

JURORS' EVALUATION AND UTILIZATION  
OF EXPERT PSYCHIATRIC TESTIMONY

By

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By

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This study empirically and statistically analyzed jurors' evaluation and utilization of expert psychiatric testimony in trials involving an insanity defense. The subjects were thirty-four jurors who served in live jury trials in three counties in northern California. Jurors' evaluation and utilization of psychiatric testimony was assessed by a three-part questionnaire: (1) an open-ended questionnaire procedure conducted with each juror in an interview with the researcher; (2) a self-administered form for each juror to rank order components of the trial with the set to indicate the degree of importance they attached to each in reaching their verdicts; and (3) a seventy-two item self-administered questionnaire to evoke jurors' ratings of expert witnesses' characteristics and courtroom behavior. Nonparametric statistical procedures were utilized throughout the study. Although no definitive conclusions can be drawn concerning the role psychiatric testimony plays in jurors' reaching their verdicts, certain trends emerge which warrant and stimulate future investigation.

  
Chairman

## CHAPTER 1

### INTRODUCTION

The legal structure of American society is founded on the premise that an individual is responsible for his actions---free to obey the law or not---with one exception. "Insanity," a legal term, relieves a human being of legal responsibility for his behavior. An individual is not legally responsible for his actions if he was "insane" at the time of the illegal act. In criminal cases involving a plea of not guilty by reason of insanity or diminished responsibility, the mental health professional often serves as an expert witness whose function is to offer technical testimony about the defendant's mental condition at the time of the alleged crime. In theory, the expert psychiatric witness is not expected to render a decision on the issue of responsibility, because that is a legal matter to be determined by the jury in accordance with rules of law. The law distinguishes between individuals who are mentally ill and those individuals who are both mentally ill and not responsible for their actions. It does this by instructing jurors that it is their duty to determine whether the defendant was of sound or unsound mind at the time of the crime, and if the unsoundness was of a nature to cause lack of responsibility in the eyes of the law. The sanity question thus represents an intimate interaction between psychology, psychiatry and law.

The practice of expert psychiatric witnesses testifying in court has given rise to two widely recognized problems: (1) How much

authority should be delegated to the experts? and (2) How much should the trial procedures be changed in order to render more professionally responsible the courts' utilization of expert psychiatric testimony? (James, 1960). Much has been written concerning the insanity defense and the role of the expert psychiatric witness in the present legal system. In fact, Allen (1973) pointedly describes the current state of the literature with this appraisal:

The defense of insanity is perhaps the most overwritten area in the law. It is really difficult to say anything new about it. As has been indicated, the proposal for abolition---novel as it may sould---has been around for a hundred years, and the arguments for and against have been so often stated that one has a feeling of déjà vu in discussing contemporary writings on the subject. (p. 82)

Despite a plethora of literature involving convincing arguments, criticisms and suggestions about the present system, the problems continue to exist, and attempts at modification remain at the level of academic debate. What is needed to break this impasse is empirical analysis of the role of psychiatric testimony in the courtroom before any realistic consideration and implementation of modifications will occur. It is the aim of this study to empirically analyze jurors' reactions to expert psychiatric testimony. Specifically, how does the jury perceive, evaluate and utilize expert psychiatric testimony in ultimately rendering a verdict?

This paper will systematically proceed as follows: Chapter 2 relates historical and background information to facilitate understanding of the nature of this study; Chapter 3 reviews the recent empirical and theoretical investigations of jurors' reactions to expert psychiatric testimony; Chapter 4 presents a description of the problem to be studied and hypotheses; Chapter 5 consists of the methods section; Chapter 6 reports the data analysis and results; and the

concluding chapter, Chapter 7, discusses the findings and their implications.

## CHAPTER 2

### HISTORICAL AND BACKGROUND INFORMATION

#### 2.1 The Expert Psychiatric Witness

The practice of the courts of calling in experts to advise them on matters not generally known to the average layman has been followed in the English system for more than four centuries. Initially, the experts were used as technical assistants to the court, rather than as witnesses. The judge summoned experts to inform him about technical matters and then decided whether or not such information should be passed on to the jury. By the middle of the seventeenth century the practice of the court-appointed expert reporting to the judge was abandoned when the finding of the facts became the exclusive province of the jury. The expert then came to be called as a witness by the parties involved in the legal dispute, which evoked the precedent that is still the expert's fundamental role in our present legal system. In one of the more famous of the early cases, Sir Thomas Brown, generally reputed to be the most eminent physician of his time, testified before an English court in a witchcraft trial. He stated that there were such things as witches, and that in his opinion the three persons pointed out to him in court "were bewitched" (Simon, 1967).

A concise definition of an expert witness is offered by Liebenson and Wepman (1964):

An expert witness is one who possesses special knowledge and experience on matters in issue in a lawsuit. This would include all issues involving scientific or other

special knowledge. His function in court is to assist the jurors in arriving at a correct conclusion upon matters that are not familiar to their everyday experiences, so that they may arrive at an intelligent understanding of the issues that must be decided. (p. 113)

In essence, two requirements must be met before one can qualify as an expert witness: (1) the subject matter involved must be distinctively related to a profession beyond the ordinary knowledge of the average person; and (2) the witness must be shown to be qualified in that profession (Louisell, 1955).

The trial judge, whose role is to supervise the rules of evidence, procedure and law of each trial, determines whether or not expert testimony should be admitted to clarify an issue. He decides if the expert witness possesses the knowledge and experience to testify on the particular issues involved in the trial and whether or not the opinion is relevant and material to the issues in the case. To convince the court that the witness qualifies as an expert by reason of his specialized knowledge and experience in a particular field, a procedure of qualifying the expert on the witness stand is undertaken. During this time the witness furnishes testimony to the court and jury on his full educational and professional background.

According to Gaines (1973), the judiciary has indicated an increasing recognition of the importance of expert testimony in a variety of cases. He reports that the courts, however, have restricted the role of expert testimony solely to its original purpose, i.e., to inform the jury of facts which are not within the knowledge of the ordinary person. When the expert goes beyond this and tells the jury nothing that they could not deduce for themselves, most judges will reject the testimony. The question of whether certain testimony will be excluded or accepted is a matter of judicial discretion, and adds Gaines, appellate courts rarely disturb the rulings at the trial level.

It is also the judge's role to give instructions to the jury regarding expert testimony. Samples of approved jury instructions include:

A witness who has special knowledge, skill, experience, training or education in a particular science, profession, or occupation may give his opinion as an expert as to any matter in which he is skilled. In determining the weight to be given such opinion you should consider the qualifications and credibility of the expert and the reasons given for his opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled. California B.A.J.I. Number 33. (Supp. 1967).

In resolving any conflict that may exist in the testimony of expert witnesses, you should weigh the opinion of one expert against that of another. In doing this, you should consider the relative qualifications and credibility of the expert witnesses, as well as the reasons for each opinion and the facts and other matters upon which it was based. California B.A.J.I. Number 33A. (Supp. 1967)

With regard to the expert witness' role in the adversary system, the attorney, who is oriented to the advocacy process, views the expert psychiatric witness as either for or against him. To the psychologist or psychiatrist, the ideal expert witness' role is that of a detached, neutral individual who presents the information as he sees it. Conversely, the undesirable role of the expert is that of a partisan, actively involved in the advocacy process, seeking to undermine his opponent, and acting deceptively and unethically in order to present his case more favorably (Brodsky and Robey, 1972). These authors summarize the typical position of the mental health professional as follows:

The medical witness should never take sides in a case, but should endeavor to be fair, impartial, and free from prejudice. He should regard himself as an independent witness for the court and should not act as an auxiliary advocate for the prosecution or defense. (p. 173)

While, theoretically speaking, the role of the expert psychiatric witness as an impartial and neutral individual in the adversary process is desirable, the reality of testifying in an adversary proceeding

renders such a role implausible and unwise. Slovenko (1973) supports this position:

... partisan experts called by the contesting parties remain the familiar source of expert testimony. Under the adversary system, if one's expert takes an impartial or middle position, and the other side goes to its extreme, then where is one expert except up the proverbial creek? In a battle, it is necessary to take account of the adversary. An expert who takes a neutral role does his party a disservice, for the opposing party's expert will undoubtedly assume his role as advocate and his advocacy would go without challenge. Hence, when a witness chooses to testify as an expert for a party, he is expected to do so under the terms of the adversary system or he should not participate. It is only in recognizing his role as partisan advocate that an expert can testify responsibly in the courtroom. (p. 26)

Similarly, Diamond (1973) asserts that, although the law presumes that the expert witness is detached, impartial, objective and unconcerned with the outcome of the case, such detachment is more appropriate for the forensic pathologist than for the expert psychiatric witness. He adds that most psychiatrists conceive their primary role as therapist, and their loyalty is to their patients.

Although the term "expert psychiatric witness" is generally recognized today as indicating either a psychiatrist or psychologist, such has not always been the case. Objections to the qualifications of the psychologist to give expert opinion evidence concerning "mental disease or defect" have focused primarily on the psychologist's lack of medical training. As stated previously in this paper, two requirements must be met before one can qualify as an expert witness: (1) the subject matter in question must be distinctively related to a profession beyond the ordinary knowledge of the average layman; and (2) the witness must be shown to be qualified in that profession.

In the initial decisions, most courts held that the professional psychologist failed to meet one or the other of these requirements.

In some cases it was argued that psychology as a profession was not a subject matter beyond the knowledge of the average layman. In contrast, psychiatry was believed to possess a body of knowledge sufficiently unfamiliar to the layman, so therefore opinions and testimony by a psychiatrist would aid the jury. In other cases it was held that while psychology was a proper subject matter for expert testimony, only medical training could give one the requisite understanding and skill in the subject matter to insure that the opinions would have reasonable validity (Pacht et al., 1973).

The trend toward acceptance of testimony by psychologists began in 1940. In People v. Hawthorne (1940) the Michigan court rejected the argument that insanity is a medical matter to which only a licensed physician can testify as an expert. The leading criminal case involving the issue of the psychologist as an expert witness was Jenkins v. United States (1962), which has been cited repeatedly by other reviewing courts. In that case the defendant relied on an insanity defense in an unsuccessful attempt to avoid conviction on several counts including assault with intent to rape. One of the grounds for appeal was that the trial judge had instructed the jury to disregard the testimony of three psychologists concerning the defendant's mental disease on the ground that the psychologists were not "competent to give a medical opinion as to a mental disease or defect." The reviewing court reversed the conviction and ordered a new trial. In arriving at its ultimate conclusion that a properly trained clinical psychologist is competent to testify on the subject of a defendant's sanity, the appellate court pointed out other areas in which non-medical practitioners have been permitted to testify on medical matters. The court concluded that a psychologist's testimony will be received if his experience or training

is such as to permit him to form and express an opinion that would aid the jury, and that lack of the medical degree would not be an automatic disqualification (Gaines, 1973).

## 2.2 Rules of Criminal Responsibility

Historically, society has held the notion that fault is essential to criminal responsibility, and that a person who commits a crime under certain mental states is not responsible for his act. Implementation of this social concession has centered primarily on the selection of criteria for determining these particular mental states.

The first rule that became the prevailing test of legal insanity in this country, and which is still the test in most states today, was the M'Naghten Rule. It originated in England, when in 1843 a psychotic named Daniel M'Naghten attempted to assassinate the Prime Minister of England, Sir Robert Peel, but instead shot and killed his private secretary, whom he mistook for Peel. There had been a series of attempted assassinations of the Queen's ministers and members of the Royal Family, so when M'Naghten was found not guilty by reason of insanity, Queen Victoria ordered the judges of England to tighten up the insanity rules. Fourteen of the fifteen judges concurred in what has come to be known as the M'Naghten Rule. Essentially, it states that defendant is to be held criminally responsible for his acts, unless it is proved that by reason of mental disease or defect he did not know they were wrong.

The M'Naghten Rule has been criticized on a number of points:

- (1) it focuses only on the cognitive sphere and ignores the emotional and volitional impairments that frequently characterize mental illness;
- (2) it is preoccupied with moral blame (knowledge of "right" and "wrong") rather than with scientific diagnosis and prognosis;
- (3) it is phrased

in absolute terms--yes or no, black or white--without recognizing shades of gray; (4) it is too restrictive, requiring a degree of disorientation found in only a very small percentage of severely mentally ill persons; and (5) it unduly restricts the scope of psychiatric and psychological testimony (Allen, 1974).

As time went on, states began to supplement the M'Naghten language with the "irresistible impulse" test. This test includes the M'Naghten Rule plus instructions to the jury to acquit by reason of insanity if they find that the defendant had a mental disease which kept him from controlling his conduct. The jury is to acquit even if they conclude the defendant knew what he was doing and that it was wrong. For a time this test muted psychiatric criticism where it was adopted, but by the 1950s, psychiatric criticism of the impulse control test was as harsh as that of M'Naghten (Becker, 1973).

In 1954 Judge David Bazelon, Chief Judge of the U.S. Court of Appeals for the District of Columbia, announced in United States v. Monte Durham a new rule under which expert testimony would no longer be confined to the parameters of the M'Naghten Rule. Under the Durham rule the jury would be presented with a "simple" causation test: Was the defendant's unlawful act the product of mental disease or defect? Through the Durham decision Judge Bazelon was hopeful of revitalizing the cooperative, understanding and progressive relationship between psychiatry and the law. Instead of attempting to restrict psychiatric testimony before it was heard, it encouraged the fullest possible range of psychiatric testimony on the question of responsibility in criminal trials. It allowed the expert psychiatric witness to present the court and jury with all the information that he could provide that would illuminate the question of why the defendant acted as he did. For

bringing the law into accord with modern scientific concepts of the human personality, Judge Bazelon was hailed as a great reformer (Allen, 1974).

It was soon realized that the Durham decision created as many problems as it appeared to resolve. These problems centered around the definition and interpretation of the language in Durham: (1) What is meant by "mental disease or defect?" Does it include only psychoses? Does it include only what is defined as a "mental disorder" in the Diagnostic and Statistical Manual of the American Psychiatric Association? If so, has the legal system abdicated its authority and decision-making role in the determination of criminal responsibility to the mental health professions? Are sociopaths included in the definition of "mental disease or defect", and if so, is repeated criminality an automatic defense? (2) What does "product of" mean? How can any act committed by one suffering from a diagnosable disorder be anything other than causally related to his mental illness? (Allen, 1974).

The Durham decision was also criticized for opening the door to evasion of criminal penalties by malingering defendants. As a result, pressures mounted to tighten up the Durham rule and for the law to provide a legal definition of "mental disease or defect" independent of the vagaries of the individual expert witness or the classification systems. In McDonald v. United States (1962) the court attempted a legal definition of "mental disease or defect":

A mental disease or defect includes any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls. 312 F.2d 851 (D.C. Cir. 1962).

However, the McDonald decision not only failed to alleviate the problem but apparently made it worse by creating a "screen" that further obscured the issue. Although it did define "mental disease or defect",

the definition was an addition, not a substitution, in the instructions given to the jury (Becker, 1973).

Similarly, the concept of "productivity" in the Durham decision, i.e., whether the alleged crime was a "product of" his mental disease or defect, has no conceptual analogue in psychiatry. According to Becker (1973) it was often used in testimony as the witness' own moral judgment whether the defendant should be punished or blamed. Consequently, in Washington v. United States (1967), Judge Bazelon wrote:

The term 'product' has no clinical significance for psychiatrists. Thus there is no justification for permitting psychiatrists to testify on the ultimate issue. Psychiatrists should explain how [the] defendant's disease or defect relates to his alleged offense, that is, how the development, adaptation and functioning of [the] defendant's behavioral processes may have influenced his conduct. But psychiatrists should not speak directly in terms of 'product,' or even 'result' or 'cause.'  
129 U.S. App. D.C. 29, 390 F.2d 444 (1967).

Although the Washington decision failed in its objective to prohibit expert testimony in terms of "productivity", it forced fuller explanation of the reasons underlying an expert witness' conclusion on "productivity" and subsequently brought out a myriad of other problems.

In 1972 in United States v. Brawner, the United States Court of Appeals for the District of Columbia finally abandoned the Durham experiment and adopted the American Law Institute (ALI) insanity rule augmented by a rule of "partial responsibility". The ALI Rule essentially states that defendants should be exculpated only if "substantially deprived of capacity" to appreciate the criminality of their conduct or to conform their conduct to the requirements of the law. The Brawner decision included the second paragraph of the ALI rule, which held that the term "mental disease or defect" does not include an abnormality manifested solely by repeated criminal or antisocial behavior. The

doctrine of "partial or diminished responsibility" holds that the degree of a crime may be reduced (such as from first degree to second degree murder) if the defendant was suffering from a mental illness that impaired his ability to form the criminal intent required of the higher degree of the crime charged. Also in Brawner, the expert psychiatric witness is permitted to testify as to whether or not there is a causal relationship between the defendant's mental disease or defect and his capacity to "appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law" United States v. Brawner, 471 F2d 969 (D.C. Cir. 1972).

The Brawner decision, with the incorporation of the ALI rule, met one of the objections to M'Naghten--failure to recognize gradations of impairment--by its use of the phrase "substantially deprived of capacity". It met one of the criticisms in the administration of the Durham decision--the ambiguous "product of" term--by providing both a cognitive (appreciation of criminality) and a volitional (conform one's conduct) standard (Allen, 1974).

The Brawner decision has been widely criticized for producing merely indecisive and equivocal changes which will not have any practical consequences and will only add to the general confusion surrounding the insanity defense (Diamond, 1973). This appraisal is shared by the presiding judge in the Brawner decision, Chief Judge Bazelon, in his concurring opinion:

I fear that it can fairly be said of Brawner, just as it should be said of Durham, that while the generals are designing an inspiring new insignia for the standard, the battle is being lost in the trenches. United States v. Brawner, 471 F.2d 1012 n.79 (D.C. Cir. 1972).

In his article, "From Durham to Brawner, A Futile Journey", Diamond (1973) concludes that the real problems of the criminal law

are not solvable by reformulations of the rules of criminal responsibility. They fail to address the ultimate issues: how to combine compassionate attitudes towards the mentally ill with the necessity and urgency of societal protection; how to respect and enhance the rights of the individual, protect him from the unrestricted authority of the state and the desire for vengeance by the public, yet still maintain a system of fairness and justice.

Diamond's assessment and criticism of the state of affairs regarding the insanity defense and the rules of criminal responsibility were ostensibly expressed by Chief Judge Bazelon in his concurring opinion in United States v. Brawner (1972):

On the whole I fear that the change made by the Court today is primarily one of form rather than of substance.... What should by now be clear is that the problem of the responsibility defense cannot be resolved by adopting for the standard or for the jury instruction any new formulation of words. 471 F.2d 1010, 1039 n.79 (D.C. Cir. 1972).

### 2.3 Role of the Expert Psychiatric Witness in Court: Problems

The present system of the expert psychiatric witness testifying in court on the issue of the defendant's criminal responsibility is perhaps criticized most severely by the experts themselves. Hence, it is not surprising that a major problem is the reluctance of the competent, well-trained psychiatrist or psychologist to involve himself in the legal system (Diamond, 1973). There are a number of reasons why the competent mental health professional often willingly leaves the legal arena to his more dubious colleagues. Slovenko (1973) feels that many psychiatrists wonder if their testimony makes any difference anyway in the legal process, or if they are simply being used as a ploy. They tend to see themselves as mere pawns in the complex "game", to be

manipulated by the use of arbitrary concepts and semantic nuances. Service as an expert witness is often damaging to one's self-esteem as a result of confrontation and humiliation at the hands of the lawyers during cross-examination. It is often poor public relations, as the expert psychiatric witness is many times identified in the mind of the public as someone hired to cheat justice by testifying that the defendant is not guilty by reason of insanity. To be minimally prepared in the courtroom, an expert witness' role entails learning a whole new set of concepts and values, for he is outside the hospital or other clinical setting to which he is accustomed. Many psychiatrists and psychologists are reluctant to openly oppose another colleague's testimony. The role of the psychiatric expert in court often harms the intimate therapist-patient relationship (Diamond, 1973).

In his article, "Psychiatric Testimony, Trial Gamesmanship and the Defense of Insanity", Willis (1968) stresses the limitations placed on the expert psychiatric witness in the legal arena. When the expert attempts to play the "game" according to the trial rules, he is forced to generalize and oversimplify. In addition, extrinsic factors often preclude his drawing reasonable inferences and predictions. Such barriers include the absence of available time in which to overcome the defendant's resistance to candid and uninhibited discussion and the partisan nature of those disclosures which do become available. These factors may tend to make the psychiatric testimony either a mere ritual to be performed for the sake of avoiding reversal by the appellate courts, or a part of the armament in the "gamesmanship" of the opposing advocates.

Suarez (1967) states that, theoretically, the expert psychiatric witness is expected to provide data and opinions in court which will help the trier-of-fact in reaching his decision. However, in practice, his

role has been expanded, and says Suarez, he has been forced or seduced to become involved with legal issues and occasionally even judicial ones.

Suarez (1967) cites the area of criminal responsibility as an example:

Psychiatrically speaking, an examination of the defendant can yield a picture of his current functioning as well as some comment about his previous adjustment in a general way. But the law, in trying to come to grips with the issue of responsibility, has been interested only minimally in either of these. Instead, the existing criteria focus is on the mental state of the offender at the time of the crime. It is not possible, nor is it likely in the near future, for a psychiatrist who first sees the patient some time, often months, after an offense, to give specific information about the mental state of the defendant at the time of the offense. Further, it is believed by some that aside from the time element, the psychiatrist is not particularly qualified to answer unequivocally questions about the knowledge of right from wrong, or questions about the capacity to control his behavior. (p. 174)

Suarez continues his criticism of the legal system's procedure with regard to its handing the legal issue of criminal responsibility over to the expert psychiatric witness:

The criteria used in determining responsibility are the sole business of the criminal law, but the psychiatrist should not be asked the ultimate question, i.e., responsibility, or the immediate antecedents: that is, "yes or no" questions to each of the criteria. The simple reason is because he cannot have scientific answers. Besides, involved in his determination are legal, philosophical and moral convictions clearly outside his scope. The ultimate question, as well as the existence or absence of specific criteria are matters of fact for the jury. However, the moment that the psychiatrist is pressed to give his opinion, which is no more than his personal guess or his moral conviction, there suddenly appears something interpreted as "tangible" and "scientific." Under the guise of science, part or all of the responsibility for the difficult issue of criminal responsibility is thus handed over to the psychiatrist. (p. 174)

Suarez insists that the issue is not simply the presentation of data and psychiatric opinion by the expert, but rather, the next step beyond, i.e., the juxtaposition of such testimony on the existing law.

James (1960) suggests that perhaps the chief complaint of the expert psychiatric witnesses lie in the adversary nature of the proceedings. In addition to being exposed to cross-examination, the expert witness may be asked to give categorical replies on matters he believes are heavily shaded by special circumstances or unique events. He may be asked to state his opinion on hypothetical questions which he believes have no bearing on the particular proceeding, or which in fact may illustrate a point that is contradictory to the case at hand. He may find that his attempts to present a full clinical account of the nature of the defendant's symptoms are objected to as irrelevant. Instead, he may be asked to state his views on matters he believes are not related both to his own area of expertise and to the nature of the case. As previously stated, questions concerning the defendant's sense of responsibility and his understanding of right from wrong are directed to the expert psychiatric witness.

Among others, Dr. Karl Menninger suggests that psychiatrists be excluded entirely from the courtroom. In The Crime of Punishment, Menninger (1968) wrote:

We psychiatrists don't belong in the courtroom. We cannot function effectively there. It is not our proper sphere of action. We do not understand the language addressed to us nor convey what we intend to and think we do, using the language we employ. Our performance in the courtroom ritual is a continuation of what is really a fraudulent, discriminatory, undemocratic procedure--that of trying to manipulate psychiatric categories and legal sanctions for the special benefits of selected individuals. (p. 138)

According to Dr. Lawrence Kolb, Director of the New York State Psychiatric Institute, psychiatrists contribute to the erosion of the law by the "unwitting continuance" of the practice of testifying in court on the defendant's mental state at the time he committed a criminal

act. He claims that criticism of psychiatry by judges and lawyers stems from psychiatrists accepting the role of expert witness thereby attempting to answer questions largely unanswerable by their special knowledge. He concludes that growing numbers of young psychiatrists do not wish to take part in a process which forces them into adversary positions or close to the point of professional perjury (Kolb, 1972).

Others have pointed out that the experts also must share in the responsibility for the problems plaguing the present system of determining criminal responsibility. Schulman (1973) feels that the expert is guilty of overselling his product. This overselling of skills, which are imperfect and geared to the clinical imperfection which is tolerable in a clinical setting, contributes to the court's unrealistic expectations of and disappointment in the expert's performance. In concurrence with this view, Woodruff (1971) asserts that it should be recognized that those psychiatrists who take part in the present adversary system are as much responsible for such state of affairs as is the legal system.

Diamond (1973) observes that while the psychiatry of the 1970s is well advanced over that of the 1950s, it nevertheless is less usable by the law. He predicts that the evidentiary value of expert psychiatric testimony will become less, rather than more, credible in the coming decades, as further gains in knowledge adds to the confusion.

Articulate statements in favor of retaining psychiatric testimony within the adversary system have been made by such renowned forensic psychiatrists as Henry Davidson, Bernard Diamond and Alan Stone. Their arguments contend that the psychiatrist or expert who shrinks from testifying may be failing an individual precisely at the moment he is most needed. The expert's testimony will be criticized, but no one expects his performance to be flawless. Moreover, avoiding the courtroom

is to close a very important door on the study of disturbed behavior and on the application of current knowledge to the legal and social institutions. Finally, the courtroom provides an arena to inform the public, to initiate legal reforms, and to influence public attitudes (Slovenko, 1973).

From the lawyers' perspective the role of the expert psychiatric witness in the courtroom provides a source of concern. Even before the expert takes the witness stand, the lawyer may be fearful that the expert's orientation, his view of human nature, and his knowledge of conforming behavior in contrast to criminal behavior, may be so far removed from the legal orientation that his opinion will have no relevance for the trial. The lawyer may be fearful of the potential influence and power of the expert witness, while simultaneously remaining skeptical of the "scientific" nature of the discipline he represents. A frequently cited concern for the lawyer is the belief that unless the function of the expert psychiatric witness is carefully delineated, he could, as a result of his prestige and knowledge, virtually dictate to the jury the outcome of the case. He may be dismayed by the open and sometimes bitter conflicts between expert witnesses of different schools of thought or orientation (Simon, 1967).

For the jury, it is always a complicated process when sanity questions are raised in a trial. The jurors are bombarded with complex instructions and detailed evidence which they are expected to understand logically rather than emotionally. They are exposed to conflicting expert psychiatric testimony from which they must determine the facts and apply the law. Willis (1968) contends that even if a medical or psychiatric "truth" is asserted, a jury may feel suspicious and fear that they are being manipulated with a trial tactic, or they may simply be

hostile to the expert who propounds the explanation and subsequently reject it.

Needless to say, several alternatives to the present system of using expert psychiatric testimony in the trial proceedings have been proposed. Several representatives from the psychiatric, psychological and legal professions believe that the insanity defense should be abolished, and that no distinction should be made between the mentally ill or defective and the normal individual with regard to responsibility. All individuals should be held to the same standard of responsibility. The effect of this would be to leave the question of determination of criminal responsibility completely to the jury and to totally remove the expert psychiatric witness from the litigation phase. The psychiatric expert could then enter the system at the sentencing or disposition phase. Willis (1968) elaborates on this alternative:

If the criminal defendant is unable to conform his behavior within the range of acceptable variation, i.e., if he is dangerous to the security of significant social institutions, to persons, or to the property of others, our next concern should be what course of action is best to deter him from future repetitions of the offense charged. It is at this point--only after careful and conscientious study--that psychiatry makes a useful and legitimate entry into criminal proceedings. The psychiatrist's fifteen minute "look-in" before trial is never sufficient to justify an answer to the following germane questions. Is there sufficient capacity for emotional growth, for relearning and reconditioning, as to make the person treatable? If treatable, in what setting is the treatment best effected? These are questions to be considered at sentencing, and are of such serious significance that they should not be entwined in the trial "game." They should be decided as dispassionately and carefully as possible with a view to the best ultimate result for the individual and society. (p. 55)

Because the jury is exposed to conflicting psychiatric testimony, there have been proposals to abolish jury trials in sanity cases. One suggestion as an alternative has been to leave the judicial determination

of insanity to a panel of experts appointed *amicus curiae*. This alternative has been criticized on the grounds that, since experts too are subject to error and power may corrupt, the jury may constitute a check and balance against an inappropriate concentration of power in the hands of court-appointed experts (Klein and Temerlin, 1969).

Diamond (1973) suggests that perhaps expert psychiatric testimony should be reserved exclusively for the defense in criminal trials. The prosecution would attempt to prove sanity by the use of non-expert witnesses or by the circumstances of the crime. Such a procedure would eliminate the troublesome battle of the experts in addition to being more compatible with the psychiatrist's role as therapist.

Other ideas include the expert witnesses examining the defendant outside the courtroom and submitting their report to the court. The court would then decide if the experts have been persuasive and order the most promising recommendations. A relatively novel possibility would be to broaden the use of the diminished responsibility defense, which would reduce the degree of the charge (i.e., such as from first to second degree murder). The defense would not just supplement the insanity defense, but rather, it would supercede it, since it appears to offer a more rational solution to the problem of criminal responsibility of the mentally ill offender (Diamond, 1973).

## CHAPTER 3

### RECENT EMPIRICAL AND THEORETICAL INVESTIGATIONS

In his review article on jury research during the last forty-five years, Erlanger (1970) found that two major themes were most often discussed in the empirical literature: competence and representation. Research efforts on the issue of the jury's competence have centered on: (1) the typical juror's ability to understand court testimony; (2) the psychological elements which influence a jury's decision; (3) whether juries understand the judge's instructions, and if they do, whether they follow them; and (4) jurors' understanding of the law.

Research in the area of representation has included: (1) status of jurors and its influence on the deliberation process; (2) social characteristics of jurors and their effects on the jury decision-making process; and (3) the relationship between the relevant universe defined by statute and the composition of the jury venire (Erlanger, 1970).

Research efforts involving the jury and its role in and reaction to insanity defense trials have been scarce. A review of the literature of jurors' reactions to and utilization of expert psychiatric testimony in insanity defense trials yields two sources of information: (1) articles written by experienced expert witnesses which recommend behavioral guidelines and courtroom etiquette in order to most effectively communicate testimony to the jury; (2) experimental studies based on the "mock trial" method originating in 1953 as part of the large scale

study of the American jury system undertaken at the University of Chicago Law School.

In their article, "On Becoming An Expert Witness: Issues of Orientation and Effectiveness", Brodsky and Robey (1972) present a schema for conceptualizing the attitudes, roles and behavior of the expert psychiatric witness in the pre-trial, witness stand and post-trial phases of his involvement in court. They illustrate these attitudes and behaviors in terms of the courtroom-oriented versus the courtroom-unfamiliar expert witness and relate the two orientations to likely impact and effectiveness on the jury. For example, on the witness stand the courtroom-oriented expert witness speaks in language that is free of psychological jargon; he instructs while explaining, speaking directly to the jury; he is composed, courteous and consistent during cross-examination; he readily admits areas of uncertainty and ignorance that exist for himself and his profession and is equivocal where necessary; and he reflects a mild advocacy of his findings. Conversely, the courtroom-unfamiliar witness uses technical terms and often stubbornly clings to small points or overstates findings when cross-examined; he often becomes resentful, confused or brusque during cross-examination and thus amenable to manipulations through semantic or hypothetical questions; and he yields an "objective" presentation of clinical information. The authors conclude that the results of the judicial process are greatly influenced by these contrasting modes of presentation. They claim that the courtroom-oriented witness is more likely to elicit decisions consonant with his opinion.

Other experts are more specific in their behavioral prescriptions, such as Beeman (1970) in his article entitled: "Nine Easy Ways to Look

Bad In Court". According to Beeman, some of the principal blunders on the witness stand include: quoting textbooks (they are often outdated); dressing as you please (suit and tie mandatory); addressing answers to the judge or questioning attorney (should address answers to jury); volunteering more information than is requested (opens the door for possibly disastrous cross-examination); trying to conceal the fact that a witness fee is being received (taints effectiveness of testimony by intimation that it was "bought"); and treating the opposing lawyer as an enemy (destroys witness' objectivity).

There are some articles that take a slightly different slant by informing the expert witness of the legal techniques and procedures he will encounter on the witness stand. These articles are written both by lawyers and experienced expert witnesses. For example, Horsley's article, "How To Prepare Yourself For Cross-Examination", emphasizes the fact that in the courtroom, the lawyer is in his element, and the expert witness is out of his. Unless the expert is aware of the pitfalls he may encounter when examined by an adroit trial lawyer, he may end up "humiliated, useless to the jury in evaluating the case, and perhaps under severe emotional distress and tension that will leave a permanent mark upon your self-confidence." (1974, p. 18). Other examples are Willis' (1968) "Psychiatric Testimony, Trial Gamesmanship and the Defense of Insanity", "Preparing To Testify" (Sellers, 1965), "What the Medical Expert Can Expect From the Trial Lawyer" (Wecht, 1974), "How To Witness Expertly" (Nopto, 1973), and The Psychologist As a Witness (Liebenson and Wepman, 1964).

In surveying the number of empirical studies in the area of jurors' evaluation and utilization of expert psychiatric testimony, only three

were found. The pioneer study by Simon in 1967 (initially reported in preliminary form under her maiden name, James in 1960) was part of a larger study of the American jury system begun in 1953 at the University of Chicago Law School. It was out of this Chicago Project that the "mock trial" experimental method was developed. Since then, studies by Klein and Temerlin (1969), and McMahon (1974) have utilized the Chicago mock trial technique or slight variations thereof. Before summarizing the findings of these studies, it will be useful to summarize the steps followed in the mock trial experimental procedure (Simon, 1967):

1. A transcript of an actual case that has been decided by the court is obtained. The transcript is edited and condensed from a trial that lasted, generally, two or three days to one that can be heard in about sixty to ninety minutes. The experimental transcript contains the lawyers' opening and closing statements and the judge's instructions to the jury, as well as the testimony of all witnesses.
2. The experimental trial is tape recorded, and the parts of the attorneys and the principals in the case are acted out by members of the law school staff, or in other studies, by professional actors. The recorded trial attempts to reflect the slowness and tedium of a day in court.
3. With the cooperation of the judges of the court and the local bar associations regular jurors are drawn from the jury pools. Jurors are assigned to the recorded trials by the court as part of their regular period of jury duty. A judge instructs them as to their duties by explaining the court's interest in the comprehensive study of the judicial process. He also tells them that while their verdicts in the case could have no immediate practical consequences, the judges of this court are very much interested in the results of the study.
4. Before listening to the trial, each juror fills out a questionnaire, which elicits much the same kind of information that the trial lawyer seeks during an extensive voir dire or pre-trial examination of prospective jurors. This is used to decide which jurors to challenge and which to accept on the jury.
5. The jurors then listen to a recorded trial, which is

interrupted once for lunch. Before leaving the courtroom, the jurors are instructed not to discuss the case among themselves.

6. After the trial, but before the deliberation, each juror is asked to fill out a brief questionnaire in which he is asked to state how he would decide the case at this time.
7. The jury begins its deliberation, which is tape recorded.
8. When the jury reaches a verdict, the foreman reports it to the experimenter. The jurors are given a final questionnaire in which they are asked about their reactions to the trial and to the deliberation. Each juror is also asked to state if his own verdict differs or agrees with that of the group. Thus, on three different occasions: before the deliberation, as part of the group verdict, and again after the deliberation, the individual verdicts are obtained.

Simon (1967) states that the basic idea underlying the use of experimental juries is that it permits exactly the same stimulus, i.e., a recorded trial, to be played over and over again before many different juries. Thus, it lends itself to a substantial amount of control over the phenomena under study. It also allows for changes in the trial and analysis of the effect of the changes on the jury's decision. The mock trial method legitimately opens the doors to the inner sanctum of the jury room for systematic observation and analysis of the jury's deliberations. Simon acknowledges certain weaknesses and difficulties in the mock trial procedure, such as, the jurors do not actually see a trial enacted before them, but concludes that the results are valid, because all of the conditions were real except for the trial itself.

In reviewing the results of Simon's (1967) study of jurors' reactions to and evaluation of expert psychiatric testimony, certain conclusions can be drawn. The jurors distinguished between the contributions made by the defense and government psychiatrists, i.e., they

acknowledge that an expert's testimony not based on first-hand information and knowledge of the defendant may not be worth as much as testimony derived from direct contact with the defendant. Most jurors generally granted to the experts the recognition appropriate to their credentials, training and superior knowledge in the field. Jurors did not indicate any differences in their evaluation of the "model" version of psychiatric testimony, in contrast to the "typical" version of psychiatric testimony. That is, the longer, more detailed, straightforward "model" account was not significantly more helpful or influential than the shorter and more technical "typical" version. Approximately seventy-five per cent of the jurors indicated that the psychiatric testimony was helpful, and sixty-six per cent did not believe the language employed by the experts was too technical or that more information was needed.

However, with regard to the expert psychiatric testimony influencing the jurors' verdicts of finding the defendant guilty or insane, the conclusion is that it did not, as evidenced by the finding that of the sixty-eight juries who heard and deliberated the case, only nine or thirteen per cent found the defendant not guilty by reason of insanity. Thus, seventy-one per cent of the juries in finding the defendant guilty voted against the experts, and sixteen per cent of the sixty-eight juries were unable to arrive at a unanimous verdict.

Simon also discovered something about how jurors perceive the division of labor between themselves and the expert witnesses in relation to who should make the final decision in insanity defense trials. She found that jurors are much more concerned about exercising their responsibility when a defendant has committed a heinous crime and is not patently insane, than they are when the defendant has committed a relatively mild offense and is patently insane. She concludes:

It is clear that the jury recognizes the importance of the information that the psychiatrists supply, but is equally clear that the jury is not willing to relinquish its responsibility for deciding the case to the psychiatrist. (1967, p. 89)

In their experimental study, using the mock trial method, of the effect of expert psychiatric testimony upon jurors' verdicts, Klein and Temerlin (1969) set up four conditions of expert psychiatric testimony for each defendant: the experts agreed that the defendant was sane; the experts agreed that the defendant was insane; the experts disagreed as to the defendant's sanity; and no expert testimony about the defendant. They found that the jurors' verdicts were profoundly influenced by expert psychiatric testimony when the experts agreed that the defendant was sane or insane. But when expert testimony was conflicting or absent, jurors exhibited an overwhelming tendency to vote sane, even though the defendant was clearly psychotic according to clinical criteria.

In her doctoral dissertation using the mock trial method, McMahon (1974) found that twenty-two per cent of her subjects changed their verdicts from guilty to not guilty by reason of insanity after hearing the psychiatric testimony. The psychiatric testimony in her study was associated with a shift in the guilty/not guilty ratio from four to three in favor of guilty to nine to five in favor of not guilty. She concluded that, contrary to the presumed importance of subject variables in her study, the psychiatric testimony had more of an influence on the decisions of the jurors than did the intrinsic subject variables which were assessed.

## CHAPTER 4

### PROBLEM DESCRIPTION AND HYPOTHESES

As presented in chapter three, a review of the literature on jurors' evaluation and utilization of expert psychiatric testimony yielded several articles and only three research studies to date. From this survey one conclusion is inescapable--there is a dearth of research in this area. This is especially significant in light of Slovenko's (1973) assessment of the interface of psychiatry, psychology and the law:

...the experts who are called upon to give opinions are dissatisfied with lawyers, the law, and the conditions under which they must assist in the administration of justice. The lawyers and the courts are equally dissatisfied with the experts.  
(p.xii)

Unfortunately, the problem is not only the lack of research in this area but the inadequacy of the research as well. The articles written by expert witnesses are their impressions of what jurors attend to when evaluating psychiatric testimony. At best, their guidelines to appropriate witness stand behavior and effective communication of testimony represent untested hypotheses and unverified conclusions. The logical question then arises: Why doesn't someone ask the jurors themselves for their reactions to expert psychiatric testimony? The mock trial experimental studies have attempted to do this and to assess the role that expert psychiatric testimony plays in a juror's reaching his verdict. However, the critical question must be raised as to whether the conclusions derived from mock jury trials are valid for live jury trials.

The researchers who have utilized the mock trial method have opted for experimental rigor at the expense of questionable validity of the results.

Simon (1967) and Klein and Temerlin (1969) defend the validity of their results on the grounds that all conditions in their studies were real except the trial itself. They cite as indirect evidence of their studies' realism certain aspects of the recorded jury deliberations, i.e., the relative length of the deliberations and statements from some of the jurors indicating they seemed to forget that their verdicts would have no practical significance.

Critical examination of the mock trial method used in the three studies (Simon, Klein and Temerlin, and McMahon) reveal enough major differences between mock trial conditions and real jury trials to warrant the conclusion that mock trial study results do not necessarily generalize and apply to live jury trials. Some of the basic differences between mock and real trial procedures include:

1. In all three mock jury trials the jurors did not go through the formal voir dire or pre-trial examination by both prosecuting attorney and defense attorney, as they would have in a real jury trial. Questionnaires designed to simulate the screening process of the voir dire lack the self-serving directedness and the give and take aspect of the voir dire itself. The voir dire is an important part of a lawyer's case preparation and cannot be realistically simulated by a questionnaire "asking much the same kind of information a trial lawyer seeks."
2. In the mock trial procedure the jurors do not actually see and experience a trial before them; they only listen to a recorded version. Certainly, there can be no valid comparison between a live trial and a tape-recorded one with regard to the nature and quality of the cognitive, emotional and perceptual experiences of the jurors and the differential impact on the jurors' decision-making processes. For example, recorded trials do not permit jurors the benefit of observing and reacting to the non-verbal behaviors of all participants involved in the trial. As stated by the researchers, the main reason for use of recorded trials in the mock trial procedure was for methodological and financial purposes and

not because of its close simulation to the experience of a live trial.

3. Similarly, jurors in the mock trial situation were exposed to a complete "trial" for sixty to ninety minutes. It is difficult to assess, and impractical to enumerate here, the many quantitative and qualitative variables that may be operating to influence a juror's decision-making process when he experiences a real jury trial for days and perhaps weeks on end, as opposed to just sixty or ninety minutes.
4. The fact that in the mock trials the jurors' verdicts will not affect the defendant's fate and have no real or practical implications is a striking discrepancy between the mock trial and the live jury trial. The mock trial jurors are freed from any responsibility for their verdicts and, unlike jurors in a real jury trial, they don't have to "live" with their decisions.
5. In Klein and Temerlin's (1969) study the jurors heard a tape recording of the actual psychiatric interviews with each "defendant" and then were asked to render an opinion as to the mental status of the defendant. In real trials, or even sanity hearings, jurors do not hear or have access to the expert's psychiatric interview with the defendant. In real cases jurors also hear the "facts" of the case, i.e., other witnesses' testimony with regard to a crime the defendant allegedly committed. In other words, jurors in live insanity trials are not exposed to only psychiatric testimony, but to other testimony as well. Similarly, in this study there were no adversary proceedings or cross-examinations of experts as there are in real jury trials or sanity hearings.
6. In Simon's (1967) study, there was no conflicting expert testimony in one of the two cases she used, because the prosecution did not present an expert psychiatric witness. In reality, insanity defense trials usually involve conflicting expert psychiatric testimony, or they do not come to trial.

To date, no one has yet conducted research on jurors' evaluation and utilization of expert psychiatric testimony using live trials and real jurors. The reasons for the absence of such research are varied. Some researchers prefer not to conduct research unless they can control and manipulate variables in the fashion of the traditional experimental method,

and legal restrictions prevent such research methodology in live jury trials. Perhaps others have encountered difficulties in eliciting the cooperation of skeptical judges and district attorneys, which is essential in carrying out research of this nature. Furthermore, there is no guarantee that, even if granted permission from the judge, the jurors will cooperate in the research, as they are under no legal or moral obligation to do so. To invest time and money in research projects in which the subjects may opt not to participate is a risky venture. There is also the problem of the frequency and availability of trials utilizing an insanity defense. For whatever the reason, live jury research has not been attempted in insanity trials, and it is urgently needed.

This study will evaluate jurors' reactions to expert psychiatric testimony using live trials and real jurors. It is, therefore, essentially a pilot study in this virgin area of research. Jurors' evaluation and utilization of expert psychiatric testimony will be analyzed to provide empirical data on the role of psychiatric testimony in the formulation of their verdicts.

This researcher hypothesizes that the role of psychiatric testimony in jurors' formulation of their verdicts is not a major one; it is not an important factor in influencing their verdicts. Rather, the primary role of expert psychiatric testimony is that of an accessory to the trial; the jurors find it interesting, educational, sometimes irrational, and helpful in understanding the dynamics of the defendant's behavior. Jurors will use psychiatric testimony retrospectively and selectively to substantiate their initial impressions, based on the "facts" of the case. When the main thrust of the psychiatric testimony conflicts greatly with

their initial conclusions, the jurors will either selectively attend to parts of the testimony out of context, while ignoring the gist of it, or dismiss it completely.

CHAPTER 5  
METHODS SECTION

5.1 Subjects

The subjects in this study were real jurors who served in live jury trials in San Francisco, San Mateo and Santa Clara counties in northern California. Three trials were used in the study, and out of a possible total of thirty-six subjects, thirty-four participated; only two jurors declined.

5.2 Trials

Three live jury trials were used in this study with one from each county. Each trial contained conflicting expert psychiatric testimony and involved the question of the defendant's sanity. In the three cases the sanity question was reflected in three different, yet related, pleas: not guilty by reason of insanity (NGI), diminished capacity or responsibility, and restoration of sanity. Each trial involved a specific alleged offense: assault with a deadly weapon and second degree murder for the other two cases. Table 1 summarizes these data.

In Trial One, the defendant was charged with assaulting a girl with a knife, and he pleaded not guilty by reason of insanity. The peculiar characteristics of the case were that the defendant identified with the habits of a werewolf and attacked the girl with

TABLE 1

## DESCRIPTION OF TRIALS SAMPLED

	LOCATION	OFFENSE	NO. OF EXPERTS	DEF'S PLEA	VERDICT
Trial 1	San Mateo	Assault	Four	NGI	Guilty
Trial 2	San Francisco	Murder	Seven	rest. of sanity	Insane
Trial 3	Santa Clara	Murder	Two	dim. capacity	Guilty

uncontrollable rage. In physical appearance the defendant strikingly resembled a werewolf, including two large protruding teeth and a fully bearded face. There were four expert psychiatric witnesses: two were court-appointed psychiatrists; one was a psychiatrist hired by the defense; and one was a clinical psychologist hired by the defense. The two court-appointed experts found the defendant legally sane at the time of his alleged crime; the two defense experts found the defendant legally insane at the time of his alleged act. The jury unanimously found the defendant sane, and consequently guilty of assault with a deadly weapon.

In Trial Two, the defendant had previously been found not guilty by reason of insanity one year ago by a judge in the shooting murder of his two children and his unsuccessful subsequent suicide attempt, which left him partially paralyzed in both legs with partial brain damage. He was sent to a state mental hospital, and in the trial sampled, he was asking that his sanity be legally restored. There were seven expert psychiatric witnesses: two psychiatrists from the state hospital; two psychiatrists from a city hospital, two psychiatrists in private practice; and a clinical psychologist from the state hospital. Three experts were called by the court, and four were called by the defense. Five of the six psychiatrists found the defendant presently sane with one psychiatrist finding the defendant still a danger to others. The clinical psychologist rendered no opinion as to the defendant's mental status at the time of the trial, since he had not regularly observed him for the

previous two months. There were no other witnesses called to the stand, except a brief appearance by the defendant. The jury denied the defendant's plea for restoration of sanity, and the defendant was returned to the state hospital. At the defense's request, each juror was polled for his "true verdict," i.e., how each one voted separately, as opposed to the agreed upon single verdict presented by the jury as a whole. Eight jurors voted "insane," and four jurors voted "sane."

In Trial Three, the defendant was charged with second degree murder in the fatal stabbing of his wife. The defendant claimed self-defense and entered a plea of diminished capacity, i.e., due to the effects of alcohol, his state of mind was such that his ability to form criminal intent or malice was impaired. Consequently, the defense was trying to get the charge reduced from second degree murder to manslaughter. There were two expert psychiatric witnesses: one was a court-appointed psychiatrist; and one was a psychiatrist hired by the defense. The court expert testified that the defendant was aware of his behavior at the time of the act, and that his capacity to adhere to alternative behaviors was not impaired. The defense expert stated that the defendant was sufficiently intoxicated so as to be unable to form the criminal intent necessary to be convicted of second degree murder. The jury unanimously found the defendant guilty of second degree murder.

### 5.3 Instruments

The instruments used to assess jurors' evaluation and utilization of expert psychiatric testimony consist of (1) an open-ended questionnaire procedure conducted with each juror in an interview with the researcher (see Appendix One); (2) a self-administered form for each juror to rank order six trial components in order of importance (see Appendix Two); and (3) a seventy-two item self-administered questionnaire (see Appendix Three). These instruments were designed by this researcher, and the subject matter was derived from anecdotal experience of expert witnesses in mock and real jury trials and a review of the literature.

The open-ended questionnaire elicits (a) the general role that psychiatric testimony played in jurors' verdicts; (b) the perceived aspects and elements of each trial that influenced the jurors to reach the decisions they did (such as other witnesses' testimony, the defendant's behavior and appearance, etc.); and (c) jurors' evaluations of each expert witness and his testimony.

The self-administered form is made up of six composite categories (or factors) that are seen to operate in the trial, excluding the jury deliberation. The jurors rank ordered these categories with the set to indicate the degree of importance they attached to each in reaching their verdicts.

The seventy-two item self-administered questionnaire evokes jurors' ratings of expert witnesses' characteristics and courtroom behavior for the trial in which they were involved.

CHAPTER 6  
DATA ANALYSIS AND RESULTS

Introduction

This chapter presents the data collected and the analyses performed. An overview of the chapter is presented first which shows in a step-wise fashion the type of data collated and the manner in which it is treated:

1. Descriptive statistics of the demographic characteristics of the jurors were collated.
2. Jurors' responses to the open-ended questionnaire were categorized and summed for each trial.
3. Jurors' responses to the first part of the open-ended questionnaire were quantified in yes-no form and total across all three trials.
4. Jurors' responses to the self-administered form for rank ordering of trial categories were summed for all three trials and a median value for each trial component was calculated.
5. Median tests were performed to determine if the differences among the median ranks of the trial categories were statistically significant.
6. Jurors were divided into those who ranked psychiatric testimony high in importance and those who ranked it low in importance, and their responses to the yes-no questions were compared across all three trials.
7. Jurors were then divided into those who rendered a guilty verdict and those who voted not guilty, and their responses to the yes-no questions were then compared for all three trials.
8. The six trial categories were used to group jurors' responses to open-ended question one. Comparisons for

inspection are shown between the jurors' rank orderings and the frequency of mention of each trial category.

9. Jurors were divided into those who ranked psychiatric testimony high and those who ranked it low in importance, and their rankings of the other trial categories were compared by median tests.
10. Jurors were then grouped into those who voted guilty and those who voted not guilty across all trials, and their rankings of the six trial components were compared by median tests.
11. Phi coefficients were calculated to determine the relationship between each juror's verdict and the trial components and demographic variables.
12. Jurors' responses to each item of the seventy-two item questionnaire were totaled across all three trials and tested for differences in frequency of agreement of the jurors. Jurors were also divided according to guilty and not guilty verdicts, and their responses to the seventy-two items were tested with the Fisher Exact Probability Test.

#### 6.1 Descriptive Statistics of Demographic Variables

Descriptive statistics were calculated for the demographic characteristics of the thirty-four jurors in this study.<sup>1</sup> The demographic variables in the sample studied were sex, race, age, religion, occupation, income, education and marital status (see Appendix Four). The results may be best summarized in the form of a juror demographic profile. A juror in this study is more likely to be male than female, white, in his middle forties and more

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1. See Nie et al., 1975, p. 194.

often is Protestant than any other religion. His education level approximates two years of college. He is apt to have a skilled blue collar job and to earn slightly less than fifteen thousand dollars a year. He is most probably married.

## 6.2 Jurors' Responses to the Open-ended Questionnaire

Jurors' responses to the open-ended questionnaire were categorized and summed for each trial. The frequency of jurors' responses for each category appears in parentheses (see Appendix One). This section presents some of the jurors' responses to the open-ended questions for each trial.

In Trial One the defendant's own testimony, i.e., his recollection of his behavior during the crime, was perceived most frequently by jurors (seven out of a possible eleven) as the factor that influenced them to reach the decisions they did. The second most frequently mentioned factor affecting jurors' decisions was the defendant's behavior in court, specifically, his alertness and outburst on the stand. The defendant's testimony and his behavior in court were followed by the prosecuting attorney's summation and testimony by other witnesses according to the jurors' responses. Psychiatric testimony was cited by two of the eleven jurors as influencing their decisions.

In response to how they resolved in their own minds the conflicting conclusions drawn by the psychiatric experts, three jurors in Trial One relied on the defendant's behavior during the

crime as reported by the defendant himself. Three more jurors found the court appointed experts' opinions consistent with their own perceptions of the trial proceedings. Two jurors adhered to the prosecuting attorney's interpretation of the case to resolve the conflicting psychiatric testimony, and no other factor was reported more than once by the jurors in Trial One.

The jurors in Trial One named the same court appointed expert most often as the expert witness they liked the best and whose testimony they found most helpful in reaching their decisions. From Appendix One the reasons the jurors presented for their favorable evaluations of this particular expert witness and the number of jurors expressing each response in parentheses are as follows:

defined, explained, simplified things consistent with facts (7); explained things clearly, logically; consistent and positive in his answers (5); answered all questions, didn't grope for words, skillfully handled questions of opposing attorney (5); gave testimony in his terms, then put into layman's terms (3); very sharp, smooth, honest, straightforward, agreed defendant was sick (3); defense attorney couldn't rattle him (2).

Similarly, in selecting the experts they liked the least and whose testimony they found the least helpful in reaching their verdicts, the jurors in Trial One offered these explanations:

too psychiatrically oriented, overly speculative and interpretative, illogical (4); snotty, arrogant didn't project warmth, not explicit when testifying (3); "typical psychiatrist," shaggy looking (3); attitude harsh and defensive, should have been leery of defendant and wasn't (3); wild speculations, i.e., "Defendant probably didn't do this," rather than looking at facts and seeing for sure if he did (4).

The jurors in Trial One were asked to describe the qualities and characteristics of a good expert psychiatric witness. From Appendix One the most prevalent responses included:

explain things in terms jury can understand, use examples but don't talk down to jurors (7); logical, consistent, common sense testimony (5); does not get personally involved, maintains some degree of detachment, but concerned (3); dynamic, interesting, good speaker (2); experienced, good credentials (2); can't be intimidated, comes right out with answers, control over what he's doing (2).

Conversely, when requested to enumerate the qualities and characteristics of a poor expert psychiatric witness, the jurors cited these liabilities:

lack of confidence, unsure of self, indecisive (6); speaking in flat tone, rambling, meandering (4); arrogant, superior air (3); overspeculative, overinterpreting facts of case (3); use of primarily psychiatric terms, explanations (2).

The name of each psychiatric witness was presented verbally to the jurors one at a time. Each juror was instructed to respond as quickly as possible with the impression of that expert that stood out most in his mind. The most popular responses included:

positive in opinions, knew what he was talking about, smart (6); old country type doctor (5); nervous, ill at ease, defensive, unsure of self (5); nondescript, quiet, not dynamic (5); presented examples in layman's terms to explain facts (4); very explicit in testimony (3); dynamic, forceful, good speaker, eloquent (3); experienced (3); practical approach, down to earth, straightforward (3); nasty, arrogant (3).

In Trial Two the psychiatric testimony was perceived most frequently by jurors (eight out of a possible eleven) as the element that influenced them to render the verdicts they did. The second most frequently mentioned factor (six of the eleven jurors) was the jurors' feeling that the defendant needed more psychiatric treatment and, subsequently, more time in the hospital to insure his

reception of this treatment. The defendant's own testimony was mentioned by three jurors as influencing their decisions. No other factor was reported more than once by the jurors in Trial Two.

In response to how they resolved in their own mind the conflicting conclusions drawn by the expert witnesses, eight jurors in Trial Two stated that they perceived the conflict as a moral one rather than a psychiatric or legal one, i.e., the need to protect society from the potentiality of the defendant's going out and harming someone. Similarly, six jurors felt that, irrespective of the psychiatric testimony, the defendant needed more supervised treatment and time in the hospital. Four of the jurors openly disregarded the psychiatric testimony, dismissing it as simply other opinions. Three of the jurors did not perceive the psychiatric testimony to be in conflict.

The jurors in Trial Two were divided in their rationale for their differential selections of the expert witnesses they liked the best and whose testimony they considered most helpful in reaching their decisions. From Appendix One the jurors' differential responses and the frequency of each response are summarized below:

most direct, objective, agreed defendant had problems, pointed out troublesome areas (4); objective, not defendant's advocate (3); expressed self well (2); made most sense, wasn't biased toward defendant (2); good credentials, impressive, no axe to grind one way or the other (2) clear, precise testimony, put it in understandable terms (2); all experts were about the same (4).

The jurors were also asked which expert witnesses they liked the least and whose testimony they found least helpful in reaching their verdicts. Reasons offered in support of their selections included:

nervous, couldn't express self on stand, seemed in a daze (5); testimony looked rehearsed, press agent for defendant (4); tried to persuade jury (3); too much of an advocate (2); didn't explain things (2); spent 30 hours with defendant so had to say defendant was sane, self-interest cancelled out his testimony (2); biased presentation for the defendant (2).

The jurors in Trial Two indicated the following qualities as characteristic of a good expert psychiatric witness:

explain and define things in clear, simple terms (3); can never present enough information to jury (3); nice appearance, well-groomed, relaxed (2); state opinion in positive, definite manner, avoid vagueness (2); don't preach to jury (2); no suggestions (3).

On the other hand, a poor expert psychiatric witness, according to some of the jurors, possessed these characteristics:

nervous on stand (2); too much of an advocate for defendant (2); does not explain testimony, vague testimony (2); can be too sure of himself, presents opinion as fact (1); no suggestions (6).

As in Trial One, the jurors in Trial Two gave their impressions of each psychiatric witness as rapidly as possible when presented verbally with the expert's name. The most frequent responses are presented below:

got flustered, confused, too nervous (7); painted too rosy a picture, unfair, one-sided (3); don't remember him (3); embarrassment to his profession (2); eloquent (2); quiet, effective (2); well qualified, intelligent (2); didn't like his mannerisms, constantly blinking eyes, funny facial expressions (1); very fair, honest, limited himself to what he could support, I liked this (2).

In Trial Three the actual physical evidence and facts of the case, such as bloody sheets, lack of blood on the defendant, etc., were mentioned most frequently by the jurors (ten out of a possible

twelve) as the factor that influenced them to reach the decision they did. Accordingly, the defendant's own testimony and the expert psychiatric testimony were each cited twice by jurors and placed a distant second in the frequency of jurors' responses. No other factors were reported more than once by the jurors in Trial Three.

In response to how they resolved in their own minds the conflicting conclusions presented by the expert psychiatric witnesses, eight of the twelve jurors in Trial Three stated they depended on the physical evidence and facts of the case (see Appendix One). Four jurors viewed both psychiatric experts as biased in their testimony and consequently the experts were perceived as cancelling each other out. Three jurors handled the conflict between the psychiatric experts by relying on the defendant's behavior directly before the crime, i.e., they felt he was too alert and aware of what he was doing to render a plea of diminished capacity.

The jurors in Trial Three presented the following characteristics as reasons supporting their selections of the expert witnesses they liked the best and whose testimony they found most helpful in reaching their decisions:

concrete testimony, impartial (5); straightforward, methodical, stuck to the point (5); integrated opinion with facts of case (4); smooth, articulate (4); clinical, left decision up to jury (4); shed light on defendant's mind during crime (2).

In responding to the questions of which expert witnesses they liked the least and which experts they found least helpful in reaching their verdicts, the jurors in Trial Three enumerated certain

negative behaviors and qualities exhibited by the expert witnesses which influenced their choices. The jurors' responses are presented below:

too much of an advocate for defendant which hurt credibility, biased (8); rambled on and on, over-interpreted things (5); hard to understand (2).

The jurors in Trial Three were requested to describe the qualities of a good expert psychiatric witness. From Appendix One the most frequent responses were:

objective, factual, unbiased testimony (6); make answers simple, to the point, don't equivocate (4); present as much data as possible, give alternative explanations (4); tell how arrived at opinion (3); use layman's language (3); should not argue case (2).

Jurors described a poor expert psychiatric witness as one who possesses the following characteristics:

evasive, wishy-washy, indirect in testimony (6); biased, advocate for defendant (6); try to sway or persuade jury, preaching (2); speak down to jury (2).

As in Trials One and Two, the name of each expert psychiatric witness was presented verbally to the jurors one at a time. Each juror was told to respond as quickly as possible with the image of that expert which stood out most in his mind. The most prevalent responses were:

advocate for defendant (6); factual, straightforward (6); impartial (4); articulate (3); smooth (2); young (1).

### 6.3 Quantification in Yes-No Form of Jurors' Responses to Open-ended Questionnaire

Jurors' responses to the first section of the open-ended questionnaire were quantified in yes-no form and totaled for all three

trials. This was done to facilitate presentation and explanation of how psychiatric testimony influenced the jurors' decisions. The open-ended questions from Appendix One were:

2. Did the psychiatric testimony play any part in reaching your verdict? If so, how? If not, why not?
3. Did the psychiatric testimony help contribute to your understanding of the case? If so, how? If not, why not?
4. Did the psychiatric testimony make it easier or more difficult for you in reaching your verdict? In what way?
5. Did the psychiatric testimony make you feel more certain about or comfortable with your final verdict? In what way? If not, why not?
6. Without the psychiatric testimony would your verdict have been the same as it was or different? Why?

The quantified results are indicated in Table 2.

The data in Table 2 show that the jurors responded that psychiatric testimony did play a role in formulating their individual verdicts, that it helped contribute to their understanding of the case, that it facilitated their reaching the verdicts they did, and that it made them feel more certain or comfortable with their individual verdicts. There was solid agreement that if there had been no psychiatric testimony presented in each trial, the jurors' individual verdicts would not have been different.

The chi square test for goodness-of-fit was used to determine whether the differences observed in jurors' yes-no responses were statistically significant or merely chance variations. Table 2 shows that the differences in jurors' responses to four of the five yes-no questions were statistically significantly at the .05 level or less. The differences in jurors' responses to question five, which

TABLE 2

SUMMARY TABLE OF QUANTIFIED JURORS' RESPONSES TO  
OPEN-ENDED QUESTIONS ASSESSING THE INFLUENCE OF  
PSYCHIATRIC TESTIMONY ON EACH JURORS' DECISION FOR ALL TRIALS

QUESTION	YES	NO	TABLE $\chi^2$	CALCULATED $\chi^2$
2 Helped Reach Verdict	26	7	6.64	10.94*
3 Helped Understand Case	27	6	6.64	13.36*
4 Verdict Easier	25	8	6.64	8.76*
5 Verdict More Certain	20	13	6.64	1.48
6 Different Verdict**	5	23	6.64	11.57*

\*significant at alpha = .05 or less

\*\*five jurors responded "undecided"

asks the jurors if the psychiatric testimony made them feel more certain or comfortable with their individual verdicts, were not statistically significant.

#### 6.4 Jurors' Rank Ordering of Principal Trial Components

Jurors' responses to the self-administered form for rank ordering of trial categories were summed for all three trials, and a median value for each trial component was calculated. The trial components (or elements) are judge's instructions on the legal definition of sanity/insanity, expert psychiatric testimony, lawyers' presentations, defendant's behavior and appearance in court, witnesses' testimony and defendant's testimony.

The median values were numerically ranked to determine how important to the jurors was psychiatric testimony in forming their verdicts compared to other elements of the trial. The median was selected as the measure of central tendency, because the data were ordinal in nature (Roscoe, 1969).

The results are presented in Table 3. The median values indicate that the judge's instructions on the legal definition of sanity/insanity and other witnesses' testimony were ranked respectively first and second in importance to jurors in reaching their decisions. Psychiatric testimony was ranked third in importance followed by the lawyers' presentations, the defendant's testimony and the defendant's behavior and appearance in court. Descriptive statistics for the principal trial components can be found in Appendix Five.

TABLE 3  
MEDIAN RANKING OF PRINCIPAL TRIAL COMPONENTS  
BY JURORS ACROSS ALL TRIALS

<u>COMPONENT</u>	<u>MEDIAN</u>	<u>RANK</u>
Legal Def of Insanity	2.083	1
Witnesses' Testimony	2.750	2
Psychiatric Testimony	3.063	3
Lawyers' Presentations	3.445	4
Defendant's Testimony	3.800	5
Defendant's Beh-Appr	5.154	6

6.5 Median Tests on Differences Among  
Median Ranks of Principal Trial  
Components Across all Trials

Median tests were performed to determine if the differences among the median ranks of the trial categories in Table 3 were statistically significant. The results of the median tests are indicated in Table 4. The findings show that the differences among the medians of the first five trial components in Table 3, i.e., the legal definition of sanity/insanity, witnesses' testimony, psychiatric testimony, lawyers' presentations and defendant's testimony were not statistically significant. However, the differences between the medians of each of the first five trial components and the sixth component, defendant's behavior and appearance, were statistically significant.

6.6 Comparison of Jurors' Responses to  
Yes-No Questions by Jurors Who  
Ranked Psychiatric Testimony High  
and Low in Importance

Jurors were divided into those who ranked psychiatric testimony high in importance and those who ranked it low in importance and their responses to the yes-no questions were compared across all three trials. Jurors were considered high rankers or low rankers of psychiatric testimony based on how they rank ordered the six principal trial components in Table 3. A high ranking of psychiatric testimony was arbitrarily considered to be a ranking of one or two; a low ranking consisted of three, four, five or six. A numerical ranking of three out of a possible six was considered low rather than high, because the concept of a high ranking to the researcher connotes a value greater than the upper one half of a sample.

TABLE 4

MEDIAN TESTS ON DIFFERENCES AMONG  
 MEDIAN RANKS OF PRINCIPAL TRIAL  
 COMPONENTS ACROSS ALL TRIALS

COMPONENTS	MEDIAN	COMPUTED $\chi^2$
Legal Def of Insanity Psychiatric Testimony	2.083 3.063	2.332
Legal Def of Insanity Lawyers' Presentations	2.083 3.445	0.262
Legal Def of Insanity Defendat's Beh-Appr	2.083 5.154	11.006*
Legal Def of Insanity Witnesses' Testimony	2.083 2.750	0.581
Legal Def of Insanity Defendant's Testimony	2.083 3.800	1.036
Psychiatric Testimony Lawyers' Presentations	3.063 3.445	0.262
Psychiatric Testimony Defendant's Beh-Appr	3.063 5.154	29.211*
Psychiatric Testimony Witnesses' Testimony	3.063 2.750	0.268
Psychiatric Testimony Defendant's Testimony	3.063 3.800	1.036
Lawyers' Presentations Defendant's Beh-Appr	3.445 5.154	16.516*
Lawyers' Presentations Witnesses' Testimony	3.445 2.750	0.596
Lawyers' Presentations Defendant's Testimony	3.445 3.800	0.064
Defendant's Beh-Appr Witnesses' Testimony	5.154 2.750	16.516*
Defendant's Beh-Appr Defendant's Testimony	5.154 3.800	8.015*
Witnesses' Testimony Defendant's Testimony	2.750 3.800	1.628

\*significant at alpha = .05 or less

The Fisher exact probability test with Tocher's modification was employed to determine whether the differences in responses by jurors who ranked psychiatric testimony high and low were statistically significant. The Fisher test with Tocher's modification is a useful and powerful nonparametric test for analyzing discrete nominal or ordinal data when the sample is not large enough to warrant use of a chi square test (Siegel, 1956).

The results are summarized in Table 5. There were no statistically significant differences in responses between the jurors who ranked psychiatric testimony high in importance and those who ranked it low in importance. Looking at the responses to question four in Table 5, the data show that, unlike the high ranking jurors, the low ranking jurors were evenly divided in their opinions of whether or not the psychiatric testimony made them feel more certain or comfortable with their individual verdicts. Essentially, both high ranking and low ranking jurors reflected the view that psychiatric testimony was helpful to them in reaching their verdicts. They also agreed that without the presence of psychiatric testimony in each trial, their verdicts would not have been different. The total number of responses for each question in Table 5 was different, because some of the jurors' responses were not amenable to a yes-no quantification. In a few instances jurors misunderstood the directions in rank ordering the trial components.

TABLE 5

COMPARISON OF JURORS' RESPONSES TO YES-NO QUESTIONS ON  
 THE INFLUENCE OF PSYCHIATRIC TESTIMONY BY HIGH  
 RANKING AND LOW RANKING JURORS  
 FOR ALL TRIALS

QUESTION	H. RANKERS		L. RANKERS		FISHER EXACT PROBABILITY
	Yes	No	Yes	No	
2 Helped Verdict	9	2	16	5	p = .5443
3 Helped Understand	10	1	15	6	p = .2118
4 Verdict Easier	9	2	14	5	p = .4854
5 Verdict Certain	8	2	10	10	p = .1169
6 Different Verdict	2	6	3	16	p = .8641

6.7 Comparison of Jurors' Responses to  
Yes-No Questions by Jurors Who  
Voted Guilty and Not Guilty in  
All Trials

Jurors were divided into those who rendered a guilty verdict and those who voted not guilty, and their responses to the yes-no questions were compared across all three trials. The Fisher exact probability test with Tocher's modification was performed to determine whether the differences in responses were statistically significant.

From Table 6 the data show that jurors who voted guilty versus not guilty differed significantly in their responses to two of the yes-no questions. Jurors who voted not guilty unanimously responded that the psychiatric testimony made them feel more certain or comfortable with their decisions, while jurors who voted guilty were equally divided in their yes-no responses to this question. Jurors who rendered a not guilty verdict essentially responded that without the psychiatric testimony their verdicts would have been different. Conversely, jurors who rendered a guilty verdict responded that if the psychiatric testimony were omitted, their verdicts would not have been different. These differences in jurors' responses to questions five and six were statistically significant at the .05 level or less. The jurors who voted guilty or not guilty responded similarly to the other questions in Table 6, i.e., that psychiatric testimony played a role in their decision making, helped them understand the cases, and made it easier to reach their verdicts.

TABLE 6  
 JURORS WHO VOTED GUILTY AND NOT GUILTY  
 AND HOW EACH RESPONDED TO OPEN-ENDED QUESTIONS

QUESTION	NOT GUILTY		GUILTY		FISHER EXACT PROBABILITY
	Yes	No	Yes	No	
2 Helped Verdict	7	0	19	7	p - .154
3 Helped Understand	6	1	21	5	p = .624
4 Verdict Easier	6	1	19	7	p = .444
5 Verdict Certain	7	0	13	13	p = .018*
**6 Different Verdict	4	1	2	22	p = .003*

\*significant at .05 level or less

\*\*two "undecided" responses

#### 6.8 Frequency of Jurors' Responses to Trial Components Used in Forming Their Verdicts Obtained from Interviews

The six trial categories rank ordered in Table 3 were used to group jurors' responses to open-ended question one for each trial. The frequency of mention of each trial category was compared for inspection with the jurors' rank orderings of the categories from Table 3.

The data in Table 7 show jurors most frequently responded that they used other witnesses' testimony, defendant's testimony, and psychiatric testimony in reaching their decisions. Jurors' personal biases, gleaned from their interview responses, were most prevalent in Trial Two. In the open-ended interviews the jurors cited the judge's legal definition of sanity/insanity a total of two times, yet ranked ordered it first when asked to rank the trial components according to the degree of importance they attached to each in reaching their verdicts. Similarly, during the interviews jurors responded that they utilized lawyers' presentations in reaching their verdicts a total of three times, yet rank ordered it higher than defendant's testimony, which they cited fourteen times in the interviews.

#### 6.9 Comparison of Jurors' Rank Ordering of Trial Categories by Jurors Who Ranked Psychiatric Testimony High Versus Low in Importance for Reaching Their Verdicts

The jurors were divided into those who ranked psychiatric testimony high in importance and those who ranked it low in importance

TABLE 7

FREQUENCY OF JURORS' RESPONSES TO TRIAL COMPONENTS  
USED IN FORMING THEIR VERDICTS OBTAINED FROM INTERVIEWS

COMPONENT	TRIAL 1	TRIAL 2	TRIAL 3	TOTAL	RANK*
Other Witnesses (facts of case)	3	1	10	14	2
Psychiatric Testimony	2	10	2	14	3
Defendant's Testimony	9	3	2	14	5
Personal Bias**	0	7	2	9	
Defendant's Beh-Appr	4	1	0	5	6
Lawyers' Presentations	3	0	0	3	4
Judge's Instructions	1	1	0	2	1
Other Jury Members**	1	0	0	1	

\*From Table 3

\*\*Not included in ranked trial components

for reaching their verdicts. This was done to determine if differences existed in how each group ranked the other trial components. Median tests were used to determine if the differences in ranking were statistically significant. The Fisher exact probability test with Tocher's modification was employed rather than a chi square because of the limited sample sizes.

Table 8 shows that the only significant difference between high ranking and low ranking jurors was in their rank ordering of other witnesses' testimony. Low ranking jurors valued other witnesses' testimony more than high ranking jurors.

#### 6.10 Comparison of Jurors' Rank Ordering of Trial Categories by Jurors Who Voted Guilty and Not Guilty for All Trials

Jurors were then grouped into those who voted guilty and those who voted not guilty across all trials, and their rankings of the six trial components were compared across all trials by median tests.

The results, summarized in Table 9, indicate there were no significant differences in the rank ordering of principal trial components by jurors who rendered a guilty or not guilty verdict.

#### 6.11 Phi Coefficients Correlating Each Juror's Verdict with Principal Trial Components and Demographic Variables

The phi coefficient was used to determine the relationship between each juror's verdict and the trial components and demographic

TABLE 8  
 MEDIAN RANK VALUES OF TRIAL COMPONENTS BY JURORS  
 WHO RANKED PSYCHIATRIC TESTIMONY HIGH AND LOW

COMPONENT	HIGH RANKERS	LOW RANKERS	FISHER EXACT PROBABILITY
Legal Def of Insanity	2.333	1.833	p = .706
Witnesses' Testimony	3.750	2.000	p = .000*
Lawyers' Presentations	3.667	3.300	p = .258
Defendant's Testimony	5.000	3.250	p = .159
Defendant's Beh-Appr	4.625	5.389	p = .135

\*significant at .05 level or less

TABLE 9

MEDIAN RANK VALUES OF TRIAL COMPONENTS BY JURORS WHO  
VOTED GUILTY AND NOT GUILTY ACROSS ALL TRIALS

COMPONENT	NOT GUILTY	GUILTY	FISHER EXACT PROBABILITY
Legal Def of Insanity	1.75	2.25	p = .368
Psychiatric Testimony	2.25	3.12	p = .759
Lawyers' Presentations	3.33	3.50	p = .539
Defendant's Testimony	5.00	3.50	p = .287
Defendant's Beh-Appr	4.25	5.32	p = .191
Witnesses' Testimony	3.25	2.50	p = .287

variables. Use of the phi coefficient necessitated collapsing the data into two dichotomous categories. For example, the rank order values of each trial component were grouped into a dichotomous rank of high or low (see Appendix Five). The rankings were applied in the same fashion as they were to psychiatric testimony in previous sections. A rank of one or two was considered a high ranking; a rank of three through six was considered a low ranking.

The results are summarized in Table 10, which shows that the only statistically significant factors correlated with jurors' verdicts are marital status and income. After these two variables there is a sharp decrease in correlation between jurors' verdicts and all other factors including psychiatric testimony. However, defendant's plea and age approach statistical significance at the .05 level.

#### 6.12 Jurors' Evaluation of Expert Witnesses' Characteristics and Courtroom Behavior

Jurors' responses to each item of the seventy-two item self-administered questionnaire were totaled across all three trials and tested for differences in frequency of agreement of the jurors by use of chi square analysis. Jurors were also divided according to their guilty and not guilty verdicts, and their responses to the

TABLE 10

PHI COEFFICIENTS CORRELATING EACH JUROR'S VERDICT  
WITH TRIAL COMPONENTS AND DEMOGRAPHIC VARIABLES

FACTORS	PHI COEFFICIENT	$\chi^2$
Marital Status	0.575	11.241*
Income	0.396	5.332*
Defendant's Plea	0.270	2.479
Age	0.266	2.406
Psychiatric Testimony	0.2445	1.846
Race	0.199	1.346
Witnesses' Testimony	0.180	1.004
Defendant's Testimony	0.175	0.949
Education	0.159	0.859
Legal Def of Insanity	0.146	0.661
Lawyers' Presentations	0.107	0.355
Defendant's Beh-Appr	0.084	0.219
Sex	0.080	0.218
Religion	0.072	0.176
Occupation	0.043	0.063
Nature of Offense	0.041	0.057

\*significant at alpha = .05

seventy-two items were tested with the Fisher exact probability test.

The jurors were instructed to circle one of five possible reactions to each statement: strongly agree, agree, undecided, disagree and strongly disagree. The questions were informally grouped into categories characteristic of the experts themselves and their behavior while testifying (such as physical appearance, style of presentation, etc.). The five response categories were collapsed into three: agree, undecided and disagree to facilitate analysis and interpretation of the data. A chi square test for goodness-of-fit was performed on each question. Initially, all three collapsed categories, i.e., agree, undecided and disagree, were included in the chi square analysis. The researcher expected the frequency of jurors' responses to the undecided category to be much lower than those of the agree and disagree categories. In reality, the frequency of undecided responses was considerably lower than those of the agree and disagree categories, so inclusion of the undecided category in the chi square analysis would inflate the chi square values. Therefore, the chi square value for each question in Appendix Three includes the agree and disagree responses; the undecided responses were omitted.

The categories, questions and results can be found in Appendix Three. A few of the more interesting findings will be cited here. There was solid agreement among the jurors that:

1. How an expert witness handles stress during cross examination influences a juror's opinion of him.

2. Jurors respond favorably to an expert psychiatric witness who does not hesitate to actively defend his opinion.
3. The expert witness who expresses a degree of uncertainty about his opinion is viewed in an unfavorable manner.
4. When testifying, the expert psychiatric witness should use plain language and layman's terms as much as possible.
5. It is important for the expert witness to cite examples to explain and clarify his testimony.
6. The expert psychiatric witness who is firm and forceful in presenting his opinion gives a favorable impression.
7. The expert psychiatric witness can be more effective by explaining how he arrived at his opinion.
8. The more smoothly and quickly the expert psychiatric witness answers questions, the more impressive he is.
9. The sex of the expert psychiatric witness has no influence on the juror.
10. The length of time the expert psychiatric witness is on the witness stand has no influence on the juror's opinion of his testimony.

When the jurors were divided according to their guilty or not guilty verdicts, and their responses to each of the seventy-two items compared, their responses differed significantly to only two questions. On question fourteen jurors who voted guilty tended to agree with the statement that the longer the expert psychiatric testimony, the more difficult it is for the juror to remember and evaluate it; jurors who voted not guilty disagreed with the statement. On question thirty-one jurors who voted not guilty were inclined to agree with the statement that it helps in understanding the testimony for the expert witness to freely use psychiatric terms and descriptions; jurors who voted guilty disagreed with the statement.

CHAPTER 7  
DISCUSSION

Introduction

This study was designed to investigate two major questions: (a) the role that psychiatric testimony plays in jurors' reaching their verdicts compared to other elements of insanity defense trials; and (b) jurors' evaluation of characteristics of expert psychiatric witnesses themselves and their testimony. This chapter will discuss the results of this study that bear on these two questions. It will also consider the influence of methodological and instrumental limitations on the results and the implications of this research on these two questions.

It was hypothesized that the role of psychiatric testimony in jurors' verdict formation is not a major one in influencing their verdicts. Rather, it was postulated that psychiatric testimony serves as an accessory to the trial; jurors find it interesting and use it retrospectively and selectively to substantiate impressions based on the facts of the case. When the thrust of the psychiatric testimony conflicts greatly with their conclusions

based on other data, jurors will selectively attend to parts of the testimony out of context to support their initial impressions or else dismiss it completely.

The stepwise analyses performed in the preceding chapter and the trends emanating from those analyses will be discussed in relation to the above hypotheses.

#### A. Role of Psychiatric Testimony in Jurors' Reaching Their Verdicts

##### 7.1 Jurors' Responses to the Open-Ended Questionnaire

The jurors' responses to why they decided the way they did in each trial were presented in section 6.2 of the previous chapter. Although responses varied across the trials, there were some notable similarities. A discernible trend in jurors' responses is that jurors most frequently utilized the physical evidence and the facts of the case presented through other witnesses' testimony or the defendant's own testimony in reaching their verdicts. Psychiatric testimony did not play an active role in their decision-making processes in Trials One and Three, as jurors cited it only twice in each trial. Psychiatric testimony was mentioned eight times in Trial Two, but this finding is misleading and will be delineated subsequently.

The trend of utilizing physical evidence to decide the cases is supported by jurors' responses to how they resolved the conflicting psychiatric conclusions. The jurors generally mentioned the same elements they originally used to reach their verdicts: physical evidence and the facts of the case reflected through other witnesses' testimony and defendant's testimony. The jurors in Trial

Two who had previously responded that they utilized psychiatric testimony in reaching their decisions stated that they resolved the conflicting psychiatric conclusions primarily on moral grounds. Eight of the jurors in Trial Two felt that society needed protection from the defendant, and that the defendant needed more institutionalized treatment, despite the fact that five of the six expert psychiatric witnesses concluded the defendant should be released from the hospital. In each of the three trials several jurors stated that they disregarded the psychiatric testimony because it was biased on both sides, cancelled itself out, merely represented other opinions, or conflicted with the facts of the cases.

A corollary trend reflected by jurors' responses to the open-ended questionnaire is that psychiatric testimony played a minor role in reaching their verdicts. As previously stated, jurors indicated that the physical evidence, facts of the cases, witnesses' testimony, defendant's testimony and their own personal philosophies were the primary influences in forming their verdicts.

Similarly, jurors' responses to the quantified yes-no questions in Table 2 of the previous chapter suggest that jurors do utilize psychiatric testimony in reaching their decisions, but that it is not the primary influence in their decisions, i.e., without the presence of psychiatric testimony in the trials, the jurors' verdicts would not have changed. These findings continue to substantiate the trend that psychiatric testimony played a minor role in jurors' reaching their verdicts.

### 7.2 Jurors' Rank Ordering of Principal Trial Components

The jurors rank ordered the principal trial components, and the data were presented in Table 3. This ranking was done to statistically assess the relative importance of psychiatric testimony in jurors' reaching their verdicts compared with other elements of the trials. Psychiatric testimony was ranked third in relative importance behind the judge's legal definition of sanity/insanity and witnesses' testimony. This ranking of psychiatric testimony is consistent with jurors' responses to the yes-no questions regarding the role of psychiatric testimony in jurors' verdicts.

Based on jurors' responses to the open-ended questions, one would have expected psychiatric testimony to be rank ordered below defendant's testimony in importance to jurors' reaching their verdicts, but it was not. This discrepancy is a minor one, because the differences in jurors' rank ordering of the first five trial components were not statistically significant (see Tables 3 and 4). However, the differences between the medians of each of the first five trial components and the sixth component, defendant's behavior and appearance, were statistically significant. Therefore, it appears that the defendant's behavior and appearance played a lesser role than the other trial components in jurors' reaching their verdicts.

### 7.3 Comparison of Jurors' Responses to Yes-No Questions by Jurors Who Ranked Psychiatric Testimony High and Low in Importance

The jurors were divided into two groups: those who ranked

psychiatric testimony high in importance and those who ranked it low in importance in reaching their verdicts. This was done to ascertain if in fact they responded differentially to the yes-no questions regarding the role that psychiatric testimony played in jurors' verdicts. As stated in the previous chapter a high ranking of psychiatric testimony included a numerical ranking of one or two; a low ranking consisted of a three, four, five or six. In effect, this is a conservative approach, because in insanity defense trials psychiatric testimony is frequently the primary source of evidence presented. For a juror, then, to rank psychiatric testimony third in importance out of six trial components would indicate that comparatively little attention and importance was given to it in reaching a verdict.

In Table 5 the data showed no statistically significant differences between the high and low ranking jurors in their responses to yes-no questions. This finding is seemingly contradictory, i.e., one would expect to find different responses from those who ranked psychiatric testimony high in importance and those who ranked it low, especially to the same set of yes-no questions assessing the role of psychiatric testimony in reaching verdicts.

This discrepancy among jurors' differential evaluations of the role expert psychiatric testimony plays in reaching their verdicts may be attributed in part to the demand characteristics of the questionnaire or the interviewing situation. This will be discussed later in this chapter.

An alternative explanation of this discrepancy, i.e., why

jurors ranked psychiatric testimony low and yet responded to the yes-no questions in a highly favorable manner characteristic of high ranking jurors, is that hypothesized in the beginning of this chapter. The psychiatric testimony is not an important factor in influencing jurors' verdicts; rather, the trend is for jurors to use it retrospectively and selectively to substantiate their initial impressions based on other considerations in the case. In other words, the jurors who ranked psychiatric testimony low, yet responded favorably to the yes-no questions about psychiatric testimony, did not view their behavior as contradictory or inconsistent. Psychiatric testimony was not an important factor in their decision making as evidenced by their ranking it low in importance. These jurors did, however, select aspects of the psychiatric testimony to verify their own impressions, hence their favorable responses to the yes-no questions. That these jurors used the psychiatric testimony retrospectively and selectively cannot be validated statistically here, but it can be empirically by examining the cases used in this study.

The most striking illustration of selective use of psychiatric testimony out of context came from the second case used in this study (see Chapter 5, section 5.2). In this case five psychiatrists testified that the defendant was presently restored to sanity and was not dangerous to himself or others, which satisfied the legal criteria for his release from the state hospital for the criminally insane. One psychiatrist testified to the contrary. After the case and during interviews with these jurors, each juror commented that the psychiatrist who testified the defendant was still presently

insane was a poor expert witness: he got confused easily, contradicted himself on the stand and had great difficulty in expressing his opinion clearly. They stated that they were embarrassed for him and largely dismissed his testimony. The clinical psychologist who testified had no impact per se on the case, because he felt he could not present an opinion on the question at hand, since he had not examined the defendant recently.

The jurors found the defendant not restored to sanity, thus overriding the five psychiatrists. The only other witness besides the experts was the defendant, who made a brief appearance on the stand. In explaining how they arrived at their verdicts, the jurors who found him insane stated that they felt that the defendant had not spent enough time in the hospital commensurate to his crime, i.e., murdering his two children and then attempting unsuccessfully to kill himself. They were concerned that he may hurt someone else, and that they, as a jury, would be held morally, if not legally, responsible.

In response to how they resolved the conflict between their opinions and that of the five experts, the jurors stated that they perceived no conflict. They cited a part of the five experts' testimony that recommended the defendant continue to receive psychotherapy as an outpatient after his release from the hospital. The jurors took this as evidence that the defendant needed further treatment and therefore was not ready to leave the hospital, thus justifying their verdicts. They ignored the thrust of the five psychiatrists' opinions that the defendant was ready to leave the hospital and attended to the portion of the testimony, out of

context, that substantiated their initial impressions.

These initial impressions were based on other external considerations, such as the need for continued punishment, the sordid nature of the crime, and the fear of being held morally responsible for the consequences of their decisions. Some of the jurors merely stated they felt that the defendant needed to spend more time in the hospital and dismissed the expert psychiatric testimony completely. Others resented the fact that the defendant's family had the finances to hire several psychiatrists on his behalf, although three of the experts were court appointed from the state hospital. The few jurors who felt that the defendant was restored to sanity and should be released stated that they based their decisions on the psychiatric testimony. However, these jurors represent a trend receiving increased attention in the literature in recent years: although their individual verdicts differed from the majority of the other jurors, they rescinded and were willing to have the jury's final verdict reported unanimously.

In the second degree murder case involving the plea of diminished capacity the jurors stated that they based their decisions primarily, and in most cases totally, on the evidence or facts of the case. Such evidence included the fact that the defendant had no blood on himself, while his wife was covered with blood, yet he pleaded self-defense, etc. In this case, too, the jurors viewed the psychiatric testimony as an accessory to the facts. They were also greatly influenced by the nature of the crime, or more specifically, by the presentation of pictures of the bloody nude victim by the

prosecution.

In the first case involving assault with a deadly weapon the jurors verbalized that they used the psychiatric testimony in formulating their verdicts but repeatedly referred to the defendant's own testimony when explaining how they reached their decisions.

#### 7.4 Comparison of Jurors' Responses to Yes-No Questions by Jurors Who Voted Guilty and Not Guilty in All Trials

Comparing jurors who voted guilty versus not guilty is an attempt to assess jurors' evaluation of psychiatric testimony on a behavioral level. Both groups of jurors responded favorably to yes-no questions on the role that psychiatric testimony played in their verdicts, but on question six ninety-one per cent (22 of 24) of the jurors who registered a guilty verdict responded that their verdicts would remain unchanged with no psychiatric testimony. Eighty per cent (4 of 5) of the jurors voting not guilty responded their verdict would change with no psychiatric testimony.

The history and development of the conflict and controversy over the role of psychiatric testimony in insanity cases has been discussed in previous chapters in this study. It may be argued that there is nothing wrong with psychiatric testimony playing an accessory role in insanity cases, and in fact, that should be its role in such trials. The jurors' responses to question six, i.e., that their verdicts would have been the same regardless of the presence or absence of psychiatric testimony, again raises the question of why have psychiatric testimony in a trial at all?

Does it really help the juror to reach his verdict, or does he use the psychiatric testimony inappropriately in a selective and/or purely retrospective manner? These data do not answer in any definitive fashion these arguments. The data seem to suggest a relative perspective and perhaps weight to assign to such testimony.

#### 7.5 Frequency of Jurors' Responses to Trial Components Used in Forming Their Verdicts Obtained From Interviews

The six trial categories rank ordered in Table 3 were used to group jurors' responses to the first open-ended question for each trial. Most of the jurors' responses to the open-ended question were subsumed under the six trial categories. Only two classes of jurors' responses were not accounted for under the six trial categories: (1) other jury members, which one juror mentioned, and (2) personal bias, which represents nine jurors' responses. In this instance personal bias is defined as a juror's predisposed conclusion or personal philosophy irrespective of the presentation of data, as opposed to a selective perception of the data presented.

The defendant's testimony, other witnesses' testimony and psychiatric testimony were most often mentioned by jurors as influencing their verdicts. This finding is consistent with the categorizations reported in section 6.2 in the previous chapter. However, a discrepancy appears between the frequency of mention for judge's instructions and defendant's testimony. Judge's instructions were only mentioned twice by jurors as a factor in forming their verdicts, yet jurors ranked it first in importance for reaching a

verdict among the six trial categories. Similarly, defendant's testimony was mentioned a total of fourteen times by jurors, yet they ranked it fifth in importance for reaching a verdict.

The discrepancy between the number one ranking of judge's instructions and its low frequency of mention by jurors may have resulted from jurors' using it in reaching their verdicts and considering it as part of the trial process rather than as a tangible trial component. Consequently, when presented as a concrete trial component, the judge's instructions was ranked first in importance by the jurors. Conversely, the demand characteristics of the questionnaire itself may have sanctioned jurors' responses to the judge's instructions.

The discrepancy in ranking between defendant's testimony and lawyers' presentations may reflect overlapping between these categories as perceived by jurors. Jurors may have confounded the lawyers' reporting of the defendant's testimony with the defendant's own presentation of his testimony.

7.6 Comparison of Jurors' Rank Ordering of Trial Categories by Jurors Who Ranked Psychiatric Testimony High Versus Low in Importance for Reaching Their Verdicts

Jurors were divided into high and low rankers of psychiatric testimony to see if differences existed in how each group rank ordered the other trial categories. Those jurors who ranked psychiatric testimony high in importance to reaching their verdicts gave witnesses' testimony a low ranking. This is consistent with their high ranking of psychiatric testimony. They attached more weight

to the expert psychiatric witnesses than to any other witnesses, including the defendant himself, whose testimony they ranked low. On the other hand, those jurors who ranked psychiatric testimony low in importance gave more weight to other witnesses' testimony and the defendant's testimony as reflected in their higher rankings of these categories.

Taken at face value this finding would suggest that a favorable attitude set toward psychiatric testimony would unduly weight the juror's decision and conversely for an unfavorable set. Unfortunately, the retrospective nature of the study and the other trends which suggest a somewhat accessory status to psychiatric testimony confound any clear conclusions being drawn about the degree of influence of the attitude set of the juror. Furthermore, the literature findings by McMahon (1974) fail to support an attitudinal influence on mental health issues in insanity defense mock trials. McMahon's findings do not give by extrapolation support to the operation of favorable-unfavorable attributes.

#### 7.7 Phi Coefficients Correlating Each Juror's Verdict with Principal Trial Components and Demographic Variables

The phi coefficient was employed to ascertain the relationship between each juror's verdict and the trial components and demographic variables. The results, reported in Table 10, were somewhat unexpected. No factor correlated highly with jurors' verdicts, and only two, marital status and income, were found to be statistically

significant. Based on the results from previous sections indicating the relative importance of the judge's legal definition of sanity/insanity, defendant's testimony and other witnesses' testimony, one would expect to find these factors more highly correlated with jurors' verdicts than they were. One might also expect, based on results from previous sections, that other trial categories would be more highly correlated with jurors' verdicts than was psychiatric testimony, but they were not. In fact, while psychiatric testimony was not very highly correlated with jurors' verdicts, its correlation coefficient was among the highest relative to the other categories.

In examining the raw data in Appendix Six it can be seen that a relationship may exist between jurors who render a guilty verdict and those who rank psychiatric testimony low in importance for reaching their verdicts. These findings remain inconclusive at this point. They suggest further exploration, however.

In considering the statistically significant correlations between jurors' verdicts and both marital status and income, caution must be exercised not to over-interpret them. There appears to be a relationship between marital status and jurors' verdicts. Married jurors tend to be associated more with a guilty verdict than single jurors. With regard to marital status it may be that age is a confounding factor, and that the younger jurors are also single and tend to be more permissive, hence more receptive to an insanity plea. The factor of age had a low correlation with jurors' verdicts, although its coefficient approached statistical significance at the .05 level.

Similarly, there seems to be a relationship between jurors' incomes and their verdicts, i.e., a higher income being associated with a guilty verdict. It could be that the higher the income the more conservative one tends to be and the more inclined to return a guilty verdict. Age may also be confounding the variable of income, that is, the older the juror the higher his income.

In discussion of the findings relative to the role psychiatric testimony plays in jurors' verdicts certain trends are suggestive which point to substantive questions for future discussion and study. Such questions must be tentatively posed as a result of certain methodological and instrumental limitations. The questions seen to emerge are: (1) jurors' use of physical evidence and facts of the cases to reach their verdicts; (2) psychiatric testimony playing a minor role in jurors' reaching their verdicts; (3) jurors' tendency to be influenced by other jurors and conforming their individual verdicts to the majority verdict; and (4) jurors' use of psychiatric testimony retrospectively and selectively to substantiate their initial impressions based on other considerations in the case.

#### B. Jurors' Evaluation of Expert Witnesses Themselves and Their Testimony

##### 7.8 Jurors' Evaluation of Expert Witnesses' Characteristics and Courtroom Behavior

Jurors were requested to describe the expert witnesses' characteristics they liked best and found most helpful in reaching verdicts for each trial. To summarize briefly for all trials they generally

agreed that a good expert psychiatric witness: (1) is straightforward, impartial and makes his testimony simple and to the point; (2) presents his testimony in medical, then layman's terms; (3) uses examples to explain his testimony; and (4) presents as much information as possible and gives alternative explanations.

Conversely, jurors were asked to describe the qualities of the expert witnesses they liked least and found least helpful in reaching their verdicts for each trial. To summarize across all trials jurors agreed that a poor expert psychiatric witness: (1) is biased and takes an advocacy role; (2) presents his testimony in an evasive, speculative and indecisive manner; (3) over-interprets and uses primarily psychiatric jargon; and (4) appears arrogant, harsh and defensive.

The summaries above present a global view of jurors' evaluations of the expert witnesses and their testimony. The reader can get a closer glimpse into jurors' perceptual and evaluative processes by examining their individual responses to the open-ended questionnaire in Appendix One.

No attempt will be made here to discuss at length the data in section 6.12 or Appendix Three. However, a few of the more interesting findings from Appendix Three will be cited and compared to the behavioral guidelines suggested by expert psychiatric witnesses in journal articles.

Most of the articles written by expert psychiatric witnesses suggest as a guideline for effective testimony that the expert witness address his testimony directly to the jury and look at the

jury, as opposed to the questioning attorney or judge. In this study the jurors indicated that this was not an important factor to them.

The jurors overwhelmingly supported recommendations in the literature that the expert psychiatric witness expresses his testimony in layman's terms as frequently as possible. Similarly, he should freely use examples to communicate his testimony to the jury.

Contrary to suggestions from journal articles jurors support an expert witness' efforts to actively defend his opinion during cross examination and do not think less of an expert witness who argues with an opposing attorney. Jurors also favored a forceful and firm style when presenting testimony.

As evidenced in the literature jurors seemed to pay attention to an expert witness' credentials; however, the jurors did not tend to perceive an expert more favorably solely because his professional credentials were more numerous than another expert's credentials.

Jurors definitely indicated that the sex of the expert witness was unimportant in their evaluation of the expert's testimony. Of course, one could logically question the validity of this finding by suggesting that the jurors felt constrained to give a socially acceptable response rather than a candid one. In this study only one of the expert witnesses was female (Dr. N), and she consistently received negative evaluations from the jurors. It is impossible to ascertain if anti-female biases were operating in this instance. This question should not be overlooked in assessing relative credence to be given to the psychiatric experts.

Jurors considered the age of the expert psychiatric witness unimportant in their assessment of his performance. Possibly related to the age factor, the amount of courtroom or trial experience an expert had was not particularly important to the jurors.

These findings represent the first attempt known to the researcher to solicit feedback directly from real jurors about what aspects of psychiatric testimony facilitated or hindered their understanding and utilization of expert psychiatric testimony. There is a need for subsequent research of this nature to help achieve greater effectiveness in communicating psychiatric testimony to the jury.

#### 7.9 Methodological and Instrumental Limitations

During the course of this study it was realized that for subsequent research efforts changes will be necessary in the questionnaire itself and in its administration. The questions can be improved through refinement of the wording and by making them more specific and amenable to quantification and scaling techniques. There is probably confounding among the trial components and the demographic variables with several factors tapping the same concept. The small sample size inhibits the formation of firm conclusions and prohibits extrapolation of the results to a larger population. The small sample size is probably also responsible for the absence of more significant correlative results, as the phi coefficient is sensitive to and limited by the marginal totals. There may also be some elements associated with jurors' verdicts that are not being

tapped by the factors in Table 10. There needs to be a sample more equally balanced between guilty and not guilty verdicts. Clearly, a much larger sample and more sophisticated data gathering instruments are needed for future research. These improvements would permit the use of more sophisticated analyses.

Greater attention should be paid not only to administration of the questionnaire but to experimenter bias as well. Administration of the questionnaire should be uniform, that is, both parts presented orally or in written form rather than one of each. The jurors may have felt pressured or obligated to respond positively to the yes-no questions. The questions were asked face to face in an interview session with the researcher, whom the jurors knew to be a psychologist. In contrast, the form for rank ordering of trial components was self-administered. It may have been easier or more comfortable for the jurors to express stable judgments somewhat anonymously on paper than verbally and face to face with a member of the profession they are evaluating. Clearer and better control of the demand characteristics of the interview and data gathering is indicated.

While the relating of retrospective verbal report may always be called into question on its reliability, a check was performed on two of the three trials for reliability of jurors' responses. In two trials the defense attorneys requested that each juror verbally report his individual verdict to the court after the jury as a whole presented its verdict. Each juror's verdict as reported in court was compared to his verdict reported to the researcher for a reliability check. There was complete agreement for each

juror, and it is assumed that jurors' verbal reporting in the third trial reflects similar reliability.

There were differences among the individual trials which may raise the question of the appropriateness of combining them for unified study. However, the trials contained essential common elements, such as the violent nature of the offenses and random distribution of jurors for all three trials, which render them amenable to analysis as a group. It cannot be concluded that the same questions which emerge from this study would hold for less violent or non-violent cases.

In retrospect it would have been appropriate to have obtained anecdotal descriptive data on the defendant himself, independent of jurors' perceptions and expert witnesses' testimony about him. This data might have provided additional insight into jurors' decision-making processes, thus further clarifying the role of psychiatric testimony in reaching their verdicts.

The researcher feels that it is important to meet with the jurors individually, because they will be more receptive to participation in the study and will tend to be more cooperative. Furthermore, it is extremely difficult to meet with them as a group, because judges and court officials are reticent to permit such a meeting in or near the courtroom for fear of connoting sanction or coercion of juror participation in the research. Many of the jurors reported feeling threatened initially by participating in this study. They were concerned about having to defend their verdicts to the researcher and about the subsequent use of the information. However, once

rapport was established with them, the jurors were generally cooperative and welcomed an opportunity to move toward emotional closure on the trials. Therefore, the researcher is advised to approach the interview with the set to establish rapport and to get information that may be emotionally charged.

The most difficult aspect of conducting this study was the lack of control the researcher had over important factors such as how long each trial would last, when the jurors were ready to report their verdict, scheduling and rescheduling of trials, availability of trials involving the insanity pleas, and making the contacts to be privy to necessary information, i.e., data on the jurors and the details of the cases. It is evident that this research cannot be conducted without the cooperation of judges, district attorneys, and other court officials.

Given the requirement of larger numbers of subjects for such research as this, conducting juror interviews will necessarily involve altered methods which permit data gathering within reasonable time periods. More researchers, interviewers and perhaps juror travel to a central place might all be required.

#### 7.10 Implications

This research is a preliminary investigative attempt to ascertain the role that expert psychiatric testimony plays in jurors' formation of their verdicts. Unlike previous studies, this effort used real jury trials and real jurors, the reasons for which have been enumerated in Chapter 4. It is hoped that future research will follow this lead

and go into the courtroom rather than remaining at the mock trial stage of investigation. The researcher feels that empirical data collected from actual trials reflect the true state of the problem and are more likely to generate change in the present system of utilizing expert psychiatric witnesses than results collected under conditions simulating real trials.

This study is a step in the direction of providing an impetus for change in the present trial system of utilizing psychiatric testimony. The methodological weaknesses and limitations of this investigation necessitate caution and conservatism in interpreting the results. Subsequent research in this area must surmount these limitations.

This study does not warrant a conclusion that the insanity defense as now conducted in trials utilizing psychiatric testimony be dropped. However, this researcher's personal view is that to continue use of the expert psychiatric witness in his present capacity in the courtroom is a waste of valuable effort for all parties involved.

Others have expressed arguments in favor of abolishing the present system and its use of expert psychiatric witnesses in the trial itself, and yet the situation that exists today is as confusing and frustrating as ever for its participants. This researcher agrees with the abolishment arguments.

APPENDICES

APPENDIX ONE  
OPEN-ENDED QUESTIONNAIRE AND  
RESPONSES BY TRIAL

<u>TRIAL I</u>	<u>OFFENSE</u>	<u># OF EXPERTS</u>	<u># OF JURORS</u>	<u>DEF'S PLEA</u>	<u>VERDICT</u>
		2 court appt			
	Assault	4: 2 defense	11	NGI	Guilty

A. Role of Psychiatric Testimony In General

1. What are some of the things that made you decide the way you did in this trial?

Defendant admitted aware of actions during crime, remembered actions (7); defendant's alertness, outburst on stand (4); prosecuting attorney's summation (3); testimony by others: police, victim, etc. (3); defendant regretful and sorry about act (2); psychiatric testimony (2); other jury members (1); McNaughten Rule (1).

2. Did the psychiatric testimony play any part in reaching your verdict? If so, how? If not, why not?

Helped explain case (3); made it easier to render verdict (2); no (2); yes (2); made complete picture (1); helped familiarize with defense of insanity (1); supported impression that defendant knew what he was doing (1).

3. Did the psychiatric testimony help contribute to your understanding of the case? If so, how? If not, why not?

Taught difference between neuroses and psychoses (3); indicated defendant was smart, which was helpful (2); can't say it does, though was interesting (2); showed jurors what experts considered normal (1); gave useful definitions and examples (1); could determine defendant's mental level (1); yes (1).

4. Did the psychiatric testimony make it easier or more difficult for you in reaching your verdict? In what way?

Easier (4); easier because brought out information in trial, put it in perspective (2); easier because of definition of schizophrenia and neurosis (1); easier, reasons they agreed were the same, built up weight of testimony (1); more difficult because of conflict between experts (2); more difficult (1); helped understand workings of the mind (1).

5. Did the psychiatric testimony make you feel more certain about or comfortable with your final verdict? In what way? If not, why not?

Yes, supported and substantiated my original impressions (5);

no, when saw defendant on stand concluded he was sick, didn't need reassurance (2); established degree of sickness of defendant (1); details of crime and defendant's actions fell into category described by expert (1); yes, more comfortable and certain (2); not necessarily, conflict between experts confusing (2); more comfortable, shot werewolf theory down (1).

6. Without the psychiatric testimony would your verdict have been the same as it was or different? Why?

Would have been the same (5); don't know, can't tell (2); same because asked to determine sanity or insanity at time of the act (1); same, defense didn't have much to work with; no one denied fact he would kill her if victim didn't comply (1); don't think it would have been different, have to consider all the data (1); would be different if decision just based on defendant's testimony (1).

7. In this case there were psychiatric experts whose opinions and conclusions conflicted. How did you resolve this conflict in your own mind?

Defendant's behavior, said he knew what he was doing, able to continue normal actions after the act (3); court appointed , experts' opinions were consistent with what I saw in court and heard from other witnesses (3); prosecuting attorney's description and interpretation of the law (2); how experts presented the data made the difference (1); whatever supported my own opinion (1); two defense witnesses didn't say the right things (1); judge's instructions (1).

B. Factors of the expert himself and the expert testimony

1. Which expert witness or witnesses did you like the best? Why?

Dr. K: explained things clearly, logically; consistent and positive in his answers (5); answered all questions, didn't grope for words, skillfully handled questions of opposing attorney (5); gave testimony in his terms, then put into layman's terms (3); very sharp, smooth, honest, straightforward, agreed defendant was sick (3); spoke to all people involved, police, etc. (1); didn't speculate, dwelled solely on facts (1); described things thoroughly (1); spoke flatteringly about opposing experts (2); angry at judicial system because it is inappropriate for sick defendant (1).

Dr. Pf: dedicated to what he was doing (1); was first expert and interesting (1); didn't feel he was talking down to jury (1).

Don't know, didn't like any of them the best (1).

2. Which expert witness or witnesses did you find most helpful in reaching your verdict? Why?

Dr. K: defined, explained, simplified things consistent with facts; analogies from medical to layman's terms (7); defense attorney couldn't rattle him (2).

Dr. Ph: much experience with psychotics in state hospital gave Court opinion added weight (1).  
appt.

Dr. N: her tests were helpful (1).  
Defense

All experts were about the same (2); none were helpful (2).

3. Which expert witness or witnesses did you like the least? Why?

Dr. N: attitude harsh and defensive; should have been leery of defendant and wasn't; "You'll have to accept the fact that I don't have the Rorschach with me." (3); came from same office as Dr. Pf., seemed to collaborate with him (1).

Dr. Pf: snotty, arrogant, didn't project warmth, not explicit when testifying (3); "typical psychiatrist" shaggy looking (3); too psychiatrically oriented, overly speculative and interpretative, illogical (4); didn't tap all sources of information, i.e., police, etc. (2); only saw defendant for an hour and a half (1).

Can't say which I liked the least (2).

4. Which expert witness or witnesses did you find least helpful in reaching your verdict? Why?

Dr. Pf: wild speculations, i.e., "Defendant probably didn't do this," rather than looking at facts and seeing for sure if he did (4); simply stated defendant was schizophrenic and didn't explain well (2).

Dr. N: no papers to show she was involved in case, seemed she could care less, selectively showed tests she wanted presented (3); interpretations were illogical (2); seemed uncomfortable, unsure of herself, difficulty answering questions (2).

Can't say which were least helpful (2).

5. Please rank the expert witnesses according to the value of their testimony in helping you to understand the case; 1 - most valuable, 2 - next valuable, etc. Please give reasons for your rankings.

Dr. K: rank 1 (8) rank 2 (0) rank 3 (1) rank 4 (0)  
got more information from him than from others; his explanations contained examples and were repeated often, which was helpful; used medical and layman's terms.

Dr. Ph: rank 1 (1) rank 2 (7) rank 3 (1) rank 4 (0)  
professional in manner, sorted out both pros and cons of testimony and was very logical; quiet, stayed with facts; didn't let defense attorney throw him.

Dr. Pf: rank 1 (0) rank 2 (2) rank 3 (6) rank 4 (1)  
rambled, overly interpretative, biased, could be influenced, didn't explain things well.

Dr. N: rank 1 (0) rank 2 (0) rank 3 (1) rank 4 (7)  
polished report; defendant gave her what she wanted to hear; refused to give evidence to support her opinion; out of her class because she was young, inexperienced.

6. What are the qualities and characteristics of a good expert psychiatric witness?

Explain things in terms jury can understand, use examples but don't talk down to jurors (7); logical, consistent, common sense testimony (5); does not get personally involved, maintains some degree of detachment, but concerned (3); dynamic, interesting, good speaker (2); experienced, good credentials (2); can't be intimidated, comes right out with answers, control over what he's doing (2); soft-spoken (1); straightforward, direct, i.e., "Defendant is sick but we aren't here to address that, but to determine if he is sane or insane legally" (1); spend more than an hour with defendant, get to know him (1); weigh both sides of case (1); conservative in dress, physical appearance (1).

7. What are the qualities and characteristics of a poor expert psychiatric witness?

Lack of confidence, unsure of self, indecisive (6); speaking in flat tone, rambling, meandering (4); arrogant, superior air (3); use of primarily psychiatric terms, explanations (2); arguing with attorneys, taking questions personally (1); does not consider both sides of story (1); overspeculative, overinterpreting facts of case (3); lack of experience, "A young psychiatrist can't match experience of an older expert" (1).

8. The name of each expert psychiatric witness will be presented to you one at a time. Please respond as quickly as possible with the impression or characteristic of that expert or his/her testimony that stands out most in your mind.

Dr. K: positive in opinions, knew what he was talking about, Court smart (6); presented examples in layman's terms to appt explain facts (4); dynamic, forceful, good speaker, eloquent (3); practical approach, down to earth, straightforward (3); reacted well to harrassment (1); didn't speculate (1); experienced (1); mad at judicial system, used stand as soap box to voice personal opinions (1).

Dr. Ph: old country type doctor (5); nondescript, quiet, Court not dynamic (5); learned man (5); very explicit appt in testimony (3); experienced (3); got impatient, uptight at times (2); professional, here to do what he has to do then will go on about his business (1); used big words, hard to understand (1).

Dr. Pf: didn't convert medical terms to layman's terms (4); Defense illogical, far out explanations (2); absent-minded professor type (2); explained, handled questions well (2); well educated (1); theoretician, text-book doctor (2); experienced (1); not too positive in opinion (1); nasty, arrogant (1).

Dr. N: nervous, ill at ease, defensive, unsure of self (5); sincere, honest (3); unaccustomed to role of expert witness (2); unshakable testimony (2); smug, arrogant, snotty (2); sloppily dressed (1); female (1); personalized the case (2); highly qualified (1); put defendant at ease (1); well-spoken (1).

<u>TRIAL II</u>	<u>OFFENSE</u>	<u># OF EXPERTS</u>	<u># OF JURORS</u>	<u>DEF'S PLEA</u>	<u>VERDICT</u>
	Murder	3 court appt 7: 4 defense	11	Rest of sanity	Insane

A. Role of psychiatric testimony in general

1. What are some of the things that made you decide the way you did this trial?

Defendant needed more treatment, more time in hospital to insure treatment (6); psychiatric testimony (8); defendant's testimony (3); seemed sane (1); judge's instructions (1); report from state hospital (2); own personal impression, defendant trying to beat rap (1); other witnesses' testimony (1).

2. Did the psychiatric testimony play any part in reaching your verdict? If so, how? If not, why not?

It showed defendant needed more treatment (5); it claimed defendant sane at this time, what about future? (4); psychiatric testimony presented biased, one-sided story of health; overkill brought out by cross-examination (3); experts paid for services, services and testimony were "bought" (3); nothing else to go by (2); not much conflict among experts (1); yes (2); no (1).

3. Did the psychiatric testimony help contribute to your understanding of the case? If so, how? If not, why not?

Yes (3); no (2); showed he needed further treatment (3); was not familiar with psychotic depression before (2); confused me at times, sane at this time, what about future (2); brought out some of the history of the defendant (1); don't have to be a psychiatrist to understand people, don't think much of experts (1); learned that someone once insane can regain sanity (1); presented one-sided story without complete knowledge of whole thing (1).

4. Did the psychiatric testimony make it easier or more difficult for you in reaching your verdict? In what way?

Easier (5); more difficult, put doubts in our our minds, what about the future? (4); cross-examination of psychiatric testimony was basis of my decision (1); easier, helped understand how mind works, what to expect under certain circumstances (1); not easier, merely gave their opinions and said same thing (2).

5. Did the psychiatric testimony make you feel more certain about or comfortable with your final verdict? In what way? If not, why not?

More comfortable (5); yes, all we had to go on (1); yes, first thought he was insane, then other experts changed my mind (1); yes, having it presented different ways (1); yes, more disagreement among experts would have made it more difficult (1); no (2); no, but I was comfortable (1).

6. Without the psychiatric testimony would your verdict have been the same as it was or different? Why?

Same (5); couldn't have done without it (2); might have, defendant's testimony didn't sway me much (1); different, because would have been no evidence of sanity (2); don't know (1).

7. In this case there were psychiatric experts whose opinions and conclusions conflicted. How did you resolve this conflict in your own mind?

Moral issue involved more than legal issue, need to protect society, what if defendant goes out and kills someone? (8); felt defendant needed more supervised treatment, time in hospital (6); disregarded psychiatric testimony because it was just their opinions, credentials had no bearing on it (4); experts would not commit themselves further than saying he was sane at present time (3); psychiatric testimony not much in conflict (3); judge's instructions said to go on evidence presented in case (1).

B. Factors of the expert himself and the expert testimony.

1. Which expert witness or witnesses did you like the best? Why?

Dr. Ly: most direct, objective, agreed defendant had problems, pointed out troublesome areas (4); expressed self well (2); court appt., so carried more weight (1).

Dr. C: clear, precise testimony, put it in understandable terms (2); good credentials, impressive, no axe to grind one way or the other (2).

Dr. B: made most sense, wasn't biased toward defendant (2).

Dr. Ls: good credentials, extended contact with defendant (1).

All experts were about the same (2).

2. Which expert witness or witnesses did you find most helpful in reaching your verdict? Why?

All experts were about the same (4).

Dr. C: explained things in simple terms (1); epitomized good expert witness, good physical appearance (1); looked at jury (1).

Dr. Ly: objective, not defendant's advocate (3).

Dr. Ls: presented two-sided picture of defendant, i.e., stated defendant is susceptible to stress, needs therapy (1).

Dr. K: nice manner (1).

None were helpful (1).

3. Which expert witness or witnesses did you like the least? Why?

Dr. C: testimony looked rehearsed, press agent for defendant, tried to persuade jury (4); didn't explain things (2); talked down to jury (1); didn't like his addressing testimony to jury (1).

Dr. Ls: tried to persuade jury (3); spent 30 hours with defendant so had to say defendant was sane, self-interest cancelled out his testimony (2); didn't like his talking directly to jury (1).

Dr. Ly: biased presentation for defendant (2).

Dr. K: only saw defendant once, got information second hand (1).

All were about the same (1).

4. Which expert witness or witnesses did you find least helpful in reaching your verdict? Why?

Dr. E: nervous, couldn't express self on stand, seemed in a daze (5); contradictory (1); more of administrator, not much patient contact, not directly involved with patients (1).

Dr. C: talked down to jury (1); too much of an advocate (2).

Dr. K: got information second hand (1).

Psychiatrists are like witchcraft, don't have confidence in psychiatrists (1); all experts were about the same (1).

5. Please rank the expert witnesses according to the value of their testimony in helping you to understand the case: 1 - most valuable, 2 - next valuable, etc.. Please give reasons for your ranking.

Dr. Ly:	rank 1 (2)	rank 2 (2)	rank 3 (1)	rank 4 (0)
Dr. C:	rank 1 (2)	rank 2 (0)	rank 3 (1)	rank 6 (2)
Dr. Ls:	rank 1 (1)	rank 2 (1)	rank 3 (2)	rank 4 (0)
Dr. K:	rank 2 (0)	rank 3 (0)	rank 4 (2)	rank 5 (2)
Dr. Lr:	rank 2 (0)	rank 3 (1)	rank 4 (2)	rank 5 (1)
Dr. B:	rank 2 (1)	rank 4 (0)	rank 5 (1)	rank 6 (2)
Dr. E:	rank 2 (0)	rank 4 (0)	rank 6 (0)	rank 7 (5)

All were about the same (5)

6. What are the qualities and characteristics of a good expert psychiatric witness?

Explain and define things in clear, simple terms (3); can never present enough information to jury (3); jury members unqualified to hear cases like this, should be brought before medical board (3); nice appearance, well-groomed, relaxed (2); look at jury when testifying (1); has to seel himself to jury (1); state opinion in positive, definite manner, avoid vagueness (2); don't have professional partners testify in same case (1); can have to many experts, overkill (1); don't preach to jury (2); experience and education important (1); indicate future plans for defendant (1); no suggestions (3).

7. What are the qualities and characteristics of a poor expert psychiatric witness?

No suggestions (6); nervous on stand (2); too much of an advocate for defendant; does not explain testimony, vague testimony (2); can be too sure of himself, presents opinion as fact (1); speaks too quickly on stand (1); expert sould be aware himself, not look like typical psychiatrist, absent minded professor (1).

8. The name of each expert psychiatric witness will be presented to you one at a time. Please respond as quickly as possible with the impression or characteristic of that expert or his/her testimony that stands out most in your mind.

Dr. Ly: quiet, effective (2); well qualified, intelligent (2); sure of self (1); little too positive (1); articulate (1); summed up and clarified points (1); no response (4); don't remember them (1).

- Dr. C: painted too rosy a picture, unfair, one-sided (3); preached to jury (1); eloquent (2); enthusiastic (1); well qualified (1); sure of self (1); don't remember him (1).
- Dr. Ls: polished (1); seemed like expensive psychiatrist with well-to-do patients (1); well qualified (1); sure of self (1); sincere (1); good person to have for a psychiatrist (1); clear, concise testimony (1); talked directly to jury (1); effeminate (1); appeared a little resentful (1).
- Dr. Lr: don't remember him (3); impressive credentials (1); only saw defendant for short time (1); neutral in stance, should have been effective (1); matter of fact (1); very effective (1).
- Dr. K: don't remember him (2); good witness (1); didn't like his mannerisms, constantly blinking eyes, funny facial expressions (1); outgoing (1); nice guy (1); resentful over cross examination about fee he received for testifying.
- Dr. B: very fair, honest, limited himself to what he could support, I liked this (2); diplomatic (1); subtly put out aura that defendant was okay (1); don't remember him (3); up and coming young man (1); cared what he was doing (1); good witness (1).
- Dr. E: got flustered, confused, too nervous (7); embarrassment to his profession (2); unaware (1); don't remember him (1).

<u>TRIAL III</u>	<u>OFFENSE</u>	<u># OF EXPERTS</u>	<u># OF JURORS</u>	<u>DEF'S PLEA</u>	<u>VERDICT</u>
		1 court appt			
	Murder	2: 1 defense	12	Dim. Capacity	Guilty

#### A. Role of Psychiatric Testimony In General

1. What are some of the things that made you decide the way you did in this trial?

Actual physical evidence, facts of case, i.e., bloody sheets, number of stab wounds, lack of blood on defendant (10); defendant's testimony showed he was aware of behavior during crime (2); personal opinion from beginning (1); psychiatric testimony (2); neither expert made big impression on me (1).

2. Did the psychiatric testimony play any part in reaching your verdict? If so, how? If not, why not?

Shed light on diminished capacity issue (4); useful to small degree, but was interesting (2); somewhat, indicated defendant was capable of doing what he wanted to do (2); helped define meaning of various charges, which charge most appropriate (1); believed both experts but their testimony was selectively favorable to both sides (1); contrast between expert testimony and facts of case made decision difficult (1); no (3).

3. Did the psychiatric testimony help contribute to your understanding of the case? If so, how? If not, why not?

Gave us a lot think about on both sides (3); clarified mental state of defendant, diminished capacity plea (5); threw out psychiatric testimony that tried to sway me (2); psychiatric testimony was additive in case (1); no, conflict between experts confusing (2); helped very little, goes back to alcohol issue (1).

4. Did the psychiatric testimony make it easier or more difficult for you in reaching your verdict? In what way?

Easier, was informative, talked about defendant's mental state, awareness (6); little easier (2); neither, threw out psychiatric testimony when they conflicted, used common sense, accepted what they agreed on (2); more difficult (2); hard to say, really didn't sway me (1).

5. Did the psychiatric testimony make you feel more certain or more comfortable with your final verdict? In what way? If not, why not?

No (7); cancelled itself out, confusing (2); not determining factor (1); yes (2); yes, helped in area of diminished capacity combined with common sense (1).

6. Without the psychiatric testimony would your verdict have been the same as it was or different? Why?

Same, especially if given other evidence, such as alcohol level in blood, circumstances of case (6); same, based on common sense (2); can't say, hard to say (3).

7. In this case there were psychiatric experts whose opinions and conclusions conflicted. How did you resolve this conflict in your own mind?

Facts of case, physical evidence (8); didn't go with either expert, both biased, cancelled each other out (4); defendant's behavior before crime, too alert and aware (3).

B. Factors of the expert himself and the expert testimony

1. Which expert witness or witnesses did you like best? Why?

Dr. L: smooth, articulate (4); gave alternative explanations which were helpful to understanding case (1); intelligent (1); straightforward, to the point (1); told about workings of defendant's mind (1); both were professional, well-informed (1); both gave reasons for their answers in context with facts (1); most helpful (1).

Dr. S: gave helpful definitions (1); straightforward, methodical, stuck to the point (5); impartial, clinical, left decision up to jury (4); saw defendant first, right after crime, which gave testimony more weight (1).

Both equally helpful (1).

2. Which expert witness or witnesses did you find most helpful in reaching your verdict? Why?

Dr. L: professional (1); very suave, smooth (4); shed light on defendant's state of mind during crime (2); well-informed (1).

Dr. S: concrete testimony, impartial (5); integrated opinion with facts of case (4).

3. Which expert witness or witnesses did you like the least? Why?

Dr. L: too much an advocate for defendant which hurt credibility, biased (8).

Dr. S: not eloquent (1).

4. Which expert witness or witnesses did you find least helpful in reaching your verdict? Why?

Dr. L: rambled on and on, overinterpreted things (5); hard for layman to understand (2); biased (8).

5. Please rank the expert witnesses according to the value of their testimony in helping you to understand the case: 1 - most valuable, 2 - next valuable, etc. Please give reasons for your ranking.

Dr. L: rank 1 (1) rank 2 (11)

Dr. S: rank 1 (11) rank 2 (1)

6. What are the qualities and characteristics of a good expert psychiatric witness?

Objective, factual, unbiased testimony (6); make answers simple, to the point, don't equivocate (4); present as much data as possible, give alternative explanations (4); tell how arrived at opinion (3); admit if don't know something (1); sincere in testimony (1); use layman's language (3); should not argue case (2).

7. What are the qualities and characteristics of a poor expert psychiatric witness?

Evasive, wishy-washy, indirect in testimony (6); biased, advocate for defendant (6); try to sway or persuade jury, preaching (2); speak down to jury (2).

8. The name of each expert psychiatric witness will be presented to you one at a time. Please respond as quickly as possible with the impression or characteristic of that expert or his/her testimony that stands out most in your mind.

Dr. L: advocate for defendant (6); smooth (2); young (1);  
articulate (3).

Dr. S: factual, straightforward (6); impartial (4).

APPENDIX TWO

TRIAL COMPONENT FORM FOR SELF-ADMINISTERED  
RANK ORDERING

PLEASE FILL OUT THE FOLLOWING INFORMATION:

Sex \_\_\_\_\_ Highest Grade Completed \_\_\_\_\_  
Race \_\_\_\_\_ Occupation \_\_\_\_\_  
Age \_\_\_\_\_ Annual Income \_\_\_\_\_  
Religion \_\_\_\_\_ Marital Status \_\_\_\_\_

Please rank the following according to the degree of importance you attached to each in reaching your verdict. Give a ranking of 1 to what you considered the most important or paid the most attention to in reaching your decision. Give a ranking of 2 to the second most, etc.

\_\_\_\_\_ Judge's instructions to jury on the legal definition of sanity/insanity

\_\_\_\_\_ Expert psychiatric testimony

\_\_\_\_\_ Nature and content of the lawyers' presentations

\_\_\_\_\_ Defendant's behavior and appearance in court

\_\_\_\_\_ Witnesses' testimony of events that transpired prior to, during and after the crime

\_\_\_\_\_ Defendant's testimony of events that transpired prior to, during and after the crime

\_\_\_\_\_ Verdict

APPENDIX THREE

JURORS' EVALUATION OF EXPERT WITNESSES'  
CHARACTERISTICS AND COURTROOM BEHAVIOR QUESTIONNAIRE



CATEGORY \_\_\_\_\_ AGREE UNDECIDED DISAGREE  $\chi^2$

REACTION TO STRESS

5. How an expert psychiatric witness handles stress during cross examination by the opposing lawyer influences a juror's opinion of him.	30	1	3	22.09*
30. It does not hurt his credibility for an expert psychiatric witness to appear intimidated or bothered by the opposing attorney.	14	1	19	1.76

RESPONSE TO CROSS EXAMINATION

11. A juror responds favorably to an expert psychiatric witness who does not hesitate to actively defend his opinion during cross examination.	32	0	2	26.47*
36. A juror tends to have a low opinion of an expert psychiatric witness who argues with an opposing lawyer.	5	6	23	11.57*

53. It is important for an expert psychiatric witness to ignore attempts by the opposing attorney to unnerve him or rattle him rather than respond them.	21	6	7	7.00*
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ADDRESSING RESPONSES TO JURY

7. When testifying, the expert psychiatric witness should speak to and look at the jury.	11	5	18	1.69
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CATEGORY AGREE · UNDECIDED DISAGREE  $\chi^2$

ADDRESSING RESPONSES TO JURY (CONT'D)

32.	It is unimportant whether the expert psychiatric witness addresses his testimony directly to the jury, judge or questioning lawyer.	16	5	13	.31
54.	Jurors will pay more attention to the expert psychiatric witness who directs his answers to them directly rather than addressing his answers to the judge or lawyer.	10	2	24	5.76*

COURT APPOINTED VS. DEFENSE HIRED EXPERT

9.	A court appointed expert psychiatric witness is more objective than an expert psychiatric witness hired by the defense.	14	10	10	.67
34.	One is more likely to believe an expert psychiatric witness hired by the court than by the defense.	10	5	19	2.79
55.	The fact that an expert psychiatric witness is hired by the court or the defense has no bearing on the juror's opinion of his testimony.	21	2	11	3.12

EXPRESSING CERTAINTY VS. UNCERTAINTY OF OPINION

13.	The expert psychiatric witness who expresses a degree of uncertainty about his opinion is viewed in an unfavorable manner.	27	3	4	17.06*
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CATEGORY	AGREE	UNDECIDED	DISAGREE	X <sup>2</sup>
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EXPRESSING CERTAINTY VS. UNCERTAINTY OF OPINION (CONT'D)

35. It detracts from an expert witness' effectiveness if he seems unwilling to change his mind about his diagnosis.	7	4	23	8.53*
38. It is important for an expert psychiatric witness to be decisive and unyielding in his opinion.	25	2	7	10.12*
45. An expert psychiatric witness can be too definite and sure of his opinion.	12	5	17	.86
56. If an expert psychiatric witness shows any uncertainty about his opinion, it shows he is flixible and has an open mind on the witness stand.	9	5	20	4.17*

LENGTH OF PSYCHIATRIC EXAMINATION

16. The length of time an expert psychiatric witness spends interviewing and examining the defendant is not important.	3	2	29	21.12*
57. If expert psychiatric witness #1 spends more time examining and interviewing the defendant than does expert psychiatric witness #2, then expert witness #1 and his opinion carry more weight than expert witness #2 and his opinion.	19	6	9	3.57
70. The shorter the time an expert psychiatric witness spends examining and interviewing a defendant, the less effective his testimony is.	17	4	13	.53

PROFESSIONAL CREDENTIALS

2.	Jurors do not pay much attention to the expert psychiatric witness' professional credentials, i.e., degrees held, organizations belonged to, etc.	10	4	20	3.33
27.	The more degrees an expert has and the more organizations he belongs to, the more favorable he will be in a juror's eyes.	11	5	18	1.69
58.	An expert psychiatric witness whose professional credentials are not as numerous as other expert witnesses' credentials will not be viewed as favorably as those experts with more credentials.	8	5	21	5.83*

PSYCHIATRIST VS. PSYCHOLOGIST AS EXPERT WITNESS

4.	A juror will pay more attention to a psychiatrist than a psychologist on the witness stand.	10	13	11	.05
29.	Psychologists make better expert witnesses than do psychiatrists.	0	15	19	19.00*
59.	Jurors view the testimony of psychologists and psychiatrists with essentially equal importance.	15	8	11	.61

USE OF TECHNICAL VS. LAYMAN'S TERMS

6.	The use of mostly technical terms and psychiatric language by the expert psychiatric witness confuses the jury and is hard to follow.	24	2	8	8.00*
8.	When testifying, the expert psychiatric witness should use plain language and layman's terms as much as possible.	32	1	1	29.12*
31.	It helps in understanding the testimony for the expert witness to freely use psychiatric terms and descriptions.	9	4	21	4.80*

USE OF EXAMPLES

20.	It is important for the expert psychiatric witness to cite examples to explain and clarify his testimony.	30	1	3	22.09*
33.	The use of examples by the expert psychiatric witness is not particularly helpful in communicating his testimony to the jury and often complicates things.	3	2	29	21.12*
43.	It is difficult for a juror to remember an expert witness' testimony without examples presented during the testimony.	14	4	16	.13

STYLE OF PRESENTATION

10.	The expert psychiatric witness who is firm and forceful in presenting his opinion gives a favorable impression to a juror.	27	2	5	15.12*
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CATEGORY	AGREE	UNDECIDED	DISAGREE	$\chi^2$
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## STYLE OF PRESENTATION (CONT'D)

60.	An expert psychiatric witness who presents his testimony in a soft-spoken and low-key manner is viewed more favorably than the expert witness who presents his testimony in an active and forceful manner.	8	10	16	2.67
71.	The expert psychiatric witness who presents his testimony in a forceful and energetic manner tends to alienate a juror and hurt the effectiveness of his testimony.	6	4	24	10.80*

## DEGREE OF PERSONAL INVOLVEMENT

12.	It is important for an expert psychiatric witness to be somewhat detached and impersonal when testifying about a case.	24	2	8	8.00*
15.	An expert witness will be looked at favorably if he appears very concerned and has a deep personal involvement in the case.	8	3	23	7.26*
37.	An expert psychiatric witness should not communicate in an objective and personally uninvolved manner about a case.	7	6	21	7.00*
42.	It is unprofessional for an expert psychiatric witness to show personal concern for the defendant and the case.	10	3	21	3.90*
61.	It detracts from an expert witness' credibility if he appears to be personally involved while presenting his testimony.	18	4	12	1.20



CATEGORY	AGREE	UNDECIDED	DISAGREE	$\chi^2$
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EXPLANATION OF OPINION FORMATION (CONT')

41. The expert psychiatric witness can be more effective by explaining how he arrived at his opinion.	34	0	0	34.00*
64. It helps the juror when an expert psychiatric witness explains how he arrived at and formed his opinion.	34	0	0	34.00*

RAPID VS. HESITANT RESPONSE

21. The more smoothly and quickly the expert psychiatric witness answers questions, the more impressive he is.	24	4	6	10.80*
24. It is unfavorable for an expert psychiatric witness to pause often before answering questions on the witness stand.	4	3	27	17.06*
65. If an expert psychiatric witness does not respond quickly to a lawyer's questions, he looks unprepared.	6	1	27	13.36*

SEX OF THE EXPERT PSYCHIATRIC WITNESS

23. Expert psychiatric testimony from a male expert carries more weight than that from a female expert.	1	8	25	22.15*
47. The sex of the expert psychiatric witness has no influence on the juror.	25	7	2	19.59*

SEX OF THE EXPERT PSYCHIATRIC WITNESS (CONT'D)

66. A female expert psychiatric witness' testimony tends to be less impressive than a male expert witness' testimony. 1 8 25 22.15\*

INDEPENDENCE VS. COLLABORATION OF EXPERTS

25. It is important that the expert psychiatric witnesses arrive at their opinions independently. 26 2 6 12.50\*

48. Expert psychiatric witnesses who share a professional practice should not testify in the same case. 12 7 15 .33

68. It is all right for expert psychiatric witnesses who are in professional practice together to testify in the same case. 15 6 13 .14

USE OF VISUAL AIDS

22. When the psychiatric testimony is presented with the use of visual aids, such as charts, writing on the blackboard, etc., it hinders more than helps the juror to understand the testimony. 3 9 22 14.44\*

46. Writing on the blackboard aids the juror in remembering the important points of the expert psychiatric testimony. 18 7 9 3.00

67. It is easier to understand expert witness testimony when it is accompanied by charts or other visual aids. 18 8 8 3.85\*



APPENDIX FOUR  
DESCRIPTIVE STATISTICS OF  
DEMOGRAPHIC VARIABLES

VARIABLE	ABSOLUTE FREQUENCY	RELATIVE FREQUENCY	MEDIAN	MEAN
<b>SEX:</b>				
(1) Male	22	64.7		
(2) Female	12	35.3		
<b>RACE:</b>				
(1) Black	3	8.8		
(2) White	29	85.3		
(3) Asian	2	5.9		
<b>AGE:</b>				
(1) 18-30	4	11.8	51.0	48.4
(2) 31-49	12	35.3		
(3) 50-64	12	35.3		
(4) 65-over	6	17.6		
<b>RELIGION:</b>				
(1) Protestant	12	35.3		
(2) Catholic	6	17.6		
(3) Other	16	47.1		
<b>EDUCATION:</b>				
(1) Gram., Jr. H.	6	17.6		
(2) High School	9	26.4		
(3) Coll. & Beyond	19	55.9		
<b>OCCUPATION:</b>				
(1) Prof. & W.C.	18	52.9		
(2) B.C., Ser. HW	13	38.2		
(3) Ret., Student	3	8.8		
<b>INCOME:</b>				
(1) Above 20K	4	11.8		
(2) 10-20K	18	52.9		
(3) Below 10K	12	35.3		
<b>MARITAL STATUS:</b>				
(1) Single	8	23.5		
(2) Married	26	76.5		

Abbreviation Code

Prof. = professional  
W.C. = white collar  
B.C. = blue collar  
Ser. = service  
HW = housewife  
Ret. = retired  
K = thousand

APPENDIX FIVE

DESCRIPTIVE STATISTICS FOR  
PRINCIPAL COMPONENTS OF TRIAL

COMPONENT	RANK	ABSOLUTE FREQUENCY	RELATIVE FREQUENCY	MEDIAN	MEAN
LEGAL DEF. OF SANITY:				2.083	3.000
(1) High	1,2	18	58.1		
(2) Low	3-6	13	41.9		
PSYCHIATRIC TEST.:				3.065	3.000
(1) High	1,2	11	35.5		
(2) Low	3-6	20	64.5		
LAWYERS' PRES.:				3.445	3.581
(1) High	1,2	7	22.6		
(2) Low	3-6	24	77.4		
DEF'S BEH-APPR:				5.154	4.806
(1) High	1,2	3	9.7		
(2) Low	3-6	28	90.3		
WITNESSES' TEST.:				2.750	2.968
(1) High	1,2	14	45.2		
(2) Low	3-6	17	54.8		
DEF'S TEST.:				3.800	3.645
(1) High	1,2	9	29.0		
(2) Low	3-6	22	71.0		

Abbreviation Code

Def = definition  
Def's = defendant's  
Test. = testimony  
Pres. = presentation  
Beh-Appr = behavior and appearance

APPENDIX SIX

PHI COEFFICIENT COMPUTATION TABLES

Legal Def of Insanity

	NG	G	
High	5	13	18
Low	2	11	13
	7	24	31

Lawyers' Presentations

	NG	G	
High	1	6	7
Low	6	18	24
	7	24	31

Psychiatric Testimony

	NG	G	
High	4	7	11
Low	3	17	20
	7	24	31

Income

	NG	G	
Above 15K	1	19	20
Below 15K	5	9	14
	6	28	34

Defendant's Testimony

	NG	G	
High	1	8	9
Low	6	16	22
	7	24	31

Marital Status

	NG	G	
Married	2	24	26
Single	5	3	8
	7	27	34

Witnesses' Testimony

	NG	G	
High	2	12	14
Low	5	12	17
	7	24	31

Sex

	NG	G	
Male	4	18	22
Female	3	9	12
	7	27	34

Defendant's Beh-Appr

	NG	G	
High	1	2	3
Low	6	22	28
	7	24	31

Race

	NG	G	
White	5	24	29
Other	2	3	5
	7	27	34

	<u>Occupation</u>		
	NG	G	
White Coll.	4	14	18
Blue Coll.	3	13	16
	7	27	34

	<u>Defendant's Plea</u>		
	NG	G	
Rest. of Sanity	4	7	11
NGI/Dim. Capacity	3	20	23
	7	27	34

	<u>Nature of Offense</u>		
	NG	G	
Murder	5	18	23
Assault	2	9	11
	7	27	34

	<u>Religion</u>		
	NG	G	
Protestant	2	10	12
Other	5	17	22
	7	27	34

	<u>Education</u>		
	NG	G	
H.S. Degree or higher	5	14	19
H.S. Degree or lower	2	13	15
	7	27	34

Abbreviation Code

High = ranking of 1 or 2  
 Low = ranking of 3 through 6  
 NG = not guilty  
 G = guilty  
 K = thousand  
 NGI = not guilty by reason  
 of insanity

	<u>Age</u>		
	NG	G	
Above 30	5	25	30
30 and below	2	2	4
	7	27	34

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Gary Norman Slutzky was born in Dayton, Ohio on October 28, 1946. He was reared in Dayton and graduated from Fairview High School in June, 1964.

The author received his B. A. in Sociology from Ohio State University in March 1969. He taught school for two years at Madison Junior High School in Trotwood, Ohio. He entered the graduate program at the University of Dayton and received an M. A. in Clinical Psychology in July 1972. During this time, he worked for one year at Good Samaritan Mental Health Center in Dayton, Ohio, followed by a position as a staff member at the Clark County Comprehensive Community Mental Health Center in Springfield, Ohio for one year.

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