little to say about 12-year-olds. It may be that the testimony, being generalised, had a pervasively enhancing effect on jurors' perceptions of children, which might be the case if jurors were inclined to adopt a heuristic mode of processing with the court-appointed expert, and did not attend carefully to details concerning the ages specified by the expert. Another interpretation is that jurors exposed to the 12-year-old children, hearing the favourable research findings with regard to much younger children's cognitive abilities, may have responded by attributing higher levels of testimonial capacity to the older children than jurors who had not heard the evidence concerning younger children. The implications of the non-significant victim age results for understanding jurors' perceptions of child witnesses at various ages are discussed in more detail in Chapter 11.

It was noted by Duggan et al. (1989) and also in this study, that considerable emphasis was placed, during deliberations, on the meaning of proof "beyond a reasonable doubt". A number of jurors stated that, although they believed the child's version of what had occurred, they still maintained sufficient doubt to constitute a "reasonable doubt". More puzzling was the position of those jurors who stated that they believed the sexual assault had occurred, as the child stated, but they were nevertheless reluctant to vote guilty because of their concern about the consequences for the defendant of a guilty verdict.

6.6 METHODOLOGICAL CONSIDERATIONS FROM EXPERIMENT 1

Following the analysis of results from Experiment 1 and prior to the conduct of further experimentation, three methodological areas were reviewed: the duration of the trial stimulus, the impartiality of the psychological expert's testimony, and the use of undergraduates as mock jurors. The following discussion touches briefly on reasons why the first two of these areas were considered to be satisfactory, but the use of students as subjects was not continued in later experiments.
6.6.1 The brief duration of the simulation relative to a protracted trial in real life.

With regard to the findings of this study it should be emphasised that this was a simulation and although efforts were made to enhance ecological validity by presenting videotaped trials of a plausible and emotionally engaging scenario and by allowing a period of juror deliberation, there were problems associated with compressing what might take three or more days in criminal court proceedings into a videotape of less than 45 minutes. Excluded is a wealth of evidential and extra-evidentiary detail and complexity, as well as the nuances and tactics which comprise some of the texture of courtroom proceedings such as the use of presumptuous questions shown to be effective in diminishing an expert's credibility (Kassin, Williams, & Saunders, 1990). For these reasons, jurors in this study may have tended to place a greater relative weight on the expert's testimony than might have been the case in full trial proceedings. Nevertheless, the number and kind of witnesses presented in this simulation are similar to those mentioned as positively or negatively salient by jurors in the actual sexual abuse case studied by Shigaki and Wolf (1990), in which the jurors interviewed after the trial maintained that the five-year-old child's testimony was the most salient factor influencing their verdicts, and the testimonies of the child's mother, medical doctor and expert witness on sexual abuse were all considered to be positive and of equal salience.

6.6.2 Impartiality of the expert

A comparison of jurors' evaluations of the court-appointed expert relative to experts giving the same testimony in partisan roles was not undertaken, as it was, in Brekke et al.'s study (1991), but jurors who heard the expert testimony in this study, whether they voted guilty or not guilty, gave high ratings of the expert's impartiality. Borgida et al. (1989) have pointed out that in an adversarial legal system, a psychologist expert may strive to be objective, yet appear to be partisan. It is, of course, possible, that in some cases the converse may apply, that is, jurors
may attribute to a court-appointed expert the positive source characteristics (Petty & Cacioppo, 1986b) of nonadversarial status and objectivity, when, in fact, the expert's testimony is considerably less than impartial.

Expert testimony of the type presented in this study could not encompass, even over a much longer period in court, the full details and diversity of findings from research into children's cognitive abilities, and any attempt to summarise the literature succinctly is likely to be considered differently, as more or less impartial, by other experts in the field. Judgments of an expert's impartiality are, ultimately, subjective, whether it be jurors or other experts making those judgments. In the present study, the attempt was made to summarise the relevant literature and to incorporate differences of opinion and divergent findings, some of which emerged when the judge questioned the expert and some when the defence counsel was invited to examine the expert. In this fashion, it was hoped to incorporate within the simulation some of the checks and balances which are routine procedure in the Anglo-American legal system. In accord with the conclusions reached by the authors of numerous reviews of children's abilities (e.g., Ceci & Bruck, 1993; Davies, 1989; Dent & Flin, 1992; Perry & Wrightsman, 1991; Spencer & Flin, 1990), the expert was generally supportive of children's cognitive abilities and testimonial capacities.

6.6.3 The ecological validity of using undergraduate student subjects vs jury-eligible citizens.

A number of results from the content analysis of deliberations suggest that there may have been substantial differences in process, even though there were no significant differences in outcome, between student jurors and jury-eligible subjects from the community. Compared to jurors from the community, student jurors were more likely to make inaccurate and inappropriate statements and to engage in speculation which was not germane to their roles as triers of fact, such as
discussion concerning the consequences of the trial for the child and for the defendant. It is also interesting to note that there was considerably more volatility in the student juror group, who moved from 44 pre-deliberation guilty verdicts to 32 post-deliberation guilty verdicts. Among the community jury groups only one subject changed; from a pre-deliberation not guilty verdict to guilty, following deliberation.

A number of interpretations of these student/community differences are possible. It may be that student jurors approach deliberation with a greater propensity to listen to others' viewpoints and be persuaded by reasoned debate. Alternatively, it may be that students' verdicts are more likely to initially reflect a degree of campus "political correctness" (i.e., a propensity to empathise with the victim), which tends to dissipate to some extent as the facts of the case are aired. Given that inaccurate and inappropriate statements are more common in the student groups' deliberations, it suggests a tendency towards less rigorous thinking in those groups, and/or less willing acceptance of the constraints within which jurors are required to operate.

In terms of leniency of verdict, students have been found to be more lenient than subjects from the community (Hinkle, Smeitzer, Allen, & King, 1983; Kaplan & Krupa, 1986) or less lenient (Gerbasi, Zuckerman, & Reis, 1977), depending on the nature of the case. In the present experiment, although there were no significant differences between the student and community subjects on any dependent variable measures or verdicts, the difference on post-deliberation verdicts did approach significance, (p=.07), with students giving fewer votes for conviction.

Aubrey and Ewing (1989) found that, when presented with a scenario involving elements of the battered woman syndrome (Walker, 1984), psychology students were less inclined than registered voter subjects to endorse stereotypical statements.
about battered women and more inclined to understanding the situation of the victim. Aubrey and Ewing suggest their results may indicate the development of increased social consciousness among the students in the campus milieu, an environment which they propose fosters "the development of values in which the perception of others is less likely to be stereotypical or judgmental" (1989, p. 295). In the present study, no survey of pre-trial attitudes to victims of sexual assault was undertaken, but it may be that student jurors were initially more uncritically positive towards the child victim/witness than jurors from the community, and then found it difficult to sustain that position as counter arguments based on the legal facts were advanced during deliberation.

The differences in deliberation content between students and community groups and the volatility of student verdicts from pre- to post-deliberation support the contention that students may not be an accurate analog for studying the cognitions, attitudes or decision-making processes of real jurors (Aubrey & Ewing, 1989; Weiten & Diamond, 1979). As Wells (1986) has noted, "in examining the validity of verdicts, we must be concerned with the process by which those verdicts are reached. Verdicts reached by bizarre or faulty processes are unacceptable regardless of whether or not the verdict was correct" (p. 91). For these reasons the decision was made to use only jury-eligible citizens from the community in the remaining experiments of this thesis.

6.7 SUMMARY AND LEGAL IMPLICATIONS

In the past decade, a large number of jurisdictions within the Anglo-American adversarial system have recommended or implemented reforms to legal procedures for dealing with child victim/witnesses of sexual assault. Currently, the growing use of psychological expert witnesses by both the prosecution and defence in child abuse litigation has been termed a "disturbing trend" and a "lucrative industry"
(Whitcomb, 1990) spawning battles of experts. Some authors from both legal and psychological perspectives have endorsed the available but rarely used procedure which allows the court to appoint its own expert witness. In this study a court-appointed expert was used to present generalised testimony based on the substantial body of literature concerning children's memory abilities, resistance to suggestion and reality monitoring. On these variables the jurors who heard the expert testimony rated the child victims significantly higher than did those jurors who did not have the benefit of such testimony.

McGough (1991) has re-iterated that witness credibility is a question of fact to be determined by the jury in our legal system. It is important to note that the expert in this study made no attempt to usurp the jury's function in this respect. No direct mention was made of any characteristics of the child complainant nor was there any statement made by the expert which referred to the child's credibility. The expert merely provided a cognitive developmental framework which was as accurate as the current state of psychological research allowed. It was then up to the jurors themselves to use that framework or not. The question of whether the same testimony delivered by a psychologist expert witness for the prosecution would have similar impact on jurors was the subject of investigation in the second experiment.
Chapter 7

Experiment two: The impact of adversarial versus nonadversarial expert testimony in a simulated child sexual abuse case
Chapter 7

Experiment 2: The Impact of 
adversarial versus nonadversarial expert testimony
In a simulated child sexual abuse case

7.1 INTRODUCTION

In Experiment 1, it was found that, in a simulated child sexual abuse trial, jurors exposed to expert psychological testimony concerning research on the cognitive abilities of children rated the child witnesses significantly higher on those variables which the expert addressed than did those jurors not exposed to the expert testimony. In that experiment, the psychologist expert was presented as a court-appointed witness so that an evaluation of the impact of the expert testimony could be made with minimal likelihood of confounding role effects.

As a court-appointed expert, it was expected that the psychologist would be seen, not as an advocate for either side, but rather as a neutral, impartial educator whose function was to provide a cognitive developmental framework which the jurors might or might not use in their decision making, and particularly in their assessments of the child witness' credibility. In that experiment jurors rated the impartiality and helpfulness of the psychologist expert highly, but without an expert in an adversarial role, no conclusions could be drawn about relative levels of impartiality and assistance.

In the present study, the same stimulus materials were used as in the previous study, but the psychologist expert was presented in two modes; a non-adversarial (court-appointed) expert, and an adversarial (appearing for the prosecution) witness. The experiment was similar to that conducted by Brekke et al. (1991), who used a videotaped re-enactment of an acquaintance rape case as the trial stimulus.
Results from Experiment 1 showed a number of outcomes which differed according to juror gender. Female jurors gave significantly higher ratings to the child victim's memory, resistance to suggestion, reality monitoring and overall credibility, and were significantly higher in quantitative ratings of their degree of certainty of the defendant's guilt.

It was considered that, in an emotionally engaging scenario such as a sexual assault case, especially one involving a child victim, strong affective responses involving empathy or identification may be characteristically gender-differentiated (Deitz, Blackwell, Daley, & Bentley, 1982) and that the possibility of gender as a factor in such a trial should be explored fully. Therefore, male and female child victim/witnesses were used as in Experiment 1, but additionally, in this study, both male and female psychological experts were presented.

7.2 METHOD

7.2.1 Subjects

One hundred and ninety two subjects participated in the study, in 32 groups each of six mock jurors. All subjects were jury eligible citizens from the community who had been solicited by requesting undergraduate psychology students at the University of Tasmania to take a copy of a prepared letter and pass it to any jury-eligible citizen known to them. The letter explained the general nature of the research without specifying the relevant variables under investigation. The letter further explained that jurors would deliberate in groups of six after watching a simulated reconstruction of a sexual assault trial and that deliberations would be videotaped for later content analysis. The subjects were randomly assigned to the experimental conditions. There was a gender balance of three males and three female jurors in each mock jury.
7.2.2 Experimental design

The design was a 2 (expert role: court appointed vs. witness for the prosecution) x 2 (age of child: 6 vs 9 yrs) x 2 (gender of child) x 2 (gender of psychological expert) x 2 (gender of juror) factorial design. As child age did not significantly affect subjects' child-based ratings or verdicts in Experiment 1, it was decided to use just two child ages in this experiment.

7.2.3 Material

The same basic trial scenario as in experiment one was used in this experiment. In the court-appointed role, each psychological expert was questioned by the judge who also made it clear to the court at the outset that the witness was court-appointed and was not present to support either the prosecution or defence case. When the psychologist was presented as a witness for the prosecution, examination-in-chief was conducted by prosecuting counsel (full transcript of adversarial expert testimony, Appendix 6). In each role, the psychologist was cross-examined by defence counsel.

Juror Questionnaire

Before deliberating, subjects assessed the child witness using a 9-point scale on the same variables as in Experiment 1, and subjects were again asked to vote guilty or not guilty and, on a 5-point scale, indicate the degree of certainty each felt about their vote.

Post-deliberation

At the end of the 25 minute deliberation period, subjects were asked to rate the child's confidence, consistency, reliability of memory, resistance to suggestion, reality monitoring ability, and overall credibility, and then to vote guilty or not guilty and give an indication of their subjective certainty.
7.2.4 Procedure

On arrival, each juror was given instructions which stated that, as a panel, they would view a videotaped simulation of a trial involving a child complainant bringing an allegation of sexual assault against his/her father. It was specified that each juror was to complete a brief questionnaire on aspects of the trial before and after a deliberation process of 25 minutes duration, and the deliberations were to be videotaped for content analysis. Each juror's confidentiality was guaranteed. After viewing the trial, jurors were given a sheet which listed the witnesses, and specified the legal definition of the charge of sexual intercourse with a young person (Tasmanian Criminal Code, s.124). As in Experiment 1, all deliberations were transcribed and the contents were analysed using the same raters, codebook and procedures which had been used in the first experiment.

7.3 RESULTS

*Independent variable effects on jurors' perceptions of the child victim/witness*

A multivariate F test (2x2x2x2x2) MANOVA, using expert role, child age, and the genders of expert, child and juror as independent variables with the three child-based dependent variables, memory, resistance to suggestion, reality monitoring, showed significant main effects for expert role (Wilks' Lambda : $F(3, 158) = .943$, $p<.05$). There was also a significant interaction between the gender and role of the expert (Wilks' Lambda : $F(3,158) = .931$, $p<.01$), and between age of child, gender of child and gender of juror, $F(3,158 = .933$, $p<.05$).

Univariate analyses indicated that jurors who heard the court-appointed expert rated the likely harmfulness of the sexual abuse significantly higher ($M = 6.98$) than those who heard the prosecution expert ($M = 6.32$), $F(1,160) = 4.46$, $p<.05$. 


Gender of expert x expert role interactive effects

The interactive effect of gender and role of expert was significant on credibility ratings, $F(1, 160) = 15.72, p <.01$. While there were no significant differences between mean child credibility ratings when the female expert was acting in either the non-adversarial ($M = 6.34$) or adversarial ($M = 6.84$) role, the mean for the jurors' ratings of the child's credibility when the male psychologist was court appointed ($M = 7.07$, $SD = 1.74$) was significantly higher than when he was presented as a witness for the prosecution ($M = 5.53$, $SD = 1.95$). Further Anova analyses of the child-based ratings made by jurors showed that a number of the child-based variables exhibited the same pattern as the child's credibility ratings, that is, there were significant interactions between role and gender of expert on ratings of the child's confidence, $F(1, 160) = 6.67, p <.05$, consistency, $F(1, 160) = 7.57, p <.01$, reality monitoring, $F(1, 160) = 6.00, p <.05$, memory ability, $F(1, 160) = 10.99, p <.01$, and the likelihood that the child did not misinterpret the defendant's action, $F(1, 160) = 10.48, p <.01$. For each of these variables, as with the child's credibility ratings, the interactive effect was attributable to jurors' significantly lower ratings of the child when the male expert appeared in the adversarial (prosecution) role, as shown in Figures 7.1 to 7.6.

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**Figure 7.1** Mean pre-deliberation ratings of the child's overall credibility at each expert gender x role condition.
Figure 7.2 Mean pre-deliberation ratings of the child's confidence at each expert gender x role condition.

Figure 7.3 Mean pre-deliberation ratings of the child's consistency at each expert gender x role condition.
Figure 7.4 Mean pre-deliberation ratings of the child's reality monitoring at each expert gender x role condition.

Figure 7.5 Mean pre-deliberation ratings of the child's memory ability at each expert gender x role condition.
Interactions involving age and gender of child.

Significant interactions between the gender and age of the child were found on the child-based variables of confidence, $F(1,160) = 9.14, p<.01$ and consistency, $F(1,160) = 6.64, p<.05$. On these variables, the interactive effects were attributable to the lower mean ratings which jurors gave to the 6-year-old boy's confidence ($M = 5.39$) relative to the 6-year-old girl's ($M = 6.16$), and to the 9-year-old girl's confidence ($M = 5.32$) and consistency ($M = 6.38$) relative to the 9-year-old boy's confidence ($M = 6.14$) and consistency ($M = 7.12$).

Following the significant MANOVA effect for the interaction of age and gender of child with gender of juror, univariate Anova analyses indicated that the interaction of these three variables was significant on ratings of the child's reality monitoring ability. The mean ratings for reality monitoring in each of the child age x gender of child x gender of juror conditions are shown in Table 7.1. The results indicate that
when the child was six years old, jurors of the same sex gave the child higher ratings than the 9-year-old child, but with the 9-year-old child, jurors of the opposite sex gave the child higher ratings than the 6-year-old child.

Table 7.1 Mean ratings (with SD's in parentheses) of the child's reality monitoring ability by child age, gender of child and gender of juror

<table>
<thead>
<tr>
<th>Child age</th>
<th>Gender of child</th>
<th>Gender of juror</th>
<th>Mean ratings of child's reality monitoring ability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Six</td>
<td>Male</td>
<td>Male</td>
<td>5.91 (1.65)</td>
</tr>
<tr>
<td>Nine</td>
<td>Male</td>
<td>Male</td>
<td>5.37 (1.81)</td>
</tr>
<tr>
<td>Six</td>
<td>Male</td>
<td>Female</td>
<td>6.52 (1.89)</td>
</tr>
<tr>
<td>Nine</td>
<td>Male</td>
<td>Female</td>
<td>7.14 (1.62)</td>
</tr>
<tr>
<td>Six</td>
<td>Female</td>
<td>Male</td>
<td>6.48 (1.33)</td>
</tr>
<tr>
<td>Nine</td>
<td>Female</td>
<td>Male</td>
<td>7.08 (1.21)</td>
</tr>
<tr>
<td>Six</td>
<td>Female</td>
<td>Female</td>
<td>6.96 (1.60)</td>
</tr>
<tr>
<td>Nine</td>
<td>Female</td>
<td>Female</td>
<td>6.52 (1.65)</td>
</tr>
</tbody>
</table>

**Gender of juror effects**

Relative to male jurors, female jurors gave the child witnesses significantly higher ratings on overall credibility, $F(1, 160) = 11.01, p < .01$, confidence, $F(1, 160) = 4.25, p < .05$, consistency, $F(1, 160) = 5.56, p < .05$, reality monitoring ability, $F(1, 160) = 6.46, p < .05$, and the likelihood that the child did not misinterpret the defendant's actions, $F(1, 160) = 19.20, p < .01$.

**Three-way gender interactions**:

**Gender of expert x gender of child x gender of juror**

Anova analyses of the child-based ratings also indicated a significant three-way gender interaction on ratings of the child's confidence, $F(1, 160) = 7.75, p < .01$, consistency, $F(1, 160) = 4.77, p < .05$, memory, $F(1, 160) = 5.33, p < .05$, with a tendency towards significance on ratings of the child's overall credibility, $F(1, 160)$
For each of these variables the interactive effect was attributable to male jurors' significantly lower ratings of the male child when the male expert gave testimony. Table 7.2 shows the mean ratings for each of the three-way gender conditions on each of these variables.

Table 7.2 Three-way gender means for ratings of the child's memory, confidence, consistency, credibility and pre-deliberation verdict ratings.

<table>
<thead>
<tr>
<th>Gender of</th>
<th>Memory</th>
<th>Confidence</th>
<th>Consistency</th>
<th>Credibility</th>
<th>Verdict rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expert</td>
<td>Child</td>
<td>Juror</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>Male</td>
<td>Male</td>
<td>5.43</td>
<td>4.62</td>
<td>5.89</td>
</tr>
<tr>
<td>Male</td>
<td>Male</td>
<td>Female</td>
<td>6.81</td>
<td>6.75</td>
<td>7.87</td>
</tr>
<tr>
<td>Male</td>
<td>Female</td>
<td>Male</td>
<td>6.20</td>
<td>5.75</td>
<td>6.50</td>
</tr>
<tr>
<td>Male</td>
<td>Female</td>
<td>Female</td>
<td>5.81</td>
<td>5.27</td>
<td>6.47</td>
</tr>
<tr>
<td>Female</td>
<td>Male</td>
<td>Male</td>
<td>6.08</td>
<td>5.79</td>
<td>7.00</td>
</tr>
<tr>
<td>Female</td>
<td>Male</td>
<td>Female</td>
<td>6.18</td>
<td>5.89</td>
<td>7.10</td>
</tr>
<tr>
<td>Female</td>
<td>Female</td>
<td>Male</td>
<td>6.60</td>
<td>5.77</td>
<td>7.10</td>
</tr>
<tr>
<td>Female</td>
<td>Female</td>
<td>Female</td>
<td>7.04</td>
<td>6.16</td>
<td>7.29</td>
</tr>
</tbody>
</table>

**Analysis of verdicts**

The relationship between the independent variables and jurors' pre-deliberation verdicts was analysed using a log linear analysis, which showed there were no significant differences in the number of guilty votes with respect to expert role or expert gender, but the interaction of these variables approached significance (p=.055). Further chi-square analyses were conducted to examine the effect of expert role on verdict within each expert gender condition. There was a significantly higher proportion of guilty votes when the male expert was in the court-appointed role, relative to the adversarial role, $\chi^2 (1, N=96) = 6.06, p<.05$. With the female expert, there was no significant effect of role on verdict. Chi-square analyses of the effect of expert gender on verdict within each role
condition showed that when the expert appeared for the prosecution, there were significantly more guilty votes with the female expert than the male expert, \( \chi^2 (1, N=96) = 7.15, \ p<.01 \). The log linear analysis also indicated a significant main effect for juror gender, \( \chi^2 (1, N=192) = 7.76, \ p<.01 \), with female jurors significantly more likely to render a guilty verdict. Prior to deliberation, 69% of the female jurors and 49% of the male jurors voted for conviction. After deliberation, there was a 4.5% change to acquittal in the female juror group, and no change in the male juror group. Table 7.3 shows the frequency of guilty and not guilty pre-deliberation verdicts and post-deliberation verdicts by each independent variable.

<table>
<thead>
<tr>
<th>Expert Role Condition</th>
<th>Pre-Deliberation</th>
<th>Post-Deliberation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Guilty</td>
<td>Not guilty</td>
</tr>
<tr>
<td>Court-appointed</td>
<td>59</td>
<td>37</td>
</tr>
<tr>
<td>Witness for prosecution</td>
<td>54</td>
<td>42</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Age of Child Condition</th>
<th>Pre-Deliberation</th>
<th>Post-Deliberation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Guilty</td>
<td>Not guilty</td>
</tr>
<tr>
<td>Six years</td>
<td>59</td>
<td>37</td>
</tr>
<tr>
<td>Nine years</td>
<td>54</td>
<td>42</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gender of Child Condition</th>
<th>Pre-Deliberation</th>
<th>Post-Deliberation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Guilty</td>
<td>Not guilty</td>
</tr>
<tr>
<td>Male</td>
<td>51</td>
<td>45</td>
</tr>
<tr>
<td>Female</td>
<td>62</td>
<td>34</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gender of Expert Condition</th>
<th>Pre-Deliberation</th>
<th>Post-Deliberation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Guilty</td>
<td>Not guilty</td>
</tr>
<tr>
<td>Male</td>
<td>53</td>
<td>43</td>
</tr>
<tr>
<td>Female</td>
<td>60</td>
<td>36</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gender of Juror Condition</th>
<th>Pre-Deliberation</th>
<th>Post-Deliberation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Guilty</td>
<td>Not guilty</td>
</tr>
<tr>
<td>Male</td>
<td>47</td>
<td>49</td>
</tr>
<tr>
<td>Female</td>
<td>66</td>
<td>30</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Column totals (for each Ind.Var)</th>
<th>Pre-Deliberation</th>
<th>Post-Deliberation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>113</td>
<td>79</td>
</tr>
</tbody>
</table>
After nominating their verdicts, jurors were asked to rate the degree of certainty/uncertainty they felt about their verdicts on a five-point scale, which allowed the dichotomous verdicts to be scaled quantitatively from 1 (very certain defendant is not guilty) up to 10 (very certain defendant is guilty). Anova analyses of the independent variables with these verdict ratings showed significantly higher ratings for those exposed to the non-adversarial expert relative to the adversarial expert, $F(1,160) = 4.29$, $p<.05$, and also higher verdict ratings for the female jurors relative to the males, $F (1,160) = 6.97$, $p<.01$.

The interaction between gender of expert and role of expert was highly significant with regard to verdict ratings, $F(1, 160) = 14.69$, $p<.001$, as was found with jurors' ratings of a number of the child-based variables. Verdict ratings did not vary significantly with role when the expert was female, but were significantly higher ($M = 7.12$, $SD = 2.92$) when the male expert was in the non-adversarial role, relative to the adversarial role ($M = 4.75$, $SD = 2.86$). As can be seen from Figure 7.7, the pattern is consistent across juror gender.

Figure 7.7 Pre-deliberation verdict ratings for male and female jurors at each expert gender x role condition.
**Balance of verdicts within juries.**

Table 7.4 shows the balance of verdicts within juries before and after the deliberation process. Only two jury panels prior to deliberation and three panels after deliberation were unanimous in voting guilty.

<table>
<thead>
<tr>
<th>Table 7.4</th>
<th>Number of jury panels with a particular balance of verdicts before and after deliberation.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unanimous</td>
</tr>
<tr>
<td></td>
<td>Not guilty</td>
</tr>
<tr>
<td><strong>Pre-deliberation</strong></td>
<td></td>
</tr>
<tr>
<td>Court-appointed expert</td>
<td>0</td>
</tr>
<tr>
<td>Prosecution expert</td>
<td>0</td>
</tr>
<tr>
<td><strong>Post-deliberation</strong></td>
<td></td>
</tr>
<tr>
<td>Court-appointed expert</td>
<td>0</td>
</tr>
<tr>
<td>Prosecution expert</td>
<td>0</td>
</tr>
</tbody>
</table>

**Evaluation of the expert testimony: Impartiality and helpfulness.**

Anova tests of the relationship between the independent variables and the perceived impartiality and helpfulness of the psychologist's testimony indicated that those who saw the expert in the court-appointed role rated the expert's testimony as significantly more impartial, $F(1,160) = 4.69$, $p<.05$, and more helpful, $F(1,160) = 8.69$, $p<.01$. Relative to male jurors, female jurors also rated the expert's testimony as more impartial, $F(1,160) = 11.6$, $p<.01$, and more helpful, $F(1,160) = 4.45$, $p<.05$. The interaction of expert gender and expert role was significant for ratings of expert assistance, $F(1,160) = 5.38$, $p<.05$, and for ratings of the expert's impartiality, $F(1,160) = 3.84$, $p=.05$. The male expert witness was rated as significantly more helpful, $t(94) = 3.97$, $p<.01$, and impartial, $t(94) = 2.7$, $p<.01$, in the court-appointed role than when presented in the role of a prosecution expert witness. Figures 7.8 and 7.9 show the interaction of expert role and gender on ratings of impartiality and helpfulness.
Figure 7.8. Ratings of the expert's impartiality for male and female jurors at each expert gender x role condition.

Figure 7.9. Ratings of the helpfulness of the expert's testimony for male and female jurors at each expert gender x role condition.
Correlation and regression analyses

Intercorrelations of the child-based dependent variables, confidence, consistency, memory ability, resistance to suggestion, reality monitoring, the child's attractiveness, the likelihood that the child did not misinterpret the defendant's actions, pre-deliberation verdict ratings, and jurors' assessments of the child's overall credibility are shown in Table 7.5. Differential reliability of the individual child-based ratings may have accounted for some differences in the magnitude of the correlations.

To examine which of the child-based ratings made by jurors were most highly predictive of the jurors' pre-deliberation verdicts at each victim age, stepwise regression analyses were conducted using the variables, confidence, consistency, memory ability, resistance to suggestion, reality monitoring, harmfulness of the alleged act, the child's attractiveness, and the likelihood that the child did not misinterpret the defendant's actions. Results showed that, for both the 6-year-old and 9-year-old victims, jurors' ratings on the likelihood that the child had not misinterpreted the defendant's actions accounted for the most substantial proportion of variance, followed by jurors' ratings of the child's resistance to suggestion. These variables accounted for 48% of the variability in pre-deliberation verdicts with the 6-year-old victim, and 40% of the verdict variability with 9-year-old victims.

A similar regression analysis with the child's credibility as the target variable showed that, for the 6-year-old, perceived resistance to suggestion, followed by the likelihood of not misinterpreting the defendant's actions, together accounted for 56% of the variance. With the 9-year-old victim, ratings of the child's consistency were the most salient predictor, followed by the likelihood of non-misinterpretation of the defendant's actions, these two variables accounting for 57% of the variance in pre-deliberation verdicts.
Table 7.5 Inter-correlations between verdicts and child-based variables

<table>
<thead>
<tr>
<th></th>
<th>Confid</th>
<th>Consist</th>
<th>Memory</th>
<th>Resist to suggestion</th>
<th>Reality monitoring</th>
<th>Attract. interpretation</th>
<th>Non-misinterpretation</th>
<th>Verdict rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consistency</td>
<td>.47 *</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Memory</td>
<td>.46 *</td>
<td>.52 *</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Resistance to suggestion</td>
<td>.44 *</td>
<td>.31 *</td>
<td>.47 *</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reality monitoring</td>
<td>.35 *</td>
<td>.44 *</td>
<td>.57 *</td>
<td>.55 *</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attractiveness</td>
<td>.13</td>
<td>.00</td>
<td>.12</td>
<td>.07</td>
<td>.15</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-misinterpretation</td>
<td>.38 *</td>
<td>.34 *</td>
<td>.41 *</td>
<td>.47 *</td>
<td>.16</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Verdict rating</td>
<td>.39 *</td>
<td>.30 *</td>
<td>.44 *</td>
<td>.49 *</td>
<td>.50 *</td>
<td>.09</td>
<td>.58 *</td>
<td></td>
</tr>
<tr>
<td>Overall child credibility</td>
<td>.54 *</td>
<td>.54 *</td>
<td>.61 *</td>
<td>.58 *</td>
<td>.62 *</td>
<td>.19</td>
<td>.61 *</td>
<td>.69 *</td>
</tr>
</tbody>
</table>

* p < .01

7.4 CONTENT ANALYSIS OF DELIBERATIONS

The content of deliberations was analysed to determine how content varied as a function of the independent variables. Alpha was set at .01, because of the large number of content categories.

Role of expert: Those jurors exposed to the non-adversarial expert were significantly more likely than those who saw the adversarial expert to make comments which indicated acceptance of the child's testimony as sufficient explanation for events \( \chi^2(190) = 2.9, p < .01 \), and were significantly more likely to see the family doctor's testimony as enhancing the child victim's case, \( \chi^2(190) = 2.6, p < .01 \).
**Gender of expert**: Those who viewed the female expert witness made more favourable comments about the manner in which the psychologist's interview with the child was conducted, $t(190) = 2.75, p<.01$. It should be noted that the female psychologist whose interview with the child was shown in all trial conditions, was not the female psychologist who presented expert testimony. Those who viewed the female expert witness also were significantly more likely to view the mother's testimony as strengthening the alleged victim's claim than were those who saw the male expert witness, $t(190) = 3.14, p<.01$.

**Gender of juror**: The only significant differences in the content of the male and female jurors' deliberations were that females engaged in significantly more discussion of the child's testimony, $t(190) = 3.5, p<.001$, and the defendant's testimony, $t(190) = 3.08, p<.01$. In these content analysis categories, the term "discussion" included any clear reference to the witness' testimony or any questions intended to clarify the content of that testimony, for example, "Did she say she fell asleep when her father was massaging her legs?"

Female jurors also recorded a significantly higher number of utterance units per deliberation ($M = 29.87$) than did the male jurors ($M = 24.68$). While the mean number of words spoken during deliberation was substantially higher for female jurors ($M = 606.3$) than for male jurors ($M = 536.1$), this difference was not significant.

**Age of child victim**: Significantly more discussion of the child's testimony occurred with the 9-year-old victim, than with the 6-year old victim, $t(190) = 3.34, p<.001$. There was significantly more discussion of reasonable doubt and its relation to verdicts in the deliberations of jurors who saw the 6-year-old victims, relative to those who saw the 9-year-old victims, $t(190) = 2.76, p<.01$
Gender of child victim: Significantly more discussion of the doctor's testimony and questions seeking to clarify the content of the doctor's testimony occurred with the male victims, \( t(190) = 3.08, p < .01 \). Comments indicating acceptance that the child had acted appropriately during and after the alleged sexually abusive incident were at a significantly higher level in the deliberations of those who saw the female child than with those who saw the male child, \( t(190) = 2.5, p = .01 \).

Relationship of deliberation contents to verdicts

Stepwise and multiple regression analyses were used to determine the relationship between content analysis categories and the jurors' quantitative ratings of post-deliberation verdicts. The most salient predictor of verdicts was the proportion of favourable or unfavourable comments made by a juror concerning the child victim's cognitive abilities \( (R^2 = .171) \). The next variable contributing to variance of post-deliberation verdicts was the degree to which jurors regarded the psychologist's testimony as enhancing the child's case. A significant contribution to variance was also made by jurors' ratings of the appropriateness of the child's behaviour during and after the alleged sexual assault, including the delay in disclosure. These three variables together accounted for 35% of the variance in post-deliberation verdicts.

7.5 DISCUSSION

The impact of expert gender and expert role

In the present study, with the male adversarial expert there were significantly fewer guilty verdicts than when he appeared as a court-appointed witness. There were also significantly fewer guilty votes with the male expert than the female expert when each appeared as an adversarial expert. While there were no significant differences between the mean ratings of the child's credibility and other
child-based variables, and also the defendant's guilt, when the female expert was acting in either the adversarial or non-adversarial role, the ratings on these variables were significantly higher when the male psychologist was court-appointed than when the male expert was a witness for the prosecution.

On ratings of the impartiality and helpfulness of the psychologist expert the same pattern emerged. These lower ratings of the child, the expert and defendant guilt by jurors exposed to the male adversarial expert witness were consistent across juror gender. Theoretical models and analyses of the communication and persuasion process (Chaiken, 1980, 1987; Eagly & Chaiken, 1984; Petty & Cacioppo, 1986b; Wood & Eagly, 1981) suggest ways in which nonadversarial presentations of expert testimony may lead to jurors giving greater weight to the content of such testimony but why this process appeared to occur only with the male expert and not with the female expert is not readily explicable. As in Brekke et al.'s (1991) study of the relative impact of non-adversarial and adversarial expert testimony, the present experiment was not designed to distinguish between the relative merits of theoretical models of persuasion but these models may afford some plausible interpretations of the underlying processes. According to Petty and Cacioppo (1986b), the two primary components of a communicator's credibility are perceived trustworthiness and expertise both of which jurors might attribute to a court-appointed expert. However, an adversarial witness may be seen as expert but untrustworthy having assumed what Brodsky (1977) terms, an "unequivocal advocacy role" or in more common parlance, the role of a "hired gun" (Rappeport, 1993; Schultz-Ross, 1993). If jurors have conceptions of the adversarial legal system as one which encourages partiality (Fox & Walters, 1986; Smith, 1989), and which is also traditionally dominated by male protagonists in the roles of judges, lawyers and experts, they may be less inclined to associate a female expert with the "hired gun" role, and thus more inclined to perceive a female expert as impartial and trustworthy, and more inclined to see her testimony as helpful. Scutt (1994)
suggests that the legal system in Australia is still perceived as highly male-dominated, and that this perception is fuelled by expressions of lingering judicial sympathy for men who kill their departing wives, and reluctance to relinquish cautions to juries on the purported female propensity to prevarication in rape cases.

While there are no published studies on the impact of the expert's gender in the presentation of expert testimony, Leippe, Brigham, Cousins and Romanczyk (1987) found that female criminal attorneys were significantly more likely to understand the reasons why children retract allegations of sexual abuse. They suggested that this result was consistent with Eagly's (1987) findings that women generally displayed warmer, more empathic styles of social and professional interaction. It may be that, in the present study, the female in the adversarial expert role was perceived by jurors as displaying a warmer, more empathic presentational style, and these contextual factors may have led to her testimony receiving a greater degree of acceptance than the male expert's, whose presentational style may have been such as to have little impact on jurors' expectancy of partiality.

While jurors made no assessments of the experts' presentational styles, it is nevertheless of some interest that the content analysis of deliberations revealed that those who saw the female expert made more favourable comments about two other female protagonists in the trial - the psychologist who interviewed the child, and the child's mother.

Because only one male and one female served as experts in this trial, it may have been that the effects of expert gender and the significant interactions with expert role were in some manner confounded with idiosyncratic characteristics of the individuals who served as experts. To investigate whether other factors such as jurors' perceptions of confidence or demeanour may have been mediating differential responses to the male expert in the varying roles, a further 40 jury-eligible
citizens, who had not previously been used as subjects in either experiment one or two, were shown just the videotaped sequence involving the presentation of the male expert's testimony. Twenty subjects (10 male, 10 female) viewed the expert delivering his testimony as a court-appointed witness and another gender-balanced sample of twenty subjects viewed the expert giving evidence as a prosecution witness. These subjects were told only that they were to view a psychologist's testimony concerning children's abilities, and were given no information as to the expert's role. After viewing, each subject was asked to rate the expert on 9-point scales, on the variables of confidence, honesty, competence, credibility, trustworthiness and clarity of presentation. Results, shown in Table 7.6, indicated no significant differences between the means for any variable.

<table>
<thead>
<tr>
<th>Expert attribute</th>
<th>Court-appointed (n=20)</th>
<th>Prosecution (n=20)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confidence</td>
<td>7.20 (1.24)</td>
<td>6.85 (1.04)</td>
</tr>
<tr>
<td>Honesty</td>
<td>7.30 (1.03)</td>
<td>7.40 (1.56)</td>
</tr>
<tr>
<td>Competence</td>
<td>7.00 (1.33)</td>
<td>6.90 (1.41)</td>
</tr>
<tr>
<td>Credibility</td>
<td>6.95 (1.57)</td>
<td>6.80 (1.50)</td>
</tr>
<tr>
<td>Trustworthiness</td>
<td>7.15 (1.13)</td>
<td>6.90 (1.16)</td>
</tr>
<tr>
<td>Clarity</td>
<td>7.40 (0.94)</td>
<td>7.35 (1.04)</td>
</tr>
</tbody>
</table>

Content analysis and children's cognitive abilities

From the content analysis of deliberations, it was found in this experiment, as in Experiment 1, that the jurors' perceptions of the child's cognitive abilities were the most salient predictors of verdicts. The primacy of jurors' beliefs about children's cognitive abilities, which is a central feature of Leippe and Romanczyk's communication/persuasion model (1987), is further supported by the finding that the degree to which the psychologist's testimony on children's abilities enhanced the child's case was the next highest content category predictive of verdicts.
However, given that the psychologist's testimony is salient with regard to verdict outcomes, the question remains as to whether the order in which the psychologist gives testimony vis-a-vis the child is important. Is there evidence for a process whereby the expert's testimony, when presented early in the trial, sensitises jurors to view the child more favourably than jurors who hear the expert's testimony after the child has testified, thereby producing differential outcomes? This question was evaluated in the third experiment which was designed to investigate the impact of variations in the temporal sequence in which the child's and the psychologist expert's testimony are presented.
Chapter 8

Experiment three:
Investigation of variations in the temporal order of presentation of the child's and expert's testimony
Chapter 8
Experiment 3
Investigation of variations in the temporal order of presentation of the child's and expert's testimony

8.1 INTRODUCTION

The central question to be investigated in this experiment was: "Is the order in which the child witness and psychologist expert give their testimonies important?" If the expert comes before the child, does it tend to sensitise the jurors to give more attention to the child's testimony or particular aspects of the child's testimony, and thereby enhance the jurors' perceptions of the child's credibility?

Wells, Lindsay, and Tousignant (1980) investigated the relative impact of generalised expert testimony presented early, which they termed "expert advice", with the more usual placing of expert testimony after the eyewitness' testimony. They hypothesised that when presented before the eyewitness' testimony, the benefits of psychological expert testimony would be able to be better utilized. Kassin, Reddy, and Tulloch (1990) found that the relative influence of presentation order varied with cognitive variables; subjects high in the need for cognition were more influenced by arguments preceding evidence and those low in need for cognition were more influenced by arguments that followed the evidence.

Brekke and Borgida (1988), arguing from findings on belief perseverance, hypothesised that once jurors have come to a particular interpretation of case facts, any subsequent expert evidence would have relatively little impact, and that a generalised expert testimony presented early in the trial would be better utilized by jurors. However, Pennington and Hastie (1988, 1992, 1993) suggest that the juror's process of interpretation is non-linear and continues well after all the
Evidence has been presented. The results from the Brekke and Borgida study showed no main effects for timing of presentation of the expert testimony on any of the jurors' ratings, although there were some differences in deliberation content. The design of the present experiment allows testing of the following alternative hypotheses in a simulated child sexual abuse case:

1) that expert testimony presented early is differentially utilized in that jurors are sensitized to view the child more favourably than those who hear the expert's testimony after the child, or
2) that the timing of expert testimony is unimportant.

8.2 METHOD

8.2.1 Subjects

One hundred and twenty adult subjects participated in the study (60 males, 60 females). All subjects were jury-eligible citizens who were recruited by requesting undergraduate psychology students to take a copy of a prepared letter and pass it to a jury-eligible citizen known to them. The letter informed the recipient of the general nature of the research without specifying the particular variables under investigation, and invited replies from anyone willing to act as a mock juror. It was explained that jurors would deliberate in groups of six after watching a simulated reconstruction of a sexual assault trial, and that the total time involved for each participant was approximately two hours. No payment was offered or made. Mean age of the participants was 36.5 years (SD = 10.4) and the mean period of education was 12.6 years (SD = 2.4).

8.2.2 Experimental Design

Two ages of female victim/witness were used (6 & 9 years). For each victim age condition there were two orders of presentation (expert testimony before or after the child's testimony). There were 24 subjects at each child age x order of presentation condition. A further 24 subjects were allocated at random to a no-
expert control condition, in which half the subjects saw the 6-year-old and the other half saw the 9-year-old child.

8.2.3 Stimulus materials
The same trial scenario and pre-deliberation rating scales as in Experiments 1 and 2 were used. The psychologist appeared in the trial as a male court-appointed witness in every manipulation.

8.2.4 Procedure
As in the previous experiments, each juror was asked to read the instructions and sign the statement of informed consent. After viewing the trial, jurors were required to complete the same ratings as used in the previous experiments, as well as to render a verdict prior to deliberation and to indicate their degree of certainty. Jurors were then given 25 minutes to deliberate, after which each was asked to vote guilty or not guilty, with an indication of subjective certainty.

8.3 RESULTS

Expert testimony position effects on the child based variables
A multivariate F test (3x2x2 MANOVA) using expert testimony position, child age and juror gender as the independent variables and the jurors' ratings of the child's memory, resistance to suggestion and reality monitoring ability as the dependent variables was conducted. The analysis indicated that ratings in each of the expert present conditions were significantly higher than ratings in the no-expert control condition (Wilks' Lambda: $F(6, 212) = .838$, $p < .01$). Further univariate analyses showed that there were no significant differences on any dependent variables between those who saw the expert testimony prior to the child and those who saw the expert testimony after the child. Table 8.1 shows the means on each of the child-based dependent variables for the expert before, expert after and nil expert variations.
### Table 8.1. Means on child-based and pre-deliberation verdict ratings by expert position.

<table>
<thead>
<tr>
<th>Dep. variable</th>
<th>Expert position</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Before child</td>
<td>After child</td>
<td>Nil expert</td>
<td>p</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>-----------------</td>
<td>------------</td>
<td>------------</td>
<td>----------</td>
<td>----------</td>
<td>----------</td>
</tr>
<tr>
<td>Child's confidence</td>
<td>6.19</td>
<td>6.31</td>
<td>5.45</td>
<td>n.s.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child's consistency</td>
<td>7.14</td>
<td>7.25</td>
<td>6.41</td>
<td>n.s.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child's memory</td>
<td>6.75</td>
<td>6.91</td>
<td>5.70</td>
<td>before v. nil (p&lt;.01)</td>
<td>after v. nil (p&lt;.01)</td>
<td></td>
</tr>
<tr>
<td>Resistance to suggestibility</td>
<td>5.61</td>
<td>6.02</td>
<td>4.91</td>
<td>after v. nil (p&lt;.05)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attractiveness</td>
<td>5.80</td>
<td>5.91</td>
<td>5.83</td>
<td>n.s.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reality monitoring</td>
<td>7.20</td>
<td>7.16</td>
<td>5.72</td>
<td>before v. nil (p&lt;.01)</td>
<td>after v. nil (p&lt;.01)</td>
<td></td>
</tr>
<tr>
<td>Likelihood that child did not misinterpret</td>
<td>7.13</td>
<td>6.85</td>
<td>6.39</td>
<td>n.s.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Verdict ratings</td>
<td>7.04</td>
<td>6.60</td>
<td>5.95</td>
<td>n.s.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

**Verdicts and verdict ratings**

Chi-square analysis of verdicts indicated no significant effect for expert position, although there were substantially more guilty verdicts rendered in each of the expert present conditions. Pre-deliberation verdicts are shown in Table 8.2.

### Table 8.2. Pre-deliberation verdicts by expert position

(Percentages of total vote in each condition are shown in parentheses)

<table>
<thead>
<tr>
<th>Verdict</th>
<th>Expert position</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Before (n=48)</td>
<td>After (n=48)</td>
<td>Nil (n=24)</td>
<td></td>
</tr>
<tr>
<td>Guilty</td>
<td>33 (69%)</td>
<td>29 (61%)</td>
<td>12 (50%)</td>
<td></td>
</tr>
<tr>
<td>Not guilty</td>
<td>15 (31%)</td>
<td>19 (39%)</td>
<td>12 (50%)</td>
<td></td>
</tr>
</tbody>
</table>
Balance of verdicts within juries.

Table 8.3 shows the balance of verdicts within juries before and after the deliberation process. Three jury panels prior to and after deliberation were unanimous in voting guilty.

<table>
<thead>
<tr>
<th></th>
<th>Unanimous</th>
<th>Majority for Not guilty</th>
<th>Balanced (3 - 3)</th>
<th>Majority for Guilty</th>
<th>Unanimous Guilty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-deliberation</td>
<td>0</td>
<td>4</td>
<td>7</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>Post-deliberation</td>
<td>0</td>
<td>6</td>
<td>2</td>
<td>9</td>
<td>3</td>
</tr>
</tbody>
</table>

Gender of juror effects:

The multivariate F test indicated a significant main effect for juror gender on the child based variables, memory, resistance to suggestion and reality monitoring ability (Wilks' Lambda : \( F(3,106) = .916, \ p < .05 \)). Compared to male jurors, females gave significantly higher ratings for the child's consistency, \( F(1,108) = 5.98, \ p < .05 \), the likelihood that the child had not misinterpreted the incident, \( F(1,108) = 10.86, \ p < .01 \), the degree to which the abuse was considered harmful to the child, assuming it occurred, \( F(1,108) = 4.30, \ p < .05 \), and the child's overall credibility rating, \( F(1,108) = 8.06, \ p < .05 \). Analysis of scaled pre-deliberation verdict ratings showed that female jurors gave significantly higher ratings for conviction, \( F(1,108) = 11.14, \ p < .01 \).

Age of child effects:

The 6-year-old child was rated as more confident, \( F(1,108) = 5.31, \ p < .05 \), and more attractive, \( F(1,108) = 8.49, \ p < .01 \) than the 9-year-old child.
Regression analysis:

To examine which of the jurors' child-based ratings were most highly predictive of their ratings of the child's credibility, a stepwise regression analysis was run using the variables, confidence, consistency, memory ability, resistance to suggestion, reality monitoring, harmfulness of the alleged act, the child's attractiveness, and the likelihood that the child did not misinterpret the defendant's actions. The most substantial proportion of variance ($R^2 = .423$) was accounted for by jurors' perceptions of the likelihood that the child had or had not misinterpreted the event. Other salient variables in the regression equation were resistance to suggestion and reality monitoring. These three variables accounted for just under half ($R^2 = .495$) of total variance in child credibility ratings.

With verdict ratings as the target variable, the likelihood that the child had not misinterpreted the event again accounted for the highest proportion of variance ($R^2 = .393$), followed by reality monitoring ability, consistency and resistance to suggestion. These four variables accounted for 60% of the variance in verdict ratings.

8.4 DISCUSSION

It was hypothesised that expert testimony concerning children's general capabilities which was presented prior to the child's testimony may have greater impact in so far as the jurors had that knowledge to utilise while viewing the child's testimony. The hypothesis was not supported by the data. The finding of no significant differences on any dependent variable regardless of whether expert testimony was presented before or after the child's testimony suggests that an "on-line" linear information processing model may not suffice to explain juror decision-making.
The results tend to support Pennington and Hastie's (1981, 1986, 1988, 1992) "story model", which posits that jurors do not show a continuous updating decision strategy, but rather a "memory based" strategy which involves organising, elaborating and interpreting in memory a number of interdependent elements dispersed throughout the evidence presentation before coming to a pre-deliberation verdict decision. The story model which proposes that jurors construct a mental representation, an interpretation of what the evidence is about, leads to the supposition that not only is the juror's interpretation or "story" crucial in decision making but that essential elements in story construction may be the juror's perceptions of the trial protagonists' interpretations of events. In this experiment, as in the previous two experiments, the prime predictor variable, accounting for the greatest variance in both child credibility ratings and verdict ratings was the jurors' perceptions of the likelihood that the child did or did not misinterpret the defendant's actions.

In this experiment, as in Experiment 1, there were no significant differences between the proportions of guilty votes in expert present conditions when compared with the no expert condition. On verdict ratings, the differences between expert present and expert absent conditions were not significant, whereas this difference was significant in Experiment 1. It may be that somewhat less weight was put on child-based factors in jurors' decision-making in this experiment. However, the relatively small number of subjects in the no expert condition may have reduced the likelihood of a significant difference emerging.

Results from the experiments thus far have indicated that psychological expert testimony regarding children's cognitive abilities may impact on jurors' decision making in a child sexual abuse case, but the question remains as to whether other forms of psychological expert testimony impact similarly on jurors. Further, there is, in actual cases, considerable variability with regard to the quality of the
testimony provided by a child victim/witness. Does the impact of psychological expert testimony differ with varying levels of statement quality in the child's testimony? The following chapter presents the results of an investigation of the relative impact of the generalised expert testimony as used in the first three experiments, compared with two other types of psychological expert testimony, across variations of expert role and the content quality of the child's evidence.
Chapter 9

Experiment four:
A study of the impact of different types of expert testimony across differing levels of child statement quality
Chapter 9

Experiment 4: A study of the impact of different types of expert testimony across differing levels of child statement quality

9.1 INTRODUCTION

In the final experiment of this thesis, the aim was to investigate the relative impact of generalised expert testimony on children’s cognitive abilities with two other forms of psychological expert testimony, one of which is sometimes admitted into Anglo-American criminal cases, and another type of expert testimony which has not been admitted in Anglo-American courts, but is commonplace in the European inquisitorial system.

The first type of comparison testimony is expert testimony on behaviours and psychological effects commonly observed in sexually abused children. Mason (1991) indicates that prosecutors increasingly rely on expert witness testimony in child sexual abuse cases and the usual form of such testimony is behavioural syndrome testimony which addresses the general characteristics of a sexually abused child and in which the expert may or may not claim that the plaintiff fits the particular characteristics described.

A difficulty here is the variability in the behavioural and psychological consequences of abuse. A number of authors have claimed that an expert in the field of child sexual abuse cannot accurately diagnose a specific child as a victim as there are no unique behaviours or typical characteristics of sexually abused children, and many even appear to be asymptomatic after abuse (Hall, 1989; McGord, 1986; Mrazek, 1981; Schultz, 1980). However, Myers et al. (1989) maintain that while sexually abused children may display a wide range of reactions to the abuse, experts
are not without symptomatic and behavioural guidelines. The survey by Conte, Sorensen, Fogarty, and Dalla Rosa (1991) indicated that professionals in the area showed a high level of agreement concerning the sequelae indicative of sexual abuse.

Myers (1993), in reviewing the admissibility of expert testimony on commonly observed behavioural and psychological sequelae in sexually abused children in the U.S. cites courts which have prohibited such testimony (Commonwealth v. Dunkle, 1992; Nelson v. State (Alaska), 1989; State (South Carolina) v. Hudnall, 1987; State (Arizona) v. Moran, 1986), and courts where such testimony has been admitted (Broderick v. King's Way Assembly of God Church, 1991; Brady v. State (Indiana), 1989; Commonwealth (Massachusetts) v. Dockham, 1989). Myers also notes a number of cases where the expert, properly qualified, has been permitted the further step of opining that a particular child has been sexually abused (Broderick v. King's Way Assembly of God Church, 1991; Glendening v. State (Florida), 1988; People (Michigan Court of Appeal) v. James, 1990; Seering v. Department of Social Services (California Court of Appeal), 1987; State (Ohio) v. Boston, 1989; State (Idaho) v. Hester, 1988; Townsend v. State (Nevada), 1987).

For the purposes of this experiment, the expert provides testimony on commonly observed behavioural and psychological effects, while acknowledging the diversity of symptomatology. He then states, on the basis of tests, interviews and assessment procedures he has conducted with the child, his opinion that the complainant displays symptoms and behaviours consistent with those which might be displayed in a child who has been sexually assaulted.

The second form of comparison testimony used in this experiment was a psychologist expert's assessment of the validity of the child's statement. While a number of methods for assessing the credibility of a child's sexual abuse allegation have been proposed (Benedek & Schetky, 1987; DeYoung, 1986, 1988; Faller,
Only one procedure, Statement Validity Analysis (SVA), provides an objective system for rating, analysing and interpreting data. Recent work (Raskin & Esplin, 1991) has sought to provide a set of robust criteria which allow quantification of the sort of clinical judgements, used in the European Statement Reality Analysis procedure (Undeutsch, 1982). To date, studies have investigated the validity (Steller, Wellerhaus, & Wolf, 1988; Esplin, Boychuk, & Raskin, 1988) and reliability (Anson, Golding, & Gully, 1993) of the SVA criteria, and the effect of training in the use of the SVA criteria to assist in detecting adult deception (Landry & Brigham, 1992).

While much further investigation and development of the SVA criteria would be required before their use might be considered in judicial contexts, the criteria are, nevertheless, the most useful basis currently available for the procedures required for this experiment, one of which was to develop expert testimony which focussed on an assessment, not of the child, nor of the child's general credibility, but rather of the child's statement concerning the alleged incident. The criterion based content analysis (CBCA) procedure of the SVA technique also provides an objectively definable and measurable basis for manipulating the quality or content of the child's testimony, and thereby to investigate the effects of a number of variables across qualitative differences in the child's evidence. Studies of juror decision making have found that certain factors such as demeanour (Hendry, Shaffer, & Peacock, 1989) are more salient in a weaker evidence condition. In this experiment, the child's testimony was presented to half the jurors in a standard form, and to the other half in an enhanced form, that is, some of the child's answers were expanded so that exemplars of certain CBCA criteria were added to the standard form of the testimony. To what degree jurors intuitively used those criteria listed in the CBCA procedure as indicators of enhanced credibility was also investigated in this experiment.
9.2 METHOD

9.2.1 Subjects

One hundred and forty-four subjects participated, all jury-eligible citizens recruited from advertisements in the local newspaper. Potential mock jurors were informed in the advertisement that they would be required to participate in University research on juries for one evening only. The time required was approximately two hours and a payment of $20 would be made to each participant.

Those replying to the advertisement were sent a sheet with the following points:

The research was concerned with child witnesses in criminal trials, particularly cases involving allegations of sexual assault.

Mock jurors in groups of six were required to watch a simulated trial on videotape and then give various ratings on paper.

The deliberation period would be videotaped for possible later content analysis.

Only one attendance for about two hours' duration was required, and a $20 payment would be made.

With the information sheet, potential jurors were sent an expression of interest in participation which was to be signed and returned, together with a pre-trial questionnaire, a map showing where to attend, and a return envelope. Potential jurors were informed that they would be contacted some weeks after the return of their expression of interest and questionnaire, and allocated a time to attend.

9.2.2 Pre-trial questionnaire (Appendix 7.2)

Golding (1992) has indicated the importance of establishing a "normative understanding of the knowledge schemata of potential jurors" (p. 254) to determine whether jurors lack critical information or have incorrect beliefs, assumptions or
expectations. On areas in which courts traditionally have expected the jurors' common knowledge to suffice, studies have found that jurors have limited knowledge, as Dodge and Greene (1991) found in their investigation of jurors' understanding of battered women's reactions, and as others have found regarding aspects of jurors' conceptions of children's testimonial capacities (Cole & Loftus, 1987; Goodman & Reed, 1986; King & Yuille, 1987; Myers & Perry, 1987). Gabora et al. (1993) using a pre-trial child sexual abuse belief scale concluded that their subjects held relatively few misconceptions about child sexual assault. However, the subjects were all psychology undergraduates, who might be expected to be better informed on such matters than the general public.

In the present experiment, to ascertain pre-trial attitudes and beliefs, prospective subjects were asked to complete a pre-trial questionnaire. Although such a questionnaire may serve to "prime" potential jurors to the issues, such an effect may have been minimized by the period of four to six weeks between return of the questionnaire and attendance as a mock juror. The questionnaire (Appendix 7.2) covered four areas: perceptions of trial procedures and the legal system (items 4, 10, 12, 15, 23 & 24), perceptions of children as witnesses and the behaviour of sexually abused children (items 2, 5, 6, 7, 8, 13, 14, 16, 18, 19 & 21), perceptions of perpetrators/ alleged perpetrators of sexual abuse (items 1, 3, 11 & 25), perceptions and attitudes concerning experts and expert testimony (items 9, 17, 20 & 22). Respondents indicated their degree of agreement / disagreement on a 9-point Likert scale. To minimise response bias, response directions with more favourable implications for a child witness were varied.

Most of the items used came from the survey used by Borgida et al. (1989), which was administered to professionals in the area of child sexual abuse to determine their degree of partisan orientation. Of the 35 questions in the Borgida et al. survey, 16 were used in the present study. Minor changes in wording were
considered necessary. For example, of the ten questions in the "Child as witness" section of the Borgida et al. survey, only one qualifies the word "children" by specifying an age, yet research results indicate considerable differences in jurors' stereotypes of child witnesses as a function of age (Nightingale, 1993). Therefore, the words, "aged 8 or 9" were inserted after "children" as a 9-year-old victim witness was used in the trial scenario which subjects would view. The items in this survey drawn from the Borgida et al. instrument are items 1, 2, 3, 4, 5, 6, 8, 10, 11, 14, 15, 16, 17, 18, 19 and 21.

Two items in this survey (12 & 13) were adapted from questions used by Corder and Whiteside (1988) in their survey of jurors' perceptions of issues related to child sexual abuse. The other seven items were devised for this study, five (numbers 9, 20, 22, 23, 24) concerning attitudes towards expert witnesses and/or the legal system, one item (7) regarding delays in reporting abuse and the last item (25) concerning attitudes towards treatment or punitive measures for perpetrators.

9.2.3 Experimental design

The design was a 3 (type of expert testimony: cognitive abilities, psychological consequences, statement analysis) x 2 (child's statement quality: standard vs. enhanced) x 2 (expert role: court-appointed vs. witness for the prosecution) x 2 (gender of juror). Only one age and gender of victim/witness was used (9-year-old female).

Independent Variables

Manipulation 1: Manipulating the quality of the content of the child's testimony.

To vary the quality of the child's testimony, an objectively definable and measurable basis for manipulations was required. The criteria used in Criteria-based content analysis (CBCA) (Raskin & Esplin, 1991) were considered the most appropriate for this purpose (see Appendix 8.4). Empirical evidence for the
reliability and validity of these criteria has been sought in a number of centres (Horowitz, 1991). Their potential for discriminating between fabrications and accounts of genuine experiences have been investigated by Landry and Brigham (1991), and inter-rater reliability has been studied by Anson, Golding, and Gully (1993). However, the utility of the criteria in this experiment was not to differentiate between fabrications and accounts based on actually experienced events, but rather to provide an objective basis for manipulating quality of testimony. The first 18 criteria were used in preparatory work, omitting criterion 19, “details characteristic of the offence”.

Each of six post-graduate students in psychology was given approximately six hours training in the use of CBCA, in three two-hour sessions. Training consisted of learning the CBCA criteria and becoming familiar with exemplars of these criteria in a transcript of a child’s actual videotaped testimony (Steller & Boychuk, 1992). Further training in the application of the CBCA criteria to transcripts of actual testimony from child sexual abuse cases in the Australian Capital Territory was followed by extensive group discussion to ensure that raters had adequate practice in using the CBCA procedure and understood the need for inter-rater consistency.

After the training period, raters were divided into two groups of three. Raters in the “Standard” testimony group were given a testimony similar to that used as the child’s testimony in Experiments 1, 2 and 3. The raters in the “Enhanced” testimony group were given a testimonial transcript which was based on the “Standard” testimony but had additions and alterations designed to enhance the statement by the addition of further CBCA exemplars. The differences between the two testimonies-in-chief are indicated below, with the added CBCA criterion in italics and parentheses.
Question 21: "What about the night you got cramp at your Dad's... what did you do then?"

Standard answer: "I got out of bed and went into the next room and Dad was at his desk and watching T.V. Anyway, I told him my legs were hurting real bad and... and then he put some big cushions together... down on the floor... and said I should lie down while he got some oil to rub me legs."

Enhanced answer: "I got out of bed and went into the next room and Dad was watching T.V. No. No! I remember now, he was sitting at his desk, but the T.V was on... pretty quiet (Spontaneous Correction - criterion 14). Anyway, I told him my legs were hurting real bad and... and then he put some big cushions together... down on the floor... and said I should lie down while he got some oil to rub me legs. Then he went out and I think I remember hearing the phone ring just after he went out so he didn't come back straight away (Unexpected complication - criterion 7)... but he wasn't away long and he came back with some oil.

Question 24: "And what did you do?"

Standard answer: "I screamed out and told him to stop."

Enhanced answer: "I screamed out and told him to stop. I remember yelling 'Stop, Daddy, stop!' (Reproduction of conversation - criterion 6) 'cause I felt really scared and I remember my voice sounded a bit shaky... like scared." (Account of subjective mental state - criterion 12)

Question 25: "Did he stop when you yelled?"

Standard answer: "No, he started putting something bigger into me. I couldn't see because he was on top of me. It really, really hurt."

Enhanced answer: "No, he started putting something bigger into me. I couldn't see because he was on top of me. It really, really hurt... and I felt frighten. " (Account of subjective mental state - criterion 12)
Question 26: "What happened then?"

*Standard answer*: "He moved up and down a bit... when he got up there was sticky stuff all over my legs. He wiped it off and put my pyjamas back on me."

*Enhanced answer*: "He moved up and down a bit... when he got up there was sticky stuff all over my legs. He wiped it off and put my pyjamas back on me, and he said, 'You'll be all right. I'll get you back to bed.'* (Reproduction of conversation-criterion 6)

Question 28: "How did you feel after this happened?"

*Standard answer*: "Next day, I was still sore. Dad said I should take a hot bath and he would buy me a chocolate."

*Enhanced answer*: "I don't really remember how I felt afterwards, except I was really sore (Admitting lack of memory - criterion 15) and the next day, I was still sore. Dad said I should take a hot bath and he would buy me a chocolate."

Question 29: "How do you feel about Dad now?"

*Standard answer*: "... not very good."

*Enhanced answer*: "I don't know... I'm not angry with him, or, you know... I don't feel bad about him or like that. (Pardoning the perpetrator, that is, not blaming him when the opportunity arose - criterion 18)"

Question 31: "Did the sticky stuff feel like the oil Dad was using?"

*Standard answer*: "No... not really! It was sort of different."

*Enhanced answer*: "No... not really! It was sort of different, not like anything I'd felt before, but I can't remember very well. All I remember is it felt yucky." (Admitting lack of memory - criterion 15)
Question 37: "Kim, do you realise your father could get into big trouble for this?"

*Standard answer:* "I know ... but he wanted to hurt me."

*Enhanced answer:* "I don't want to get him into trouble or anything like that. I just don't know why he wanted to hurt me." *(Pardoning perpetrator - criterion 15)*

Raters in each group were asked to carefully analyse the transcript given by writing beside each CBCA criterion any exemplars they found and then allocating points for each criterion on the basis of "0" (absent), "1" (present) and "2" (strongly present). Each of the six criteria added in the enhanced version was identified as present by at least two of the three raters in the "enhanced" testimony group. Conversely, in the "standard" testimony raters' group, no two raters identified any of the six additional criteria as being present in the "standard" testimony. Mean rating for number of criteria present in the "standard" testimony was 9 with a mean point score of 13.33. In the "enhanced" testimony raters' group, the mean for criteria present was 15, with a mean point score of 22.67. As in the first three experiments, a parallel script was created in which the questions put and the child's answers were innocuous. The videotape of the interview which was conducted with a 9-year-old girl by a female child psychologist then was edited into the two child testimony conditions, the "standard" and "enhanced" testimonies (see Appendix 9).

**Manipulation 2:**

*Manipulating the type of psychological expert testimony*

An aim of the experiment was to compare the influence of psychological expert testimonies which were primarily concerned with

1) the capacities of children in general
2) the behaviour of a particular child witness, or
3) the statement of a particular child witness.
Therefore there were three variations of psychological expert testimony, which may be characterised as focussing on:

1) the general cognitive capabilities of children (as in Experiments 1, 2, 3)
2) the psychological symptoms displayed by the child plaintiff,
3) an analysis of the content of the child's statement.

1) **expert testimony on the general capabilities of children**

   The first form of expert testimony, dealing with children's general capabilities, was the same as used in the first three experiments.

2) **expert testimony on the symptoms displayed by the child plaintiff,**

   The second form of testimony was based on a review of the signs and symptoms that might typically be manifested by a child who has been sexually abused. To formulate a psychological expert testimony on the behavioural/psychological consequences of sexual abuse a number of leading articles were consulted regarding the short and long term effects (Bresee, Stearns, Bess, & Packer, 1986; Browne & Finkelhor, 1986; DeYoung, 1986; Finkelhor, 1990; Tong & Oates, 1990a, 1990b).

   The psychological testimony was designed to reflect those reactions which are frequently mentioned in the literature as characteristic sequelae. The psychologist admits at the outset that children's reactions to abuse are highly variable and that there is no symptom or set of symptoms which are reliably and exclusively diagnostic. The psychologist cites findings from Bresee et al. (1986) that symptoms may vary between children sexually assaulted on only one occasion and those subjected to more frequent molestation. The psychologist testifies that he has used some of the tests and procedures which Bresee et al. have found to be effective in differentiating victims of sexual abuse, particularly those which measure self concept, level of depression, relationship to parents, body image and level of...
anxiety, and that he has spoken to staff at the child's school about her past and present performance. The psychologist's testimony-in-chief concludes thus:

"Kim's results on the Children's Manifest Anxiety scale indicated moderate to high levels of anxiety. Her self reports indicated that she had experienced frequent periods of disturbed sleep since the alleged incident and that she no longer wanted to stay out overnight at her friends' houses. From discussion with school personnel, there were indications of decline in Kim's school performance over recent months. I concluded that the symptoms and behaviours displayed by Kim, namely, social withdrawal, sleep disturbance, moderate to high anxiety levels, and declining school performance were all symptoms and behaviours which are consistent with those which might be displayed in a child who had been sexually assaulted."

Under cross examination from defence counsel, the psychologist states that he has no previous anxiety scale results to serve as a baseline. He admits also that it may be difficult to differentiate between symptoms and behaviours produced by other disturbing and stressful events such as the separation of one's parents, but that the child's reactions were consistent with an experience of greater traumatic impact than anything associated merely with her parents' separation.

3) expert testimony concerning the content of the child's testimony.

The psychologist's testimony-in-chief begins with some brief background on the use of Statement Validity Analysis (SVA) in Europe since the 1950's and that the focus is on analysis of the content of the child's statement; it is not a procedure for assessing the general credibility of a child witness. The psychologist then outlines the general CBCA categories: general characteristics of the statement, specific contents, peculiarities of the event, and motivation to make a false allegation, together with some of the specific criteria within these categories (Horowitz, 1991; Kohnken, 1990; Kohnken & Steller, 1988; Raskin & Esplin, 1991). The
psychologist cites the studies by Steller, Wellershaus, and Wolf (1988) and Esplin, Boychuk, and Raskin (1988) to indicate the nature of recent research into the validity of the CBCA criteria. He mentions that CBCA research is proceeding at three North American universities; Utah, Arizona and British Columbia, as well as at the U.S. National Institute of Child Health and Development (Horowitz, 1991).

The psychologist then gives the results of applying criteria-based content analysis to the child’s statement. For the “standard” testimony he concludes that 9 out of the possible 18 criteria were fulfilled, resulting in a score of 13 using the 0 (criterion absent), 1 (criterion present) and 2 (criterion strongly present) scoring method. For the “enhanced” testimony, he concludes that 15 of the 18 criteria are present, resulting in a score of 23 points.

In concluding, the psychologist uses words which are appropriate to the probabilistic assessment made. He says that the standard testimony has “some” of the qualities consistent with an account of an actually experienced event, but in the enhanced testimony version uses the word “many”. For the standard testimony the psychologist rates the statement as “moderate” in terms of the presence of the criteria, and in the enhanced version, he uses the word “high”.

Under cross examination by defence counsel, the psychologist admits that he has not administered formal standardised tests to determine the child’s cognitive and verbal capacities. Defence counsel then raises questions about the Esplin et al. (1988) study similar to those expressed by Wells and Loftus (1991) in their “alternative interpretation” of the Esplin et al. findings. The psychologist’s reply is based on Raskin and Esplin’s (1991b) answer to those concerns. The final interchange in the cross-examination involves defence counsel’s assertion that the psychologist had used a procedure based on meagre research. The psychologist replies that while the procedure is relatively new in the Anglo-American world,
content analysis of a child’s statement has been a mandatory procedure in the German legal system for forty years and psychologists there have reported satisfaction with CBCA’s validity.

Judge’s introduction and final instructions:

In his introduction, the judge states that the defendant has been committed for trial on two charges, aggravated sexual assault and sexual intercourse with a young person, and has pleaded not guilty to both. He then clarifies the legal criteria pertaining to each charge as set out in sections 127a and 124 respectively of the Tasmanian Criminal Code. He emphasises to the jurors that the Prosecution must show beyond reasonable doubt that the crimes as defined did occur and, if so occurring, that the defendant was the perpetrator of each crime. In his final instructions, the judge reiterates the legal criteria for each charge and states the verdict standard of "beyond reasonable doubt", which applies in criminal cases.

The judge’s final instructions are fundamentally the same for each of the expert testimony manipulations, except that after the words, “You have heard the testimony of Dr. Melton, a psychologist”, the following sentence varies according to the nature of the testimony presented by the psychologist:

For the “children’s general capabilities” expert testimony, the judge’s words are: "His testimony has provided the court with results from psychological studies which have investigated the behaviours displayed by children of various ages."

For the “behavioural/psychological consequences” testimony, the judge says: "His testimony has provided the court with a description of the behavioural and emotional reactions commonly observed in sexually abused children".
For the "statement validity analysis" testimony, the judge's words are: "His testimony has provided the court with his assessment of the quality of the content of Kim Wood's statement, using criteria which he states are able to validly and reliably differentiate between accounts of actually experienced events and accounts of events which have not been experienced".

For each expert testimony variation, the judge then immediately follows those words with: "Bear in mind that Dr. Melton's testimony is merely to provide information which you are free to use or reject in your decision making. You are the trier of fact and are solely responsible for any decisions you make".

**Manipulation 3:**

*Manipulating the mode of presentation of the psychologist's testimony:*

*adversarial and nonadversarial roles.*

In the court-appointed role, the psychologist was called and questioned by the judge who made it clear that the witness was court-appointed and was not present to support either the prosecution or defence case. The psychologist said that he had no communication whatever with either counsel for the defence or the prosecuting counsel. When appearing as a witness for the prosecution, the psychologist was called and questioned by the prosecuting counsel, and also indicated clearly at the outset that he was in court as a witness for the prosecution. Following the introductory role-establishing questions, the same questions and answers were used in both the adversarial and non-adversarial expert roles. In each mode of presentation the same cross examination was conducted by defence counsel.

**9.2.4 Procedure**

Jurors participated in gender-balanced groups of six. After viewing the trial each juror was given a sheet listing the legal definitions of the charges of aggravated sexual assault (Tasmanian Criminal Code, s.127a), and sexual intercourse with a
young person (Tasmanian Criminal Code, s.124), and also the witnesses in the trial and their roles. As in the previous experiments, jurors completed pre-deliberation rating sheets (Appendix 8.1) before deliberation began. Recognition recall of case facts and the expert testimony facts were completed prior to deliberation so that jurors' recall would not be aided by any discussion which might occur during deliberation, or impeded by incorrect information suggested during deliberation. Before deliberation began, jurors were told that they would be asked to indicate their verdicts after a thirty minute deliberation period, and if not unanimous, a further fifteen minutes of deliberation would be required.

The dependent measures were in these categories:

Reactions to the child witness:

On a 9-point scale, jurors were asked to rate the child's confidence, consistency, reliability of memory, susceptibility to suggestion, attractiveness, reality monitoring ability, the likelihood that the child had misinterpreted the defendant's action, general credibility, and any features of the child's testimony considered particularly convincing or unconvincing.

Ratings of other witnesses:

Jurors were asked to rate the credibility of the mother and the defendant, and the extent to which testimony by the mother and medical doctor strengthened the child's evidence.

Probabilistic ratings of alternative interpretations of the central issue:

In percentage terms, jurors were asked to rate the likelihood that

1) the defendant touched the child's genitals unintentionally and the child somehow misinterpreted what happened,

2) the defendant did penetrate the child's vagina with his finger or fingers (aggravated sexual assault).
3) the defendant did penetrate the child's vagina with his penis (intercourse with a young person).

Evaluations of the expert and expert testimony:

On 9-point scales jurors rated the degree to which the expert testimony was scientific, helpful, relevant, and understandable, and the seriousness of gaps in the research which had been acknowledged by the expert. They also rated the psychologist expert in terms of his impartiality, confidence, honesty, competence, credibility, intelligence and trustworthiness.

Interest and fairness of the trial:

Jurors rated how interested they were and how fair they considered the trial to be on 9-point scales.

Relative influence of the witnesses:

Jurors were asked to distribute 100 percentage points to show the relative influence that each witness' testimony had in influencing their final verdicts.

Verdicts and degree of certainty:

Before deliberating, jurors were asked to render verdicts on both charges and on a 5-point scale, the degree of certainty they felt about each verdict. They were also required to render verdicts and indications of certainty after deliberating.

Recognition recall of case facts (Appendix 8.2) and recall of the psychologist's expert testimony (Appendix 8.3):

All jurors were given 12 items and asked to indicate whether the item was or was not part of the information presented at the trial. It was emphasised that they were not being asked whether the statement was true or false but simply whether it was part of the evidence presented or not. Jurors were also given six items drawn from
the appropriate psychological expert testimony and asked to indicate whether the item was or was not part of the psychologist's testimony. As it was not intended to make comparisons of expert testimony recall across the differing types of expert testimony, no attempt was made to achieve comparable levels of difficulty for these items, other than face value.

**CBCA exemplars** (Appendix 8.5)

Identification of CBCA exemplars in the child's testimony

Jurors were asked to indicate whether they identified exemplars of the CBCA criteria in the child's testimony by circling "yes" or "no" to questions such as, "Did Kim reproduce any conversation that occurred between herself and her father at or near the time of the alleged incident?", "Was there an unplanned interruption or unexpected complication just before, during or just after the alleged incident?"

CBCA exemplars as credibility indicators

To ascertain whether the presence of CBCA criteria enhance, diminish or fail to affect perceived witness credibility, jurors were asked to think over how each of twelve CBCA criteria might influence their ideas about the believability of any child's statement about alleged sexual abuse. To items such as "The child spontaneously corrects any of her answers", jurors were asked to rate whether they thought the presence of the feature in a child's testimony would make the child's statement more credible or less credible or make no difference to credibility.

9.3 RESULTS

**Pre-trial survey**

Jurors were randomly assigned to the experimental conditions, but it was possible, given the large number of questions in the pre-trial survey that a significant difference in pre-existing attitudes might be found in jurors assigned to
a particular experimental condition. Analysis of the relationship between each of the pre-trial survey questions and the independent variables showed that there was a significant difference on one question in one experimental condition. Those jurors assigned to the enhanced statement group were significantly more likely to agree with the proposition, "In the current social climate, it is almost impossible for a person accused of child sexual abuse to get an impartial trial" than those in the standard testimony condition ($M = 5.3$ vs. $M = 4.3$), $F(1,143) = 8.5$, $p < .01$. Thus, jurors who subsequently saw the child's enhanced statement expressed, prior to viewing the trial, greater concern for the defendant in the case, specifically with regard to the possibility of bias disadvantaging the defendant's position. One can only speculate as to what the implications of this difference, if anything other than chance, may be. It is possible that jurors in the enhanced testimony condition may have been more alert to indications of impartiality. It is also possible that they approached their tasks as jurors with a greater commitment to minimising partiality in their own decision making.

There were substantial gender differences in responses to items on the pre-trial survey. Female jurors were significantly more likely to agree with the statements:
that children are unlikely to fantasize about sexual activity with parents or other adults ($p < .01$),
that the majority of child sexual abuse cases involve a relative or step-parent of the child ($p < .05$),
that children aged 8 or 9 have no difficulty in distinguishing fantasy from reality ($p < .05$),
that delays in reporting child sexual abuse to the police or other authorities are quite common ($p < .01$),
that steps should be taken to increase the conviction rate in child sexual abuse cases ($p < .05$).
Females showed significantly higher levels of disagreement with the statements:
- that it would be wrong to convict someone of a crime if the only eyewitness was a 9-year-old \( (p<.05) \),
- that children who retract their stories about sexual abuse were probably lying in the first place \( (p<.01) \),
- that children aged 8 or 9 can be easily manipulated into giving false reports of sexual abuse \( (p<.01) \),
- that the memories of children aged 8 or 9 for emotionally traumatic events are not as accurate as adults \( (p<.05) \),
- that, after sexual abuse prevention training, children are likely to misinterpret harmless expressions of affection by adults as sexual abuse \( (p<.01) \),
- that the legal system should not be involved in cases where there is sexual abuse within a family \( (p<.05) \).

Mean ratings by juror gender on each of the pre-trial survey items are shown in Table 9.1. Ratings on items 6, 8, 14 and 16 were reversed so that higher ratings indicated attitudes more favourable to child witnesses.

Stepwise regression analyses were conducted to determine whether any of the pre-trial survey questions were predictive of trial verdict ratings. The most salient predictor of verdict ratings on both charges were the responses to question 6 on the questionnaire, that is, disagreement with the proposition that it would be wrong to convict someone if the only witness was a 9-year-old was positively correlated with higher ratings of defendant guilt. On the aggravated sexual assault charge, a further contribution to verdict rating variance was made by responses to statement 18 on the survey “Children aged 8 or 9 have no difficulty in distinguishing fantasy from reality”. These two variables, statements 6 and 18, accounted for 11% of verdict rating variance, \( F(2,141) = 9.07 \).
Table 9.1 Mean ratings by juror gender on pre-trial survey items

<table>
<thead>
<tr>
<th>Item</th>
<th>Description of Item content</th>
<th>Mean ratings</th>
<th>F</th>
<th>p</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Male</td>
<td>Female</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Children unlikely to fantasize about CSA</td>
<td>5.60</td>
<td>6.47</td>
<td>4.87</td>
</tr>
<tr>
<td>5</td>
<td>Children are no more influenced by leading questions than are adults</td>
<td>3.66</td>
<td>3.77</td>
<td>0.09</td>
</tr>
<tr>
<td>6</td>
<td>It would be wrong to convict someone of a crime if the only witness was a 9-yr-old</td>
<td>6.41</td>
<td>7.17</td>
<td>5.48</td>
</tr>
<tr>
<td>7</td>
<td>The closer the relationship between abuser and child, the longer to disclosure</td>
<td>7.34</td>
<td>7.62</td>
<td>1.20</td>
</tr>
<tr>
<td>8</td>
<td>Children who retract were probably lying</td>
<td>6.27</td>
<td>7.40</td>
<td>13.65</td>
</tr>
<tr>
<td>13</td>
<td>Juror’s ability to tell if child witness is lying</td>
<td>3.75</td>
<td>4.32</td>
<td>3.04</td>
</tr>
<tr>
<td>14</td>
<td>Children can be easily manipulated into falsity</td>
<td>4.07</td>
<td>5.47</td>
<td>19.53</td>
</tr>
<tr>
<td>16</td>
<td>Memories of children for traumatic events are not as accurate as adults</td>
<td>6.39</td>
<td>7.16</td>
<td>5.17</td>
</tr>
<tr>
<td>18</td>
<td>Children have no difficulty reality monitoring</td>
<td>4.90</td>
<td>5.80</td>
<td>6.56</td>
</tr>
<tr>
<td>19</td>
<td>After sex abuse education children more likely to misinterpret harmless adult affection</td>
<td>5.21</td>
<td>4.00</td>
<td>15.25</td>
</tr>
<tr>
<td>21</td>
<td>Delays in reporting CSA are common</td>
<td>7.38</td>
<td>8.02</td>
<td>8.15</td>
</tr>
<tr>
<td></td>
<td>Perceptions of trial procedures and the legal system</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Most child sex abuse cases are tried in court</td>
<td>2.95</td>
<td>2.56</td>
<td>1.69</td>
</tr>
<tr>
<td>10</td>
<td>Increased conviction rates in sex abuse cases</td>
<td>6.84</td>
<td>7.50</td>
<td>5.30</td>
</tr>
<tr>
<td>12</td>
<td>Legal system should not be involved in cases of intra-familial sexual abuse</td>
<td>2.52</td>
<td>1.82</td>
<td>5.25</td>
</tr>
<tr>
<td>15</td>
<td>Fair trial impossible for one accused of CSA</td>
<td>5.01</td>
<td>4.59</td>
<td>1.37</td>
</tr>
<tr>
<td>23</td>
<td>If an offence cannot be proved in a court of law it has not, in effect, been committed</td>
<td>2.82</td>
<td>2.26</td>
<td>2.49</td>
</tr>
<tr>
<td>24</td>
<td>Child sexual abuse cases are among the most difficult to prosecute and secure convictions</td>
<td>7.07</td>
<td>7.47</td>
<td>1.82</td>
</tr>
<tr>
<td></td>
<td>Perceptions of perpetrators / alleged perpetrators</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Sexual abusers have noticeable dysfunctions in other areas of their lives, such as work</td>
<td>4.20</td>
<td>3.84</td>
<td>1.02</td>
</tr>
<tr>
<td>3</td>
<td>Stepfathers more likely to abuse than fathers</td>
<td>4.80</td>
<td>4.57</td>
<td>0.32</td>
</tr>
<tr>
<td>11</td>
<td>Most CSA cases involve relatives/step-parents</td>
<td>6.72</td>
<td>7.29</td>
<td>4.15</td>
</tr>
<tr>
<td>25</td>
<td>Treatment not punishment for CSA convictions</td>
<td>5.62</td>
<td>5.54</td>
<td>0.03</td>
</tr>
<tr>
<td></td>
<td>Perceptions of experts and expert testimony</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Experts can identify when children lie about CSA</td>
<td>4.70</td>
<td>4.62</td>
<td>0.05</td>
</tr>
<tr>
<td>17</td>
<td>Medical experts can tell if child has been abused</td>
<td>3.62</td>
<td>3.58</td>
<td>0.01</td>
</tr>
<tr>
<td>20</td>
<td>A court-appointed expert is more likely to be honest than an adversarial expert</td>
<td>4.96</td>
<td>4.84</td>
<td>0.09</td>
</tr>
<tr>
<td>22</td>
<td>Research gaps more likely to be acknowledged by court-appointed than adversarial expert</td>
<td>5.66</td>
<td>5.37</td>
<td>0.62</td>
</tr>
</tbody>
</table>

Notes: * indicates statistical significance.
On the sexual intercourse charge, verdict ratings were significantly positively correlated with pre-trial responses to survey statement 21, that delays in reporting child sexual abuse are quite common, and negatively correlated with statement 23, that an offence, has not, in effect been committed if it cannot be proved in a court of law. Responses to items 6, 21 and 23 on the survey accounted for 16% of verdict rating variance, $F(3,140) = 8.96$.

**Ratings of the child witness**

A multivariate F test (3x2x2x2 Manova) using type of expert testimony, expert role, child's statement quality and juror gender as the independent variables was calculated on the jurors' ratings of those child-based variables addressed in the general capabilities testimony: memory, resistance to suggestion and reality monitoring. Ratings of those jurors who heard the general capabilities testimony were significantly higher than the ratings of those who heard either the psychological consequences testimony or the SVA testimony (Wilks' Lambda: $F(6,236) = .86, p < .01$). There was also a significant juror gender effect with female jurors' ratings significantly higher than male jurors' ratings (Wilks' Lambda: $F(3,118) = .84, p < .001$). Univariate analyses indicated significant juror gender effects on three other child based variables. Female jurors ($M = 7.43$) gave the child significantly higher ratings for consistency than did male jurors ($M = 6.70$), $F(1,120) = 8.49, p < .01$, and females rated the child as more attractive ($M = 6.41$) than did the male jurors ($M = 5.96$), $F(1,120) = 4.93, p < .05$. Females also considered it more unlikely ($M = 7.5$) than did male jurors ($M = 6.29$) that the child had misinterpreted the defendant's actions, $F(1,120) = 14.18, p < .001$.

There were significant main effects for type of testimony on ratings of the child's confidence, and on the degree to which the abuse was considered harmful to the child, assuming it occurred. Jurors who heard the psychological consequences testimony rated the child's confidence as lower ($M = 5.87$) than either those who heard the general capabilities testimony ($M = 6.74$) or those who heard the SVA testimony ($M = 5.97$).
Those who heard the psychological consequences testimony rated the degree of harm significantly greater \( (M = 7.34) \) than either those who heard the general capabilities testimony \( (M = 6.8) \) or those who heard the SVA testimony \( (M = 6.30) \), \( F(2, 120) = 4.57, p < .05 \).

There was a significant main effect for the quality of the child's statement on jurors' ratings of the child's confidence, \( F(1, 120) = 4.70, p < .05 \), but this was attributable to the significant interaction between child's statement quality and juror gender, \( F(1, 120) = 7.85, p < .01 \). While male jurors' ratings of the child's confidence were not significantly affected by statement quality, female jurors who saw the enhanced statement rated the child as significantly more confident \( (M = 7.20) \) than the female jurors who saw the standard statement \( (M = 5.79) \). On ratings of the child's overall credibility, there was a significant effect only for juror gender, with females \( (M = 7.53) \) giving higher ratings than male jurors \( (M = 6.56) \), \( F(1, 120) = 12.91, p < .001 \).

**Statement quality x expert role x expert testimony interactions.**

Univariate Anova analyses of the effects of the independent variables on juror's ratings of the child-based variables showed two significant three-way interactions. The interaction of statement quality x expert role x expert testimony on jurors' ratings of the child's memory was significant and attributable to the low ratings by those jurors in the standard statement conditions who heard the court-appointed expert's testimony concerning the SVA results and by those who heard the expert's testimony on the psychological consequences of abuse. The interaction of these same variables was significant on jurors' ratings of the child's reality monitoring ability, and again this was attributable to the low ratings given by jurors in the standard statement condition who heard the court-appointed expert's SVA testimony. Table 9.2 shows the cell means for the three-way interactions on both variables and significant differences between the cell means.
Table 9.2. Mean ratings of the child's memory, and reality monitoring in relation to three-way interaction; statement quality x expert role x type of expert testimony.

<table>
<thead>
<tr>
<th>Statement Quality</th>
<th>Expert Role</th>
<th>Expert Testimony</th>
<th>Memory Significant Differences with other means</th>
<th>Reality Monitoring Significant differences with other means</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overt SVA</td>
<td>5.79 (vs. S/C.A./Gen) * (vs. E/C.A./Psy) * (vs. E/Pros/Gen) *</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Standard C.A.</td>
<td>Psych</td>
<td>5.79 (vs. S/C.A./Gen) *</td>
<td>7.12 n.s</td>
<td></td>
</tr>
<tr>
<td>Standard C.A.</td>
<td>General</td>
<td>7.25 n.s</td>
<td>7.25 n.s</td>
<td></td>
</tr>
<tr>
<td>Standard Pros</td>
<td>SVA</td>
<td>6.33 n.s</td>
<td>7.42 n.s</td>
<td></td>
</tr>
<tr>
<td>Standard Pros</td>
<td>Psych</td>
<td>6.42 n.s</td>
<td>7.00 n.s</td>
<td></td>
</tr>
<tr>
<td>Standard Pros</td>
<td>General</td>
<td>6.42 n.s</td>
<td>6.42 (vs. E/C.A./Psy) *</td>
<td></td>
</tr>
<tr>
<td>Enhanced C.A.</td>
<td>SVA</td>
<td>6.67 n.s</td>
<td>7.50 n.s</td>
<td></td>
</tr>
<tr>
<td>Enhanced C.A.</td>
<td>Psych</td>
<td>7.33 n.s</td>
<td>7.71 n.s</td>
<td></td>
</tr>
<tr>
<td>Enhanced C.A.</td>
<td>General</td>
<td>6.63 n.s</td>
<td>6.67 n.s</td>
<td></td>
</tr>
<tr>
<td>Enhanced Pros</td>
<td>SVA</td>
<td>6.83 n.s</td>
<td>7.50 n.s</td>
<td></td>
</tr>
<tr>
<td>Enhanced Pros</td>
<td>Psych</td>
<td>6.17 n.s</td>
<td>7.08 n.s</td>
<td></td>
</tr>
<tr>
<td>Enhanced Pros</td>
<td>General</td>
<td>7.17 n.s</td>
<td>7.50 n.s</td>
<td></td>
</tr>
</tbody>
</table>

* p<.05

Analysis of verdicts

Aggravated sexual assault verdict

Chi-square analyses of the effects of the independent variables on aggravated sexual assault verdicts showed significantly more pre-deliberation guilty verdicts by female jurors, \( \chi^2 (1, N=144) = 7.25, p<.01 \), and also by jurors in the enhanced statement condition prior to deliberation, \( \chi^2 (1, N=144) = 3.70, p=.05 \), and after deliberation, \( \chi^2 (1, N=144) = 7.54, p<.01 \). Table 9.3 shows the frequency of guilty and not guilty verdicts for the standard and enhanced versions of the child's statement on both charges, before and after deliberation.
Table 9.3 Pre- and post-deliberation verdicts by quality of child’s testimony

<table>
<thead>
<tr>
<th></th>
<th>Enhanced testimony</th>
<th>Standard testimony</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Guilty</td>
<td>Not guilty</td>
</tr>
<tr>
<td><strong>Aggravated sexual assault</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pre-deliberation</td>
<td>59</td>
<td>13</td>
</tr>
<tr>
<td>Post-deliberation</td>
<td>62</td>
<td>10</td>
</tr>
</tbody>
</table>

\( \chi^2 (1,144) = 3.70, \ p=.05 \)

\( \chi^2 (1,144) = 7.54, \ p<.01 \)

| **Sexual intercourse** |        |            |        |            |
| Pre-deliberation       | 38      | 34         | 36      | 36         |
| Post-deliberation      | 40      | 32         | 30      | 42         |

\( \chi^2 (1,144) = 0.11, \ n.s \)

\( \chi^2 (1,144) = 2.78, \ n.s \)

While there was no significant main effect for expert role, chi-square analyses within each of the three types of testimony showed that expert role had a significant effect only with those jurors who viewed the SVA expert testimony, \( \chi^2 (1,n=48) = 4.54, \ p<.05 \), with the greater number of guilty votes being rendered by those who saw the prosecution expert. Further analysis of this voting pattern indicated that the significant effect was largely attributable to the verdict difference on the standard quality interview alone, a difference which approached significance \( (\ p=.08) \). Thus, while the sample size for those who saw SVA testimony in conjunction with the standard quality interview was small \( n = 24 \), there was some indication that, in this condition, those who viewed the court-appointed testimony may have been more inclined to accept the expert’s judgement that the child’s statement was only of moderate quality and were therefore less inclined to vote guilty, whereas those who saw the prosecution expert appeared to be less accepting of the expert’s assessment of the child’s statement as moderate, and more inclined to vote guilty. Alternatively, some who saw the prosecution expert deliver his assessment of the child’s statement as “moderate” may have presumed that the expert was there to give testimony favourable to the child, and therefore interpreted “moderate” as signifying “moderately good” rather than “moderately bad”. These interpretations may also explain the low ratings noted above which jurors gave to the child’s memory and reality monitoring ability in the standard interview/ court-
appointed/SVA testimony condition. The different verdict patterns with varying types of expert testimony are shown in Table 9.4. The variability in verdict patterns with different types of expert testimony is discussed further in section 11.3 of Chapter 11.

Table 9.4 Frequency of pre- and post-deliberation guilty verdicts on both charges with each type of expert testimony. (Percentages of guilty verdicts in parentheses)

<table>
<thead>
<tr>
<th>Interview quality</th>
<th>Expert role</th>
<th>Gender of juror</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enhanced Standard</td>
<td>Court-ap Prosec</td>
<td>Female</td>
</tr>
</tbody>
</table>

**Generalised testimony**

**Pre-deliberation**
- Aggravated sexual assault: 19(79) 19(79)
- Sexual intercourse: 12(50) 13(54)

**Post-deliberation**
- Aggravated sexual assault: 19(79) 19(79)
- Sexual intercourse: 11(46) 12(50)

**Psychological consequences testimony**

**Pre-deliberation**
- Aggravated sexual assault: 18(75) 14(58)
- Sexual intercourse: 10(42) 14(58)

**Post-deliberation**
- Aggravated sexual assault: 19(79) 14(58)
- Sexual intercourse: 8(33) 13(54)

**S.V.A. testimony**

**Pre-deliberation**
- Aggravated sexual assault: 22(92) 16(67)
- Sexual intercourse: 16(67) 9(38)*

**Post-deliberation**
- Aggravated sexual assault: 24(100) 15(63)**
- Sexual intercourse: 21(88) 5(21)**

* p<.05; ** p<.01
Verdicts for the charge of sexual intercourse with a young person

Chi-square analyses of the effects of the independent variables on the sexual intercourse verdicts showed a significant main effect for gender only, with significantly more females voting guilty, $\chi^2 (1, N=144) = 9.0, p<.01$.

Balance of verdicts within juries.

Table 9.5 shows the balance of verdicts within juries before and after the deliberation process. On both charges there is considerable movement towards a unanimous verdict following deliberation.

<table>
<thead>
<tr>
<th></th>
<th>Unanimous</th>
<th>Majority for</th>
<th>Balanced (3 - 3)</th>
<th>Majority for</th>
<th>Unanimous</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Not guilty</td>
<td>Not guilty</td>
<td>Guilty</td>
<td>Guilty</td>
<td>Guilty</td>
</tr>
<tr>
<td>Aggravated sexual assault</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pre-deliberation</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>19</td>
<td>2</td>
</tr>
<tr>
<td>Post-deliberation</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>11</td>
<td>9</td>
</tr>
<tr>
<td>Sexual intercourse</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pre-deliberation</td>
<td>0</td>
<td>6</td>
<td>10</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td>Post-deliberation</td>
<td>5</td>
<td>4</td>
<td>6</td>
<td>5</td>
<td>4</td>
</tr>
</tbody>
</table>

Scaled verdict ratings

Results for pre-deliberation scaled verdicts showed the same pattern of main effects as did the analysis of dichotomous verdicts. On the charge of aggravated sexual assault, those who saw the child's enhanced testimony gave significantly higher verdict ratings of defendant guilt ($M = 7.91, SD = 2.66$) than those who saw the standard testimony ($M = 6.95, SD = 3.08$), $F(1,120) = 4.49, p<.05$. There were also juror gender differences with female subjects giving significantly higher verdict ratings of defendant guilt on the aggravated sexual assault charge, $F(120) = 6.30, p<.05$, and on the sexual intercourse charge, $F(120) = 9.0, p<.01$.  

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Likelihood of occurrence of the central trial issues

Ratings of the likelihood that the defendant had penetrated the child's vagina with his finger(s), which is the legal criterion for aggravated sexual assault, were, as might be expected, significantly different for those who voted guilty (M = 82.8%) and those who voted not guilty (M = 38.7%), but there was a significant interaction between juror gender and verdict. The 47 males who rendered pre-deliberation guilty verdicts on the aggravated sexual assault charge maintained significantly lower levels of likelihood that the defendant had penetrated the child's vagina (M = 76.3%) than did the 61 female jurors who rendered a guilty verdict on this charge (M = 87.9%), $F(1,106) = 7.82, p < .01$.

On the more serious charge of intercourse with a young person, the 74 subjects who voted guilty had significantly higher ratings (M = 79.8%) of the likelihood that the defendant had penetrated the child's vagina with his penis than the 70 subjects who voted not guilty (M = 37.8%). There was no significant interaction between verdict and juror gender, but the differences were in the same direction as the first charge; the 28 males who voted guilty on the sexual intercourse charge indicated a mean likelihood of 74.6% that the defendant had penetrated the child's vagina with his penis, while the 46 females who voted guilty on this charge had a mean likelihood of 83.0%.

Evaluations of the expert and expert testimony

In the court appointed role the expert was perceived as more competent (M = 7.47) than as a witness for the prosecution (M = 6.86), $p < .05$, more trustworthy (M = 7.41 vs. M = 6.79, $p < .05$), more helpful (M = 6.68 vs. M = 5.80, $p < .05$) and more scientific (M = 6.68 vs. M = 5.98, $p < .05$). An admission of gaps in the research was seen as significantly less serious when made by the court appointed expert (M = 5.4, SD = 1.93) than when made by the prosecution's expert (M = 6.19, SD = 1.77, $p < .01$).
The mean rating for comprehensibility of the SVA testimony ($M = 6.61$) was significantly lower than the ratings given by jurors for the comprehensibility of the psychological consequences testimony ($M = 7.33$) and the general capabilities testimony ($M = 7.60$), $F(2,120) = 4.47$, $p < .05$.

Perceptions of the expert differed considerably according to verdict preference. Overall, those who voted guilty on the aggravated sexual assault charge considered the expert's testimony to be very significantly more helpful ($M = 6.76$) than those who voted not guilty ($M = 4.69$), $F(1,143) = 30.49$, $p < .001$. In each of the expert role conditions, differences were highly significant on ratings of the degree to which the testimony was helpful in relation to aggravated sexual assault verdicts. For those jurors who saw the court-appointed expert, the mean ratings for helpfulness of the expert testimony were 7.35 for guilty voters and 5.18 for not guilty voters, $F(1,71) = 23.8$, $p < .001$. For those who viewed the prosecution expert, mean helpfulness ratings were 6.25 for guilty and 3.92 for not guilty voters, $F(1,71) = 15.19$, $p < .001$.

On the sexual assault charge, differences in perceptions of the expert on other variables as well as helpfulness appear to have been salient in verdict decision making. On this charge, the 74 jurors who voted guilty rated the expert's testimony as more helpful ($M = 6.73$ vs. $M = 5.72$), $F(1,143) = 8.4$, $p < .01$, and the expert as more trustworthy ($M = 7.46$ vs. $M = 6.71$), $F(1,143) = 9.5$, $p < .01$, and more honest ($M = 7.99$ vs. $M = 7.20$), $F(1,143) = 9.8$, $p < .01$. This pattern of differences in perceptions of the expert was consistent within each expert role condition.

*Interest in the trial*

Jurors exposed to the nonadversarial expert testimony expressed significantly more interest ($M = 8.13$, $SD = 0.97$) than those who viewed the adversarial expert ($M = 7.73$, $SD = 1.3$, $p < .05$).
Relative Influence of the witnesses

The means for the percentage of influence accorded to each witness’s testimony are shown in Table 9.6. For those who voted not guilty on the aggravated sexual assault charge there was no difference in the degree of influence of the child’s and the defendant’s testimony, but for those who found the defendant guilty, the child’s testimony was three times more influential than the defendant’s. For those voting guilty on the sexual intercourse charge, the child’s testimony was four times more influential than the defendant’s.

Table 9.6 Means (and SD’s in parentheses) for percentage of influence that each witness’s testimony had in verdict decisions for guilty and not guilty voters on the aggravated sexual assault and sexual intercourse charges

<table>
<thead>
<tr>
<th>Witness</th>
<th>Pre-deliberation</th>
<th>Verdict</th>
<th>p</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Guilty</td>
<td>Not guilty</td>
<td></td>
</tr>
<tr>
<td>Child</td>
<td>46.8 (16.3)</td>
<td>28.3 (17.9)</td>
<td>&lt;.001</td>
</tr>
<tr>
<td>Mother</td>
<td>10.5 (7.2)</td>
<td>12.8 (11.1)</td>
<td>n.s.</td>
</tr>
<tr>
<td>Medical doctor</td>
<td>11.7 (7.1)</td>
<td>14.6 (10.7)</td>
<td>n.s.</td>
</tr>
<tr>
<td>Psychologist</td>
<td>15.5 (9.9)</td>
<td>18.0 (13.9)</td>
<td>n.s.</td>
</tr>
<tr>
<td>Defendant</td>
<td>15.6 (11.6)</td>
<td>26.2 (14.2)</td>
<td>&lt;.001</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Witness</th>
<th>Pre-deliberation</th>
<th>Verdict</th>
<th>p</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Guilty</td>
<td>Not guilty</td>
<td></td>
</tr>
<tr>
<td>Child</td>
<td>49.4 (18.5)</td>
<td>34.8 (15.3)</td>
<td>&lt;.001</td>
</tr>
<tr>
<td>Mother</td>
<td>10.2 (7.6)</td>
<td>11.9 (9.1)</td>
<td>n.s.</td>
</tr>
<tr>
<td>Medical doctor</td>
<td>11.8 (7.7)</td>
<td>13.1 (8.8)</td>
<td>n.s.</td>
</tr>
<tr>
<td>Psychologist</td>
<td>15.9 (9.7)</td>
<td>16.4 (12.4)</td>
<td>n.s.</td>
</tr>
<tr>
<td>Defendant</td>
<td>12.6 (9.8)</td>
<td>24.1 (13.5)</td>
<td>&lt;.001</td>
</tr>
</tbody>
</table>
Recognition recall of trial facts:

There was no significant difference on recall of the twelve case facts between those exposed to the court-appointed expert (M = 9.97, SD = 1.38) and those exposed to the prosecution expert (M = 10.18, SD = 1.67). However, differences between these groups on recall of the expert testimony did approach significance (p = .07), with those exposed to the nonadversarial expert tending to exhibit poorer recognition recall (M = 4.02, SD = 1.27) of the six items than those exposed to the adversarial expert (M = 4.38, SD = 1.15).

Regression analysis of child-based ratings on pre-deliberation verdict ratings

Stepwise regression analysis involving the child-based ratings, confidence, consistency, memory ability, resistance to suggestion, reality monitoring, harmfulness of the alleged act, the child's attractiveness, and the likelihood that the child did not misinterpret the defendant's actions, indicated that the best predictor of pre-deliberation aggravated sexual assault verdict ratings was the likelihood that the child had not misinterpreted the defendant's actions, followed by ratings of the child's ability to distinguish fact from fantasy, and memory ability ($R^2 = .387$; $F(3, 140) = 29.40$). For pre-deliberation sexual intercourse verdict ratings, the likelihood of not misinterpreting the incident was also the most salient predictor, followed by memory ability ($R^2 = .257$; $F(2, 141) = 24.43$).

Jurors' opinions on SVA criteria as statement credibility indicators

The proportion of jurors indicating that the presence of a given SVA criterion would enhance the credibility of the child's statement was highest (73.6%) for criterion 8, "Unusual details" and lowest for criterion 15, "Admitting lack of memory". The criterion which was considered by the highest proportion to detract from credibility was criterion 14, "Spontaneous corrections". Table 9.7 shows the percentage of jurors who nominated each criterion as a feature which would enhance
credibility. Table 9.8 shows the order in terms of the percentages of jurors who nominated the presence of the criterion as a feature which would make the statement less credible. On both the aggravated sexual assault charge and the sexual intercourse charge, there were no significant differences between those jurors who voted guilty and those who voted not guilty in terms of the number of criteria nominated as enhancing a statement's credibility, or the number of criteria considered to diminish statement credibility.

Identification of SVA criteria features in child's statement

To test the hypothesis that those who voted guilty would identify more SVA features as present in the child's statement, analysis of verdicts by number of features identified was conducted separately for the enhanced and standard testimony groups. For those jurors who saw the enhanced testimony, there was a significant difference between the number of SVA features (M = 6.37) identified by those (n = 59) who voted guilty on the aggravated sexual assault charge and those (n=13) who voted not guilty (M = 4.76), F(1,70) = 6.39, p<.05. On the sexual intercourse charge, the difference between the number of SVA features (M = 6.62) identified by those (n = 38) who voted guilty also differed significantly from the number of features (M = 5.50) identified by those (n = 34) who voted not guilty, F(1,70) = 5.02, p<.05.

For jurors who saw the standard testimony, there was a significant difference between the number of SVA features (M = 1.95) identified by those (n = 49) who voted guilty on the aggravated sexual assault charge and the number of features identified (M = 1.34) by those (n = 23) who voted not guilty, F(1,70) = 5.6, p<.05. On the charge of sexual intercourse with a young person, the difference between the number of features (M = 1.97) identified by the 36 guilty voters and the number of features (M = 1.55) identified by the 36 not guilty voters approached significance (p=.09).
<table>
<thead>
<tr>
<th>SVA criterion number</th>
<th>Description of feature</th>
<th>Percentage indicating feature would increase statement’s credibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Unusual details: The child reports details of persons, objects or events which were unusual but meaningful in the context of the alleged incident</td>
<td>73.6</td>
</tr>
<tr>
<td>12</td>
<td>Accounts of subjective mental state: The child reports her own thoughts and feelings at the time of the alleged incident</td>
<td>69.4</td>
</tr>
<tr>
<td>6</td>
<td>Reproduction of conversation: The child reports the words of conversation that occurred between herself and the alleged perpetrator at the time of the alleged incident</td>
<td>63.9</td>
</tr>
<tr>
<td>10</td>
<td>Accurately reported details misunderstood: The child reports details about the incident which seem to be accurate in a sexually abusive incident but which are misunderstood by the child</td>
<td>63.2</td>
</tr>
<tr>
<td>9</td>
<td>Superfluous details: The child’s statement includes extra (peripheral) details that were related to the situation but that did not contribute directly to the allegation</td>
<td>54.8</td>
</tr>
<tr>
<td>17</td>
<td>Self deprecation: The child describes some aspect of her behaviour as being wrong or inappropriate</td>
<td>48.6</td>
</tr>
<tr>
<td>18</td>
<td>Pardoning the perpetrator: The child makes excuses for the alleged perpetrator or does not blame him when an opportunity to blame him occurs</td>
<td>45.8</td>
</tr>
<tr>
<td>7</td>
<td>Unexpected complications during the incident: The child says that there was an unplanned interruption or an unexpected complication during the alleged incident</td>
<td>43.8</td>
</tr>
<tr>
<td>13</td>
<td>Attribution of perpetrator’s mental state: The child makes some reference to her father’s thoughts or feelings at the time of the alleged incident</td>
<td>41.7</td>
</tr>
<tr>
<td>16</td>
<td>Raising doubts about one’s own testimony: The child expresses concern that some part of her statement seems incorrect or unbelievable</td>
<td>37.5</td>
</tr>
<tr>
<td>14</td>
<td>Spontaneous corrections: The child spontaneously corrects any of her answers</td>
<td>27.8</td>
</tr>
<tr>
<td>15</td>
<td>Admitting lack of memory: The child indicates that she did not remember some aspect of the alleged incident</td>
<td>25.0</td>
</tr>
</tbody>
</table>
Table 9.8  Percentages of jurors indicating each SVA criterion as diminishing statement credibility

<table>
<thead>
<tr>
<th>SVA criterion number</th>
<th>Description of feature</th>
<th>Percentage indicating feature would diminish a statement's credibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>Spontaneous corrections</td>
<td>31.9</td>
</tr>
<tr>
<td>15</td>
<td>Admitting lack of memory</td>
<td>25.0</td>
</tr>
<tr>
<td>6</td>
<td>Raising doubts about one's own testimony</td>
<td>22.2</td>
</tr>
<tr>
<td>13</td>
<td>Attribution of perpetrator’s mental state</td>
<td>19.4</td>
</tr>
<tr>
<td>10</td>
<td>Accurately reported details misunderstood</td>
<td>12.5</td>
</tr>
<tr>
<td>17</td>
<td>Self deprecation</td>
<td>11.8</td>
</tr>
<tr>
<td>18</td>
<td>Pardoning the perpetrator</td>
<td>11.1</td>
</tr>
<tr>
<td>9</td>
<td>Superfluous details</td>
<td>9.0</td>
</tr>
<tr>
<td>6</td>
<td>Reproduction of conversation</td>
<td>8.3</td>
</tr>
<tr>
<td>7</td>
<td>Unexpected complications during the incident</td>
<td>6.9</td>
</tr>
<tr>
<td>8</td>
<td>Unusual details</td>
<td>4.9</td>
</tr>
<tr>
<td>12</td>
<td>Accounts of subjective mental state</td>
<td>3.5</td>
</tr>
</tbody>
</table>

Check on SVA testimony jurors compared to those hearing other expert testimonies:

Although there were no significant differences in any verdicts or verdict ratings according to the type of expert testimony, a number of tests were conducted to determine whether those who heard the SVA testimony enjoyed any subsequent advantage in terms of ability to identify CBCA features in the child's testimony or recognition of those features as credibility enhancing. Chi-square analyses conducted for the enhanced testimony and standard testimony groups separately showed that those who heard the SVA testimony were not more likely to identify any single feature as present in the child's testimony than those who heard the other types of expert testimony. There were no significant differences between the
number of SVA criteria nominated as enhancing credibility by type of expert testimony; that is, those who heard the SVA testimony wherein the expert mentioned some of the criteria used in content analysis did not nominate a significantly greater number of criteria as enhancing credibility than those who heard either the psychological consequences or general capabilities testimony.

9.4 DISCUSSION

Implications of the pre-trial survey results

Of the pre-trial survey items, the most salient predictor of jurors' subsequent verdict ratings on both the aggravated sexual assault and sexual intercourse charges was the extent of agreement or disagreement with the proposition that it would be wrong to convict someone if the only witness was a 9-year-old. Those respondents who signalled their apparently greater willingness to convict on the uncorroborated testimony of a 9-year-old child were more likely to vote the defendant guilty when acting as jurors in the simulated trial. Overall, a high proportion of subjects (77%) indicated some degree of disagreement with the statement that it would be wrong to convict on the uncorroborated testimony of a child, and only 12% agreed that it would be wrong to do so. In Australia, proceedings against an alleged offender are rare if appropriate corroboration is not available (Warner, 1991) and if there is no admission by the alleged offender (Brereton & Cole, 1991), since the likelihood of conviction in these circumstances is considered too low. Given the legislative provisions in Australia, which require children's unsworn evidence to be corroborated, and the judicial cautions against convicting on the basis of children's sworn, or unsworn, evidence (Davies, 1993; Warner, 1991) it is interesting that, in this study, only one eighth of the subjects held the opinion that convicting on the basis of a child's uncorroborated testimony would be wrong. This result suggests that the recently realised or recommended abolition of corroboration requirements in various states of the United States (Levine & Battistoni, 1991) and Australia (Warner, 1987) may be in accord with attitudes held in the general population. In
England and Wales the Criminal Justice Act (1989) abolished the corroboration rule for unsworn evidence of children, following a review of the psychological research on the witness competency of children.

The pre-trial survey results indicated significant pre-trial attitudinal differences between male and female jurors. Females were more strongly in agreement with statements indicating that children aged 8 or 9 have no difficulty in reality monitoring, are unlikely to fantasize about sexual activity with adults, and are not easily manipulated into giving false reports of sexual abuse. Females also were more likely to consider delays in disclosure or reporting to be common, and were less likely to interpret a child’s retraction as an indicator of fabrication. Females were more inclined to say that the legal system should intervene in cases of familial sexual abuse. Finally, females indicated greater willingness to convict if the only witness to a crime was a 9-year-old child. These prior attitudinal differences seem to be expressed in the significantly higher credibility ratings accorded the child witness and the higher proportions of guilty verdicts rendered by the female jurors.

The effect of varying the content quality of the child’s statement

It was hypothesized that those jurors who saw the enhanced version of the child’s testimony would rate the child’s credibility higher and render significantly more guilty verdicts, provided that

1) additional features in the enhanced testimony were attended to by jurors, and

2) these features were perceived by jurors as credibility-enhancing.

Jurors who saw the enhanced statement were more likely to vote guilty on the aggravated sexual assault charge, but verdict differences on the sexual intercourse charge did not attain significance. While guilty voters and not guilty voters in the enhanced testimony condition did not differ in the number of criteria nominated as enhancing a statement’s credibility, those who voted guilty on the aggravated sexual
assault charge identified significantly more of the CBCA features as being present in
the child’s testimony than did those who voted not guilty. The same outcome emerged
with verdicts on the sexual intercourse charge.

It was found also in the standard testimony condition, which contained
considerably fewer CBCA criteria, that those who voted guilty identified more
features as present than the not guilty voters. The findings support the hypothesis
that jurors may intuitively use some CBCA features in their assessment of the
credibility of a child’s statement.

There was considerable variability in the proportions of jurors indicating each
CBCA criterion as increasing or diminishing perceived credibility. Almost one third
of subjects said they would perceive a child’s spontaneous corrections as detracting
from credibility, yet this was one of seven criteria found in 100% of the confirmed
cases studied by Esplin et al. (1988), albeit, in only 57% of the confirmed cases in
the Anson et al. (1993) study. Only 28% of subjects in this experiment perceived
the presence of spontaneous corrections as credibility-enhancing behaviour, which
suggests that, in this instance, jurors’ common knowledge and experience may be a
less than adequate basis for understanding this particular behaviour (Colman &
Mackay, 1992).

Impact of type of expert testimony

The hypothesis that jurors who saw the generalised cognitive abilities testimony
would rate the child higher on the abilities addressed by the expert was supported.
The only other main effects for type of testimony were that jurors who heard the
psychological consequences testimony rated the child as less confident and rated the
degree of harm as greater, outcomes consistent with the content of the evidence
presented by the expert, who said that the child displayed moderate to high levels of
anxiety and other negative psychological and behavioural sequelae.
The point of interest is that not one of the three types of testimony had a significantly greater impact on ratings of the child's credibility or on verdicts than any other. On the aggravated sexual assault charge, the percentage of pre-deliberation guilty verdicts rendered with the generalised cognitive abilities testimony was 81%, with the psychological consequences testimony 69%, and with the statement validity analysis testimony 79%. On the sexual intercourse charge, proportions of pre-deliberation guilty verdicts were: cognitive abilities testimony 54%, psychological consequences testimony 50%, and SVA testimony 52%.

*Perceptions of the expert and relationship to verdicts*

Whether jurors saw the adversarial or non-adversarial expert, there were significant differences between guilty and not guilty voters in their ratings of the expert. With regard to sexual intercourse verdicts, those voting guilty in both expert role conditions rated the expert as more helpful, more trustworthy and more honest. The differences between guilty and not guilty voters in their perceptions of the expert's impartiality did not reach significance, but it may be that some jurors are uncertain of the meaning of the term "impartiality" and their perceptions of the expert are more clearly indicated in the ratings of honesty and trustworthiness.

*Processing of the expert testimony*

Brekke et al. (1991) found that recognition recall of case facts was significantly higher for the nonadversarial than the adversarial expert condition. They suggested that this finding may have been due to a reduction in the information load if jurors were heuristically processing the nonadversarial expert's testimony, that is, being somewhat less attentive to the details of expert testimony, jurors presumably had a greater capacity to retain and recall other case facts. Brekke et al. (1991) did find that recognition recall of the expert testimony was significantly poorer in the nonadversarial condition. In the present study there was no significant difference on
recall of case facts between the adversarial and nonadversarial conditions, but the difference in recall of expert testimony facts did approach significance, with those exposed to the nonadversarial expert exhibiting poorer recognition recall. This is supportive of Chaiken's (1980, 1987) heuristic processing hypothesis. However, Chaiken also proposes that heuristic processing is most likely to occur when either motivation or ability is low. There is no reason to presume that ability is low in this sample of subjects and there was no direct measure of motivation, only a less direct indicator, degree of interest in the trial. On this measure the results were similar to those found by Brekke et al. (1991). Those jurors exposed to the nonadversarial testimony were significantly more interested in the trial than those in the adversarial expert condition.

Brekke et al. (1991) concluded that while the poorer recognition recall of the nonadversarial testimony supports both Chaiken's heuristic processing model (1980, 1987) and Petty and Cacioppo's Elaboration Likelihood Model (1986a), the greater interest exhibited by those same jurors raises questions about the mediators of the effects. However, it is possible that in this study and in the Brekke et al. study, interest in the trial may not be a good indicator of levels of motivation to process information carefully. It is likely that those exposed to the nonadversarial expert showed greater interest because of the novelty of such a role in our Anglo-American legal system, but were also less systematic in their processing of the court-appointed expert's testimony because they perceived the expert as more impartial and trustworthy and therefore relied to a greater degree on the "statements by experts can be trusted" rule of thumb.

The present findings suggest that there was greater acceptance and less scrutiny of statements made by the nonadversarial expert in that he was perceived as more competent, more trustworthy, more helpful and more scientific. Furthermore, gaps in the research were considered less serious when the nonadversarial expert made
such an acknowledgement. It is possible that what might be perceived as a chink in the professional armour of an adversarial expert may be seen as merely a candid admission of a regrettable hiatus in the literature when coming from a nonadversarial expert, and may serve to enhance perceived expertise.

**Weight accorded to the child’s testimony**

- **the importance displacement hypothesis**

It has been suggested (Ross et al., 1989) that the importance displacement hypothesis formulated by Goodman and colleagues may not apply in child sexual abuse cases. The importance displacement hypothesis predicts that the testimonies of other witnesses are likely to be more influential when the key witness is a child. In this experiment, jurors were asked to apportion 100 percentage points between each of the trial witnesses to indicate how much each witness had influenced their final verdict decision.

Results from this trial scenario, suggest that there may be a high degree of variability among jurors in the weight accorded to the child’s testimony, with those voting for conviction on either charge rating the child’s testimony as considerably more influential than the defendant’s or any other witness’s testimony, whereas for those who voted not guilty there was no significant difference in the degree to which they perceived the child’s and defendant’s testimony influencing their decision making.

It is possible that jurors who voted guilty, having committed themselves to a vote for conviction, may have retrospectively interpreted and elaborated the degree of influence the child’s testimony had on their decision making, and may also have retrospectively depreciated the defendant’s testimony.
Certainty requirements for conviction

The finding that relative to female guilty voters, males who voted guilty on the aggravated sexual assault charge showed a lower percentage likelihood that the defendant had penetrated the girl's vagina with his finger suggests that male jurors may have lower certainty requirements for conviction. This finding does not support Ellsworth's (1993) hypothesis that the greater the regret a juror feels for a mistaken conviction relative to a mistaken acquittal the higher the juror's threshold of conviction. Content analysis of the deliberations in the earlier experiments of this thesis has indicated that male jurors are more likely to express concern for the consequences of a guilty verdict for the defendant than do female jurors. This may be due to male jurors' higher levels of empathy for a male defendant and less identification with the victim in cases involving sexual crimes (Deitz, Blackwell, Daley, & Bentley, 1982; Deitz & Byrnes, 1981; McNamara, Vattano, & Viney, 1993) and therefore, presumably, greater concern about a mistaken conviction relative to a mistaken acquittal. Further discussion of the implications of the results of all four experiments in this thesis for juror gender differences is contained in Chapter 11.
Chapter 10

Discussion and Conclusions:
Impact of psychological expert testimony
and expert roles
Chapter 10
Discussion and Conclusions: Impact of psychological expert testimony and expert roles

10.1 Summary of results concerning the impact of psychological expert testimony

The central emphasis in the four experiments of the present thesis was an investigation of the impact of generalised psychological expert testimony concerning children's cognitive abilities in a sexual abuse case.

In the first experiment the presence of such testimony resulted in higher juror ratings of the complainant child's memory expertise, resistance to suggestion and reality monitoring, but not in significantly more guilty verdicts. However, results indicated that the exposure to expert testimony may have enhanced the degree of certainty felt by those who voted guilty.

In the second experiment, the impact of the generalised testimony was found to vary with the expert's role when the expert was male, but no variation in impact across roles was noted with the female expert. While expert role did not significantly affect verdicts, the verdict ratings, which combined verdict with degree of certainty, were significantly higher when the male expert presented in the non-adversarial role, than when in the adversarial role. Relative to the court-appointed male expert, the adversarial male expert was rated as less impartial and his testimony as less helpful.

Results from the third experiment indicated that variations in the order of presentation of testimony did not affect the impact of the psychologist's expert testimony. However, as in the first experiment, those who heard the expert
testimony, regardless of its position, rated the child higher on cognitive competence variables than did those jurors who did not see the expert.

In the fourth experiment, the impact of the generalised cognitive abilities testimony was compared with two other forms of expert testimony, one bearing on the general psychological consequences of sexual abuse with reference made to relevant symptoms displayed by the child, and the other involving a probabilistic assessment of the validity of the child's statement. Jurors who saw the cognitive abilities testimony rated the child higher on those abilities, but verdicts and verdict ratings did not differ with varying types of expert testimony. The impact of expert role was considerably less straightforward in the fourth experiment than in the second experiment, and varied according to the type of expert testimony given.

In considering the impact of psychological expert testimony in these studies and the relevance of the present findings to real cases, caution should be exercised for two reasons. First, as mentioned in Chapter 6, the compression of a trial scenario into a brief videotaped presentation may have resulted in the jurors placing greater weight on the expert's testimony than might occur in a full trial. Secondly, the impact of the psychologist's testimony may have been attributable, in some degree, to the "boomerang effect" (Isquith, Levine, & Scheiner, 1993) where the judge's directions, even those which are cautionary, serve to draw attention to a particular witness's testimony, and in so doing lead jurors to attach greater weight to it.

10.2 Role of expert witness

The role of the expert witness was manipulated in Experiments 2 and 4. In Experiment 2, there were significantly fewer guilty votes with the male expert in the adversarial role than in the court-appointed role, and the court-appointed expert was rated as significantly more helpful and impartial. In Experiment 4, where only a male expert was used, there were indications of differing effects on
verdicts for expert role depending on the nature of the expert testimony presented (see Table 9.4).

When the expert presented generalised cognitive abilities testimony, there were no significant differences from expert role on aggravated sexual assault verdicts, but the sexual intercourse verdicts, while not significantly differing by expert role, were, nevertheless, in the same direction (court-appointed expert, 63% guilty vs. prosecution expert, 41% guilty) as the significant differences found in Experiment 2. Differences on sexual intercourse verdicts increased to be significantly different, after deliberation.

With the psychological consequences testimony, guilty verdicts by expert role were similar on the aggravated sexual assault and on the sexual intercourse charges. With this form of testimony it may be that the psychologist appearing for the prosecution, having made it clear that he had examined the child, was in a better position to disconfirm expectations of partiality, than he was when delivering a more impersonal, generalised testimony, involving no communication with or questioning of the child complainant. In the analysis of deliberations in Experiments 1 and 2, there were several instances when jurors remarked on the psychologist's failure to examine or speak to the child, and this may have adversely affected the weight some jurors gave to the psychologist's testimony.

With the statement validity analysis testimony, those hearing the prosecution expert were significantly more likely to vote guilty on the aggravated sexual assault charge. It might be expected that a prosecution expert who gave only moderate endorsement to the complainant child's statement would thereby disconfirm any expectations of partiality, and may have his testimony more readily accepted. However, jurors' responses appear to have been more variable. While a content analysis of the deliberations of Experiment 4 was not conducted, perusal of the
videotaped deliberations of the two jury groups in the “Standard interview/SVA/prosecution expert” condition revealed a number of comments indicating that jurors may have been confused by this testimony and tended to dismiss the psychologist's conclusions and focus primarily on the child's testimony in their decision making. Although not significant, there was, nevertheless, a substantial difference between the mean percentages which jurors allocated to the psychologist's influence on their decision-making in the “standard interview/SVA/court-appointed expert” juries (18%) and the “standard interview/SVA/prosecution expert” jury groups (11%). The following are comments from the deliberations of the latter groups:

"The psychologist totally confused me" (juror 3, group 7).
"I got lost. I switched off halfway through" (juror 2, group 7, referring to psychologist's testimony).
"I don't think his testimony was one way or the other" (juror 2, group 7).
"... he's a red herring in some ways" (juror 4, group 7, referring to psychologist).
"He clarified a few points, but wouldn't sway you one way or the other" (juror 2, group 7).
"I had trouble working out which one was the prosecution, who was the psychologist supposed to be representing. I got confused" (juror 4, group 8).
"The psychologist said very little, went on and on. I wasn't impressed" (juror 5, group 8).
"I wasn't very clear on whose side he came out on" (juror 4, group 8).
Chapter 11

Discussion and conclusions:

Findings pertinent to areas of sexual abuse cases other than expert testimony
Chapter 11
Discussion and conclusions: Findings pertinent to areas other than expert testimony

Findings from these four experiments which have implications for other areas of jury research are discussed in detail below. The two most robust findings were:

1) the salience of jurors' perceptions as to whether the child may have misinterpreted the defendant's actions at the time of the alleged incident. In all four experiments, regression analyses indicated that this variable was most highly predictive of jurors' verdict ratings, and

2) the consistent pattern of juror gender differences across all four studies, with females more likely to rate the child's credibility higher and to render guilty verdicts.

11.1 Juror gender differences

Menkel-Meadow and Diamond (1991) propose that gender is an "important and salient category for sociolegal analysis" (p. 227), particularly to the extent that such analyses can illuminate questions regarding the possibility of separate "male and female legal cultures". Rape trial simulation studies have generally found that female jurors are significantly more likely to find the defendant guilty (Brekke & Borgida, 1988; Davis, Kerr, Atkin, Holt, & Meek, 1975; Deitz & Byrnes, 1981; Kassin, Reddy, & Tulloch, 1990; Lyons & Regina, 1986; Miller & Hewitt, 1978; Spanos, Dubreuil, & Gwynn, 1992; Weir & Wrightsman, 1990), although others have found a non-significant trend in the same direction (Field, 1978; Villemur & Hyde, 1983). Some have suggested that the critical differential factor is women's greater degree of empathy for victims (Deitz et al., 1982; Deitz & Byrnes, 1981; Weir & Wrightsman, 1990). However, two studies of jurors in actual rape cases (Lafree, Reskin, & Visher, 1985; Nelligan, 1988) found no basis for positing gender differences in conviction or acquittal rates.
Nelligan (1988) speculated that either the *voir dire* selection process may serve to filter out those with differential propensities to acquit or convict, or juror gender differences are in some way "submerged" during deliberation. His inference is that it is women's propensities that go under, as previous studies have indicated that male jurors tend to dominate participation in deliberation (Hastie, Penrod & Pennington, 1983). Ellsworth (1993) has suggested that, despite several social role shifts, the ratio of 1.5 : 1 in speaking rates during deliberation for males and females respectively has not altered from the decade of Kalven and Zeisel (1966) to the late 1980's (Strodbeck & Lipinski, 1988), but there was no evidence of such a gender-related participation imbalance in the experiments that constitute this thesis. In fact, the only gender differences in deliberation content indicated that females tended to participate to a greater extent than males. Data from Experiment 2 showed a higher mean number of utterance units for females, and significantly more discussion of both the child's and the defendant's testimony by female jurors. Gender differences in verdicts in these four experiments were similar to those found in studies using rape cases. The pattern of juror gender differences on pre-deliberation verdicts was also similar to that found by Gabora et al. (1993) with female complainant witnesses aged 13 and 17, in a simulated child sexual abuse case. Table 11.1 shows the proportion of each gender group voting for conviction and acquittal in each of the four studies of this thesis, and for comparison, the results from the Gabora et al. (1993), Brekke and Borgida (1988) and Ross et al. (1994) studies.

A narrowing of gender verdict differences after deliberation was noted in the experiments in this thesis, and in the Gabora et al. study. A similar pattern of juror gender differences on pre-deliberation verdicts with a less pronounced difference after deliberation, as more females changed their votes from guilt to innocence, was found by Nagao and Davis (1980), and Brekke and Borgida (1988), using simulated rape trials.
Table 11.1. Percentage of guilty votes by juror gender in mock trials involving charges of a sexual nature

<table>
<thead>
<tr>
<th>Experiment</th>
<th>Females</th>
<th>Males</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-deliberation</td>
<td>Post-deliberation</td>
<td>Pre-deliberation</td>
</tr>
<tr>
<td>Experiment 1</td>
<td>74</td>
<td>61</td>
</tr>
<tr>
<td>Experiment 2</td>
<td>69</td>
<td>65</td>
</tr>
<tr>
<td>Experiment 3</td>
<td>75</td>
<td>78</td>
</tr>
<tr>
<td>Experiment 4</td>
<td>85</td>
<td>86</td>
</tr>
<tr>
<td>(aggr. sexual assault charge)</td>
<td>Pre-deliberation</td>
<td>Post-deliberation</td>
</tr>
<tr>
<td>Brekke &amp; Borgida (1988)</td>
<td>Pre-deliberation</td>
<td>Post-deliberation</td>
</tr>
<tr>
<td>Ross et al. (1994)</td>
<td>Experiment 1</td>
<td>(no deliberation)</td>
</tr>
</tbody>
</table>

However, gender differences on verdicts were not found in the study by Duggan et al. (1988), using complainant witnesses aged 5, 9 and 13 in a simulated sexual abuse case. The difference between the results found by Duggan et al. and the findings in the other three studies may be in part attributable to the difference in the scenarios used. The description of the scenario in the Duggan et al. study indicates that the defendant (neighbour or step-father) was alleged to have fondled the child
victim. The scenarios employed in the present studies and in those by Gabora et al. (1993) and Brekke and Borgida (1988) may well have been more emotionally engaging. In the present experiments there was an allegation of full and painful penetration of the child by the child's own father. Suggestions in the scenario that the parents' separation was not devoid of acrimony may also have served to enhance the juror gender polarization effect. In general, female jurors consistently gave higher ratings than male jurors on the child-based variables.

While significant gender differences on verdicts were found in the first experiment conducted by Ross et al. (1994), in their second experiment the proportion of guilty votes for male jurors (64.6%) was as high as the proportion of female jurors' guilty votes (66.6%). The authors used a scenario of a 10-year-old girl alleging sexual abuse by her father. In the first experiment, the mock jurors saw the complete trial, but in the second experiment the same stimulus material was used except that the videotape was stopped after the child testified and the defendant's testimony was not seen by the mock jurors. The findings suggest that viewing the defendant and hearing the defendant's testimony may be particularly salient for male jurors' decision-making, perhaps because it affords the opportunity for differential gender responses in the degree of empathy with a male defendant.

There is evidence that the gender differences in perceptions of the child witness and in judgements of guilt reflect jurors' prior attitudes and beliefs. Gabora et al. (1993) gave their jurors two scales prior to the trial, the "Attitudes toward Women Scale" and the "Child Sexual Abuse Belief Scale". They concluded that the "female jurors held more pro-feminist attitudes and believed less strongly in misconceptions about child sexual abuse than male jurors. These initial attitudinal differences may explain the differences in the way males and females responded to the trial testimony" (p.117). Brekke and Borgida (1988) using a rape trial as stimulus did not measure pre-trial attitudes but in commenting on their results
stated, "women were more favourably disposed toward the victim and rendered significantly more guilty votes than did men..... Some of the strongest sex differences emerged on evaluations of the expert witness and his testimony. Compared with men, women evaluated the rape expert more favourably and considered his testimony to be more useful to them in reaching their verdicts" (p. 375).

In Experiment 4, pre-trial survey results indicated significant pre-trial attitudinal differences between male and female jurors. These gender-related differences may have been expressed in the significantly higher credibility ratings accorded the child witness and the higher proportions of guilty verdicts rendered by the female jurors, not only in Experiment 4, but consistently throughout the present series of experiments.

11.2 Age of child victim/witness

The finding in the first experiment of no significant main effects for credibility according to the age of the child victim differs from the findings of Duggan et al., although it should be noted that the ages in this study (6,9,12) differed from those in the Duggan et al. study (5,9,13). These differences, though slight, may yet account for the contrary findings. Duggan et al., using female victims only, found that the 13-year-old was considered to be the least credible witness, which they interpreted as indicating jurors' propensities to attribute partial responsibility to the 13-year-old victim. From the content analyses of the deliberations in this study, it is clear that very few jurors who viewed the 12-year-old victims verbalised attributions of responsibility towards those victims, and when aired, such suggestions were not supported by other jurors. Duggan et al. suggested that jurors may view girls "approaching their teenage years" with greater suspicion in sexual abuse cases. Relative to the 9-year-old victims, the difference between the credibility ratings for the 12-year-old victims in this study and the 13-year-old girl in the Duggan et al. study may possibly be due to differences in developmental or other idiosyncratic factors in the children used.
An alternative interpretation open to further research is that, for some jurors, there may be a critical point at the transition from victim age 12 to 13, at which their perception of the child's level of responsibility and credibility alters. Having entered the teenage years, a 13-year-old may be perceived as having a greater degree of knowledge about and responsibility for sexual matters. Further, the likelihood that jurors, during deliberation, may attribute partial responsibility for a sexually abusive incident to the child and that such attributions may be supported by other jurors may increase with the age of the teenager. Gabora et al. (1993) found no significant difference between jurors' pre-deliberation verdicts with 13-year-old and 17-year-old complainants, but after deliberation, jurors who saw the older complainant returned significantly fewer guilty verdicts than those who saw the younger complainant. Suggestions, during deliberation, that the allegations were fabricated may also increase with age. Gabora et al. (1993) found that jurors were more likely to believe that the 13-year-old complainant lacked the knowledge required for fabricating. Apparent differences in jurors' reactions to various ages of child victim from one study to another may be explained by looking at the combination of factors involved in studies which have used child sexual abuse cases. Table 11.2 summarises comparable aspects of six such studies published to date.

Comparisons of the differing factors in each study suggest that care should be exercised in generalising from some studies. First, caution should be exercised, as Nightingale (1993) acknowledges, in generalising from studies that employ trial narratives. It is likely that jurors' stereotypes about children are more salient in such studies. Second, doubts have been expressed about the degree to which results are generalizable when only student subjects are used as mock jurors.
<table>
<thead>
<tr>
<th>Experiment</th>
<th>Trial format</th>
<th>Type of case</th>
<th>Age of child'n</th>
<th>Gender of child</th>
<th>Expert</th>
<th>Subject present</th>
<th>pop'n</th>
<th>% Gender of jurors</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goodman et al. (1989)</td>
<td>Written transcript (1 page)</td>
<td>oral sex with teacher</td>
<td>6,14,22</td>
<td>female</td>
<td>no</td>
<td>Psych u'grads</td>
<td></td>
<td>28 72</td>
<td>6 yr old more credible than 22-year-old Defendant more guilty with 6-year-old than other victims</td>
</tr>
<tr>
<td>Gabora et al. (1993)</td>
<td>Videotape</td>
<td>Multiple escalating incidents with father</td>
<td>13, 17</td>
<td>female</td>
<td>yes</td>
<td>Psych u'grads</td>
<td></td>
<td>55 45</td>
<td>No main effect of age on pre-deliberate verdicts More guilty votes with 13-year-old on post-deliber verdicts</td>
</tr>
<tr>
<td>Nightingale (1993) Experiment 1</td>
<td>Written transcript (6 pages)</td>
<td>oral sex</td>
<td>6,9,12</td>
<td>female</td>
<td>no</td>
<td>Psych u'grads</td>
<td></td>
<td>47 53</td>
<td>No main effect for victim age on verdicts</td>
</tr>
<tr>
<td>Nightingale (1993) Experiment 2</td>
<td>Written transcript (6 pages)</td>
<td>oral sex incl.</td>
<td>6-14</td>
<td>female</td>
<td>no</td>
<td>Psych u'grads</td>
<td></td>
<td>48 52</td>
<td>As victim age increased, no. of guilty votes decreased</td>
</tr>
<tr>
<td>Crowley et al (1994) Experiment 1 in this thesis</td>
<td>Videotape</td>
<td>sexual interc. with father</td>
<td>6,9,12</td>
<td>male &amp; female</td>
<td>yes</td>
<td>Jury-eligible citizens &amp; Psych u'grads</td>
<td></td>
<td>50 50</td>
<td>No main effects for age on verdicts or credibility</td>
</tr>
</tbody>
</table>
Third, given the common finding of gender polarization effects in cases involving sexual assault, some degree of care seems appropriate when interpreting results from studies which do not retain a gender balance among the juror sample. Male jurors may be less inclined to render guilty verdicts with older female complainants than are female jurors (Goodman et al., 1989). Fourth, only two studies (Experiments 1 and 2, this thesis) have investigated jurors' reactions to both male and female victim/witnesses, thus retaining a gender balance among the complainant witnesses. Admittedly, male children may constitute a minority of actual complainants (20% in the criminal court survey by Lipovsky et al., 1992) but unless they are included in an experimental paradigm, any conclusions about jurors' reactions to victims of different ages, such as those made by Nightingale and other authors, are applicable only to female children.

In recent experiments, using written trial transcripts of a civil and criminal (sexual abuse) case to investigate jurors' reactions to child victim witnesses, Nightingale (1993) found, in her first experiment using child ages 6, 9 and 12, that there were no significant main effects for victim age, and her expectation that the 12-year-old might be disadvantaged in the sexual abuse case was not supported by her data. In her second experiment using the same sexual abuse transcript and varying the ages of the child victim by each year from 6 to 14, Nightingale found there was a significant trend towards decreasing guilty votes as the age of the victim increased, but Nightingale's results do not appear to support her own conclusion of "a possible negative bias toward child victims that are approaching adolescence" (p. 693). In her first experiment, as in the first experiment in this thesis, there was no effect of victim age (6, 9, 12) on verdicts. In Nightingale's second experiment, even though a significant trend for age on verdicts was found, the data suggest that the outlying ages in the range from 6-14 were largely responsible for the significant effect. The proportion of guilty and not guilty verdicts was equal for ages seven, nine, eleven and almost equal for age twelve (10 guilty, 11 not guilty).
Results for pre-deliberation verdicts from Experiments 1 and 2 are shown in Table 11.3. Results from Experiment 1 in this thesis, show a relatively consistent pattern of verdicts of juror gender across differing victim ages and genders. At each age, 6, 9 and 12, male jurors voted guilty and not guilty in equal or approximately equal proportions, whereas at each victim/witness age, female jurors gave substantially more guilty votes. On pre-deliberation verdict results from Experiment 2, there is a similar pattern for female jurors at each age by gender of child, a pattern similar to that found in experiment one. However, the pattern of verdicts for male jurors is more variable across each age by gender of child than in Experiment 1.

```
<table>
<thead>
<tr>
<th>Gender &amp; age of child</th>
<th>Male jurors</th>
<th>Female jurors</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Guilty</td>
<td>Not guilty</td>
</tr>
<tr>
<td><strong>Experiment 1</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male .. 6 years</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Female .. 6 years</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Total .. 6 year-old child</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Male .. 9 years</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Female .. 9 years</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Total .. 9 year-old child</td>
<td>10</td>
<td>14</td>
</tr>
<tr>
<td>Male .. 12 years</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Female .. 12 years</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Total .. 12 year-old child</td>
<td>11</td>
<td>13</td>
</tr>
<tr>
<td><strong>Experiment 2</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male .. 6 years</td>
<td>9</td>
<td>15</td>
</tr>
<tr>
<td>Female .. 6 years</td>
<td>17</td>
<td>7</td>
</tr>
<tr>
<td>Total .. 6 year-old child</td>
<td>26</td>
<td>22</td>
</tr>
<tr>
<td>Male .. 9 years</td>
<td>10</td>
<td>14</td>
</tr>
<tr>
<td>Female .. 9 years</td>
<td>11</td>
<td>13</td>
</tr>
<tr>
<td>Total .. 9 year-old child</td>
<td>21</td>
<td>27</td>
</tr>
</tbody>
</table>
```
While there were three significant interactions involving child age in Experiment 2, the only significant main effects of child age in the experiments of this thesis were those concerned with differences in deliberation content. In Experiment 1, there was significantly more discussion of the 6-year-old children's cognitive capabilities than there was for the 9-year-old or the 12-year-old children. In Experiment 2, the jurors who saw the 6-year-old children entered into more discussion of reasonable doubt and its relation to verdicts than did those jurors who saw the 9-year-old children.

11.3 Patterns of verdict preference over all four studies

From an inspection of the pre- and post-deliberation verdict frequencies in Table 11.4, there are two noteworthy features.

<table>
<thead>
<tr>
<th>Exp 1 (All S's.. N=144)</th>
<th>Exp 1 (expert pres.. n=72)</th>
<th>Exp 2 (All S's.. N=192)</th>
<th>Exp 3 (All S's.. N=120)</th>
<th>Exp 3 (expert pres.. n=96)</th>
<th>Exp 4 (Agg sex ass.. N=144)</th>
<th>Exp 4 (Sex interc.. N=144)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-deliberation</td>
<td>Post-deliberation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Guilty</td>
<td>Not guilty</td>
<td>Guilty</td>
<td>Not guilty</td>
<td>Guilty</td>
<td>Not guilty</td>
<td>Guilty</td>
</tr>
<tr>
<td>86 (60)</td>
<td>58 (40)</td>
<td>75 (52)</td>
<td>69 (48)</td>
<td>48 (67)</td>
<td>24 (33)</td>
<td>43 (59)</td>
</tr>
<tr>
<td>43 (59)</td>
<td>29 (40)</td>
<td>113 (59)</td>
<td>79 (41)</td>
<td>109 (57)</td>
<td>83 (43)</td>
<td></td>
</tr>
<tr>
<td>74 (62)</td>
<td>46 (38)</td>
<td>74 (62)</td>
<td>46 (38)</td>
<td>62 (65)</td>
<td>34 (35)</td>
<td></td>
</tr>
<tr>
<td>63 (66)</td>
<td>33 (34)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>108 (75)</td>
<td>36 (25)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>74 (51)</td>
<td>70 (49)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>
1) The pattern of votes when only a sexual intercourse charge was offered is quite different from the pattern when two charges/verdicts were offered, as was the case in Experiment 4. There, the proportion of aggravated sexual assault guilty verdicts was considerably higher and the proportion of sexual intercourse guilty verdicts considerably lower than in those experiments where only one charge and verdict outcome was possible. This finding suggests that where there is only the more serious charge to be considered, some jurors may be voting guilty to the harsher charge with some degree of reluctance; when a "compromise" between guilty or not guilty on the more serious charge is offered (i.e., the potential for a guilty vote on a less serious charge), it is strongly supported.

Other studies (Greenwald, Tomkins, Kenning, & Zavodny, 1990; Poulson, 1990) have found that, when presented with a choice of verdicts (e.g., manslaughter vs first degree murder), jurors usually choose the least punishable charge, although in the Hastie and Pennington (1983) study, when three verdict choices were offered (first degree murder, second degree murder, manslaughter) the most favoured pre-deliberation verdict of manslaughter altered toward a modal post-deliberation verdict of second degree murder, perhaps the "compromise" verdict in that case.

There is also the possibility of an order effect in decision making. Kruglanski and Freund (1983) proposed that there may be a "freezing" of hypothesis testing when jurors are unable or unmotivated to produce alternative hypotheses. Greenberg, Williams and O'Brien (1986) found that when the first hypotheses tested were concerned with the harshest verdicts, there appeared to be a freezing process which led to a bias toward harsh verdicts when less serious charges were subsequently considered. In Experiment 4, the order of verdict consideration was from lenient to more serious, and it is possible that some jurors considered that there was at least some degree of intentional penetration of the child's vagina but also may have been unsure as to the precise nature of the penetration. Thus, the
verdict which satisfied the criterion of "some intentional penetration, nature unsure" was one of guilty to the first charge, and at this point some jurors may have "frozen", feeling they had insufficient evidence for testing further hypotheses.

2) Table 11.5 shows the frequency data from each experiment for those who changed their verdict from pre- to post-deliberation. Other than the changes in Experiment 1, for which student jurors were largely responsible, it appears that, in Experiments 1, 2 and 3, there is little change proportionally from pre-deliberation to post-deliberation verdicts. Results from a number of studies have shown that a jury's final verdict appears to be largely predictable from the pattern of verdict preferences before deliberation (Davis et al., 1975; Kalvin & Zeisel, 1966; Stasser, Kerr, & Bray, 1982), and in general the results of the present studies are consistent with these previous findings. However, given the relatively brief deliberation time and the absence of specific instructions or coercion towards achieving verdict unanimity, it may be that the extent of change in these studies under-represents the likely degree of change in real cases. In Experiment 4, the instruction that jury panels which were not unanimous after 30 minutes of deliberation would have to deliberate for a further 15 minutes resulted in substantially more movement towards unanimity than occurred in the other three experiments in which jurors were told that deliberation would cease after 25 minutes regardless of the degree of unanimity. The additional time would appear to be a relatively minor impost yet the desire to avoid the extra deliberation appeared to produce considerable pressure for change, particularly for those in minority verdict groups.

By contrast, the substantial change in verdicts among students in Experiment 1 is interesting because those who changed were more likely to be in verdict majority groups, not minority groups, and further, all changes were in the direction from pre-deliberation guilt to post-deliberation acquittal. The possibility that students
are more open to be persuaded by reasoned debate, as raised in Chapter 6, seems to be inadequate, as such an explanation may account for the frequency of change but not its uni-directionality. The more plausible explanation, also mooted earlier, is that students may be more inclined to enter the experimental session with a propensity towards overbelief in children, relative to jurors from the community (Yarmey & Jones, 1983).

Table 11.5 Number of mock jurors changing their verdict from pre-to post-deliberation. Figures are shown by gender of juror, direction of change and degree of pre-deliberation support in the jury group.

<table>
<thead>
<tr>
<th>Direction of change (Pre- to post-deliberation)</th>
<th>Degree of juror support</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guilty-&gt;Not guilty</td>
<td>Not guilty-&gt;Guilty</td>
</tr>
</tbody>
</table>

**Experiment 1**
Student jurors (N=72)

<table>
<thead>
<tr>
<th></th>
<th>Male</th>
<th>Female</th>
<th>Total change (18%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guilty</td>
<td>6</td>
<td>7</td>
<td>13</td>
</tr>
<tr>
<td>Not guilty</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total change</td>
<td>13</td>
<td>10</td>
<td></td>
</tr>
</tbody>
</table>

**Experiment 1**
Community jurors (N=72)

<table>
<thead>
<tr>
<th></th>
<th>Male</th>
<th>Female</th>
<th>Total change (7%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guilty</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Not guilty</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Total change</td>
<td>5</td>
<td>3</td>
<td></td>
</tr>
</tbody>
</table>

**Experiment 2**
Community jurors (N=192)

<table>
<thead>
<tr>
<th></th>
<th>Male</th>
<th>Female</th>
<th>Total change (8%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guilty</td>
<td>4</td>
<td>6</td>
<td>10</td>
</tr>
<tr>
<td>Not guilty</td>
<td>4</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>Total change</td>
<td>8</td>
<td>5</td>
<td></td>
</tr>
</tbody>
</table>

**Experiment 3**
Community jurors (N=120)

<table>
<thead>
<tr>
<th></th>
<th>Male</th>
<th>Female</th>
<th>Total change (7%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guilty</td>
<td>3</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Not guilty</td>
<td>1</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Total change</td>
<td>7</td>
<td>0</td>
<td></td>
</tr>
</tbody>
</table>

**Experiment 4** (sexual intercourse verdicts)
Community jurors (N=144)

<table>
<thead>
<tr>
<th></th>
<th>Male</th>
<th>Female</th>
<th>Total change (21%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guilty</td>
<td>7</td>
<td>10</td>
<td>17</td>
</tr>
<tr>
<td>Not guilty</td>
<td>6</td>
<td>7</td>
<td>13</td>
</tr>
<tr>
<td>Total change</td>
<td>14</td>
<td>3</td>
<td>17</td>
</tr>
</tbody>
</table>
Chapter 12

Implications of some major thesis findings
Chapter 12
Implications of some major thesis findings

12.1 The effect of expert testimony on jury process.

When assessing the impact of expert testimony, Wells (1986) maintained that the effects on both process and outcomes should be considered, suggesting that "verdicts reached by bizarre or faulty processes are unacceptable, regardless of whether or not the verdict was correct" (p. 91). In jury studies such as those reported in this thesis, there is no "correct" verdict. Conclusions can only be couched in terms of the effects that this or that manipulation had on verdicts. Nevertheless, the tentative conclusion can be advanced that the addition of expert testimony on children's cognitive abilities to the trial process appears to have improved the deliberation and decision-making processes. The basis for this conclusion is not in any significant differences in verdict outcomes, as results from Experiments 1 and 2 indicate that expert testimony and expert role did not significantly affect verdicts, but rather the degree of certainty jurors felt about verdicts. If a body of expert testimony based on published research and delivered in a reasonably objective manner leads triers of facts to greater certainty in their verdicts, then it could be argued that there has been improvement in the decision-making process.

12.2 The idiosyncrasies of evidence interpretation, and juror gender "bias".

Results from Experiment 3 suggest that juror decision-making does not involve a linear, continuous up-dating decision strategy but rather an active construction process in which evidence from various parts of the trial is organized, elaborated and interpreted in memory to form what Pennington and Hastie (1993) term a "narrative story organization" which the juror imposes on trial information. Pennington and Hastie (1993) suggest that stories are constructed by reasoning...
from a combination of the evidence presented and from the juror's knowledge of events similar in content to those in dispute. In the scenario used in this series of experiments, the jurors' perceptions of the likelihood that the child misinterpreted events was consistently highly predictive of verdicts, suggesting that the most salient interpretation involved in the story construction and decision-making processes appears to have been the juror's assessment with regard to these alternatives:

1) that the child's account of the incident was accurately recalled and reported, or
2) that the child's recall was accurate in some respects but not in others, or
3) that the child misinterpreted the defendant's action at the time of the incident, or
4) that, after the event, the child confused what actually happened with what he/she thought had happened, or
5) that the child was subsequently led to mislabel or misinterpret a nonabusive act that could be confused with abuse.

The juror's evaluations of the child's memory abilities, reality monitoring and susceptibility to suggestion are clearly important elements in the juror's deciding which of these interpretations is to be accepted. So also is the juror's knowledge and experience of the world. One who has experienced unwanted sexual contact as a child may be more inclined to empathise with the child. Another juror who may have been the target of an unfounded accusation of impropriety may be more inclined to favour the defendant's account. Because there is a unique set of idiosyncratic factors which determine the knowledge and experience which each juror brings into the courtroom, care should be exercised before concluding that juror gender differences indicate some form of gender "bias". It could be argued from these results that women are biased towards child complainants in sexual abuse cases, or that men are biased towards male defendants, or equally that "bias" is not an appropriate term to
characterise the gender differences found. While numerous studies have shown that many women may have the basis for empathising with the child complainant, given the high proportion who experienced unwanted sexual contact as minors, it is also the case that substantial, albeit somewhat lower, proportions of men have experienced sexually abusive contact as minors. It may be that gender differences in pre-trial attitudes towards children and subsequent gender differences on credibility ratings and verdicts are not indicative of gender "bias" but may be more closely related to women having greater contact time with children and therefore more opportunities to accurately appraise children's cognitive abilities.

It is of interest that the lower ratings of helpfulness and impartiality accorded the male adversarial expert witness in Experiment 2 were consistent across gender. Therefore, if the male prosecution expert was perceived as too closely aligned with a male-dominated legal system which encourages partiality then it was a perception shared by both genders of juror.

12.3 Jurors' "Common knowledge".

A further important implication concerns jurors' "common knowledge". The psychologist expert's testimony on children's cognitive abilities addressed only some of the criteria used by a juror in assessing credibility. Results from Experiment 4 showed that there may be considerable discrepancy between the indicia of credibility used by jurors and those suggested by psychological research. The Anglo-American criminal justice system leaves the evaluation of credibility entirely with the triers of fact, and the approach used is basically one of social judgement or impression formation (Kohnken, 1990). While there is no published literature on jurors' abilities to discriminate between truthful and non-truthful testimony, there is a substantial corpus of empirical studies on subjects' accuracy in judging the credibility of statements in controlled settings, and the results show that, in general, detection accuracy rates are only marginally above chance (Ekman, 1989;
Kohnken, 1990). Research indicates that those cues which are most relevant for
detecting deceit are often ignored and those least useful are most heavily relied upon
(Ekman, 1989).

In Experiment 4, the three SVA criteria which were most frequently endorsed as
diminishing the credibility of a child's testimony were "spontaneous corrections",
"admitting lack of memory", and "raising doubts about one's own testimony". Admittedly, much research needs to be done to determine which of the SVA criteria
are valid indicators of credibility when assessing children's allegations, but it is of
some interest that the three criteria which mock jurors most often nominated as
credibility-diminishing in Experiment 4 are also the behaviours one might expect to
see in a child who is tentative, confused or uncertain, and which are commonly
identified by those working with sexually abused children (Sorensen & Snow,
1991). Further, when giving testimony, children often are required to answer
questions which jump from one time-frame to another. Young children, lacking
adult spatiotemporal integrative abilities, may appear to be confused by such a

The likelihood of spontaneous corrections and admissions of lack of memory may
also be increased if the abuse has been accompanied by psychic trauma, which has
been found to impair awareness of sequence and temporal perspective (Terr, 1983).
As confidence is consistently found to be a major cue used by mock-jurors in their
assessments of witness credibility (Goodman, Golding, & Haith, 1984; Luus &
Wells, 1992; Wells & Murray, 1984), jurors, whose "common knowledge" is
rarely likely to include knowledge of factors such as the disclosure process and the
effects of psychic trauma, may tend to discount or devalue the testimony of an
uncertain child witness.
12.4 Psychological expert testimony as an even-handed summary of the extant research.

In the past 15 years, there has been a plethora of research into children's cognitive abilities, especially their susceptibility or resistance to suggestive influence. After a comprehensive review of the research, Ceci and Bruck (1993) concluded that "extreme negative opinions about the young child's ability to resist leading questions are unwarranted... In light of the full corpus of data we reviewed these extreme opinions are not supported by the available research. This research shows that children are able to encode and retrieve large amounts of information especially when it is personally experienced and highly meaningful" (p. 434). Suggestibility in children, as Davies (1991b) writes, "appears to be a situational factor rather than a trait" (p. 107).

Ceci and Bruck (1993) rightly express concern also about experts who render extreme positive opinions and "rarely present a careful summary of the research" (p. 431). An even-handed summary of the research should make reference to the findings which indicate that, relative to older children and adults, younger children are more vulnerable to the effects of misleading information, suggestive questions and improper interview techniques (Ceci & Bruck, 1993). It was the New Jersey Superior Court Appellate Division's concerns about the use of such techniques which were prominent in that court's reversal of Kelly Michaels' conviction (State v. Michaels, 1994), and the ruling that, before a re-trial can occur, there must be a pre-trial "taint" hearing to assess the adequacy of the investigative interviews and the reliability, and admissibility, of the children's testimony. If this common law precedent of "taint" hearings is adopted by other jurisdictions throughout the United States, as is anticipated (J.E. Myers, personal communication, August 24, 1994), then the use of expert testimony regarding children's memory and suggestibility may be a frequent feature at such hearings (Myers, in press). The importance of the findings from this thesis is that they provide empirical support for the proposition
that expert testimony on those issues, presented in a balanced and objective manner, especially by a court-appointed expert, can assist the judge and jury towards greater understanding and improve the juridical process.

12.5 Future research directions

The significant interaction effects between expert gender and expert role in Experiment 2 raised intriguing questions about jurors' perceptions of a male expert in the adversarial role, but given the lack of a consistent expert role effect in Experiment 4, future research could be directed to investigating the inter-relationships between expert role, expert gender and the type of expert testimony presented.

Although considerably more research is required on the reliability and validity of the SVA technique, it is conceded (McGough, 1991) that such a technique may be useful to prosecutors at the pre-trial stage in deciding whether to proceed with a case or as leverage in plea-bargaining. Other advocates of the SVA technique (Raskin & Esplin, 1991) foresee its use not just as an investigative tool but as an element in judicial proceedings. However, McGough's (1991) concern is that expert testimony based on SVA simply displaces the juror's judgement of witness credibility one step further: "The reliability of a witness (his or her statement) is being vouched for by an expert whose own reliability then comes into issue" (p. 166).

Future research should be directed to expanding the corpus of findings concerning jurors' responses to SVA expert testimony so that future judicial opinions concerning the likely impact of such testimony might have an empirical basis on which to draw.

A possible direction for future research may lie in the incorporation of the expert as a defence witness in the expert role manipulation. A major difficulty with
this proposal lies in devising a body of expert testimony which might plausibly be
given by an expert in all three expert witness roles: court-appointed, prosecution,
and defence. The SVA testimony presented in Experiment 4 in which the expert
assesses the quality of the child's testimony as "moderate" could be presented by an
expert in any one of the three possible roles and further research is planned to study
this role manipulation.
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