

JURY VERDICT AS A FUNCTION OF THE
DEFENDANT'S PRIOR RECORD
AND APPARENT GUILT

By

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PREFACE

This study is concerned primarily with the effect of knowledge of a defendant's prior criminal record on jury verdict behavior and deliberation time. The effect of presence of prior record is investigated across three levels of evidence, ranging from high to low apparent guilt. In addition, the jurors' manner of information integration is explored, using their responses on several rating tasks.

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CHAPTER I

INTRODUCTION

Rationale for the Present Study

The operation of the jury system in this country is considered primarily as a legal process by most people. In recent years, however, social psychologists have become increasingly interested in the individual and social processes which occur in the courtroom and the deliberation chamber.

The word "jury" is defined as a "body of laymen selected by lot, or by some other fair and impartial means, to ascertain, under the guidance of a judge, the truth in questions of fact arising either in a civil or criminal proceeding" (Gulick & Kimbrough, 1965, p. 626). When a person has been charged with a crime, he is guaranteed certain rights, among them the right to a trial by an impartial jury and the right against self-incrimination. In order to prevent the jury's receiving biasing information, federal rules of evidence state that a prosecutor cannot use information about a defendant's "bad character" as evidence in the trial--the trial evidence must be limited to actual occurrences which bear directly on the facts of the criminal act before the court (Brooks & Doob, 1975).

In cases where the crime of which the defendant is accused constitutes a second or subsequent felony offense, or in cases where the death penalty is a possibility, the trial is to be "bifurcated," consisting of two stages. During the first stage of a bifurcated trial procedure, evidence regarding the crime itself is presented. After this initial stage, the jury decides the guilt or innocence of the defendant. If they find the defendant not guilty, the trial is over; if, however, the jury returns a verdict of guilty, information regarding the defendant's prior criminal record (previous convictions of felonies and crimes of "moral turpitude") is introduced during the second stage. The bifurcated trial enables the jury to consider the defendant's prior record in recommending punishment. In this manner, "habitual offenders" can be dealt with more harshly (Oklahoma Statutes 1971, and 1977 Amendment, Title 22, Section 860). Further, during this stage of the proceeding, attorneys can introduce evidence of a mitigating or aggravating nature in order to influence the setting of punishment (Note 1). Thus, the rules of evidence for the two stages are substantially different. The Supreme Court has noted that making a distinction between the evidentiary rules governing trial and those governing sentencing is sound (Fellman, 1958, Chap. 4):

The trial is limited narrowly to strictly relevant evidence, to avoid waste of time and confusion, and to prevent influencing the court by evidence of other misconduct. But a sentencing judge is not limited to the issue of guilt, his task being to

decide upon a type of punishment within the statutory limits. It is both relevant and essential for the judge to have in his possession the fullest possible information (Fellman, 1958, p. 45).

In Oklahoma the jury recommends sentence. The court is bound by law to follow the jury's recommendation except when the jury cannot reach unanimous agreement or when the punishment decided upon is excessive (greater than the maximum fixed by law). When the exceptions occur, the judge sets sentences (Oklahoma Statutes 1971, Title 22, Sections 926-928). In addition, the judge may rule suspension or probation of all or any part of the sentence (Oklahoma Statutes 1971, Title 22, Section 991).

The major problem that a defendant encounters during a bifurcated trial becomes apparent when he has a prior criminal record and his defense demands that he testify in his own behalf. When the defendant takes the witness stand, the prosecutor can, in cross-examination during the first stage of the bifurcated trial, question the defendant regarding his prior criminal record for the purpose of affecting his credibility as a witness (Oklahoma Statutes 1971, and 1977 Amendment, Title 22, Section 860). Questions about the prior record of the defendant can also be introduced in order to establish identification of the defendant (Note 2).

This situation places the defendant in a serious dilemma. The reason for providing the bifurcated procedure is to prevent jury exposure to legally irrelevant information, which expressly includes the defendant's past record. Yet, if the defendant takes the stand, he cannot refuse to

answer questions about his prior criminal record. If he does not take the stand, the jury will most likely be biased against him since it is likely to reason that if he were innocent he would assert his innocence under oath (Fellman, 1958, Chap. 9).

In addition, the jury empaneled for a bifurcated trial is not supposed to know that their trial is a bifurcated procedure because they may thereby suspect that a past criminal record is involved. Any citizen who has served on a jury previously, however, is likely to be aware of trial bifurcation, and nothing prevents his sharing this information with other jurors (Note 1). Because of this problem, some legal practitioners believe that all trials should be bifurcated (Notes 1 & 2).

In summary, the legal rationale for providing the bifurcated trial is that information about the defendant's prior criminal record is irrelevant during the verdict phase, but is necessary during sentencing. Knowledge of a defendant's past is thought to unduly influence the verdict behavior of the jury, thereby preventing the jury from being wholly objective in their consideration of the trial evidence.

The purpose of the present study is to examine the effects of knowledge of a defendant's prior record upon the verdict behavior of jury groups. This variable will be investigated across three levels of evidence, ranging from high to low apparent guilt.

Review of the Literature

Psychological research in jury processes has been hampered by methodological problems and by pragmatic difficulties involving the secrecy which characterizes jury behavior in the legal system. The most common research designs used in jury research consist of variations on two basic methodologies. When the experimenter is interested in decisions and attributes of individual jurors, subjects are usually exposed to a scenario (either of a crime or the trial evidence relating to a crime), and then they express opinions as to the guilt or innocence of the defendant, and assign punishment. The attributes of interest in the study are usually measured with one or more instruments. The second research method is used when the jury as a group is of primary interest. In this paradigm, subjects are assigned to juries, presented with an account of a crime or with trial evidence, and then are observed during the jury deliberation.

Numerous aspects of individual juror behavior have been investigated. Authoritarianism appears to be the attribute which has been investigated the most. Studies in this area have found, for example, that authoritarians seem to be more severe, both in conviction and sentencing, to low-status defendants (Roberts & Jessor, 1958) and to attitudinally-dissimilar defendants (Byrne, 1965). Other studies have found that authoritarians are more likely than egalitarians to err in the direction of a guilty verdict; that anti-authoritarians

are more likely to err in the direction of a verdict of not guilty (Boehm, 1968); and that authoritarians are more likely to recall evidence regarding the character of the defendant, whereas egalitarians recall more evidence about the crime itself (Berg & Vidmar, 1975).

Other factors which influence the decision-making processes of individual jurors are topics such as locus of control (Phares & Wilson, 1972; Sosis, 1974), belief in a just world (Jones & Aronson, 1973), and racism (Bullock, 1971; Green, 1964; Nemeth & Sosis, 1973). Sue, Smith, and Caldwell (1973) found that certainty of guilt was positively related to severity of punishment assigned.

Research investigating the jury as a group has studied decision processes and size of the jury. In studying the group processes of juries, Foss (1976) concluded that simulated juries reach a final decision by an egalitarian process in which individual points of view are fairly represented. Foss suggested that the various extralegal factors which have been identified as influencing decision-making in individual jurors may be less important for group judgments than might be assumed from studies of individual jurors. This conclusion gains support from several studies which have found that group discussion tends to influence individual verdict and sentencing behavior (Gleason & Harris, 1976; Myers & Kaplan, 1976). Other studies have considered the influence of the jury foreman on verdict and sentencing (Beran, Albert, Loiseaux, Mayfield, & Wright, 1958); the effects of assigned

decision rule and number of members in the jury group (Davis, Kerr, Atkin, Holt, & Meek, 1975; Valenti & Downing, 1975); primacy-recency effects in decision-making (Stone, 1969; Wallace & Wilson, 1969; Wilson, 1971; Zdep & Wilson, 1968); and the effects of inadmissible evidence on jury decisions (Sue et al., 1973).

In addition to the many topics of research in jury processes per se, several social psychological theoretical positions must be considered in order to understand the jury from a psychological perspective. Two theoretical orientations central to this perspective are cognitive consistency and attribution theory as they relate to impression formation. The juror's basic duty in a court of criminal law is to listen to both sides of an issue, integrate the information he receives, and arrive at a decision regarding the truth in the case. In fulfilling these duties, he is presented with information about a crime and a defendant, and must form some opinion regarding the likelihood of the defendant's guilt or innocence.

Social psychological research has demonstrated that people tend to integrate information by a process of weighting and averaging the bits of information they receive. If the information they get is inconsistent, the weighting of the information in this process changes (Abelson, 1968; Anderson, 1965a; Feldman, 1968). Singer (1968) views information integration as a stimulus-processing mechanism which tends to, if necessary, distort objectively inconsistent

material in order to maintain cognitive consistency. This distortion can be accomplished in at least three ways: discounting, assimilation, and attention decrement. These three methods of maintaining cognitive consistency result in either a primacy or a recency effect, depending upon the method of information presentation.

When one final evaluative response is required of the subject after a set of stimuli is introduced, a primacy effect may be expected (Anderson, 1965b; Anderson & Jacobson, 1965; Asch, 1946). This effect is demonstrated in these situations because, presumably, the subject receives the first parts of the information set and immediately begins making a judgment. Once this preliminary judgment (attribution) is made, he either assimilates further information into the existing cognitive structure, or discounts it (Warr & Knapper, 1968). On the other hand, when evaluative responding is required after each item, or when pronunciation or repetition of the stimuli is required, recency effects emerge (Anderson, 1965a; Stewart, 1965). Hendrick and Costanini (1970) reinterpret both primacy and recency effects as resulting from attention decrement; all of the methodological procedures mentioned above, in effect, redistribute attention across the stimuli set, and the results consequently support the attention decrement interpretation.

Overview of the Present Study

The research completed by social psychologists in the

area of cognitive consistency suggests that knowledge of prior criminal record does bias verdict; in any case, the justice system in this country has asserted that it does. By combining the presence or absence of this information with level of apparent guilt, the effects of knowledge of prior record and levels of evidence on the verdict behavior of jury groups can be determined.

Considering the previous investigations in the area of cognitive consistency, as well as the prior research on juries, several expectations regarding the effects of combining these two independent variables become apparent. The two conditions of trial procedure should lead to vastly differing verdicts since early introduction of the defendant's prior criminal record might lead the jurors to make an attribution of deviance or criminality. Information following this early "judgment" would be somewhat distorted by either assimilation or discounting, if it is inconsistent with the early attribution. Juries in the one-stage trial proceeding are expected to reach a verdict more quickly and sentence more severely since they will presumably be more certain of the defendant's guilt after making the attribution of deviance based upon his previous criminal record.

Verdict behavior, sentencing, and deliberation time are expected to vary significantly across evidence conditions, since each jury will be exposed to a specific weighting of evidence designed to manipulate his certainty of guilt or innocence. Juries in the ambiguous condition should

deliberate the longest and be most disparate in their verdicts since certainty of guilt or innocence will be lowest.

The cognitive consistency literature indicates that individual jurors should rate the defendant more negatively after a guilty verdict than after a verdict of not guilty. It is also expected that those who return a guilty verdict will perceive evidence damaging to the defendant's case as most important, whereas those who find the defendant not guilty will rate non-damaging evidence as most important.

CHAPTER II

METHOD

The methodology for this study represents a compromise between two major considerations in doing social psychological research: mundane realism and experimental cost. Mundane realism refers to the use of a methodology which transcends the laboratory and enables the researcher to generalize findings to actual situations encountered in the real world. It is important in jury research not only to enhance generalizability of research results but also to intensify subjects' involvement in the experiment. In this study, subjects were exposed to a trial procedure resembling the process used in criminal courts. In addition, many of the materials used during the trial and deliberations were duplicates of printed forms used in the legal system.

Mundane realism must be weighed against experimental cost in terms of time, subjects, and materials required. Because of these considerations, two major exceptions to the ideal of maximum realism were necessary. First, although subjects viewed trial evidence which had been videotaped in a courtroom, they were not in an actual courtroom when they observed the trial and were aware, of course, that they were not really deciding the fate of a defendant. The second

exception was that this study employed six-person juries instead of the 12-person juries used in Oklahoma felony courts. The experimental procedures used were selected as a reasonable compromise between mundane realism and experimental cost.

Subjects

The subjects were 216 students solicited from undergraduate psychology classes at Oklahoma State University. Each subject satisfied two legal criteria in order to serve in this study: he or she was eighteen years of age or older with no prior felony convictions. These criteria were appropriate since they satisfied the legal requirements for a citizen to serve as an actual juror in a civil or criminal case in Oklahoma. Subjects were recruited in groups of 18 for each of 12 experimental sessions. Each subject was exposed to one of the six treatment combinations.

Experimental Design

A 2 X 3 completely randomized factorial design was used, with all treatments fixed. The two independent variables manipulated, and their levels, were Type of Trial (one-stage versus bifurcated) and Level of Evidence (high guilt versus ambiguous versus low guilt).

The dependent variables included jury verdict (guilty, not guilty), recommended length of sentence, and length of deliberation. The deliberation times required to reach a

verdict and to assign sentence (if the verdict was guilty) were recorded separately. The deliberation time in each condition was measured from the time the deliberation room door was closed until deliberations ceased. Further, each deliberation was tape recorded to assure accurate assessment of deliberation time. This procedure was especially important for the one-stage proceeding in which the deliberations for verdict and sentencing were uninterrupted.

Immediately following jury deliberation, jurors rated the defendant using an abbreviated form of the semantic differential scale, answered questions measuring their recall of information about the trial, and rated eight items of evidence in order of importance. The semantic differential was correlated with the other two measures. These three paper/pencil tasks were included in order to gain insight into the subjects' process of information integration.

Materials

Stimulus Materials

Six videotapes were used which constituted the manipulation of the two independent variables. A videotape was made to represent each of the six cells generated by the Type of Trial X Level of Evidence design. The evidence presented in these tapes was based on an actual criminal proceeding held in Payne County, Oklahoma, in January of 1975.¹ This

¹State of Oklahoma vs. Salinas and Karlin, No. CRF-74-260.

trial evidence was adjusted in order to create the three evidence conditions. The complete script used for the tape indicating the ambiguous condition is presented in Appendix A.

The information about the defendant's prior criminal record was also included in the tapes. For the one-stage trial condition, this information was inserted at the beginning of the prosecuting attorney's cross-examination of the defendant. In the bifurcated condition, it was presented immediately prior to the judge's instructions for sentencing. The crime of which the defendant was accused in the present trial was robbery by force, a felony which, in Oklahoma, calls for a sentence of 5 to 50 years of incarceration. The prior record of the defendant reflected a previous conviction for forgery. Although the two crimes differed in that the crime involved in the present trial included a face-to-face confrontation with the victim, whereas the prior conviction did not, they were similar in that both involved theft and neither included the use of a dangerous weapon.

The videotapes for the three evidence conditions were judged independently by undergraduate psychology students prior to the experiment. These students viewed one of the three trials, then indicated whether they believed the defendant to be guilty or not guilty and rated the effectiveness of each attorney. The trials viewed contained only evidence; the judge's instructions and the information about the defendant's prior record were omitted for these ratings, so that their opinions would be based upon the evidence alone.

In addition to these videotapes, typewritten information regarding the defendant's past criminal record was prepared for distribution at the appropriate time during each trial (Appendix B). This practice was adopted in accordance with current legal practices; in actual courtroom procedure, when jurors are informed of a defendant's past record, they are provided with copies of the judgment certificate for the previous conviction. The prior conviction information was held constant throughout all treatment conditions.

Materials Used During Deliberation

The juries required several types of material during their deliberations. Ballot slips, pencils, and forms for recording the verdict and sentence were provided. The ballot slips were secretly coded so that the voting process could be subsequently reconstructed. The design of the verdict and sentencing forms approximated, as closely as possible, the form used in actual court cases. A copy of both of these latter forms is included in Appendix C.

Post-Deliberation Materials

Three measurement instruments were utilized by the jurors after their deliberations were completed: an abbreviated semantic differential scale for rating the defendant, a questionnaire eliciting subjects' recall of evidence, and a form for rating the importance of items of evidence.

Semantic differential. The abbreviated form of the semantic differential scale consisted of a single item to measure each of three dimensions: potency, activity, and evaluation. The nine-point bipolar adjectives used to elicit the jurors' rating of the defendant's potency, activity, and evaluation were "weak-strong," "active-inactive," and "good-bad," respectively. The higher the score (1-9) on each item, the greater the degree of each dimension indicated. A copy of this scale is presented in Appendix D.

Evidence recall. The evidence recall questionnaire (Appendix E) included ten multiple-choice questions designed to test the jurors' ability to remember general facts about the case, such as the defendant's name and where the crime took place.

Evidence importance. The evidence importance form, included in Appendix F, was composed of a random listing of eight major points of evidence included in each of the videotapes. A complete listing of the eight items of evidence included on the evidence importance instrument is presented in Appendix G. This listing also indicates whether each item was varied across the different evidence conditions as well as its association (if any) with the defendant's guilt or innocence. Four of these items were changed across evidence conditions and four were not. The jurors were required to rate each of the items as to perceived importance, a rating of "1" indicating highest importance and "8," low importance.

Procedure

Three six-person juries were formed for each experimental session. Upon arrival, subjects were assigned randomly to the three juries. This randomization was accomplished by having each subject draw one poker chip from a paper bag. The bag contained six each of red, blue, and white chips (for the three juries), plus enough yellow chips (for alternates) to complete the number of subjects who had reported for the experimental session. This procedure was followed by a verbal orientation to jury service (Appendix H) and the standard oath that prospective jurors swear in real jury duty.

A short voir dire was then conducted to increase mundane realism and to enhance the subjects' involvement in the study. During this voir dire, each subject was directed to talk a little about himself/herself, giving his/her name, home town, and college major. Each subject was then asked two or three questions (see Appendix I) by the defense and prosecution attorneys who were present. These attorneys were undergraduate research assistants majoring in pre-law.

Following the voir dire, the juries in the one-stage trial condition viewed one of its three videotapes (containing information about the defendant's prior record). After viewing the trial, the jurors received further instructions (Appendix J), retired to a deliberation room to reach a verdict and, in the case of a guilty verdict, to recommend

punishment. Jurors then completed the three paper/pencil tasks, were debriefed, received credit slips, and were dismissed.

The experimental procedure differed for juries in the bifurcated trial condition. After completion of the voir dire, these juries viewed one of its three videotapes, without receiving the defendant's past criminal record. After viewing the videotape, they retired to reach a verdict. If they determined that the defendant was not guilty, they then completed the three paper/pencil tasks, and were debriefed, provided with experimental credit slips, and dismissed. If a guilty verdict was rendered, however, the jurors returned to the courtroom, where they were informed of the defendant's prior criminal record and were given additional judge's instructions. They retired again to determine punishment. Once they had recommended punishment, they completed the paper/pencil tasks, were debriefed, received credit slips, and were dismissed. The time required for each experimental session was approximately two hours.

Since 24 (rather than the minimum 18) subjects were recruited for each experimental session, more than 18 subjects appeared for some of the sessions. These additional subjects were used as a control. Acting as jury alternates, they were exposed to the same experimental conditions but reached their verdict and completed the additional paper/pencil tasks individually. This control was planned so that the behavior of the jury groups could be compared with that of

individuals on a post hoc basis, to assess the influences of group discussion and group processes on information integration and decision-making.

CHAPTER III

RESULTS

This study manipulated two independent variables: Level of Evidence (high apparent guilt, ambiguous, and low apparent guilt) and Type of Trial (one-stage and bifurcated). A detailed presentation of information about these juries is included in Appendix K. Analyses of variance were used to determine the effects of these variables on juries' verdicts, sentences, and deliberation times.

In addition to these analyses of jury behavior, several juror behaviors were examined using analyses of variance and correlation procedures. Analyses of variance assessed the effects of the independent variables upon the jurors' semantic differential ratings of the defendant, their ability to recall information about the trial, and their importance ratings of eight items of evidence. Correlation coefficients were used to identify interrelationships among the semantic differential ratings, recall of information, and evidence importance ratings. All reported correlations are statistically significant at the .05 level or less; no non-significant correlations are reported. Jury and juror analyses are reported separately.

Several juror substitutions occurred as a result of challenges for cause during the voir dire by both the defense attorney and the prosecutor. These substitutions served to increase mundane realism and external validity. A total of five females and four males were pre-empted. In each case a same-sexed alternate was substituted, and the pre-empted juror joined the panel of alternates. Of the total of nine pre-empted jurors, five had relatives in law enforcement, three had been victims of crime, and one had previously served on a jury.

Jury Processes

Verdict

All 36 of the juries were required to deliberate until a unanimous verdict was reached. A guilty verdict was scored "0" and a verdict of not guilty, "1." Two of the 36 juries initially reported being unable to reach a unanimous verdict ("hung"). Jury group nine, which was in the high guilt, bifurcated condition, was split 4-2 (four guilty, two not guilty) when they declared themselves hung; group 15 (in the ambiguous evidence, one-stage condition) was split 2-4 (two guilty, four not guilty). Both juries were instructed again to reach a unanimous verdict; both juries eventually voted guilty.

Jury 15 was also one of the two groups in which the majority changed their opinions to reach a final unanimous

verdict, the other group being Jury 24. Jury 15, in the one-stage, ambiguous evidence condition, had a 2-4 split (two guilty, four not guilty) on the first ballot, but returned a final verdict of guilty. Jury 24, in the bifurcated, ambiguous condition, began with a 4-2 split (four guilty, two not guilty), but the final verdict was not guilty.

A total of seven of the 36 juries returned a guilty verdict. Of these seven, five had viewed the videotapes depicting high apparent guilt, and two juries had viewed the ambiguous guilt tape. With regard to Type of Trial, five had participated in the one-stage trial proceeding and two had participated in the bifurcated proceeding. Both of these latter juries had viewed the high guilt tape.

A 2 X 3 analysis of variance was performed; the results of this analysis are presented in Table I and the means appear in Table II. The manipulation of Level of Evidence was effective. More guilty verdicts were rendered as apparent guilt increased, $F(2, 30) = 3.8, p < .034$. The means of reported verdicts for the low, ambiguous, and high guilt conditions were 1.00, .83, and .58, respectively. None of the main or interaction effects for Type of Trial were significant, although there was a trend for the one-stage trial to produce more guilty verdicts than the bifurcated version. Even though this relationship did not achieve statistical significance, the one-stage trial produced more than twice as many guilty verdicts as did the bifurcated trial (five in the one-stage trial versus two in the bifurcated trial).

TABLE I
JURY VERDICTS

Source	D.F.	Sum of Squares	F-Value	PR > F
Model:				
Level of Evidence	2	1.0556	3.80	*
Type of Trial	1	.2500	1.80	NS
Evidence X Type Trial	2	.1666	.60	NS
Error	30	4.1667		

* $p < .034$

TABLE II
MEANS FOR GROUP DATA

Independent Variables	N	Verdict	Deliberation Time, Verdict
Level of Evidence:			
High Apparent Guilt	12	.5833	23.73 minutes
Ambiguous Guilt	12	.8333	17.89 minutes
Low Apparent Guilt	12	1.0000	9.40 minutes
Type of Trial:			
One-Stage	18	.7222	22.89 minutes
Bifurcated	18	.8889	11.12 minutes
Evidence X Type Trial:			
High Guilt X One-Stage	6	.5000	27.30 minutes
High Guilt X Bifurcated	6	.6667	20.15 minutes
Ambiguous X One-Stage	6	.6667	27.38 minutes
Ambiguous X Bifurcated	6	1.0000	8.40 minutes
Low Guilt X One-Stage	6	1.0000	13.98 minutes
Low Guilt X Bifurcated	6	1.0000	4.82 minutes

Deliberation Time and Sentencing

The deliberation time for each jury was measured in minutes from the beginning of the deliberation until a verdict was reported by the jury foreman. The results of the analysis of variance for this dependent variable are presented in Table III. Deliberation time tended to increase as apparent guilt increased, $F(2, 30) = 3.08$, $p < .06$. The means for low, ambiguous, and high guilt conditions were, respectively, 9.4, 17.9, and 23.7 minutes. The Type of Trial main effect, however, was significant, $F(1, 30) = 6.17$, $p < .02$. When the past record of the defendant was known to the jurors as they deliberated, the deliberation time was more than twice as great as the time required without knowledge of the defendant's past record ($M_s = 22.9$ minutes and 11.1 minutes, respectively). The Level of Evidence X Type of Trial interaction was not significant. Overall, deliberation time tended to increase with the defendant's apparent guilt, and increased significantly when jurors knew of his prior criminal record.

An examination of the deliberation times and sentences of the seven juries who returned guilty verdicts suggests an interesting pattern (see Table IV). When these data are re-arranged in order of the length of deliberation time needed for reaching a verdict, shorter deliberation time for verdict appears to be associated with more punitiveness in sentencing. The first three juries, who averaged about 10 minutes in

TABLE III
 DELIBERATION TIME FOR VERDICT

Source	D.F.	Sum of Squares	F-Value	PR > F
Model:				
Level of Evidence	2	1245.37	3.08	*
Type of Trial	1	1246.09	6.17	**
Evidence X Type Trial	2	240.46	.60	NS
Error	30	6057.52		
* $p < .06$				
** $p < .02$				

TABLE IV
GUILTY VERDICT GROUPS

Group	Initial Split (G/NG)	Level of Evidence	Type of Trial	Deliberation Time Verdict	Deliberation Time Sentence	Sentence
1	5/1	High Guilt	One-Stage	13.4 minutes	4.2 minutes	40 years
4	4/2	High Guilt	One-Stage	32.0 minutes	2.0 minutes	5 years
6	4/2	High Guilt	One-Stage	15.0 minutes	2.3 minutes	10 years
8	5/1	High Guilt	Bifurcated	4.1 minutes	7.2 minutes	15 years
9	4/2	High Guilt	Bifurcated	57.2 minutes	5.5 minutes	10 years
15	2/4	Ambiguous	One-Stage	43.3 minutes	1.2 minutes	5 years
16	4/2	Ambiguous	One-Stage	52.4 minutes	1.1 minutes	5 years

RE-ARRANGED IN ASCENDING ORDER OF DELIBERATION TIME, VERDICT:

8	5/1	High Guilt	Bifurcated	4.1	} $\bar{M}=3.9$	15	} $\bar{M}=21.7$	
1	5/1	High Guilt	One-Stage	13.4		4.2		40
6	4/2	High Guilt	One-Stage	15.0		2.3		10
4	4/2	High Guilt	One-Stage	32.0	2.0	5	} $\bar{M}=6.7$	
15	2/4	Ambiguous	One-Stage	43.3	1.2	5		
16	4/2	Ambiguous	One-Stage	52.4	1.1	5		
9	4/2	High Guilt	Bifurcated	57.2	5.5	10		

verdict deliberating, assessed a heavier punishment ($M = 21.7$ years) than did the three juries who averaged 51 minutes for deliberation and assessed a mean punishment of only 6.7 years. The correlation of the deliberation time for verdict with the sentence imposed was $-.54$, which is, however, not statistically significant.

Juror Behavior

In addition to the statistical analyses of the juries' behavior, the 216 jurors were considered individually as well. As stated previously, dependent variables for the jurors included responses on an abbreviated form of the semantic differential, evidence recall, and evidence importance ratings.

Analyses of variance were performed on these dependent variables; Table V presents means for each independent variable and for interaction combinations. In addition to these analyses, correlation coefficients, as previously outlined, were computed. The correlations may be examined using Table VI. The dependent variables will be considered separately.

Verdict

For the purposes of this correlational analysis, each juror's verdict was considered the same as that voted unanimously by his/her group.

TABLE V
MEANS FOR INDIVIDUAL DATA

Independent Variables	Pot.	Act.	Eval.	Amt. Money Found on Def.	Bar- tender's Testi- mony	Claim by Victim	Def.'s Lack of Corrob.	Absence of Stains
Evidence (N=72 each):								
High Apparent Guilt	4.90	4.88	4.33	2.91	3.36	3.05	6.08	5.33
Ambiguous	5.22	5.19	4.80	4.33	4.48	3.70	5.83	3.69
Low Apparent Guilt	5.56	5.44	4.98	4.88	2.04	3.93	6.70	3.62
Type Trial (N=108 each):								
One-Stage	4.87	5.18	4.51	3.73	3.24	3.46	5.88	4.62
Bifurcated	5.59	5.16	4.89	4.36	3.35	3.66	6.52	3.81
Interaction (N=36 each):								
Hi Guilt X One-Stage	4.58	5.11	4.38	2.55	3.27	3.16	5.94	5.55
Hi Guilt X Bifurcated	5.22	4.66	4.27	3.27	3.44	2.94	6.22	5.11
Ambig. X One-Stage	4.69	5.19	4.58	4.36	4.05	3.50	5.52	4.08
Ambig. X Bifurcated	5.75	5.19	5.02	4.30	4.91	3.91	6.13	3.30
Lo Guilt X One-Stage	5.33	5.25	4.58	4.27	2.38	3.72	6.19	4.22
Lo Guilt X Bifurcated	5.80	5.63	5.38	5.50	1.69	4.13	7.22	3.02

TABLE VI
CORRELATIONS FOR INDIVIDUAL SUBJECTS

	Semantic Diff.			Evidence Importance (Imp) Items							
	Pot.	Act.	Eval.	Imp 1	Imp 2	Imp 3	Imp 4	Imp 5	Imp 6	Imp 7	Imp 8
Verdict	.25**		.41**	-.31**		.27**		.20**	.28**	-.47**	-.15*
Potency		.27**	.24**			.17*			.15*	-.13*	
Eval.						.19*		.16*	.22**	-.35**	-.20**
Imp 1						-.30**	-.23**	-.18*	-.21**		
Imp 2							-.33**	-.17*			-.14*
Imp 3										-.28**	-.19*
Imp 4										-.14*	
Imp 5										-.28**	
Imp 6										-.16*	-.15*

* $p < .05$

** $p < .005$

Imp 1: Amt. of Alcohol Consumed
 Imp 2: Physician's Testimony
 Imp 3: Amt. of Money in Def.'s Possession
 Imp 4: Bartender's Testimony

Imp 5: Victim's Claim of Seeing Defendant
 Imp 6: Defendant's Lack of Corroboration
 Imp 7: Absence of Stains on Def.'s Clothes
 Imp 8: Def.'s Account of His Own Actions

Guilty verdicts. Verdicts of guilty were associated with jurors' attributions of low evaluation ($r=.41$) and low potency ($r=.25$) on their semantic differential ratings of the defendant. In addition, three evidence items were related to guilty verdicts. Two of these factors involve the testimony of the defendant: the amount of money found on the defendant when he was arrested ($r=.27$) and the defendant's lack of corroboration for his account of his own actions the night of the robbery ($r=.28$). The third factor, the victim's claim that he saw the defendant's face while being attacked ($r=.19$), involves an eyewitness account by the victim. This latter item gives credence to the notion that people generally believe eyewitnesses. Jurors who voted guilty believed this testimony, and rated it as important, even though the victim, in all conditions, was admittedly dazed and lying on the ground when he saw his attacker.

Not guilty verdicts. Verdicts of not guilty were associated with three points of evidence. The amount of alcohol consumed by the victim and defendant ($r=.31$) was varied with the level of evidence, being the highest in the low guilt condition, thus perhaps leading the jurors to question the victim's testimony in that condition as well as in the ambiguous condition, where a significant proportion of verdicts of not guilty were reported. The absence of stains on the defendant's clothes when arrested ($r=.47$) and the defendant's account of his own actions on the night of the crime

($r=.15$) were held constant in all conditions, and would seemingly indicate innocence on his part.

Verdict Change

This dependent variable reflects whether each juror's final verdict (the jury's verdict) was the same as or different from his/her initial opinion. A total of 51 jurors (23%) in the 36 juries indicated that they had changed their opinions during their deliberation.¹

These 51 jurors were matched with 51 others who did not change to see if they differed in regard to their responses on the semantic differential scales and evidence importance ratings. Each of the 51 "non-changers" was chosen randomly from the same jury as his/her matched counterpart who changed. No comparisons were significant.

Recall of Evidence

The jurors demonstrated little variability in their ability to recall the ten items of information about the trial. A mean of 9.74 indicated that all the jurors made a perfect or near-perfect score on this recall test. Evidence recall, therefore, was not significantly associated with any of the other dependent variables.

¹The self-reported indication of opinion change was recorded on a questionnaire which was not included in this study, but was part of another research design using these same subjects. Self-reports were verified by examining the ballot slips which the jurors used during their deliberations.

Semantic Differential

Upon completion of the deliberations, each juror completed an abbreviated semantic differential scale. Each component of this scale will be reported separately.

Potency. Both evidence condition and type of trial viewed significantly affected the jurors' judgment of the potency of the defendant (Table VII). As apparent guilt increased, potency decreased, $F(2, 210) = 4.01, p < .01$. The means reflecting this relationship are 4.9 for high and 5.5 for low apparent guilt. Further, jurors who had viewed the one-stage version of the trial rated him as significantly less potent than those who had participated in the bifurcated trial, $F(1, 210) = 14.12, p < .0002; M_s = 4.8$ for the one-stage and 5.5 for the bifurcated trial. Overall, jurors tended to see the defendant as weaker when the evidence indicated high guilt and when the trial proceeding was one-stage.

High potency was correlated with low importance on two points of evidence: the amount of money found on the defendant when arrested ($r = .17$), and the defendant's lack of corroboration ($r = .15$). In addition, it was related to high importance of the absence of stains on the defendant's clothes ($r = .13$).

The first item of evidence, the amount of money that the defendant had when arrested, was varied according to evidence condition, being highest in the high apparent guilt condition. The second point of evidence, the defendant's lack of

TABLE VII
SEMANTIC DIFFERENTIAL: POTENCY

Source	D.F.	Sum of Squares	F-Value	PR > F
Model:				
Level of Evidence	2	16.009	4.01	*
Type of Trial	1	28.166	14.12	**
Evidence X Type Trial	2	3.250	.81	NS
Error	210	419.000		
* $p < .02$				
** $p < .0002$				

corroboration, was held constant in all conditions, as was the third, the absence of stains on the defendant's clothes. Since perceived guilt was related to potency, the jurors' ranking of these items is as it should be. Those who rated the defendant as "potent" perceived non-damaging evidence as important and damaging evidence as relatively unimportant.

Activity. Although no relationships were statistically significant, the evidence variable approached significance, $F(2, 210) = 2.7, p < .07$ (Table VIII). The means were 4.8 and 5.4 for high and low apparent guilt, respectively. The relationship between strength of evidence and ratings of activity was, therefore, marginal--higher guilt was associated with jurors' opinions of the defendant as somewhat inactive.

Evaluation. Individual ratings on the evaluation dimension were significantly affected by both independent variables and their interaction. These results are presented in Table IX. As apparent guilt increased, evaluation decreased, $F(2, 210) = 6.21, p < .002$. The mean evaluation in the high apparent guilt condition was 4.3, and 4.98 in the low guilt condition. In addition, participation in the one-stage trial was associated with a lower evaluation, $F(1, 210) = 5.9, p < .015$. The means for the one-stage and bifurcated trials were 4.51 and 4.89, respectively. The Level of Evidence X Type of Trial interaction was significant, also, $F(2, 210) = 2.91, p < .05$. The defendant was rated more favorably in the ,

TABLE VIII
SEMANTIC DIFFERENTIAL: ACTIVITY

Source	D.F.	Sum of Squares	F-Value	PR > F
Model:				
Level of Evidence	2	11.148	2.70	*
Type of Trial	1	.018	.01	NS
Evidence X Type Trial	2	6.259	1.51	NS
Error	210	433.888		

* $p < .069$

TABLE IX
SEMANTIC DIFFERENTIAL: EVALUATION

Source	D.F.	Sum of Squares	F-Value	PR > F
Model:				
Level of Evidence	2	16.361	6.21	*
Type of Trial	1	7.782	5.90	**
Evidence X Type Trial	2	7.675	2.91	***
Error	210	276.805		

* $p < .002$
 ** $p < .02$
 *** $p < .05$

bifurcated trial combined with the ambiguous and low apparent guilt conditions; but in the high apparent guilt condition, higher ratings occurred in the one-stage trial. Table V presents these means.

An examination of the correlations indicates that positive evaluation was associated with the importance of the absence of stains on the defendant's clothes ($r=.35$) and with the defendant's account of his own actions on the night of the crime ($r=.20$). Negative evaluation was related to the amount of money found on the defendant ($r=.19$), the claim by the victim that he saw the defendant's face during the attack ($r=.16$), and the defendant's lack of corroboration for his activities on the night of the robbery ($r=.22$). Jurors who rated the defendant as "good," then, tended to judge less damaging evidence as important; jurors who rated him as "bad" tended to place importance on more damaging items.

Summary. The overall results of the semantic differential ratings suggest that high apparent guilt and participation in the one-stage version of the trial is associated with a perception of the defendant as a weak, relatively inactive, "bad" person. Jurors who viewed the bifurcated trial or evidence indicating low guilt perceived him as strong, somewhat active, and "good."

The ratings of evidence importance appear to be aligned appropriately. In general, damaging evidence was rated as important by jurors who perceived the defendant as "bad" and

"weak," and non-damaging items of evidence were seen as important by those jurors who rated the defendant "good" and "strong."

Evidence Importance Ratings

Information regarding the items of evidence included in the videotapes are presented in Appendix G. This table lists the items of evidence, whether each was changed across evidence conditions, and, if so, in what direction. These changes were made in order to increase damaging information in the high guilt condition and to decrease it in the low guilt condition. Overall, the item considered most important by the jurors was the bartender's testimony ($\bar{M} = 3.3$); the one seen as least important was the defendant's lack of corroboration ($\bar{M} = 6.2$). Mean importance ratings for the eight items of evidence are presented in Table X.

Amount of alcohol consumed by victim and defendant.

Neither of the independent variables was significantly related to the perceived importance of this item.

The correlations between this item of evidence and the other seven, however, yielded several statistically significant correlation coefficients. The perceived importance of this item was inversely related to the importance of four others: the amount of money found on the defendant when he was arrested ($r = -.30$); the bartender's testimony ($r = -.23$); the victim's claim that he saw the defendant's face during

TABLE X
OVERALL MEAN IMPORTANCE RATINGS
FOR ITEMS OF EVIDENCE

Item Number	Description	Mean Rating
1	Amount of Alcohol Consumed by Victim and Defendant	4.32
2	Physician's Testimony	6.03
3	Amount of Money Found on Defendant When Arrested	4.07
4	Bartender's Testimony	3.30
5	Victim's Claim of Seeing Defendant's Face During Attack	3.59
6	Defendant's Lack of Corroboration	6.21
7	Absence of Stains on Defendant's Clothes When Arrested	4.11
8	Defendant's Account of His Own Actions on the Night of the Crime	3.92

the attack ($r=-.18$); and the defendant's lack of corroboration ($r=-.21$). Those jurors who perceived alcohol consumption as important, rated the latter items as relatively unimportant, and vice versa. The first three of these four were changed across evidence conditions, as was alcohol consumption; the fourth item remained unchanged throughout all levels of evidence.

Physician's testimony. The testimony of the physician was not significantly affected by either of the independent variables. This item remained unchanged throughout all evidence conditions; in all cases the physician testified only as to the victim's injuries, verifying that he had indeed been beaten, but offering no evidence as to the identity of the perpetrator of the crime. In view of his role in the trial, the lack of statistical significance is reasonable.

Even though the physician's testimony was not significantly related to the independent variables, it was inversely correlated with the bartender's testimony ($r=-.33$), with the claim by the victim that he saw the defendant's face during the attack ($r=-.17$), and to the defendant's account of his own activities on the night of the crime ($r=-.14$). The individual ratings for these items of evidence indicates that most jurors viewed the physician's testimony as somewhat less important than each of the other items. The average rating for the physician's testimony was 6.03, compared with 3.3, 3.6, and 3.9 for the others, respectively. This perception

of the evidence was very accurate, since the physician testified only as to the injuries of the victim, and never presented evidence either for or against the defendant. In contrast, it was the bartender, the victim, and the defendant whose testimony added evidence favoring the defendant's guilt or innocence. These latter items of evidence, therefore, should have been seen as more important, as indeed they were.

Amount of money found on defendant when arrested. The judged importance of this item of evidence was significantly affected both by Level of Evidence and by Type of Trial (see Table XI). As apparent guilt increased, the perceived importance of this item increased, $F(2, 210) = 19.74, p < .0001$. Mean importance in the high guilt condition was 2.9, and 4.89 in the low guilt condition. Further, jurors who viewed the one-stage trial perceived the amount of money found on the defendant as significantly more important than did those who participated in the bifurcated trial, $F(1, 210) = 5.67, p < .01$. The mean rating of the jurors in the one-stage proceeding was 3.7, compared with 4.36 for those in the bifurcated proceeding.

This item changed across evidence conditions. In the high guilt condition, the defendant had \$70 in his possession when arrested; in the low guilt condition, \$7. Compared with the other items listed, then, jurors considered this one to be more important when the amount was greater.

An examination of the correlations indicates that the

TABLE XI
 AMOUNT OF MONEY FOUND ON DEFENDANT
 WHEN ARRESTED

Source	D.F.	Sum of Squares	F-Value	PR > F
Model:				
Level of Evidence	2	148.925	19.74	*
Type of Trial	1	21.407	5.67	**
Evidence X Type Trial	2	14.925	1.98	NS
Error	210	792.277		

* $p < .0001$
 ** $p < .02$

importance of this item was inversely related to the perceived importance of the absence of stains on the defendant's clothes when arrested ($r = -.28$) and the defendant's account of his own actions on the night of the crime ($r = -.19$). Both of the latter pieces of evidence are non-damaging, whereas the amount of money in the possession of the defendant was most damaging in the high guilt condition, and less damaging in the others. Jurors who viewed the more damaging evidence as important, therefore, considered non-damaging evidence as less important.

Bartender's testimony. Level of Evidence was significantly related to the perceived importance of the bartender's testimony, $F(2, 210) = 26.85$, $p < .0001$ (Table XII). This item changed with level of evidence. In both the high guilt and ambiguous evidence conditions, the bartender testified that he saw the defendant follow the victim out of the bar, but his certainty differed; he was very certain of what he saw in the high guilt condition, but uncertain in the ambiguous condition. In the low guilt condition, the bartender testified for the defense, saying that he had seen the defendant in the bar some minutes after the victim had left.

The significant relationship between evidence condition and the importance ratings for this item is not linear. The item was rated most important in the low apparent guilt condition ($M = 2.0$), less important in the high guilt condition ($M = 3.36$), and least important in the ambiguous condition

TABLE XII
BARTENDER'S TESTIMONY

Source	D.F.	Sum of Squares	F-Value	PR > F
Model:				
Level of Evidence	2	215.564	26.85	*
Type of Trial	1	.666	.17	NS
Evidence X Type Trial	2	21.861	2.72	**
Error	210	842.944		
* $p < .0001$				
** $p < .068$				

($M = 4.48$). Considering the contents of his testimony, these perceptions of importance are reasonable.

The main effect for the Type of Trial variable was non-significant; the interaction, however, was marginally significant, $F(2, 210) = 2.72, p < .07$. There was a trend for this testimony to be considered more important in the bifurcated version of the trial when the evidence indicated high apparent guilt and when it was ambiguous. In the low guilt condition, the testimony was rated as more important in the one-stage trial. These means are presented in Table V.

Claim by victim that he saw defendant's face during the attack. This item of evidence was also altered across evidence conditions. Although the victim's story remained constant, the certainty of his testimony changed. In the low guilt condition, the defense attorney was able to cast serious doubt on the victim's ability to have seen who attacked him. In the high guilt condition, his testimony was not challenged.

The main effect for the Level of Evidence variable was significant, $F(2, 210) = 3.8, p < .023$ (Table XIII). As apparent guilt increased, importance of this item increased; the means were 3.0, 3.7, and 3.9 for high, ambiguous, and low guilt, respectively. Type of Trial did not affect these ratings significantly.

The perceived importance of this item was inversely correlated with that for the absence of stains on the defendant's

TABLE XIII
CLAIM BY VICTIM THAT HE SAW DEFENDANT'S
FACE DURING ATTACK

Source	D.F.	Sum of Squares	F-Value	PR > F
<hr/>				
Model:				
Level of Evidence	2	29.787	3.80	*
Type of Trial	1	2.240	.57	NS
Evidence X Type Trial	2	4.898	.63	NS
Error	210	822.166		

* $p < .02$

clothes when arrested ($r=-.28$). Since the victim's claim was indicative of guilt in the defendant, and the absence of stains was evidence of the defendant's innocence, a high importance rating on either of these would logically be associated with a low rating on the other.

Defendant's lack of corroboration. The Level of Evidence variable significantly affected this item of evidence, $F(2, 210) = 4.23$, $p < .01$, Table XIV. Once again, a non-linear relationship resulted, with the jurors who viewed the ambiguous tapes rating this item highest ($M = 5.8$); those viewing the high guilt trial rating it lower ($M = 6.0$); and those viewing the low guilt tapes rating it lowest in importance ($M = 6.7$). This time, the item did not change across evidence conditions.

Participation in the one-stage trial was associated with a higher importance rating on this item, $F(1, 210) = 6.38$, $p < .01$. The mean importance of the defendant's lack of corroboration in the one-stage trial was 5.8, and 6.5 in the bifurcated trial.

This item of evidence was perceived as most important in situations where other evidence indicated guilt. This conclusion is supported by the fact that high importance on this item was associated with low importance on two other items: the absence of stains on the defendant's clothes when he was arrested ($r=-.16$) and the defendant's account of his own actions on the night of the crime ($r=-.15$). The defendant's

TABLE XIV
 DEFENDANT'S LACK OF CORROBORATION

Source	D.F.	Sum of Squares	F-Value	PR > F
Model:				
Level of Evidence	2	29.250	4.23	*
Type of Trial	1	22.041	6.38	*
Evidence X Type Trial	2	5.083	.74	NS
Error	210	725.250		

* $p < .02$

lack of corroboration seems damaging, or at least weakens the defendant's case, whereas the absence of stains on his clothes and his own testimony are indicative of innocence. These inverse relationships are therefore logically consistent.

Absence of stains on defendant's clothes when arrested.

This item did not change across evidence conditions, but as apparent guilt increased, its judged importance decreased, $F(2, 210) = 15.07, p < .0001$ (Table XV). The means for this item were 5.3, 3.69, and 3.62 in the high, ambiguous, and low guilt conditions, respectively.

Type of Trial also significantly affected the importance ratings of this item, $F(1, 210) = 7.84, p < .005$. The one-stage trial condition was associated with lower ratings, a mean of 4.62 in the one-stage version versus a mean of 3.81 in the bifurcated version. Since the absence of blood stains on the defendant's clothes is non-damaging, higher perceived importance of this item in the low guilt condition is logical.

Summary of evidence importance ratings. Overall, the relationships between each of these items of evidence and the independent variables, and the interrelationships among the items themselves indicate that, in general, the jurors integrated the information in a reasonable fashion. Evidence which was damaging to the defense case was, in general, seen as important in the high apparent guilt condition and in the one-stage version of the trial. Non-damaging evidence was perceived as important when low guilt was suggested or when

TABLE XV
 ABSENCE OF STAINS ON DEFENDANT'S
 CLOTHES WHEN ARRESTED

Source	D.F.	Sum of Squares	F-Value	PR > F
Model:				
Level of Evidence	2	134.620	15.07	*
Type of Trial	1	35.041	7.84	**
Evidence X Type Trial	2	5.083	.57	NS
Error	210	938.027		
* $p < .0001$				
** $p < .005$				

the trial was bifurcated.

Considering the correlations among the items of evidence, the importance ratings are aligned in a logically consistent manner. Overall, items of evidence which were damaging were positively correlated with one another and negatively related with non-damaging evidence. Conversely, non-damaging items were positively related with one another, and inversely related with damaging evidence.

Alternates

Of the total of 39 alternates who participated in the research study, 14 were involved in the one-stage proceeding; three of these viewed evidence depicting high guilt, two, ambiguous, and nine, low guilt. Twenty-five alternates participated in the bifurcated trial, six of which were in the high guilt condition, nine in the ambiguous condition, and ten in the low guilt condition. These alternates viewed the tapes along with the juries, though seated in a separate group, but did not deliberate. Immediately after viewing the trial, they rendered individual verdicts and completed the three paper/pencil tasks.

Analyses of variance were computed in order to detect significant effects of the treatments upon the dependent variables of verdict, semantic differential dimensions, and evidence importance ratings. Results of significant effects, as well as the means involved, are presented in Appendix L.

A comparison between data for the jurors and that for

alternates reveals that, overall, discussion did not change anything drastically, though some differences may be noted. Level of Evidence affected significantly the verdicts of the alternates, high apparent guilt being associated with more guilt verdicts, $F(2, 33) = 6.29, p < .004$. The effect for alternates, therefore, was even more marked than that for jurors.

The semantic differential ratings of the alternates yielded less significant results than those of the jurors; the Type of Trial relationship with potency achieved near significance, $F(1, 33) = 3.4, p < .07$. This was the only effect which the independent variables had on the semantic differential ratings of the alternates, contrasted with those of the jurors, where Level of Evidence affected ratings of all of the dimensions, and where Type of Trial affected potency and evaluation.

For two of the eight items of evidence rated for importance, Level of Evidence had a significant effect on the perceptions of both jurors and alternates; in both cases the effects on the ratings of alternates were slightly less significant than on those for jurors. For both jurors and alternates, the bartender's testimony was judged most important in the low apparent guilt condition, less important in the high guilt condition, and least important in the ambiguous condition, this relationship achieving high significance for the alternates, $F(2, 33) = 54.77, p < .005$. The second of these two items of evidence, the victim's claim of

seeing the defendant's face during the attack, achieved near significance for the alternates, $F(2, 33) = 3.08, p < .06$. High apparent guilt was associated with high importance on this item. It might be noted that these two items of evidence are the only ones which involve eyewitness testimony, and were rated, overall, as the most important by all alternates, again pointing up the tendency of jurors to emphasize the importance of eyewitness testimony.

Concerning the remaining six of the items of evidence, there is a definite tendency for the treatments to have had a much greater effect on the ratings of the jurors than on those of the alternates. This suggests that group discussion may have had a "polarizing" effect on the jurors. During their deliberations, they perhaps relied upon one another to clarify the importance of the various items of evidence presented. They emphasized certain evidence, which differed somewhat depending upon the version of the trial they had viewed. This reciprocal influence among the jurors expressed itself by ratings which were more significantly affected by the trial and evidence conditions.

CHAPTER IV

DISCUSSION

The Juries

Introduction

All juries which participated in this research were faced with a more or less ambiguous situation. The high apparent guilt tape presented evidence favoring the victim's testimony; the low apparent guilt tape showed evidence favoring the defendant's testimony. All were to some extent ambiguous, however, since none of the tapes presented physical evidence establishing the defendant as the assailant. All evidence was presented through trial testimony. In every case, therefore, the jurors were confronted essentially with the fundamental question of evaluating the credibility of each witness.

All juries expressed the desire for more testimony from more witnesses during their deliberations. They wanted not only reliable, credible witnesses, but eyewitnesses who actually viewed the assault. As one male juror commented during deliberation, "You could never say he did it unless someone actually saw him do it." They wanted, it seems, an "open and shut case," which could be decided with absolute

certainty, even though jurors in actual litigation seldom try cases which are unambiguous.

Since these jurors were confronted with an ambiguous case, they had to select the facts from lengthy testimony, a situation which closely matches the problem of most real-life jurors. During their deliberations, the jurors spent a substantial amount of time taking the role of another person. They spoke at length regarding their own personal experiences and what they would have done if they were the victim or the defendant. They used these personal experiences as a basis for speculating on the role and significance of factors such as the degree of intoxication of both the victim and defendant, and whether or not the victim, in his dazed condition and prone position, would be capable of identifying the defendant as his assailant.

For the jurors who believed the defendant to be innocent, the point most often used to sway the guilty-voting jurors was the factor of reasonable doubt. They discussed what "reasonable doubt" meant, and reminded each other of the principle of presumption of innocence, as expressed in the judge's instructions.

Verdict

Seven of the 36 juries returned a verdict of guilty; the remaining 29 found that the defendant was not guilty. Five of the seven who returned guilty verdicts were in the high apparent guilt evidence condition; the remaining two were in

the ambiguous condition. Five juries who found the defendant guilty were in the one-stage trial condition (three in the high guilt, two in the ambiguous evidence conditions); the other two participated in the bifurcated trial, both in the high guilt evidence condition.

In 34 of the 36 juries, the majority opinion as expressed on the first ballot turned out to be the final verdict of the group. In two cases, however, the majority changed their verdicts in order to reach a final unanimous jury verdict. Jury 15 (in the one-stage, ambiguous evidence condition) had a 2-4 split (two guilty, four not guilty) on the first ballot, but returned a verdict of guilty. Jury 24 (bifurcated, ambiguous evidence condition) began with a 4-2 split (four guilty, two not guilty) on the first ballot, but the final verdict was not guilty. The change of the initial majority opinion in these juries appeared unrelated to the longer deliberation times. Although the time required for deliberation in Jury 15 was 43.3 minutes (one of the longer times recorded), the time expended by Jury 24 was only 17.3 minutes.

Apparently, the items of evidence emphasized by the juries who returned guilty verdicts differed from those emphasized by the juries voting not guilty. Three items of evidence correlated significantly with a final verdict of guilty, and three with a verdict of not guilty. Juries who voted guilty emphasized the amount of money found on the defendant when he was arrested, the victim's eyewitness identification of the defendant as his assailant, and the defendant's lack

of corroboration for his account of his own activities on the night of the crime. All of these items of evidence are damaging to the defendant, especially in the high apparent guilt condition, where most of the guilty verdicts were returned. The juries which returned a verdict of not guilty emphasized the importance of the amount of alcohol consumed by the victim and defendant, the defendant's account of his own actions, and the absence of blood stains on his clothes when arrested. The first of these varied across evidence condition, but, judging from the course of conversation in the taped record of the deliberations, apparently was considered ambiguous in all conditions. Jurors relied on their own personal experience and debated whether or not the victim would have been intoxicated enough so that his eyewitness testimony should or should not receive much credence. The remaining two items of evidence, the defendant's alibi and the absence of stains on his clothes, were non-damaging, so their relationship with verdicts of not guilty is reasonable.

The statistical relationship between verdict and evidence condition supports the reliability of the videotapes as being significantly different in perceived apparent guilt. These tapes had been previously rated by individuals who viewed them independently of the present research effort. On that previous occasion, the judge's instructions and introduction of the prior record were omitted, so that the ratings were based solely on the evidence presented. Those ratings indicated that the manipulation of evidence in the tapes was successful.

Even though all the tapes are somewhat ambiguous, the significant relationship between Level of Evidence and verdict in this study provides evidence that the manipulation of this independent variable was successful, and that the tapes can be used, therefore, with confidence in future research.

Knowledge of a defendant's prior criminal record was expected to significantly affect the juror's verdicts. The relationship between Type of Trial and verdict did not achieve significance, however. Apparently, jurors were able to disregard a prior record when deliberating. The audio tapes of the deliberations indicated that, in most cases, the prior record was discussed, but generally in the context of the witness's credibility. Several jurors discussed it as possible "proof" of the defendant's guilt but in most cases other jurors reminded him or her of the judge's instructions, which outlined the proper consideration of the prior record. They considered the prior record in terms of the defendant's credibility as a witness but not as a general statement regarding the defendant's character. Knowledge of the prior record, therefore, did not predispose them toward a verdict of guilty.

The conclusion that the presence of a prior record does not significantly affect a verdict has two limitations. First, the severity of both the previous and present crime is a factor that must be considered. If the previous conviction had involved a crime which was more severe than that indicated in this study--forgery--then the awareness of a prior conviction

may have had a more pronounced effect on the jurors and their final verdict. If the present crime had been more severe, or if the amount of money taken had been greater, the jurors perhaps would have been swayed by the knowledge of a previous conviction.

A second consideration is that of relevancy of the previous crime to the present one. In this study, the prior conviction was for forgery, and the present case involved robbery by force. The two are similar in that theft was involved in both and a dangerous weapon was not used in either. They were dissimilar, however, in that the previous conviction did not include a face-to-face confrontation with a victim, nor did it involve physical violence. Perhaps if the two crimes had been more similar, the previous conviction would not have been disregarded as easily as it was by these jurors. These two factors, the severity of the crime, previous and present, and the relevancy of the prior crime to the present one, must be considered when discussing the effects of a prior conviction on a pending case.

Deliberation Time for Verdict

Both the level of apparent guilt and the presence or absence of the prior criminal record had a significant effect on deliberation time for verdicts. As apparent guilt increased, the amount of time required by the juries to reach a verdict increased. The juries in the high apparent guilt condition spent more time discussing the evidence. Since

the nature of the evidence, even in the high guilt condition, was somewhat ambiguous, jurors required more time in this condition to sort the facts and to determine the truth. The issue of reasonable doubt was raised in the high guilt condition much more often than in the low guilt condition; this issue was not discussed at all in the majority of the juries who participated in the low apparent guilt version of the trial. The jurors in this condition were presented with evidence which was ambiguous, but the damaging testimony was weakened by the witnesses' admission of uncertainty under cross-examination. Consequently, the task for these jurors was much easier and their deliberation time was substantially lower. In summary, the additional deliberation time for the juries in the high guilt version appeared to have been spent in a more thorough analysis of the evidence, considering the probability of the truth in each witness's testimony.

Deliberation time for verdict was also significantly related to the independent variable of Type of Trial. When the jurors knew of the defendant's past criminal record while deliberating the verdict, the deliberation time was more than double the time juries needed when uninformed of the prior record.

In listening to the audio tapes of the jury deliberations, it appears that the additional time in the one-stage trial condition was not spent discussing the past record. In most cases, no more than three minutes of the total deliberation time were used actually talking about the prior criminal

record. Apparently, the past record introduced more ambiguity into the situation. The jurors' dilemma of the possibility of freeing a guilty man versus incarcerating an innocent man was heightened. In general, the past record, although not used as evidence for conviction, was used as a basis for questioning the defendant's credibility. Generally, therefore, the jurors followed the judge's instructions regarding use of the past record. The increased desire to consider the defendant's veracity generalized to the other witnesses as well; the testimony of the victim and the bartender underwent similar examination. The members of one jury even doubted that the victim had been beaten: "He could have been drunk and fallen down and lost his wallet. Maybe that's how he got hurt." Jurors who were aware of the defendant's past record, then, spent the additional deliberation time repeatedly going over the points of evidence, scrutinizing it in detail for contradiction and probability of truth.

One interesting trend emerged from examining the deliberation time required for those juries who returned a guilty verdict. Higher deliberation time for verdict was associated, though not significantly, with punitiveness in sentencing in an inverse manner.

The audio tapes provide insight into why long deliberation times should be associated with short sentences. The juries who used less time to deliberate appeared to be relatively certain of the verdict when they began deliberations. In two of the three juries with the shortest deliberation

times, the first vote resulted in a 5-1 split (five guilty, one not guilty), so the quick verdict can be explained by social pressure to conform. The one juror who voted not guilty conformed quickly, relying on the majority opinion rather than attempting to change the opinions of the others. This situation produced a high certainty of guilt and a longer sentence.

All of the juries who took longer to deliberate began with at least a 4-2 split (four guilty, two not guilty). The pressure to conform was less since the two jurors who voted not guilty were subsequently allied. The evidence was considered in more detail as each side attempted to sway the other. The repeated consideration of the evidence enhanced ambiguity for these jurors and decreased their certainty of the correctness of the guilty verdict. This decreased certainty expressed itself in terms of generally shorter sentences.

The Jurors

Semantic Differential Ratings

An interpretation of the results of the abbreviated semantic differential is relatively straightforward. In general, jurors who believed the defendant to be guilty rated him more negatively than those who believed him to be innocent. Further, the correlations between these ratings and the evidence importance ratings were generally aligned in a consistent manner.

Potency. Both Level of Evidence and Type of Trial were significantly related to the defendant's judged potency. The defendant was perceived as "weak" by jurors who had viewed evidence indicating apparent guilt and by those who had participated in the one-stage version of the trial. In addition, potency was significantly correlated with the importance of three items of evidence listed on the evidence importance rating instrument. As potency decreased, the importance of these items increased. The ratings on potency are reasonable, therefore, since low potency is related to guilty verdicts and to high importance on these items of evidence, the first two of which were somewhat damaging to the defendant's case, and the third, ambiguous.

Activity. The ratings on this dimension were not systematically affected by either independent variable, nor by the interaction. In addition, "activity" was not significantly correlated with the importance ratings of any of the eight items of evidence.

The testimony in all trials indicated that the defendant was unemployed and had been for some time. In all conditions, he was on unemployment compensation and had allowed the victim to buy all the drinks for both of them while they were in the bar together on the night of the crime. The jurors may have been impressed with these factors and reached their conclusions about his "activity" independently of the Level of Evidence and Type of Trial conditions.

Evaluation. A significant relationship existed between each of the independent variables and the individual ratings of the defendant as "good" or "bad." High apparent guilt and participation in the one-stage trial were both associated with the individuals' judgment of the defendant as a "bad" person. Further, the ratings on this dimension correlated significantly with the perceived importance of several items of evidence. Paralleling the ratings on the potency dimension, these evidence items were aligned appropriately with guilty and not guilty verdicts. Two were non-damaging, so their association with a positive evaluation is logically consistent. The remaining three items were generally damaging to the defendant's case, and were considered important by individuals who rated the defendant as "bad."

Evidence Importance Ratings

Eight items of evidence were chosen from the videotapes to appear on the evidence importance rating instrument. These items were pivotal points of evidence which favored either the State's case or the Defense case. Two of them involved eyewitness testimony: the bartender's testimony and the victim's eyewitness identification of the defendant as his assailant. These two items were rated as most important, over all conditions, despite the fact that in both cases there was additional evidence given which weakened the testimony. This situation points up the prevailing tendency of persons to believe eyewitnesses regardless of the witnesses' probable

ability to be sure of what they saw.

Four of the eight items of evidence were presented, unchanged, in all evidence conditions. The following discussion will enumerate these items as well as the ones which were varied.

Physician's testimony. This portion of the evidence was considered important, since the physician testified as to the seriousness of the victim's injuries. This testimony remained constant in all evidence conditions. In terms of the defendant's guilt or innocence, this testimony did not actually present any "evidence" at all. The physician merely attested to the victim's injuries; he did not present evidence either favoring or damaging the defendant's case.

The perceived importance of the physician's testimony was inversely correlated with three other pieces of evidence; in general, his testimony was rated as substantially lower in importance than any of the others. This ranking is appropriate, since the testimony could not be used to determine either the defendant's guilt or his innocence.

Defendant's lack of corroboration for his account of his own actions on the night of the crime. Although the defendant had his own version of his actions on the night of the crime, it could not be verified by any other witnesses. This item of evidence was not varied across evidence condition and was considered mildly damaging to the defendant's case.

Despite the fact that the jurors considered this item as

relatively unimportant, the Level of Evidence variable did affect significantly the ratings in a non-linear fashion. The general shape of the relationship is an inverted-U, with ratings of medium importance in the high guilt condition, high importance in the ambiguous condition, and low importance in the low guilt condition. Apparently, for jurors who faced the most ambiguous situation (i.e., those in the ambiguous evidence condition), this item functioned to anchor their discussion/decision.

Absence of stains on the defendant's clothes when arrested. When the defendant was arrested, no blood stains appeared on his clothing--clothing which he apparently had been wearing the night before when the crime was committed. This item remained constant across all tapes. Since it was favorable to the defendant, it was considered to be non-damaging.

As apparent guilt increased, the perceived importance of this item decreased. In the high guilt condition, other, more specific and damaging items were available to consider. In the low guilt condition, this item was one of the few unambiguous items of evidence and was considered, therefore, more important.

Defendant's account of his own activities on the night of the crime. This is the final item held constant across evidence conditions. Because the defendant denied having committed the crime and presented an account of his own

activities which precluded his guilt, this item was considered non-damaging. Importance ratings for this item were not systematically influenced by either independent variable, nor by the interaction. It was correlated significantly, however, with verdict. Jurors voting guilty rated this item as unimportant; those who voted not guilty rated it as important. These judgments of importance seem very consistent with the decisions made.

Amount of alcohol consumed by the victim and defendant.

This factor is the first of four which were varied across evidence condition in order to increase or decrease the apparent guilt of the defendant. In the high guilt condition, the alcohol consumption was low, implying that the defendant had the motor coordination to commit the crime and lending more credibility to the victim's eyewitness identification of the defendant as his assailant. Since alcohol consumption in the low guilt condition was rather high, it casted doubt on the defendant's ability to have committed the crime and on the victim's identification of him as the perpetrator of the crime.

The perceived importance of this item was unrelated to either of the independent variables. The audio tapes indicated that many of the jurors had difficulty in deciding how much alcohol was necessary to produce intoxication, and how intoxicated a person could be without adversely affecting his own physical and mental capabilities. Although jurors relied

on personal experiences, these experiences often were in disagreement. This situation may have produced a feeling of uncertainty about this item, which might account for the lack of systematic influence by the independent variables.

Alcohol consumption was correlated significantly with verdict. Jurors who voted guilty perceived this item as unimportant; those who voted not guilty perceived it as important. This relationship indicates that low alcohol consumption (in the high guilt condition, where most of the guilty verdicts occurred) was not viewed as important (*i.e.*, was perceived as not necessarily indicative of the defendant's guilt); high alcohol consumption, on the other hand, was perceived as more important evidence in favoring the defendant's innocence.

Amount of money found on defendant when arrested. When he was arrested, the amount of money the defendant had in his possession was varied across evidence conditions, ranging from \$70 in the high guilt condition to \$7 in the low guilt condition. This factor was damaging in the high guilt condition, especially since the defendant's only income was \$55 per week from unemployment compensation. In addition, in the high guilt condition, he was unable to explain his acquisition of this large sum.

The perceived importance of this item was influenced significantly by evidence condition. As apparent guilt increased, the perceived importance of this item increased. This relationship is understandable since in the high guilt

condition this item is probably one of the two most damaging factors. Jurors viewing the low apparent guilt trial tended to perceive this item as relatively unimportant. The \$7 sum was judged as less important than some other items of evidence in this condition.

Bartender's testimony. The bartender's testimony changed across evidence conditions. In both the high guilt and the ambiguous conditions, he testified that he saw the defendant follow the victim out of the bar on the night of the crime. His expressed certainty regarding what he saw was varied, however. In the high guilt condition, the bartender testified that he knew the men because they had frequented the bar previously, and that he was absolutely certain that he saw the defendant go out the door immediately behind the victim. In the ambiguous version, he testified that he had not seen them before, but that he had seen them leave together, the defendant walking a few paces behind the defendant. Under cross-examination by the defense attorney in this condition, the bartender admitted that he did not remember seeing them actually going out the door together. In the low guilt condition, his testimony indicated that he had seen the defendant in the bar several minutes after the victim had left.

The perceived importance of this item was significantly affected by evidence condition. The relationship is U-shaped. Importance ratings were extremely high in the low guilt condition, less in the high guilt version, and least in the

ambiguous condition. Since the bartender was the only real witness other than the defendant and victim, his report of having seen the defendant in the bar after the victim had left was perceived as crucial. In the high guilt condition, he was certain of what he saw but the jurors had other damaging items of evidence to consider in deciding the defendant's guilt or innocence; therefore, this item was seen as less crucial in their decision. Finally, in the ambiguous condition, the bartender's testimony was truly ambiguous, and therefore was not considered important. It should be noted that, despite the fact that jurors rated this item significantly less important in the ambiguous condition, it was rated as the most important item, overall.

Victim's claim of seeing the defendant's face during the attack. Although the content of the victim's testimony remained constant, his expressed certainty varied. In the high guilt condition, the victim identified the defendant as his assailant, and the defense attorney was unable to cast doubt on his veracity or his ability to identify the defendant. In the low guilt condition, however, he was forced to admit, under cross-examination, that conditions existed which made an accurate identification very unlikely.

Level of Evidence influenced significantly the perceived importance of this item. Jurors in the high apparent guilt condition rated it as more important than jurors in the low guilt condition. The victim's eyewitness testimony, and his

certainty about that testimony, were very damaging in the high guilt trial and, therefore, very important.

In the low guilt condition, although uncertain, the victim maintained that it was the defendant who had attacked and robbed him. Other evidence in that condition, notably the bartender's testimony and the absence of blood stains on the defendant's clothing, favored the defendant more powerfully. The jurors rated those items as more important, therefore, and the victim's testimony as less important.

The Alternates

To some extent, close comparison can be made between the behavior of the alternates and that of the jurors who had benefit of deliberation. The verdicts of both alternates and jurors were affected by Level of Evidence, those of the alternates achieving a higher significance level than those of the jurors. Importance ratings of two items of evidence were similarly influenced by Level of Evidence; both the bartender's testimony and the victim's identification of the defendant as his assailant involved eyewitness testimony, attesting to the tendency of persons to give emphasis to such testimony.

Differences between the jurors and alternates become apparent in examining the majority of remaining evidence items. Overall, both Level of Evidence and Type of Trial affected the responses of jurors much more significantly than they did the responses of alternates. Apparently, group deliberation was responsible for this disparity, since in all

other respects the alternates were treated the same as the jurors. It appears that deliberation served to clarify the relationship among the items of evidence, resulting in the greater effects noted. Jurors emphasized various items, which differed depending upon the trial they had seen. The discussion tended to result in perceptions which were closer in agreement among the jurors in each condition. Since alternates did not deliberate, they did not have benefit of this reciprocal process of clarification.

Conclusion

Most juries considered the evidence relatively well, attempting to analyze the probability of each witness's veracity and credibility. In considering the testimony, they examined not only the possibility of deliberate deceit, but also whether the witness under scrutiny might have been mistaken; despite this careful consideration, however, they still tended to see the eyewitness testimony as most important.

The judge's instruction was a crucial element in many of the jury deliberations. Overall, the jurors obeyed the "reasonable doubt" standard and the instructions regarding the appropriate use of the prior criminal record. The jurors reminded each other of these points when transgressions of the instructions seemed imminent. The evidence in the high guilt condition did indicate that the defendant was guilty; this was substantiated by the independent raters who judged the tape without the judge's instructions and prior record.

Only five of the 12 juries in this condition, however, returned a verdict of guilty. Although the relationship between evidence condition and verdict achieved significance, less than half of the juries in the high apparent guilt condition found the defendant guilty. The principle of reasonable doubt and presumption of innocence, as defined in the judge's instructions, probably had a significant impact.

The presence of the defendant's prior criminal record did not significantly affect the verdict. One possible reason for this result is, again, the judge's instructions. Two additional factors, however, may have had an important role: first, the severity of both the present crime and the crime involved in the previous conviction; and second, the relevance, or similarity, of the previous crime to the current one. Both possibilities should be explored in further research.

Both high apparent guilt and presence of the prior record were significantly associated with longer deliberation time for verdict. In both cases, greater ambiguity resulted from these conditions, which forced the jurors to deliberate longer regarding the defendant's guilt or innocence.

Finally, the jurors' individual ratings on the abbreviated semantic differential and the evidence importance instrument demonstrated consistency. In general, those in the high guilt condition, or who were in the one-stage trial condition saw the defendant as "weak" and "bad." Those in the low guilt condition or who had participated in the bifurcated proceeding rated him as "strong" and "good." Jurors in the high guilt

condition or who had voted guilty tended to rate damaging evidence as important; while those in the low guilt condition or who had voted not guilty tended to perceive non-damaging evidence as most important. Thus, they integrated the information in the tapes in a consistent manner. Their responses on the semantic differential and their evidence importance ratings demonstrate this consistency.

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APPENDIX A

TRIAL SCRIPT: AMBIGUOUS

EVIDENCE CONDITION

Information

The State of Oklahoma versus Neal Garnett, Defendant.

Charles H. Headrick, District Attorney of Payne County, State of Oklahoma, under and virtue of the authority vested in him as District Attorney, gives this Honorable Court to know and be informed in the name and by the authority of the State of Oklahoma, that in the County of Payne and State of Oklahoma, on the twelfth day of November, 1975, Neal Garnett, while acting alone, did commit the crime of Robbery by Force in the following form and fashion, to-wit: that is to say that the said defendant, Neal Garnett, while acting alone, then and there being, did willfully, wrongfully, unlawfully, and feloniously rob one James Lawrence, by wrongfully taking and carrying away certain money and personal property of value belonging to and in the possession of said James Lawrence, and in his immediate presence, without his consent and against his will, said robbery being accomplished by said defendant, while acting alone, by means of force and violence used against said James Lawrence by then and there kicking him and knocking him down onto the ground, beating and kicking him about the head and body and then and there wrongfully taking and carrying the money and property aforesaid, in Violation of Title 21, Oklahoma State Statutes, Section 791, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State of Oklahoma.

Introductory Remarks

JUDGE: Let the record show that the defendant is personally present in the courtroom with his court-appointed attorney, Mr. Jackson. Is the State ready?

PROSECUTOR: State's ready, Your Honor.

JUDGE: Is the Defense ready?

JACKSON: Yes, Your Honor.

JUDGE: Ladies and Gentlemen of the Jury, this is the case of the State of Oklahoma versus Neal Garnett. The charge is Robbery by Force. At this stage of the proceeding, the State will tell the plea of the defendant and make an opening statement, outlining in some detail the evidence and witnesses to be called to prove their case today. Mr. Prosecutor ...?

PROSECUTOR: Ladies and Gentlemen of the Jury, to this charge the defendant has entered a plea of not guilty. This is our whole reason for being here. At this point, I want to explain briefly to you what the evidence of the State will be. This case does not involve many people--we will call only four witnesses. First of all, the complaining witness, James Lawrence, is the man who was with the defendant for a short time during the evening of the twelfth of November 1975. I anticipate that the evidence will show that Mr. Lawrence was in a bar in Cushing on that evening, and while at the bar he met the defendant and they had some drinks together. I further anticipate his testimony to indicate that, upon deciding to leave this establishment to go home, he was followed by the defendant, and that when he got outside the bar, he was hit from behind and knocked down. He was then beaten and kicked by the defendant, and was finally robbed of some personal property. His testimony will further indicate that, after this beating took place, he met one of the other witnesses at another nearby bar and that this other witness took him to the hospital. Both Mr. Lawrence and the other witness will be able to tell you of Mr. Lawrence's condition when they met after Mr. Lawrence had been attacked.

As to the witness Jack Simpson--I believe that his testimony will show that he is a bartender in Cushing and that he personally saw the defendant, Neal Garnett, follow Jim Lawrence out of the bar when Mr. Lawrence left that night.

Our final witness will be Dr. Taylor, who was the physician on duty in the emergency room at the hospital where the victim was taken for treatment of his injuries. This witness will testify as to the extent of James Lawrence's injuries and the medical treatment that was required.

Now, I anticipate that the State will not call any other witnesses, and after we present this case to you, and the defense has done so, too, you will reach a verdict that will find this defendant guilty as charged.

JUDGE: At this stage of the case, Ladies and Gentlemen of the Jury, the defendant has an opportunity to make an opening statement or to reserve this opening statement until a later stage of the proceeding. I now inquire, does the defendant wish to make an opening statement or reserve?

JACKSON: The defendant will reserve, Your Honor.

JUDGE: Fine, then, call your first witness for the State.

Testimony of Victim

PROSECUTOR: Q. State your name, please.

A. James Lawrence.

Q. How old are you?

A. Twenty.

Q. And where do you live at the present time?

A. In Cushing.

Q. Are you employed?

A. Yes.

Q. What do you do?

A. I'm a clerk at a store in Cushing.

Q. Directing your attention to the evening of the twelfth of November, 1975, did you have occasion to be at the B. & L. Club in Cushing, Oklahoma, on that evening?

A. Yes.

Q. What were you doing there?

A. I was having a few beers and playing pool.

Q. What time did you get there?

A. Must've been about 7:30.

Q. What happened when you got there?

A. Like I said, I ordered a beer and sat for awhile, then got another beer and started playing pool.

Q. Who were you playing pool with?

A. I was playing pool with Neal Garnett, and we had some beers together.

Q. Had you known the defendant, Neal Garnett, before this evening at the B. & L. Club?

A. No, I had never met him.

Q. You said a moment ago that you and Mr. Garnett had some drinks together. Who paid for these drinks?

A. I did.

Q. Did you pay for all of them?

A. Yes.

Q. Was there any particular reason why you were paying for all the drinks?

A. Yes. In talking with Neal Garnett, I found out that he was unemployed and hadn't worked for over two months. Since I had some money, and he didn't, I bought the beer for both of us.

Q. How many drinks would you say you bought?

A. I'd say about four or five rounds, at least.

Q. Was the defendant present when you paid for them?

A. Oh, yes.

Q. Would you say, then, that the defendant had the opportunity to see that you had money with you?

A. I suppose so, yes.

Q. What time did you leave the B. & L. Club that night?

A. Around 10:30 or 11:00.

Q. Why did you leave the club?

A. It was getting late, and I had to get up early the next morning and go to work.

Q. Now, Mr. Lawrence, what happened when you decided to leave the bar?

A. I told Neal that I was going to have to leave because of having to get up early the next morning. I got up to

leave, and as I was walking out the door, I noticed that he was right behind me.

Q. Did you think that was strange?

A. Sort of, at first. Then I thought he must want a ride home.

Q. Did you have a car or any form of transportation with you?

A. Yes, I did. I had brought my pickup truck with me, and I had gotten the keys out of my pocket as I was leaving the bar.

Q. What happened after you noticed that the defendant was following you outside?

A. As soon as I got out the door, I started to turn around to ask him if he wanted me to take him home. Just as I began to turn around, I was hit on the head from behind.

Q. Do you know what you were hit with?

A. No, I don't, but it knocked me down to the ground, and I was--I guess I was sort of dazed for a minute. The next thing I knew, I looked up and saw Neal Garnett's face and then he kicked me in the face.

Q. You looked up and saw his face?

A. Yes.

Q. You're sure that the person you saw was Neal Garnett, the defendant in this case?

A. Yes.

Q. What happened after you were kicked in the face?

A. I remember being hit again and again, and being kicked some more, in the stomach and on the back. Then I felt my wallet being pulled out of my pocket.

Q. And then?

A. Then the hitting and kicking stopped for a minute, and I tried to get up.

Q. Were you able to get to your feet?

A. After a few seconds, I was.

Q. Then what did you do?

- A. I got up and tried to run away. Once I got away from him, I tried to get as far away as I could. I ran some, then walked, then ran again.
- Q. Why did you run away, Mr. Lawrence?
- A. I was afraid he'd kill me.
- Q. You believed that you might be killed?
- A. Yes.
- Q. What did you do once you had run away?
- A. After I had gone a little way, I figured that I was safe. Then I thought about what to do.
- Q. And what did you decide to do?
- A. I decided that the best thing I could do would be to keep walking and see if I could get some help from someone.
- Q. Did you find someone to help you?
- A. Yes. I was walking along and came to another bar, Dorothy's Place, and saw someone standing out front, so I started running again, as best I could.
- Q. Did you know the person who was standing in front of this second bar?
- A. Yes. It was Bob Farrell, a man I had met through my sister a few months before.
- Q. What happened after you saw Mr. Farrell?
- A. I walked toward him. He recognized me and asked what in the world had happened. I told him I had been beaten and I needed help.
- Q. Were you in pain at this point, Mr. Lawrence?
- A. Yes.
- Q. Great pain?
- A. Yes. I could hardly stay on my feet.
- Q. What did Mr. Farrell do?
- A. He helped me get over to his car, and then he took me to the hospital.
- Q. Were you seen by a physician at this hospital?

- A. Yes. I believe his name was Dr. Taylor. He was in the emergency room when I got there.
- Q. How long did you stay at the hospital?
- A. Well, they kept me for five days. Something about--they said I might have internal injuries. So they kept me.
- Q. Now, Mr. Lawrence, how much money would you say was in your wallet that night, when you decided to go home?
- A. I'd say probably about \$80 - \$85.
- Q. How do you come up with that figure?
- A. Because I know how much I started out with, and how much I spent that night.
- Q. Alright, now did you give anyone permission to remove your wallet that night?
- A. No sir, I didn't.
- Q. And you are absolutely sure that it was Neal Garnett's face you saw right before being kicked in the face?
- A. Yes.

PROSECUTOR: Your witness.

- JACKSON: Q. Mr. Lawrence, you testified that you were drinking both before you met Mr. Garnett that night and you were drinking while the two of you were playing pool. Is that right?
- A. Yes, I was drinking beer.
- Q. And how many beers would you say you had during the course of the evening?
- A. About five or six, I think.
- Q. Enough to get you high?
- A. Yes, I suppose so.
- Q. Enough to make you drunk?
- A. No sir. I was not drunk.
- Q. You also testified that you paid for the drinks because the defendant didn't have any money. Did he tell you he didn't have any money?

A. No, I just figured he didn't, since he told me he hadn't worked for awhile.

Q. Alright, now, where did you say you were when you were hit the first time?

A. Outside the bar--just outside the door.

Q. You also said you were dazed for a moment after you were hit the first time. Is that correct?

A. Yes.

Q. Do you have any idea what could have gone on while you were dazed at this time?

A. No sir, I don't.

Q. Do you have any idea how long you were dazed?

A. I can't say exactly, but it couldn't have been long.

Q. And you're absolutely sure that it was Neal Garnett who kicked you?

A. Yes.

Q. Mr. Lawrence, you testified that you had never met Mr. Garnett before that evening. Is that right?

A. Yes, it is.

Q. Tell me, while you and he were playing pool together, did you talk much?

A. I don't know ... We talked some. We were playing pool, so I guess we didn't talk constantly.

Q. How much time did you actually spend talking to him and looking at his face? You were concentrating on the game, weren't you?

A. Yes, I was paying attention to the game, but I saw him well enough to recognize him outside the bar.

Q. OK. Now, when you left the bar, or rather when you started toward the door, you noticed the defendant walking behind you, is that right?

A. Yes.

Q. Tell me, did he speak to you as you were walking toward the door?

- A. No, he didn't.
- Q. Did you say anything to him at that point?
- A. No.
- Q. I see. Now, Mr. Lawrence, you said that you noticed him walking behind you toward the door, then when you got outside, you were hit on the head from behind and were knocked to the ground. Is that right?
- A. Yes.
- Q. And you said that you were dazed for a moment and then you saw Neal Garnett's face just before he kicked you?
- A. Yes, that's right.
- Q. Mr. Lawrence, would you say that there was very much light there, outside the bar, at 10:30 at night?
- A. Well, it was kind of dark, but there is a streetlight near there, and there is a light at the entrance to the bar. There was enough light to see.
- Q. Where is the light at the entrance to the bar located?
- A. There's a light bulb on each side of the door.
- Q. So anyone who is standing on the sidewalk in front of the bar, with his back to the door, would have his face--his face would be in shadow, isn't that right?
- A. Well--yes, I guess so.
- Q. Yet you are saying, Mr. Lawrence, that you were able to recognize Mr. Garnett, with no doubt, after you had talked with him a little, not paying much attention, and after being hit and knocked to the ground and dazed. You are able to identify him after all that happened, and while looking up from the ground, where you had landed after being hit, and while your attacker was standing there with his face in shadow. Is that correct?
- A. I know what I saw. Yes, all that is right.
- Q. You don't think you might possibly be mistaken in your identification of Neal Garnett as the person who hit you?
- A. No.
- Q. Mr. Lawrence, moving along, how is it that, after being kicked and hit repeatedly, you were able to get away from your assailant so easily?

- A. I don't know. I guess, after he took my wallet out of my pocket, he was looking through it or something. Maybe he thought I was out and wasn't paying attention.
- Q. Alright, when you got away, why didn't you get in your pickup and drive away, instead of walking?
- A. I was running away--I just wanted to get away from there as fast as I could. Besides, I guess my keys were knocked out of my hand when I was attacked. I had them in my hand when I went through the door on my way outside, but when I got up to try to get away, I didn't have them.
- Q. Alright. Then what did you do, after you got up and started running?
- A. I ran down the street until I saw someone who I thought could help me.
- Q. And this was Mr. Farrell?
- A. Yes.
- Q. How far is it from the B. & L. Club to Dorothy's Place?
- A. About five or six blocks, I think.
- Q. And how long would you say it took you to get from the B. & L. Club to Dorothy's Place?
- A. I don't know. I guess it must have taken about 15 or 20 minutes.
- Q. Mr. Lawrence, were you drunk that night?
- A. No sir.

JACKSON: I have no further questions.

JUDGE: Any further questions for the State?

PROSECUTOR: No, Your Honor.

JUDGE: You may step down. Next witness.

Testimony of Robert Farrell

PROSECUTOR: Q. State your name, please.

A. Robert Farrell.

Q. How old are you, Mr. Farrell?

A. Thirty years old.

Q. What is your occupation?

A. I own a service station in Cushing.

Q. Do you know James Lawrence?

A. Yes, I do.

Q. How long have you known him?

A. I first met him last June. I had known his sister before then, and I met him at her house.

Q. Mr. Farrell, where were you on the evening of November 12, 1975?

A. I spent most of the evening at a bar in Cushing called Dorothy's Place.

Q. And did you see James Lawrence during that evening?

A. Yes, I did.

Q. Please tell the court the circumstances under which you saw James Lawrence on that evening.

A. I had been at this bar since about 9:00. I decided to leave about 11:30 and I went outside and all of a sudden I saw Jim walking toward me.

Q. What kind of condition was he in?

A. He was all bloody--his head and face had blood all over them, and he was kind of staggering.

Q. What did you do?

A. I ran up to him and asked what happened.

Q. Then what?

A. He told me what happened and I took him to the hospital.

Q. In your opinion, Mr. Farrell, after seeing him and talking with him, what would you say his condition was?

A. He couldn't hardly walk. I could see he was in pain. I had to help him get to my car so I could get help for him.

Q. So when you saw him, it was obvious to you that he had been hurt--he had blood on him?

A. Yes sir.

PROSECUTOR: Your witness.

JACKSON: I have no questions, Your Honor.

JUDGE: Witness is excused. Next witness.

Testimony of Jack Simpson

PROSECUTOR: Q. State your name, occupation, and place of employment, please.

A. Jack Simpson. I'm a bartender at the B. & L. Club.

Q. Were you working at the B. & L. Club on the evening of November 12, 1975?

A. Yes, I was.

Q. And did you see James Lawrence and Neal Garnett there that evening?

A. Yes, I did.

Q. Were the two of them together that night?

A. Yes, they were there drinking together and playing pool.

Q. You said they were drinking together. Did you personally serve these drinks to them?

A. Yes sir, I sure did.

Q. Did you notice when Jim Lawrence left the B. & L.?

A. Yes, I did.

Q. When Mr. Lawrence left, did you notice anyone walking behind him?

A. Yes. Neal Garnett got up right after he did, and I saw him walking behind him.

Q. And after Mr. Lawrence left, was that the last time you saw him that night?

A. Yes sir.

PROSECUTOR: Thank you, Mr. Simpson. Your witness.

JACKSON: Q. Mr. Simpson, how busy were you that night?

A. What do you mean?

Q. How many people were in the B. & L. Club? Did you stay busy serving drinks?

A. Yes, I stayed pretty busy. It was about like any other night, I guess.

Q. So even though you were busy, you still noticed when each of these men arrived and what they did and when they left?

A. Yes, sir.

Q. Did you actually see Jim Lawrence and Neal Garnett go through the door? Think carefully now.

A. Well--I don't remember seeing them go through the door. I mean, I saw them start to leave, and I saw them walking toward the door, but I can't say that I remember actually seeing them open the door and go outside.

Q. So of your own personal knowledge, you can't say for sure that Neal Garnett actually followed Jim Lawrence all the way out the door?

A. No sir, I guess I can't.

Q. Tell me, Mr. Simpson, did you know these two men before that night at the B. & L.?

A. No, I didn't.

Q. You had never seen them before in the Club?

A. I don't think so. I guess they could have been there before that night, but I don't think I noticed them before that night.

Q. Why did you notice them that particular night? I mean--did either of them do anything unusual that night, to make you remember them?

A. I don't think so. I just noticed them playing pool together.

Q. Alright, now, considering the fact that you were pretty busy that night, and considering the fact that you didn't know either of them, how sure are you that you actually saw these two men leave together?

A. I remember seeing them together, but I guess I can't be sure they left together.

Q. And you stated before that you didn't actually see them go out the door together?

A. Yes, that's right. I can't say that they actually left the club together.

JACKSON: Thank you. No further questions, Your Honor.

JUDGE: Any re-direct?

PROSECUTOR: No, Your Honor.

JUDGE: You may step down. Next witness.

Testimony of Dr. Hugh Taylor

PROSECUTOR: Q. Your name please?

A. I am Dr. Hugh Taylor.

Q. What do you do, sir?

A. I am a physician and surgeon.

Q. And where do you practice?

A. Drumright, Oklahoma.

Q. How long have you been practicing there, Dr. Taylor?

A. Since 1969.

PROSECUTOR: I wonder if the defense attorney would be willing to stipulate to the doctor's qualifications?

JACKSON: So stipulated.

JUDGE: Very well.

PROSECUTOR: Q. Dr. Taylor, I'd ask you, in the early morning hours of the thirteenth of November, 1975, did you have occasion to make an examination of one James Lawrence?

A. Yes, I did.

Q. And where did this examination take place?

- A. In the emergency room at the hospital in Drumright.
- Q. What did you observe about the physical condition of James Lawrence?
- A. The examination revealed bruises about the face, neck, chest, the lower back, the abdomen, both arms and legs, and over the left ear. There was blood draining from the nose and left ear. The eyes were swollen and bruised. The left eardrum was ruptured, the nose was fractured, and there was marked tenderness over the abdomen.
- Q. Now Doctor, do you have an opinion as to whether these injuries had been recently incurred by Mr. Lawrence?
- A. Yes. The blood was fresh.
- Q. And did you prescribe any further treatment for him?
- A. Yes. We admitted him to the hospital because of the abdominal findings. The examination I performed indicated the possibility of inter-abdominal injury, so we put him to bed there in the hospital, so that we could monitor his condition.
- Q. Did you later come to any conclusion regarding the possibility of these further injuries?
- A. Yes. We monitored his blood count closely and watched his progress. There was no indication of internal bleeding, so I transferred his case.

PROSECUTOR: Your witness.

JACKSON: I have no questions.

JUDGE: Witness is excused. Call your next.

PROSECUTOR: If it please the court, the State rests.

JUDGE: Is the defense ready to proceed?

JACKSON: Yes, Your Honor.

JUDGE: Do you have an opening statement?

JACKSON: Yes, Your Honor, we do.

JUDGE: Fine, then, you may proceed.

JACKSON: Ladies and Gentlemen of the Jury, I'd like to, if I could, briefly state what evidence we have to present at this time. We are not questioning the fact that

Mr. Lawrence was beaten and robbed. The issue in this case is whether or not the defendant, Neal Garnett, was responsible for the beating and robbery.

The basic thrust of the evidence starts the same as the evidence you've already heard from the State. However, I believe that the evidence will show that from the time Jim Lawrence left the B. & L. Club that night, the story is somewhat different. We have only one witness to call for the defense--the defendant himself. After hearing his testimony, I believe that you will find for the defendant in this case, that is, that you will return a verdict of not guilty. Thank you.

JUDGE: Call your first witness.

Testimony of Neal Garnett

JACKSON: Q. State your name and age, please.

A. My name is Neal Garnett, and I am 24 years old.

Q. Now, Mr. Garnett, please tell us where you were in the early evening hours of November 12, 1975.

A. I was at the B. & L. Club in Cushing.

Q. Did you go there alone?

A. Yes, I did.

Q. Did you at any time that evening talk with anyone else?

A. Yes.

Q. Please tell us the circumstances surrounding that conversation.

A. Well, I got there about 7:45 or 8:00 and bought a beer and started playing pool. Then I saw Jim Lawrence and we started talking and we played a couple of games of pool.

Q. Did you drink together?

A. Yes, we were drinking while we talked.

Q. And who paid for these drinks?

A. Well, Jim Lawrence paid for them.

Q. Why did Mr. Lawrence pay for them?

- A. He offered to, and so I thought that I would let him buy the first few, and then I'd buy a few later in the evening.
- Q. And did you buy a few later in the evening?
- A. No. I was going to, but then all of a sudden he said he had to leave, so I didn't.
- Q. Alright, Mr. Garnett. Now, what happened when Mr. Lawrence decided to leave?
- A. I said OK, and he got up and left.
- Q. What did you do?
- A. I went to the restroom. Then when I came out of the restroom, I finished the beer I had and then left.
- Q. How long would you say it was between the time Mr. Lawrence left and the time you left?
- A. Oh, probably at least 20 minutes or so.
- Q. What did you do when you left?
- A. I went to another club.
- Q. And what is the name of this other club?
- A. It's right near the B. & L. The name of it is the Hot Spot, I think.
- Q. Now, Mr. Garnett, after Jim Lawrence left the B. & L. that night, did you see him again?
- A. No, I didn't see him any more that night.
- Q. What time did you leave this second bar?
- A. About 11:30.
- Q. What did you do then?
- A. I went home.
- Q. How did you happen to be arrested? I mean, where were you when you were arrested?
- A. It was later that night, or rather early the next morning. The police came to my house and arrested me.
- Q. Mr. Garnett, did you attack Jim Lawrence on the night of November 12, 1975?

A. No, I did not.

Q. Did you hit him or kick him?

A. No.

Q. Did you remove any personal property from Mr. Lawrence on that night?

A. No.

Q. And is this testimony that you've given true to the best of your recollection?

A. Yes.

JACKSON: Your witness.

PROSECUTOR: Q. Mr. Garnett, where are you employed?

A. I don't have a job right now.

Q. Do you have any income?

A. Yes, I get unemployment checks.

Q. How much do these checks come to?

A. \$55 a week.

Q. What is your occupation--what did you do when you were employed?

A. I was a car mechanic.

Q. Were you unemployed on November 12 of last year?

A. Yes, I was.

Q. And your only income then was unemployment checks?

A. Yes.

Q. Now, Mr. Garnett, you stated that when James Lawrence left the B. & L. Club on the evening of November 12 last, that you did not follow him out but instead stayed in the B. & L. for awhile longer, is that right?

A. Yes.

Q. And you also testified that when you did leave, you went to another bar and stayed until about 11:30. Is that right?

- A. Yes.
- Q. Tell me, Mr. Garnett, did you see anyone you knew at this second bar?
- A. No, that's why I didn't stay very long.
- Q. Did you buy any drinks at this second bar?
- A. Yes, one.
- Q. Do you remember, or could you identify, the bartender at that second club?
- A. No. It was a woman, but I didn't know her.
- Q. Could that bartender--do you think she would remember you?
- A. No. I just bought one drink, and the place was pretty crowded that night. She was busy.
- Q. Alright, so you say you went to this second bar, but saw no one you know and no one who would remember seeing you there?
- A. That's right. But I was there.
- Q. OK, Mr. Garnett. You said that when you left the second place, you went home?
- A. That's right.
- Q. Tell me, would you say you were drunk that night?
- A. Not drunk. Pretty high, but not drunk.
- Q. Are you married?
- A. No.
- Q. Do you live with anyone?
- A. No, I live alone.
- Q. And when you got home that night, you went right to bed?
- A. Yes.
- Q. And the police came and arrested you at your home?
- A. Yes.
- Q. What were you wearing when you were arrested?

- A. I had not changed clothes to go to bed, so I was wearing the same thing I had worn the night before.
- Q. You were wearing the same things you had worn on the night of November 12?
- A. Yes.
- Q. What was the condition of those clothes?
- A. What do you mean?
- Q. Well, were they clean or dirty, or wrinkled, or what?
- A. I guess you could say they were dirty and wrinkled. I'd worn them since the afternoon before, and I'd slept in them.
- Q. Were there any stains on them?
- A. No.
- Q. Tell me, did you have any money in your wallet or in your pockets when you were arrested?
- A. Yes, I did.
- Q. How much?
- A. A little over \$70.
- Q. Since you're unemployed, and your only income, you have testified, is \$55 a week from the unemployment commission, how did you happen to have over \$70 on you when you were arrested?
- A. I had saved it up to pay rent with.
- Q. I see. Now, Mr. Garnett, to sum up, you say that when you left the B. & L. Club, it was after Jim Lawrence had left, and you went to another bar, where you stayed for a little while, and then went home. Is that right?
- A. Yes.
- Q. You heard the testimony given by Mr. Lawrence, didn't you?
- A. Yes.
- Q. And you testified that you did not see Mr. Lawrence again, after he left the B. & L. that night?
- A. Yes.

Q. Your story is quite different from the story Jim Lawrence told, isn't it?

A. Yes, it is.

Q. You are saying then that his story is untrue?

A. I am saying that he was mistaken.

Q. But you are saying that his story is untrue?

A. Yes.

Q. Somebody's not telling the truth.

A. That's right.

PROSECUTOR: No further questions.

JUDGE: Do you have any re-direct, Mr. Jackson?

JACKSON: No, Your Honor.

JUDGE: Alright, witness is excused. Call your next.

JACKSON: Your Honor, we have no further witnesses. The defense rests.

Judge's Instructions

Ladies and Gentlemen of the Jury:

The Defendant in this case is charged with having committed the offense of Robbery by Force in this county on or about the twelfth day of November, 1975, as set forth in the Information which has been read to you.

To this charge the defendant has entered a plea of not guilty, which casts upon the State the burden of proving the material allegations of the Information to your satisfaction beyond a reasonable doubt before you would be justified in returning a verdict of guilty.

The Information is simply the charge upon which the defendant is placed upon trial, and sets forth in a formal way the offense of which the defendant is accused, and it is in and of itself no evidence of the defendant's guilt, and you should not allow yourselves to be influenced against the defendant by reason of the filing of such an Information.

The defendant is presumed to be innocent of the crime charged against him, and innocent of each and every material element constituting such offense, and this presumption of innocence continues until such time as his guilt is shown to your satisfaction beyond a reasonable doubt. And if, upon a consideration of all the evidence, facts and circumstances of the case, you entertain a reasonable doubt of the guilt of the defendant of the crime charged against him, you must give him the benefit of that doubt and return a verdict of not guilty.

The material allegations of the Information are:

(1) That the defendant, Neal Garnett, while acting alone;

(2) Did willfully, unlawfully, intentionally, and feloniously;

(3) Make an assault upon James Lawrence by kicking him about the head and body and knocking him down onto the ground;

(4) Did wrongfully take and carry away from the person of James Lawrence money and personal property of value belonging to him as reflected by the evidence;

(5) That said taking was against his will and was accomplished by means of force and violence, and

(6) That the acts aforesaid occurred in Payne County, Oklahoma, on or about the twelfth day of November, 1975.

The Statutes of the State provide:

"Robbery is a wrongful taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear."

"To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property, or to prevent or overcome resistance to the taking. If employed merely as a means of escape, it does not constitute robbery."

"When force is employed in either of the ways just above specified, the degree of force employed is immaterial."

"When property is taken under the circumstances required to constitute robbery, the fact that the property was of trifling value does not qualify the offense."

"Robbery, when accomplished by the use of force, or of putting the person robbed in fear of some immediate injury to his person, is robbery in the first degree. When accomplished in any other manner, it is robbery in the second degree."

Should you find from the evidence, under these instructions, and beyond a reasonable doubt, that the defendant, Neal Garnett, is guilty of Robbery by Force, as charged in the Information, and as defined in these instructions, then you shall find the defendant, Neal Garnett, guilty as charged. But, if you do not so find, or should you entertain a reasonable doubt thereof, then in either of said latter events you shall find the defendant, Neal Garnett, not guilty.

You are the judges of the facts, the weight of the evidence, and the credibility of the witnesses. In determining such weight or credit you may consider: the interest, if any, which the witness may have in the result of the trial; the relation of the witness to the parties; the bias or prejudice, if any has been apparent; the candor, fairness, intelligence and demeanor of the witness; the ability of the witness to remember and relate past occurrences, means of observation, and opportunity of knowing the matters about which the witness has testified. From all the facts and circumstances appearing in evidence and coming to your observation during the trial, aided by the knowledge which you each possess in common with other persons, you will reach your conclusions. You should not let sympathy, sentiment, or prejudice enter into your deliberations, but should discharge your duties as jurors impartially, conscientiously and faithfully under your oaths and return such verdict as the evidence warrants when measured by these instructions.

When you have retired to your jury room, you will select one of your number as foreman and enter upon your deliberations, and when you have agreed on a verdict, which must be unanimous, you will cause the same to be signed by your foreman and return it into court.

APPENDIX B

PRIOR CRIMINAL RECORD
JUDGMENT CERTIFICATE

IN THE DISTRICT COURT OF PAYNE COUNTY, STATE OF OKLAHOMA
JUDICIAL DISTRICT NO. 9

THE STATE OF OKLAHOMA,

vs.

Neal Garnett

Plaintiff

Defendant

No. 73-10294

JUDGMENT AND SENTENCE

Now, on this 17th day of February, 1973, the same being a judicial day of said Court, and the time duly appointed for judgment in the above entitled cause, and said cause coming on for judgment, and the defendant, Neal Garnett being personally present in open Court with his court-appointed Attorney, Raymond L. Martin and having been legally charged with the offense of forgery

and having been duly informed of the nature of the charge and having been duly arraigned thereon, and having duly and properly entered

his plea of Not Guilty to the crime of forgery as charged in the Information herein after having been duly advised of his rights and the effect of such plea; and it appearing to the Court that the defendant is of the age of Eighteen Years; and the defendant having been asked by the Court whether he has any legal cause to show why judgment and sentence should not be pronounced against him, and he stating no sufficient cause why judgment and sentence should not be pronounced, and none appearing to the Court, it is the judgment of the Court that said defendant is guilty of the crime of Forgery

as charged in the Information.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that the Sheriff of Payne County, Oklahoma, transport said defendant to the said State Penitentiary at McAlester, Oklahoma, and that the Department of Corrections do detain the said defendant according to this judgment, sentence and order, and that the Clerk of this Court do immediately certify under the Seal of the Court and deliver to the Sheriff of Payne County, Oklahoma, two copies of this judgment, sentence and order, one of the copies to accompany the body of the said defendant to said penitentiary at McAlester, Oklahoma, and to be left therewith at the said penitentiary, said copy to be warrant and authority for the imprisonment of the said defendant and the other copy to be warrant and authority of said Sheriff of Payne County, Oklahoma, for the transportation and imprisonment of the said defendant, as hereinbefore provided; said last named copy to be returned to the Clerk of said Court with the proceedings thereunder endorsed thereon.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT THAT at such time as the defendant herein is released from confinement by the Department of Corrections of the State of Oklahoma, he shall be released to the Sheriff of Payne County to be returned to this Court to either pay or otherwise liquidate the costs of this action, all without prejudice to trusty or other prison rewards.


DISTRICT JUDGE

APPENDIX C

VERDICT AND SENTENCING FORMS

IN THE _____ DISTRICT _____ COURT OF PAYNE COUNTY, STATE OF OKLAHOMA

STATE OF OKLAHOMA	} Case No. <u>75-41207</u>
vs. Plaintiff	
NEAL GARNETT	
Defendant	

VERDICT

WE, THE JURY, Empaneled and sworn to try the issues in the above entitled cause, do upon our oaths, find that the defendant, Neal Garnett, is _____ of Robbery by Force as set forth in the Information.

_____ Foreman

IN THE _____ DISTRICT _____ COURT OF PAYNE COUNTY, STATE OF OKLAHOMA

STATE OF OKLAHOMA	} Case No. <u>75-41207</u>
vs. Plaintiff	
NEAL GARNETT	
Defendant	

VERDICT

WE, THE JURY, Empaneled and sworn to try the issues in the above entitled cause, do upon our oaths, find that the defendant, Neal Garnett, is Guilty of Robbery by Force as set forth in the Information, and we further fix and assess his punishment at imprisonment in the State Penetentiary for a period of _____.

_____ Foreman

APPENDIX D

SEMANTIC DIFFERENTIAL

This page of instructions is included in your booklet in order to demonstrate to you the proper way to complete the rating scales which follow.

If, for example, you were asked to rate "John Doe's" personality, using the following scale, you would mark the blank which best fits your opinion.

Warm Cold

_____ _____

Thus, if you felt that John was an extremely warm person, you would mark the blank directly under the word "Warm." If you felt that he was a very cold, unfeeling person, you might mark the blank directly under the word "Cold." If you felt that he was between the two extremes, you would mark one of the blanks between the extremes--the blank which best reflects your opinion. The check mark in the third blank above, for instance, would indicate that John is a warm person, but he is not extremely warm.

How would you rate the defendant on the following dimensions?
Please check the blank which best fits your opinion.

Strong

Weak

Inactive

Active

Good

Bad

APPENDIX E

EVIDENCE RECALL QUESTIONNAIRE

Please indicate the correct answer to each item by placing the corresponding letter in the space to the left of the question.

- _____ 1. The name of the victim in this case was:
a) Steve Mandell.
b) Fred Burroughs.
c) James Lawrence.
d) Matthew Logan.
- _____ 2. The crime for which the defendant was being tried was:
a) robbery by force.
b) mail fraud.
c) attempted murder.
d) arson.
- _____ 3. How many rounds of beer did the defendant and the victim have while they were together?
a) 6-7
b) more than 7
c) 1
d) 4-5
- _____ 4. Where did the crime take place?
a) in an alley
b) in the victim's home
c) outside a bar
d) just up the street from the police station
- _____ 5. How much money was taken from the victim?
a) \$250
b) no money was taken
c) about \$30
d) \$80 - \$85

- _____ 6. What was the defendant wearing when he was arrested?
- a) light blue pajamas
 - b) the same clothes he had been wearing the night before
 - c) bathing suit and scuba gear
 - d) there was no mention of what he was wearing
- _____ 7. How was the victim injured?
- a) beaten
 - b) shot
 - c) stabbed
 - d) strangled
- _____ 8. According to the defendant, what did he do after the victim left him on the night of the crime?
- a) went to the restroom
 - b) left with the victim
 - c) stayed where he was for the rest of the night
 - d) none of these
- _____ 9. Who was at home with the defendant when he was arrested?
- a) his wife
 - b) his parents
 - c) no one
 - d) his girlfriend
- _____ 10. How was the victim able to identify Neal Garnett as his assailant?
- a) he assumed that he had been attacked by Neal Garnett
 - b) he said he saw Neal Garnett's face just before being kicked in the head
 - c) it was Neal Garnett who took him to the hospital
 - d) all of the above

APPENDIX F

EVIDENCE IMPORTANCE QUESTIONNAIRE

Below is a random listing of eight pieces of evidence presented in the trial you have been considering. Please indicate which of the items you feel is most important by placing a "1" in the space beside it. Then select the second most important item of evidence and place a "2" in the space next to it, and so on through all eight. You will, then, number these items from "1" (most important) to "8" (least important).

- _____ Amount of alcohol consumed by the victim and defendant
- _____ Physician's description of victim's injuries
- _____ Amount of money found on defendant when he was arrested
- _____ Testimony of the bartender from the B. & L. Club
- _____ Claim by victim that he saw defendant's face just before being kicked in the head
- _____ Defendant's lack of corroboration from the female bartender in the second bar he went to that night
- _____ Absence of stains on defendant's clothes when arrested
- _____ Defendant's account of his activities after the victim had left the bar

APPENDIX G

EVIDENCE IMPORTANCE ITEMS

Item of Evidence	Character of Evidence	Changed Across Tapes?	Source of Change
Amount of Alcohol Consumed by Victim and Defendant	Varies	Yes	Amount ranges from low in high guilt to high in low guilt condition
Physician's Testimony	Ambiguous	No	--
Amount of Money Found on Defendant When Arrested	Varies	Yes	Amount ranges from \$70 in high guilt to \$7 in low guilt condition
Bartender's Testimony	Varies	Yes	Certainty of testimony varies from high in high guilt to low in ambiguous; in low guilt condition, bartender testified for defense
Victim's Claim of Seeing Defendant During Attack	Varies	Yes	Certainty varies from high in high guilt to low in low guilt condition
Defendant's Lack of Corroboration	Damaging	No	--
Absence of Stains on Defendant's Clothes	Non-Damaging	No	--
Defendant's Account of Own Activities	Non-Damaging	No	--

APPENDIX H

ORIENTATION INFORMATION

As a duly designated officer of this, the 9th Judicial District, which includes both Logan and Payne Counties, I wish to thank you for fulfilling the summons which notified you to appear as a prospective juror.

Jury service is both a privilege and a responsibility. Exceptions to jury duty are infrequent. They are given for the infirm, care of minor children, or other hardship cases. Do any of you wish at this time to petition this court for relief of duty as a juror?

Since this criminal case does not involve the death penalty, juries of six members will be used. Three juries have been randomly formed, and alternates, who will serve in case of illness of a juror, are present. If no juror becomes ill, the alternates will remain in this room for further instructions after the juries have retired to deliberate.

Shortly, both the Prosecutor for the State of Oklahoma, Mr./Ms. _____ and the Defense counsel, Mr./Ms. _____ will examine you to determine your fitness to serve as a fair and impartial juror in this criminal case. They will each ask you questions in turn during the voir dire. Voir dire is a Latin term which means "to speak the truth."

Before they begin the voir dire, I must ask you to rise and swear to this oath.

(Administer Jurors' Oath)

Now, before the attorneys begin their voir dire, I will ask each of you to state your name, residence, age, and occupation.

(Allow Jurors to Give This Information)

We have in the legal philosophy upon which our justice system is based, the presumption of innocence. This presumption stays with the defendant throughout the trial until that point at which you are convinced, beyond a reasonable doubt, that he is guilty. Do you have any quarrel with this philosophy?

Do you believe that the burden of proof should be on the State to convince you, beyond reasonable doubt, that the defendant is guilty as charged in the indictment?

If you had to vote right now, how would you vote?

Do you promise not to make up your mind regarding guilt or innocence until you have heard all the evidence? Do you promise not to allow the personalities of either the Prosecutor or the Defense Attorney influence your decision? Do you have any fixed opinion at this time regarding the guilt or innocence of the defendant, Mr. Neal Garnett?

All right, now the Attorney for the State, Mr./Ms. _____ will proceed with the voir dire.

APPENDIX I

QUESTIONS FOR VOIR DIRE

To Be Asked by Prosecutor:

1. Have you ever served on a jury before? (How long ago?)
2. Do you know the defendant in this case, Neal Garnett?
3. Do you know the victim, James Lawrence?
4. Do you have any relatives or close friends who are law enforcement officers? (What is the relationship, etc.?)
5. Have you ever been the victim of a robbery? (How long ago?)

To Be Asked by Defense Attorney:

1. Do you know anyone who is an officer or employee of the court? (How well do you know them, etc.?)
2. Do you know anyone who has been tried or convicted of a felony? (How long ago?)
3. Have you ever been a witness in a criminal action? (When?)
4. Is there any reason why you cannot give the evidence in this case a fair hearing?
5. Is there any reason why you cannot give the State of Oklahoma and the Defendant a fair trial?

APPENDIX J

FURTHER INFORMATION FOR JURORS

For Jurors in One-Stage Proceeding:

Now that you have heard the evidence and the judge's instructions in this case, please go into the room we have designated for your deliberations. In the deliberation room, you will find individual ballot pads and pencils. Please use these forms for your individual voting. When you have reached a unanimous verdict, please record it on the verdict form provided.

If you find the defendant not guilty, you will open the door to the deliberation room so that we will know you are finished. If you find the defendant guilty, you will then decide on his punishment. Please record this decision on the form provided for recommendation of punishment, which is the second sheet attached to the verdict form. Once this is done, you may open the door so that we will know that you are finished. Please do not throw away any materials you use during your deliberation. Are there any questions?

For Jurors in Bifurcated Proceeding:

Now that you have heard the evidence and the judge's instructions in this case, please go into the room we have

designated for your deliberations. You will decide whether you believe the defendant to be guilty or innocent.

In the deliberation room, you will find individual ballot pads and pencils. Please use these forms for your individual voting. When you have reached a unanimous verdict, please record it on the verdict form provided and open the door so that we will know that you are finished. Please do not throw away any materials you use during your deliberations. Are there any questions?

(The following information is to be given to jurors in the bifurcated condition, if their verdict is "guilty.")

Since your verdict in this case is guilty, please return to the courtroom; we have some additional information for you before you recommend punishment.

(In the courtroom, play the segment of the videotape which concerns the prior record of the defendant, plus the additional judge's instructions.)

Now that you have the additional information in this case, please go back into deliberation and decide on punishment. When you have made your decision, please record it on the form provided for recommendation of punishment and then open the door so we will know that your deliberations have ended.

APPENDIX K

GROUP RESULTS

Group	Number of Males/Fem. in Groups	Initial Split G-NG	Level of Evid.	Type of Trial	Verdict (G/NG)	Sentence	Delib. Time Verdict	Delib. Time Sentence
1	3/3	5-1	High	One-Stage	G	40 years	13.4 min.	4.2 min.
2	3/3	3-3	High	One-Stage	NG	--	14.4 min.	--
3	2/4	1-5	High	One-Stage	NG	--	29.0 min.	--
4	2/4	4-2	High	One-Stage	G	5 years	32.0 min.	2.0 min.
5	2/4	3-3	High	One-Stage	NG	--	60.0 min.	--
6	6/0	4-2	High	One-Stage	G	10 years	15.0 min.	2.3 min.
7	2/4	2-4	High	Bifurcated	NG	--	8.3 min.	--
8	3/3	5-1	High	Bifurcated	G	15 years	4.1 min.	7.2 min.
9	4/2	4-2	High	Bifurcated	G	10 years	57.2 min.	5.5 min.
10	1/5	3-3	High	Bifurcated	NG	--	28.4 min.	--
11	5/1	2-4	High	Bifurcated	NG	--	14.5 min.	--
12	0/6	1-5	High	Bifurcated	NG	--	8.4 min.	--
13	4/2	1-5	Ambig.	One-Stage	NG	--	10.1 min.	--
14	4/2	0-6	Ambig.	One-Stage	NG	--	15.1 min.	--
15	2/4	2-4	Ambig.	One-Stage	G	5 years	43.3 min.	1.2 min.
16	1/5	4-2	Ambig.	One-Stage	G	5 years	52.4 min.	1.1 min.
17	4/2	1-5	Ambig.	One-Stage	NG	--	7.2 min.	--
18	5/1	2-4	Ambig.	One-Stage	NG	--	36.2 min.	--
19	4/2	1-5	Ambig.	Bifurcated	NG	--	7.1 min.	--
20	3/3	1-5	Ambig.	Bifurcated	NG	--	2.5 min.	--
21	2/4	2-4	Ambig.	Bifurcated	NG	--	9.5 min.	--
22	1/5	0-6	Ambig.	Bifurcated	NG	--	4.0 min.	--
23	4/2	3-3	Ambig.	Bifurcated	NG	--	10.0 min.	--
24	2/4	4-2	Ambig.	Bifurcated	NG	--	17.3 min.	--
25	3/3	0-6	Low	One-Stage	NG	--	17.0 min.	--
26	1/5	2-4	Low	One-Stage	NG	--	14.1 min.	--
27	2/4	2-4	Low	One-Stage	NG	--	4.3 min.	--
28	5/1	1-5	Low	One-Stage	NG	--	25.2 min.	--
29	3/3	0-6	Low	One-Stage	NG	--	2.1 min.	--
30	3/3	1-5	Low	One-Stage	NG	--	21.2 min.	--

Group	Number of Males/Fem. in Groups	Initial Split G-NG	Level of Evid.	Type of Trial	Verdict (G/NG)	Sentence	Delib. Time Verdict	Delib. Time Sentence
31	2/4	1-5	Low	Bifurcated	NG	--	5.0 min.	--
32	2/4	0-6	Low	Bifurcated	NG	--	2.3 min.	--
33	4/2	0-6	Low	Bifurcated	NG	--	12.1 min.	--
34	3/3	0-6	Low	Bifurcated	NG	--	2.4 min.	--
35	1/5	0-6	Low	Bifurcated	NG	--	4.0 min.	--
36	4/2	0-6	Low	Bifurcated	NG	--	3.1 min.	--

Total Males 102

Total Females 114

Grand Total N = 216

APPENDIX L

DATA FOR ALTERNATES

Dependent Variable: VERDICT

Source	D.F.	Sum of Squares	F-Value	PR > F
Model:				
Level of Evidence	2	1.92	6.29	*
Type of Trial	1	.12	.80	NS
Evidence X Type Trial	2	.79	2.59	NS
Error	33	5.05		

* $p < .004$

($M_s = .3, .7, \text{ and } .9$ for high to low guilt, respectively)

Dependent Variable: POTENCY

Source	D.F.	Sum of Squares	F-Value	PR > F
Model:				
Level of Evidence	2	4.35	.56	NS
Type of Trial	1	13.23	3.40	*
Evidence X Type Trial	2	.00	.00	NS
Error	33	128.61		

* $p < .07$

($M_s = 4.7 \text{ and } 6.0$ for one-stage and bifur., respectively)

Dependent Variable: AMOUNT OF MONEY ON DEFENDANT

Source	D.F.	Sum of Squares	F-Value	PR > F
Model:				
Level of Evidence	2	8.74	1.25	NS
Type of Trial	1	2.29	.66	NS
Evidence X Type Trial	2	21.44	3.07	*
Error	33	115.21		

* $p < .06$

(\bar{M}_s for one-stage = 2.7, 7.0, and 3.4 in high to low guilt, respectively; \bar{M}_s for bifurcated = 4.2, 4.9, and 1.6 in high to low guilt, respectively)

Dependent Variable: BARTENDER'S TESTIMONY

Source	D.F.	Sum of Squares	F-Value	PR > F
Model:				
Level of Evidence	2	54.77	6.15	*
Type of Trial	1	1.33	.30	NS
Evidence X Type Trial	2	26.57	2.98	**
Error	33	147.01		

* $p < .005$

($\bar{M}_s = 3.7, 5.3, \text{ and } 2.5$ for high to low guilt, respectively)

** $p < .06$

(\bar{M}_s for one-stage = 2.7, 7.0, and 3.4 for high to low guilt, respectively; \bar{M}_s for bifurcated = 4.2, 4.9, and 1.6 for high to low guilt, respectively)

Dependent Variable: CLAIM BY VICTIM

Source	D.F.	Sum of Squares	F-Value	PR > F
Model:				
Level of Evidence	2	21.69	3.08	*
Type of Trial	1	1.71	.49	NS
Evidence X Type Trial	2	9.03	1.28	NS
Error	33	116.32		

* $p < .06$

($\bar{M}_s = 2.3, 2.4,$ and 3.8 for high to low guilt, respectively)

Dependent Variable: DEFENDANT'S LACK OF CORROBORATION

Source	D.F.	Sum of Squares	F-Value	PR > F
Model:				
Level of Evidence	2	12.14	2.24	NS
Type of Trial	1	1.07	.39	NS
Evidence X Type Trial	2	20.75	3.82	*
Error	33	89.61		

* $p < .03$

(\bar{M}_s for one-stage = $5.0, 4.0,$ and 7.1 for high to low guilt, respectively; \bar{M}_s for bifurcated = $7.7, 5.9,$ and 6.5 for high to low guilt, respectively)

Dependent Variable: DEFENDANT'S ACCOUNT OF OWN ACTIVITIES

Source	D.F.	Sum of Squares	F-Value	PR > F
Model:				
Level of Evidence	2	3.51	.41	NS
Type of Trial	1	7.26	1.68	NS
Evidence X Type Trial	2	27.58	3.20	*
Error	33	142.40		

* $p < .05$

(\bar{M}_s for one-stage = 5.3, 1.0, and 5.0 for high to low guilt, respectively; \bar{M}_s for bifurcated = 3.3, 4.0, and 3.4 for high to low guilt, respectively)

VITA²

Dianna Marie Bedrick

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Master of Science

Thesis: JURY VERDICT AS A FUNCTION OF THE DEFENDANT'S PRIOR
RECORD AND APPARENT GUILT

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